provisions of section 5, which destroys his certificate for the purposes only which may be required by virtue of an adverse order to him made by you. That is my answer. If anything turns upon that I will ask your Honours to state a question of law.

I understand also that it has been suggested that it was a condition precedent to the jurisdiction of Judge Wilson to open his Court at all upon this partition that he should first cancel the original certificate of title. My answer to that is: First, of course, that this Court really cannot inquire into any of the proceedings relating to partition. That argument covers the whole of this point. But, secondly, it is almost unintelligible. The cancellation is done, I understand, either by sticking on the seal or by writing the fact across the certificate. [*Mr. Stafford:* By an order.] All I can say is that I do not believe the Native Land Court have done it in any case—that they have signed such an order formally before they proceeded. The first argument on the point is that you have no power to inquire whether the jurisdiction was or was not executed. If you proceed further, and ask whether any Court would hold that the proceedings of this Court were nugatory because the Judge did not do the act required to begin with of making an order of cancellation and sticking on his seal, or whatever it is, seems to me to be—well, it is a very strange argument. Anything, I apprehend, that the Court can do can be done *nunc pro tunc;* the Court can give its judgment, and date it back. A party dies while the Court is considering its judgment. The Court, in order to prevent any lapse by reason of the death of one of the parties while the Court is considering its judgment, dates its judgment back, and gives its judgment *nunc pro tunc;* and every act of the Court of that kind, I should apprehend, depends upon the principle that the act of the Court must wrong no one. Supposing the Supreme Court had proceeded with an inquiry up to a certain time, and then it has been discovered that there was some flaw in the writ, does this Court suppose that could not be amended? The action must begin with a writ, it is true. Supposing that a writ were issued against a plaintiff beyond the jurisdiction, which would require an order, something precedent to the jurisdiction of the Court, and the Court sat and tried the case, and gave judgment, and then somebody said there was a flaw in the writ. [*Mr. Stafford* said the parties appearing waived the objection.] I ask your Honours to reserve the question of law if you have any doubt that every Court has the jurisdiction to do what I understand was done in this case—to make the order *nunc pro tunc* or *tunc pro nunc*, as the case requires.

ADDRESS BY MR. STAFFORD.

Mr. Stafford: We say that at sitting of the 25th November, 1886, the Court cut off No. 14. On the 1st December, 1886, No. 9 was cut off. Both sections were awarded to Kemp, the object being to allow Ngatiraukawa to make a choice. The facts bear this out. The order of the 3rd December was a confirmation of the order of the 25th November as an alternative section, because Ngatiraukawa had not selected either. This is McDonald's explanation. There would be a resulting trust to the 143 owners in the section rejected by Ngatiraukawa. There is no such proposition of law about Judge's evidence as set up by Mr. Bell. Judge Wilson's testimony is not reliable; his memory is bad. The order for No. 9 was completed on the 1st December, 1886. No. 3 was confirmed as No. 14 on the 3rd December. As to voluntary arrangement, Judge Wilson admits that he considered challenging objectors sufficient to constitute voluntary arrangement. Judge Wilson said he exercised no judicial discretion in making his orders. Orders must be bad. No. 14 was originally all east of railway. After No. 11 was awarded 589 acres were taken out of it to make up the area of No. 14. The evidence shows that Rangitane, Ngatikahungunu, and Ngatiapa were not asked to assent to voluntary arrangement. Some of the Muaupoko did not consent. Many were dead, others absent. Some were minors. More than *Gazette* notice necessary to enable voluntary arrangement to be made. Section 56 necessitated assent of all the owners. As to jurisdiction: Equitable Owners Act is incorporated with the Horowhenua Block Act. Extensive jurisdiction is given to Court. No. 14 was never given to Kemp beneficially. McDonald's evidence read with minute-book shows this. Will submit issues of fact and questions of law which I have drawn up, and think material, and leave them to the Court. Mr. Bell's argument addressed to limiting jurisdiction of Court. The Court is bound to go back to the original transactions between Kemp and his tribe, and ascertain whether the tribe validly gave No. 14 to Kemp for himself. It should consider everything Judge Wilson did, and left undone—go back behind orders and everything else. Mr. Bell strained the law. The Chief Justice allowed evidence to be called against Judge Wilson's in Horowhenua No. 11. The objection made to evidence controverting Judge Wilson's comes too late. Judge Wilson, by failing to comply with sections 28 to 32, prevented any one in No. 11 from getting his land in No. 14.

Issues of Fact.

1. (*a.*) Was not a piece of land containing 1,200 acres lying to the eastward of the railway-line part of and contiguous to the southern boundary of the Horowhenua Block awarded on the 25th November, 1886, to Major Kemp in order to give effect to an agreement made in 1874 between himself and Sir Donald McLean?

(*b.*) Was not that piece of land then called "Horowhenua No. 3"?

(*c.*) Was not that piece of land the only piece of land containing 1,200 acres which was before the said Native Land Court on the 25th November, 1886?

2. (*a.*) Was not a piece of land containing 1,200 acres, now Horowhenua No. 9, awarded to Major Kemp on the 1st day of December, 1886, to give effect to the agreement mentioned in issue 1 (*a*) hereof?

(*b.*) Was not such award made in order to afford to the persons beneficially interested under such agreement the choice of accepting either the section cut off on the 25th November, 1886, or Section No. 9?