other records; and Judge Wilson will show that in regard to those very points on which the minute-book is attacked his attention was called to it in 1886, so that he can speak to its accuracy. And let me say this: There was not one witness before the Royal Commission but accepted the accuracy of the minute-book, and agreed that if his memory differed from it he would accept correction from the record. In the third place, I would make this remark in regard to the theory of a trust. No. 14 was allotted to Kemp in 1886. For nearly ten years from that date Kemp's Land Transfer certificate for this subdivision was uncaveated, and in 1895, when a caveat was lodged, it was lodged not by a tribesman, but by an officer of the Government. No tribesman could deny—when I questioned him before the Royal Commission—that from 1886 to that date Kemp had behaved avowedly as absolute owner of No. 14, without dispute by the tribe, although the tribe knew of it. During that period Kemp had said to members of the tribe, "14 is mine"; and no tribesman had said "No; you are a trustee." Kemp leased, sold, and mortgaged parts of Subdivision 14, and disposed of the timber upon it, and received the rents, purchase-moneys, and royalties, and no tribesman claimed a share. And let the Court note this: The tribesmen behaved very differently in respect of those subdivisions which were considered trust subdivisions, such as Nos. 6, 9, and 11. These were all caveated by members of the tribe as early as 1892, and when Warena Hunia, one of the trustees of No. 11, claimed absolute ownership, repeated petitions to Parliament and two actions were the consequence. All this, I repeat, was undisputed before the Royal Commission; no tribesman questioned asserted the contrary. My fourth criticism is this: Unless the Court believes that No. 14 was intended for Kemp himself, they must be prepared to believe that Kemp alone of all the 143 registered owners got no individual share in Horowhenua at all. Every other of these tribesmen got his separate piece of land—the chief alone, we must suppose, did not.

I have now finished my preliminary observations, and shall enter upon the main portion of my address, and endeavour to lay before the Court as clearly as I can the circumstances that occurred at the Partition Court of 1886 when No. 14 was allotted to Kemp, those being the events on which, as I have explained, Kemp's title turns. The old tribal title under the Native Land Court certificate, dated 1873, was, of course, put an end to by the partition of 1886, when the certificate was cancelled and the block subdivided in freehold tenure; and we are not concerned with the old Native title, which has no bearing or effect upon the freehold tenure created in 1886, so that the Court can dismiss it from their minds. There is only one point to which I would call attention—namely, the fact that the judgment of the Native Land Court, in 1873, has by judicial act established Kemp's right as one of the persons entitled according to Native custom to a share in Horowhenua. In 1873 the Court found what tribe was entitled to the block, but, more than this, under the seventeenth section of the Native Lands Act of 1867 it found the names of the 143 persons having ancestral rights in the land; and Kemp is one of these. These names are, of course, entered of record in the books of the Native Land Court, and it is (to borrow a technical phrase) *res judicata* that Kemp is beneficially interested in Horowhenua. I do not know whether I ought to trouble the Court with this, as it is, of course, self-evident, except that recently, in the Legislative Council, the Hon. Mr. Williams—on the strength of the evidence of Wirihana Hunia, given before the Native Affairs Committee—declared that Kemp's assertion at the bar of the Council that he had ancestral claims over Horowhenua was false. We start, then, on the assumption that the partition of 1886 would be incomplete—as a matter of fact, it would be absolutely illegal unless some share was allotted to Kemp. With this remark, I may put aside the old tribal title and come to the partition of 1886.

The Court must carefully bear in mind the dates of Judge Wilson's sittings in 1886, which have a most important bearing on the case. The Court opened on the 25th November, 1886. (I am now giving undisputed dates.) Three subdivisions of the block came on in Court, and minutes for orders were made. But on the 27th November the Assessor, Hamiora Mangakahia, had to leave, owing to his wife's illness, and the Court adjourned to the 1st December, a week later. On the 1st December the Court reopened with a fresh Assessor, Kahui Kararehe. As the Assessor is an integral part of the Court, the Judge treated the proceedings commenced before the Court of the 25th November (which I may call the abortive Court) as a nullity, and on the 1st, 2nd, and 3rd December made orders awarding every subdivision in the block as though the abortive Court had never sat. Consequently, the three minutes for orders made on the 25th and 26th of November were void, being superseded by fresh orders expressed to take effect at later dates. The above are undisputed dates which will serve as landmarks—first, the abortive Court on the 25th and 26th November, then the sittings with the fresh Assessor on the 1st, 2nd, and 3rd December, at which the partition was commenced *de novo*. There is one more fact which is common ground before this Court—namely, that the subdivision of Horowhenua was by voluntary arrangement among the registered owners. I need hardly say the Court had statutory powers for giving effect to voluntary arrangements. The difference between a partition by voluntary arrangement and one on evidence taken is obvious. If, on the one hand, the partition is not by voluntary arrangement, then the claimant for each subdivision has to prove his title according to Native custom. If, on the other hand, the registered owners have agreed who is to receive each subdivision, then all that has to be proved to the Court is their agreement, and no evidence is necessary beyond the absence of objection after challenge by the Court; though Judge Wilson will prove that the allotment of each subdivision in 1886 was preceded by a declaration in Court that the tribe had consented thereto, and what was their intention in doing so.

The tribe had assembled at Palmerston previously to the abortive sitting on the 25th November; and in a barn lent by Mr. Palmerson they held a long committee meeting, presided over by Kemp. The Committee commenced before the abortive Court sat, and continued during the 25th and 26th November, and for some days afterwards. Mr. Palmerson, the owner of the barn—an authorised surveyor—attended with a tracing of the block, and on this tracing Mr. Palmerson marked off, from day to day, the subdivisions they were going to ask the Court to allot as the tribe