Donald McLean and Major Kemp—that the 1,200 acres to be set apart for the descendants of Te Whatanui should be near the Horowhenua Lake (a circumstance that was not known on the 25th November when the first parcel of 1,200 acres was set apart for that purpose at Ohau)—a parcel of land comprising 1,200 acres was set apart at a place called Raumatangi, adjacent to the Horowhenua Lake, and numbered 9, and accepted by the descendants of Te Whatanui, who were present at Palmerston North at the Court of 1886."

The second stage of the proceedings is this: On the 25th November Block 14 was ordered to be given to Kemp for the descendants of Te Whatanui. In the interval the descendants of Te Whatanui reject the block, and the Court finds that it is not in accordance with the agreement. On the 1st December they allot Block 9—a block of similar area—for the descendants of Te Whatanui. My friend says that the words at the end of paragraph 9 do not mean accepted by the "descendants of Te Whatanui," but only by those who were present. At all events, they were not the registered owners, and had no say in the matter. The registered owners said they would give the block near the lake. On the 1st December the Court allotted No. 9 to Kemp for the descendants of Te Whatanui, and again it is common ground that Kemp became the trustee for the descendants of Te Whatanui in Block 9, 1,200 acres, on the 1st December. Now, your Honours will observe that the Appellate Court find also that on the 1st December the Court refrained from confirming the order made on the 25th November in respect to Block 14, for the reason that the agreement was not fulfilled. That left Block 14 vacant. It has been suggested by the other side that there was a selection still to be made by the descendants of Te Whatanui, who were not there, between these two blocks. The Court says that the descendants of Te Whatanui accepted Block 9, and thereupon Block 14 became vacant without an owner, and its ownership had to be determined by the Court on subdivision; and I want to show this Court what the Court then proceeded to do. They proceeded on the 1st December under a voluntary arrangement, and dealt with the other blocks of land. And now we come to the statement in paragraph 13:—

"After providing for an allotment to all the persons in the title there remained the portion of the said block, comprising 1,200 acres, at Ohau, dealt with on the 25th November as No. 3, but which became No. 14 later on, in consequence of the original number having been appropriated for another division; and this parcel, it is alleged, was ordered on the 3rd December, 1886, in favour of Meiha Keepa te Rangihiwinui, for himself only, as his share of the subdivisional scheme of partition under the alleged voluntary arrangement."

Now we come to the entry in the minute-book on which this claim is based:—

"Application from Meiha Keepa te Rangihiwinui for confirmation of that order for 1,200 acres in his own name, as shown upon the tracing before Court. Objectors challenged. None appeared. The order is made, as prayed, Te Keepa te Rangihiwinui."

I would point out to your Honours that the trust for the descendants of Te Whatanui had been fulfilled by the allotment of Block 9.

*Mr. Justice Williams:* Have the descendants of Te Whatanui kept Block 9 ever since?

*Mr. Baldwin:* Not until the year 1889.

*Mr. Bell:* The question is as to what was done on the 3rd December. There is no doubt about that. What is suggested by some ingenious people is that, inasmuch as all the descendants of Te Whatanui who lived in Te Rauparaha's time were very numerous, the land was too small for them; but the Appellate Court has referred to that as a contention and nothing else. On the 1st December No. 9 is allotted to the descendants of Te Whatanui because they rejected Block 14, and said they would not have it all because it was not near the lake; the Court awarded Block 9, and refrained from doing anything with regard to Block 14; and then on the 3rd December proceeded to issue an order for Block 14; and the question is whether the Court, on the 3rd December, did or did not intend a trust. The case states:—

"It is contended on behalf of the persons who assert that Meiha Keepa is only a trustee for Subdivision 14 that the foregoing minute supports their contention that the order made on the 3rd December is merely a confirmatory one of the order for the same parcel of land, the order for which was pronounced and entered on record on the 25th November as No. 3, and then vested in Meiha Keepa te Rangihiwinui for the descendants of Te Whatanui, in fulfilment of the arrangement between himself and Sir Donald McLean, as neither the position, the area, nor the purpose had been altered on the 3rd December, although the number had then been changed from 3 to 14. It is further urged that this section was set apart as an alternative one."

I point out to the Court that the first suggestion on the other side is ludicrous, unless the area to be given to the descendants of Te Whatanui was to be doubled. If the order of the 25th November was confirmed on the 3rd December, then it simply confirmed a trust which the descendants of Te Whatanui had deliberately rejected. Then it goes on:—

"Judge Wilson, in contravention of this contention, avers that the parcel of land before the Court on the 25th November was Subdivision 9, and not Subdivision 3, and that the last-named subdivision was always known to him as Subdivision No. 14, and was set apart for Meiha Keepa only. His explanation of the entry in the minute-book on the 3rd December—viz., 'Application from Meiha Keepa te Rangihiwinui for confirmation of that order,'—is that the clerk probably obtained the term 'confirmation' through the interpreter in translating the word 'whakatuturu,' which was possibly used by Meiha Keepa in applying for the order for Section 14 in his own name, which it is alleged he had already applied for the previous day. The Judge stated that he had hesitated to make the order, as he considered it advisable, owing to Meiha Keepa having already had in the subdivision a section comprising 800 acres allotted him for the payment of his tribal debts at Wanganui, and adjourned the application in order that the persons interested in the apportionment of the Horowhenua Block should have an opportunity of considering whether Meiha Keepa's request in respect of Section 14, comprising 1,200 acres, being allotted to himself should be complied with."

This is the evidence which, I submit, is the evidence that in this respect Judge Wilson did not appear to act merely administratively:—