

about it. I would not mention it to Kemp after 1890, because we were bad friends. We were on opposite sides on the Horowhenua question. It was settled in 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. Kemp adopted the suggestion, and brought it before Muaupoko. I do not know how the proposal was made to Muaupoko, whether it was by Kemp or by me for him. I will not undertake to say positively how it was done. 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 ratify the agreement of 1874 by the cession of one of them to the descendants of Te Whatanui. The Ohau section had been delineated on the Court plan before the 1st December.

According to the tenor of Mr. McDonald's evidence his main contentions in support of his theory that No. 14 was not allotted to Major Kemp absolutely are—(1.) That the section was set apart on the 25th November, and allotted to Kemp on behalf of the descendants of Te Whatanui, but, as they declined to accept it, another section of 1,200 acres, numbered 9, was set apart for them. (2.) That, so far as he is aware, the descendants of Te Whatanui did not definitely select either No. 3 (afterwards 14) or No. 9 before the Court closed on the 3rd December. (3.) That owing to no selection being made he applied personally on the 3rd December for an order of confirmation for the section first set apart on the 25th November for the descendants of Te Whatanui, and that the Court made an order as requested. (4.) That, owing to Mr. Lewis declining to select either section for the descendants of Te Whatanui, No. 9 and No. 3 (afterwards 14) were kept open till the last minute, and ultimately ordered in Kemp's name. (5.) That he considered that No. 14 had been set apart as an alternative section.

Touching the foregoing contentions, neither the evidence adduced nor the circumstances in connection with the matter support them. It is generally admitted that two sections of 1,200 acres were set apart in consequence of the descendants of Te Whatanui objecting to the first one at Ohau. But it is incorrect to say that they did not accept No. 9, the second one set apart, near Lake Horowhenua, as the minute of the Court of 1886 and subsequent evidence tends to show that No. 9 was definitely appropriated for the descendants of Te Whatanui on the 1st December, and there is corroborative evidence, if that is deemed of any importance, that they had accepted No. 9.

As regards the personal application for confirmation on the 3rd December for section 14, the Court minutes show that the application was made by Major Kemp. Mr. McDonald, when under examination by Mr. Fraser before the Royal Commission, stated, in reply to the following question relative to No. 14: "You are clear that you applied for an order in No. 14?—Yes, I am trying to speak the truth, and if the books of the Court show that I did not apply, my memory has failed. I am speaking what I believe to be the truth, but I will give in to the books."

It will be noted that Mr. McDonald was absolutely positive in 1897 of a matter he was doubtful of in 1896. The circumstances also are opposed to Mr. McDonald's version of the matter that he personally made application for No. 14, for the reason that he had had a violent quarrel in the evening of the 2nd December with Major Kemp about the railway-line, and according to his own admission he had called Kemp all the names he could lay his tongue to. It is highly probable, therefore, that they were not on very friendly terms the following day.

The statement made by Mr. McDonald in reply to the Chairman of the Royal Commission—that owing to his being unable to get Mr. Lewis to state definitely that he would take either section, that the two were left up to the very last minute when the Court was going to adjourn, when he asked to have both left in the name of Kemp—to say the least of it, is wholly incorrect, as No. 9 was finally dealt with on the 1st December, and it is exceedingly doubtful, as has been already shown, whether Mr. McDonald made the application for No. 14 on the 3rd December, as he asserts.

On the 14th March, 1896, in reply to Mr. A. L. D. Fraser, Mr. McDonald spoke doubtfully about making application for No. 14, and would give in to the books if the minutes were opposed to his belief in the matter; but on the 2nd April, in reply to the Chairman, he swore positively that he made application at the last minute, when the Court was going to adjourn, that both sections (meaning Nos. 9 and 14) be left in the name of Kemp. This betokens a singular deviation of the mind in so short a time, besides being incorrect as a matter of fact.

Major Kemp stated in evidence that he applied personally for the order for No. 14 on the 3rd December, 1886, and the records support his testimony. Reference also to the minute-book shows that, with the exception of the three orders on the 25th November, 1886, and the applications for Nos. 4 and 5 on the 1st December, Kemp applied for all the other sections.

Touching the theory of alternative allotments, the following evidence, given by Mr. McDonald before the Native Appellate Court, is cited: "I say that I personally made the application for No. 14 on the 3rd December, and that no one else did, and what I had on my mind when I made it was that the third order, made on the 25th November, was left unconfirmed on the 1st December.

. The effect of it was that Kemp had two alternative sections in his hand to satisfy the agreement of 1874 with McLean. I swear positively that Kemp did not, on the 2nd December or at any other time, apply in open Court for 1,200 acres (meaning No. 14) for himself.

. My view is that No. 9 and No. 14 were made alternative sections at my own suggestion.

. The application for confirmation was made by myself, and, I believe, on my own responsibility, so far as I know, without reference to Kemp. The idea that the order should be a confirmatory one came from me. I cannot now point to anything in my previous evidence that would indicate a trust in No. 14. 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 never before been questioned specially as to the alternative allotment. I never applied for it (No. 14) 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 know that some of the persons who said they were descendants of Te