

The witness, in reply to Henare Apatari, stated, "There was no objection to No. 14 being awarded to Kemp. . . . No. 14 came before us as part of the voluntary scheme for partition of the block."

In reply to Mr. McDonald witness stated, "I have never heard of any dispute about No. 14 until after the Court at Whanganui. I made the final order for No. 9 to the descendants of Te Whatanui on the 1st December, 1886. We never awarded No. 14 to them. . . . The order for No. 14 is dated the 3rd December, 1886. There never was any intention to give the descendants of Te Whatanui No. 14. When Kemp asked for No. 14 he asked for it for himself."

Witness stated in reply 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 Mr. 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."

The alleged inconsistencies in Judge Wilson's evidence which have been animadverted on are : (a.) The telegrams sent to the Under-Secretary in connection with the Horowhenua Block,—*i.e.*, that the telegrams were sent in 1895 and not in 1890. (b.) That No. 9 was the section before the Court on the 25th November, 1886. (c.) That the proceedings at the Court which sat on the 25th November, 1886, were abortive. (d.) That it was while the 1,200 acres for the descendants of Te Whatanui was an undefined claim that Mr. Lewis removed it from the Court's jurisdiction, and probably while the Court was not sitting. (e.) That No. 14 was awarded to Kemp absolutely. (f.) That No. 14 was not No. 3 as delineated on the plan.

It will be convenient to remark on the several matters referred to seriatim :—

(a.) Judge Wilson is evidently under a misapprehension about the date of the telegram sent in reply to the one received from the Under-Secretary relative to No. 11, Horowhenua, as the telegram was sent in 1890 and not in 1895. There was no occasion to send a telegram of the kind in 1895, as there was no trouble imminent then, but there was in 1890, as the question of trust had been raised in the Native Land Court, and was subsequently taken before the Supreme Court in 1894. The only question that was pending in 1895 was the proceedings in the Court of Appeal.

(b.) It is evidently a mistake that the section which ultimately became No. 9 was before the Court on the 25th November, as the section that was located near Lake Horowhenua and numbered No. 9 on the 1st December was not thought of until between that date and the 1st December, and in fact the section which now bears that number was not laid off until the afternoon of that day.

(c.) Judge Wilson asserts that he treated the proceedings of the Court of the 25th November as abortive, and the Supreme Court, in reply to a question submitted by the Native Appellate Court pointing out the apparent irregularity in the proceedings, has decided that the competence of the Court on the occasion referred to is not a matter for inquiry, the opinion evidently being that it was immaterial.

(d.) This in all probability is a correct account of what actually took place—that the question of locality for the 1,200 acres for the descendants of Te Whatanui was finally decided during interval which happened between the 25th November and the 1st December.

(e.) The reason for contesting this statement appears to be based on what is alleged to be an apparent inconsistency between the reiterated statements made by Judge Wilson that No. 14 was awarded to Kemp absolutely and the statement contained in the telegram sent by him in reply to the one received from the Under-Secretary relative to the question raised about Horowhenua No. 11, that the only block Kemp did not act in fiduciary capacity for was No. 10.

This is a palpable misconstruction of the meaning of this statement. What Judge Wilson stated was that Major Kemp appeared and acted for the tribe throughout in a "fiduciary capacity," the only apparent exception being for Lot 10. The statement in itself is meaningless, and what was probably meant was that Kemp acted as agent or spokesman for the tribe. The fiduciary capacity he was clothed with under the certificate of 1873 was set aside by the subdivision of 1886, and he would require to be rehabilitated with that authority before he could again act in that capacity. The Supreme Court decided, on a question referred to it by the Appellate Court dealing, *inter alia*, with this phase of the question, as regards Kemp's former fiduciary capacity becoming revived under certain circumstances, that the land may be deemed to have effectively vested in Kemp, notwithstanding the matter mentioned, if the Native Appellate Court is satisfied of the intent of the Native Land Court in making the order.

(f.) Judge Wilson appears to be under a misapprehension about No. 3 and No. 14, as there can be no doubt that the parcel of land at Ohau which was numbered 3 on the 25th November became No. 14 on the 3rd December. No. 3 and No. 9 are not identical.

As Judge Wilson's telegram to the Under-Secretary of the Native Department has been frequently referred to, it has been deemed advisable to give the full text of it, so that its actual purport may be clearly understood :—

Judge Wilson, Native Land Court, Gisborne.

24th May, 1890.

(Confidential. No. 273.)—Referring to the Horowhenua subdivision case recently before Judge Trimble at Palmerston, it is asserted by Major Kemp that there was an understanding on the part of the Natives when the block was before you for subdivision that the portion known as Horowhenua No. 11, containing 14,975 acres, awarded to Kemp and Hunia, was to be held by them in trust for the Muaupoko. The matter appears likely to lead to lawsuit, and ther trouble.

Minister will be obliged if you can kindly inform him whether, so far as you are aware, there was any such understanding in the minds of the Natives when before your Court, or whether the land was intended to be owned by Kemp and Hunia simply. By his recent decision Judge Trimble has divided the land into shares of equal value between the two chiefs named. I believe Kemp has applied for a rehearing of the partition, and he is also in communication with lawyers with a view of bringing the matter before the Supreme Court.

T. W. LEWIS, Under-Secretary.