

T. W. Lewis, Esq., Under-Secretary, Native Office, Wellington.

Gisborne, 24th May, 1890.

Your wire, *re* Horowhenua partition: I am unable to answer your question here, but will wire you again *re* the matter after I have consulted my notes at Auckland.

T. W. Lewis, Esq., Under-Secretary, Native Office, Wellington.

27th May, 1890.

Horowhenua partition: There was a large attendance of Natives interested when this block was subdivided. Major Kemp appeared and acted for the tribe throughout in a fiduciary capacity. An apparent exception, but only apparent, was Lot 10, 800 acres, awarded to Kemp for himself only; but this was done to enable him to reconp certain expenses incurred in respect to the block for which, as I understood, he had rendered himself personally liable. Lot 11, 15,207 acres, was placed in the names of Major Kemp and Warena Hakeke, I believe, for the rest of the tribe. Objectors were challenged; none appeared.

J. A. WILSON, Judge.

An attempt has been made to attach some importance to the telegram sent by Judge Wilson to the Under-Secretary, Native Department, asking whether he was aware that an understanding existed on the part of the Natives that No. 11 was awarded to Kemp and Warena Hunia in trust for the Muaupoko or for themselves alone, to the effect that Kemp appeared and acted for the tribe throughout in a fiduciary capacity, except as regards Lot 10, containing 800 acres, awarded to Kemp for himself—that the nature of the said reply indicated that a trust existed in respect of all the subdivisions except Lot 10. It will be found, if this telegram is read in an unbiassed manner, that it contains no such indication, and that, so far as the words “fiduciary capacity” are concerned, these words have no applicability, and cannot be construed to mean that a trust was created in respect of any of the subdivisions, as it does not signify in what capacity Kemp acted in the Court of 1886. The question is, What was actually effectuated by the Court at that sitting? It is submitted that the statement that Kemp acted in a fiduciary capacity cannot attach any more importance to the proceedings than it would if the message had stated that Mr. A. McDonald appeared and acted as agent on the occasion, as that is practically what it means. The term has been erroneously employed, probably through the fact that Kemp occupied a “fiduciary capacity” under the certificate of 1873, a position which he retained until he was denuded of it by the subdivision of 1886.

Under examination by Sir W. Buller before the Native Appellate Court Judge Wilson stated, with reference to the telegram referred to, “There was no telegram submitted to me by the Commissioner during the hearing of the Horowhenua Block by the Commission. I received a telegram from the Under-Secretary of Justice. It related to a dispute about No. 11, as to whether there was a trust or not. In my reply I said that I had not any notes with me. I knew at the time that my notes had been destroyed. When I reached home I telegraphed that Kemp held No. 11 in a fiduciary capacity. I said also that there was only one block in which Kemp had not acted in that capacity. No. 14 was not in the 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 the apparent 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 would be any dispute about it.”

Judge Wilson has given positive evidence on all occasions when under examination that No. 14 was set apart for Kemp absolutely, and that it was part of the voluntary arrangement. Before the Supreme Court in 1894 he stated that what Kemp got himself was No. 14, 1,200 acres; before the Royal Commission he gave positive evidence that No. 14 was for Kemp absolutely, and before the Native Appellate Court he was equally sure that No. 14 had been set apart for Kemp, with the concurrence of the Muaupoko present, at Palmerston North, as part of the voluntary arrangement, and was not allotted to him to hold as an alternative section for the descendants of Te Whatanui.

In reply to Mr. McDonald Judge Wilson stated, “Outsiders are much more likely to be confused than I am. They had their meetings outside as well as hearing the proceedings in the Court, whereas I only heard what took place in Court,” and in connection with this phase of the question it has to be borne in mind that Judge Wilson has not discussed the subject outside since the Court of 1886, consequently his mind was much more likely to be clear as to what was done and intended in the Court of 1886 than others who have discussed the matter on all occasions whenever an opportunity offered; for instance, Mr. McDonald has admitted in several Courts that he was confused between what he had heard in Court and what he had heard outside.

Mr. J. M. Fraser gave the following evidence before the Native Appellate Court on the 16th March, 1897, relative to the Horowhenua Block and No. 14: “I am a Native agent, and reside at Hastings. I know Kemp, the resident Muaupoko, and the Horowhenua Block. I acted as agent for Kemp and the tribe from the 5th March, 1890, to the 23rd July, 1892. I appeared in the Native Land Court at Palmerston in 1890, and also before a Committee of the House of Representatives during the same year with Kemp and others of the same tribe. I continued to act as agent for Kemp until the rehearing Court sat in 1891.” Witness described what took place at the meeting at Pipiriki, and stated that Kemp made no request to the people to give him No. 14. “It is absolutely incorrect that such a statement was made.”

Witness further stated, that from the 5th day of March, 1890, until he arrived at Levin, about three weeks ago, “I have never heard any individual of the Muaupoko Tribe, or any agent of any of them, allege that No. 14 was held by Kemp on trust. . . . On no occasion was it ever suggested by any member of the Muaupoko that No. 14 was held by him in trust. Have always understood from Kemp that the land was absolutely his own property.”

In reply to Hamuera Karaitiana witness stated, “I repeat that I had never heard it stated that Kemp was a trustee in No. 14 until I came to Levin to attend this Court. I was present when Kemp gave his evidence at the Court of 1890. I did not hear him say that No. 14 was not his, but that he was a trustee. I have heard his evidence read during these proceedings, but the fact that