In the Native Appellate Court, District of Wellington.—In the matter of a claim to Horowhenua Subdivision 14, containing 1,200 acres.

ARGUMENT ON OPENING BY SIR WALTER BULLER.

I APPEAR on behalf of Major Kemp te Rangihiwinui, who is claiming, in his own right, Subdivision 14 of the Horowhenua Block.

The Court is no doubt aware that in the year 1886 the Native Land Court, sitting at Palmerston, with Mr. Wilson as Judge, made a partition of the whole Horowhenua Block by the joint consent of the 143 registered owners entitled thereto under Native Land Court certificate, dated 1873, of whom Kemp was one. Subdivision 14 was the last of the fourteen subdivisions into which the block was divided, and the Land Transfer certificate thereto was, pursuant to an order of the Court, issued to Kemp.

I need not enter into the circumstances, which are a matter of public knowledge, under which this matter comes before the Native Appellate Court. There is only one point which I wish to make quite clear. It is this: that the question to be determined here—viz., whether in the year 1886 Kemp received Subdivision 14 as trustee or as absolute owner—that that question, I say, comes before this Court entirely fresh and untrammelled by any previous investigations. The Court is no doubt aware that in 1886 the Horowhenua Commission held a parliamentary inquiry into the question of title to every subdivision in the block, No. 14 included. The Commissioners had special jurisdiction to go into the question of any supposed trust. Some of the present counter-claimants were represented by Mr. Stevens on that occasion, and the Government retained Mr. A. L. D. Fraser and Mr. Alexander McDonald to appear in the case, and all those gentlemen cross-examined Kemp in a hostile manner, and set up before the Royal Commission a theory of a trust in relation to No. 14. I mention all this only for the following purpose: The Court is aware that the Commissioners presented a report to Parliament dealing, among other things, with the question of the supposed trust in relation to No. 14, and the report contained findings and recommendations as to the title to the various subdivisions in the block. These findings and recommendations, however, have not—with the exception of that relating to the State farm at Levin, with which we have nothing to do—been given effect to by "The Horowhenua Block Act, 1896," as it finally passed after being amended by the Council. And the statute in question has referred the matter of all the disputed subdivisions to the Native Appellate Court. The present inquiry, therefore, is completely untrammelled, and this Court has, so to speak, a clean sheet. But Kemp has the advantage of knowing the case that was set up by the present counter-claimants before the Royal Commission. The question, then, for this Court to determine is the following: The legal ownership of No. 14 was awarded to Kemp in 1886 by the Native Land Court, with the consent of all the 143 persons (of whom Kemp was one) entitled to share in Horowhenua: did Kemp take No. 14 as trustee or as absolute owner? If this Court finds that No. 14 was Kemp's own land—his share on the subdivision of the block—then, by "The Horowhenua Block Act, 1896," Kemp's Land Transfer certificate, which is suspended during the present investigation, will reissue to him. If, on the other hand, the counter-claimants succeed in proving—the onus, of course, being on them—the theory that at the partition of 1886 circumstances occurred which made Kemp a trustee for some tribal purpose, then this Court has jurisdiction under the Native Equitable Owners Acts.

I should incidentally remark that "The Horowhenua Block Act, 1896," which gives this Court its present jurisdiction, bestows upon it all the powers under "The Native Equitable Owners Act, 1886," and all the amendments thereof, with a view to the trial of this question as to Subdivision 14.

In dealing with the matter at issue, as I shall now endeavour to do, I will make three preliminary remarks: (1.) It is admitted that the question is, What occurred at the Court of 1886? Was it stated in Court and understood that No. 14 was Kemp's own share of the block on subdivision, or is the contrary the case—was he trustee for some tribal purpose? (2.) We have the best contemporaneous evidence answering this question in Kemp's favour. Judge Wilson will state that when he awarded No. 14 to Kemp, on the 3rd December, 1886, it was openly said in Court and understood that this subdivision was Kemp's own land—his share on subdivision of the block. He will go further than this; he will state, and the minute-book shows, that previously to the 3rd December, at the commencement of the case, the Court had been informed, in the opening speech of Mr. McDonald, who appeared to represent the tribe generally, that it was intended to give Kemp a subdivision for himself, and that consequently the Judge was on the look-out for this subdivision, and careful to challenge it when it came on, so as to make sure that there was no mistake about the matter. (3.) Turning, on the other hand, to the theory of a trust, which the counter-claimants set up before the Royal Commission, I will venture to make four preliminary criticisms on this theory. In the first place, it avowedly proceeds on the assumption that Judge Wilson's recollection, confirmed by the minute-book—that it was stated in Court, in 1886, that No. 14 was for Kemp himself—is wrong. This evidence was not contradicted by a single witness before the Horowhenua Commission, and has, in part, been commented and acted upon by the Supreme Court. Yet the attempt will have to be made to discredit it now. In the second place, those who set up this theory of a trust will be compelled to ask this Court to discredit the minutes of the Court of 1886. I will give one instance of this. The minute-book contains a minute, dated 3rd December, of the order awarding Subdivision 14; the counter-claimants will be compelled, in consonance with their theory, to suggest that this minute ought not to be there at all, and that the Clerk dreamt that a subdivision was being allotted, and made a minute of an entirely non-existent order, as Subdivision 14 had been allotted two days earlier and eight subdivisions back. I will not forestall my argument by setting forth at length the serious errors which must have crept into the minute-book and the Court maps if this theory of the counter-claimants is to be accepted. But let me say in advance that I shall produce to this Court a contemporaneons record, initialled by Judge Wilson himself, which will decisively confirm these