

*Mr. Baldwin*: Yes, your Honour, after the order was determined by the Court, as bound by the case.

*The Chief Justice*: That does not affect the validity of the order.

*Mr. Baldwin*: Yes, your Honour, I submit it does, if they carried it out without complying with the statutory requirements.

*The Chief Justice*: Do I understand that you say that this allocation was before the order was sealed?

*Mr. Baldwin*: The alteration was before the order was sealed.

*Sir R. Stout*: But it was not made with the consent of the Court.

*Mr. Baldwin*: The statute shows that the plan had to be indorsed on the order prior to the order being signed and sealed.

*The Chief Justice*: Was that done?

*Mr. Baldwin*: Yes. On paragraph 5 of the case it says,—

“The Court opened on the 25th November, 1886, and made three divisions in favour of Meiha Keepa for the following purpose, 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 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 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 Ranghiwinui, 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 or sealed.”

*The Chief Justice*: The orders were not drawn up or sealed?

*Mr. Baldwin*: I do not think the case finds when the orders were sealed.

*Sir R. Stout*: You will see paragraph 15 refers to that matter about the plan.

*The Chief Justice*: I do not see anywhere the circumstances under which these were sealed. It appears on the face of it that they ought to have been sealed in November.

*Mr. Baldwin*: If that were so they would be bad on the face of them, on the ground that the provision as to certificate had not been complied with. If it is found that this order is invalid by reason of matter of this sort, and the effect of the order as it stands would be to prevent the rightful people from getting the land, then it would be invalid.

*Sir R. Stout*: It appears that the plan was not assented to until the 10th August, 1887.

*Mr. Baldwin*: The surveyor seems to have made and signed the plan on the 10th September, 1887.

*Mr. Bell*: We do not want to have any technical questions raised about this. We must admit that the plan of each subdivision was on the order before being signed and sealed.

*Mr. Baldwin*: We say that the order was not signed and sealed until after this amended plan had been made in September.

*Mr. Bell*: I do not want to have any question raised as to this. The plan of each subdivision was on the back of the order before it was signed and sealed.

*Mr. Baldwin*: The Court has to exhibit the plan, in order to enable persons to make objections, and if no persons make objections then the title is signed. Judge Wilson was quite wrong in assuming that the same Assessor should approve of what was done. According to the Act, it must be “an Assessor”; and there is this further point in connection with this: that Judge Wilson is unable to say then (I do not say he wants to say) that No. 11 was a trust block. It is quite clear that it was trust land—that this was land belonging to certain *cestuis que trustent*, which was being given away to one trustee—to Major Kemp. The position of these persons—Kemp and Warena Hunia—was clearly defined in connection with No. 11 by the Court of Appeal. Your Honours said this, on page 95, Vol. 14, N.Z. Law Reports: “The trustees held the land for the parties in whom and to the extent to which the property in the land was before the allotment—that is, for the Natives who, but for their consent to the allotment, would have had their rights ascertained and defined by the Land Court.” On page 94 your Honours say, “The conclusion we come to is that the land was conveyed to Kemp and Hunia on the understanding that they were to hold it for the benefit of all the members of the tribe according to Maori custom; that the main object was to prevent alienation by any individual member; and that the land was to be administered very much on the principles on which the property of a tribe was held and dealt with before the introduction of English law.” And this land is a considerable portion of what these people said should be given to Warena Hunia and Kemp. Mr. Justice Denniston, in the Appeal Court, says conclusively that the railway-line was the line of demarcation, and that the whole point was the subdivision lying to the eastward.

*Mr. Bell*: The railway did not exist then.

*Mr. Baldwin*: The whole discrepancy is made up within this very block.

*Mr. Justice Denniston*: Was it not a rough delimitation of the whole thing?

*Mr. Baldwin*: No, your Honour. I submit that No. 11 was very emphatically a question of position. The other blocks were a matter of acreage, but No. 12 was the residuum of what was left. If it had been a judicial determination I could admit that your Honour's suggestion could apply. This is a case where the Court says we are trying to do what the parties have agreed amongst themselves should be done. We submit it was conclusively proved that No. 11 had nothing to do with the acreage—that it was all the land, with little exception, lying to the westward of the railway-line. At the end of paragraph 15 it says,—