Part II.

1. It would appear that the Court has been asked to introduce into the determination of the question another matter, which it is submitted is wholly irrelevant—viz., the question whether the descendants of Te Whatanui did or did not accept the allotment to them of Block 9.

2. But it must be remembered that so far as the Court was concerned the descendants of Te Whatanui had no rights whatsoever—they were pure volunteers, not persons named in the title; and they could only take by the very gift of the owners; and the Court, in allotting anything to them, could only do so, not in satisfaction of any rights of theirs, but only by direction of the owners of the block, in satisfaction of an engagement made by those owners. And the Court could have no jurisdiction to inquire who were the descendants of Te Whatanui, or, who were the particular persons in whose favour this trust was being declared. It was declared, not by the Court, but by the owners, who had a perfect right, if they thought fit to inform or not to inform the Court who were the *cestuis que trustent*. But the only person who could speak for the *cestuis que trustent* was Mr. Lewis, the officer of the Native Department, at whose request Kemp had engaged to give the land, and with whom the engagement was made. There was no engagement with the descendants of Te Whatanui; there was an engagement with the Crown to reserve 1,300 acres for the descendants of Te Whatanui, and the Crown, and the Crown only, had the right to say whether it was or was not satisfied with the performance of that engagement; and the Judge of the Court, and only the Judge of the Court, can say whether he did receive a notification from the officer of the Crown that the Crown was satisfied; and if the Judge says so, it does not matter whether a hundred people come forward and say they were the descendants of Te Whatanui, and did object or would have objected. The answer seems to be quite plain: the Judge of the Court was satisfied that the Crown, with whom the engagement was made, thought that Block 9 would fulfil the engagement, and acted accordingly.

3. It is quite true, probably, that in courtesy some of the descendants of Te Whatanui were consulted by those who were making them the gift, and possibly also by officers of the Crown; but the argument, as I understand it, which has been addressed to the Court is that they were an unascertained class, and that until they became an ascertained class nobody could speak for them, and that therefore it was not competent for the Native Land Court to allot No. 9 to them. The answer appears to be almost too plain for argument—that the Crown got the promise for this unascertained class and the Crown saw that it was fulfilled, and it was fulfilled, and their consent or non-consent was immaterial. The opposite contention can only mean that the title to the whole of the Horowhenua Block under partition remained absolutely inchoate, and incomplete, until an investigation had been held to ascertain who were the descendants of Te Whatanui, and until those persons had agreed to accept the allotment awarded to them; and the same objection must go on to hold that if any one or more of those persons subsequently ascertained did object, then the whole proceedings upon the partition, not only of Blocks 9 and 14, but of everything, would have had to be begun *de novo*.

Even if it be held that Mr. Lewis did not notify to the Court his acceptance on behalf of the Crown of the allotment of Block 9, and the positive evidence of Judge Wilson upon this point be disregarded, still it must be manifest that the question was one for the donors—the owners of the Horowhenua Block—to determine, both as to area and as to locality. Certainly the volunteers —the descendants of Te Whatanui—had no right of election or selection in the matter; and, indeed, I suppose hardly any one can pretend that they could do so otherwise than through Mr. Lewis, or through some spokesman who keeps things in his own mind possibly (indicating Mr. McDonald). Even then, on this assumption, it seems idle to contend that once the Court made a definitive allotment of No. 9 on the 1st December, in satisfaction of the agreement of 1874, there could have remained anything which the Court could do or undo in that matter. It was a question for the registered owners as the donors, and the Court, in its action, was performing not an act of partition as between the owners of the block, but awarding a block at the request of the donors in satisfaction of the agreement. Once done there was an end of it.

Part III.

1. But apart from the evidence of Judge Wilson, and assuming for the moment that the Court may elect to act on the other evidence, eliminating that of Judge Wilson, then (*a.*) If the Court decides that what was dealt with by the Court on the 25th November was Block 9, that would apparently dispose of the whole case, and be a conclusive decision in favour of Kemp, because it is then plain that no "confirmation" on the 3rd December of an order relating to Block 14 could refer to an order of the 25th November relating to Block 9, and therefore could be no creation or confirmation of a trust in relation to Block 14. (*b.*) If the Court decides upon the evidence that what was before the Court on the 25th November was Block 14, then the next question for decision will be whether the order of the 1st December allotting Block 9 to Kemp upon trust for the descendants of Te Whatanui was made finally upon the assumption by the Court that it either was or would be accepted by the descendants; or upon the notification to the Court by Mr. Lewis of such acceptance by the Crown. If it be decided by the Court (and it is submitted that the evidence is almost conclusive in this direction) that the order of the 1st December was so made, then next arises the question as to what was the meaning and effect of the order of the 3rd December. It can hardly be suggested that it could have been meant by either the registered owners or by Kemp or by the Court to confirm a trust in favour of the descendants of Te Whatanui, since that would be to allot 2,400 acres to those descendants. It is submitted that the Court ought to find, as an issue of fact, that the registered owners and the Court did on the 3rd December agree and intend that the title to No. 14 should be issued to Kemp as absolute owner; and in any case the Court, it is submitted, must find as an issue of fact that no trust was expressed