

but by virtue of a voluntary arrangement. The absence of certain owners might not interfere with a judicial decision. A voluntary arrangement stands on very different legs. Orders in such an arrangement operate as mutual conveyances by the whole of the owners, and to validate them all the owners or their representatives must concur. So much for what took place outside and before the sitting of the Court.

The objects for which the Court was assembled were chiefly two in number. In the first place, it was desired to obtain a title to the railway-line which had been constructed through the block; in the second place, it was desired that a piece of land should be secured by the Government for a township. It is in connection with these objects that Mr. Alexander McDonald first appears on the scene. Mr. McDonald had been engaged by the Manawatu Railway Company to obtain a title to the railway-line for them. He had also, together with Major Kemp, interviewed the Government, and practically concluded an agreement with them for the sale to them of 4,000 acres for a township, upon the terms which I will now read from page 6 of the Horowhenua Commission report. While at the Court Mr. McDonald was apparently employed throughout the proceedings by Major Kemp and the Muaupoko, to assist them in carrying through the partition of the block. [*Vide* Appellate Court minute-book, Vol. 31, page 116 (Rangimairehau), also Vol. 32 (Nicholson's evidence), contra, Vol. 14 (Kemp's evidence).] His son-in-law, Mr. Palmerson, the surveyor, and at whose house he, together with Major Kemp, resided, was, as it appears, also employed by the Natives to give them his professional assistance in regard to the subdivision of the block. [*Vide* Kemp's evidence, Appellate Court minute-book, Vol. 31, pages 144 and 149.]

Now, with regard to what was actually done in the partition of the block, it would be well to shortly state, first, what took place outside and prior to the Court at the meetings of the assembled Natives; second, what took place in the Court; and, shortly, what was done in connection with the partition subsequently to the Court. To begin, then, with what was done outside and prior to the sitting of the Court on the 25th November, 1886. Certain facts stand out as undisputed: First, the meeting of Natives already referred to; secondly, that Mr. McDonald and Mr. Palmerson were present assisting the Natives from time to time; thirdly, that certain at any rate of the subdivisions were settled by certain of the Natives, and in part at least by Mr. McDonald, at the meeting prior to any subdivisions being taken into the Court to be awarded. It is also substantially common ground that a tracing or tracings were used at those meetings on which the subdivisions were marked out. Indeed, provisionally, at the last moment one of these tracings has been discovered and produced.

Another important fact which may be conveniently referred to at this stage is the agreement which had been made in 1874 between Sir Donald McLean and Major Kemp, in which it was stated that certain land, part of the Horowhenua Block, was to be given to certain of the descendants of Te Whatanui to be thereafter nominated. On Major Kemp's invitation certain of the persons who claimed to be entitled under the agreement were present in Palmerston, one of the chief of these persons being, as far as the evidence goes, a half-caste named Aohau, or Neville Nicholson. During the days immediately preceding the first sitting of the Court it is undisputed that certain subdivisions were definitely agreed to: (1.) The railway-line, Subdivision No. 1, which was cut off and marked on the tracing. (2.) The section, No. 3 first, and then No. 2, of 4,000 acres for a township, to be sold on certain specified conditions to the Government, which was also cut off and marked on the tracing. It is clear also—(3.) A third subdivision, No. 2 first, and then No. 3, was cut off and marked on the tracing to be awarded to Major Kemp, in order that he might carry out the agreement made between Sir Donald McLean and himself. Now, with regard to this third section there are two rival theories: First, it is alleged by those persons who are opposing Major Kemp's beneficial ownership of the land that that third section was a section at the southern end of the block, lying entirely to the eastward of the railway, and subsequently marked No. 14 at the Court of 1886. They allege, further, that that was the only section of 1,200 acres marked off on the plan before the first sitting of the Court. The rival theory, which was the theory first set up by Major Kemp, and was the theory all along of certain of his chief witnesses, is that that Section No. 14 was never definitely marked off on the tracing prior to the Court sitting; but, after it had been offered before and outside the Court to certain of the descendants of Te Whatanui in Palmerston, and refused by them, a section near the Horowhenua Lake was substituted and marked on the tracing in fulfilment of the agreement, and Kemp and these witnesses persisted in asserting that this latter section was the third section cut off and marked on the tracing.

Now, I submit confidently that what is conclusively proved by the evidence is—(1) That there was only one piece of land cut off for the descendants of Te Whatanui before the first sitting of the Court; and (2) that that piece of land was the land at Ohau numbered at the Subdivisional Court in 1886 No. 14. In support of this I would cite the whole evidence for the counter-claimants, especially relying on Mr. A. McDonald throughout his evidence, especially at page 313, which I quote; Aohau Nicholson throughout his evidence, especially at page 362, which I quote; the evidence before this Court, page 108, of Rangimairehau, one of Kemp's witnesses; and the unwilling admission at page 254 of Raniera te Whata, another of Major Kemp's witnesses. I submit that that evidence is clear and natural, and is supported, moreover, by the evidence before the Commission of many persons who have in this proceeding given evidence in favour of Major Kemp. [Horowhenua Commission, page 75 (McDonald), &c.]

If further evidence was required it is afforded—(a) By the Court plan, (b) the list put in, and (c) the minutes. Moreover, it is clinched beyond a shadow of a doubt by the evidence of the tracing produced at the eleventh hour from the Supreme Court files.

The opposition theory is founded on Judge Wilson, and has been gradually built up; in its fully developed state it has reached to this point, as opened in the evidence: (a.) That certain negotiations took place outside and before the sitting of the Court between certain descendants of Te Whatanui and Major Kemp. This is undoubtedly true. (b.) A suggestion made by Kemp to