

MINUTES OF EVIDENCE.

WEDNESDAY, 30TH JUNE, 1886.

Mr. FENTON examined.

1. *Mr. Bell.*] Your name is Francis Dart Fenton, I believe?—Yes.
2. When were you first appointed Chief Judge of the Native Lands Court?—In 1864.
3. When did you cease to be Chief Judge?—In 1882, I think.
4. The first Act under which you were appointed was the Act of 1865—was it not?—No, I was appointed before—under the Act of 1862.

5. I call your attention to the Act of 1865. You will remember that under the 25th section of the Act of 1865 it is stated, "Subject as hereinafter mentioned, the Court shall not proceed to a decision upon any such claim, or make any order for a certificate of title, unless there shall be produced before the Court during the investigation a survey of the lands the subject of the claim, made by a surveyor duly licensed by the Governor, on such a scale and in all respects so prepared as shall be provided in the rules aforesaid, and unless it shall be proved to the Court that the boundaries of such land have been distinctly marked on the ground"?—Yes, that is so.

6. Now, will you refer to the 71st section of the same Act? It reads, "Provided nevertheless that in any trial, investigation, or other proceeding under this Act it shall be lawful for the Court, if it shall think fit so to do, to proceed with the trial, investigation, or other proceedings, and to hear and determine the same, without any survey having been previously made, anything hereinbefore contained notwithstanding"?—Yes.

7. You remember these two sections?—Yes.

8. Now, what I want to ask you is this: whether there was anything under the Act of 1873 which corresponded with the 71st section of the Act of 1865?—Not as far as I remember. I may say that I am four or five years out of the run of these things; but I speak from the best of my recollection.

9. What I want to ask you is this: Is there anything under the Act of 1873 which would correspond with the 71st section of the Act of 1865? It was necessary, was it not, that before the Court could come to any determination, there should be before it a complete survey of the block in which it was necessary to proceed?—In my judgment it was.

10. Did you act upon that judgment?—You mean when I was sitting as a Judge?

11. Yes?—As far as I can remember. We managed as best we could, as the clause blocked the Court, and we managed to get round it, if I may use such a word, by getting the Assistant Surveyor-General to approve the maps (it says "approve" in the clause, I think) for the purpose of that section. I do not know that I always had perfect maps, but we did proceed when the map was approved. This course was sanctioned by the Act of 1878.

12. As an administrative officer, did you give any instructions to your officers as to the necessity of having plans before them?—I could not give instructions to the Judges, as I looked upon them, when sitting, as my superiors.

13. When Judge Rogan was sitting on the East Coast, was he sitting under any special jurisdiction or any special authority?—He was placed there by Sir Donald McLean, and he was given an independent establishment of his own. He was Mr. McLean then. We were talking about the matter, and he accused me of throwing difficulties in the way through that clause.

14. What difficulties did he mean?—That I was obstructing the work of the country; and I said it was the clause that was the obstruction. However, he said ultimately that he had placed Mr. Rogan at Gisborne, and that that gentleman should carry on the work under his direction, and that I was to give him all the assistance I could in all technical matters, but was not to interfere with him generally. I told him I thought it was beyond the law, speaking strictly, because Parliament had provided that the administrative work of the department should be carried on by the Chief Judge, and I did not think a Minister could take into his hands in that way the work allotted to the Chief Judge. However, Mr. McLean was an all-powerful Minister, and it was no use struggling with him.

15. Did Mr. McLean tell you what was his object in putting Mr. Rogan on the East Coast?—His object, I presume, was to facilitate the colonization of the country, and get the work done. What he said to me was this—I remember his words—sometimes unimportant words remain in one's memory—he said, "I will show you how to work the Act;" to which I replied, "I shall be very glad if you will."

16. Then Mr. McLean was going to show you how the Act was going to be worked?—Yes.

17. *Mr. Holmes.*] That was in 1863?—In 1875, I think.

18. *Mr. Bell.*] Therefore, so far as the sitting of the Court connected with these blocks is concerned, you had no direct part in this investigation until you took part in the rehearing? Is that so?—Yes.

Hon. Sir R. Stout: And recommended a rehearing?

Mr. Bell: Yes, no doubt, as administrative officer.