kaingas at Raumatangi, and objected to being put right away down by Lake Waiwiri, and Kemp thereupon made good his promise and placed the descendants of Te Whatanui on No. 9, adjoining Raumatangi, and the descendants of Te Whatanui have resided there to this day.

We have the definite and uncontradicted evidence of Neville Nicholson, given before the Royal Commission, to the effect that what is now No. 14 had before the opening of the abortive Court on the 25th November been offered to him and rejected by him on behalf of the descendants of Te Whatanui, and Judge Wilson will be able to corroborate this of his own knowledge. First of all, I will read Judge Wilson's answer before the Royal Commission (page 131, answer 35). He says, "From the earliest stages there were a number of Te Whatanui's descendants about Palmerston. Some of them were stopping at the same hotel as myself, and one sat opposite me at every meal, and tried to approach me in respect to the interest that Kemp, it was said, was going to cut off for them, and said that the land was not good. I told him that he had no *locus standi* in the Court, and that I could not pay any attention to him; that their names were not in the title." I draw attention to the words "that Kemp, it was said, was going to cut off for them," which show that this refusal of No. 14 took place as soon as the descendants of Te Whatanui heard of the offer, or intended offer, of that subdivision, and before anything was decided in the barn, let alone Court. Neville Nicholson's evidence is no less precise. He mentions another incident showing how early this refusal took place, and this incident, again, is spoken of by Judge Wilson and recorded in the minute-book. I must remind the Court, in order that they may understand the allusion, that one of the three subdivisions which Mr. McDonald mentioned in his speech at the opening of the abortive Court as being the three subdivisions the Natives were prepared to go on with, was a subdivision of 1,200 acres to be awarded to Kemp for the descendants of Te Whatanui. This subdivision was mentioned second in Mr. McDonald's speech, but it came on third before the abortive Court. Mr. Lewis, the Under-Secretary for Native Affairs, gave evidence as to Kemp's promise to Sir Donald McLean in regard to the question where the subdivision for the descendants of Te Whatanui was to be located; and, finally, an abortive minute for an order was made awarding this subdivision as No. 3. This subdivision is probably identical with what is now No. 9; but nothing turns on this, and I do not insist on the point. I mention all this simply to lead up to Neville Nicholson's evidence, which is most precise, to the effect that before all this happened, at the opening of the abortive Court, Kemp had offered to cut off what is now No. 14 (for, of course, it did not become No. 14 till a week afterwards) for the descendants of Te Whatanui, and they had refused it. Indeed, so determined was Neville Nicholson not to have Waiwiri (No. 14), but to be near Lake Horowhenua, that, as he himself states, when this 1,200 acres came on before the abortive Court, thinking that it was or might be Waiwiri, he protested in Court, and asked to see where it was situated. The minute of 25th November says, "Nicholson, a half-caste, wishes to know if he may see where the 1,200 acres are to be fixed, and objects to the present position." Judge Wilson, before the Royal Commission, stated his recollection of this incident. I will now read the passage in which Neville Nicholson sums up his evidence as to the refusal of No. 14 (page 162, answers 114 to 118). [Read accordingly.] I may add that Neville Nicholson's evidence was uncontradicted before the Royal Commission, and that he is a disinterested witness on this point.

Having now proved, by documentary evidence, that No. 14 was offered and refused before the sitting of the abortive Court, let me sum up the counter-claimant's theory of a trust, and the very simple facts which disprove it. This theory of a resulting trust to the Muaupoko Tribe rests on two assumptions—namely, (1) that when No. 14 was awarded to Kemp in December, 1886, it was awarded to him in trust for the descendants of Te Whatanui, if they chose to accept it; and (2) that the descendants of Te Whatanui did not refuse No. 14 till after it had been awarded to Kemp. But the facts are, as I have proved, that No. 14 was not given at all to Kemp in trust for the descendants of Te Whatanui, for, as Nicholson and Judge Wilson prove, they had refused that subdivision a week at least before it was awarded to Kemp. And, accordingly, the suggestion that they refused it afterwards, is directly contrary to fact. Moreover, the suggestion that No. 14 was given to Kemp in trust for them is directly negatived by the minute-book, which shows that they got No. 9 two days before No. 14 was awarded to Kemp; and we know Kemp only promised them one subdivision. I am really almost ashamed of proving what appear to be rather matters of A B C, but there is a simple rule of law which we all learnt when we were students, and which seems to me to apply in this case. It is this. A man cannot give his land to a second man in trust for a third man, so as to create an effectual trust, unless all three persons consent. Applying this maxim to the present case, I would say that when the Muaupoko allowed Kemp to become legal owner of No. 14, Kemp was not thereby constituted a trustee for the descendants of Te Whatanui unless Kemp consented to be a trustee, and the Muaupoko consented to give the descendants of Te Whatanui No. 14, and the descendants of Te Whatanui accepted the gift. Now it is certain that the descendants of Te Whatanui had already refused No. 14; and it is certain that Kemp has never consented to be a trustee, but that, on the contrary, he stated in Court when applying for No. 14 that it was for himself; and, in the third place it seems, to say the least of it, contrary to human nature to suppose that the Muaupoko would be willing to give the descendants of Te Whatanui No. 14, considering that Kemp had only promised them one subdivision, and they had already got No. 9.

I have already told the Court that every one of these facts that I have stated was entirely uncontradicted by any evidence before the Royal Commission. Indeed, the only pakeha witness who gave evidence in favour of the supposed trust over No. 14—Mr. Alexander McDonald—was most emphatic, not only in accepting the accuracy of the minute-book, but in asserting his independent recollection that No. 9 was cut off by the Court before No. 14—the fact on which I rest so much stress. I may mention that Mr. McDonald had already given evidence in the Supreme Court at Wanganui in the case relating to No. 11, and on that occasion he gave a detailed account showing how, before anything was done in Court at all, No. 14 was offered to the descendants of Te