

The meaning Judge Wilson attached to the term "fiduciary capacity," as used by him in the telegram to the Under-Secretary, Native Department, in the following phrase, "Kemp appeared, and acted for the tribe throughout in a fiduciary capacity," is explained by him as follows: "There was no telegram submitted to me by the Commissioners during the hearing of the Horowhenua Block by the Commission. I received a telegram from the Under-Secretary of Justice, a short wire. . . . It related to a dispute about No. 11, as to whether there was a trust or not. . . . I telegraphed that Kemp held No. 11 in a fiduciary capacity. I said 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 any inconsistency away. I have no knowledge whether the telegram commented on 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 could be any dispute about it. . . . 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. It is a fact that Kemp asked, by or through McDonald, to appear as a trustee for the people. . . . The telegram of the Under-Secretary to me referred to No. 11 only; anything else I said was gratuitous."

Shortly stated, Judge Wilson's evidence before the Native Appellate Court relative to setting apart No. 14 for Kemp is as follows: "No. 14 is correctly marked No. 14 on the plan; it was so marked when I had done with it. I know nothing of any previous number on it."

Referring to the entry in the minute-book, Vol. 7, page 200, Judge Wilson explained that it referred to the order for No. 14, for Major Kemp himself cannot account for the word "confirmation" being used, but thinks the clerk took it from the interpreter. Major Kemp probably used the word "whakatuturu," and the interpreter rendered it "confirmed." "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. I reaffirm the reply I gave then. In reply to Mr. McDonald, Judge Wilson said, "I repeat that No. 14 was awarded to Kemp for himself, after an award had been made to him for the descendants of Te Whatanui. No. 14 was not awarded in my Court to Ngatiraukawa. 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 Court, but no order was made until after No. 10 was dealt with. We were told in Court that part of what is now No. 14 had been offered to the descendants of Te Whatanui outside of the Court, and that they had refused it. . . . 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."

In reply to Mr. Stevens witness stated that "the award of No. 14 to Kemp was part of the voluntary arrangement. No. 14 was not a gift to Kemp; it fell to his share. The 800 acres given to Kemp was allotted to him for a purpose; it was different with the 1,200 acres (No. 14)—that was for him personally. . . . No. 14 was spoken of to the Court as being for Te Whatanui's descendants, but it was never awarded to them. I cannot remember how far the offer to give No. 14 to descendants of Te Whatanui went, but I know we never awarded No. 14 to them. As regards No. 3, anything we did on the 25th November lapsed. I can swear that we did not award it to the Whatanui. . . . There was an abortive attempt to put No. 14 through for the descendants of Te Whatanui, but it failed, notwithstanding what appears in the minutes. The orders for the two 1,200-acre sections were not made to Kemp so that the Whatanuis might have the choice of which section they would take. No. 14 was not handed to Kemp for the descendants of Te Whatanui. They never had a vested right in that block. . . . I am firmly convinced there was no order on the 25th November, 1886, for No. 3 over the section now known as 14. . . . 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 Te Whatanui. No. 14 was not delineated on the plan on the 25th November, 1886—I do not 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 him for the descendants of Te Whatanui. I am not prepared to swear that No. 3 was not No. 14, but that is my recollection—that it was not. . . . The boundaries were not defined on that day (25th November, 1886). The application for 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."

In reply to Mr. Baldwin witness stated, "The Court was perfectly satisfied that there was a voluntary arrangement. . . . 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. . . . 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. At any rate, he asked the Court to award it to him for himself, and objectors were challenged before the orders were made. . . . I have no doubt that Mr. 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."