SESS. II.—1897.
NEW ZEALAND.

THE HOROWHENUA BLOCK:

MINUTES OF PROCEEDINGS AND EVIDENCE IN THE NATIVE APPELLATE COURT UNDER THE PROVISIONS OF "THE HOROWHENUA BLOCK ACT, 1896," IN RELATION TO DIVISION XIV. OF THE SAID BLOCK.

LEVIN, 25TH FEBRUARY, 1897, TO 8TH APRIL, 1897.

Presented to both Houses of the General Assembly by command of His Excellency.

No. 1.

IN THE NATIVE APPELLATE COURT,
DISTRICT OF WELLINGTON.

In the matter of "The Horowhenua Block Act, 1896," and in the matter of Meiha Keepa te Rangihiwinui claiming to be the beneficial owner of Horowhenua, Subdivision XIV., containing 1,200 acres.

I, MEIHA KEEPA TE RANGIHIWINUI, an aboriginal Maori chief residing at Wanganui, do hereby, in pursuance of the provisions of "The Horowhenua Block Act, 1896," make application to the Native Appellate Court as defined by "The Native Land Court Act, 1894," being the Court referred to in the first-mentioned Act, and pray that the said Court after hearing such evidence as may be adduced, will make all necessary orders for insuring the issue to me of a certificate of title under "The Land Transfer Act, 1885," in respect of the above-mentioned Subdivision XIV. of the Horowhenua Block, as the same is more particularly described in the First Schedule to the first mentioned Act.

Dated at Wellington, this 22nd day of October, 1896. MEIHA KEEPA RANGIHIWINUI.

Nos. 10 and 13.

In the matter of "The Horowhenua Block Act, 1896," hereinafter called "the said Act."

APPLICATION is hereby made to the Native Appellate Court by the undersigned persons, claiming to be interested, to hear and determine under the provisions of the said Act:—

(1.) Who are the persons entitled under the provisions of "The Native Equitable Owners Act, 1886," to Divisions 6, 12, 14, and such portion of Division 11 of the Horowhenua Block as is subject to the provisions of "The Native Equitable Owners Act, 1886."

(2.) What portion of Division 11 of the Horowhenua Block are the members of the Ngatihikitanga, Ngatiparerauka, Ngatiparekohatu, and Ngatikahoro hapus of the Ngatiraukawa Tribe entitled to as reserves under the provisions of subsection (*d*) of section 8 of the said Act.

(2*a*.) Who are the persons so entitled, and what are their relative shares or interests.

(3.) What persons, if any, other than those named in the Third Schedule of the said Act, are equitably entitled to be included in the Land Transfer certificate for Division 9 of the Horowhenua Block.

(4.) What amount, in addition to the sum of £1,266 19s. 5d., as provided by section 19 of the said Act, are the persons who shall be so found by the Court to be entitled to Division 12 of the Horowhenua Block to receive, and in what relative proportions.

WIRIHANA HUNIA.
WARENA TE HAKEKE.
HIMIONA KOWHAI.
IRITANA (tana x maka) HANITA.
HANITA (tana x maka) MAUNU.

Dated at Levin, this 4th day of January, 1897. Recd. N.L.Ct.O., 5/1/97.

A similar application (*see* No. 13 in Schedule below) to the above received from Raraku Hunia and Matai Porotene, dated the 12th day of January, 1897.

Notice of Time and Place of Sitting of the Native Appellate Court under "The Horowhenua Block Act, 1896."

Native Land Court Office, Wellington, 14th January, 1897.

NOTICE is hereby given that the Native Appellate Court acting under the provisions of "The Horowhenua Block Act, 1896," will sit at Levin on the 25th day of February, 1897, to hear and determine the applications affecting portions of the Horowhenua Block set forth in the Schedule hereto. All persons interested are hereby notified to attend at the time and place aforesaid.

EDWARD BUCKLE, Registrar.

[Wellington, 97-9.]

SCHEDULE.

No.	Name of Applicant.	No. of Subdivision affected.	Nature of Application.
1	Meiha Keepa Rangihiwinui (O. 78-41, W. Rhg. 2/215)	No. XIV.	That certificate of title under Land Transfer Act be ordered to be granted to applicant.
2	Heni te Rei and others (O. 83-3, W. Rhg. 2/216)	No. XI.	That certificate of title under Land Transfer Act be ordered to be granted to applicants.
3	Heni te Rei (O. 83-5, W. Rhg. 2/217)	Part of No. XI. ..	For order under subsection (*d*) of section 8, Horowhenua Block Act, vesting reserves in members of hapus of Ngatiraukawa Tribe.
4	Meiha Keepa Rangihiwinui and others (O. 83-7, W. Rhg. 2/219)	No. XI.	That certificates of title under Land Transfer Act be ordered to be granted to applicants.
5	Meiha Keepa Rangihiwinui and others (O. 78-45. W. Rhg. 2/220)	No. VI.	That certificates of title under Land Transfer Act be ordered to be granted to applicants.
6	Meiha Keepa Rangihiwinui and others (O. 78-47, W. Rhg. 2/221)	No. XII.	For order declaring applicants beneficially entitled.
7	Edward Nicholson (O. 83-9, W. Rhg. 2/222)	No. XI.	That reserves referred to in subsection (*d*) of section 8 aforesaid be awarded to the hapus named in said subsection.
8	A. Knocks (agent for Amy Wallace and others), (O. 83-11, W. Rhg. 2/223)	No. XI.	For award to Ngatiparekohatu Tribe of reserves referred to in subsection (*d*) aforesaid.
9	A. Knocks (agent for Mrs. Matilda Morgan), (O. 83-13, W. Rhg. 2/224)	No. XI.	For award to Ngatihikitanga Tribe of reserves referred to in subsection (*d*) aforesaid.
10	Wirihana Hunia and others (O. 78-49, W. Rhg. 2/230)	Nos. VI., XI., XII., XIV.	For ascertainment of title under "The Equitable Owners Act, 1886," to Subdivisions 6, 12, and 14, and portion of Subdivision 11; also for award of reserves out of Division 11; also to ascertain amount of purchase-money to be paid by the Crown under subsection (*e*) of section 8 for purchase of Division XII.
11	Ropata Ranapiri and others (O. 83-17, W. Rhg. 2/231)	No. XI. (Whakamaungariki Waiwiri)	For investigation of title.
12	The Minister for Public Works (O. 78-51, W. Rhg. 2/232)	No. XII.	To ascertain amount of purchase-money to be paid under subsection (*e*) of section 8 aforesaid.
13	Raraku Hunia and others (O. 78-55, W. Rhg. 2/233)	Nos. VI., XI., XII., XIV.	For ascertainment of title under "The Equitable Owners Act, 1886," to Subdivisions 6, 12, and 14, and portion of Subdivision 11; also for award of reserves out of Division 11; also to ascertain amount of purchase-money to be paid by the Crown under subsection (*e*) of section 8 for purchase of Division XII.

SESS. II.—1897.

NEW ZEALAND.

THE HOROWHENUA BLOCK.

MINUTES OF PROCEEDINGS AND EVIDENCE IN THE NATIVE APPELLATE COURT UNDER THE PROVISIONS OF "THE HOROWHENUA BLOCK ACT, 1896," IN RELATION TO DIVISION 14 OF THE SAID BLOCK.

Presented to both Houses of the General Assembly by Command of His Excellency.

THE NATIVE APPELLATE COURT, LEVIN.

MEIHA KEEPA RANGIHIWINUI, CLAIMANT. WARENA HUNIA AND OTHERS, COUNTER-CLAIMANTS.

THURSDAY, 25TH FEBRUARY, 1897.

THE Court opened at 10.15 a.m.

Present: A. Mackay, Esq., Judge, presiding; W. J. Butler, Judge; Atanatiu te Kairangi, Assessor; A. H. Mackay, Clerk.

The Court announced that all cases notified in *Panuis* dated the 14th January, 1897, and 8th February, 1897, were now before the Court, and would be taken in the order in which they were set down unless sufficient grounds were shown for altering the arrangement.

Judge Wilson appeared and asked that his evidence might be taken first if none of the parties would be prejudiced thereby.

Sir W. Buller appeared with Mr. Beddard for Meiha Keepa te Rangihiwinui.

Mr. John Stevens appeared for Warena Hunia, Wirihana Hunia, and others, and announced that Mr. Stafford was with him to advise and argue upon any points of law that might arise during the progress of the case. He would also watch the case on behalf of the Public Trustee.

Sir W. Buller asked if Mr. Stafford represented the Crown.

Mr. Stafford replied that he did not, but that he would advise Mr. Stevens on questions of law.

Sir W. Buller urged that the Public Trustee could not be a party to the case, and protested strongly against his being represented

Mr. Stafford stated that he appeared merely to watch proceedings on behalf of the Public Trustee, and to interpose if necessary, and if the Court would allow him to do so. In addition to this he appeared with Mr. Stevens, to advise and assist him on questions of law.

The Court: The Public Trustee has no status before this Court.

Mr. D. Scannell appeared for Hera te Upokoiri, and to some extent for Rakera Hunia, but would not take part in the case unless their brothers did anything prejudicial to their rights, or unless it became necessary for him to take action under section 4 of the Horowhenua Block Act.

Colonel McDonnell appeared for Raraku Hunia and three others.

Mr. Baldwin appeared on behalf of Nepia Pomare and others, direct descendants of Te Whatanui, to oppose certificate of title being granted to Kemp in Section No. 14, or to others in any of the other sections.

Sir W. Buller contended that Mr. Baldwin's clients had no standing unless they had sent in an application within the time allowed by the Horowhenua Block Act.

Mr. Baldwin argued that his clients and any others could claim a beneficial interest in the land under "The Equitable Owners Act, 1886." The inquiry could not be confined to any particular persons or hapus.

Sir W. Buller again contended that the jurisdiction of the Court was limited to the persons whose names appeared in the certificate of 1873 and the forty-eight added by Parliament, unless an application had been made in the time allowed, and they were confined to certain reserves agreed to by Kemp in No. 11.

Mr. Baldwin suggested that if the Court was in any doubt, a case should be stated for the opinion of the Supreme Court as to whether the provisions of the Equitable Owners Act were to be confined to the Muaupoko.

Mr. Stafford: If the Act is construed as Mr. Baldwin wishes, the Court would have to go back to 1873 and reinvestigate the title to the land. This would be monstrous. The Act assumed that the persons in the certificate were the *cestuis que trustent.*

Mr. Baldwin: I am now instructed to act for Kipa te Whatanui, who has sent in an application. We claim that Major Kemp is a trustee for certain Ngatiraukawa.

Mr. A. McDonald asked to be allowed to appear for Himiona Kowhai. Suggested that any one should be allowed to set up a claim provided that they were prepared to pay costs of Court.

Sir W. Buller objected.

Mr. Baldwin still claimed that all persons who could prove that Kemp was their trustee in 1886 and 1873 could come in.

Mr. Stevens: The Legislature never contemplated making the land *papatupu.* Kemp could not have been trustee for the Ngatiraukawa, because none of them appear in the lists.

The Court: It is clear to the Court that its jurisdiction is confined to the persons who appear in the certificate of 1873 and the forty-eight persons. Mr. Baldwin appears to rely too much on the provisions of the Equitable Owners Act. Those provisions are only imported into this Act for certain purposes, which are clearly set out in section 4 of the Horowhenua Block Act.

Mr. Stafford would like to know what Kemp's position was. He had held a Land Transfer title, but it had been taken away by the Horowhenua Block Act, and he could not claim as a *cestui que trust.*

Sir W. Buller stated that Kemp was the beneficial owner of Section 14, and that the Horowhenua Block Act provided that if the Court decided there was no trust the title would reissue to him.

The Court: The question is whether Kemp's title is destroyed or only suspended.

Mr. Beddard argued that the Court had power to decide the question of trust, and, if there was no trust, to order that the title should reissue to the original owner.

Sir W. Buller contended that Kemp was beneficially interested in Section 14 as absolute owner, and therefore could apply. Kemp had both a legal and equitable title. He was entitled to make the application even if only as one of the 143.

The Court suggested that the better plan would be for Sir W. Buller to allow the other parties to assail Kemp's title.

Mr. Stevens said that it appeared that Kemp's application was technically wrong, and that Sir W. Buller was seeking to have it amended. In his opinion, the proceedings would be shortened by taking Horowhenua No. 11 first. It was the largest block, and if No. 14 was taken first it would be necessary to go over the whole of the evidence again when No. 11 was dealt with. He asked that No. 11 be taken first.

The Court: The main question is, Who is to begin in either case?

Mr. Stevens would have no objection to Sir W. Buller commencing so long as he did not lose the right of reply.

Sir W. Buller said he was ready to go on as soon as he knew who his opponents were.

The Court held that Kemp could not be a trustee and a *cestui que trust* as well.

Mr. Scannell submitted that, as Mr. Stevens was making a concession to Sir W. Buller, he was entitled to reply.

The Court: If Sir W. Buller begins he will have the right of reply. Is Mr. Stevens ready to disclose the names of all his clients?

Mr. Stevens asked the Court to decide who was to begin.

The Court: If Sir W. Buller wishes to put himself in what the Court considers a disadvantageous position, the Court will allow him to go on.

Sir W. Buller in that case would prefer his opponents' case being taken first.

Mr. Stevens again suggested that No. 11 should be taken first.

Sir W. Buller objected.

The Court did not see why No. 14 should not be taken first.

Mr. McDonald pointed out that Nos. 11 and 14 might be taken together.

Sir W. Buller would rather commence than have the two cases heard as one, but would like to know who his opponents were.

Mr. Stevens said that all the persons whose names appeared in the schedule to the Act claimed a beneficial interest in No. 14, but he only appeared for Wirihana and Warena Hunia, together with those who claimed with them.

The Court remarked that the majority of those in the schedules did not appear to be represented.

Colonel McDonnell handed in names of persons he acted for—viz., Teone Broughton, Kate Broughton, and Emily Broughton, and stated that Te Raraku wished to make an explanation to the Court.

The Court decided to hear her, and she said that Kemp claimed to be the sole owner of No. 14. Neither she nor those with her disputed his right to do so. Did not object to Kemp having the whole of No. 14, because he was not awarded any other portion of the block for himself in 1886, whereas all the other Muaupoko had awards made to them.

Paki te Hunga preferred a claim to Section 14, and said that there were others with him, but that their conductor had not arrived. He objected altogether to this section going to Kemp alone.

Rangimairehau appeared on behalf of all Muaupoko. Did not oppose Kemp's claim to the whole of Section 14. Took the same view as Raraku and party.

Special licenses were granted to Colonel McDonnell and Mr. John Stevens: £1 each paid.

The Court adjourned to enable Mr. Stevens and Paki te Hunga to prepare their lists of names.

On resuming at 2 p.m., Mr. Hector Macdonald was sworn in as interpreter.

Paki te Hunga handed in list of names.

Kipa te Whatanui wished to make an application under section 39 of the Act of 1894 with reference to Section 14.

The Court informed him that applications of this nature could only be dealt with under a reference from the Chief Judge, and that the only persons entitled to apply under the Horowhenua Block Act were those in the certificate of 1873 and the forty-eight persons named in the Second Schedule to the Act.

Kipa te Whatanui submitted that Manihera te Rau being in the title represented the whole of the Ngatiaraukawa.

He was told that the fact of Manihera te Rau being in the title did not give other Ngatiraukawa any right.

Mr. Knocks informed the Court that the Muaupoko who applied with Manihera te Rau wished to withdraw their application so far as it referred to Section 14, and that they still intended to go on with it as regards the other sections.

Mr. J. M. Fraser put in a retainer signed by Rangimairehau and others authorising him to act for them in Section 14. He stated all his clients' names appeared in the schedule to the Act.

Mr. Stevens announced that he now appeared for Wirihana and Warena Hunia only, the other Ngatipariri who originally instructed him having cancelled his retainer.

The Court asked Sir W. Buller if there was now sufficient information as to counter-claimants to enable him to go on.

Sir W. Buller intimated that he was prepared to open his case, but list of counter-claimants should be closed.

The Court said that if that was done all those in the schedules must be represented before the case could go on.

Mr. Stevens urged that some time should be allowed for the people interested to attend.

Sir W. Buller admitted the justice of Mr. Stevens's contention, and said that the interests of those not represented could safely be left to the Court.

The Court called upon Sir W. Buller to open his case.

No. 1, Horowhenua No. 14.—Meiha Keepa te Rangihiwinui, Applicant.

Sir W. Buller: The Horowhenua Block was awarded to the Muaupoko Tribe in 1873. The Native Land Court sat in 1886, and, with the joint consent of all the owners, made a partition of the whole block. No. 14 was awarded to Major Kemp. It was the last of the subdivisions. My opening will consist chiefly of extracts from documents. I will therefore, as is customary with counsel in such cases, read most of it. The first question to be decided by the Court is whether Kemp received No. 14 as a trustee. In 1896 a Royal Commission, called the Horowhenua Commission, sat at Levin, and made inquiries regarding the title to No. 14 and other divisions of the Horowhenua Block. The Commissioners, in their report, made certain recommendations *re* No. 14 and other divisions, but none of their recommendations have been carried out by the Horowhenua Block Act, so that the present inquiry is completely untrammelled, and this Court has a clean sheet. The question for this Court to determine is the following: The legal ownership of No. 14 was awarded to Kemp in 1886, with the consent of all the 143 persons (of whom Kemp is one) entitled to share in Horowhenua. Did Kemp take No. 14 as trustee or as absolute owner? If this Court finds that No. 14 was Kemp's own land—his share on the subdivision of the block—then by the Horowhenua Block Act Kemp's Land Transfer certificate, which is suspended, will reissue to him. If the Court finds that Kemp was a trustee for some tribal purpose, it has jurisdiction to deal with the case under "The Equitable Owners Act, 1886," and its amendments. It is admitted that the question is—What occurred at the Court of 1886? Judge Wilson will state that when he awarded No. 14 to Kemp on the 3rd December it was openly stated in Court, and understood, that this subdivision was Kemp's own land. The minutes show this, and that it was intended to give Kemp a subdivision for himself. The counter-claimants will be compelled to ask the Court to disbelieve this before a trust can be proved. Will produce a contemporaneous document initialled by Judge Wilson proving correctness of minutes. None of the counter-claimants disputed the minutes before the Royal Commission. No. 14 was awarded to Kemp in 1886. For nearly ten years Kemp's title was uncaveated, and in 1895 caveat was lodged not by a tribesman, but by an officer of the Government. Kemp leased, sold, and mortgaged parts of it without objection; no one claimed a share of the proceeds although all the tribe knew of Kemp's dealings with it. Unless Court believes that No. 14 was for Kemp himself, it must believe that he alone of all those interested got no share of the block. Judge Wilson's Court opened on the 25th November, 1886. Three subdivisions of the block came on, and minutes for orders were made. On the 27th November the Assessor had to leave, and Court adjourned to the 1st December, when another Assessor arrived. The proceedings commenced before the Court on the 25th November, were treated as abortive, and Court made orders awarding every subdivision in the block as though the abortive Court had never sat. Each order was preceded by a declaration in Court that all the owners had agreed and consented thereto. Meetings of the owners were held in a barn, and Palmerson, surveyor, attended and laid off divisions on a tracing as they were agreed to. The Muaupoko had three objects in view—(1.) To cut off one or two subdivisions to meet and provide for outstanding tribal engagements. (2.) To cut off a large residential subdivision on which their kaingas were: this was No. 11. (3.) To cut up the whole of the balance of the block into individual shares. Kemp alone had no share out of Subdivisions 3, 4, 5, 6, 7, 8, and 13, therefore, unless he got No. 14, he got no individual share at all. Judge Wilson will state here, as he stated in the Supreme Court and before the Royal Commission, that when he allotted No. 14 to Kemp it was declared in Court that it was

with the full acquiescence of the tribe allotted to Kemp for his own. [Quotes from minutes to show that the purpose for which each parcel was intended was expressed in Court.] The onus is on counter-claimants to prove a trust. The surrender of the title on partition did away with the trust that existed previously. It is for the counter-claimants to show that a new trust was created in respect of No. 14. The order of the Court of 1873 established the fact that Kemp was entitled to something. In 1886 all the owners were awarded something. In 1874 Kemp agreed on behalf of the tribe to give a certain area to the descendants of Whatanui. This piece was to be at Raumatangi, close to the lake, where Whatanui's people had been squatting. No. 9 adjoins Raumatangi, whereas No. 14 is at the extreme southern end of the block, abutting on Lake Waiwiri. No. 9 came before the Court in the morning of the 1st December as No. 3, but there was some difficulty as to the boundaries, and the final order was not made until the afternoon, when the boundaries had been adjusted. It was then called No. 9, and was put in Kemp's name for conveyance to the descendants of Whatanui. No. 14 was not awarded to Kemp until the 3rd December following. If the counter-claimants could prove that No. 14 was awarded to Kemp for the descendants of Whatanui they would no doubt establish a resulting trust to Muaupoko, but they cannot do this. I will put in a list initialled by Judge Wilson showing sequence in which orders were made, and which shows that No. 9 was awarded two days before No. 14. The evidence before the Royal Commission shows that Nicholson refused No. 14, and Judge Wilson has sworn that No. 14 never came before him as the section for the descendants of Whatanui. Neville Nicholson's evidence before Horowhenua Commission, page 114, answers 114 to 118, shows that the land that is now known as No. 14 was refused by the descendants of Whatanui before the Court opened in 1886. [Quotes McDonald's evidence before Horowhenua Commission *re* Nos. 9 and 14.] The theory of a resulting trust to the Muaupoko Tribe rests on two assumptions—(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 until after it had been awarded to Kemp. But the facts are that No. 14 was not given at all to Kemp in trust for the descendants of Whatanui, for, as Nicholson and Judge Wilson prove, they had refused that subdivision a week at least before it was awarded to Kemp. A man cannot give his land to a second man in trust for a third man to create an effectual trust unless all three persons consent. Applying this maxim to the present case, I would say that when 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 No. 14 to Whatanui's descendants and they accepted the gift. I will now conclude my address with one general remark. This case does not depend on Native evidence. There is no getting away from what has been said and done in Court, and these facts do not depend on Native evidence. I shall call one or two leading chiefs to say, on behalf of the tribe, that they all understood that No. 14 was for Kemp's share, and acquiesced in his getting it; but even this evidence is irrelevant. They have consented once for all to Kemp having it. Kemp was given a freehold title to No. 14 by the partition of 1886, and the question is whether that title is or is not trammelled with a trust. Even at the partition of 1886 no claimant for any of the subdivisions gave evidence proving his title, according to Maori custom, to the share he claimed. Such evidence would have been irrelevant, as the partition was by voluntary arrangement, and it would, I submit, be doubly irrelevant now.

I put in minutes of evidence taken before the Horowhenua Royal Commission, also copy of Judge's minutes and the judgment of the Supreme Court in the case—Major Kemp *v.* Warena Hunia.

The Court adjourned till 10 a.m. of the 26th instant.

FRIDAY, 26th FEBRUARY, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Mr. Ransfield asked whether this Court could deal with his application respecting the reserves in No. 11.

The Court informed him that it had the power to make inquiries regarding the reserves; but it did not propose to go into the question at this stage, and advised him to authorise some one in attendance at the Court to let him know when the case came on.

Sir W. Buller: It was agreed yesterday that Horowhenua Commission evidence should be put in as a whole. I hand in a copy of it, and will call Judge Wilson. Ask that questions and answers be interpreted.

JOHN ALEXANDER WILSON sworn.

I am a Judge of the Native Land Court, and I reside in Auckland. I presided at Native Land Court held for division purposes in 1886. The Horowhenua Block was then before the Court for partition. I subsequently gave evidence in reference thereto before the Supreme Court in Wanganui and the Horowhenua Commission. The original title was under the 17th section of the Act of 1867. Major Kemp was the sole certificated owner; the names of 143 persons were indorsed on back of certificate. I cannot remember whether Kemp was one of the *cestuis que trustent*, but he was in the certificate. The partition was taken by voluntary arrangement, but all that was said in Court was on oath. No ancestral title was proved; the partition was agreed to by the owners. I should say that the tribe was in Palmerston, judging by the numbers present. The whole scheme of partition was discussed by them, but it was only disclosed to the Court bit by bit. Major Kemp had an authorised surveyor to mark off on plan the divisions as they were made. I believe his

name was Palmerson. He showed the divisions on the Court plan. The Native committees were all outside the Court. I do not know what took place among them. The application had been made under the old Act of 1882, but we were sitting when the Act of 1886 came into force. I gave Kemp his choice of which legislation he would come under. He chose the old Act. He was entitled to the choice. I do not think it made any difference which Act we proceeded under. The orders would show which Act they were issued under. I had ample jurisdiction under either Act to give effect to voluntary arrangements. We sat, I think, for a couple of days. On third day the Assessor received a telegram that his wife was ill, and that he must return. On my advice the Assessor left. Simultaneously the Clerk of the Court, Mr. Buckle, was removed from my Court. I sent for another Assessor, who arrived in a few days. His name was Kahui Kararehe; he was an inexperienced Assessor. I see by the minutes that the Court opened on the 25th November. I have never read them through since I signed my orders. Nor have I seen the map that was before us in 1886 since I approved it. Before the first Assessor left several partition cases were brought before us—three I believe. Whatever was done with first Assessor was considered by me to be null and void, because the partition of Horowhenua was not complete and had to be commenced *de novo*. When we sat after second Assessor arrived the first thing done was to call over the partitions that had been previously made. The new Clerk of Court was quite inexperienced. I think it is marvellous how well he kept the books considering his inexperience. I trusted entirely to my own notes, which I kept several years, along with about a hundredweight of notes of other blocks, and then burnt them. I only preserved those having historical value. I saw no reason for keeping them, as I was no longer a Judge, and the time for rehearing having long expired. I treat my private papers in the same way, and have done so for the last thirty years. It is different now; the Judge's notes go into the Registrar's strong-room. At second sitting of Court orders were made for partitions previously made. The first orders were not all confirmed. I made fresh orders to date from the time they were made. Objectors were challenged.

Mr. Stafford stated that minute was to effect that first orders were confirmed.

Judge Wilson: The minutes are incorrect in this instance. The Chief Judge of the Court was in Palmerston at the time, and reminded me that the partitions made at first sitting were invalid; but I had already taken action. I challenged objectors before making the orders; I always do so. The original title for Horowhenua was cancelled by the partition made in 1886. Kemp was a trustee under the original title to Horowhenua. The partition of Horowhenua did away with that trust. At the second sitting, which commenced on the 1st December, 1886, we made minutes for orders for the three blocks we had dealt with at the first sitting. I think the order for the railway portion was not made until nearly the last. Then there was an order for a 4,000-acre block in connection with some scheme for a village settlement that had been partially arranged between the Government and Kemp. This block was passed before us. Then there was a piece of 1,200 acres to be put in Kemp's name for the purpose of enabling him to carry out an arrangement with McLean *re* Whatanui's descendants. With respect to this 1,200 acres, Kemp stated to the Court that he wanted a partition made for that piece of land, because when Sir D. McLean was alive he had asked Kemp to set apart 1,200 acres for Whatanui's descendants, but that he (Kemp) had not consented during McLean's lifetime, but that now that his friend was dead he wished to comply with his wishes. The original area was to be 1,300 acres, but, as Whatanui's descendants had already received 100 acres, I believe Kemp considered 1,200 would be sufficient. Kemp indicated on the Court plan about where he wanted the parcel located. I cannot say whether this was in the morning or afternoon. There was some question raised as to the land not being of the proper quality as soon as locality was indicated. This was raised by a descendant, or some one purporting to be a descendant, of Whatanui. Nothing further was done in this matter just then. Mr. Lewis came and took the 1,200-acre block out of the hands of the Court. He had a meeting of persons interested, in the Courthouse, but did not succeed in arranging the matter, and brought it back to us. On referring to the minutes, I find that Mr. Lewis did appear at the first Court. He did not then indicate where the block was to be located. I cannot remember whether Kemp indicated the location of the land intended for descendants of Whatanui at first Court. The only location I ever heard of was where No. 9 is now.

The Court suggested that the proceedings at first Court should be dropped altogether.

Witness: I find by minutes that position of No. 9 was mooted at first sitting. At some time or other Mr. Lewis removed the 1,200 acres from our jurisdiction. We had statutory power to do this. He kept it about a week—or, at any rate, some days—and then came back and asked for an order to enable Kemp to carry out some promise. I cannot remember whether he came back personally. I think he went away and sent some one else—at any rate, we were asked to put the 1,200 acres in Kemp's name. When we made the second series of orders for the blocks dealt with at first Court we did not give them the same numbers; but the first clerk, who was in Wellington, knowing that the second clerk was inexperieneed, thought that he had made a mistake in numbering the three blocks of land, but, knowing that we had made fresh orders for them, he took upon himself to scratch out the new numbers and put in the old numbers, and that without reference to me. Eventually, the Registrar at Wellington sent me the orders for inspection, and I altered them. I also wrote a letter to the Chief Judge complaining of the clerk meddling with my orders.

Sir W. Buller: I now put in record No. 87/445.

Witness: The initials on the record are mine, the corrections are mine. The alterations were made and initialled by me shortly after the Court. I cannot say exactly how long. My letter of complaint would show the date. The land for Whatanui's descendants came on third in the morning, but could not be completed then because boundaries were not decided on. Other blocks were dealt with in the meantime, and in the afternoon the land was awarded as No. 9. There was a hitch at first.

They had brought in their plan on a wrong basis, boundaries were incorrect. After some discussion boundaries were agreed upon. I took them down very carefully and sent them to Mr. Marchant at Wellington. They were extracted from my notes and filled half a sheet of foolscap. The reason I sent the description of boundaries to Marchant was that the surveyors had made the survey wrongly, and a new survey had to be made before I approved it. The descriptions in the minute-book are not sufficiently full. When I wrote the description of boundaries I knew the land was for the descendants of Whatanui. Kemp and Lewis had both said so on oath in Court.

Sir W. Buller produced plans 5213 and 5214, and W.D. 508.

Witness: The minutes written on this plan are signed by me. I have not seen this plan since I signed it. [Approved plan of partition produced to witness.] I identify this plan. The plan W.D. 508 is the plan that was before the Court in 1886, and upon which Mr. Palmerson laid off the divisions as they were made. It had previously been approved by Judge Rogan, who made the order in 1873. I put the first minute on it when the Court first opened. It was then almost a blank map; there were no divisions on it. My second minute to the Chief Surveyor was made after the divisions had been scaled off and numbered. This minute is dated 3rd December, 1886. No. 14 is correctly marked No. 14 on the plan. It was so marked when I had done with it. I know nothing about any previous number on it. On the second map, as approved, No. 14 crosses the railway and extends to Waiwiri Lake. The effect of the alteration was to encroach on No. 11 as awarded to Kemp and Warena. I saw the memoranda on W.D. 508 signed by Major Kemp and Warena Hunia before I signed the approved plan. I understood they referred to the alteration of boundary of No. 14. When the plan was sent to me by Mr. Bridson, Registrar, for approval—I mean the plan of the partition—I sent it back to Mr. Bridson, and pointed out that I withheld my approval until it was explained why the plan had been sent up as it was. It did not coincide with the plan sent by me to the Survey Department. Mr. Bridson said that was how it came to him. I still refused to approve. Then Mr. Marchant wrote me a memorandum saying that the railway as shown on the plan that had been before me was incorrectly laid down, and that it had to be correctly shown. I was satisfied with that explanation, and approved the plan. I also signed the orders for title.

Sir W. Buller reads from vol. 7, page 192.

Witness: The entry refers to the land awarded by the Court to Kemp for the descendants of Whatanui.—After Mr. Lewis had brought it back to the Court. It was put in Kemp's name in order that he might fulfil an agreement. Mr. Lewis accepted it. I am sure it had been agreed to by Kemp and Lewis, but I don't know about descendants of Whatanui. The minutes are continuous from page 192 to page 200.

Sir W. Buller reads from vol. 7, page 200, "Application from Meiha Keepa te Rangihiwinui for confirmation of the order in his own name," &c.

Witness: That is the order for No. 14, to Major Kemp for himself. I do not know how the word "confirmation" came to be there, but I think the clerk took it from the interpreter. Major Kemp probably used the word "whakatuturu," and the interpreter rendered it "confirmed." I am going to say now which I have not previously said at any inquiry or proceedings, or to you. The idea that seems to be current that Kemp asked the abortive Court for a subdivision for himself is wrong. It referred to the general subdivision. When No. 10 was first brought before the Court, and Kemp asked that 800 acres should be awarded to him, it was explained that it was to pay a lawyer. I thought it was a very large area for the purpose, estimating the value of the land at 20s. per acre, and that part of it must be for Kemp, after he had paid the lawyer. The 800 acres were put in Kemp's name. It was stated that it was for the purpose of paying the lawyer. Lawyer's name was mentioned. Some time after making order for No. 10, and before making the order for No. 14, an application was made for No. 14 for Kemp himself, and the effect of this coming upon me suddenly gave me a shock, as I had looked at the 800 acres as partly for Kemp, and I did not then make the order. I left it to the very last, to give the Natives time to think of it, and object: this is sometimes necessary. No one objected, and the order was made. If there had been any objection I would not have made it. I have since heard that the 800 acres were devoted to the purposes for which it was intended, and in that case the 1,200 acres would not, in my opinion, be too much for Kemp for his personal share in the block. I am not speaking casually, but from experience in other cases of the kind. It would be what I call three averages. The Okoheriki Block at Rotorua is an instance. I could give many others if necessary. I was specially careful to challenge in No. 14, because I was then under the impression that No. 10 was for Kemp also. I say again that No. 14 was for Kemp himself. I remember giving evidence before the Royal Commission on this point. [Horowhenua Commission, page 134, question 104, read, with reply.] I reaffirm the reply that I gave then. I believe that there must have been another challenge which does not appear in the minute-book. [Horowhenua Commission, page 138, questions 203 and 204 read, with reply.] Both those replies of mine are quite true. [Horowhenua Commission, page 132, questions 58 and 59 read, with reply.] Those replies are correct. [Horowhenua Commission, page 139, question 219, read, with reply.] I reaffirm that answer. I remember giving evidence before the Supreme Court on these points. Do not remember reading judgment. Have heard that the judgment was based principally upon my evidence. My evidence given before the Supreme Court was entirely from memory, as was my evidence before the Royal Commission. I had seen neither the minute-book nor the plan. The Chairman of the Commission told me he would rather my evidence was given without reference to my minutes. I did not ask to be allowed to see the minutes, but I could see that the Commissioners did not wish me to refer to them. There was no telegram submitted to me by the Commissioners during the hearing of Horowhenua Block by the Commission. I received a telegram from the Under-Secretary of Justice—a short wire. The effect of it was rightly stated by the Commissioners in their report. The telegram reached me as I was going on board of the "Monowai," after I gave my evidence in

the Supreme Court. I do not know what the necessity for the wire was. I wrote a reply to be sent from Gisborne. It was in March, 1895. I was not then in the Government service. I was surprised at receiving the wire. It was unusual. It related to a dispute about No. 11, as to whether there was a trust or not. In my reply I said that I had not my notes with me. I knew at the time that my notes had been destroyed. When I reached home I telegraphed that Kemp held No. 11 in a fiduciary capacity. I think I included Warena also. I said also there was only one block in which Kemp had not acted in that capacity. No. 14 was not in dispute at that time. I did not consider that the telegram referred to it. It was not in my mind. I think the Commissioners should have asked me about the telegram if they attached any importance to it, because it may have appeared inconsistent, and I could have explained the apparent inconsistency away. I have no knowledge whether the telegram commented upon by the Commissioners had been proved in evidence. The telegram was written about No. 11 only. No. 14 was not in my mind. It was Kemp's own land, and I had no idea that there would be any dispute about it. [Horowhenua Commission, page 133, question 80, read, with reply.] I reaffirm that answer. I was referring to the proceedings of the second Court. I supposed that Mr. McDonald was reading from the minutes of the second sitting. My answer shows that. [Horowhenua Commission, page 132, question 50, read, with reply.] I affirm the whole of that evidence. I think I said something more on the point.

Sir W. Buller : I hand in Judge's notes. [Reads from them : "They were afraid that if all were put in, that individuals would sell," &c. Notes handed in.]

Witness : I reaffirm that evidence. It is correct. I understood that No. 11 was to be kept unbroken as a permanent dwelling-place. If No. 11 had not been broken up, Kemp would have had no separate award. As a Court we had nothing to do with what anybody got so long as all agreed.

Sir W. Buller : I put in the judgment of the Chief Justice, given when the Horowhenua Block was before him.

[Horowhenua Commission, page 133, question 77A, read.]

Witness : My answer referred to Kemp's scheme for partition. [Horowhenua Commission page 133, question 80, read.] I had confidence in the clerk.

Sir W. Buller : I put in certified copy of document I examined the witness upon. I have no more questions.

Cross-examined by Mr. A. McDonald.

Judge Wilson : I consider my memory sufficiently good to enable me to make alterations after a lapse of years. I have sometimes to make alterations.

Mr. McDonald reads from Native Land Court minutes, vol 7, page 182, *et seq.*, Kemp's evidence, from "I am the applicant in this case," &c., to end of Kemp's evidence. Also, evidence given by himself, pages 183 and 184. Also, evidence given by Mr. T. W. Lewis.

Witness : There were three orders made on that day for Nos. 1, 2, and 3. The objection raised by Nicholson was to what is now No. 14. That was never awarded to the decendants of Te Whatanui. No. 14 was not the section awarded as No. 3. There was something said by Kemp about Whatanui's decendants having No. 14 instead of No. 9, but that they declined it. I am certain that Nicholson objected to No. 9 because it was too sandy, being near the sea.

Mr. McDonald reads from vol. 7, page 188.

Witness : The 1st December, 1886, was the beginning of the valid proceedings of my Court. The Chief Judge was in Palmerston at the time, and coincided with this view.

Mr. McDonald reads further extracts from vol. 7, pages 188, 189, and 190: Kemp's evidence, "I am aware that we are to make subdivisions," &c. [read to end.]

Witness : The 1,200 acres there described is the same 1,200 acres as mentioned in the morning of the same day and also at the first Court. It is the only 1,200 acres dealt with. Kemp's 1,200 acres has not yet appeared.

Mr. McDonald quotes from vol. 7, page 200, "Application from Major Kemp for confirmation," &c.

Witness : My explanation of that is that something may have previously been said about a section for Kemp. I know that No. 14 had been before the Court in the morning of the same day.

Mr. McDonald reads from vol. 7, page 193.

Witness : I repeat that No. 14 was awarded to Kemp for himself after an award had been made to him for the decendants of Te Whatanui. If the No. 14 had not been properly awarded to Kemp it was open to any of the owners to apply for a rehearing.

The Court adjourned till the 27th instant.

LEVIN, SATURDAY, 27TH FEBRUARY, 1897.

The Court opened at 10 a.m.

Present : The same.

No. 1, Horowhenua No. 14, resumed.

Mr. Baldwin asked to be allowed to appear on behalf of the Crown, and produced authority.

Sir W. Buller objected, unless Mr. Baldwin could show statutory authority.

Mr. Baldwin claimed that the Crown could appear in any Court. In this case the Crown was concerned in seeing that the grants were issued to the proper persons. He quoted authorities in support of his contention that the Crown had a right to be represented in any Court where a probability was likely to arise that its rights would be invaded.

The Court would like to hear what Mr. Stafford had to say on the question.

Mr. Stafford said that he was not prepared to state what the actual legal position was, as he had not had an opportunity of looking into the question, but he was of opinion that under the circumstances it would be advisable to allow the Crown to appear as it might be the means of facilitating a final settlement of the whole question. He would ask the Court to look at the question from that aspect and allow the Crown to be represented.

Mr. Beddard opposed the opinion expressed by Mr. Baldwin, that the Crown had an inherent right to appear in a Court of civil jurisdiction. He quoted authorities to show that the Crown could only appear in civil cases in the same manner as a private individual could. Mr. Stafford had not dealt with the legal aspect; his argument bore upon the expediency of the case alone, and did not touch the point at issue.

The Court stated that upon hearing counsel it had decided to grant the application made by Mr. Baldwin to appear as counsel on the grounds of expediency, as it did not recognise the inherent or constitutional right of the Crown to appear before it except in a similar manner as a private individual could, but as the Horowhenua Block had been the subject of so much litigation, and the circumstances associated with it were of a peculiar nature, it seemed advisable to permit counsel to appear, but it must be understood that it was not to be looked on as a precedent in regard to other cases.

No. 14 was not awarded by any Court to Kemp for the Ngatiraukawa. There was something said in my Court by Kemp about his having offered it to the Ngatiraukawa. It was never offered to them in my Court. Outsiders are much more likely to be confused than I am. They had their meetings outside as well as hearing the proceedings in the Court, whereas I only heard what took place in Court.

From memory I say that I never made an order for any part of No. 14 vesting it in Kemp for the Ngatiraukawa. No. 14 did not cross the railway until after the survey. The order finally made to Kemp for No. 14 was confined to the eastward of the railway. I did not make any order to Kemp on the 25th November, 1886, for the portion of what is now known as No. 14, east of the railway, for the purpose of its being conveyed to the Ngatiraukawa. It was spoken of in the Court, but no order was made until after No. 10 was dealt with.

Mr. McDonald here put a question to witness, and afterwards withdrew it.

Witness: We were told in Court that part of what is now No. 14 had been offered to the descendants of Whatanui outside of the Court and that they refused it.

[Horowhenua Commission, page 161, questions 89 to 98, Nicholson's evidence, read.]

Witness: I should like to hear all the quotations you intend to make from the evidence taken before the Horowhenua Commission before replying.

[Evidence from Horowhenua Commission read by Mr. McDonald, as follows: Page 274, answer 222, to end of witness's evidence; page 145, questions 27 to 31, Waata Tohu's evidence; page 156, question 341, Paki te Hunga's evidence; page 169, questions 354 to 360, Himiona Kowhai's evidence; page 276, question 304, Rawinia Ihaia's evidence; pages 331, 332, same witness; and page 28, question 113, Major Kemp's evidence.]

Witness: The evidence you have read has not altered my mind—that of Nicholson alone is worth replying to. His evidence taken with what appears in the minute-book goes to show that his objection in Court was to what is now No. 14, but I am clear that there was no order for it. The locality appears to have been mentioned. I am quite sure that No. 9 was objected to because it was sandy. At the first sitting No. 14 seems to have been sufficiently delineated to enable Nicholson to identify it, but it was taken out of the Court and brought in again as No. 9. I remember you asking my permission to take a tracing. Do not remember whether I saw the tracing. I remember that Mr. Lewis was at Palmerston on the 25th November, 1886. Kemp said in Court that he had offered the land that afterwards became No. 14 to the Ngatiraukawa and that they refused it. After No. 10 was disposed of Kemp applied to the Court to award No. 14 to him in accordance with their agreement; objectors were challenged. There is no minute of this.

To Court: Kemp did not hand in a list for No. 14.

[File handed to witness.]

Witness: I see that lists were handed in. I had forgotten. We were more careful than I thought we were.

The Court announced that it intended to sit in the afternoon, as Judge Wilson wished to get away.

Mr. Stevens asked the Court not to release Judge Wilson from attendance after this case, as his evidence would be necessary in other cases.

Mr. Baldwin asked that Court adjourn till Monday to give him an opportunity of getting up his case.

Mr. Stafford suggested that if case were adjourned till Monday Judge Wilsons's evidence could be got through on that day.

The Court agrees to adjourn accordingly.

The Court adjourned till 10 a.m. of the 1st March.

MONDAY, 1st MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Mr. McDonald asked to be allowed to put two questions to Judge Wilson.

Judge Wilson (to Mr. McDonald): I know nothing about *Hansard*. I never see it. [Horowhenua Commission, page 131, questions 25 to 27 (witness's evidence), read to witness.] That refers to No. 11. I remember the questions and answers perfectly. I still say that it describes a

function of the Native Land Court in such cases. It was not a function of the Native Land Court to constitute itself a censor of voluntary arrangements. It had nothing to do but confirm them. Clause 56, Act of 1886, was my authority for confirming the voluntary arrangement. I satisfied myself that there was a voluntary arrangement in respect to No. 11, and gave effect to it precisely in the manner that the Natives wished. I do not know of any better arrangement they could have made that would have effected their purpose so well if the men to whom the trust was given were staunch and honest. The method of ascertaining that there was a voluntary arrangement was to challenge objectors. We may have appointed successors after making orders on partition of the Horowhenua Block. If we did, some of the owners must have been dead.

Cross-examined by Mr J. Stevens.

Judge Wilson: The division of Horowhenua was made under the Acts of 1880 and 1882. I cannot remember the exact date the Act of 1886 came into force. We were sitting under the Act of 1880 as well as the Act of 1882. The application was made under the Division Act of 1882, and the applicants were entitled to have it heard under that Act as a matter pending. The Acts of 1880 and 1882 were inseparable. The applicants elected to proceed under the old Acts. It would be a voluntary arrangement if the people gave Kemp any part of the block for himself. The award of No. 14 to Kemp was part of the voluntary arrangement. It came under section 56. Nos. 1 to 14 all came under the arrangement. It was not necessary in the Native Land Court to obtain the direct assent of each and every owner to a voluntary arrangement. The Native Land Court is a Court of equity and Native custom as well. I say emphatically it was not only necessary or even right that every one assuming a right should be expected to give a direct assent. That would stop all our proceedings. If ten of the Horowhenua owners had been out of the colony it would not prevent a voluntary arrangement. The *panui* was issued giving notice of the sitting of the Court, and it was the duty of all to attend. The Court did not consider it necessary to hunt up owners. Even in *papatupu* cases the Court does not go outside its *panui*. It is sufficient notice to all parties. Sir Donald McLean endeavoured about 1873 to have a more extensive notice given. He tried to compel the claimants to warn in writing all possible counter-claimants. He tried to work this publicity through the Registrars of the Native Land Court by instructing them to send out thousands of *panuis*. A return was made of the *panuis* sent out, and it was shown to me by the Minister. The result was that the attempts for enlarged publicity were abandoned as unworkable. We acted under section 56 of "The Native Land Court Act, 1880," in making the subdivision of the Horowhenua Block; also under the provisions generally of "The Native Land Division Act, 1882." I consider I have given specific authority for making the partition. There was no gift to Kemp. A partition is necessarily a compromise, otherwise no partition could be made as each of the owners might claim a right in each division. I will cite a precedent. In some cases Natives pass from one part of the block to another leaving their cultivations. On rehearing the original decisions have been confirmed, and there has been no gift about it. This happened in one of the Opuatia Blocks. This is *à propos* to your saying that No. 14 was a gift to Kemp. It was not a gift. It fell to his share. I think the Opuatia was a contested case. I am not sure that it was contested in Judge Mair's Court. It was in the Appellate Court. I have known rehearings applied for where there was no opposition. No. 10 was put in Kemp's name for a certain purpose—to pay debts to Sievewright and Stout. One of their names was mentioned in Court. I forget which. It was not a gift to Kemp personally. I understood at the time it was to pay debts incurred in connection with Horowhenua Block, and I thought the area was too large. That is why I said, when Kemp applied for the 1,200 acres, I received a shock. Subsequently I heard that the debt was incurred over other lands. Kemp said it would take the whole 800 acres to pay the debt. While we were still sitting in Palmerston I ascertained that the 800 acres was to pay Sievewright's bill. I thought then it was for Horowhenua. I suppose it was either on Kemp's or McDonald's representation that I thought Sievewright's bill referred to the 52,000 acres of Horowhenua. When Kemp applied for the 1,200 acres I received a shock, because I thought he was to have the lion's share of the 800 acres. The 1,200 acres was different; it was for him personally. The 800 acres was to pay legal expenses. I understood that the legal expenses were incurred by Kemp on behalf of his hapus. I do not know which hapus exactly. I am not now aware that the 800 acres were given to Kemp without any condition to enable him to pay a private debt. Your suggestion that it was is the first I have heard of it. I cannot say that I was deceived in Court, or that it was specifically stated in Court that the debt was incurred in connection with Horowhenua, but that was my impression. It was to indemnify Kemp. Mr. McDonald appeared for Kemp before me in 1886. His first application, on the 25th November, 1886, was for a piece of land for the Wellington and Manawatu Railway, to be in Kemp's name. He said he would apply for 1,200 acres to be put in Kemp's name, for the purpose of enabling him to fulfil an agreement between Kemp and McLean, which he said would be produced, but which never was produced. The 4,000 acres was first to be called No. 3, afterwards made No. 2, owing to us not being able to produce the agreement. The 4,000 acres is No. 2. No. 3 was what was afterwards No. 9. It was attempted to place No. 3 where No. 14 now is, but it was taken out of our hands, and afterwards brought back as No. 9.

To Court: Section now numbered 14 was never No. 3 to my knowledge. I have looked at the alleged 3 on the plan, but can make nothing of it. In any case I am not the author of it, directly or indirectly. It would not be the first of our figures that have been altered by an official of the Court without authority in this case.

To Mr. Stevens: The alteration from 3 to 14 was not a consequential alteration. No. 14 was before my Court to be made No. 3, but it was not made so; an objection was made and it was taken out of our Court; then came back as No. 3, where No. 9 is now. No. 14 was spoken of to

the Court as being for Whatanui's descendants, but it never was awarded to them. It was taken away and brought back as No. 3, where 9 now is. We altered it to No. 9. Nos. 1, 2, and 3 came before my Court on the 25th November, 1886, at Palmerston. No. 3 was for the descendants of Te Whatanui. No. 3 was proposed to be where No. 14 now is. Kemp wished to give them No. 14, but they refused it. Since I have seen the minutes *re* No. 3 of 25th November, 1886, I assume that it was the No. 3 where No. 9 is now. My own notes are gone, but the fee-return would show whether there were two fees paid for No. 3. I cannot recollect Mr. McDonald handing me a tracing showing the position of No. 3. He may have had one. We could not have made two orders for what is No. 14 and taken two 20s. fees for it—the same piece of land. It would be quite possible to change the number of a section. No. 3 was not changed to No. 14. No. 3 was intended for descendants of Te Whatanui until it became No. 9. It was dealt with by us for a time as No. 3, but other numbers came in, and when we finally dealt with it it dropped in as No. 9. There was no delineation on plan that I know of of what No. 14 is now when it was No. 3. There may have been a tracing, but I never saw it. I went by the Court plan, and was guided by my own notes. The clerk and the interpreter may have got muddled about the tracing and named it in the minutes. I cannot say what locality was referred to in the minute, "The Court orders 1,200 acres to be delineated on the plan." My impression is that it referred to what is now No. 9 and not to No. 14. I cannot remember how far the offer to give No. 14 to descendants of Whatanui went, but I know we never awarded No. 14 to them. If the minutes read that the order on the 25th November was made for No. 14, then I cannot indorse it. We antedated the orders for convenience. The first orders were, in my opinion, and in that of Chief Judge, invalid. The 1,200 acres for descendants of Whatanui had not been delineated on the plan on 1st December—that is plain from minutes. I apprehend that objectors were challenged before the orders were made by the new Court. There being no minute to that effect is nothing, as a great deal was omitted by the clerk who took them. My own notes occupied a much larger space. As regards No. 3, anything we did on 25th November lapsed. I can swear that we did not award it to the Whatanuis. Both No. 9 and No. 14 were objected to—No. 9 because it was sandy. What I understood was that they wanted the 1,200 acres to join the 100 acres and extend towards Waiwiri Lake. I do not know who objected to No. 9. Nicholson's objection appears to have been made after the land was brought back to us by Mr. Lewis at the second Court. The objection was to what is now No. 9. Kemp or McDonald pointed out to me where the Whatanuis wanted the 1,200 acres. I was never present at any place where a proposal was made to subdivide No. 11. Some one purporting to be a descendant of Whatanui certainly objected to No. 9 on the ground that it was sandy, and the situation was altered accordingly. The objection was made at the second sitting of the Court. I do not think there is any minute of it. The objection made by Nicholson at first Court appears to me to apply to what is now No. 14, and intensifies in my mind that Kemp said in Court that No. 14 had been offered to Whatanui's descendants and that they had refused it. I am sure I never made any order for it to descendants of Whatanui. My memory may be defective; it is quite possible that it is. There was an abortive attempt to put No. 14 through for descendants of Whatanui, but it failed, notwithstanding what appears in the minutes. This is shown by Lewis taking it out of our hands. The orders for two 1,200-acre sections were not made to Kemp, so that the Whatanuis might have the choice of which section they would take. I refused to sign the order for No. 9 until survey was altered in accordance with my order. The decendants of Whatanui had a vested right in this section. No. 14 was not handed to Kemp for descendants of Whatanui. They never had a vested right in that block. No. 3, afterwards No. 9, was awarded to Kemp for them. I cannot swear that No. 14 was ever No. 3, or that it was never No. 3. If No. 14 had been No. 3 on the 25th November, 1886, the Government could not have taken it out of our hands to give it to descendants of Whatanui. They took it out of our hands because we had not disposed of the matter. If the order for No. 3 on the 25th November, 1886, had been an effective order, the Government could not have interfered with it, or traversed our order. I am firmly convinced there was no order on the 25th November, 1886, for No. 3—over the section now known as No. 14. As I read the minutes, Nicholson's objection on the 25th November, 1886, related to what is now No. 14. Kemp said first that the Ngatiraukawa objected to No. 14. Nicholson's objection followed. The Court overruled Nicholson's objection because he was not an owner. There was no delineation on the plan of No. 14 until the order was made for it. I do not know how to explain it, but I know that No. 14 was never awarded to Kemp for descendants of Whatanui. I do not care for the minutes. I cannot indorse them as regards No. 14. I had every confidence in Buckle, who took the minutes, but I cannot be responsible for them. No. 14 was not delineated on the plan on the 25th November, 1886. I don't think so. No. 14 was delineated on the plan on the 3rd December, 1886, when it was awarded to Kemp for himself alone. This was some days after the 1,200 acres was awarded to him for the descendants of Whatanui. I do not know how many days. No. 9 was the block I wrote to the Survey Department about, because it was wrongly surveyed. Long after the Court was over I entered into correspondence with the Survey Department with reference to No. 14 being extended across the railway westward. The order for No. 3, made on the 25th November, 1886, related to land west of the lake adjoining Raumatangi, 100 acres. No. 3 became No. 9 on the 1st December, 1886. I am not prepared to swear that No. 3 was not No. 14, but that is my recollection, that it was not. I won't say that Nicholson's objection was to No. 14. It was Kemp who said there was an objection to No. 14. I will swear that when what is No. 14 came before the Court Kemp and one of Whatanui's descendants said it would not be accepted. The boundaries were not defined on that day—25th November, 1886. The application from Major Kemp on the 3rd December, 1886, for confirmation of that order, &c., does not refer to any of the orders, or anything that was done on the 25th November, 1886. It was not a confirmation of any order made on that date, nor did it refer to anything done on the 18th December, 1886. The Court opened on the 27th November,

1886, and adjourned to the 1st December, 1886. Nothing was done, there being no Assessor. On the 1st December, 1886, Kemp applied for an order for 1,200 acres, for the purpose of enabling him to fulfil an agreement with the Government. This was in the morning. [Vol. 7, pages 187 and 188]. This was the same 1,200 acres that McDonald applied for on the 25th November, 1886. It was No. 3 then, and was christened No. 9 in the evening. The minute says fee, 20s., paid on the 25th November, 1886, as No. 2. The minute is in pencil, but coincides with what I have been saying. I cannot explain why clerk altered No. 15 to No. 14; it is a mistake of his. I don't think the minutes of the Court militate against my memory; they are simply bald. I apprehend that my memory is more reliable than the minutes. I received a telegram from the Under-Secretary for Justice.

Cross-examined.

Sir W. Buller submits that the telegram should be put into witness's hand, if he is to be cross-examined on it.

Mr. Stevens is quite willing to wait until the telegram arrives.

The Court states that the file, to which the telegram referred to is probably attached, has been sent for, and will most likely be here to-morrow morning.

Mr. Stevens will leave the matter where it stands until it is known whether the telegram is available, and ask permission to be allowed to complete his examination of the witness later on.

Cross-examined by Mr. Baldwin.

Mr. Baldwin will not touch upon the telegram.

Judge Wilson: Major Kemp was the sole certificated owner of Horowhenua when it came before my Court in 1886. There were 143, including himself, on the back of the certificate. Kemp had the whole conduct of the proceedings. He was releasing himself of his trust. Mr. McDonald was, I think, Kemp's agent. They were not the only persons who took part in the proceedings. The objectors among the owners had their rights, one Native did object on the part of a section. There were several adjournments of the Court to enable the Natives to discuss Kemp's proposal. On Raniera's objection, the name of Ihaia Taueki was substituted for that of Kemp in one of the divisions. I told the Commission that in No. 11 I asked for information, but was told practically to mind my own business. There was evidence taken as to the voluntary arrangement. Kemp and McDonald were both on their oath when they made their statement about the arrangement. The Court was perfectly satisfied that there was a voluntary arrangement. The proposals were unchallenged. All those in the Court expressed their approval of them loudly. The assent of the tribe generally and the lack of objection convinced the Court that there was a voluntary arrangement. I never witnessed a more unanimous proceeding. On the 25th November, 1886, McDonald came into Court with a voluntary arrangement as to three sections. The Court gave full effect to the arrangement as regards two sections. There was no tracing before the Court that I know of. I do not remember seeing any tracing. I acted upon the Court plan, not upon any tracing. I have no doubt there was a tracing, but it was not an official document. My memory may be defective, but it must be taken for what it is worth. No. 1 was ordered in favour of Kemp for Manawatu Railway. I do not know what the consideration was to be, or who was to receive it. I do not think the tribe was to get anything out of it. The railway company got it for almost nothing. The second order was for No. 2—the township block. The locality was pointed out to the Court on the plan, not on a tracing. No. 2 was put on to the Court plan by Mr. Palmerson. I think the railway was shown on the plan when it came from Wellington. The order was made for No. 2 on the 25th November, 1886, exactly as it was asked for. Lewis said what the block was for—a township. Mr. Lewis said there was an agreement between Kemp and the Government relating to the town. It was not produced, but I understood that all the owners were to benefit by the township. I expressed a hope that they would benefit. Kemp was a trustee in No. 2, although it was not so stated. I cannot say that No. 3 was originally applied for in the position that No. 14 is in now. [The following was read from the evidence of the Horowhenua Commission: Page 181, answers 318 to 323; page 32, answers 205 to 207; page 191, answers 241 to 242; page 142, answers 334 to 343; page 161, answer 92; page 258, answers 298 to 299.] My impression still is that Kemp said he had offered what is now No. 14 to the Ngatiraukawa, and that they had refused it. At the same time, there is a good deal in the evidence you have read, which supports Buckle's minutes that an order was made. It seems to me that no application was made to us, but that they came into Court and told us that No. 14 had been offered and refused. I cannot swear that no application was made, or that no order was made, but my memory is that there was none. I would not have allowed the Government to take the matter out of our hands if an order had been made. If an order was made for 1,200 acres where No. 14 now is on the 25th November, 1886, it was not an effective order. The Ngatiraukawa objected to it or it probably would have been awarded to them as No. 3. It was afterwards awarded to Kemp for himself. The order made for the 1,200 acres on the 25th November, 1886, was, I believe, for No. 9. The minute-book says so. My impression is that it was originally No. 3, and afterwards became No. 9. I am pretty sure we made no order for No. 3 over ground that was afterwards No. 14. I do not know where I ordered the 1,200 acres to be delineated on the plan on the 25th November, 1886. On the 1st December, 1886, No. 9 was brought before the Court as No. 3 by Kemp and Lewis. We could not have done anything in the matter unless Lewis had brought it back. I believe Lewis removed the matter from our Court, in open Court, but he may have done it outside the Court. The Court considered the notice of removal sufficient, and did not delineate the 1,200 acres on the map. I do not think there was any order made for 1,200 acres to Kemp on the 25th November, 1886, before Lewis removed the question from the Court. [Horowhenua Commission, page 134, questions 86 to 97, read.] That refers to the second Court. I made the order for No. 2 on the first day of the second Court also. When the second Court sat we made fresh

orders for the parcels we had awarded at the previous Court. No. 6 was awarded to Kemp as a trustee. If he has not carried out the trust I am sorry for it. No. 11 was awarded to Kemp and Warena Hunia as trustees. No. 12 was awarded to Ihaia Taueki as a trustee.

The Court adjourned till 10 a.m. of the 2nd instant.

TUESDAY, 2ND MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Special license granted to Henare te Apatari, who is authorised to appear for Paki te Hunga and party.

JUDGE WILSON cross-examined by Mr. Baldwin.

Witness: Native Land Court minutes, Vol. 7, page 200, "Application by Major Kemp," &c.: the word "confirmation" is a mistake. I repeat that I know of no application having been made for what is now No. 14 on the 25th November, 1886. Something was said about it. No. 14 came before my Court on the 1st or 2nd December, 1886, after No. 10 had been disposed of. Kemp applied for an order for that land to himself for himself; that is the first application I remember for No. 14. Kemp mentioned No. 14 at the first Court; he said he had offered it to the Whatanuis, and they had refused it. He wanted to cut off a piece for the Whatanui people, and he then said that he had offered what is now No. 14 to Whatanui's descendants, and they had refused it. The order for 1,200 acres on the 25th November, 1886, was for No. 3—now, I believe, No. 9—that is my impression, but will not swear it. I am sure that No. 3 was not No. 14. I am certain of it; I am on my oath, but I will not swear to it one way or the other. The first application for No. 14 was made either on the 1st or 2nd December. There was no order made on either of those dates. The application stood over till the last day of the Court. I did not hurry the matter. I gave plenty of time to the people to object, and challenged very carefully because Kemp applied for the land for himself. I made the usual challenge. In this case I would be most careful to challenge objectors, because a chief was asking us to excise a piece of land for himself. I am sure objectors were challenged on the first day No. 14 came before the Court. I repeat that the clerk was wrong in using the word confirmation; there was no order to confirm. I should have had no shock when Kemp asked for the 1,200 acres if I had not been under the impression that he was to have most of the 800 acres, but I have since ascertained that all went to the lawyers. I felt almost inclined to query it, although I had no right to question any voluntary arrangement. We were careful to put this agent and spokesman on oath as a protection to the Court, so that they should not go outside and say there was no arrangement. Objectors were challenged before each order was made to give any of the owners an opportunity of objecting. I rested satisfied with the application in No. 14 without further evidence. We were satisfied that there was a voluntary arrangement, and the application was sufficient. The evidence of the voluntary arrangement given in the first Court was applicable to the second Court, although the orders of the first Court were bad. The second Court commenced *de novo*, one of the members of it was not a member of the first Court. I say this notwithstanding the fact that minutes of the 1st December, 1886, state that McDonald was on his former oath. The evidence of the first Court would be in the mind of the second Court. I would of course make the Assessor aware of that evidence, if he had not been satisfied with my explanation he would have objected. [Horowhenua Commission, page 138, question 203, read.] All that is in the second Court. In making the order for No. 14 we must have acted on the evidence given in the first Court as well as that given in the second Court. There was very little evidence regarding it in the second Court, and this was given after No. 10 was disposed of. I think Kemp said in making the application that he was entitled to the 1,200 acres for what he had done, or something to that effect; I cannot recollect exactly. At any rate, he asked the Court to award it to him for himself, and objectors were challenged before the orders were made. Before I left Palmerston I knew that Kemp would get nothing out of the 800 acres, because the lawyers tried to grab it at once. I did not consider it my duty to explain to the people that Kemp was getting a very substantial interest in No. 14. If Kemp had asked for 10,000 acres I would have been particularly careful to ascertain that the owners agreed to it. I think that is all I could have done. I thought so then; I think so now. I was not empowered to disturb the voluntary arrangement even by imposing restrictions. I took the voluntary arrangement as it came to me, and gave effect to it. The arrangement was made by the owners, not by outsiders. I have no doubt that McDonald was present in Court on the 3rd December, 1886, but I think Kemp made the application for No. 14, but McDonald may have done so. Kemp was certainly present, and I know he made the application on the 1st December, 1886.

Cross-examined by HENARE APATARI.

Witness: I don't know that all the persons interested in Horowhenua were present at my Court of 1886. I should think it unlikely. There was no objector to No. 14 being awarded to Kemp. I was not present when the tribe selected Kemp as owner of No. 14. I was in Court. Kemp brought No. 14 before the Court. He claimed it, and asked to have it awarded to him. He claimed it on account of having done so much for his people in connection with this land. He said his people consented to his having it. He said nothing about his ancestral rights to it. There was nothing said about Kemp being entitled to it by occupation. No. 14 came before us as part of the voluntary scheme for partition of the whole block.

Mr. Stafford asked if the telegrams from Judge Wilson to the Under-Secretary *re* Horowhenua, and which the Court had sent for, had arrived.

The Court informed him that they had not.

Sir W. Buller suggested that Mr. Stevens should cross-examine the witness on the telegrams as they appeared in the proceedings of the Horowhenua Commission. There would then be no necessity to wait for the originals.

Mr. Stafford said there was no objection to that course being followed if Mr. Stevens would be allowed to put in the telegrams without comment if they arrived after his cross-examination had concluded.

Sir W. Buller objected. He would sooner detain Judge Wilson until the conclusion of the case than have the telegrams put in to discredit his evidence after he had gone. He was prepared to call his next witness as soon as his attendance could be secured.

The Court announced that it was probable it might prove necessary to call further evidence, as there were several questions of law which would have to be referred to the Supreme Court for its decision. These questions could not be affected by any evidence that could be adduced, consequently further evidence would not be necessary until the points referred to were decided by the Supreme Court; but that need not delay proceedings in respect of other cases.

Mr. Stafford urged that the case might go on, and judgment be given, subject to the replies to be given by the Supreme Court to the questions submitted to it.

Mr. Stevens supported Mr. Stafford's contention.

Sir W. Buller pointed out that counsel would be in a better position to argue this question after the legal questions referred to by the Court had been made known to them.

Mr. Baldwin agreed with him.

The Court stated that it would hear argument after Judge Wilson's evidence had been taken, and asked if any of the other cases could be taken.

Counsel were not ready to go on with any of the other cases.

The Court then decided to adjourn Horowhenua No. 14 till to-morrow.

Case adjourned till the 3rd instant.

The Court adjourned till 10 a.m. on the 3rd instant.

WEDNESDAY, 3RD MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

The Court announced that the telegrams in question had arrived.

Mr. Stevens asked to be allowed to see them before cross-examining the witness on them, and they were handed to him. The copies were given to Sir W. Buller.

A telegram sent by Mr. T. W. Lewis, Under-Secretary, to Judge Wilson, which necessitated his replies. was read out by the Court.

Witness said it was not the telegram he replied to.

Sir W. Buller pointed out that the telegram referred to by the Royal Commission was dated in 1895.

The telegrams sent by Judge Wilson were read out, and he still insisted that the telegrams he sent were to Mr. Haselden, Under Secretary for Justice, and that Mr. Lewis was dead when they were written. The correspondence took place in 1895, after the Supreme Court case in 1894. The telegrams seemed to be word for word the same as those he despatched in 1895, but he could not make out their being dated in 1890.

In reply to the Court, Judge Wilson admitted that the purports of the telegrams were correct. It was quite possible that he had not destroyed his notes in 1890. As a matter of fact, they were not destroyed until his services were dispensed with by the Seddon Government. His telegrams to the Under-Secretary for Justice in 1895 must have been couched in similar language.

Horowhenua files were searched by the Court, but no telegrams from Judge Wilson to the Under-Secretary for Justice could be found.

Mr. Stafford suggested that the examination should proceed on the understanding that there were two sets of telegrams—one set in 1890 and the other in 1895.

JUDGE WILSON cross-examined by Mr. J. Stevens.

Witness: I destroyed my notes after my services had been dispensed with, about April, 1891. I do not know how long after, but less than three years. I took no note of it. My actions as Judge were more distinctly impressed on my mind, and therefore I can reply more definitely upon them. I think it was in the summer of 1891–92 that I destroyed my notes. I received a telegram from the Government in Auckland in 1895, just as I was going on board the Monowai. It was as to whether there was a trust in Horowhenua No. 11. I said I would reply after having seen my notes. I sent a similar reply to a telegram received in 1890. When I said in 1895 that I would reply after having seen my notes I knew I had no notes. I did not say that for the purpose of misleading the Under-Secretary. It was not calculated to deceive him. It was simply to put him off until I had time to attend to the matter. I placed myself in a false position, but not the Under-Secretary. I did not know that he would take any action on my telegram. I said in my telegram of 1895 that Kemp appeared in a fiduciary capacity with one apparent exception, No. 10. I did not consider the inquiry made of me referred to No. 14, as that was Kemp's own property.

The *résumé* of the telegram in Horowhenua Commission minutes of proceedings is faulty in this respect: It does not refer to the 4,000 acres, or the square foot awarded to one owner. I do not remember ever driving in a buggy with you, or ever having seen you before the Horowhenua Commission opened.

Sir W. Buller objected to the question.

The Court ruled that the question was irrelevant.

The Witness: I cannot say what effect my telegram of 1895 had on the mind of the Under-Secretary for Justice. It was sent after my notes had been destroyed. The telegram might be looked upon as disingenious; I cannot say. My reply would not put a penny into any one's pocket or take a penny out of any one's pocket. I conceive that I was in the best position of any one to say n what capacity Kemp appeared. I suppose the Under-Secretary required correct information. I do not consider I misled him, but it is for the Court to say. I will not condemn myself. No. 14 did not come within the scope of the inquiry made of me by the Under-Secretary. I ought to have mentioned the 4,000-acre block, but I omitted it.

Re-examined by Mr. Beddard.

Witness: I remember the buggy incident now. I do not know whether my notes would decide the question of trust in Horowhenua. No application has ever been made to me to inspect my notes. I recollect the opening of the Abortive Court in 1886. Remember McDonald explaining the position and making use of the word quoted—vol. 7, page 183. McDonald asked that Kemp should appear as agent, but I decided that he was spokesman and trustee for his people. He only could place the proposed partition before us. I was able to state before the Royal Commission without reference to the minutes what each subdivision of Horowhenua was intended for. In this Court I have been able to say where I disagreed with the minutes. There were a large number of Natives present at Court in 1886. It is a fact that Kemp asked by or through McDonald to appear as a trustee for the people. A number of the subdivisions were awarded to Kemp in trust. I have always been aware of this. The railway block was also awarded to him in trust. The telegram of the Under-Secretary to me referred to No. 11 only; anything else I said was gratuitous. I never heard of any disputes about No. 14 until after the Court at Wanganui. I had not heard of any disputes in 1890. [N.O. 87/2236 handed to witness, who admitted that it was in his handwriting, and signed by him.] There was a mistake in the boundary of No. 9 as first surveyed. I would not approve it until it was altered to my satisfaction. [N.O. 87/2236 handed to witness, who identified it as his handwriting. Document read.] The instructions as to survey of No. 9 must have been given on the 1st December, 1886, because it was before us on that date. I remember that No. 3 was not delineated on the plan when it first came before us, on account of disputes about the boundary. The instructions to the surveyor were given after the matter was settled. We had had so much trouble in settling the boundaries of No. 9 that I was determined not to have any alteration made in them. When the order was made for No. 9 I made a complete description of the boundaries; that which you have just read is a correct copy from my notes of the boundaries. I made the final order for No. 9 to the descendants of Whatanui on the 1st December, 1886. We never awarded No. 14 to them. I am strongly of opinion that the 1,200 acres that came before the Court on the 25th November, 1886, was what was afterwards No. 9. The order for No. 14 is dated the 3rd December, 1886. No. 1, the 4,000 acres, and No. 9 are ante-dated to the 25th November, 1886. It has all along been my opinion that the No. 3 before us on the 25th November, 1886, was the same land as that afterwards numbered 9. Mr. Buckle made some alterations of numbers in the minute-book. They were made after the 3rd December in Wellington—after No. 9 was delineated on the map, and after our Court was closed. He was Clerk of the first Court, and had the opportunity of knowing where No. 3 was situated, and which I believe afterwards became No. 9. The pencil-note in margin (by Jones) would be made at the end of the Court in December, 1886, to facilitate the preparation of fee return. Applications for the railway, the township, and 1,200 acres for descendants of Whatanui came before both Courts in November and December. I am satisfied that subdivision which came before the Court on the 1st December, 1886, as No. 3 was afterwards No. 9. [Vol. 7, page 188, read.] I have nothing more to add as to my impression that the No. 3 of the 25th November, 1886, was identical with No. 9. Kemp made the objection to No. 14. He said in Court that the descendants of Whatanui had refused it, and that they had also refused No. 9. If Nicholson made any objection to No. 14 it must have been a general objection, as I am satisfied that we never made any delineation of No. 14 for descendants of Whatanui. [Horowhenua Commission, page 131, question 35, read.] I remember that evidence. The facts are exactly as stated there. It shows, to my mind, that it was No. 3, afterwards No. 9, that was objected to. It was after No. 9 was pointed out on plan in Court that objection was made to it. There never was any intention to give the descendants of Whatanui No. 14. It was before the 1,200 acres was defined that Mr. Lewis withdrew it from the Court. He may have withdrawn it after adjournment of first Court and before opening of second Court. Mr. Buckle altered the numbers of the new Court back to those of the old Court. I assume that he thought the proceedings of the second Court confirmatory of those of the first Court. [N.O. 87/515 read to witness.] I objected to Mr. Buckle making any alterations in my minutes and orders because he had no authority to do so. I know that the alterations of numbers made in red in minute-book are Buckle's. He makes No. 12 No. 2.

Mr. Beddard agrees to read Mr. Buckle's explanation of his action in altering numbers in minute-book. He points out that, although No. 12 was put down in the list, it still retained its number, as did No. 13.

Witness: The proper No. 3 Mr. Buckle made No. 4. When Kemp asked for No. 14 he asked for it for himself. I said this before the Horowhenua Commission. We understood that the persons before us were owners. They were represented to us to be the owners. The conductor of a case was usually called a spokesman. Kemp was also a principal, but his position before us was that of trustee. The fact of those present calling out "Aye" was proof that they were owners. There was nothing hole-and-corner about any of the subdivisions. They were all quite public. We called for objectors to our

making orders, not for approvers, so we stopped those present calling "Aye." We judged by the "Ayes" that there was unanimous approval. There were several objectors during the course of the proceedings. I judged by the demeanour of those present that they took a keen interest in what was going on. There was nothing unusual in Kemp appearing in a fiduciary capacity. It was the proper course. No one else could Act. [Buckle's explanation read.] Buckle had no right to alter my orders. If the Registrar thought there was anything wrong he should have referred them to me. As I said before, Buckle looked upon the proceedings of the second Court as confirmatory, whereas they were *de novo*. It was in consequence of the dispute about the boundaries of No. 9 in the morning that I made out such a careful description of them in the afternoon. The alteration was made by Kemp. They wanted to come right up to the Hokio Stream, but Kemp would not consent to it. He said that there must be two chains between their boundary and the stream, because he wanted the fish in the stream. Kemp proposed the first boundaries of No. 9. He also agreed to the alterations. I think the land for descendants of Whatanui was brought back into our Court on the 1st December, 1886. The first boundaries for No. 9 were not wrong, but they were not acceptable to Whatanui people, and Kemp proposed that they should be altered. I do not think Lewis had anything to do with the alteration of boundaries.

Mr. Baldwin would like to ask Judge Wilson two questions.

Witness (to Mr. Baldwin): My impression is that Lewis did not take out of Court any defined piece of land; it was merely the claim. It was either taken out of Court during the first Court or during the interregnum. [Horowhenua Commission, page 131, questions 35 and 36, read.] That all points to Lewis having acted in both Courts, and to the land having been defined in the records of the Court, but not necessarily on the plan. If it was defined it was No. 3, now No. 9, not No. 14. The boundaries were certainly not defined before the 1st December, 1886. Lewis did not remove the claim on the 1st December, 1886; it came back to us there.

To *Mr. Stafford:* It is quite possible that an order may have been verbally made for 1,200 acres on the 25th November, 1886, but it was not finally made, and Lewis then removed it from the Court. He could not have done so if the order had been valid. He could only have done so subject to the order, which would have been an absurdity. As a matter of fact, no such order had ever been made. The order made on the 25th November, 1886, did not relate to No. 14. It must have related to No. 9, but I will not swear to it. It was the only land that came before us for the descendants of Whatanui. I will not swear that the order did apply to No. 9.

To *Mr. Beddard:* I am strongly of opinion that the boundaries taken down on the 1st December, 1886, were the boundaries of No. 9.

To *Court:* I cannot remember the process followed in cancelling the original certificate of Horowhenua Block to Kemp. I do not remember whether I made an order cancelling the certificate. I do not think it was a necessary precedent proceeding to the partition being made. I was proceeding under the Acts of 1880 and 1882. I see that I have signed the note "cancelled" on the certificate. I signed it after the Court had adjourned. I signed it at Waitara—I think, on the 14th December, 1886. W.D. 508 was the plan before our Court. Our subdivisions were shown on the plan by an authorised surveyor. This plan became an integral part of our order. When the divisions were laid out on the ground some of them had to be extended west of the railway. I ultimately approved the extension of No. 14 west of the railway. The plan of Horowhenua was not exhibited under sections 26 to 32 of the Act of 1880. I do not think it was necessary that the plan should be exhibited. The alteration, although large, was a necessary alteration. The persons directly interested signified their assent to the alteration—I mean the owners of No. 11. I did not value their consent much. I looked upon the alteration as a necessary part of our administration. I apprehend that sections 26 to 32 are meant for interlocutory orders—where rough surveys are made and require alteration. If the plan had been exhibited I do not see who could have objected. At any rate, I did not take any action under the sections referred to.

Judge Wilson asked if he was relieved from attendance.

After asking counsel, the Court informed Judge Wilson that he was relieved from attendance.

The Court notified that after hearing Judge Wilson's replies it proposed to go on with the case to its completion, as there would probably be other questions to refer to the Supreme Court.

Sir W. Buller stated that he would be prepared to call his next witness to-morrow.

Mr. Morison appeared, and asked the Court to take the Ngatiraukawa claims next.

Sir W. Buller supported Mr. Morison's application.

The Court saw no objection, and intimated that Mr. Morison would be informed of the date not later than one day before the Ngatiraukawa claims were taken.

The Court adjourned till the 4th instant.

THURSDAY, 4TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Sir W. Buller: I will first call Te Rangimairehau.

TE RANGIMAIREHAU sworn and examined.

Witness: I belong to Muaupoko Tribe. I am one of the registered owners of Horowhenua Block. Major Kemp was the only certificated owner. There were 143 registered owners. I live at the pa, Horowhenua. I was born there. After I was grown up I went to Arapaoa for a time, and returned to Horowhenua. At the time of the Court of 1886 I was living at Horowhenua. I remember the Partition Court at Palmerston in 1886. I attended the Court, myself and the whole tribe. Some of the tribe were at Parihaka. With the exception of those at Parihaka, all the tribe

attended the Court. I can remember the names of some of those at Parihaka. Waata Muruahi and Noa Tame were there. I am clear about this. I cannot remember the others. Ihaia Taueki was at Palmerston at the time of the Partition Court. When we arrived at Palmerston we considered the subdivisions of the block, and discussed them among ourselves outside the Court—I mean the Horowhenua Block. Our discussions took place at Palmerson's place, Palmerston North—in a barn belonging to Mr. Palmerson. All those who went to Palmerston were present at the discussions, including Ihaia Taueki. At times Kemp was present, sometimes he was not. Mr. McDonald was also present at times, sometimes not. I was present at all the discussions. There were a great many of them. They began before the Court sat, and continued during the sitting of the Court. The first discussion was about those who were put up into the mountains. We wished Kemp to know our thoughts about these. Kemp consented to our proposal to put the Ngatikahungunu up on the mountains. The names were selected from the certificate. It was proposed also to put the Ngatiapa up on the mountains. This was settled. Kemp agreed to it. Then the Rangitane were considered. They were also to be put into the mountains. Kemp was consulted about Rangitane. He agreed, and it was settled. Kemp was referred to with regard to all those objected to by Muaupoko. After this the matter was taken to the Court—I mean the arrangement for putting certain people on to the mountains. This was, I believe, the first question referred to the Court. It was one of the objects the Muaupoko had in view. Remember when Court opened. Cannot remember date. Hamiora Mangakahia was the Assessor. There were a number of us present. McDonald was present when the Court opened. So was Kemp. When the Court opened the proceedings were not interpreted to us. We were outside the Court and Major Kemp inside. I mean that we were inside the Court, but Major Kemp was our spokesman. We heard what Kemp said. He said just what the tribe had previously arranged for him to say. Kemp made an application to have Rangitane, Ngatikahungunu and Ngatiapa placed on the mountains, in accordance with our wish. So far as I remember, it was decided that these tribes should be put on the hills. I cannot remember everything that took place. It is so long ago. I remember about some of the divisions of the land when Mangakahia was present. I know of three proposed divisions in Mangakahia's time. The first was for the line of railway. Cannot remember the acreage. I do not know whether an order was made. McDonald asked that an order should be made. The next was the 4,000 acres sold to the Government. It was explained to the Court by Kemp. McDonald applied for an order for this block. Both these divisions had been discussed and agreed to by us outside the Court. I think the third division proposed was for the descendants of Whatanui. We discussed this and all the other divisions at the meeting-house before we came to the Court. The tribe discussed them, and came to an agreement about them. We discussed this land, the third proposed division, at the instance of Kemp. It was to be 1,200 acres. It was first proposed that it should be near Ohau, beside Te Wera-o-Whanga. The tribe wished this, and Kemp approved. This is on the south side of block. I do not know the present name of it. I know it is in the Horowhenua Block, at the Ohau. One of the Ngatiraukawa, who was also a Ngapuhi, named Pomare, and Heni Kipa objected to the locality proposed because it was stony. This part had been talked about by Kemp in Court as for them. Kemp offered it in Court to them. I do not know exactly to whom it was offered, because I do not know for certain who the descendants of Whatanui are. It was offered to the descendants of Whatanui to comply with the word of Taueki. I heard of the promise of Taueki to the Ngatiraukawa, who were living at the time under the name of Muaupoko at Horowhenua, near the Horowhenua Stream. I saw Taueki myself. He and Whatanui lived together, and on that account, and as they were friends, the descendants of Whatanui asked Muaupoko for some land. Taueki's promise was discussed at our meetings before we went into Court. I remember that an agreement between Kemp and Sir Donald McLean was mentioned at the meetings. We all heard what the nature of the agreement was. The arrangement of the land was afterwards. The agreement was that the descendants of Whatanui should have a piece of land. It was made long ago. The location of the land was not decided when the agreement was made. The objection by Pomare and Heni Kipa to the land offered them at Ohau by Kemp was made in Court—the Court that Mangakahia was present at. Kemp first mentioned the matter in Court. I was present in Court, and listening. Kemp said in Court that he had offered the land at Ohau to the descendants of Whatanui. Pomare and Heni Kipa then stood up and said they objected to the position of the land, because it was stony. They asked that the land for them should be at Hokio, where the 100 acres was. A Ngatiraukawa woman called Hitau also stood up in Court and said she objected to Hokio, because it was sandy. It was mentioned then that the sandy part was at the burial-ground called Ohenga. Kemp said he would bring the boundaries further inland. I think the locality of the land was not definitely fixed at that time, as the Assessor, Mangakahia, left for the north, and the Court stopped. We waited for another Assessor. Kahui Kararehe arrived to act as Assessor. After the first Assessor left, and before the second arrived, we had a discussion about the land for Te Whatanui's descendants. We agreed to their having the land at either of the localities proposed. It was finally decided that the descendants of Whatanui should have the land at the second place offered, as they had refused the piece offered first. They were to have it near Raumatangi, where it is now. Every one agreed to this. There were no objectors, as it had been discussed outside. No one offered any opposition to it afterwards. It was settled. There is no one occupying the land now. I understand that it belongs to Whatanui's descendants, three of whom are living on our portion. I heard that the matter was not finally settled at Mangakahia's Court. At any rate, it came before the second Court. I was present in Court every day. It was, I think, brought on after dinner in Kahui's Court, but I am not sure as to the hour, it is so long ago. The Court awarded the land to the descendants of Whatanui, and it was settled. I refer to the 1,200 acres at Raumatangi. I did not hear of any boundaries at the time. I heard of the land only. I do not remember seeing it on the

map. It was after we returned home that Palmerson came to survey the land. I was quite clear as to where the 1,200 acres was situated. I saw Lewis at the Court. I did not see him taking any part in the arrangement of the 1,200 acres, but I heard that he decided the locality. There were orders made by the second Court for other divisions of the block besides those I have mentioned. I remember some of them, not all; there were so many. As I have stated before, the railway-line was the first division. Then came the 4,000 acres sold to the Government. The next I know of was the 800 acres. I cannot remember its divisional number. It was awarded to Kemp for his debts. I did not know about his debts; they were incurred over his Wanganui lands, and had nothing whatever to do with Horowhenua. We had some talk over it, and the tribe consented to the land being given to Kemp for the purpose I have stated. Te Keepa asked for the land at Palmerston in a meeting-house, in which we also lived. He asked for a piece of land to enable him to pay his debts to the lawyers. He said it would take 800 acres. The lawyer's name was Sievewright. We consented to this request unconditionally. I do not know what Sievewright was to get. I myself agreed. I agreed to 800 acres being given to Kemp to sell in order to pay his debt to Sievewright. All the tribe consented. I have repeated this several times. I did not hear one dissenting voice. I was in Kahui's Court when the application was made to it for the 800 acres. The purpose for which it was intended was stated in Court, as I have stated it here. There was no dissent in Court, and the order was made in favour of Kemp. The next application was for the block for us, the tribe, after those objected to had been thrown out. I do not remember how many there were of us. We were to get 105 acres each, but on survey the area was slightly reduced. This was a matter of arrangement out of Court. It was settled out of Court. I got my 105 acres. The next was the block for the *rerewaho*, the people omitted from the certificate of 1873. Cannot say how many. Do not remember number of block. It was awarded to Kemp as trustee, to convey to the *rerewaho*. No. 11 was awarded by the same Court. I heard that the area was 15,000 acres, but it seems to be less now. Our houses are on this block. There are cultivations of ours on the land. This block was awarded to Kemp as trustee; Warena Hunia was put in the title with him. It was said at our meetings that No. 11 was for us, the people who are living on the land, not for those outside—I mean our relatives of Ngatikahungunu, Rangitane, and Ngatiapa. They were not to be in it. I refer to the persons in the certificate, and who Muaupoko had agreed should be put on the hilly portion of the land. The block was to be permanently reserved for us, the occupants. This was decided at our meetings. It was not proposed to divide it at that time. The tribe decided to keep it intact, and not subdivide it. It also decided to put Kemp's name in the certificate as trustee. After the meeting we went to the Court and informed it that this land was for the permanent residents. Kemp gave this and all other information to the Court. All the tribe did was to decide outside the Court. Kemp applied to the Court to award No. 11 to him as trustee. This was objected to by Wirihana Hunia, who proposed that his brother Warena's name should be put in the title with Kemp's. We, the tribe, did not consent to that young man being put in. We went into a side room, where we objected to Warena being made a trustee, but Kemp ultimately agreed to his name being put into the title. Warena was not present; Wirihana was. The Court waited while we were in the room. The name of Ihaia Taueki was proposed as a co-grantee with Kemp. Kemp proposed it, but it was not agreed to. There were no others proposed. The end of the discussion in the room was that Kemp said that Warena should be a co-trustee with him for No. 11. I did not agree to this. All objected. Some left the Court and went away. I became angry, and went out of the Court. I was not in the Court when the order was made for No. 11, but I knew that it was awarded to Kemp and Warena, as I understood it, as trustees. We made no objection in Court. The name of Ihaia Taueki was put into the hill block, which I have heard is a large one. It was discussed at our meeting outside the Court. I insisted at the meeting that my name should be put into this block as trustee. Hoani Puihi also wanted to be put in as trustee. Himiona Kowhai's name was also proposed. The meeting decided that Ihaia Taueki's name only should be put in the title as trustee, not as absolute owner. I was present when this block was awarded to Ihaia Taueki by the Court as trustee. I do not know the number of it. It was said to contain 13,000 acres. I remember an award being made to Wiremu Matakara for one square foot. All these subdivisions were discussed and agreed to by the tribe at meetings held in our meeting-house. There was no evidence given in the Court about ancestry. It was all settled out of Court, and every one was intended to have a share—even those omitted from the certificate of 1873. I do not remember all the small divisions. I remember all the large ones.

Q. Did Kemp get a share?

Mr. Baldwin and *Mr. Stafford* objected.

The Court ruled that it was a proper question.

Sir W. Buller: What share did Kemp get for himself?

Witness: Kemp got Waiwiri for himself. I have stated that we all got a share; no one was left out. Waiwiri contains 1,200 acres. It is at Waiwiri Lake. The pa is called Papaitonga. The land is on both sides of the railway. The railway runs through it. I do not know the number of it. I was present in Court when this 1,200 acres was applied for for Kemp. The Court challenged objectors. I did not see any objector. The land was awarded to Kemp. This was in Court. Waiwiri was talked about at our meetings outside the Court.

To *Assessor:* This was the same land that was rejected by the descendants of Whatanui—the inland part. Now I find that it extends to Waiwiri.

To *Sir W. Buller:* The talk about Waiwiri at our meetings was about giving it to Kemp. No one objected. The meetings of the tribe were all the same. Kemp was present at this particular meeting. Hare Pomare, of Ngapuhi, Te Hitau (female), and Heni Kipa were the descendants of Whatanui that I saw at Palmerston when the Court sat in 1886. I do not remember any others. They occupied a different house to ours, some distance off. Heard about a meeting between Mr. Lewis and the descendants of Whatanui at Palmerston at that time. Was not present. It was

held in the house of Ngatiraukawa. They did not attend our meetings. I was not present at any meeting between Kemp and descendants of Whatanui. I remember sitting of Native Land Court at Palmerston in 1890 to deal with the Horowhenua Block. I think Wirihana Hunia and others were the applicants. I attended the Court and gave evidence before it. The application before the Court related to Horowhenua No. 11. It was awarded to the two people only. I am not clear what else was done. The tribe objected to the decision that the land was for the two people only. By "we" I mean the Muaupoko. Notwithstanding our objection, the Court divided the land, No. 11, between the two persons in the title for themselves only. We did not agree that it should be so, and had a Maori meeting about it at Pipiriki, Horowhenua. Kemp, Wirihana, and, I think, Donald Fraser were present. All of the Muaupoko were there. The meeting lasted a week. Nothing definite was done. Kemp's contention was that the land belonged to the tribe, and that he was only a trustee for them. Warena Hunia denied this, and said that the law had given it to Kemp and himself for themselves only. Kemp made a proposition to the tribe; Warena Hunia did not. I repeat that there was no definite outcome of the meeting. An application was made for a rehearing of the partition of No. 11. We also petitioned Parliament. Kemp applied for a rehearing, which was granted, and the case came before two Judges—Judge Scannell and Judge Mair. Kemp appeared in the Court in that case. I was also present at the Court, and spoke. It was again urged by the tribe that the award to the two chiefs only should be set aside or reversed. I do not remember what the end of the case was. I do not know that the land was given back to the tribe. The Judges were brought to Horowhenua to inspect No. 11. The tribe again met at Pipiriki. The whole of Muaupoko assembled, including Kemp and either Wirihana or Warena Hunia. I cannot be sure whether Donald Fraser was present or not. The meeting lasted about a day, I think, and there was no result. The Court had not given a decision. I remember a case in the Supreme Court—after the meeting—in which Mr. Edwards appeared. Major Kemp brought the action. I attended the Court, and gave evidence. The case was concluded in Wellington. The judgment of the Court upheld the contention of the tribe. Our claims to the land were recognised by it. I was one of the speakers at the meetings I have referred to. I do not know of any other divisions of Horowhenua than No. 11 being discussed at the meetings. I have heard it is contended by some people that Kemp holds No. 14 in trust. I deny it, because it was set apart by the people for Kemp when all the other divisions were made. I did not hear it asserted before the Horowhenua Commission that Kemp held No. 14 as trustee. You are in occupation of Papaitonga now. I don't know how long you have occupied it. I have heard that Kemp has sold a part of Papaitonga to you, and that he has leased the balance of it to you. I heard that the timber on it was sold to Peter Bartholomew. I have never demanded from Kemp any share of the purchase-money, rent, or royalties. I have never heard that any members of my tribe have made any demand for a share of these moneys. I did not hear at any of our meetings any one make any claims for No. 14 or for any of the proceeds from it. I heard Waata Muruahi give evidence before the Royal Commission. [Horowhenua Commission, page 275, questions 290 to 298, and replies, read.] Those statements are untrue, in my opinion. I did not hear any statements of the kind at the meetings.

Mr. Baldwin asked, with permission of McDonald and Stevens, to cross-examine this witness before them.

Cross-examined by Mr. Baldwin.

Witness: I said that in 1886 No. 11 was set apart as a tribal reserve. That is, for the residential owners—the Muaupoko Tribe—the persons I considered the real owners of the 52,000 acres. The Ngatikahungunu, and Ngatiapa, and Rangitane in the title had no right to take part in the division of the land—nor did they. The persons living on the land were the people who took part in the division of the land in 1886. They and they only. The Ngatikahungunu, Rangitane, and Ngatiapa took no part whatever in the division. The bulk of the residential Muaupoko were present at the division in 1886. A few were at Parihaka. A few of the registered owners were dead in 1886. Many of them were dead. Most of them—men and women. Some of the successors to deceased persons were children. Those I was concerned with were all grown up. McDonald did not attend our meetings in 1886 that I remember. I was under a misapprehension. Alick McDonald attended sometimes; not always. Palmerson was not present at any of our meetings. I do not remember McDonald having a tracing of Horowhenua. He did not show it to me. There was no tracing put up in our meeting-house. We had agreed upon certain subdivisions before going into Mangakahia's Court—(1) The railway line; (2) 4,000 acres for township; (3) the 1,200 acres at Ohau. I did not see these subdivisions shown on a map in our meeting-house before we went to the Court. The locality only was indicated by name. Survey was made afterwards. Kemp and McDonald conducted the whole of the proceedings in Court. They may have had a map. The tribe did not see it. The divisions were mentioned in Court. We knew of the locations of Nos. 1 and 2. The 4,000 acres was stated to be for the Government; it was not indicated on the plan. The 1,200 acres was to be at the southern side of Horowhenua Block, adjoining Ngatiraukawa lands. These three divisions were taken into Court, but were not defined on the plan. McDonald applied for order for railway-line. I do not know whether his application was granted or not. I am stating what is the truth. I did not see the divisions laid off on the plan, either inside or outside the Court. We did not see any of the divisions delineated on the plan—neither that for Ngatiraukawa nor any other. I recognised the localities of the different divisions by their Maori names. I repeat that I never saw the 1,200 acres at Ohau delineated on any plan at the Court of 1886. McDonald was acting as conductor for Kemp in the Court of 1886. I have already stated that McDonald went into Mangakahia's Court and applied for three orders—(1) for the railway; (2) for the township; (3) for the 1,200 acres at Ohau, for the descendants of Whatanui. I do not know whether the orders were made or not. At Mangakahia's Court it was intended to

give the 1,200 acres at Ohau to Whatanui's descendants, but it was not put on the plan that I know of. I heard the Judge challenge when the divisions were applied for in Mangakahia's Court. There were no objectors. I did not hear the Judge say that the orders would be made. If the Judge did make the orders one would be for the 1,200 acres at Ohau; but the locality was objected to, as it was stony. I remember Nicholson making an objection. He objected to the land at Ohau. They all did. Judge Wilson told him (Nicholson) he was not in the certificate. I do not know what took place at the meetings between Lewis and descendants of Whatanui. None of Muaupoko were present. Kemp told the tribe about the piece for Sievwright. He did not say what his debt to Sievwright was. He asked the tribe to give him the 800 acres personally, so that he might give it—the whole of the 800 acres—to Sievwright for his debts. He told the Court that the 800 acres was to pay Sievwright. I have said that No. 11 was for the tribe. There was no list of names made out at the meetings. It was to be a residential block for the whole tribe. It was not to interfere with Kemp's section at Waiwiri. The Muaupoko living at Horowhenua have very little land elsewhere. If it was divided and some sold their shares they would have to take the consequences. When Kemp stated that Warena was to go into No. 11 with him, they settled it, but we did not consent; we were very much dissatisfied and went out of Court. We did not make any objection in Court. We could not carry our objection so far. We objected inwardly. To show our disapproval we all left the Court. We are justified in objecting to Warena being put in No. 11 as trustee, because he has since claimed the land as his own, and the law upheld him for a time. Our land has been endangered by him, and that is what we were afraid of when we objected; but we gave in to Kemp when he insisted on Warena being put into the title to No. 11 with him. [Horowhenua Commission, page 99, question 36, and reply, read.] I stated that No. 14 at Waiwiri was Kemp's own, and did not belong to the tribe. The Muaupoko rights extend as far as Waiwiri; but each member has a right to his particular part. Waiwiri was Kemp's portion, and the tribe consented to his having it, although the land was not divided under ancestral rights. Kemp has an ancestral right to Waiwiri, but I cannot give his genealogy. Kemp can say who he derived his ancestral right from. Kemp himself applied for an order in favour of himself for the 1,200 acres at Ohau. McDonald might have applied also; I do not remember. This was in Kahui's Court. I only remember this 1,200 acres coming on once in Mangakahia's Court, and again the second time in Kahui's Court. There was only one application for the 1,200 acres in Kahui's Court, so far as I can remember. I am not clear whether McDonald made the application for this section in Mangakahia's Court or in Kahui's Court, but I think it was in Mangakahia's Court. The Judge called for objections before making each order. I remember that the Judge challenged for objectors to an order being made in this block; cannot remember whether it was done more than once. Objectors were challenged for this block in both Courts; once in each Court. Objectors appeared in the first Court. There were no objectors in the second Court. The land given to Kemp was east of the railway at Ohau. It was arranged at a meeting of the resident section of Muaupoko. Warena Hunia was not present. Wirihana Hunia was, and did not object. Hoani Puihi was present and agreed. I do not quite remember whether Paki te Hunga was there. Makere te Rou was. She assented. If I had heard any one object I would say so. Kemp is the great chief of Muaupoko. Some of those present may have thought they had a right to object. I cannot say. If they had objected Kemp would have been too strong for them. I heard Kemp's evidence in all the cases that came before Judge Trimble about Horowhenua in 1890. So far as I know his evidence was true. I do not know that any of it was untrue.

The Court adjourned to the 5th instant.

FRIDAY, 5TH MARCH, 1897.

The Court opened at 10 a.m.
Present: The same.
No. 1, Horowhenua No. 14, resumed.

RANGIMAIREHAU cross-examined by Mr. McDonald.

Witness: I stated yesterday that I remembered the Court of 1886. Kemp was then just recovering from a serious illness. He was still far from well, and used crutches. He lived at Palmerson's house comfortably, and had servants to wait upon him. The tribe settled round him in such accommodation as could be found. We were satisfied with it. You lived in the same house as Kemp. After we and Kemp were settled the meetings commenced. They extended over several days before the Court began. I saw you coming in and out occasionally at the meetings. I said yesterday that I did not see any map at the meetings. Mangakahia was the Assessor of the first Court. May have been on the 25th November, 1886—cannot say for certain. Three orders were applied for at that Court, particulars of which I gave yesterday. I do not know whether any orders were made at that time. We did not understand what was done. [Vol. 7, page 184, "The immediate application is the railway-line. The Court asks for the statutory power," &c.] You did not tell us at Palmerston what was in those minutes. This is the first time I have heard that any order was made. I heard you apply for the orders. Did not hear the Judge say that orders would be made. Heard him challenge objectors. None appeared. [Vol. 7, page 84 (*re* application for order for township block) read.] There may have been a plan handed to Court. I never saw any plan. Don't know where you got it, if you had one. I don't mean to suggest that you made a map for yourself. I simply say I did not see a map. You say that the map was put into Court to show the position of the 4,000 acres. I don't know anything about it. I do not dispute that you handed in a map, as the minutes say you did.

Lewis was called to give evidence about a township. I have some recollection of the Judge saying something after Lewis had given evidence about the township. [Vol. 7, page 185: "We do not wish the man," &c.] I do not remember that I had heard, then, that the land was sold to the Government. I do not remember what Mr. Lewis said in his evidence about the township. [Read to witness: pages 184 and 185.] I knew that the object in applying for an order for the 4,000 acres was to enable it to be sold. The benefit we derived from the sale is, that the Europeans have settled among us. It was first stated that we were to get quarter-acre sections, but I placed no faith in the statement. We never got the sections. I know that Mr. Lewis spoke about the 1,200 acres for the descendants of Whatanui at that Court. The land he referred to is what is now No. 9, at Raumatangi. The first proposal was to give the 1,200 acres at Ohau, but that finally settled by Lewis was at Raumatangi. The proposal to give the 1,200 acres at Ohau was in Mangakahia's Court. [Vol. 7, page 185, Lewis's evidence read: "During the time Sir Donald McLean," &c.] I have only now heard that an order was made for the 1,200 acres. It was not interpreted to us at the time. I remember Nicholson objecting to the position of the 1,200 acres as then proposed. He is a half-caste, and understood what took place. As it says in the minutes that an order was made for the 1,200 acres, I will not dispute it. I have already said I did not hear the order made. I remember the first Court adjourning, and a further adjournment taking place owing to there being no Assessor. Our deliberations extended over six or seven days. There were three divisions before the Court on the 25th November, 1886. We, the Maoris, did not know them by numbers. I remember an order for 11,130 acres being asked in Kahui's Court. Don't know numbers. It was awarded to us. When it was surveyed I heard it was No. 3.

To *Court:* I saw Mr. McDonald in Court on 1st December and other days. He was the conductor, but I only now know what he did. He did not tell us at the time.

To *Mr. McDonald:* I did not know until we were informed by the Court that the Assessor was gone. [Horowhenua Commission, page 89, questions 188 to 190 read.] I remember giving that evidence. The land was intended to be at Ohau at first; it was afterwards extended west of railway. [Horowhenua Commission, questions 191 and 192 read.] I referred to the objection made by Nicholson in Court. [Horowhenua Commission, question 195 read.] I don't remember giving that evidence. I never said that it was said about the town, and not in a building. I ask the Court to believe what I say. [Horowhenua Commission, questions 196 to 205 read.] Silence is sometimes a sign of consent among Maoris. [Horowhenua Commission, question 206 read.] That was settled on the 25th November, 1886. [Horowhenua Commission, questions 207, 208, 209, read.] I reaffirm most of my evidence as read, but I deny having said anything about the eel pas, or about Papaitonga. I admit the rest is correct. I mean that I did not say that the eel pas at Hokio and Papaitonga were offered to Whatanui's descendants. [Horowhenua Commission, page 98, questions 2 to 6 read.] I remember those questions and my replies. The replies are correct. [Horowhenua Commission, page 99, question 56 read.] I remember that question being put to me. My reply is correctly reported. I knew at the time that No. 14 was identical with Papaitonga. [Horowhenua Commission, page 98, questions 26 to 28 read.] Those questions and replies are correctly reported. [Horowhenua Commission, page 91, questions 257 to 260 read.] That is true. I did not hear that the mortgage had been passed by the Native Land Court. I cannot speak for other Muaupoko. Sir W. Buller told us that the mortgage was to secure £500 paid to Edwards only. That is all I heard. [Horowhenua Commission, page 270, questions 81 to 96 read.] I again say you must ask the whole of Muaupoko. I am only one of them. Assemble the tribe, and ask them as a tribe. [Horowhenua Commission, page 93, questions 335 and 336 read.] It was Hare Pomare's elder brother that Kemp met in Auckland. It was Hare Pomare who went to Palmerston in 1886. The Pomares are the direct descendants of Whatanui. I heard Kemp say that he had seen Pomare the elder in Wellington; but I cannot say that it was when the Court was sitting that Kemp saw him. I can't say whether Kemp should have waited for Pomare the elder to accept or reject the 1,200 acres. Ask him; he will be giving evidence here shortly. [Vol. 7, page 193, *re* No. 11.] The No. 14 that was before Mangakahia's Court was said to be entirely to the eastward of the railway. ["Application by Major Kemp," &c.] I do not know what is there meant by the balance of the land between the railway and the sea. I suppose it means No. 11. I don't know why Kemp and Hunia extended No. 14 westward to Papaitonga. I believe the tribe agreed to Kemp having Waiwiri, in the same way as they assented to the township section and others. I cannot name the individuals who assented. I do not admit that the extension of No. 14 to Waiwiri was not agreed to in 1886. I told the Court this morning that No. 14, the 1,200 acres at Ohau, was given to Kemp for descendants of Whatanui. It was at that time confined to the east side of the railway, and the descendants of Whatanui refused to accept it. It was afterwards given to Kemp by the tribe—the same piece.

Mr. McDonald informs witness the days Court sat in November and December, 1886, and what the Court did.

Witness: I admit that what you tell me is correct. Kahui's Court sat on the 1st, 2nd, and 3rd December. I kept no count of the days. I heard Kemp apply to Mangakahia's Court to make an order to him for the 1,200 acres at Ohau for Ngatiraukawa, but I do not know whether the order was made. The tribe afterwards gave the same piece of land to Kemp for himself. I understood that Kemp informed the Court (Kahui's Court) that as Ngatiraukawa had refused the 1,200 acres at Ohau he was to have it himself. I did not hear him say this, but I knew that the tribe arranged outside the Court that Kemp was to have it for himself. I heard an application made in Kahui's Court for an order in Kemp's favour for this 1,200 acres, but it was not stated that it was for Kemp alone. That was settled outside after the matter was withdrawn temporarily. I cannot remember what took place on the different days the Court sat—at least, not everything.

Colonel McDonnell: No questions.

Cross-examined by Mr. Stevens.

Witness: I do not know where the Court went from to Palmerston in 1886. I do not know that it had been sitting at Foxton, not the same Court. We were at Te Awapuni when the Court opened at Palmerston. Kemp was there with us. I do not know who applied for the partition of Horowhenua. We did not receive a *panui*. Wiki Keepa came to Horowhenua herself, and took us to Te Awapuni. I believe Kemp caused the Court to go to Palmerston. We saw Mr. McDonald at Mr. Palmerson's house at Palmerston. We held discussions before the Court opened, as I stated yesterday. I do not know that Mr. McDonald asked the Court to adjourn from Foxton to Palmerston. I was at Horowhenua at that time with my tribe. It was when the Court went to Palmerston that I went there. We did not instruct McDonald to apply to Court at Foxton to adjourn to Palmerston. The Court was sitting when we discussed the three subdivisions at Palmerston. This was before we went into Court. We discussed and arranged the hill blocks as well. I believe one of the first three blocks was for the township, another was for the railway. The third was for the descendants of Whatanui. We did not know exactly what the railway company were to have a section for. McDonald did not tell us at the time. He may have told Kemp. I stated before the Horowhenua Commission that No. 14 was for Kemp himself. We agreed outside the Court that descendants of Whatanui were to have 1,200 acres east of the railway. McDonald applied for the orders for the three sections just referred to. The descendants of Whatanui refused the 1,200 acres at Ohau because it was stony. Pomare and Heni Kipa refused it. I heard the application was made on behalf of Pomare in Auckland. Pomare, from Auckland, was not here at time of Court. Hare Pomare, Heni Kipa, and Ru Reweti were present at the Court at Palmerston. Ru Reweti did not object. Nicholson made his objection in Mangakahia's Court when it was proposed to make an order for the 1,200 acres. The objection arose when the position was indicated to Nicholson, perhaps on the map, but I did not see any map. Judge Wilson overruled his objection. I do not know what the numbers were of the first three blocks applied for. They were not then referred to by numbers. One of the blocks was the 1,200 acres at Ohau. I am not clear that it was this block that Nicholson objected to. I do not say that he objected to the position of the 1,200 acres; he asked to be allowed to see where it was. I did not see any map. The map was not shown to Nicholson, because the Judge considered that he had no right to apply. The Court may have adjourned after that or not, I cannot say. I am referring to Mangakahia's Court. It was at that Court that the 1,200 acres was arranged for the descendants of Whatanui. I do not know the date of the cutting-off of the second piece of land for descendants of Whatanui after they had refused the first section. It was about the same time that the first section was dealt with—the same year. We gave the land to Kemp at the same time. the Ngatiraukawa having rejected it. It was agreed to give the 1,200 acres at Ohau to Kemp after the section at Raumatangi was disposed of. The Ohau section was given to Kemp for Whatanui's descendants at Mangakahia's Court. They rejected it, and it was then given by the people to Kemp. I think this was also in Mangakahia's Court. I remember Lewis coming to Mangakahia's Court. I do not remember his withdrawing the 1,200 acres from the Court, but he had meetings with the Ngatiraukawa. I said that the 1,200 acres at Ohau was for Kemp himself. I will not say what Kemp's ancestral claim to it is, or whether he has any. Kemp has a right by occupation to Papaitonga. Buller is now keeping his fires alight. He has occupied Papaitonga and cultivated at Waiwiri. It was given to Kemp because the land was under subdivision; and as Kemp had no other allotment it was given to him. The land was divided by voluntary arrangement, without reference to occupation. Kemp had no other portion, and this was allotted to him. I did not hear Wirihana Hunia agree to Kemp having it; nor did he object. Makere te Rou agreed to Kemp having it; but before the Commission sat some one influenced her to say that she did not agree. Persuaded her to lie. I do not know who did it. [Horowhenua Commission, page 93, question 320 read, with reply.] I remember giving that reply. I think now that the 1,200 acres at Ohau was awarded to Kemp by Kahui's Court. I think the 1,200 acres at Raumatangi was set apart for the Ngatiraukawa by Mangakahia's Court. The section at Raumatangi was awarded first. I remember that Hitau objected to it because it was sandy. Kemp said: "Leave it to me, I will consider it." I do not remember how long he was considering it.

Cross-examined by Henare Apatari.

Witness: Whararíki and her sister were of the same rank as ourselves. We are all rangatira. Their descendants are living, Te Paki and others. Hoani Nahona is one. I have said in all the Courts that I was born on this land. I went to Arapaoa, not because I married a woman belonging to that place. I went as a rangitira with other Muaupoko, not as a slave. We lived at Arapaoa a considerable time. Returned here at time of Te Kuititanga. I was present at Foxton Court in 1873. Did not give evidence. I said that Muaupoko at one time had rights from Otaki to Manawatu, and that Whatanui lived under the mana of Muaupoko. The Ngatiraukawa are now living on each side of us; Muaupoko are in the middle. The Court put us here. The evidence upon which we were confined to Horowhenua is in the minutes of the Foxton Court. There were five tribes before the Foxton Court—viz., Ngatiapa, Ngatikahungunu (two divisions), Rangitane, and Muaupoko. Members of all these tribes were admitted as owners. Some of them are now on the hills. The registered owners were not all at Palmerston. There was no necessity. The Muaupoko were the proper people to arrange the partition and give what they chose to the others. As I understand that, No. 11 was awarded to Kemp and Warena as trustees. The 800 acres was awarded to Kemp. He asked us for it at Palmerston. He placed that burden of his upon us, his tribe. He required it to pay his debts. He made it clear that it was to pay debts incurred over Whanganui lands, not in connection with Horowhenua. I think we were justified in doing this; we did it out of love. I think we treated the *takekores* liberally in putting them on the hills; we need not have given them anything. Kemp has always arranged with the tribe before taking any action in connection with

Horowhenua. He refers to us and consults us, because we have rights in the land. The residential Muaupoko agreed to give Kemp No. 14 to carry out Taueki's promise to Whatanui. There were many present, I cannot remember them all, when we decided to set apart the 1,200 acres. It was done by the tribe, not by individuals. You want me to name one or two, but they would not represent a tribe. The Ngatiraukawa refused the first block, and we gave them the choice of another block, which they accepted. The second block was within the boundaries of what afterwards became No. 11. I know of none who objected.

Re-examined by Sir W. Buller.

[Horowhenua Commission, page 93, questions 320, 321, 322, read:]

Witness: Those replies explain the question and answer read to me by Mr. Stevens.

Sir W. Buller quoted from notes to show that witness's evidence appeared inconsistent on certain points, and asked to explain his meaning.

Witness: As I have already related, we discussed the subdivisions inland. Kemp and McDonald were negotiating about the 1,200 acres. Kemp asked us to give some land to the descendants of Whatanui. We, the tribe, consented. Kemp then said the land should be on the Ohau side. Kemp said this to us outside the Court, at our kainga. We all consented. Then the parcel for the railway was mentioned. The 1,200 acres at Ohau was then dealt with in Mangakahia's Court, as I have already stated. The locality was objected to. It was taken into Court and ordered. Objectors were challenged. None appeared. The 1,200 acres at Ohau having been refused, the alternative section at Raumatangi was dealt with by the Court. By "no objectors" I mean that the Muaupoko did not object.

To *Court:* Three divisions were taken into Mangakahia's Court. The objection to the 1,200 acres at Ohau was by Pomare and Heni Kipa. Nicholson was present. He only asked to see the position. I do not remember his objecting. When the two objected I do not know what took place exactly, but the 1,200 acres at Raumatangi was settled I think. I know that Lewis, Kemp, and McDonald discussed the question of the 1,200 acres afterwards. I cannot say positively whether the matter was settled definitely on that day. I take it that it was not, as Pomare and Heni Kipa objected.

To *Sir W. Buller:* I said that the 1,200 acres finally settled by Mr. Lewis was at Raumatangi. I say so now. The descendants of Te Whatanui never attended any of our meetings at Palmerston. Ru Reweti acted as go-between; between the Ngatiraukawa and ourselves at Palmerston. It was in the Court that Kemp said he would give 1,200 acres to the descendants of Whatanui.

The Court adjourned till the 6th instant.

SATURDAY, 6TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

RANGIMAIREHAU examined by the Assessor.

Witness: Kawana Hunia was not put on the hills, his share was allotted down here. I have said that three divisions were brought before Mangakahia's Court—(1) The railway; (2) the township; (3) the 1,200 acres for descendants of Whatanui. I do not know whether orders were finally made by Mangakahia's Court; McDonald did not tell us. I heard McDonald asking for the orders. He and Kemp might know whether they were made. McDonald asked for the orders in Mangakahia's Court. The first proposal was to give the descendants of Whatanui the 1,200 acres at Ohau. It was a verbal proposal. I heard Judge Wilson give his evidence in this Court. I think I am more nearly correct than Judge Wilson in saying I do not know whether an order was made or not. I think it was at Kahui's Court that Pomare and Heni Kipa objected—I made a mistake; I meant to say Mangakahia's. I do not remember Lewis withdrawing the question of the 1,200 acres from the first Court as stated by Judge Wilson. The whole block came before the Court on the 1st December, 1886. The descendants of Whatanui themselves asked that their 1,200 acres should be located by the 100 acres at Raumatangi, and it was agreed to. I do not know what took place between them and Lewis. Notwithstanding the minute of the Court that Nicholson objected, I say that I saw Pomare and Heni Kipa object. Nicholson's relatives are the descendants of Whatanui who have lived permanently at Horowhenua. Pomare did not come here till 1882. Waretini Ma told Pomare and Heni Kipa that the Ohau land was stony. Waretini was at the Court in 1886. I cannot say why Waretini, who had a knowledge of the land, should not have himself objected. I remember the Judge telling Nicholson that he was not in the title. I think Nicholson had asked to see the order, or some other paper. I do not know why Judge Wilson did not tell Heni Kipa and Pomare that they had no right to object. They are not in the title. I do not know who the land on the railway was awarded to. We agreed outside the Court to give it to Taitoko (Kemp). We knew nothing of the Railway Company. McDonald was present when the matter was discussed and arranged. I understood that Kemp was to hold the land as a trustee; but it appears now that I was wrong. I have lately heard that the land has been conveyed to the Railway Company. I do not know who has the money for the land. This was the first division allotted to Kemp. The 4,000-acre block for the township was fully discussed by Muaupoko. It was decided that this block should be awarded to Kemp for sale to the Government. It was given to him to be sold. He was not a *kaitiaki* in the sense that he was to hold the land. The question of the disposal of the money was not discussed at the time. I did not understand that the land was for Kemp himself. It was handed over to him to be sold to the Government in accordance with our decision. Kemp asked us to sell a portion of our land, and said that

we would be benefited by Europeans occupying it. You can see the result yourself. The Europeans living amongst us. It would not be right to say that this land was for Kemp himself, although he has sold it, and has not accounted for the moneys. The Muaupoko have never made a claim upon Kemp for the money. It was never spoken of by Kemp's tribe. The matter was brought before the Horowhenua Commission at the instance of Europeans—not by the tribe. The allotment of the 800 acres to Kemp is quite clear. It was to pay his debt to Sievwright. He asked the tribe for it, and they could not refuse his request. It cannot be said that the land was for himself. He is not living on it. I have said that the tribe consented to the 1,200 acres at Ohau being awarded to Kemp for the descendants of Whatanui. This was outside the Court. I repeat that I do not know that an order was made for this purpose. Kemp would know. I am speaking of what the tribe did outside. I do not know what took place after the Ngatiraukawa made their objection. The descendants of Whatanui commenced to quarrel among themselves about the division of their land. The tribe handed it over to Kemp to give to the descendants of Whatanui after they had refused the parcel at Ohau. After they objected to the block at Ohau another parcel was given to Kemp for them. The 1,200 acres at Ohau did not become Kemp's own when we gave it to him for the descendants of Whatanui. He was to give it away. Kemp asked us, as a chief, to consent to all the divisions of Horowhenua. Kemp asked us to discuss the question of the 1,200 acres at Raumatangi. We consented, and he took it into the Court. We were there also. Did not know that it was necessary that an order should be made for it to prevent any one interfering with it. We did nothing in writing to signify our consent; we gave the land verbally, as our ancestors would have done, and there was an end of it. It was the 1,200 acres at Ohau that was given to Kemp for himself after the descendants of Te Whatanui had refused it. It was when they refused it that Kemp got his mana over it. I know nothing of your elders killing Takare and another at Papaitonga. I never heard it. Ask Kemp, he might have heard of it. I am not prepared to say that the shares of the owners of No. 11 should be equal, or that those who have received substantial interests in other portions of the block will get the largest interests in No. 11. I will see when the time comes. I was present at the Foxton Court in 1873 when Horowhenua was before it. 100 acres were awarded by that Court to the descendants of Whatanui. This was in fulfilment of the promise of Taueki. The Muaupoko chiefs agreed to it, as they did to the 1,200 acres afterwards. Te Watene's settlement is on the 100 acres. The land was known to us as the Mauri. The houses at Kouturoa belonged to Te Maunu, but Watene occupied them. The Ngatiraukawa burial-ground is on the 100-acre section. It was partly the burning of Te Watene's whare that caused the trouble between Ngatiraukawa and Muaupoko, but Watene wanted to claim the land also. The law was appealed to, but Watene was not satisfied, and continued the Maori methods of preferring a claim. The Ngatiraukawa have always claimed this land under the law; but the law having given the land to us, if they still persist it will be in defiance of the law. I believe the Government paid the Ngatiraukawa some money to induce them to cease quarrelling with Muaupoko; the land was given to them through *aroha*. I saw the money paid in Wellington in the presence of Matene, Karanama, and others. The trouble ceased after that. The people from here who saw the money paid were myself, Kawana Hunia, and Kemp. The trouble was between us and the Ngatiraukawa. I never heard that the money was paid to Ngatiraukawa because the Ngatiraukawa suspected that the Government had connived at the burning of Watene's house. I have heard that there was an agreement between Sir D. McLean and Kemp by which the Ngatiraukawa were to get additional land. I did not hear that it was to prevent further trouble between Ngatiraukawa and Muaupoko.

To *Court*: I stated that the work done by Mangakahia's Court was the setting apart of three parcels—(1) The railway; (2) 4,000 acres for the town; (3) 1,200 acres for Te Whatanui's descendants at Ohau. I do not know the reason why Mr. Lewis took the 1,200 acres out of the Court; all that I know is that the descendants of Whatanui refused the land at Ohau, and then a parcel was offered them at Raumatangi, and that the 1,200 acres was finally located there for them. I understand the question you put about the 1,200 acres being dealt with by Mangakahia's Court. I do not know that Judge Wilson's version of what took place before that Court is more correct than mine. Judge Wilson may possibly be correct. I am probably unaware of what actually took place. The 1,200 acres allotted to Kemp was for the descendants of Te Whatanui. It was after Te Whatanui's descendants refused the 1,200 acres at Ohau that it was allotted to Kemp. I do not know the date, but it was probably at Mangakahia's Court. It was after the 1,200 acres had been allotted to Kemp for the descendants of Te Whatanui at Raumatangi that the 1,200 acres at Ohau was allotted to him. I mean by saying that Kemp took the land that it was allotted for himself.

The Court adjourned till 10 a.m. of the 8th instant.

MONDAY, 8TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

The Court announced that Hamuera Karaitiana had been authorised to appear for Rihipeti Nireaha, *alias* Tamaki.

Special license granted to Hamuera Karaitiana.

Mr. J. M. Fraser asked to have his position defined; he did not wish to cross-examine any of Sir W. Buller's witnesses, but would like to be able to cross-examine any witnesses antagonistic to the tribe or to Kemp's case. He denied the trust.

The Court stated that Mr. Fraser would have the right to cross-examine.

Sir W. Buller will call Major Kemp.

MEIHA KEEPA TE RANGIHIWINUI sworn.

Witness: I am a chief of Muaupoko and other West Coast tribes. I reside at Wanganui. I know the Horowhenua Block. It was put through the Native Land Court in 1873. I acted for my hapus, with Mr. Cash, when it was before the Court in 1872 and 1873. I was the spokesman of all the tribes on my side. The counter-claimants were Ngatiraukawa, Ngatitoa, and Ngatiawa. The land was awarded to me, the Muaupoko. A certificate of title was issued to me. The members of my tribe to the number of 143 were made registered owners. My name was on the back of the certificate as well as being in the body of it. Long after the land was put through Court I leased parts of the land, sold timber on it, mortgaged and sold parts of it. The tribe approved of my dealings with the land. I applied for partition of the land. The subdivision Court sat in 1886 under Judge Wilson. Mangakahia was the Assessor. I was the first to go to Palmerston. I was ill. Went against the advice of my doctor. I was on crutches. First went to Awapuni. When the Court arrived at Palmerston I proceeded to that place, and lived in Mr. Palmerson's house. The Muaupoko were lodged in a barn. Ihaia, Rangimairehau, Noa, and all Muaupoko except those at Parihaka were present. Hoani Puihi was one. Wirihana Hunia, Raniera, and all the resident Muaupoko were at Palmerston. None of the chiefs were absent. Waata Muruahi and some others, whose names I forget, were at Parihaka. The tribe assembled at Palmerston for the purpose of subdividing the Horowhenua Block. We discussed the division of the land in Palmerston. McDonald was acting with me, and on behalf of the Manawatu Railway Company. Palmerson was also friendly with me. We first discussed the piece for the railway and No. 2. Palmerson made the necessary calculations. The Court was not sitting at that time. We first discussed the part of the block inland of the railway, and that portion of No. 2 which extended west of the railway. McDonald conducted the proceedings, and acted as our interpreter. On the second day the surveyor obtained a map. I mean Mr. Palmerson. Before the map arrived we had decided Nos. 1 and 2. I then made a division near Ohau for the descendants of Whatanui. I placed the 1,200 acres there because the land was my own. When Pomare and Heni heard this, they came to me, and said, "We have heard that we are to be placed at Ohau. We will not have the land, because it is stony. We want the land beside the 100 acres at Te Raumatangi." I then consented, and said, "I will give you the land where you wish it to be." After this Lewis arrived, and said, "I have come to read to you your agreement with Sir D. McLean, and to ask you not to give the land away from the lake. I told him I had already consented, and he was pleased. After that we went to the Court—all the Maoris and McDonald. When we entered the Court, I stood up to explain that we had arranged about Nos. 1, 2, and 3. I said to the Court that the descendants of Whatanui had refused the 1,200 acres at Ohau, and I had agreed to give it to them at Raumatangi, where they wished to have it, and that Mr. McDonald would explain matters and make the applications for the orders in respect to the awards. McDonald stood up, and applied for an order for the railway line—76 acres. The Court challenged objectors. None appeared, and the order was made for it in my favour, to be transferred by me to the railway Company. After that No. 2, the 4,000 acres, was placed before the Court. The Judge called for objectors. There were none. The order was made. No. 3 was for descendants of Whatanui—the parcel near Raumatangi. It was first No. 3, and subsequently altered to No. 9. Objectors were called for by the Court. None appeared at that time. The order was made to me to convey to the descendants of Whatanui. This was at Mangakahia's Court. I paid £3 for the three orders. I offered to put the 1,200 acres into Lewis's hands outside the Court, but he said: "No; you had better go to a lawyer to arrange for the conveyance." I was afraid of the expense. That was all that was done on that date. News came that Mangakahia's wife was ill, and he went away. After the Assessor left we went on arranging the different divisions with our surveyor outside the Court. Lewis telegraphed for Kahui Kararehe, a Taranaki Assessor. While waiting for the Assessor we arranged the divisions, large and small, until they were all finished. Our surveyor mapped them out. No. 4 was for the Hamua, of Wairarapa. I forget how many. The area of this division was 500 acres. It was agreed to. After No. 4, No. 5 was considered. It was a small piece for Tamati and Kotuku. It was four or five acres, I do not remember exactly. Then No. 6 was dealt with. I cut off that piece, because it belonged to my ancestors. It was for those who were omitted from the title. I told Palmerson to lay it off on the plan. I decided the area—4,600 acres. I proposed to the tribe that it should be cut off to make provision for the people who were not in the original certificate, but ought to have been. It was my own suggestion. The tribe agreed to it. It was to be in my name. The name of the locality was Hamoana. Then came No. 7. It was for Te Peeti, Hoani Meihana, and Waata Tohu, and contained 300 odd acres. Something over 100 acres each. The next block was No. 8. This was for Mere Karena and Te Ruaohata and another. I cannot remember the area of it. About 100 acres each, or a little less. The tribe agreed to all these allotments being made. The next discussed was No. 9, which was formerly No. 3. It was then it was called No. 9, and Rangimairehau's block named No. 3. I mean a large block that was afterwards awarded to a number of people—105 acres each. I then told my tribe that I had a burden upon me. My trouble was that an action had been brought against me in the Supreme Court at Gisborne and that I had not attended the Court. I asked them if they would take my burden on their shoulders. Rangimairehau consented, and asked what area it would take to relieve me. I told them that the debt had been incurred in connection with Whanganui lands. I remember the amount, and told the people what it was. I said Palmerson would calculate what area would be necessary to pay it. It was £2,900 odd. Palmerson inspected the land and valued it at £4 an acre, and said that 10s. would be necessary for survey, leaving £3 10s. an acre available. Palmerson figured it out, and found that it would take 800 acres. The tribe consented to take my burden upon their shoulders, and said they would give me the land. It was put in my name to enable me to convey it to Sievwright and Stout. I did so, and they sold it. None of the tribe dissented. There was not one who objected. No. 11

was next. It was a large block containing Horowhenua Lake. It was said to contain 15,000 acres, but has turned out less on survey. The tribe decided that this block should be for the people, and that I was to be the caretaker of it. We then discussed No. 12, a block of about 13,000 acres on the hills. I was not present the whole time. I was ill. Did not hear what had been arranged until it came before the Court. None of these divisions had yet been before Kahui's Court. Nothing was known about No. 13 until we went into Court. No. 14 came next. It was on the Ohau side. I asked the people to consent to this block being awarded to me. The tribe agreed. It was my land, and they agreed to my having it for myself. They all agreed. None of them objected. McDonald was not present at all the discussions. He ceased after No. 4 was discussed. At that time relations between us had become strained. Sometimes McDonald attended the meetings. Sometimes he did not, as we were not friendly. When the new Assessor arrived the Court sat again. This was Kahui. When Kahui arrived we all assembled in Court. Cannot remember date. Judge Wilson presided. We asked that the orders for Nos. 1, 2, and 9 might be confirmed. The latter was formerly No. 3. It was McDonald who applied for confirmation of the former awards, because they were of no effect. The Judge also said that the orders of the previous Court were invalid because the Assessor sitting with him at the second Court was a new Assessor. The orders for (1) railway-line, (2) the township, and (9) for descendants of Te Whatanui, 10,200 acres adjoining Raumatangi, were then made. When No. 9 was being arranged in Court, Hitau, a Ngatiraukawa woman, said that part of the land was sandy. Nicholson also stood up and asked to be shown the plan. The Court told him it could not hear him. I got up and said I would adjust the boundaries so as to exclude the sand. The descendants of Whatanui wanted me to bring the boundary to the Hokio Stream. I declined to do this, and said that it must not approach nearer than 2 chains from the stream and lake. The Judge then left the Courthouse to Mr. Lewis so that we might discuss the matter. I was present at the meeting with Lewis in the Courthouse, arranging the boundaries of No. 9. Palmerson was there. The boundary was finally settled then and there. We shifted the boundary so that it went by Otaewa. The lower side was moved to Waiwherowhero, cutting out Ohenga, the sandy ground. Ohenga is a burial-ground. Mr. Lewis and the descendants of Whatanui agreed to the boundaries as altered, and the matter was completed. It was taken into Court again, and awarded to me for the descendants of Whatanui. After this was done, McDonald applied for No. 4 for people of Hamua. There were no objections to this. After this award was made McDonald ceased to act for us. We quarrelled. He wanted me to give him the line of railway. I said I would, but I first wanted to know what was meant by the word "shares." He replied, "that does not matter; you have signed the agreement to the Railway Company." I insisted that he should explain to me what "shares" meant. I was careful, because I had previously been a shareholder of a steamer and got nothing for my shares but paper. We thus became estranged, and I managed things myself. I explained to the Court what had been agreed to by the people, and asked for the orders to carry out their instructions. I first applied for No. 5, and it was awarded—after objectors had been called for, none appearing. I then applied for No. 6. I explained to the Court what it was for, but that the names of the persons entitled had not yet been ascertained. Objectors were called for. There were none. Order was made. Then I applied for No. 7. There were no objectors. They were challenged by the Court. Objectors were called for by the Court when I applied for No. 8. None objected. Then came No. 9, which was awarded to me for descendants of Whatanui. The adjustment of the boundaries was mentioned. There were no objectors, and the order was made. I explained the nature of No. 10 to the Court—that it was for my debts which my people had taken on to their shoulders. Objectors were challenged, but there were none, and an order was made for it in my name for me to convey to Sievwright, which I did. Then came No. 11, including the lake. I made the application for it. I was on one side of the table; McDonald and Wirihana on the other. The majority of Muaupoko were in the body of the Court. My application to the Court was that No. 11 should be awarded to me in pursuance of an arrangement made by my tribe that I should hold the land as a caretaker. As I stood up, McDonald handed me a note suggesting that Warena and myself should be put in the title. Te Kiri and Raniera wanted to know what was written on the paper? I said it was proposed that Warena should be put in the land with me, and trouble immediately arose in the Court, and, seeing this, I said we would go into another room and talk the matter over. The Court waited. When we entered the little room I said I will give the land to Ihaia Taueki as caretaker. Raniera, Te Kiri, and others would not consent, and insisted that I should be in the title. I then said I would agree to Warena being in the title with me, as he was an exemplary young man. The people were very angry. Rangimairehau, Raniera, and others left the Court. I went back and applied to the Court to make an order in favour of Warena and myself. Objectors were challenged. There were none. The principal people had left the Court. They were right, and I was wrong, as is shown by what is now happening. It was not proposed at any of our meetings that Warena's name should be put in the title. The proposal came upon them as a surprise; it was the first they had heard of it, and they were annoyed. It was McDonald's fish-hook that caught me. He is a man of fishhooks. No. 12 was next. I applied to have this awarded to us two, as we were already in No. 11. Raniera objected. The case stood over for a time, and came before the Court the next day. In the meantime we had arranged the matter. Rangimairehau wanted to be *kai-tiaki*, so did Hoani and Himiona Kowhai. I said we will leave all your names out and put in Ihaia Taueki. The tribe agreed, and it was brought into Court. I applied for an order. Objectors were challenged. None appeared. Order was made to Ihaia Taueki. The tribe knew it was for them. No. 13 then came before the Court, and it was found that there were two names for one person, Wiremu Matakatea and Wiremu Matakara. A block containing one square foot was awarded to the latter. There were no objectors. My first mentioning of No. 14 was at Mangakahia's Court. I made my first application on the 2nd December, 1886, after the square foot was awarded. The order was not made then; the Judge remained silent.

The Court did not comply with my application then, although it called for objectors, and was informed that there were none. The order was made on the third day. The land was given to me then. The Court called for objectors on the third day, and the people said there were none, that the land was mine and I was to have it. There was no evidence as to ancestry or other "*takes*" before either Mangakahia's or Kahui's Courts. The land was being divided among the people by voluntary arrangement. The arrangement was delayed for some time by McDonald's action. Trouble has been caused among us by Donald Fraser about the land, money, and about Warena's and my position in No. 11. After Court of 1886 Warena came to me for money, I paid him £70. Afterwards Donald Fraser urged him to come to me for more. I was expected to pay Wirihana's debts also. I remember the Court of 1890. It was for the purpose of ascertaining whether the land was for Warena and myself. The Court decided that it belonged to us alone. I applied for a rehearing. Majors Scannell and Mair presided at the rehearing Court. I brought them on to the land. This was in 1891 or 1892. This Court decided that it could not divide the land among the people, but that if any further action on behalf of the people was taken the Court would assist. The judgment of the former Court presided over by Colonel Trimble was confirmed. I continued to agitate after this judgment. I petitioned Parliament three or four times. McDonald and Donald Fraser did all they could to frustrate me. They told me that I could not succeed as the law was against me. At last I got a favourable report from the Native Affairs Committee. To that extent the people were put back on to the land. After that, and after Warena had sold the farm, the other side asked to have a law passed. I got Sir W. Buller to go to the Hon. J. Ballance about it. Sir W. Buller suggested that we should lodge a caveat. I eventually got a Proclamation put over the land to prevent it being sold. The other side were very much pleased with their success. They came to my hotel and taunted me. Mr. Stevens often came to the hotel and told me I was beaten, but they had a different story to tell when they saw the Proclamation. Shortly after this Mr. Ballance died, and I petitioned both Houses of Parliament, and consulted Sir W. Buller as to taking steps in the Supreme Court to test our position in No. 11. After I had commenced my action in the Supreme Court I appeared before the Native Affairs Committee in support of my petition, but was told that they had no report to make as the case was before the Supreme Court. The Committee of the Legislative Council made a favourable report on my petition. Subsequently the case came on in the Supreme Court in Wanganui. I, Raniera, Rangimairehau, and Kerehi gave evidence. The decision of the Court was that the land belonged to the tribe. The other side took the case to the Appeal Court, which upheld the decision of the Supreme Court. They threatened to take it to England, and I was pleased, because that would have been final. I have always contended that the land belonged to the people. The other side always told me it belonged to us two only, and tried to dissuade me from the action I was taking. After this a Commission was set up, and I knew it was intended to do me an injury, and made up my mind not to appear before it. It occurred to me also that the Government had got into some difficulty over the land they had bought from Warena. I was subpœned to appear before the Commission by Sir W. Buller, and I was angry. Sir Walter Buller told me that I would be put in prison if I did not attend; but I said "What do I care if I am." After the Court of 1891 we had meetings about our *raruraru*. The first was at Pipiriki, Mr. J. M. Fraser, Donald Fraser, and Wirihana were present. I do not know whether Warena was present. All Muaupoko were there. Donald Fraser asked Ru Reweti to persuade me to come to the meeting and make an arrangement with the tribe. I attended the meeting and I said it was no use as I had already offered Warena 3,500 acres, and he would not accept it. I made the first offer in Wellington. Donald Fraser, Barnicoat, and Wirihana were present. Wirihana told me that the area offered was only sufficient for Warena himself. At Pipiriki all Muaupoko assembled in front of me. I told them I had not come of my own accord but at the request of the Warena and Fraser combination. I further said I now give you my share of the land to do as you like with. Then they applied to Wirihana and Donald Fraser. Donald Fraser said he would not talk to the tribe but would negotiate with me. He proposed to me that we should pick out the best of the block and give the sand to the people. I declined, and suggested that the lines should be drawn from the sea to the inland boundary. One of Donald Fraser's proposals was that the lake should be divided between us, and that the tribe should be left in the sand seaward of the lake. I left after this, as I altogether refused to agree. Nothing definite was done at the meeting. I do not remember whether the *rerewaho* were discussed at the Pipiriki meeting. The meeting referred to was the last meeting held to discuss No. 11. I know Waata Muruahi. I think he was at the Pipiriki meeting. [Horowhenua Commission, pages 275, 276, questions 290 to 299, and replies, read.] That is all utterly untrue. No. 14 was not discussed at the Pipiriki meeting. I did not ask for it there, it was mine already. No. 6 was also in my name to give to the *rerewaho*. I did not hear No. 14 mentioned at Pipiriki. When we discussed No. 14 at Palmerston, Waata Muruahi was at Parihaka. There was not a word at Pipiriki about my giving back part of No. 14 to some of the people. I never heard any statement of the kind at any time. They might have done so if they had thought proper when I was before them. I did not hear it suggested that No. 14 was not mine until after the Commission. I did not hear it so stated in evidence before the Commission. No. 14 was never mooted at any of the proceedings about Horowhenua until the Commission. Donald Fraser and McDonald taught Te Paki to speak falsely before the Commission; they endeavoured to induce Hoani to speak falsely in Parliament, but he refused. I know the effect of a caveat. It is to prevent the sale of land. The Muaupoko and I caveated No. 11, No. 6—I don't remember the others. Muaupoko did not caveat No. 14. The Government lodged a caveat at the request of my opponents in November, 1896. I have exercised rights of ownership over No. 14; I have leased it to you, and mortgaged it to you. [For leases, see Horowhenua Commission, pages 319 to 321.] I am speaking of the leases dated in 1892 and mentioned in the proceedings at the Horowhenua Commission. You have been in possession of the land between the railway and the sea

ever since execution of the lease. You have paid the rent to me. None of Muaupoko have made any demand upon me for a share of the rents. I have received £300 from Peter Bartholomew for the right to cut timber on No. 14, east of the railway. No Muaupoko has ever made any application to me for any part of that money. The leases were made openly and the money paid. The Muaupoko knew all about it. I have sold parts of No. 14 to you, 4 acres in one place, and about 8 acres in another place; both these areas were cut off from my estate. The consideration I received from you was £110. None of the Muaupoko have asked me for any of the money, not even Raniera. Mr. Edwards acted for me in the Supreme Court case at Wanganui. I mortgaged No. 14 to you for £500, to enable me to pay Mr. Edwards. I appeared before the Trust Commissioner in Wanganui to explain what I had done. Mr. Garland Woon interpreted the mortgage to me. [Translation read.] The translation is quite clear. I understood it when I signed the deed. I understood the mortgage was to cover any further advances you might make to me, and any costs due by me to you. I consulted a lawyer before agreeing to the rate of interest named in the deed. I consulted Mr. Edwards. He also prepared the mortgage. I went before Judge Ward to have the mortgage approved. You were present. Mr. Edwards explained the deed to the Trust Commissioner. Raniera was in Court. None of the Muaupoko objected to my mortgaging No. 14 to you. Rangimairehau and Kerehi were in Wanganui when mortgage was confirmed. I told them I had raised some money on a mortgage. They did not object. None of the Muaupoko have ever said a word to me in disapproval of my having mortgaged No. 14. [Horowhenua Commission, page 28, questions 113 to 122, and replies, read.] I re-affirm all those answers. They are true. What I meant by my answer to question 122 was that No. 14 was for myself alone. [Horowhenua Commission, page 29, question 146A to 152, with replies, read.] My answers to those questions are true. When I gave my evidence before the Royal Commission, I had not seen the Court minutes. I gave my evidence before Judge Wilson gave his. [Horowhenua Commission, page 33, questions 244 to 245 read, with replies.] Those replies are all true. [Horowhenua Commission, page 181, question 318.] My reply to that question referred to the land at Raumatangi. [Horowhenua Commission, page 181, question 319 read.] It is true that No. 14 was cut off first, but it was not accepted. [Horowhenua Commission, page 181, question 320.] That reply is correct. [Horowhenua Commission, page 181, question 321, and answer, read.] I reaffirm those answers. [Horowhenua Commission, page 191, question 234 to 237, and replies, read.] Those replies are all true. [Horowhenua Commission, page 191, questions 241 to 244, and replies, read.] No. 9 was ordered on the 1st December, 1886. I applied for No. 14 on the 2nd December, 1886, but it was not awarded to me till the 3rd December, 1886, on which date I applied for it again. On the 2nd December, 1886, after the square foot was ordered. I applied for No. 14. Did not know why the Judge did not award it to me till the 3rd December, 1886. It was the last parcel applied for. [Horowhenua Commission, page 180, questions 299 to 317, and replies, read.] I will explain about the pa at Pipiriki. I anticipated an attack by Ngatiraukawa because Karanama said to Heta when he went to get the money for the telegraph posts, "Stand there with your horse." Heta held up one of the bags of money to them and sang a song of derision. Karanama said, "Go to Wanganui and tell Kemp what I say. I will cultivate potatoes at Mahoenui, because blood will be spilt there if I do not go there. This is an important communication for you to make to Kemp." Heta gave me Karanama's message, and placed the money before me. I said it was my blood that was to be shed, and sent Heta back with instructions to prepare timber for a pa without letting what he was doing be known, and that I would follow him later. Heta returned to Horowhenua, and prepared the timber. Some months after I came as far as Rangitikei; saw Kawana; he and some of the elders wanted to come with me and wanted to know the reason of my journey. I said I had no particular object. We reached Horowhenua. Te Watene was living at Kouturoa. It was proposed by Muaupoko to drag Watene out of the houses, and burn them. I tried to stop this, but they would not listen and burned down one of Watene's toetoe houses. I then made use of the timber prepared by Heta. Muaupoko erected the pa. Hunia remained inactive. We worked at the pa all night, and by morning the two sides were completed; by dinner-time the posts were all in. By this time the news had reached Otaki and Karanama and Parakaia came, but I took them to Kupe so they should not see the pa. They tried to persuade me to stop the trouble, but I would not have anything to say to them as they had come from Manawatu. Kawana Hunia remained silent all this time. I do not remember saying at the Foxton Court that Kawana Hunia and I built the pa. I put it up myself. I did not mean to say in reply to Fraser that I had told lies before the Court in 1873. I did not want Kiri to tell lies before the Foxton Court. I did not put her up to telling lies. I did not build Waipata pa. My elders did. Kawana Hunia did not live there till lately, and then only as a visitor. I had no intention of admitting before the Royal Commission that I had told lies before the Court of 1873.

The Court adjourned till the 9th instant.

TUESDAY, 9TH MARCH, 1897.

The Court opened at 10 a.m.
Present: The same.
No. 1, Horowhenua No. 14, resumed.

Examination of KEEPA TE RANGIHIWINUI continued.

Witness: I have said that the land I first offered to descendants of Whatanui was at Ohau. When they refused that, I gave it to them at Raumatangi. No. 14, when first awarded to me,

extended from the railway towards the hills. It crossed the Ohau. I see by the plan that it now runs down to Waiwiri Lake. The reason of this is that when the other divisions had been laid off the area was found to be short. There was not sufficient land inland of the railway to contain the whole of No. 14. After No. 6 had been surveyed, this parcel took in part of what was originally intended for No. 14, and what would have been the inland portion of it. The boundaries of No. 14 had therefore to be extended westward to Papaitonga, in order to include the required area of 1,200 acres. This was done by the surveyor, not at my request, but because he could not lay it off as originally intended. [Plan used by Court of 1886 shown to witness.] That is my signature. I wrote it after it was found the alteration was necessary. Mr. Palmerson, the surveyor, brought me the plan for my signature. I did not see Warena sign it. I cannot identify the signature on the plan purporting to be Warena's. [Horowhenua Commission, page 9: Agreement made between Kemp and Sir D. McLean read to witness.] That is the agreement I referred to when I said Sir Donald McLean and I came to an agreement. It is the same agreement that I asked my people to confirm. They agreed to give the descendants of Whatanui 1,200 acres only, on the ground that they had 100 acres already. It was in fulfilment of this agreement that the 1,200 acres was given to the descendants of Whatanui at Raumatangi. When the meeting was held at Kupe, Pomare came to it. I was not present. When I went to Auckland I saw Pomare, before the land went to the Court. I said to him, "If I win our land at Horowhenua I will remember you." I referred to the land at Raumatangi given by Taueki. Pomare replied, "If you will give effect to the promise of our elders, I will not go to the Court." I remembered this when the title to the land was investigated. When the land came before the Court in 1872 and 1873 it was awarded to me. Then I wrote to Pomare asking him to come down as I had won the land. He did not reply. I wrote three times and received no reply, so I concluded that he was *pouri* at his tribe, the Ngatiraukawa, having been defeated. When Kawana and others were arrested for burning houses, I followed them to Wellington and found they had been released on bail. Sir Donald McLean asked me to dine with him. After dinner I wished to leave; Sir Donald McLean detained me as he had something to say to me. He said, "I wish to speak to you about Horowhenua." I asked him what he wanted done with Horowhenua, and he replied, "I want you to cut off a piece of it." I would not consent, because the land had been awarded to me. Sir Donald McLean asked me if I had not made a promise to Pomare. Then I thought that Pomare had not treated me fairly, he had not answered my letters, but had instead gone to Sir Donald McLean. Sir Donald McLean asked me to give 1,400 acres in fulfilment of my promise to Pomare. I refused at first, but ultimately offered him 1,200. Sir Donald McLean insisted, so I gave way, and the agreement was written. McLean said, "Put it in Pomare's name." I said, "No; he has not behaved fairly to me, let it be for the descendants of Whatanui." I meant Pomare, his brothers, sisters, children, and grandchildren—Hare Pomare, Tiaho, and others. I heard afterwards that the descendants of Whatanui were quarrelling among themselves. The morning after my promise to Sir Donald McLean I went to the Government offices, and found Matene Watene, Karanama, and others were waiting to receive £1,500. After their business was over I went in. Sir Donald McLean turned to me and said, "I will read the agreement, so that Matene ma may hear it." After it was read, Watene asked that his name might be put in. I refused, and he said I was quite right. Lately the descendants of Te Whatanui have been quarrelling among themselves. This was in 1890, and was the first I had heard of any quarrel. [Horowhenua Commission, page 9: Receipt signed by certain Ngatiraukawa, acknowledging the receipt of £1,500, read to witness.] I consulted my tribe about my having agreed to those reserves, and they repudiated it altogether. They have never agreed to it down to the present time. It was a voluntary promise of my own. I did not receive any money for it.

Cross-examined by Mr. McDonald.

Witness: I have admitted that in the Court of 1873 our lawyers advised us all to tell the same story. I was new to Courts at that time. I had previously been a fighting man, and wished to fight still. We were advised to go on a particular line, and followed it. I don't know whether it was true or false; I accepted it as they gave it to me. I swore what I considered I was justified in swearing to. In 1890 I was endeavouring to get my people into the land; you were trying to prevent it. I may have said more then than I did in 1873. [Vol. 13, page 178: Portion of evidence of Court of 1873 read to witness, relating to Te Mauna. Witness's evidence relating to Mauna at Court of 1873 (vol. 1, page 255) and Court of 1890 (vol. 13, page 178) read to him by the Court.] The questions were put in that way, and I answered them as they appear in the minutes. It was you and Te Wirihana who made my object in 1890 different to what it was in 1873. You and Wirihana turned against me, and it became necessary to go into the rights to the land. I then questioned Hunia's *take* to the land. In 1873 I gave my own rights in Court, not Hunia's. I claim the 1,200 acres now before this Court, because the tribe agreed at Palmerston to my having it. If it became a question of ancestral rights I could establish my rights against all comers. It is mine by law now; you are trying to get it away from me. It was awarded to me in 1886 for myself. My object in coming to the present Court is that by my evidence I may obtain an assured title to No. 14.

Question: Is not the object you have at present in view sufficiently great to influence your evidence, as your evidence was influenced in 1873 and 1890 by the objects you then had in view?—

The Interpreter could not make the witness understand the question.

Witness: I admit that my object is to obtain a title to No. 14. The matter is now before this Court, and is in its hands. I do not wish to influence the Court improperly by what I say. I do not ask the people to support me. They gave me the land themselves. You are trying to induce them to withdraw from their promise. I repeat that I do not ask the people to support me. I have not attempted to mislead the Court as to the differences that took place between us in 1886. I have told the exact truth about our quarrel on that occasion. I told this Court that you ceased to act for

us after No. 4 was awarded. I brought all the other divisions before the Court myself. I meant the 500 odd acres for Hamua. I rely upon the minutes of the Court. They will show which of us is right. No. 4 was the last division you brought before the Court. I remember distinctly the numbers each of us applied for, and the time we quarrelled. I paid you what I owed you, and we parted after the quarrel. You did not present me with a bill, but I gave you a sum of money. I think it was £10. You said I was very good. I have a clear recollection of what took place at Palmerston in 1886, both outside and inside the Court. I have not misled the Court with regard to what took place before the Court of 1890. Donald Fraser never approached me before 1890 with a view to making adequate provision for the tribe. I have never refused any proposal to make proper provision for the tribe. That is a misstatement. I am the only one who has advocated that course. I never proposed to Donald Fraser and yourself that Warena should take a certain area and that I should have the rest. You and Fraser came to me about the matter, but nothing came of it. I have always held that Warena and I were trustees. I said so frequently before 1890, but my lawyer did not put it in the pleadings in the Supreme Court of 1889 at Wanganui. Mr. Southey Baker was my lawyer in that case. I told Muaupoko and others that Warena and I were trustees. It is you that have always contended that there was no trust. I don't suppose that I told you and Fraser that I was a trustee. You were my enemies. When No. 11 was set apart in 1886 I stood before Muaupoko and said: "Your heads have been in my hands, my feet have been upon your bodies; the reason I had my own name only put in is that I knew some of you would sell. You are my father's tribe, and this is the only land you have. You have none elsewhere. Now, I am going to lift your heads up. Each of you will get something in the other divisions, and No. 11 is the balance, which is for yourselves to keep. If you sell in the other portions of the block you will get nothing in this." This shows that I looked upon myself as a trustee. I don't remember telling you before the Court of 1890 that I was a trustee. I told my lawyer that I was, and that the land belonged to the people. I did not convey my share of No. 11 to the people after rehearing Court of 1890 because I knew that you were trying to get an undisputed title for Warena to his share, and I wanted to prevent that. Hoani Puihi asked me to allow my portion to be transferred to the people first, but I said "No, let me see you give yours first so that I may be clear." Rangimairehau said that he had received my share, and asked the other side to give up theirs. I consider that I have acted rightly in agitating until a trust has been declared. I agreed to allow Warena to take 3,500 acres for himself because I was importuned by Donald Fraser. I was also to have 3,500 acres; the rest was to go to the tribe. The arrangement fell through when they came back and suggested that we should pick the best of the land, and put the tribe on the sandhills. Donald Fraser and Wirihana said that the 3,500 acres should be for Warena only, and that Wirihana and his sisters should share with the people. I would not agree to this at all, and the matter dropped. After the rehearing Court, Donald Fraser asked me to come to Horowhenua to see if we could arrange the matter. I met Fraser and Warena's lawyer, Mr. Barnicoat, but nothing came of it. I agreed that Warena and I should each have 3,500 acres, but I intended to consider others. No. 14 is different to No. 11. The former was awarded to me for myself alone. I remember the meetings outside the Court in 1886. Palmerson had a map, and showed it to me. The divisions shown on the first map were wrong; they were therefore shown correctly on another plan. We took a plan to the Court on the 25th November, 1886. There were three divisions shown on it—(1st) The railway, (2nd) the township, (3rd) the 1,200 acres at Raumatangi. The 1,200-acre section at Raumatangi was shown on the map taken to Mangakahia's Court. I am sure of this. You took the plan into Court. I remember Lewis giving evidence at Court of 1886. It was Lewis who produced the agreement, and reminded me that the land was to be at Hokio. This was in Palmerson's house. I do not think he showed me the agreement then. He did later. It was after I had agreed to give the descendants of Whatanui the land at Raumatanga, and after they had refused the land at Ohau as being stony, that Lewis spoke to me about the land being located at Raumatangi. This all took place before we went into Mangakahia's Court. It was in consequence of Pomare's objection to the land at Ohau that I agreed to its being located at Raumatangi. I had agreed to the change before Lewis spoke to me, and I told him so. It was shown upon the plan and called No. 3, and was afterwards changed to No. 9. We took the plan into Mangakahia's Court, showing the 1,200 acres marked No. 3 at Raumatangi. [Vol. 7, page 185: Order made in favour of Keepa Rangihiwinui for 1,200 acres, &c.] If that was in Mangakahia's Court you handed in the tracing. If you say the No. 3 that was shown on that tracing was the 1,200 acres at Ohau, you are wrong. That 1,200 acres was the last piece ordered. Nicholson's objection was to the boundaries of the piece at Raumatangi. It was in Kahui's Court. I don't remember his making any objection in Mangakahia's Court. I don't say the minutes of the Court are wrong. I am giving you my version, what I remember. I paid the £3 for the orders to Mangakahia's Court. Rangimairehau was wrong if he said that the 1,200 acres at Ohau was the first piece taken into Court for descendants of Whatanui. Judge Wilson would not say so. [Vol. 7, page 185.] That was an application for the 1,200 acres at Raumatangi. The orders made by Mangakahia's Court were not final, and it was necessary to make them again. This section came before the Court the second time on the 1st December, 1886. Objection was made by Hitau to the boundaries, and it stood over for a time. The section at Raumatangi came before the Court twice on the 1st December, the first time the boundaries were objected to, and I promised to alter them. The first application was made for this section in Mangakahia's Court, and I paid £1 for the order, but it was not finally made by that Court. [Vol. 7, pages 187, 188, read out.] My recollection is that when the boundaries of the parcel at Te Raumatangi were adjusted the order for it was made. Hitau objected to the boundaries at first. This was in the morning. Nicholson objected at the same time. It is not my fault if the Court minutes do not mention the objection made by Hitau. [Minutes of Mangakahia's Court again read to witness.] I am telling you what I know to the best of my ability. I am speaking from recollection, without having referred to any documents.

[Vol. 7, page 200, read out: Application from Major Kemp for confirmation of that order, &c.] I believe I made that application myself. Yes, I did; I remember making it. It was for No. 14. I had applied for it on the 2nd December, 1886, after the awarding of the square foot; but the Court did not make the order then. [Vol. 7, page 195: Mr. McDonald applies, on behalf of Major Kemp, under clause 121 of the Railway Construction Act, that the order be made direct to the company, &c.] My recollection is that you went into the box and produced the agreement I had signed. We had fallen out previous to that. When you withdrew the application I took Mr. Baker's advice. I remember being called to give evidence about the railway, but you and I had quarrelled about it before that. Someone in authority in the Railway Company came to Palmerston and explained the nature of the shares to me. [Horowhenua Commission, page 181, question 323, and reply, read.] I never said that. I said that I set No. 14 apart for the descendants of Whatanui, but as they refused it I kept it for myself. I mentioned those I would consider. [Vol. 13, page 177, Kemp's evidence-in-chief, read out: "No. 14 is for the descendants of Whatanui; it is not for me alone," &c.] What I meant by that was that the land was mine, and that I could give it to whom I liked. The descendants of Whatanui chose No. 9. I never intended them to have two sections. [Vol. 13, page 177, read out: "I am in No. 9. This was cut off for the Ngatiraukawa," &c.] It was settled in 1886 that they should have No. 9. I said, if they would give me No. 9, they should have No. 14.

To *Court:* I made use of the words quoted in 1890 because the descendants of Whatanui had quarrelled among themselves, and I allowed them a choice of the sections again. I told them outside the Court that, as they were dissatisfied with No. 9, I would exchange No. 14 for it if they wished.

To *McDonald:* Muaupoko would not conclude from what I said in 1890 that I was holding No. 14 for them if the Ngatiraukawa did not take it. All Muaupoko knew in 1890 that No. 14 was my own. They knew that it was given to me in 1886.

To *Court:* One reason for my saying what I did in 1890 was that I wanted the Ngatiraukawa to give me back the Raumatangi.

To *McDonald:* I was not afraid in 1890 to say that No. 14 was my own in case the Muaupoko might object.

Cross-examined by Mr. Stevens.

Witness: I knew the Hon. John Bryce. We were not always on friendly terms. We quarrelled about Murimotu. He was a Minister at the time. I only once complained of Mr. Bryce's action. We are on friendly terms now. McDonald brought trouble on Ngatikauhata and Ngatiwhakatere as well as on me. The 800 acres, Horowhenua No. 10, was cut off to pay my debts. I told my people, the Muaupoko, that I had a heavy burden on me, and that my tribe at Wanganui would not help me. I must therefore put it on the Muaupoko. Rangimairehau asked me the amount of my debt, and how many acres it would take to defray it. I told him I would ask Palmerson, and said that the bill of Sievwright's amounted to £2,900 odd. Palmerson said it would take 800 acres to pay the debt. The Muaupoko consented to give the 800 acres to pay the debt. Palmerson surveyed it. I do not know that Carkeek surveyed. I did not see him in Palmerston. The 800 acres was not surveyed before Palmerson calculated the area that would be required. At £4 per acre the value would be £3,200. I have already said that no part of my debt was incurred in connection with Horowhenua. It was all on account of my Murimotu lands. The tribe agreed to my selling No. 2 on condition that I kept 10 acres out of every hundred. The Government fixed the price. The whole of the purchase-money was paid to me. I drew £500 on the first occasion. McDonald and Wirihana went with me; also my wife. I cannot remember date. After the survey was made Mr. Ballance said he would not return the tenths to the Natives. He said that they had plenty of land, and that this should be for the Europeans. I received £6,000 in all for the land, and about £200 in interest. The rent I received from Hector McDonald for the part leased to him went to the Muaupoko. I gave it to them. I cannot say how much rent I have received altogether. The first five years, £200 a year; the second five years, £300 a year; the third five years, £400 a year. Hector McDonald, sen., paid me the rent up to his death. I do not wish to say what happened after his death. There was trouble. John McDonald has paid me rent, but not the full amount. The lease was transferred to Mrs. McDonald. I gave the Muaupoko £2,000 in addition to what they drew from the lessee. A sum of £2,000 due from rent has never been paid to me. McDonald gave me £100 when I went to Parihaka. For a good many years he paid me nothing. I cannot say what year McDonald ceased to pay me. I will not dispute McDonald's books. He knows what he has paid me. I have received £500 as timber royalties. Other moneys have been paid to me. I forget the amounts, perhaps £300. Bartholomew could say. The railway shares I am holding for the tribe. I will consider what to do with them when the litigation over this land is ended. Some small sums have been paid to my son-in-law for dividends on the shares, about £7 altogether. I cannot say exactly what I have received from Sir Walter Buller for rent of No. 14—I think it is 2s. 6d. an acre. The rent is being retained to defray my debts. I mortgaged No. 14 to Buller for £500 and further advances. The £500 was paid to Edwards. I do not know how much I have received in addition to the £500. If any one said that the mortgage amounted now to over £2,000 I would not complain. I am spending the money to clear my name. Why should I ask Sir Walter Buller how much I owe him?

The Court adjourned till the 10th instant.

WEDNESDAY, 10TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

KEEPA TE RANGIHIWINUI, cross-examination by Mr. Stevens continued.

Witness: I do not remember telling Judge Wilson in 1886 that my debt amounted to £800 when I applied for No. 10. I do not remember telling Judge Wilson that I owed £800; that was not the amount of my debt. I told the people what I owed. I did not tell Judge Wilson that I owed £800. No one told Judge Wilson that I owed £800. Palmerson came to Horowhenua to value the land after it had been arranged that the people should relieve me of my burden. About the time of the Court I told the people outside the Court what I owed, and that I would ask Palmerson how many acres would be required. He decided that it would take 800 acres, and told me so. No. 14 was awarded to me for my own share. It was the last award made. It was agreed that I was to give part of the proceeds of No. 2 to the tribe. I had no intention to keep the whole of it, but I was compelled to spend it in the expenses of the litigation that was forced upon me. I do not remember whether £3,000 of the purchase-money for No. 2 was still in the hands of the Government in 1890. If I said so at the Court of 1890, I suppose it was. I have not given the £3,000 to the tribe; it has gone in expenses. I kept it to defray the expenses of litigation over this land. Much of it was devoted to paying the expenses of the tribe in Palmerston. No one gave their consent to my retaining the £6,000 for myself. I myself decided to expend it on their behalf. [Vol. 13, page 186.] I have already said I afterwards expended the amount on behalf of the tribe. It was McDonald and Donald Fraser who caused all the trouble over this land. If they had not interfered there would have been no trouble. The tribe consented to my having No. 14. I asked them for it myself, and they consented, because it was my own land. It was not valued. No. 10 was the only block valued. I did not tell the tribe the value of No. 14, or any of the other divisions. McDonald may remember whether the tribe were told the price for No. 2 before the sale; I don't remember. If any of the tribe say that they were told the price I would not dispute. Before the subdivision of 1886 I was trustee for the people; I had power to lease for twenty-one years. I have already stated that I spoke to the tribe, and they consented to my having No. 14. They were all in Court—Rangimairehau, Raniera, Hoani Puihi, Te Kiri, Noa senior, and Noa junior. These are all I remember. There may have been others, or the others may have been outside the Court. There are over a hundred names in the certificate of 1873. It was Muaupoko only who consented to my having No. 14. It was not necessary for the members of outside hapus, to agree. McDonald might be able to say how many Muaupoko were at Palmerston. No. 14 was given to me in Mr. Palmerson's barn. The order was made in my favour in Kahui Kararehi's Court. After No. 13 was ordered. I can't remember whether the order for No. 14 was made in the morning or the afternoon. When I applied for No. 14, some of the certificated owners were dead—many of them were dead. Successors had not been appointed to all of them. It was not necessary to appoint successors to all the deceased owners before a subdivision could be made. Experts did not advise us that this was necessary. McDonald acted for us, and he did not tell us that it was necessary to have successors appointed. The dead owners would have consented if they had been alive. I don't remember how many of the owners died between 1873 and 1886. Kawana Hunia, Te Rangirurupuni, Rewiri Tara, and others died during that period. I cannot name any others from memory. [List of persons said to be dead in 1886, and marked "A" and "B," read out.] All those died between 1873 and 1886. I cannot remember how many of the deceased owners were represented by successors appointed by the Court. I left the tribe to consider the interests of those who had died. Succession order had not been applied for until after the division of 1886. The persons who agreed to the voluntary arrangement were afterwards appointed successors to the deceased. The ancestral claims were not inquired into when the subdivision was made. Some of the deceased owners had good claims, others had not. I did not hear until the Horowhenua Commission sat that any objection had been made to my having No. 14 for myself. It was not necessary for Ngatikahungunu and Ngatipa to agree to my leasing No. 14 to Sir Walter Buller. They have never objected. It is at your instigation that Wirihana objects now. I cannot remember when Sir Walter Buller first asked me to lease No. 14 to him. It was before he went to England. I told him to wait awhile. It was after the division in 1886 that Sir Walter Buller asked me to lease him the land. He wanted my promise to let him have it. I gave him the promise and refused to lease it to other Europeans. I cannot remember whether it was before or after the subdivision of 1886, or where he spoke to me about the lease. I did not make a note of the date Sir Walter Buller asked me to lease the land to him. [Horowhenua Commission, page 242, question 3 and reply read out.] I repeat that I do not remember the date. No doubt Sir Walter Buller was correct. I cannot remember whether I made the promise to Sir Walter Buller before the Court of 1886 sat or after it sat. Under the certificate of 1873 I was trustee till 1886. I told Sir Walter Buller that I would lease Papaitonga to him when the time came. I was the chief of the land. Buller came to me knowing that I was the chief. I have heard that Sir George Grey wanted to acquire Papaitonga, but he did not come to me about it. I cannot remember when I first heard it. I cannot say whether it was in Wellington or Wanganui that Sir Walter Buller first spoke to me about Papaitonga. I only remember Sir Walter Buller speaking to me once. He asked me to lease Papaitonga to him, and I said, "Wait until I get my breath." I did not take No. 14 in order to fulfil my promise to Sir Walter Buller. I did not tell my tribe that I proposed to lease it to Buller. There was no reason for me to inform the tribe, because the land was my own absolutely. It had been awarded to me, with their consent, as my share. No. 14 was my share of the Horowhenua Block. I do not consider that it was all I was entitled to in the whole block. I do not yet know what further area I am entitled to in the whole block. That will not be known until these proceedings are over. I have rights to No. 14 from ancestry, mana, and the strong hand. Signs of the ownership of my ancestors down to my own time are to be

found all over the block. Others have ancestral rights with me. I know who they are, but it is no use going back to ancestral rights now, as the land is now held under European title. My own ancestral rights extend over the whole 52,000 acres. I was born at Manawatu, at a place called Te Wheeki. My father went there from Horowhenua. He previously lived at Papaitonga, Otaki, and the Pelorus. I knew Kaewa. She was born at Te Waitawa. She never lived at Horowhenua. Kawana married her at Waitawa, and took her to Rangitikei. She never returned to Horowhenua—never lived permanently at Horowhenua. When she died her head was brought to Horowhenua. I do not know where it is buried. I knew Wirihana, younger brother of Hunia. His body and that of his wife were brought to Horowhenua when Hunia began his *mahi kino*. I applied to Kahui's Court for an order for No. 14 on the 2nd December, 1886. Objectors were challenged. There were none; but the Court did not make an order on that occasion. The next day I renewed my application, and an order was then made in my favour. I know of no application in writing on the 2nd December, 1886. I did not see any name written on a piece of paper on the 2nd December, 1886. I did not hand in any list of names to Court of 1886 for No. 14. I was the only owner. Why should I hand in a list of names? I may have handed in a paper with my own name on it—I cannot remember. I am certain I applied for No. 14 on the 2nd December, 1886. If there is nothing about it in the minutes I cannot help that. I do not remember who acted as our clerk in 1886. It may have been McDonald. [Paper purporting to have been handed in to Court on the 3rd December, 1886, and containing witness's name, produced to him.] I do not remember seeing that paper. Do not know who wrote my name on it. I still say that I made an application on the 2nd December, 1886, and that the Court did not make any order until I renewed my application on the following day.

Cross-examined by Mr. Baldwin.

Witness: I remember the date of my first application for No. 14; it was on the 2nd December, 1886. I knew this date at time of Commission, but I did not make it known because I knew the Commission was intended to injure me. I do not remember the exact date Judge Trimble's Court sat. I was not conducting my own case before that Court. Mr. J. M. Fraser acted for me. Do not remember date I gave evidence before that Court. I cannot remember date of my leases to Sir Walter Buller, or whether he went to England before or after the Court of 1886. Sir Walter Buller acted as my solicitor sometimes, off and on, between 1874 and 1886; not for all purposes. I do not remember the date Sir Walter Buller went to England. I cannot remember date of Supreme Court case in Wanganui before the Chief Justice. Sir Walter Buller and Mr. Edwards acted as my solicitor and counsel. Do not remember date Appellate Court sat at Otaki for No. 9. I cannot remember when I first got possession of the Crown grant for No. 14. It may have been in 1888. I cannot say for certain. The Horowhenua Commission sat last year. I had then had a grant for No. 14 for nearly ten years. I should have said so before the Commission. I was mistaken in saying fifteen years. I said yesterday that two people prepared the list of names for the title of 1873. Others interfered, and the result was that some of the people were omitted. [Horowhenua Commission, page 178, question 247, read out.] Te Whatahoro was the clerk. He wrote the names down. The other two gave him the names. I admitted before Appellate Court that I had suppressed boundaries in 1873. That was because Ngatiraukawa came to me with their conquest, and not to claim the fulfilment of my ancestors' promise. Up to 1886 I was sole certificated owner of Horowhenua. I am the chief of the land. I had sole control of the land, and resisted Ngatiraukawa. From 1873 to 1886 I settled everything in connection with Horowhenua. The tribe arranged about the lease; I assented to it. They asked me to allow the land to be leased, and I consented. I arranged about the lease of the timber. Before subdivision of 1886 I sent a messenger to Muaupoko, to my section of Muaupoko. I think my daughter carried my message, but I am not quite sure. I sent the messenger to Horowhenua to tell the people to go to Palmerston. I do not know whether any of them remained behind at Horowhenua: they may have. The surveyor arranged the divisions on the plan. It was a committee of the people who selected the names for the several divisions. This course was adopted with regard to all the parcels. I cut off Nos. 6 and 14, but I advised the committee of what I was going to do. Everything was brought before the committee. The tribe did not agree to Warena's name being put in No. 11: they wished my name only put in. I put Warena in: McDonald knows this. The boundaries of No. 14 were extended westward of the railway because there was not sufficient land east of the railway. The tribe agreed to the extension of the boundary. They agreed that I should have 1,200 acres. [Horowhenua Commission, page 172, question 164, read out.] I say now that the people did know of it. I was confused when I made that reply to the question before the Commission. When I say that the people knew it I mean that they consented to my getting 1,200 acres. We had several meetings to divide the land before the Court sat in 1886. [Horowhenua Commission, pages 27, 28, 29, question 68 and following: purport of questions explained to witness.] I meant that there was only one committee—the Muaupoko alone; but they met on several days. I offered No. 14 to Ngatiraukawa myself. It was only mentioned in Mangakahia's Court. My proposal to cut off No. 14 was discussed by the people outside. The Ngatiraukawa objected to it. [Horowhenua Commission, page 190, question 195, read out.] That is correct, it is substantially what I say now; as I understand it, some parts of that evidence refer to what took place in 1890. Pomare and Heni came to me to object to No. 14. That was the only conversation with them about it at that time. It was mentioned again in Mangakahia's Court when McDonald made the application for some other pieces. I told the Court then that I had cut off a piece of 1,200 acres for the descendants of Whatanui at Ohau, but that they had refused it. There was only one talk about No. 14 with Pomare outside the Court. As I have stated before, I arranged to cut off No. 14 for descendants of Whatanui in Mangakahia's Court, but they objected to it. It was only indicated to the descendants of Whatanui that their

land was to be at Ohau, inland of the railway. It may have been shown on the plan—I think it was. When we first went into Mangakahia's Court there were three divisions shown upon our plan. The 1,200-acre lot was then all east of the railway. I believe the tribe saw the plan before we took it into Mangakahia's Court. Before we went into Court the objection to the Ohau section was made, and I agreed to alter the locality to Raumatangi. The alternative section of Raumatangi was shown on the plan we took into Court. There were therefore four sections in all on the plan. All the divisions were discussed by the tribe. They knew that Pomare had objected. They were there, and heard what was said. [Appellate Book, Otaki, page 73.] I admit that I cut off No. 14. I brought it before the tribe, and they consented. It was in the Court that Nicholson made his objection. I don't remember his objecting outside the Court. [Horowhenua Commission, page 28, questions 115, 116, read out.] I repeat, the only objection that I heard Nicholson make was in Court. When we were talking outside Pomare, Heni Kipa, Nicholson, Ru Reweti, Waretini, Watene, and others were present. I don't remember exactly what was said. The land at Ohau was the only piece of land objected to by the descendants of Whatanui. There are no stones at Raumatangi. It was the sand that was objected to there. [Horowhenua Commission, page 32, questions 204, 205, read out.] They must have put in the part about the land being cut off in Court. I did not say it. [Appellate Book, Otaki, page 73, read.] I admit the correctness of those minutes; but they do not say I cut off the land in Court. I have stated that after I had agreed to place the 1,200 acres at Raumatangi Lewis came up and reminded me that the land was to be near the lake. [Appellate Book, Otaki, page 78, read out.] Mr. Morison was very severe on me, and I replied evasively, You know all about it. Morison was endeavouring to injure me. It was outside the Court the misunderstanding arose between McDonald and myself, when No. 4 division was awarded, some days after the railway block was ordered. I think it was at the time of Kahui's Court. The tribe gave me No. 14 after No. 4 was ordered. I cannot fix the hour or day. It was when the numbers allotted approached near to 14 that I asked the tribe to consent to my having No. 14, and they did. [Horowhenua Commission, page 32, questions 215 to 218, read out.] That is wrong. McDonald asked me if I was a trustee, and I said No, that the land was mine, and I could put whom I chose into it. [Horowhenua Commission, page 32, question 320, read out.] I say myself that No. 14 is mine alone. The tribe know it also. It is mine by mana, chieftainship, and ancestry. You will find my genealogy in the Court minute-book for 1872. Kupe is my ancestor,—but I am not going to give my genealogy. I have a claim to this land from Puakiteao, through Riunga. I cut off No. 6 out of my own land for the *rerewaho.* I was trustee for them. I was put into No. 9 as a trustee In No. 11 I am also a trustee. I understood that I could put any one I chose in it. I said that No. 11 was for the whole of my people. When I threatened to keep out any of those who sold in No. 3 I only intended it as a warning. I would not have adhered to it. [Horowhenua Commission, page 193, question 280, read out.] That evidence is true. The first caveat that I know of against this land Horowhenua was lodged by Mr. Edwards under instructions from us. I consented to lease Papaitonga to Sir Walter Buller when he asked me to do so. At the time I was the only certificated owner of Horowhenua. There was nothing definite done before Sir Walter Buller went to England. When Sir Walter Buller returned from England he continued to act as my solicitor. At least, he has done so lately. I do not remember how long after he returned from England he commenced to act for me. He was not acting for me in 1894. He was when deed of release was signed. I have given leases of part of No. 14 to Sir Walter Buller—the part near the lake. Sir Walter Buller did ask me who I held No. 14 for. I told him it was my own. This was when the lease was being negotiated. He made the usual inquiries. I do not remember Sir Walter Buller making any inquiries beyond those contained in the statutory declaration. There was no reason for Sir Walter Buller to ask me if I was a trustee, because the land was my own. Sir Walter Buller asked me if I was a trustee, and I said, "No, the land is my own." This was when lease was taken to be signed. [Horowhenua Commission, page 254, question 185, read out.] Sir Walter Buller did ask me if I was a trustee, and I told him I was not. Possibly Sir Walter Buller did not hear, or has forgotten. McDonald told me that I would get into trouble. I went to Sir Walter Buller and he advised me to get a deed of release signed. McDonald was acting for the Hunias when he told me I would get into trouble. It was when we were in Wellington petitioning about this land—not the first petition. Sir Walter Buller prepared the deed of release at that time. I do not remember whether McDonald's warning was before I signed first lease to Sir Walter Buller. Sir Walter Buller got the deed of release signed. He was then acting as my solicitor. He brought it up to me and read it over to me.

The Court adjourned till the 11th instant.

THURSDAY, 11TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

KEEPA TE RANGIHIWINUI cross-examined by Henare Apatari.

Witness: My father was at Horowhenua when this land was being fought over by Te Rauparaha. I was here also, but was too young to remember. The first battle was Ohau. I know who burned Watene's house—Kawana Hunia, Mohi Mohi, and others of Muaupoko. Watene was alone. When Ngatiraukawa came in a body Kawana Hunia ran away. It was not a courageous act to burn Te Watene's house. When courage was required your party ran away and left the Muaupoko to their fate. Paki te Hunga is a descendant of Te Riunga. I have never disputed it. He has rights in Horowhenua. I said before the Royal Commission that he had better

rights than Kawana Hunia. My rights to No. 14 are derived from Te Riunga. Te Paki's ancestors and parents were never at Papaitonga. They lived further this way. Some of my ancestors were killed at Papaitonga. None of the Ngatipariri. The *rangatira* killed there were Toheriri, Takare, and Paepae. They were not of Ngatipariri. Pariri belonged to Hamua and Rangitikei. Their descendants should be returned there. It was on the *take* of Tireao that all the lands as far as Ngatikahungunu were put through the Court. The mana of Puakiteao extended as far as Takapau, where her *pou* was put up. The Rangitane Ngtiapa, Ngatikahungunu, and some of the Whanganui's attended the Court of 1873. Hoani Meihana and others who came with him had ancestral rights to Horowhenua, but no occupation. I know of a post called Ngatokoura being put up between Ngatihuia and Horowhenua. Te Aweawe might have erected it. I settled it. It was taken into consideration after the land was awarded to me. I made the agreement with Sir Donald McLean about the descendants of Whatanui without reference to the tribe. He came to me as the chief. I consulted the tribe about it long before the Court of 1886, and also at the time the land was awarded by the Court. The tribe were present. I had the 1,200 acres delineated on the plan, and showed it to them. They consented to it. The Ngatiraukawa objected to it. The section at Raumatangi was substituted for it, taken into Court, and an order made for it in my name. The only mention of the Ohau section in Court was that it had been objected to. This was in Mangakahia's Court. Three orders were made by that Court, and I paid £3 for them. Te Paki and all Muaupoko were present at the meetings outside and in the Court, except those who were at Parihaka. Te Paki must have agreed, because when objectors were called he did not object. Some of the Muaupoko have since withdrawn their consent at the instigation of certain Europeans. I consulted the tribe about the divisions of the land because they were interested in them. I knew that the tribe of my father had rights in the land, and therefore consulted them about the division of it. No. 6 was set apart for some of the people of my tribe who I had in my mind, but before I could carry out my intention my enemy interfered. I look upon myself as the caretaker of that land for others—for those who were omitted from the original title. I have always considered myself a trustee for the people in No. 11. The tribe chose me to be the trustee. My co-grantee has always contended that we were the absolute owners of it. I hope the result of these proceedings will be that the people will be reinstated on the land; they are in the water now. The tribe consented to my having No. 10 to pay my debts. If the people had not consented I should have had to bear the burden myself. It was not awarded to me as my share of the land. I give the rents received from McDonald to the people. They have drawn some of it themselves. It has always been given to the resident Muaupoko, not to those who reside at other places and have other lands. I made this known a long time ago to Hunia and others. The non-resident Muaupoko have never made any demand for a share of the rents.

Cross-examined by Hamuera Karaitiana.

Witness: I consulted the tribe about No. 14 in case it should be said I had acted secretly. If the tribe wish me to prove my rights to it I have no objection, but the land is now in the hands of the law. If the Court says that it is now open to us to bring forward our "takes" to No. 14, I am prepared to prove my rights to it. Muruahi, Tame, Tare, and Winara were the only Muaupoko absent from the Court in 1886. All the rest were there—men, women, and children. Warena Hunia was in Rangitikei when the land was divided in 1886. I have held No. 14 for about ten years. My title was never disputed until the time of the Commission. [Vol. 13, page 177, "No. 14 is for the descendants of Whatanui," &c. read.] I do not know that I said that, or why I said it if I did. It is not clear. Toheriri, Takare, and Paepae had rights all over Horowhenua, with Nukureia, Paehora, Noa te Whata, and Taheke. These were the chiefs. Toheriri was a Ngaiteriuinga. No direct descendants living. Raneira is a collateral descendant; his hapu *rangatira* is Ngaiteriuinga. Paipai has no descendants. Arahia is nearest of kin, Raneira, and Rahira. Rahira is granddaughter of Arahia. Ngahine, Ngaiteao, Ngaitamarangi, and Ngatipariri are hapus of Muaupoko. Some of the Muaupoko are members of more than one hapu. Some of those who have gone over to Ngatipariri are Ngaiterininga. I can give the genealogy from the three ancestors by both sides. The descendants of Takare are Ngaiterininga although they do not appear as such in the Court records. I have many hapu names. Ngaiterininga is one, Ngatihine is another. Neither of these three ancestors is descended from Pariri that I know of. I know their descent by both lines.

To *Mr. Baldwin* [Horowhenua Commission, page 77, question 410, and reply, read out]: I don't remember hearing McDonald saying that.

Re-examined by Sir W. Buller.

Sir W. Buller asked the Court to note that he did not intend to re-examine the witness on the new matter introduced by Mr. Baldwin in the last part of his cross-examination. The object of the questions was not to forward this inquiry, or to discredit the witness, but to discredit him. He was not a party to these proceedings, and the Court was aware that by the Act all matters affecting him must be decided by the Supreme Court. Mr. Baldwin might think it right to cast reflections on his professional reputation, but it was unfair.

The Court stated that it was not likely to be misled by anything that was said.

Mr. Baldwin explained that the object of his questions to Kemp was not to discredit Sir Walter Buller, but to pit Kemp's memory against Sir Walter Buller for the purpose of showing that Kemp's evidence was utterly unreliable. He had not intended to impute professional misconduct to Sir Walter Buller.

Witness (to Sir W. Buller): I said yesterday I remembered your asking me if I was a trustee, and that I had made a statutory declaration. [Form of statutory declaration read to witness.] That is the form of declaration I signed; the Justice of the Peace first asked me if I understood it,

and I replied that I did. I said yesterday that a number of certificated owners had died. Successors have been appointed for them. None had been appointed before the Court of 1886. The deceased owners were represented by the Muaupoko, who attended the Court. Ruruhira Ngakuira has been appointed successor to Karena Taiawhio. Wirihana and I acted for her, Meretene, Kerei te Panau, and others were appointed successors to Ani Tihore, *alias* Kanara. They were present at the meetings at Palmerston in 1886; some were minors. Kawana Hunia was dead in 1886. He was represented at our meetings by Te Wirihana Hunia. Rewiri te Whiumairangi was dead; Raniera, Makere, and myself were the nearest of kin. Te Rangirurupuni was represented by Hiria and Hoani Puihi. Heta te Whata was dead in 1886; Noa, Raniera, and Makere represented him. Wirihana Tarewa was represented by his children—Te Hape, Kerehi, and others. They were present. Inia Tamarake was dead in 1886. Many of his relatives were present. Iritana, Himiona Kowhai, and others represented him. Tamati Maunu was represented by his children—Hariata, Amorangi, and others. Ihaka te Rangihouhia was represented by Wirihana Hunia. Matene Pakauwera was represented by a young woman who is his successor. I forget her name. It is Pirihira. She was present. Himiona Taiweherua's representative was a woman, who appeared at the meetings. I forget her name. Others of his relatives were present. She is here now. Her husband was Tunuiarangi, but they have parted. Riwai te Amo's successors are here. I cannot recollect their names. They were all at the meetings in Palmerston. All his relatives were there—Hariata Himiona and others. Wi Matakatea and his sisters represented Wiremu Matakatea. They are here now. Matenga Tinotahi was represented by his daughter, who is in Court now—Ani Patene. Heta Takapo was represented by his daughter, and by Ani Patene and others. Ani Patene and others represented Heta Takapo. They are all connected. Rawinia and Hetariki were at the Palmerston meetings. Waata Muruahi was away at Taranaki. Kerehi Mitiwaha represented Tamati Muruahi. Waata Muruahi did not object to what we had done when he returned from Parihaka. Pirihira and others represented Herewini Rakautihia. His relatives were present. Hakuira Takapo was represented by Rihipeti and others, his near relatives. I think Rihipeti was there. I and Rora were the representatives of Arikihanara. He was my sister's son. There were relatives of Hapimana Tohu present at the meetings, but I cannot remember which of them. I cannot remember Tiaki Tikara, or who represented him. Ani Patene and others represented Maaka Ngarongaro. He was a brother of Te Ha. His relatives were present. Raniera and others are relatives of Rihari Tarakihi. Maata is one of his children. I do not think he was dead in 1886. I am not clear about him. Rangimairehau represented Te Waitere Kakiwa. Hereora was represented by Broughton and others, her children. Heni Wairangi was represented by Ani Patene and others, her nearest relatives: I do not quite remember who. I cannot say who represented Turuki. Pirihira te Whata was represented by her husband and son, Raniera te Whata. Hanita was the nearest relative of Wiki Hanita present, I think, but am not sure. Merehira te Marika was represented by her daughter, Rawinia Ihaia, who was present at the meeting. Raniera and others represented Ema te Whango, I think, but I cannot remember. Roreta Tawhai was a child of Ema te Whango. Raniera and her own children were her nearest relatives present. Makere and Puihi represented Mere Muinga. Makere was present. I do not recollect whether Ruihi Wunu was. I do not remember who represented Arihia Toetoe. Hoani Puihi and others represented Peti te Uku. Tamati Taopuku: I do not know this man's nearest relatives. I, Hiria, and Ngapou, and Iritana Hanita are related to him. Te Paki and others are also relatives of his, and were present. I do not know Topi Kotuku's nearest relatives. The nearest I know is Ruihi, who is at Wairarapa. I am also distantly related to him. He was staying with me at Wanganui when he was drowned. I was his nearest relative at the meetings. Karena Taiawhio's brother represented him. Wirihana Hunia and I also represented him. I do not remember about Ratima Poutau. Matiaha Mokai and his section, the *takekores*, remained away. They had no right; they were not Muaupoko. I and Rora represented Hori te Mawae. He was my uncle, but had no rights in Horowhenua. Te Miha o te Rangi was an elder relative of mine. He lived at Wairarapa. I represented him. Ruihi, of Wairarapa, is his nearest relative. Kerehi Mitiwaha represented Ani Tihore. The Rangitanes were present, but did not take any part in the discussions about the divisions. They had more delicacy than Europeans would have had, and did not push themselves forward. I do not remember whether Merehira Waipapa died before 1886. Peeti te Aweawe was dead, but none of the Rangitane went into the Court or to our meetings. They were at Palmerston, but were ashamed to interfere, because they had no rights to the land. Anikanara Marehua (not identified). I do not know Miriama Waikohu, or whether she died before 1886. I do not know who represented Ngahuia Tirai. Hamiora Potau was a son of Potau. The nearest of kin are here, but I cannot name them. Others can. They were present at the meetings in 1886. I was told to make the statements I made to the Court in 1873. I believed I was stating what was true, and I still believe it. I distributed the rents I received from Hector McDonald for Horowhenua to the people: the whole of it. Some of it was returned to me by the people. Whatever I have had of the rents has been a gift to me by the people. The deed of release was made, as I understood it, to prevent any action being brought against me to compel me to account. After that trouble was over I was confronted with the charges about No. 14. No. 14 was awarded to me before I had received all the money for the township. I had received an advance of £500. I gave £100 of this to Wirihana and £25 to McDonald. The latter returned me £10 and retained £15. I paid the police at Palmerston £100 for Wirihana Hunia's trouble. When the Awarua case came before the Court in Wanganui Wirihana asked me for money and I gave him £100. Warena and his European wired me to say that Warena was going to be arrested. I sent him £70. I kept the balance. When I was ill in Wanganui Wirihana Hunia asked me for some money; I gave him £100. Later on I gave him £100 at the Wellington Hotel, in Wellington. Then Warena Hunia came to me and I gave him and his European friend Donald Fraser £100.

Q. Do you state generally that you administered the money—£2,500—fairly in the interests of the tribe?—*A.* Yes.

Q. The same question was put *re* the £3,000?—*A.* Yes.

Witness: This was all before the deed of release was signed. [Horowhenua Commission, page 191, questions 234 to 236, read out.] That is right. I did not admit anybody's right to come in. That is my explanation of my replies to Mr. Baldwin's questions. I never admitted that any one could interfere with my Crown grant. My promise to lease Papaitonga to you before you left for England was a verbal promise. There was no consideration of any kind. It was Papaitonga Lake that I promised to lease to you. The land had not been allotted to me there at that time. It is quite possible that if No. 14 had been confined to the east of the railway Sir Walter Buller may not have cared to have it. There was no area referred to in my promise to lease you Papaitonga. I did not write to you while you were in England in reference to my promise to lease Papaitonga to you. The meeting between Neville Nicholson, Taipua, Karanama, and myself took place in 1890, at a hotel in Palmerston. Nicholson and Ru Reweti were quarrelling about their land. They had refused to exchange with me, and I put the matter into Taipua's hands to settle, as he was the *rangatira* of Ngatiraukawa. I made the offer to exchange to Ru Reweti. Hare Pomare wanted me to give him a piece of land near the railway, but nothing came of it. This was also in 1890. [N.O. 90/1627 (letter signed by Kemp) read to him.] That is my letter.

Mr. Stafford asked to be allowed to put a few questions to the witness with reference to the deed of release.

The Court gave permission.

Witness (to Mr. Stafford): I remember the deed of release. It was brought to me.

Mr. Stafford reads from deed of release: "And whereas on the occasion of such division a portion of the said block containing 800 acres was by general consent of the owners, &c." Why was it necessary to put the 800 acres in the deed of release?

Sir W. Buller objected to question.

The Court ruled that question could be put.

Witness: I don't know why the 800 acres was put in the deed. Sir Walter Buller prepared the deed of release, and put the 800 acres in it. He considered it advisable to insert the condition about the 800 acres. He omitted No. 14, which there has been so much trouble about. I did not tell Sir Walter Buller about my debt to Sievewright. I did not know that there was anything wrong about the 800 acres. The tribe had given it to me. I don't know why Sir Walter Buller put the condition about the 800 acres in the deed. I did not instruct him to put it in. I did not give him any instructions. After McDonald warned me about the moneys, I spoke to Sir Walter Buller. That is all I did, and he prepared the deed of release. The money referred to in the deed of release included the money for the township. Sir Walter Buller drew the deed as he thought fit. I simply accepted his advice. I was told proceedings were to be taken against me about all the Horowhenua moneys. That is why I went to Sir Walter Buller. Sir Walter Buller acted for me in preparing the deed of release. I was not present when the deed of release was signed. Don't know whether they had the advice of an independent solicitor. I did not pay the people anything to induce them to sign the deed of release. I repeat that I did not put any conditions in the deed of release. Sir Walter Buller made use of his knowledge to protect me. I had no knowledge, and did not give Sir Walter Buller any instructions.

Mr. Stafford said the reason he had asked the witness these questions was that the Court had the power, under section 4 of the Horowhenua Block Act, to omit from any order the name of any person who, having been found to be a trustee, had, to the prejudice of the interests of the other owners, or any of them, assumed the position of an absolute owner in respect to any former sale or disposition of any portion or portions of the said block, or for any other sufficient reason. He explained that he had made reference to this section for the purpose of indicating to Sir Walter Buller that it was intended to go into the accounts, and he did not wish to take him by surprise.

The Court stated that it had already pointed out to Sir Walter Buller that in defining the interests of the owners it might be necessary to take the question of accounts into consideration.

Mr. Baldwin said it would be advisable for Sir Walter Buller to call evidence as to the accounts, because it would be contended by his side that Kemp had received large sums of money and appropriated them to his own use; and if this was not done they intended to call evidence in support of the contention, which Sir Walter Buller would not have the opportunity of rebutting.

The Court stated that it had indicated at the outset of the case that Sir Walter Buller placed himself in a disadvantageous position by claiming the right to commence.

Sir W. Buller asked leave to address the Court relative to the question raised by Mr. Stafford.

The Court adjourned till 10 a.m. of the 12th instant.

FRIDAY, 12TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Meiha Keepa asked to be allowed to reply to the threat made by one of the solicitors yesterday.

The Court informed Kemp that there had been no threat made against him. It had been stated that he had put himself in such a position that it might be necessary, under section 4 of the Act, to inquire into the accounts, with the result that Kemp might be affected.

Meiha Keepa expressed himself satisfied.

Mr. Stafford stated that he had no intention to make any threats against any one. He had a duty to perform, and all that he had said was that he intended to do it.

Mr. Baldwin explained that in making the remarks he did yesterday he did not intend to say anything offensive to Sir Walter Buller. He had spoken warmly, but without intending to make any reflections on Sir Walter. At the same time he wished it understood that he did not withdraw from the position he took up.

Sir W. Buller, before going on with his case, desired to ask for directions from the Court. Mr. Stafford occupied a unique position. He could not act for the Public Trustee; he could only assist Mr. Stevens; and yet, after Major Kemp had been examined, subjected to three cross-examinations, and re-examined, Mr. Stafford cross-examined him again. If Mr. Stafford, acting with Mr. Stevens, had a right to cross-examine in addition to Mr. Stevens, he would claim the same right for his friend Mr. Beddard. Mr. Stafford disregarded all rules of evidence, and asked Kemp what his instructions were to his solicitor, which were privileged. Such a question would not be allowed in any Court of law. [Quotes from Taylor's "Law of Evidence," vol. 1, page 769: "The rigid enforcement of this rule."] He contended it was clear the questions could not be put.

The Court asked why Sir Walter Buller did not produce his authorities yesterday, while the matter was before the Court, so that the quotation now made might have been considered before the question was put.

Sir W. Buller stated that he was not armed with the authorities at the time.

The Court said the questions had been put through the Court.

Sir W. Buller contended that it was a cross-examination nevertheless. He contended that Mr. Beddard would argue the question as to whether the money received for Horowhenua could be taken into consideration in this case. He would adhere to his opening, and prove what he had stated there, and stated that after hearing the evidence of the counter-claimants he might consider it necessary to call rebutting evidence.

Mr. Stafford stated he had laid down distinctly that he was not acting for the Public Trustee, but that he was advising Mr. Stevens. He had referred to the deed of release as it was a question of law. As to his questions to the witness, Sir Walter had not objected to them, and he contended that the Court was not bound by any rules of evidence. He would continue to act as he had done, and expound questions of law. He had no intention of being offensive to Sir Walter Buller, although Sir Walter irritated his side.

Sir W. Buller did not object to Mr. Stafford expounding the law; what he took exception to was Mr. Stafford coming with a fourth cross-examination after he had re-examined.

The Court said there was only one point that it was necessary to reply to. It agreed that Sir Walter Buller should have the same privileges extended to him as to other parties.

Mr. J. M. Fraser stated that his clients took up the same position in respect to each of the blocks. They did not ask that Kemp's name should be struck out of any subdivision, and were perfectly satisfied with his disposition of the moneys. He spoke for the large majority of the resident Muaupoko, who had met, and retained him to appear for them, and said that the parties opposing consisted of two persons represented by Mr. Stevens, one person represented by Mr. McDonald, two persons represented by Mr. Scannell, and four persons represented by Henare te Apatari. Then there was the Crown with no interest in the block. Paki te Hunga and those with him were the only persons really claiming this block. He asked to put in a written statement. [Statement put in.]

The Court said those who had released Kemp could only bind themselves, not others. Those who opposed Kemp must be heard. The result of this must be perceptible—and that is, that those who are satisfied with Kemp's administration will have to bear their share of the responsibility.

Mr. Fraser did not claim that his clients bound any but themselves. The fact of many absenting themselves showed that they were satisfied. The other side had been very active.

Mr. McDonald said, so far as he was concerned, that statement was incorrect.

The Court said all must come before the Court personally and give their consent. Voluntary arrangements that might be disputed would not be accepted.

Mr. Stevens contended that there were a number who were not satisfied, and that these people took exception to Kemp's dissipating £32,000.

Mr. Beddard urged that Kemp's worst enemy could not say that more than £2,000 was unaccounted for. The Commission said this, and they were hostile to Kemp. He only admitted the accuracy of it for the sake of argument. The Commission recommended that the £2,000 should be made a charge against Kemp's estate, but that was struck out by Parliament. He contended that if Mr. Fraser's statement was correct that the tribe were satisfied the Court would only sequester so much of the £2,000 as the objectors were entitled to.

The Court stated that it must go into the whole question.

Mr. Beddard contended that every trustee who had properly administered a trust was entitled to a deed of release. A deed of indemnity recited that there had been a breach of trust, and that the beneficiaries gave up their rights. The deed referred to was a deed of release, and he could prove that it was not necessary that the *cestuis que trustent* should be independently represented. The trust recited was the 1873 trust, which was extinguished in 1886. [Reads recitals.] If there had been irregular transactions on the part of Kemp, there would have been a confirmation clause. An ordinary trustee was bound to prove that he had expended all moneys honestly, and produce vouchers for every item. Was Kemp to be treated as if he had embezzled every penny he could not account for, or was he to be allowed a certain discretion owing to the confidence reposed in him by the tribe? [Reads from judgment of Appeal Court, pages 93 and 94, *vide* "Law Reports," part 2, February, 1896.]

The Court: Even if Kemp was not liable under the original title to account, he was after the partitions of 1886. Under the Horowhenua Block Act, all judgments and decrees of the Supreme Court that conflict with the Act are set aside; but, notwithstanding that, the Court would give them consideration so far as might be possible.

Mr. McDonald stated that Judge Wilson drew a distinction between an ordinary and a Maori trust. The trust imposed in 1886 was a Maori trust, and he contended that Kemp had failed to carry out the trust.

Mr. Beddard said Kemp held No. 2 in trust, and contended that, as the Government were the owners of it, not the tribe, Kemp was not liable to account except to Government.

The Court: It is necessary to consider the provisions of "The Equitable Owners Act, 1886," in coming to a conclusion as to the object of clothing the Court with the power conferred on it by section 4 of the Horowhenua Block Act. Under the Equitable Owners Act the Court could not exclude any person in the original title, however much such person or persons had misconducted themselves.

Mr. Beddard argued that clause 4 was an overriding clause, and that the Equitable Owners Act must be read with it.

Mr. Stafford said the relations of parties when deed of release was signed were that of trustee and *cestui que trust*, and that the Court should deal strictly with the trustee, as the *cestui que trust* were in the dark as to what they were doing. He argued that the deed was a deed of indemnity, although not specified, and that the last clause was a covenant of indemnity. It was to cover all the commissions and omissions of Kemp. He contended that a trustee was not entitled to a deed of release. There were many cases where ordinary deeds of release had been declared invalid because the *cestui que trust* had not been independently represented. They were in the dark. The deed of release was not under seal; therefore, as there was no consideration shown, the deed was invalid as a nude contract. [Reads from judgment of Appeal Court, page 98 "Law Reports," 2nd February, 1896.] His contention was that accounts must be inquired into from 1873. If Kemp could not account for all moneys his side would ask the Court to exclude him from the certificate. The Court had great power under section 4, and could exclude any trustee for any reason it considered sufficient.

Mr. Baldwin supported Mr. Stafford's view.

Mr. Beddard still contended that the deed was an ordinary deed of release, and, further, that as such it need not be under seal. *Vide* Property Law Consolidation Act.

Sir W. Buller presumed this Court would not determine the validity or otherwise of the deed of release.

The Court stated that there was no occasion to express an opinion on that point. Touching the question of accounts, it had been already intimated that the inquiry into that matter should be confined to a separate proceeding. It was not necessary now, but it might be necessary, to take this matter into consideration in connection with the proceedings now before it relative to No. 14 before determining the question at issue.

Examination of KEEPA TE RANGIHIWINUI continued.

Witness (to Assessor): I was trustee for the land in 1873 to prevent it being sold. I was careful because I had seen the evil of the ten-grantee system. Every deceased owner was provided for by the subdivision of 1886 as well as those living. The deceased owners or their successors are all in No. 3 and other sections. All the other sections, I think. If the Ngatiraukawa had accepted the 1,200-acre section at Ohau the surveyor would have had to survey it to include the area of 1,200 acres. I suppose it would have extended to the Waiwiri Lake, as it does now. There would have been no objection. Both No. 6 and No. 14 were originally located to the eastward of the railway. The owners for No. 6 had not been fully settled when the order was made for it. Many complained that they had been omitted from the list of names of 1873. I do not know why the shortage of No. 14 was not made up out of No. 6. No. 14 was the last block surveyed, and there was not sufficient area for it east of the railway. It was therefore extended to Papaitonga. I had nothing to do with it. If the whole area had been eastward of the railway it would have been awarded to me there. If the 1,200 acres at Ohau had been accepted by the descendants of Whatanui, and had afterwards been extended to Papaitonga, neither I nor the Muaupoko would have made any objection. It was a necessary part of the partition.

The Court announced that it had received an intimation from the Justice Department that no telegrams could be found addressed by the Under-Secretary of the Justice Department to Judge Wilson or by Judge Wilson to the Under-Secretary during 1895, and that Judge Wilson was holding Courts at Rotorua and other places continuously from and after April of that year.

Sir W. Buller called Ru Reweti.

RU REWETI sworn and examined.

Witness: I reside in Wanganui. I am Kemp's son-in-law, and act as his secretary. I am one of the lineal descendants of Te Whatanui. I know a place in the Horowhenua Block called Pipiriki. I remember a Maori meeting at Pipiriki after the Court of 1891 that reheard Horowhenua—immediately after that Court. I was present at that meeting. The main body of Muaupoko were present. Some may have been absent, but the representative people were all there. J. M. Fraser, Kemp, Tamatea, and I came to the meeting from Palmerston. Hoani Puihi, Rangimairehau, Wirihana Hunia, Warena Hunia, Makere te Rou, Kerehi, and others were at the meeting. The meeting was called to consider a proposal made by Mr. Barnicoat, Warena's solicitor, at Palmerston. Mr. Barnicoat proposed that Kemp should agree to Hunia family having 3,000 acres out of No. 11. It was to be in satisfaction of Warena's claim to the land. Mr. Barnicoat made a proposal to Mr. J. M. Fraser, who was Kemp's agent, and myself at Palmerston. We told Barnicoat that we would tell Kemp, and bring him to meet Wirihana, Mr. Barnicoat, and Donald Fraser to discuss the matter. When we mentioned it to Kemp he agreed to go, but added that he would not settle anything definitely there, but would lay the proposal before the tribe at Horowhenua,

and leave them to decide. Kemp told Warena and his pakehas this directly he entered their room. Both parties agreed there that the proposal should be submitted to the people at Horowhenua. I think this was in May, 1891. We then came to Horowhenua: Warena, Wirihana, and Donald Fraser followed the next day. Before Warena and party arrived, Kemp had informed the tribe what the proposals made at Palmerston were, and added that if the tribe approved them he would agree. On the arrival of Warena, Wirihana, and Donald Fraser, one of the tribe—I think it was Rangimairehau—told them that Kemp had made known their proposals to the people, and said that the tribe considered them fair. Wirihana and Donald Fraser went behind the meeting-house by themselves and had a conversation. When they returned Wirihana spoke and said that he was pleased at the decision come to by the tribe. Before this Donald Fraser had intimated that he would have nothing to say to the tribe, as they were not in the title. He could only negotiate with Kemp. Wirihana went on to say that the 3,000 acres should be for Warena only, and that the other members of the Hunia family should go into the other portion of the block with the tribe. This was not approved of or agreed to. After some discussion Wirihana consented that the 3,000 acres should be for the whole family, provided they got part of the lake. He agreed on behalf of himself and family. The tribe did not consent to his demand for a part of the lake, and the meeting broke up without anything definite being done. No. 6 was spoken of at the meeting. I think Te Paki referred to this section. He suggested that the list of names of the *rerewaho* handed by McDonald to the Court at Palmerston should be adopted. J. M. Fraser said that the list of names referred to was not satisfactory. Some of the persons in the list were not entitled to participate in No. 6. He contended that the list was not given to the Court at the proper time. Kemp would not agree to the list of names being accepted as it was, and the discussion ended without finality. This was all I heard at the meeting—the only subjects I heard referred to at the meeting. I did not hear Waata Muruahi's evidence before the Royal Commission. [Horowhenua Commission, page 275, questions 290 to 297, and replies, read.] All I can say about that is that No. 14 was not mentioned at all while we were present. It may have been referred to after Kemp, Fraser, and myself had left. I think Donald Fraser left with us. The meeting broke up, and we returned to Wanganui. [Horowhenua Commission, page 275, questions 282 and 283, with replies, read.] I was present the whole time. I never heard that said about No. 14. I did not hear No. 6 discussed. I must have heard it if it had been. I was there from first to last explaining to the people. I did not hear Kemp ask that the 1,200 acres set apart for Ngatiraukawa should be given to him. I must have heard it if he had made the request. No. 14 was not mentioned at all. No. 6 was the only division discussed besides No. 11. I was present at the Court of 1886, but did not take so much interest in this matter then as I do now. I happened to be at some of the meetings outside the Court. The meetings I was interested in were those where our land was discussed. I remember Kemp proposing to cut off on his map the piece for us at Ohau. Palmerson laid off the division on the map. I knew the locality, and told Hare Pomare and Heni after it had been delineated on the plan without a number. They probably told Te Aohau and Hitau, because just afterwards I heard Hitau, Te Aohau, Waretini, and others of our people objecting to it outside the Court. Te Aohau and others came to me and urged me to object to it, and said they intended to object to it as it was very stony. I said it did not matter to me where the land was situated, so long as we got the acreage. Later on Heni Kipa and Hare Pomare came and told me that they would see Kemp and ask him to give us the land adjoining Raumatangi already awarded by the Court. After they had seen Kemp they came and told me that Kemp had agreed, after a stiff talk, to their request to have the locality of our land shifted to Raumatangi. While Heni Kipa and Hare Pomare were with Kemp, I was amusing myself. At that time I suggested to Hare Pomare that he should ask Kemp to give us some sections on the railway-line. Kemp would not consent unless the area of the sections was deducted from the 1,200 acres at Raumatangi. Nothing came of this. The matter dropped. Subsequently 1,200 acres at Raumatangi was laid off for us on Kemp's map. This section, as delineated, I believed would contain a large proportion of sand. About this time Mr. Lewis, who had previously been at Palmerston and gone away, returned to Palmerston. Ho told Kemp that it was wrong to give the descendants of Whatanui the 1,200 acres at Ohau, as it was a condition of the agreement that the land should be near the Horowhenua Lake. Kemp said that the matter had been settled, and that the land was to adjoin Raumatangi. Mr. Lewis approved. I don't remember mentioning the 1,200 acres to Muaupoko myself, but they knew that the land was to be at Raumatangi. It was spoken of publicly. I am not able to speak positively about whether any blocks had been before the Court while this was going on, but it was before Lewis arrived that the change was made. Mr. Lewis went into Court to approve of the land being at Raumatangi. We and the whole of the Muaupoko were living in a barn at Palmerston at this time. Kemp came in and spoke about the piece of land at Ohau that was cut off for us. I was near the door when he entered the barn, and he sat down by me. He suggested to his tribe that the Ohau land should be for him. Then Kiritotara arose and said "Who can object to your *korero ?*" She made a long speech, but it was all in support of Kemp's request. None else stood up to support or object to what either Kemp or Kiri had said. Hoani, Rangimairehau, and all the elders of Muaupoko who would take part in matters of the kind were present. I don't remember what happened in Court. I have been in communication with Muaupoko ever since. I have never heard any of the Muaupoko object to Kemp having No. 14, either at meetings or in private. It was when the Commission was sitting that I first heard it stated that Kemp held No. 14 in trust.

Cross-examined by Mr. McDonald.

Witness: I am interested in the dispute that has been going on between the descendants of Whatanui. I saw the Ohau section for us shown on the plan. Before Lewis came up Kemp had

agreed to shift it to Raumatangi. [Vol. 7, page 185, Lewis's evidence, read out.] That may have been previous to the time I have spoken of. I referred to the time Lewis went into the Court to get the section at Raumatangi confirmed. [Minutes for orders made on the 25th November, 1886, read to witness.] I have said I do not know what took place in Court. I know that Kemp lived in Palmerson's house with you at time of Court of 1886. I cannot remember seeing you at the meeting in the barn when Kemp spoke about No. 14.

Cross-examined by Mr. Stevens.

Witness: All the Hunia party, Te Paki, Himiona, and, I think, Ria Hamuera and others, were at the Pipiriki meeting. I cannot remember whether Ria Hamuera agreed to or opposed the giving of 3,000 acres to Warena Hunia. This was in 1891. Te Aohau was not present when the 1,200 acres at Ohau was first laid off on the plan for us. The first I knew of it was when I saw it on the plan. I don't know when it was taken into Court. It was on Lewis's second visit to Palmerston that he was told it had been agreed that we were to have the 1,200 acres at Raumatangi. Lewis had heard from the people that it was proposed to give us the land at Ohau; that is why he told Kemp that it would be wrong to give us the land at Ohau. I am not responsible for what Lewis said in Court. Kemp said to the people in the barn that he thought the land at Ohau should be left for him. Kiritotara was the only person who replied to Kemp. I frequently attended the Muaupoko meetings. I was more with them than with my own people. Ria Hamuera may have spoken at the Pipiriki meeting; many women spoke. I cannot remember them all. Kiritotara took a prominent part in the Muaupoko discussions—a more prominent part than most of the men.

Witness (to Mr. McDonald): The balance of No. 11, after Warena got his share, was to go to Major Kemp and the permanent residents. I don't know who was to decide the matter as regards the owners. I think Kemp wished to decide who was to go into the land.

Cross-examined by Mr. Baldwin.

Witness: I remember that there were two Courts in 1886. It may have been after Lewis had given his evidence in Court that he told Kemp the land for descendants of Whatanui should be at Raumatangi. I don't wish to contradict Mr. Lewis's evidence. No. 9 was awarded after Lewis spoke to Kemp about it. The No. 9 I first saw on the map was that as shown before the boundaries were adjusted. It was after No. 9 had been given to us that No. 14 was left to Kemp. I was present at the meeting quite by accident. I remember Nicholson giving evidence before the Appellate Court at Otaki on the 23rd January, 1895. [Page 36, "An endeavour was made," &c., read out.] I did not cross-examine Nicholson on that point. I was examining him about our section only. I write Kemp's letters for him, but am not his secretary. I keep some of his accounts for him. Others his pakeha friends do for him. I can't produce any books of accounts. I have receipts for moneys paid away on account of Horowhenua. The reason I do not keep books is that he does not leave his money matters with me altogether. Kemp does not keep a banking account. He had money in the bank about the time he sold the township.

Cross-examined by Henare Apatari.

Witness: Many of Muaupoko were in the barn at the time of meeting I have mentioned. I have no idea how many. Te Kiri attracted my attention because she spoke. I cannot say whether Te Paki or Rihipeti were present. I don't know whether Te Paki would have had the courage to object if he had been present.

Hamuera Karaitiana: No questions.

Re-examined by Sir W. Buller.

Witness: McDonald was agent for Major Kemp at Court of 1886.

Mr. J. M. Fraser asked to be allowed to put a few questions to the witness on a personal matter.

Witness (to Mr. Fraser): I remember that you acted for Kemp from March, 1890. You had the conduct of Kemp's affairs in connection with Horowhenua from that date down to the time of the Pipiriki meeting. I remember your advising Kemp to leave the settlement of the Horowhenua question to the Chief Judge. You asked him if you should get Fraser's and Hunia's assent to that course. Kemp agreed to your doing so. I don't know that Kemp has ever withdrawn his authority to you to endeavour to settle the matter. I don't know when I first heard that Kemp had said that he had revoked his authority to you. If he had withdrawn his authority to you I should have heard of it.

Mr. Baldwin asked the Court to adjourn till Monday, as he required to be in Wellington to-morrow.

None of the other *kaiwhakahaere* objected.

The Court adjourned till the 15th instant.

MONDAY, 15TH MARCH, 1897.

The Court opened at 10.15 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Sir W. Buller called Raniera te Whata.

RANIERA TE WHATA sworn and examined.

Witness: I reside at Horowhenua. Was born at Waikiekie, Horowhenua. I am a Muaupoko. Am one of the registered owners of Horowhenua Block. Remember the sitting of the Native Land Court in 1886. I attended it. Major Kemp and I came from Wanganui to Palmerston to attend

the Court. We went first to Te Awapuni. The Muaupoko Tribe were then at Horowhenua. Wiki Keepa came for them, and they went to the Court at Palmerston. All the resident Muaupoko went to Palmerston except those who had gone to Parihaka. Waata Muruahi, Hori te Pa, Noa Tawhati, Winara te Raorao, and others were at Parihaka. Te Matahi, wife of Waata Muruahi, was also there, and some others whom I cannot remember. Rora and I returned to Wanganui to get food for the people while they attended the Court at Palmerston. We found the Muaupoko living in Palmerson's barn at Palmerston when we arrived there with the food. Kemp, being an invalid, was living in Palmerson's house. The Muaupoko Tribe assembled in Palmerson's barn to discuss matters in connection with the Horowhenua Block. At the first meeting McDonald and Kemp went in to the barn. The first matter discussed was the railway-line. After that was settled the 4,000-acre block was talked about. Then the piece for the descendants of Whatanui was considered by the meeting. This was at Ohau. When Pomare and Heni heard about the piece proposed for them they came into the barn. Pomare stood up and told us—the tribe, Kemp, and McDonald—that they objected to their land being at Ohau because it was stony. He said also, "Let us be placed at Te Raumatangi, where the 100 acres is; then the whole of the 1,300 acres will all be there together. So the descendants of Whatanui agreed to their land being placed at Raumatangi. When these three blocks were settled we heard that Mangakahia had arrived. I also heard that Lewis had arrived, and had gone to Kemp's house, but I had not seen him at that time. Then these three parcels were taken into Mangakahia's Court, and McDonald first brought the railway-line before the Court. The Court challenged objectors. I and my tribe replied that there were no objectors. The Court asked who was to be put into the block, and we, the tribe, said, "Let Kemp be put in as trustee." After the railway block was dealt with McDonald brought the 4,000 acres before the Court. The Court asked what it was for, and we said that we wanted to sell it for a township for us. Then the Court asked if any of us objected, and we replied that none of us objected. In reply to a question by the Court we said that Kemp should be put into the title. We said also that we wished the land sold. After this the block for the descendants of Whatanui was applied for by McDonald. Nicholson stood up and asked the Court to let him look at the plan, so that he might see the part that was to be given to the descendants of Whatanui at Hokio. The Court said, "You are not in the certificate." Nicholson persisted in his demand to be shown the position of the land, and was told by the Court to sit down. Nicholson sat down, and Lewis rose up. This was the first I had seen of him. Lewis explained that the certificate was in Wellington, and he was speaking from memory, but he knew that it provided for the land being near Horowhenua. At this time Mangakahia received a wire informing him that his wife was ill, and nothing further was done. We returned to our barn, and stayed there. Mangakahia went home, and the Court adjourned. As there was no Assessor, we went on discussing the other divisions of the block. Lewis wired to Kahui Kararehe, asking him to relieve Mangakahia. We arranged outside the Court about the big block for the tribe—for our shares. Then we discussed the parcel for the *rerewaho*, the people who were omitted from the certificate of 1873. During the discussion Kemp asked that the *rerewaho* should be left to him. This was done, and Kemp settled the block for them. The block for Hamua was next taken. After it was settled the block for Ngatiapa was discussed. Then we discussed the land for Rangitane. Kahui had not yet arrived. After the Rangitane Block was settled Kemp told us of his *mate*, and said, "O people, I am going to place my burden on the shoulders of the tribe." He told us that his trouble was in connection with Murimotu, and amounted to £2,000 odd. Te Rangimairehau asked Kemp how many acres would be required. Kemp replied that the surveyor would calculate the area required. He mentioned that his debt was to Sievwright and Stout. We settled this, and the next morning, Kahui having arrived, we went to the Court. McDonald again applied before Kahui's Court for the railway-line. Objectors were called for. We replied, "There are none," just as we did at Mangakahia's Court. We asked that the order should be to Kemp. Then McDonald applied for the 4,000 acres again. The Court asked what the block was for. We said it was to be sold. In reply to the Court, we said that it had been arranged that the order should be to Kemp. The land for the descendants of Whatanui was then mentioned. It was announced that it was to be at Raumatangi. McDonald was present. Hitau objected to it because it was sandy. Kemp said if it was left to him he would adjust the boundaries so as to exclude the sandy part. The order was not made for the block at that time. The next was the block for us, the Muaupoko. We brought this before the Court; also all the other blocks we had agreed to. After the Muaupoko Block was disposed of the Hamua Block was dealt with. Then the Ngatiapa Block and the Rangitane Block were disposed of. After these blocks were dealt with the block to defray Kemp's debts was brought on and ordered. Then the Rerewaho Block was settled, and the Court adjourned for lunch. When the Court resumed McDonald applied for the square foot of land, and it was ordered. After this the block of land for the descendants of Whatanui was brought on again, and an order made for it, after the Court had called for and been informed there were no objectors. There were no objectors to any of the divisions applied for, because we had arranged and agreed to them all. I will now speak about No. 11. We wished Kemp to hold this in trust for us. Kemp was on one side of the table and McDonald on the other. We saw McDonald hand a piece of paper across the table to Kemp. Te Kiri asked what it was about. Kemp replied that the paper contained Warena's name, and beckoned us into another room. Kemp, Wirihana, Raniera Te Whata, Te Rangimairehau, Makere te Rangimairehau, Ngataahi, Ihaia Taueki, Te Kiri, and Kerehi Tomo went into the room. Some of the people did not enter the room. Kemp said: "Listen, people of Muaupoko. I will hand this block over to Ihaia Taueki to administer for the people." We objected to Ihaia Taueki being put into the title. Wirihana Hunia then proposed that Warena Hunia's name should be put in, but we disapproved of this also, as we wanted Kemp to hold the land as our trustee. Kemp then said it would be as well to put Warena's name in the title with his own, as Warena was a trustworthy young man. We were very angry

when Kemp suggested this, and many of us walked out of the Court. We did not go back to the Court, but returned to the barn. Next morning we went to the Court again, and found that No. 11 had been awarded to Kemp and Warena Hunia. If we had known that this was to be done we would have withdrawn the case, as we objected to it. Then the hill block was brought on, and I rose and told the Court that I intended to withdraw it until the tribe had agreed what was to be done with it. The Court consented, and adjourned till the next day. I have now told all that I heard at the meetings outside the Court, as well as what took place inside the Court. As to the block at Ohau, we were asked by the Court if we objected to Kemp having it. We replied that we had no objection; it was his share, and that he had not been given an interest in any of the other divisions. I heard of Kemp selling the timber on No. 14, and did not object. I also heard that part of it was mortgaged to raise funds to pay the lawyer who acted for us in connection with our troubles over Horowhenua. I wish the Court to understand that the 1,200 acres at Ohau was given to Kemp for himself. It was done publicly, not secretly. It was also done under the law. After the hill block was adjourned Rangimairehau wanted it awarded to him. Hoani Puihi wished his name put in also. Then Himiona wanted to be one of the grantees. This was not consented to, and it was ultimately decided to have the land awarded to Ihaia Taueki as trustee. This was done on the application of Kemp, made in our presence. We told the Court we approved. The Ohau Block was dealt with on the last day. The Court asked us if we had any objection to make to Kemp's application for an order in his favour. We said we had no objection; the land was for him, for his share. Kemp had previously applied for an order for the same block, but it was not made. This was the day before the order was finally made. The descendants of Whatanui wanted the 1,200 acres bounded by the Hokio Stream, but Kemp insisted that the boundary should not go within 2 chains of the Hokio Stream. It was settled that the boundary should run from a certain point to the top of Ohenga Hill, and was to exclude our burial-grounds. This was afterwards carried out by survey. I was present at the Court of 1890. I remember the Horowhenua Commission sitting here. I did not hear it stated before the Commission that Kemp held the Ohau land in trust, and not for himself. I heard Kemp say that the land was for himself and those in his mind. That was in this Court. He said he held it for Raniera, Tamatea, Arihia, and Ngahuia. I did not ask him for any interest in the land.

To Court: I did not hear Kemp say this until the Commission sat.

The Court announced that the draft copy of the Horowhenua Commission report had been received, and it could be seen from it that the date 1895, referring to the telegrams sent by Judge Wilson to the Under-Secretary, was a misprint for 1890. A memorandum would be sent to Judge Wilson pointing this out, and asking him if he had any remarks to make upon it.

RANIERA TE WHATA'S examination continued.

Witness (to Sir W. Buller): I remember giving evidence before the Commission. [Horowhenua Commission, page 100, questions 69 to 81, and replies, read out.] I remember giving that evidence before the Royal Commission. It is true. [Horowhenua Commission, page 33, questions 240 to 242, with replies, read out.] I heard Kemp give that evidence. I have nothing to say about it. I assent to it. It is correct. [Horowhenua Commission, page 100, questions 82 to 84, read out.] I reaffirm those replies now. They are true. I never said before the Commission that Kemp was a caretaker for No. 14. I don't remember saying it. He was not a caretaker for No. 14. It was his own share. [Horowhenua Commission, page 191, questions 234 to 236, read out.] I heard Kemp give that evidence. I have no objection to those statements of his. They are correct. No one ever told me that I ought to share in No. 14. Who could tell me so? I had given it to Kemp. What other land was there for him? [Horowhenua Commission, page 131, questions 123 to 130, read out.] I remember giving that evidence. It is true. I know where Pipiriki is. It is on the other side of the lake at our kaingas. Remember meetings of Muaupoko there. Ru Reweti explained the object of the meeting to us. It was to discuss the proposal that Warena should have 3,000 acres. Nothing came of it, and Kemp left. Waata Muruahi was at the meeting. [Horowhenua Commission, pages 275 and 276, questions 290 to 296, read out.] I did not hear anything of that at the Pipiriki meeting. [Horowhenua Commission, page 276, questions 297 to 299, read out.] That is false. I did not hear anything of the kind. I did not hear Hori te Pa, or Charles Broughton, or Ngatahi, or Makere say anything about No. 14. I was present at Pipiriki all the time, and heard all that was said. If anything had been said about No. 14 I should have heard it. I have never heard any of the Muaupoko make any objection to the sale of the timber on No. 14 by Kemp to Bartholomew, or to the mortgage and sale by Kemp to you of parts of the same block.

Cross-examined by Mr. McDonald.

Witness: I have told the Court that I went to Wanganui to get food. Did not return to Horowhenua before I went to Palmerston. I did not live permanently at Wanganui I came backwards and forwards to Horowhenua, where my home is. I have told the Court what I believe to be the truth with reference to what we did in connection with Horowhenua in 1886. I saw Lewis at Mangakahia's Court in Palmerston. He gave evidence before that Court. He said that the land for descendants of Whatanui was to be near Horowhenua. [Vol. 7, page 185, Lewis's evidence, read to witness.] I did not say anything about the area. I heard Lewis say that the agreement was in Wellington, and that the boundary was to be near the Horowhenua Lake. The story I have told is my recollection of what took place. It was what we all agreed to in the barn

—I and the tribe. I have not consulted with any one as to what I was to say in this Court. I am not like you, desirous of catching every kaka you see. I was angry when No. 11 was before the Court in 1886, because you proposed to put Warena's name in in the Court and not to the people. We all left the Court in consequence, and went to our quarters. We did not know on that date that the order had been made for No. 11. The Ohau land was first offered to the descendants of Whatanui at Mangakahia's Court. They objected to it, and it was placed at Raumatangi. The Ohau land was not offered to them again. It lay there, and was awarded to Kemp on the last day of the Court, after we had disposed of all the divisions. Major Kemp said, "That block is for me." It was arranged outside that Kemp was to have it, and then it was taken into Court to be confirmed. It was not passed on the first day, although Kemp applied for it, and there were no objectors. [Horowhenua Commission, page 271, question 137, read to witness.] That is true. Waiwiri was given to Kemp twice—once outside the Court, and again inside the Court. [Horowhenua Commission, page 272, question 138, read out.] [No clear reply. Witness did not appear to understand]. I heard part of Ru Reweti's evidence before this Court. Not all of it. The tribe were present when Kemp said that No. 14 should be for him, in the barn. You were present as the *kaiwhakahaere* until the Hamua Block was dealt with; then you and Kemp turned back to back. You were present when Kemp said that No. 14 should be for him. We all agreed to it. We did not say "*Kahore.*" We said "Aye" in the Court. I know that there were 143 persons in the original certificate of 1873. We divided them into classes outside the Court—the Hamua to their block, the Rangitane to their block, the Muaupoko to their block, and the *rerewaho* to their block—so that each set should have a separate block. The resident Muaupoko got 105 acres each. I see that Kemp's name was struck off the list of No. 3. It is quite clear that he left that block for his people, and kept the Ohau Block for himself. Having been struck out of the Muaupoko Block, where would he have had his land if not in the Ohau Block? His name was not in Rangitane, Hamua, or Ngatiapa blocks. It was not intended that Kemp should share with us in No. 3. I do not know that Kemp's name was struck out of No. 3 Block because he had asked for the 800 acres to pay his debts with. His name was not struck out for that reason. Your quarrel with Kemp commenced about the time the Hamua Block was dealt with. I heard you and Kemp quarrelling in the Court. You came into the Court after that, but you two sat back to back. I cannot remember whether the Hamua Block or the square foot was cut off first. It was the railway block you and Kemp quarrelled about. You continued to live in the same house after your quarrel.

Cross-examined by Mr. Stevens.

Witness: It is a fact that Kemp went into our barn and said that he should have the 1,200 acres at Ohau. Ru Rewiti was the only descendant of Whatanui present. Kemp stood near the door. McDonald was somewhere opposite the door. The Muaupoko were in the body of the building. I have nothing to say if Ru Rewiti stated in this Court that someone replied to Kemp when he said he would have the 1,200 acres at Ohau. No one replied to him inside the building. There was no other discussion about No. 14 than the one I have referred to. Kemp spoke about it first.

Cross-examined by Mr. Baldwin.

Witness: Pomare and Heni came into the barn and objected to the Ohau land. I was present. After we had discussed the first three blocks outside we heard that Mangakahia had arrived. I did not say that Nicholson objected to the Ohau land. I said he asked to see the plan. It was Heni and Pomare who objected to the Ohau land, because it was stony. This was at our kainga. It was only mentioned at Mangakahia's Court that Ohau had been offered to the descendants of Whatanui, and that they had refused it. Nothing else was done. Ask McDonald who mentioned it. It was either he or Kemp. They were our *kaiwhakahaere*. There were no meetings outside about the location of the land for the descendants of Whatanui between the time the first Court adjourned and the second Court opened. Arahia and Ngahuia are both Muaupoko. The latter is my niece. She is in the *rerewaho* list. Arahia is also known as Rahira Horima. She is not in the list of *rerewaho*. I contended before the Commission that she should be put in. Hamua is a hapu of Ngatikahungunu, not of Muaupoko. No. 14 was given to Kemp after all the other blocks were disposed of. He asked for it, and we consented.

The Court adjourned till the 16th instant.

TUESDAY, 16TH MARCH, 1897.

The Court opened at 10 a.m.
Present: The same.
No. 1, Horowhenua No. 14, resumed.

RANIERA TE WHATA cross-examined by Henare te Apatari.

Witness: Muaupoko is the principal tribal name of the owners of this land. I know the hapu names of the members of this tribe: they are Ngatihine, Ngaiteao, Ngaitamarangi, Ngatipuri, Ngaiteriunga, and Ngaitaratu. These are all I can remember, but there are others. Ngatipariri belong to Hamua, not to Muaupoko. I have heard it stated in other Courts that Ngatipariri was a hapu of Muaupoko. It was a woman who introduced the Ngatipariri hapu into the Muaupoko Tribe. I don't know the name of the woman. She married a man of the Muaupoko. Her descendants would only have rights through their Muaupoko side. They would have no rights through their mother. I cannot give the name of the man of the Muaupoko who married the Ngatipariri woman. I don't know it. I am not now giving a *whakapapa*. It was Kemp who agreed to give the land at Ohau to the descendants of Whatanui. He brought the matter before the people. Pomare and Heni Kipa objected. Kemp told us in the barn that he was offering it to

the descendants of Whatanui. We consented. No one objected. If there had been any objection it would have been made. Kemp asked the people for No. 14 for himself. He asked us for it outside and in the Court. Kemp came to our meeting-house from Palmerson's house when he asked us for No. 14. I cannot say what part of the building he sat in when he entered. I explained that to the Court as nearly as I could yesterday. He sat down near my father, some little distance from the door. The whole tribe was in the barn when Kemp asked for No. 14. If you had asked me if the whole tribe had consented I should have said "Yes." They called out "Aye" when he asked for it. I said in reply to Mr. McDonald, yesterday, that no one objected in the barn, and the tribe called out "Aye" in the Court, and said that none of them objected to Kemp having No. 14 for himself. As to whether silence means consent among Maoris, all I can say that it did on that occasion, and does generally when a tribe is assembled. There was no reason for any of us being afraid to object because Kemp was a chief. It was the tribe who gave him the land in the first place. I do not know what other tribes mean when they remain silent. I am only acquainted with the customs of my own tribe. It was when the Hamua Block was under consideration when Kemp and McDonald quarrelled. I do not know the number of it. I was at the Pipiriki meeting. I know who stood up to explain the object of the meeting. Kemp did so. Many people welcomed Kemp and the other visitors, if that is what you mean. I saw Waata Muruahi at the meeting, but did not see him stand up to speak. I did not see or hear Te Paki speak at the meeting. If Ru Reweti said he did, that is his version. Do not attempt to identify me with him. I disapprove of Kemp's promise of reserves for Ngatiraukawa. It was a personal promise and was not confirmed by the people. They were not consulted about the matter. Kemp has told the Court his right to the part he promised to Ngatiraukawa. I am not going into them again. He has rights in the locality in common with the tribe, and was bound to consult the tribe.

Cross-examined by Hamuera Karaitiana.

Witness: It was the tribe who agreed to the land at Ohau being given to the descendants of Te Whatanui. Kemp was to hold it as trustee. It was first agreed to outside, then McDonald took it into Court—Mangakahia's Court. I mean now the parcel at Raumatangi. The descendants of Whatanui had refused the section at Ohau. It was never proposed to make Kemp a trustee for No. 14, because the descendants of Whatanui refused it before the proceedings had reached that point. Kemp told us that he had offered it to them, and they had refused it. I know what your object is: You are trying to get me to say that Kemp was a trustee, but I will not do so. Kemp was awarded No. 14 because he had not been allotted any interest in any of the other divisions. I will not say that No. 14 is the only part of the block he has any right to. I say that silence means consent at meetings.

Re-examined by Sir W. Buller.

Witness: I never heard any murmurs of discontent after the meetings at which No. 14 was given to Kemp for himself. I was the only one who could object, and I did not object. I never heard any objection made to Kemp having No. 14 for himself until the time of the Commission.

To *Assessor:* I was at the Court of 1873. It awarded 100 acres to the descendants of Whatanui. Sir Donald McLean asked Kemp subsequently to set apart a further area of 1,200 acres for the descendants of Whatanui—the direct descendants—in fulfilment of a promise made by Kemp to Pomare, and for another reason, which was the promise made by Taueki, who was a chief of rank. He and Te Whatanui lived at Horowhenua on terms of the closest friendship. Te Whatanui lived permanently at Horowhenua. He died and was buried there. Taueki died at Horowhenua. His wife's name was Kahukore. They lived at Horowhenua permanently. So did their ancestors and elders before them. Their descendants have continued to occupy. Ihaia and Hereora were the children of Taueki. The hill block was the only part of Horowhenua awarded to Ihaia. Kemp wished that No. 11 should be allotted to Ihaia for him to distribute among us. The hill block was put in his name as trustee for Muaupoko in the same way as Kemp is trustee for them in No. 11. I do not know what land Ihaia got for himself at the division of 1886, but I will consider him when he and Kemp surrender their trusts in Nos. 12 and 11 respectively.

To *Court* [Horowhenua Commission, page 100, question 99, read out.]: The answers I have now given are replies to the Assessor's questions. If the evidence I have now given differs from the statements I made before the Commission that will be for the Court to consider.

John Monro Fraser sworn and examined.

Witness: I am a Native Agent, and reside at Hastings. I know Kemp, the resident Muaupoko, and the Horowhenua Block. I acted as agent for Kemp and the tribe from 5th March, 1890, to the 23rd July, 1892. I appeared in the Native Land Court at Palmerston, in 1890, with Mr. S. Baker, solicitor, for Kemp. I also appeared in Wellington, in 1890, before a Committee of the House of Representatives with Kemp and others of the tribe. I continued to act as agent for Kemp until the rehearing Court sat in 1891. I took charge of Kemp's case at the rehearing Court. The great bulk of Muaupoko were present at both Courts, and I was in constant communication with them. When rehearing Court gave judgment, Barnicoat, solicitor for Warena Hunia, spoke to Ru Reweti and myself as to effecting a settlement, and intimated to us that the Hunia family would agree to accept 3,000 acres. I confirm Ru Reweti's evidence as to meeting at Pipiriki. It took place in May, 1891. Was a large meeting. I was present and remained in settlement until the meeting broke up. I heard all the discussions. Slept in the meeting-house. The first evening we arrived, before Donald Fraser had arrived, Kemp informed the Natives that a proposition had been made by Barnicoat on behalf of Warena, that 3,000 acres should be given to the Hunia family in satisfaction of their claims, but that he would not consent

until he had seen the people. He then laid the matter before them, and said it was for them to come to a determination. The Natives deliberated, with the result that they agreed to accept the proposal. Next day Donald Fraser, Warena, and Wirihana arrived at Pipiriki. Rangimairehau intimated that object of meeting had been explained to them by Kemp, and that the people on Kemp's suggestion had agreed to give the Hunia family 3,000 acres. Donald Fraser replied that he did not recognise the rights of the tribe to speak on the matter, and said that the tribe must understand that he could only negotiate with Kemp. Kemp explained that whatever was the wish of the tribe he would give effect to. After further discussion, Wirihana and Donald Fraser left the house together to consult. On their return Wirihana took up the discussion, stating that he would not consent to accept the 3,000 acres unless his family obtained a portion of the lake. Kemp became angry at this request, refused to listen to it, and further said that he had had enough of the deceit of that party. There was nothing done in respect of the settlement, for which Donald Fraser has often expressed sorrow to me. No. 6, for *rerewaho*, was spoken about. My recollection is that Ngataahi was the first to bring the matter up. She asked when the list would be settled and they would receive their land. I replied to her that we had no list. The list for that block had not yet been settled; that a list had been handed in to Trimble for Court by McDonald, and which was objected to as not comprising the persons for whom the land was intended. I also said that list of names would be gone into after the troubles in connection with No. 11 had been settled. I remember Paki te Hunga making a violent speech. He was anxious, and demanded that list should be settled then. Kemp replied that as soon as his troubles were over in No. 11 he would settle the names for No. 6. There was no other subject discussed in the presence of Te Paki and others. That was all that took place. I remember the evidence of Waata Muruahi before the Commission, which has been read by you. It is incorrect. Kemp made no request to the people to give him No. 14. It is absolotely incorrect. From the 5th day of March, 1890, until I arrived here three weeks ago, I have never heard any individual of Muaupoko, or any agent of any of them, allege that No. 14 was held by Kemp in trust. After Paki and others had left the meeting at Pipiriki I addressed the people with reference to a further petition to Parliament, then about to assemble. They instructed me to get Mr. Bell to prepare a petition. This was done, and I attended Parliament with Kemp and a large number of the Muaupoko during the whole session. The matter was only dealt with in the last hours of the session. I had the assistance of the Hon. Mr. Cadman in passing the Bill prohibiting dealings with Horowhenua, on the distinct understanding that I should do my best to bring about a settlement of the disputes within the twelve months. The blocks discussed at the Pipiriki meeting were Nos. 6 and 11. The only block ever discussed before or after the Pipiriki meeting was No. 11. Up to date of the passing of the Bill in both Houses I had been in constant communication with Kemp and the Muaupoko. On no occasion was it ever suggested by any member of the Muaupoko that No. 14 was held by Kemp in trust. Have always understood from Kemp that the land was absolutely his own property. After the passage of the Horowhenua Block Bill of 1891 I proceeded to carry out my promise to Mr. Cadman to endeavour to settle the difficulties. I had correspondence with the Government on the subject. I also was in direct communication with Kemp at this period. It was agreed by Kemp that the matters in dispute should be left with the then Chief Judge of the Native Land Court. I succeeded in getting Donald Fraser to agree to that course, he being representative of Warena Hunia. He agreed, and I at once wrote to Mr. Cadman enclosing a copy of the letter I had addressed to Donald Fraser on the subject. These letters are on the file. I produce letter I received in reply to my letter to Native Minister. [Letter put in and read.] I wish to explain to the Court, with reference to that letter, that Kemp distinctly acquiesced, and told me that he agreed to the matter being left to the settlement of the Chief Judge. On receipt of letter from the Minister I severed my connection with Kemp. It is fair to Kemp to say that he always objected to the word "arbitration." He certainly never agreed to the disputes being referred to arbitration. The word "arbitration," perhaps, ought not to have been used in my letters, but I meant a settlement by the Chief Judge. That is all the evidence I desire to offer in the present case.

Cross-examined by Mr. McDonald.

Witness: When I wrote the letter to the Minister I considered I understood Kemp's instructions. I think Kemp objected to the term "arbitration." I do not think he intended to repudiate his instructions. I first appeared in the Court of 1890, about the 5th day of March, some days after the case had commenced. I was not personally aware of the negotiations that had taken place between Kemp, Donald Fraser, and Warena at the opening of the case, or any negotiations prior to the 5th March, 1890. I heard afterwards that negotiations had taken place. Mr. S. Baker and Major Kemp told me so. I cannot recollect Donald Fraser's version of the negotiations, although he told me what they were from his point of view. I never heard from any one that the negotiations broke down because Kemp could not be got to say what he would do with the rest of the land after Warena took his; but I gathered that this was unlikely, because the attitude taken up by Fraser and Warena was that No. 11 belonged to Kemp and Warena absolutely. They ignored the tribe entirely. This was in Court.

Cross-examined by Mr. Stevens.

Witness: Warena made the application for 3,000 acres for his family through his solicitor, at Palmerston. Wirihana was present at the Pipiriki meeting. He asked for a portion of the lake, including the place on which a *whata* stood. I heard the question discussed as to the *whata*. The people did not admit that it was Wirihana's *whata*. I think they said it belonged to one of the wives of Hoani Puihi. I cannot recollect that there was anything said about who erected it. I did not hear Wirihana say at Pipiriki that his father had erected the *whata*. I am certain that

that there was no possibility of a settlement with Hunia at Pipiriki, because he demanded a portion of the lake. There was no mention of a hundred acres at the meeting. Wirihana demanded a portion of the lake in addition to the 3,000 acres. His whole contention was as to the fishing rights in the lake. The allocation of the 3,000 acres was mentioned. It was to be on the southern side of the Hokio Stream. We did not get to the extent of boundaries when Fraser and Wirihana left the house, and when they returned Wirihana made his request for the lake, which was not agreed to by Kemp and the people. The people agreed to give the 3,000 acres after the explanation by Kemp and myself that it would put a stop to expensive litigation. No one at Pipiriki suggested that the Hunia family should be offered less than 3,000 acres, but there was a great deal of discussion before the people would agree. It was done on our strong representation only. The tribe did not admit the right of the Hunia family at all. My opinion always has been that Kawana Hunia had not as much right as any individual resident of Muaupoko. My opinion is based on evidence given by the Hunias themselves, by others on their behalf, and by the Muaupoko. The Hunias call themselves Ngatipariri. They are descendants of Pariri, no doubt. Kaewa was Wirihana's grandmother. She was a woman of notoriety. She was the wife of a Ngatiraukawa man. Then she was the wife of Te Hakeke. I am giving you now what I have heard, not what I know. Te Hakeke, I should be inclined to say, from what I know of Ngatiapa, would have very little time to be on friendly terms with Muaupoko. I never heard that he was at enmity with them. The information I have gained as to the relative positions of Kemp and Kawana Hunia is from Kemp's side mostly, but I have heard it from both sides. It was not on account of the right of the Hunia family that I agreed to 3,000 acres being given them. It was because I knew that they were in a position to put us to a great deal of expense and trouble that I agreed to it. I was not present at the Court of 1886, but, judging by the evidence, I should say that Warena was not put into No. 11 with the assent of the people. The weight of evidence goes to show that he was put in against the wish of the people. They did not apply for a rehearing.

Cross-examined by Mr. Baldwin.

Witness: I was acting with Baker for Kemp in the Court of 1890. Assisted him to sum up Kemp's case. After the evidence had been taken, Baker continued to act until end of case. I ceased to act for Kemp on receipt of the letter I have put in. Did not see Kemp about it. I communicated with Ru Reweti on the subject. I acted for Kemp for over two years. I see it stated in evidence that I offered the Hunias a large sum of money for their share of No. 11. No one was more surprised than I was when I saw it. I had no instructions at time of Pipiriki meeting to say that the list for No. 6 had not been settled. I judged that they had not been definitely settled, because a wrong list had been put into Court. I was not told by Kemp or any one on his behalf that the list for No. 6 had never been definitely settled. I said at Pipiriki that the transfer of No. 6 could not be made until we had a proper list of names, and until the trouble about No. 11 was settled. Kemp and Ru Reweti both told me that a list of persons entitled to ownership in No. 6 did exist, but they could not give it to me when I wanted it. I am not able to say that Kemp ever told me that a list of names for No. 6 had been definitely settled, or that no list had been settled. I told Ngataahi at Pipiriki that No. 6 could not be transferred until list of names was settled, and until troubles about No. 11 were over. [Donald Fraser's evidence before Supreme Court at Wanganui read, *re* proposed arrangement between Kemp and Hunia.] I certainly never heard that anything of that kind ever took place. I do not believe it. [Further extract from Donald Fraser's evidence read.] It is absolutely incorrect. There are many statements in what you have read which are absolutely untrue. Mr. Donald Fraser's memory has played him false. Down to the present moment there has never been any reference whatever to fees payable to me made by Kemp or by any person on Kemp's behalf. There is no guarantee by Kemp or by any person on Kemp's behalf to pay me my fees.

Cross-examined by Henare Apatari.

Witness: I was agent for Kemp from March, 1890, till July, 1892, both in and out of Court. I was at Pipiriki meeting. I saw Te Paki and Waata Muruahi speak at the meeting. Waata Muruahi did not say what he stated to the Royal Commission. I remember him welcoming the guests to Pipiriki and speaking of the settlement of the No. 11 block. He also referred to the fact that when the divisions took place in 1886 he was at Parihaka. The main part of his address was a welcome to Paki and other strangers to Pipiriki. I have a very distinct recollection of Waata Muruahi speaking. He is one of the principal men at Pipiriki. If Ru Reweti said he did not speak at the meeting he must have forgotten. I have heard Kemp say in Court and out of Court that Te Paki, Iritana, and sisters had good claims to Horowhenua.

Cross-examined by Hamuera Karaitiana.

Witness: I know Nireaha Tamaki well. I saw him at the meeting at Pipiriki in 1891. I know Karena te Mana o Tawhaki well. He was at the meeting. If these two people tell the truth they will make the same statement that I have. I repeat that I had never heard it stated that Kemp was a trustee in No. 14 until I came to Levin to attend this Court. I was present when Kemp gave his evidence at the Court of 1890. I did not hear him say that No. 14 was not his but that he was a trustee. I have heard his evidence read during these proceedings, but the fact that it appears in the minute-book would not make me believe it. Neither the Judge nor the Clerk understood Maori, and it is possible a mistake may have been made in the interpretation. I cannot conceive his giving such evidence, as he has always informed me that No. 14 was his own, and that he held No. 11 as trustee. I have heard the evidence given in this Court as to No. 14.

Mr. McDonald (through Court): The evidence discloses the fact that Kaewa was taken prisoner by the Ngatiraukawa while she was the wife of Te Hakeke. My reply to Mr. Stevens was not an attempt to revive the calumny in relation to Kaewa.

Re-examined by Sir W. Buller.

Witness: By this land I refer to No. 11 in my reply to Henare Apatari about Te Paki's rights. I do not wish to accuse Mr. Donald Fraser of deliberate untruth in his evidence before the Supreme Court. I say that some of his statements are incorrect.

To *Assessor:* I did not think in 1890 that No. 11 belonged to Kemp and Warena only. The first day he retained me he signed a document declaring that he held it as trustee for Muaupoko. Kemp's contention in 1890 was that he was a trustee in No. 11. Subsequently in Parliament and at the rehearing Court he still held the same contention. Down to the present time I have never heard him say that he did not hold No. 11 as a trustee. He has always said that he was trustee for Muaupoko, including himself. I have heard that Kawana Hunia had no right to Horowhenua, and that there were others in the title who had no right. I have heard that Hakeke belonged to Ngatiapa and his wife to Waitawa. I heard that Kemp's mother belonged to Wanganui. The evidence shows that his father, Tanguru, resided at Horowhenua. I have heard that Pukerua was at one time the southern boundary of the Muaupoko territory, and Manawatu the northern boundary. I have also heard that pressure by Ngatiraukawa afterwards confined the survivors of Muaupoko between Papaitonga and Poroutawhao. Have heard it said that Horowhenua was the assembling place of Muaupoko. The Muaupoko living among other tribes in 1873 would have had a right to be admitted into Horowhenua. I think so. I cannot give the reason that actuated the Court in putting Kemp and Hunia into the title in 1873. Do not know what the reason was. Ihaia Taueki did not speak at the Pipiriki meeting. He is a very reserved man. He was consulted in 1890 and 1891 on matters connected with Horowhenua. His wife, Ngataahi, explained everything to him. He seemed to me then to have a high opinion of Kemp, and to leave everything to him. I never asked Ihaia Taueki if he had agreed to Kemp having No. 14, because I never had any doubt that it was Kemp's. I have always heard that Ihaia Taueki was the Ariki of Muaupoko, and that he and his ancestors had occupied Horowhenua permanently. Ihaia Taueki was an owner in No. 3 block. All his relatives are also in that block. It is intended also to place among the *rerewaho* any of his people who were wrongly omitted from the title in 1873.

Sir W. Buller stated that before calling his next witness he would like to put in a letter from Mr. Edwards, now Mr. Justice Edwards, dated the 24th October, 1895, to the Chairman of the Native Affairs Committee, House of Representatives [*vide* page 332, G.–2, 1896: Exhibit A.W., Horowhenua Commission].

The Court adjourned till the 17th instant.

WEDNESDAY, 17TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Sir W. Buller proposed to recall Te Rangimairehau to give evidence as to the successors to deceased owners, and whether they were at Palmerston during the Court of 1886.

TE RANGIMAIREHAU recalled on former oath.

Witness: No. 2, Kawana Hunia te Hakeke, was dead in 1886. Te Wirihana and his other children are his successors. Wirihana and Warena were present at the meetings of 1896. I do not remember seeing the others. No. 4, Rewiri te Whiumairangi, died before 1886. Makere te Rangimairehau, Ngatahi Taueki, Karaitiana Tarawahi, Rahira Wirihana, Mata Hinekirangi, and another, who I forget, are his successors. I remember now Hopa Heremaia was the other. They were present at the meetings of 1886. No. 5, Te Rangirurupuni, was dead in 1886. Hiria Amorangi, Pane Korama, and others represented him at the meetings and the Court of 1886. I forget the others. Those I have named were present. No. 7, Motai Taueki, died since 1886. He was present at the meetings of 1886. No. 8, Heta te Whata, died long before 1886. Raniera, Ngahuia, and Noa te Whata represented him at the meetings; they were present. No. 9, Wirihana Tarewa, was dead in 1886. All his children represented him in that year; their names are Rewi Wirihana, Hori Wirihana, Harerota Wirihana or Porotene, Riria Reene Tikara, Kingi Wirihana.

The Court adjourned for a few minutes, to enable an announcement to be made *re* Stipendiary Court.

The Stipendiary Magistrate's Court was opened at 10.30 a.m., and adjourned till the 21st April next.

The Native Appellate Court reopened.

Witness (to Sir W. Buller): Rewi, Hori, and Hare Rota were adults in 1886. Katarina and Wirihana were minors, but almost grown up. Kerehi Tomo was afterwards appointed trustee for these minors. He was present at the meetings of 1886. No. 10, Inia Tamaraki, was dead in 1886. Iritana Hanita and others represented him in 1886 at the meetings. Himiona Kowhai also represented him. I cannot remember any others. No. 15, Tamate Maunu, was dead in 1886. He was represented at the meetings by Hariata Amorangi, Mereana Amorangi, and Rawinia Ihaia. They were all present at the meetings of 1886. No. 16, Ihaka te Rangihouhia, died before 1886. Wirihana Hunia represented him. No. 17, Matene Pakauwera, died before 1886. Pirihira Hautapu represented him at the meetings in that year. No. 19, Himiona Taiweherua, died before 1886. I think Pirihira Hautapu was one who represented him. Paranihia Riwai represented him at the meetings. No. 23, Riwai te Amo, was dead in 1886. Ngatahi, Hariata Hoani, Himiona Kowhai,

Mereana Maunu represented him. They were all present at the meetings of 1886. No. 29, Heta Matakatea, died previous to 1886. Roka Hanita, Winara Matakatea, Kara Matakatea, Miriama Matakatea, Te Hore Matakatea, Wiremu Matakatea, Roka Miriama, and Wiremu were the *kaumatuas* at that time. They were all present. Roka was afterwards appointed trustee for the minors. No. 30, Te Matenga Kinotahi, died before 1886. Rahira, Karaitiana, Ani Patene, and Mata represented him at the meetings. No. 31, Hetariki Matao, died before 1886. Rihipeti Nireaha and Hetariki Tamaiti represented Hetariki at the meetings in 1886. No. 34, Petera te Ha, died before 1886. Rihipeti Nireaha represented him at our meetings in 1886. No. 42, Herewini te Rakautihia, was dead in 1886. Makere, Ruihi Wunu, Heni Haimona, Mere Ngakuka, and others represented him in 1886. They were all present. No. 43, Akuira Takapo, was dead in 1886. His sister perhaps represented him at the meetings. I forget her name. No. 51, Te Hapimana Tohu, was dead in 1886. Pirihira Hautapu was his representative at our meetings in 1886. No. 59, Maaka Ngorongoro, died before 1886. Rihipeti Nireaha represented him at the meetings. No. 61, Karena Taiawhio, was dead in 1886. I forget who represented him at our meetings. Some one at Turakina has been appointed successor. Ruruhira Ngakuira was at meetings of 1886. No. 77, Waitere Kakiwa, died before 1886. I, Makere te Rangimairehau, Raniera te Whata, Motai Mahanga, Te Kiri Poretene, Ihaia Taueki, and Roka Hanita were present at the meetings of 1886, and represented this deceased. No. 84, Te Peeti te Aweawe, was dead in 1886. Ereni te Aweawe, Rauira te Aweawe, Hare Rakena te Aweawe, Hanita te Aweawe, and Tamihana te Aweawe represented him at the meetings of 1886. No. 88, Ruta te Kiri, was dead in 1886. Roka Hanita, Miriama, Para Hori, Winara Hori represented him. Roka was appointed trustee for the others. No. 91, Hereora, died before 1886. Noa Tame, Te Kiri Porotene, Kahukore Porotene, Taare Porotene, Tiaki Porotene, and Unaiki Tame represented her at the meetings. Te Raraku was at the meetings, and represented her also. Cannot remember any others. No. 94, Ani Tihore, was dead in 1886. Ereni te Aweawe represented her. Cannot remember any others. Meretene Kerei te Panau was present at the meetings. No. 97, Heni Wairangi, was dead in 1886. Rihipeti Nireaha and others represented her. I forget the others. A Heni Wairangi, who was called after the deceased, was at the meetings. No. 99, Oriwia te Mitiwaha, was dead in 1886. Norenore and Te Warena Kerehi were her representatives at the meetings in 1886. Pirihira Hema was at the meetings also. No. 100, Hera Tupou, was dead in 1886. Nehenehe or Hariata Tupou, Pire Tupou, and Tuhi Hori represented her at the meetings. Pahau Hoani was present; so was Te Hori Tupou. No. 101, Pirihira te Rau, was dead in 1886. Her husband, Manihera te Rau, and Paranihia Riwai represented her at the meetings. No 102, Ria Rona Taueki, died since 1886. She was present at the meetings in 1886. No. 104, Turuki, died long before 1886. Her brother, Te Ahuru, was not present at the meetings. Turuki was not represented. No. 105, Pirihira te Whata, died before meetings in 1886. Raniera te Whata and Noa te Whata represented her. No. 107, Wiki Hanita, was dead in 1886. Iritana Kowhai, or Hanita, and Himiona Kowhai represented her. No. 108, Merehira te Marika, died previous to 1886. Mereana Maunu, Rawinia Ihaia, or Ngatahi, represented her at the meetings of 1886. No. 114, Ema te Whango, was dead in 1886. Te Mananui and Maata Hinehine represented her at the meetings. Te Watarauhi te Hau was at the meetings also. No. 115, Roreta Tawhai, was dead in 1886. Te Mananui Tawhai represented Roreta at the meetings. No. 117, Mere Mionga, was dead in 1886. Te Ruihi Wunu and Heni Haimona represented her. There were others who I forget. No. 122, Arihia Toitoi, was dead in 1886. Don't know who represented her. No. 123, Merehira Tohu, died before 1886. Waata Tohu and Rora Tohu represented her at the 1886 meetings. No. 125, Merehira Waipapa, was dead in 1886. Her representatives were there, but I cannot name them. No. 129, Peti Uku, was dead in 1886. Hoani Puihi represented her at the meetings in that year. Taitapu Putiputi was present at the meetings of 1886. No. 57, Tamati Taopuku, was dead in 1886. Hema Hanuhanu represented him at the meetings. No. 93, Anikanara te Whata, died before 1886. No; I have made a mistake. I don't know that person. The only Anikanara te Whata I know is alive, and was at the meetings. No. 142, Miriama Piripi, is dead. She was a Ngatikahungunu. I know nothing about her. No. 136, Ngahuia Tirae, was a Ngatiwhakatere. I don't know whether she was dead or not in 1886. Do not know whether she was represented. No. 55, Tiaki Tikara, was dead in 1886. Pene Tikara and Hana Rata represented him at the meetings. No. 50, Ariki Hanara, was dead in 1886. Ngarori Korako succeeded him. Rora Hakaraia represented the deceased at the meetings; she was his mother. No. 36, Tamati Muruahi, was dead in 1886. I don't think he was represented at the meetings. No. 65, Rihari Tarakihi, died last year. He was at the meetings in Palmerston in 1886. No. 78, Ratima Potau, was dead in 1886. I don't know who represented him. He was a Ngatiapa: lived and died with them. No. 76, Hamuera Potau, died before 1886. Was not represented. He was also a Ngatiapa. No. 77, Matiaha Mokai, was dead in 1886. Was not represented. He belonged to Wairarapa, and the Wairarapa people did not attend. No. 80, Hori te Mawae, was dead in 1886. Kemp represented him at the meetings. No. 82, Te Miha o te Rangi, was dead in 1886. I don't know who represented him. He was also a Wairarapa man. No. 58, Topi Kotuku, died long before meetings of 1886. Rora Hakaraia represented him.

Mr. McDonald: No questions.

Mr. Stafford: No questions.

Cross-examined by Mr. Baldwin.

Witness: Only the Muaupoko *tuturu* took part in the meetings of 1886. I don't know whether any of the Ngatikahungunu were represented at the meetings. I saw some of the Ngatiapa at the meetings. I did not say that the Ngatiapa gave No. 14 to Kemp. I said that Muaupoko gave it. Wirihana Hunia was the only Ngatiapa I saw at the meetings. None of the Rangitane were present when No. 14 was given to Kemp. They had no right, and were put up on

the hills. I don't know whether the meeting which gave No. 14 to Kemp was before or during Kahui's Court. No. 14 was given to Kemp after the order was made for the 1,200 acres at Raumatangi. I say again that only Muaupoko *tuturu* were present at the meeting which gave No. 14 to Kemp. All the resident Muaupoko were present except those at Parihaka, and they gave their consent when they returned. All the successors of the deceased owners were present. I mean the Muaupoko proper. I am certain that the persons I say were present at the meeting of 1886 were present.

Cross-examined by Henare Apatari.

Witness: The Muaupoko proper gave the 1,200 acres to the descendants of Whatanui. The same people gave Kemp the land at Ohau for himself. All agreed when they remained silent, including Wirihana Hunia; no one dissented. The people unanimously consented in the Court, and said that no one objected when the Court called for objectors. I think it was in the Court that Te Kiri gave her consent in words. She assented with the others in the barn.

To *Mr. McDonald:* You were present at the meeting which gave the Ohau section to Kemp. I saw you there myself.

Cross-examined by Hamuera Karaitiana.

Witness: All the persons of Muaupoko proper that I have named were present when the land at Ohau was first discussed. It was proposed that Kemp should hold it as trustee. All Muaupoko consented. It was shown to the Court. The matter was brought before the Court. That is all I know of the arrangement. The parcel at Raumatangi was also brought before the Court. The first piece brought before the Court was refused, and on that account it became necessary to take the other parcel into Court.

Sir W. Buller did not wish to re-examine, and stated that Kemp's case was closed. He could call many more witnesses, but would not take up the time of the Court by doing so. He undertook to tender any witness the Court might require, and stated that, if after he had heard witnesses for the other parties he considered it necessary, he would ask the Court to allow him to call rebutting evidence.

The Court asked Mr. Stafford if he was ready to go on.

Mr. Stafford said Mr. Stevens was absent, and asked the Court to adjourn till to-morrow. He was taken by surprise, as he had no idea that Sir Walter Buller would close his case to-day. He asked the Court to intimate what the legal questions were that it intended to refer to the Supreme Court.

The Court said that it did not intend to disclose them until the conclusion of the case.

Mr. Stafford said he intended to submit certain questions of law and fact which would show that Sir Walter Buller's case was bad. If the Court consented to hear argument on legal points it might come to the conclusion that it was unnecessary to proceed further.

Sir W. Buller hoped the Court would adhere to its former determination—that the case should proceed to a conclusion.

Mr. McDonald supported Mr. Stafford's application for adjournment, on the ground that it might result in the amalgamation of some, if not all, of the counter-claimants' cases. He would like an adjournment till 2 p.m. to-morrow.

Sir W. Buller opposed any adjournment beyond 10 a.m. to-morrow.

Mr. Baldwin said there were several points of importance to be considered by the Court. If these points were not to go to the Supreme Court they must be argued before this Court. If counsel were made aware of the points that were going to the Supreme Court their arguments might be unnecessary and time might be saved.

Mr. Stafford considered Mr. Fraser was in an anomalous position. His clients had no interest in the case, and he should not be allowed to cross-examine witnesses. Although nominally representing some of the Muaupoko, who supported Kemp, he was really acting for Kemp. The Muaupoko should be represented by independent counsel.

The Court said it understood that Mr. Fraser represented a certain number of the Muaupoko who consented to a certificate being granted to Kemp.

Mr. J. M. Fraser repeated that he was not acting for Kemp, and that he had nothing to do with him. He represented an independent body of Muaupoko, who said that by voluntary arrangement No. 14 was allotted to Kemp for himself.

The Court said there was a good deal in Mr. Stafford's contention that Mr. Fraser was placed in an anomalous position by only nominally representing certain persons without opening a case or calling evidence, and the question arose whether, although the Court had complied with his application to be allowed to cross-examine, before the matter had been fully discussed that it would be justifiable under the circumstances to allow him to do so.

Mr. Fraser stated that if this was the view the Court held he would not press the matter, but would like till to-morrow morning to consider whether he would open a case or not.

Sir W. Buller pointed out that it was rather unfair to him that objection was taken to Mr. Fraser being allowed to cross-examine the witnesses on the other side.

The Court pointed out that Sir Walter Buller's witnesses would have been subjected to being three times cross-examined irrespective of whether Mr. Fraser had received permission to cross-examine the witnesses for the defence or not.

Mr. Beddard said if the counter-claimants had issues of law to show that Sir Walter Buller's case was bad, then the whole partition of 1886 must be bad, and the whole of the Muaupoko would have a proprietary interest.

The Court stated that it did not mean the whole partition was bad, but only the portions the titles to which were suspended by the Act.

The Court suggested that McDonald might go on with his case.

Mr. McDonald urged that if the adjournment was granted it might be possible to shorten the case materially.

The Court had no objection to grant an adjournment till to-morrow morning, if necessary. Meantime Messrs. McDonald, Baldwin, and Stafford might discuss the advisableness of amalgamating their cases. It did not consider it necessary to hear legal argument at present.

Mr. Stafford hoped the Court would not rule that it could not hear counsel on the law and facts as they stand, contending that Sir Walter Buller had not proved his case.

The Court stated that counsel would have an opportunity to refer to the law and facts alluded to in their opening address, but it did not seem necessary to hear argument in support of these points until after evidence for the defence had been adduced. The proposal to close the case without calling evidence appeared to be premature, and was entirely at variance with the attitude taken up by Kemp's opponents on the Court announcing shortly before Judge Wilson's examination was closed that it might be unnecessary to proceed further with the case until certain legal and technical points had been decided by the Supreme Court. On that occasion it had been pointed out that it would probably prove very inconvenient if the case was interrupted at that stage, especially should it be found necessary to take further evidence on receiving the decision of the Supreme Court that a trust did exist in respect of Section 14. It was further urged, in support of the contention, that the Court could not then come to a satisfactory decision in the matter if it only heard part of the evidence, as it would not be in full possession of both sides of the case. The position had not been altered in any way since that opinion had been expressed to render it unnecessary now to adhere to the course then approved of.

The Court adjourned till the 18th March.

THURSDAY, 18TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Hoani Puihi said Sir Walter Buller was acting for Kemp, McDonald for Himiona, Stevens for Wirihana Hunia, Mr. Stafford was assisting Mr. Stevens, Mr. Baldwin was acting for the Crown. Rihipeti and Te Paki were also represented by conductors, whereas the tribe were not up to the present time represented at all. They wished Mr. J. M. Fraser to act for them, and had chosen him to act for them.

The Court told Hoani Puihi to say more definitely who he spoke for.

Many of those in the body of the Court, in reply to Hoani Puihi, assented to what he had said.

The Court read out the retainer to Mr. Fraser, and said that, as the people were present, it considered it expedient to ascertain whether they all consented.

Mr. Stafford wished to know whether it was necessary to do so now.

The Court said it might have something to do with Mr. Fraser's request yesterday to be allowed till to-day to decide whether he would set up a case.

Mr. Fraser stated that on meeting his clients last evening they had expressed the strongest desire to be represented, and asked to be allowed to do so.

The Court said, if Mr. Fraser's case was identical with Sir Walter Buller's, there did not appear to be any necessity for his setting up a case.

Mr. Fraser said there was no doubt Sir Walter Buller's case and his were practically the same. His case was based on an agreement. The receiver under the agreement had been before the Court, and he submitted that the givers had a right to be heard.

The Court said they undoubtedly had if they set up a case.

Mr. Fraser said, in order that the tribe might be satisfied, he would ask permission to set up a case which would be similar to Sir Walter Buller's, except that it was for the giver instead of the receiver. The Court would remember that Sir Walter Buller's side had been charged with conspiracy. Evidence might be led in that direction, and the people would be at a disadvantage. His case would be of the shortest possible duration.

Mr. Stafford contended the matter had not changed. They alleged that there was no trust, and it was for them to prove it. There was no precedent for allowing Mr. Fraser to set up a case. He had admitted that his case was identical with Sir Walter Buller's. The Court, he submitted, had no power to allow Fraser to set up a case. His side had not charged Sir Walter Buller's clients with conspiracy, but merely with irregularities.

Mr. Beddard reminded Mr. Stafford that he had said that all the owners should be represented.

Mr. Stafford said he had meant that they should be represented if the Court decided that there was a trust.

The Court said, if Mr. Fraser's case was identical with that of Sir Walter Buller's he would not have the right to cross-examine. In order to do so he must put himself in a proper position.

Mr. Fraser said he intended to set up a case, as the giver was entitled to be heard.

The Court asked why Sir Walter Buller had not called other witnesses. He could have done so if he had considered it necessary. The whole question was whether it was likely to serve any purpose if Mr. Fraser opened a case.

Mr. Fraser said his evidence would confirm that brought by Sir Walter Buller.

The Court asked Mr. Fraser if he did not consider Sir Walter Buller's evidence sufficiently full on the question of voluntary arrangement.

Mr. Fraser said he did, but his clients asked that they should have the privilege of cross-examining witnesses who said that there was no arrangement.

The Court said the position had not altered since yesterday. Mr. Fraser's clients had not properly understood the position. They appeared to consent unanimously to Kemp having No. 14, and Sir Walter Buller could have called any of them who chose if he had considered it necessary.

Mr. Fraser said he would leave himself in the hands of the Court.

The Court said it did not appear to be necessary for Mr. Fraser to open a case.

Mr. Fraser asked to be allowed to open a case later on if he thought it advisable to do so.

The Court informed him that the matter must be decided before the counter-claimants commenced.

Sir W. Buller reminded the Court that if the other side introduced new matter he would ask leave to call rebutting evidence, in accordance with the rules of the Court.

Mr. Stafford stated that he had intended yesterday to place certain questions of law and fact before the Court to show that Sir W. Buller's case was bad, but as he judged that the Court had determined to send the case to the Supreme Court he had decided not to do so, as it would be unwise.

Mr. Stevens regretted he was absent yesterday. He had understood the Court would not sit. With regard to the merging of cases, he was taken by surprise at Sir Walter Buller's case closing so suddenly and unexpectedly. He would ask the Court to indulge Mr. McDonald and himself by granting an adjournment until 2 p.m. If the adjournment was allowed it would facilitate rather than retard business, as the cases could be condensed.

Mr. McDonald said in the absence of Mr. Stevens those in town had met and done what they could, but had not reached the point of merging the cases, as the interests of parties were so diverse. It was agreed, however, that he was to be the first witness. He had not had time to confer with Mr. Stevens. Time would have been saved if the adjournment had been granted, as asked for, till 2 p.m. He supported Mr. Stevens's application for a further adjournment, but, if not allowed, he was prepared to go on, say what he intended to prove, and go into the box.

The Court considered that after what Mr. McDonald had said there was no necessity for any adjournment. Mr. McDonald could go on with his case.

Sir W. Buller asked whether the other conductors could cross-examine Mr. McDonald.

Mr. Stevens claimed the same right to cross-examine Mr. McDonald as he had to cross-examine the witnesses called by Sir Walter Buller.

Mr. Stafford said he would only put questions on points of law.

The Court stated that Mr. Stevens and the other conductors could cross-examine Mr. McDonald if their cases were diverse.

The Court informed Mr. Stafford that it had not declined to disclose the legal points that were in the mind of the Court, but had said that it was inadvisable to disclose them. It considered so still.

The Court considered this a fitting opportunity, inasmuch as counsel on neither side had called attention to the anomalous position the Appellate Court was placed in by the Horowhenua Block Act, to remark thereon. The Act confers concurrent jurisdiction to a certain extent on two Courts differently constituted. The authority conferred on the Appellate Court is absolute to deal with all matters connected with the block in question, excepting the question as to the validity of certain alienations in connection with division 14. Section 10 confers jurisdiction on the Supreme Court for that purpose; but the Appellate Court is the only tribunal that can determine all other matters in connection with the several parcels of land brought under its jurisdiction by the Horowhenua Block Act, and on these questions its decision is final. It may happen, therefore, that the decision given by the two Courts in respect of Subdivision No. 14 may clash, and should that happen neither Court can reverse the decision of the other. The result, therefore, would be that two conflicting decisions will co-exist about the same matter. It seems therefore advisable, in view of this possibility, that certain points of law should be referred to the Supreme Court for its opinion, to prevent such an undesirable state of affairs taking place; for, notwithstanding anything this Court may do in exercising its functions, it will not be considered binding by the Supreme Court in respect of any matter it is required to deal with under section 10. It is rather an anomalous position of affairs, but that seems to be the position. The obvious mode of preventing a difficulty of this kind from occurring would have been to have given a right of appeal to the Supreme Court on certain points only, which could have embraced the existence or non-existence of a trust in section 14, and the determination of the validity or otherwise of the several alienations connected therewith. Had that been done the possible complications referred to would have been avoided.

Mr. Stafford said that appeared to be the position, but there were other difficulties in the way which he would not refer to now.

The Court called upon McDonald to open his case.

Case of Himiona Kowhai.

Mr. McDonald: Before going into the box to give evidence I desire to make a few remarks by way of opening, though there is no need to occupy much time. Still, I desire to say something by way of opening of the case of my client, Himiona Kowhai, and any others of Muaupoko who it may hereafter appear are of the same mind as to Major Kemp's claim, now before the Court, as Himiona Kowhai. Major Kemp's case, as disclosed by the witnesses called by Sir Walter Buller, rests, it appears to me, on four main allegations: (1.) Allegation of Major Kemp that the Raumatangi Section, of 1,200 acres, was awarded by the Native Land Court of the 25th November, 1886, viz.: The Court of which Mangakahia was on that day and year the Assessor, and the further allegation of Major Kemp that the only reference in Court on that day to the Ohau Section, of 1,200 acres, was his voluntary statement to the Court that he had at first intended to allot 1,200 acres at Ohau to the descendants of Whatanui, but that they had objected to it, and he had consequently allotted the Raumatangi Section to them. Evidence will now be adduced in

contradiction of this allegation. (2.) Allegation of Rangimairehau and Raniera te Whata that at a certain meeting of Muaupoko outside the Court, and previous to the final allocation by the Court of the Ohau Section, at which meeting these witnesses allege I was present, Major Kemp proposed that the Ohau Section (now No. 14) should be allotted to him (Kemp) for himself as his individual share of the Horowhenua Block, and that Muaupoko then and there agreed to that proposal, as signified by a total absence of dissent on the part of any one whomsoever. Evidence will now be adduced in contradiction of each and every clause of this allegation. (3.) Allegation by Judge Wilson that on a certain day, apparently the 2nd December, or, as fixed by Major Kemp, on the day and immediately after the award by the Court of 1886 of one square foot to one Wiremu Matakara, Major Kemp, in that Court, applied in the ordinary way for 1,200 acres to be awarded to him (Kemp) for his own individual use and benefit, but that the Court did not at that time make any award or order on the application. Evidence will now be adduced in contradiction of this allegation; but I desire to say that in contradicting his Honour Judge Wilson it is not in any way intended to do more than attribute to him most grievous lapses of memory and excessive indulgencies in an apparently lively imagination. (4.) Allegation of Judge Wilson that on a day succeeding the above-referred-to alleged application of Major Kemp—viz., apparently on the 3rd December, 1886—Major Kemp again applied in Court for the said section of 1,200 acres, and that it was then awarded to him by the Court as applied for—viz., for his own individual use and benefit. Evidence will now be adduced in contradiction of this allegation, but again without imputation of more than lapse of memory and indulgence in a powerful imagination on the part of his Honour Judge Wilson. I will now present myself as a witness.

ALEXANDER McDONALD sworn and examined.

Witness: I live at Shannon. I will confine my evidence as strictly as possible to No. 14. I have been connected with this block since about the middle of 1886. My especial business then was to obtain a title to the railway-line running through the Horowhenua Block. I waited upon Kemp, the sole certificated owner, and after some negotiation proceeded to Wellington with Kemp, as he wished to see the Government on the matter. He submitted through me certain proposals to the Government, to which he said if the Government would agree he would make application to the Court to partition the block, that being considered necessary precedent to any title in fee-simple being granted for any part of the block. The proposals were considered by the Government, Mr. Ballance being Native Minister, and, as I thought, generally agreed to by Mr. Ballance; whereupon Kemp signed an application in Mr. Lewis's office for partition of the Horowhenua Block. Kemp shortly afterwards fell very ill. I was informed that his life was despaired of. In consequence of his illness the sitting of the Court was adjourned from time to time. My impression is that several months elapsed before the Court sat to hear the application. The Court opened in Foxton early in November, or late in October, 1886. Kemp arrived in Palmerston, and I had an interview with him. He was still extremely ill, and on crutches. I suggested to him that I should go to Foxton, and move the Court to adjourn to Palmerston. He agreed. I went to Foxton, and waited upon Judge Wilson in his private room, and informed him of my object in going to Foxton. He told me that some one had already appeared in his Court and made the same application, and that he had consented. I then said that neither Kemp nor Muaupoko had any plan of the land to be partitioned, but presumed the Court would have a plan. If the Court would allow the Muaupoko to take a tracing off the plan I believed it would greatly facilitate partition. The Judge told me I could take a tracing when the Court reached Palmerston. I returned there the next day, and informed Kemp of what I had done. I made arrangements for comfortable lodgings for Kemp at Palmerston, and business began. The Court came to Palmerston about the 11th or 12th November, and, so far as I can recollect, the Muaupoko were then in Palmerson's barn, and in tents. I will now say something about the outside meetings, so often referred to. The outside meetings commenced, so far as I can recollect, about the 12th November, but there was neither then nor at any other time thereafter any meeting called for any specific purpose. The people lived there as they would in their own kaingas. There was always somebody there, but I should say never at any one time were all the owners who were in Palmerston present together. Something would be proposed to the persons who might happen to be present in the barn, and more or less agreed to. Then somebody else would come in who had been wandering about the town or elsewhere, and the matter that had been partially arranged had to be gone into again, and so it went on continuously night and day. Under these circumstances I say that up to the 25th November only three things had been so completely agreed to that I could feel myself justified in going to the Court and saying that they had been agreed to. One of my means of satisfying myself of the general consent was the use of tracing of the block. Kemp had employed a surveyor, a Mr. Palmerson, in whose house he lived, to take tracing from the Court plan. He took three separate tracings. When anything was proposed and any considerable consent given to it, I got Palmerson to put the proposed subdivision on a tracing, which for purposes of future reference I will call No. 1 tracing. When that matter became, as I thought, more fully agreed to the subdivision was transferred to No. 2 tracing, and when it was finally agreed to it was put on to No. 3 tracing. No. 1 and No. 2 tracings were both in view of any one who chose to look at them in the hall of Palmerson's house, so that if any objection was made the objector and Major Kemp knew what was objected to. On the afternoon or evening of the 24th November these three sections I have referred to as having been agreed to up to this time had been transferred by Palmerson to No. 3 tracing. I do not recollect whether I intimated to the Court that we were ready to go on with part of the partition on the following day or whether the Court informed Kemp through me that he would be required to go on on the following day, but the minutes of the Court show that we went to the Court on the morning of the 25th November. I now propose to take the minutes of the Court as they are. I accept them as correct. [The minutes of the Court, read as follows: Vol. 7, page 182, "Major Kemp: I

am the applicant in this case," &c.] I admit that these minutes are correct, though meagre. I wish to call attention to certain sentences only. I stated to the Court that three subdivisions were going to be asked for on the 25th November. I draw attention to this: "The applicant desires . . . The immediate application is the railway-line." (*Vide* Vol. 7, page 183). The Court asked for explanations about the railway-line and then made the order. (*Vide* Vol. 7, page 184.) Then I requested that No. 3 be taken before No. 2, as the Under-Secretary had not the agreement for No. 2. Apparently I had obtained leave of the Court to take the township before the 1,200 acres. Mr. Lewis then gave evidence as to the 4,000 acres. (*Vide* Vol. 7, page 184). The Court then made an order for the 4,000 acres, position to be delineated on the plan. Mr. Lewis was then examined on his former oath as to the 1,200 acres for the descendants of Whatanui. (*Vide* Vol. 7, page 185). I desire to draw special attention to part of Mr. Lewis's evidence: "I cannot remember that the locality was expressed, but the area was." Objectors were called for; none appeared. Order made (page 185). The words inserted in red were not used at the time, nor did the Court order refer to No. 9, as now shown on the Court plan of Horowhenua Block. I state now, on my oath, that the 1,200 acres shown upon that tracing, and immediately after put upon the Court plan, was that now known as No. 14. That was the section before the Court shown upon the tracing produced by me and transferred to the Court plan, and was the section referred to in the order. On the same day, and before we left the Court, it was put by Palmerson on the Court plan. Whether it was at that time given a number or not I am not prepared to swear, as I cannot remember distinctly, but I will point out that it was the third order made on that day, and I am told that the figure "3" still appears upon it under the figures "14." I will now explain that the Court will find by the minutes that I told the Court that Kemp would apply for an adjournment to enable other subdivisions to be agreed to. Apparently that adjournment was granted, because it is noted in the minutes that the Court adjourned till the Saturday morning. The Court resumed on Saturday, the 27th November, and adjourned till the 1st December, because there was no Assessor. The Court met on the 1st December. The first entry is "Keepa te Rangihiwinui wishes Mr. McDonald to conduct his case." (*Vide* Vol. 7, pages 177 and 178.) I made no application to the Court at that stage on the morning of the 1st December with reference to the proceedings of the 25th November. I made no reference at all to those proceedings at that time. [Reads minutes on page 188, "The third was 1,200 acres," &c.] I now say that as the Court uttered these words I intervened. I said, "Stay"; the result of my intervention being that the Court said, "This Court does not propose to delineate on plan," by which I understood that the Court did not confirm that particular division, as it had done the two previous ones—Nos. 1 and 2. The next sentence purports to report something I said. It does not appear very intelligible. The Court will observe that on the 25th November, after the order was made respecting the 1,200 acres, a man got up—it was Nicholson—and made some objection to the land shown upon the tracing. Personally I thought nothing whatever of his objection, holding, as I did, that it was a most gracious act on the part of Muaupoko to give any land at all; but the Court will observe that between the 25th November and the 1st December there is an interval of five days. During these five days the Ngatiraukawa objection assumed a very different aspect. I had several casual communications with young Nicholson. Mr. Lewis was there, and talking a good deal about the matter. I think the agreement had arrived during the interval, and contained these words; "Near the Horowhenua Lake." I had been intimately associated with different hapus of Ngatiraukawa, and I strongly suspected that their object was not solely to get 1,200 acres in any particular place, but to have the finding of 1873 set aside by Parliament, and the whole Horowhenua Block made *papatupu* again. I considered it right, therefore, to caution Kemp, and suggested to him the allotment of an alternative section to satisfy the agreement of 1874 and close the mouths of Ngatiraukawa in the event of their going to Parliament. I was under the impression that Kemp was influenced by my representations, and the allotment of 1,200 acres adjoining the 100 acres at Raumatangi was proposed to Muaupoko by Major Kemp. The proposal was discussed exactly as all others were, and not otherwise. It was not till the dinner adjournment of the 1st December that it was finally agreed by Muaupoko to make that alternative allotment. At 2 o'clock on that day I took the application into Court, and made it, explaining to the Court at the time why it was made. It will be seen that there is an entry in the minutes of the afternoon of that day as follows: "This order made as prayed," &c. (Vol. 7, page 193). I will proceed now to last day of Court (Vol. 7, page 200): "Application from Major Kemp . . . The order is made as prayed," &c. This is one of the allegations I said in my opening I would bring evidence to contradict. I say that I personally made that application, and that no one else did, and what I had in my mind when I made it was that that third order, made on the 25th November, was left unconfirmed on the 1st December; and though I pretended to know nothing of the legal aspect of the matter, as the Court considered it necessary to confirm the others, I thought it safest to get this confirmed. The effect of it was that Kemp had two alternative sections in his hands to satisfy the agreement of 1874 with McLean. I state on my oath that I never heard any proposal by Kemp that the 1,200 acres now known as No. 14 should be allotted to him as his share of Horowhenua, at any meeting or anywhere else. I was present in Court on every occasion on which Horowhenua was before it, and I swear positively that Kemp did not, on the 2nd December, or at any other time, apply in open Court for 1,200 acres for himself. In my view at that time, and as I understood the law, the order of the Court had the effect of absolutely vesting the legal estate in the person or persons named in the order; or, rather, that the certificate which followed the order did so. It was also my opinion of the law as it stood that the Court could not make an order for a piece of land otherwise than as an order in fee-simple. Consequently I was of opinion that the Muaupoko people were showing absolute unlimited confidence in Major Kemp.

Mr. Stafford said that before the cross-examination of Mr. McDonald was commenced he would like to mention certain points, and ask the other side whether they assented to them or not. He wished to give the other side a knowledge of the counter-claimants' case. He would put three questions to Sir Walter Buller: (1.) Was Sir Walter Buller prepared to go into the box and submit to cross-examination as a hostile witness? (2.) Would Sir Walter Buller produce the draft of the deed of release? (3.) Did Sir Walter Buller or Major Kemp propose to produce any accounts of the moneys received and expended by Kemp? There dropped from the Court at an early stage of this case an intimation that there had been no order made cancelling the prior title to this land before the Court exercised jurisdiction on partition. He would like to ask the Court whether it had in its mind that the cancellation of the certificate of title of 1873 was a condition precedent to partition under "The Native Land Division Act, 1882."

The Court did not think it had made any statement on the point, but it was in the mind of the Court that the cancellation of the instrument of title was a condition precedent to division, and that it had not been legally cancelled. It was evident to the Court from the replies of Judge Wilson that the provisions of the Division Act had not been complied with. There was evidence on the face of the instrument of title that the cancellation had not been made until some time subsequent to the proceedings before the Court in December, 1886.

Mr. Stafford said another of their points was that Judge Wilson stated in his evidence that he acted administratively under section 56, and not judicially.

Sir W. Buller declined to reply to the questions put to him by Mr. Stafford at this stage, and said the other side must conduct their case in their own way.

The Court announced that Sir Walter Buller had already said that he would give his assistance on the question of accounts.

Sir W. Buller said he would do so when No. 11 came on. He contended the accounts had nothing to do with this case.

The Court stated that when the question of trust had been decided the position of those who supported Kemp would be considered.

Mr. Baldwin did not understand the Court to rule that it was only if Kemp was found to be a trustee that he could be excluded from No. 14. He contended that the Court should not give any decision awarding the land to Kemp himself until question of accounts had been gone into.

The Court would not rule on any point until it gave its decision on the whole question.

Mr. Stafford contended that accounts should be furnished now.

Mr. Baldwin claimed the right to cross-examine last.

The Court said it was not of much consequence. Mr. Baldwin might cross-examine after the counter-claimants if he chose, but the applicant had the undoubted right to cross-examine last. It considered it advisable that the question of accounts should be made a separate proceeding.

Mr. Stevens was satisfied with Mr. McDonald's evidence, and had therefore no questions to put to him.

Cross-examined by Henare Apatari.

Witness: I remember Muaupoko living in the barn and tents at Palmerston. Don't remember any besides Muaupoko particularly. Visitors came and went. Think I remember Nireaha Tamaki and Hanita te Aweawe coming there occasionally to see Muaupoko. Never heard Kemp asking Muaupoko for 1,200 acres for himself. Suppose because he did not do so. There were two 1,200-acre sections discussed at meetings, both to be vested in Kemp for purpose of an agreement for the cession of one of them to descendants of Whatanui. Don't know how many. Muaupoko said they consented, but I was satisfied that those who were present did consent that Kemp should convey 1,200 acres to descendants of Whatanui.

Hamuera Karaitiana: No questions.

Mr. Baldwin said as the Court had ruled that he must come before Sir Walter Buller, he would cross-examine the witness now, but before counsel addressed the Court he would produce authorities to show that counsel for the Crown had the right to address the Court last.

Cross-examined by Mr. Baldwin.

Witness: I said I was perfectly clear that no application was made by Kemp for 1,200 acres on the 2nd December. [List supposed to have been handed to Court of 1886 by Kemp produced to witness.] That corroborates my statement that the 1,200 acres was applied for on the 3rd December, and not on the 2nd December.

Cross-examined by Mr. Beddard.

Witness: I was not employed by Kemp, nor did I advise him in connection with sale of 4,000 acres to the Government before partition of 1886. I was acting for the Wellington and Manawatu Railway Company at that time. I believe Kemp himself proposed the sale of 4,000 acres for the township. [Horowhenua Commission, page 73: "I then learned that Land Purchase officers," &c.] That was long before I had anything to do with it. I was acting for the Railway Company. I first heard of proposal to sell land for township when I went to Wellington with Kemp. This was before partition. I was aware at that time that any sale by Kemp would be *ultra vires*. I wrote the proposal for Kemp, and went with him to Wellington. I think Kemp gave me £25 or £50 as a present. I looked upon it that any agreement made by Kemp would require confirmation by the people on partition. There was no agreement between Kemp and myself before partition that was *ultra vires*. I heard that there was an agreement between Kemp and the Wellington and Manawatu Railway Company drawn by Sir Walter Buller, but I never saw it. [Vol. 7, page 188, "Mr. McDonald said that the agreement between Kemp and himself," &c., read.] That is a mistake: I think it must mean between Kemp and McLean. [Vol. 7, page 188, "This Court does not propose to delineate on the plan," read.] That was in consequence of my intervention. My explanation of it

is this: I thought the Court was about to use the same words about it as it had about the preceding sections, and I asked the Court not to do so. I was really asking the Court not to confirm the order, because I thought it might be better to put the Ngatiraukawa somewhere else. The delineation is made generally at the time the order is made. I do not think the minute implies that an order had been made and the delineation was to follow. Nos. 1 and 2 were confirmed by the Court of its own motion, not on my application. There is no minute of my suggestion to the Court to hold its hand and not make an order for No. 3. The subdivision stood as it was, so far as I know. Nothing further was done at that time about the 1,200 acres for the descendants of Whatanui. I can only give a suggestion why I said, "The agreement between Kemp and himself, &c." The agreement had been fully confirmed outside, but it may have entered my mind to inform the Court that it was not intended to repudiate the agreement altogether, but merely for the purpose of suspending the section for the time. I say that Kemp had no right to make the agreement. The Ohau Section had been fully agreed to by Muaupoko before the 25th November. There is nothing in the minutes to show that I intervened at all, but I did do so, and I wish now I had not. I admit the accuracy of the minutes as far as they go. The section that was third in order on the 25th, and which I believe was referred to on the 1st December, was the section at Ohau, now known as No. 14. [Vol. 7, page 193, "The Court awarded this this morning in No. 3 Subdivision to Keepa te Rangihiwinui," read.] If you can make sense out of that without explanation you are cleverer than I am. I suppose I made some explanation when I asked the Court not to make an order for the 1,200 acres on the 1st December, 1886. It is quite possible I did. Part of the statement is true, as to lending of the Courthouse to Ngatiraukawa. [Horowhenua Commission, page 162, questions 126, 127, and 128 (Nicholson's evidence), read out.] I cannot explain those replies. You had better ask Nicholson. I have not the slightest recollection of seeing Hitau at all in the Court of 1886. I heard no objection to the No. 9 section in the Court. There was an angry discussion among Muaupoko outside the Court about the land being allotted at Raumatangi at all, and about the exclusion of Ohenga. This was during the interregnum. I cannot remember any particular individual who objected. I do not remember that Muaupoko referred to me specially about the boundary, because I did not know the land. I applied for No. 9 on the afternoon of 1st December. [Application from Major Kemp, &c., Vol. 7, page 192.] The person who applied described the boundaries. I got my final instructions about No. 9 during the dinner-hour. Nicholson did not take part in Muaupoko meetings, and urge Kemp to fulfil his promise. No Ngatiraukawa attended them. The Ngatiraukawa must have communicated with Kemp. They did not communicate with Muaupoko at all, so far as I know. If it has been stated that the disputing about the boundaries of No. 9 commenced and finished between 1 and 2 o'clock it is wrong. The minute, "The Court awarded this this morning in No. 3, &c.," requires explanation. I cannot explain Mr. Jones's minute. I will not attempt it. The section referred to in the morning was the Ohau Section. The section before the Court in the afternoon was a different section altogether. [Horowhenua Commission, page 230, questions 133 and 134, and replies, read.] In the opinion of that witness, it was settled in Palmerston. [Horowhenua Commission, page 226, questions 328, 329, 330, read out.] I do not dispute that evidence by Heni Kipa. I am not aware of any negotiations between Ngatiraukawa and Kemp. I am not prepared to deny that there were such negotiations. I do not believe there were any. I considered at the time that they were quite unimportant. I do not remember making any direct suggestion to Muaupoko. I made many to Kemp, and if he agreed to them I used my influence with Muaupoko. I heard nothing of negotiations between Kemp and Ngatiraukawa. I do not believe he would listen to any of them. [Horowhenua Commission, page 162, questions 114 to 119, read out.] I cannot dispute that evidence, but I can say that the agreement did not reach Palmerston until the Ohau Section had been awarded to Kemp. I do not say that Pomare, Heni, Nicholson, and others did not agree to accept No. 9, but I did not consider their consent sufficient. Lewis and Kemp were the only two who could make Muaupoko safe. [Horowhenua Commission, page 163, question 135, read out.] The descendants of Whatanui, from a Maori point of view, are a numerous body. I did not care at all whether Ngatiraukawa were satisfied or not in 1886, so long as Kemp and Lewis agreed. What I thought was that if Ngatiraukawa complained to Parliament, and Kemp and the Government could say that alternative sections had been offered to them, Parliament would compel them to accept one. I was the author of a lengthy letter to the *Manawatu Farmer*. Every word of it is true. When I proposed alternative sections for the descendants of Whatanui I had in my mind that Ohau was away from Ngatiraukawa kaingas. I was aware of that when alternative sections were proposed. If they did not accept one or the other they would get nothing. Some of them might have preferred the Ohau Section, notwithstanding that some of them had objected. The Ngatiraukawa had a valid ground of objection to Ohau, because the agreement provided that the land was to be near Horowhenua.

The Court adjourned till the 19th instant.

FRIDAY, 19TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

A. MCDONALD'S cross-examination by Mr. Beddard continued.

Mr. Baldwin asked the Court to take a note that the certificate of 1873 had not been presented to the Court in 1886 for cancellation.

Sir W. Buller objected.

The Court said Mr. Baldwin had better bring the matter up again after McDonald's evidence was taken.

Witness (to Mr. Beddard): I gave you an explanation yesterday as to the words in the minute-book, "The agreement," &c. My explanation was not an afterthought. I don't remember having said previously that I did not know what I meant by those words. I may have. If it is in the notes of the Court that I did, then I did. Tracing No. 3 made by Palmerson was for use of Court. The subdivisions would be transferred to it from No. 2 tracing if there was no objection, and similarly from No. 1 to No. 2. I cannot say from memory that every division went through that process. All those where there had been any difficulty did. It is most unaccountable to me why the tracing was not filed with the Court papers. I could not say when first I heard of the dispute as to who were the descendants of Whatanui. My first recollection of it is when I attended the Native Land Court at Otaki and found a case going on about No. 9. Mr. Morison called me as a witness. I think it was in 1895, and was to ascertain who were the owners of No. 9. My view is that No. 9 and No. 14 were made alternative sections at my own suggestion. It would in my view become Kemp's duty to restore the remaining section to Muaupoko after it had been decided which section the descendants of Whatanui were to have—that is to say, to those members of the tribe that were entitled to it. This was his moral duty after the descendants of Whatanui had finally chosen. I have said that I gave evidence before the Appellate Court at Otaki in 1895. [Horowhenua Commission, page 80, answer 437, read out.] I have no doubt that I said that to Sir Walter Buller. It was true I did not know that the Ngatiraukawa might not still object to it. [Question 440 and answer read.] The minute is there, and I will not attempt to correct it. It is in a measure correct. I don't know now that the Ngatiraukawa have selected No. 9, or that the matter is finally settled. It was impossible for me to urge anything on Kemp after 1890; we had quarrelled. [Horowhenua Commission, page 80, questions 440 to 443, and answers, read out.] If the descendants of Whatanui made the application to the Court for definition of their interests in No. 9 it would be sufficient evidence to me that they had selected it. Both sides were represented by counsel, and were each claiming the whole or a large portion of the Block No. 9. This would not be inconsistent with what I say—that they may not have selected it. All I know is that they were disputing as to the relative interests in No. 9. I also know that they were only to have one subdivision. I repeat that my answer to Horowhenua Commission, question 437, is correctly reported. [Horowhenua Commission, page 80, questions 452 to 456, read out.] My general answer is that up to 1896 I did not know that the descendants of Whatanui had selected No. 9. My answers to questions 440, 441, 442 are true in the sense that I meant. People not knowing the circumstances might conclude from my replies that I did not know what had taken place before the Appellate Court at Otaki in 1895. As I intended them, they are absolutely true; but on looking at them now I will say that they are not well expressed. My best answer would have been that my relations with Kemp precluded my making any suggestion at all to him. I entirely deny having intentionally given any untrue colour to anything. I knew in 1895 that No. 9 was the case before the Court at Otaki. I was told so after I went into Court. If I had said, in reply to 440, that I was called as a witness in the case at Otaki it would not have conflicted with my answer to 437, although people not knowing much of Maori matters might think it did. I did not know what Sir Walter Buller's purpose was in putting to me the questions you have read. So far as I know, up to the present time the Ngatiraukawa have not deliberately selected No. 9. [Minute of Appellate Court at Otaki, 1895, page 47, McDonald's evidence, read: "Muaupoko at once agreed," &c.] I admit that those are my words. If I said Papaitonga it would not be quite correct, because the section did not extend to Papaitonga in 1886. I would consider, if both parties to the agreement agreed to any particular section, that the matter was settled. Nothing further, in my opinion, would be necessary for the selection of No. 9. I said before Royal Commssion that in 1886 the Ngatiraukawa strongly objected to both sections. I am wrong. It was in my letter to the *Farmer* that I said the Ngatiraukawa then present in Palmerston North obstinately refused to make selection. [Appellate Court minutes, 1895, page 47, "Lewis afterwards endeavoured to persuade Nicholson," &c.] I gave that evidence. The locality of the land was altered on account of the objection of the Ngatiraukawa present to the section proposed for them at Ohau. I will not say that I meant that the locality of the 1,200 acres which the Ngatiraukawa had been promised was altered in accordance with their wishes to Raumatangi. I intended the Court to understand that in consequence of certain objections being made by the Ngatiraukawa present in Palmerston it was deemed expedient to allot a different section for the purpose of fulfilling, by the cession of one of them, the agreement of 1874. It was not done in consequence of the wishes of the Ngatiraukawa. I admit that some of the Ngatiraukawa wanted the land at Raumatangi. They were not unanimous. Some wanted it in one place, some in another. By using the word "they" in my evidence before the Appellate Court at Otaki I did not necessarily mean all of the Ngatiraukawa present. The only Ngatiraukawa I distinctly remember at Palmerston was Nicholson. I know nothing about any negotiations between Hare Pomare, Heni Kipa, and Kemp. They were all present at Palmerston. I was acting under the instructions of the Maoris at Palmerston, but most of the instructions were given at my suggestion. I was there to assist the Natives to carry out their wishes, but I had other business of my own. I say that an order was made on the 3rd December, 1886, confirming an order made on the 25th November for 1,200 acres at Ohau. I presume the words used by Judge Wilson in making the order on the 3rd December are correctly given in the minute-book. The application for confirmation was made by myself, and, I believe, on my responsibility, so far as I know, without reference to Kemp. The idea that the order should be a confirmatory one came from me, I believe, and I understood Judge Wilson made it as a confirmatory order. He made no objection whatever, so far as I can remember. This does not appear to me to be a "cock and bull" story. It is true. If Judge Wilson has said that, after consultation with the Chief Judge, he decided not to make confirmatory

orders, but to treat the orders of 25th November as abortive, all that I can say is that he acted contrary to the Chief Judge's advice. I do not know anything about the dates of the orders. [N.O. 87/515, "Mr. Buckle's minutes have nothing to do with it," &c., read.] I still say that the words in the minutes are practically the words used by Judge Wilson, and that he referred to something that took place on the 25th November. I verily believe that it was at my suggestion the 1,200 acres at Ohau was originally selected for the descendants of Whatanui. I did say in my letter to the *Manawatu Farmer* ["Many years ago when Sir George Grey," &c., down to paragraph 10, read out]. I admit that that is in my letter. My suggestion was that the 1,200 acres should be placed on the Ngatiraukawa boundary; it was not placed exactly as I suggested it. I do not suggest that Sir George Grey would have cared for Ohau without Waiwiri. I thought the 1,200 acres would have extended to Waiwiri when I made the suggestion. It was afterwards put east of the railway. My suggestion was made before anything had been done. One of my reasons for suggesting the locality for the 1,200 acres was that I thought the Ngatiraukawa might sell it for a public park. I thought it desirable that it should be a public park. I think so still. [Horowhenua Commission, page 163, question and answer, read.] That is true. I said it. The 1,200 acres shown on Palmerson's tracing was all east of the railway, as shown on W.D. 508. I had forgotten how it was delineated until I saw the plan. [Horowhenua Commission, page 163, questions 151 to 153 read out.] I said that, and say so still. I told the Commissioners that my impression was that the fact that the area east of the railway was not sufficient for all the sections was discovered before the Court rose in 1886. When I gave my evidence there were no maps before the Commission—they arrived afterwards; and the Chairman asked me if I could identify the plan that was before the Court in 1886. My strong impression still is that the 1,200 acres at first extended across the railway to Waiwiri.

Mr. Baldwin, at this stage, asked the Court to adjourn from this evening until Monday, especially as the building was required to-morrow for other purposes.

Sir W. Buller agreed.

The Court said, under the circumstances, it would adjourn at its rising until the 22nd instant.

Witness (to Mr. Beddard): I understood in 1886 that the orders made could not contain a trust. That was my reading of the law. I understood that the persons named in the orders were absolute owners as far as the Court was concerned. [Horowhenua Commission, page 74, "I went to Muaupoko," &c., read.] That is quite right. I considered that the Land Transfer certificates which would follow on the orders would not contain a trust. In 1894 an action was brought by Kemp to have a trust declared. I don't remember what my evidence was in 1890 about going into the side room to talk about No. 11. I don't deny that I said in 1890 that I did not remember the incident at all. [Vol. 13, page 232, 22nd March, 1890: "I don't remember anything special about No. 11. I don't remember Kemp and others going into another room."] I may have said that. After Kemp went into Court in 1890 he said he was a trustee. That was the first time. I heard him say so. [Supreme Court case, page 31.] I said in my evidence there that Kemp and others went into a room, and that I went too. I remembered the incident then. [Witness' evidence before the Supreme Court read.] I don't think that shows a variable memory. The incident was called to my memory after I gave the first evidence. I did not attach any importance to it. I don't care what you think about the character of my evidence. [Vol. 13, folio 232, read out.] Apparently I did not remember the incident then. I do not like to dispute the Court minutes. The question of going into the room has been an important question since. It was the most ordinary circumstance at the time. The question of putting in the names was not decided in the room. Objection was withdrawn there to the two names going in. It had been discussed at length previously. It had been so far decided that Kemp's name alone should be put in that I felt justified in going to the Court and asking for an order. While I don't question the accuracy of the minutes of the Court, if my credibility is to be judged by them I think they should have been shown to me, and I should have been asked if I was correctly reported. I think that if the reference is to a room it must mean the side room of the Court, but I am not sure; it may mean a room in Palmerson's house. I said in the Supreme Court that I was in the room in 1886, and that nothing was said about a trust in Court either before or after we retired to the side room. Nothing was said that would indicate a trust until 1890, except that it was impressed upon Kemp and Warena that they were to act fairly to the people. [Supreme Court case, page 31, question 68, read.] That is true. I was not surprised at the judgment of the Supreme Court; I was gratified at it. I have always said that Kemp and Warena would be scoundrels and robbers if they defrauded the people, although No. 11 vested in them absolutely, as No. 2 did in Kemp. In my opinion, the Court would have been wrong in making any order if it had been informed that there was a trust. I don't know that very much depends in this case on what was said in Court on the 1st December, 1886. Nothing was said in the Court to indicate that No. 9 had been accepted unanimously by the descendants of Whatanui. I did not hear any such statement made. I would not have paid any attention to it if there had. Lewis was the only person there who could accept it, and he did not do so. If Judge Wilson says that No. 9 was definitely accepted in Court by the descendants of Whatanui he says that which is not true. It is quite likely my story differs from Judge Wilson's. I say that it was not Raumatangi that was before the Court either on the 25th November, 1886, or the 1st December following. It was the Ohau section that was before the Court on those days. Judge Wilson was not correct if he said that an order was made for No. 9 on the morning of the 1st December. I think I did cross-examine Judge Wilson on what took place on the 1st December. I was telling Judge Wilson what my recollection was, but he stopped me, and said he preferred his own. My story, I consider, is a wonderfully full and accurate one, considering the time that has elapsed. My memory has been refreshed by reading the minutes. Wherever my letter to the *Manawatu Farmer* agrees with the minutes it may be taken as correct; any part that does not coincide with the minutes is wrong. I wrote it

entirely from memory. When I was before the Commission there were many things I did not remember clearly, but reference to the minute-books has convinced me that I was right in what I said. I do not know that I said before the Royal Commission that it was the Ohau section that was before the Court on the 1st December. I have no doubt I did if I was asked. [Horowhenua Commission, page 79, question 425, read out.] I must say that I could not have given that answer. I must have been misreported. The section that is now No. 12 was the only section I heard of in the Court of 1886 as No. 14. [Horowhenua Commission, page 75, "My recollection is that No. 14 was kept open till the last," &c.] That is quite true. I said that I was referring then to what is now known as No. 14. I cannot now point to anything in my previous evidence that would indicate a trust in Section No. 14. I cannot refer you to anything in my evidence before the Commission relating to my having intervened in the Court on the 1st December. The section which is now 14 was the last dealt with in the Court. I may have had that in my mind when I replied to question 424. If I had not, then I am incorrectly reported. I could not have said that the section at Raumatangi came before the Court of 1886 before the Ohau section. I did not mean that. My intervention on the 1st December has proved very important. My recollection has never been called to it. I recollect it perfectly now since seeing the minutes, notwithstanding that there is nothing in the minutes directly mentioning it. It comes back to me as clear as daylight. [Vol. 14, pages 315, 316, "There was a very great deal of discussion about . . . and Kemp kept the first 1,200 acres," &c.] I don't think it is possible that I could have used those identical words, but it appears to be how the minute is taken. The division shown on tracing No. 1 would, in the natural course of things, be identical with the one applied for in Court if there was no objection to it. [Horowhenua Commission, page 79, questions 426 to 428, read.] That does not imply that No. 9 was given definitely to the descendants of Whatanui. It appears that I did not mention in the Supreme Court that alternative sections were set apart. The Muaupoko knew nothing about the disputes among the Ngatiraukawa, or, rather, I should say that I knew nothing about them. I cannot for the moment recollect or point to any documentary evidence before 1896 that would indicate alternative sections. There was no question raised, so far as I know, before 1896 about No. 14. I was never questioned about No. 14 on any occasion on which I gave evidence before 1896. I have told what I believe to be true in this Court; my being here as representative of a person who raises the question of trust has not influenced my evidence. I have never before been questioned specially as to the alternative allotments. I have given a general narrative. No such communication was made to Ngatiraukawa, so far as I know, about the alternative sections. The Muaupoko understood clearly that the two sections were to be awarded to Kemp, and he was to convey to Ngatiraukawa whichever they chose. [Horowhenua Commission, page 79, questions 428 and 429, read.] I am reported there as having contradicted my former evidence given before the Supreme Court. I cannot understand it. My answer to No. 429 did not mean the same thing as the question. The question of making an alternative section was finally decided during the dinner-hour of the 1st December, it having been largely discussed during the previous five days. I was not cognisant of any negotiations going on between Kemp and the descendants of Whatanui about the 1,200 acres, excepting that Lewis was there, and there was a great deal of talk about it. The Ngatiraukawa who were present at Palmerston refused to accept either section. The only man I actually heard making an objection was Nicholson. I don't know whether Ngatiraukawa collectively had any objection to the one section or preferred the other. I think the Ngatiraukawa ought to have been well satisfied to get their land anywhere. I am speaking now of the time up to the 25th November. [Horowhenua Commission, page 75: "Therefore I recommended," &c.] I still deny that in 1886 I was aware that Ngatiraukawa had a *bonâ fide* right to object to the Ohau section. I don't think I knew the terms of Kemp's agreement when I used the words, "This is not a fulfilment of the agreement," &c., but I may have. I merely had a suspicion in my mind that the Ngatiraukawa might go to Parliament. That is why I suggested to Kemp that another section should be set apart. No. 14 had been awarded before I made this suggestion. I never applied for it as an alternative allotment. When I applied for a confirmation of No. 14 on the 3rd December I was not aware that Ngatiraukawa had any objection to it. I knew that some of the persons who said they were descendants of Whatanui had made an objection. I did not know that the descendants of Whatanui collectively had objected.

The Court adjourned until the 22nd instant.

MONDAY, 22ND MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Sir W. Buller said he would complete the cross-examination of Mr. McDonald, as his junior was absent.

A. McDONALD cross-examined by Sir W. Buller.

Witness: The only person of Ngatiraukawa I distinctly remember at the Court of 1886 was Nicholson. There were others there. I heard Nicholson objecting to the Ohau section in Court. I do not know Hare Pomare. I cannot say whether he was at Palmerston in 1886. I do not think I know Hitau by sight. I have not the least doubt that Hare Pomare and Hitau were at Palmerston. The people say they were. Mr. Lewis, Kemp, and the Muaupoko were the only persons I communicated with about No. 14, and occasionally Nicholson, when I met him in town. I cannot say at what time Mr. Lewis arrived. He was there on the 25th November. I remember distinctly Mr. Lewis being at Palmerston. I cannot say what date the agreement arrived after Lewis had wired for it. I can only say that it had not arrived on the 25th. I am prepared to say that it had not arrived when Lewis gave his evidence. I am not prepared to say that it had not

been telegraphed to Lewis before the Court adjourned. I know it was momentarily expected. I could not say to a day when purport of agreement was communicated to me, but I am quite clear that it was between the 25th November and the 1st December that I was told that it contained the words "near the Horowhenua Lake." I was aware of the purport of the agreement on the morning of the 1st December. I only heard Nicholson addressing the Court once. I do not deny that he spoke more than once, but I do not remember hearing him more than once. I do not recollect that Nicholson said before the Commission that he attempted to address the Court more than once. [Horowhenua Commission, page 163, question 142 (Nicholson to McDonald), read.] The occasion I remember was after Lewis arrived. I do not remember any other. [Horowhenua Commission, page 75, McDonald's evidence, read: "I thought, well, the Ngatiraukawa, if limited to this section," &c.] I admit that I made that statement before the Royal Commission. I must at that time have been aware of the purport of the agreement, but I was not aware of it before the 25th November. What I had in my mind when I made the statement to the Commission was the period between the 25th November and the 1st December.

Mr. Baldwin objected to Sir Walter Buller continuing the cross-examination.

Sir W. Buller contended that he had a perfect right to cross-examine.

The Court was of opinion that Sir Walter Buller should not go over the same ground as Mr. Beddard.

Witness: I was telling the Commission what had taken place before we went into Court on the 1st December. [Horowhenua Commission, page 75, "Then the Ngatiraukawa appeared on the scene," &c.] That may have been before we went into Court, but it does not show that I knew purport of agreement. [Further extracts read from page 75.] The land I referred to then was the section we have referred to here as the Ohau section. I would not say whether what you have read referred to a time before we went into Court. No suspicion arose in my mind as to Ngatiraukawa going to Parliament before the 25th November. I can't say exactly when the suspicion arose in my mind, but the first point was given to it by Nicholson's objection in Court. Then, the further information that the agreement had the words "near the Horowhenua Lake" further intensified my suspicion, and I considered it advisable to recommend Muaupoko to lay off the other section. By "the other section" I mean the Raumatangi section. The Muaupoko agreed to my suggestion. We went to the Court on the 1st December with a lot of subdivisions. I used the word "confirm" before the Commission in the sense that the voluntary arrangements required confirmation. [Horowhenua Commission, page 161, question 96, Nicholson's evidence.] I cannot say I remember Nicholson giving that evidence. Mr. Lewis declined to make a choice of the sections, although I urged him to do so. I still adhere to my statement that Mr. Lewis refused in express terms to me to select either section. I am not prepared to contradict Judge Wilson as to what Mr. Lewis said to him. Lewis remained at least one day in Palmerston after the 25th, and I continued to urge him, so long as he remained, to make a selection. I cannot say on what date it was that I made my last representations to Lewis. I am perfectly certain that I spoke to him between the 25th November and the 3rd December. I won't go further than that. I cannot swear that I spoke to Lewis after the 1st December or on the 1st December. It is quite possible that my representations to Lewis may have been at any time after the first section had been dealt with, on the 25th November. It was finally determined to provide a second section, because he would not make a choice. [Horowhenua Commission, page 86, question 112, read out.] I do not remember anything about that incident. I don't remember any meeting between Kemp and Ngatiraukawa, but I have no doubt there were such meetings. I am not prepared to contradict the evidence of Kemp that there were such meetings. I suggested the Ohau section to Muaupoko. I should not have said to the Commission that "I selected it." I am prepared to contradict Kemp if he stated that he first suggested the Ohau section for descendants of Whatanui. It originated with me. Kemp adopted the suggestion, and brought it before the Muaupoko. I don't know for certain how the proposal was made to Muaupoko—whether it was by Kemp or by me for him. I won't undertake to say exactly how it was done. [Letter to *Manawatu Farmer* quoted: "I submitted all these considerations," &c. "These considerations were fully submitted by me to Muaupoko," &c.] I was right in saying in that letter that I submitted the question fully to the assembled Muaupoko. I was not as careful as I would be on my oath, but the paragraph is sufficiently correct for what I had in view at the time I wrote it. I consider that the statements in my letter are correct. It is a fact that the proposals were submitted to the whole of the Muaupoko who were in Palmerston, but they were not all present at the same time. I told them all from time to time. I suggested the Ohau section to them, being influenced by certain considerations which I made known to the assembled Muaupoko, and which they approved. This was before the Court of the 25th November. Between the 25th November and the 1st December it appeared that the Ngatiraukawa objected to the Ohau section. I am not aware that the Ohau section was offered to Ngatiraukawa at all till it was mentioned in the Court on the 25th November. The first proposal to offer the Raumatangi section to the descendants of Whatanui was after the 25th November. Cannot fix the exact date. The Ohau section was approved of by the people, and put on the tracing before we went into Court on the 25th. I am not prepared to contradict Kemp and other witnesses if they say that the Ohau section was offered to the descendants of Whatanui outside the Court before the 25th November. There had been much discussion among Muaupoko over the alternative sections before the 1st December. I can't say whether I stated to Muaupoko all the considerations that influenced me in suggesting an alternative section for Ngatiraukawa. I told them the principal one after I knew it—that is, the condition in the agreement that the land should be near the Horowhenua Lake. I also warned Muaupoko that Ngatiraukawa might go to Parliament to get the original title upset. I don't think it was stated in Court on the 1st December, when No. 9 was before it, that it had been definitely agreed upon as the section for the descendants

of Whatanui. [Horowhenua Commission, page 162, questions 124 to 128 (Nicholson's evidence), read.] I remember that. [Horowhenua Commission, page 162, question 129, read.] If Mr. Nicholson says he said that I would not contradict him, but it would not convince me that it had been settled. [Horowhenua Commission, page 163, question 155, McDonald's evidence.] I suppose I said that. I would say the same now. It was settled on the afternoon of the 1st December that No. 9 should be allotted to Kemp for the same purpose as the Ohau section had been awarded to him on the 25th November. My reason for asking the Court not to confirm No. 14 on morning of the 1st December was that it was in contemplation to make another section for the same purpose as that which had been made on the 25th November, and I thought it quite possible that when second section was made some sufficient acceptance of it would have been forthcoming. The Ohau section could then be dealt with otherwise than was originally intended. I swear that in substance I made that statement in Court when I intervened. Up to the 3rd December no sufficient acceptance had been made so far as I know, therefore I asked the Court to put both in Kemp's name, to enable him to satisfy the agreement of 1874 by the cession of one of them to the descendants of Whatanui. The minute-book indicated that something arrested the proceedings of the Court (*vide* vol. 7, page 188.) [Horowhenua Commission, page 163, question 151.] No. 14, as shown on W.D. 508, was put on the plan by Palmerson. It was originally all east of the railway, and corresponded with the section shown on the tracing. The final impression on my mind is that the fact that there was not sufficient land to satisfy the orders east of the railway was known before the Court rose in 1886. There was no application made for No. 9 on the morning of the 1st December. It was made in the afternoon. My intervention was on the morning of that day. The Ohau section had been delineated on the Court plan before the 1st December. I understood on the morning of the 1st December that the Court was going to confirm its order for the Ohau section as it had done for the others. When the matter came on in the afternoon it was a different application for a different section—the Raumatangi section. I explained to the Court that this was the section that I had told it in the morning it might be necessary to make. I won't attempt to explain why there is no minute of my explanation of the afternoon of the 1st December. I consider the minute is clear that some explanation must have been made. I swear that I made the application of the afternoon of the 1st December. I had not then been made aware of the terms of the agreement of 1874. I understood that there had been some objection to the section at Ohau. I was aware at that time of the purport of the agreement. I assume that I became aware of it on the morning of the 1st December. I consider there was a chance of the Ngatiraukawa refusing the Raumatangi section on the 1st December. By "obstinate refusal" in my letter I meant the objection raised by Nicholson in Court. I knew that the people connected with Whatanui were the only persons interesting themselves in the 1,200 acres, but there were other members of the Ngatiraukawa who were talking about the Horowhenua Block. I can't remember who they were. I think Ransfield was one. I don't know yet that the descendants of Whatanui have accepted No. 9. I heard before the Royal Commission sat that an Order in Council had been issued giving the Native Land Court jurisdiction to deal with No. 9. I believe I gave evidence before the Appellate Court in 1891. [Appellate minutes, Vol. 14, p. 321: "Do you know the piece set apart for descendants of Whatanui?" &c.] I suppose I said that if it is in the minutes. I meant that it was afterwards agreed that No. 9 should be allotted, not that Ngatiraukawa should get both. [Horowhenua Commission, page 83, question 15, and answer, read.] I suppose I gave that answer. I had not seen the minute-book at that time. I have now. If Judge Wilson says that Kemp made the application for No. 14 on 3rd December I must differ from him. My memory was not so definite in 1890 on material points as it is now, since I have perused the minutes, and my memory has been refreshed. [Vol. 14, page 71: "I was not engaged as conductor," &c.] If I said that, then my impression was wrong. [Further extracts read.] I remember giving that evidence. The division of the Horowhenua Block was done by voluntary arrangement—I mean that the people agreed to the divisions. They were completely under the influence of Major Kemp, and did not often dissent from his proposals. As part of the voluntary arrangement, No. 11 was awarded to Kemp and Warena Hunia. I did not understand that the land was given to them absolutely. They were under a moral obligation to the people, although the fee-simple vested in them. I do not remember saying in the Supreme Court that there was a moral obligation on the part of Kemp and Hunia with regard to No. 11. I remember saying, in reply to Mr. Edwards, that there was no mention in the Court of 1886 as to a trust. If there had been anything said to me about a trust I should have mentioned it to the Court of 1886. I said something in the Supreme Court to the effect that there was a moral obligation on the part of Kemp and Hunia in No. 11. [Extract of McDonald's evidence before Supreme Court read, pages 29 and 30.] I considered that there was a moral obligation on Kemp to provide for the people occupying No. 11. They would be satisfied with any partition he made of it. As they were satisfied that he should nominate the persons for the quarter-acre sections in the township, I can only specifically refer the obligation to Kemp, because, before we went to Court, Warena's name had not been mentioned. After the retirement to the room, I understood that Warena was to hold the land under the same condition as Kemp. I thought at the time that he had the legal power to do what he liked with the land. If Kemp and Warena had sold No. 11 it would have been a terrible breach of the confidence reposed in them by the people. The last paragraph of my letter to the *Manawatu Farmer* expresses my present opinion of the position of Kemp and Warena. I meant the legal position. [Horowhenua Commission, page 83, question 16, read out.] I remember giving that evidence. It is true. I am of the same opinion now. The award for No. 11 was made before the order for the Ohau section. When I applied for what is now No. 14, on the 3rd December, I indicated that I wanted confirmation of the order made for it on the 25th November. I cannot remember what the number of it was on that date. It was still No. 3, as far as I know, on the 3rd December. It was

the section that was No. 3 on the 25th November. I never knew it by any other number. I can't say whether I had anything to do with fixing the number for the square foot. [List for No. 13 shown to witness.] That is my handwriting, so I presume I had. No part of the list referring to No. 14 is in my handwriting. I admit that it appears to have been handed in by Kemp on the 3rd December. I believe it was first put into the Court on the 25th November. When I applied for confirmation of the order for Ohau section, on 3rd December, I did not tell the Court I had seen the agreement. The Ohau section is not far from Horowhenua Lake. It might be near enough to the lake to comply with the agreement. I express no opinion on that point. I repeat that I made the application for the Ohau section on my own responsibility, very likely without consulting Kemp. I consider that I had authority to do it, and I supposed it was necessary to have the former order confirmed. [Horowhenua Commission, page 80, questions 451 to 456.] I have resided in this district since 1886. I have frequently seen members of the Muaupoko Tribe during this period. I don't remember ever telling any member of the Muaupoko Tribe that I considered Kemp held No. 14 in trust. I have never during the period told any members of Ngatiraukawa that Kemp held No. 14 in trust. Until a few days before the Commission I never mentioned to you that I regarded Kemp as a trustee for No. 14, although I knew you were in occupation of the land, or part of it. I gave evidence before a parliamentary committee when No. 11 was before the House in 1892. I assisted Mr. Barnicoat, and briefed evidence for him at the Court of 1890. Mr. Barnicoat employed me. I don't remember who asked me to give evidence before parliamentary committee. Mr. Stevens and Donald Fraser were present. I don't remember any special occasion on which I mentioned the question of trust in No. 14 to Stevens, Donald Fraser, and Barnicoat, but I remember saying to Barnicoat that I wondered when the question would crop up. I cannot fix in my mind any time that I mentioned the question of trust in No. 14 to Donald Fraser. If he says I never spoke to him about it I will believe him. I can't remember the time, but I feel sure that I must have done so or Fraser would not have known about it. I would not mention it to Kemp after 1890, because we became bad friends. We were on opposite sides in the Horowhenua question.

Mr. McDonald: I don't propose to make any statement.

To Court: There were three parcels brought before the Court on the 25th November—the railway, the township, and the 1,200 acres at Ohau. I don't think there were any other sections shown on the tracing; certainly No. 9 was not. I can't remember when the agreement came up. Sievwright attended the Court of 1886. He was there several days. I think he went away and returned. If he says there were three parcels brought before the Court on the 25th November he must refer to those mentioned above. If I wrote to the Railway Company on the 26th November, 1886, stating that orders had been made for three parcels, I referred to the same sections. I don't remember writing. [Letter produced, and read by Court.] I am positive that on the 25th November the land at Raumatangi was not shown in the tracing. I can't remember the exact date on which Lewis was in Palmerston.

Mr. McDonald called Te Aohau Nikitini.

TE AOHAU NIKITINI sworn and examined.

Witness: I am a Ngatiraukawa. My permanent residence is at Horowhenua. I live now at Wanganui. I am one of the descendants of Whatanui, and one of the claimants under the agreement of 1874, between Kemp and Sir Donald McLean. I remember the Court of 1886 at Palmerston. I remember the first day the Muaupoko went into the Court. Mangakahia was the Assessor. The first application was for the railway; second, the township; and third, the 1,200 acres at Ohau. The 1,200 acres at Ohau was, I understood, cut off for us, the descendants of Whatanui, to fulfil the agreement made between Kemp and Sir Donald McLean. I can point out the section on the map. At the time the 1,200 acres was mentioned it was not on the Court map, but was shown on a small map that you had. I saw it on your map at the time. It was all east of the railway then. It has since been extended west of the railway. When Kemp applied for an order for the 1,200-acre section at Ohau in his own name, to enable him to fulfil the agreement, the Court called for objectors. I stood up and said that I had something to say to the Court. The Court asked me if I was in the certificate. I replied, "No," but it was proposed to set apart the land for us. The Court refused to hear me. I persisted, and the Court told me that if I continued to do so I would be arrested; so I told the Court I would communicate with the Government on the matter. After I sat down, the Court said that Kemp's application would be complied with. Later on, on the same day, we, the descendants of Whatanui, and some others of Ngatiraukawa, met at the Royal Hotel, and asked Kemp to attend. He went to the hotel, and Waretini said, "The reason you are asked to come here is that we are dissatisfied at you placing our 1,200 acres at Ohau, whereas we want it near our kainga and burial-place at Raumatangi." Kemp said that he had consulted Muaupoko about it, and they would not consent. I then told Kemp that McLean had told us when the agreement was made that our 1,200 acres should be at the Hokio Stream. Kemp said it was quite true, but he could do nothing against the wish of the people. We did not return to the Court on that day. The Court was over before our meeting. After I left the Court, on the same day, I sent a telegram to Lewis, thinking he had gone to Wellington, but I found that he was still in Palmerston. When I saw Lewis I told him I had wired to him at Wellington for the agreement, and asked him to procure it, as I knew it contained a condition that the 1,200 acres should be near the Horowhenua Lake. The next morning, I think, Lewis came to our house before breakfast and called me out, and told me that I was right—the agreement had arrived. We went to his hotel, and he showed me a telegram saying that the 1,300 acres should be near the Horowhenua Lake. He said he would speak to Kemp. That was the last time I saw Mr. Lewis; but the same day, or perhaps the next, I saw Kemp, and he told me that he had seen Lewis, and that

he had consented to what Lewis wanted—that the land should be at Raumatangi. The Assessor had left by this time, and we had to wait for the new Assessor. Kahui Kararehe came as Assessor, and Lewis returned to Palmerston. The Court opened with Kahui as Assessor. I went to the Court. There were several matters brought before it, but I did not pay any attention to them. I was thinking of our own section. I can't be sure whether our section was brought on on that day or the next, but Lewis asked us to meet in the Courthouse, and No. 9 was spoken of. The boundaries were gone into. The most important boundary was that on the Hokio side. I wanted the Hokio Stream made the boundary. Kemp said that it was his wish that 2 chains along the stream and lake should be reserved. Lewis advised me to give way, as the land along the stream would be a reserve for all. I can't say whether this was in the morning or afternoon. The Raumatangi section was put upon your tracing after our meeting. I am not sure whether I could recognise it now as it appeared on your tracing. You and Kemp were insisting on the reserve, and I wanted the river made the boundary. I understood that a line parallel to Hokio Stream was to be the boundary until it reached Ohenga, and was to turn there so as to exclude Ohenga. After the meeting the Court resumed, and made orders for divisions Nos. 11 and 12. I am not quite clear whether it was the first or second day of Kahui's Court that Raumatangi was brought before it. I was present. The boundaries were read out. Kemp's application for an order for it in his own name was read out also. Afterwards Lewis asked me to send in a list of names. There were two 1,200-acre sections cut off, one at Mangakahia's Court and the other at Kahui's Court. I did not think we were to have the Ohau section, because I had objected to it, and the Raumatangi section was set apart for us on my application. Wiremu Pomare was not in Palmerston at the time: his younger brother Hare Pomare was. Kemp did not say anything to us about the elder Pomare. Kemp and I came from Wanganui to Palmerston. I came at Kemp's request, and because the 1,200 acres was to be cut off for us. I first heard Kemp speak of Pomare at the time the Appellate Court sat in 1895. [Horowhenua Commission, page 163, question 135, read out.] Personally I did not object to the Ohau section, but our elders did, and wished to have Raumatangi; so I gave way to them. If I had urged them to accept the Ohau section they would have done so. I have never written to the Government or Kemp saying the descendants of Whatanui would accept No. 9. There was no occasion to do so. As Kemp and Lewis were at Palmerston, I considered I had the right to decide. Karanama, Heni Matene, Henare Roera, Perawiti te Puke, and others I forget were at Palmerston Court in 1886. I did not see Robert Ransfield there: Hunia Horomona was. They came up about the reserves that were spoken of at Waiwiri. I remained in Palmerston till the Court adjourned, and then returned to Wanganui. I did not hear anything more in Court about the 1,200 acres at Ohau. I heard outside the Court from Wirihana and others that as we had not accepted the Ohau section it would go back to the people. Wirihana offered us the section at Ohau for that at Raumatangi, but I declined. Wirihana's reason for wanting to exchange was that the cost of fencing Raumatangi would be so great.

The Court adjourned till the 23rd instant.

TUESDAY, 23RD MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

TE AOHAU NIKITINI cross-examined by Mr. Stevens.

Witness: I have said that I was at the Court at Palmerston in 1886. I was in Palmerston a week or more before the Court opened. I knew at Wanganui before we went to the Court that the 1,200 acres was to be cut off for us by the Court. I knew myself that the 1,200 acres was to be at Raumatangi, but when we reached Palmerston I heard that it was proposed to give it to us at Ohau. It was on that account that I called a meeting of the descendants of Whatanui, and asked Kemp to attend it. I cannot say exactly how long before the 25th it was that this meeting took place, but it was then I ascertained definitely that the Muaupoko had decided to locate our section at Ohau. I was dissatisfied, and did not consent. I wired to Lewis about it after the meeting, because Kemp was determined that we should not have the land near the Hokio Stream. Lewis arrived in Palmerston before the sitting of Mangakahia's Court. We had conversations about the 1,200 acres. I told him that Kemp wanted us to take the land at Ohau, and asked him to urge Kemp to place the land near Raumatangi. I did not hear Lewis speak to Kemp about the 1,200 acres. I was present in Mangakahia's Court on the 25th November. The parcels before the Court on that date were—the railway-line, the township, and the parcel of land at Ohau. I know it was the Ohau section, because I saw it delineated on McDonald's tracing, and I heard also that the land was on the south side of the block. There was nothing said in the Court on that date about the 1,200 acres at Raumatangi. I stood up to ask the Court to place the land at Raumatangi, near our kainga. The Court did not entertain our objection to the land at Ohau. It would not listen to me. I think the Court made an order in favour of Major Kemp on the 25th November. Kemp applied for it in his name to enable him to fulfil his agreement with McLean as to the descendants of Whatanui. I heard Kemp make the application in the words I have given. I then left the Court with the intention of sending a wire to the Government, as I believe we had been unfairly treated. As I went to send a telegram I saw Lewis, and asked him to send for the agreement, because I knew the terms of the agreement. He sent for the agreement. Next morning, or the morning after, he came to our house, and told me he had received it, and that I was right about the parcel of land being near the Horowhenua. We went to the hotel, and he showed me a telegram containing the substance of the agreement, and said he would see Kemp about it. After that I saw Kemp;

he told me he had seen Lewis, and that it was settled. I remember Kahui Kararehe's Court. Don't know date it opened, but it was about a week after the first opening. I was present when it opened. The Raumatangi section was the first section of 1,200 acres brought before it. Lewis sent for us to come and arrange about the boundaries of No. 9. I don't remember whether this was in the morning or afternoon, or on the second day. I think it was after No. 11 was dealt with. It was after the Muaupoko business was over for the day. There was nothing said in Court about the Ohau section, but I heard Wirihana say outside the Court that it could go back to the people, as we had selected the Raumatangi section. Wirihana was the only person I heard say this, but there were others present. I don't remember who they were. I think either Ru Reweti or Eparaima acted as clerk for Major Kemp at that time; probably Eparaima, as he was sent with Wiki and myself to Horowhenua to take the Muaupoko to Palmerston. I can't say whether Eparaima was present when Wirihana told me that the Ohau section should go back to the people. He may have been. The statement was made outside the Court. I can't say that Ru Reweti joined in my application for land at Raumatangi. He was always on Kemp's side; besides, he knew nothing about the land. Heni Kipa and Hare Pomare were present when I asked to have the land at Raumatangi, and did not object. They did not speak then or when No. 9 was cut off for us in the Court. I did not think then that they were interested in the matter. It is for the law to decide whether the lineal descendants of Whatanui or the descendants of Hitau are to have No. 9. I don't know what the effect of the Horowhenua Block Act may be. I have only seen the report of the Royal Commission. Waretini, Te Waihaki, Ema, and, I think, Rere, sent in a list of names of those it was considered were entitled to the 1,200 acres. I told them to do so, and returned to Wanganui. This was after the Court of 1886. Some of the lineal descendants of Whatanui were, I heard, included in the list—viz., Heni Kipa, Ru Reweti, and Hare Pomare. Ema said that only those of the lineal descendants of Whatanui who were living here should go in. Ru Reweti insisted that all his lineal descendants should be put in. They quarrelled, and Kemp then wrote to Lewis asking that the list should not be accepted as final until Wiremu Pomare arrived. Lewis sent me a copy of Kemp's letter. I did not see the list or a copy of it.

Henare Apatari: No questions.

Hamuera Karaitiana: No questions.

Cross-examined by Mr. Baldwin.

Witness: I was in Palmerston before the Court of 1886 in connection with the land for the descendants of Whatanui. [Appellate Book, page 36, Nicholson's evidence: "An endeavour was made to locate the 1,200 acres at Papaitonga," &c.] I may have said that I was acting for Whatanui; there was no Hitau then. I was acting for all who were present at Palmerston, including Heni Kipa and Pomare. I consented to their being put in. I was not acting for Wiremu Pomare. I acted for those whom I considered the 1,200 acres were for. [Appellate Book, page 36: "An endeavour was made to locate the 1,200 acres. I objected," read out again.] It was before the Court that I sent the wire to Lewis. [Appellate Book, page 36, "We discussed the location of the 1,200 acres before the Court sat. I was deputed to appear in Court," &c., read.] It was at our meeting that I objected. I also objected in the Court. The meeting took place before the Court sat. I mean the meeting that Kemp attended and refused our request to have the land located at Raumatangi. Kemp did not agree until after the agreement arrived. We had another meeting after Mangakahia's Court sat. [Vol. 7, page 185: "During the time that Sir Donald McLean was Native Minister," &c. (Lewis's evidence), read.] I remember Lewis giving evidence about the township, and the block at Ohau, but I cannot remember whether he said all you have read. My purpose in objecting was that I wanted to see where the 1,200 acres was located. I had heard that it was to be at Ohau. I heard this out of Court, and I saw it delineated on the tracing in the Court. When I saw the tracing in the Court the Raumatangi section was not shown on it. I am quite sure of this. We settled the question of the boundaries of Raumatangi section when Kahui's Court sat. They were discussed with us by Kemp and the whole of Muaupoko. I never saw a section at Raumatangi as shown on map signed by Kemp. The whole dispute in Kahui's Court was as to whether the line should follow the stream, or be 2 chains from it and the Ohenga Cemetery. When No. 9 was dealt with by Kaihui's Court: McDonald and Kemp were acting together. I understood that McDonald was acting for Kemp. I cannot remember whether McDonald was present at the discussion over the boundaries. There was a considerable amount of business done in the Court before No. 9 was dealt with. No. 11 was one of the parcels disposed of. No. 3 was, I think, dealt with before No. 9, but I will not be certain. I remember the sections for Ngatiapa and Rangitane being placed on the hills. I think they were dealt with before No. 9. I remember the section for the *rerewaho*. I cannot say whether it was ordered before or after No. 9. I remember that there was a dispute about boundaries of No. 9. It was settled that the boundary should be 2 chains from the stream. When the section was surveyed it was found not to accord with the arrangement. I remember an order being made to Kemp for No. 9 for descendants of Whatanui. It was made after the boundaries had been discussed between Kemp and ourselves. All I remember is that there was a lot of work done by the Court before No. 9 was dealt with at all by Kahui's Court. My recollection is that No. 9 was not awarded until the boundaries had been fixed. The first thing Kahui's Court did was to re-enact the orders made by Mangakahia's Court. I understood that this was for the information of the Assessor. I thought it was settled that No. 9 was for us when the order was made. The boundaries were described and objectors called for, none appearing. I think I told the Court we agreed to accept the Raumatangi section because I was the person who had asked to have it placed there. I considered that, being spokesman of those present, if I agreed the matter was settled. I have always thought so since, and have given evidence to that effect. I was in and about the Court of 1886 until it adjourned *sine die*. I remember the square foot for Wiremu Matakatea. I do not remember Kemp asking at that time

that the Ohau should be allotted to him for himself. I never at any time heard Kemp apply in Court for the Ohau section for himself. I am on good terms with the Muaupoko. We have lived together. I know the Muaupoko people well. Did so in 1886, and before. I have never heard from any Muaupoko that the Muaupoko had arranged that the Ohau section should be for Kemp—for himself alone.

Cross-examined by Sir W. Buller.

Witness: I did not hear at Palmerston that Ohau was for Kemp's share. I did not attend the Muaupoko meetings at Palmerston. I had no means of knowing whether it was decided at the meetings that Kemp should have it, but I did not hear any one say so outside or inside the Court. I heard Kahui's Court going over the work done by Mangakahia's Court. I concluded that the Court was either confirming the former orders or giving information to the Assessor. I know nothing of any subsequent application either by Kemp or McDonald for the Ohau land. Such an application may have been made without my hearing it. I had no interest in anything before the Court after No. 9 was allotted. I heard about the square foot being allotted for the double name. I heard the order made for it. I can't say whether it was on the first, second, or third day of Kahui's Court. [Vol. 7, page 195, read out: "Application from Major Kemp for 1 square foot," &c.] Either McDonald or Kemp applied to have the duplicate name struck out. The Court said it could not do that, and awarded a foot to the duplicate name. I am sure the Court proceeded to make the order at the time as soon as McDonald made the application. [Vol. 7, page 194: "Application from Major Kemp to amend the list of names in the certificate," &c.] That is what took place. The Court immediately made an order for 1 square foot to Wiremu Matakara. I did not hear any proposal to adjourn the case after Court had said it could not strike out the name. No. 12 was brought before the Court after No. 11. The application was Kemp's, but I think McDonald explained it to the Court. Raniera stood up and said that the chiefs had enough in No. 11. Wirihana became angry. The Court told Raniera to go on, and he said that this should be for the tribe, as the two chiefs had sufficient in No. 11. Kemp asked for an adjournment, and it did not come on again till next day. The first talk about No. 12 came immediately after No. 11. No. 11 was before No. 9, so that No. 12 must have been before No. 9. I do not remember whether the square foot came immediately after No. 12. I remained in Palmerston till end of Court. I cannot remember what was done by the Court after the square foot was ordered. Cannot say that it was the last order made. I think that No. 9 was ordered on the afternoon of the first day of Kahui's Court. No. 12 was brought on after No. 11 was ordered. It was taken out of the Court, and brought in again next day. When Kahui's Court opened it dealt with the railway, the town, and 1,200 acres at Ohau. These were the parcels I thought were referred to for information of Assessor. Then the land for Wairarapa Natives, parcel for Karena's wife, section for Hiroti and others, the 105 acres each block, were dealt with by the Court. After these, in the afternoon of same day, No. 9 was dealt with. I was mistaken in saying that Nos. 11 and 12 were taken on that day. I think that No. 11 was first block dealt with on the second day. If the minute-book says it was taken on the first day, then I am wrong. I admit that I was wrong in replying to Mr. Baldwin about Nos. 11 and 12 being taken before No. 9. I should have said they were dealt with on the same day as No. 9. I am sure that after No. 9 was finally awarded, on the afternoon of the first day of Kahui's Court, I did not hear anything more about the Ohau section. If the minute-book says "and that the Ohau section was afterwards applied for by Kemp," I could not have heard it. I thought it had been already awarded on the 25th of November. The meeting with Lewis in Court-house about boundaries of No. 9 was not during the dinner adjournment. The Judge remained in the Court. McDonald was present. The meeting lasted a considerable time, perhaps about an hour. Ru Reweti may have been at the meeting, but he took no active part. I cannot say whether Heni Kipa was there; her husband was. I think Hare Pomare had returned to Otaki, but he attended the first meeting. Hitau was at the meeting but was silent. I was their spokesman. Waretini Tuainuku and Ranginui were present. Hukiki was not there. Henare Roera was there; so was Maraku; also his wife, Erenora. I cannot say whether all these remained in the Court, but they belonged to our party. I remember now that Hitau was not in the Court; she was ill. [Horowhenua Commission, page 162, questions 124 to 128 (Nikitini's evidence), read.] I remember giving that evidence; it is all true. Lewis was not at the meeting; he came afterwards. We did not go to the Court until the boundaries were settled. I referred to our meeting at the Royal Hotel, where Kemp refused our request. It was before we went to Kahui's Court. I was not speaking of the meeting at the Courthouse; the locality of the section had been agreed to then. Kemp met me at a shoemaker's shop, and told me he had seen Lewis, and that he agreed to the 1,200 acres being at Raumatangi. I consider that, as Kemp was the principal man on Muaupoko side and I was the principal man on our side, the matter was settled. It was about a day before we went to Kahui's Court that Kemp told me he had agreed to the section for us being at Raumatangi. The boundaries were arranged in the Courthouse. I think Kemp had seen the agreement when he met me, and told me it was all right. I had seen the telegram containing terms of agreement before we went to Kahui's Court. After Kemp had told me that he had agreed, Lewis also told me that Kemp had consented. This was in the street after Lewis had seen Kemp. It may have been a day before we went to Kahui's Court, but, at any rate, it was before we went to Kahui's Court. The only business at our meeting in the Court-house was the settlement of the boundaries. Kemp had agreed to the location of the land at Raumatangi outside the Court. Lewis had also agreed, and so had I. I don't think it mattered to Lewis where the section was located. There was no one else whose consent was necessary to the completion of the matter. Our meeting in the Courthouse was to fix the boundaries of No. 9. The main discussion was between Kemp and myself. I told him that we were entitled under the agreement to 1,300 acres; but Kemp would not consent then, though he

did afterwards when he petitioned Parliament. Some of the Muaupoko were present. Lewis was also there, and advised me to give way on the question of the reserve. I don't remember what McDonald said about the boundaries, but he took part in the discussion. I do not remember there being anything said about the land being sandy. Ohenga was spoken of. The seaward side of it is sandy. Kemp and I fixed the boundary of No. 9 in the Courthouse. When we were discussing them we had a tracing of the block before us. I do not know who prepared it, but Palmerson was the surveyor who laid off the subdivisions. I concluded that he made the tracing because he, Kemp and McDonald generally came into the Court together. The lines laid down by us are not on any of the plans before this Court. The boundary we fixed followed the bends of the Hokio Stream, 2 chains from it, until it reached Ohenga, where it turned to avoid Ohenga. The angle was an acute angle; from a point on the Hokio Stream it ran in a south-westerly direction to the eastward of Ohenga. This was the direction it took on the tracing we had before us at the meeting in the Courthouse. [Plan bearing Kemp's approval to alteration of boundaries of No. 14, produced to witness.] Those boundaries of No. 9 do not correspond with the position of boundaries shown on the tracing used at the meeting. My consent was subject to the boundaries being laid down as we had agreed to them. It was not at my wish that the surveyor altered the boundaries of No. 9 on survey. I do not know who has the tracing now that we used at the meeting. [Horowhenua Commission, page 163, question 142, read out.] I remember saying that to the Commission. I spoke at Mangakahia's Court first. The second time I spoke was about bringing the boundary to the Hokio Stream. I told the Court that there was a dispute about the boundaries. Kemp and Lewis informed the Court that the location of the parcel at Raumatangi had been settled, and that the boundary towards the Hokio Stream was to be 2 chains from it. Then Kemp stated why he wanted the boundary 2 chains from the stream. After he had spoken I informed the Court that I had insisted upon the stream being the boundary, because the eel pas were in the stream. Lewis asked me to withdraw my objection, as the 2-chain reserve would be for all, and on this ground I withdrew my objection. It was after Judge Wilson had resumed his seat on the bench that this took place. That was the settlement of the matter, and was the giving of Raumatangi to the descendants of Whatanui; but Kemp reopened the matter by objecting to our list of names. We have always been in occupation of Raumatangi. I was in Kahui's Court when the 1,200 acres at Raumatangi was awarded to Kemp for the descendants of Whatanui. I can swear that it was awarded to Kemp for that purpose. It was so stated in Court. The application to the Court was to award Raumatangi to Kemp in fulfilment of the agreement between Kemp and Sir Donald McLean on behalf of the descendants of Whatanui. I had some talk with Wirihana about an exchange of the Raumatangi and Ohau sections. This was at a considerably later period. The talk about Ohau going back to the people was immediately after the settlement of No. 9. I asked the question what would be done with the other section, and Wirihana replied that it would go back to the tribe. I said no more, as it did not concern me who the Ohau section went to. I did not understand at the time that it was to be kept as an alternative section, so that we might have it instead of Raumatangi. It was after No. 11 was divided that Wirihana proposed to exchange sections. Raumatangi is within the part awarded to Warena Hunia, and Wirihana said that if we would take Ohau it would save fencing. I declined, and asked Wirihana to give us the portion reserved between Raumatangi section and the stream. He agreed, but asked me to wait until his troubles with Kemp were over. Wirihana was the only person who spoke of the exchange to me. I never heard any one of our party, either the direct descendants or the collateral descendants of Te Whatanui, say they would not have either Raumatangi or Ohau. If any of them had said so I would have heard it. None of them have ever said that they would not accept Raumatangi. Before the matter was settled Waretini said that he would like his share at Papaitonga. This was before the partition Court of 1886. I have never heard any of our party say that they had not made up their minds whether they would have Ohau or Raumatangi. When I appeared in Mangakahia's Court I objected to our land being placed at Ohau. I don't think I could have asked to see the position, because I knew it. The tracing was on the agent's table. We had the same tracing when we had the meeting with Lewis in the Courthouse. It was much larger than W.D. 508. On consideration, I think it must have been a tracing taken from W.D. 508. The first time I saw the tracing was when it was brought into Mangakahia's Court. The Ohau section was shown on it as on W.D. 508. The Raumatangi section was not on it when I first saw it, nor was it shown when we were discussing the boundaries. The railway, the township, and the Ohau section were shown on the tracing when I first saw it. Kemp laid down the boundary of No. 9 on the tracing we had at the Courthouse meeting. I am not sure whether Palmerson was there or not. It was put on the tracing with lead pencil. I think it must have been either Kemp or McDonald who put it on. The Judge took his seat without our breaking up our meeting. The tracing was put before the Judge, and he made an order upon it. What I recollect most clearly was the 2 chains along the Hokio Stream. After the order was made the matter was settled, and we had no further claim on the Ohau section. I don't know who first proposed that we should have the Ohau section. If Kemp said he did I won't contradict him, because he told us it had been decided by him and his people. Kemp did not tell me on the way from Wanganui to Palmerston that it was intended to offer us the Ohau section. He told me at Palmerston before the Court sat, and I said that our elders would not agree, and wanted it at Raumatangi. Lewis was present in Court when the order was made for No. 9.

Re-examined by Mr. McDonald.

Witness: The meeting in the Courthouse was after dinner. The application was made to the Judge for No. 9 directly the meeting was concluded. [Vol. 7, page 192, "Application from Meiha Keepa te Rangihiwinui for 1,200 acres in his own name," &c., read, including description of boundaries.] That is not what Kemp and I agreed to. The agreement was that the line was to follow the bends of the stream. The minute does not represent what we said in Court. I wanted

the stream made the boundary. Kemp insisted on the reserve of 2 chains. The description of boundaries read by you is not as we gave them to the Judge. The line being run straight had the effect of cutting out all our kaingas. I would not have agreed to the boundary if I had known that it was going to be laid down as it has been. I don't know who gave the Court the description of the boundaries you have read out. It was neither Kemp nor myself. I don't say that any one wished to deceive us or the Court at the time, but I wondered who had instructed the surveyor to survey No. 9 as he did. When No. 9 was ordered, it was distinctly stated that it was for the descendants of Whatanui. The same thing was stated when the Ohau section was awarded by Mangakahia's Court. It did not occur to me in 1886 that any one else had any right to say anything about No. 9, and that is why I said the whole thing was settled. When others claimed a right afterwards it did not alter my opinion. If Kemp had persisted in our having the Ohau section, I would have appealed to the law. I am an Assessor of the Court. I know that Kemp could not sell any of the land under the original title, but Parliament can alter the law. I mean by appealing to the law that we would have petitioned Parliament. I have already said that the second time I stood up in Court I spoke about the boundaries of No. 9. When Kemp told me that he agreed to our having Raumatangi, I knew that he was living with his people, and that they would agree to anything that he would propose. Hitau did not object in Court to Raumatangi because it was sandy. I did everything, and they all knew what I was doing.

To *Court:* Both Kemp and Lewis suggested that we should send in a list of names after No. 9 was awarded. I have never seen the list, but I agreed to it. I don't remember writing a letter forwarding the list. [A letter produced to witness.] I did not write that letter. It is not in my handwriting. Waretini may have written it. [List of names read to witness.] This is the first time I have heard the list of names read. I don't approve of it. Many of those whose names appear in it have no right to the 1,200 acres. I remember writing to Government in 1890, stating that Ru Reweti and I had agreed about the 1,200 acres. I don't know that Kemp wrote informing the Government that it had been arranged that the land was to be divided equally between the descendants of Whatanui and Hitau. I never agreed to that. Ru Reweti and I disputed over the division. [Letter from Kemp to Lewis, dated the 30th April, 1887, read to witness.] I repeat that Wiremu Pomare was never heard of in connection with the 1,200 acres until some time after the Court of 1886.

The Court adjourned until the 24th instant.

WEDNESDAY, 24TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Mr. McDonald said he wished to call Sir Walter Buller to give evidence on certain passages in his pamphlet.

Sir W. Buller had no objection, if the Court considered anything in his pamphlet relevant to the case. He would ask to be allowed to put in the pamphlet.

Mr. McDonald had no objection to the pamphlet being put in.

Mr. Baldwin said the question whether the pamphlet should be put in might be argued when Sir Walter tendered it to the Court. He contended that only those parts of it that were pertinent to the case could be put in.

After some discussion, it was agreed that Sir Walter Buller should be examined later on.

Mr. McDonald called Himiona Kowhai.

HIMIONA KOWHAI sworn and examined.

Witness: I am a Muaupoko. I was born at Horowhenua. Have lived at Horowhenua all my life. My father's name was Hanita Kowhai. My mother's name is Iritana Kowhai. My father was not in the certificate of 1873. My mother and I are. My father was killed in a fight against Titokowaru before 1873. I know something of the old leases of Horowhenua. My father took part in them up to the time of his death. He was custodian of the lease. When he went away to fight he left it with my mother. The land was leased to Hector McDonald. I remember the Court of 1886 at Palmerston. I attended that Court with the other Muaupoko who went to Palmerston. We went to Palmerston from Horowhenua. I think Eparaima and Wiki Keepa came for us. I understood that Kemp sent them for us. We lived in Palmerson's barn, at Palmerston. Kemp stayed in Mr. Palmerson's house. I saw you in Palmerston. You lived in the same house as Kemp. We were told the business we had been sent for to do. It was to arrange subdivision of Horowhenua before it went into Court. The Muaupoko proceeded with the business. The first divisions settled by Muaupoko were—(1) The railway-line, (2) the township, and (3) Ohau. We were told that Ohau was to be given to Kemp to convey to the descendants of Whatanui. The Muaupoko agreed to it, outside the Court. What I heard was that the Ohau section was taken into Court, and that Nicholson objected to it. I was not in Court myself. I was a follower of Te Whiti at that time, and did not recognise Courts. Some others of Muaupoko followed Te Whiti. Others did not. The Muaupoko who went into the Court told me, when they came out, that Nicholson had objected to the other section. It was generally spoken of. Mangakahia was the Assessor of the Court referred to; so I heard. I knew the section at Ohau. You pointed it out on a tracing. I understand maps. Can point out the section on Court plan. [Points to No. 14.] I recognise it from having seen it on other plans. The plan you showed us at Palmerston was on soft, thin paper. I remained with Muaupoko at Palmerston after Nicholson refused the Ohau section. I and my wife came to Horowhenua for two or three days, and then returned to Palmerston. I was at Palmerston when the Court finished.

I never heard the Ohau section referred to again in the barn after Nicholson had refused it. I did not hear anything about it afterwards. I heard about another piece being arranged for the descendants of Te Whatanui, at Raumatangi. I heard this at our kainga, at Palmerston. I heard the people say that Kemp proposed to give the descendants of Whatanui a piece of land at Raumatangi. I did not hear any objection to the proposal. All the people agreed. Kemp's name was to go into the section, and it was to be for the same people that the Ohau section had been offered to. I did not understand that the descendants of Whatanui were to have both sections. They were to have their choice, but were only to have one section. I did not hear at the time that the descendants of Whatanui had chosen either section. I did not hear Kemp say in 1886 that the descendants of Whatanui had chosen either of the sections. I have since heard that the descendants of Whatanui had made a choice of a section. I heard this at time of Otaki Court. I did not attend it; but Rere and Ema Nicholson told me what they were going for. They said they were going to Otaki about the Raumatangi land—I mean No. 9, near the 100 acres, at Raumatangi. The Court I refer to sat about two years ago. I did not make any application to Kemp about No. 14 after the Otaki Court, because we were too much occupied with the dispute between Kemp and Warena, in connection with No. 11. I have not heard of any others applying to Kemp about No. 14 since the Otaki Court. I remember a meeting at Horowhenua, at a place called Pipiriki, to discuss the matters in dispute between Kemp and Warena. At that meeting Waata Muruahi spoke of the Ohau section; he also referred to the land held by Kemp and Warena, and that held by Ihaia Taueki. He asked Kemp to give back the Ohau section to the tribe. I heard him. Kemp, in reply, said, I only now understand that this is an attempt to choke me. I do not quite know what he meant by it. I thought at the time of the Pipiriki meeting that No. 14 belonged to the descendants of Whatanui, because I did not know that they had finally rejected it. I knew that it was vested in Kemp, for the purpose of conveying it to them. I do not know what year Pipiriki meeting was held. I think it was after the Court of 1890, but am not sure. It was about that time.

Cross-examined by Mr. Stevens.

Witness: I can give the names of some of the Muaupoko who did not attend the Court of 1886. Winara te Raorao, Hori te Pa, Noa Tame, Tiripa Waata, amd Anikanara Hori did not attend the Court. The reason was that they were followers of Te Whiti, and did not recognise Courts. Waata Muruahi was there one day. There were flax-mills working in Horowhenua in 1886. Some of the Maoris worked at the mills. Some of those I have mentioned were engaged at the mills. I don't know that any of the Muaupoko were away at Parihaka or Wairarapa when the Court sat in 1886. I don't know that Kemp has large personal interests in Nos. 11 and 14, or either of them. If Kemp stated that he held No. 14 by his own personal right he was wrong. He has no right there at all. It was given to him for the descendants of Whatanui. I don't know where Kemp's claims are situated in Horowhenua. I was in Palmerston when the Court sat there in 1890. No. 11 was divided between Kemp and Warena by that Court. The north side of the block was awarded to Kemp. The Hokio Stream was the boundary between them. If No. 14 had not been laid off east of the railway that part would have gone to Warena under the order of the Court of 1890. Warena Hunia has rights to No. 14 by Maori custom. He has large rights there. I don't know that Wirihana Hunia has any other right to Horowhenua than that derived from his father. I know he derived his right from his father. Wirihana Hakeke's rights went to his descendants —Wirihana is one of them. Ngatihine is Kemp's hapu of Muaupoko. Wirihana te Hakeke was Ngatipariri.

Cross-examined by Henare Te Apatari.

Witness: My wife and I returned from Palmerston to Horowhenua several times, for two or three days at a time, when the Court sat in 1886. I was at the meeting when Kemp asked the people to set apart some land to enable him to fulfil his agreement with the Government regarding the descendants of Whatanui. No one objected. I was not at any meeting at which Kemp asked for the Ohau land for himself. The two sections were set apart so that the descendants of Whatanui might choose which they would have, Nicholson having objected to the Ohau section. The Muaupoko were not all present. Pero Tikara was in Wairarapa. He did not attend the meetings or Court in 1886. Te Oti Hore was in Wairarapa at time of meetings in Palmerston in 1886.

Cross-examined by Hamuera Karaitiana.

Witness: I don't think Winara attended the Court at Palmerston in 1886. I do not know who acted for him. His brother and sister were at Horowhenua. I could not say who represented Hori te Pa. Noa Tame's younger brother was at the meetings at Palmerston in 1886. I did not hear him say that he acted for himself and his brother. Tiripa Waata was not at Palmerston, but her mother was. I did not hear any one say that they appeared for any one else. It seemed necessary that those who were absent should be represented.

Cross-examined by Mr. Baldwin.

Witness: I am quite clear that I did not in 1886 give Kemp No. 14 for himself. I did not hear that any meeting of Muaupoko at Court of 1886, or at any time since, gave Kemp No. 14 for himself. I dispute Kemp's right to have No. 14 for himself. The tribe conferred very substantial benefits on Kemp in 1886. I remember they gave him 800 acres to pay his private debts with. The other owners only got 105 acres each. The 800 acres was a substantial share for Kemp. I remember also that Kemp got 4,000 acres to sell to the Crown, under certain conditions. Kemp asked the tribe for it, so that there should be a township near the people. The proceeds were to pay cost of survey. This was not done. We paid for our survey ourselves. I understood in 1886 that the 800 acres was Kemp's share. He sold it to pay his private debts incurred over Wanganui

lands. It was not then intended that he should have the Ohau section for himself. If it had been suggested I would not have said anything. I was a Te Whiti-ite. My consent would have been this: that I would not have spoken. It was not, so far as I know, suggested to any of the tribe in 1886 that Kemp should have the Ohau section for himself.

Cross-examined by Sir Walter Buller.

Witness: I have taken an active part in the business of the tribe, but I have not taken part in the discussions about Horowhenua at any of the meetings. The reason I did not speak at the meetings which took place when the Court sat at Palmerston, in 1886, was that I was a Te Whiti-ite. I became a follower of Te Whiti long before the Court of 1886. I am not a Te Whiti-ite now. I ceased some time since 1886, but a long time before the Otaki Court. I had ceased visiting Parihaka at time of Pipiriki meeting, but my thoughts were still on Te Whiti. That is why I did not take part in the discussions then. I have not spoken at any of the meetings that have taken place since the Pipiriki meeting. Being a follower of Te Whiti, I did not speak at any of the meetings in Palmerston in 1886, or in the Court. My loyalty to Te Whiti prevented me going in to the Court. I did not tell the people this. They all knew that Parihaka people did not recognise Courts. I heard from the people that Mangakahia was the Assessor of the Court. I also heard after Mangakahia left that Kahui Karerehe had come. I saw him in the Court. I went into the Court three or four times, for a short time only. I did not go into Mangakahia's Court at all. I heard what the Court was doing sometimes when I was in the Court. The only business I can remember is the proceedings about No. 11 and the piece in Ihaia's name. I remember the application being made for No. 11 to be put into Kemp's name, and Wirihana asking that his name should be put in as well. The people would not consent to Wirihana's name being put in; they retired into a side-room and agreed to put Warena's name in, and the Court made the order. I came out of the Court soon after this. No. 12 was, I think, called on before I left the Court, and an application made for an order in favour of Kemp and Warena. Raniera objected, and asked that it should be left to the people to decide. I then came out of the Court. This is all I can remember of what took place in the Court. I did not take any interest in the proceedings when No. 11 was before the Court. I don't know who made the application. The proceedings had commenced when I went in. I heard Wirihana object to the order being made in Kemp's favour only. Wirihana said that if his name was not put in he would make trouble over all the divisions, and that is why Kemp agreed to put Warena's name in. I believe it was McDonald who took matters before the Court. It was in the side-room that Wirihana objected. I did not go into the room. It was when we returned to our kainga that I was told what Wirihana had said. When we returned to the kainga Wirihana said what I have told the Court. He told us that he had asked in the side-room to have his own name put in. I think this was at the kainga. [Page 33, printed evidence in Supreme Court case (Wirihana's evidence), read: "I was a long time looking at the map of subdivision, and I said to Kemp," &c.] I thought that Wirihana wanted his own name put in. That is my recollection. I was in the Court when they returned from the side-room. I heard the award of the Court to the two persons. The land vested in the two absolutely by law, but not by Maori custom. According to Maori custom it was handed over to them as chiefs, and they were to consider the tribe. I remember the Supreme Court case in Wanganui in 1894. I gave evidence in that case. [Page 36, Supreme Court evidence, read.] I remember giving that evidence. It is true. When I said that I gave up my father's bones I meant that I gave them to Kemp and Warena as chiefs. If they chose to dispose of the land that would be for them to consider. [Horowhenua Commission, page 167, questions 282 to 291, read.] I don't think that evidence is exactly as I gave it. Most of it is right, but in some parts it seems to have been misreported. [Questions read again.] I admit that I gave those replies. [Questions 292 and 293 read.] I suppose I said that, because it is printed. I remember saying it. I have said that I heard the railway, the township, and the 1,200 acres come before Mangakahia's Court. I heard this at Palmerston in 1886, and I have had them in mind since the Royal Commission. I heard them discussed and arranged at our meetings before they were taken to the Court. I was present when those three parcels were discussed, before Mangakahia's Court sat. The railway was the first, then the township. The Ohau section was third. I was sure of this before I gave evidence before the Royal Commission. [Horowhenua Commission, page 166, question 262, read.] I understood when I made that reply to Mr. Stevens that he was referring to the Ohau section. I was confused then. I had had no time to think over my evidence. I have thought over it since. Nobody has told me anything. Nobody has told me what the sequence of the cases was. The minutes of the Court have not been interpreted to me. I am quite sure that Raumatangi was not offered to the descendants of Whatanui before Ohau. [Horowhenua Commission, page 169, question 348, read.] I don't know that I said that. [Question 349 read.] That is correct. [Question 350 read.] I don't remember giving that answer. [Question 351 read.] I remember giving that answer; it referred to the 100 acres. [Question 352 read.] That is correct. [Question 353 read.] That is correct. [Question 354 read.] That is not correct. I don't think I gave that reply to Mr. Stevens. If I did it was because I was not prepared. [Question 355 read.] I don't remember that I said that, but if it is in the minutes I will not deny it. [Question 356 read.] I don't remember saying that. The question or my reply must have been misinterpreted. [Question 357 read.] I said that. [Question 358 read.] I don't know that that is what I said. [Question 359 read.] I said that; but it was arranged in Palmerston in 1886 that No. 9 was for the descendants of Whatanui. [Question 360 read.] I don't know that I said that. [Question 361 read.] I have always said that No. 9 was not cut off first. It was cut off for the same purpose as the Ohau section. [Question 362 read.] I said that. [Question 363 read.] That is what I said. [Question 364 read.] I did not say that I knew that Ohau was the first section agreed to by Muaupoko for descendants of Whatanui. [Question 365 read.] I remember saying that; but I did not say that No. 9 was

the section first proposed for the descendants of Whatanui. [Question 366 read.] I remember saying that we wanted Ngatiraukawa to have No. 14, so that they would not interfere with us. [Question 367 read.] I don't remember saying that. [Question 368 read.] I did not understand what time Mr. Stevens was referring to in that question. I saw the plan used by Mr. McDonald in 1886, showing the Ohau section, township, No. 9, and other divisions. I did not see all these divisions on it. I did not see No. 9 on it. I saw a map in 1886 in our house at Palmerston. I could not have said "No" to Stevens's questions if I had known he referred to 1886. I heard from the people that No. 9 was on McDonald's plan, but it was after the Ohau section. I do not remember telling the Commission that No. 9 was the first section cut off. The people and McDonald told me that No. 9 was on the map. I think McDonald showed me in our house. Sometimes we looked at the map. I did not go to see No. 9 on the map. The reason McDonald told me that No. 9 was on the map was that Nicholson had refused the Ohau section, and No. 9 was laid off in consequence. I did not know in 1886 that the Ngatiraukawa would prefer the Raumatangi land. I did not know it until the Otaki Court in 1895. I knew that they had lived for years at Raumatangi, but not on the 1,200 acres. They had stock on the 1,200 acres, and have now, in common with others. I first heard at Otaki Court of dispute between the descendants and collateral descendants of Whatanui. They were talking about the land after 1886, but I don't know whether they selected a section or what they did.

The Court adjourned till the 25th instant.

THURSDAY, 25TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

HIMIONA KOWHAI's cross-examination by Sir Walter Buller continued.

Witness [Horowhenua Commission, page 168, question 305, and reply, read out]: I remember saying that. [Question 306, and reply, read out.] I said that. [Question 307, and reply, read out.] I admit that I said that. [Question 308 read out, with reply.] I think I said it was for the descendants of Whatanui. I meant that. [Question 309, and reply, read.] I said that. [Question 310, and reply, read.] I said that No. 9 was cut off first, but I was mistaken. My mind went back to 1874, when Kemp and McLean made an agreement on behalf of descendants of Ngatiraukawa. [Latter part of question read.] I don't remember whether I said that. I think I said that the Ohau section was set apart first, and that in consequence of Nicholson refusing it No. 9 was selected. I know that what I am saying now is opposed to what I am reported to have said before the Commission, but this is the correct evidence. The agreement between Kemp and McLean was that some land should be set apart in the locality of Raumatangi for the descendants of Whatanui. It was only when the Court sat at Palmerston that it was known the land was proposed to be given to them at Ohau. [Horowhenua Commission, page 167, question 272, and reply, read.] I remember saying that. [Question 273 read, with reply.] I said that; it referred to No. 11. [Question 274, and reply, read.] I said that. [Question 275, and reply, read.] I remember saying that. [Question 276, and reply, read.] That is right. I meant when the land was taken before the Court at Palmerston nothing was said indicating a trust in No. 11. There was as regards some of the other divisions. There was nothing said at our kainga indicating that Kemp and Warena were trustees on behalf of the tribe in No. 11. I was at some of the meetings; others I did not attend. I don't remember whether I was at the meeting when No. 11 was discussed. I don't know what was done about it outside the Court. I remember No. 11 being taken to Court. If a trust had been suggested in No. 11 outside the Court I should have heard it. Up to the time the land was taken into Court nothing was said indicating that No. 11 was to be held by Kemp and Warena in trust. It was in the Court that I heard that Wirihana wanted his name put into No. 11. At our discussions outside the Court I understood that Kemp's name only was to be put in. Wirihana may have proposed outside the Court that his name should be put in No. 11. I cannot recollect. I don't quite remember saying in the Supreme Court that Kemp made a speech outside the Court, and that Wirihana replied to it. I don't remember now whether Kemp made a speech or whether Wirihana replied to it. I cannot remember everything. [Supreme Court case, page 39, line 91, *et seq.*, read.] I remember giving these replies to Barnicoat. I had forgotten that I said it. I was a follower of Te Whiti in 1886; that is why I did not pay much attention to what was being done at the meetings. I went to Parihaka after 1886. I heard what was going on, because everything was done in our house, but I don't remember what was done, because my thoughts were with Te Whiti. I was at the Pipiriki meeting in 1891. I heard Waata Muruahi speak at that meeting. Donald Fraser and J. M. Fraser were at the meeting. Waata Muruahi asked Kemp and Warena to give back No. 11. He also asked Ihaia to give back the parcel he had. He asked Kemp to give back the Ohau section that you are occupying now. The meeting-house was full. All the people had assembled when these requests were made. Kemp, Wirihana, Donald Fraser, Ru Reweti, and J. M. Fraser were all there. In my belief they all heard them. Waata Muruahi stood up and spoke in his natural voice, loud enough to be heard by all present. I was some little distance from Waata. In reply to Waata's requests to him, Kemp said, "*Katahi au ka mohio he nanati tenei i taku kaki.*" I don't know what Kemp meant by the words he used. He will know. [Horowhenua Commission, page 275, question 290, *et. seq.* (Waata Muruahi's evidence), read to witness.] I am not quite clear about that evidence. It may be true. The purport of the Pipiriki meeting was to ask Kemp and Wirihana to give back No. 11, Ihaia to give back the land awarded to him, and Kemp to give back the Ohau section. Waata Muruahi was not at Parihaka at the time of the

Court in 1886. I don't remember hearing Hori te Pa and Charles Broughton speak at the Pipiriki meeting. I heard Ngataahi speak of the *rerewaho* block. I did not hear her refer to No. 14. The only person I heard speak about No. 14 was Waata Muruahi. I heard Mohi speak at the meeting, but not about No. 14. The discussion before the meeting resulted in it being decided that Kemp and Warena should be asked to give back No. 11, Ihaia Taueki to give back his piece, and Kemp to return No. 14. Waata Muruahi was selected to make the requests at the meeting. All Muaupoko who were at Pipiriki resolved on this course. It was before the meeting was called, and before the arrival of Kemp and others, that it was proposed to ask for the return of the lands. I have mentioned Waata Muruahi was nominated at the same time. Kuku, Hema, and others were present, and took part. It was the desire of Muaupoko that Waata Muruahi should make the requests. Rangimairehau may have made the first speech when Kemp arrived at Pipiriki meeting. I don't know how many others spoke before Waata Muruahi. I remember Raniera speaking. Those who spoke did so on behalf of the tribe. I can't say whether it was towards the end of the meeting that Waata Muruahi spoke, but he said what I have stated. I am quite clear that the Ohau section was one of those Waata asked to be given back. I don't quite remember on what grounds Waata asked that this parcel should be given back, but it was the general opinion at the time that it should be given back. I did not hear Waata explain that as descendants of Whatanui had chosen No. 9 the Ohau section should be given back to the tribe. I was not surprised at the request, although I understood that No. 14 was for descendants of Whatanui. I did not hear any one say at the Pipiriki meeting that Kemp was still holding No. 14 for descendants of Whatanui; I heard that stated in Palmerston in 1886. I did not hear any one state at Pipiriki meeting that Kemp was a *kai-tiaki* in No. 14. We knew that he held it for descendants of Whatanui. I don't know why Waata Muruahi asked that No. 14 be returned. I don't know whether the registered owners of Horowhenua, who were in Wairarapa and elsewhere, knew of sitting of Court in 1886. They have never told me that they did not know of it. I was not present when Muaupoko were told that Nicholson and some of the other descendants of Whatanui wanted their land at Raumatangi. I think I was down here, and when I returned to Palmerston I was told that it had been agreed that the land should be located at Raumatangi in compliance with their desire. I heard nothing more about the Ohau section after Nicholson had refused it. From 1886 down to the present time I have never spoken to Kemp about his being a trustee in No. 14, because I did not know that the descendants of Whatanui had decided not to take it. I knew that descendants of Whatanui had chosen No. 9 in 1895, because they were wrangling about it. It was in 1895 I first ascertained that the descendants of Whatanui had accepted No. 9. I did not speak to Kemp about No. 14 after that, because we were too much taken up with the dispute between Kemp and Warena over No. 11. For the same reason I did not speak to any of the Muaupoko about Kemp being a trustee in No. 14 until time of Commission. I heard that in 1894 the Supreme Court had given a judgment putting all the people back on No. 11. I heard that Warena Hunia appealed against the decision and that it was affirmed by the Appeal Court. All the disputes about Horowhenua were inquired into by the Royal Commission. I was not clear after decision of Supreme Court and Appeal Court that the people were definitely put back on to No. 11. I was not sure that the matter was ended. When I knew it was settled that the descendants of Whatanui were to have No. 9, then I thought the road was open for the people to get back No. 14, but I was not clear what steps it would be necessary to take. It is only now that I perceive a way to get back No. 14. Since the Act under which this Court is sitting was framed. It was stated before the Commission that No. 14 was held in trust and should come back to the tribe. It was from what was said before the Royal Commission that I began to cast about for means of getting No. 14 back. I can't remember when I first heard that you were in occupation of the Ohau section. I may have known it when I went to Wellington to give evidence before a parliamentary Committee in 1892. I have seen you frequently since then, down to the present time. Down to the time of the Royal Commission I never told you that the Ohau section belonged to Muaupoko and not to Kemp. I heard that Kemp had sold you some small portions of the section at Otomuri. I heard that you had paid Kemp £110 for two small pieces of it. I have never applied to you for part of the purchase-money or for a portion of the rents, but I am doing so now because the road is open to me. I heard that Kemp had sold the timber off part of the Ohau section to Peter Bartholomew for £300. I have never applied to Kemp for any part of the £300, because I did not know how to proceed. I am going to do so now. I did not think of applying to you or Kemp for any portions of these moneys, because I did not know of any road until the Horowhenua Block Act was passed, which gives us the means of compelling Kemp to account for all moneys. I did not tell Muaupoko that Kemp was a trustee in No. 14 because they all knew he held it for the descendants of Whatanui. I did not tell them so after I knew that the descendants of Whatanui had chosen No. 9. I have never applied to you for the rents or purchase-money for the Ohau section, because I did not know how to. For the same reason I did not apply to Bartholomew for a share of the purchase-money for the timber over the Ohau section, or the £500 paid as royalty for timber off what is now the State farm. I repeat that I have never told you that Kemp held No. 14 in trust. I would never have applied to you and Kemp if this road had not been opened.

Re-examined by Mr. McDonald.

Witness: I said in my evidence before the Commission that it was our fault that No. 11 was awarded to Kemp and Warena without conditions. When No. 11 was awarded to them the tribe did not tell them that they were to hold it as trustees. In some of the other divisions the questions of trust was made clear. They held No. 11 to do with it as they thought proper. I thought we had nothing more to do with the land in consequence of our having made no conditions. According to Maori custom the land was to be for them, and they could consider their people.

It was for them to consider whether they should give back any portion of the land to the people. I never heard of any chief who had a present of food given to him keeping it all to himself. [Horowhenua Commission, page 166, question 266, and reply, read.] I remember saying that before the Royal Commission, and it is what I thought at the time. No. 11 was awarded to Kemp and Hunia. The actions of Kemp and Warena since the decisions given by the Supreme Court and Appeal Court show that those decisions did not settle the Horowhenua trouble. I did not consider myself as free to communicate with Kemp after those decisions as I was previous to 1890. The whole tribe has been kept in a state of turmoil from 1890 till now. We did not know what to do until these proceedings were open to us. I was hurried to give evidence before the Commission. My mind was unsettled by the illness of my wife, who was in labour. Her child was born on the evening of the day I gave evidence before the Commission. I mean this Court to understand from my evidence that the Ohau section was selected for the descendants of Whatanui before the Raumatangi section. I have never objected to Hector McDonald's leases. I know no difference between his leases and Sir Walter Buller's. Kemp leased the land in both cases. I did not object to either. The township section was granted to Kemp under certain conditions. I did not make any application to Kemp for any part of the money received by him for the township, because I did not know how to proceed. I heard it stated by others that Sir Walter Buller had purchased part of No. 14. I may have heard this before the Commission sat, but I heard Sir Walter Buller say so before the Royal Commission.

To *Assessor:* I have stated that I was at some of the Muaupoko meetings in 1886, and that my thoughts were with Te Whiti. I consented to No. 11 being awarded to Kemp and Warena, and to No. 12 being awarded to Ihaia Taueki, but I did not speak; I remained silent, and the people agreed that two only should be in the title. If the majority had not agreed I would not have done so. We placed reliance upon the two chiefs. It was for them to do what they thought right. It is quite true that we gave the land to them because they were chiefs. I can trace Kawana Hunia and myself from Pariri. [The Assessor gives Whakapapa.] I admit that is correct. I am a younger relative of Kawana. My elders from Pariri down to my father occupied Horowhenua permanently. I am quite equal in rank to Kawana, but he obtained an ascendancy over us by the prominent part he took in preventing the Ngatiraukawa getting the land. I have now ceased to rely upon the chiefs, and am doing the best I can for myself. I do not know under what Act Horowhenua was divided. I was very young when the title to the land was ascertained in 1873. I do not know that we looked upon Kemp as a trustee in 1886 as he had been previously. I did not know in 1886 whether Kemp was to be a trustee in No. 11, when it was proposed that it should be vested in him alone. I did not know that Kemp and Warena were trustees in No. 11, because it was not so stated, whereas it was mentioned in other divisions. I don't know whether Ihaia Taueki would have been a trustee if No. 11 had been awarded to him. No. 14 was awarded to Kemp to enable him to convey it to the descendants of Whatanui, and for that purpose. No. 14 belonged to all of us—that is to say, the descendants of Pariri. We derive our rights to it from Pariri. I know of Te Riringa; her interests were at Tamaki. I do not know that she had any rights here. It is not true that Pariri was a Hamua. I did not hear that it was one of the conditions of Kemp's agreement with McLean that the 1,200 acres for descendants of Te Whatanui was to be at Raumatangi. They are not living on it now. They live on No. 11. I don't know why they do not live on No. 9. I don't know that Kemp still holds No. 9, because the Ngatiraukawa were fighting over their relative interests in that section in 1895. I did not hear that Kemp had written to the Government asking them not to accept any list of names for No. 9, but to leave the matter to be settled by him.

Mr. McDonald said he wished to call Sir Walter Buller.

The Court said it understood that Mr. McDonald wished to examine Sir Walter Buller on his pamphlet, and it was not then decided whether or not the pamphlet was to be put in.

Mr. Baldwin objected to the pamphlet being put in, and said he would object to Mr. McDonald examining Sir Walter Buller on it. He contended that Sir Walter Buller could only refresh his memory from the pamphlet.

The Court said it considered it inadvisable that the pamphlet should be put in in any shape. The pamphlet contained only hearsay evidence, and Sir Walter Buller was cross-examined on it before the Royal Commission.

Mr. McDonald said he did not wish to examine Sir Walter Buller on his pamphlet. He wanted to put questions to him about what he said at the bar of the House.

The Court said that if Mr. McDonald wished to examine Sir Walter Buller there was plenty of material in the evidence of the latter before the Royal Commission.

Mr. McDonald said he would not call Sir Walter Buller if the Court did not consider it necessary or advisable. He did not intend to call any other Maori witnesses, but he would like to put certain questions to Sir Walter Buller before the case closed.

The Court did not see any necessity for calling Sir Walter Buller to repeat what he had already stated on oath. It did not know what questions it was intended to put to Sir Walter Buller, but, so far as it could see, he was not a material witness in this case, because all he had said was obtained from some one else. He was not in New Zealand in 1886.

Mr. Stevens said he had a great many questions to put to Sir Walter Buller, all of which were relevant to the case, and he hoped Sir Walter Buller would be put in the box. He thought Mr. McDonald had made a mistake in not taking out a subpœna for him.

Mr. McDonald said he was glad he had told Sir Walter Buller he intended to call him. It was more courteous to do as he had done.

The Court agreed with Mr. McDonald. As Sir Walter Buller had offered to give evidence there was no necessity to subpœna him.

Mr. McDonald asked that the question of calling Sir Walter Buller stand over until Monday.

The Court agreed.
Mr. McDonald: Subject to calling Sir Walter Buller, that closes my case.
Mr. Stevens asked to be allowed to open his case to-morrow.
The Court agreed.
The Court adjourned till the 26th instant.

FRIDAY, 26TH MARCH, 1897.

The Court opened at 10 a.m.
Present: The same.
No. 1, Horowhenua No. 14, resumed.

CASE OF WIRIHANA HUNIA AND WARENA HUNIA.

Mr. Baldwin informed the Court that Mr. Stafford was anxious to be present when the points of law were discussed, and asked if sufficient notice could be given to Mr Stafford.

The Court said the legal points would not be made known till the case was concluded, and that notice of the time could be sent to Mr. Stafford.

Mr. Stevens said he would not go into the evidence at any great length in opening his case. It would be necessary for him to adduce evidence refuting the claims of Kemp for maintenance of his title. The first allegation was that No. 14 was not cut off for Ngatiraukawa. He would bring evidence to disprove this allegation. He would also call evidence to disprove Kemp's assertion that he asked Muaupoko for No. 14 for himself. He would prove, further, that Kemp did not make any application to the Court on the last day of the Court for an order in favour of himself and for himself absolutely for Section No. 14, and that he did not apply for the land for himself on the day that the square foot was ordered. He contended that Kemp had not the assent of all the registered owners or their representatives to his keeping No. 14 for himself. If the Court did not hold that it was necessary for all the owners to agree to a voluntary arrangement, then he would have little hope of proving his case; but he hoped that the Court would say that it was necessary, and that it was and is necessary in all cases where there is a semblance of a trust, that sufficient notice should be given to all owners of what was intended to be done. He would show that Kemp did not give notice to all, but attempted to make a clandestine arrangement. He called Wirihana Hunia.

WIRIHANA HUNIA sworn and examined.

Witness: I reside here and at Rangitikei. My father's name was Kawana Hunia. He was a Muaupoko and a Ngatiapa, and was also member of other tribes. He belonged to Ngatipariri section of Muaupoko. He was a member also of other hapus of Muaupoko. He had two brothers, both younger than himself—viz., Te Wirihana Ngapapa and Te Rakena Komarua. Te Wirihana was also known as Wirihana Maihe. Hare Rakena te Komarua died at Te Wairoa. Wirihana Ngapapa is buried on Horowhenua No. 11. His tombstone is still standing. I resided at Horowhenua formerly; after Wirihana died I was brought here. I was very young—an infant. I was brought up at Horowhenua by some of the elders of Muaupoko—Himiona te Hopo, Te Rangiruru-puni, Hanita Kowhai, and others. I grew up at Horowhenua. I was brought to Horowhenua to take the place of my uncle, Wirihana, as a Muaupoko. My father and uncles were related to Muaupoko through their mother, Kaewa, who married Hakeke. When Kaewa's children were born it was arranged that Kawana Hunia should be chief of Ngatiapa, and Wirihana was sent back to his Muaupoko side as a chief of Muaupoko. I was sent to Horowhenua to be a chief of Muaupoko. My younger brother was to be a chief of Ngatiapa. He was taken by Aperahama Tipae and other chiefs to bring up. I remember a sitting of the Native Land Court at Foxton in 1873. I was there. I remember that Kawana Hunia, Kemp, and Peeti te Aweawe took the leading part before the Court and at the meetings outside the Court. Kemp's name was put on the face of the certificate. I can explain why my father's name was not put on the certificate as well as Kemp's. Kawana Hunia did not know that it was proposed to put Kemp's name only in the certificate. It was done secretly by Kemp, Te Whatahoro, Rangimairehau, and others in a tent on a Sunday. Kemp did not consult my father about the certificate; he had his name put in secretly. When Kemp, Hunia, and the people went into Court Hunia found that the names had been arranged secretly by Kemp. Hunia in Court objected to what his friend Kemp had done. The Court said that Hunia's objection was reasonable, and that it would not be right to award the land to Kemp only. Kemp and Hunia's lawyer, Mr. Cash, also objected to this being done. Kemp then suggested to the Court that he and Hunia should both be put in the title. Hunia rose and said he would not consent that his name should be put in in the Court, and added that his name should be agreed to outside the Court. He then left the Court, after making certain remarks which I forget. He was very angry with Kemp for deceiving him, and did not pay any further attention to the matter. He said that Kemp had deceived him in the matter of the list of names. He did not return to the Court. After this Kemp became intoxicated and tried to conciliate his friend Hunia. I heard Hunia say outside the Court, "I am not like you. I brought you from your Wanganui tribes to act for our elders and parents who were being pressed by Ngatiraukawa. I will now await the result of your work." I heard Kemp say there was nothing in his name having been selected as a caretaker for their joint land. He said he could only carry out the wishes of the people, and could do nothing of his own motion. Kawana Hunia subsequently made numerous applications for subdivision of the land. He wished to have Kemp's certificate cancelled and another investigation of the title to Horowhenua. I believe correspondence from him to this effect will be found in the Government offices. About two months after his death a *Kahiti* notice appeared of an application by himself and others regarding Horowhenua. The whole of the Muaupoko assembled at Foxton when the application came before the Court. Kemp and I also went there. The Muaupoko told us

they would leave it to us to say what steps should be taken regarding it. They suggested that Kemp and I should withdraw the application. Kemp agreed, and asked me to withdraw the application. I consented, but told Kemp and the Muaupoko that I would do it when the Court went to Palmerston. I explained to them why I would not do it at Foxton. I wanted the Court to go to Palmerston to hear the application of Ngatiapa for Aorangi. The Court went to Palmerston—I think it was in 1885. I remember the Court sitting in Palmerston in 1886. I was present from the commencement of the Court until it finished. I lived at Hokowhitu, about a mile from the Courthouse, and about the same distance from Palmerson's place, where Muaupoko lived. Kemp lived in Palmerson's dwelling-house. The Muaupoko were in a barn. I remember what took place with regard to the partition of Horowhenua before it went into Court. The railway-line was the first block cut off out of Court. The Ohau section was the second dealt with outside the Court. The third was the township. This is how they were arranged outside the Court. I was present when they were cut off. It was done by Muaupoko in Palmerson's barn. Mr. A. McDonald was present. Palmerson may have been there, but I can't remember. McDonald had a map. He went to Palmerson's house, got the map, and had the different parcels placed on the map. All these three blocks were cut off and arranged in Palmerson's barn before we went into Court. The Ohau section was the second cut off in Palmerson's barn. It was to fulfil the agreement between Kemp and McLean that some land should be set apart for the descendants of Whatanui. It was to be put in Kemp's name for him to convey to the descendants of Whatanui. That was the arrangement come to outside. Mangakahia was the first assessor of the Palmerston Court. Mr. McDonald made the application to the Court for three sections. He was agent for Kemp and the Muaupoko. I was in the Court when the applications were made by McDonald. He applied first for the railway-line. Then he applied for the township. Then he applied for the land at Ohau. The section that was No. 2 outside, I think, became No. 3 in the Court. I think the township section was dealt with before the Ohau land. I know Section No. 9. There was nothing said about Raumatangi in the Court when the three orders I have spoken of were applied for. Hokio was not mentioned. I don't remember any reference to any other block besides the three, on the first day that we took the land into the Court—Mangakahia's Court. This is my recollection of what took place. Kemp was in the Court when McDonald made the applications for the three sections. I did not hear Kemp apply for any land for himself at that time, nor did I hear McDonald apply on his behalf. I was in Court all the time. Te Aohau objected when McDonald applied for an order for the Ohau land. He first asked to see the map that McDonald had handed to the Judge, so that he might know the position of the land set apart for descendants of Whatanui. The Judge asked him if he was in the certificate, and, finding that he was not, the Judge ordered him to sit down, and threatened to send for a constable. Te Aohau was the only one I saw or heard at that time object in Court to the location of the land at Ohau. I understand that he objected to their land being placed at Ohau. I do not know any other reason for his objection. Afterwards I heard others objecting outside the Court, and saying that they intended to see Kemp about the matter. The Court passed the three blocks, 1, 2, and 3, on the first day. I think the two sections were passed on that day, and that the Ohau section was allowed to stand over at the request of McDonald and Lewis. I understood the railway and the township blocks were finally settled at the time. I remember the order in which some of the other divisions were taken. There were no others dealt with by Mangakahia's Court. The Assessor left, and we waited for about a week for another. When the second Assessor, Kahui Kararahi, arrived we dealt with the other divisions, so far as I can remember. The first blocks dealt with by the second Court were the three that were before the first Court. I think Mr. McDonald brought them before the Court again. Then I think that No. 3, the block for the tribe, was dealt with. Next, I think, was the 510 acres for Hamua. I think the next was the land for Tamati Taopuku and Topi, No. 5, I think. The next, I think, was the block for the *rerewaho*, about 4,600 acres. After that the land for Waata Tohu, Te Peeti, and Hoani Meihana was taken. Then the land for Mere Karena came on. After that, I think, No. 9 was taken—either that or No. 10. I believe it was the 1,200 acres at Raumatangi. Then, I think, the 800 acres for Kemp was dealt with—No. 10, I think. After this No. 11 came on—the one that is in Kemp's and Warena's name. Then came the land that was awarded to Ihaia Taueki. Kemp told me that No. 11 was to be awarded to him and Warena, and when No. 12 was called on Kemp asked me to leave it to him. It was stony and of no value, he said. He leant over the table towards me and said this, in a low voice. I would not agree. Then McDonald asked for an order to Kemp and Warena. Objectors were called for, and Raniera made some objections. I told him to sit down, thinking that he intended to object to Kemp and Warena. The Court allowed him to proceed, and he said that the chiefs had sufficient, and that this should go to the tribe. The Court said the matter had better be arranged outside. It then adjourned; we went back to the Muaupoko kainga. Next day, after the Court opened—the second day of Kahui's Court—we assembled in the Court, but there was not much done. I think the only business done was the land for Wiremu, Matakara, and the Court adjourned till next day. There was no other business done at the time the square foot was awarded. McDonald asked the Court to adjourn, and we went back to discuss No. 12. If any one says that No. 14, or any other block, was cut off at the time the square foot was ordered he is wrong. There was no application for an order for No. 14 in favour of Kemp, in his own right, when the square foot was ordered. This is my recollection, but I may be wrong. The Court books will show. When we were discussing No. 12 Hoani Puihi wanted it awarded to him. Rangimairehau wished it put in his name. The majority were in favour of Himiona Kowhai's name being put in. I said I would not consent to give Muaupoko the land, because the hills did not belong to them, but to me. Then Ihaia Taueki stood up and said "Listen to me, my grandchild! Can you or can you not cure my complaint?" I said I could not, as he had brought it on himself. He gave the land to Kemp to administer, and his was part of Kemp's administration. I told him that as this was the last piece of land left I would give it to him for himself. McDonald and Kemp were near me

at the time. Kemp agreed, and the next morning No. 12 was taken into Court and awarded to Ihaia Taueki without objection. If any witnesses have said that the Ohau land was dealt with at any other meeting than that referred to by me it is untrue. I did not hear of any subsequent meeting of the people at which the Ohau section was given to Kemp for himself. There could not have been, in my opinion. If Kemp was present and I was absent it would not be a meeting. If there had been such a meeting I must have heard about it, and would have attended. I heard part of Ru Reweti's evidence. I heard him say that he was present at a meeting in Palmerson's barn when Kemp came in and asked Muaupoko to give him No. 14 for himself, &c. All I can say is, Who heard of that meeting? I was not present at it, nor have I heard of it since. The first I heard of it was at this Court. I know of no discussion about No. 14 other than that I have said took place at the first meeting. The Muaupoko were at the Palmerston Court, "Te nui o Muaupoko." I think there were about one hundred and forty names in the original certificate for Horowhenua. I remember Ihaka te Rangihouhia of Ngatipariri. He was in the certificate of 1873. He died before 1886. I was appointed his successor. There never has been any arrangement between Kemp and myself as chiefs that he should have No. 14 for himself. We, the Muaupoko, have always considered that Kemp held No. 14 as an alternative section for the descendants of Whatanui. Kemp was to hold it and No. 9 until they had finally decided which they would have. The boundary of No. 9 was not allowed to go to Hokio Stream because it was thought that the boundary being kept away from the stream the descendants of Whatanui would choose No. 14. I never heard that No. 14 was given to Kemp for his share of the block.

Mr. Stevens here put a question to the witness with reference to the ancestral rights to Ohau.

Sir W. Buller objected, and stated that he had not put a single question to any of his witnesses as to Kemp's ancestral rights.

Mr. Baldwin contended that, as Kemp and other witnesses called by Sir Walter Buller had referred to Kemp's ancestral rights, it was competent for Mr. Stevens to put the question.

Mr. Stevens said if Sir Walter Buller would say that he abandoned any claim by ancestry; he would not press the question.

Sir W. Buller said he would not abandon anything, but he had not mentioned ancestral rights in his opening, and for the purpose of this case he did not rely on ancestry.

The Court said the question before it was whether or not Kemp held No. 14 in trust, and it did not seem necessary to go into the question of ancestry at present.

Witness (to Mr. Stevens): I think Lewis and McDonald spoke of the agreement between Kemp and McLean at Mangakahia's Court. I don't think the agreement had arrived then, but I believe that McDonald asked that the Ohau section should stand over until the terms of the agreement were known. The Ohau section was shown on McDonald's tracing, which he showed to the Court. I have heard it stated here and before the Royal Commission that No. 14 was Kemp's absolutely. I have never agreed to Kemp having No. 14 for himself. I deny his right to have it for himself. He was wrong in stating before the Commission that No. 14 was his own. No. 14 belongs to Ngatipariri. The people who have a right to it are the descendants of Pariri. The fights over it were between Ngatiraukawa and Ngatipariri. Kemp's ancestors took no part in those fights.

Examined by Mr. McDonald.

Witness: The three parcels were spoken of before Mangakahia's Court. The Ohau section was postponed as the result of a conversation between you and Mr. Lewis—at least, I believe so. [Vol. 7, page 185: "Mr. Lewis, on his former oath, said," &c. "Order made in favour of Keepa te Rangihiwinui," &c.] I have no doubt that the minute of the Court is correct. I thought the order was deferred until the agreement arrived. I must have forgotten. It took place a great many years ago, and I cannot dispute the minutes of the Court. I think Mangakahia only sat on one day. I remember the first day that Kahui sat. The orders made by the first Court were gone over by Kahui's Court. It may have been then that the Ohau section was postponed. I remember the Court of 1890 at Palmerston. I remember Kemp giving evidence there. [Vol. 13, page 177: "I still hold this for a special purpose."] I remember Kemp saying, "No. 14 is for the descendants of Te Whatanui; it is not for me alone." I remember Kemp saying that. I heard him saying it. I did not object to what he said. I understood that he was holding the land for the descendants of Whatanui pursuant to the agreement. At that time he held the two parcels to hand over to the descendants of Whatanui, whichever of them they might choose. The descendants of Whatanui had not made any selection at that time. Up to 1890 I had no knowledge that Kemp claimed No. 14 for himself. I think it was in 1894 that I heard the matter was settled, because I saw Kemp, Taipua, Te Aohau, and Ru Reweti in the streets in Wellington, and Hoani Taipua told me they were going to Lewis's office to have the Raumatangi section conveyed to the descendants of Whatanui. I did not make any application to Kemp after that about No. 14, because we were quarrelling about No. 11, and he would not have listened to me. I have said that the Ohau section was dealt with on the first day of Kahui's Court. Orders were then made for the parcels that had been before Mangakahia's Court. I did not hear the Ohau section referred to after that in the Court of 1886. The Raumatangi section was also cut off for the descendants of Whatanui, because Te Aohau had objected to the Ohau section in Mangakahia's Court. Hare Pomare and Heni Kipa had also, I heard, spoken to Kemp outside the Court. All Muaupoko heard the objections to the Ohau section. They were the subject of general conversation. Kemp and myself spoke to Muaupoko as to the advisableness of cutting off another block of land at Hokio, so that the descendants of Whatanui could have their choice. It was decided that the boundary should not touch the Hokio Stream, as Muaupoko strongly objected to it. Both sections were to be in Kemp's name. There was much discussion about it among Muaupoko. The women took part in it. The whole discussion was after Mangakahia's Court, and before Kahui's Court. I think Kahui's Court lasted three days. I remember what took place on the last day. I think No. 12 was ordered on that day.

I don't think there was anything else done. I think I was in Court all day. I can't remember whether Kemp applied on that day for an order for No. 14 to himself and for himself alone. I don't think Kemp made any application. You and Kemp were on one side of the table and I was on the other. I believe Kemp said to me, "Let this land be put in my name," and I consented. I did not understand that it was for Kemp alone. I consented because it was decided at the first meeting that he was to hold it in terms of the agreement. I had therefore no reason to object. I did not see Kemp stand up to apply for No. 14 for himself. You made the applications for all the divisions. I deny the statements of Judge Wilson and Kemp that Kemp applied for No. 14 for himself. I did not hear or see him do it. I was in Court on the second day of Kahui's Court. I did not hear Kemp at any time apply in Court for No. 14 for himself. I did not hear him make any application at all. I may be mistaken. It will be found in the books of the Court. I did not hear Kemp claim a right to the whole of No. 14 until the Commission sat. I heard it then. I have done my best since then to have the matter brought before a competent tribunal.

Henare te Apatari: No questions.

Hamuera Karaitiana: No questions.

Cross-examined by Mr. Baldwin.

Witness: I remember giving evidence before the Commission. [Horowhenua Commission, page 56, questions 290 to 294, read.] The 800 acres and the railway were looked upon by me as a fair share for Kemp himself of the land that was divided among us in 1886. I thought it was sufficient for him, because he had no right to this land. We consented to let Kemp have the 800 acres to settle his troubles. [Supreme Court evidence: "Then the land for Whatanui's descendants," &c.] That was the land at Ohau. It was put into Kemp's name to give to these people. That was at Mangakahia's Court. ["As they were not satisfied, 1,200 acres were cut out of No. 11."] I believe that was done by Kahui's Court. ["That the tribe has agreed to, and it was settled."] By "settled" I mean that it was to be put into Kemp's name, in pursuance of the agreement, to be conveyed to the descendants of Whatanui. [Supreme Court evidence, page 33: "The 1,200 acres was the last the decision was given on."] That was the land at Ohau. ["It was given to Kemp to give to them before the 1,200 acres had been taken out of No. 11," &c.] That is the conversation with Kemp that I referred to to-day. When Kemp asked me to let the 1,200 acres be put in his name I understood it was to fulfil the agreement between him and Sir Donald McLean, and not to keep it for himself. I am now clear, since I have heard read the evidence I gave in the Supreme Court, that McDonald made an application for No. 14 on the third day of Kahui's Court. When McDonald made the application for No. 14 I thought it was to fulfil the agreement made by Kemp and McLean on behalf of the descendants of Whatanui. We preferred that they should have the Ohau section, and that is why the two sections were left in Kemp's name.

Cross-examined by Sir W. Buller.

Witness: I remember now that McDonald made an application for No. 14 on last day of Kahui's Court. I understood that he made the application for all the divisions. I think McDonald made the application in English. It was interpreted into Maori. I remember what the interpreter said—at least, some of it. McDonald got up after Kemp had whispered to me, and I had said, "*E pai ana.*" I concluded that he was applying for No. 14. I think what McDonald said was interpreted. I do not remember what he said. [Vol. 7, page 200, read: "Subdivision 12—Application from Major Kemp," &c.] The application was Kemp's, but McDonald was his mouthpiece. I think he made all the applications to the Court, but I cannot remember the words he used. I think McDonald asked that No. 14 should be in Kemp's name. I did not think much about it, because I understood it was to enable Kemp to fulfil his agreement with McLean. If I had thought that Kemp wanted it for himself I should have said something, because we were then becoming unfriendly. I do not think there was any other business done on the third day of Kahui's Court. I remember McDonald making an application for the railway, but I cannot remember the date. I saw him and Kemp quarrelling about it outside the Court. If the minute-book says an order was made for the railway-line on the last day of Kahui's Court I will not dispute it, but I do not recollect it. I repeat that I did not hear anything about the Ohau section after the first day of Kahui's Court. I meant that I did not hear anything about it on the second day of Kahui's Court. I had forgotten when I said, in reply to McDonald, that I did not hear anything more about the Ohau section after the first day of Kahui's Court. I am not mistaken in saying that the land in Raumatangi had not been accepted by the descendants of Whatanui. I mean the Court to believe that I did not know that the descendants of Whatanui had accepted No. 9 until 1894. I then learned also that Kemp had agreed to convey it. Up to that time I believed that Kemp was holding the Ohau section for the descendants of Whatanui. I knew positively at time of Court at Otaki in 1895 that they had selected No. 9. In 1895 I believed that the descendants of Whatanui had finally selected No. 9, and thought that No. 14 would go back to No. 11 after the sitting of the Court at Otaki. I thought it would go back to Warena—that is, the Ngatipariri. I did not think it would go back to the Muaupoko. I say this because No. 11, of which Raumatangi had formed a part, had been awarded to Kemp and Warena. No. 11 had been divided between Warena and Kemp before 1895, and Raumatangi is in the portion awarded to Warena; therefore, if Raumatangi was taken by the descendants of Whatanui, Warena should have Ohau. I remember the Court of 1890. I was present. I know No. 11 was valued for purpose of division between Kemp and Warena. The award was made to Warena in No. 11 irrespective of Raumatangi, but if the descendants of Whatanui had elected to take No. 14, the Raumatangi section would have belonged to Warena by Maori custom. The Ohau section belonged to the Ngatipariri also. Warena got his share in No. 11 without Raumatangi. I cannot say whether it was mentioned in the Court of 1890 that if descendants of Whatanui took No. 14 Raumatangi section should revert to Warena,

but I think I have mentioned it in the Court somewhere. Mr. Barnicoat acted for Warena in 1890. I made common cause with Warena. [Vol. 13, page 85, read: "Whatanui's people only got 100 acres at the original hearing," &c.] I do not remember Barnicoat saying that, but it is true, because it is in the Court books.

The Court adjourned till the 27th instant.

SATURDAY, 27TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

WIRIHANA HUNIA'S cross-examination by Sir W. Buller continued.

Witness: I said yesterday that I did not know till 1895 that descendants of Whatanui had definitely accepted Raumatangi. I admit that Barnicoat said in 1890 that descendants of Whatanui had refused Ohau section, and that Raumatangi had been cut off for them instead, but at that time Kemp still held both sections; he had not conveyed either. I remember Barnicoat saying, "No. 9 was put in Kemp's name, and I believe he is arranging with Te Whatanui's people to transfer it to them." This was in 1890. I cannot remember everything Mr. Barnicoat said, but I admit that what is in the books is correct. It was in February, 1890, that Mr. Barnicoat, who was my solicitor, made the remarks quoted—about three years after the partition of 1886. I remember saying yesterday that when No. 11B, 6,775 acres, was awarded to my brother in 1890 I knew that No. 9 had been cut out. The Raumatangi section is good land. I know that the valuators employed by the Commission valued No. 9 at £3 5s. an acre (*vide* Horowhenua Commission, page 344). It was known at time of Court in 1890 that the descendants of Whatanui wanted Raumatangi so that they might have access to Hokio Stream, but we wished them to have Ohau—I mean Te Aohau and others. I did not know what Ru Reweti and his party wanted. By "we" I mean Muaupoko. I don't remember whether anything was said in Court in 1890 about the descendants of Whatanui wanting the Raumatangi section, including the Hokio Stream, or about our wanting them to have the Ohau section. I don't think I or any Muaupoko indicated to the Court in 1890 that we wanted the descendants of Whatanui to have the Ohau section. We were too much occupied with No. 11; that was what Kemp and I were speaking of. I don't remember saying anything to any one about it. I was not concerned in the matter; they had to arrange with Kemp which section they would take. I knew in 1890 that the boundary of the Raumatangi section did not touch the Hokio Stream. I don't remember anything being said in the Court of 1890 about what was to be done with No. 9 if the descendants of Whatanui chose No. 14, but it was in my mind that No. 9 should go to Warena; but, as I say, I do not remember mentioning it to anybody. I knew in 1890 that No. 14 extended down to Waiwiri. I knew this at time of Court in that year. I don't remember hearing anything said in the Court of 1890 about what was to be done with No. 14 in the event of descendants of Whatanui choosing No. 9. I had it in my mind, and so had others, but I did not speak of it to any one out of Court, so far as I can remember. It had occurred to me in 1890 that the descendants of Whatanui were a long time making a choice of the sections. I was waiting to see which section they would take, so that I could decide on the course I should take for the recovery of the other. I honestly believed that if they chose No. 14 the Raumatangi would be added to my brother's land. It belonged to our hapu by Maori custom, not to the other hapus of Muaupoko. I saw Te Aohau and other descendants of Whatanui at different times. I heard Nicholson say in this Court that he selected No. 9 in 1886, and that the matter was settled. That was what he wished, but Kemp did not give it to him. Notwithstanding anything Kemp and Judge Wilson may have sworn, I say that it was still open to Ngatiraukawa to take either section in 1890. It was not till 1894 that I discovered that Ngatiraukawa had accepted Raumatangi. I think it was in that year that Kemp proposed to hand it over to them. When the Court sat at Otaki in 1895 I ascertained that they had got it. I remember suggesting to Te Aohau that he should take No. 14. I forget the date, and I forget his reply, but he did not say he would accept No. 14. I believed down to 1894 that Kemp held No. 14 and No. 9 in trust for descendants of Whatanui, and not for himself. That is what I thought. I would have considered it dishonest of Kemp to have disposed of No. 14 in any other way up to 1894. It would not have been right of him to have given No. 14 to me before Ngatiraukawa had made their choice. It would have been equally dishonest of me to ask him for it, and that is why I did not do so. I don't remember asking Kemp to give me No. 14 about 1889. I remember saying something to him about No. 14. [Horowhenua Commission, page 54, questions 204 to 207, read.] I remember giving that evidence; it is quite true. The questions and answers referred to No. 14. I thought that Te Aohau and party really wanted Raumatangi. We wished them to accept No. 14. Kemp was delaying the transfer of the sections in the hope that they would choose No. 14. I thought they would insist on having Raumatangi. I admit that it was wrong of me to ask Kemp to give No. 14 to me under the circumstances. One of the first things settled by Muaupoko at their meeting in 1886 when the township was discussed was that there should be a reserve of 1 or 2 chains round the Horowhenua Lake, and along the banks of the Hokio Stream. At the time the township was discussed it was arranged that there should be a reserve between it and the lake. The reserve on the banks of Hokio Stream was decided when Raumatangi section was discussed. I don't remember what particular women of Muaupoko objected to the boundary of Raumatangi section extending to Hokio Stream, but some did protest. It was at a meeting at the Royal Hotel, after we had left the Court—Kahui's Court. I think it was the first day of Kahui's Court. I called a meeting at the hotel to discuss the boundaries of Raumatangi. I think the meeting took place during the dinner adjournment, but I am not sure. I don't remember the

boundary on the Hokio side being mentioned in the Court in the morning. The meeting in the hotel was to discuss the Hokio boundary only. I believe the Ohau section, the township, and the railway were mentioned in the Court by McDonald that morning before we went to the hotel. I believe McDonald referred to the three blocks that had previously been dealt with by Mangakahia's Court. I believe that orders were made for the three sections before we met at the hotel. That is what I think. I was at the Court. I don't think McDonald made any application. I think he merely pointed out to the Court what had been done by the previous Court. I think the Judge asked McDonald to explain to the new Assessor what had been done by the previous Court. I don't know whether fresh orders were made or not for the sections dealt with by Mangakahia's Court. I think McDonald brought them before the Court in the following order: (1) Railway-line, (2) township, and (3) the 1,200 acres for the descendants of Whatanui. I cannot remember whether McDonald made any statement about the 1,200 acres on that occasion. I think Mr. Lewis was there, and that he and McDonald talked about the 1,200 acres. I don't remember being present at a meeting between Muaupoko and the descendants of Whatanui in the Courthouse to discuss the boundaries of the Raumatangi section. If Nicholson says there was such a meeting I will not contradict him. It is possible I may have attended the meeting. I do not remember the Hokio boundary being discussed in the Courthouse. Lewis was not present at our meeting at the Royal Hotel. Kemp was. It was then settled that the boundary of No. 9 should not be within 2 chains of Hokio Stream. This was before we had dinner. Te Aohau was not present. It was a meeting of Muaupoko only. None of the descendants of Whatanui attended the meeting. The meeting decided that the boundary should start from a peg on the Raumatangi 100 acres, and not to approach within 2 chains of the Hokio Stream at any point. I think this was what was resolved upon. I repeat that I do not remember any meeting in the Courthouse about the Hokio Stream, but I will not deny that there was such a meeting. I may have forgotten about it. I think I went to the Court after the meeting I have spoken of. I am sure I went back to the Court after dinner. I think No. 9 was dealt with then. Nos. 3, 4, 5, and 6 were dealt with in the morning of the first day of Kahui's Court. No. 9 was ordered in the afternoon. I do not know whether anything was said about the Hokio Stream. I do not remember McDonald saying anything about it. He made the applications in Court. I do not remember his saying what the block was for. I think there were other blocks dealt with after No. 9 on that day. No. 10 and No. 11 were dealt with on the same day as No. 9. No. 12 was called on, but was not settled. Himiona Kowhai was mistaken if he said I asked to have my name put in No. 11. I heard the award made for No. 11 in favour of Kemp and my brother. It was not intended at that time that they should be trustees. It was for themselves absolutely. The question of trust was not raised until 1890. It was set up by Kemp for the purpose of injuring me. I gave No. 12 to Ihaia Taueki for himself alone, not as a trustee. It was mine. The whole of Horowhenua is mine, and I am the chief of Muaupoko. Kemp is not their Chief. I have the mana over the land. I said before the Royal Commission that I had given No. 12 to Ihaia Taueki, and that I did not want to claim any part of it. I think I said this in the Court of 1890, but am not sure. [Vol. 13, page 177 (Kemp's evidence), read: "No. 12 is in Ihaia Taueki's name. It was left to him because he was the chief of Muaupoko. I gave it to him to dispose of as he chose," &c.] I may have heard Kemp say that. I do not remember. I am glad that you have read it. It is not true. If I had been asked by my lawyer I would have said it was a false statement. I gave it to Ihaia Taueki myself in the presence of Muaupoko. I gave it to him for himself. If I had heard Kemp make the statement I would have told my lawyer to contradict him. I have contradicted many of his false statements. [Vol. 13, page 177 (Kemp's evidence): "I am in No. 9. This was cut off for the Ngatiraukawa," &c.] I have forgotten whether I heard Kemp say that. [Vol. 13, page 177 (Kemp's evidence): "No. 14 is for descendants of Whatanui."] I said yesterday that I heard Kemp give that evidence, and that I understood he held the parcel under agreement in 1886. I now reaffirm it. I swear that I heard it. I cannot account for my not remembering Kemp saying, "I am in No. 9," &c. I forget some things and remember others. If we had not the books we would not remember anything. I may have been outside the Court when Kemp said, "No. 12 is in Ihaia Taueki's name," &c., and perhaps my lawyer did not tell me it had been said. I spoke the truth yesterday when I related what took place between Kemp and Kawana Hunia at the Court of 1873. It is true that it was arranged secretly in a tent to put Kemp's name in the certificate of 1873. The story I have told the Commission and this Court about what took place at the Court of 1873 is true. [Vol. 13, page 272 (Wirihana Hunia's evidence): "Major Kemp was friendly with the Government at the Court of 1873, that is why his name was put in the certificate," &c.] That statement was given me by Donald Fraser. I told Donald Fraser that it would not be right. Fraser said he heard it from Kawana Hunia. We disputed about it, and I told him what I had heard as I stated it yesterday. He said it was wrong, and I accepted his statement because I knew he did Hunia's business. I went into the box and gave the evidence you read knowing it to be untrue.

Sir W. Buller said, after the last reply given by the witness he did not consider it necessary to put any further questions to him.

Re-examined by Mr. Stevens.

Witness: The boundary of the 1,200 acres at Raumatangi was to start from a point on the 100-acre section, 2 chains from the Hokio Stream, and not to be nearer than 2 chains from the bends of the stream. I do not know whether it was to be a straight line or to follow the bends of the river. It was done so that Te Aohau and party could not reach the river. The people hoped that if the descendants of Whatanui could not get the Hokio Stream they would choose the Ohau section. Another objection to their having the Raumatangi section was that it was in the middle of our land, and the fencing would be expensive. I do not know of any other reason. I have

already said that we were anxious that they would choose the Ohau section. I do not remember ever asking the descendants of Whatanui if they were going to enforce the agreement of 1874. I suggested to them that they should take No. 14. Te Aohau only laughed when I suggested it. I think he said that the descendants of Te Whatanui were disputing among themselves. [Horowhenua Commission, page 54, questions 204 and 207, and replies, read.] I have reaffirmed that evidence. [Question 208 and reply read.] I remember that question, and my reply. I gave No. 12 to Ihaia Taueki knowing that it was my own. I gave it to him also in my position of chief of the Muaupoko. He asked me for it in a proper manner, and I gave it to him. Donald Fraser told me that the statement that I afterwards made to the Court of 1890 as to what took place at the Court of 1873 was the correct account of what took place at that Court. I remember him telling me so at Parewanui. He told me about 1887. He also asked me about the conditions on which the township was sold, and I told him that Kemp had received the purchase-money—£6,000. It was before evidence was being collected for the Division Court of 1890 that Donald Fraser told me what I have said. He told me at Parewanui. He asked me at the same time if I thought I would get any benefit from the moneys received by Kemp. I said I did not know. The conversation took place at my kainga. He went to Parewanui on business of his own, and called in at my place. We first conversed about the township, and then he told me what I afterwards said in the Court of 1890. He told me that I would get into trouble with Kemp as my father had done. He also said if Kawana had not got angry and had been put in the title with Kemp he would not have been deceived. The mischief commenced by the omission of Hunia's name from the title. I said that Hunia became angry and left the Court, but Fraser said I was wrong, and that his version was the correct one, as he had heard it from Hunia, who said he had consented to Kemp's name only being put into the title. I was then uncertain which version was the correct one. This was in 1887. The Court sat for the division of Horowhenua in 1890. Mr. Fraser did not tell me to repeat in the Native Land Court what he had told me. He was present at the sitting of the Court in 1890. I had no conversation with Donald Fraser about the omission of Hunia's name from the certificate at that time, but the lawyer asked me about it. Donald Fraser did not make the statement to me for the purpose of being repeated in the Native Land Court, but I told it to the lawyer when he asked me, and said I had discussed it with Donald Fraser. I believed that Donald Fraser had heard what he told me from Kawana Hunia, and that is why I repeated it in Court.

To the *Assessor:* The interests of the deceased owners were considered when the land was divided in 1886. I was one of the registered owners of Horowhenua. Wirihana Hakeke died before 1873—I think, about 1853. We did not allot any share to him. I received two shares, my own and that of Ihaka Rangihouhia, to whom I was appointed successor. We had one meeting only about the Ohau section. I was not present at any meeting at which Kemp asked for Ohau for himself. Never heard of it. Raniera and Rangimairehau are the only persons who know of it. They cling to Kemp because he has undertaken to give them land. The people were not told of Kemp having asked me across the Court table in a whisper to let No. 14 be put in his name. I consented, and that ended the matter. I don't know why Kemp should ask me to let No. 14 be put in his name after we had agreed to his having it for the descendants of Whatanui. Mr. McDonald might know; he has the written documents. The 2 chains reserved at the Hokio Stream was to prevent the descendants of Whatanui from getting to the stream, in the hope that they would for that reason accept the Ohau section. I thought that the land reserved along the Hokio Stream would go back to Kemp and Warena.

The Court adjourned till the 29th instant.

MONDAY, 29TH MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Mr. McDonald said he was prepared to call Sir Walter Buller, if it was convenient to the Court.

Mr. Stevens said his next witness was in attendance, and he would like to call him.

The Court said it would be better to take Mr. Stevens's witness, as he was present.

Mr. Stevens called Joseph Retter.

JOSEPH RETTER sworn and examined.

Witness: I am a farmer residing at Levin. I am married. I married Hannah Stickel, otherwise known as Hana Tikara. Have been married for thirty-six years. My wife's mother's name was Kuri Katuku. I never saw her. I don't know which hapu she belonged to, but she was a Muaupoko. I believe she was a Ngatipariri. I have lived at Porirua, and for twenty years at Rangitikei, since my marriage. Have lived here for the last eleven years. I heard a few little things about the Horowhenua Block when living at Rangitikei. Remember sitting of the Native Land Court in 1886, at Palmerston. I attended the Court. The Muaupoko were at the Court. They lived in a shed belonging to Mr. Palmerson. I stopped with them sometimes, but slept chiefly in the boarding-house. I cannot give date of opening of Court to divide Horowhenua Block. It was about November or December. I don't remember the name of the Assessor of the Court. I remember seeing Kemp at Palmerston at the time. I think he had his meals and slept at the boarding-house I lived in. I remember Mr. A. McDonald being at Palmerston at the time. I think he lived with his son-in-law. I cannot say whether the Natives made a subdivision of the land before they went into the Court. There was nothing done at the place where we stayed. I believe there were some arrangements made outside the Court. Mr. Palmerson was in Palmerston. I remember his visiting the Natives. I was present in Court when the

divisions of the Horowhenua Block were first spoken of. I think Kemp and McDonald conducted the case. The first block I heard was the railway. I think the next was Levin, the 4,000 acres. The third block, I think, was No. 3, which, I think, was laid off for Ngatiraukawa, somewhere about Ohau. No. 3 was not Raumatangi. I had no conversation with Kemp before the Court opened about any of the divisions. My brother-in-law, Stickles, spoke to Kemp about the block. He spoke to Kemp about the No. 3 division. I was not present when Stickles first spoke to Kemp in the barn. I heard him speak to Kemp in the Court about No. 3. I was present. Kemp asked him if No. 3 was good ground. Stickles said it was. In reply to further questions by Kemp, Stickles said there was milling timber on part of it, and that it was well watered. It was Ben Stickles who spoke to Kemp. I am quite sure that No. 3 was cut off for Ngatiraukawa. I have heard lately that Kemp claimed No. 3 for himself. I cannot say how many years it is since I heard it, perhaps three or four years; but I knew before that time that he had leased it. I never heard Kemp ask the Muaupoko or Ngatipariri for the Ohau land for himself. Mrs. Retter has never been asked to agree to Kemp having No. 14 for himself that I know of. I think that we heard that Ngatiraukawa objected to take No. 3 just after it was offered to them. Ngatiraukawa having refused the land on the Ohau side, it was naturally supposed that it would go back to the block. I have heard several of the Natives say so in my own house.

Cross-examined by Mr. McDonald.

Witness: I am almost sure that Major Kemp lived in the same boarding-house as myself; at any rate, I often saw him at table there. I may be confusing the Court of 1886 with that of 1890. He seemed well. I think he was unwell in 1886, but will not be sure. I may have been mistaken; it may have been at time of 1890 Court that Kemp lived at the same place as myself.

Cross-examined by Henare te Apatari.

Witness: I could not say whether Mangakahia was the Assessor of the Court I attended in 1886. There was only one meeting of Muaupoko in Palmerson's barn that I remember. I did not hear anything about the Ohau land at that meeting—at least, I don't think so. Major Kemp came in one evening and said that he was in trouble—that he had a bill of £3,000 from Sievwright, and asked the people to give him some land to pay for it; and they all agreed. That is all that was done. Kemp asked for 800 acres. The land at Ohau was cut off for Ngatiraukawa.

Hamuera Karaitiana had no questions.

Cross-examined by Mr. Baldwin.

Witness: I have only recently heard that Kemp claimed No. 14. I never heard it from Kemp himself. We had previously heard that it had been leased like other portions of the block.

Cross-examined by Sir Walter Buller.

Witness: I never saw my wife's mother. I don't speak Maori well. I only know a few words. I have never troubled my head about Maori. I never heard of any of the blocks being considered outside. I don't know that I could put the words "What divisions were considered outside" into Maori. I could not put "What block was considered at your meeting" into Maori. My joke with Kemp would be in broken Maori. I don't remember what it was. I am clear as to what took place at the Court of 1886. I saw Kemp and McDonald conducting in Court. I don't know who the Assessor was. Carr, the constable of Otaki, was the interpreter. The lands first brought before the Court were: the railway, the township, and the Ohau section. It was the first Court I was ever at. I did not pay much attention to the proceedings. I remember what I have said took place quite well. All that was said about No. 3 that I heard was the conversation between Stickles andKemp. I cannot remember anything more being said about No. 3 on that day. I don't think it was set off on that day. It may have been. I think there was a split up between Kemp and McDonald about that time, and that things were at a standstill for a day or two. I could not say exactly which was the first piece called on. I think No. 1 was first, No. 2 followed No. 1. I could not say that No. 3 came on the same day or the same week. To the best of my recollection the stoppage took place at No. 3 block. I could not say what the cause of the stoppage was. The quarrel between Kemp and McDonald may have been outside. I won't say when No. 3 came on, or whether it was on the same day as No. 2. I was in Court when No. 3 came on in Court. I knew it was a bit of ground for Ngatiraukawa. I don't know that the number was spoken of in Court. I don't remember what took place in Court about No. 3 except the conversation I have related between Kemp and Stickles. I think Stickles stood by the side of the witness-box, and replied to the questions put to him by Kemp. The questions were put in Maori. I don't think the Judge said anything. Kemp said to Stickles: "It will do; we will cut that bit off for Ngatiraukawa." I can't say whether the Court did cut it off that day. McDonald was in the Court. Cannot say whether he took any part in the proceedings. I don't think he said anything about No. 3. I can't say when Ngatiraukawa refused the Ohau section. Lewis did not come till afterwards. Nicholson was present. He had a good deal to say in Court at different times. I don't think he was present during the conversation between Kemp and Stickles. He may have been; but he did not say anything. I did not know then that Ngatiraukawa wanted Raumatangi. I did not hear this till nearly a week after the Court. There were high words between Nicholson and McDonald in the Courthouse after Lewis arrived about the Raumatangi section. The Land Court was not sitting. I think it was over, but it may not have been. The high words between McDonald and Nicholson were about the Hokio Stream. Nicholson wanted the boundaries of their land to go to the water. Kemp would not sanction it, as he had already that day reserved 2 chains round

the lake and along the stream. McDonald told Nicholson two or three times that the land along the stream was reserved, and he could not have it. Nicholson quite understood that the lines did not follow the bends of the stream. That is what the dispute was about. McDonald was backing up Kemp. Lewis had very little to say. He did not take either side, but waited until they had settled it among themselves. It was settled that the line should not come to the stream. I think it was settled in the Court on same day. I did not leave the Court. I can't remember what Kemp said after the settlement. Kemp and McDonald both said in the Courthouse that the boundary should not go to the stream. Lewis told me that it was foresight on Kemp's part to reserve the banks of the stream. He also said that the boundary did not follow the bends of the stream, but was to be a straight line. The Land Court was all over when the boundary question was discussed. I think so. I don't remember any Judge being present. I am speaking of the time when Lewis came up to purchase the 4,000 acres. I am quite sure that the Land Court had been sitting, and that No. 3 had been before it before the meeting I have spoken of about the Hokio Stream. The purchase of the township was discussed at the same time as the Hokio Stream. I think this was nearly a week after the Court had finished. The reason that Nicholson claimed up to the stream was because he wanted the water for fishing. He also wanted the places they were living on. He wanted the boundary of the land they were to get to go to the stream. This was after the Ohau land had been mentioned for the descendants of Whatanui in Court. I never heard the Raumatangi land mentioned in Court until the time I have spoken of. To the best of my belief the Court had finished. I do not know that I ever heard the Ohau land mentioned in Court after the time I have spoken of. It may have been. I was not in Court all the time. The Raumatangi may also have been spoken of in Court, but I did not hear it. I was in the barn several times, but I only remember the one meeting, and that was when Kemp asked for the 800 acres to pay Sievewright. The Ngatiraukawa having refused the Ohau land, it would, I believe, go back to Nos. 11 and 6. There were no boundaries fixed for the Ohau section. I did not see it on any plan, but it may have been on a plan. The Ohau section was not supposed to touch the water of Waiwiri. None of the Muaupoko lakes were to be disposed of. It was to commence on the eastern side of the lake, and extend westward across the railway towards the mountains. I don't know who told me that this was the land for the Ngatiruakawa. I think I was the first to propose it. I proposed to Stickles that the land for Ngatiraukawa should adjoin their own. I did not propose it to Kemp, because I did not think I could make him understand. For the same reason I did not speak to any of the others of the Muaupoko about it. Several Maoris at different times have told me that they thought No. 14 was to go back to the block—viz., Iritana, Wiki Pua, and Stickles's wife. This was years after the Court. They spoke half Maori and half English. Any one could understand them. They spoke to my wife, not to me. I listened, and heard what they said. My wife is a Muaupoko. She is not in the title. She speaks Maori, and is in Court.

Cross-examined by Mr. Stevens.

Witness: Iritana, Wika Pua, Ben's wife, and others have been to my house. All expressed themselves as believing that No. 14 would go back to the block. I can understand Maoris at meetings if they don't speak too fast. No. 3 may have been spoken of at the same time as Nos. 1 and 2. I may not have known the name of it. I think the railway, township, and Ohau section followed in that order. I did not look at the map to see the boundaries of any of the sections. I told Tikara that the Ohau section should not touch the Waiwiri Lake. I understood it was not to; but the Maoris may have altered it afterwards.

Mr. Stevens had another witness to call, but he had not arrived, and he asked the Court to allow him to call him later.

The Court said that it might be convenient to call Sir Walter Buller now.

Sir W. Buller said he was in the hands of the Court, but he must say at once that he should refuse to reply to any questions relating to his dealings with Kemp, or to the advice he had given to Kemp as his solicitor.

Mr Stafford said he would force the questions upon Sir Walter Buller. He wished to ask Sir Walter Buller what took place between Kemp and himself as lessor and lessee, and as vendor and purchaser.

Sir W. Buller said the position was different when he was before the Royal Commission. He tendered himself for cross-examination before that tribunal because he was on his trial there; whereas he was not a party to this case, and he should refuse to reply to any questions referring to his dealings with Kemp. He asked Mr. Stafford if he would admit that there was no confidential relations between Kemp and himself when he took a lease, a transfer, and a mortgage of No. 14 from Kemp.

Mr. Stafford was not prepared to admit that. Sir Walter Buller may have been confidential adviser in other matters, but could not claim the privilege in respect of the cases mentioned.

Mr. McDonald intimated to the Court that he intended to call Sir Walter Buller for a certain purpose only, and if Sir Walter Buller withdrew certain statements made by him he would not call him.

Sir W. Buller said he might state frankly that the replies that he had made at the bar of the House he had made hurriedly. The information on which these replies were based had been obtained from hearsay statements made by different persons to him. He had no objection to take to the attitude observed towards him by Mr. McDonald or Mr. Stevens, but he thought that Mr. Stafford and Mr. Baldwin had displayed a certain amount of vindictiveness towards him.

Mr. Stafford thought that statements of that kind should not be allowed, and that the Court should interpose. He could say for himself and his friend, Mr. Baldwin, that there had been no vindictiveness. They had a duty to perform, and were present to do it.

Mr. Baldwin concurred with the remarks that had fallen from Mr. Stafford.

The Court stated that it was premature to ask it to interfere until some questions arose to necessitate its intervention. It deprecated these passages-at-arms, and had endeavoured on all occasions to keep the parties from personal recrimination. It hoped now that, as each side had promised to observe proper demeanour towards each other, there would be no occasion for it to interpose again.

Mr. McDonald called Sir Walter Buller.

Sir WALTER BULLER sworn and examined.

Witness: My name is Walter Lawry Buller. I reside at Wellington. I remember making a speech and answering some questions in October, 1895. [*Hansard*, page 982, question and answer read by McDonald: "*A.* I am aware of the arrangements which led," &c.] I gave that answer to a question put me by the Minister of Lands through the Speaker. It is impossible for me to say how I got the information, but it is what I had in my mind at that time. I gave the answer believing it to be substantially true. I gave it partly on Kemp's authority, but not altogether. The question was put to me hurriedly. I had been in constant communication with the Muaupoko then. I gave a frank answer to the Minister of Lands. I thought at that time that the Ohau section extended to Papaitonga Lake. I said the award was afterwards made by consent. I understood it had been marked off on the plan. I don't say that it was marked off before it was awarded. I intended to convey the impression that those who were entitled to object refused the section first offered them because they wanted it in another place. I assumed that all who were entitled were represented at Palmerston. I think so still. Nicholson has said so. Some were absent, no doubt. By the word "they" I did not mean the descendants of Whatanui, who were in Palmerston. At that time no rumour of any trust had reached me. As a matter of fact I had not Pomare in my mind before the House. I don't think I had heard of Pomare until time of Commission, but Kemp may have spoken to me about him. When I said that Kemp's ownership of Papaitonga is undisputed, I had in my mind the time of partition in 1886. I can't say who I got the information from. My statements were facts, so far as I knew. I was not pleading for Kemp or any one else. I think I satisfied Parliament that I was frank and open with them to the best of my knowledge and ability. Everything I said was absolutely true. [*Hansard*, page 986; question by Mr. Carroll, and reply, read: *Q.* "Was not the Horowhenua Block," &c. *A.* "It was first of all by Major Kemp, and offered," &c.] That was the answer I gave to Mr. Carroll's question. [*Q.* "Did not the Whatanui family elect," &c. *A.* "They did," &c.] That was my answer. [*Q.* "When the Whatanui family," &c. *A.* "Because the people agreed that this should be Major Kemp's allotment," &c.] That was my answer. It is impossible for me to say what impression was produced by what I said. I only intended to convey the meaning the words bear. They are plain English. I don't say that No. 14 then existed as a section. I was speaking of No. 14 as we know it now. These questions were not formulated by me; they were put by Carroll. I knew they referred to No. 14, and answered accordingly.

Sir W. Buller asked to be allowed to put in all the questions put to him, and his replies thereto—the whole of the Appendix to *Hansard*, No. 37, 1895.

Witness (to McDonald) [*Hansard*, page 976, paragraph 10 of petition, read: "In the month of February, 1890, a sitting of the Native Land Court was held at Palmerston," &c.]: I admit that I drew the petition, and am responsible for the expression "a fiction of law." I interpreted the petition before Kemp signed it, and he perfectly understood it. I believe I was his professional adviser at the time, and the professional adviser of many other of Muaupoko. When I first took the matter up for Kemp and Muaupoko I was informed that Warena was declaring himself an absolute owner, whereas Kemp held that he was a trustee for the tribe. I was informed that Kemp had executed a declaration of trust, and tried to compel his co-trustee to do the same. All this was in my mind when I drew the petition. So far from any desire to rush my clients into expense, I not only did not take a shilling from Kemp myself, but I advised him to exhaust every remedy before going into Court. I was aware of what had been done in what was called "a compromise," the proposed compromise being that Warena and Kemp should each have a big slice, and the rest go to the people. I had this information from Kemp and Muaupoko. I said that I would be no party to any compromise: there was either a trust or no trust. [Reads from *Hansard:* "I was instrumental," &c.] It did not occur to me to advise the people to call the two chiefs before them and ascertain what they would do, because I was instructed that Warena insisted that he was an absolute owner. I did not propose any meeting of the tribe, for I knew it would be hopeless after what had taken place, but I twice approached Parliament on behalf of Kemp and Muaupoko, and used my influence with Mr. Seddon to pass a short Act setting up a tribunal to ascertain whether there was a trust or not, so as to avoid expense. [Reads Horowhenua Commission, page 31.] While I was endeavouring to get the relief I sought for Kemp and Muaupoko I wrote the following letter to Mr. Seddon [Horowhenua Commission, Exhibit Av. 1, read]. The object was to set up a tribunal to ascertain whether Kemp and Warena were trustees. It was not until the Government had purchased the State farm that I advised Kemp to go to the Supreme Court. I had no personal communication with Warena. Donald Fraser had. Mr. McDonald and Donald Fraser both said before a Committee of the House that Warena claimed the land in his own right, but that he would make some provision for the tribe. That was a position I absolutely refused to recognise. I told Mr. Stevens this, when he told me at the time that the matter might be arranged. It was my opinion that I could only get justice for the people by undoing what had been done by what I call "a fiction of law." The Judges had no option to do anything but to go on with the partition in 1890. This was what I may call "a fiction of law." I was not acting for Kemp till August, 1892. I did not advise Kemp then to convey his portion of the land to the people, because he did not recognise all the owners. He only recognised the rights of the *ahika*. His prayer all along was that the Native Land Court should ascertain who were the permanent

residents. He considered he was the best man to say who the *ahika* were. He has always told me that he wished the Court to determine who the permanent residents were. I am sure it has never been Kemp's object to get rid of Warena and keep the land himself. When taking my retainer from Kemp, I made myself generally acquainted with what had taken place. I didn't know that Southey Baker acted for Kemp and Barnicoat for Warena in 1890. I don't know whether this became known to me afterwards. I can't say whether I had studied the minutes of the Court of 1890. I did afterwards. I advised Kemp to get the trust declared, upon the information received from him that he and Warena were trustees. It seems to me that the settlement of the matter so nearly arrived at in 1890 would have been plundering the tribe. The tribe were only too thankful to get what they could, believing they were at the mercy of Kemp and Warena. I advised the tribe that they must have all or none, and that I would endeavour to get redress from Parliament. I am not responsible for anything that has happened since the action. It was brought, and succeeded, after we had failed in Parliament. It was Warena who appealed. I did my best to keep the Muaupoko out of the law. I went Home in April, 1886, as Commissioner for the colony at the Colonial Exhibition, and remained in England until about May, 1890. I went Home again in February or March, 1893, and returned to the colony in the beginning of 1894. My return to the colony in 1890 was shortly after the Court of that year, if that Court sat from February to April. I was not aware then that the question of trust had been raised at that Court. I stated before the Commission that, before going to England in 1886, I got a verbal promise from Kemp that when he had perfected his title to the land at Papaitonga he would give me a lease of Papaitonga Lake. [*Vide* Horowhenua Commission, page 242.] When I came back to the colony—about May, 1890—I was uncertain whether I would remain or return to England. I held directorships that made it almost necessary for me to live in England, Up to the beginning of 1892 I never thought of asking Kemp to fulfil his promise. Events made it advisable that I should remain in the colony, and, as nearly as I can remember, about February or March, 1892, I came up the coast for a trip with my children. We drove from Otaki to Papaitonga, which I had not seen since 1863. I was charmed with the scenery, and there and then asked Waretini and Perawiti, two of the owners of Waiwiri East, to let me have a piece of land on the lake. I don't think that I had then seen Kemp since my return from England. After friendly talk, both Waretini and Perawiti said I should have 10 acres; but the owners would have to decide upon price. They pointed out boundary between Waiwiri East and Horowhenua No. 14, and showed me that they were the owners of nearly all the open frontage of the lake. I remained with them an hour, and left with an understanding that owners should meet and decide the price, and send for me to come up. I told them that I would give any price they liked to ask, as I wanted a little home there. A few days after I got a wire asking me to come to Otaki. I found all owners of Waiwiri East assembled. They told me that they had decided I should have 30 acres, and that I was to pay £10 an acre for it. I agreed, and proposed to prepare transfer at once, but Waretini and Perawiti wanted all the money. In the end it was decided that I was to have 60 acres, and I got it. After that I went and saw Kemp at Wanganui. It was after I had bought the land at Papaitonga that I went with Kemp to Mr. Cadman's office. I did not know then of Kemp's evidence before the Court of 1890. I did not see the evidence until after I was retained in 1892.

Mr. Stafford asked to be allowed to cross-examine the witness to-morrow, as he was suffering from a bad cold.

Sir W. Buller put in a written memorandum of his objection being put to him about his relations with Kemp.

The Court adjourned till 9 a.m. of the 30th instant.

TUESDAY, 30TH MARCH, 1897.

The Court opened at 9 a.m.

Present: The same.

No. 1, Horowhenua No. 14.

Case called on and adjourned till 2 p.m., the Courthouse being required for sitting of Appellate Court to hear argument on the application of Rangipo Mete Paetahi to succeed to the interest of Kawana Hunia in Horowhenua No. 11 (part of). (For proceedings, *vide* Wellington Appellate Court, Book No. 7, folio 50, *et seq.*)

Horowhenua No. 14 resumed.

Mr. Stafford wished Sir Walter Buller to explain the memorandum he had put into Court.

Sir W. Buller said the memorandum conveyed what it expressed—nothing more nor less.

Mr. Stafford wished to know what Sir Walter Buller's objections were.

Sir W. Buller said he would object to reply to any questions affecting his relations with Kemp as his legal adviser.

Mr. Stafford said Sir Walter Buller should withdraw the memorandum from the Court.

Sir W. Buller declined.

Mr. Stafford: Before putting my questions to Sir Walter Buller, I may say that I know I shall be met by objections to be raised by Sir Walter Buller on two points—the question of privilege between solicitor and client and the existence of a trust—and I will ask the Court to take a note of every question Sir Walter Buller refuses to answer. I intend to call Kemp, Rangimairehau, and Raniera te Whata. I therefore ask that these persons be ordered to leave the Court.

Mr. J. M. Fraser asked the Court to allow him to point out that Kemp, being a party to the suit, could not be asked to retire.

Mr. Stafford contended that the Court had power to order anybody out of Court.

The Court concurred with Fraser's contention as regarded Kemp, but as it did not specially apply to the other two they could be requested to retire.

Sir W. BULLER cross-examined by Mr. Stafford.

Mr. Stafford.] You said, in your evidence before the Commission on the 21st April, 1896, page 242, "I was in practice," &c., to "elsewhere"?—Those words are accurate as reported.

Did you or did you not, from 1874 to 1886, except when you were in England, act as Kemp's solicitor?—I did not say so.

[Last question repeated.]—From 1874 to 1886 I acted as Kemp's solicitor, off and on.

As such, would you not know Kemp's position in connection with the Horowhenua Block?—I presume I would.

As a matter of fact, did you not know in that capacity that he was the sole certificated owner of Horowhenua?—Undoubtedly, of the 52,000 acres.

Did you not know that there were 143 registered owners, including himself? As a professional man, did you not know that he was trustee for the registered owners?—I knew that Kemp was trustee for the 143 owners, including himself.

What month in 1886 did you leave England?—I think in April.

You say that before you left for England you had a verbal promise from him to lease Papaitonga?—Kemp promised to lease me Papaitonga and the adjacent lands.

Where did the conversation take place?—I don't know, or when.

It must have taken place between—what year did you get it in?—I can't tell you. I don't know what year it was.

What did you intend should be inferred from your words?—Exactly what they mean.

Was anything said about the term?—I believe not.

Anything about the rent?—No.

Why did you fix on Papaitonga?—Because of the beauty of the scenery.

Was not Kemp in a position to grant you a lease for twenty-one years?—Yes, no doubt.

Why did you not take the lease at that time?—Because I did not choose to, I suppose. Particulars were not gone into.

Had not this verbal promise for the future a reference to partition of this block?—It may have had. I cannot say.

Why was lease deferred?—I cannot say.

What grounds had you for supposing that Kemp would have a right to lease you Papaitonga?—I don't know that I had any grounds.

Were you not angry when you found Kemp had leased to Bartholomew?—Certainly not.

[Horowhenua Commission, page 242, question 3 read: "I got a verbal promise from Major Kemp," &c.]

Was it not then in your mind that after subdivision you would get Papaitonga?—It may have been. It appears to have been at time of Commission.

What right had you to suppose that Kemp would get Papaitonga?—Kemp may have told me that Papaitonga was his part of the estate. I don't remember. It was a vague verbal promise.

When did you return from England?—In May, 1890.

Do you remember when you first saw Kemp with reference to carrying out his promise?—I think it was in May, 1892, after I had secured from Ngatiraukawa the whole of the open frontage to the lake.

When did you get your retainer from Muaupoko?—On the 18th July, 1892. I think it was signed by Kemp on that date, and subsequently by the members of Muaupoko Tribe.

Were you at that time solicitor for Kemp?—The retainer was from Kemp and others.

Was not Kemp trustee for the others?—I am not going to say in the witness-box.

Were you Kemp's solicitor before you took the retainer?—No. I went out of practice before I left for England in 1886. I think I called on Mr. Cadman with Kemp on the 18th July, 1892. I told Mr. Cadman I went as Kemp's friend, not as his solicitor. After leaving the office I determined to act for Kemp and the tribe, and immediately took my retainer.

May I take it that you commenced to act as solicitor for Kemp after retainer was signed?—For Major Kemp and the Muaupoko Tribe.

Did you then make inquiries as to partition of this block?—I commenced to make inquiries about No. 11, with regard to which I understood I was specially retained.

Did you not make general inquiries as to the other divisions?—I did at a later period.

What were those inquiries, and when made?—I made the inquiries usually made by a solicitor, but I do not remember when and where.

Did you not peruse the minutes of the Native Land Court of 1886?—I have perused them, but when I cannot say, except that it was after I was retained.

Was it not before the 19th October, 1892?—I do not remember, but I do not believe I did. I thought I had full information about No. 11 to enable me to take necessary steps.

Did you, between the time of your retainer and the 19th October, 1892, peruse any records relating to No. 14?—I may have done so, but I do not remember. I think I remember perusing some papers relating to a right of way round Papaitonga Lake before that period.

Am I to understand that between your retainer and the 19th October, 1892, you did not peruse the records or minutes relative to the subdivision of the Horowhenua Block?—I may have done so.

Would it not have been necessary to make you acquainted with Kemp's position?—I have no doubt that I took every precaution as to his position. As a matter of fact, I did satisfy myself that Kemp had an untrammelled title under the Land Transfer Act.

Would not a perusal of the records and the minutes be the most satisfactory means of ascertaining what the subdivision was?—That is a matter of opinion.

In what other way did you ascertain the particulars?—I don't know how I obtained the particulars, but I got sufficient information to enable me to go to Parliament as solicitor for Kemp and the Muaupoko.

What other sources would there be for obtaining the information?—I presume there were other sources. I decline to say what steps I took as solicitor for Kemp and Muaupoko. I decline to say what I did under instructions from Kemp and Muaupoko.

What were your sources of information?—I decline to say. I will tell you in the Supreme Court.

[Question pressed]?—I still decline. I obtained my information under instructions from my clients.

The Court said information from public records was not privileged.

Sir W. Buller: I have said that I perused the records, but that I did not know when.

Mr Stafford.] Did you or did you not search the minutes and records of subdivision of Horowhenua between the time of your retainer and 1892?—I say, as I said before, I do not know when I searched the records and minutes.

Did you prepare a deed of release and discharge (*vide* page 287, Exhibit S.)?—I prepared the deed of release.

In that deed there are a number of recitals relating to the subdivision. Where did you get that information?—I got it from my clients, and presumably from the minute-books, but I have no recollection of it.

Can you explain why it was necessary to confirm the subdivision relative to the 800 acres?—There is no confirmation in the deed I drew. I advised Kemp that the 800 acres should go on.

Was it not because the gift of the 800 acres was bad?—Certainly not; I don't think so now.

On what other grounds was a release necessary?—It is enough for me to say that I advised my client to include it.

Did your client suggest it to you or you to him?—I take the entire responsibility of advising him.

Why did you consider it necessary to get the release for the 800 acres?—I am not here to give the reasons for my advice. I decline to do so. I decline to explain, because it is privileged. I decline to say what I advised Kemp. I am entirely responsible for the deed, Kemp having left himself entirely in my hands.

You will see that there is a reference in the deed to the township: Where did you get the information regarding that?—From my clients.

I suppose you took some time to draft deed of release?—I don't know how long—probably a ew days.

Will you produce the draft?—So far as I know, the draft does not exist. I have no office, and kept no drafts. I drafted it in my own house.

Have you made any search for the draft?—I have not. I have no doubt that it was destroyed.

Will you say that in that draft release there is no recital referring to No. 14?—I feel absolutely sure that the deed presented to the Commission was an engrossment of my draft. I don't recollect any corrections in it. Certainly there was nothing in it referring to No. 14. I will swear that.

What was the date of your first dealing with Kemp in No. 14?—The 20th May, 1892.

At the time you took the lease had you searched the minutes?—Certainly not: why should I? I have no recollection of it.

Were you preparing the deed of release on the 20th May, 1892?—Certainly not.

Had you not then at that time received instructions to prepare deed of release?—Certainly not, so far as I am aware.

The next lease is dated 5th September, 1892: Was the deed of release then in preparation?—I cannot say; it may have been.

Had you then searched the records of the Court about the subdivisions?—I cannot say: I may have.

Had you on the 31st October, 1892, searched the records?—I cannot say, but I presume I had, from the fact of the recitals in the deed of release which I had prepared.

Was not your principal object in preparing that deed to cure defects in No. 14?—Certainly not. I swear that I did not know at that time that a question of trust would be raised in reference to No. 14.

Did not the 800 acres as to validity stand in the same position as No. 14?—Certainly not; the 800 acres was a gift to Kemp by the tribe; whereas No. 14 was his own share of the block, taken with the general consent of the tribe at the subdivision of 1886.

Would not the validity of both transactions rest upon the voluntary arrangement spoken of by Judge Wilson?—That is a question of law that I do not care to express an opinion upon.

Was not the release made in consequence of the doubt of the validity of the voluntary arrangement?—I don't say so. I thought it advisable to state the fact that the 800 acres should be included. I don't question the validity of the gift. The reason the 800 acres was put on the deed was that Kemp's solicitor advised it; that solicitor being myself.

Was any explanation ever given as to the object of the recital about the 800 acres?—The whole deed was explained to my clients before they signed it.

What explanation was given to the Natives?—I decline to say more than that the deed was explained to my clients.

Your position was this at the time: You were acting for Kemp in obtaining the release?—I was acting for Kemp, who took the release, and I was acting for the people who gave him the release and discharge.

Was it consistent with that position that you should get the release without the Natives having independent advice?—In my opinion, certainly. If it had been a deed of indemnity reciting breaches of trust, independent advice might have been advisable.

Don't you know that a Court of Equity holds that such a deed is invalid?—No I do not. The deed has already been before the Supreme Court and Court of Appeal.

Had you prior to the taking of any of these leases, transfers, and mortgages searched the minute-books relating to subdivision of Horowhenua?—I cannot say. I believe I had. I had certainly searched the title for No. 14.

Did you not know prior to the taking of the leases, &c., that several of the subdivisions of Horowhenua Block were given to Kemp in trust?—I believe I did prior to some of them. I knew that Kemp held No. 6 in trust, and that he and Warena held No. 11 in trust for the tribe. I had so advised him. I believe I also knew that Ihaia Taueki held No. 12 in trust. I knew, further, that there were a number of the divisions in which no trust was mentioned.

Did you not know that where Kemp was intended to be a trustee the certificates of title were issued without any notice of the trust?—I knew that the certificate of title for No. 11 was to Kemp and Warena; there was no trust mentioned. I know that No. 6 was in Kemp's name, and that he admitted he was a trustee for the *rerewaho*.

Was not No. 2 in the same position?—It was in Kemp's name, but he sold it to the Crown.

Was not No. 9 in the same position?—I believed it was, but it was referred to the Native Land Court by Order in Council. I believe that No. 10 was vested in Kemp, and transferred by him to Sievewright.

Under these circumstances, why did you not inquire whether there was any trust in No. 14?—I did make all such inquiries as I thought necessary. When I searched the title I was aware the old trust had become extinguished by a partition of the block, and that certain new trusts had been created in 1886. The only blocks in which it was ever suggested to me that a trust existed were those subdivisions enumerated by you—viz., Nos. 6, 9, 10, 11, and 12, No. 2 having long before been disposed of by Kemp to Government.

At what date did you first know this?—It would be impossible for me to say. It was after I was retained by Kemp and the tribe. In regard to No. 14, I never had a suggestion from any one, either from any member of Muaupoko Tribe or any one of Whatanui's descendants, or from A. McDonald or Donald Fraser, or any one else so far as I know, till a question was put to me at the bar of the House by a Minister of the Crown in October, 1895. A caveat was lodged against No. 14 about a month later, not by a Native, but by an officer of the Government.

Was it before you took your first lease that you knew these subdivisions were held in trust?—I cannot say.

Did you know it before you were retained?—I think not—at any rate, I had not full information on the subject.

Did you know that the subdivisions were held in trust before you took your lease of the 31st October, 1892?—I presume I was aware of it then, because I had prepared the deed of release and discharge.

Knowing that a number of these subdivisions were in trust, should you not have inquired if No. 14 was in trust?—I have told you that, as a prudent solicitor, I had made all the necessary inquiries. [Horowhenua Commission, page 249, question 56, read.] I understood that that question referred to No. 11—I say that on my oath—and to other blocks. Not No. 14.

You knew at some time before some of the transactions between you and Kemp took place that some of the divisions were in trust. Why did you not inquire whether there was a trust in No. 14?—I searched the title, and made all necessary inquiries from Muaupoko.

Did you ascertain from the minute-books that some of the divisions were held in trust?—I think not. I satisfied myself from other sources that No. 11 was held in trust for the tribe.

Did you ever ask Kemp whether No. 14 was held in trust?—I may have done so. I have no recollection of asking specifically if there was a trust, but when I took my first lease from him I got him to sign a statutory declaration that he did not hold the land in trust. He did the same in all subsequent transactions between us, and all those deeds were passed by a Trust Commissioner, after being satisfied that no trust existed. There was no appeal in either case, although means of appeal were provided by law. I have said that I presumed I knew that some of the divisions were held in trust before my last dealings, because before that I had drafted the deed of release, but I cannot say for certain.

As a cautious man, do you not think you should have inquired of Kemp on that point directly as to No. 14?—As a cautious solicitor, I made every inquiry necessary.

Do I understand that you were contented with searching the Land Transfer Register?—I searched the Land Transfer Register, and made such other inquiries as at the time I thought necessary or expedient. I swear that I was absolutely satisfied that Kemp owned No. 14.

Were yonr inquiries directed to ascertain whether there was a trust or not?—There was no occasion to make inquiries about a trust, because I knew there was no trust.

Did you inquire whether there was a trust or not?—I satisfied myself that there was no trust, so I presume I made inquiries. I don't remember.

I understand you made inquiries that satisfied you there was no trust?—At this distance of time I cannot remember what inquiries I made. I assume that I made all the inquiries requisite to satisfy me that Kemp was absolute owner, and not trustee.

The Court adjourned till the 31st instant.

WEDNESDAY, 31ST MARCH, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Sir W. Buller explained that he inadvertently forgot to mention yesterday that No. 1 was vested in Kemp in trust to convey to the railway company in the same way that No. 10 was

awarded to Kemp in trust to convey to Sievewright in order to pay debts that the tribe had accepted burden of. Any other disposition of these blocks would have been a breach of trust.

Mr. J. M. Fraser pointed out that Raniera te Whata was in Court.

The Court said it was of no consequence.

Sir W. BULLER, cross-examined by Henare te Apatari.

Witness: I have heard all the evidence that has been given before this Court. I have heard all that the witnesses have alleged in Court in regard to No. 14, and everything else. I heard it stated in Court that it was part of the voluntary arrangement that Kemp was to have No. 14 as his share of the estate. I will explain everything I can to the Court when I address it. From what I have heard in evidence and from Muaupoko the section at Ohau was first offered to the descendants of TeWhatanui, and when they refused it provision was made for them at Raumatangi, after which Muaupoko consented to Kemp having the Ohau section for himself. I have not heard Kemp stating that he was trustee for No. 14, either inside or outside the Court, but he made a statement before the Commission that might have borne that construction until it was explained by him. Kemp denied that he had stated in the Court of 1890 that he held No. 14 in trust for Ngatiraukawa. He said that he was misreported. Kemp swore here that he made no such statement in 1890. I heard my witnesses say that Kemp asked Muaupoko for No. 14 for himself, and I believe it to be true. I was not at the meeting. I cannot say what happened. I heard Raniera say that no one spoke when Kemp asked for No. 14. I have no means of knowing whether any one spoke or not. One witness testified that the meeting said "Aye." Ru Reweti said that Kiritotara said that no one could object. I conclude that the consent to Kemp's request was unanimous, as there were no objectors to the application in Court. Rangimairehau, Raniera, and Ru Reweti, I believe, spoke to the best of their recollection as to the form of assent, but they all agree that the consent of Muaupoko at the meeting and in Court was unanimous. I cannot say whether the discrepancies you allege in my witnesses' statements as to the form of assent should be taken as proof of the consent. I have no opinion to express upon it. I leave it to the Court.

Cross-examined by Hamuera Karaitiana.

Witness: I was solicitor for Kemp and those of the Muaupoko who signed my retainer from the 18th July, 1892, down to the time of the Commission, when I appeared for them. I have looked at the minute-book of 1886. Cannot say when I first saw it. The first thing I did for Muaupoko was to establish a trust in No. 11 through the Supreme Court. The minute-book was silent as to a trust, and I had to obtain my information from Muaupoko. My clients gave me the information—those who signed my retainer. I have seen the minute-book of 1890. Don't know when I first saw it. I know now the contents of that minute-book. Can't remember when I first became acquainted with those minutes. I will read the reply I gave to Mr. Stafford yesterday as to whether I knew or did not know that Kemp was a trustee in No. 14. [Not read.] I never heard that there was any trust suggested in No. 14 until a question was put to me at the bar of the House by Mr. Carroll. I have always understood that it was agreed that Kemp should have it for himself. I have never heard anything to the contrary. I probably heard from Kemp that he was the owner of No. 14 and not a trustee. I searched the title of No. 14 and made the necessary inquiries besides, before I parted with any money, as a prudent solicitor should. After I had been retained in July, 1892, it became my business to make inquiries on behalf of the people. The land was clothed with a European title. I had no occasion to make inquiries about the original title. I said in my opening that I would tender no evidence as to ancestry, and I have not done so. I say that on partition of the block by an arrangement of give and take No. 14 fell to Kemp as his share. In my opinion it was a valid and binding partition; by that arrangement Kemp gave up his rights in all other blocks except No. 11, and others gave up their rights in No. 14, the effect being that No. 14 became Kemp's share. By "arrangement" I mean the voluntary arrangement come to in 1886, and confirmed by the Court. I may have seen the certificate of title for No. 12. I think so. There is no difference between the certificate of title for No. 12 and that for No. 14, so far as I know, excepting in names of owners and description of parcel. The minute-book does not disclose a trust, nor does the certificate of title. I had to get my information from other sources. The information so obtained availed in the Supreme Court to establish a trust in No. 11, notwithstanding that there was no trust disclosed in the minutes or in the certificate of title. Everybody, as far as I know, knew that No. 14 was Kemp's absolutely. Kemp must have told me so or I would not have had any dealings with him in connection with it. I cannot say when Kemp told me, or when others told me that the land belonged to Kemp. I have always known that the land was Kemp's. I have seen minute-book No. 13, Otaki, page 177, Kemp's evidence: "No. 14 is for the descendants of Whatanui; it is not for me alone." My answer to that is that Kemp has sworn in this Court that he never made that statement, and I believe him. I attach more importance to what I heard outside than to a statement in the minute which Kemp has sworn he never made. Everything that is written is not necessarily true. In this instance it is the minute-book that is wrong.

Cross-examined by Mr. Baldwin.

Witness [Vol. 13, page 278: Judgment of Court *re* No. 11 on the 10th April, 1890]: I am instructed by Kemp that he asserted a trust in No. 11 in 1890. I believe he signed a declaration of trust at that time. I cannot say where I was residing during the session of 1890. I suppose I was in Wellington. Kemp presented a petition to Parliament in 1890. [*Hansard*, No. 37, pages 977, 978.] I have not the slightest recollection of having any communication with Kemp in Wellington in that year. Mr. Bell was acting for Kemp then. I don't remember whether Mr. Ballance was in power in 1890.

Mr. Baldwin: Did you, directly or indirectly, use your influence, give any information or advice, or take any part whatever, professionally or otherwise, in connection with this petition of 1890?

Sir W. Buller: I think not I have absolutely no recollection of the sort. It is impossible for me to say definitely that I did not, it is so long ago, but I don't think I did. I was out of practice at the time. [*Hansard*, No. 37, page 978.] Not referred to. The Rehearing Court sat in Palmerston in 1890 to rehear partition of No. 11. [Judgment quoted.] I cannot say without reference to a diary where I was residing during the session of 1891; I may have been in Wellington. I am aware that legislation prohibiting dealings with Horowhenua for a year was enacted in 1891. I had nothing to do with it, and did not know anything about it at the time. I don't think I took any part with regard to petition of 1891, or the legislation that followed it. That is my recollection. I believe Judge Mair told me first what had been happening in connection with Horowhenua. This was when Ngarara case was on in Wellington—I believe, in 1891. I don't remember seeing Kemp at any time during the session of 1891. [*Hansard*, No. 37, page 986, read.] I am perfectly sure that when Kemp retained me I told him I would not be a party to any compromise. I have no recollection of communicating with Warena Hunia on the point. I had no statement from Warena that he would not return the land to the tribe. Kemp and Muaupoko told me so. I was prepared at time of Commission to submit an arrangement to the Commissioners, subject to their consent. The arrangement was that we should submit to the Commission a division of the block, but nothing came of it. It was a suggestion by me to Donald Fraser without prejudice. It was a very different thing to a private compromise. It was after the Supreme Court had put back the 143 people on to the block, and the consent of the 143, or their representatives, would have had to be obtained. I am aware of judgment of Supreme Court, in which, after publication of *Kahiti*, it is held that the actions of those present bind the rest. The suggestion on my part to come to a voluntary arrangement out of Court, such voluntary arrangement to be submitted to the Commissioners for their approval, was, to my mind, a very different thing to the proposed compromise at a time when the trust was being denied by Warena Hunia—a hole-and-corner compromise to which I would never have given my consent. It is a matter of law whether judgment of the Supreme Court was suspended at the time of Commission. I intimated to the Commission that I was not without hope that some arrangements would be come to among the parties which would have the effect of shortening proceedings. The suggestion I made was to Donald Fraser, as attorney for Hunia. I had not consulted my clients. Donald Fraser seemed willing to come to some arrangement, and mentioned it to Stevens, who said that if an arrangement was come to he would leave the case, and that ended it. I proposed that Warena and all those who could claim with him should go into his part, and that Kemp and his people should go with him. As far as I can remember, I proposed a block of 2,000 acres for Warena and party, and the same for Kemp and party, Kemp's block to be on the south side of block. The proposal was made without prejudice.

Mr. J. M. Fraser protested, on behalf of tribe, against any examination as to the alleged arrangement, as it was privileged.

Sir W. Buller: It was not because a trust was set up for No. 14 that the arrangement was proposed, in order that the question of trust might be dropped. I cannot say how soon after my return from England I learned that Kemp had No. 14 in his own name. I can't say that I knew it before I came to Papaitonga with my family—possibly I did. It may have been a month later or less that I went to see Kemp at Wanganui. My transfer was signed by Ngatiraukawa a few days after the negotiations. I cannot say how I got my first knowledge that No. 14 was in Kemp's name. I don't know whether I searched the title to No. 14 before I came to Papaitonga, but it is quite possible I did. [Horowhenua Commission, page 253, read.] That first six years would be the time of the timber lease to Bartholomew. It is probable that I saw Kemp before Bartholomew's lease was signed; I must have. It was two or three days after I approached Kemp that he signed my lease. I presume I asked Kemp for a lease of the whole of No. 14 when I first saw him about it. On the 18th July, 1892, I got a retainer from Kemp; others signed it afterwards. I have no recollection of having lodged a caveat against No. 6. I think the Natives did it. I don't think I have prepared any caveats for any one else to lodge. [Horowhenua Commission, page 343 (bill of costs).] Those are covered by my mortgage. I should say the sessions referred to were those of 1892, 1893, and 1894. I did not act for them before that. Briefing evidence was briefing Judge Wilson and others for the Supreme Court case. All these costs up to October, 1894, had been incurred before the giving of the mortgage. Mr. Edwards prepared the mortgage. He acted as solicitor between the parties. I decline to say what passed between me and him. I heard the Trust Commissioner ask Kemp if he was satisfied with the terms of the mortgage. I think the mortgage was read over to him in Court. [*Hansard*, page 982, read: "Major Kemp then said," &c.] I have stated that they were disputing about the ownership. I probably knew that the certificate was in Kemp's name, but I believe that the descendants of Whatanui were in possession, and living on it. I don't know where I got the information. [*Hansard*, page 981: "The Court held that it was unreasonable."] That was in my mind when I made that speech. The judgment of the Court has been put in and speaks for itself; I apparently overstated it. I see now that I did. My speech was made hurriedly, without preparation. [Horowhenua Commission, page 254, question 188, read.] All the representative men who were in Wellington would be in my mind. I did not see the other Muaupoko for some time. I could only speak to them as members of Muaupoko Tribe. I don't know that there was any particular object in telling the Muaupoko that I was taking a lease of No. 14 from Kemp. It was certainly not because I thought there would be any objection or because I thought there was a trust.

Mr. Baldwin said before he went on with the cross-examination of Sir Walter Buller he would ask the Court to subpœna the Registrar of the Supreme Court to produce a tracing marked Exhibit B. He asked the Court to take a note that he was prepared to call Mr. McDonald and Mr. Stevens to state that the conversation about the arrangement to be submitted to the Commission was not a private conversation.

Mr. Stevens denied that it was a private conversation.

Sir W. Buller (to Mr. Baldwin) [*Hansard*, page 983.] : At the time I took my first lease from Kemp I was not his professional adviser, so far as I am aware. The lease of September, 1892, was taken after I was retained by Kemp and Muaupoko. Similarly with regard to the lease of October, 1892. There was no professional man acting for Kemp in connection with those leases, so far as I am aware.

Mr. McDonald did not wish to re-examine.

Sir W. Buller : Mr. McDonald put it to me whether I thought it was reasonable that I should put the people to great expense without consulting Warena as to the prospect of his giving up the land. Mr. McDonald asked me if I had read the minute-book. I would like to read two passages from it. [Otaki, No. 13, page 263 (Wirihana's evidence) : "I heard that all the Muaupoko agreed to give their interests in this land to do what they liked with," &c., to "left out." Same volume, page 268 (Baker's address) : "I intend to put in a declaration of trust by Major Kemp" (section 41 of Act of 1886 quoted). "The object is to secure the land for Muaupoko Tribe," &c., to "present Court."] The reading of the minute-book strengthens my contention that it was no use approaching Warena. I got the fullest information before I went to Parliament. I never heard till the Royal Commission any suggestion of a moral obligation on the part of Kemp and Hunia. At the time I advised Kemp to go to Parliament in 1892 I had satisfied myself that it was useless approaching Warena, seeing that he had declared himself to be absolute owner. In the early part of 1892 I had read a pamphlet containing a statement of Warena Hunia regarding Horowhenua Block, on page 3 of which appears the following paragraph : "Subdivision No. 11, containing 14,975 acres, was awarded to Major Kemp and myself, our shares being undefined," &c. In the face of such a statement as that it was utterly useless to communicate with Warena Hunia. I had the pamphlet in my possession in 1892, when we were fighting before the Native Affairs Committee, and I never did attempt to treat with Warena. [*Hansard*, page 982, read.] The fact that the descendants of Whatanui were disputing over the land is the best proof I can offer that they were in possession. There is therefore no inconsistency in my replies given on pages 982 and 986.

To *Mr. Stafford :* I have not got the draft of deed of realease. I do not know where it is.

Mr. McDonald wished to know what would be the next proceeding after the close of this case.

The Court said it had contemplated that the accounts would be gone into after all the evidence had been taken in this case.

Mr. Stafford asked when the issues of law would be gone into.

The Court said it did not propose to submit the questions of law until the close of the case.

Mr. Stevens informed the Court that he did not consider it necessary to call any more evidence, and that his case was closed.

Case of Paki te Hunga.

Henare te Apatari called Paki te Hunga.

Paki te Hunga sworn and examined.

Witness : I was one of the registered owners of Horowhenua. I am a Muaupoko, and have a good right to the Horowhenua Block. I remember the troubles at Te Watene's place. I and a younger relative, Kawana Hunia, burnt Watene's house. I am equal in rank to Kawana Hunia. I have never derived any benefit from Horowhenua, either pecuniarily or otherwise. I was at Palmerston when the Court sat in 1886. When I arrived there all Muaupoko were living at Palmerson's place in a barn, discussing the proposed divisions of the block. Nothing had been settled, because the people were wandering about the town amusing themselves. In the evening I returned home by train, my wife and child being unwell. Next morning I went back to Palmerston. The discussion was still going on, but nothing was settled, and I returned home again. I went back to Palmerston afterwards, and Rangimairehau told me what blocks had been settled. There were three blocks. The first was the railway-line. I was told that this had been considered by the tribe, and given to Kemp to convey to the Railway Company. I was asked what I thought about it, and said that I agreed. The second was the Township of Weraroa, 4,000 acres, and the quarter-acre sections for the Muaupoko. This land was to be sold to Government; the purchase-money was to pay for the exterior and interior surveys. Rangimairehau asked me what I had to say about this. I said I consented. The third was the block for the descendants of Whatanui. This block was located at Ohau, and was set apart in fulfilment of the agreement between Kemp and McLean regarding the descendants of Whatanui. Te Aohau objected to this in Court, so Rangimairehau told me. I did not go to the Court. I was not then told that the Ohau land was given to Kemp for himself. I wanted to have my name put in Nos. 11 and 12. Hema Hanita and I had some strong words, but my wish was not complied with. About three or four days later I again went to Palmerston, and found that No. 11 had been awarded to Kemp and Hunia, and No. 12 to Ihaia Taueki. This is all that I know about what took place at the Court of 1886. Then we came to the Pipiriki meeting, which Kemp was invited by the Muaupoko to attend. Before Kemp arrived the people had decided to ask him to give back Nos. 6, 11, 12, and 14 to them. Waata Muruahi was appointed spokesman. Kuku Karaitiana was chairman of the meeting held before Kemp arrived. When Kemp and I arrived Waata Muruahi asked Kemp for Nos. 6, 11, 12, and 14. He asked Kemp and Warena to

give them back to the people. I do not know that he asked Ihaia. Kemp would not consent. It was then that I heard that No. 9 had been set apart for the descendants of Whatanui. I said to Kemp, "You are cutting up only the part of the block belonging to me and my hapu." In the evening, when we assembled in the *whare runanga*, I asked Kemp what he was going to do with the land for the *rerewaho*. The house was crowded. He said he should have that piece. I then asked what was to become of the *rerewaho*. He said, "We will put them in No. 11." I told him I would not consent, as he had consumed all the land. That ended our conversation.

Mr. McDonald asked to be allowed to postpone his cross-examination of the witness till to-morrow.

The Court saw no objection, if Mr. Stevens was ready to go on.

Cross-examined by Mr. Stevens.

Witness: I did not remain at Palmerston for more than a day at a time in 1886. I returned to Oroua in the evenings. Kemp did not speak to me about the Ohau lands in 1886 at Palmerston. I believe my son Eparamia was Kemp's clerk in 1886. Rangimairehau told me after the Ohau land had been taken into Court that it had been cut off for the descendants of Whatanui. I am sure it was not No. 9 that Rangimairehau spoke of. It was the land at Ohau, east of the railway, that he spoke of. If Kemp said that No. 14 was his share of the land it would be incorrect. I have not received a penny of the rent for No. 14.

Cross-examined by Hamuera Karaitiana.

Witness: I did not hear Te Rangimairehau say that No. 14 was given to Kemp for himself. If he had said so I would have been angry.

The Court adjourned till the 1st April.

THURSDAY, 1ST APRIL, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua, No. 14, resumed.

PAKI TE HUNGA cross-examined by Mr. McDonald.

Witness: I am quite clear that I was informed that the Ohau section was the first section awarded to the descendants of Whatanui. I did not hear it stated during the sitting of the Court of 1886 that it had afterwards been given by the Muaupoko to Kemp for himself. I only heard that in this Court. I have claims to all the divisions held by Kemp and others—I mean Nos. 6, 11, 12, and 14. I have never agreed to Kemp having No. 14 for himself. I have never been asked to agree. If I had been asked to agree I would not have done so.

Cross-examined by Mr. Baldwin.

Witness [Horowhenua Commission, page 156, questions 341 to 355, and replies, read]: Some of that evidence is correct, but most of it is incorrectly reported. [Question 341 and reply read.] That is correct. [Question 342 and reply read.] That is wrong. It is not the correct interpretation of what I said. All my claims are from Pariri, not from Riunga. I am descended from the latter, but that ancestor had no rights in Horowhenua. [Horowhenua Commission, page 157, questions 389, 390, and 391, with replies, read.] Those replies are also incorrectly interpreted. I did not say it. I repeat that I am a descendant of Riunga, but I do not claim from her. All my claims are from Pariri. I never said before the Commission that I claimed Horowhenua from Riunga. [Horowhenua Commission, page 156, question 343, and reply, read.] That was my reply. [Question 344 and reply read.] That is correct. [Question 345 and reply read.] I said that. [Question 346 and reply read.] That is right. [Question 347 and reply read.] It was No. 9 I spoke to Kemp about at Pipiriki, not No. 14. By No. 9 I meant the section at Raumatangi. I spoke to Kemp about it at Pipiriki meeting. I told him he was cutting up only the parts I and my hapu were interested in. [Horowhenua Commission, question 348, and reply, read.] I spoke to Kemp about the *rerewaho* land just after I spoke to him about No. 9. My reply to question 348 referred to No. 9, and not to No. 14. I said that Kemp was cutting out both sections from Ngatipariri lands. I spoke to Kemp about No. 14, inasmuch as it was Ngatipariri lands, I meant to include it when I spoke to Kemp about cutting up Ngatipariri lands. [Question 349 and reply read.] That is correct. It was at Pipiriki. I heard Kemp propose that he should take the land for the *rerewaho*. Kemp did not reply to what I said about the proposal. [Question 350 and reply read.] That is true. I did not speak to Kemp about No. 14 then. I did not speak to Kemp, specially to Kemp, about No. 14 at Pipiriki. I included all our land because I had ascertained that two sections had been cut out of our land, Nos. 9 and 14. I said to Kemp, "You are cutting up my land and that of my hapu only; I will not agree to this." I did not refer to the Ohau section by its number. [Question 351 and reply read.] That is quite correct. [Question 352 and reply read.] That was my reply. [Question 353 and reply read.] That is correct. [Question 354 and reply read.] I said that. [Question 255 and reply read.] That is quite correct. [Question 356 and reply read.] That is true. With my explanation, all my evidence that you have read is correct, except that relating to Te Riunga. I said that Te Riunga's rights were south of Ohau section, not this side of it, and that Te Riunga's land had been taken by Ngatiraukawa. I won't admit that my reply to question 391 is correctly reported. [Volume 13, page 231, Paki's evidence, read: "I was not present at the Court in 1886. I went to my place at Oroua Bridge. I was not present when the arrangements were made outside."] I was present at meetings in Palmerson's barn in 1886. Te Rangimairehau told me what had been settled at the meetings and in the Court.

Cross-examined by Sir Walter Buller.

Witness: I am the Paki te Hunga who gave evidence before the Royal Commission last year. [Horowhenua Commission, page 158, question 408, and reply, read.] I remember giving that reply. [Question 409 and reply read.] I admit that I gave that reply. [Question 410 and reply read.] I remember saying that. [Question 411 and reply read.] I said that. [Question 412 and reply read.] That is true. I made that reply. I did not hear Donald Fraser contradict me when he gave his evidence. If Donald Fraser and Wirihana do deny it I will reassert it. [Page 158, question 3, D. Fraser's evidence.] Donald Fraser was trying to shield himself when he said that. I still say that Donald Fraser and Wirihana gave me a false statement to make in Court. I say this positively, on my oath. I knew that the statement was false at the time. I wanted my son-in-law, Eruera te Kahu, to conduct for me. Donald Fraser and Wirihana told me that there was no opening for another case, as there were only two in the title, but that I must say that the land belonged to Warena, as the different inquiries were held. I discovered that I had been wronged—that my *tamariki* were claiming the land for themselves. That is why I gave the replies I did to A. L. D. Fraser. I did not like to tell Wirihana and Warena that it was a lie, and that I would not say it in Court, because if I had claimed the land for myself we would have been beaten by Kemp's side. I therefore went into the witness-box and swore what was false in order to save Warena and defeat Kemp. The Court did not find it out. I confessed it myself. I admit that I was not justified in making the statement I did to the Court, because I knew it was false when I made it. I regretted it afterwards down to the time of the Commission. I did not know at the time that my offence rendered me liable to imprisonment. The reason that I regretted making the statement is that I found out that I had been injured by the land having been absorbed by Warena, Wirihana, and Kemp. I refer to Kemp getting the railway, the 800 acres, and the township. When I gave the evidence I have referred to I was speaking of No. 11. My *pouri* was caused by my children having taken the land, and my confession was because of my *pouritanga*. I regretted losing the land, and I also regretted having spoken falsely in Court.

Re-examined by Henare te Apatari.

Witness: I have no right to Horowhenua through Te Riunga. Her principal rights are at Tamaki. Te Riunga had rights at Ohau. When this land was undisturbed the different hapus occupied the portions they were entitled to, but when the territory north and south of Horowhenua was taken by Ngatiraukawa and other tribes the Muaupoko, including Kawana, were confined to the portion left. That is why I contend that I have the largest rights to it.

Wirihana Hunia asked to be allowed to put certain questions to the witness, as Mr. Stevens was absent.

The Court said he could put his questions through the Court.

Wirihana decided to defer putting his questions till No. 11 was before the Court.

Henare te Apatari announced that his case was closed.

Hamuera Karaitiana asked to be allowed to commence his case at 2 p.m.

The Court informed him that he could commence his case at 2 p.m.

Sir W. Buller stated that he wished to say something on the question of the accounts.

The Court said he might mention the matter at 2 p.m.

It was ultimately decided to go into the question of accounts on Monday next; addresses of counsel to follow.

Sir W. Buller suggested that the Court should hear argument on questions of law and fact on Tuesday next, as Messrs. Stevens and McDonald would be away on that day. He and Mr. Stafford might agree on certain issues and submit them to the Court; but at any rate they could bring them before the Court, and it was possible that this course might assist the Court.

Mr. Stafford said it was impossible that he could attend on Tuesday next. He thought no one could be prejudiced by the Court disclosing the points it considered must go to the Supreme Court.

Sir W. Buller objected to the course proposed by Mr. Stafford—that the Court should make known what was in its mind.

The Court said Mr. Stafford and Mr. Baldwin might meet and decide upon the issues of law and fact from their point of view.

Mr. Stafford said the points of law he intended to submit were so apparent that no evidence could affect them. They would not take five minutes.

Mr. Baldwin strongly supported what Mr. Stafford said. He would like Mr. Stafford's assistance in preparing the case for submission. If Court would disclose the issues in its mind, he and Mr. Stafford would meet and decide whether they had anything to add to them.

Mr. Stafford read paragraph 13, statement of claim between Kemp and Warena Hunia, and said that this was one of their points, and was uncontrovertible. Their other issues were on the same basis.

Sir W. Buller said he was convinced from what Mr. Stafford had said that it was impossible for Mr. Stafford and himself to agree, and that they must submit their cases to the Court.

The Court was still of opinion that Mr. Stafford and Mr. Baldwin should prepare their issues of fact and law, and that Sir Walter Buller should do the same, and submit them to the Court. The questions in the mind of the Court were upon matters that had occurred previous to this case.

Mr. Baldwin said he would like to put in a copy of the pleadings in the Supreme Court case, Warena Hunia *v.* Kemp.

The Court requested counsel to submit their statements of law and fact in writing, and intimated that argument would be heard upon them on Tuesday next.

CASE OF RIHIPETI TAMAKI.

Hamuera Karaitiana said, in opening his case, that he had intended to call Nireaha Tamaki, but, as he could not give any evidence of importance that his client could not give, he had decided that it was unnecessary, and would call Rihipete Tamaki.

Rihipeti Tamaki: I live at Te Hawera. I am a Muaupoko. My hapus are Ngatipariri and Hamua. I remember the Court of 1886. I attended it. I remember the Muaupoko assembling at Palmerson's place, in Palmerston. We lived in a barn. Kemp stayed in Palmerson's house. I heard the discussions about the divisions of Horowhenua Block. I heard Rangimairehau speak of the divisions in the barn. Rangimairehau spoke of the block for the railway, the township, and the Ohau section. I heard Rangimairehau say that the Ohau section was to be awarded to Kemp to give to the descendants of Whatanui. That is all I heard Rangimairehau say. I agreed, because all the tribe had consented to give the land to the descendants of Whatanui, but I did not speak. The lands had not been awarded at that time. They were discussed outside the Court, and then taken into the Court and awarded. I was in Court when the three blocks were brought before the Court. Mr. McDonald was conducting at the time. I did not hear of any meetings of Muaupoko after that. I could not say whether there were any other meetings. I only heard of the one I have mentioned by chance. Mangakahia was the Assessor when the three blocks were brought into the Court. I heard the Ohau Block referred to in Court. I did not hear any one object in the Court. If Rangimairehau had said that Muaupoko had agreed to give the Ohau section to Kemp for himself I would not have agreed. It is only now that I have heard it claimed that this land was given to Kemp for himself; that is why I am objecting.

Cross-examined by Mr. McDonald.

Rihipeti Tamaki: I was some time in Palmerston during sitting of Court, but I lived in lodgings, not with the Muaupoko. I did not go to Palmerson's barn every day. We were invited to attend the meeting I was present at. I heard, but not from the Muaupoko themselves, that they were dividing their land. I agreed to what I was told was done by Muaupoko. I heard that other divisions of the block were made. I did not object, because I heard that Kemp and Warena were trustees for No. 11, and that Kemp was trustee for the Ohau section. I understood that Ihaia Taueki also was trustee for No. 12. I did not hear of this when the railway section was dealt with. The other divisions must have been made later. I heard at the time that they were made. I heard it from Muaupoko outside. I did not object. The Hamua were put on the hills because they had no right. I did not hear that there was a piece of land cut off at Raumatangi at that Court. I did not hear it while I was at Palmerston.

Cross-examined by Henare Te Apatari.

Rihipeti Tamaki: I did not hear it proposed at any meeting that Kemp should have Ohau for himself. Nor did I hear of a meeting where Kiritotara said no one could object to his having it, or of a meeting where Kemp proposed that he should have it, and no one spoke.

Cross-examined by Mr. Baldwin.

Rihipeti Tamaki: My recollection is not very clear as to what took place at the Court of 1886. I only remember what I spoke of first. I know Te Aohau. He was at Palmerston in 1886. I did not see him stand up in Court. I may have been outside when he spoke. I saw Mr. Lewis at the Court. He came on other business—to bring up money for the people. I did not see him in the Court I did not give any evidence before the Commission about the Ohau section. I did not make any statement to any of the Commissioners about No. 14. I did not hear that No. 14 was given to Kemp for himself. I heard that it was for the descendants of Whatanui.

Sir W. Buller had no questions.

Re-examined by Hamuera Karaitiana.

Rihipeti Tamaki: I only heard outside about the other divisions. I was not present at the meetings where the first three blocks were discussed, but Rangimairehau told me about them.

Hamuera Karaitiana: That closes my case.

The Court: Then, that closes the evidence so far as this case is concerned.

Mr. Baldwin: I presume that the pleadings in the Supreme Court are put in; also the plan (Exhibit B).

The Court considered that they were in.

Horowhenua No. 14 case adjourned till Monday, the 5th instant.

The Court adjourned until the 5th instant.

MONDAY, 5TH APRIL, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14.

The Court said the chief business before the Court was the rendering of accounts which Sir Walter Buller had promised to go on with to-day.

Sir W. Buller said he would do what he could to show the expenditure by Kemp since 1873. It was very difficult. From 1873 to 1886 Kemp was trustee for the whole block. It was impossible to make up an accurate statement, as Kemp had kept no books; but the Court would be told all that it was possible to tell. According to Kemp's contention, from the time of partition in 1886 down to decision of Supreme Court in 1895 he and Warena were trustees in respect of No. 11. It would be easy to show receipts, because they depended on documentary evidence.

Since Court rose Mr. Fraser, on behalf of Muaupoko, and I have drawn up an approximate statement of receipts and expenditure since 1873 down to the present date. From 1873 to 1895 Kemp received the moneys in shape of rents, royalties on timber, payment by Government for township, and interest. These moneys he has either paid over to the tribe or disbursed in the interest of the tribe. Since he succeeded in placing registered owners back on No. 11 he has carefully abstained from touching any of the income. The lease that John McDonald held of part of No. 11 expired some time ago, but McDonald has remained in possession as a yearly tenant at a rental of £400, payable in advance. Accordingly, on the 5th October, 1895, a payment became due, but Kemp refused to touch it. On the 5th October last another payment of £400 became due, but Kemp did not take it. There is therefore £800 in hand. I called upon John McDonald to pay me the £800, which should, under ordinary circumstances, have been paid to Kemp. He at once gave me a cheque for £800, which I have paid to my account in Bank of Australasia, as a trust account, to abide the order of this Court. I say the money belongs to Muaupoko, of whom Major Kemp is one. I will put in duplicate slip to show terms in which money has been paid into bank. I have informed Kemp that not one shilling of that money will be paid out except on an order from this Court. Although Kemp has given me all the assistance in his power I could not have drawn up statement of accounts except for assistance rendered by Fraser and Muaupoko. When I hand statement to Court it will see that there can be no doubt as to receipts. The leases were before Commission, and are in evidence. H. McDonald's evidence before Commission shows what he paid Kemp and Muaupoko. The amount of purchase-money for township and interest is beyond doubt. Evidence of Bartholomew shows what he paid as royalties. I have not included in receipts anything in way of rents, royalties, or purchase-money received by Kemp in respect of No. 14, because I say that is Kemp's own property, and he is not accountable to any one; but the amount is in evidence, and can be ascertained by Court from documents before it. As to expenditure of the large sums received by Kemp during the last twenty-three years, wherever possible I have given exact figure in showing a payment. I will show to Court admitted payments to Warena and Wirihana. Hope to bring evidence to satisfy Court of other payments to Muaupoko. True, as stated by Kemp before Commission, that a large portion of the money has gone in payment of lawyers and agents. Kemp will say in witness-box that in making these large payments he believed he was acting in the interests of his people. As to proof of exact amounts paid to lawyers and agents, in some cases I shall be able to give exact amounts. In other cases Kemp can only give his recollections of what the amounts were. In the early days large sums were paid to Mr. Cash, solicitor, who acted for Kemp and the tribe in 1872–3. At a later period Mr. W. S. Baker acted for Kemp and the tribe, and was paid large sums. In order to furnish exact information as to amounts paid to those two solicitors, Fraser wrote asking them to send a memorandum of accounts, stating object for which they were required by Appellate Court. Urgent telegrams also sent to them on Saturday. Mr. Cash's partner replied that it was impossible to furnish the information. Mr. S. Baker has not replied to either letter or telegram. Unless Court considers it necessary to subpœna Cash and Baker we must fall back on memory. Mr. J. McDonald has given all the assistance he can, and is prepared to give evidence if necessary. As to large amount paid or payable by Kemp to me, these costs were incurred by him on behalf of Muaupoko, but he has taken the whole amount on his own shoulders. His personal estate is chargeable with it, and I have no claim for one shilling on any other Muaupoko in respect of my services. It is therefore clearly an amount for which Kemp is justified in claiming credit from the people. Court is aware that chiefs are put to great expense in connection with meetings for Court purposes, and I submit that such payments are made for tribal purposes, and are fairly chargeable in such cases as the present. The difficulty is as to the amount of such expenditure, and it can only be arrived at approximately. In such cases I propose to put in and call evidence, which I trust will satisfy the Court that we are rather under than over the mark. During the last twenty-three years Kemp has travelled about a great deal on the legitimate business of the tribe. He has made large stays in Wellington, and has had to pay the expenses of members of the tribe who accompanied him. There are some sums which it will be shown in evidence were gifts from the tribe to Kemp—for instance, a gift by people of £300, to enable Kemp to build a house at Wanganui. He is clearly entitled to take credit for gifts if Court is satisfied they were *bonâ fide* gifts. There is evidence before the Commission to substantiate gift of £300. I will satisfy the Court that with the indifferent material at my hand I have endeavoured to draw up a true account of receipts and expenditure. In respect to £800 deposited with me in trust, McDonald is entitled by law to claim from tribe their proportion of land-tax for No. 11. On his satisfying the Court that he is entitled, and the amount, I will pay him. I put in receipt I gave McDonald for the £800; also duplicate slip showing payment to my account. I also hand in statement of receipts and expenditure, and call Mr. J. M. Fraser.

Mr. J. M. Fraser sworn and examined.

Witness: When Court asked that account should be handed in to Court to-day, I consulted Kemp and Muaupoko Tribe. We first discussed receipts by Kemp of moneys in connection with block. The first money received by Kemp was under a lease dated the 1st December, 1876, for fifteen years, as from the 5th October, 1876, to Mr. Hector McDonald: First five years, £200 per annum; second five years, £300 per annum; third five years, £400 per annum. That lease expired on the 5th October, 1891. Kemp debits himself with the whole of the rents under that lease. From 1891 to 1896, no lease. McDonald occupied by verbal permission of Kemp, who has debited himself with the £2,000 received as rent for that period. The item as to royalties was obtained from Kemp and from evidence given before Commission. Similarly as to amount received from township. The sum of £210, for interest, was obtained from questions put by the Chairman of the Commission to Kemp. The sum of £100 was forfeited by Warena Hunia. Mr.

Edwards received it from Supreme Court. Total of moneys received by Kemp is £13,810. I have made fullest inquiries, and cannot find that Kemp has received anything outside this amount. The payments are divided into five heads. The first four items under the first head were paid to Kemp by McDonald. The £400 was handed to the people. The next three items were received by the tribe from Hector McDonald. The next two items were moneys obtained by tribe from McDonald, and brought by the tribe to Wanganui and given to Kemp as a present. Next item, £300, was paid by McDonald to Ihaia Taueki and the tribe. Then there were a hundred sheep, given under Kemp's order to Aue Puihi; value, £50. Then there were four hundred sheep, given by McDonald to Raniera te Whata, on Kemp's order: £125. £50 was paid to Kiritotara on account of Ruatangata. There are two payments to Warena, amounting to £170. £533 paid to Wirihana Hunia. Payment to Makere and Muaupoko of £1,000: This was part of a sum of £1,300 said before the Commission to have been paid by McDonald to Baker. He kept £300 of it for costs. Payment of £100 to Rangimairehau: I saw it paid in Wellington. Hapeta Rangimairehau lives at Parihaka. He obtained £100 from Kemp on one of his visits here. The total amount under head No. 1 is £4,492. The Court sat in Foxton in 1873. Kemp contributed largely to costs. Amount put down is approximate. Court will understand that expense would be heavy—£250. £20 was refunded by Kemp to Renata Kawepo, who had paid it on behalf of Muaupoko. In 1886 Kemp paid railway-fares of all the people from Levin to Palmerston and return; he estimates cost at £36. Cost of food, firewood, and one item of rent, he estimates at £300. In 1890 Kemp expended £300 on behalf of tribe. I have personal knowledge that this is a reasonable charge for the maintenance of the people. I have personal knowledge of the next item of £200. I was present in Wellington with Kemp and Muaupoko during the session of 1890. I believe it cost Kemp more than £200. £30 is a reasonable charge to make for maintenance of people who attended Chief Judge's Court. Court of 1891: Natives were here for five weeks; item, £150. £300: I have personal knowledge that it cost Kemp fully this sum for maintenance of the people in Wellington during session of 1891. Next, the items amounting to £350 I have no knowledge of; but the people tell me Kemp must have expended at least that amount. Kemp's personal expenses, £500, is made up approximately. I should think it is reasonable. Miscellaneous payments: £30 paid to Dr. Buller, £5 paid to H. McDonald, £130 paid to Ru Reweti, £23 10s. paid to W. S. Baker. Since I commenced my evidence I remember an item of £12 12s. that ought to be added. I saw it paid. Kemp remembers paying £115 to Cash in 1872. In 1873 Kemp thinks the account was taxed down from £800 to £400. In 1886, £75 paid to A. McDonald; £400 paid by H. McDonald to Baker, and a similar sum paid by J. McDonald to Mr. Baker. In 1890 Baker accepted £300 as balance of his account. I saw it paid. Kemp claims that he has paid Baker £1,400 altogether. Payment to myself of £631 was for period from March, 1890, to July, 1892. £32 12s. to Cuff was for Muaupoko in 1891. £28 11s. for Court-fees. £43 12s. paid to Rawiri Rota for acting as clerk. £940 paid to Edwards includes £100 deposit paid by Warena. £52 10s. to Skerrett. Kemp has told me that he takes the whole responsibility of the £2,098 8s. 7d. payable to Sir Walter Buller. The statement shows a balance of £735 13s. 5d. due by Kemp to tribe. There is no claim for Kemp's own share or for administering the estate. The £500 is part of his personal expenses—money out of pocket.

Mr. McDonald: No questions.

Cross-examined by Mr. Stevens.

Witness: The first sum of £1,000 was not received by Kemp in one sum or annually. The tribe received it—the whole of the £1,000—from Hector McDonald. The tribe received the greater part of the next item, £1,500. The Muaupoko know who of the Muaupoko received the money. I can't give the names. All Muaupoko to whom I have spoken admit the payments. I have not asked Wirihana Hunia or Himiona Kowhai whether they admit the payments. There was no money received from the railway company for the land conveyed to them. Kemp had not the use of the rent-moneys: they were paid direct to the people. The £2,098 is for a period during which Sir Walter Buller was acting for Kemp and the tribe—from 1892 to 1896. I don't know whether the account has been rendered by Sir Walter Buller to Kemp in detail. All my clients admit the present of £300 to Kemp at Wanganui. The 800-acre section was given to Kemp as a present. This is admitted by everybody. The sheep given by Kemp, although to individuals, were available for the tribe. I don't think Kemp has received any moneys besides those I have mentioned.

Mr. Baldwin: No questions.

Mr. Stevens took this opportunity of saying that he disapproved of the statement of accounts put in by Sir Walter Buller. He would put in a statement of accounts, and adduce evidence, to show that Kemp owed the Muaupoko more thousands than he said he owed hundreds.

Mr. McDonald stated that after looking through the evidence he had come to the conclusion that the question of settling the issues of fact was of more importance than at first appeared. He therefore asked the Court, as he would be unable to be present, at any rate until mid-day to-morrow, to postpone the argument until Wednesday.

Sir W. Buller suggested that Mr. McDonald should allow his application to stand over till the afternoon, when he would be in a position to say whether he could agree to it.

Cross-examined by Henare Te Apatiri.

Witness: £30 of Kemp's money was paid on account of Paki. I don't know that Paki received any other moneys. So far as I know, Paki has not lived on the block since 1876. The moneys seem to have been paid to the resident Muaupoko. I have not heard whether Pero Tikara received a share of the money paid to Muaupoko. I think he was living in Wairarapa at the time the

moneys were paid to Muaupoko. Eparaima Paki acted as clerk for Kemp in 1886. He received some money. I have forgotten to put it into the account. Hana Tikara did not come here till 1886. I don't think she received any money.

Cross-examined by Hamuera Karaitiana.

Witness: I have not heard that Rihipeti Nireaha received any of the money. She has never lived at Horowhenua. The moneys were paid to the permanent residents. I have always understood that Kemp considered the permanent residents only entitled to the rents of No. 11.

Sir W. Buller: I have been considering the Court's direction that I should go on calling my witnesses, and have come to the conclusion that I have made out a *primâ facie* case, and will ask the Court to allow the matter to stand as it is until No. 11 is before the Court, especially as Mr. Stevens has intimated that he will not accept the statement of accounts put in by me. It will place me at a disadvantage if I proceed with my case until I see Mr. Stevens's statement of accounts.

Mr. Stevens: I contend that Sir Walter Buller should call all his witnesses to substantiate his accounts, and that I should then adduce evidence to rebut.

The Court said it did not see how it could try two statements at once. Parties had better meet, and try to reconcile their statements of accounts.

Sir W. Buller and *Mr. Stevens* did not think anything would be gained by their meeting.

Mr. McDonald did not see the use of going into the accounts now.

The Court said it had already decided that, as Kemp had been the sole administrator of the Horowhenua Block, it was necessary that he should account.

Mr. Stevens said he would object to every item in the account put in by Sir Walter Buller until they were substantiated.

Sir W. Buller contended that his statement of accounts must be accepted as correct until it was attacked, and proved to be incorrect.

The Court asked Mr. Stevens if he admitted that the amounts stated to have been received by Kemp were correct.

Mr. Stevens said he admitted that they were correct, with the exception of the omission of the amounts received for the railway, either for its purchase or in dividends, and contended that 5 per cent. interest should be charged on all sums received by Kemp.

The Court said it did not know how the interest could be calculated. Many of the sums did not appear to have been paid to Kemp at all, but to the Muaupoko.

The Court held that Sir Walter Buller must go on with his case, and if Mr. Stevens took exception to any of the items he could call evidence in support of his objection. If necessary, Sir Walter Buller would be allowed to call rebutting evidence. As Mr. Stevens had to go away, it would be more convenient to take the question of accounts at a later date.

Mr. McDonald renewed his application for adjournment until Wednesday.

Sir W. Buller said he had just received an urgent telegram from Mr. Bell saying that he had made all his arrangements for to-morrow, and could not alter them.

Mr. McDonald said he would endeavour to be here by 11 a.m. to-morrow.

The Court decided to hear argument at 11 a.m., to suit Mr. McDonald's convenience.

It was decided that further proceedings respecting Horowhenua No. 14 should be adjourned temporarily, and that the continuation of the inquiry with regard to the accounts should be continued in connection with the investigation and determination of interests in No. 11.

The Court adjourned until the 6th instant.

STATEMENT OF RECEIPTS and EXPENDITURE of Meiha Keepa te Rangihiwinui in connection with Horowhenua Block.

Receipts.	£	s.	d.	£	s.	d.
(1.) Rents under lease executed on the 1st December, 1876, as from the 5th October, 1876, for fifteen years, to H. McDonald—						
1876 to 1881—Five years, at £200 per annum	1,000	0	0			
1881 to 1886—Five years, at £300 per annum	1,500	0	0			
1886 to 1891—Five years, at £400 per annum	2,000	0	0			
1891 to 1896—Under arrangement from year to year with H. McDonald, at £400	2,000	0	0			
				6,500	0	0
(2.) Royalties on timber—						
From Mr. Peter Bartholomew	500	0	0			
From Mr. Peter Bartholomew	500	0	0			
				1,000	0	0
(3.) Sale of No. 2 Block—Township: From Crown	...			6,000	0	0
(4.) Interest—From Crown, on portion of purchase-money ...	...			210	0	0
(5.) Miscellaneous—Deposit for costs by Warena Hunia on appeal in Supreme Court action	...			100	0	0
				£13,810	0	0

Expenditure.	£ s. d.	£ s. d.
(1.) Payments to Muaupoko by Meiha Keepa or by his order—		
December 1, 1876—Paid Muaupoko at Horowhenua ...	400 0 0	
October 20, 1877—Paid Muaupoko, order to McDonald ...	100 0 0	
September 13, 1880—Paid Ihaia and Muaupoko, order to McDonald...	364 0 0	
April 25, 1881—Paid Ihaia and Muaupoko, order to McDonald	100 0 0	
June 20, 1881—Muaupoko contribution to tribal meeting-house building at Wanganui, £200; Muaupoko, present of cash with food obtained from rent from H. McDonald, £100 ...	300 0 0	
December 29, 1882—		
Paid Ihaia and Muaupoko, order to McDonald	300 0 0	
Paid H. McDonald for 100 sheep to Aue Puihi... ...	50 0 0	
Paid J. R. McDonald for 400 sheep to Raniera te Whata	125 0 0	
Paid Kiri Totara and Makere for Land Court case, Ruatangata, at Wangaehu	50 0 0	
Paid Warena Hunia £70 0 0		
" " 100 0 0		
	170 0 0	
Paid Wirihana Hunia at Wellington ... £100 0 0		
" " " Palmerston ... 100 0 0		
" " " Wellington ... 100 0 0		
" " " Wanganui ... 100 0 0		
" " " " ... 100 0 0		
" for horses at Palmerston ... 33 0 0		
	533 0 0	
1889—Paid Makere and Muaupoko	1,000 0 0	
July, 20, 1890—		
Paid Te Rangimairehau	100 0 0	
Paid Hapeta Ihaia Taueki	100 0 0	
Paid Bank of Australasia, in trust for tribe, per Sir W. L. Buller	800 0 0	
		4,492 0 0
(2.) Expenses of Muaupoko—		
Attending Land Courts and Parliament—		
1873—Paid expenses of Muaupoko attending Court ...	250 0 0	
1882—Paid Renata Kawepo, Muaupoko passages, Marton	20 0 0	
1886—		
Paid railway-fares of tribe to and from Court ...	36 0 0	
Paid for food, firewood, and rent (Whatanui's people £5)...	300 0 0	
1890—		
Paid ditto attending Court	300 0 0	
Paid expenses of seven persons at Wellington, whole session	200 0 0	
1891—		
Paid expenses attending Court, application for rehearing	30 0 0	
Paid for food, &c., attending rehearing—about five weeks	150 0 0	
Paid expenses, &c., Parliament, whole session ...	300 0 0	
1892— " " ...	150 0 0	
1894— " " ...	100 0 0	
1895— " " ...	100 0 0	
1896—Paid expenses, Royal Commission	25 0 0	
		1,961 0 0
(3.) Meiha Keepa's personal expenses—		
1873 to 1886—Many journeys to Horowhenua, Otaki, and Wellington in connection with Ngatiraukawa troubles, and expenses of Force from Wanganui	200 0 0	
1886 to 1888—Many journeys to Wellington in connection with sale of block, &c.	100 0 0	
1888 to 1896—Personal expenses attending Courts and Parliament, and travelling expenses on the business of the tribe	200 0 0	
		500 0 0
(4.) Miscellaneous payments—		
1879—		
Paid Dr. Buller for prosecuting Paki and Hunia at Foxton	30 0 0	
Paid Hector McDonald and another, expenses to Wellington	5 0 0	
Paid Ru Reweti for clerical assistance...	130 0 0	
Paid Mr. Baker for defending McDonald, action for cattle	23 10 0	
		188 10 0
Carried forward		7,141 10 0

Expenditure—continued.	£ s. d.	£ s. d.
Brought forward	...	7,141 10 0
(5.) Law costs and agency charges—		
1872—Paid Mr. Cash, solicitor, retainer and expenses ...	115 0 0	
1873—Paid Mr. Cash, solicitor, costs	400 0 0	
1886—		
Paid Mr. A. McDonald, agency charges	75 0 0	
Paid Mr. Baker, costs, per H. McDonald	400 0 0	
1888—Paid Mr. Baker, per J. R. McDonald	400 0 0	
1889—Paid Mr. Baker, per J. R. McDonald	300 0 0	
1890—		
June 27—Paid Mr. Baker, per Bell, Gully, and Izard ...	300 0 0	
Paid Messrs. Bell, Gully, and Izard	105 5 0	
Paid Messrs. Bell, Gully, and Izard	10 10 0	
Paid Mr. J. M. Fraser, agency charges	631 0 0	
Paid Mr. Cuff, solicitor, costs	33 12 0	
Paid Court fees	28 11 0	
Paid Rota Tahiwi, Native clerk	43 0 0	
1894—		
March 20—Paid Mr. Edwards, solicitor, fees	100 0 0	
October 9—Paid Mr. Edwards, solicitor, fees	500 0 0	
1896—		
April 3—Paid Mr. Edwards, solicitor, fees	240 0 0	
Paid Mr. Edwards, Warena Hunia's deposit	100 0 0	
Paid Mr. Skerrett, junior counsel	52 10 0	
Sir W. Buller's costs and disbursements on account of Muaupoko Tribe	2,098 8 7	
		5,932 16 7
By Balance		735 13 5
		£13,810 0 0

TUESDAY, 6TH APRIL, 1897.

The Court opened at 11 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Argument on issues of fact and questions of law to be submitted to the Supreme Court.

Sir W. Buller: Mr. Bell will appear with me to put before the Court issues of fact to be decided by the Appellate Court, and points of law to be submitted to the Supreme Court.

Mr. Bell argued on behalf of Sir Walter Buller, and submitted issues of fact and points of law for consideration. (*Vide* page 104.)

Mr. Stafford argued on behalf of the counter-claimants. (*Vide* page 109.)

Mr. Bell asked the Court to submit a further question to the Supreme Court. (*Vide* question 15, case for Supreme Court, page 140.)

The Court agreed to submit the question with others, but not separately.

Mr. Bell said that he would do his best to get the Supreme Court to reply to all the questions submitted to it by the Court.

The Court adjourned till the 7th instant.

WEDNESDAY, 7TH APRIL, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Mr. McDonald addressed the Court on behalf of Himiona Kowhai. (*Vide* page 110.)

Hamuera Karaitiana addressed the Court on behalf of Rihipeti Tamaki and others. (*Vide* page 113.)

Henare te Apatari addressed the Court on behalf of Paki te Hunga and others. (*Vide* page 113.)

Mr Baldwin addressed the Court on behalf of the Crown and the counter-claimants, represented by Mr. Stevens, who was absent. (*Vide* page 114.)

The Court adjourned till the 8th instant.

THURSDAY, 8TH APRIL, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Sir W. Buller addressed the Court on behalf of Major Kemp, the address occupying the whole day. (*Vide* page 129.)

It was decided to take the claim of Ngatiraukawa for certain reserves in No. 11 to-morrow.

The Court adjourned till the 9th instant.

In the Native Appellate Court, District of Wellington.—In the matter of a claim to Horowhenua Subdivision 14, containing 1,200 acres.

ARGUMENT ON OPENING BY SIR WALTER BULLER.

I APPEAR on behalf of Major Kemp te Rangihiwinui, who is claiming, in his own right, Subdivision 14 of the Horowhenua Block.

The Court is no doubt aware that in the year 1886 the Native Land Court, sitting at Palmerston, with Mr. Wilson as Judge, made a partition of the whole Horowhenua Block by the joint consent of the 143 registered owners entitled thereto under Native Land Court certificate, dated 1873, of whom Kemp was one. Subdivision 14 was the last of the fourteen subdivisions into which the block was divided, and the Land Transfer certificate thereto was, pursuant to an order of the Court, issued to Kemp.

I need not enter into the circumstances, which are a matter of public knowledge, under which this matter comes before the Native Appellate Court. There is only one point which I wish to make quite clear. It is this: that the question to be determined here—viz., whether in the year 1886 Kemp received Subdivision 14 as trustee or as absolute owner—that that question, I say, comes before this Court entirely fresh and untrammelled by any previous investigations. The Court is no doubt aware that in 1886 the Horowhenua Commission held a parliamentary inquiry into the question of title to every subdivision in the block, No. 14 included. The Commissioners had special jurisdiction to go into the question of any supposed trust. Some of the present counter-claimants were represented by Mr. Stevens on that occasion, and the Government retained Mr. A. L. D. Fraser and Mr. Alexander McDonald to appear in the case, and all those gentlemen cross-examined Kemp in a hostile manner, and set up before the Royal Commission a theory of a trust in relation to No. 14. I mention all this only for the following purpose: The Court is aware that the Commissioners presented a report to Parliament dealing, among other things, with the question of the supposed trust in relation to No. 14, and the report contained findings and recommendations as to the title to the various subdivisions in the block. These findings and recommendations, however, have not—with the exception of that relating to the State farm at Levin, with which we have nothing to do—been given effect to by "The Horowhenua Block Act, 1896," as it finally passed after being amended by the Council. And the statute in question has referred the matter of all the disputed subdivisions to the Native Appellate Court. The present inquiry, therefore, is completely untrammelled, and this Court has, so to speak, a clean sheet. But Kemp has the advantage of knowing the case that was set up by the present counter-claimants before the Royal Commission. The question, then, for this Court to determine is the following: The legal ownership of No. 14 was awarded to Kemp in 1886 by the Native Land Court, with the consent of all the 143 persons (of whom Kemp was one) entitled to share in Horowhenua: did Kemp take No. 14 as trustee or as absolute owner? If this Court finds that No. 14 was Kemp's own land—his share on the subdivision of the block—then, by "The Horowhenua Block Act, 1896," Kemp's Land Transfer certificate, which is suspended during the present investigation, will reissue to him. If, on the other hand, the counter-claimants succeed in proving—the onus, of course, being on them—the theory that at the partition of 1886 circumstances occurred which made Kemp a trustee for some tribal purpose, then this Court has jurisdiction under the Native Equitable Owners Acts.

I should incidentally remark that "The Horowhenua Block Act, 1896," which gives this Court its present jurisdiction, bestows upon it all the powers under "The Native Equitable Owners Act, 1886," and all the amendments thereof, with a view to the trial of this question as to Subdivision 14.

In dealing with the matter at issue, as I shall now endeavour to do, I will make three preliminary remarks: (1.) It is admitted that the question is, What occurred at the Court of 1886? Was it stated in Court and understood that No. 14 was Kemp's own share of the block on subdivision, or is the contrary the case—was he trustee for some tribal purpose? (2.) We have the best contemporaneous evidence answering this question in Kemp's favour. Judge Wilson will state that when he awarded No. 14 to Kemp, on the 3rd December, 1886, it was openly said in Court and understood that this subdivision was Kemp's own land—his share on subdivision of the block. He will go further than this; he will state, and the minute-book shows, that previously to the 3rd December, at the commencement of the case, the Court had been informed, in the opening speech of Mr. McDonald, who appeared to represent the tribe generally, that it was intended to give Kemp a subdivision for himself, and that consequently the Judge was on the look-out for this subdivision, and careful to challenge it when it came on, so as to make sure that there was no mistake about the matter. (3.) Turning, on the other hand, to the theory of a trust, which the counter-claimants set up before the Royal Commission, I will venture to make four preliminary criticisms on this theory. In the first place, it avowedly proceeds on the assumption that Judge Wilson's recollection, confirmed by the minute-book—that it was stated in Court, in 1886, that No. 14 was for Kemp himself—is wrong. This evidence was not contradicted by a single witness before the Horowhenua Commission, and has, in part, been commented and acted upon by the Supreme Court. Yet the attempt will have to be made to discredit it now. In the second place, those who set up this theory of a trust will be compelled to ask this Court to discredit the minutes of the Court of 1886. I will give one instance of this. The minute-book contains a minute, dated 3rd December, of the order awarding Subdivision 14; the counter-claimants will be compelled, in consonance with their theory, to suggest that this minute ought not to be there at all, and that the Clerk dreamt that a subdivision was being allotted, and made a minute of an entirely non-existent order, as Subdivision 14 had been allotted two days earlier and eight subdivisions back. I will not forestall my argument by setting forth at length the serious errors which must have crept into the minute-book and the Court maps if this theory of the counter-claimants is to be accepted. But let me say in advance that I shall produce to this Court a contemporaneons record, initialled by Judge Wilson himself, which will decisively confirm these

other records; and Judge Wilson will show that in regard to those very points on which the minute-book is attacked his attention was called to it in 1886, so that he can speak to its accuracy. And let me say this: There was not one witness before the Royal Commission but accepted the accuracy of the minute-book, and agreed that if his memory differed from it he would accept correction from the record. In the third place, I would make this remark in regard to the theory of a trust. No. 14 was allotted to Kemp in 1886. For nearly ten years from that date Kemp's Land Transfer certificate for this subdivision was uncaveated, and in 1895, when a caveat was lodged, it was lodged not by a tribesman, but by an officer of the Government. No tribesman could deny—when I questioned him before the Royal Commission—that from 1886 to that date Kemp had behaved avowedly as absolute owner of No. 14, without dispute by the tribe, although the tribe knew of it. During that period Kemp had said to members of the tribe, "14 is mine"; and no tribesman had said "No; you are a trustee." Kemp leased, sold, and mortgaged parts of Subdivision 14, and disposed of the timber upon it, and received the rents, purchase-moneys, and royalties, and no tribesman claimed a share. And let the Court note this: The tribesmen behaved very differently in respect of those subdivisions which were considered trust subdivisions, such as Nos. 6, 9, and 11. These were all caveated by members of the tribe as early as 1892, and when Warena Hunia, one of the trustees of No. 11, claimed absolute ownership, repeated petitions to Parliament and two actions were the consequence. All this, I repeat, was undisputed before the Royal Commission; no tribesman questioned asserted the contrary. My fourth criticism is this: Unless the Court believes that No. 14 was intended for Kemp himself, they must be prepared to believe that Kemp alone of all the 143 registered owners got no individual share in Horowhenua at all. Every other of these tribesmen got his separate piece of land—the chief alone, we must suppose, did not.

I have now finished my preliminary observations, and shall enter upon the main portion of my address, and endeavour to lay before the Court as clearly as I can the circumstances that occurred at the Partition Court of 1886 when No. 14 was allotted to Kemp, those being the events on which, as I have explained, Kemp's title turns. The old tribal title under the Native Land Court certificate, dated 1873, was, of course, put an end to by the partition of 1886, when the certificate was cancelled and the block subdivided in freehold tenure; and we are not concerned with the old Native title, which has no bearing or effect upon the freehold tenure created in 1886, so that the Court can dismiss it from their minds. There is only one point to which I would call attention—namely, the fact that the judgment of the Native Land Court, in 1873, has by judicial act established Kemp's right as one of the persons entitled according to Native custom to a share in Horowhenua. In 1873 the Court found what tribe was entitled to the block, but, more than this, under the seventeenth section of the Native Lands Act of 1867 it found the names of the 143 persons having ancestral rights in the land; and Kemp is one of these. These names are, of course, entered of record in the books of the Native Land Court, and it is (to borrow a technical phrase) *res judicata* that Kemp is beneficially interested in Horowhenua. I do not know whether I ought to trouble the Court with this, as it is, of course, self-evident, except that recently, in the Legislative Council, the Hon. Mr. Williams—on the strength of the evidence of Wirihana Hunia, given before the Native Affairs Committee—declared that Kemp's assertion at the bar of the Council that he had ancestral claims over Horowhenua was false. We start, then, on the assumption that the partition of 1886 would be incomplete—as a matter of fact, it would be absolutely illegal unless some share was allotted to Kemp. With this remark, I may put aside the old tribal title and come to the partition of 1886.

The Court must carefully bear in mind the dates of Judge Wilson's sittings in 1886, which have a most important bearing on the case. The Court opened on the 25th November, 1886. (I am now giving undisputed dates.) Three subdivisions of the block came on in Court, and minutes for orders were made. But on the 27th November the Assessor, Hamiora Mangakahia, had to leave, owing to his wife's illness, and the Court adjourned to the 1st December, a week later. On the 1st December the Court reopened with a fresh Assessor, Kahui Kararehe. As the Assessor is an integral part of the Court, the Judge treated the proceedings commenced before the Court of the 25th November (which I may call the abortive Court) as a nullity, and on the 1st, 2nd, and 3rd December made orders awarding every subdivision in the block as though the abortive Court had never sat. Consequently, the three minutes for orders made on the 25th and 26th of November were void, being superseded by fresh orders expressed to take effect at later dates. The above are undisputed dates which will serve as landmarks—first, the abortive Court on the 25th and 26th November, then the sittings with the fresh Assessor on the 1st, 2nd, and 3rd December, at which the partition was commenced *de novo*. There is one more fact which is common ground before this Court—namely, that the subdivision of Horowhenua was by voluntary arrangement among the registered owners. I need hardly say the Court had statutory powers for giving effect to voluntary arrangements. The difference between a partition by voluntary arrangement and one on evidence taken is obvious. If, on the one hand, the partition is not by voluntary arrangement, then the claimant for each subdivision has to prove his title according to Native custom. If, on the other hand, the registered owners have agreed who is to receive each subdivision, then all that has to be proved to the Court is their agreement, and no evidence is necessary beyond the absence of objection after challenge by the Court; though Judge Wilson will prove that the allotment of each subdivision in 1886 was preceded by a declaration in Court that the tribe had consented thereto, and what was their intention in doing so.

The tribe had assembled at Palmerston previously to the abortive sitting on the 25th November; and in a barn lent by Mr. Palmerson they held a long committee meeting, presided over by Kemp. The Committee commenced before the abortive Court sat, and continued during the 25th and 26th November, and for some days afterwards. Mr. Palmerson, the owner of the barn—an authorised surveyor—attended with a tracing of the block, and on this tracing Mr. Palmerson marked off, from day to day, the subdivisions they were going to ask the Court to allot as the tribe

agreed upon them; and with, no doubt, much discussion and palaver and many changes of plans it was decided who was to receive each subdivision and for what purpose—some recipients as absolute owners, some as trustees. (These general facts are, of course, undisputed).

The general scheme of partition of the Horowhenua Block as ultimately given effect to by the Court is as follows (I am showing the general lines on which the Natives agreed to subdivide the land, as shown by the allotments already made by the Court): The Muaupoko had three objects in view: (1.) In the first place, they cut off one or two odd subdivisions to provide for what I may call outstanding tribal engagements; thus, for instance, Subdivision 1 was cut off for the Manawatu Railway-line in accordance with a promise made by Kemp as chief. (2.) Then they cut off a large residential subdivision as a perpetual reserve, on which their kaingas were, and which was to be kept inalienable as the dwelling-place of the tribe. This reserve was Subdivision 11, which, as I have already said, was placed in the joint names of Kemp and Warena Hunia for better security, and which Kemp afterwards, in the Supreme Court, rescued from Warena Hunia, who claimed that he and Kemp were absolute owners. (3.) Having thus met outstanding engagements and provided a reserve, they cut up the whole balance of the block into individual shares, giving to each of the 143 tribesmen found entitled according to Native custom by the Court of 1873 a piece of land as a separate allotment. Subdivisions Nos. 3, 4, 5, 6, 7, 8, and 13—in fact, as I have said, the whole balance of the block—was thus marked off among the individual tribesmen, who were divided into classes—some classes to receive as much as 105 acres a man, some as little as 13—according to what the tribe considered their claims to be. I have now accounted for the whole block except Subdivision 14. I desire to bring a most important point before the Court. Kemp alone, of all the 143 registered owners, was the only one who had no share out of Subdivisions 3, 4, 5, 6, 7, 8, and 13. This fact is, of course, proved by the lists of owners of those subdivisions. Then, what is the consequence? It is this: that, unless No. 14 was for Kemp himself, he got no individual share at all. I stated this at the outset of my address, and I repeat it now: Every other tribesman, in addition to his residential rights on the reserve subdivision—No. 11—got his own 105 acres, or 13 acres, or what not—his own piece of land to do what he liked with; Kemp alone, the chief, who conducted the partition in person, got nothing for himself—if we suppose he received No. 14 as a trustee.

I have now elaborated this point which I foreshadowed at the outset of my address. The next point I will come to is the following, which I also mentioned at the beginning: Those who suggest that No. 14 was not intended by the tribe in 1886 for Kemp himself will be compelled to attempt to discredit the evidence of Judge Wilson, who will state here, as he stated in the Supreme Court in 1894, and before the Horowhenua Commission in 1896, that when he allotted No. 14 to Kemp it was expressly declared in Court that No. 14 was, with the full knowledge and acquiescence of the tribe, allotted to Kemp for his own. It will be for the Court to say what more authoritative witness than Judge Wilson could testify in Kemp's favour.

In 1894 Kemp, in the interest of the tribe, brought an action against Warena Hunia in the Supreme Court in respect of Subdivision 11, which, as I have said, was put in their joint names as a tribal reserve. Warena Hunia claimed that they were absolute owners; but the Supreme Court, at Kemp's instance, declared that they were trustees, and the judgment of the Supreme Court was expressly based on Judge Wilson's evidence as to what was said in Court in 1886—evidence which, in the words of the Chief Justice, was such as the Court could rely on. In the course of his evidence Judge Wilson, referring to his recollection as to what was stated in Court in 1886, in regard to Subdivision 14, said that that subdivision was for Kemp himself. Again, before the Horowhenua Commission, Judge Wilson's evidence was emphatic in favour of Kemp. The Chairman of the Commission, realising the importance of Judge Wilson's evidence, cautioned him in serious terms to charge his memory as thoroughly as he was able, as Kemp's title might depend on what he said. On that occasion, again, Judge Wilson declared positively that when he allotted No. 14 to Kemp it was stated in Court that this subdivision was intended for Kemp himself, and that the tribe perfectly understood and acquiesced in this. If this statement was made, and no objection offered—and the minute-book shows there was none—the present case is at an end. And let me make one point quite clear. It was treated as common ground before the Commission that the application for each subdivision was prefaced by a declaration in Court of the purpose for which it was allotted. If the recipient was to be absolute owner, that was stated in Court; if, on the other hand, he was to be trustee for some tribal purpose, that purpose was announced, although the word "trustee" was not always used. The question, then, is, What was stated in regard to No. 14? And on this point, again, Judge Wilson's evidence was uncontradicted both in the Supreme Court and before the Royal Commission; indeed, not one single witness was called adversely to Kemp to speak on this point. I am curious to know how the counter-claimants will get over this difficulty now. I will just read two minutes from the Court-book of 1886, showing how fully the intention of the tribe was explained in Court. In the first place, let me take No. 6, which was a trust subdivision. (See page 191.) Two sentences are sufficient: "Application by Major Kemp for subdivision for 4,620 acres, to be awarded to himself, to be given by him to persons outside" (not on the certificate). "We have agreed to this arrangement" (the persons omitted from the original certificate). Although the word "trustee" is not used, the intention is manifest that Kemp is to take Subdivision 6 in trust to convey it to certain tribesmen whose names had been by mistake omitted from the certificate of 1873.

No. 9 is another subdivision. The minute (page 188) says, "The second was 1,200 acres, ordered in the name of Te Keepa te Rangihiwinui, for the purpose of fulfilling an agreement with the Government." The phrase "for the purpose of fulfilling an agreement with the Government" clearly shows that Kemp is to take the land as a trustee. I may as well explain what the reference is. I have already told the Court that, besides the sittings in December (from the minutes of which I am now quoting), there had been an abortive sitting, opening on the 25th November. At the

opening of the abortive sitting, as the minutes of the 25th November show, Kemp asked that Mr. Alexander McDonald, who, though not retained by the tribe, was assisting them, should be allowed to make a speech explaining the position. Accordingly, Mr. McDonald was sworn, and, after stating the general aims of the tribe in making the partition, he went on to tell the Court that the tribe, who, as I have already explained, had begun their deliberations in the barn, were prepared to go on with three of the subdivisions, and that the second of these would be (to quote the words of the minute) "1,200 acres in terms of an agreement made between himself" (which, of course, refers to Kemp) "and the late Sir Donald McLean as Minister." I may mention that the agreement was afterwards produced in Court, and Mr. Lewis explained that it was an agreement to give a subdivision near Lake Horowhenua for the descendants of Te Whatanui. I refer to all this only to show that the phrase "for the purpose of fulfilling an agreement with the Government" in the minute of the 1st December unmistakably denotes that a trust is intended for the descendants of Te Whatanui.

Judge Wilson, then, has declared positively that when he allotted No. 14 to Kemp it was stated in Court that this subdivision was intended for Kemp himself, and that the tribe perfectly understood and acquiesced in this. And I have confirmed his evidence by calling attention to the admitted fact that when each subdivision came on something was said in Court as to the intention of the tribe in asking for the award. But I can go further than this in regard to No. 14, and show by the record that Judge Wilson, who had been warned at the outset that Kemp was going to apply for a subdivision for himself, was on the look-out for that subdivision, and when it came on was specially careful to see that there was no mistake about its being for Kemp himself. I have just previously in my address told the Court about the speech that Mr. McDonald made at the opening of the sitting of the abortive Court explaining the general aims of the tribe. He first of all explains the statutes applicable to the case: then follows some very important matter. Mr. McDonald is telling the Court that the partition is to be made by general agreement of the tribe, and Kemp will conduct the partition, and that when Kemp makes the various applications it must be understood that he does so as the mouthpiece of the tribe. Mr. McDonald, as quoted by the minute-book, says (I am quoting from page 183), "Kemp wishes to satisfy the Court that he appears as agent for the owners and the medium of their desires to the Court." In other words, Kemp asks that the consent of the tribe to each application that he may make shall be presumed by the Court. Then follows what I desire to draw special attention to. The Court says, "We cannot look upon Kemp as their agent. He may be their spokesman. The other owners are not precluded from getting up and objecting to Kemp's case. They must know exactly what Kemp's subdivision is." This is a very circumstantial minute, showing that Mr. McDonald had told the Court that Kemp was to have a subdivision for himself. Judge Wilson, expressly on the ground that Kemp is to have a subdivision for himself, and that he is therefore an interested party, says that the word "agent" as applied to Kemp is a misnomer, and that "spokesman" would be a more appropriate word. He says, in effect, that the tribesmen are not to be deterred from objecting to any application by Kemp to which they do not really consent; and, finally—and this is what I rely on—he says that "they must know exactly what Kemp's subdivision is," in order that when Kemp applies for it for himself they may make quite sure that it is really intended for him. It entirely accords with this evidence that Judge Wilson should afterwards state before the Royal Commission—I am quoting his own words, page 134, answer 104—"I am sure we challenged thoroughly for No. 14. I suppose we challenged in all of them very carefully, but we should be particularly careful with a chief when he says, 'I am to have that.'" Thus Judge Wilson took very proper precautions in respect of No. 14. In justice to Kemp, however, I may incidentally mention that afterwards, before the Royal Commission, speaking of Kemp's conduct in carrying through the partition, Judge Wilson said—page 132, answer 54—when asked "What was your impression of Kemp's attitude towards the tribe through all these proceedings," "I thought he was a very exemplary chief—thoroughly loyal to his tribe. It was in this respect that I spoke of him as an exemplary chief."

I have now concluded the first part of my address, and have laid before the Court the affirmative evidence showing that Kemp received No. 14 as absolute owner; and the Court will observe that throughout I have been careful not to say that I will prove each point, but to prove it. I shall, with the leave of the Court, summarise this affirmative evidence. But let me first make two emphatic comments—the Court will bear me witness if they are true or not. In the first place, the onus is on the counter-claimants to prove that there is a trust, and, as a rule, the person in whom is vested the legal ownership does not attempt to prove affirmatively that this legal ownership is untrammelled and absolute, but simply produces his Land Transfer certificate and says, "Look! I am legal owner; now prove a trust if you can." Yet Kemp, although the onus is not on him to do so, produces evidence showing that he was intended by the tribe to enjoy the land beneficially. And, in the second place, what is the quality of the evidence that Kemp adduces? Kemp's case does not depend in one single particular upon the interested testimony of himself or any other Native witnesses, but exclusively upon the authoritative records of the Court, corroborated by the weighty evidence of Judge Wilson.

Now let me summarise the uncontradicted facts which I have laid before the Court: (1.) The judgment of the Native Land Court in 1873 has judicially established the fact that Kemp is entitled according to Native custom to a share in Horowhenua as one of the 143 registered owners. (2.) In the second place, at the partition of 1886 every registered owner except Kemp received his 105 acres, or what not—his separate piece of land—Kemp alone, the chief, unless we suppose that No. 14 was for him, received no such individual allotment—and this in spite of the fact that at the very outset of the case Mr. McDonald informed the Court that Kemp was to have a subdivision for his own—this last fact being proved by the minute-book. (3.) Judge Wilson has stated positively that he was particularly careful to challenge when No. 14

came on. He has declared emphatically, before the Supreme Court and the Royal Commission, that it was perfectly understood and acquiesced in by the tribe that No. 14 was for Kemp himself (to use his own words) " to do what he liked with," and that this was stated in Court. It will be a matter for strong comment with me if any evidence is now produced by the counter-claimants to contradict Judge Wilson's recollection of what was stated in Court, seeing that no attempt of the kind was made either in the Supreme Court or before the Royal Commission. And, moreover, the minute-book bears Judge Wilson's recollection out. In addition to this (4) Kemp has held Subdivision 14 for ten years uncaveated and undisputed; in contrast to the supposed trust subdivisions of the block which were caveated by members of the tribe as early as 1892, and in respect of one of which (No. 11) two actions were brought to enforce the trust. During these ten years Kemp in express words claimed that he was absolute owner of No. 14, leasing and selling parts of it, and no member of the tribe either disputed his right or claimed any share of the moneys. I now turn to the theory of a trust, which was suggested on behalf of the counter-claimants before the Royal Commission. I cannot at the outset too emphatically tell the Court that this theory of the counter-claimants is only tenable on the assumption that the records of the Court of 1886 are vitiated by very serious errors. Of course any theory that No. 14 is trust property comes directly into conflict with the already-quoted entries in the minute-book of remarks made in Court; but the particular theory of the counter-claimants can only hold water if there are much more serious errors in the minute-book and Court map. The Court can only credit this theory if it is prepared to say that two minutes of orders should be struck out from the minute-book, as no such orders were made, and that the numbering of the subdivisions in the minute-book and Court map—which is a very important matter, as it is not arbitrary, but depends upon the sequence in which the subdivisions came before the Court—is wrong in respect of six subdivisions. I wish that I could turn at once to this theory of the counter-claimants and show how it conflicts with the record; but, first of all, I am compelled to some extent to go back to an old story beginning in the year 1873, and ask the Court to listen to some facts which the counter-claimants will insist upon as leading up to their theory of a trust.

The Native Land Court, as I have said, in 1873 awarded the Horowhenua Block to the Muaupoko Tribe. In the year 1874, at the request of Sir Donald McLean—then Native Minister—Kemp took upon himself, as chief of the Muaupoko, to promise on their behalf that at some convenient future time the tribe would give the descendants of the great Te Whatanui a subdivision of 1,300 acres out of Horowhenua. I may mention, in explanation, that Kemp was really ratifying an old promise made a generation ago by Taueki, in gratitude for Te Whatanui's services to the tribe. I will read the written note of Kemp's promise. [Reads memorandum in full, from page 9 of the report.]

The Court will notice, as it is a very important point, that the subdivision is to be located near the Horowhenua Lake. The reason why the descendants of Te Whatanui should desire this is obvious when I mention the following facts: The descendants of Te Whatanui had in 1873 been squatting for some time, with the acquiescence or sufferance of the Muaupoko, on Horowhenua, near the lake; and the Court of 1873, while giving the rest of Horowhenua Block to the Muaupoko, recognised the squatting title of the descendants of Te Whatanui by cutting out and awarding to them a section called Raumatangi, containing 100 acres, this being the actual site of their kaingas and cultivations. If the Court will look at Raumatangi on the map they will see that Raumatangi adjoins Lake Horowhenua and the Hokio Stream; and no doubt the spirit of Kemp's promise to Sir Donald McLean was that the new subdivision to be granted to the descendants of Te Whatanui should be somewhere adjoining the lake and Raumatangi. While looking at the map, I would ask the Court to note carefully a point, the importance of which will appear presently—namely, that what is now Subdivision 9 adjoins Raumatangi, the Hokio Stream, and Lake Horowhenua, whereas No. 14 is right away from all three, abutting on Lake Waiwiri. Kemp, then, in 1874 promised Sir Donald McLean that the Muaupoko would cut off one subdivision of 1,300 acres near to Lake Horowhenua for the descendants of Te Whatanui. I may say at once that at the partition of 1886 the Muaupoko ratified Kemp's promise—a purely voluntary promise, I should mention—and were willing to cut off a subdivision of 1,200 acres—not 1,300 acres—for the descendants of Te Whatanui. I should explain that—although it is a point that nothing turns upon in the present case—the Muaupoko insisted on deducting the 100 acres comprised in Raumatangi from the 1,300 acres promised by Kemp. All this is common ground between Kemp and the counter-claimants. Now, will the Court please follow me while I read a minute of the 1st December, the minute of the order awarding Subdivision 9—the subdivision adjoining the Horowhenua Lake and Raumatangi—to Kemp, in trust for the descendants of Te Whatanui. I am reading from the minutes of the 1st December, page 192. The Court will observe that the boundaries of No. 9 are defined very carefully. I will ask the Court to follow me on the map as well. [Reads from "Application" to "Raumatangi lengthwise."] I have already explained that the subdivision for the descendants of Te Whatanui was to be near to Raumatangi. [Reads from "The land" to "tracing."] This minute is a minute of an order made in the afternoon, for the minute continues, "The Court awarded this, this morning, as No. 3 subdivision, to Keepa te Rangihiwinui. This subdivision, 1,200 acres, is made as prayed. This and all other previous subdivisions to be delineated upon the map of the Court."

The afternoon minute, then, states that No. 9 had been before the Court in the morning as No. 3. I will read the morning minute presently. When I do so, the Court will see that Judge Wilson awarded Subdivision 9 in the morning as No. 3, but there was a difficulty as to the boundaries. The subdivision came on again, therefore, in the afternoon, by which time the boundaries were fixed, and, as the afternoon minute (which I have just read) shows, the morning order is confirmed in the afternoon and the subdivision is ordered to be delineated on the Court map. Probably there was a good deal of discussion between Kemp and the Muaupoko on the one hand and the descendants of

Te Whatanui on the other during the luncheon adjournment, and, as it happens, we can guess what the point of it was. If the Court will follow the boundaries of Subdivision 9, as set forth in the afternoon minute—which I have just read—they will see that the descendants of Te Whatanui are carefully kept 2 chains away from the Horowhenua Lake and Hokio Stream. But this meant keeping them away from their fisheries, and of course they did their best to induce Kemp—who, however, as the minute shows, stood firm—to bring the boundary up to the lake and stream. This question, I may say, is fully discussed in the report of the Horowhenua Commission. Nothing turns upon it in the present case; but it shows why there was a difficulty in the morning as to the boundaries, and this stood over till the afternoon, when the morning order was confirmed, and, the boundaries having been fixed, the subdivision was ordered to be delineated on the Court map. I will now read the minute of the morning order, which is express to the effect that the subdivision is for the descendants of Te Whatanui. This is the minute, which I read to the Court before, as a specimen of how clear the minute-book is in showing where a trust is intended. I will read it again, it runs as follows: "The second was 1,200 acres, to be ordered in the name of Te Keepa te Rangihiwinui for the purpose of fulfilling an agreement between himself and the Government. The Court does not purpose to delineate upon the plan."

The Court will remember that the phrase, "the second was" means that in the speech of Mr. McDonald, explaining the position before the abortive Court of the 25th November, and mentioning the three subdivisions which the tribe was prepared to proceed with, the second of these to be mentioned in Mr. McDonald's speech was 1,200 acres (the location of which was probably not yet fixed upon), for the descendants of Te Whatanui; and I have explained (what I may mention will be common ground between Kemp and the counter-claimants) that the phrase, "the agreement with the Government" refers to Kemp's agreement with Sir Donald McLean.

Returning, therefore, to the minutes of the morning and afternoon of the 1st December, I summarise their effect thus: The afternoon minute sets forth the boundaries—being unmistakably those of No. 9—and expressly states that No. 9 had been before the Court in the morning as No. 3; and when we refer to the minute of No. 3 in the morning, that minute shows that the subdivision is for the descendants of Te Whatanui. No. 9 was awarded in the morning for the descendants of Te Whatanui, and that order was confirmed in the afternoon, and the boundaries delineated on the map. I hope I am not wearying the Court in proving thus elaborately that No. 9 was awarded to Kemp for the descendants of Te Whatanui on the 1st December. But if the Court grasps the fact that the descendants of Te Whatanui received No. 9 on the 1st December, and remembers that, according to Kemp's promise, they were only to receive one subdivision of 1,200 acres, then the counter-claimants' case falls to the ground. Subdivision 9 is given to the descendants of Te Whatanui on the 1st December, and they are only to have one subdivision. On the 3rd December, two days later, we find the minute of an order awarding No. 14 to Kemp: No. 14 cannot therefore have been intended for the descendants of Te Whatanui, for they were only to have one subdivision, and had already got No. 9. Yet, in the face of these minutes, the counter-claimants contended before the Royal Commission that No. 14 was awarded to Kemp in trust for the descendants of Te Whatanui, and, as the descendants of Te Whatanui have certainly long ago rejected the supposed gift of No. 14, and are living on No. 9, Kemp (so the counter-claimants contend) ought to return No. 14 to the Muaupoko Tribe, as—the object of the supposed gift of No. 14 having failed—what is called a resulting trust to the Muaupoko Tribe has arisen.

Such is the theory of the counter-claimants, a theory directly contradicted by the minute-book. Of course, if they could prove that No. 14 was awarded to Kemp in trust for the descendants of Te Whatanui, and the proposed beneficiaries afterwards rejected the gift, then, no doubt, there would be a resulting trust to the Muaupoko. But the counter-claimants have first to prove that No. 14 was awarded to Kemp in trust for the descendants of Te Whatanui; and the minute-book proves that, on the contrary, No. 14 was awarded to Kemp two days after the descendants of Te Whatanui—who were only to have one subdivision—had already got No. 9. I need not elaborate this point. Of course it stands to common-sense that No. 14, as the number implies, was awarded six subdivisions later than No. 9. I may state at once that the numbering in the two Court-maps and the minute-book all agree; and that I shall put the matter beyond a doubt by producing a list showing the sequence in which the orders were made by the Court of 1886. This list was initialled by Judge Wilson himself in 1886, and shows that 9 came before 14. And Judge Wilson will state positively, in accordance with the minute-book and his emphatic and uncontradicted testimony before the Royal Commission, that No. 9 was awarded for the descendants of Te Whatanui several subdivisions before Kemp got 14. I really hope that throughout this part of my address I have not laboured somewhat obvious points; but these simple facts that I have stated—namely, that the descendants of Te Whatanui, who were only to have one subdivision, got No. 9 two days before No. 14 was awarded—are absolutely fatal to the theory that No. 14 was awarded in trust for the descendants of Te Whatanui, and how the counter-claimants are going to get over this difficulty I am unable to conjecture. There is one fact which I have not mentioned yet, and one which I readily admit, as it does not hurt Kemp at all. It is this: When the Muaupoko tribesmen, previously to the opening of the abortive Court that sat on the 25th November—a week earlier than No. 9 was awarded to the descendants of Te Whatanui—were discussing in Mr. Palmerson's barn how Horowhenua was to be cut up, Neville Nicholson, and perhaps some other of Te Whatanui's descendants, were present, urging Kemp to fulfil his promise to Sir Donald McLean and give them a subdivision; and he at first proposed to give them what afterwards became No. 14; but, as I have shown, what actually was given to them a week later was No. 9. There is no getting away from that. The fact is, of course, as Nicholson stated before the Royal Commission, that when Kemp offered No. 14 to the descendants of Te Whatanui they promptly reminded him that he had promised Sir Donald McLean to give them a slice near the Horowhenua Lake adjoining the site of their

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

Whatanui and refused by them, and No. 9 given them instead. In examining him before the Royal Commission I read to him the Judge's note, by Sir James Prendergast, of his evidence before the Supreme Court. I will read that note now from the record of the Royal Commission (page 79, question 428): "Somewhere about this time Mr. Lewis," &c. [Read accordingly.] When I read over this very plain statement to Mr. McDonald he could not, of course, contradict it, though he made some very prolonged and rather disingenuous attempts to water it down—attempts which will afford excellent matter for cross-examination if Mr. McDonald should be called now. He tried to say that he was not sure that No. 9 was ever definitely given to the descendants of Te Whatanui; but, in the first place, this is irrelevant so long as they refused No. 14, and, in the second place, it contradicts Mr. McDonald's statements in the Supreme Court and the minutes, the accuracy of which he accepted, and is rather absurd considering that the descendants of Te Whatanui took up their residence on No. 9 immediately, and have ever since been disputing among themselves about its division. This was all the evidence we had before the Royal Commission in favour of the trust, except, of course, the evidence of various Natives who said that No. 14 belonged to them, but did not attempt to deny that the opposite was expressly said in Court in 1886, in Judge Wilson's hearing, when No. 14 was allotted. Indeed, curiously enough, no one at all was called by the counter-claimants to speak on this point.

I will now conclude my address with one general remark. This case does not depend on Native evidence. There is no getting away from what was said and done in Court, and these points, I am glad to say, do not depend on Native evidence. I shall call one or two leading chiefs to say, on behalf of the great majority of the tribe, that they all understood that No. 14 was Kemp's share, and acquiesced in his getting it. But even this class of Native evidence is irrelevant. Judge Wilson stated before the Royal Commission, and no one attempted to deny it, that when No. 14 was allotted it was stated in Court that it was Kemp's individual share; and that he challenged with especial care, and no one objected. The Natives cannot unsay that: they have consented, once for all, to Kemp having No. 14. There is another class of Native evidence with which I shall not trouble the Court at all. I shall not, of course, offer any evidence that Kemp is entitled, according to Native custom, to Subdivision 14. Kemp was given a freehold title to No. 14 by the partition of 1886, and the question is whether that freehold title is or is not trammelled with a trust. Even at the partition of 1886 no claimant for any of the subdivisions gave evidence proving his title according to Native custom to the share he claimed. Such evidence would have been irrelevant, as the partition was by voluntary arrangement; and it would, I submit, be doubly irrelevant now.

ARGUMENT BY MR. H. D. BELL.

Part I.

1. There has been a very considerable conflict of evidence as to which block of 1,200 acres, 9 or 14, was the subject-matter of the intended order of the 25th November, and upon this point, if the Court had to determine it, it is not greatly aided by the recollection of the Judge who heard the case, or by the minutes of the Court; and it must be very difficult, after so many years, to discriminate between the evidence and to decide which of the various accounts is to be accepted. It may well be that each person is honestly giving his recollection of what took place and what was intended, and, if that be so, it is surely almost impossible safely to decide which memory to rely upon.

2. But it is submitted that it is immaterial and unnecessary for the Court to come to any conclusion upon this point, for if the minutes of the 1st and the 3rd December, and the recollection of Judge Wilson, are accepted as a guide, and if the recollection of Judge Wilson as to what took place on the 2nd December is also accepted as a guide, then it is wholly immaterial which block was intended to be dealt with on the 25th.

3. For, assume that what was intended to be dealt with on the 25th was Block 14, Ohau, then, if Judge Wilson is to be believed in his statement as to his reason for making the order of the 1st December—viz., that Mr. Lewis had notified to the Court the approval of the Government to that Block 9 for the descendants of Te Whatanui—it follows that on the 1st December, when an order for No. 9 was made in favour of Kemp upon trust for the descendants of Te Whatanui, the order of the 25th November became nugatory, and it became necessary to make a fresh order with regard to Block 14. And, on the other hand, if we assume that what was dealt with on the 25th was Block 9, then the order of the 1st December confirmed the order of the 25th November, and, as before, leaves Block 14 still to be dealt with by order of the Native Land Court.

4. Is the Court, then, to be guided by the recollection of Judge Wilson, which is clear and unshaken, with regard to the proceedings of the 1st, 2nd, and 3rd December? I contend that there is the plainest authority for the proposition that evidence cannot be accepted to contravene that recollection; and I will mention some of them. Most of them are collected in the New Zealand case of White *v.* McKellar (1 N.Z. Jur. 157), which determines that, first of all, the Judge's notes are conclusive, but that the Judge's recollection can be used to supply any omission in those notes, and the Judge's recollection may also be used to explain any ambiguity. The case of Reg. *v.* Grant (3 Nev. & Man.) decides that when the Judge is clear in his recollection upon a point, and reports his recollection to the Court, it is not open to the Court to receive evidence to contravene that report.

5. The importance of strict adhesion to this rule has been recognised, as I show consistently, in the English Courts. It is, to say the least, of no less importance that it should be strictly adhered to in the Native Land Court, as, in the nature of things, what can there be to guide the Native Land Court or the Supreme Court, where the minutes are ambiguous or the terms of an

order are open to question, except the report of the Judge? To decide otherwise is to throw the matter upon the conflicting evidence, of which the present case is a striking example. If the Native Land Court at a later stage of proceedings in a particular case determines to decide a question which arises as to what took place while the Native Land Court Judge was on the bench, not by his report of what took place, but by a decision between two different accounts of contending parties, where is the continuity of the Court or of its proceedings? Take, for instance, the question which arises so constantly in every Court—the Native Land Court, the Supreme Court, the Court of Appeal—whether or not counsel for one of the parties did or did not make a certain objection to the reception of evidence, the objection not being expressly noted in the minutes. Counsel A says at a later stage, say in the Appellate Court, "Oh, but I did make that objection to the evidence." Counsel B says, "You did not make that objection." The minutes are referred to, and it is found that the objection is not noted. Is the Court, then, to decide which memory, of A or B, they will rely on, or must they not, as every other Court does, ask the Judge who presided, and whose duty it was to observe the objections, whether or not the objection was made in the terms which counsel A states them to have been made, and, if not, in what other terms? If the Judge has no recollection, then, obviously, the Court is driven to decide between the conflicting accounts of A and B; but if the Judge has a recollection, then, naturally, the Court would accept his recollection; and, fortunately, it is laid down as an unalterable rule by the authorities which I have mentioned that if the Judge has such a recollection and reports it to the Court the Court will not accept evidence to contravene it.

6. I assume for the moment that this Court would, without any such rule to guide it, accept the report of Judge Wilson as—(*a*) true, and (*b*) that which upon all principle should be accepted. But if that be not so, then I submit that the Court, apart from questions of comity, is bound by the rule of law to accept it; and I should ask the Court, in its case for the opinion of the Supreme Court, to ask, as a matter of law, whether, having the evidence of Judge Wilson clear and distinct as to what took place on the 2nd and 3rd December, it ought not to act upon that; and whether it can properly allow any evidence to be heard to contravene it.

7. It can scarcely be denied by any one that if the recollection of Judge Wilson, and his report in his evidence now before the Court, are to guide the Court, then that the case made to establish a trust wholly fails, because, having allotted definitively Block 9 to be held on trust for the descendants of Te Whatanui on the 1st December, what he did on the 2nd and 3rd with regard to Block 14 cannot have been done with the object or the effect of constituting a trust in favour of the descendants of Te Whatanui. Neither the registered owners could then have had any such intention, nor could Judge Wilson; and it is obvious that there can therefore be no resulting trust; and, as no trust whatever was intended, as Judge Wilson says, or declared, as is manifest, the land must belong to Kemp absolutely, and must have been intended to belong to Kemp absolutely.

8. The counter-claimants rely upon the word "confirm" in the minute of the 3rd December, but they cannot make that word speak for itself. They are obliged to resort to extrinsic evidence to show what it was that was confirmed. Once get to extrinsic evidence, and again the principle comes in and must be applied, that if you have the extrinsic evidence of the Judge, that is conclusive, and you neither can nor ought to go beyond it. It is true that if the order of the 3rd December said in so many words, "We confirm a trust which we have previously declared," then the counter-claimants could rely upon those terms as the expression of the intention of the Court, not to be explained away by any extrinsic evidence. But they must resort themselves to extrinsic evidence, and to the recollection of various persons, *e.g.*, Mr. McDonald, as to what took place for the purpose of connecting the word "confirm" with a previous order intended to create a trust. But, as I have said, the admission of extrinsic evidence, which is admittedly necessary to explain the meaning of the word, and the object of confirmation, immediately admits the best extrinsic evidence—viz., the explanation of the Judge who made the order; and that Judge reports to the Court, and is perfectly clear that the word used was "*whakatuturu*"—that the word was not used with reference to any trust, but was used with reference to the making solid in favour of Kemp the title to Block 14 which Kemp had mentioned to the Court on the 2nd December.

9. The fallacy of the argument for the counter-claimants appears to be that they select a word which is ambiguous, and contend that the Court must be guided by their extrinsic evidence as to the meaning of that ambiguity, in contravention of the evidence not only of other persons present in Court, but also in contravention of the opinion, the memory, and the report of the very man who made the order, and of the only man who had any duty in framing it, the other persons having an interest but no duty. Further, the Judge is the only man giving evidence here who is disinterested, and who has a duty in giving his evidence beyond the ordinary duty of a witness to tell the truth as far as is in his power. To ignore his extrinsic evidence, and not to accept it, is not only to throw a slur upon him which must be quite undeserved, but to throw open to endless litigation and hopeless confusion the records and the minutes of the Court.

10. The contention of the counter-claimants must be that wherever in any minute or order you can find an ambiguity the Court is to be guided in the interpretation, not by the clear memory of the man who made the order, who directed the proceedings, and who had a judicial and ministerial duty, but by the memory of irresponsible persons who have an interest in the matter; and they must go further, and contend that where there is a conflict in the testimony of such irresponsible and interested persons the Court is not to attach weight to the evidence and the report of a Judge, but is itself to do its best to determine which of the irresponsible and interested persons is more accurate, without regard to or attaching any weight to the opinion and memory of the one responsible and disinterested person.

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

or declared on the 3rd December, either by way of confirmation or by way of original creation, in favour of any body of persons, inasmuch as the trust in favour of the descendants of Te Whatanui had been created and declared on the 1st December in regard to Block 9, and no one has suggested that there ever was an express or implied declaration of trust in favour of any one else.

2. It is submitted, therefore, that if the Court finds that the order of the 1st December in respect of Block 9 was final and conclusive, unless it finds that the order of the 3rd December conferred and was intended to confer an absolute ownership on Kemp in No. 14, it must proceed to ascertain and declare a trust which was never intended or declared by any person at the time.

3. The members of the tribe who have an interest against Kemp in this matter come forward in numbers to declare what was the intention of the order of the 3rd December, and practically the only opponent of this is Mr. McDonald; and his statement only amounts to this: that he intended something or other which he did not communicate either to the Judge or to the Natives. That can hardly decide what was the intention of the Court or of the person who was named in the order, or of the people whose land was being dealt with, and who assented to his name going into the order.

Part IV.

1. It is understood that a suggestion is made that the allotment of No. 14 to Kemp on the 3rd December was made in the absence of some of the registered owners, and without their express consent, though none objected; and it may be assumed that this suggestion means that on the 25th November a trust had been created in respect of this block, and that though that trust had become nugatory by reason of the order of the 1st December, yet that it was not competent for the Court to deal with Block 14 without the consent and presence of all the registered owners. But the answer appears to be that the Court was bound to allot Block 14. It was proceeding to partition the whole block, and Block 14 was vacant. To whom was it to be awarded? No new *Gazette* could by any possibility be required. It was part of the division of the whole block, which had been duly gazetted, and was a purely incidental proceeding in the course of the partition. Those who were not present were absent by their own act during the progress of a partition of the Horowhenua Block, in the progress of which it became necessary to deal with a point which arose in respect of Block 14. If this contention means anything, it appears to me that it means that Block 14 must still remain held upon trust for the descendants of Te Whatanui, which is manifestly absurd. Still, assuming that the order of the 25th November related to Block 14, it is manifest that on the cancellation of the trust Block 14 became again tribal land, which it was the duty of the Court under its original *Gazette* to proceed to allocate. Exactly the same objection could be raised to the allotment of any other subdivision of the tribal land to any Native in the absence of any of the tribe. This objection is practically an objection to the whole partition on the ground that all were not present, and, I submit, is indistinguishable from that objection, and that I proceed in the next Part to contend is not open to the Court in its present proceeding.

Part V.

This is part of the case which I perhaps do not understand very well. I mean, only as to what points have been raised. Probably it is the part of the case upon which, if I am competent at all, I am more competent to speak than upon any other, because of the experience I have had, fortunately or unfortunately, of discussing these questions of jurisdiction of the Native Land Court in other Courts.

I myself am unable to understand how it can be suggested that this Court, sitting under "The Horowhenua Block Act, 1896," has jurisdiction to inquire into the validity or invalidity of the proceedings of the Court of 1886, or into the validity or invalidity of the orders of partition issued by the Court of 1886. The very fact that the jurisdiction is limited to three divisions affirms, ratifies, and confirms the partition of which these divisions form part. Who has conferred upon this Court jurisdiction to inquire whether Judge Wilson proceeded regularly or irregularly in 1886? I do not find it in the Act, and, if not in the Act, where has this Appellate Court got any jurisdiction? Here is a Court—no doubt a Court of very complete jurisdiction, but a Court with no original jurisdiction to deal with applications for investigation of title, except such as it derives from its possession of the general jurisdiction of the Native Land Court—here is a Court of limited jurisdiction, sitting in a special jurisdiction for a particular purpose defined by the statute, and then that Court is to proceed to deal with questions which have never been submitted to it by the Legislature. Of course, if I am right in that, a good deal of what I shall have to say following upon the subsidiary questions as to the irregularity will fall to the ground; and I confess that I have not been particular or precise upon this class of objection, as I confess I cannot conceive it possible either that this Court will assume jurisdiction to inquire into such matters or that they will state it as a question of law which can be answered in any but one way. It is human to err; but I am unable to see it. The Court is to inquire. It has jurisdiction "to enable"—that is, for the purpose of enabling—"to enable," that is the preamble—"the *cestuis que trustent*," and nobody else, "to become certificated owners of certain portions of the said block": that is the preamble to section 4. Very well: what are you going to do, if no person ever was a trustee, in order to enable the *cestuis que trustent*, if there be such, to become certificated owners? You are to make inquiries; and for that purpose, and not further or otherwise, "The Native Equitable Owners Act, 1886," is revived and re-enacted.

Then begins the second paragraph: "In exercising jurisdiction under this Act" the Court is given a certain authority which it would not have under the Equitable Owners Act—viz., to exclude the trustee from the beneficial interest; and in section 5 the orders made must declare the persons beneficially entitled to the division. The word "beneficial" is underlined and marked. If it were

not there it would not matter, but there it is. The Legislature, in section 5, accentuates and enforces what it said before. What you have to determine is the *cestuis que trustent*, if there be such.

I confess I do not know how this Court has any jurisdiction to inquire into the propriety or impropriety, or regularity or irregularity, of the proceedings of the Court of 1886. The time for rehearing has passed. The time for appeal, if there had been one at the time, is past. The Court of 1886, acting rightly or wrongly, ascertained a portion of land called "Division 14." As to that Division 14, this Court is told to ascertain whether there be or be not *cestuis que trustent*, and the argument that is offered to the Court is that there never was any Division 14, because it never ought to have been divided, the Court having no jurisdiction to do certain things. The object of inquiry is to ascertain whether that person is or is not a trustee, and, if so, to determine who are the persons beneficially entitled, as used in the second paragraph of section 5, or "the *cestuis que trustent*," as used in the first paragraph.

I hope, your Honour, I am not presenting something stronger than an argument on this point. It is difficult sometimes, when one hardly sees how the question is arguable, to avoid putting one's argument in terms stronger than one would like to use. I do not intend to be disrespectful to my learned friends or to the Court, yet I confess that I am unable to do more than point to the Act as the answer to the suggestion of jurisdiction of this Court to go into questions of the method or the manner in which Judge Wilson exercised his jurisdiction. Take this question of voluntary arrangement. Judge Wilson decided, as a matter of fact, that there was a voluntary arrangement. Now, he may have been quite wrong in that—wrong in law, if you like—but he came to that conclusion. If he was right in his conclusion, then he was right in proceeding, as he minuted, to carry out the voluntary arrangement. Certain people—your Honours, if you please—turning up the records at this date, finding dates of deaths, and so forth, may find that in your opinion Judge Wilson ought not, either in law or in fact, to have come to the conclusion that there was a definite voluntary arrangement which he ought to have acted upon; but he decided that there was, and, whether his decision was right or wrong in law, who has any right to challenge it now? This Court? If so, where does it get the authority? And what decision is this Court, supposing it has authority, to give? Has this Court authority to ascertain who are the owners of Block 14, if they be not *cestuis que trust?* Has this Court authority to award Block 14, say, to the man who got a square foot in the corner of the block?

If this Court can review the decision of Judge Wilson upon any point it can upon all points. It may come to the conclusion that he was quite wrong in putting Kemp into this block—that he ought to have put in, for instance, Hunia. Has this Court authority to do that? If it has not authority to reverse one decision surely it has no authority to reverse another.

I have said that the Act gave the additional power, which you had not got under the Equitable Owners Act, of excluding the trustee upon grounds which are specified in the section. That power you could not have obtained under the Equitable Owners Act; and that is the reason why the second part of section 4 confers a very proper jurisdiction in addition to the jurisdiction conferred by the Equitable Owners Act. But if this Court were to proceed to make its award, upon what basis is it to proceed. Upon what evidence? And this Court would then be a Court of original jurisdiction in the matter of hearing all applications for investigation of titles to land. It is true possibly—I don't know—that the Supreme Court or the Court of Appeal might interfere in some way or other with the judgment of the Native Land Court given even so long ago; but this Court has not that jurisdiction, except by way of appeal, and there is no such appeal. Nothing has even been confided to your Honours by way of appeal. What is confided to your Honours is a special and original jurisdiction in this matter, to hold a particular inquiry. I ask the Court, might not this jurisdiction equally well have been conferred upon any Court, upon the Royal Commission, say, upon the Supreme Court; any Court might properly and equally have inquired into this question of fact and mixed question of fact and law, whether there was or was not a trust, of which Kemp, the owner, was the trustee; and to challenge the existence of Kemp as a trustee, as your Honours must challenge by challenging the regularity of the proceedings upon the partition and the order which constitutes him a trustee, seems to be so illogical that I hardly know quite where I ought to meet the argument?

I pass now to another section. I understand that learned counsel for the Crown, or for the counter-claimants—one of the opposite parties—contend that because the Land Transfer certificate was made null and void by the latter words of section 5 therefore the land is open for inquiry by this Court. I do not know whether that argument has been addressed to the Court. I must meet it, I presume. My answer is—First, the nullification of the Land Transfer certificate does not nullify the order in favour of Kemp. You are aware that in the first of the cases *re* the Mangaohane Block a certificate was set aside by the Supreme Court, but not the order. It does not affect the ascertainment of the title by the Native Land Court that the document of European title has been rendered null and void by the Act. But, secondly—and this is the more important point—every statute is read *secundum subjectam materiam*. It is only for the purposes of this section that the Land Transfer certificate is ordered to be null and void; for the purpose of enabling the other persons to be registered, if there be any, the Land Transfer certificate is deemed to be null and void. The principle is this: When a statute interferes with a vested right of any kind, title, or anything else, the first principle is that you are to read it as interfering only for the purpose and to the limited effect which is required for effecting that purpose; and that your Honours will find in Maxwell on Statutes under the heading of "Subject-matter." Supposing you find that Kemp is not a trustee, and that there was absolute ownership in him, do your Honours mean to say that there will have to be a new certificate issued to him in respect to this block. The Land Transfer certificate by this section is nullified if you find *cestuis que trustent*, but it is manifest, I submit, that, if your Honours find the issue in favour of Kemp, he holds the certificate notwithstanding the

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?

3. (*a.*) Was not the order made on the 3rd December, 1886, for Subdivision No. 14 made in confirmation of the order made on the 25th November, 1886, for the 1,200 acres in the name of Major Kemp?

(*b.*) Was not such confirmation made in order to afford to the persons beneficially entitled under such agreement the choice of accepting either Section No. 9 or Section No. 14?

4. Were not the proceedings in Court of 1886 intended to be in pursuance of an alleged voluntary arrangement under "The Native Land Court Act, 1880," section 56?

5. Was the assent of the whole of the 143 registered owners ever given to such alleged voluntary arrangement?

6. Did any, and if so what, members of the Rangitane, Ngatikahungunu, and Ngatiapa Tribes included in list of registered owners give their assent to alleged voluntary arrangement?

7. Did the whole of the members of the Muaupoko Tribe included in the list of registered owners give their assent to such alleged voluntary arrangement?

8. (*a.*) Was such alleged voluntary arrangement in writing?

(*b.*) What evidence was there before the Court of 1886 of any such voluntary arrangement, or of the assent of the registered owners thereto?

9. Did the Judge who sat at the Subdivisional Court in 1886 exercise any judicial discretion in giving effect to such voluntary arrangement?

10. Did not the said Judge act merely administratively, and merely purport to record the alleged voluntary arrangement?

11. (*a.*) At the time of the said alleged voluntary arrangement, were not a number of the registered owners dead?

(*b.*) At that time were not certain of the registered owners infants?

(*c.*) At that time were there not a large number, amounting to thirty and upwards, of registered owners dead to whom successors had not been appointed?

(*d.*) At that time were there not successors appointed to certain of the deceased owners—

(1.) Which successors were then infants?

(2.) And on behalf of some of whom no trustees had been appointed?

(*e.*) At that time were there not successors who were subsequently appointed to certain of the deceased owners, which successors were then infants?

12. Was not the Subdivision No. 14 at the Court of 1886 a block of land lying entirely to the eastward of the railway-line?

13. Was not all land to the westward of railway-line at the Court of 1886, called "Horowhenua No 11," the subject of an order at that Court in favour of Kemp and Warena Hunia, in trust for 143 registered owners or some of them?

14. Under what authority was 589 acres lying to westward of railway-line, forming part of Horowhenua No. 11 at the Court of 1886, included in the order for Horowhenua No. 14 as it now stands?

15. Did the beneficial owners of No. 11 ever assent to the said 589 acres being taken out of No. 11 and included in No. 14?

16. Prior to the making of the order for No. 14, including 589 acres part of No. 11, were the provisions of sections 28 to 31 inclusive of "Native Land Court Act, 1880," complied with?

17. Prior to the exercise by the Court in 1886 of its jurisdiction under "The Native Land Division Act, 1882," was a surrender made of the original certificate of title issued under Act of 1867 to Major Kemp, or was an order made for its cancellation?

18. Was not Major Kemp at time of Subdivisional Court in 1886 in a fiduciary relation towards the 143 registered owners in regard to the Horowhenua Block?

19. Was not Major Kemp at time of Subdivisional Court a chief possessing paramount authority and influence over the Muaupoko?

20. Was not the alleged voluntary arrangement a mere dictation by Major Kemp of what he intended to do.

21. Was not the position of Major Kemp in 1886 such as to leave to the registered owners no choice but to agree to what he dictated?

22. Did not Major Kemp assume at the meeting and at the Subdivisional Court in 1886 the position that the registered owners had no choice but to agree to what he dictated with regard to the subdivision of the Horowhenua Block?

23. Did not the members of the registered owners who were present at the meetings and at the Subdivisional Court in 1886 assume that Major Kemp was in such a position that the registered owners had no choice but to agree to what he dictated with regard to the subdivision of the Horowhenua Block?

ADDRESS OF MR. ALEXANDER MCDONALD.

May it please the Court: So far as the present case has gone this Court is asked to say whether or not a trust should be declared as to Section 14 of the Horowhenua Block. "Trust or no trust" is, so far, the sole question which this Court has been asked to determine. There is nothing at all specially difficult about the question. The Native Land Court, while the Equitable Owners Act was in force, determined many exactly similar questions, and "The Horowhenua Block Act, 1896" revives and re-enacts that Act for the express purpose of enabling this Court to determine that same old question in this case. It is true that this Court announced at the beginning of the case that before finally determining the question submitted to it by the application of Major Kemp the Court intended to refer certain questions to the Supreme Court; and any one can readily see that such a course is probably very prudent and judicious. But this Court at the same time stated emphatically and repeatedly that it did not consider it wise to disclose at that

stage what those questions were which it proposed to refer to the Supreme Court. It was open then to counsel to say, "We will, under these circumstances, advise our clients to ask the Court to postpone taking evidence on the questions of fact until these questions of law have been disposed of." But the lawyers did not do so. On the contrary, they said, "Very well, go on and take the evidence on the question of facts." And now, after forty days have been spent in submitting to this Court apparently all the available evidence on the facts, down come these lawyers to wrangle and argue about jurisdiction and questions of law.

Your Honours, if there is any meaning at all in the English language, this Court does not require any assistance from these lawyers, or from any one else, to "state" the questions of law which this Court originally proposed to refer to the Supreme Court. These questions were already formulated in the mind of the Court before any of the evidence adduced during the last forty days was presented to the Court on the hearing of this case.

What, then, did the lawyers want to do by their solemn or vehement so-called argument yesterday? I will not say what I believe they wanted to do, because my remarks might be applied personally; but I will say this: that they did not seem to me to throw any light whatever upon the simple question which this Court is at the present time asked to determine.

I do not know any more nor less than they do what exactly may be the law points which this Court had originally determined to refer to the Supreme Court, and I presume it is still in the mind of the Court to refer those points whatsoever they may be, but the Court required no assistance to formulate those questions, and I fail to see the relevancy or usefulness of the so-called arguments of yesterday. I will, with the leave of the Court, give one instance of the uselessness of these arguments. Mr. Bell laid it down as a proposition of law that the report of a Judge may not be contravened as to what had happened in his own Court; and Mr. Bell further said that by report was meant evidence or other statement which the Judge chose to make as to the matter in question. Mr. Baldwin disputed the proposition of Mr. Bell, and we were treated to an argument of the "learned friend" kind.

Now, the question cannot by any possibility apply to the present case, because the Judge whose dictum Mr. Bell desires this Court to take has made several contradictory reports; and, even if Mr. Bell's proposition is perfectly sound in law, there would still remain the question of determining which report of the Judge was to be regarded as authoritative, seeing that the reports contradict each other. Mr. Baldwin, however, did not differ from Mr. Bell on this ground, but upon some general principle, and so we had an argument that was in no respect relevant to the case before this Court. And so with all the rest of the arguments of yesterday.

I will, and do, therefore ask the Court to sweep out of its mind equally the solemn and the vehement arguments addressed to it yesterday. These arguments were not needed to assist the Court to state the questions already formulated in the mind of the Court to be referred to the Supreme Court, and there was no new question raised by the arguments relevant to this case. The arguments were therefore, so far as I can see, perfectly useless, and more than useless.

I will now make a few remarks on the evidence adduced in this case.

The following are what I understand to be the allegations set up by Major Kemp in support of his claim for a Land Transfer certificate for Section 14 of the Horowhenua Block:—

Allegation No. 1: That the Ohau section was never actually marked off on the plan of the Court, nor awarded by the Court to enable Kemp to fulfil the agreement with Sir Donald McLean. Touching this allegation, the unfortunate, though perhaps in the first instance well-intentioned, tampering with the numbers of sections creates some perplexity, and necessitates some care to clear up. But compare minute-book No. 7, folios 184 and 185, with figure 3 under 14 on Map W.D. 508 of the Court of 1886. I submit that this alone is conclusive of the falsity of the above allegation. (*Vide* Judge Wilson's evidence, in which he attempts to identify No. 9 with the section dealt with on the 25th November, 1886: "I should not like to swear that no order was made on the 25th November for the section now 14." "The subdivision was put on the plan by Mr. Palmerson." "I don't think my memory is contrary to the minutes." "Nicholson's objection of the 25th November was to what is now 14." "There was an abortive attempt to put the land now 14 through the Court for Te Whatanui's people." "My memory may be defective." "Nicholson's objection appears to me to apply to lands afterwards 14.") I submit that the positive evidence of A. McDonald, Nicholson, Himiona Kowhai, in direct explicit contradiction of this allegation, is not needed. (Commission report, page 134, question 88: "The order was made at this stage?—Yes." Instance of confusion of memory, page 134, questions 89 and 90. See also page 98, questions 1 to 7.)

Allegation No. 2: That the Ohau section was only informally offered to the descendants of Te Whatanui, and was refused by them. This allegation is to a great extent disproved by the reply to Allegation No. 1. See also evidence of Judge Wilson: "He" (Mr. Lewis) "told me that the descendants of Te Whatanui had not been able to settle anything, but to leave the land in Kemp's name." (Page 27, Judge's notes.) This was after he (Mr. Lewis) had, as alleged, "brought the land back to the Court." (26th February, 1897, pages 5 and 6, my notes marked between red crosses; Commission report, page 131, question 36.) But the fact is that there was no such gathering of the descendants of Te Whatanui at Palmerston who could authoritatively or validly accept or reject anything. According to the evidence of Judge Wilson before the Royal Commission it was "after the boundaries had been defined in the records of the Court" that Mr. Lewis "removed the land from the Court." (Reports, page 131, question 36. Consequently it must have been after the afternoon of the 1st December that Mr. Lewis told the Judge nothing had been settled, and the land must be left in the name of Kemp. See also my leading question, page 131, question 37: "That is, he accepted it on behalf of the descendants of Te Whatanui?" Answer, "Oh, no; he simply said that for reasons the Government had," &c. See also report of Royal Commission, page 134, question 92, and page 136, question 132. In these questions and answers Judge Wilson holds that it was No. 9 not No. 14, that was refused.

Allegation No. 3: That the section actually awarded in the Court on the 25th November, referred to on the morning of the 1st December, and finally awarded on the afternoon of the 1st December, was from first to last identical with the section now No. 9, or Raumatangi section. This allegation is disproved to a great extent by the reply to Allegation No. 1. See also evidence of Judge Wilson: "There was an abortive attempt made to put the land now 14 through the Court for Te Whatanui's people." Nicholson's objection of the 25th November was to what is now 14. (Judge's notes, page 56.) "I should not like to swear that no order was made on the 25th for the section now No. 14." "It may have been between the two Courts that Mr. Lewis withdrew the land from the Court."

Allegation No. 4: That Major Kemp made application in Court on one day (fixed by Major Kemp to be the same day as that on which the square foot was awarded—viz., the 2nd December) to have the Ohau section, now No. 14, awarded to him for his own use and benefit, but that the Court made no order on that day on the application. In reply to this allegation, I would point out that this is an absolutely new theory set up by Judge Wilson, and eagerly caught up and followed by the claimant and his Maori witnesses. The theory was not heard of or suggested at any former investigation *re* Horowhenua. If allegation No. 3 is true, how did the Ohau section, with a figure 3 on it, come to be on the Court plan when this present alleged application of Major Kemp's on the 2nd December was made? There is not the slightest hint of any such application recorded in the minutes of the Court of 1886, and it is not credible that so important an application should pass without notice by the Clerk of the Court. Judge Wilson says the application gave him a shock. How, then, is it credible that the Clerk took no notice whatever of the matter? I submit that the story of this application as told by Judge Wilson is simply an afterthought to explain the words "confirmation of that order" in the application of the 3rd December. I regret to have to add that this is not the only instance in which Judge Wilson, as we shall see presently, has simply evolved a tale out of his own imagination to avoid being compelled to admit that he had made a mistake in thought or in action. I submit that the allegation under review is without solid foundation in fact, and does not need for its rejection the positive contradiction of counter-claimants or their witnesses. See also Report of Royal Commission, page 139, question 223, *re* the Judge's memory: "Gets an idea in his head and keeps it for years; then finds he was wrong." See also page 99 questions 52, 53, and 56: "Kemp, caretaker for all the blocks, including 14" (evidence of Rangimairehau); page 103, questions 218 and 219 (evidence of Makere te Rou); page 108, questions 429 to 439 (evidence of Kerehi Tomo); page 118, questions 4 to 8 (evidence of Kerehi Tomo). Both in Kemp's name until descendants of Te Whatanui decided.

Allegation No. 5: That on a succeeding day (fixed by Judge Wilson as the last day of the Court —viz., the 3rd December) Kemp renewed his application to have the Ohau section, now No. 14, awarded to him for his own use and benefit, and that the Court then made the order accordingly; and, further, that the minute, "Applications from Major Kemp (f. 200, B.7) for confirmation of that order," &c., is the renewed application referred to in this allegation. In reply to this assertion Judge Wilson, in the earlier part of his evidence, 26th February, 1897 (page 7, my notes), propounds a theory of explanation of the words "confirmation of that order" in the minute. He suggests that the interpreter, clerk, and Kemp, between them, made a mistake. He thinks it probable that Kemp used the word "*whakatuturu*," which the interpreter translated "confirmation," and the clerk took the word from the interpreter and wrote it down. But when this explanation broke down in all its parts, partly under cross-examination, but chiefly by the simple inadequacy of it as an explanation, the Judge at once evolves out of his own imagination this new theory rather than frankly admit that he had been mistaken in taking the application of the 3rd December as an application for a section not previously dealt with by his Court. But this new theory also is inadequate. According to Judge Wilson's own story, he made no order at all on the alleged previous application of Kemp. Why then use the words "confirmation of that order"? Judge Wilson, however, offers no further explanation; nor do any other of the claimant's witnesses. They simply follow as carefully as they know how in the track suggested to them by the Judge. I submit that, as in the case of Allegation No. 4, this allegation (No. 5) does not need the positive evidence of the counter-claimants' witnesses to insure its rejection by this Court. See also evidence of Judge Wilson, Report of Royal Commission, page 135, question 110, for another version of explanation. See also Rangimairehau's evidence, Report, page 89, questions 207, 208. Notwithstanding leading questions, Rangimairehau says he did not hear Kemp apply in Court for No. 14.

Allegation No. 6: That at a meeting of Muaupoko, in Mr. Palmerson's barn, Major Kemp asked Muaupoko to allow him to take the land, now No. 14, for his own use and benefit, and as his share, or part of his share, in the Horowhenua Block. With reference to this, I would state that, apart from the legal objection applying equally to all the alleged "voluntary arrangements" of Muaupoko for partition of the Horowhenua Block, particular legal objections lie against this alleged transaction, as, for instance, that Major Kemp had not then, either in fact or by inference, divested himself of the character of trustee which he had held as from 1873, and could not therefore be a party to this alleged "voluntary arrangement" for his own benefit. Moreover, apart from all merely legal objection, the story of witnesses touching this alleged meeting and arrangement to allot this section to Major Kemp as his share or otherwise is too inconsistent to be believed. Kemp's own evidence is simply that the meeting agreed. Rangimairehau says the whole meeting audibly assented with a hearty "Ae." Raniera says, "No one spoke; all were silent." Ru Davis says, "Te Kiri only spoke, and she only said, 'Who can gainsay you?'" If there is any truth at all in this witness's evidence it only shows that the relation of trustee and *cestuis que trustent* was so potent that a Court of equity would certainly set the transaction aside as absolutely void. Raniera and Rangimairehau swear that Alexander McDonald was present at the meeting, and the latter points out the exact position in the barn which Alexander McDonald occupied, but Alexander McDonald swears that he never at any meeting or elsewhere heard Kemp, or any one else, propose or suggest that the

section should be allotted to Kemp for his own use and benefit. As in the former cases, I submit that this allegation does not need evidence of counter-claimants to insure its rejection by this Court. See also report of Royal Commission, page 32, question 220, where Kemp says that Muaupoko had nothing to do with granting him Section 14. See also Rangimairehau's evidence, Report of Commission, page 99, questions 52, 53, and 56; Makere te Rou, page 103, questions 218 and 219; Kerehi Tomo, page 108, questions 429 to 439; Kerehi Tomo, page 118, questions 4 to 8; Hoani Puihi, page 127, questions 349 to 361; Waata Tohu, page 146, questions 27 to 31; Paki te Hunga, page 156, questions 341 to 345; John Broughton, page 359, questions 307 to 310, also 320.

ADDRESS BY HAMUERA KARAITIANA, CONDUCTOR FOR RIHIPETI TAMAKI AND PARTY.

[Translation.]

Kemp claims to be the sole owner of No. 14 upon three grounds: First, that the land has been vested in him for nearly ten years without objection by any one, until the Royal Commission sat, when, he alleges, he first heard of any objection. In reference to this ground of claim, I would point out to the Court that Kemp himself has explained the reason for his having held No. 14 for so long a time (*vide* his evidence on page 177 of Otaki Minute-book No. 13). He there says that No. 14 is for the descendants of Te Whatanui, and not for himself. Second, Kemp claims that No. 14 belonged to his ancestors, and that it has come down to him from them. I ask the Court not to take this ground of claim into consideration, because the present inquiry is not an investigation of ancestral rights. Third, Kemp alleges that No. 14 was given to him by the whole tribe in 1886—first, in order that he might transfer it to the descendants of Whatanui, and afterwards for himself absolutely. Witnesses on behalf of Kemp have stated that No. 14 was given to Kemp, and that he was to transfer it to the descendants of Whatanui; they have also testified that No. 14 was given to Kemp for himself.

The Court will see that Kemp has himself shown the inaccuracy of the latter evidence, by stating in 1890 that the people gave him the land to transfer to the descendants of Whatanui. I urge the Court not to consider any of the grounds of claim set up by Kemp, because if it had been true that No. 14 had been given to Kemp for himself, no other ground of claim would have been set up on his behalf. I contend that the claim by gift is new. If the gift had been made in 1886 it would not have been forgotten by Kemp in 1890. I ask why Kemp should have forgotten his proper claim to this land in 1890, and only thought of it again this year. In my opinion, the application of those who are opposed to Kemp's claim, that their land should be returned to them, is reasonable. Kemp has admitted that he holds No. 14 as trustee.

ADDRESS BY HENARE TE APATARI, CONDUCTOR FOR PEETI TE AWEAWE AND OTHERS.

[Translation.]

I will not occupy the time of the Court for long in reviewing the evidence that has been adduced before it. I have not the advantage possessed by my legal friends who are intimate with the statutes under which the Horowhenua Block has been dealt with for many years past. The opinions that I can give the Court will therefore be unimportant as compared with theirs. I will first refer to Kemp's claim. Sir Walter Buller, in opening the case, set up the following grounds of claim: First, the length of time that Kemp had held No. 14; second, Kemp's ancestral right to No. 14; third, the gift by the whole tribe to Kemp of No. 14 for himself in 1886. Of these three claims set up by Kemp, the only one he and his witnesses seemed to rely upon was the giving of the land to himself in 1886, and, as regards this, let the Court refer to the evidence given by Kemp before the Court in 1890, and reported on page 177, Otaki, Vol. 13. He stated there that he held No. 14 on trust for the whole of Muaupoko; and I submit that he acted as a chief should, in making that admission on his oath. I will leave the two first grounds of claim set up on Kemp's behalf in the hands of the Court, and will comment upon the third. The Court will note that Kemp and his witnesses say that Muaupoko gave him the land to transfer to the descendants of Whatanui. It was confined to the eastward of the railway-line, and was called No. 3. Kemp has also stated that it was in consequence of the objection made by Te Aohau and Hare Pomare to the land that it was not given to the descendants of Te Whatanui.

Now, why should Kemp listen to objections raised by these people, who are not owners of the Raumatangi 100-acre section, and who were not supported by Wiremu Pomare, of Auckland, the person Kemp said the 1,200-acre section was for? If Te Aohau and Hare Pomare had agreed to accept the land east of the railway-line it would have been finally located there. It would not have been said then that there was not sufficient land east of the railway to enable the 1,200 acres to be laid off there, nor would it have been asserted that the land to be given to the descendants of Whatanui extended westward to Waiwiri Lake. I submit that the Muaupoko understood that the section called No. 3 was to be given to the descendants of Te Whatanui. This, taken with the evidence given by Kemp in Vol. 13, page 177, will satisfy the Court that he held No. 14 as trustee for Muaupoko. There is nothing to show that Kemp asked Muaupoko for No. 14 for himself. According to his own evidence there would be no necessity for him to do so, as he alleges that it is his by right of ancestry. The question of title was not gone into when it was arranged that No. 14 should be given to the descendants of Whatanui, to ascertain that the land was Kemp's, and that he had the right personally to give it away—on the contrary, the evidence before this Court is that the tribe gave it to Kemp to transfer to the descendants of Whatanui.

I will call the attention of the Court to the following evidence: Kemp stated that the Muaupoko, at a meeting in Palmerston in 1886, consented to his having No. 14. Te Rangimairehau said that the Muaupoko at that meeting agreed to Kemp having No. 14. Raniera said that none of

Muaupoko at that meeting assented in audible tones to Kemp having No. 14. Ru Reweti stated Te Kiri was the only person who spoke, and she said, "Who can oppose Kemp's application for No. 14?" The Court will also weigh this evidence: Ru Reweti said he did not hear Waata Muruahi refer to No. 14 at the Pipiriki meeting. Mr. J. M. Fraser said he heard Waata Muruahi speak at the Pipiriki meeting, but that he only welcomed the visitors, and did not refer to No. 14.

It is a matter for consideration by the Court whether these witnesses are to be believed—that the Muaupoko Tribe consented to Kemp having No. 14. I would ask who this tribe of Muaupoko were who consented to give No. 14 to Kemp? The consent of Rangimairehau and Raniera cannot be held to bind the Muaupoko Tribe.

All this evidence has been manufactured since 1886. Kemp made it quite clear in 1890 that he and Warena held No. 11 in trust, and the people knew that No. 14 was part of No. 11. They did not know that the boundaries of No. 14 had been extended west of the railway to Waiwiri. All parties to this case have admitted that they knew No. 14 was given to the descendants of Whatanui, and that it was owing to the refusal of Te Aohau and Pomare to accept it that the matter was not concluded during the sitting of the Court in 1886. It was said afterwards that Kemp asked Muaupoko to give him No. 14 for himself. Now, I refer the Court to the evidence of the witnesses before this Court, some of whom have asserted that No. 12 was given to Ihaia Taueki as trustee, whilst others have stated that it was given to him for himself. This is similar to the evidence regarding No. 14: some say that it was given to Kemp for the descendants of Te Whatanui, whereas others allege that it was given to Kemp for himself. Both sections are held under similar titles, and it cannot be said that No. 12 only is subject to a trust. I submit that both sections are held in trust for the tribe. If the claimants will submit a list of names of the persons who agreed to Kemp having No. 14 in 1886, I will admit the gift so far as they are concerned, and it will be apparent that they gave away their own rights in it.

I will now speak on the matter in reference to which I said in the beginning of my address that my opinion would not be of much value to the Court. In 1873 an order was made for the issue of a certificate of title under the Act of 1867 for the Horowhenna Block. In 1880 an Act was passed for the Native Land Court, which provided that the cancellation of all certificates issued before 1880 should be notified in the *Kahiti* in connection with partitions. The Court could only issue orders to individual owners of Horowhenua on partition, after notification in the *Gazette* of the cancellation of the certificate. In 1886 the Court sat to subdivide the Horowhenua Block, and made orders on partition while the certificate of 1873 was still in force; and I contend that those orders are invalid, because the certificate was not cancelled until after they were made, and this has caused all the complications that have arisen in connection with the Horowhenua Block. There are many other legal points bearing upon this case, but I will leave them in the hands of the Court.

I will now remark upon the plan, which it is said was approved by Kemp and Warena. The Court partitioned the land, and marked off the divisions on the plan, and the Muaupoko looked upon the location of the several sections as final. Subsequently the surveyor, in carrying out the partition on the land, extended No. 14 westward of the railway to the Waiwiri Lake, which he had no authority to do without the consent of the owners of the land. The Judge did not notify in the *Kahiti* a time and place for exhibiting the altered plan, so that the people interested had no opportunity of appearing to express their approval or disapproval of it. The only persons who heard of the alterations and approved of them were Kemp and Warena, and they did so on their own responsibility, and without the knowledge of Muaupoko. I submit that this was absolutely illegal, because the extension of Section No. 3, afterwards No. 14, to Waiwiri was wrong; it was done without the knowledge of Muaupoko. The extension was not shown on the plan in use when No. 3 was set apart for the descendants of Whatanui. The change of number from 3 to 14 has also been made since; and I hope the Court will seriously consider the effect of the changing of the numbers of sections, and the alteration of the boundaries of No. 14.

It is not necessary for me to further prolong my address, as the Court has a fuller knowledge of the matters before it than I possess.

Address by P. E. Baldwin, Counsel for the Crown.

May it please the Court: In addressing the Court on behalf of the Crown, I think it would be well to preface my remarks by stating what, as I understand it, weighed with the Crown in becoming a party to these proceedings. The chief reasons for the interference of the Crown were these: In the first place this Horowhenua Block has been a constant source of public trouble for a very lengthy period of time. Petitions to Parliament have been presented in the last seven sessions, legislation has been repeatedly demanded, and the interference of the Executive Government has been invoked. This investigation, moreover, is taking place under a special Act, and is of grave public importance. In the second place, the Crown, as a result of these proceedings, will be called upon to grant to certain persons titles under the Land Transfer Act, and is entitled to be well satisfied that its grants are made to the rightful owners, where it is suggested, and there is a reasonable suspicion, that persons other than the rightful owners are making efforts to obtain titles for themselves. In the third place, and most important of all, the proceedings in this case are to be final and conclusive. From the decision of this Court there is no appeal on law or on fact. In order, therefore, that these final proceedings might be, if possible, more solemnly and more satisfactorily final than if they had been left to the various private parties interested, some of whom may have been unable or unwilling to be represented, or unready to enter upon the contest themselves, it was deemed advisable that the Crown should appear and lend the Court such assistance as it was able, with a view to elucidate the truth.

I do not wish it to be understood for one moment that the Crown could doubt that a Court constituted such as this Court, and assisted by the representative counsel and agents engaged, would have been unable in any case probably to do the strictest justice in carrying into effect the Horowhenua Block Act. But, having in view the considerations already alleged, it was thought desirable in the public interest, and for the public satisfaction, that the Crown should be a party. The presence of the Crown, which has no desire except to see justice done, should add the final guarantee in the public's eye that the conclusions come to by this Court are arrived at after wide, careful, and exhaustive inquiry.

There is, moreover, a further aspect to the case, which made it very desirable in this particular proceeding that the Crown should be represented. It is one of the prerogatives of the Crown to see to it that the rights of persons who are, by reason of their infirmities or circumstances, unable to afford themselves the protection which an ordinary British subject has against his fellows should be protected. Now, there are in the case of this Horowhenua Block circumstances which would be apt to place a large number of persons in such a position that they would be unable to defend their rights effectually. Especially is that so with regard to Block 14. Not to forestall what I shall have to say hereafter on this subject, it has made itself manifest that a large number of the Muaupoko Tribe, by reason of mistaken loyalty, of outside influence, of pressure, or of fear, are unable to properly insist upon their own rights. The attitude of their conductor is a strong indication of the truth of this.

Mr. J. M. Fraser, who appears for these persons, is one of the most competent conductors in the Native Land Court; but he is not able to go beyond or act otherwise than in obedience to his instructions. The attitude that he has adopted from the commencement is that these persons whom he represents, alleged to be a large bulk of the Muaupoko, are desirous, without inquiry, to agree to the proposition put forward by Major Kemp that No. 14 is Major Kemp's own property. And it is quite possible that in the proceedings in connection with No. 6, No. 11, and No. 12 a similar state of affairs may manifest itself in regard to those blocks in respect to Major Kemp or Wirihana Hunia or Ihaia Taueki. If such a state of affairs should arise, the same considerations will weigh with the Crown, just as they are now pressing it regarding Block No. 14.

Now, it has been suggested to the Court that the Court should examine these persons as to their wishes on the matter of this block—Horowhenua No. 14. But any such examination must necessarily be futile. If these persons have been persuaded that it is their duty or their privilege or their interest to sacrifice themselves in the interest of their chief, whoever he may be, the Court will appeal to them in vain. These people it is the duty of the Crown to protect against themselves. If the Crown finds on an inquiry into any block such as this that any person is, by reason of his influence, in a position to obtain from his tribe a benefit to which he is not justly entitled, then the Crown is entitled to interfere. It is the sacred duty of the Crown to interfere and see that such benefit shall not be given until a legal title has been conferred upon the tribesmen. That having been done, the Crown has played its part. Thereafter any dealings between the owners and their chief are subjected to the inquiry of the officer specially appointed by the Legislature to protect Natives, not only against others, but against themselves. To apply the foregoing considerations. The Court has been told in emphatic terms, and the Court has seen, during the course of this inquiry, how anxious, how clamorous, a great number of these Muaupoko people have been to divest themselves of any rights they may have in No. 14. That this is due to Major Kemp's strong personal influence as a great chief and as the titular owner of the land since 1873, and to the perverted view the tribe have been induced to take of the situation—I make no accusation against any one in particular—seems perfectly clear; and, the situation being so, I say the Crown not only may, but is indeed bound, to intervene. No doubt certain of the Muaupoko are appearing who take up a different attitude. They are here, represented by able counsel and conductors, to protect their rights, and incidentally the rights of others, and the Court is here to jealously see that justice is done. But it is quite conceivable that the Court might not have laid before it the materials to enable it to help these persons who are lying under this strong influence, this strong banal influence, against themselves and their rights. That, I repeat, is another reason why the Crown thought it advisable to be represented. I will now very shortly state the attitude I have taken up in this inquiry, and my reasons for such attitude. The Crown, as I take it, is here to assist the Court to do justice. If it clearly appears that justice lies on one side, the Crown is bound honestly to throw its whole weight in the support of that side, and in that sense not only may but must take up a party attitude. At the outset of the case it became abundantly clear to me, even from the evidence of the first witness in support of Major Kemp, that the theory that Major Kemp was the rightful beneficial owner of this land was being supported by evidence which I cannot but regard now, and which I regarded then, as false. My grounds for making this statement will appear fully later on. It was clearly my duty to cross-examine the witnesses, who, according to the evidence in my possession, were stating what was untrue. In so far I was, from the nature of the case, forced to take up a party attitude. Furthermore, before the evidence of the first two witnesses was anything like complete I formed an opinion from the evidence tendered, which I have always since retained, and which has become every day stronger—that the theory of trust set up in regard to this block is a correct theory. Acting on that view, and acting, moreover, in the interests of those who, in my view, helplessly, mistakenly, and most unjustly were sacrificing themselves in defence of Major Kemp's claims, as well as of all other of the registered owners, I, as representing the Crown, have joined issue with Major Kemp and his theory. Another point I will just touch on. It seemed to me that the cross-examination by Major Kemp's counsel of one or more of the witnesses was conducted not with a view to attaining the truth, but with the view of confusing the witness, and I have therefore, in more than one case, given the witness a chance of explaining to the Court what his views were, before Major Kemp's counsel could unfairly use his evidence to confuse him.

Another preliminary observation I have to make, without casting any aspersion on Sir Walter Buller. I think he has placed himself in this inquiry in a most unenviable position. He is acting here as counsel for Major Kemp, and he himself is personally interested in the decision in this case as the purchaser, lessee, and mortgagee from Major Kemp of portions of the block. However anxious he might be as counsel to lead the evidence in such a direction as would do justice to the beneficial owners and Major Kemp, the strong pecuniary and personal interest he is under must interfere to obliterate all facts, all claims, all evidence which would in any way militate against his own advantage, lying as it does in the direction of proving Major Kemp an owner, and in that direction only. That this has influenced the evidence led in this case I do not say, but Sir Walter Buller was, in my opinion, most ill-advised to accept the dual position he occupies.

And now, your Honours, to turn to a different matter I think it right to mention. In a sense, I consider it both useless and almost a presumption to address the Court, constituted as it is, at any length on this case. No remarks of mine can induce this Court to alter its opinion. Your Honours have far more experience, a far more intimate knowledge of Natives and Native manners, and, I am sure, just as clear if not a clearer view of the main facts and outlines of this case than I have. But I, nevertheless, consider it my duty to lay before the Court the salient facts from the point of view which the Crown, as represented by myself, takes of the case. For, apart from the great importance of this case, it may be that the bearing of some small detail looked at from a slightly different standpoint may assist the Court in establishing more clearly its own conclusion, or may, on some point or other, suggest to the Court a modification of its previous conclusion.

With these preliminary remarks I shall now turn to the case itself, and, having shortly premised what I regard the matter for this Court's decision, and the position Major Kemp has taken up, I shall divide my statement into three broad divisions. Firstly, I shall lightly touch upon the facts of the case as I understand them, which facts seem to me to conclusively show that Block 14 was never given or allotted to Major Kemp for his own individual benefit. Secondly, I shall endeavour to show your Honours how and when this theory arose that Major Kemp is the beneficial owner of this Section No. 14, and the various steps by which it attained to its present proportions. Thirdly, I shall deal shortly but very carefully with the evidence of various witnesses; and in regard to this last branch of the subject I shall, during the course of my address, have to comment in very grave terms upon certain evidence. In anticipation I will only say this: Most of Major Kemp's principal witnesses are tied by their evidence to his theory, and his whole theory. One and all of them have sworn to that theory in its entirety. If the Court holds that part of the theory is absolutely untrue, the Court must (this is a very important point) disregard the whole story, for such a result proves three things—(*a*) That each witness has lied; (*b*) that they have conspired together to lie; (*c*) that the whole story is a fabrication, and that the Court can put no faith in any part of it.

I will now turn to the case, and will premise my comments by stating briefly what I submit to be the scope of this Court's functions. It seems clear that the whole point for the decision of this Court is a simple one. Was the piece of land now called No. 14 at or prior to 1886 validly given by the real owners to Major Kemp? Now, that is exactly the point upon which my learned friend Sir Walter Buller wishes to avoid a decision. He wishes to complicate the matter by legal difficulties as to the effect of the proceedings subsequent to the Court of 1886. He wishes the Court to be bound not by what the owners really did, but by what Judge Wilson, on no evidence at all, assumed that they did, and what Judge Wilson, without jurisdiction, did. It is just such a position as this that the Equitable Owners Act, as I read it, was framed to avoid. And I submit that, once having decided who were the owners before the Court of 1886, this Court has only to decide whether or not those persons really, and apart from all legal proceedings, intended to give and did validly give this land to Kemp for himself beneficially. For that purpose this Court need only determine who were the owners in 1886; which, if any of them, were at the Court in 1886; if all of them, or some on behalf of all, were entitled to dispose of this land; and if the necessary persons did dispose of it by giving it to Major Kemp beneficially.

Now, the Court will remember that this is an application not by any of the *cestuis que trustent*, but by Major Kemp, who is applying to the Court to declare him beneficial owner of this piece of land. Sir Walter Buller, acting on Major Kemp's behalf, has taken upon himself to establish the following position: That Horowhenua No. 14, as now existing, represents what was agreed to by the owners, and in pursuance thereof allotted at the Court of 1886 to Major Kemp as his own share of the lands subdivided by that Court (exclusive of Horowhenua No. 11). To establish this he propounds to this Court the following theory of fact: (*a*) An offer and rejection out of and prior to the Court of 1886 of a section of 1,200 acres at Ohau, later on at the Court called No. 14, to certain of the descendants of Te Whatanui; (*b*) a subsequent allotment in the Court which sat in November, 1886, of a substituted piece of land to those persons, and no definite dealing in the Court with that first piece of land; (*c*) an agreement outside and during the sitting of the Court of 1886 by the persons whose consent was necessary that Kemp should retain that first piece of land as his own individual share, and an award by the Court to him of that land; and (*d*), as a consequence, that this confers upon Major Kemp a title to a section of land—(1) of same area, 1,200 acres; (2) in part—say, 610 acres—of land then alleged to have been given and awarded; but (3) in part—say, 589 acres—of land in different situation and in a section (No. 11) awarded in the names of Kemp and Warena Hunia, admittedly in trust as a residential block for a large number of the other persons, and this without any consent of the beneficial owners of that section previously had or obtained. That is the Herculean task in the province of fact and of law that Major Kemp has taken upon himself to prove.

Part I.

The Facts.—In the year 1886, when the Court sat at Palmerston for the purpose of subdividing the Horowhenua Block, it would be well to clearly have in the Court's mind what were the relative

positions of the parties interested in the Horowhenua Block. On one hand stood Major Kemp. He had been since 1873 the sole certificated owner of the whole of the Horowhenua Block. To use Sir Walter Buller's language, as such he was "in fact and in law a trustee" for the whole 143 owners. And this opinion is substantially adopted by his Honour the Chief Justice. [Warena te Hakeke *v.* Kemp and Another, 14 N.Z. Law Reports; Appellate Court minute-book, Vol. 32, page 172.] As such trustee, to use Major Kemp's own expression, he had the heads of the people under his hand: "Your heads have been in my hands; my feet have been upon your bodies;" and during the whole of the time from 1873 to 1886 he acted up to that expression in its entirety. He was, moreover, as this Court well knows, a chief of great mana—a man of surpassing bravery, a man acquainted with European ideas, and a man of extreme ability, and he would have held a prominent position in any tribe. How much more so in a tribe such as the Muaupoko—a tribe who had for decades been refugees, wanderers, and living on sufferance under the protection of others. These tribesmen were powerless before such a man. In support of this I will only quote what Rangimairehau, the chief of Kemp's followers, thought, what Major Kemp himself thought, and what Sir Walter Buller thought as to Kemp's position with regard to the tribe. [Quotes Appellate Court minute-book, Vol. 31, pages 106, 111, 112 (Rangimairehau); page 192 (Kemp). Horowhenua Commission, page 170, questions 11, 12, 45, 46; page 184 (Kemp). Appellate Court minute-book, Vol. 31, page 240 (Ru Reweti).] I say without hesitation that Major Kemp was at the time of the Subdivisional Court possessed of paramount authority and influence over the Muaupoko—that he was *de facto* in a position to dictate to the registered owners what he intended to do in regard to the subdivision of the Horowhenua Block, and that the tribesmen were not in a position to gainsay him, and dared not do so.

Now, at that time who in law under the title were the tribesmen? There were 143 names registered in the Court as the owners of the Horowhenua Block, including Major Kemp himself. These owners divide themselves into several distinct classes. In the first place, there were certain persons, members of tribes, who were regarded by the Muaupoko as outsiders, and who, the evidence clearly shows, were never summoned to take, and never did take, part in the partition of the block or in the meetings held in regard thereto. [*Vide* Appellate Court minute-book, Vol. 31, pages 106, 126, 288.] These were the members of the Rangitane, Ngatiapa, and Ngatikahungunu Tribes, amounting to some thirty persons. [Lists of Sections 4, 7, 8.] The balance of the owners were considered as being Muaupoko proper—that is to say, Muaupoko residents of what was afterwards Block No. 11; but, with regard to them, a large number had died, and certain were for various reasons absent. Those who were present had come on a summons sent to Horowhenua by Major Kemp himself. No *Panui* or *Gazette* ever reached them, nor, it is fair to assume, any of the other owners. [Appellate Court minute-book, Vol. 31, page 122.] Major Kemp, being the sole certificated owner, would—I think I am correctly stating the Native Land Court procedure—be the only person to whom a *Gazette* or *Panui* would be sent. Besides these Muaupako people who were in the title, it would appear that there were a large number of Muaupoko proper who had been accidentally or purposely omitted from the list in 1873, and a great many of these persons were apparently present. There is one fact which I would just mention here in passing, as it is of importance later on. It seems that certain Muaupoko present were followers of Te Whiti, and as such abstained altogether from taking any part in any proceedings connected with the Courts. There is further evidence before the Court to show that some forty-one original owners were dead, and that with regard to upwards of thirty of these no successors had been appointed prior to the Court of 1886. It was, however, attempted to be shown by evidence that the whole of the persons who were since appointed successors to these then deceased owners were present at the meetings, and concurred in the proceedings. The evidence on this point was, I venture to state, exceedingly unsatisfactory, and I submit that the Court cannot attach much weight to it. Rangimairehau especially was unquestionably stating what was untrue when he stated that he remembered every single solitary one of these successors being present at the Court and at the meetings. [*Vide* Appellate Court minute-book, Vol. 31, page 288.] There is a further point to mark, and that is this: that a great many of the persons since appointed successors to deceased owners were at that time infants. When, therefore, this assemblage of the Muaupoko people took place at Palmerston in or about November, 1886, the owners present represented the mutilated body of 143 owners, after deducting all the Rangitane, Ngatiapa, and Ngatikahungunu, amounting to some thirty-eight persons, some six or seven of the then living Muaupoko who were absent at Parihaka and elsewhere, and some thirty deceased persons to whom no successors had been appointed. Now, the highest that the case can be put, the highest the case is put, for Major Kemp is that this fragment of the whole of the owners consented to the award of the original No. 14 to Major Kemp, and that such consent confirms to him as against all the owners another section—the present No. 14.

To state the matter perfectly fairly, I repeat that it is alleged that there were also present certain persons, infants and others, who were among those who afterwards were, but who at that time had not been, appointed successors to certain of the deceased owners. That the number who were present were not by any means the whole of the Muaupoko is also clear from another fact. It is uncontradicted that all the persons who were present at the Court met—I think I am correct in stating, resided—together in a barn belonging to a Mr. Palmerson, a surveyor. The evidence before this Court shows that that barn was not a very large building, and it is impossible that the hundred and fifty or so persons who it is alleged were there could have been accommodated in such a building. No doubt a large proportion of the principal owners were present; that is the farthest that this Court can go upon that point having regard to the evidence.

Now, how could those persons assent to an arrangement to give away other persons' rights apart from judicial decision? For, as this Court knows, the claim set up is not by judicial decision,

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, providentially, 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

these descendants of Te Whatanui that they should take the land at Ohau. (*c.*) An expression of dissent with that land, and a demand by them of an alternative section near their own homes at Raumatangi. This is also true. [*Vide* Appellate Court minute-book, Vol. 31, page 243 (Raniera), page 195, &c. (Kemp).] (*d.*) That this suggestion was communicated by the descendants of Te Whatanui to the assembled Muaupoko before the Court sat. This is utterly false. [*Vide* Appellate Court minute-book, Vol. 31, pages 362–368 (Nicholson), page 130 (Rangimairehau). Horowhenua Commission, page 89, question 95 (Rangimairehau); page 106, question 345 (Makere te Rou); page 90, question 195 (Kemp).] (*e.*) That, upon being informed by Mr. Lewis that such was the tenor of the agreement between Sir Donald McLean and Major Kemp, this was agreed to by the Muaupoko. This is also utterly false. Mr. Lewis did not know at the time he gave evidence in Palmerston whether any particular locality had been arranged. [*Vide* Appellate Court minute-book, Vol. 7, page (" Muaupoko never agreed "); Vol. 31, page 324 (McDonald); Vol. 31, page 367 (Nicholson). Appellate Court minute-book, page (Kemp); contra, Vol. 31, page 253 (Raniera); Vol. 31, page 143 (Kemp).] (*f.*) That a section was accordingly arranged for them at Raumatangi, cut off, and marked on the plan. This is also untrue. [Kemp, page 194; contra, Court tracing and plan, McDonald and Nicholson's evidence, Native Land Court minute-book, Vol. 13, page (Kemp), Vol. 14, page ; Appellate Court minute-book, page .] (*g.*) That the matter was taken into Court on the first day the Court sat, and explained on that basis by Major Kemp. This completes the false theory, and is also without any foundation. [Native Land Court Minute-book, Vol. 7, page , McDonald and other witnesses quoted.] The extract I quote proves its utter falseness.

This brings us down to the opening of the Court at which Judge Wilson was Judge and Mangakahia Assessor. This Court sat on the 25th November, 1886. In the first place, it would seem that the Court proceeded about the partition of the block in a very irregular way. To begin with, the proceedings were not translated. [Horowhenua Commission, page 99, question 39 (Rangimairehau); page 271, question 134 (Raniera). Appellate Court minute-book, Vol. 32 (Himiona Kowhai).] This certainly points to Mr. McDonald's continuous employment. Having been given their choice of having the partition proceeded with under the Act of 1886, which had then just come into operation, or under the Acts of 1880 and 1882, which had been kept alive for the purpose of pending proceedings, the Natives elected to have the partition carried out under the Acts of 1880 and 1882. Under section 10 of the Act of 1882 it was made a duty on the part of the Court to either obtain a surrender of the original certificate of title or make an order for its cancellation. This Judge Wilson entirely omitted to do. [Appellate Court minute-book, Vol. 31 (Judge Wilson).] The evidence is clear that he did not obtain the surrender or make any order for the cancellation of the certificate of title, or, indeed, even purported to cancel it, until after the Court had ceased to sit. This it is probable invalidated the whole of the proceedings. In the second place, Judge Wilson stated that the proceedings in this Court were intended to be in pursuance of what he understood was a voluntary arrangement under " The Native Land Court Act, 1880," section 56. Such alleged voluntary arrangement was not reduced to writing, nor was there, so far as appears from Judge Wilson's evidence, any proper evidence before the Court of any such voluntary arrangement, or of the assent of the registered owners. [Appellate Court minute-book, Vol. 31, pages 45, 46, 60, 68.] As a matter of fact, it is manifest that if the Judge had made any inquiries he must have learnt that the consent of only a fragmentary number of owners was given to any arrangement at that Court. Nor did the Judge consider it necessary to exercise any judicial discretion in giving effect to such voluntary arrangement. He said that he acted merely administratively, and merely purported to record what he gathered was a voluntary arrangement. [Appellate Court minute-book, Vol. 31, pages 67, 69, 70.] It seems quite clear, also, that this proceeding invalidated everything that the Judge did, and that all his orders issued at the Court of 1886, in regard to the subdivision of the Horowhenua Block, were invalid.

Turning to the minutes of what took place at this first Court, which I shall call Mangakahia's Court, it must be noted that these minutes were kept by an experienced clerk. This clerk was not present at the subsequent sitting of the Court. It seems also from his minutes that the Court made use of not only a plan but a tracing.

It is undisputed that in that Court applications were made for three orders, and, after objection had been challenged, that the Court purported to make such orders. The minute-book is clear on this point. The first order was manifestly for the railway-line. That was in Major Kemp's own name. This is not disputed. The second was for 4,000 acres to be sold on conditions; it was placed in the name of Kemp as trustee; but it would appear that, even if he had strictly adhered to the conditions mentioned, Major Kemp would have obtained substantial benefits. It is also clear that a third block of 1,200 acres was ordered in Kemp's name, to fulfil the agreement for the descendants of Te Whatanui. In this block, also, Kemp was to be trustee.

Mr. Lewis's evidence recorded in the minute-book shows that at that time the parties present did not know whether the agreement mentioned any particular location for the 1,200 acres. A significent allusion to Nicholson, moreover, in the minutes, coupled with Nicholson's own evidence and the evidence of Mr. Alexander McDonald, together with the evidence disclosed by the tracing and the list of names handed in, shows clearly that this land must have been the land at Ohau. As this is an extremely important point I will now cite the evidence proving this beyond a shadow of a doubt. I would also draw attention to the fact that in the original plan this section is marked No. 3 first, and subsequently No. 14; and in the tracing No. 2 first, which it was, and then No. 3, which it was according to the minutes when transferred to the plan, and then No. 14, showing beyond a doubt that this was the third section dealt with by the Court. The schedule upon the tracing shows, further, three things—(1) That No. 9 was never anything but No. 9; (2) that No. 9 was not cut out of the block until a very late stage of the proceedings; (3) that No. 9 was, when No. 11 itself was cut off, not contemplated, the area of No. 9 having first been included in No. 11; and, on the cutting out of No. 9, 1,200 acres, the area of No. 11 being altered from 16,407 acres to 15,207 acres.

I now proceed to quote the evidence on which I rely. [Appellate Court minute-book, Vol. 31, pages 62, also 43, 42, 55, 56, 62, 63, 66, 79, 80, 84 (Judge Wilson); Vol. 31, page 313 (McDonald); Vol. 31, page 369 (Nicholson); Vol. 31, page 108 (Rangimairehau). Horowhenua Commission, page 98, question 1, *et. seq.* (Rangimairehau); pages 161, 162 (Nicholson); page 28, question 113; page 32, questions 205, 181. Native Land Court minutes, Vol. 13, page 177, Vol. 14, page (Kemp). Horowhenua Commission, page 52, question 124, page 59, question 17, page 60, questions 18 and 19 (Wirihana Hunia).] This, then, disposes of the proceedings at Mangakahia's Court, and it is, I submit, conclusively proved to the satisfaction of this Court that No. 3 in Mangakahia's Court was the section at Ohau. I will pass on from that Court. It appears that the Court shortly after adjourned to the 27th November. It would seem that prior to that date the Assessor, Mangakahia, left for home, and several days elapsed before the arrival of a new Assessor. Judge Wilson sat on the 27th, and purported to adjourn the Court until the 1st December. This step was a very questionable assumption of jurisdiction, and, although it has been held by the Supreme Court that a Judge acting alone had power to adjourn a Court under the Act of 1880, the point is not clear from doubt. It is possible that the whole of the proceedings subsequently to 27th November for this reason became invalid. With that point, of course, this Court will, I presume, have nothing to do. During the interval between Mangakahia's Court and the resumption of the Court on the 1st December a large amount of work seems to have been done by the Muaupoko outside the Court.

In the first place, with regard to the piece of land for the descendants of Te Whatanui. Shortly after the adjournment of the Court Mr. Lewis received a telegram containing the information that the land for the descendants of Te Whatanui was to be near the Horowhenua Lake. This he communicated to Major Kemp and, among others, Nicholson. [Appellate Court minute-book, page 324 (McDonald); page 367 (Nicholson).] The news was received by the Muaupoko, to whom Kemp alleges he communicated it, with great expressions of anger and dissent. And there was reason for this. Although at the present time, to Europeans, No. 14 might possibly be a more desirable block than No. 9, it must be kept in mind that No. 9 was, from a Native point of view, and especially from a Muaupoko point of view, in 1886, a far more desirable section. In the first place, No. 14 lay right at the extremity of their block, and joining the Ngatiraukawa land to the south. It was, moreover, bush-covered, and in part hilly, stony land; besides which it did not trench in any way on any fishing-waters or grazing-lands of the Muaupoko. Any section proposed to be given near the Horowhenua Lake was, on the contrary, of necessity, a section of land right alongside and adjacent to the fishing-ground of the Muaupoko, and right in the centre of their residential block. Moreover—a still more serious objection from a Maori point of view—it was difficult to locate it in any position which would not interfere with cultivations or burial-places of the Muaupoko inhabitants. Eventually, however, owing, probably, to the persistence of the Whatanui people, and to Mr. Lewis's influence, it was agreed that a section should be laid off somewhere near the Horowhenua Lake, and adjoining a small block—Raumatangi—which had been awarded in the Court of 1873 to the representatives of Te Whatanui. The exact location, however, was not quite definite. This was as far as the outside negotiations seem to have gone with regard to the land for the descendants of Te Whatanui.

Now, I do not propose, nor do I think it material in this case, to go carefully through what was done with regard to all the other blocks, but I would draw the Court's attention to certain subdivisions that were made. One was the subdivision for the Muaupoko residents—106 persons, of 105 acres each. It is noticeable that Major Kemp's name is not included, although in the list as originally handed in his name did unquestionably appear. The explanation given to account for that fact would appear to be that suggested by more than one of the witnesses, that the block I am about to mention next was given to Major Kemp by the tribe, and that the tribe considered that was a fair amount for him of the land then being cut up, if, indeed, the point ever presented itself to the Natives at the Court of 1886 at all. [Native Land Court minute-book, Vol. 32, page (Himiona Kowhai); page (Paki te Hunga).] In any case, however, the Muaupoko did consent to give Major Kemp 800 acres, the pick of the block, in order that he might pay a private bill of costs of his own, which were incurred in connection with other tribal lands in which other Natives were interested, and with regard to which the Muaupoko people had no concern or interest whatever. Even at that time this 800 acres was worth £3,200, and I submit to the Court that that in itself was a very substantial award to Major Kemp. For it must not be lost sight of that at that time the tribe were really only cutting up the comparatively useless portions of the block so far as they were concerned.

The whole of the land actually dealt with at that Court, with the exception of No. 9, in which case they had no option, was the heavily bush-covered land lying to the westward of the railway-line. This was land which had no particular value from a Maori point of view, and it was only in the anticipation of profitably leasing it to Europeans that the 105-acre sections awarded to the various Natives were of any value whatsoever. (*Hansard*, page 976, paragraph 4.)

Having, then, in their meetings disposed of this bush country to the westward of the railway, and having, with what grace they could, submitted to the giving at Raumatangi of 1,200 acres as an alternative section for the descendants of Te Whatanui, the Muaupoko then left the residue of the block intact. Adopting the words in Sir Walter Buller's own petition prepared for Major Kemp, and presented to Parliament in 1894, a copy of which appears in *Hansard*, page 976: "(5.) The effect of the partition amongst the owners, so far as it had now been carried, was to leave the residential portion of the block, called Horowhenua No. 11, containing 14,975 acres (then 15,207 acres), and including the whole of the Horowhenua Lake, quite intact. (6.) The tribe, having determined to keep this portion of the estate unbroken as a permanent home for the people, declined to have the partition carried any further, and moved the Court to order a certificate of title for the same, as before, in the name of your petitioner, Major Kemp (*Hansard*, page 976). No doubt this is true. The tribe at that time resolved to retain the balance of the

land, being the whole of the land lying to the westward of the railway, with the exception of a piece cut out for the descendants of Te Whatanui and the small portions of the township block, and Block No. 10, the 800 acres for Major Kemp, as a residential block for themselves.

On the 1st day of December, a new Assessor, called Kahui Kararehe, having arrived, the Court reopened. It appears that the clerk who kept the minutes of this subsequent Court was entirely inexperienced, and his minutes are not entitled to the same weight as those of the clerk at Mangakahia's Court. Judge Wilson, in his evidence before the Court, states that he considered the proceedings at the previous Court to have been invalid, and therefore that he knows he commenced *de novo*. That this is not the view Judge Wilson took of the matter in 1886 and later seems perfectly clear. In the first place, it will be seen in reference to the minutes that Mr. McDonald was examined by the Court on the 1st December on his former oath. This is a clear indication, according to Judge Wilson himself, that it was a continuation of the previous Court. A more certain indication, however, is found in this fact: that Judge Wilson issued his orders for three sections of land—the railway-line, the township, and 1,200 acres for the descendants of Te Whatanui (by mistake numbered 9), dated the 25th November, 1886, and as of the Court constituted by himself as Judge and Mangakahia as Assessor.

It is not perhaps absolutely necessary for the present theory set up by Judge Wilson that his present statement in regard to the validity of the first Court's proceeding should be correct; but in any case, for the reasons already given, the facts show that he is in error, and I submit that to this Court with very great confidence. The first business transacted at the Court of the 1st December, which I shall call Kahui's Court, was the reading over by the Judge of what had been done at the previous Court. The Judge, for reasons best known to himself, thought it was advisable to confirm the previous work, and the minute-book clearly shows that he confirmed the orders made in respect of Blocks No. 1 and No. 2. [Native Land Court minute-book, Vol. 7, page ; Appellate Court minute-book, Vol. 31, page 314 (McDonald), page 367, &c. (Nicholson).]

Mr. McDonald states, and I feel certain the Court will find, especially having regard to the evidence of Nicholson on the subject, that Judge Wilson was also about to confirm the order made for the third section, which I submit was the Ohau section, at Mangakahia's Court, but that Mr. McDonald interposed and informed the Judge of the difficulty which had arisen about the locality, and that the Judge then postponed dealing with the matter until later on in the day. [Appellate Court minute-book, Vol. 31, page 322 (McDonald).]

A great deal of evidence has been led and a great deal of stress has been laid upon the minutes as showing that No. 9 came on twice in Kahui's Court on the first day: first, as the No. 3 in Mangakahia's Court, which, for the reason already advanced, it clearly was not, and, secondly, in the afternoon. A fact which lends the only colour of truth that this theory obtains outside the minute-book, which undoubtedly requires and will receive explanation, is the fact—for fact it seems to be—that a dispute took place in Kahui's Court on that day with regard to the boundaries of No. 9. Both McDonald and Nicholson are clear that the Section No. 9 never came on but once, and this is Rangimairehau's recollection also. These witnesses are clear, moreover, that the Court made a short adjournment during which the difficulty of boundary was settled, and that on resuming the Court dealt with No. 9 straight away. [Appellate Court minute-book, Vol. 31, pages 324, 353 (McDonald), page 382 (Nicholson), page 95 (Rangimairehau).] That section was thereupon awarded to Major Kemp to enable him to carry out the agreement made between himself and Sir Donald McLean, although a section was at that time under order of the Court in his name near Ohau for a similar purpose. The second did, however, and the first section did not, comply with the terms of the agreement; and this is the strongest fact which can be urged in support of the theory set up by Sir Walter Buller.

Now, with regard to the minute-book. There are two expressions which require explanation, and which are, I submit, capable of explanation, and I will now deal with them. "This Court does not propose to delineate upon the plan." This, I submit, is on account of the intervention of McDonald, and refers to the Ohau section. No doubt there is evidence to show that it had been ordered to be delineated, and, Mr. McDonald says, had been actually delineated on the 25th November; but it may well be that the actual delineation had not been physically made, or that Judge Wilson or the clerk looked on the matter as suspended until the order was confirmed. The second minute is made in the afternoon, and is to the following effect: "The Court awarded this this morning, in No. 3 subdivision, to Keepa te Rangihiwinui." This is incorrect if it means this particular piece of land—No. 9; but if it means this claim of 1,200 acres for the descendants of Te Whatanui it is not substantially incorrect, although "awarded" would be more properly put "dealt with," seeing that no actual award had, as appears from the minutes, been made in the morning. That "this" means this claim of 1,200 acres seems confirmed by the pencil minute. In any case, the minute is, in view of the facts, unsatisfactory, and I confess I find some difficulty in making satisfactory sense of it.

Now, an important point presents itself at this period—a point of some difficulty, I admit I find it—and it is to show this Court, without a shadow of doubt, that it was not definitely settled in the mind of Major Kemp and the Muaupoko people upon the 1st day of December, 1886, that No. 9 was definitely selected and set aside for the descendants of Te Whatanui. If it can be shown to this Court conclusively that it was not then settled that No. 9 was to be for the descendants of Te Whatanui, then the case of Sir Walter Buller's client must utterly fail, because his whole present theory is that it was after the reverting of Section 14 to the tribe by reason of the refusal of the Ngatiraukawa to accept it, and before 2nd December, when Kemp is alleged to have applied in Court for it, that he, Major Kemp, became the owner of Horowhenua No. 14 under agreement with the Muaupoko people.

In the first place, we have the evidence of Mr. Alexander McDonald, which I quote. [Appellate Court minute-book, Vol. 31, pages 325, 326, 332 (McDonald); contra, Vol. 31, pages 27, 30,

54 (Judge Wilson).] His evidence is opposed to that of Aohau Nicholson, who gives the account which I shall now read of what took place. [Appellate Court minute-book, Vol. 31, page 382 (Judge Wilson (*quod supra*).] Judge Wilson is not clear, but tends to support, as his theory necessarily requires, the evidence of Nicholson. Moreover, the observation which fell from Wirihana Hunia [Appellate Court minute-book, Vol. 32 (Wirihana Hunia)], and the whole of the evidence led by Sir Walter Buller, points in an opposite direction to that of Mr. McDonald. At the same time, there are several considerations which may, I think, and possibly ought to, induce the Court to say that Mr. McDonald's evidence is accurate. One of these is this: For reasons already stated the Muaupoko would be loth to believe that there was no chance of Te Whatanui's descendants accepting the Ohau land. Major Kemp himself would unquestionably at that time have much preferred it, and judging from his autocratic character, and the course he followed in regard to the other sections, he was quite capable of attempting to carry it through on his own lines [Appellate Court minute-book, Vol. 31, page 177 (Kemp)]. Secondly, as Mr. McDonald very clearly puts it, it was impossible at that time that any one could have settled the matter except the persons who had made the agreement and the persons on whose behalf it was made, who were an indeterminate body. Mr. McDonald alleges that he considers the consent of both Kemp and Mr. Lewis was necessary to settle the section for the descendants of Te Whatanui, and that to his own knowledge Mr. Lewis never made a definite choice [Appellate Court minute-book, Vol. 32, page (McDonald)]. Nicholson, on the other hand, states that Mr. Lewis and Kemp and himself all definitely selected that section, and informed the Court, as I read his evidence, that they all agreed that that section had been selected for the descendants of Te Whatanui. It must be noted, however, that Nicholson's *rôle* in connection with this section is indeed, and has always been, that he was the person by whose exertions this land was secured. He is even now contesting the Subdivision No. 9 with certain other persons, descendants of Te Whatanui, and he is therefore naturally inclined to exaggerate the services he rendered in having No. 9 set apart. For this reason I submit that this Court should receive his positive statements with some little reservation, and if the Court thinks on that ground, and on Mr. McDonald's evidence, that No. 9 was not then definitely settled for the descendants of Te Whatanui, then that the Court should disregard Nicholson's positive statement to the contrary.

Major Kemp himself clearly did not regard No. 9 as then settled for the descendants of Te Whatanui, and he did not so regard it in February, 1890; for at the Court sitting then in Palmerston he gave a famous piece of evidence, which I shall have occasion to comment on later on, in which he expressively stated that he even at that date held No. 14 and No. 9 as alternative sections for the descendants of Te Whatanui. Several Muaupoko, notably Himiona Kowhai and Paki te Hunga, have sworn before the Commission and before this Court, and others before the Commission, that they never knew what section the descendants of Te Whatanui had accepted until quite recently. I shall also further show that Section No. 9 was not definitely accepted for the descendants of Te Whatanui until the year 1890, when an Order in Council was drawn up at the instance of Major Kemp, which definitely settled No. 9 for these persons.

I submit, therefore, that on the balance of the evidence it would appear, at any rate, very doubtful whether No. 9 was selected at that Court for the descendants of Te Whatanui to any one's definite knowledge. If it were not, then the whole of Major Kemp's case is gone, because then there never could have been, what as a matter of fact there never was, at that time a gift to him of the other Section No. 14. On the last day but one an application was made for several subdivisions. One of these was a remarkable one. It refers to a small piece of land—1 square foot. Most of the witnesses remember this piece of land being awarded. It no doubt would make an impression on the mind of any hearer. Now Major Kemp asserts that it was at this time he made an application for No. 14 for himself, and that it stood over. This is the first time this evidence has been given [Appellate Court minute-book, Vol. 31, page 31 (Judge Wilson)]. Kemp is merely following Judge Wilson's testimony. There are no minutes of any such application, and it is opposed to the evidence of both Nicholson and McDonald. Judge Wilson, who started this story, says it gave him quite a shock when Kemp applied. And yet he did not consider it necessary to take any note, even the most meagre kind, of the application. I submit that this evidence is a mere afterthought to explain the minute of the 3rd December in harmony with the present theory, and that, so far as Kemp is concerned, is suggested by the evidence of the Judge.

Passing now to what transpired on the last day of Kahui's Court, the minute-book is most instructive, and is to the following effect: "Application from Major Keepa te Rangihiwinui for confirmation of that order for 1,200 acres in his own name (as shown on tracing before Court). Objections challenged. None appeared. The order is made as prayed to Keepa te Rangihiwinui."

Now, Judge Wilson says that he thought that Major Kemp was to profit by the award of 800 acres, No. 10, to him, although he imagined some part of it was to pay tribal costs; and see how careful his minute is on this: "Application from Major Kemp for subdivision of 800 acres to be awarded to himself, as agreed upon by himself and tribe as marked on the tracing." But although he goes on to say, "That is why I said when Kemp applied for 1,200 acres I received a shock," and that he left it over until the last day to see whether any one would object, he does not deem it necessary to make any but the above baldest of bald minutes. Comment on its terms as contrasted with the minutes for the 800 acres would be superfluous.

The telegram of 1890 is very instructive on this point, and further bears out the counter-claimants' rendering of the minutes. It, in plain terms, states that Kemp acted in regard to all blocks in a fiduciary relation, with the exception, but only apparent exception, of No. 10. It is material to set out the whole correspondence so that the strength of the position may appear.

Judge Wilson would not positively commit himself to state whether Major Kemp or Mr. McDonald made the application for that order on the 3rd December. [Appellate Court

minute-book, Vol. 31, page 69 (Judge Wilson).] Mr. McDonald positively swears that he made it. [Appellate Court minute-book, Vol. 31, page (McDonald).] The only order for 1,200 acres previously granted to Kemp which could be referred to in the minutes was the order made on the 25th day of November, 1886. The word "confirmed" is also very significant. It is only once previously used in the minutes, and that was in connection with the orders for the Blocks No. 1 and No. 2 made at Mangakahia's Court, when they came before Kahui's Court on the 1st December, 1886.

Mr. McDonald's account [Appellate Court minute-book, Vol. 31, page (McDonald)] of what took place on the final day is extremely clear, and I do not hesitate to say that this Court must believe what Mr. McDonald states, which is that the minute means exactly what it says—that he applied to the Court to confirm the order for No. 14, made under the No. 3 in Mangakahia's Court, in Kemp's name, in order that he might transfer it to the descendants of Te Whatanui, and that the Court accordingly made an order confirming it as an alternative section to be so transferred, and in no way for Kemp himself beneficially.

This concludes the first branch of my address. I have purposely abstained from dealing with the alleged meeting at which Major Kemp was said to have been allotted No. 14 for himself, as I think it comes more clearly and properly under the second division of my subject.

To complete the subject it is necessary now to trace No. 14 beyond the Court of 1886. At that time it lay entirely to the east of the railway, as did all the other blocks, except parts of No. 2 and No. 10 and No. 9, as has already been pointed out. It is clear that at the time of the partition No. 11 was the main block in the minds of the Natives. This is not to be wondered at, seeing that it comprises their ancestral homes, their cultivations, their burial-grounds, their fisheries, and all the clear land which formed the chief places of occupation of the Natives.

I have already adverted to the difficulties which were experienced in getting the Muaupoko to agree to the gift of 1,200 acres in the position of No. 9, and also to the care which Kemp showed to keep that section away from any of the fishing-places of the tribe. No. 11 was the matter of grave moment to the tribe, and, having been once set apart at the 1886 Court, the Muaupoko thought that that piece of land—the really important piece to them—was secure so far as they were concerned in the hands of their great chief Kemp, and Warena, his Christian young friend. But I would draw the Court's attention to what Kemp does for these trusting residents. He allows No. 14, for which there was not sufficient land to the eastward of the railway, to be carried into this residential block, and to abstract some 589 acres from the area of that block, including a great part of the Papaitonga Lake. Now, if Major Kemp thought at the time this was done that the land was still held by him for the descendants of Te Whatanui, I say that his conduct was disgraceful, and was a plain act of treachery towards his tribe. He says he would have been prepared to allow this robbery even if the land had been going to an alien tribe. [Appellate Court minute-book, Vol. 31, pages 227, 228 (Kemp).] And all the while there was no necessity for him to do so. The plain alternative was either to take the required land to make up the deficient area to the eastward of the railway out of the Block No. 12, and shift back all the other lines, or to abate the area of the whole sections to the westward of the railway, and thus make up the required area. I say that his conduct was disgraceful, even if the land was to be held by him in trust, and the Ngatiraukawa, not he, were to have a chance of getting it. But how much more disgraceful if, as he now alleges, Section No. 14 was then his own particular allotment, for then, as trustee in Section No. 11, he consents to the robbery from the tribe of 589 acres of very valuable land, such land to be given to himself, the trustee. And how does he excuse such conduct? He shelters himself behind the surveyor. In the name of the surveyor he excuses himself for this act of robbery—this flagrant breach of his duty as a trustee and a chief. And his conduct is indorsed by the Judge of the Native Land Court. In neglect of the plain statutory duty cast upon him, the Judge omits entirely to comply with the sections which provide for due publicity in respect to all completed plans, whether of partitions or otherwise. [Appellate Court minute-book, Vol. 31, page (Judge Wilson).] And without any notice to any person whatsoever he issued the order to Major Kemp for Section No. 14, included in which order are 589 acres of the best land in the tribe's residential block. I say that Judge Wilson cannot be heard to say that he countenanced the unauthorised and most improper transfer of 589 acres of the tribal estate to Major Kemp for himself. I say that his concurrence in this alteration shows plainly that at that time Judge Wilson well knew that this piece of land—No. 14—was held by Kemp upon trust: and that had he not known so he would rather have extended Section 6 across the railway-line, and so left Section 14 in the position in which it was when he now alleges the tribe left it to Major Kemp. In any case, however, the result of these proceedings was that an order was issued for No. 14 on both sides of the railway in Kemp's own name. A Land Transfer certificate duly followed. Similarly with regard to No. 9. An order was duly issued, and was followed by Land Transfer certificates. The net result, therefore, was that two sections of land were originally cut off in Major Kemp's name of precisely the same area, and originally at least for the purpose of fulfilling the same agreement. And I submit that this Court will find that both so remained in Kemp's own name—that in respect to both he is still a trustee, but that the trusts are different now in respect to No. 9 and No. 14. In respect to No. 9, his trust is to transfer it to the descendants of Te Whatanui ascertained to be the owners of it. With regard to No. 14, his no less clear duty is to transfer it to the 143 members of the Muaupoko Tribe for whom he holds it in trust by reason of the failure of the trust to fulfil which they originally consented to its award in his name. If Kemp were mindful of his duties as a great chief and as a trustee he would not need that the Court should compel him to do this act of elementary justice to his tribe.

An attempt has been made to fasten on the tribe an active acquiescence in Kemp's alleged retention of this land for himself, and also in his dealing, as proving that Kemp's beneficial ownership was the light in which the tribe viewed the position. It is implied that the tribe lay by while

Kemp dealt with the land and made no complaint, although all the while serious disputes were taking place with regard to other blocks. But the facts are not so. Kemp's first assertion of a right to keep the land was in 1891; his first dealing in 1892. Now, acquiescence can only date from there. But, in the first place, it is alleged that complaints were made in 1891 as to Kemp's not returning this land. [Appellate Court minute-book, Vol. 32, page (Himiona Kowhai); page (Paki te Hunga), also Horowhenua Commission, page .] Then, in 1892, a pamphlet was issued which clearly accused Kemp of trying to misappropriate this land. [Warena Hunia's pamphlet.] Finally, with regard to Kemp's leases, it must be remembered Kemp was undoubtedly the legal owner of this block, just as he had been of the whole block from 1873 to 1886. During that period he had always dealt with the land as sole owner, and leases, timber licenses, and other dealings by him with the tribal estate, were quite familiar to the tribe. And some have come here and said as much. They have compared the leases to Sir Walter Buller with those to Mr. McDonald and Mr. Bartholomew. They had not objected to the latter, and for three years they did not gainsay the former. [Appellate Court minute-book, Vol. 32, page (Himiona Kowhai); page (Paki te Hunga).] Having regard to the circumstances, never was there a case where acquiescence was a weaker reed.

Part II.

I have said that I intended to prove how a theory that No. 14 was awarded to Major Kemp on the partition as his own share originated, and how it gradually attained to the full round story it now presents. I say without hesitation that up to the year 1890 Major Kemp never claimed that section for himself in the sense he is now claiming it; and, in his evidence before the Native Land Court in 1890, he made the following statement: "I am in No. 9. This was cut off for the Ngatiraukawa. Ngatiraukawa objected to this. I still hold this for a special purpose. I ask for No. 10 to be awarded to the tribe in order to pay off Sievewright, the lawyer. The tribe made it over to me, and I sold it. No. 12 is in Ihaia Taueki's name; it was left to Ihaia Taueki, as he was the chief of Muaupoko. I gave it to him to dispose of as he chooses. It was not meant for him to have it alone. We all know it is for the tribe. No. 14 is for the descendants of Te Whatanui. It is not for me alone. As to the No. 9 subdivision, I shall see that the tribe do not suffer. I will give it to them if necessary." [Native Land Court minute-book, Vol. 13, page 177.]

Now, the Court will notice how Kemp regarded Ihaia's rights in No. 12 in exactly the same way he then regarded his own position in No. 14, and, at the time of the Commisson, his position in No. 6 and No. 11. I assume that in this statement Kemp mixed up No. 14 and No. 9. He was not clear then, and that emphasizes the truth of my contention, which block he really held for the Whatanuis; but he only claimed the other block, whichever it was, for himself as chief of the tribe. The land was, on failure of the special purpose for which it was awarded, held by him for the tribe, to be returned to the tribe. But he arrogated to himself the position of chief. He claimed that he could, as chief of the tribe, dispose of the land among the tribe just as he thought fit. But, whatever interpretation is adopted of the words, it is clear Kemp did not in 1890 claim No. 14 for his own under an arrangement with the tribe.

Now, an attempt has been made in this Court to prove that Major Kemp never made such a statement. I cannot but criticize this attempt as a most improper and unworthy one. Major Kemp himself, when faced with this evidence before the Royal Commission, said that he had said so [Horowhenua Commission, page 181, question 323 (Kemp)], but that he did not intend every one to have a say in settling the names for No. 14; which is exactly the same position as he took up with regard to No. 6 and No. 11 [Horowhenua Commission, page (Kemp)]. He furthermore agreed in this Court that he had made the statement. For some reason he was subsequently led in evidence to deny his words, a proceeding that the Court will, I am sure, highly disapprove of. It has been attempted to show that the statement is in itself an obscure one. The contrary is plain, especially if No. 9 and No. 14 are transposed. Kemp is showing for whom the various subdivisions were made. Among them he mentions No. 14, according to my reading, as No. 9, and he clearly and properly states it is held by him as a trust block.

Now, in the year 1890 two very significant events occurred. One was the return from England of Sir Walter Buller, who had obtained from Major Kemp, prior to 1886, a verbal promise that he would, when he perfected his title and subdivision, lease to Sir Walter Buller the Papaitonga Lake. The second significant fact is that in August, 1890, Major Kemp, at whose instigation it is not clear, requested the Government to issue an Order in Council which would have the effect of finally allotting No. 9 to the descendants of Te Whatanui. Whether either of these two events, which occurred in 1890, had anything to do with Major Kemp's change of front I am not prepared to say, but it is a remarkable and significant fact that the next time Major Kemp gave evidence—viz., in the Court of 1891—he states, "And you also got 1,200 acres in your own name?—Yes; this was put in my own name so that I could hand it over to the descendants of Te Whatanui." "They got another 1,200 acres, did they?—Yes, this; I, Kemp, myself," &c. [Native Land Court minute-book, Vol. 14, page].

Before the Appellate Court, which sat at Otaki in 1895 on Block No. 9, Major Kemp again gave evidence, and indirectly countenanced the same statement that he had previously made in 1891. Then came the Royal Commission; and I ask this Court to very carefully scrutinise Major Kemp's evidence as to this piece of land, No. 14. The Court will see that at that time this elaborate story was only in an early stage, and I would draw the Court's attention most carefully to the following passages [Horowhenua Commission, page 28, questions 121–124; page 30, questions 217–222].

Later on Major Kemp uses stronger terms in regard to his own ownership of this Horowhenua land; but I say without hesitation that I challenge Sir Walter Buller to produce from

the report one solitary definite statement as to any such leaving of No. 14 to Major Kemp for his own share on the subdivision, as has been set up in this Court. Neither Kemp nor Rangimairehau, nor Raniera, nor Ru Reweti, breathed one word of a definite character in that direction. Even if the evidence of this alleged meeting were far more definite and conclusive than it is in this Court, I say that this Court, having regard to former utterances on the subject, must receive it with the very gravest suspicion. But, even taking the evidence before this Court in support of this alleged voluntary arrangement that Kemp should retain Section 14 as his own share, what do we find? I say without hesitation that the evidence adduced is of so shadowy, fragmentary, and contradictory a nature that, if not one person had come forward to contradict it, the Court could never have accepted it as sufficient evidence of the alleged award. In the first place, it is clear that the gift alleged is a gift by certain of the Muaupoko only, a fragmentary number of the owners of the Horowhenua Block. These are all who were present [Appellate Court minute-book, Vol. 31, pages 101, 110, 111, 119, 124, &c., 135 (Rangimairehau); pages 147, 155, 183, 184, 196 (Kemp); pages 249, 250, 255, 257, 260 (Raniera te Whata); pages 235, 236, 240, 258 (Ru Reweti)]. But what is the evidence before this Court that even they consented?

I will only contrast a few statements with regard to this alleged voluntary arrangement to leave No. 14 to Major Kemp. On no point as to the circumstances of the arrangement is there a concurrence between these persons, and if they do prove anything at all it is a mere casual remark by Kemp not dissented from by certain persons present. To say that that is sufficient in law or in common-sense to constitute a valid transfer of 1,200 acres of most valuable land by persons situated as these persons were to their dominant chief and trustee is a statement remarkable for its audacity, but utterly unsound. And that is assuming proof of this meeting. It is always a false matter to crack nuts with sledge-hammers, and to labour to disprove this previous arrangement is in the nature of such a proceeding. And I say to this Court with confidence that the evidence of Wirihana Hunia, Paki te Hunga, Himiona Kowhai, and the evidence of the witnesses at the Royal Commission, must conclude the matter [Horowhenua Commission, page 32, question 220 (Kemp); page 52, question 128 (Warena Hunia); page 89, questions 206, 210; page 99, question 36 (Rangimairehau); page 123, questions 209–214 (H. McDonald); pages 127, 142, 144 (Hoani Puihi); page 271 (Makere te Rou); page (Broughton); page 272 (Hopa te Piki)]. Sir Walter Buller's voluntary arrangement to leave this section to Kemp as his share, on being subjected to inquiry proves to be both improbable in itself and utterly unsupported by the facts. It is, moreover, as I submit, utterly bad on the ground that even if it had been made by all the persons who attended the Palmerston Court their consent could not bind other absent owners in the block.

In conclusion, it would seem unquestionable that this arrangement is a thing of recent discovery, elaborated possibly out of some desultory conversation, and is unwarranted by any wholesome evidence. It can be seen also how it has developed itself from time to time; and I feel convinced that this Court will unhesitatingly proclaim that it is utterly untrue, and, even if it were true up to the point claimed by the claimant, that it is bad in law, and must be disregarded in this Court.

Part III.

And now I propose to deal with the evidence of some of the principal witnesses who have been examined in this case.

Judge Wilson.

I feel some reluctance in saying that I do not think this Court ought to place much reliance upon the evidence given by Judge Wilson. Such a statement with regard to the evidence of a Judge of the Native Land Court I should not make without the gravest consideration. But it seems to me that this Court has already been forced to the conclusion that I am now stating. It seems to me that only one of three hypotheses can account for the extraordinary position into which Judge Wilson got himself by his evidence. Either Judge Wilson's memory is utterly unreliable, or he has formed a theory and declines to recognise any fact which in any way conflicts with that theory, or he is giving untrue evidence. Whichever of the first two of these hypotheses the Court chooses to adopt—for I assume that the Court will be very chary indeed in assuming that a gentleman of Judge Wilson's standing and position would give false evidence—matters little to me. But it may be noted that Judge Wilson, having been briefed in connection with this Horowhenua Block on a previous occasion by Sir Walter Buller [Appellate Court minute-book, Vol. 32, page (Sir W. Buller),] and, as I read the minutes, having discussed the matter with him [Appellate Court minute-book, Vol. 31, page 31 (Judge Wilson)], may have got an idea into his head with regard to Block 14 which has taken settled root there, and of which he has not been able to disabuse his mind. In any case, however, his evidence as to the telegrams, as to the tracing, as to what happened in Mangakahia's Court, and as to Mr. Lewis's action in taking No. 9 out of Court, all sufficiently prove that his evidence cannot be relied on. All his evidence, too, on these points was given admittedly in support of a certain theory—the theory that Sir Walter Buller had set up; and I therefore say without hesitation that the Court must disregard his evidence on the matter, whether in favour of that theory or not.

To briefly analyse Judge Wilson's evidence: There are certain points he was positive on when giving his evidence in chief:—

1. He says that, besides the telegrams in 1890, in 1895 he sent to the Under-Secretary for Justice, Mr. Haselden, certain telegrams in connection with the Horowhenua Block. These telegrams, he states, were substantially as set out in the Report of the Horowhenua Commission. In 1891 Judge Wilson had destroyed

The Facts.

1. No such telegrams were ever sent or received by Judge Wilson. The only telegrams were sent in 1890.

his notes. He admits that his conduct in sending such telegrams after his notes were destroyed might be considered as disingenuous, and his conduct in so acting might be calculated to deceive the Under-Secretary. But he incurs all this odium, and asserts most positively he did send the telegrams. This is a question of what happened two years ago.

2. That No. 9 was the section before Mangakahia's Court.

2. The plans and tracing proved beyond a shadow of a doubt that this is absolutely incorrect.

3. That the proceedings at the Court which sat on the 25th November, 1886, were abortive.

3. Those orders were issued as of the date and as of the Court which sat on that date, Mangakahia, the Assessor's name, being inserted in the orders instead of Kahui Karerehe, the Assessor who sat at the December Court.

4. That it was while the claim for the Whatanuis was an undefined claim of 1,200 acres that Mr. Lewis removed it from the Court's jurisdiction, and probably while the Court was not sitting.

4. Before the Commission he stated Mr. Lewis removed Section No. 9 from the Court after the boundaries had been defined in the Court records, and while the Court was sitting.

5. That No. 14 was awarded to Kemp absolutely.

5. This is absolutely contradicted by the telegram of 1890, which states that the only block Kemp did not act in a fiduciary capacity for was No. 10. At that time Judge Wilson had his notes.

6. That No. 14 was not No. 3 as delineated on the plan.

6. Besides the plans, &c., his own later evidence shows his uncertainty on this question, and shows, moreover, conclusively that his first evidence was utterly incorrect.

Further, he states he does not care for the minutes where they disagree with him, although he admits those of the first sitting were kept by a careful and experienced clerk.

And this is the evidence that this Court is said by Sir Walter Buller and Mr. H. D. Bell to be concluded by in law. Had Mr. Bell had the benefit of hearing or studying it, he could hardly have urged such a proposition. Judge Wilson's memory, wherever opposed to records, has failed—signally failed. Moreover, the piteous indecision in his mind, as exemplified by his evidence wherever he has been pressed on almost any point, shows his utter unreliability.

Judge Wilson's memory of what happened even in 1895, two years ago, is utterly at fault. And it is said that this Court is concluded by his statement of what passed in 1886, however full, however conclusive, the evidence by which it is sought to be contradicted.

I submit that the proposition advanced is not law. And I go further: I say, without hesitation, that if it were there would be such a manifest failure of justice that this Court would be bound to hold its hand until the injustice were done away with, and the Court was put in a position to consider more satisfactory evidence of the matters as to which Judge Wilson testified. It surely argues a lamentable want of confidence in the justice of Major Kemp's case when his counsel are driven to take up such a position.

Major Kemp.

I come now to Sir Walter Buller's "witness of truth." I am not concerned with any false evidence Major Kemp may have given in 1873, but I am concerned to say to this Court that in his evidence before this Court he has admitted himself to be an untruthful man; he has shown that his present evidence in regard to No. 14 conflicts entirely with his previous evidence on the subject; and, further, the Court has seen how his evidence has all along just suited the theory he was then advancing. I feel that the best way in which I can illustrate his remarkable changes of front is by setting out in parallel columns, with the reference, his evidence on a few points connected with this block on different occasions. With these extracts before the Court, and with the further knowledge that Major Kemp conspired with others in this Court to support a concocted false story, I am content to leave Major Kemp to the judgment of the Court, as I feel sure the reliance they will be able to place upon his evidence will be little or none.

1. The Muaupoko people had nothing to do with setting apart the land for Whatanui's descendants.

1. The question of setting apart the land was referred to the Muaupoko people, and they agreed.

2. There was never any meeting or committee about setting apart the land for Whatanui's people.

2. The question of setting apart the land was referred to the Muaupoko people, and they agreed.

3. No. 14 was held by Kemp in 1890 in trust for Ngatiraukawa, or some other special purpose.

3. He has been the sole beneficial owner since 1886.

4. He did give the foregoing evidence.

4. He never gave it.

5. His reasons for giving it.

5. He never gave it.

6. No. 14 was put in his name for Ngatiraukawa.

6. It was never even mentioned in Court as being for them.

7. The Judge was told they had refused it.

7. It was never even mentioned in Court as being for them.

8. People never consulted as to removal of Ngatiraukawa land from Papaitonga to Horowhenua Lake.	8. The Muaupoko people, on being asked, agreed to the removal.
9. The land No. 14 was given him before the Subdivisional Court in 1886.	9. The land was not given him until after No. 9 had been cut off in the Court.
10. Mr. McDonald only acted for them during four subdivisions.	10. At the Court Mr. McDonald handed in the list for the various blocks.

11. Kemp admitted giving false evidence, suborning false evidence, and suppressing boundaries in 1873.

12. If Mr. J. M. Fraser is to be believed, he told a series of untruths before the Commission as to Mr. Fraser's relations with himself.

13. He contradicted Sir Walter Buller's evidence on at least one material matter of fact.

Rangimairehau.

Rangimairehau requires special notice. Before the Commission, on being asked a question by Sir Walter Buller, he is reported, after answering it, as having said, "I must not tell lies, as others do." In this Court, too, he has not lent himself to this false story in its entirety, and I think that his evidence is deserving of serious consideration. He is Sir Walter Buller's only principal witness in support of the alleged agreement whose evidence is free from the taint which attaches to those who are implicated in the false story. But what does his evidence amount to? It is a very vague recollection of a very vague meeting. The meeting was certainly unpremeditated, so far as the Muaupoko were concerned, nor was any pains taken to insure a representative attendance. As far as Rangimairehau can remember at first, Major Kemp strolled into the barn, sat down, said to the persons present, "No. 14 should be left to me," and none actively dissented. That was all. Such is Rangimairehau's recollection. And, although his evidence is, I believe, in the main truthful, the Court will not fail to notice three things:—

1. He is mistaken about important matters of fact. He says the first business done at the Court was setting the people apart in the mountains. This is quite incorrect. He was present in Court but did not hear Mr. Lewis give evidence about any blocks. He believes the Ohau 1,200 acres were in 1886 on both sides of the railway.

2. He always says he looked on the land as Kemp's own, and not the tribe's. From this to remembering a meeting to give Kemp the land, especially when the matter has no doubt been considerably discussed recently, is not a great stretch.

3. There is no special meeting or any direct assent of more than a few persons. That is his first impression. However, eventually he shifts his ground. Pressed, no doubt, as to the difficulty about absentees, he swears that every soul of Muaupoko and all the successors were present, and agreed by not dissenting. This manifestly is false; and it is a pity that the most truthful witness put forward in support of the story should have been the only one to tell such a manifest untruth.

At the same time, I presume that the Court will scrutinise carefully his evidence, and the Court will see that it does not prove the theory set up, but, on the contrary, all it amounts to in the way of proof is proof (if of anything) of a mere casual statement by Kemp not dissented from by certain persons present. This the Court will understand, I submit, not proved; but this, I say, is the utmost that Rangimairehau has proved, even if his evidence were accepted as undisputed on the point.

Raniera.

As this is one of the witnesses who has wilfully and emphatically supported the utterly untrue story, part of which is that the only piece cut off for the Whatanuis in the first Court was Section No. 9, and that No. 14 was not then cut out, I ask the Court to think that he must have been guilty of giving concerted false evidence with other persons. If the Court is of opinion that that is so the Court cannot place any reliance upon any evidence he may have given, or that any of the others implicated—notably, Major Kemp—may have given. The point is an important one. I have already referred to it in my opening remarks, and I trust that this Court sees what I mean. It is this: that if any large number of the witnesses, as in the present case, concur in telling a detailed story, and some portion of that story is clearly untrue, then the Court must say that their concurrence in this untruthful part proves collusion and conspiracy, and the Court cannot rely in the slightest degree upon any of their evidence, because that also must be concerted, and probably is utterly false. If men will conspire together to tell one lie, part of a whole story, probably a great part of the evidence concurred in by these parties is also a lie; and their evidence cannot stand against that of witnesses whose evidence does not bear the same imprint of combination.

Ru Reweti.

This witness was called for the purpose, no doubt, of proving one particular fact—viz., the alleged voluntary arrangement to give Major Kemp No. 14 as his share. I ask the Court to carefully look at his evidence. If it stood alone and uncontradicted, how could any Court of law find upon that that Major Kemp had become entitled to No. 14 in his own right as an allotment with the consent of the owners?

The story is, on the face of it, a vague story. The witness does not pretend that there was any fixed meeting, any discussion, any consideration of this suggestion to give Major Kemp No. 14 as his share, and, even if there were truth in this story as alleged, it does not carry the matter one step in the direction in which Sir Walter Buller desires it to go. On the contrary, the fact that a favourable witness, a son-in-law of Major Kemp's, cannot swear to anything more definite than that Ru Reweti put forward, is in itself conclusive evidence that no real serious arrangement to allow Major Kemp to retain No. 14 was ever entered into.

So much for Sir Walter Buller's witnesses.

With regard to the witnesses for the counter-claimants, it seems to me that certain points were clearly brought out. The first is that all the Native witnesses who were owners in the block concurred in denying that they ever agreed to allow Major Kemp No. 14, or ever heard of any meeting for that purpose at the Court of 1886. There also seems to be a general consensus of opinion among them that No. 10 was an ample share for Major Kemp. A further point which comes out in the evidence of Himiona Kowhai is that silence at the Muaupoko meetings was not necessarily assent. Himiona states that if he had been asked to assent to Major Kemp having the land for himself he would not have spoken. That he was a Te Whitiite, and, as such, took no part in Court or legal proceedings, but that his remaining silent would not have been giving his assent; and Mr. McDonald very pithily puts the same point when he states it as his opinion, as a Maori expert, that among Maoris silence implies dissent.

I will only make this one further remark about the Native witnesses who were called on behalf of the counter-claimants, and that is this: Although some of them may have at one time or another given false evidence, their evidence in this Court was clearly not a concerted story, and the Court, I submit, will not therefore regard previous lapses from truth on their part in the same grave way in which the concerted untruth of the witnesses for the claimants is regarded. This remark, as I have already said, applies, in my opinion, to Rangimairehau.

There are three principal witnesses for the counter-claimants whose evidence calls for little further remark.

Mr. A. McDonald.

In the first place, Mr. Alexander McDonald has given the Court a clear, concise, and eminently reasonable account of all that transpired. Mr. McDonald was subjected to a very severe cross-examination, both by Mr. Beddard and Sir Walter Buller, and it seems to me that the cross-examination only cemented the truth of the evidence. Unquestionably, a man who, like Mr. McDonald, has given evidence on many occasions in connection with the various portions of the same block might quite reasonably occasionally give a slightly different account of matters connected with, but not intimately cognate with, the subject under discussion. That is to be expected. But even if there are one or two such small omissions or discrepancies, which I do not think is at all clear in this case, then I say that does not effect the value of Mr. McDonald's main testimony, more especially when, as he points out, he has had chances of refreshing his memory before he gave evidence in this case which he never had before. I myself have founded a good part of my theory of this case upon Mr. McDonald's evidence, and I feel this Court has been impressed with the idea that his evidence was, in the main, and in all material respects, true and accurate.

Aohau Nicholson.

This is the second witness whose evidence calls for slight passing remark. He was a clear witness, and on the main point of this case—viz., whether No. 14 or No. 9 was originally cut off in Mangakahia's Court—he had no interest whatever. I have dealt at an earlier stage with certain parts of his evidence, in regard to which, from reasons submitted, I do not think the Court should entirely agree, especially where they conflict with that of persons who, I submit, are more reliable and more disinterested witnesses on those points; but, on the whole, I must confess that to me Aohau Nicholson's evidence seemed reliable, and I feel sure that this Court formed the same impression.

Sir Walter Buller.

Now, the third witness in regard to whose evidence I have some remarks to make is Sir Walter Buller himself. Before dealing, however, with his evidence I think it advisable to deal with the form of my cross-examination of this witness. It was only on mature consideration that I cross-examined Sir Walter Buller at all, and this for obvious reasons. In the first place, Sir Walter Buller was not at the Court of 1886. His evidence, therefore, was merely hearsay evidence. In the second place, questions are pending in respect to the validity of Sir Walter Buller's title, and one of the main grounds for attacking that title will probably be on the ground that Sir Walter Buller had notice of a trust. Taking these two matters into consideration in conjunction, it will be seen that to prove the trust in respect to No. 14 through Sir Walter Buller was necessarily to prove his knowledge of the trust, because that was the only way in which he could give effective evidence as to the existence of the trust. This was the unfortunate position in which all those who wished to cross-examine Sir Walter Buller were placed. To cross-examine him as to the existence of the trust resolved itself practically into an examination as to his knowledge of the trust gleaned since 1890, and therefore to cross-examine him as to evidence having a distinct bearing on the validity of his title.

It seemed imperative to me, however, in the interest of justice, that I should cross-examine Sir Walter Buller.

In his evidence before the Commission he emphatically declared that he had not a scintilla of notice or knowledge of a trust in regard to No. 14, and he stated that he had always understood and been led to believe by everybody that there never was such a trust, but, on the contrary, that he understood from the Natives, although he never asked any of them directly, that Major Kemp was the beneficial owner. I quote his evidence on this point. [Horowhenua Commission, page 254.] Moreover, his answers to the cross-examination of counsel and agents preceding me in this matter were most disingenuous. His object was unmistakably to commit himself to no definite statements from which the truth or otherwise of his previous evidence could be gauged. In confirmation of this, I quote the following representative extract of the class of answer given. [Appellate Court minutes, Vol. 32, page .] I will not weary the Court with others.

I accordingly asked Sir Walter Buller certain further questions to those previously put to him. The whole of his evidence compels me to say, with great reluctance, that his statement

cannot be accepted by this Court as having the weight that should attach to that of a professional man. In support of this grave charge, I adduce the following facts: (*a.*) That Sir Walter Buller volunteered certain definite statements of important fact to the House of Representatives which are untrue according to his present facts. These I quote. [*Hansard*, Vol., 1895, pages 982 and 983.] His only explanation is that he believed them to be true at the time he made them, but that they were a mere matter of hearsay, and that he never troubled to verify them before stating them to the House as definite facts. (*b.*) Sir Walter Buller made certain statements to the House which were both intended and calculated to give, and did give, an entirely false impression to the House as to certain most important matters. I quote the following [*Hansard*, Vol. 1895, pages 983 and 985]. (*c.*) Sir Walter Buller volunteered certain important statements to the House which he has been unable to justify in this Court, and which are not true. I quote the following [*Hansard*, Vol. 1895, page 981.]

I submit, therefore, that this Court cannot rely on Sir Walter Buller's statement that the evidence of the tribe to him has always been that there was no trust, or that such is what he understood from them as carrying the matter one step further.

Such is my address, and I must thank the Court for a patient hearing. I have striven throughout to be moderate in my language, and to avoid any reference to anything not bearing on this case and the evidence in support of it. What I have said has been in the interests of justice, and if I have had to refer to the evidence of any witnesses in harsh terms it may have been unpleasant, but it was unavoidable.

It has been suggested that the Crown, or some one of the counter-claimants, is desirous of setting aside the whole partition. Nothing is further from their minds. I myself—and, I am instructed to say, the counter-claimants also—are laying no stress on the alleged invalidities as affecting the titles to any other blocks; but, inasmuch as it has been suggested that this Court is bound by the previous proceedings, we are concerned to show that those proceedings are invalid. It may be suggested we are asking the Court to take a step or to come to a decision which will destroy the whole partition. The Court must guard against accepting that suggestion on account of anything that has fallen from me. Without expressing any opinion on the powers of the Supreme Court, I am far from urging that this Court has any authority to invalidate the previous partition. But I am equally clear that this Court is not by any previous proceedings stopped from doing what the facts show to be elementary justice.

I submit the following proposition is clearly established: The rightful owners never gave Major Kemp the section that was No. 14 at the Court of 1886 as his own share, or agreed to its allotment to him. I go further, and confidently submit that the evidence shows clearly that Major Kemp never was allotted that section, nor was it ever agreed it should be so awarded. And incontestably he was never, then or since, given the section now No. 14. That section it is not even contended by his counsel was ever awarded to him by the owners. Their whole claim is that an injustice done in the proceedings subsequently to the Court as a matter of legal technicality awarded the section now No. 14 to him. That being so, I submit that this Court will give its judgment so, brushing aside all legal and technical difficulties.

Upon your Honours lie the duty of deciding, and your Honours will decide what is right and what is just. And your Honours will see to it that you do not allow any one to minimise or destroy the whole object with which this Court was set up—the object of deciding this matter once for all upon the naked facts. I have laid before the Court my view of the facts. It may be a right view; it may be a wrong view. But, be this Court's decision what it may, so long as it is given on the facts, I shall cheerfully bow to it as a complete settlement of this matter. But this I do submit, with confidence: that such a course, and such a course only, will be an adequate exercise of your Honours' functions. Your Honours are here to decide—your Honours, I say it with all respect, must decide—the matter considering the facts, the whole facts, and nothing but the facts, and well weighing the evidence before you. To go further—to say your Honours will so decide, and will so give judgment, in accordance with your high duties, without fear or favour and without respect of man—is unnecessary, and with that I cheerfully leave the issue in your Honours' hands.

Claimant's Case.

Outline of Argument by Sir W. Buller.

I wish the Court clearly to understand at the outset that I shall confine my argument strictly to the question whether, on the 3rd December, 1886, when the order in freehold tenure for Subdivision 14 was directed to issue to Kemp, he took that subdivision as trustee or as absolute owner.

Now, there are only three ways in which a trust could have been created on that date, and I wish to make it quite plain to the Court that it is certain that two of those methods of creating a trust, at any rate, were not resorted to. In the first place, it is perfectly certain that the Court did not create a trust, or intend to create a trust, by its order. Judge Wilson had no such intention. In the second place, it is perfectly certain that there was no express declaration of trust. The only remaining way in which an effective trust could be created is the following—and this is the question at issue: Was there an understanding among the registered owners on the 3rd December that Kemp should hold Subdivision 14 as trustee for some specified purpose? And was that intention communicated to and understood by Kemp?

I will not enlarge upon the second of these two points; it speaks for itself. As to the other, the Court will clearly understand this: It does not help the counter-claimants to allege that there had been an understanding on the 25th November that Kemp should be a trustee. The counter-claimants will fail unless they prove that on the 3rd December there was an understanding between

the registered owners and Kemp that Subdivision 14 was by the order of that day to be put in Kemp's name as trustee for some clearly understood purpose.

There is only one more general remark I would make—namely, that since Kemp has got the legal ownership of Subdivision 14 the law presumes that he is absolute owner, and it is for the counter-claimants to prove every link in the chain connecting Kemp with an alleged trust. If one of those links fails Kemp is, by operation of law, absolute owner.

Now, before setting out the theory of the counter-claimants more precisely, and endeavouring to show that it fails on at least two material points, as I shall presently proceed to do, let me at once call attention to one of the methods in which Kemp answers this theory of a trust. Kemp meets the counter-claimants at the outset with a very bold reply. He is prepared to prove affirmatively that it was fully understood that No. 14 was to be his own. It is quite unnecessary for him to do this, but he is prepared to go as far as this. He has called several of the leading Muaupoko chiefs—and has tendered the whole tribe—to prove that he asked the tribe for No. 14 as his share of the estate, and they agreed to it. And let the Court note the significant fact that the counter-claimants have not called one single independent Muaupoko witness to disprove this. If this story is true—and it is uncontradicted—this case is at an end, for Mr. Bell has pointed out that the fact that some of the registered owners or their representatives were not present in the barn is a matter which does not tend to prove Kemp a trustee, but goes to the validity of the partition; so that, even if the Court could entertain this fact, it is quite beside the present question as to whether Kemp is trustee or absolute owner. I think it will not be presumptuous in me to assume, on the uncontradicted evidence, that the tribe as a whole were aware that Kemp was going to apply in Court for No. 14 as his own individual share of the Horowhenua Block, and consented. This being so, I shall not seriously discuss the pretence of the counter-claimants that each of them personally was not aware that No. 14 was for Kemp himself. They were all present at Palmerston, and the Court will not, I venture to say, doubt that if they were not aware on the 3rd they were soon afterwards. If they objected, why did they not apply for a rehearing? Their unblushing assertion that they never until years afterwards heard so much as a hint that No. 14 was for Kemp himself tends only to discredit their veracity. I submit, then, that on this point Kemp wins the case, without going any further.

Again, there is the positive evidence of Judge Wilson that on the 3rd it was stated in Court that No. 14 was to be allotted to Kemp for himself; and the Court will observe carefully that Judge Wilson was never seriously cross-examined on this point. Leaving aside the legal question whether the Court can admit evidence to contravene the report of the Judge who made the order, I would submit that this is very strong evidence. I call attention to the fact that, besides being supported by other witnesses who heard the same thing stated in Court, Judge Wilson's story met with no contradiction such as the Court is likely to pay any attention to except from Mr. McDonald. On this head, I would point out at once how difficult it is to understand Mr. McDonald's story as to what took place on the 3rd in Court. His story is that No. 14 was on the 3rd confirmed in Kemp's name as an alternative offer to the descendants of Te Whatanui. Now, of course, if on the 3rd December it was stated in Court, and generally understood, that, as Lewis had not accepted No. 9 for the descendants of Te Whatanui (which is the counter-claimants' story), the order of the 25th was to be repeated or confirmed so as to keep No. 14 in Kemp's name, and thus enable the descendants of Te Whatanui to choose at leisure between the two subdivisions; and if Kemp was aware that he was to take only as trustee, then, no doubt, there would be a trust. In Mr. McDonald's letter to the *Manawatu Farmer* (which is now in evidence) he says as plainly as possible that this was clearly understood. The Court must have been startled when, from my cross-examination of him, it appeared that, so far from there being any tribal meeting between the 1st and 3rd December at which it was decided to keep No. 14 indefinitely open as an alternative offer, because the descendants of Te Whatanui were so particularly hard to please (an act so singularly obliging that surely it would not have been agreed to without discussion)—so far from it being stated in Court that No. 14 was destined for this purpose, Mr. McDonald's evidence was as follows (I quote from the Judge's notes, page 359): "I repeat that I made the application for No. 14 on my own responsibility, very likely without consulting Kemp. I considered that I had authority to do it, and I supposed it was necessary to have the former order confirmed." And in cross-examination by Mr. Beddard he said (*l.c.*, page 344), "I did not apply for No. 14 as an alternative allotment"—in other words, did not mention his intention in Court.

And the Court will remember that the counter-claimants have failed to give any evidence of a tribal meeting between the 1st and 3rd December at which it was decided that the order of the 25th November in respect of the subdivision alleged to be No. 14 should be confirmed on the 3rd December, notwithstanding that No. 9 had been awarded in the meantime for a similar purpose, with a view to enable the descendants of Te Whatanui to choose at leisure. Now, let me point out the absurdity of Mr. McDonald's words, "I supposed that it was necessary to have the former order confirmed." Why, after No. 9 had been allotted, should No. 14 be again placed in Kemp's name, unless either the tribe intended to let Kemp have it himself (which Mr. McDonald denies) or the tribe had decided that it should be an alternative offer to the descendants of Te Whatanui, whereas Mr. McDonald admits he had consulted no one? And does Mr. McDonald seriously suggest that he had authority, or thought he had authority, to do this without consulting Kemp or any one? The Muaupoko were not bound, legally or morally, to give the descendants of Te Whatanui a single acre, and Mr. McDonald, in his evidence before the Royal Commission (page 75), says that he pointed this out to the tribe at the outset. However, in consequence of Kemp's promise to McLean the tribe were willing to give Ohau. This was objected to, and, according to McDonald, the objection was "very foolish." (See Royal Commission evidence, page 75.) Yet No. 9 was offered, and actually put in Kemp's name; and, again, according to McDonald, there was the same ungracious and absurd refusal to take it and be thankful.

Under these circumstances it would have been, to say the least of it, extremely obliging on the part of Muaupoko if, after all this, they had decided to have No. 14 retained in Kemp's name indefinitely in order to stop the grumbling on the part of people who admittedly had no claim upon the tribe. But to say that Mr. McDonald ventured to do this without having consulted Kemp or the tribe—or even mentioning it in Court for their information—is altogether too apocryphal. The Court has not to decide the law of the matter; but how a trust could be declared or confirmed on the 3rd December without any of the parties entitled to declare the trust knowing of it is a conundrum which perhaps Mr. McDonald's legal skill can solve. I contend, then, that on these two points of positive evidence—namely, the tribal meeting and the statements in Court on the 3rd December—coupled with Kemp's admitted and notorious assertion and exercise of ownership over Subdivision 14 for ten years, to the knowledge of the tribe, without their caveating or disputing his title, or claiming a share of the rents, sale-moneys, or timber-royalties, the Court ought to hold that Kemp has proved affirmatively the intention of the tribe that No. 14 should be his.

In my address to the Horowhenua Commission I illustrated this contention under ten heads of undisputed evidence. I cannot do better than quote those passages here :—

"(1.) Although it is about ten years since the land was allotted to Major Kemp, and seven years and a half since the certificate of title under the Land Transfer Act was issued, with title ante-vested, not a single Muaupoko of those to whom, as is now contended, the land should revert has ever put forward any claim to it, direct or indirect.

"(2.) Although in regard to all the other blocks in respect of which trusts are alleged to exist caveats have been lodged (sometimes three deep) to prevent any dealing with the land, no one has ever proposed or attempted to lodge a caveat against this title.

"(3.) The Crown—professing to look after the interests of beneficiaries—lodged a caveat against Block No. 6 in January, 1895, but not against this block till the 2nd November, 1895—long after the discussion had taken place in the House and the passing of the Horowhenua Block Act.

"(4.) Although it was a matter of notoriety that Major Kemp had leased the block to me some five years ago, and sold the timber on the eastern side to Mr. Peter Bartholomew, not a single member of the tribe (as shown by the evidence) has ever applied either to Major Kemp, or to Mr Bartholomew, or to myself for a part of the rent or timber-money.

"(5.) Although it was generally known that shortly after the lease Major Kemp sold two detached portions of the block, comprising about 11 acres, to me for £110, no other member of the tribe received a share of the purchase-money, or applied for it to Major Kemp or myself, or ever expected any share of it.

"(6.) Notwithstanding all the turmoil and contention over the Horowhenua Block ever since the Partition Court of 1890, at none of the tribal meetings has this supposed trust in respect of No. 14 ever been mentioned in any way.

"(7.) Even Mr. Donald Fraser (Warena Hunias's attorney) admits that he never heard the block referred to in any way, except once in Wanganui, when Warena asked Kemp to give him the privilege of leasing it, and Kemp replied, 'I cannot do so, because I have promised that land to my sister Rora.' Both the request and the reply are, I submit, clear evidence of Kemp's undoubted right to do what he liked with it, for, as Mr. Fraser added, 'Warena said nothing more, either then or afterwards.'

"(8.) In 1892 Major Kemp, finding that a right-of-way had been laid off round the Papaitonga Lake, within the Block 14, applied, in his own right, to the Government to have the map in the Survey Office altered by the obliteration of the right-of-way, and surrendered the certificate of title for that purpose, supporting his application with a statutory declaration by Judge Wilson that the right-of-way had not been ordered by the Court. The application was made by Major Kemp without consultation with the tribe, and was agreed to by the Government, the official plan being altered accordingly.

"(9.) When in September, 1894, Major Kemp, in order to give security for £500 advanced by me to Mr. Edwards to pay costs in the Supreme Court, agreed to mortgage No. 14 to myself, and took the deed before Mr. Ward, the Trust Commissioner, in open Court, to have it certified to under the Native Lands Frauds Prevention Act, not a single member of the Muaupoko Tribe made any objection to what he was doing, either then or subsequently.

"(10.) All these acts of ownership on the part of Major Kemp have been open and public, and well known to every member of the tribe, and no one has ever presumed to question his right.

"These, then, are ten good and sufficient reasons for my contention that Block 14 never was a trust estate in any sense whatever after the division Court of 1886."

In this connection I again assert, as in my opening, that unless No. 14 was Kemp's share on partition no subdivision was. I have already reminded the Court that every registered owner got, in addition to his rights in Nos. 11 and 12, a piece of 105 acres or what not. Kemp admittedly did not, although classified as one of the persons having first-class rights in Horowhenua, share in any of these allotments. I do not know whether the counter-claimants still seriously contend that the 800 acres (No. 10) is Kemp's share on partition. The Court will no doubt pay due attention to the remarks of His Honour Judge Prendergast, C.J., on this point, although not bound by his judgment. Mr. McDonald, in his evidence, very significantly omitted all reference to this subject; and Mr. Donald Fraser (Warena Hunia's attorney) stated before the Royal Commission (Evidence, page 68), "I do not think the 800 acres ought to have been taken into account, because that was a voluntary gift from the whole tribe who had any interest in it." But, beyond all this, it is obvious that the 800 acres was asked for on special grounds, and not as of right. If the 800 acres had been Kemp's share on partition, needless to say he would have been entitled to demand it without mentioning the purpose for which he required it, and could have done with it as he liked. But, on the contrary, he admittedly asked for the 800 acres as a favour, which was only granted after much discussion. (See McDonald's evidence in Supreme Court, page 29.) Kemp specified the

purpose for which he desired it, and the acreage was determined, not with reference to his rights in Horowhenua, but the amount of Sievwright's bill; and, above all, he could not do what he liked with it, but was bound, legally and morally, to apply it to the purpose for which it was given to him. Hence, when the trust was executed I put the 800 acres in the deed of release. All this is incompatible with the 800 acres being Kemp's share on partition.

I now pass on to consider the theory of the counter-claimants—namely, that there was an understanding on the 3rd December between Kemp and the other registered owners that the order awarding No. 14 to him (whether by way of confirmation of a previous order or not does not matter—that is only a question of machinery) was intended not to constitute him absolute owner, but trustee for the descendants of Te Whatanui. I have already explained that the question is what understanding there was on the 3rd December. Every one knew that at Kahui's Court (whether technically by way of confirmation or not) fresh orders were being made for the whole block, and the counter-claimants must prove that, notwithstanding that No. 9 had already been allotted for the descendants of Te Whatanui, the registered owners intended that the order of the 3rd December should award No. 14 for the same purpose, and that Kemp, on the 3rd December, was aware of such intention.

Now, the question for the Court to determine is one of fact—namely, was it likely that the Muaupoko intended to give No. 14 as well as No. 9 under the circumstances?

It is admitted, of course, that the descendants of Te Whatanui were only to have one subdivision. If, therefore, as Kemp contends, No. 9 was definitely allotted by the Muaupoko on the 1st December as the one and only subdivision for the descendants of Te Whatanui, it follows, as a matter not of law, but of fact and common-sense, that they cannot have intended two days later to give No. 14 for the same purpose. The question of fact to be determined then is, Was No. 9 definitely selected by the Muaupoko on the 1st December as the one and only subdivision to be given to the descendants of Te Whatanui in fulfilment of Kemp's promise? What, then, were the intentions of the Muaupoko on the 1st December? If, on the 1st December, they definitely decided the question, they cannot have intended two days later to offer No. 14 as an alternative.

At this point attention must be called to a simple and obvious fact completely ignored in the arguments of the counter-claimants. It is this: The gift of a subdivision to the descendants of Te Whatanui was a purely gratuitous act on the part of the Muaupoko. Mr. McDonald himself admits, in his evidence before the Royal Commission (page 75), that in his opinion "the Muaupoko were not obliged to provide any land at all," and he declared again before this Court that the Muaupoko were not bound to give a single acre. This being so, it was for the donors to decide what subdivision they were willing to give. They were not under any legal or moral obligation to consult the descendants of Te Whatanui as to choice of locality; it was as much as could be expected if, as happened, the Muaupoko consulted the reasonable wishes of those of the descendants of Te Whatanui who were present at Palmerston, especially as, no doubt, it was assumed that these knew the wishes of the others as to choice of locality. Moreover, it is obvious that they would all want the land near their kaingas. It is unlikely that, even if they had been asked to do so (and there is not the slightest evidence of any such request), the Muaupoko would have kept the matter waiting in order to consult the wishes as to choice of locality of every possible recipient under this purely gratuitous gift. All the evidence goes to show that the Muaupoko did what, needless to say, they were entitled to do—namely, first decide which subdivision they were willing to give, and then consider who was to share in it. To suggest that they were bound first to determine who the *uri* of Te Whatanui were, and then consult every one of them as to choice of locality, is contrary to the law and common-sense of the case, inasmuch as the Muaupoko were conferring a favour. And the evidence shows that they did nothing of the sort. They were not bound to give a single acre, and yet were making a handsome present (*i.e.*, No. 9). It is clear, therefore, they were entitled to say to all and sundry who might be entitled to share in it, "Take it, or leave it," especially as they had already allowed the descendants of Te Whatanui to "look a gift horse in the mouth" in regard to their objections to Ohau when offered by Kemp previously to the 1st December.

The contention on behalf of Kemp, then, is that on the 1st December the Muaupoko decided, as they were entitled to do, what subdivision they were willing to give to the descendants of Te Whatanui, and that they did this after consulting the wishes of those descendants of Te Whatanui who were present in Palmerston, as explained to them by Neville Nicholson and others who were there. Mr. Lewis, according to Nicholson, urged Kemp to give Raumatangi, and expressed himself satisfied with the choice of that subdivision. It is important to remember that Mr. McDonald, again and again in his evidence, has admitted that Mr. Lewis was the person *par excellence* whose consent was decisive, as not only was Mr. Lewis the official representative of the interests of the descendants of Te Whatanui, but he was also the accredited agent of the Government, and Kemp's promises had been nominally made to the Government. And we have Nicholson's evidence to the following effect: "After the order was made [for No. 9 on the 1st December] the matter was settled, and we had no further claim on Ohau." This being so, the Muaupoko decided the matter definitely on the 1st December without waiting—as it would have been absurd for them to wait—to ascertain every one of the *uri* of Te Whatanui and ask his individual consent. Judge Wilson and Nicholson both state that on the 1st December Kemp and Lewis came into Court and said that the matter was settled, and Nicholson twice in his evidence tells us how, on leaving the Court on the 1st December, he heard Wirihana discussing with others of the Muaupoko the fact that, as No. 9 was selected, Ohau would now revert to the Muaupoko.

In order, then, to disprove this theory all that is necessary for me to do, and all that I shall attempt to do, is to prove from the evidence that Kemp, Lewis, and those descendants of Te Whatanui who were present at Palmerston agreed together on the 1st December, to the selection of No. 9 in fulfilment of the promise made by Major Kemp to Sir Donald McLean in 1874. Indeed,

it is unnecessary to refer to the evidence of Nicholson and other witnesses on this point, inasmuch as Mr. McDonald himself, in his evidence in the Supreme Court (*l.c.*, 29), states that "after great discussion it was ultimately agreed to give them the 1,200 acres adjoining or surrounding the 100 acres which was on the western side of the railway, and then arose a discussion as to who of the Ngatiraukawa were to be included."

If the Court finds in accordance with the last contention, then it must find as a fact that there can have been no intention on the part of the registered owners on the 3rd December to give No. 14 to the descendants of Te Whatanui. But, even if there was such an intention on the part of the registered owners, no trust can have been created on the 3rd in favour of the descendants of Te Whatanui in view of Mr. McDonald's most important admission that Kemp was never informed that the order of the 3rd December was going to be made with a view to constituting him a trustee. No amount of intention on the part of the registered owners, if not communicated to Kemp, could have any such effect.

I have already, in the issues of law submitted by Mr. Bell, asked the Court to refer this point to the Supreme Court.

Finally, on the question of what occurred at Kahui's Court, I submit that Judge Wilson's evidence is clear and distinct, and not shaken on cross-examination; indeed, the whole weight of the cross-examination was directed to what occurred on the 25th November.

I shall ask this Court to state Judge Wilson's evidence as to what occurred at Kahui's Court in a case for the Supreme Court, and to ask whether it can be contradicted.

The Court will observe that I have said nothing about what occurred on the 25th November. As regards the evidence, I may well ask the Court not to come to any decision on this question. I scarcely referred to it in my opening, because I attached no importance to it. In my view of the facts and law, what occurred on the 25th November is immaterial. And, further, it is unnecessary for me to labour the question whether the order of the 3rd was intended to confirm the order of the 25th November. On this point I shall only ask the Court to give, in the case for the Supreme Court, extracts from the minutes and from Judge Wilson's evidence.

Nothing showed plainer than Mr. Stafford's speech the day before yesterday that the minutes by themselves do not show what order, if any, was intended to be confirmed on the 3rd December. Mr. Stafford had to go into all sorts of explanations of matters not disclosed by the minutes for the purpose of showing that the order referred to was an order made on the 25th, and that this order related to the Ohau subdivision, which, needless to say, the minutes entirely fail to show. Extrinsic evidence being thus necessary to explain the minutes of the 3rd December, it will be for the Supreme Court to say whether the evidence of Judge Wilson can be contravened. But beyond all this is the following point: Even supposing that the order of the 3rd December confirmed the order of the 25th November, that confirmation was a confirmation of the legal ownership to Kemp. It does not create or confirm a trust: that could only be done either by means of an express declaration of trust on the 3rd December by those entitled to declare it—and it is not alleged that there was any such declaration—or by an understanding among the registered owners generally arrived at between the 1st and the 3rd December, and communicated to Kemp before the latter date, that the legal ownership was to be awarded to him on the 3rd December in trust for the descendants of Te Whatanui.

It is quite plain that all the registered owners understood that at the opening of Kahui's Court the whole block was being reallotted, and the counter-claimants must prove that the reallotment of No. 14 (whether technically by way of confirmation or not) was intended to be by way of trust, and that Kemp knew it. Not only has Mr. McDonald admitted that Kemp did not know this—which alone is sufficient—not only have the counter-claimants failed entirely to give evidence of any meeting at Kahui's Court, at which this was decided, but if the Court believes our story that No. 9 was definitely decided on as the subdivision for the descendants of Te Whatanui on the 1st December they cannot believe that the registered owners had any intention on the 3rd December to give No. 14 to those descendants; and, I repeat, Mr. McDonald has admitted that he never consulted the tribe as to the order of the 3rd December.

Remarks on certain Points raised by the Counter-claimants.

I have now concluded my address on the question whether, as the result of an inquiry under the Native Equitable Owners Act, the Court ought to hold that Kemp is a trustee. I hope I shall be pardoned if, very briefly, and with great respect for the Court, I address an appeal to this tribunal. I am aware that questions of law foreign to the issue whether Kemp is a trustee or not have been imported into this case. Those matters are to be referred, I understand, to the Supreme Court; and I am advised by Mr. H. D. Bell, whom my friend Mr. Beddard has consulted, as well as Sir Robert Stout, that on all these points, tried on their own merits as questions of law, I ought to succeed in the Supreme Court. I shall have a very earnest appeal to make to the Court on these points. But before thus appealing I would state the three main contentions raised by the counter-claimants, and, briefly, the answers I am advised to make to them. The Court will understand that my only reason for troubling it with this statement is to show that I am entirely willing to argue these points in the Supreme Court since this Court wishes it.

(*a.*) The first point is whether, as to the map, the requirements of sections 28 and 32 have been complied with. I am advised that these sections have no application to cases of partition. It is true that objection was not raised in the recent case before Mr. Justice Edwards which Mr. Bell quoted; but the advisers of Kemp certainly intend to raise it now. And, further, Mr. Justice Edwards expressly decided that, assuming that the Court guilty of these irregularities had general jurisdiction—as, I am advised, Judge Wilson had—such irregularities may be waived; and they have been undoubtedly waived in the present case.

(*b*.) The second point is that the 1873 title was not duly cancelled. I am advised that this irregularity is a prevalent one, and not fatal to jurisdiction. It is, indeed, submitted that the act of partition itself sufficiently extinguishes the previous title.

(*c*.) The third point is that the allotment of No. 14 was not made with the consent of all the registered owners, or their duly-appointed successors or guardians. The question of what constitutes an effectual voluntary arrangement such as the Court is entitled to act on, after notice in the *Gazette* and challenge for objectors, will have to be argued. The Court is, no doubt, acquainted with the various decisions on this question. I need hardly remind the Court that Judge Wilson—after hearing the uncontradicted evidence of Mr. McDonald, given on the 25th November (as the minutes show), to the effect that an application was being made for the partition of the whole Horowhenua Block by consent of all the owners—judicially decided that there was a voluntary arrangement duly entered into for partition of the whole block, and acted accordingly; or that, as to most if not all of the subdivisions, evidence was actually given, although this was entirely supererogatory, showing the propriety of the allotment and the trusts intended to be created.

Now, having shown that I fully intend to discuss these points of law, since the Court desires to have them raised, I would address a respectful appeal to the Court. I would remind your Honours, if it is necessary to do so, that none of these technical irregularities are due to any fault of Kemp; and I feel sure that, even if the Court were compelled to deprive Kemp of his land because of these errors, it would do so with regret. That is my sincere belief. I would further respectfully submit to the Court that these are only technical irregularities, and that no substantial injustice has resulted from them. As regards the alteration of the map, the Court has no doubt observed that Kemp and Hunia, the legal owners of No. 11, would, according to well-known principles of equity, have the right to consent to the alteration on behalf of their *cestuis que trustent*, especially as the latter were not ascertained And your Honours will have observed that Kemp and Hunia have signed the map, and expressly authorised this alteration. The Court will also have remarked that the area of No. 11 was not lessened by this alteration, only its location shifted.

As regards the fact that every one of the registered owners and their duly appointed representatives were not present in the barn, it is admittedly true that this objection applies to every subdivision in the block. Moreover, it is not denied that all the registered owners were classified before the partition, according to the extent of their respective interests in the land, into first, second, and third-class owners; and that to every owner, dead or alive, of age or a minor, a share was allotted corresponding to his rights according to Native custom. It is not suggested that absentees were left out.

Now, having dealt with these two technical irregularities, and endeavoured to show that supposing the Court were to ignore them altogether the resulting injustice would be small, I would venture most respectfully but most earnestly to ask the Court to consider what very grave consequences would ensue if your Honours were to choose—for the Court has a choice in the matter—to act on the assumption that technical irregularities must be given their full legal effect, even to the full legal effect contended for by the counter-claimants. I need not point out to the Court—for it is the Court's own observation—that the partition of 1886 was a bargain between the registered owners (Kemp included), Kemp resigning his claim on other parts of the block on condition of receiving No. 14 as his share. The present request of the counter-claimants to the Court is that this Court—a Court whose duty and prerogative it pre-eminently is to do equity—will enable them under plea of technical irregularities, for which Kemp is in no wise responsible, to go back on the bargain of 1886, and, while keeping the land which Kemp relinquished in their favour, to violate the condition on which it was given them—namely, that Kemp should receive No. 14 as his share. I ask the Court to be slow to assume a jurisdiction it is not bound to assume in order to aid such an attempt. I say respectfully, but advisedly, that this Court, if it were to take away Kemp's share for these irregularities, would be bound on elementary principles, not only of natural justice but of strict law, to re-partition the whole block. But a re-partition is impossible; for some of the shares, notably those of the counter-claimants, have been alienated, and those alienations in some cases confirmed by Act of Parliament. The present "Horowhenua Block Act, 1896," alone renders a re-partition impossible. Under these circumstances, I say advisedly, that to take away Kemp's share for these irregularities would, since a re-partition is impossible, be not only in flat contradiction of those principles of equity which this Court is sworn to administer, but so plain an injustice that if your Honours felt that you had no option but to give effect to it I am firmly assured that your Honours would be the first to advise remedial legislation on the subject. The counter-claimants, by every rule of moral right and also of law and equity, are precluded from asking the Court to assume the jurisdiction they would have you assume; and I ask your Honours, so far from objecting to Kemp raising all technical defences that he may have, to assist him in every way to raise them. Or, shall it be said that Kemp's land was taken away—contrary to the plain justice of the case—on the ground of technicalities, and that he was not even allowed to plead whatever technicalities were in his favour?

I have carefully refrained from arguing whether your Honours can assume this jurisdiction which you are asked to assume. That I leave to your Honours' wisdom to determine. Mr. Bell has given his pledge that he will raise no objection to those points suggested by the counter-claimants being argued in the Supreme Court, and I am the last person in the world to ask him to go back on that. He would not if I did. But one thing is certain, that—assuming this Court has not jurisdiction to determine the questions raised by the counter-claimants—the Supreme Court will of its own motion refuse to answer any case stated with regard to them.

As to Judge Wilson.

After reviewing at considerable length, and commenting upon, the evidence called by the several sets of counter-claimants, Sir Walter Buller said,—Before proceeding to review the evidence

called by myself, I would venture respectfully to make one observation regarding the evidence of Judge Wilson, my chief witness in this case. I would deprecate very earnestly any suggestion that he was a witness who did not honestly endeavour to speak impartially to the facts without taking sides. Your Honours will remember that Judge Wilson stated that he had carefully abstained from holding any communication with me with a view to the evidence he was to give either before the Royal Commission or before this Court. Although I, of course, had the right to interview him as my witness, knowing his feeling, I did not attempt to speak to him about the case notwithstanding that we were staying at the same hotel. I did, indeed, send him a copy of the minutes of 1886, but he declined to read it, as he preferred that his evidence should be purely from memory, as it had been in the Supreme Court and before the Royal Commission. I will, first of all, refer to the evidence he gave before the Commission. [Printed evidence, Horowhenua Commission, page 139, questions 219 and 223] :—

"*The Chairman.*] If your recollection is correct as to No. 14, that is Kemp's absolute property, and he can make good the title to whom he leases or mortgages it. A very great deal may depend upon your recollection of this matter. As you are aware, Sir Walter Buller has taken a mortgage over this land, and it may be that the whole validity of this lease and mortgage may depend on your recollection being correct. Therefore, I ask you to charge your memory as thoroughly as you can, so that we may have it beyond all doubt. Before asking you, I will read what Kemp said about this. Here is Kemp's evidence on the matter: [Kemp's evidence read]?—I did not know until last week that Sir Walter Buller had anything to do with it.

"*The Chairman.*] Having heard Kemp's evidence read, you are quite clear in your own mind that No. 14 was intended for Kemp himself in his own right, to be held by him absolutely to do as he liked with—his own individual property?—Yes; but in regard to my memory I have found myself getting a wrong idea of a circumstance that I witnessed myself, and keeping that wrong idea for years until I was put right. My memory, however, is clear about this."

Your Honours will remember that before the Supreme Court and before the Commission he was taken, from memory, through every subdivision of Horowhenua Block, and was able to state with great accuracy what transpired in Court with regard to each, and the purpose for which it was allotted. It would be strange if a truthful witness, whose memory had not been coached, could, after a lapse of ten years, remember every detail, especially on points which he considered unimportant. As to what happened at Mangakahia's Court—a matter to which neither Judge Wilson nor, I may say, I myself ever attached much importance—he was not clear, and did not pretend to be so. So far from that detracting from the weight of his evidence on those points in respect to which he was clear, it adds, I submit, immensely to its value.

I hope your Honours will be very slow to accept the suggestion—a suggestion the seriousness of which your Honours above all men will appreciate—that this Judge's evidence as to what he did in the discharge of his public duty, and as to the proceedings taken before him, is so coloured to favour one side that he ought to be singled out as an exception to the rule of law that a Judge's evidence as to proceedings in Court must be conclusively taken to be fair and accurate. There is one step further, of even greater danger, which the Court has been invited to take. Your Honours have been invited, even if you do not take so grave a view as to the evidence of Judge Wilson, to nevertheless refuse to apply this rule of law. It is not for me to point out to the Court that the lighter the grounds on which your Honours abrogate this rule the more serious, because the more easily invoked, the precedent which will be established.

MEMORANDUM PUT IN BY SIR WALTER BULLER, AS PART OF HIS FINAL ADDRESS TO THE COURT.

(1.) Outline of argument.
(2.) Observations as to Judge Wilson.
(3.) Remarks on certain points raised by the counter-claimants.

References in address to Judges' notes in the Supreme Court and in the Native Appellate Court, and to minute-books of the Native Land Court, and to evidence before the Horowhenua Commission.

As to Mr. A. McDonald: In reviewing evidence, the following references were given: Supreme Court evidence, page 31, "I remember" to "is untrue"; page 30, "There was the usual" to "awarded"; page 31, "I find great difficulty in disentangling what took place, in my mind, and what has taken place since," &c. And again, Horowhenua Commission, page 77. Also, page 79, "Anything that appears in the minute-book of the Native Land Court I accept." And again, page 83 (in relation to Subdivision No. 14). Page 76, question 15 (as to the quarrel with Kemp), "I called him everything I could lay my tongue to." Minute-book, Vol. 7, page 188, "The second was 1,200 acres," and "The third was," &c. Horowhenua Commission, page 163, "I will swear," &c.; page 79, questions 424 and 425; page 80, questions 440, 442, and 443. Minute-book of 1891, Vol. 14, page 316, "Ngatiraukawa would not," &c. Horowhenua Commission, page 79, questions 435, 436, and 437. Appellate Court, Otaki, 1895, minute-book, page 47. Horowhenua Commission, page 79, question 423, also page 79, questions 428 and 429 (as to evidence in Supreme Court in 1894, before any trust in respect of No. 14 had been mooted). Otaki minute-book, Vol. 14, pages 315 and 316, "Great discussion," &c. Horowhenua Commission, page 75, line 32, "Mr. Lewis, as I said," &c. Appellate Court, Otaki, minute-book, page 47, "He (Major Kemp) then appealed," &c.

As to Himiona Kowhai's evidence: Horowhenua Commission, page 166, question 262; page 169, questions 349 to 355; also questions 314 and 315; page 169, questions 361 and 362; also questions 364, 365, and 367; page 167, questions 274, 275, and 276. References to statement at bar of the House (*Hansard*, 1895, pages 975 and 982).

As to Wirihana Hunia's evidence: Horowhenua Commission, page 49, questions 29 to 32; page 52, question 130. Minute-book, Vol. 13, page 272, "Major Kemp was friendly" to "alone."

As to Nicholson's evidence: Judge Butler's note-book at the present Court — Book 32: Page 368, "Lewis arrived" to "near Raumatangi." Page 369, "I think" to "the 25th November." Page 370, "I was present" to "who they were." Page 374, "When No. 9 was dealt with" to "boundaries." Page 375, "I remember an order" to "and ourselves." Page 376, "I think I told" to "placed there." Page 376, "I did not attend" to "should have it." Page 377, "I know nothing" to "my hearing it." Book 33: Page 1, "Kemp and I" to "Hokio Stream." Page 2, "The second time" to "Whatanui." Page 3, "The application" to "Te Whatanui." Page 4, "I had some talk" to "troubles were over." Page 3, "We have always been" to "Whatanui." Page 5, "Before the matter" to "Raumatangi." Page 6, "After the order" to "was made for No. 9." Page 9, "Both Kemp and Lewis," to "was awarded."

As to Judge Wilson's evidence: Judge's note-book, Vol. 32: Page 24, "Then there was" to "where No. 9 is now." Page 26, "I find by" to "in Kemp's name." Page 27, "The initials" to "sheet of foolscap." Page 28, "The description," to "Kemp and Lewis had both said so, on oath, in Court." Page 30, "The entry refers" to "page 192 to page 200." Page 38, "The 1,200 acres here described" to "appeared." Page 63, "The orders made" to "afterwards became No. 9." Page 64, "I am strongly of opinion" to "3rd December, 1886." Page 79, "When the second Court" to "previous Court." Page 30, "Application from Meiha Keepa" to "own name." Page 30, "That is the order" to "rendered it 'confirmed.'" Page 32, "I was specially careful" to "minute-book." Page 33, "My evidence given before" to "minute-book nor plan." Page 31, "When No. 10 was brought forward" to "not have made it." Page 32, "I have since learnt" to "many others if necessary." Page 24, "When I reached home" to "in my mind." Page 38, "I repeat" to "for a rehearing." Page 41, "No. 14 was not awarded" to "they refused it." Page 51, "Section now numbered 14" to "authority in this case." Page 51, "No. 14 was spoken of" to "awarded to them." Page 53, "I apprehend" to "to the Whatanuis." Page 81, "There never was" to "No. 14." Page 79, "I made the final order" to "No. 14 to them." Page 80, "I am satisfied that" to "afterwards No. 9." Horowhenua Commission, page 138, questions 203 and 204; page 132, questions 58 and 59; page 139, question 219 (all reaffirmed before this Court).

As to Major Kemp's evidence: Horowhenua Commission, page 180, question 307. Minute-book 13, page 178. "Important judgments"—Orakei case, page 78.

As to Raniera's evidence: Horowhenua Commission, page 100, question 99.

As to non-existence of any trust in respect of No. 14:—(1.) A. McDonald: Horowhenua Commission, page 80, questions 450 to 456. (2.) Donald Fraser: page 250, questions 238 to 250 (second line). (3.) Wirihana Hunia: page 52, questions 155 to 167. (4.) Hoani Puihi (cross-examined by McDonald): page 130, questions 467 to 478.

Also, Major Kemp: Horowhenua Commission, page 34, questions 251 to 258. Sir Walter Buller: page 250, questions 89 to 96. Major Kemp: page 191, questions 234 to 236. Judge Ward: page 238, questions 26 to 29.

Also, put in by Sir Walter Buller:—Table A, showing the contradictions given by Nicholson (the only descendant of Te Whatanui called by the counter-claimants) to McDonald's present story; and Table B. showing that up to 1896 (which McDonald admitted, in cross-examination by Beddard, was the date when he first heard of a trust as to No. 14) his story was the same as Nicholson has told throughout—namely, that No. 9 was definitely selected in 1886.

IN THE SUPREME COURT OF NEW ZEALAND, WELLINGTON DISTRICT.

IN the matter of "The Horowhenua Block Act, 1896," "The Native Equitable Owners Act, 1886," and "The Native Land Court Act, 1894,"—and in the matter of a parcel of land—to wit, Subdivision 14 of the Horowhenua Block, situate in the District of Manawatu, in the Provincial Survey District of Wellington; and in the matter of an Application by Meiha Keepa te Rangihiwinui for an order under the above-named Acts declaring him to be the beneficial owner of Subdivision 14 of the aforesaid block.

THIS is a case stated by the Native Appellate Court under section 92 of "The Native Land Court Act, 1894," for a decision of the Supreme Court.

1. The original title to the Horowhenua Block was a certificate of title under the 17th section of "The Native Land Act, 1867," dated the 27th June, 1881, issued in favour of Meiha Keepa te Rangihiwinui and 142 other registered owners, in pursuance of an order of the Native Land Court dated the 10th April, 1873. The only name in the body of the certificate was Meiha Keepa's, the other 142 owners being registered in manner provided. The approximate area of the block was 52,460 acres.

2. In the month of November, 1886, the Native Land Court sat at Palmerston for the purpose of partitioning the said block of land upon the application of Meiha Keepa, and the Court in the said proceedings purported to act under the provisions of "The Native Land Court Act, 1880," and "The Native Land Division Act, 1882." A copy of the *Gazette* notice of the sitting of the said Court is included in the Schedule attached hereto.

3. The Court proceeded to subdivide the aforesaid block by giving effect to an alleged voluntary arrangement of the registered owners assembled at Palmerston North by virtue of section 56 of "The Native Land Court Act, 1880," but such arrangement was not reduced into form or put into writing. It was not formally recorded by the Court in manner provided, or recorded at all otherwise than by the Court recording the orders it made giving effect to the said arrangement, the Judge being of opinion that he had no power to depart from the terms of the alleged voluntary arrangement in any respect whatsoever, or to exercise any judicial discretion as to giving effect to it or otherwise, and that he could only act administratively and in accordance with such opinions.

The said Judge did purport merely to act administratively and merely to record the terms of such alleged voluntary arrangement. A large number of the registered owners of the said block were also dead or absent at the time the said voluntary arrangement was made.

4. Under the said arrangement the block was divided into fourteen parcels in favour of the persons and for the purposes enumerated in the Schedule hereto attached, and marked A.

5. The Court opened on the 25th November, 1886, and made three divisions in favour of Meiha Keepa for the following purposes—viz.: No. 1, for the railway-line (76 acres); No. 2, for sale to the Government (4,000 acres); No. 3 (1,200 acres), for the descendants of Te Whatanui, who were not amongst the registered owners, to enable an arrangement for the settlement of tribal quarrels, made in 1874 between Sir Donald McLean and Meiha Keepa, to be fulfilled (*vide* agreement of the 11th February, 1874, No. 6 in Schedule annexed hereto). This parcel of land, then numbered 3, but subsequently designated No. 14, was laid off along the southern boundary of the block, and to the east of the railway, and throughout the evidence given before the Native Appellate Court it is referred to as the block of 1,200 acres laid off at Ohau, and by some of the witnesses as Papaitonga, but the latter name has become associated with it in consequence of the alteration made in the position of part of the said subdivision after it had become designated as 14.

The orders for the above-mentioned parcels of land were pronounced in Court on the 25th November, 1886, in favour of Meiha Keepa te Rangihiwinui, to be held by him for the aforesaid purposes; and a minute thereof was made in the records of the Court, and the fees paid, but the orders were not drawn up or signed and sealed.

6. After ordering the aforesaid parcels of land, the Court adjourned further proceedings in the Horowhenua case until 10 a.m. on Saturday, 27th November.

7. On reopening the Court on 27th November the Horowhenua case was further adjourned until Wednesday, 1st December, 1886, in consequence of there being no Assessor in attendance.

8. On the said 1st day of December, in consequence of the absence of Mangakahia, the Assessor who sat on the 25th November, the Court purported to continue the partition of the said block with a new Assessor (Kahui Kararehe), and called over, for the purpose of confirming them, the three orders made on the 25th of November, the presiding Judge being under the impression, as the application was for a partition of the whole block, that it was necessary to commence *de novo* in consequence of the continuation of the proceedings being carried on with a new Assessor. The proceedings of the 25th November were, therefore, apparently treated on the 1st December as being of no avail. But this view was not subsequently adhered to, as three of the orders of the Court were finally dated from the 25th of November, and as of a Court constituted by Judge Wilson and Mangakahia as Assessor, although the parcel of land No. 9, the subject of one of the orders so dated, was not dealt with or before the Native Land Court on that date.

9. The Court on the 1st of December confirmed two out of three of the orders previously made on the 25th November—viz., the order for the railway-line, and the order for the parcel comprising 4,000 acres to be sold to the Government, but postponed the confirmation of the order for the 1,200 acres on the southern side of the block at Ohau intended for the descendants of Te Whatanui, in consequence of a fresh arrangement entered into out of Court during the interval—that a similar area should be set apart in another locality for the same purpose. Accordingly, in pursuance of the said arrangement, and in conformity with the terms of the agreement between Sir Donald McLean and Major Kemp—that the 1,200 acres to be set apart for the descendants of Te Whatanui should be near the Horowhenua Lake (a circumstance that was not known on the 25th November, when the first parcel of 1,200 acres was set apart for that purpose at Ohau)—a parcel of land, comprising 1,200 acres, was set apart at a place called Raumatangi, adjacent to the Horowhenua Lake and numbered 9, and accepted by the descendants of Te Whatanui, who were present at Palmerston North at the Court of 1886.

10. This parcel was ordered by the Court during the afternoon of the 1st December in the name of Keepa te Rangihiwinui for the purpose referred to in the last preceding paragraph.

11. The reason for setting apart another parcel of 1,200 acres at Raumatangi—namely, No. 9—was because certain of the descendants of Te Whatanui had disapproved of the 1,200 acres first selected for them at Ohau—namely, No. 3—on the 25th November.

12. All the persons recorded in the Native Land Court certificate of title as registered owners received on partition some portion of the Horowhenua Block in their own right, and during the apportionment a parcel of 800 acres was allotted to Meiha Keepa te Rangihiwinui, with the consent of the owners then present, to be sold for the purpose of defraying certain pecuniary difficulties in which he was then involved for legal expenses incurred in connection with lands in the Wanganui district, but in respect of which the registered owners were under no liability whatever.

13. After providing for an allotment to all the persons in the title, there remained the portion of the said block comprising 1,200 acres at Ohau, dealt with on the 25th November as No. 3, but which became No. 14 later on, in consequence of the original number having been appropriated for another subdivision; and this parcel, it is alleged, was ordered on the 3rd December, 1886, in favour of Meiha Keepa te Rangihiwinui for himself only, as his share of the subdivisional scheme of partition under the alleged voluntary arrangement. The entry in the minute-book on which this claim is based is to the following effect, viz.: "Application from Meiha Keepa te Rangihiwinui for confirmation of that order for 1,200 acres in his own name as shown upon tracing before Court. Objectors challenged. None appeared. The order is made as prayed to Keepa te Rangihiwinui." It is contended on behalf of the persons who assert that Mehia Keepa is only a trustee for Subdivision 14, that the foregoing minute supports their contention that the order made on the 3rd December is merely a confirmatory one of the order for the same parcel of land, the order for which was pronounced and entered on record on the 25th November as No. 3, and then vested in Meiha Keepa te Rangihiwinui for the descendants of Te Whatanui, in fulfilment of the arrangement between himself and Sir Donald McLean,

as neither the position, the area, nor the purpose had been altered on the 3rd December, although the number had then been changed from 3 to 14. It is further urged that this section was set apart as an alternative one. Judge Wilson, in contravention of this contention, avers that the parcel of land before the Court on the 25th November was Subdivision 9, and not Subdivision 3, and that the last-named subdivision was always known to him as Subdivision 14, and was set apart for Meiha Keepa only. His explanation of the entry in the minute-book on the 3rd December—viz., "Application from Meiha Keepa te Rangihiwinui for confirmation of that order,"—is that the clerk probably obtained the term "confirmation" through the interpreter in translating the word "*whakatuturu*," which was possibly used by Meiha Keepa in applying for an order for Section 14 in his own name, which it is alleged he had already applied for the previous day. The Judge stated that he had hesitated to make the order, as he considered it advisable, owing to Meiha Keepa having already had in the subdivision a section comprising 800 acres allotted him for the payment of his tribal debts at Wanganui, and adjourned the application in order that the persons concerned in the apportionment of the Horowhenua Block should have an opportunity of considering whether Meiha Keepa's request in respect of Section 14, comprising 1,200 acres, being allotted to himself should be complied with. The Court is of opinion that Judge Wilson is under a misapprehension as to the order in which the subdivisions were made, as it is sufficiently manifest from the minutes of the Court of the 25th November, coupled with other circumstances, that Subdivision 3, afterwards numbered 14, was the parcel of land before the Court on the 25th November, and not No. 9, which only came before the Court for the first time on the afternoon of the 1st December. As regards that part of Judge Wilson's explanation concerning the application made by Meiha Keepa on the 2nd December, to have No. 14 allotted to him for himself, there is no entry in the minute-book in support of the circumstance; but this is not conclusive proof that no such application was made. The Court, however, makes no definite finding on the point as to whether No. 14 was at the Court of 1886 awarded to Meiha Keepa beneficially, as it is not necessary for this case to determine it.

14. "The Native Land Division Act, 1882," under which the partition of the Horowhenua Block was made, requires that the following procedure be observed in respect of the cancellation of the original title: (*a.*) That the surrender of a grant be made by any writing sufficiently showing the intention of the surrender. (*b.*) That the Minister of Lands, or other proper officer, on receipt of the grant and surrender, shall cancel the record. (*c.*) That notice shall be given requiring all persons to produce their grants or other instruments of title at the sitting of the Court appointed to hear any application for partition. (*d.*) If the grant or other instrument of title is not produced, the Court may, by its order, adjudge and determine such grant or other instrument to be null and void, and the effect of such an adjudication shall be the same as if the grant had been absolutely repealed by *scire facias*. Notice was given on the 10th July, 1886, and published in *Kahiti* No. 34, of the 15th July, 1886, of the time and place for the production of the grant or other instrument of title, but none of the other requirements of sections 5, 6, and 7 of "The Native Land Division Act, 1882," were complied with. The word "cancelled" was subsequently written across the face of the certificate, and signed by the presiding Judge, but the date cannot be definitely determined, as it has evidently been altered. Judge Wilson stated in evidence before the Appellate Court that he thought it was dated on the 14th December, 1886, at Waitara.

15. At the time the said subdivision was made, the position of the several parcels was approximately indicated upon a plan of the whole block, and on the 3rd December, 1886, a minute was written on the said plan W.D. 508, and signed by the presiding Judge, directing the Survey Department to cause a survey to be made of the several subdivisions in accordance with the diagram forwarded, in terms following: "Referred to the Chief Surveyor to cause subdivision surveys to be made in manner shown upon this plan.—J. A. Wilson, Judge.—3/12/96." A survey of the several subdivisions was finally made and a proper plan thereof prepared, but the provisions of sections 26 and 32 of "The Native Land Court Act, 1880," were not complied with. At the time when the minutes for the orders for Nos. 11 and 14 were made on the 1st and 3rd December, 1886, respectively, the purport of the order made for No. 11 was for the whole of the land not otherwise appropriated between the railway and the sea, as shown upon the plan forwarded to the Survey Department, comprising an approximate area of 15,207 acres. The position of No. 14 was originally fixed to the eastward of the railway-line, but on the survey being made it was found that the area to the eastward of the railway-line was insufficient by 589 acres to provide for the whole of the quantity required; an alteration was therefore made which resulted in 589 acres 1 rood 38 perches being taken out of No. 11 to make up the quantity required for No. 14. The area of No. 11, found on survey, now comprises 14,975 acres.

The questions for the opinion of the Court are:—

(1.) Does not section 56 of "The Native Land Court Act, 1880," require the assent to a voluntary arrangement under that section of every one of the owners, registered or otherwise, to render it effective, and was it not imperative that the requirements of that section should have been fully complied with prior to giving effect to any such arrangement?

(2.) If the consent of the whole of the owners was necessary to give effect to a voluntary arrangement, and no such consent was obtained prior to the allocation of any portion of the block before the Court in favour of any person amongst the registered or other owners, can it be deemed that an order made by the Court merely administratively, and merely as giving effect or recording in part such alleged voluntary arrangement, in favour of Meiha Keepa te Rangihiwinui for the subdivision known as No. 14 of the Horowhenua Block, containing 1,200 acres, made in his name on the 3rd December, 1886, effectively vests such parcel of land in him as the sole beneficial owner, considering the position he held formerly as trustee for the whole estate under the title of 1873, notwithstanding that the evidence of the presiding Judge is to the effect that the Court, as part of its administrative function in giving effect to the alleged voluntary arrangement, ordered that this section should be allotted to Meiha Keepa te Rangihiwinui as his share of the block?

(3.) Is not each order made in pursuance of a voluntary arrangement under section 56 of "The Native Land Court Act, 1880," in the nature of a conveyance by the whole of the parties interested in the land subject to such voluntary arrangement?

(4.) Did not the fact that the Judge who sat at the Subdivisional Court in 1886 failed to exercise any judicial discretion in giving effect to the alleged voluntary arrangement and acted merely administratively, and merely purported to record the alleged voluntary arrangement, render the order issued for No. 14 invalid?

(4A.) In accordance with the scheme of subdivision agreed to under the alleged voluntary arrangement, the Court, on the 25th November, 1886, pronounced three orders, one of which was for a parcel of land numbered 3, subsequently designated 14, situated at Ohau, adjacent to the southern boundary of the Horowhenua Block, in the name of Keepa te Rangihiwinui, for 1,200 acres, on behalf of the descendants of Te Whatanui, and a minute thereof was entered in the records of the Court. Was not the Court *functus officio* in respect of the orders pronounced by it on the 25th November; or was it competent for it to treat such orders as nugatory on the 1st December, 1886, and, as regards No. 3, to set apart another parcel of land of the same size for the same purpose in another part of the block. If not, were not both parcels appropriated to the same purpose, and did not Kemp, in whose favour they were ordered, become clothed with a fiduciary capacity in respect of both for the purpose referred to.

(5.) Was it not a condition precedent to the exercise of jurisdiction by the Native Land Court in 1886 that the original certificate of title issued under the 17th section of "The Native Land Act, 1867," to Meiha Keepa te Rangihiwinui should be surrendered, or an order made for its cancellation, and can it be deemed that such certificate of title was sufficiently and absolutely cancelled by merely having written on the face of it the word "cancelled" subsequent to the proceeding of the Court having terminated?

(6.) If the muniment of title was not absolutely cancelled, did not Kemp's fiduciary capacity remain in force in respect of all the sections held in his own name, or did the Land Transfer certificate issued to him for those sections destroy the effect of such fiduciary capacity? If the Land Transfer certificate did not affect the position, does not the efficacy of the original title now revive on the nullification of the Land Transfer certificate by "The Horowhenua Block Act, 1896," and rehabilitate Kemp's fiduciary position in respect of the subdivision held in his own name?

(7.) Was it not essential that the provisions of sections 27 to 32 of "The Native Land Court Act, 1880," should have been complied with in respect of the whole subdivision, more especially having regard to the substantial alteration which was made in the position of Section 14 after the making and marking off in accordance with the scheme agreed on under the alleged voluntary arrangement of the whole of the divisions on the Court plan, such divisions having become an integral part of the orders on the plan being signed by the Judge on the 3rd December, 1886, and forwarded to the Survey Department to cause the survey to be carried out in the manner indicated?

(8.) Was not the plan on which the positions of the subdivisions were indicated by the Court on the 3rd December, 1886, an integral part of the orders? If so, was it competent for the presiding Judge or any other person, subsequent to the proceedings of the Court having terminated on the 3rd December, 1886, to alter or consent to the alteration of the position of any sections delineated on the aforesaid plan, except in accordance with the provisions of sections 27 to 32 of "The Native Land Court Act, 1880."

(9.) The Court, at its sitting in December, 1886, having allotted the whole of the block of land situated on the westward of the railway-line, comprising an approximate area of 15,207 acres, and numbered 11 on the plan, and vested the said block in Keepa te Rangihiwinui and Warena Hunia as from the 1st December, 1886—was it competent for those persons, who have since been declared by the Supreme Court and the Court of Appeal to be trustees for themselves and other members of the Muaupoko Tribe for the aforesaid block, to divert or appropriate any portion of the said land to the use or benefit of Keepa te Rangihiwinui, or any other person, without the consent of the *cestuis que trustent* beneficially entitled in the said block to such diversion or appropriation?

(10.) Should not the alteration in the shape and position of Section 14, located in the first place to the eastward of the railway-line on the plan signed by the Judge on the 3rd December, 1886, have been submitted for the inspection of any person or persons whom it may have concerned, in conformity with the provisions of section 28 of the Act of 1880, before the presiding Judge of the Court of 1886 consented to accept the alteration and seal the orders?

(11.) Is not the portion of Section 14 to the westward of the railway-line, and comprising 589 acres 1 rood 38 perches, which formed part of Section 11 as ordered by the Court on 1st December, 1886, as originally delineated on the plan of the subdivision exhibited on plan W.D. 508, subject to the same trust as the subdivision now known as No. 11, inasmuch as the aforesaid area originally formed part of the said No. 11, which the Supreme Court has decided to be subject to a resulting trust in favour of the 143 persons included in the original title in 1873?

(12.) If the matters mentioned in paragraphs Nos. 3, 14, and 15 in the Statement of Case are admitted to be essential elements in the procedure prior to the final signing and sealing of the orders of the Subdivisional Court of 1886, does not the omission to perform those duties nullify the said orders *ab initio*, and leave the certificate of title issued under the 17th section of "The Native Land Act, 1867," in full force—at any rate as regards the subdivisions of the Horowhenua Block referred to the Native Appellate Court under "The Horowhenua Block Act, 1896," the Land Transfer titles of which have been rendered null and void by the aforesaid Act?

(13.) Is the whole or any part of the Subdivision 14 of the Horowhenua Block subject to a trust in consequence of the several circumstances detailed above, or any of them?

(14.) Can the Native Appellate Court disregard the evidence of Judge Wilson as to his recollection of what took place before the Court of 1886, and find contrary to that evidence, should

it manifestly appear that his remembrance of what took place does not actually accord with what was done?

(14A.) Where the evidence is conflicting, and depends entirely on oral testimony, is it open to the Appellate Court to receive and consider evidence in contravention of Judge Wilson's distinct recollection with regard to any proceedings before him at the Court of 1886?

(15.) Has the Native Appellate Court, exercising jurisdiction under "The Horowhenua Block Act, 1896," jurisdiction to inquire into the validity or otherwise of the proceedings taken by the Native Land Court in 1886 in respect of the making and issue of the orders in freehold tenure, except so far as may be necessary to ascertain whether the Native in whose favour an order was made was or was not a trustee?

(16.) Is it not a matter for decision by the Appellate Court under "The Horowhenua Block Act, 1896," whether it was validly agreed to at or before the Subdivisional Court of 1886 by the persons whose consent was necessary, that Major Kemp should be the sole owner of the piece of land now Horowhenua No. 14?

(17.) Is not the Appellate Court, in coming to such decision, entitled to disregard any of the proceedings in the Court of 1886, and any matters or things in pursuance thereof?

(18.) Can the Court exercising jurisdiction under section 4 of "The Horowhenua Block Act, 1896," limit the interest of, or wholly omit from an order made, any person, unless it finds such person to have been a trustee, and, while a trustee, to have acted to the prejudice of the interests of the other owners? Are the concluding six words of section 4 to be construed as limited to reasons *ejusdem generis* with those specifically stated?

The Supreme Court shall have power, so far as may be necessary for the purposes of this case, to refer to the under-mentioned papers and documents, which are either records or state undisputed facts (see *B*):—

Schedule A.—Subdivisions of the Horowhenua Block in 1886.

No.	Area.	Owners.	Remarks.
	A. R. P.		
1	76 0 0	Meiha Keepa te Rangihiwinui ..	For railway-line.
2	3,988 2 32	Meiha Keepa te Rangihiwinui ..	To be sold to the Government.
3	11,130 0 0	Ihaia Taueki and 105 others.	
4	512 1 20	Hiroti te Iki and 29 others.	
5	4 0 0	Tamati Taopuku and Topi Kotuku.	
6	4,620 0 0	Meiha Keepa te Rangihiwinui ..	To be transferred to certain persons omitted from the original title.
7	311 3 15	Waata Tamatea, Te Peeti te Awe-awe, and Hoani Meihana.	
8	264 3 15	Mere Karena te Mana-o-tawhaki, Ruahoata, and Karena Taiawhio.	
9	1,200 0 0	Meiha Keepa te Rangihiwinui ..	To be transferred to the descendants of Te Whatanui.
10	800 0 0	Meiha Keepa te Rangihiwinui ..	To be sold to defray debts of £2,800 incurred by Meiha Keepa.
11	14,975 0 0	Meiha Keepa te Rangihiwinui and Warena te Hakeke.	Since declared by the Supreme Court in 1894 to be held in trust for the beneficial owners.
12	13,137 0 0	Ihaia Taueki.	
13	1 square foot	Wiremu Matakara.	
14	1,200 0 0	Meiha Keepa te Rangihiwinui ..	Claimed by Meiha Keepa to have been allotted as his share of the subdivision, but now alleged by some to be held by him in trust for other registered owners.

(B.)—Schedule of Papers and Documents referred to.

1. The original certificate of title of the Horowhenua Block, dated the 27th June, 1881.
2. Copies of the orders for Subdivisions 12, 6, 9, 11, and 14, as drawn up and signed.
3. The map W.D. 508, and the map annexed thereto, marked S.O. $\frac{2660}{37}$, and signed by Keepa te Rangihiwinui and Warena Hunia on the 10th August, 1887.
4. The tracing produced as an exhibit in the Supreme Court on the 11th October, 1874, in the action Meiha Keepa te Rangihiwinui *v.* Warena Hunia, and marked Exhibit B, showing the scheme of subdivision as contemplated prior to No. 9 being located at Raumatangi; but there is nothing to connect it with the proceedings in the Court of 1886.
5. The correspondence relating to—(*a.*) The alteration of the boundaries of Subdivisions Nos. 6, 11, and 14; (*b.*) the memoranda by Mr. Buckle, the first Clerk of the Court, and Judge Wilson relative to the alteration of the numbers in the minute-book of the Court to correspond with the numbering of the minutes of the Court held on the 25th November, 1886, known as "Mangakahia's Court."
6. The agreement of the 11th February, 1874.
7. The minutes of the Court of 1886.
8. Extract from the *New Zealand Gazette*, page 867, No. 39, of the 22nd July, 1886:—

Sitting of the Native Land Court for the Subdivision of Hereditaments.

Native Land Court Office, Wellington, 10th July, 1886.

NOTICE is hereby given that at a sitting of this Court to be held at Foxton, in the District of Otaki, on the 17th day of August next, will be heard the application of the person whose name appears in the first column for the subdivision of the hereditaments comprised in the certificate of title of the piece of land the name of which appears in the second column, situate in the district named in the third column.

And in pursuance of the provisions of section 7 of "The Native Land Division Act, 1882," all persons having in their possession any original grant or other instrument of title relating to the land aforesaid are hereby ordered to produce the same at the said sitting of the Court.

W. BRIDSON, Registrar.

SCHEDULE.

No.	Name of the Person applying for the Subdivision of Land.	Name of the Block to be subdivided.	District in which the Land is situate.
1	Te Keepa te Rangihiwinui.	Horowhenua.	Manawatu.

[Published also in the Maori language in the *Kahiti o Niu Tireni*, page 174, No. 34, of 15th July, 1886.]

CORRESPONDENCE.

Native Appellate Court, Levin, 23rd April, 1897.

DEAR SIR,— Re *Horowhenua No. 14.*

Enclosed I send you a copy of the statement of case, &c., prepared for the Supreme Court.

Kindly peruse it, and consult Mr. Stafford thereon as to whether it is necessary to superadd any additional matter for the purpose of elucidating the questions of fact and law proposed to be submitted.

A copy of the case has been handed to Sir Walter Buller to be sent to Mr. H. D. Bell for perusal, and, as it is probable that some additional matter may be suggested by Mr. Bell, it seems advisable that a unanimity of action should be arrived at with a view to prevent separate and dissimilar proposals being submitted to the Court in respect of fresh matter to be added to the statement of case as now prepared.

It will also be understood that no questions within jurisdiction of the Appellate Court either of law or of fact are to form part of any fresh suggestions that may be submitted for consideration. Yours, &c.,

P. Baldwin, Esq., Solicitor, Wellington. A. MACKAY.

DEAR SIR,— *Horowhenua No 14.* Wellington, 5th May, 1897.

The proposed statement of a case for submission to the Supreme Court has been very carefully considered by us conjointly, and we are very much obliged to you for having sent the case to us for perusal. Prior to returning it, we are writing to submit to you reasons for urging that the submission of points to the Supreme Court may be unnecessary, and we feel certain that the Court will fully consider what we are writing before finally deciding to send the case to the Supreme Court.

The reasons which make it, as we respectfully submit, undesirable and quite unnecessary that this case should be referred at the present time are as follows:—

In the first place, as you are aware, the questions stated by the various parties interested must involve a considerable amount of argument. Some of them may require the decision of a further tribunal, and in any case the arguments must, in the course of things, last over a considerable period of time. The expense of this to the various parties interested will be very considerable. Besides this, the time which will elapse before we can secure the attendance of his Honour the Chief Justice may be very great. We do not wish to use exaggerated language in the matter, but especially on the score of expense this application to the Supreme Court must be fraught with a grievous disadvantage, at any rate to our client, and we presume to Sir Walter Buller also.

Of course, if it is inevitable that the case should go, the expense will have to be faced, and the persons who are unfortunately compelled to pay it will have no option in the matter; but we do respectfully submit to the Court that no such necessity exists at present. We have all along urged that the sole question for this Court's decision is a simple one. Major Kemp has applied for an order declaring that he is the beneficial owner of Section No. 14, and we submit that it is conclusively proved to this Court that Major Kemp has established no such right. If the Court is of the same opinion, it seems to us, with all respect, that the Court by saying so could obviate entirely any necessity for approaching the Supreme Court. And having in view the very grave expense to which the various parties will be put in the matter, we submit that the Court will be adopting the most convenient course if it, once and for all, gives its finding on that fact.

Of course, if the Court finds that No. 14 was beneficially given to Major Kemp, it may be that certain matters of law may have to be considered by the Supreme Court; but the finding of the Court upon the point we mentioned would obviate, if the finding is in one direction, almost the whole of the questions which have been asked.

Under these circumstances, we would ask the Court to very seriously consider whether the course we point out may not be the better one to follow. On our clients' behalf, we are very loth indeed to throw away any chance of obviating this very considerable expense. The matter, we are perfectly aware, is one of extreme importance, and we do not wish in any way to run counter to anything the Court considers ought to be done; but, before returning the case altered in the form in which we think it should go to the Supreme Court, we feel it is our duty to lay these considerations before you. We trust you will consider it desirable to make, and we urge upon you to make, a finding upon the issue whether No. 14 was, as a matter of fact, allotted or awarded to Major Kemp beneficially. By so doing the grave expense and other disadvantages attendant upon this submission of questions of law to the Supreme Court will be saved.

We trust we have made the position perfectly clear. We, of course, bow to whatever the Court considers ought to be done. If, after consideration of what we are here urging, the Court still thinks, in view of all the circumstances, that the matter should go to the Supreme Court without any definite finding on the point we mentioned, we shall at once forward to your Honour the case as we have altered it. Yours, &c.,

E. STAFFORD.

His Honour Judge Mackay, Levin. P. E. BALDWIN.

Wellington, 7th May, 1897.

DEAR SIR,— *Horowhenua No. 14.*

Herewith I return, altered in red ink, the statement of case for the Supreme Court.

You will notice that there are several alterations, but in almost every instance they are alterations more of form than of substance.

With regard to 2A, I understood you to say that you would not object to it. The other alterations speak for themselves, with the exception of the alteration made by striking out the five lines at the end of question 2. We have struck this out subject to your Honour's approval for the reason that it is involved in the question No. 14. Of course, if the Appellate Court is bound by Judge Wilson's evidence, then it will conclude the matter. If not, we submit that it might possibly lead to misapprehension in the Supreme Court, that this Court had conclusively found that such was the finding of this Court with regard to what was done by Judge Wilson in respect to the allotment of No. 14.

I am also forwarding, as requested, a copy of my address, but I beg to point out to the Court that some of the references are not yet complete. The papers in connection with the references are still at Levin, and I shall be unable to officially complete them before I go up there.

In conclusion, I may say that if your Honours think it would be useful or advisable for either Mr. Stafford or myself to go to Levin in connection with any of the suggested alterations by ourselves or by Mr. Bell that we shall be very happy to fall in with your Honours' wishes.

No time will be lost, I may point out, by our not having earlier sent this case forward, inasmuch as his Honour the Chief Justice will not, of course, be available for the lengthy argument which must take place on this case until after the Court of Appeal.

Yours, &c.,

His Honour Judge Mackay, Levin. P. E. BALDWIN.

Native Appellate Court, Levin, 8th May, 1897.

DEAR SIR,— *Horowhenua No. 14.*

Your joint letter with Mr. Stafford's of the 5th instant, and likewise your own of the 7th instant, came duly to hand with the statement of case as altered.

Touching the alterations, there is no objection to those merely of form, but the Court cannot accept the alterations which import controversial matter into the case, of which there is no specific evidence in support thereof.

Touching the new paragraph marked 2A, I considered the circumstance set out therein on the suggestion made by yourself on the 21st ultimo, but came to the conclusion that as the evidence relative to the matter was very meagre, it was inadvisable to insert any reference to it in the statement, I have therefore not accepted the suggested alteration.

I think the five lines struck out at the end of the second question had better be allowed to stand, as the other side will probably object to have those altered, as it is the only place in which the particular matter is stated in that form.

In putting the question in that form, the Court does not pronounce any finding in the matter, it merely states that Judge Wilson's evidence is to that effect, which is indisputable. I can hardly suppose that the Supreme Court can misunderstand the matter. The question as put appears perfectly plain—viz., If the consent of the whole of the owners was necessary, and such consent was not obtained, can it be deemed that an order in Kemp's favour for No. 14 effectively vests such parcel of land in him as the sole beneficial owner, considering the position he held formerly as trustee for the whole of his estate under the title of 1873, notwithstanding Judge Wilson's evidence is to the effect that the Court intended that this section should be allotted to Kemp as his share of the block?

The matter resolves itself into this: If the Supreme Court decides that the consent of all the persons is necessary to effectively vest the land in Kemp for himself—the intention of the Court was of no avail.

Many thanks for a copy of yonr address, which is a very comprehensive one.

Touching your suggestion that either yourself or Mr. Stafford would come to Levin in connection with the suggested alterations by yourselves on Mr. Bell, it is proposed to forward the copies of the case containing the suggested alterations by both sides to the Registrar of the Native Land Court, Wellington, to enable counsel to meet and discuss the question there, and, if both sides can agree, the case as amended could be type-written; but, if a difference of opinion should arise about any of the alterations, the discussion would have to be left to the Court.

With reference to your joint letter of the 5th instant, the Court was extremely surprised to note the opinion expressed therein relative to the case prepared by it for submission to the Supreme Court, as it was under the impression that you were not opposed to the course the Court has indicated from the outset it intended to pursue with regard to the several questions of law that were involved in the case, and it is at a loss to understand now why your opinion has veered in the opposite direction at the eleventh hour.

It is only now that the Court has been made aware that it was your joint opinion from the outset that the question for its decision is confined simply to the determination of the single question whether Kemp had been declared the beneficial owner of Subdivision 14 by the Court of 1886.

The main question the Court understood was before it, and which appeared also to be advocated by you, was whether a trust did or did not exist in respect of Section No. 14; but that is a question which involves a much wider range of procedure than you appear to consider is attached to it.

As regards the conclusive proof you assert is apparent that Kemp has failed to prove that he is entitled to be declared the beneficial owner of Lot 14 by this Court, it is pointed out, with all deference to your opinion, that the proof is not so manifest on that point as to place the matter beyond doubt, and it will require a very careful analysis of the evidence adduced before the Appellate Court, coupled with the evidence taken before other tribunals, before a pronounced decision can be given in either direction.

As regards the question of expense, the Court has no desire to cause the smallest expense to any one beyond what is absolutely necessary in dealing with the several matters before it; neither is it specially bent on referring the case to the Supreme Court if there is any other mode of obviating the necessity; but it has appeared from the outset, and still appears so, that there are several questions of law which are so enwrapt with the whole procedure—that it is impossible to disassociate them so as to reduce the case to the simple position you appear to imagine it to be in, so far as this Court is concerned.

I have had an opportunity of perusing the statement of case to be submitted by the Public Trustee, and, as many of the points of law set out therein are similar to the questions included in the case prepared by the Appellate Court, it would seem fruitless to go on with both cases, and this Court is willing to leave it to the decision of counsel for the parties concerned as to which course would be the best and least expensive to follow, and if counsel on both sides agree that no good will result in submitting the Appellate Court case that will determine the matter.

It would seem, however, so far as it is possible to view the whole question from another standpoint, that the case stated by the Appellate Court would be the least expensive one to adopt. Many of the points that are raised in the Public Trustee's statement can be dealt with at very much less expense, as there would be no need to call and examine a number of witnesses, or render futile to a great extent the whole of the work done by the Appellate Court, as the procedure need not have been so protracted had it been known then that there was a possibility of its labours being rendered abortive.

Mr. Bell has suggested that the following papers should be omitted from the schedule, as they do not appear to be needed in the case, and the Supreme Court might object to having such a number of documents referred to it:—

(*a.*) The evidence before the Supreme Court in 1894.

(*b.*) The evidence given before the Royal Commission in 1896.

(*c.*) Judge Wilson's evidence before the Native Appellate Court in 1897.

If Mr. Stafford and yourself are of the same opinion as Mr. Bell, the papers referred to may be eliminated from the schedule.

Yours, &c.,

P. E. Baldwin, Esq., Solicitor, Wellington. A. MACKAY.

Wellington, 17th May, 1897.

DEAR SIR,— *Horowhenua No. 14.*

I am in receipt of your letter of the 8th instant, and in reply have to say—

As you find yourselves unable so strike out the last five lines of the second question, then we suggest that after the words, "to the effect that the Court," should be added the words "as part of the Court's administrative function in giving effect to the alleged voluntary arrangement ordered," and that the word "intended" should be struck out.

If I may say so, I think you have a little misunderstood the purport of our previous letter. We did not presume to dictate to the Court as to whether Major Kemp had or had not proved that he was beneficially entitled to Sub-

division No. 14 at the Court of 1886; what we were referring to was the subdivision now No. 14, and it is a decision on that point that we are anxious to have.

It would appear that the Appellate Court must give its decision, as far as we can judge, entirely apart from the Supreme Court. The Supreme Court has expressed an opinion that it will not feel itself in any way bound by the decision of the Appellate Court, that the Appellate Court is proceeding under a different jurisdiction altogether from the Supreme Court, and, as we understood the Chief Justice, that while it may be that a trust may be proved in one Court it may quite well be that a trust is not proved in the other Court. It does not appear to us, from what the Supreme Court stated, that in any case the labours of the Appellate Court would be rendered abortive.

From what fell from the Chief Justice we gathered that it is only in the action in the Supreme Court against Sir Walter Buller that the decision of the Appellate Court would not be binding; and it could not, indeed, be given in evidence in the Supreme Court. Of course, it might quite well be that Major Kemp might be trustee for the Natives, and yet that fact be, under the particular section of the Horowhenua Block Act, incapable of being proved in the Supreme Court as against Sir Walter Buller.

If your Honours decline or feel yourselves unable to give a decision on the question of fact stated above until the questions of law are dealt with, far be it from us to in any way run counter to the Court's decision.

In such a case the sooner we have the decision of the Supreme Court on the points of law the better. In any case the answer to the questions of law might, from the considerations above stated, be different in the case sent by the Appellate Court and in the Supreme Court action.

We should leave entirely to the Appellate Court what papers it desires to send forward to the Supreme Court.

Yours, &c.,

His Honour Judge Mackay, Levin. P. E. BALDWIN.

DEAR SIR,— Levin, 29th May, 1897.

I was astonished to note in a letter shown to me yesterday by Mr. A. McDonald, from Mr. Stafford, that it was stated "that the case stated by the Appellate Court for the opinion of the Supreme Court upon certain questions of law stated by the Appellate Court will shortly come on for hearing," and asking Wirihana Hunia to authorise him to appear on his behalf.

I was under the impression, from the tenor of your joint letter, that you considered it inadvisable that the Appellate Court case should be proceeded with, both on the score of expense, and also that to a certain extent the questions proposed to be submitted were extra-judicial.

In my letter of the 8th instant I notified you that I would send copies of the statement of case to Wellington to the Registrar of the Native Land Court, to enable the counsel on both sides to meet and settle any point that either side had suggested, in place of either you or Mr. Stafford coming to Levin, as this appeared the most effective mode of bringing all the parties together and getting the questions determined; and if both sides could agree, the case could have been type-written in readiness for reference to the Supreme Court.

The case was accordingly sent down to the Registrar on the 8th instant as indicated, and was returned to me on the 15th, with an intimation that counsel had not been to consult on the matter; consequently, I concluded that there was no intention to proceed with the case, and thereupon relinquished the idea of taking further action therein, more especially as the most of the points embodied in the Appellate Court case are also included in the statement of case to be submitted by the Public Trustee, it therefore appeared unnecessary to duplicate the proceedings by going over the same ground twice.

The Court does not decline to give a decision on the matter before it, but it has held the opinion from the outset that the questions of law should first be dealt with by the only Court which can give an authoritative decision on the matter.

The Court in all probability will adjourn on the 5th proximo, as Judge Butler has to join the Chief Judge at the sitting of the Appellate Court appointed for Wellington on the 8th proximo.

From what fell from the Chief Justice in Banco on the argument of counsel relative to the affidavits filed by Sir W. Buller and the Public Trustee, it would seem that the Supreme Court is not likely to pay any attention to what the Appellate Court may do; consequently it is immaterial, so far as the proceedings by the Public Trustee against Sir W. Buller are concerned, whether the Appellate Court gives a decision or not; this being the position, those proceedings need not wait on anything the Appellate Court may do in the premises.

Yours truly,

P. E. Baldwin, Esq., Solicitor, Wellington. A. MACKAY.

Wellington, 1st June, 1897.

DEAR SIR,— *Horowhenua No. 14.*

I am in receipt of yours of the 29th May, and may say I am very much surprised at its contents.

I am sorry you should have been under the impression, from any letters written by us, that we considered it inadvisable for the Appellate Court case to be proceeded with. If you will look at our letters, you will find that what we have said unmistakably right away through is this: If the Appellate Court can decide the questions of fact without submitting the questions of law, then we submitted that the Appellate Court should, in order to obviate the expense, give its decision on the facts prior to submitting any case.

In my letter to you of the 17th May, I wound up by stating: "If Your Honours decline or feel yourselves unable to give a decision on the question of fact stated above, until the questions of law are dealt with, far be it from us to in any way run counter to the Court's decision. In such a case the sooner we have the decision of the Supreme Court on the points of law the better. In any case, the answers to the questions of law might, from the considerations above stated, be different in the case sent by the Appellate Court and in the Supreme Court action." That is what we are anxious for. The absence of a decision by the Appellate Court is a most cruel hindrance to the Natives in obtaining their rights in the Supreme Court action, and is also hampering the plaintiffs, inasmuch as they are quite in the dark as to what the decision of the Court will be upon the facts.

With regard to the alteration of the case, we were never notified by the Registrar of the Native Land Court that the case was down here. It is improbable that the parties could agree, and we would therefore prefer that the Court would settle this case itself.

If I may say so, I was present and took part in the argument before the Chief Justice, and it is incorrect to say that he suggested that the Court would not be bound by the Appellate Court's decision. That is a question of law which will have to be argued hereafter on the merits. I am strongly of opinion that the Supreme Court is bound by the Appellate Court's decision. In any case, however, we are, I must repeat it, extremely anxious to obtain the decision of the Appellate Court, and seeing that the Appellate Court feels itself unable to come to a satisfactory conclusion without the opinion of the Supreme Court on the law points, we, on our part, must strongly urge that the case should be submitted to the Supreme Court without any delay whatever.

Yours, &c.,

His Honour Judge Mackay, Levin. P. E. BALDWIN.

[P.S.—This letter, you will understand, is from Mr. Stafford and myself as representing Wirihana Hunia, as was my last letter. I do not suppose there will be any doubt on the matter, but I merely do this to obviate any chance of a misunderstanding.—P.E.B.]

A TRUE HISTORY OF THE HOROWHENUA BLOCK, BY ALEXANDER McDONALD, NATIVE AGENT AND LICENSED INTERPRETER: BEING A REPLY TO SIR WALTER BULLER'S PAMPHLET.

[*Magna est veritas, et prevalebit. Fiat justitia, ruat cœlum.*]

TO THE EDITOR OF THE FARMER.

Shannon, 27th February, 1896.

SIR,—You will have seen a pamphlet published by Sir Walter Buller entitled "A History of the Horowhenua Block." In his pamphlet Sir Walter Buller poses as a philanthropist, not as a mere lawyer. Here are his words: "Whatever I have done in connection with the Horowhenua business has been done with the object of assisting the tribe in their efforts to obtain justice." [Page 8 of the pamphlet.] And he nowhere says that he was paid, or is to be paid, for his services, except that he had a "retainer," apparently only to give him standing-ground in the business. If Sir Walter had been content to win his case, which he says he has done, as a lawyer, by putting in the Court in which the case was heard such glosses, constructions, and evasions upon "facts" as he might find it proper or possible to do, I should only have to say of him that he was a very clever lawyer for a bad case; but when in sober earnest he purports to tell the "History of the Horowhenua Block" to the Parliament and people of the colony he must speak the plain truth only, or he will find that other persons know quite another version of that history.

The first question that arises in connection with this pamphlet is this, namely: What injustice had been done, or was going to be done, to the "tribe" to justify Sir Walter Buller's intervention? and, secondly, What has been the practical result of his intervention? These answers cannot be truthfully answered in a single sentence. Sir Walter Buller has given his answer in a pamphlet of a good many pages, and I say his answer is extremely incorrect and misleading, and I propose to show why I say so, as follows:—

The whole fabric of Sir Walter Buller's history is based upon the theory: (1), That a certain order made by the Native Land Court in 1886 worked a great wrong on the Muaupoko Tribe, by depriving them of homes which they and their fathers had possessed from time immemorial; (2) that though the said order was made in 1886, the Muaupoko Tribe did not become aware of the effect of the order until 1890; (3) that, in particular, Major Kemp was unaware until 1890 of the effect of the order; (4) that the Native Land Court which made the order was unaware of the effect of the order (*vide* page 4 of the pamphlet). To all of which I reply: (1) That it is preposterous to suppose, or to say, as does Sir Walter Buller, that the Native Land Court which made the order was unaware of the effect of its own order; (2) that no wrong whatever was done to the Muaupoko people by the order, nor by the certificate of title issued upon the order, because, when in 1890 the allegation of "trust" was first made, and all the subsequent turmoil began, neither Major Kemp nor Warena Hunia, the persons named in the order, had evinced the slightest intention or desire to disturb the possession of the Muaupoko residents; (3) that not a particle of evidence has been adduced, and there is no reason at all to believe, that either Major Kemp or Warena Hunia had at that time, or at any former or subsequent time, any intention or desire to disturb the possession of the Muaupoko residents; (4) that the allegation of a "trust" was not in the first instance made by the Muaupoko residents, but by Major Kemp, apparently only to defeat the demand of Warena Hunia for an account of rents accruing subsequently to 1886, and that such demand was just and proper, whether Warena Hunia was or is regarded as an "absolute owner" or as a "trustee"; (5) that for certain good and sufficient reasons it was in 1886 the deliberate and well-considered intention of the Muaupoko Tribe to vest the estate "Block 11" in Major Kemp and Warena Hunia, and that the Muaupoko Tribe and Wirihana Hunia (the latter acting for his brother Warena, who was absent) were all perfectly well aware at the time the order was made that the effect of the order for which they asked me to move the Court, and for which I on their behalf (not they themselves, as stated by Sir Walter Buller, *vide* page 3 of the pamphlet) did move the Court, would be to vest the estate in Major Kemp and Warena Hunia, and would give these two persons absolute power to deal with the estate as they should think proper; (6) Nevertheless, I affirm that in relation to that estate, "Block 11," Major Kemp and Warena Hunia remained bound to the Muaupoko people, not by reason of anything intended or not intended, done or not done, in or about the Native Land Court of 1886, but simply by the fact that the said Major Kemp and Warena Hunia were by birth and by choice of the Muaupoko Tribe—and without derogation of the proper ancestral and hereditary position of Ihaia Taueki, who by reason of infirmity was incapable—the "chiefs" each of his own section or sections of the Muaupoko Tribe; (7) that if at any time it had become desirable, either by the Muaupoko Tribe themselves, or by others on behalf of the tribe, to reconsider with a view to modify, alter, or altogether abrogate the voluntary and complete confidence reposed by the Muaupoko Tribe in their chiefs as aforesaid, such reconsideration might have been readily obtained without putting the said "chiefs," or the Muaupoko Tribe, to anything like the expense which has been actually incurred, and which is now likely to be greatly increased, and without engendering the bitter feelings of animosity which have been aroused in the matter; (8) that therefore the intervention of Sir Walter Buller in the character of a person entirely disinterested, and desirous only of "justice," which he claims, was extremely injudicious; while as a mere lawyer his intervention was, in my humble opinion, able, clever, and effective in making much ado at enormous cost—about nothing.

I think that a brief review of the incidents connected with the Horowhenua Block will, apart from my positive allegation, show: (1) That it is extremely improbable that the Muaupoko Tribe, or anybody else, was unaware that the effect of the order of the Native Land Court of 1886 would be to vest the estate in Major Kemp and Warena Hunia in fee-simple; (2) that it was not necessary, nor, in fact, any practical advantage to the Muaupoko Tribe to declare Major Kemp and Warena Hunia to be "trustees" instead of "absolute owners"; (3) that it is in one important particular a positive disadvantage to the actual residents of the Muaupoko Tribe to hold Major Kemp and Warena Hunia to be trustees, because it brings back on to the land the whole registered list of 1873 whom the residents will now have to fight in the Native Land Courts, and it remains to be seen how and at what cost they will come out of the fight; and (4) there was no necessity for the intervention of Sir Walter Buller in the manner in which he did intervene.

Looking Backward.

In his pamphlet Sir Walter Buller begins the "History of Horowhenua" where it suits him. I must begin further back in time than does Sir Walter Buller. I must ask the reader to think back to the year 1840. At that time this coast southward from the Rangitikei River was occupied in considerable force, but not exclusively, by a portion of the great Ngatiraukawa Tribe. The hapus or sections of Ngatiraukawa occupying this coast had come from Waikato, and had taken forcible possession of this district: and one of the principal chiefs of the tribe, by name Te Whatanui, had a personal residence at the Horowhenua Lake. With him and his Ngatiraukawa hapus there lived a remnant of the Muaupoko Tribe. Muaupoko was one of the tribes occupying this part of the coast—say, from near Manawatu River to Pukerua—before the incursion of Ngatiraukawa and allies. Now, it is not at all necessary to trouble the reader with my opinion, or with any opinion, as to what may have been the relative rights to the land of Ngatiraukawa or of Muaupoko. We may, so far as the present Horownenua dispute is concerned, pass at once to the year 1873.

The Native Land Court Award.

In that year the Native Land Court sat at Foxton to determine the title to all the land from the Manawatu River to the Kukutauaki Stream, near Waikanae—I should think nearly or quite a million acres. The parties were the Ngatiraukawa and the original Natives. After full investigation of all the circumstances under which the Ngatiraukawa had taken and held possession, the Court, while awarding the bulk of the land to the Ngatiraukawa, made specific awards to all persons or parties of the original tribes who had clung to the land, notwithstanding the overwhelming intrusion of the foreign tribes. This was in strict accordance with the constant practice of the Court in similar cases. Accordingly the Court awarded 52,000 acres at Horowhenua to the Muaupoko Tribe, and at the same time made a special award of 100 acres within the same area to the family of the Ngatiraukawa chief, Te Whatanui (who was then dead), in respect of the actual residence of that chief at that place. The

party of Muaupoko resident at Horowhenua, to whom this award of 52,000 acres was made, had for obvious reasons taken no active or prominent part in the public transactions of the time, as from, say, 1840 to 1873, and were consequently at the latter date very ignorant of the modes and effect of proceedings in the Native Land Court.

Major Kemp and Kawana Hunia.

But there were two chiefs closely connected by blood with Muaupoko, who were really the head and front of the opposition to the Ngatiraukawa claims in the Native Land Court of 1873. These two chiefs were Te Keepa Rangihiwinui, better known as Major Kemp, of Wanganui, and the late Kawana Hunia te Hakeke, of Ngatiapa. The father of the former and the mother of the latter were of Muaupoko, and, though the chiefs themselves had been all their lives identified as chiefs respectively of Wanganui and of Ngatiapa, their right to appear and act for Muaupoko was indubitable.

In reciting these few particulars by way of introduction to the Horowhenua dispute, I have endeavoured to avoid extraneous questions of "mana," "conquest," &c., as having nothing to do with the present dispute. I think, however, that it would be well to bear in mind the distinctive character of the two chiefs above-mentioned—namely, Major Kemp and Kawana Hunia. Major Kemp had, by loyal service in the field, achieved the rank of major in the colonial forces, and received special marks of merit and distinction as a soldier and leader of men. He had also served the State in other capacities. It must, therefore, I think, be supposed that he had in 1873 a pretty good idea of what he was about. Kawana Hunia was a *bonâ fide* Maori chief, and he was nothing more, having never even learned to read or write, which was quite unusual with Maoris of his age. He had, nevertheless, taken a very active personal part in at least two important land sales to the Government.

It is also important to bear in mind that, although the Native Land Court for investigation of the title to this part of the coast sat at Foxton, in the year 1873, it did not adjudicate under the Native Land Act of that year, but under the previous Native Land Acts of 1865 and 1867.

Mistakes.

The ignorance of the Muaupoko people in 1873 showed itself in various ways: (1.) In giving into the Court the list of names for the land awarded to their tribe, the residents allowed many names of non-resident relatives and other persons to be included, who would not have been admitted by the Court if the least objection had been made to them. (2.) Instead of nominating ten persons, of as many different families, for the certificate ordered to be issued to them, which they might have done, they allowed a certificate to be ordered to one person only—Major Kemp. (3.) As it afterwards transpired, they carelessly omitted to include forty-four names which ought to have been included.

The certificate ordered by the Native Land Court of 1873 to be issued to Muaupoko for 52,000 acres at Horowhenua was a certificate under the 17th section of "The Native Land Act, 1867."

Now, there are some things about a certificate under the 17th section of the Native Land Act of 1867 which should be borne in mind: (1.) Not more than ten persons can appear on the face of any certificate; all other persons ascertained by the Court to be interested in any block of land are to be "registered" in the Court. (2.) It has been on several occasions determined by the Supreme Court that every "certificated" owner under this Act is a trustee for himself and the persons "registered" in the same Court in respect of the same land. (3.) The Act itself limits the power of the "certificated" owner, so that he may only lease the whole or any part of the land for not more than twenty-one years; he cannot sell the land, nor any part of it. (4.) The persons "registered" were, so far as the Native Land Court was concerned, under complete disability. They could make no application in respect of the same land to the Native Land Court, nor could they make any demand on the "certificated" owner in respect of rents, nor in respect of anything else in connection with the same land.

The position, therefore, of Major Kemp as sole "certificated" owner of these 52,000 acres at Horowhenua, was surely a very satisfactory one to himself; but I desire it to be particularly observed that it was a position which need not have been at all detrimental to the Muaupoko people, but, on the contrary, might have been highly beneficial to them. Whether the result proved to be detrimental or the reverse would depend entirely on Major Kemp himself.

A Disturbance.

The first circumstance that occurred in reference to Horowhenua after the finding of the Native Land Court of 1873 has little to do with the phase of the Horowhenua dispute with which Sir Walter Buller chiefly deals in his pamphlet, but, as it is referred to there, and is, I think, sure to crop up hereafter, I will mention it. It was briefly as follows:—

Ngatiraukawa were extremely dissatisfied equally with the small section awarded to the family of Te Whatanui and with the large area awarded to Muaupoko by the Native Land Court of 1873. Ngatiraukawa, therefore, attempted to take and hold possession of more than the 100 acres awarded to them. Kawana Hunia thereupon burned the whares of Ngatiraukawa, and some shots were fired from both sides. Hereupon the late Sir Donald McLean personally intervened, and under his mediation Major Kemp promised on behalf of the Muaupoko that 1,200 acres should be added to the Ngatiraukawa 100 acres. An agreement to that effect was drawn up between Major Kemp and Sir Donald McLean, and, although this agreement was *ultra vires*, it satisfied the parties, and the disturbance ended for a time.

The Horowhenua Block.

I now return to the particular phase of the Horowhenua dispute with which Sir Walter Buller is more particularly concerned.

For many years previous to 1873 portions of the land since known as the Horowhenua Block, of 52,000 acres, had been leased to the late Mr. Hector McDonald, of Horowhenua. These so-called leases were quite invalid in law, but Mr. McDonald, by using his own common-sense and paying rent to one or another as occasion required, managed to hold the land as a sheep- and cattle-run. Shortly after 1873 Major Kemp, as he was then entitled to do, granted a valid lease to Mr. McDonald. And so all things settled down into a comparatively quiet groove.

As I shall set down nothing in this letter except what I know of my own knowledge, or which was of undisputed notoriety, I express no opinion as to how Major Kemp disposed of rents accruing from the Horowhenua Block from 1873 to 1886, during which time he was the sole "certificated" owner. Evidence was, however, adduced on several occasions during the present dispute showing that very soon after 1873 some of the "registered" persons were dissatisfied with the state of affairs, and endeavoured to move the Native Land Court for relief; but, as has been said, the Native Land Court could not entertain any such applications.

Negotiations were also entered into by the Government for the purchase of part of the block, but neither could anything be validly done in this direction; and so matters stood. But in 1882 Parliament passed an Act called "The Native Land Division Act, 1882." By this Act it was provided that in the event of any block of land held under certificate, as provided by section 17 of "The Native Land Act, 1867," coming before the Court for partition, the persons "registered" in respect of that block were to be regarded by the Native Land Court as "owners"; but there still remained the difficulty that only the "certificated owners" of any block could effectually apply for partition of it. In the case of the Horowhenua Block this difficulty was increased by the circumstances that there was only one "certificated owner"; and I have sound reason to believe that the Government had more than once, through their Land Purchase Office, tried in vain to induce Major Kemp to make the necessary application. I pass now to the year 1886.

Major Kemp and the Railway-line.

In the beginning of the year 1886 I was employed by the Wellington–Manawatu Railway Company to obtain a valid freehold title to the railway-line through the Horowhenua Block. But the title to the block being, as I have said, a certificate under the 17th section of "The Native Land Act, 1867," it was clearly impossible to obtain a valid

freehold title to the railway-line unless the sole "certificated owner," Major Kemp, could be induced to apply to the Native Land Court for partition of the block under the Division Act of 1882. Accordingly I waited upon Major Kemp at Wanganui. Deeming it my duty to do so, I entered with him quite fully and unreservedly into a consideration of how he personally would be affected if he made the application I required. In the course of the negotiation it was apparent to me that it was quite as obvious to Major Kemp as it was to me that the effect of the application I desired him to make would be to destroy his existing title and paramount position under the Act, and reduce him to the rank of an ordinary "owner" of undefined extent of personal interest in the block, in common with all the persons "registered" by the Native Land Court of 1873 in respect of the block.

I declare also that it seemed to me to be as clear to Major Kemp as it was to me, and as it could not fail to be to any one who had even a cursory acquaintance with the then existing Native Land Acts and the practice of the Native Land Court—namely, that the Act of 1867 having been repealed, every order for a title to be made under the existing Acts by the Native Land Court would necessarily be an order for a freehold title devoid of any outstanding equity.

Under these circumstances, Major Kemp declined to make the required application until he should first interview the Government at Wellington. I therefore made some slight financial arrangement on his account to enable him to proceed at once to Wellington, and I accompanied him there.

4,000 Acres of the Block.

Arrived at Wellington, I, at the request of Major Kemp, formulated and put into writing on his behalf certain proposals which he desired to make to the Government concerning Horowhenua, involving the sale to the Government of 4,000 acres of the block, and Major Kemp, in my presence, submitted that written proposal to the Government. After several days' negotiation with the late Mr. Lewis, Under-Secretary of Native Affairs, and the late Mr. Ballance (then, I think, Native Minister), Major Kemp's proposal was accepted by the Government, subject to a modification as to price to be determined by the Surveyor-General, and Major Kemp then signed the application to partition the Horowhenua Block.

The circumstance that orders to be made by the Native Land Court under the then existing Native Land Acts would necessarily be orders for the issue of freehold titles, was, I allege, frequently referred to during the above negotiations, and appeared to be well known to Major Kemp; but, apart from my allegation, I submit that it is incredible that such negotiations could have been carried on to conclusion without Major Kemp becoming aware, if he did not already know it, that under the then existing Native Land Acts the Native Land Court could not order the issue of any title to land other than freehold title. For instance, it was necessary for some one or more persons to get a freehold title to the 4,000 acres proposed to be sold to the Government before a valid transfer could be made to the purchaser; and we shall see presently that in this, and in every case (and there were several cases of the kind) when the Court of 1886 was asked to order a title to any person for any ulterior purpose, beyond that of simply making a freehold title to the person named in the order, that ulterior purpose was always mentioned in the open Court. And in all such cases the ulterior purpose for which the order was asked was not merely mentioned in Court, but was enlarged upon and fully explained in Court, for the very reason that, as every one knew, the order could only be made, in every case, for the issue of a freehold title. It was therefore desirable to have some official record of the ultimate intentions of the person applying for the order; such public mention of ulterior intention would be, it was thought, at all events, some check upon the person or persons in whose favour the Court was asked to make an order.

I recollect the following instances in which the Court of 1886 was asked to make orders of this kind in the Horowhenua Block: 76 acres to Major Kemp, to be transferred to the Wellington-Manawatu Railway Company; 4,000 acres to Major Kemp, to be sold to the Government; 800 acres to Major Kemp, to be transferred to Mr. Seivwright; 1,200 acres to Major Kemp, to be transferred to Ngatiraukawa; 1,200 acres to Major Kemp, in substitution in case the first was not accepted by Ngatiraukawa; 4,620 acres to Major Kemp, to be transferred to the forty-four persons omitted by the Court in 1873.

In all these cases full explanation was made in open Court of the ulterior purpose for which the Court was moved to make an order, and if there had been any purpose or intention of the kind in the case of Block 11, that purpose would assuredly have been mentioned and explained in the same way in the open Court, unless it is believed that I wilfully concealed the ulterior purpose for which the order was asked, or that I was a very incompetent expert in not knowing what the Maoris for whom I was acting really intended by asking for the order.

Block 11.

Sir Walter Buller calls Block 11 "the residential portion" of the Horowhenua Block, and says: "The tribe "having determined to keep this portion of the estate unbroken as a permanent home for the people, declined to have "the partition carried any further, and moved the Court to order a certificate of title for the same, as before, in the "name of Major Kemp."

But it was I who, at the request of "the tribe," moved the Court to order a certificate for Block 11. Therefore, if there is any vestige of truth in the above paragraph of Sir Walter Buller's pamphlet, I must have deliberately concealed from the Court the "determination" of the tribe, and the purpose they had in view in asking for the order. To that I reply that there is not a vestige of truth in the paragraph. It is pure fabrication, whether Sir Walter Buller invented it himself, which I do not suppose, or was told it by others. Sir Walter Buller's purpose in saying that Block 11 is the "residential portion" of the estate is apparent. He thinks thereby to make it more difficult of belief that the residents would voluntarily or knowingly vest their actual homes absolutely in any person or persons other than themselves, or in "trust" for themselves. But Block 11 contains nearly 15,000 acres of land, and the actual "homes" of Muaupoko residents do not comprise more than a few hundred acres. Moreover, a great part of Block 11 has been leased invalidly or validly since far back in the "forties," and very little of the rents have been doled out to Muaupoko residents, at the pleasure of one or another person other than themselves. Another great part of Block 11 is forest, which has not been occupied in the memory of man except for bird-catching, like any other part of the total Horowhenua Block of 52,000 acres. Another great part of Block 11 has been, until recently, occupied by Ngatiraukawa; and, still further, we shall see presently that the Muaupoko residents made not the least difficulty about giving up their actual homes when it seemed desirable to do so.

As a matter of fact, there were sound and solid reasons for leaving Block 11 "unbroken," but the reasons were not at all such as stated by Sir Walter Buller. Partition of land in the immediate neighbourhood of actual Maori settlement is always a most difficult matter, and must always be very arbitrary, so much so that, for many years after the institution of the Native Land Court the Judges, as a rule, refused to partition such land unless the "owners" could agree amongst themselves to a partition. And in the case of Block 11 there were special complications and difficulties. These complications were caused: (1.) By the circumstance that remnants of the Muaupoko Tribe who previously had occupied the country from Manawatu to Pukerua were now all assembled within this comparatively small area, thus practically destroying any right arising from immemorial "occupation" of anybody in particular. (2.) The recent dominant occupation of Ngatiraukawa. (3.) The nature of the occupation which, while it might and certainly would in the Native Land Court give actual residents a superior right each to his own whare or garden, gave no obviously superior right to parts not actually built upon or cultivated to one person in the list found by the Native Land Court of 1873 than to any other person in the list. In the circumstances of this particular case no one person in the list of 1873 could have any obviously better right than another to the lake, or to the leased lands, or, in short, to any part of Block 11, except just that spot occupied by house or garden. And these small "spots" comprised together a very small part of Block 11.

Under these circumstances, I submit that the leading men and women actually resident at Horowhenua did the best they could do: they got rid of the entire list of 1873, including themselves, by giving to each name in that list

a portion of land which satisfied the law; and to close every door, they set apart a portion for the persons inadvertently omitted from the list of 1873, and two blocks of 1,200 acres each, so as to give Ngatiraukawa a choice in respect of Major Kemp's agreement with Sir Donald McLean. And now there remained Block 11. If the "actual residents" had gone then, or go now, into the Native Land Court to partition Block 11, they would have had, or will now have, to reintroduce the whole list of 1873, and fight with all and sundry for title to the lake, to the leased lands, to the forest, and to every part not built upon or cultivated. Instead of doing that they, in 1886, deliberately and voluntarily and, as I think, judiciously, left themselves and their homes absolutely in the hands of their two natural "chiefs," without right of appeal to the Native Land Court on the part of any one or more persons in the list of 1873, or of Ngatiraukawa, or of the omitted persons. And to give these two "chiefs" power of future action it was necessary that they should have an absolute title themselves.

How Block 11 was Vested.

It is true that it was at first proposed to vest Block 11 in Major Kemp alone, but the proposal was objected to. Wirihana Hunia, on behalf of himself and a section of Muaupoko, called Ngatipariri, objected; and it is not true, as stated by Sir Walter Buller, that the objection was not made until the Court was being moved to make the order. The objection was made at the outside meetings, and was discussed at intervals for several days and nights. It certainly did seem to me that a majority of Muaupoko were in favour of vesting the section in Major Kemp alone; and, thinking that perhaps the objectors would allow the order to be made, I asked the Court to order the issue of a certificate to Major Kemp alone; but when the usual question, "Is there any objection?" was put by the Court, Wirihana Hunia rose and "objected," and, of course, the Court could not make the order as on a "voluntary arrangement," as provided by the Act. The parties then adjourned to a room adjoining that in which the Court was sitting, and Major Kemp and those supporting him, finding that Wirihana Hunia would not agree to an order in favour of Major Kemp alone, gave way, and then I asked the Court for an order in the joint names of Major Kemp and Warena Hunia.

Two things are, I submit, incredible in the statement of Sir Walter Buller on this point: (1.) If a "trust" in the sense now claimed had been intended (I hope it will be thought incredible) that I would not have so informed the Court. (2.) I think it is incredible that if the question of associating the name of Warena Hunia with that of Major Kemp had not been previously discussed, the parties could in a few minutes have agreed to it.

Sir Walter Buller says that the Court was moved to order a certificate to Major Kemp "as before." But in order to believe that, it is necessary to suppose that I, who moved the Court, was totally ignorant of the law, which absolutely precluded the Courts from ordering a certificate "as before"; and I was not quite so ignorant as all that.

I will now pass to the next point—namely, that no wrong had been done to the Muaupoko Tribe to justify the intervention of Sir Walter Buller in the manner in which he did intervene. Since writing the above I have had an opportunity of perusing the full text of the judgment of His Honour the Chief Justice on the hearing of the case in 1894 in the Supreme Court at Wanganui. His Honour clearly distinguishes between a person having "the legal estate" and the same person being "the beneficial owner." I have nothing whatever to say to that distinction. All I contend for is that the Muaupoko Tribe, and every person concerned, supposed that the title of Major Kemp and Warena Hunia jointly for Block 11 would be the same as the title of Major Kemp alone to the 4,000 acres (Block 2), which was to be and has been sold to the Government by Major Kemp alone—that is, if Major Kemp and Warena Hunia had been so inclined, and had gone straight to the Government and sold Block 11, or any part of it, they could have made as good a title to the Government for that block as Major Kemp alone did for the 4,000 acres (Block 2).

I now return to my statement that no wrong was done to Muaupoko by the order of the Native Land Court in 1886.

Leases and Rents.

There had been from 1886 to 1890 £400 or £500 per annum accruing from leases of parts of Block 11. The leases had been granted shortly after 1873 by Major Kemp, who alone had power at that time to grant leases. But on and after 1886 the title to the land was changed, as we have seen. Nevertheless, the tenants naturally continued to pay the rents to Major Kemp. But it is clear that under the order of 1886 and the Land Transfer certificate issued thereon, Warena Hunia was entitled to a share of these rents. That is to say, if under the new title Warena Hunia was a "beneficial owner," he would be entitled to a share of the rents; and if he was only a "trustee" he was still entitled; in fact, it would in that case be his imperative duty to obtain and keep an account of the rents. But, according to the evidence, all he could get up to 1889 from Major Kemp was a little money now and then without any regular account.

Negotiations.

Becoming dissatisfied with these irregular payments, much negotiation appears to have ensued. These negotiations took place with the personal assistance of that well-known friend of the Maoris, especially of the Whanganui and Ngatiapa Tribes, the late Richard Woon, Esq. Mr. Richard Woon died before the Horowhenua dispute came into the Courts, so that his evidence could not be had; but all other evidence goes to show that in these negotiations nothing was said about a "trust." Major Kemp seems only to have complained that Warena Hunia was unduly pressing his "elder" about the rents, and that there must be some European at the bottom of so much urgency.

Nothing came of these negotiations, and Warena Hunia began an action in the Supreme Court to compel Major Kemp to divide the rents fairly. But neither in this action nor in the defence to it was there any allusion or suggestion of a "trust," and the Supreme Court in due course, and as provided by law, "referred" to the Native Land Court to "ascertain the relative interests" of Major Kemp and Warena Hunia in order to enable the Supreme Court to determine the proportion of rent to which each was entitled under the joint certificate of title. This was in the end of 1889 or beginning of 1890, and at or about the same time both Major Kemp and Waruna Hunia "applied" severally to the Native Land Court to "partition" the estate.

Immediately before the consequent sitting of the Native Land Court in 1890 Major Kemp made a large distribution of money—£1,000—to the Muaupoko residents, and at the same time extremely positive rumours became current that Warena Hunia intended to sell the estate and turn the residents out.

A comparison of the evidence given by Major Kemp and other members of the Muaupoko in the Native Land Court of 1873, and by the same persons in the Native Land Court in 1890, will show to what an extent the Muaupoko Tribe were demoralised by the distribution of that money, and the rumours of Warena Hunia's alleged intention to sell the estate.

A number of applications had at or about the same time been made to partition other blocks at Horowhenua, notably Block 3, in which all the Muaupoko residents were interested. Consequently, when the Native Land Court of 1890 opened at Palmerston North all Muaupoko were present.

Before Block 11 was called in that Court negotiations took place between Major Kemp and Warena Hunia in which I took part. I was not at that time in the employ of either party. My idea, and I think it was also the idea of everybody else, at that time was, that while Major Kemp and Warena Hunia remained under the natural obligations and responsibilities of "chiefs" in relation to this estate, and in relation to the Muaupoko Tribe, they had been by consent of the tribe invested with an extra power not possessed by "chiefs" of the older time—namely, the legal power of making at their own discretion any disposition of the estate they might think proper. Anyhow the negotiations which now ensued immediately before the case was called in the Native Land Court of 1890 (while, in fact, that Court was sitting and doing other business) were conducted as if the two "chiefs" had power to deal with the estate as might seem good to them. There was no mention or suggestion of a "trust" in the sense now claimed. I personally discussed the whole question with Major Kemp, as I understood it, and so far as I could see as he also understood it, and finally he, through me, proposed that Warena Hunia should take 1,000 acres of Block 11 for his personal share, and leave the rest of the estate to Major Kemp.

I made that proposal in the first instance to Mr. Donald Fraser, who held a power of attorney from Warena Hunia. Mr. Fraser, however, preferred that the proposal should be made to Warena Hunia personally, and accordingly I did so.

But Warena Hunia at once refused to entertain the proposal, expressly on the ground that to do so would be to desert his family, his hapu, and the Muaupoko residents generally. He, however, made a counter-proposal—namely, that he and Major Kemp should first make proper provision for the Muaupoko residents, and that then there need be no difficulty in making final arrangements as between himself and Major Kemp individually.

The two Chiefs discuss Matters.

These counter-proposals were discussed personally by the two "chiefs." I and others were present. Hoani Taipua, then M.H.R., was invited to attend, and he did so, and made suggestions. Another Maori chief, Karena te Manu-a-Tawhaki, also attended, and made suggestions; and during these discussions, which extended over several days and nights, no suggestion was made of a "trust" in the sense now claimed. The whole discussion turned upon the obligation under which the chiefs lay to make provision for Muaupoko residents. Major Kemp professed to be influenced solely by the fear that Warena Hunia, under the influence of "evil-minded Europeans," would sell the land to the detriment of Warena himself and of the residents. Warena Hunia denied any intention to sell the land, or any part of it, and challenged Major Kemp there and then to make such provision for the Muaupoko residents as any disinterested person could think reasonable. "Give me," said Warena, "half the land and half the people. You take the first name on the list. If any of your immediate relations or friends fall to me, I will, if you wish it, hand them back to you, and take a like number from your list. I will make such provisions for my half of the people as will content them, and you do the same by your half. If I fail to content my people, you and they can take steps to compel me to be just. If you fail to content your people, I will help them to compel you. I will agree to nothing else. You have robbed, or are going to rob, me and the people of our share in the town sold to the Government, and I will trust you no further. I will have separation from you."

Major Kemp obstinate.

These negotiations came to nothing, because Major Kemp was obstinate, and his pride was hurt by being bearded by the younger "chief." But I submit that the negotiations prove incontestably that up to that time no harm whatever was ever intended to be done to the Muaupoko residents, and that consequently no wrong had been done to them by the order of 1886. It is also, I submit, clear that there was not the least necessity for the storm of law that ensued, professedly in the interests of the Muaupoko residents, nor for the intervention of Sir Walter Buller in the manner in which he did intervene.

Negotiations fail.

These last negotiations having failed, the parties went into the Native Land Court, and Major Kemp then set up the theory of "trust" as now claimed. The Native Land Court had no jurisdiction to entertain such a claim, and made an order for the partition of the block as between the two men named in the certificate of title. But further proceedings of law prevented the order from taking effect.

The "chiefs" had undoubtedly quarrelled, and it would have been better to allow them to separate and divide the estate. For the security of the Muaupoko residents, if that was thought to be in danger, all that was necessary was to "proclaim" both divisions, and so prevent private dealings with the land, until the parties had time to cool down and listen to reason. By this means, too, it would have been possible to see which, if either, of the "chiefs" was disposed to be unjust to the Muaupoko residents, and the other would have been saved the worry, the enormous expense, and the bitter quarreling of the last five years.

It is observable that Warena Hunia in his speech as quoted above, seems to recognise that there was a power *somewhere* which could compel himself and Major Kemp to be just if they were disposed to be otherwise. That power, however, is the Parliament of the colony, in which Maoris are at least supposed to be represented. It is not reasonable to expect "justice" in such a case as this from the European Courts, which not only are, but seem always to pride themselves upon being ignorant of Maori "customs" and feelings.

Sir Walter Buller, it appears, found no difficulty in getting the block "proclaimed" when it suited him to do so (*vide* pamphlet, pages 2 and 3). Why was it not done at first, instead of after the parties had been worked up to madness and suffered enormous expenses? It would not in that case probably have been necessary to mortgage land "at the suggestion of Mr. Edwards" (pamphlet, page 6).

I must, however, be just to Sir Walter Buller. I am not aware that he personally intervened until some time after 1890, and after the theory of "trust" had been set up: but others did, and he took up the running later on, and so far as I can see is the only man who has reaped any profit out of the bad business.

As I have quoted Warena Hunia's charge against Major Kemp, of having robbed the people in the sale of the township (Block 2—4,000 acres) to the Government, I will explain what Warena was understood to mean.

The Partition of Horowhenua.

I have mentioned that before Major Kemp, in 1886, signed the "application" to partition Horowhenua, he made certain proposals or stipulations with the Government. These proposals were as follow: That 4,000 acres were to be purchased by the Government in the centre of the block, and adjoining the Horowhenua Lake so that the railway should run nearly through the centre of the 4,000 acres. The 4,000 acres was to be a township called "Taitoko" (an ancestral name by which Major Kemp was known to Maoris).

A price per acre was to be fairly ascertained and agreed upon. There was to be a reserve for recreation—a garden much superior to the Square, in Palmerston North. Another reserve for church, another for school, another for justice. The centre of the town was to be laid off by Government in quarter-acre sections; outside these, half-acre sections; outside these, 1-acre sections; outside these, 5-acre sections; and outside these, 40-acre sections. Every tenth section of each denomination to be Crown-granted to Muaupoko residents of Horowhenua, to be nominated by Major Kemp. After deducting the reserves, which were to be a gift of Muaupoko to the town, and deducting also the tenth sections at fair value, the purchase-money was to be paid to Major Kemp. Out of this money Major Kemp was to pay all internal surveys of sections awarded outside of the 4,000 acres to owners; also survey of road-lines, so that each owner would receive any section awarded to him or her, outside the 4,000 acres, free of charge. The balance of the purchase-money (if any) was to be divided among Muaupoko as might seem right.

After several days' consideration of this proposal it was, as I have said, verbally accepted by Mr. Ballance in his own house; but I do not now remember whether any acceptance was indorsed on the written document. It was at the same time agreed that the Surveyor-General should go forthwith up to Horowhenua to view the land and determine the price per acre of it. Major Kemp and I then returned from Mr. Ballance's house to Mr. Lewis's office, and informed him that Mr. Ballance had agreed, and that Major Kemp was ready to sign the application to partition Horowhenua. Mr. Lewis then caused an application form to be filled up, and Major Kemp signed it there and then. Later on the same day, or it may have been on the next day, Major Kemp made me the handsome present of £50, as I was leaving for Auckland on other business of my own.

I saw the written proposal of Major Kemp on a file in the Native Office several years after 1886, and I suppose it is there still, so that my statement of its contents can be verified.

Soon after this Major Kemp took very ill, and a sitting of the Native Land Court to hear his application was delayed for several months until he recovered sufficiently to attend.

At length, in 1886, the Native Land Court was announced to sit at Palmerston North, and all Muaupoko assembled there. The first thing done was to get a tracing of the block from the Court plan, and the "outside" meetings then began, with a view to agree to a partition of the block. On Major Kemp's behalf, I caused a sketch of the railway-line and the 4,000 acres proposed to be sold to be scaled on the tracing. That was done by a surveyor, the late Mr. Palmerson, my son-in-law, in whose home Major Kemp and I were staying.

The Proposal.

With this tracing before the assembled Muaupoko Tribe, I explained to them the whole scheme of the proposed township, as set forth below, and enlarged upon the advantages of it to them:—

[Translation.]

"Conditions upon which Major Kemp proposes to sell a Block of Land to the Government for a Township at Horowhenua.

"1. The township to be named 'Taitoko.'

"2. The acres for the township to be 4,000 acres, of which it is estimated that 1,280 acres will be on the east side of the railway, with two miles frontage to the railway, and the remainder of the land on the west side of the railway, also with two miles frontage.

"3. One hundred acres, by estimation, to be reserved (made sacred) as a garden for the said town by the side of the Horowhenua Lake, the trustees for which garden shall be Major Kemp and His Excellency the Governor; but when there is a Mayor or Council for the said town, then the said Mayor or Council shall be trustee with Major Kemp, instead of His Excellency the Governor.

"4. Four acres shall be reserved (made sacred) as a square for the said town, with the same trustees as above-mentioned for the garden.

"5. Ten acres shall be reserved (made sacred) as sites for schools or college, under the law of New Zealand; said school to be for Maori and European children.

"6. The remainder of the land, 3,886 acres, of the said town shall be sold to the Government, and the survey of the said town shall be proceeded with forthwith, and when a map has been completed the Government shall return every tenth section, under Crown grant, to Maoris who shall be named by Major Kemp. The price of the land—that is, the 3,886 acres—shall be , but, if Major Kemp and the Native Minister cannot agree as to price, they shall refer the question to arbitration—one arbitrator to be appointed by the Native Minister and one by Major Kemp.

"7. The Lakes Horowhenua and Papaitonga, and the streams issuing from them to the sea, and a chain round the borders of the lakes, shall be reserved so that they may not be drained, for which purpose Major Kemp shall be appointed trustee.

"8. Major Kemp has also divided the owners of Horowhenua into five classes.

"9. If the proposals are approved by the Native Minister Major Kemp will apply to the Native Land Court to subdivide the block, in order that the town and each class of owners shall get their portion."

The Proposal agreed to.

The Muaupoko Tribe unanimously agreed to the proposal, and it is not too much to say that the prospects of having this township on such terms in their midst was so pleasing to them that it smoothed the way to the general partition of the whole block subsequently agreed to.

The proposed township as shown upon the tracing included the house and cultivation of Hoani Puihi and family, but he expressly consented to both being taken.

What Major Kemp did.

But when Major Kemp got his title he simply sold the land to the Government for cash, and not one of the promises to Muaupoko has been kept; nor, so far as I have heard, has Major Kemp ever accounted to Muaupoko for a shilling out of the £6,000 he received for the land. What, then, is to be said of this transaction, and was not Warena Hunia justified in saying that the tribe had been robbed, and insisting upon separation from Major Kemp?

I do not know whether the present Minister of Lands referred particularly to this transaction when he is reported to have said that "since he had been Minister he had come across some disgraceful transactions, but none to equal those in connection with Horowhenua." But I submit that this transaction alone is sufficient to cause men to look very askance at anybody found helping Major Kemp until he has made any restitution that may be possible with regard to this township.

Re *Horowhenua Block 14.*

This subdivision of the Horowhenua Block contains 1,200 acres, and includes a great part of the Papaitonga Lake. The whole of the section is of the best quality of soil. The borders of the lake are undulating, and very beautiful. Many years ago, when Sir George Grey was Governor, he used all his great influence in vain endeavour to acquire the land and lake now comprised in the section as an acclimatisation and recreation park for New Zealand. The Governor was unsuccessful, because the Maori chiefs and tribes from Wellington to Wanganui could not agree to the ownership of that part of this district, and there was no Native Land Court at that time to determine the question of title.

In 1873 the Native Land Court awarded the "Horowhenua Block," of over 52,000 acres, to the Muaupoko Tribe. This section formed an undivided part of that area. In 1886 the Native Land Court sat at Palmerston North for the purpose of subdividing the "Horowhenua Block," on the application of Major Kemp. The Muaupoko "owners," 143 in number, assembled personally, or by family representation, to attend the Court.

The writer of this memo. had special business with the said Muaupoko "owners"—namely, to obtain for the Wellington–Manawatu Railway Company a title for that portion of the land taken by the railway-line crossing the Horowhenua Block. Finding that there would be no objection to a transfer to the company of the said land, I tendered to Major Kemp and the Muaupoko people all the assistance I could give them in a general division of the block. The whole of the subsequent partition of the block into fourteen sections was by "voluntary arrangement."

Near the beginning of the "outside meetings" in this case it transpired that in 1874 Major Kemp had, on behalf of Muaupoko, agreed with the late Sir Donald McLean to transfer 1,200 acres of the Horowhenua Block to Ngatiraukawa, in supplement of 100 acres awarded in 1873 by the Native Land Court to that tribe near the Horowhenua Lake. After much discussion at the "outside meetings" of 1886 it was deemed expedient by the Muaupoko people to accept and fulfil that agreement.

Such being the determination of the "owners," I was mainly, if not entirely, instrumental in inducing Muaupoko to allot for that purpose this particular section now numbered 14. In inducing Muaupoko to allot the section now numbered 14, in fulfilment of the agreement of Major Kemp and the late Sir Donald McLean, I was influenced by several considerations, namely: (1.) Having in memory Sir George Grey's desire to acquire that part as a public park, I thought Ngatiraukawa would readily sell it to the Government if the Government still desired to possess it. (2.) It lay adjacent to Ngatiraukawa land. (3.) The proposed allotment was of first-rate quality, and must be considered as a most generous fulfilment on the part of Muaupoko of an agreement which was in itself, in my opinion, *ultra vires*. (4.) The proposed allotment being on the boundary of the Horowhenua Block, whether Ngatiraukawa sold or kept the section would not interfere with any internal arrangements of the Muaupoko people.

I submitted all these considerations fully to the assembled Muaupoko, and they were approved. Accordingly, the allotment was placed upon the tracing of the "Horowhenua Block" in use by the "outside meetings." It presently appeared, however (that is, before the Native Land Court had been asked to "confirm" this or any subdivision) that Ngatiraukawa would not accept this 1,200 acres or any other 1,200 acres in satisfaction of their claims to Horowhenua.

What Ngatiraukawa appeared to me to be aiming at was to create dissension and confusion, in the hope that the whole "Horowhenua Block" might be thrown back into the Native Land Court, as a "rehearing" of the judgment of the Native Land Court of 1873. In order to close the door against any such possibility, I strongly recommended Muaupoko to allot an alternative 1,200 acres adjacent to the 100 acres allotted by the Native Land Court of 1873 to Ngatiraukawa. In recommending Muaupoko to make this alternative allotment I was influenced by the following

considerations: (1.) It seemed to me quite probable that, if necessary, Parliament would legalise the agreement of 1874 between Major Kemp and the late Sir Donald McLean. (2.) There might be some reasonable objection to the first allotment of 1,200 acres, on the ground that the proposed section was separate from the 100 acres allotted to Ngatiraukawa by the Native Land Court of 1873. (3.) Advantage might be taken of this objection to induce Parliament to throw the whole "Horowhenua Block" back into the Native Land Court as a "rehearing" of the judgment of 1873. (4.) Such a proceeding would put "Muaupoko" to great expense, and, while it might not ultimately be to the advantage of Ngatiraukawa, could not well be otherwise on the whole than disadvantageous to Muaupoko. (5.) Under these circumstances, it seemed to me prudent to allot an alternative 1,200 acres adjacent to the existing 100 acres of Ngatiraukawa. (6.) To do so would, I thought, effectually close the door against any appeal by Ngatiraukawa to Parliament or to any other authority. These considerations were fully submitted by me to Muaupoko, and were approved by them. Accordingly the alternative allotment, now Section 9, was proposed and agreed to.

It was clearly and perfectly understood that only one of the allotments was to be transferred to Ngatiraukawa, and that the other would be in the meantime held by Major Kemp for whomsoever might hereafter be found to be best entitled to it. This, it was hoped, would be determined before the final adjournment of the Native Land Court then sitting. But the Ngatiraukawa then present in Palmerston North obstinately refused to make choice of either section while the Native Land Court was still there, and there was therefore no alternative but to leave both sections, 14 and 9, in the name of Major Kemp.

I affirm that it is not possible for anything to be more clearly understood than that only one of these sections were to be transferred to Ngatiraukawa by Major Kemp, and that then the other would be returned to be dealt with by the Muaupoko Tribe.

If it has been finally settled that Ngatiraukawa are to have Section 9 in fulfilment of the agreement of 1874, it is certain that, so far as "justice" is concerned, Section 14 must be returned to Muaupoko, and cannot be otherwise dealt with by Major Kemp, nor by any other person.

I affirm that all I have here set down is true, and was all fully stated in the Native Land Court of 1886, and was perfectly well known and understood by Major Kemp and by all Muaupoko, and it is quite incredible to me that it was not also well known to Sir Walter Buller.

But if the Ngatiraukawa have finally elected to take Section 9 in satisfaction of their claim to Horowhenua, and if the Muaupoko Tribe have consented to the transfer of Section 14 by Major Kemp to Sir Walter Buller, I do not see how any one can complain of the latter transaction. Otherwise, I do not see how the transfer of Section 14 to Sir Walter Buller can be regarded otherwise than as a breach of trust, alike contrary to common-sense and to "justice," whatever the lawyers may say about it.

Re *Sale of Levin Special Settlement to the Government by Warena Hunia.*

I do not consider myself competent to express an opinion on the technically legal aspect of the question, but of the moral and equitable right of Warena Hunia to sell the land I have no doubt whatever. If he had sold any part of the land in the actual occupation of any member of the Muaupoko Tribe I should say that, though he would still be, in my opinion, within his own hereditary right, and the right voluntarily conferred upon him by the tribe in 1886, yet he would, as a Maori chief, have done wrong. But I do not understand that he has done so, and his right to sell any unoccupied parts of the land allotted to him by the Native Land Court of 1890 is, in my opinion, indisputable from any moral or equitable point of view, whatever lawyers may say to the contrary.

Under no conceivable circumstances (except party politics, which can account for anything, however nasty) can the Levin Special Settlement or the £2,000 of the Government be in any real danger.

Relying on my own personal knowledge, and on public records as from 1840 to 1890, and regarding, as I do, the evidence of Major Kemp and the Muaupoko people in the Native Land Court of 1890 as absolutely worthless in the light of the evidence given by the same persons in the previous Native Land Court of 1873, all the lawyers in Christendom could not persuade me that Warena Hunia had not a perfect right to sell or otherwise dispose at his pleasure of the land he is said to have sold to the Government.

A. McDonald.

TABLES A AND B, REFERRED TO IN SIR WALTER BULLER'S MEMORANDUM AT END OF FINAL ADDRESS. (See Page 136.)

Table A.

Showing the contradictions given by Nicholson (the only descendant of Te Whatanui called by the counter-claimants) to McDonald's present story:—

N.B.—It is admittedly the case that, if Kemp proves that No. 9 was on the 1st December definitely decided on by the registered owners of Horowhenua as the subdivision for the descendants of Te Whatanui, the counter-claimants' case must fail; as they cannot succeed unless they prove that on the 3rd December No. 14 was allotted in trust as an alternative offer to those descendants (and refused by them after the Court of 1886). It is on the question, what occurred on and before the 1st December, that Nicholson flatly contradicts McDonald; and it should be observed that Nicholson's evidence is against the side that called him, and moreover highly authoritative on the question what occurred as to No. 9 in 1886.

Summarising these contradictions: Whereas McDonald denies that the descendants of Te Whatanui present in Palmerston accepted, much less asked for, No. 9 at the partition of 1886, Nicholson tells how, for at least a week prior to the award of No. 9 on the 1st December, they had been urging Kemp to give them No. 9 (instead of Ohau), as being the locality named in Kemp's promise to McLean, and near their kaingas; that Lewis had also been interceding to the same effect; and that, when Kemp acceded to their request, the definite choice of No. 9 was announced in Court by Kemp and Lewis (as Judge Wilson also relates) in the hearing of Nicholson and other descendants of Te Whatanui. It may be remarked that Nicholson states the most specific facts—McDonald's ignorance of which, considering he was in communication with Nicholson, is surprising.

(1.) Nicholson says (Horowhenua Commission, pages 162 and 163, answers 134 and 135,) that he objected to Ohau and wanted Raumatangi, because, to use his own words, "my elders wanted it where their kaingas were," and so much in earnest were they to get Raumatangi that, he proceeds to tell, he asked Kemp to meet the descendants of Te Whatanui present in Palmerston at the Royal Hotel (Horowhenua Commission evidence, page 162, answers 114 to 130); and that when the telegraphic copy of the agreement arrived, showing that the land was to be near Lake Horowhenua, Kemp came round and let them have No. 9, and that they heard Kemp announce in Court that this was settled. (Nicholson's evidence in the present case is even more specific, *vide infra* (2).

(1.) McDonald says (Judge Butler's notes, p. 325): "I am not aware of any negotiations between Ngatiraukawa and Kemp. I don't believe there were any." And (*ibid.*, page 330): "My general answer is that up to the present time I did not know that the descendants of Te Whatanui had selected No. 9."

(2.) Nicholson's story in the present case is as follows (page 368, Judge Butler's notes): ". . . But when we reached Palmerston I heard that it was proposed to give it us at Ohau. It was on that account that I called a meeting of the descendants of Te Whatanui, and asked Kemp to attend it. . . . It was then I ascertained

that the Muaupoko had decided to locate the section at Ohau. I was dissatisfied, and did not consent. I wired to Lewis. . . ." (Page 369, *ibid.*): "I told him that Kemp wanted us to take the land at Ohau, and asked him to urge Kemp to place the land near Raumatangi. . . ." (Page 370, *ibid.*): "He sent for the agreement. Next morning he came to our house and told me I was right about the parcel of land being near the Horowhenua Lake, and showed the telegraphic copy of the agreement, and said he would ask Kemp about it. After that I saw Kemp. He told me he had seen Lewis, and it was settled." (Page 381, *ibid.*): "After Kemp had told me that he had agreed, Lewis also told me that Kemp had consented. . . . The only business of our meeting in the Court-house was the settlement of the boundaries. Kemp had agreed to the location of the land at Raumatangi outside the Court. Lewis had also agreed, and so had I." (Vol. 33, page 2, *ibid.*): "Kemp and Lewis informed the Court that the location of the parcel at Raumatangi had been settled, and that the boundary towards the Hokio Stream was to be 2 chains away from it . . ." (Vol. 32, page 375, *ibid*): ". . . I heard Wirihana say outside the Court that it (Ohau) would go back to the people, as we had selected Raumatangi section. Wirihana was the only person I heard say this, but there were others present." (Vol. 33, page 4): ". . . The talk about Ohau going back to the people was immediately after the settlement of No. 9. I asked what would be done with the other section, and Wirihana replied that it would go back to the tribe." (*Ibid.*, page 6): ". . . After the order was made the matter was settled, and we had no further claim on Ohau."

(2.) Macdonald, although in communication with Nicholson, is quite unaware of all this.

Assuming Nicholson's story to be true, McDonald must be stating what is directly opposite to the truth, when he says, "I still adhere to my statement that Lewis refused in express terms to me to select either section." On the contrary, Lewis, according to Nicholson, urged Kemp to give No. 9, and expressed himself satisfied with the choice of that subdivision.

(3.) Nicholson also tells (showing that the matter was settled) that Lewis asked for a list of names (for Raumatangi). He also (*ibid.*, p. 6) gives an account of a proposal by Wirihana, in 1890, that they should exchange, so as let Raumatangi revert into Warena's share of No. 11.

(3.) The evidence of Nicholson, given above, flatly contradicts McDonald's story, that No. 9 is never decided on to this day.

It may be remarked that, even apart from Nicholson's contradictions, the counter-claimants would have a great difficulty in explaining how it is that (if, as they say, 14 and 9 were given as alternatives), there is no evidence at any time between the years 1886 and 1896 of any attempt on the part of the registered owners to induce the descendants of Te Whatanui to choose. That the Muaupoko (who, according to the counter-claimants' story, were to have which-ever subdivision was rejected) should have been willing to let the selection be postponed for ten years is remarkable.

(4.) (Vol. 33, page 5): "I never heard any of our party, either the direct or the collateral descendants of Te Whatanui, decline to say whether they would have Raumatangi or Ohau. If any of them had said so I would have heard it. None of them have ever said they would not have Raumatangi. I have never heard any of our party say that they had not made up their minds whether they would have Ohau or Raumatangi." (*Ibid.*, page 8): "If Kemp had persisted in our having the Ohau section, I would have appealed to Parliament."

This is a very different thing from McDonald's story, that the descendants of Te Whatanui were refusing to have either section in order to make an excuse for appealing to Parliament to get the judgment of 1873 reopened. On the contrary, according to Nicholson's story, they were asking for Raumatangi, and would have appealed to Parliament to get Raumatangi, if it had been refused. McDonald's story, besides being contradicted by Nicholson, is inherently absurd. The Muaupoko were not bound to give a single acre (*vide* McDonald's evidence, Horowhenua Commission, page 75), yet they offered Ohau, and then, when this was objected to, Raumatangi. Lewis, the representative of the Government, was present, and knew the Muaupoko were behaving handsomely. Did McDonald really believe that the Government were likely to allow the descendants of Te Whatanui to appeal successfully to Parliament, to reopen the judgment of 1873 (not merely, be it observed, to get Raumatangi), when, according to McDonald's own showing, their only ground of complaint was their own refusal to accept either of two successive handsome offers from people who were not bound to give them anything.

TABLE B.

Showing that up to 1896 (which McDonald admitted in cross-examination by Beddard was the date when he first heard of a trust as to No. 14) his story was the same as Nicholson has told throughout—namely, that No. 9 was definitely selected in 1886:—

(1.) Nicholson's story before the Royal Commission and in the present case is given above (*vide* Table A). It is exactly the same as he gave at Otaki (Otaki Appellate Court book, pages 36 and 37): "We discussed location for this 1,200 acres at Palmerston before the Court sat. Kemp desired the land located at Papaitonga. I objected. We afterwards met in a hotel, and asked Kemp to be present. I, Hitau, Emma, Hare Pomare, Piri Watene, Heni Kipa, Kipa Whatanui, Karanama Kapukai. Kemp came to the meeting. I pointed out to him that the land should be located where our cultivations were. He refused. When Mr. Lewis arrived I told him; he sent for agreement signed by Kemp, and the Court fixed position of land where it now is. Lewis then asked us to send in our list of names."

(1.) At Otaki McDonald was called as a witness by Nicholson's side, and gave evidence soon after Nicholson, and precisely confirmed Nicholson's story (Otaki Appellate Court book, page 47): "He" (Kemp, addressing Muaupoko) "said it was not because he considered that Ngatiraukawa had any right, but simply on representation of Sir Donald McLean; that Ngatiraukawa, Watene, and others were on the ground, and there was no means of getting them off. He then appealed to Muaupoko to make good his promise to Sir Donald McLean. Muaupoko at once agreed, and 1,200 acres was selected at Papaitonga, put on a tracing by Palmerson, and handed to Lewis as a complete fulfilment of Kemp's promise to McLean. Lewis afterwards endeavoured to persuade Nicholson to accept the 1,200 acres. I understood them to object to locality; they wanted it adjoining the 100 acres. Lewis told Kemp this; locality afterwards altered. . . ." By Baldwin: "The meetings I have referred to lasted over three weeks. I was present at many of them."

In his Otaki story McDonald admits what he now denies—namely, that the descendants of Te Whatanui wanted No. 9, and that Lewis urged Kemp to give it to them. The words "locality afterwards altered" mean, of course, that a new locality was substituted, not offered as an alternative. And the obvious inference from the words is that the substitution of No. 9 was consequent upon the communication by Lewis to Kemp of the wishes of the descendants of Te Whatanui.

(2.) Again (Otaki Appellate Court book, Vol. 14, pages 315, 316): "There was very great discussion about 1,200 acres in fulfilment of an agreement between Kemp and Sir D. McLean. It was for successors of Te Whatanui. Ngatiraukawa would not accept the 1,200 acres proposed to be given, and another 1,200 acres was given, and Kemp kept the first 1,200 acres." These words can only have one meaning. The first 1,200 acres (Papaitonga) is never "given" at all, but objected to by the Ngatiraukawa while it is merely proposed to be given, and accordingly kept by Kemp. The second 1,200 acres is definitely "given." And, moreover, distinguishing phrases are used; Papaitonga is "kept" by Kemp; Raumatangi is "given." To make these words fit in with McDonald's present story the same phrase "given" or "kept" (if, indeed, "kept" by a great stretch of language is to mean "put in Kemp's name in order to be given") should be used of both subdivisions; instead of which a clear distinction is drawn between their respective destinations; one is "given," the other is "kept."

(3.) Again, there is McDonald's evidence before the Supreme Court (Horowhenua Commission evidence, page 79, questions 428 and 429): "Somewhere about this time Mr. Lewis, the Under-Secretary, arrived at Palmerston. He took a very active part in the matter on behalf of the descendants of Whatanui. Kemp fully admitted that he had promised the 1,200 acres in addition to the 100 acres, and a piece of 1,200 acres was marked off on No. 1 tracing for that purpose; but it transpired through Mr. Lewis that they did not want the 1,200 acres marked on the tracing; that they were not satisfied with it; and, after a great discussion, it was ultimately agreed to give them 1,200 acres adjoining or surrounding the 100 acres which was on the western side of the railway. That was transferred to No. 1 tracing, and then arose a discussion as to who of the Ngatiraukawa were to be included."

These words are an important admission to the effect that Muaupoko, at the partition of 1886, decided, as they were entitled to do (without waiting to ascertain the *uri* of Te Whatanui and ask the consent of each of them) what subdivision they were willing to give those descendants. No. 9 was first decided on and put on a tracing, and then the question who were to share it was discussed.

It will be observed that when this evidence is put to McDonald at the Royal Commission, while not venturing to unsay it, he attempts to travesty it (answer 429). To definitely decide on the subdivision without waiting to consult those who might share in it, is not the same thing as to "Wait and see if any one would say 'We will take that.'" Yet the words, "That is quite true," implied that the two things are the same.

It should be noticed generally in reference to McDonald's evidence previous to 1896 that he has insufficiently explained why he never till that year suggested that No. 14 was a trust subdivision. In these previous cases, his evidence at which is now being quoted, he was admittedly the chief witness called in opposition to Kemp; and counsel opposed to Kemp were briefed upon the information of McDonald as to what took place at the partition of 1886. How comes it then that—although Kemp, on each occasion, is questioned minutely on cross-examination as to his alleged frauds upon the tribe—that which would have been the greatest fraud of all is never flung in his teeth?

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