

22. The suggestion now made is that Wi Hau, because he was a well-known and useful servant of the Government, was prepared to betray the interests of his fellow-Maoris and to sell the land to the Government, irrespective of whether other people had interests in it or not, and at an inadequate price. But, on the other hand, the extract quoted from the letter is at least equally consistent with an implication of Mr. Kemp's desire to make the purchase for the reason that Wi Hau, who was a well-known and useful servant of the Government, was anxious to have a settlement established. The fundamental rule must not be overlooked in this connection that the presumption is in favour of honesty and against fraud, especially where the person against whom the charge is made is dead and no longer able to speak for himself. That applies equally to Wi Hau as to Mr. Kemp. Of course, the presumption is rebuttable, but the material offered to support the rebuttal must be clear and convincing.

23. Mr. Kemp then writes to the Chief Land Purchase Commissioner on the 4th October, 1858, when he reports that the price for the Mokau Block referred to in his letter of the 1st July "and containing by survey 7,225 acres" has been "fixed at the sum named in the margin (£240)." The letter goes on: "The particulars connected with the negotiations for this block have already been transmitted to your office. I now beg to recommend for the Governor's approval the payment of the above-named sum, which I think fair and reasonable, and as low as it could be made, taking the ascertained quantity and other favourable points into consideration." The first observation to be made about this letter is that it is the first statement of the actual area of the land, from which the inference is that between the 1st July and the 4th October the survey had been completed, and that in all probability Mr. Kemp had seen the actual plan. The next observation has reference to the words "the ascertained quantity." Judge Acheson in his report says that, according to Mr. Kemp's letter, the quantity of *timber* on the block had been "ascertained." In making that statement he presumably accepted an assertion made before him by Mr. Skelton—and, indeed, Mr. Skelton has emphasized the point before us as being evidence of what he is pleased to call Mr. Kemp's fraud. In point of fact, both Mr. Skelton and Judge Acheson are clearly wrong on this point. The words "ascertained quantity" in Mr. Kemp's letter obviously are referable to the *land*. "Quantity" clearly means "area" and nothing else. First of all, that is the only reasonable interpretation of what Mr. Kemp says, and, secondly, it can mean nothing else because the land was the only thing the extent or area or quantity of which had been ascertained: the timber could not have been measured or its quantity ascertained at that time. We may have to make further reference to this letter of Mr. Kemp's when we come to deal with the adequacy of consideration.

24. As to the allegation of fraud made against Wi Hau, it is further suggested that he had been, in effect, bribed by the Government, firstly by a payment of £100, and secondly by his appointment as one of ten members of a runanga for the district. As to the question of bribery, the suggestion seems to us to be very far-fetched. It is true that a sum of £100 had been paid to him, but that payment was made on a recommendation by Mr. Commissioner Bell, and is explained in a letter of his of the 30th June, 1858, to the Chief Commissioner of the Land Purchase Department. Suffice it to say that in one of the old claims (Joyce's claim) which was heard before Commissioner Richmond in November, 1842, an award of 219 acres was made to the claimant Joyce. It happened, however, that a sum of £62 2s. 6d.