

—Yes. Have you any idea of the extent of Kemp's interest in the block on subdivision?—He got three blocks in his own name alone, one of 4,000 acres, one of 1,200 acres, and one of 800 acres, and he got a share in a block of 16,000 acres with Warena Hunia, a son of the late Kawana Hunia. Then he and Kemp had 16,000 acres, independently of the original block?—Yes. Had Kemp any interest in any other block?—No. He had a share in the 16,000 acres. Can you say of your own knowledge whether any of the Native owners, when the subdivision orders were made, were prepared to sell?—Yes, a good many of them. Did they offer them?—They offered them at the time the land was passing through the Court, but there was the proclamation on the land, which prevented them from selling. Was Kemp desirous of selling?—I heard of him offering only the 4,000-acre piece. Others of the Natives were prepared to sell?—Yes. Can you say whether Kemp had entered into negotiations with the Government for the sale of the land in anticipation of it passing through the Court?—At the same interview at which Kemp agreed to apply to the Court he offered 4,000 acres for sale to the Government."

It will be observed by the tenor of the foregoing questions that the object of putting them was to elicit information on behalf of the Wellington and Manawatu Railway Company—who considered they had a grievance against the Government for not affording them facilities to acquire the Horowhenua Block—as to how much land would have been available for purchase had no obstacle been placed in the way of acquiring it. It will also be perceived that the questions put to Mr. McDonald as to what area Kemp possessed in the block were specific, and that the nature of the replies went to show that Kemp possessed, besides a share in the 16,000-acre block (otherwise No. 11), three other blocks which he could dispose of, comprising respectively 4,000 acres, 1,200 acres, and 800 acres, but that he only desired, as far as it was known, to sell the 4,000 acres. It will also be noted that this evidence was given by Mr. McDonald in December, 1887, a twelvemonth after the land passed the Court, while the matter was fresh in his mind, and that it is entirely opposed to the theory of the alternative selection.

The Court is satisfied beyond all reasonable doubt that the following matters happened in the Court of 1886 in connection with the setting-apart of No. 14: (a.) That a block of 1,200 acres was dealt with by the Court on the 25th November, 1886, and an order directed to issue in favour of Meiha Keepa te Rangihwinui for the descendants of Te Whatanui. The division dealt with on that date was then numbered 3. That the descendants of Te Whatanui present at Palmerston North, to the knowledge of the registered owners, refused to accept the 1,200 acres at Ohau numbered 3. (b.) That it is conclusively proved that the block dealt with on the 1st December was No. 9, and was made as a final allotment to Kemp, as trustee for the descendants of Te Whatanui, and not as an alternative allotment in order to allow the descendants of Te Whatanui to choose between No. 9 and No. 3 (ultimately numbered 14). (c.) That Mr. Lewis, the Under-Secretary for Native Affairs, was present at the Court when No. 9 was set apart, on the 1st December, for the descendants of Te Whatanui, but it is immaterial whether as representative of the Government he did or did not accept the aforesaid section on behalf of the descendants of Te Whatanui, as the position of the 1,200 acres was fixed by the agreement of 1874, and so long as the terms of the said agreement were complied with further action was unnecessary; but, notwithstanding that, Judge Wilson has stated that both Major Kemp and Mr. Lewis told him on the 1st December, 1886, that No. 9 had been accepted by the descendants of Te Whatanui. (d.) That the 1,200 acres set apart at Ohau, and numbered 3, on the 25th November, 1886, which was then intended for the descendants of Te Whatanui, but was refused by them, became afterwards vacant and unappropriated, until it was again dealt with by the Court on the 3rd December, 1886. That the order of the 25th November was only a minute for an order; that no order was drawn up in relation to No. 3 after it became No. 14, which is either dated on the 25th November or made to relate back to that date by way of confirmation or otherwise. That the registered owners having decided on the 1st December that Subdivision 9, comprising 1,200 acres, was to be allotted to the descendants of Te Whatanui in satisfaction of the agreement of 1874, it follows as a matter of course that on the 3rd day of December there could have been no intention to create or confirm a trust in respect of Subdivision No. 14 in favour of such descendants.

After due consideration of all the circumstances, the Court is of opinion that the Native Land Court in 1886, in making its order on the 3rd December in favour of Meiha Keepa te Rangihwinui for Section 14, fully intended to vest the said section in him as sole beneficial owner. That, having carefully weighed all the evidence, the Court is of opinion that Judge Wilson's testimony relative to the setting-apart of Section 14 in favour of Major Kemp untrammelled with any trust or other obligation is indisputable, and that the Court in making its order proceeded upon a determination that the registered owners had agreed to such appropriation.

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