acted without authority, that the tribe would have consented to anything he did. In 1886 the Muaupoko set aside 1,200 acres in pursuance of the agreement with Sir Donald McLean. This is what is now Block XIV. The Ngatiraukawa objected to the situation of this land, and therefore a section near Lake Horowhenua was set aside. This section appears, although we can get no direct evidence on this point, to have been in a different situation to that in which No. 9 now is; and ultimately Section No. 9, as now existing, was laid off containing 1,200 acres. There is no permanent water except swamp on this subdivision, and it will be noticed that the land does not touch either the Hokio Stream or the Horowhenua Lake, from which places a considerable amount of the food supply of the Natives comes.

There are two classes of claimants to this land; one, the lineal descendants of Te Whatanui, who have never resided on it, and the other those who are descended from Te Whatanui's sister, Hitau, who and whose descendants have continuously resided on the block.

The former class base their claim on the wording of the agreement "descendants of Te Whatanui" and Kemp's alleged promise to Pomare. The latter claim that these words are not to be read in their ordinary sense, but as indicating a class of persons who were living on the land, and were those who comprised the Te Whatanui's settlement. In our opinion the latter claim is the just one. It is impossible to conceive that if Te Whatanui's lineal descendants were entitled to this large block of land, they would have been satisfied with 100 acres at Raumatangi which was given to them in 1873; and yet no claim whatever is made by them until 1,200 acres were set aside under Kemp's agreement with Sir Donald McLean. On the other hand, it is evident that Sir Donald McLean, who had all the parties before him, was satisfied that the Ngatiraukawa who were causing all the disturbance, and not the lineal descendants of the Te Whatanui, had claims; for he paid £1,050 to extinguish them, and prevailed on Kemp to agree to set aside 1,200 acres, and also make reserves. Nor does our view conflict with the decision of the Supreme Court given in 1895.

The facts leading up to this decision were as follows:—

In 1890 an Order in Council was issued directing the Native Land Court to ascertain and determine which of the descendants of Te Whatanui were entitled, and in what relative proportions, to a share in the said piece of land, and to make such order or orders in their behalf, as the nature of the case might require.

The Native Land Court awarded 400 acres to the second class of claimants mentioned above, who appealed; and the Appellate Court varied the judgment by awarding 600 acres to each class. Thereupon the first class applied to the Supreme Court to prohibit the Appellate Court from carrying its judgment into effect, on the grounds that the words in the Order in Council "descendants" meant in English law "lineal descendants." The Supreme Court affirmed this view, but its descision was not on the terms of the agreement, but on the terms of the Order in Council. Had the Supreme Court been called upon to interpret the agreement, a vast amount of evidence as to the situation of the parties, &c., would have been before it which was not before, when it was called upon to decide the technical meaning of a word in the Order in Council. That both the Native Land Court, and the Supreme Court felt, if the Judges are reported correctly, that the matter should not be allowed to rest is evident from the judgments. In the judgment of the Native Land Court (Appellate) it is stated:—

"A difficulty was raised in this Court at the commencement of the case, because it was said that the appellants were not such descendants, being descended from Hitau, a sister of Te Whatanui. It is perhaps whether they are descendants according to the European meaning of the term. We think the Order in Council should have empowered the Court to enquire and determine who were the persons entitled under the deed of gift upon which the Order in Council was founded. It is probable that if this objection had been raised at the first hearing, the Court, after hearing the evidence, would have made a special report, with a view to the wording of the Order in Council being reconsidered. As, however, the Pomare party did not at the first hearing dispute the right of the descendants of Hitau to be admitted, we have not thought it right to allow that question to be raised for the first time in the Appellate Court."