

arriving at the truth in connection with the history of the block. Mr. Wilson's evidence, given before us, shows that a piece of land (subsequently forming part of what is now Subdivision 14) was set aside for Kemp to hold absolutely, and in his own right, and that the piece of land was the last one which was cut out of the block. The evidence of Mr. McDonald and other witnesses is to the effect that—and we have no doubt their evidence is correct—Subdivision 14 was not cut off for Kemp absolutely, and that it was not the last, but the third section that was cut out; and this is corroborated by an inspection of the plan which was before the Court in 1886, on which the subdivision is distinctly marked No. 3, and the alteration from 3 to 14 is shown. That plan and the evidence also shows that Subdivision 14 as now existing—which, according to Mr. Wilson's recollection, is Kemp's private property—was not marked off until after the Court of 1886, when it was marked off owing to a deficiency in area of another block."

The Commissioners then go on to remark, with reference to the telegraphic correspondence which took place between Judge Wilson and the Under-Secretary, Native Affairs, in 1890, that they think Mr. Wilson's memory is playing him false; but, as they do not explain on what point they consider he is mistaken, it is not possible to arrive at a satisfactory conclusion as to whether or not it refers to the statement that "Major Kemp appeared and acted for the tribe throughout in a fiduciary capacity; that an apparent, but only apparent, exception was Lot 10, of 800 acres, awarded to Kemp for himself only"; but it does inferentially, if the statement that Mr. Wilson's memory is playing him false refers to his evidence relative to No. 14 being cut out for Kemp absolutely, compared with the statement contained in the telegram that Kemp acted in a fiduciary capacity throughout, excepting as regards Lot 10, of 800 acres, awarded to Kemp for himself only. It is certainly a very inexplicit and inapplicable reply to the Under-Secretary's message, but it is hardly evidence of Mr. Wilson's memory playing him false, nor does it appear to bear upon the point the Commissioners evidently had in their minds when commenting on it.

The following extract from the evidence given by Judge Wilson before the Native Appellate Court explains his view of the matter: "The conductor of a case was usually called a spokesman. Kemp was also a principal, but his position before us was that of a trustee. There was nothing unusual in Kemp appearing in a fiduciary capacity. It was the proper course. No one else could act." It will be seen by the foregoing extracts that Judge Wilson misemployed the term when he stated that "Kemp appeared and acted for the tribe throughout in a 'fiduciary capacity.'"

Touching the other part of Judge Wilson's evidence commented on by the Commissioners, *i.e.* the part referring to the setting-apart of No. 14, there is no doubt that the evidence given relative to Nos. 3, 9, and 14 is very confused, especially the mixing of 3 and 9; but, irrespective of the confusion of numbers and the order in which these sections were set apart, the assertion made by Judge Wilson that No. 14 was set aside for Kemp to hold absolutely in his own right is not to be discredited because of the apparent confusion. The statement that No. 14 was the last section dealt with is correct, notwithstanding it was one of the three sections before the Court on the 25th November. The discrediting of Judge Wilson's testimony on the evidence given by Mr. McDonald and other witnesses is not justifiable in the face of the statement which appears a little earlier in the report relative to the non-reliability of the evidence, especially of the Native witnesses; and if their evidence is eliminated there is only Mr. McDonald's left, which the Commissioners have also commented on as being unsatisfactory.

The following evidence was given by Neville Nicholson (Te Aohau) before the Royal Commission relative to the position held by Major Kemp prior to the subdivision of the Horowhenua Block in 1886, and the position that he was placed in by that subdivision, as explained by the Assessor to the Natives in Court.

The following questions were put: By Mr. Stevens: With regard to Block 11, were you in the Court when that block was cut off from the main block?—Yes. Do you know what position the titles stood in for the whole of the Horowhenua before that subdivision was made?—Yes. What position did Kemp occupy at that time?—He was the caretaker for his people. We, the Ngatiraukawa, were under the impression that Kemp and Kawana were the caretakers of it for the people. That was after the trouble of 1874. We were taken to Wellington by Sir Donald McLean, and then we found out that Kemp alone was the caretaker, and not Kawana. You say that Kemp was the *kaitiaki* for the whole of the Horowhenua Block before that subdivision was made?—Yes. . . . Did the Assessor explain the difference between the title given by the Court then and the former title of 1873?—The Assessor said, "You must recollect that from 1873 to this time Kemp was the caretaker of the whole land, but now the land is divided into different parts amongst the tribe, and that has done away with the former title." That is, the Assessor explained to the Natives present that the former trust had ceased to exist with regard to No. 11?—The Assessor went through the different subdivisions and explained the whole matter, so that they would understand that Kemp's former position had come to an end. Who was the Assessor?—Kahui Kararehe.

It has been stated that a kind of fiduciary interest in land was vested sometimes in a chief for the benefit of others, but such an idea looks very much like the result of European suggestions, and is inconsistent with the habits of the people. As a matter of fact the position known to Europeans as held by the sovereign, as *parens patriae*, or guardian over various classes of persons, and the trustee of the kingdom, never existed amongst the Natives. The supposition that a chief held the position of trustee is on a par with the idea that he possessed manorial rights and other positions in regard to the land totally incompatible with his actual status in the tribe. As regards the plan which the Commissioners relied on in support of their opinion that Judge Wilson was in error about No. 14, it is evidently the supplementary plan which is referred to, as plan W.D. 508 was the plan in use by the Court, and on that No. 14, as dealt with by the Court, was to the east of the railway; and, as regards the subsequent marking-off of part of the section to the west of the railway, the Chief Justice has decided that it was competent for the Court to make the required alteration.