

Te Whatanui on the other during the luncheon adjournment, and, as it happens, we can guess what the point of it was. If the Court will follow the boundaries of Subdivision 9, as set forth in the afternoon minute—which I have just read—they will see that the descendants of Te Whatanui are carefully kept 2 chains away from the Horowhenua Lake and Hokio Stream. But this meant keeping them away from their fisheries, and of course they did their best to induce Kemp—who, however, as the minute shows, stood firm—to bring the boundary up to the lake and stream. This question, I may say, is fully discussed in the report of the Horowhenua Commission. Nothing turns upon it in the present case; but it shows why there was a difficulty in the morning as to the boundaries, and this stood over till the afternoon, when the morning order was confirmed, and, the boundaries having been fixed, the subdivision was ordered to be delineated on the Court map. I will now read the minute of the morning order, which is express to the effect that the subdivision is for the descendants of Te Whatanui. This is the minute, which I read to the Court before, as a specimen of how clear the minute-book is in showing where a trust is intended. I will read it again, it runs as follows: “The second was 1,200 acres, to be ordered in the name of Te Keapa te Rangihiwini for the purpose of fulfilling an agreement between himself and the Government. The Court does not purpose to delineate upon the plan.”

The Court will remember that the phrase, “the second was” means that in the speech of Mr. McDonald, explaining the position before the abortive Court of the 25th November, and mentioning the three subdivisions which the tribe was prepared to proceed with, the second of these to be mentioned in Mr. McDonald’s speech was 1,200 acres (the location of which was probably not yet fixed upon), for the descendants of Te Whatanui; and I have explained (what I may mention will be common ground between Kemp and the counter-claimants) that the phrase, “the agreement with the Government” refers to Kemp’s agreement with Sir Donald McLean.

Returning, therefore, to the minutes of the morning and afternoon of the 1st December, I summarise their effect thus: The afternoon minute sets forth the boundaries—being unmistakably those of No. 9—and expressly states that No. 9 had been before the Court in the morning as No. 3; and when we refer to the minute of No. 3 in the morning, that minute shows that the subdivision is for the descendants of Te Whatanui. No. 9 was awarded in the morning for the descendants of Te Whatanui, and that order was confirmed in the afternoon, and the boundaries delineated on the map. I hope I am not wearying the Court in proving thus elaborately that No. 9 was awarded to Kemp for the descendants of Te Whatanui on the 1st December. But if the Court grasps the fact that the descendants of Te Whatanui received No. 9 on the 1st December, and remembers that, according to Kemp’s promise, they were only to receive one subdivision of 1,200 acres, then the counter-claimants’ case falls to the ground. Subdivision 9 is given to the descendants of Te Whatanui on the 1st December, and they are only to have one subdivision. On the 3rd December, two days later, we find the minute of an order awarding No. 14 to Kemp: No. 14 cannot therefore have been intended for the descendants of Te Whatanui, for they were only to have one subdivision, and had already got No. 9. Yet, in the face of these minutes, the counter-claimants contended before the Royal Commission that No. 14 was awarded to Kemp in trust for the descendants of Te Whatanui, and, as the descendants of Te Whatanui have certainly long ago rejected the supposed gift of No. 14, and are living on No. 9, Kemp (so the counter-claimants contend) ought to return No. 14 to the Muaupoko Tribe, as—the object of the supposed gift of No. 14 having failed—what is called a resulting trust to the Muaupoko Tribe has arisen.

Such is the theory of the counter-claimants, a theory directly contradicted by the minute-book. Of course, if they could prove that No. 14 was awarded to Kemp in trust for the descendants of Te Whatanui, and the proposed beneficiaries afterwards rejected the gift, then, no doubt, there would be a resulting trust to the Muaupoko. But the counter-claimants have first to prove that No. 14 was awarded to Kemp in trust for the descendants of Te Whatanui; and the minute-book proves that, on the contrary, No. 14 was awarded to Kemp two days after the descendants of Te Whatanui—who were only to have one subdivision—had already got No. 9. I need not elaborate this point. Of course it stands to common-sense that No. 14, as the number implies, was awarded six subdivisions later than No. 9. I may state at once that the numbering in the two Court-maps and the minute-book all agree; and that I shall put the matter beyond a doubt by producing a list showing the sequence in which the orders were made by the Court of 1886. This list was initialled by Judge Wilson himself in 1886, and shows that 9 came before 14. And Judge Wilson will state positively, in accordance with the minute-book and his emphatic and uncontradicted testimony before the Royal Commission, that No. 9 was awarded for the descendants of Te Whatanui several subdivisions before Kemp got 14. I really hope that throughout this part of my address I have not laboured somewhat obvious points; but these simple facts that I have stated—namely, that the descendants of Te Whatanui, who were only to have one subdivision, got No. 9 two days before No. 14 was awarded—are absolutely fatal to the theory that No. 14 was awarded in trust for the descendants of Te Whatanui, and how the counter-claimants are going to get over this difficulty I am unable to conjecture. There is one fact which I have not mentioned yet, and one which I readily admit, as it does not hurt Kemp at all. It is this: When the Muaupoko tribesmen, previously to the opening of the abortive Court that sat on the 25th November—a week earlier than No. 9 was awarded to the descendants of Te Whatanui—were discussing in Mr. Palmerson’s barn how Horowhenua was to be cut up, Neville Nicholson, and perhaps some other of Te Whatanui’s descendants, were present, urging Kemp to fulfil his promise to Sir Donald McLean and give them a subdivision; and he at first proposed to give them what afterwards became No. 14; but, as I have shown, what actually was given to them a week later was No. 9. There is no getting away from that. The fact is, of course, as Nicholson stated before the Royal Commission, that when Kemp offered No. 14 to the descendants of Te Whatanui they promptly reminded him that he had promised Sir Donald McLean to give them a slice near the Horowhenua Lake adjoining the site of their