1886.

NEW ZEALAND.

OWHAOKO AND KAIMANAWA NATIVE LANDS COMMITTEE

(REPORT OF), TOGETHER WITH MINUTES OF PROCEEDINGS AND EVIDENCE, AND APPENDIX.

Report brought up 13th August, 1886, and ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

TUESDAY, THE 15TH DAY OF JUNE, 1886.

Ordered, "That the Owhaoko and Kaimanawa Native Lands Bill be referred to a Select Committee."

WEDNESDAY, THE 16TH DAY OF JUNE, 1886.

Ordered, "That a Select Committee, consisting of ten members, be appointed to consider the question of the Bill to provide for a reinvestigation into the Native title to lands known as Owhaoko and Kaimanawa-Oruamatua, and the petition of F. D. Fenton referring to the said Bill; such Committee to have power to call for persons and papers, and to report from time to time: three to be a quorum. The Committee to consist of the Hon. Major Atkinson, Hon. Mr. Bryce, Mr. Conolly, Sir George Grey, Mr. Holmes, Mr. Menteath, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart, and the Hon. Sir Robert Stout."—(*Hon. Mr. Ballance.*)

PETITION OF F. D. FENTON.

To the honourable the House of Representatives in Parliament assembled.

THE humble petition of Francis Dart Fenton, of Auckland, Esquire, late Chief Judge of the Native Land Court, showeth,—

That your petitioner has read a memorandum by the Hon. Sir Robert Stout, the Attorney-General of New Zealand, on the subject of the Kaimanawa and Owhaoko Blocks.

That the said memorandum contains grave charges against your petitioner, which your petitioner is not conscious of meriting.

Your petitioner therefore humbly prays that your honourable House will cause an inquiry to be made into the allegations made in the said memorandum, and into the impressions drawn therefrom.

And your petitioner will ever pray, &c.

F. D. FENTON.

REPORT ON THE OWHAOKO AND KAIMANAWA-ORUAMATUA REINVESTIGATION OF TITLE BILL, AND ON THE MEMORANDUM OF THE HON. SIR ROBERT STOUT ANNEXED THERETO, AND ON THE PETITION OF FRANCIS DART FENTON.

THE Committee have the honour to report that they have perused and examined the Bill, and the memorandum of the Hon. Sir Robert Stout annexed thereto, and the petition of Mr. Fenton, and have taken evidence, and have heard Mr. Bell of counsel for Messrs. Fenton and Rogan.

1. With regard to the lands called Owhaoko No. 1, Owhaoko No. 2, and Owhaoko, it appears that a rehearing was ordered as alleged in the first paragraph of the preamble to the Bill, and that no such rehearing ever took place. It also appears from the evidence that some at least of the parties who had applied for a rehearing did not intend that their application should be withdrawn.

2. The Committee are therefore of opinion that there should be a rehearing with respect to Owhaoko No. 1, Owhaoko No. 2, and Owhaoko.

3. With regard to the Kaimanawa-Oruamatua land it appears that on the hearing a witness, Noa Huke, stated that "Natives not present had a claim; that the people then living on the land had a claim." But, after endeavouring, without success, to obtain from Noa Huke and Renata the names of Natives other than were put in the memorial of ownership, the Court, notwithstanding Noa Huke's evidence, made an order in favour of five Natives only. Two of the absent Natives have been examined, and another has been represented by his son, before the Committee. They object to Renata being made a part-owner with them, and also complain that the hearing was held in their absence. It is stated by them that they had only three days' notice, which appears to the Committee to have been unreasonably short. It is however material that an application for a rehearing was received and considered, but refused by Sir Donald McLean, apparently on the ground that the Natives had had sufficient time to appear.

4. The Committee are of opinion that a *primâ facie* case for a rehearing has been made out in the case of the Kaimanawa-Oruamatua Block.

5. In the opinion of the Committee, provision should be made, in granting a rehearing in respect of any of the said blocks, that the rights of the lessees respectively should not be prejudiced.

6. The memorandum of the Hon. Sir Robert Stout would appear to have conveyed to Mr. Fenton the impression that, in coming to the decisions that he did, he was actuated by improper motives; and that he had been influenced by friendship, and had unduly favoured certain parties. The Committee have to report that, in their opinion, there is nothing in the evidence to show any such partiality or favouritism on the part of either Mr. Fenton or Mr. Rogan; and that the Hon. Sir Robert Stout, in his second memorandum (page 81), states that he at least did not intend to charge corrupt conduct.

7. Several serious charges have been made against Dr. Buller in the course of the inquiry, as to which, that gentleman being absent and unrepresented, the Committee offer no opinion.

8. There has no doubt been much irregularity in the proceedings of the Native Land Court; but the Committee are of opinion that it would not be right to judge that Court by such a strict standard as might fairly be applied to other Courts.

9. That, from the evidence, it appears that Mr. Fenton, in addition to the work which devolved on him as Chief Judge of the Native Land Court, performed various executive duties; and he states that his letters and telegrams referred to in the memorandum of the Hon. Sir Robert Stout were written in his executive capacity.

EDWARD T. CONOLLY,
Chairman.

13th August, 1886.

MINUTES OF PROCEEDINGS.

TUESDAY, 22ND JUNE, 1886.

THE Committee met pursuant to notice.

Present: Hon. Major Atkinson, Hon. Mr. Bryce, Mr. Conolly, Sir G. Grey, Mr. Holmes, Mr. Menteath, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart, Sir R. Stout.

Orders of reference read.

On the motion of Hon. Sir R. Stout, *Resolved*, That Mr. Conolly take the chair.

Hon. Sir R. Stout read a series of issues which he proposed submitting to the Committtee.

The petition of F. D. Fenton read.

On the motion of Hon. Sir R. Stout, *Resolved*, That a copy of the departmental papers on the subject be obtained by the Clerk for the perusal of the members of Committee. That a copy of the issues suggested by the Hon. Sir R. Stout be handed to each member of the Committee. That Mr. Bell, as solicitor for Mr. F. D. Fenton, be allowed access to the copy of the papers.

On the motion of Mr. Montgomery, *Resolved*, That the Committee at its rising do adjourn till Wednesday, the 30th instant, at 11 o'clock.

Resolved, That notice of such meeting be given to Sir G. Grey, the member presenting Mr. Fenton's petition, and Mr. H. D. Bell, solicitor for Mr. Fenton.

The Committee then adjourned.

WEDNESDAY, 30TH JUNE, 1886.

The Committee met at 11 o'clock.

Present: Mr. Conolly (Chairman), Hon. Major Atkinson, Hon. Mr. Bryce, Sir G. Grey, Mr. Holmes, Mr. Montgomery, Mr. W. D. Stewart, Hon. Sir R. Stout.

The minutes of the last meeting were read and confirmed.

Two letters from Mr. H. D. Bell, dated the 23rd and 24th instant, were read by the Chairman.

On the motion of Mr. W. D. Stewart, seconded by Hon. Sir R. Stout, *Resolved*, That the Clerk of the Committee obtain from the Native Land Office the files and books (minutes) referred to in Mr. Bell's letter of the 23rd. That the said documents be indexed, and that Mr. Bell be allowed to see the said documents in the presence of the Clerk of the Committee.

Mr. Bell, who was in attendance, was called in, and stated that he appeared for Mr. Fenton and Mr. Rogan.

On the motion of Hon. Sir. R. Stout, *Resolved*, Whereas Mr. Bell, as counsel for Judges Fenton and Rogan, requests he may see minute-books and documents referring to blocks other than those included in the Bill referred to the Committee, to show the practice of the Native Land Court, that Mr. Bell be called to name the blocks regarding which he desires to obtain information.

Mr. Bell, being recalled, stated that he should not be able to name any particular blocks, but could name the year and place of investigation. He undertook to see the Chief Registrar, and apply again to-morrow.

Copy of letter from Mr. Cuff was read by the Chairman.

Petition signed by Hiraka te Rango and five others was also read.

The Clerk was instructed to acknowledge the receipt of the copy of Mr. Cuff's letter, and state that should the Committee require to examine any of his clients due notice will be given.

On the motion of Hon. Sir R. Stout, *Resolved*, That the Clerk inform, by telegram, Renata Kawepo and five others that the Select Committee is now sitting to investigate the Bill providing for the rehearing of Owhaoko-Kaimanawa Blocks, and that if they have any evidence to give to come at once.

Judge Fenton was now called in and examined by Mr. Bell.

The Clerk was instructed to obtain from the Native Office two letters: one from Dr. Buller to the Chief Judge, No. 4794, 1880; the other from Dr. Buller to Mr. Dickey, dated 26th July, 1880.

Resolved, That this Committee do now adjourn till to-morrow, 1st July, at 11.15 a.m.

Adjourned accordingly.

THURSDAY, 1ST JULY, 1886.

The Committee met at 11.15 a.m.

Present: Mr. Conolly (Chairman), Major Atkinson, Sir G. Grey, Mr. Holmes, Mr. Seddon, Mr. W. D. Stewart, Hon. Sir R. Stout.

Minutes of the previous meeting read and confirmed.

Letter of this date, enclosing Dr. Buller's telegram of the 26th July, 1880, &c., from Mr. Lewis, Under-Secretary, Native Office, received, and read by the Chairman.

A letter was also received from the Native Affairs Committee enclosing telegram from certain Natives residing in Taupo, expressing satisfaction in the inquiry of the Owhaoko and other blocks, and asking for a rehearing of said blocks.

On the motion of Mr. Holmes, *Resolved*, That Mr. Fenton be called in for examination.

Mr. Fenton's examination by Mr. Bell then proceeded.

Mr. Lewis, Under-Secretary, attended with original files and minute-books from Native Office.

On the motion of Hon. Sir R. Stout, *Resolved*, That this meeting adjourn till to-morrow, at 11 o'clock.

Adjourned accordingly.

FRIDAY, 2ND JULY, 1886.

The Committee met at 11 a.m.

Present: Mr. Conolly (Chairman), Hon. Major Atkinson, Mr. Holmes, Mr. W. D. Stewart, Hon. Sir R. Stout.

Minutes of last meeting read and confirmed.

Telegram addressed to the Native Minister from Rawiri Kahia was received, and read by the Chairman.

Also a letter from the Native Office, enclosing copy of a letter from Mr. A. Southy Baker, solicitor, Palmerston North, with reference to a petition from Noa te Hianga for a reinvestigation of the title to the Mongaohane Block, Patea, asking that this block be included in the Owhaoko-Kaimanawa Bill, was read, and the Clerk instructed to reply that the Committee can only deal with the matters referred to them.

Mr. Lewis, Under-Secretary, was again in attendance with original papers, &c.

The examination of Mr. Fenton by Mr. Bell was resumed.

Resolved, That Mr. Fenton be allowed to correct an answer to a question put in the first day's examination.

On the motion of Hon. Sir R. Stout, *Resolved*, That Mr. Cornford be asked by wire: (1.) On whose behalf he perused draft case for Supreme Court *re* Owhaoko, in July, 1881. (2.) Was he paid fees for such perusal, and, if so, when, and by whom? (3.) When did he begin to act in the matter for Studholme and Renata?

On the motion of Hon. Sir R. Stout, *Resolved*, That this Committee do now adjourn till to-morrow (Saturday), at 11 a.m.

Adjourned accordingly.

SATURDAY, 3RD JULY, 1886.

The Committee met at 11 a.m.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Holmes, Mr. Montgomery, Mr. Seddon, Mr. Stewart, Hon. Sir R. Stout.

Minutes of the previous meeting read and confirmed.

Telegram from Renata Kawepo read by the Chairman.

Answer to telegram of yesterday from Mr. Cornford received, read by the Chairman, and ordered to be printed.

On the motion of Mr. Holmes, *Resolved*, That Mr. Bell's address to the Committee be taken down in shorthand and printed with the proceedings, provided his clients do not address the Committee, except in answer to questions.

Mr. Fenton's examination was then proceeded with, and concluded by Mr. Bell.

Mr. Rogan was then called in for examination by Mr. Bell.

Mr. Lewis, Under-Secretary, was again in attendance.

On the motion of Hon. Sir R. Stout, *Resolved*, That this Commitee do now (1 o'clock) adjourn till Monday, the 5th instant, at 10.30 a.m.

Adjourned accordingly.

MONDAY, 5TH JULY, 1886.

The Committee met at 10.30 a.m.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Holmes, Mr. Montgomery, Mr. Stewart, Hon. Sir R. Stout.

The minutes of the last meeting were read and confirmed.

Telegram from Airini Tonore and four others, residing at Napier, who claim to be amongst principal owners, wishing to be heard before Committee, and one also from Hori te Tauri, to the same effect, were read by the Chairman.

On the motion of Hon. Sir R. Stout, *Resolved*, That the following reply to telegrams be sent;

"Make statement before Resident Magistrate and forward same to Chairman, and if Committee think it necessary to examine them due notice will be sent."

Mr. Rogan's examination by Mr. Bell was then proceeded with.

Mr. Lewis was again in attendance with original papers, &c.

Resolved, That this Committee do now (1 o'clock) adjourn till Wednesday, the 7th instant, at 11 o'clock.

Adjourned accordingly.

WEDNESDAY, 7TH JULY, 1886.

The Committee met at 11 o'clock.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Montgomery, Mr. Stewart.

The minutes of the last meeting were read and confirmed.

Letter from Mr. Bell, asking Chairman to defer the examination of witnesses by him till another day.—Granted.

Note from the Hon. the Premier, enclosing letter from Mr. R. T. Batley, Hawke's Bay, bearing on the subject under consideration, read by the Chairman.

Captain Birch, lessee of the Kaimanawa-Oruamatua Block, was in attendance, and wishing to give evidence before the Committee, was called in and gave evidence.

Resolved, That this Committee do now (12 o'clock) adjourn till Friday, the 9th instant, at 11 o'clock.

Adjourned accordingly.

FRIDAY, 9TH JULY, 1886

The Committee met at 11 o'clock.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. W. D. Stewart, and Hon. Sir R. Stout.

The minutes of last meeting read and confirmed.

Telegram received and read from Airini Tonori, expressing satisfaction in being allowed to make statement before Resident Magistrate, which will be made on Friday (to-day).

Letter from Captain Birch, informing the Committee that he has wired for a copy of the names appended to his original agreement to lease, read by the Chairman.

Letter (dated from Wellington) from Hiraka te Rango, with two other Natives, expressing a wish to give evidence before the Committee.

Mr. Bridson, Registrar of the Native Land Court, who was in attendance, was called in for examination by Mr. Bell.

The Clerk was instructed to give notice to Hiraka and others to attend and give evidence before the Committee on Monday.

Resolved, That this Committee do now (1 o'clock) adjourn till Monday, the 12th instant, at 10.30 o'clock a.m.

Adjourned accordingly.

MONDAY, 12TH JULY, 1886.

The Committee met at 10.30 o'clock a.m.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Menteath, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart, Hon. Sir R. Stout.

Minutes of last meeting read and confirmed.

Letter from Captain Birch, enclosing telegram from Messrs. Wilson and Cotterill, Napier, with names of Natives attached to agreement to lease of 1867, was read, and it was ordered that the telegram be printed as an amendment to Captain Birch's evidence.

Hiraka te Rango was called in to give evidence *re* his petition for rehearing.

Karaitiana te Rango and Te Mihi Retimana also gave evidence.

Resolved, That this Committee do now adjourn till further notice.

Adjourned accordingly.

WEDNESDAY, 14TH JULY, 1886.

The Committee met pursuant to notice.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart, Hon. Sir R. Stout.

Minutes of previous meeting read and confirmed.

Letter from Captain Preece, enclosing statement of Airini Tonori, made before him on the 9th instant, received and read.

Mr. Fenton's examination was then proceeded with, Mr. Bell, his solicitor, being present.

Resolved, That this Committee do now (1 o'clock) adjourn till to-morrow at 10.30 a.m.

Adjourned accordingly.

THURSDAY, 15TH JULY, 1886.

The Committee met at 10.30 a.m.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Menteath, Mr. W. D. Stewart, Hon. Sir R. Stout.

Minutes of last meeting read and confirmed.

Resolved, That Mr. Fenton's further examination be postponed till to-morrow on account of his illness.

Letters through Native Office from Airini Tonori, Hiraka te Rango, Rawiri Kahia, and others, expressing approval of the Bill for rehearing, were received and read.

Resolved, That the following telegram be sent to Mr. Dickey, Auckland (see Appendix).

Mr. Rogan was called in and examined by the Committee, after which he was released from further attendance.

Resolved, That the Committee do now adjourn till to-morrow at 10.30 a.m.

Adjourned accordingly.

FRIDAY, 16TH JULY, 1886.

The Committee met at 10.30 a.m.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart, Hon. Sir R. Stout.

Minutes of last meeting read and confirmed.

Mr. Fenton's examination was then proceeded with by the Committee, and he was relieved from further attendance.

On the motion of Hon. Sir R. Stout, *Resolved*, That this Committee do now adjourn (1 o'clock) *sine die*.

Adjourned accordingly.

TUESDAY, 20TH JULY, 1886.

The Committee met, pursuant to notice, at 11 o'clock.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Seddon, Mr. Stewart.

Minutes of last meeting read and confirmed.

Letter from Mr. Shaen relative to Judge Richmond's decision *re* Owhaoko on the 27th July, 1881, received and read.

Mr. T. W. Lewis was then called in for examination by Mr. Bell; after which Mr. Bell addressed the Committee.

Resolved, That telegrams be sent to Renata Kawepo and Captain Preece to forward (Renata's) statement immediately.

Resolved, That the Committee do now (1 o'clock) adjourn till to-morrow at 11 o'clock.

Adjourned accordingly.

WEDNESDAY, 21ST JULY, 1886.

The Committee met at 11 o'clock.

Present: Mr. Conolly (Chairman), Mr. Seddon, Mr. W. D. Stewart, Hon. Sir R. Stout.

Telegram from Captain Preece *re* Renata Kawepo's statement received and read.

Resolved, That a telegram be sent to Mr. Dickey asking for reply to telegram of the 15th instant; also to Captain Preece *re* posting Renata's statement.

Mr. Bell was then called in, and proceeded with his address.

On the motion of Hon. Sir R. Stout, subject to the approval of the other (absent) members of the Committee, *Resolved*, To wire to Dr. Buller, "Is statement of 26th July true?"

The Committee then adjourned *sine die*.

TUESDAY, 27TH JULY, 1886.

The Committee met, pursuant to notice, at 11 o'clock.

Present: Mr. Conolly (Chairman), Mr. Holmes, Mr. Seddon, Mr. W. D. Stewart.

The minutes of the last meeting were read and confirmed.

The Chairman reported *re* wire to Dr. Buller, as per resolution of last meeting, that he had seen the members who had been absent, the majority of whom were averse to its being sent.

Telegram from Mr. Dickey received and read.

Letter from Captain Preece enclosing statement of Renata Kawepo, made before him on the 23rd instant, received and read.

Letter from Mr. Fenton read, and ordered to be printed.

Resolved, That this Committee do now adjourn *sine die*.

MONDAY, 9TH AUGUST, 1886.

The Committee met pursuant to notice.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Menteath, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart.

Minutes of last meeting read and confirmed.

Letter from Hon. Sir R. Stout, bearing on Mr. Fenton's letter of the 21st July, received and read by the Chairman, and ordered to be printed.

Preamble to report read and agreed to.

Paragraphs Nos. 1 and 2 of report on Owhaoko No. 1, Owhaoko No. 2, and Owhaoko read and agreed to.

Resolved, That this Committee do now adjourn till to-morrow at 11 o'clock.

Adjourned accordingly.

TUESDAY, 10TH AUGUST, 1886.

The Committee met at 11 o'clock.

Present: Mr. Conolly (Chairman), Hon. Mr. Bryce, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart.

Minutes of last meeting read and confirmed.

Paragraph 3 read and agreed to.

Proposed by Mr. W. D. Stewart, as paragraph 4:—

That your Committee are not satisfied, from the evidence adduced, that a rehearing should be granted in the case of Kaimanawa-Oruamatua Block, but they are of opinion that there is fair ground for allowing an application being made to the Native Land Court for a rehearing, and that reasonable time for making such an application should be allowed.

Proposed by Mr. Seddon, as an amendment, That all the words after the word "That" be omitted, with a view to insert the following: "your Committee are of opinion that a *prima facie* case for a rehearing has been made out in the case of the Kaimanawa-Oruamatua Block, and recommend that the necessary legislation to give effect to the same be passed."

On the question being put, "That the words proposed to be struck out stand part of the question," the Committee divided as follows:—

Ayes: Hon. Mr. Bryce, Mr. W. D. Stewart.

Noes: Mr. Montgomery, Mr. Seddon.

The Chairman gave his casting vote with the Ayes.

So it was resolved in the affirmative.

Debate.

Proposed by Mr. Seddon, That this debate be now adjourned.

On the question being put, the Committee divided as follows:—

Ayes: Mr. Montgomery, Mr. Seddon.

Noes: Hon. Mr. Bryce, Mr. W. D. Stewart.

The Chairman gave his casting vote with the Ayes, on the ground that, the Committee being equally divided, he should vote for further time, although against his own opinion.

So it was resolved in the affirmative.

Resolved, That a copy of Mr. W. D. Stewart's motion be sent to each member of the Committee.

Resolved, That this Committee do now adjourn till Thursday at 11 o'clock.

Adjourned accordingly.

THURSDAY, 12TH AUGUST, 1886.

The Committee met at 11 o'clock.

Present: Mr. Conolly (Chairman), Hon. Major Atkinson, Hon. Mr. Bryce, Mr. Menteath, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart.

Minutes of last meeting read and confirmed.

Letter from Mr. Holmes received and read by the Chairman, and ordered to be printed.

Resolved, That the preamble and paragraphs 1, 2 and 3 of the report as adopted at previous meetings be set out in the minutes.

Preamble: The Committee have the honour to report that they have perused and examined the Bill, and the memorandum of the Hon. Sir R. Stout annexed thereto, and the petition of Mr. Fenton, and have taken evidence, and have heard Mr. Bell of counsel for Messrs. Fenton and Rogan.

Paragraph 1: With regard to the lands called Owahoko No. 1, Owhaoko No. 2, and Owhaoko, it appears that a rehearing was ordered as alleged in the first paragraph of the preamble to the Bill, and that no such rehearing ever took place. It also appears from the evidence that some at least of the parties who had applied for a rehearing did not intend that their application should be withdrawn.

Paragraph 2: The Committee are therefore of opinion that there should be a rehearing with respect to Owhaoko No. 1, Owhaoko No. 2, and Owhaoko.

Paragraph 3: With regard to the Kaimanawa-Oruamatua land it appears that on the hearing a witness, Noa Huke, stated that "Natives not present had a claim;" that the people then living on the land had a claim. But, after endeavouring, without success, to obtain from Noa Huke and Renata the names of Natives other than were put in the memorial of ownership, the Court, notwithstanding Noa Huke's evidence, made an order in favour of five Natives only. Two of the absent Natives have been examined, and another has been represented by his son, before the Committee. They object to Renata being made a part-owner with them, and also complain that the hearing was held in their absence. It is stated by them that they had only three days' notice, which appears to the Committee to have been unreasonably short. It is however material that an application for a rehearing was received and considered, but refused by Sir Donald McLean, apparently on the ground that the Natives had had sufficient time to appear.

Mr. W. D. Stewart's proposed paragraph 4 was further considered.

On the question being put, the Committee divided as follows:—

Ayes: Hon. Mr. Bryce, Mr. W. D. Stewart.

Noes: Mr. Menteath, Mr. Montgomery, Mr. Seddon.

So it passed in the negative.

Debate.

Proposed by Hon. Mr. Bryce, That the debate be adjourned.

On the question being put, the Committee divided as follows:—

Ayes: Hon. Mr. Bryce, Mr. W. D. Stewart.
Noes: Mr. Seddon, Mr. Menteath, Mr. Montgomery.
So it passed in the negative.

Paragraph 4: On the motion of Mr. Seddon, *Resolved*, That the Committee are of opinion that a *primâ facie* case for a rehearing has been made out in the case of the Kaimanawa-Oruamatua Block.

Paragraph 5: On the motion of Mr. Stewart, *Resolved*, That, in the opinion of the Committee, provision should be made, in granting a rehearing in respect of any of the said blocks, that the rights of the lessees respectively should not be prejudiced.

On the motion of Mr. Seddon, *Resolved*, That paragraphs 6, 7, and 8, as follows, be adopted:—

Paragraph 6: That the memorandum of the Hon. Sir Robert Stout would appear to have conveyed to Mr. Fenton the impression that, in coming to the decisions that he did, he was actuated by improper motives; and that he had been influenced by friendship, and had unduly favoured certain parties. The Committee have to report that, in their opinion, there is nothing in the evidence to show any such partiality or favouritism on the part of either Mr. Fenton or Mr. Rogan; and that the Hon. Sir Robert Stout, in his second memorandum (page 81), states that at least he did not intend to charge corrupt conduct.

Paragraph 7: That several serious charges have been made against Dr. Buller in the course of the inquiry, as to which, that gentleman being absent and unrepresented, the Committee offer no opinion.

Paragraph 8: That there has no doubt been much irregularity in the proceedings of the Native Land Court; but the Committee are of opinion that it would not be right to judge that Court by such a strict standard as might fairly be applied to other Courts.

Proposed by Mr. W. D. Stewart that paragraph 9 be as follows:—

Paragraph 9: That, from the evidence, it appears that Mr. Fenton, in addition to the work which devolved on him as Chief Judge of the Native Land Court, performed various executive duties; and that his letters and telegrams referred to in the memorandum of the Hon. Sir Robert Stout were written in his executive capacity.

Upon which it was moved by Mr. Seddon, by way of amendment, That the words "he states" be inserted after the word "and" in the third line.

And the question being put, "That the words proposed to be inserted be so inserted," it was resolved in the affirmative.

The motion, as amended, was then agreed to.

The Committee then adjourned till Friday, the 13th instant, at 11 o'clock.

FRIDAY, 13TH AUGUST, 1886.

The Committee met at 11 o'clock.

Present: Mr. Conolly (Chairman), Hon. Major Atkinson, Hon. Mr. Bryce, Mr. Menteath, Mr. Montgomery, Mr. Seddon, Mr. W. D. Stewart.

Resolved, That the report, as considered at previous meetings, be adopted.

The Hon. Mr. Bryce moved, That the following should be added to the report as paragraph 10:—

With reference to the memorandum from the Premier, Sir Robert Stout, which accompanies the Bill submitted to the Committee, there is no reason to doubt the statement of the Premier that he did not impute improper motives or corrupt actions to either Judge Fenton or Judge Rogan. There is, however, reason to suppose that, from the terms in which the memorandum was drawn, it was possible to arrive at the conclusion that these imputations were intended to be implied, which is, in the opinion of the Committee, a matter for great regret. It is also unfortunate that the memorandum so written should have been published as a public document, instead of being treated merely as a memorandum for the evidence of the Native Minister or other members of the Government.

On the question being put, the Committee divided, and the names were taken down as follows:—

Ayes: Hon. Major Atkinson, Hon. Mr. Bryce.
Noes: Mr. Menteath, Mr. Montgomery, Mr. Seddon.
So it passed in the negative.

Resolved, That the Chairman present to the House the report, with copy of evidence and minutes in connection with the Owhaoko-Kaimanawa Native Land Bill.

Resolved, That it be entered on the minutes that the Hon. Sir Robert Stout did not attend any of the meetings of the Committee after the completion of the evidence, and stated that he would take no part in the preparation of the report.

The Committee then adjourned till further notice.

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.

Mr. *Fenton:* I should like to add, if it is permitted, that, as far as my recollection goes, the correspondence, I think, was almost entirely carried on, after Mr. McLean's arrangement, between Mr. Rogan and my office through the Chief Clerk. I think it is very likely formal letters came addressed to the Chief Judge; but I said to Mr. McLean at the time that as he was depriving me of my power, I should decline all responsibility. He said, "Yes, that's the very thing I want."

19. Mr. *Bell.*] So that Mr. Rogan corresponded with Mr. Dickey, the Chief Clerk at Auckland, for the assistance he wanted?—That is my recollection. Of course Mr. Rogan could not do all his work with his own people, because it meant very large correspondence. I had a correspondence with Colonel Russell, who was Native Minister—I think it was during the Waitara investigations, in 1865. He and I had a very long correspondence on this matter at that time. I was rather anxious that there should be independent establishments at Wellington, Gisborne, Napier, Taranaki, and so on, and we went into it at some length. We found that it meant this: that a local Judge established in the various places meant a survey staff, with clerks, and, in fact, that the expense of the departments proposed was such that the scheme had not the slightest chance of being agreed to, and it was abandoned. The establishment of Mr. Rogan locally was a partial step in that direction; but without any survey staff, and only two clerks, it could not be carried on without the assistance of my establishment.

20. Now, it appears that the papers relating to the application for a rehearing of the Owhaoko Block claims were referred to you. Look at page 87 of the memorandum of the Attorney-General. There it is stated that the petition of these Natives for a rehearing of the Owhaoko Block was referred to you?—Yes.

21. You observe that this is an application by Topia and others?—I observe it now you call my attention to it. I did not observe it before.

22. Now, can you recollect when you referred it to Mr. Locke—can you recollect the effect otherwise than from this memorandum?—No.

23. However, do you recollect that you recommended a rehearing of the Owhaoko Block? Do you recollect that as a fact?—I see that I did, but I have no recollection of it.

24. Therefore you have no recollection of the circumstances connected with it?—Until the editor of the *New Zealand Herald* brought me this paper I had completely forgotten even the name of Owhaoko, and now it is only that two or three things occur to my recollection as I read.

25. I dare say you observe that on the 3rd November, 1879, you pointed out that there was no real difficulty in issuing the Order in Council for the rehearing?—That seems very clear.

26. And you also observe that on the 16th October of that year you had written?—Where do you find that?

27. Below. On the 16th you had written to the Minister referring to this rehearing, and pointing out that no further action had been taken?—So it seems.

28. Well, therefore you appear to have been satisfied at that time that a rehearing ought to be given, and to have done your best to get the Order in Council issued—judging from these papers, I mean?—I was clearly of opinion at that time that a rehearing should be ordered, and, finding that time was passing away, I reminded the Government.

Mr. *Bell:* Now, I take you to the occasion of the rehearing of the circumstances that took place before you. I would refer you to the paragraph on page 10 of the memorandum, in which there is comment on the application for the adjournment. I want you to read that paragraph. [Paragraph read.] Now, you see it is stated that Dr. Buller applied to you for an adjournment of the sitting. I would ask the Committee if the letter before them, which is only a *précis*, should be laid before them in full.

The Chairman: The letter shall be procured in full.

Mr. Bell: There is another point I should like you to refer to. On page 115 of the papers on the table there is a telegram from Dr. Buller, of the 25th July, which concludes with a dash, as if the whole were not set out. I dare say the matter which is left out refers to other questions.

Hon. Sir R. Stout: Yes; you can have that also if you wish.

30. *Mr. Bell:* Now, Mr. Fenton, it appears from these papers on the table that Dr. Buller applied to you for an adjournment of the sitting—we have not his letter, so I cannot show it to you—and that Dr. Buller stated that notice of the sitting had been received late. It is also stated by Dr. Buller that the Owhaoko claimants originally resided at Taupo. Can you remember the application by Dr. Buller for the adjournment? What were you doing in Wellington at that time?—I was assisting—if that is the right word—the Government about their Bills. They were passing a new Native Land Act, and there were some three or four Acts of the same kind before the Government.

31. That is what you were doing in Wellington during the session of 1880?—Yes.

32. Why did you adjourn the Court *sine die?*—I was desired by the Government to go to Wellington. It is a place I do not like. I always go there with reluctance, and am pleased to get away. But the Government wanted me, though I do not know that they had the absolute right to keep me.

33. Now, let me read this paragraph: "Dr. Buller, who acted for Renata Kawepo, applied to the Chief Judge, Native Land Court, for an adjournment of the sitting, stating that 'notice of the sitting had been received late.' It will be observed that it appeared in the *Gazette* of the 8th June, the sitting to take place on the 30th June, and, as Renata and the people he represented lived near Napier, the time should have been ample. But if it were not ample what time had the people resident at Taupo when the case was originally heard? He also stated that the Owhaoko claimants mostly resided at Taupo. As he was not acting for them, but, on the contrary, acting for Renata Kawepo and for his lessees, the Messrs. Studholme, who ignored the claimants at Taupo, this would seem at first sight to have been very kind of Renata Kawepo's solicitor. His object appears to have been, not, however, to obtain any redress for these Taupo claimants, but to get an adjournment of the Court, and that without consulting the claimants who resided at Taupo,

or any person acting for them. Notwithstanding the enormous delay they have already been put to about their rehearing, Judge Fenton adjourns the Court *sine die*, and inserts the following notice in the *Gazette*: 'Notice.—Native Land Court, Auckland, June 10th, 1880.—Notice is hereby given that the sitting of this Court advertised to be held at Napier on the 30th instant will not be so held, but is postponed to a future date.—F. D. FENTON, Chief Judge.'" Did you adjourn the Court *sine die* because Dr. Buller wanted to obtain an adjournment for other persons than the applicants?—That is not my recollection. My recollection is simply that I adjourned it because I could not go. It was my practice to take rehearings myself whenever I could. I am not certain about what I am going to say now, but I think that this is the year that I tried arranging the Courts for a whole year beforehand, so that everybody might know when the Courts were sitting all through the different districts. I think this was the year. The scheme utterly broke down, however, and I found it quite impracticable. My recollection is that this was adjourned *sine die* because I did not know when I should be at liberty, and for no other reason at all. I do not see that because Dr. Buller writes a letter to me it is to be taken for granted that I go upon that. That is not the character I have held. Even when a Minister wrote to me I have been believed to be rather a troublesome than a facile man.

34. As I understand it, you were here, and you adjourned the Court because you could not leave Wellington?—That is so.

Mr. Fenton (addressing the Chairman) said: I only read this memorandum of Sir R. Stout's once. It gave me so much distress that I only read it once. It pained me so much. But I talked to Mr. Dickey about it. He said that there were several things which are not clear to him, but which might be cleared up by the Native Land Court file and papers. I have not seen them.

Mr. Bell: This is a point at which I should like to break off my examination.

THURSDAY, 1ST JULY, 1886.

Mr. FENTON further examined.

Mr. Fenton: May I mention something that I did not know yesterday—in fact, I do not put much importance to it, though, as it concerns Mr. Dickey, who is not here, I deem it right to mention it. It is mentioned on page 9 of the memorandum that the notices of sitting were wrong in the date recited and in the place mentioned—viz., Porangahau. I think it right to state that this notice of his, naming the 31st October, 1877, is simply taken from the Order in Council; and, if there is any error there, it is in the Order in Council. I saw the original order last night. In 1867, or somewhere about then, I used to prepare these Orders in Council for the Government; but I made some mistake—I forget what it was now, but it was something similar to the one now pointed out to the Committee—and I wrote to the Government and said that I had done my best, and, as they were going to put the responsibility on me, I would not do them any longer.

35. *Mr. Bell.*] Can you remember whether that would be before or after 1880?—Long before.

36. But before that you assisted to draft the Orders in Council?—Yes. I think I began in 1867 or 1868. It was when Sir Donald McLean was Native Minister that I discontinued.

37. *Hon. Sir R. Stout.*] It appears in my memorandum that this Order in Council was prepared two days later by the Clerk?—It does not concern me, but Mr. Dickey; and, as he is not here, I think it right to make the explanation. Dr. Buller's letter of the 8th June, asking me to adjourn the Court, judging from the *précis*, I could not possibly have seen, because I was away. I simply adjourned the Court because I could not go. If I remember right, at a subsequent date I told Mr. Dickey to fix the date as late as possible, because I did not know how long the Government were going to keep me.

38. *Mr. Bell.*] We have got down to the bottom of page 9. What I want to know from you now is about the suggestion in the following paragraph: "At this time Judge Fenton was in Wellington, and the people who suggested to him that the case had been reheard must have been residents in or visitors to Wellington. Clearly it was not the Taupo Natives, and one can only infer who suggested it by the other surroundings of this case." Can you remember at all who suggested it to you?—No, I have no idea.

39. If you were informed of the fact would you consult your officers at Auckland?—I presume if it was of sufficient importance I should wire down to the officers at Auckland.

40. However, you have no recollection?—None whatever. I do not see that it matters at all, if I forgot that there was to be a rehearing.

41. You cannot infer who suggested it?—Not at all.

42. Go on to Dr. Buller's letter of the 26th July, which is as follows: "Wellington, 26th July, 1880.—*Re* Owhaoko: Please inform me by telegram of the names of the applicants for rehearing. The case has been adjourned *sine die*, and Mr. Fenton has advised Studholme to make terms with a view to withdrawal.—W. L. BULLER.—A. Dickey, Esq., Native Land Court, Auckland." I call your attention to the last words—that is, "Mr. Fenton" to the end. I ask you what you say to that?—I say this: that this is almost the only part—I will not say altogether, but it is the feature in this paper which I have a distinct recollection of. I remember it for this reason: that I saw this telegram some months afterwards in Auckland, when looking over the files for some other purpose, and I was very much annoyed at this—not so much that I should have minded making a suggestion to Mr. Studholme or any one else if I could fix up a quarrel, but because in this case I had not done so, and I thought it was an impertinence on the part of Dr. Buller, and I think so still.

43. I understand that you did not assume the new function which the Premier's memorandum infers by the comments—because that would appear to be a new function for a Judge to assume?—I did not; and I was not a Judge, but an administrative officer. I do not think the Attorney-General quite understands my position. Till I gave up office, and this section which gave me these powers

was repealed, and my successor appointed, I held a dual position, being not only a Judge, but also a sort of Registrar to the Native Lands Department, or some such title; so that when sitting in my office I was an entirely different individual from the Chief Judge, although the title was the same.

44. You actually prepared Crown grants after the year 1869?—I prepared them. I was in the Legislative Council, and I got a Bill passed through authorizing them to be prepared in my office.

45. *Mr. Stewart.*] Does Mr. Fenton say that he had dual duties to perform—that is, was he Chief Judge and an Executive officer?—Yes, that is the case. Through the whole of this paper, with the exception of that application of Dr. Buller to make an order, there is no single judicial act that I performed. Everything else is done as head of the executive department. Had it not been on that ground, I do not think I should have yielded to Sir Donald McLean. But he said, "You are an executive officer of the Government, and I have a right to give you orders." I said that was not the intention of the Act; but he had all the Middle Island members with him, and I had to give way.

Mr. Stewart: He seems to have been called Chief Judge throughout just the same.

Mr. Fenton: Perhaps the Attorney-General when he wrote this memorandum was not aware of this distinction; because I think there are many things which he might have thought differently of if he had known that I was only really a Judge when I was in Court. So clear was the distinction that I never inquired into the orders of the Judges when they came to me unless there was something on the face of them which showed excess of jurisdiction. So long as they were right on the face of them, I executed them whether I agreed with them or not.

46. *Mr. Bell:* Now, there is a telegram a little lower down, after you returned to Auckland?—Is it clear that I absolutely deny the previous allegation?

The Chairman: Mr. Fenton absolutely denies that he had a conference with Mr. Studholme as to the withdrawal. That is how I remember it.

Mr. Stewart: He says that this was not done as Judge, but as administrator.

Hon. Sir R. Stout: He says he had no conference at all.

47. *Mr. Holmes.*] Did he say he only got this telegram when he got to Auckland?—I only saw it when I got to Auckland. I have often on the bench done my best to make up quarrels, and have given adjournments frequently to allow the parties to arrange if they could. And if I could give any assistance I have invariably done so. It is little actions of that kind which eased the work of the Court to a very great extent. I do not disclaim this. This was only between Natives, and only when Natives were the litigants. Out of Court, of course, I was nobody except an administrative officer.

48. *Mr. Bell.*] I will go to that question as to the relations between you and Mr. Studholme afterwards. On your return from Auckland you see there is a telegram from Mr. Bridson as follows: "Owhaoko rehearing application, N. and D. 78/1675: Chief Judge wishes to know if signatures are in handwriting of one or of the several claimants, and what are the names attached. —W. Bridson, 11/10/80." Do you know why you wished to know? do you remember the matter at all?—No, I do not. I cannot tell you.

49. But the suggestion is that you wanted to know in order that Mr. Studholme, through his solicitor, Dr. Buller, might be enabled to interview the applicants for a rehearing. Do you remember whether that was so?—I think there is something afterwards in the memorandum.

50. Yes; an answer is received that you minuted. The minute is, "Write letter to Mr. Studholme at Northern Club, with copy of this.—October 12." Do you remember why you minuted it so?—Because he asked for it. The only question is as to whether Mr. Dickey gets the fee.

51. Was he entitled to the information?—Yes; he could inspect all papers himself for the fee of 2s. 6d., and obtain a letter of information of the contents of records for 5s. I quote from the Rules of Court—"Inspection of papers (each case), 2s. 6d.; letter of information on contents of record, 5s." All administrative and judicial papers were kept originally together, and after some experience I should have had them separated had it not been for the great labour involved.

52. *Hon. Sir R. Stout.*] I understand you to say that he had a right to see any papers?—Yes.

53. *Mr. Bell.*] I understand you to say that you did not distinguish the judicial papers from the administrative papers?—I said it ought to have been done, but it was not done.

54. What should you describe as a record within the meaning of the rule you have just referred to?—Practically, it was everything.

55. Except minute-books, I suppose?—Yes.

Mr. Stewart: I could not see before how these documents came into the records at all, but I see it now.

56. *Mr. Bell.*] Then you consider he was entitled to the documents on the administrative as well as the judicial files?—It was the practice to put all the papers on one file. After experience I saw the error of this practice; but it was impossible to vary it because of the enormous labour and expense of sorting such a mass of papers. I was once threatened with a mandamus upon the construction of the 19th section. The lawyers thought it went a great deal further than I did.

57. *Mr. Seddon.*] What Act is that?—The Native Land Act of 1873. This is the section: "The Court rolls of each district, one of the original survey-maps hereinafter referred to, and all documents of the Court relating to Native land within such district, shall be kept in the office of the Court of the district, under the custody of the officer appointed for such district, as hereinafter mentioned. Such Court rolls and other records shall be open to the public for inspection and search at such times and upon the payment of such fees as shall be prescribed by rules. A transcript of the Court rolls of each district and of all subsequent enrolments thereon, with tracings of all maps, shall be transmitted to the Chief Judge of the Court." These gentlemen wished to see some papers which in my opinion they had no right to see, because they did not produce any authority to represent any interest. The papers referred to in the section were the papers of the District Officer.

58. *Mr. Bell.*] At any rate, Dr. Buller was entitled, or any one else, to see the records of this paper?—No; not any one else, unless they could produce authority from some person interested in the matter.

59. Do you recollect, as a matter of fact, if Mr. Studholme was at the Northern Club, or any circumstance of that kind?—I judge by this memorandum that he was there.

60. Have you any independent recollection of it?—No, that is all I know.

61. Was there any communication between you and Mr. Studholme?—None whatever. Only yesterday I found, on looking over the Native Land Court papers, that the registration of the lease and everything connected with this paper was not done by myself—that I did not minute a single letter or anything else previously to the two telegrams.

62. Were there any business relations between you?—I do not find any, as the registration of the lease was done by Mr. Munro.

63. I ask you was there any private business relation between you and Mr. Studholme?—None whatever.

64. Was there any arrangement between you and Mr. Studholme or any one else as to the determination of the Court in this matter? I am obliged to ask you the question?—That question is an insult.

65. I very much regret, but I am obliged to ask the question. However, I will leave the Committee to judge by your reply?—I apologize to you for that remark. My head is not as good as it was two months ago—before I saw this paper.

Hon. Sir R. STOUT examined.

66. *Mr. Bell.*] If the Committee will permit me, I will break off the examination, and put a question to Sir Robert Stout, if he does not object?—I do not object to answer any question at any time. I shall be glad to give any information.

67. I wish to ask you whether it was or is intended by this memorandum to infer any act of corruption, or, say, collusion, against the late Chief Judge of the Native Land Court in respect to these blocks?—I make no charge whatever. I think from the documents which I have seen that he has acted improperly in several cases. I do not believe there was any corrupt bargain—if I may use the term—whatever between himself and Mr. Studholme or Dr. Buller; and I never said so. I do not believe so.

68. The word "impropriety" is capable of varied construction. May I ask whether the suggestion is that Mr. Fenton's conduct as Judge has been illegal?—I believe it has.

69. Or improper?—Well, I do not think he has acted properly, nor legally. I do not wish to jump at conclusions, as Mr. Fenton may have excuses to offer to my satisfaction. For instance, to-day he says Dr. Buller's statement in the telegram to Mr. Dickey is untrue. I assumed in my memorandum that what Dr. Buller said was true; but Mr. Fenton says it is not true. I have no prejudice or bias in the matter, and if Mr. Fenton can explain other things in the same way, I shall be the first to acknowledge it. He says Dr. Buller stated what was untrue, and I shall believe him, and shall assume that Dr. Buller has wired to the Clerk of the Native Land Court an untruth.

70. Do I understand, with reference to what took place at the Court which sat at Napier for the purpose of a rehearing, that you suggest that there was impropriety on the part of the late Chief Judge?—Well, as you say "impropriety," I think so; but I do not mean or believe that the Judge has done anything corruptly.

71. Do you mean in law or in morals?—I do not know what you call morals. I do not think he has done anything immoral. I do not think so. I suppose, to put it that way, that a man who acts immorally is one who wilfully does wrong.

72. What I want to know is whether I have to defend the character of a private person—the character of Mr. Fenton. Are the charges in your memorandum against his character?—Again, if you mean in his character as a Judge, I think he did things he ought not to have done. I do not think he was conscious of having acted immorally, as you say, and I never said so. I did not charge him with corruption at all.

The Chairman: I think the Committee will have to form their own opinion on the memorandum of Sir Robert Stout, as we cannot take as evidence his interpretation of his own words.

73. *Mr. Stewart.*] I think, if Mr. Bell will allow me, that his question is to this effect: Did Sir Robert think Mr. Fenton had any sinister object in doing what he did?—I understand that Mr. Fenton is here to answer any questions put to him. I do not pretend to know anything beyond these documents. Mr. Fenton has explained one document, for instance, by saying that Dr. Buller has wired to his Chief Clerk what was untrue, and a second document by saying that Mr. Studholme was entitled to the information. I do not agree with that, but it does not matter.

Mr. Bell: The point, if I may be permitted to ask it, is upon the question which Mr. Fenton treated as an insult just now. I would not put such a question to him as to a corrupt bargain. There is a suggestion current through the memorandum which seems to show that there was some understanding.

Mr. Fenton: I see what Sir Robert Stout means: that I was wrong in my position as Judge as to law, and so on. I do not agree with that, and I am prepared to argue that question—if argument is the proper word—with the Attorney-General.

Hon. Sir R. Stout: I do not object to any argument. Will you name a paragraph, Mr. Bell, which shows such an inference as you assume.

74. *Mr. Bell.*] There is one, I think, on page 10: "For what purpose did the Chief Judge require this information? Was it to enable Mr. Studholme, through his solicitor, Dr. Buller, to interview the applicants for a rehearing?"—Well, I would explain that in this way. If you refer to the original document you will find that Mr. Rolleston declined to give information to Mr. Donnelly,

who asked for it. The information was not filed in the Native Land Court Record Office—it was only in the Native Lands Office in Wellington; and if they wished to get information they should have applied to the Native Minister direct. I assumed that the application was made by Mr. Studholme to Judge Fenton, and that he wired through his clerk to get the information from the Native Office, in order to furnish Mr. Studholme with information to carry out what Judge Fenton had advised the Court (by Dr. Buller's statement) to do—namely, to get a withdrawal. My paragraph was based on the assumption that what is stated in this paragraph—namely, "and Mr. Fenton has advised Studholme to make terms with a view to withdrawal"—was correct.

Mr. Bell: I am content with that way of putting it. That being so, I think I will leave it to the Committee, and would beg that any member who has the least doubt on the point will put the question to Mr. Fenton. I cannot put the question again after the answer I have received. I myself feel that it is a most insulting one to put to a gentleman of his position.

Mr. FENTON'S examination continued.

75. *Mr. Stewart.*] There is only one question. Mr. Bell suggested that there might be some business relation. The correspondence here shows some sort of personal relation. Were you and Mr. Studholme personal friends?—At that time?

76. Yes—in 1880, at the time referred to by these documents?—I was in the same relation to Mr. Studholme that I was with other ancient members of Parliament, and that is all. I have had relations with him since, but I knew no more about him then than about other old members of Parliament whom I was constantly meeting. I had never been to his house and he had never been to mine. Would you allow me to add to this honourable member that he will find hundreds of letters of this kind amongst my official papers. People who knew me frequently wrote "My dear Fenton," or "My dear Mr. Fenton," and I put these letters on the file, and did not trouble about being addressed in any more formal manner. The very fact that these papers were all handed over to the clerks would show that it never entered my mind that there was any understanding between us. If there had been, as an ordinary man of the world I should have destroyed them. I may say that I made it a rule, almost from the first moment I went into the office, not to open any letters myself: they were always opened by my people in the office, and they were placed on my table after being registered as office documents. I am well aware that there is no single letter of this description—"My dear Fenton," or "My dear Mr. Fenton"—that came into my office that is not in the public records.

77. *Mr. Bell.*] Well, perhaps we had better pass from that for the present. You have read the correspondence which appears in the memorandum and the papers with reference to the rehearing, if I call your attention to them?—Yes.

78. That will be on page 11?—Yes.

79. You observe the second paragraph on page 11?—Yes. It frequently happened that Native agents came to the office and tried to get information—and before I observed the effect of it they sometimes obtained it—simply for the purpose of purchasing interests for the purpose of disturbing the claims. Thus, when honourable purchasers came in they found that some interest had been bought by these blackmailers, and the result was most disastrous to everybody. The European purchaser was asked to buy out these people at most exorbitant prices, in which the Natives had no benefit; and it was injurious to everybody, and extremely wrong, so I would not allow them to inspect the papers unless they had a right.

80. Now, this letter of the 25th October, 1880: You are referred to by Mr. Dickey, who calls your attention to the fact that the rehearing must be called on before the 31st—practically the 30th—and asks you the question, Can Mr. Hamlin call the case for adjournment, as well as the Court? Then, on the 26th, you see, there is a telegram to Mr. Hamlin, the interpreter, from Mr. Dickey, as follows: "Please formally open the sitting of this Court at Napier on the 29th instant, and adjourn until Monday, the 1st proximo, at 2 p.m." Have you anything to say as to where you were on the 26th?—I was at home—at least, I was not at the office on the 26th.

81. So that Mr. Dickey sent this telegram on the 26th without your being at the office?—It seems so.

Hon. Sir R. Stout: The telegram was from Mr. Hamlin on the 26th: Mr. Dickey might have sent it before.

82. *Mr. Bell.*] Mr. Fenton was not at the office on the 26th, and so Mr. Dickey sends the telegram without Mr. Fenton's knowledge. Now I am coming to what Mr. Fenton says: When you say "at home" you were at your house?—I was not at the office. I know this, because I went to look at the books in the office at Auckland, and I found that all the letters on the 27th are mine, and on the 25th, but on the 26th all the letters are signed by Mr. Dickey.

83. So you are able to say you were not at the office on the 26th?—Yes.

84. Now, because Mr. Stout's memorandum puts them in this order, is that because the document is undated in the original? Have you seen the papers?—Yes, last night.

Hon. Sir R. Stout: Perhaps it would be best to look at original document. The writings are across one another, and that is the reason that I said it was undated.

[The original document was here produced and examined, it being as follows, written in red ink in Mr. Fenton's handwriting, below a memorandum from Mr. Dickey in black ink, dated the 25th October, 1880: "The application for rehearing is withdrawn.—F. D., Oct. 27." "Ask Mr. Hamlin to open the Court and adjourn until Monday, at 2."]

Mr. Fenton: That is so. I did not understand it till I saw the original, and it was then very clear.

Mr. Bell: This memorandum—"Ask Mr. Hamlin to open the Court and adjourn till Monday, at 2"—follows the phrase, "The application for rehearing is withdrawn.—F. D. FENTON, 27th October."

84A. *The Chairman*] But he says it was not till the 27th?—It was not before the 27th, at any rate.

Hon. Sir R. Stout: Then I understand that this paragraph, "Ask Mr. Hamlin to open Court, and adjourn till Monday at 2," was written after "The application for rehearing is withdrawn." It might appear in order, but there is no date to it.

85. *Mr. Stewart.*] What you mean to say is: that this adjournment was not looked upon as settled till the application for a rehearing was withdrawn?—Yes.

Hon. Sir R. Stout: As this had no date, I assumed that it was after this order that Mr. Dickey had sent this telegram of the 26th, because I did not think that Mr. Dickey would have ventured to order Mr. Hamlin to adjourn the Court without Mr. Fenton's order.

Mr. Bell: However, there seems to be no doubt that this follows on.

Hon. Sir R. Stout: If that is so, why should he direct Mr. Dickey upon adjourning the Court when he knew that Mr. Dickey had the day before done what was necessary to secure the adjournment?

Mr. Fenton: Mr. Dickey had no authority.

Hon. Sir R. Stout: Well, he had done so. That is the reason that I could not read them aright.

86. *Mr. Bell.*] There is no explanation except that it was a misunderstanding?—No. The rules require that the adjournment should be in writing by the Judge.

Hon. Sir R. Stout: It appeared strange that there was no reason for this second adjournment.

87. *Mr. Bell.*] Now, on the 26th October a telegram had been received by you at Auckland, apparently from Dr. Buller, as follows: "*Re* Awhaoko withdrawal. Withdrawal of application by post," &c.; and on the 27th you received a second. Then you minuted, "The application for rehearing is withdrawn;" and then you minuted, "Ask Mr. Hamlin to open the Court and adjourn it till Monday at 2"?—Yes; that is what appears to me what I should do, and what I did. Of course I did not bear all these things in my mind. There were many Courts going on, in all directions, and if honourable members suppose that I was able to remember all proceedings in all the Courts, I desire to say that I was not. When I gave the verbal order previous to the 25th, intending Mr. Dickey to put it into form, I was unaware of this rehearing. He kept a "Rehearing Book," and, on reference to that, he called my attention to it. These papers were placed on my table, and I saw them the first thing in the morning. On the 27th there was Mr. Dickey's memorandum telling me that there was a rehearing, which up to that time I was not aware of, and along with it the telegram of Dr. Buller's withdrawing the application. Had the proceeding taken place twenty-four hours after, I should, of course, have remembered that.

88. The importance of the telegram from Mr. Dickey passed away when you heard it was withdrawn?—No, not the importance of it. There was a book called the "Rehearing Book." This book was kept to prevent the time limited for rehearings lapsing. When he got my order to adjourn the Court he looked at this book and made this memorandum, calling my attention to it, which I did not see till the 27th.

89. Now, with reference to the question of rehearing, you seem to have accepted as *primâ facie* evidence the statement of Dr. Buller that a rehearing had been withdrawn. Sir Robert Stout says this: "I assume that no Court would consider a telegram from the solicitor of the parties objecting to the rehearing to be evidence of the withdrawal of claims by those who had applied for a rehearing." Would you, as an administrative officer, believe Dr. Buller to be telling a falsehood?—No. I should believe no one was telling a falsehood unless I had some antecedent evidence against his character.

90. You had one rather unpleasant matter in connection with this gentleman, had you not?—I did not know it at that time. It was not till after that. But I will say this: I am getting an old man now, and the longer I live the more I believe that there is more good than bad in men.

91. Except Judges in the Native Land Court?—Well, they have traps, tricks, and pitfalls of every description from Natives and Europeans. Honourable members can never understand how they are surrounded with difficulties and snares. You never know when you are safe.

92. There is a report of the proceedings of the Court over which you presided at Napier. On pages 12 and 13——

Mr. Fenton: I should like to say, with reference to my accepting Dr. Buller's word, that during the three years, I think, or more, that I was District Judge—that is, in a purely European Court, of course—I always made it a practice, when counsel said, "My learned friend is engaged, we have arranged that this case shall be struck out or adjourned," that I never declined to accept his word; and during all that period I was not once deceived.

93. *Mr. Stewart.*] You accepted the assurance of counsel?—I never would dream of doing the contrary.

94. *The Chairman.*] As a matter of fact, there was a withdrawal signed, which had been sent to your office at Napier?—Yes; it was on its way.

95. You did not see it till afterwards, of course?—No.

Hon. Sir R. Stout: Well, it was not correct, because it was not fully signed.

96. *Mr. Bell.*] Well, I want to get through this question of the Court. It is a question of law simply. Do you know whether this report is a correct report of what took place? You have your own minutes, have you not, of what took place? The report commences at the bottom of page 12, and is continued on pages 13 and 14. Can you say whether the report is correct? Have you your own minutes of what took place then?—Yes.

97. Can you produce them?—Yes.

Hon. Sir R. Stout: Is there anything in the newspaper report that is incorrect?

98. *Mr. Bell.*] Is there any matter of the report that you have any objection to?—Yes, I object to the whole of it, because there were no proceedings.

99. Is this anything like what took place?—You mean of this conversation?

100. Yes. Why did you say, first of all, there were no proceedings?—Because the case was withdrawn.

101. *Mr. Seddon.*] What took place when the case was called? What transpired—from your minutes?—Nothing.

102. But, still, this conversation took place?—I wrote on the cause list "Withdrawn," and I remember it.

Hon. Sir R. Stout: You had better look at the minute-book. You will see that something was proposed.

[Minute-book produced.]

103. *Mr. Bell:* You say nothing was done upon the question of the rehearing?—I admit no authority except my own notes, unless it be as to who were sworn, and the fees paid, and so on.

104. *Mr. Stewart.*] You would not record what took place. The Press would do that?—No. I said there was nothing done. We had a long conversation of an irregular nature, discussing matters of law, because they were very interesting.

105. *Hon. Sir R. Stout.*] The question arose whether you should not affirm the original judgment; and upon that you stated a case for the information of the Supreme Court?—No, not then; that came on the second day. May I call the attention of the Attorney-General to one thing which I think he has not sufficiently observed: that is, there was present with me Mr. O'Brien, a man of the very highest judgment and great penetration. He was the other Judge. He was practising in 1853 and 1854. He was a member of the House of Representatives in 1856, I think; and he was Registrar of the Supreme Court under Chief Justice Arney, Chief Justice Stephens, and other Judges. I do not think the Attorney-General has sufficiently noticed that point. It was not myself alone who was sitting, but I had the advantage—and a very great advantage too—of having an able lawyer with me.

Mr. Bell: Now, the judgment you gave on the third day, in consequence of the argument has been subjected to very severe comment at the hands of the Hon. the Premier on page 14. He says, "Judge Fenton says it would be a monstrous injustice to allow a title to be destroyed by merely getting a rehearing and not prosecuting it. I am amazed at his use of such language. He knew the desire not to prosecute the rehearing did not come from the Natives."

Hon. Sir R. Stout: Yes, but you should read the following paragraph: "If Dr. Buller's telegram of the 26th July, 1880, is correct, it was at Judge Fenton's own suggestion that the Natives were asked to consent to a withdrawal of the rehearing." It was on the assumption that Dr. Buller's telegram was correct that I made that comment.

Mr. Bell: Yes, I suppose that is so. I accept that.

Mr. Fenton: May I read the copy of the notes taken by myself?

The Chairman: Yes.

Mr. Fenton: This is what appears: "Extract from Chief Judge Fenton's notes of Court held at Napier, October and November, 1880.—A Native Land Court held. Adjourned to Monday. Monday, 1st November, 1880.—Present: F. D. Fenton, Chief Judge; L. O'Brien, Judge; William Hikairo, Assessor; Francis Edward Hamlin, sworn well and truly to interpret. Owhaoko rehearing withdrawn. 2nd November.—At the Supreme Court, by adjournment from the Provincial Buildings. Present, same. Owhaoko rehearing. Dr. Buller put in a retainer, and obtained leave to appear on behalf of Topia Turoa and Hohepa Tamamutu; also a revocation by Te Kehu, in addition to the previous papers; also a *fac-simile* of the original application in one handwriting. He asked for a confirmation of previous judgment, as required by Act of 1880. He referred to Interpretation Act. By me: How can you do that? The applicants do not appear; they are not appearing. Mr. Lascelles said the Court will satisfy itself that all the persons represented assent to the withdrawal. The Court must not be content with the signature of the man who signs because he signs as an agent. By me: I think the Court should not make any order. 3rd November.—Same place. Present, same. Owhaoko. I intimated that the Court would submit a case to the Supreme Court."

107. *Mr. Bell.*] Is there any other minute?—There is a minute on the 3rd: "I intimated that the Court would submit a case to the Supreme Court."

108. You defend your law, Mr. Fenton, I assume?—Yes. I think the Attorney-General is quite wrong.

108A. *Hon. Sir R. Stout.*] In what point?—That all persons can come in into a rehearing, I understand you.

109. My point is this: that, once a rehearing is granted, it is not for you to decide whether the people applying only are interested; but when there are other outside applicants apart from the applicants for a rehearing, you have a right to consider their interest. That is my point?—Yes, I understand the point, on which I cannot agree with you. I have an unvaried practice, not only of myself, but all the other Judges, for fifteen years, and we always acted upon this interpretation of the statute. In fact, I think you will find that if you look at the *Gazettes*, as things are going on now, that, say, four applicants make application for a rehearing, of which three are dismissed and one granted—even to this day I think the practice prevails—could the three whose applications are dismissed subsequently appear in Court?

110. I am not going to argue the point with you. I want to ask if you assume that when a rehearing is granted any outside applicants to those who were declared owners have no power to interfere?—Yes, that is so.

111. Then the whole thing would fall to the ground. If I understand you, in all cases where others than the persons previously declared true owners are the applicants, when a rehearing is refused you would not confirm an order giving it to the other owners, or to the new applicants?—Certainly not.

112. Then what would you do?—Somebody else would send in a new claim.

113. Then you would not make any order confirming the original owners? Would you prevent a stranger coming in to show you the real facts of the case, telling you who were the true owners? —Yes, certainly.

Hon. Sir R. Stout: Then I do not understand it.

Mr. Bell: I would ask you, Mr. Fenton, is not the law which you administered in this case the same as has been uniformly administered by the Land Court from the beginning to the end?

Hon. Sir R. Stout: That does not make it law.

Mr. Bell: Yes; but it shows that this was not an exceptional decision.

114. *Hon. Sir R. Stout.*] Then I want to know this point: Supposing this rehearing is granted, of course, as I understand the law, that means that the thing is treated as if no order is made, and a new application is before the Court. However, leaving that out of the question, the rehearing is granted; and the people in whose favour the order had originally been made; and the other persons who asked for a rehearing come before the Court, and say they do not want a rehearing; then a third person comes before the Court, and says, "I am not an applicant for a rehearing; I was not declared by a previous Court to be entitled to the land, and I want to be heard," would you say "I will not hear you"?—Yes, certainly.

115. Then, what would be the consequence? This: that the claimants for the rehearing and the previous Natives agree that they should divide the land amongst them, and the true owner would be debarred of his rights?—Do you mean people who are not admitted?

116. Yes—and they would be debarred of their rights?—If they were the true owners, and another man got the property, of course the true owners would be excluded. But that is an assumption which I think is quite illogical.

117. I do not think so. That is what has been done in this case. Would you mind giving the section of the Act on which you base this contention?—The 58th.

Mr. Bell: I do not propose to try and defend the law of the Judge, but I wish to show that the law which was administered in the Native Land Court for fifteen years was administered in this case. Thus, if for over fifteen years the Supreme Court decision had been followed in that particular manner, and the Court of Appeal upsets it, thereby showing that the Judges had been administering the law wrongly for that fifteen years, that brings no charge against the Judges.

Hon. Sir R. Stout: I only say it seems wrong to me; and I shall require something more to convince me.

Mr. Fenton: This is the section of the Act: "Upon the application of any persons interested in any Native land who may feel themselves aggrieved by the decision of the Court in respect thereof, the Governor in Council may order a rehearing of any matter heard and decided under the provisions of this Act, within such a period of time from the publication of the decision and memorial of ownership in manner hereinbefore required as may be limited in such order; and upon such order being made all proceedings theretofore taken by the Court in such matter shall be annulled, and the case shall commence *de novo*, and shall proceed in manner provided by this Act: Provided that no application for a rehearing shall be entertained if it be made after six months shall have elapsed from time of such publication."

Mr. Bell: I have undertaken to prove it was an honest judgment, given by a single-minded, upright Judge.

The Chairman: I understand that there is no imputation on the Judge.

Mr. Fenton: If the Committee will allow me for one minute, I would say that the Attorney-General and the Crown Law Officers have no constitutional position to question the decision of a Court of Record or any other Court. I must say that, though my ability is not to be compared to that of the Attorney-General, I consider my decision to be sound law: at any rate, it is law until upset by a competent tribunal.

Hon. Sir R. Stout: I am satisfied to allow the Legislature to decide what is right, because that is the highest Court.

Mr. Fenton: In that point I quite agree.

FRIDAY, 2ND JULY, 1886.

Mr. FENTON further examined.

The Chairman: In the course of his evidence Mr. Fenton was explaining that he had a double function as Chief Judge of the Native Land Court—as an administrative officer and as a Judge. The Committee do not seem quite clear about that matter, and would like Mr. Fenton to point out the section on which he relies.

Mr. Bell: I had intended, when the Committee gave me an opportunity, to point out the section of the Act which he acted under. The 14th section of the Act of 1880 points out that the administrative business of of the Court shall be carried on by the Chief Judge.

Hon. Sir R. Stout: But when was that Act passed?

Mr. Bell: On the 13th August, 1880.

Hon. Sir R. Stout: That was after the period of these occurrences.

118. *Mr. Stewart.*] Was there any similar provision in the previous Acts?—Yes: the Act of 1873, section 16, states that all the administrative business of the Court shall be carried on by the Chief Judge, subject to the provisions of the Act. The Act of 1865 has a similar provision.

119. *Hon. Sir R. Stout.*] What I want to get at is whether there was any administrative business outside the Court business. Of course we know there must be administrative business carried on, the same as by the Judges of the Supreme Court in chambers. Was there anything except to ascertain the titles of Crown grants? I want to know what other administrative duties the Chief Judge had to do besides the ascertainment of Native titles, the issuing of orders or Crown

grants, and carrying out the decrees of the Court?—The Act of 1873, section 13, provides that all administrative duties shall be carried out by the Chief Judge, and also the Act of 1865.

120. *Mr. Stewart.*] Does it not seem that there were administrative duties, as apart from the judicial duties, which he must have done?—I may mention that my predecessor was Mr. Domett; but he was not a Judge at all, and he had the administrative work then. He was Secretary of Crown lands, and he was not a Judge of the Court.

121. Can you state what duties of an administrative character you had to perform outside of those which you conceived to come within your duties as Judge?—I had the preparation of the documents of Native grants—nominally by me, but mostly by the Chief Clerk—and very extensive correspondence. In one year—I forget which it was now—I found that the letters written from my office were, with the exception of the Colonial Secretary's office, the most numerous of any establishment of the Government. There were about seven thousand letters I wrote during the year, including correspondence with the Natives and the Government: also constant correspondence with, and attendance upon, European purchasers and their solicitors. I had to see to the carrying-out of the different decisions of the Court, and to assess the Native land duties under the Act of 1873. I had the whole work of the department, which extended down into the South Island. I had to hold Courts at Dunedin, and, as I told you, I had a more extensive correspondence than any department except that of the Colonial Secretary.

122. *Mr. Bell.*] When a man wished to approach the Native Land Court for anything, who was the official to whom he ought to go?—To myself.

123. *Hon. Sir R. Stout.*] The point is this: Had you any duties outside those of dealing with titles of Natives to Native land?—Yes.

124. What were they?—Carrying through the purchases afterwards.

125. Yes, that was after the decree of the Court?—Yes.

126. But I mean prior to the decree of the Court. You had nothing to do with Native lands generally except to find out who were the owners?—I did not find out the owners.

127. The Court did?—Yes.

128. Yes; but you, as Chief Judge of the Court, had to see that your officers got the requisite claimants. When the Courts were held and made a decree giving the title to some one, you had to see that it was carried out by the proper deeds and documents being prepared?—Yes.

Hon. Sir R. Stout: Yes, that is what I understand.

129. *The Chairman.*] Mr. Fenton made a remark just now about having had large correspondence with Natives and Europeans. It is not usual in other Courts for Judges to correspond with litigants. What was the nature of this correspondence that was carried on?—With the public, just the same as the Colonial Secretary or the Minister of Justice, or any other executive department of Government.

130. With respect to matters coming before the Court, or with other matters? I do not understand the position. It seems peculiar. A Judge as Judge does not correspond with people—that is, a Judge of the Supreme Court?—But when I was in my office I was not a Judge.

131. That is exactly what the Committee seem to want to be made clear. If not a Judge, what were you?—I was nothing more than an ordinary executive officer—like the Secretary for Crown Lands. In fact, my predecessor as administrator of the Court, Mr. Domett, was also Secretary for Crown Lands. He was Secretary to the Crown Lands Department. It was not a Ministerial office then.

132. *Hon. Sir R. Stout.*] It is not a Ministerial office now. Mr. McKerrow is Secretary now?—I thought it was a Ministerial office. However, my predecessor carried on the work. It was not very large then. He was not a Judge, but he used to do all the correspondence then.

Mr. Stewart: It seems to me that Mr. Fenton's position was somewhat analogous to that of the Wardens on the goldfields, who correspond with persons.

Hon. Sir R. Stout: That is what I think.

The Chairman: In respect to the Wardens of the goldfields, they are under the Justice Department in regard to their judicial functions, but they are under the Mines Department in regard to their administrative functions.

Mr. Fenton: I should like to make my meaning clear, because it struck me when I read this memorandum of the Attorney-General that it was a misunderstanding of my duplicate positions that was underlying the whole of that paper. I observe that there is only one part of the paper in which I was exercising judicial functions—that is, during Dr. Buller's application for an order. The whole of the other business referred to was carried on by me as an administrative officer. I was in the Legislative Council when it was found that there were over five hundred Crown grants in arrear. The Act of 1869 handed the preparation of these and of all future grants over to me, and I had all the Crown Lands business to do afterwards. It was a very heavy correspondence—with the Surveyor-General and other officers of the Government, and so on. The Committee will understand that the department was a new one, and I am free to admit that in the commencement we made mistakes. But we gradually found out errors of system, and corrected them. But there was an enormous amount of outside work which I cannot minutely describe to the Committee. If I had what we call our District Register Book before me I could go through a page, in which every block of land is entered.

Hon. Sir R. Stout: One of the books is here, and I understand its use. On one page is marked the order made in connection with a block, and on the other everything that is done in connection with it.

Mr. Fenton: If the book is produced, it will show what I did in my office, and what was done by the Court—what was done outside and so on when I got an order from a Court—that is to say, a Judge and an Assessor. If there was anything on the face of it which showed excess of jurisdiction I objected to it: otherwise I executed it, whether I agreed with it or not. As I said in my

examination on Wednesday, when they were sitting I considered the Judges to be my superior officers.

133. *The Chairman.*] Just one question. I want to ask when Mr. Fenton was appointed Judge?—In 1864.

134. Was Mr. Domett then in office as Secretary of Crown Lands, or had he resigned?—I think he resigned to make way for me.

135. *Hon. Sir R. Stout.*] He remained Secretary for Crown lands after that?—Yes.

136. *The Chairman.*] So far as he had been performing Native duties, they were transferred to you?—That is so. My recollection is that he resigned to make way for me, with very great gladness, as far as I understood.

137. *Hon. Sir R. Stout.*] As I understand it, the position was that some duties that he performed you undertook?—That expresses exactly what I mean.

138. *The Chairman.*] Then, in addition to his duties as Secretary of Crown lands, Mr. Domett performed a number of duties in connection with the Native Department?—Yes—as the Native Land Court would be under the Act of 1862.

139. But he was not a Judge in that Court?—No, he was not.

140. But, so far as his duties related to Native lands, they were transferred to you when you became Chief Judge?—Yes; I am not certain whether I was called Chief Judge under the Act of 1862. I forget what my title was. There were only three Judges appointed then. The work was very trifling, as few Judges had been appointed under the Act. That Act was tentative.

141. However, you were Judge, but not Chief Judge, so far as you remember?—I think that is so.

142. *Mr. Stewart.*] I want to ask whether these executive duties that you say devolved upon you devolved similarly upon the other Judges?—No: I get these powers and duties from the statute.

143. What I mean is this: the Chief Judge had executive as well as judicial duties, and there were no similar executive duties performed by the other Judges?—No; I do not think they corresponded with anybody if they could help it. The Committee may not understand what I mean when I say "if they could help it;" but frequently when sitting in Court Judges receive letters like this: "Do not believe a word the last man said. It's all lies."

144. There were no other duties devolving upon the other Judges?—No.

145. *Hon. Sir R. Stout.*] You did not consider yourself an officer of the Native Land Department?—No. I always protested against that. I held that the Court must not be a creature of the Government.

Hon. Sir R. Stout: Yes; that has been the constant struggle, and that is what is the struggle even now amongst some of the Judges.

Mr. Fenton: When Sir Donald McLean made the separate establishment at Gisborne under his own orders, I objected strongly. I even thought it was illegal; but Sir Donald McLean, as some honourable members present may know, was a very powerful Minister. He had all the Middle Island members with him, and it was perfectly useless to struggle against him; so I gave way. I accepted office in 1864, only on the express condition that I should hold office during good behaviour; and also, that if I thought fit I could continue my private practice. I found very soon, however, that the last clause of the agreement was worthless, because I had not time to attend to anything. But the Act of 1873 made me hold office during pleasure. If my old tenure had existed, I do not think I should have submitted at all to that separate establishment at Gisborne. I considered, however, that Parliament had shown its will that I should be subordinate to the Government, and after that I said nothing.

146. *Mr. Bell.*] I will make that clear by asking you this question: You were a Judge holding office during good behaviour until 1873, but after that you were a Judge during pleasure?—Yes.

147. Mr. Fenton you have got your copy of Sir Robert Stout's memorandum—(To Sir R. Stout:) I do not know what I ought to call you—whether Premier or Attorney-General. I feel inclined almost to call you "my learned friend."

Hon. Sir R. Stout: I do not care which it is.

The Chairman: I should assume this was advice given in his capacity as Attorney-General.

Mr. Bell: Mr. Ballance stated that it was referred to Sir Robert as Minister of Education.

Hon. Sir R. Stout: No doubt it came under my notice more directly as Minister of Education.

148. *Mr. Bell.*] You see here, Mr. Fenton, at the foot of page 16, that "The Chief Judge states a case for the Supreme Court to ascertain if he can make an order; and this case was stated notwithstanding that the Natives had objected to the withdrawal of the rehearing, and without their being consulted regarding it." What was the point on which you wanted the opinion of the Supreme Court?—Whether it was a *casus omissus* in the Act. The rehearing having been ordered, and the Court having sat, without any one appearing, Mr. O'Brien and I thought there was not a rehearing, and the power conferred by the Act seemed based on that.

149. What was the point on which you wanted the opinion of the Supreme Court?—Whether we had power to make an order affirming the original judgment.

150. Refer to the clauses 47 and 48 of the Act of 1880. Was not the point whether you had power under these circumstances to affirm the original order? Did you want the opinion of the Supreme Court as to whether the Natives had or had not withdrawn?—No.

151. Did you not decide that as a matter of fact?—Yes, we had decided that.

152. Have you, as Judge, in stating a case for the Supreme Court, ever informed them of irrelevant facts? Was that your practice?—I think I never sent any other case. I do not remember any.

153. Did you consider that this question which Sir Robert Stout refers to, "that the Natives had objected to the withdrawal of the rehearing, and without their being consulted regarding it"—

do you think that a relevant fact to the point of law which you wanted to determine?—Certainly not. We did not recognize them at all.

154. Can you conceive now that there could have been any object in your consulting Natives as to the point of law which you wanted the opinion of the Supreme Court upon?—No. If Mr. Lascelles felt a strong opinion on the matter, then would have been the time for him to apply to the Supreme Court for prohibition to prevent me going on; but he did not. And during the whole course of our fifteen years' proceedings in this direction; if any person thought my law was wrong he should have gone to the Supreme Court and opposed it. Then, if wrong, it would have been declared by a proper tribunal.

155. Look at the next page, Mr. Fenton. There are two telegrams. The first is, "Have you done anything *re* amendments? Anxious. Relying on you.—JOHN STUDHOLME, 1/6/81." To this a reply was sent by you, "Have delayed case until last moment, for obvious reasons. Buller is now settling it. Better that judgment of Supreme Court should be during session.—F. D. FENTON, 1/6/81." Before I ask you a question I will read Sir Robert Stout's comment.

The Chairman: You will notice that this telegram is dated five weeks before the case is stated.

Mr. Bell: Yes, that is so; but Sir Robert Stout says there are telegrams which show that Mr. Cornford is acting in the interests of Dr. Buller's clients. I have been unable to find any such telegrams.

Hon. Sir R. Stout: I will show them to you.

156. *Mr. Bell.*] I was reading these telegrams to you. I am going to ask you to explain this remark of Sir Robert Stout's: "I gather from this that, if the Supreme Court decision was adverse to the affirming of the previous decision of the Court, an application would have been made to Parliament for some Act to make Renata's and his friends' title complete." I ask you to explain that?—I cannot explain Mr. Studholme's telegram—he must explain that himself. All I would say to that is what I stated the first day—that all papers, telegrams, and every description of document that came to me were put on the file without exception. As to my own telegram—"Have delayed case until last moment for obvious reasons. Buller is now settling it. Better that judgment of Supreme Court should be during session.—F. D. FENTON"—the reasons were these, as far as I remember. I do not know whether I ought to mention one of them, but I suppose I must. One of my reasons—in fact, I remember two with certainty—one was that we were anxious, and all the Judges were anxious, to get the opinion of Mr. Justice Richmond. I do not like saying this, but his opinion was more highly esteemed than any other. The recollection on my mind—I cannot say why, for I do not remember—is that if there was a delay we should get that Judge's opinion. The next reason was that I did not want the same state of things to occur with respect to this block as had been displayed to me in a subsequent case. A large block of land at Pukehamoamoa had come before the Court, and a very distressing state of things had been divulged. Renata was the chief of the tribe. I must explain this at some length. This tribe, Ngatiupokoiriiri—I think that was the name—in the old days was a hapu of the Ngatihahuungu. It was one of those unfortunate tribes that had been in great distress during the whole of its existence. The Court—*i.e.*, Mr. O'Brien, and I, and the Assessor—found during the hearing of the case that it had been attacked by the Ngatituwharetoa, from Taupo; by the Ngatiporou, from the East Cape; by the Arohas, from the Lakes; slightly by the Waikato tribes; and ultimately by the Ngapuhi, from the Bay of Islands, who came down in great force and took Renata prisoner. He was a man of rank and great spirit. He was one of the loyal chiefs in our wars, and fought for us most strenuously. He was not only the father of the tribe, but during all these wars he was the preserver of the tribe. They would have all gone into slavery but for the remarkable energy and military skill of this single man. When we were sitting on this Pukehamoamoa Block we found that all the younger members of his family—his first cousins once removed, and others—had all turned against him. A European had married one of them and had got up an agitation which was entirely destructive of the old chief's mana and happiness, and they tried even to turn him out of all this land.

157. *Hon. Sir R. Stout.*] What was the name of the European?—I might mention it, but I would rather not.

158. *Hon. Major Atkinson.*] What was his name?—Then, sir, if I must state it, his name was Donnelly. I think, during the whole course of my experience in these Native Land Courts, I never came across a more distressing case. Though Judges ought not to be distressed, I could not help feeling greatly moved. So much so, indeed, that in this case we tied up the land—this Pukehamoamoa Block—and ordered that nothing but a short lease should be allowed. We even ordered that nothing should be done to permit alienation of the land during the lifetime of Renata. But for him the people who were then opposing him would not, in all probability, have been alive. The remnant of the tribe would have been destroyed if it had not been for his energy and wonderful skill. It pained me to see these very people whose lives had been preserved by him trying to upset this fine old fellow—for he is one of the few old chiefs we have in New Zealand who live to remind us of the higher qualities of the race—because a European had married into the tribe. This left such a strong impression on my mind that I resolved I would do all I could to prevent this land (Owhaoko) also from being disturbed in the same way. If my law had been right everything would have been similarly adrift in this present block of land.

159. *Mr. Bell.*] Because you had decided that you had not power to reaffirm the original judgment?—Yes; that was my law—which I am very glad to say turned out to be bad law. It would have been all adrift. Renata would have been subject to the same indignities, to the same loss of interest in land and everything else that was attempted in the case of the Pukehamoamoa.

160. *Hon. Major Atkinson.*] Because you thought it would be reopened by a rehearing being granted?—No; "rehearing" is the wrong word. Dr. Buller asked us to make an order reaffirming the original judgment.

161. Why did you think it was wanted to be reaffirmed? We all seem to have overlooked clause 50.

162. You say you wanted it then: it was Dr. Buller wanted it?—We overlooked the existence of clause 50, upon which the judgment of the Supreme Court went.

163. But you thought the original certificate had been ousted by granting the rehearing?—Yes, that is it. I did not want to bring this block to the same state in which we had found Pukehamoamoa. The considerations were these two, as far as I remember. I am pretty sure about it. One was to get an opinion from Mr. Justice Richmond; the other was to prevent the state of things which we had seen prevailing in this tribe in our investigation of the Pukehamoamoa. The same feeling, I may say, guided me in the letter or telegram; so that if it turned out that our law was right I wished it to be during Parliament; then, if there was a *casus omissus* in the Act, Parliament might have an opportunity of immediately rectifying it.

164. *Mr. Bell.*] Then Sir Robert Stout assumed rightly in his memorandum: "I gather from this that, if the Supreme Court decision was adverse to the affirming of the previous decision of the Court, an application would have been made to Parliament for some Act to make Renata's and his friends' titles complete"?—That is right, only I should not have put it in that way. But the idea is correct.

Mr. Stewart: But there was a very different motive imputed.

The Chairman: You were going on, Mr. Bell, to the latter part of that paragraph about Mr. Cornford?

Mr. Bell: I would ask that to stand over for the present.

The Chairman: I thought you might identify the telegrams and papers now. There is an inference thrown here upon certain telegrams and letters which we have not before us. By the memorandum "it would appear from the telegrams that he was acting in the interests of Dr. Buller's clients." That is Sir Robert's inference. I imagine from what fell from you that you would wish to see these telegrams and have them put in. [Original telegrams produced.]

165. *Mr. Bell.*] There is a letter, dated the 3rd June, 1881, which I want you to look at (Native Lands, 85/612), in which Dr. Buller suggests that the case should be submitted to the Supreme Court. There is a minute upon that letter in your handwriting?—Yes. I do not quite understand this.

166. Here is a telegram from Mr. Cornford of the 24th June, "Will send case back by Tuesday's boat," and a letter from Mr. Cornford of the 28th June, in which he says, "I have perused the case, and am inclined to think that the question at issue is not stated as definitely as it should be." On the 28th June you had not got the case, but you had a telegram stating that more time is required; and there is a letter from Dr. Buller of the 1st July: "When may we hope to have case settled for submission?" Then you wired, "Owhaoko case not arrived. If not arrived by next mail must proceed without." That is a telegram sent by you to Dr. Buller after the one received from him asking when they might have the case settled for submission?—Yes.

167. Then, the next telegram is one by you to Dr. Buller, telling him that you had informed Mr. Cornford that unless the case is returned by next mail you will proceed without. Dr. Buller replied on the 4th July, "Thanks for telegram. Will send you fresh copy of case to meet the contingency. *Lapsus calami* in case as forwarded. Section 47 of "Native Land Act, 1873," should read '1880,' third page." Can you recollect whether you sent any other telegram to Dr. Buller, or whether this would be a reply to your telegram of the 2nd?—I do not remember anything more about it.

168. Now, there is a telegram from Mr. Cornford of the 2nd July, 1881—a long telegram?—Yes, this is it. [Copy read.]

The Chairman: Then it is pretty clear that Mr. Cornford was at that time not appearing for those who were applying for the rehearing, but for those who were never parties to the case, and who said then and say now that they ought to be allowed to be heard. And, therefore, in the absence of any evidence to the contrary, these must be the parties for whom Mr. Cornford is acting six months afterwards.

169. *Mr. Bell.*] Can you say whether you sent the case to Mr. Cornford?—Mr. Cornford and Mr. Lascelles represented certain people at Napier whom I considered had no right to intervene in the rehearing.

170. Why did you conceive they had no right? Can you remember?—Because they were not parties. They were neither appellants nor defendants. That is the old point of law over again.

171. But they had some interest—had they not?—They said they were interested; but I did not recognize their interest, or, rather, their *locus standi.*

172. *Hon. Major Atkinson.*] That hardly appears to be a reason for sending it to them?—No; but Dr. Buller had noticed them in his draft case.

173. *Mr. Bell.*] Read that telegram over again?—I do not recognize the newspaper report. Dr. Buller wrote it. He told me that he furnished the report. On reflection, I think I have rather taken that too far. It was another report that he told me he had furnished; but I judge from what he told me about that report that he did this too.

Mr. Stewart: Judging from the prominence he has given himself, I should say that is very likely.

174. *Mr. Bell.*] Then you believe the report in the *Hawke's Bay Herald* was supplied by Dr. Buller?—Yes, I think so.

175. Then there is this minute in your handwriting—81/3162, without a date: "Make two copies—*i.e.*, of case—and send one to Dr. Buller and one to Cornford, Napier. Say that, not having received the one returned from Cornford, I have prepared one myself, which I have sent"?—Yes.

Mr. Bell: Then there is a letter of the 9th July to the Registrar of the Supreme Court, forward-

ing the case for the opinion of the Supreme Court. The case is printed in the memorandum (case 81/362). There are no other papers or telegrams at that date from Mr. Fenton to Mr. Cornford, but there is a minute in the handwriting of the Clerk that a letter was sent to Mr. Cornford for a return of the case sent to him for perusal.

176. As to this matter at the top of page 18, referred to by Sir Robert Stout: "It was, in my opinion, the bounden duty of Judge Fenton, before he sent the case for the opinion of the Supreme Court, to have had the whole question of the signatures to the withdrawal and the telegram repudiating the withdrawal adjudicated upon; and I can find no excuse for his neglect of such duty." Now, had this question of the withdrawal anything to do with the point of law which you wanted determined?—No.

177. Was there any means by which you could have adjudicated upon the question of the genuineness of the signatures to the withdrawal at this time, the rehearing having been dismissed? After you had dismissed this rehearing, could you consider the letter which had been received from Heperi Pikirangi, dated the 30th November, 1880, saying that the rehearing had been withdrawn improperly? Was there any means by which you could judicially have determined the question of whether that had been properly withdrawn or not? Could you reconstitute your Court for the purpose?—I do not know of any means of doing so. Nothing was more frequent after the decision of the Court than for dissatisfied parties who had lost their case to come in multitudes and complain.

178. Was this an exceptional kind of letter to get—this letter of Heperi Pikirangi of the 3rd November? Was it common or uncommon for you to have charges of this kind made?—Yes, it was a common thing.

179. *Hon. Sir R. Stout.*] Was it a common thing to have distinct charges of falsification and promises of payment, as stated in this letter?—Yes, it was a usual thing. That was the usual style of letter.

180. *Mr. Bell.*] Then the letters of the 3rd November and 11th November were the usual style of complaints you received—that people came down to defraud them—against professional men even?—Yes; anybody.

181. And they were never inquired into?—No; they always came, and they were never inquired into.

182. *Hon. Major Atkinson.*] They were looked upon as a matter of course?—Yes. We could not inquire into them.

183. *Mr. Bell.*] You would have had nothing else to do if you had started to make inquiries?—It would be quite impossible. They indulged in expressions that we Europeans only think. When we lose a case we do not talk about it and accuse people; but they do, and they write too.

184. *Hon. Sir R. Stout.*] I would draw your attention to the telegram to Mr. Bryce from the Natives, showing that they had no knowledge that you had heard the case. That telegram states, "We request that you will remove our names from the document withdrawing the Owhaoko case from the Court. We now wish the hearing to go on. This lawyer, Dr. Buller, cajoled us to sign our names to the (draft) document you gave him. Friend the Minister, let the title to Owhaoko be reheard at Napier. We, the persons who signed Dr. Buller's document, agree to it.—HOHEPA TAMAMUTU." What is this then?—It is not that the Natives are disagreeing with the decision come to, but they object to the document that they have signed being taken as a withdrawal of the rehearing. You got that on the 11th November.

185. *Mr. Bell.*] This letter of the 3rd November was not received by you till you had come to your decision upon the question of fact?—Yes, my powers were all exercised at that time: I was *functus officio*.

186. I will not trouble you with the other matter referred to by Sir Robert Stout, but I will refer to page 19, in which telegrams between Dr. Buller and you, Mr. Studholme and Dr. Buller, and a letter from Mr. Studholme to you are set out. The first telegram from Dr. Buller to Mr. Studholme reads, "Owhaoko gazetted for hearing. Get Fenton wire Heale judgment affirmed. Knew nothing till I showed him copy of Richmond's order." That is correct in so far as it states that judgment was confirmed, is it not? By that time you had got the opinion of the Supreme Court affirming the original judgment?—That was so.

187. *Hon. Sir R. Stout.*] Would you state the date of the affirmation?—As far as I can make out from the paper, it never was confirmed in Court.

188. *Mr. Bell.*] I will put it to you in this way: By that time—long before that you had the judgment of the Supreme Court—you had the power to affirm the decision?—Yes.

189. Then go on to Mr. Studholme's letter to you: "My dear Fenton,—I have just received the enclosed telegram from Dr. Buller. Judge Heale is apparently unacquainted with the facts of the case. Will you kindly advise him? It would be very annoying if there was any further difficulty *re* title. I leave for Napier, per 'Te Anau,' at noon.—Yours &c., JOHN STUDHOLME"?—Yes, I see that.

190. Well, you received this letter from Mr. Studholme. Can you remember what you did when you received that letter?—Only from these papers.

191. Did you know whether the *Gazette* notice for the hearing was in the name of the Owhaoko Block? The application for this hearing that you were then being referred to—did you then know the name of the block that was in the list for hearing. It is spoken of as Owhaoko: what appeared in the *Gazette* as the name of the block?—Ngaruroro.

192. I will take you to the next telegram, which you sent to Mr. Heale, "Owhaoko has been heard, and is finished. This claim should be dismissed with costs.—F. D. FENTON." Why did you saythis claim should be dismissed with costs?—For this reason: The Natives had got into a way which was very inconvenient, besides being very dishonest, when a case had been decided against

them, of sending in a new claim for the same piece of land under a different name. It caused us a great deal of trouble in the office. We entered it on the books, and in one case they got an order before we found out from the Survey Office that the land was the same as a piece which had already gone through the Court in a different name. Here they sent in a claim for the Owhaoko Block, calling it Ngaririoro, repeating this trick. And I had often asked the Judges to give costs; but they said, "It is of no use; we cannot get them paid." I asked Judge Heale to do it in this case, to try and make an example; but he did not do it. I could not get the Judges to put costs on in any case.

193. Look at the previous telegram: "Dr. Buller, Napier.—Owhaoko seems to be a new claim. I think you should ask for costs.—F. D. FENTON." Why did you tell him to ask for costs? Was it to put money either into Dr. Buller's or Mr. Studholme's pocket?—No; it was to get brought forcibly before the Court the necessity of taking steps to stop this trick, which had become almost a habit with the Natives. I remember very often I have had conversations with Judges about these costs; and this was a practice which I wanted to stop. I was very much annoyed at it, as it gave so much trouble in the office, bringing Natives to defend the title which they had already obtained, often from a great distance, and putting them to great expense. In one case of my own—in which, however, it was not this trick, but a second trial—I gave costs, and they were paid.

194. You were aware that the Owhaoko had been practically determined by the Judge of the Supreme Court, and that you had power to affirm the original order. Supposing you knew that application for that block was being brought before one of the Judges under another name, would it not be your duty to inform the Judge that he ought to impose costs?—Certainly. If the trick succeeded they would get an order.

195. Now, you give an explanation. I will put it to you this way: The explanation you have given was the only motive that induced you to send those telegrams as to costs?—Certainly. There could be no other motive, could there.

Mr. Stewart: There should be none, at any rate.

Mr. Holmes: That is another way of putting it.

196. *Mr. Bell.*] Was anything as to costs suggested to you by either Dr. Buller or Mr. Studholme?—No, certainly not. I have done this very often, not only by paper, but personally with the Judges.

197. Your impression is that Mr. Heale did not obey your opinion. He did not give costs?—No; I could never get them to do it. They said it was perfectly useless.

198. *Mr. Holmes.*] Did not I understand you to say they were your superiors when sitting as Judges; therefore you would not expect them to obey you?—No, I suppose not.

SATURDAY, 3RD JULY, 1886.

The following telegrams were put in by the Chairman, and it was resolved that they be printed as evidence:—

The Chairman to Mr. Cornford, Napier.—Please state (1) on whose behalf you perused draft case for Supreme Court *re* Owhaoko Block, in July, 1881; (2) were you paid fees for such perusal, and, if so, when and by whom; (3) when did you begin to act in the matter for Studholme and Renata?

Mr. Cornford to the Chairman.—At request of G. P. Donnelly, I perused a case submitted to me by Judge Fenton in July, 1881. Was never paid any fees for so doing. Began to act for Mr. Studholme in March, 1884. Have never acted for Studholme and Renata, or for Renata.

Mr. FENTON'S examination resumed.

199. *Mr. Bell.*] You were asked a question, What were your duties as an executive officer? Do you wish to make any statement in reference to that?—I would very much like to do so, because the honourable member who asked me the question did not seem to understand why I should be corresponding at all. If you will permit me, I will read from notes. They are as follows: Under the Act of 1865: To recommend assessors; make rules for guidance of all officers and surveyors, regulations for juries; receive and enter in proper books claims; corresponding with Survey Department to ascertain where the land claimed was situate; issue preliminary notices of sitting; to issue final notices; to forward maps and papers to the Court, and numerous other preparations; to prepare all certificates under orders of the Court, with proper plans; to examine and execute; to keep records of decisions, and enter in the books accordingly; memoranda of interlocutory judgments; append recommendation of restrictions; make the necessary entries and copies; forward originals to the Governor. Similar proceedings with reference to appointment of successors of deceased owners, called "testamentary orders;" similar proceedings with reference to claims when the Natives did not desire Crown grants; similar proceedings with respect to succession to Native land; similar proceedings with respect to subdivision of Crown-grant land. Decide as to duties payable to Treasury on conveyances in case of objection to assessment of Registrars of Deeds; keep accounts of all fees for Treasury; communicate with Judges and surveyors about surveys and maps; furnish copies of orders to proper applicants; secure to Government repayment of advances to Natives for surveys; consider applications for rehearings on reference from Governor. Keep all record-books, local register-books, order-books, claim-books, certificate-books, testamentary-order books, subdivision-books, survey-books, Judge's books, fee-books, &c.; supply Government officers with forms, and Natives, on application; print all notices of Court in Auckland, and supply copy for the *Gazette*, also for *Kahiti;* distribute the same to all Resident Magistrates (twenty copies), Native Assessors, public officers, and Natives concerned. (I remember that on counting it up we ascertained that the writing in the addresses of notices for one Court amounted to fifteen hundred folios of writing.) Postponing Courts when necessary; examining and approving (if necessary) alterations in maps ordered by Courts; examine each Judge's fee-book, and the general fee-book; examine maps as received from the chief provincial surveyor; deposit same for public inspection; set down

for hearing questions arising between surveyors and their employers; and sign and seal all certificates. Under the Act of 1867: To examine and license interpreters; receive and account for money deposited in Court as security; keep record of lands proclaimed by the Governor as Native title extinguished; warn the Survey Office and Judges; register and secure advances to Natives by intending purchasers of money for purposes of getting surveys made; arrange for references from Government under the New Zealand Settlements Acts, 1863, 1864, 1865, and 1866. Under the Act of 1869: Prepare all Crown grants and copies (of which there were five hundred in arrear at the time of this duty being imposed on me), and forward to Secretary for Crown Lands. Under the Act of 1873: To preserve and record Court rolls (clauses 21 to 32 never operated); all proceedings as to Courts similar to those under the Act of 1865; receive and consider all reports of district officers; inform Judges of claims, and request preliminary inquiries as to possibility of disturbance of the peace; prepare memorials of ownership, and correspond with Survey Office about plans; prepare decisions of Court for *Gazette;* make copies of Court rolls; make certified copies of rolls for the Minister; notify to the Governor interests of infants and persons under disability; inquire into fairness of sales and due execution of deeds; payment of survey liens, duties to Government, fees and charges; examine deeds and make declarations of freehold; transmit to Governor, with recommendations of Crown grant; similar proceedings as to leases; provide Courts for applications for separation of interests of dissentient sellers, and for subdivision; issue fresh memorials, and all other proceedings thereupon; provide for trial of claims of Government surveyor, if disputed; record the liens; notify the surveyor when paid off; register instruments of disposition, and enter on the district record; examine all mortgages before registration, to see that no power of foreclosure; witness, superintend, and record execution of instruments of disposition; similar proceedings as above when European purchaser has purchased part of land in Crown grant, and all formal records, &c.; references from Supreme Court; amend errors; provide for settlement of old land-claims on reference from Land Claims Commissioner. Under "Government Land Purchase Act, 1874:" Provide for observance of notifications of Land Purchase operations; notify to Judges the abandonment of Government operations. Under Act of 1877: Provide (as before) for Government applications for land, to be marked off, and to satisfy their payments. Under the Act of 1878: Forward to the Governor recommendation about restrictions; forward to the Governor and prepare appointment of trustees, &c., under Maori Real Estate Management Acts; and change interlocutory orders to final orders at discretion. Under the Act of 1880: To determine applications for rehearings (and sometimes hold Courts for the purpose); sign conveyances of land, assigned for payment of any advances. Besides all this there was fixing Courts, postponing them if necessary; preparation inquiry of all extraordinary orders; correspondence with the Government, Natives, purchasers, and their solicitors; seeing them when they called; providing clerks for the Courts; writing to the several Resident Magistrates for clerks when no clerks left in the office; despatching papers, &c., to the Judges to whom a Court was assigned, and the general superintendence of a large office. The letters in one year, when a statement was made to obtain greater clerical assistance, amounted, according to the office-number, to between 6,000 and 7,000. Besides this there were similar duties (Native Land Court) under special Acts—"Native Land Court Act, 1881," Mohaka and Waikare Native Reserves Acts, Native Intestate Succession Acts, Maori Real Estate Management Acts, East Coast Land-titles Investigation Acts, Rangitikei-Manawatu Crown Grants Act, Kaiapoi Native Reserves Act, Himatangi Crown Grants Act, Taonui Ahuaturanga Act; and, under "The Land Duties Act, 1873," the assessment of duties payable to Government on instruments of disposition was thrown entirely upon the Judges—mostly the Chief Judge, because he was in Auckland and had a fixed office. I will now, if you will allow me, mention one or two matters in my evidence which require altering or explaining.

200. *The Chairman.*] Perhaps before you go on with that I had better inform you of the resolution which the Committee has arrived at. Your counsel, Mr. Bell, will be allowed at the close of the evidence to address the Committee, and his address will be taken down in shorthand and made part of the proceedings; but that is on the condition that you do not also address the Committee on the facts or allegations in this memorandum, because they do not think that you should do so by your counsel and also personally. But Mr. Bell has told us that he does not intend, in his address, to argue that the decisions were right in matter of law, and therefore, if you think it desirable to address the Committee on that point, they will hear you. But I think it right to warn you that, if you go into the law question of the allegations and comments contained in Sir Robert Stout's memorandum, you will then be shutting out your counsel from being heard by the Committee, or, rather, what he may say will not be reported in that case. I believe I am expressing the views of the Committee correctly?—I understand that, Sir. I only wish to bring under the notice of the Chairman one or two slight inaccuracies in the report of my evidence which I should like made clear.

[It was agreed that the alterations thought necessary by the witness should be made, and referred to the Chairman.]

201. *Mr. Bell.*] I would like to ask you one more question, Mr. Fenton: How long have you been in the public service of the colony?—Since 1852.

202. What was your first office?—I was a clerk in the Registry of Deeds; then Resident Magistrate; then Native Secretary (there was no Responsible Government in those days); then Civil Commissioner and Resident Magistrate at Waikato—that was when the king or land-league movement was going on; then Assistant Law Officer; and then I was Under-Secretary for Defence for some time, when the establishment was formed when the war broke out; and then Chief Judge of the Compensation Court. (That was the most difficult office I have ever held, I think: it was under the New Zealand Settlement Act of 1873.) Then I was District Judge, and I was offered the office that the learned Attorney-General now holds, which I declined. That was when Sir James Prendergast was made Chief Justice.

203. You were a member of Parliament—a member of the Legislative Council—were you not?—Yes.

204. You have never been out of the public service since you joined it, have you?—Not till 1882.

205. *Mr. Holmes.*] You and Mr. Bryce were great friends, were you not?

Hon. Mr. Bryce: We got on pretty well. We had some disagreements; but they were nothing very great.

Mr. Fenton: Mr. Bryce had his own views and I had mine. We used to have a few differences, but not much. I had a happy time with Mr. Rolleston when I corresponded with him as Minister of Justice. He used to answer all letters from the Maoris about the Court to the effect that the Executive Government could not interfere with Courts. Those days were halcyon days for the Court.

206. *Mr. Bryce.*] Do you mean to imply that I was not as submissive as Mr. Rolleston?—Well, not quite, I think.

Mr. ROGAN examined.

207. *Mr. Bell.*] What is your name, Mr. Rogan?—John Rogan.

208. You were a Judge of the Native Land Court, Mr. Rogan?—Yes.

209. When were you appointed?—I think it was in 1862.

210. When did you cease to be a Judge?—About eight years ago. I do not know exactly.

211. You were not a lawyer, I believe?—No.

212. You were not educated to the profession of the law?—No; certainly not.

213. Can you say how many of the Judges of the Native Land Court have been educated to the law. I will give you three names: Messrs. Fenton, Brookfield, and O'Brien?—Yes, those were all lawyers.

214. Can you tell me whether there was any other Judge who was educated to the profession of the law?—No; none that I am aware of. There were others who were not lawyers—Major Heaphy, Captain Symonds, Mr. Maning, Mr. Halse, and others.

215. You had a knowledge of the Native language?—Yes.

216. And your fellow-Judges you have named had a knowledge of the Native language?—Yes—more or less.

217. And of Native custom?—Yes. I have been living the principal part of my life amongst the Maoris—for forty-five years.

218. Now, I wish to call your attention to this memorandum of Sir Robert Stout's on the question of the Owhaoko and Kaimanawa Blocks. First of all, in reference to the Kaimanawa Block: You will see that he says, in reference to the application for investigation on the first page of the memorandum, "In the year 1875 certain Natives applied to have the title to the blocks determined. The notices were gazetted on the 7th day of September, 1875; and the Court sat on the 16th September, 1875." I would ask you whether, of your knowledge, the Natives read the *Kahiti*—whether the *Kahiti* was the kind of document that would find its way to Patea?—Well, I really could not answer that question. I do not know anything about the Patea District.

219. Then answer the first part of the question. Did the Natives, in your opinion, read the *Kahiti*?—As far as I am aware, I do not think they did.

220. Will you refer to this book and see when the notices which were required by the Act of 1873 to be sent out were sent out? Read this to the Committee about the Owhaoko Block. It is stated in the memorandum that the notices were on the same day. What is this book, first of all?—A book of record in the Chief Judge's office—a *précis* of everything that has taken place in regard to every block of land that has been brought before the Native Land Court.

221. That is a book in which a *précis* of the proceedings is entered and recorded. Now, will you read this passage: [Paragraph read to effect that notices were sent out, under the the 36th section of the Act, on the 5th April, 1875.] So that the record-book says that the notices were sent out on the 5th April?—Yes.

223. Now read on?—"The district officer has no objection to the hearing of it," &c.

224. What does this mean—that the district officer has no objection to the hearing?—It was a rule to send to the district officers in the different parts of the country simply to ascertain whether there was any objection to the cases being heard. If there was no objection they would very probably be dealt with.

225. Then it reads, "Notice issued. Court to sit at Napier on the 16th September, 1875"?—Yes.

226. Does that "Notice issued" refer to this "notice under section 36," higher up?—I could not say positively, but I think it does.

227. Will you read some passage from this book that has reference to page 91—"Record of the Oruamatua-Kaimanawa." Will you read that, please?—"Notice under section 36 of the Act of 1873 issued to district and other officers, 5th April, 1875."

Mr. Bell: I will leave the minute-books with reference to the Kaimanawa-Oruamatua.

228. *Hon. Sir R. Stout:* Does Mr. Rogan mean to imply that the time for the hearing had been fixed in April? Is it not a fact that it was not fixed till the 9th August?

229. *Mr. Bell.*] I am just coming to that. Section 36 is as follows: "Copies of all notices of claims, as soon as may be after the receipt of the application, and notices of all sittings of the Court for the investigation of titles, with a schedule of the cases to be investigated, shall be forwarded to each of the District Officers, Commissioners of Crown Lands, Inspectors of Surveys, and Native Reserves Commissioners in whose district the land, or any portion thereof respectively, is situate, also to the claimant and counter-claimant or objector (if any), and to such other persons for

distribution as the Chief Judge shall think fit; and shall be inserted in the *Kahiti*, in the Maori language, and in the *Gazette* of the province in which the land affected is situate in the Maori and English languages." What is the notice that is sent to the *Gazette?* How were the notices prepared which were sent to the *Gazette?*—They were prepared in the Chief Judge's Office in Auckland.

230. But what were they?—They were prepared in the Chief Judge's office in Auckland.

231. What was the notice sent to the *Gazette?* Was it a special notice?—I understood that it was a notice prescribing claims which were sent in to the Native Land Court Office, which were to be gazetted for the ordinary Courts—that it was a mere copy of the notice which was to be called upon at the time that the Court was to sit.

232. I want to call your attention to these notices. The notices were sent out to the District Officers. Well, then, was it a paper sent to the *Gazette* with the notice you had sent out to the District Officers?—As far as I apprehend the matter, the two notices were one and the same thing. I never drew out a notice myself in my life.

233. *Mr. Holmes.*] Do we understand that the notices sent to the *Gazette* were actual copies of the notice sent to the Chief Judge?—Yes.

234. But that is on the 9th August, and the other is dated the 5th September?—Yes—that is, Auckland, the 9th August.

The Chairman: I suppose he means that it would be a substantial copy.

235. *Mr. Bell.*] Now, you sat as the Judge of the Native Land Court upon the investigation of Kaimanawa-Oruamatua and the Owhaoko Blocks on the 16th September, 1875?—Yes—as one of the Judges.

236. Who was the other Judge?—The Assessor, Hone Peti.

237. You will see the minute-book at page 3, in reference to the Kaimanawa-Oruamatua, on the 16th September. You have read Sir Robert Stout's memorandum, and it gives the evidence of Renata Kawepo and Noa Huke apparently correctly does it not?—Yes.

238. Sir Robert Stout says, "It seems to me peculiar that a Judge should, knowing that there were other owners of the land, have, without their consent, stated that he would order a memorial to be issued to the people present"?—After the evidence of Noa Huke objectors were challenged. Te Hapuku came forward and said there were no objectors to the claim put forward, and Meihana said there were no objectors on his side. Then the Court stated "that when the map, which is now on the way from Auckland, comes to hand—a tracing only being before the Court—a memorial of ownership will be ordered."

239. Now, I wish to put this to you: Do you know where Renata was living at the time?—At this time?

240. Yes, at the time of the sitting of the Court?—Well, I have a good idea. I cannot tell you the name of the place, but it is about nine miles from Napier.

241. Do you know where Noa Huke was living?—I think he was living at Napier, at the same place as Renata Kawepo.

242. Then you had before you the evidence of two Napier natives and the statements of Te Hapuku and Meihana to the effect that there was no objection to the order?—Yes.

243. Will you refer to Noa Huke's evidence. You observe that he stated that there were other owners with him, and that he was aware of them?—Yes. He said, "I have been on this land. There are Natives who are not present who have a claim. The people now living on the land have a claim. About twenty people—men, women, and children—are living on the land. Three of the people are Kaumatuas—namely, Matiu Taruarau—the others are included in Renata's list."

244. How did that evidence come out?—By questions put by myself.

245. Why did you put questions?—Because it was necessary for me, as Judge, to ascertain some information about the particular block of land that I was adjudicating upon.

246. You ascertained from Noa Huke that there were Natives not present who had claims?—Yes—about twenty.

247. Why, then, did you say that the memorial of ownership would be ordered? To whom did you mean to issue a memorial of ownership?—To all those whose names I could obtain from the witnesses in writing.

248. You had obtained some names from Renata?—I had some from him, and some from Noa. May I say that, with regard to this question, it was I who fixed these twenty Natives on this particular piece of land of Kaimanawa, as seen by the question I asked Noa, "Are there any people living in this neighbourhood or on the land;" and he said "Yes—about twenty."

249. Why did you not put twenty in the memorial?—Because neither Noa nor Renata would give me the names of these people.

250. Did they tell you why they refused to give you the names?—Renata was the chief, and just immediately after Noa gave his evidence Renata came forward. It is just possible I would have obtained them from Noa, but Renata said, "That is sufficient. We have an arrangement among ourselves about this land, and there are others living on the land; but that is sufficient for us. Those are the names that we have decided upon to put in this block."

251. *Hon. Sir R. Stout.*] That is not amongst the minutes?—No.

252. How do you know this, then?—I can remember this. I have a distinct recollection of it. It would have been very easy, as Judge, for me to write these down if I could obtain them.

253. Were you satisfied to leave these people out of the memorial—that is, all those whose names you had not got?—When we arrived at this point I believe—I have not a very distinct recollection, but I think the Assessor, Hone Peti, was on my right hand. He is a very able man, who understood Maori thoroughly, being a half-caste. I said to him, "What about this, Hone Peti?" He said, "You have got all the names which these chiefs will give you. They will not give you any more. Then, order this memorial; because Renata is a chief of great responsibility, and if he makes any mistake the mistake will be his, and the responsibility not ours."

254. You were satisfied with that?—Yes. But what satisfied me more particularly was that the two chiefs, Te Hapuku and Meihana, came forward and said that no one disputed the title of these people.

255. *Mr. Bell.*] That was more satisfactory to you?—Yes. They were not claimants, but were independent chiefs of Hawke's Bay.

256. Did you think they had any right to speak for others?—Do I understand you to mean the chiefs.

257. Yes—Te Hapuku and Meihana?—They were quite atliberty in the Court. Any one could come forward and state it. If there were any objections, that was the time for them to come forward and prefer or to waive their claim. No objector appeared in the Court, and the Native Assessor and I were perfectly satisfied in our minds. Otherwise we should not have made the temporary order for memorial of ownership until the correct plan should have been sent in.

258. *Hon. Sir R. Stout.*] Satisfied with what?—With the statement that was made by Noa and Renata, and Te Hapuku and Meihana—that this land chiefly belonged to these people whose names were written down.

259. You say you were satisfied to leave out the others who had been named, as Matiu Tamarau, whom Noa had named. Why did you leave him out?—Because Renata stated that these were all that they would receive as grantees for the estate.

260. That is not in the book?—No, it is not in the book. I think I can give, in Maori, what this man said. However, I decided to leave it as it was, because Renata said to me—I got into an argument with him about these twenty people—"The land is mine and the people are mine."

261. Is there anything in the minute-book to say that Renata objected to Matthew being put in the memorial?—No, I do not think there is anything in the minute-book. I am labouring under a disadvantage before the Committee, inasmuch as these are minutes taken by the Clerk. I do not pretend to say that I had the ability to write sufficiently quickly to take full minutes of the case; but I took minutes of this and other actions, and the Committee may take my word for what I have stated.

262. I only want to know if there is anything which shows that Renata objected to the name of Matthew being omitted from the notice?—No; there is nothing in the minutes showing this.

263. *Mr. Bell.*] What has become of your minutes?—They were in my room at the Native Land Court Office at Gisborne, and were all burnt. They were in the room of the office at the same time that Mr. Woon and I were successful, or nearly so, in saving the whole of the other records, which we carried out. My room was off the office, and I lost all my private property and private papers. Those are the minutes taken by the Clerk.

264. Did you look at the Clerk's minutes? Were you in the habit of doing so?—Except for the purpose of making out a memorial of ownership I depended upon my own minutes, and not upon these. If a memorial of ownership were to be ordered, that became a serious question. As to the area and names of memorial of ownership, the books were my guide on such an occasion as that.

265. Now, I want you to answer me this: When the memorial of ownership was ordered, the area was omitted till the plan came from the Auckland office: was that the practice?—Yes.

266. Were you aware that this practice was not permitted by the Act of 1873?—Yes. I did it because the late Sir Donald McLean selected me as one of the Judges to dispose of the land question, as far as my duties as a Native Land Court Judge were concerned, on the whole of the East Coast. On my arrival at Gisborne in 1875 this question arose before I sat on any Native Land Court in this district. Plans of the whole of that district were many, but none of them were connected trigonometrically. I took objection to one brought forward a few days pervious to the sitting of the Court; and the surveyor in charge stated that he would put on the face of the plan nothing to show that it was a corrected plan. I replied that under these circumstances I should go back to Auckland; that it was necessary, according to the Act, that I should have a correct plan before me before I proceeded to the investigation of the title. The surveyor said that he would put a note on the plan which would satisfy me that the investigation should be proceeded with, and that he would at a future time give me a correct plan of any block that I thought proper to investigate. I considered this over. There were a large number—perhaps a hundred and fifty cases down, and about six hundred Natives in the Town of Gisborne at this time; and it was a question for me whether I should go back to Auckland and disregard the direction I had received from Sir Donald McLean to endeavour with all my power to carry on and settle the question of Native land on the East Coast; and I decided to proceed with the business of the Court as if these plans were all perfect ones. I made probably a hundred and fifty orders similar to these two orders. In fact, the whole of the lands from the Waiapu River extending to Napier itself—most of these were on what I might call sketch-surveys, or incomplete surveys, hanging upon nothing. Some of them were perfect plans, such as this—Kaimanawa. That was disposed of immediately in the Court; but the orders were held back until the land was surveyed, perhaps for two years. At the end of two years, the whole of these orders were made out; and it took me, I remember, a month to make them out. They were made at my office in Gisborne; not in the Court.

267. The point is this: If you had insisted upon nothing but actual surveys, as required by the Act of 1873, six hundred and fifty Natives must have gone home without having their claims heard?—Yes; they must have gone back again.

268. Could you have carried on the business of the Court if the actual surveys before investigation had been insisted upon?—I should have left and gone to Auckland. But after that Sir Donald McLean came to me and said, "Rogan, if you had gone to Auckland, you would have destroyed the prosperity of the whole of the district, over which I have had a great deal of trouble." And he said "As to any illegality, the Government have the power to remedy that." But he said, "Your duty is, as I have told you, to pay special attention to ascertain the Native owners of the land; and when these maps come in, at any future time, you can make your memorials of ownership, as you have done on the whole of the land from Napier to Masterton.

269. And you did, as I understand, proceed with sketch-plans only?—Yes.
270. These sketch-plans would not show area accurately?—No; I will show that presently.
271. That is, because these sketch-plans would not be accurate as to area?—Yes.
272. *Mr. Holmes.*] Do I understand that you issued memorials on sketch-plans?—No; you do not issue a memorial until you get a correct survey and plan.
273. *Mr. Bell.*] The area as appearing on the sketch-plan before investigation, and the area appearing in the memorial, would therefore be in most cases different?—Yes; in nine hundred and ninety-nine cases out of a thousand they would be. One is only a guess, while the other is an actual survey.
274. Sir Robert Stout in his memorandum speaks of your having made orders and memorials upon days when the Court never sat. I want to know if it was possible for you, on any occasion, to fix up and issue your memorial in the Court?—No; it was impossible to investigate the case and sign the memorial simultaneously. It was generally a day after the hearing of the Court that the memorials and orders were made.
Hon. Sir R. Stout: The point I meant is that the Court made its memorial as of a day on which it never sat.

MONDAY, 5TH JULY, 1886.

Mr. ROGAN'S examination resumed.

275. *Mr. Bell.*] I think, Mr. Rogan, that the last point in your evidence on Saturday was this: You told the Committee that your practice was to deal with the sketch-plans, and to make your orders and your memorials upon the result of a completed survey?—Yes.
276. And that was what you considered to be your duty on the East Coast, in order to enable any inquiries to be made in your Court. Now, with reference to the Owhaoko investigation, I refer you to the minute-book, at page 136. Sir Robert Stout, in his memorandum, at page 2, says, "On the same day the Court had the title to the Owhaoko Blocks No. 1 and No. 2, before it. According to the minutes of the Land Court, these consisted of 38,220 acres." Do you see, in the minute-book, "Owhaoko. Plan produced." There is against that 164,500 acres?—Yes.
277. That is on the 16th September, 1875?—Yes.
278. There is Owhaoko Block, 38,228 acres. Do you remember whether there was a sketch-plan of that block?—Yes, there was.
279. Sir Robert Stout gives the evidence of Renata Kawepo and Noa Huke on this application, on page 2. Now you will see that he goes on to say, "The evidence is given in the first person, and I have no doubt it has been minuted in full." In the minute-book are these words—are there not: "Objectors challenged. None appeared"?—Yes.
280. Then you see "Renata Kawepo and Noa Huke recalled;" but their evidence when recalled is not set out, is it?—No.
281. It would seem that Sir Robert Stout is wrong in having said, "No doubt it has been minuted in full"?—Yes.
282. The minute says they were recalled. Can you remember whether they were re-examined upon the recall?—Yes; I think to the best of my recollection they were.
283. What would be the object of recalling them? Who recalls them?—I recalled them.
284. What was the object in recalling them?—If you will allow me I will explain. There is a sketch-map of the 38,000 acres; but I believe it is not to be found. If it was I should be able to answer that question at once. I should be able to point out on the map the object of recalling these people. As it is not to be found, and is not in the papers, I will try to explain. The question is, what was the object in recalling these Natives. It will be necessary for me to explain that there was a sketch-plan of this land before the Court at the time. It was a mere sketch-map, showing that the amount was 38,220 acres. There was on this sketch-map a little mark made in the corner, which was requested by these Natives to be cut off from the survey. And that was Owhaoko No. 2. There were three Natives in the investigation of this land. There were three names given to me by the Native Noa Huke as the owners of the block, and it was simply in asking these Natives who were to go into this 181 acres irrespective of the 38,000 acres; and I think if I had the sketch-map I could prove that I got three more Natives besides those which were already acknowledged to be owners. Then it occurred to me—the Hon. the Attorney-General will see what I mean by this argument that I am going to attempt to propound—that there was a block containing 38,000 acres, and I had three Native owners to it at that time. The whole of this block was supposed to be investigated in the name of these three Natives, and the smaller portion for these other three. I said to these Natives, "Why, you give three Natives for this 38,000 acres and three for this corner here [showing position on map]. You will see that there are six of you that have claims to this block of land of 38,000 acres." And I put in the names of the six Natives into one block, and the same six names into the other.
285. That is the whole of the entry upon that minute. You had then a sketch-map before you?—Yes.
286. Then look at the minute, Tuesday, 21st September?—Will you allow me to make another explanation in regard to this, which Sir Robert Stout, in his memorandum, does not appear to understand. Of course, he could not understand it, because what I have just now attempted to explain was not in the book. I can very well understand him not understanding it. There was, three months afterwards, an investigation of this 164,500 acres of land, and six names were given as the owners, corresponding exactly with the six names I had put in previously. It is stated that I have taken the names of the six Natives of this block which I investigated last, and put them in the block which I investigated three months before; but that is not correct.
287. *Mr. Holmes.*] What was the name of the second block?—Owhaoko No. 2.

[By means of the lithographed map attached to the memorandum the witness explained the position of Blocks Owhaoko No. 1 and No. 2, and showed reserve of 181 acres mentioned by him.]

288. *Mr. Bell.*] And three months afterwards, when they were applying for the large block, you put in the same six men?—Yes.

289. May I ask if you had any doubt that those Natives who lived at Patea knew that the Court was sitting? When you heard Noa Huke's evidence had you any doubt that the Natives living at Patea knew that the Court was sitting to investigate?—No.

290. Supposing upon every investigation you had insisted that all the Natives entitled to come to the Court should do so, could you have investigated any block of land?—No. I should have gone home. I could not have done it.

291. What would the custom be supposing the Natives had agreed to a school reserve. Would the custom be for the whole tribe to come from Patea to Napier?—No, they would have sent chiefs there, or sent a letter to tell me what they wanted.

292. Did you expect the whole tribe of Patea to turn up at the Napier Court and tell you what they wanted?—No, I could not expect that, because I knew that of the twenty Natives I had put there a large number were old men and incapable of travelling.

293. Now go on to the minute-book, page 136. That says, "Owhaoko, 164,500 acres." Can you say what plan you had then?—I had an imperfect plan, I think. It was rather better than a sketch-plan, but it was not a certified plan.

294. You see the evidence on page 4 of Sir Robert Stout's memorandum. Renata's evidence is given. What follows Renata Kawepo's evidence in the minutes? Will you read the minute-book as to what follows?—"Objectors challenged. Wiremu te Ota stated that there was no one to object. The only person he knew that owned the land was Renata Kawepo himself."

295. *Hon. Sir R. Stout.*] When objectors are challenged, and any one stands up in Court, are these people sworn?—They are not sworn, as a rule.

296. *The Chairman.*] You have the words "Objectors challenged." Do they mean "Objectors called for"?—Yes. After the evidence is taken in the Court, then I myself say in Maori, "Is there any person in the Court who has a claim to this land?"

297. And that is what you call "Objectors challenged"?—Yes. I used to say, "If there are any persons in the Court who have any objection to this claim, now is the time to make it."

298. *Mr. Bell.*] What follows in the minute-book—the statement of the Court set out in Sir Robert Stout's memorandum: "The Court stated that, although this is a large block of land, there was evidently no objection to Renata's claim, but, on the contrary, when objection was challenged, some person had stood up to substantiate his claim; and as soon as a correct plan was produced an order would be made"?—Yes.

299. That is a correct copy of the minute-book?—Yes.

300. Then follow: "Additional names given in by Renata Kawepo, Noa Huke, and Te Hira te Oke"?—Yes.

301. Sir Robert Stout says, "So far, therefore—that is, up to the 1st August, 1876—no order was made and practically no judicial decision given regarding this block." Was any judicial decision given on the 1st August, 1876?—It is recorded, "As soon as a correct plan is produced an order would be made." That is the judicial decision.

302. *Mr. Holmes.*] What date is that?—The 1st of August. It is perfectly clear that I had 164,500 acres before me unsurveyed, and it was impossible for me, with an unsurveyed plan, to make an order at that time.

303. *Mr. Bell.*] Now go to page 414. You had to make an order to give a memorial as soon as the survey was completed?—Yes.

304. *Mr. Holmes.*] Is there any minute of the order being made on the 1st August? When was the memorandum put down as to the order being made?—It was what was termed merely an interlocutory order. No order is made on the minutes beyond that we will make an order in the future, when something is done. That minute only shows that we have determined upon it.

305. *Mr. Bell.*] Mr. Holmes wants to know whether the practice of the Native Land Court was to minute the decision when you arrive at it. Where did you minute what you decided?—Here in the minute-book.

306. But that is not your handwriting. Where did you keep your record of what was done? Had you no memorandum of your own?—I had books of my own, but they were burnt at Gisborne.

307. You see page 413, "Owhaoko"?—Yes.

308. Going back to page 404, you see that the Court sat at Porangahau on the 30th November?—Yes.

309. Now you see, on page 413, at the close of the sitting of the Court at Porangahau, on the 1st December of the same year—1876—the words "Court adjourned" struck out, and "Owhaoko, see page 136"?—Yes.

310. Can you say in whose handwriting this minute is, having reference to Owhaoko on pages 413 and 414?—In Mr. Brooking's handwriting. He was a junior clerk in the office.

311. Then you see the paragraph on page 414, "160,000 acres, to stand over till a proper plan is produced. See copy telegram, page 418." In whose handwriting is that?—In Mr. Woon's handwriting.

312. Then, the words "No. 1 School Reserve:" whose handwriting is that?—That is also Woon's.

313. And the words "twenty-eight thousand six hundred and one"?—Yes.

314. Who was Mr. Brooking?—A junior clerk with me. He was a very good Native scholar, but not a clerk.

315. Who was Mr. Woon?—Mr. Woon was the clerk who had charge of the records in Gisborne.

316. He was not with you at Porangahau?—No, he was not there.

317. You did not see him till you went to Gisborne?—No.

318. Did you take Mr. Brooking with you to Gisborne?—Yes; he was travelling with me.

319. Can you say from your memory whether anything with reference to Owhaoko was done at Porangahau on the 1st or 2nd December? Do you remember whether anything was done?—If I may be allowed a little time I will explain this. At this Court at Porangahau I was engaged on a matter of subdivision—a separate matter from the Owhaoko altogether. During the sitting of that Court a gentleman named Maney came in incidentally with the plan of Owhaoko No. 1 and Owhaoko No. 2, containing twenty-one thousand acres odd, which was the correct plan of the sketch of the thirty-eight thousand acres. At this time I gave this plan to Mr. Brooking, telling him to make a memorandum in the book to the effect that the plan was received from Mr. Maney. He took the trouble to travel from Napier to give this plan over to me, as being the correct survey, and it was, I thought, proper for me to receive it. I handed this plan to Mr. Brooking, telling him to make a minute of it—to make a few words of a minute; and I passed over to the disputed blocks at once that I was engaged upon at Porangahau. The Court disposed of them and was adjourned, and we travelled to Napier, and from Napier to Gisborne. When I arrived at Gisborne I saw the principal clerk, Mr Woon, and I said, "Mr. Woon, remember we have got a correct plan. Make out a memorial of ownership, and I shall sign it." I did so.

320. *Hon. Sir R. Stout.*] On what date?—The date of it was some time in December—some few days afterwards; I think, the 20th December, 1876.

321. *Mr. Bell.*] That is the memorial of ownership ordered that was referred to some little time ago in the books, for the 38,000 acres—"that the memorial would be given directly a correct plan was produced?"—Yes.

322. You told Mr. Woon to make it out, and signed it at Gisborne. Did you see this minute-book when you instructed him?—No, I wish I had.

323. You have told the Committee that you instructed Mr. Brooking to make this minute. Did you see it?—No.

324. Looking at it as it appeared originally in Mr. Brooking's handwriting, was it correct?—It was absolutely and completely wrong.

325. It was ordered for 164,500 acres?—Yes; and I had instructed the Clerk to make it for 28,000 acres.

326. Now turn to page 417. You will see continuation of this Owhaoko. In whose handwriting is that?—Mr. Woon's.

327. And therefore made at Gisborne?—Yes.

328. As altered—taking these pages, 413, 414, and 417, together, as altered by Mr. Woon—is the minute a correct statement of what the Court had done?—Only part of Mr. Woon's statement here is correct according to the order. What I wanted Mr. Brooking to make a minute of was simply confined to No. I. and No. II., and not to Owhaoko itself. I stated just now that this minute, "164,000 acres," is, I may say, a blunder.

329. A blunder of whose?—A blunder of the Clerk's.

330. That, however, was the acreage which had appeared upon the sketch-plan, Mr. Rogan?—Quite so. But I never ordered this.

331. That is not the note which you directed your Clerk to make?—Certainly not.

332. I understand you to say that the minute on page 417 is a correct minute of what you wanted down?—It is not a correct minute; it is only partly correct.

333. But what part of it is correct?—Owhaoko No. I.; School Reserve, Owhaoko No. II.

334. Then is it correct now? Have you to complain of anything?—I have to complain of this, that it was absolutely unnecessary for the Clerk to make any minute at all. It is impossible for any one not acquainted with the facts to understand how it is made.

335. Did you order Mr. Woon to make any alterations in the book?—No; you will see that these memorials were made of Owhaoko No. I. and Owhaoko No. II. Mr. Woon's entry was only a minute of them.

336. *The Chairman.*] Mr. Woon would seem to have repeated unnecessarily?—Yes.

337. *Mr. Bell.*] What did you do about the big block? What was your determination about the large block?—I had no determination about the matter. The bringing from page 136 to page 413 of the 164,500 acres is simply confusion. My determination was that, when the plan of these 164,500 acres came before me, that I should make a memorial of ownership.

338. To whom?—In favour of the persons whose names we ascertained in the investigation.

339. Then, had you determined the question of the title, subject to the plan?—Yes, to the best of my ability.

340. When did you make a determination as to the title?—That was determined on the 1st August, 1876.

341. What was your determination then? What question did you determine with reference to the large block?—I determined to order a memorial of ownership for Renata Kawepo and the others whose names are in the memorial, as stated in his evidence.

342. Then you had determined the question of title on the first case, subject to the production of a proper plan?—Yes.

343. Then, did you direct the words "No order," &c., should be inserted in the minute-book, page 417?—No, I did not direct him to do this at all. The Committee will see that the statement I have made that there was a mistake is shown here. What I ordered was that, when a correct plan of this block came before me, I should make a memorial of ownership; and it was impossible for me to do anything without such plan.

344. What was the mistake?—The mistake was that the Clerk is ordered to make a minute of which it would have been necessary only to say, in few words, "Receipt acknowledged of plan from Mr. Maney of block of land of twenty-eight thousand odd acres," without another word. Instead of doing that, the Clerk goes to another sketch-map of the Owhaoko. He did not pay much attention to it, I suppose. He had one plan, and he went to the sketch-plan, which was not a correct one, and put down "164,000 acres." It seems to me to explain a good deal of the difficulty with regard to these papers altogether. If the proper entry had been made Sir Robert Stout would never have had these photographed. The proper entry would have made the papers much more intelligible.

345. *The Chairman.*] I understand that there were Owhaoko, Owhaoko No. I., and Owhaoko No. II.—three separate blocks?—Yes, that is so.

346. *Mr. Bell.*] I understand that your Clerk made an entry with reference to the large block instead of the other?—Yes; that is the case.

347. Now, these alterations on pages 413 and 414 were made by Mr. Wood. Were they made by your instruction? Did you interfere with reference to this minute at all?—Not, to the best of my recollection. If I had seen this minute of the order at this time the probability is I would have sent the clerks out of the office altogether. Instead of my seeing it, to the best of my recollection the first time I discovered it was on Friday morning last. I was reading over Sir Rober Stout's memorandum, and I have read it several times in Auckland, and the copy I had at my lodgings was turned up just in that manner [as shown by witness]. I had read the papers over several times, and after breakfast on Friday morning I turned to this order, and the moment I saw 164,000 acres, "Why," said I, "this explains all. I could always explain why I wrote 28,000 at the Court at Porangahau; but if I am asked how this 164,000 acres was there I do not know what reply to make;" for it was not in my knowledge that I had anything to do with the 164,000 acres then. Now I see that the Clerk has taken it from its proper place, and brought it into Porangahau, without any reason whatever that I can see.

348. Then you say Mr. Brooking did not make the note you directed him to make?—Yes; and I repeat that it was only about Friday morning that I discovered this.

349. Then I understand you to say that you did not direct Mr. Woon to make the alterations on pages 413 and 414?—Well, if I had done that I should have seen this, most certainly. I am by profession a surveyor, and I know all about plans. I have made these orders for twenty years, and it would be ridiculuus for me to make an order for 164,000 acres when I had no plan before me. It never came before me for several months afterwards.

350. And you made an order for the memorial when the proper plan was made?—Yes; several months afterwards. It was impossible to make such an order as that, because it will be seen that, except the map for the 28,000 acres which Mr. Maney gave me, there was no map for nearly a year afterwards.

351. Then when you got the plan you made the order?—Yes. May I say, Sir Robert Stout, that if you have gone over the papers you will see what I have stated to be correct?

Hon. Sir R. Stout: Yes; I quite agree with your explanation, Judge. I think it is perfectly right.

Mr. Bell: Except that you say no order was made at all?

Hon. Sir R. Stout: I say so still.

352. *Mr. Bell* (to witness).] You have already said that it was the practice of the Court you followed when there was no survey before the Court?—Yes; in several instances it was done because there could be no plan.

353. Did you determine the title to the land—in whom it lay?—I did.

354. On what date did you determine that?—On the 1st August, 1876.

355. At Napier?—Yes.

356. *Hon. Sir R. Stout.*] Suppose you had died in the meantime, where was the record of the order?—Well, I do not know.

357. *Mr. Bell.*] Do you know how it was that the memorial as drawn up referred to the 2nd December?—Yes.

358. Look at page 6. You say, "At a sitting of the Native Land Court of New Zealand, begun and holden at Porangahau, on the 2nd day of December, 1876, before John Rogan, Esq., Judge, and Honi Peeti, Assessor, in the matter of the application of the persons for the investigation of their claims to be interested in the blocks of land named in the first column of the schedule hereto, it was ordered that a memorial of ownership of the several persons respectively named in the third column of the said schedule be inscribed on a separate folium of the Court rolls." Is that correct?—No, that is not correct. I have already stated that there was a blunder in the 164,000 acres.

359. *Hon. Sir R. Stout.*] And, consequently, your certificate was wrong?—It was not wrong, in my point of view; because I have made nearly all the orders from the East Cape just in the same manner I have made this.

360. I mean wrong in so far as it states that you had this matter before you at Porangahau?—Yes, it is wrong.

361. *Mr. Bell.*] You mean it is incorrect in its statement of the date and the place where your determination was arrived at?—Yes.

362. In whose handwriting is that entry on page 446?—That is in Mr. Woon's handwriting.

363. Just read it?—"Owhaoko. At a sitting of the Native Land Court, held at Gisborne, Poverty Bay, 31st October, 1877, it was ordered, That a memorial of the ownership of Renata Kawepo, Ihakara Te Raio, Retimana Te Rango, Noa Huke, Hira te Oke, and Karaitiana te Rango of a parcel of land at Patea, in the District of Wellington, containing one hundred and thirty-four thousand six hundred and fifty acres (134,650), and known by the name of Owhaoko, be inscribed

in a separate folium of the Court rolls. Map produced, certified to by Mr. Williams, District Inspector of Surveys, Wellington, as a reconnaissance survey; Mr. Thompson, Surveyor-General, approving of same, *vide* telegram produced. Fees, £2, charged. Telegram: 'The map of the Owhaoko Block sent you, and signed by Mr. Williams, is correct, and in conformity with the rules in force under "The Native Land Act, 1873." '—Signed, J. T. THOMPSON, Surveyor-General, 30th October, 1877.—To Mr. Locke, Court adjourned. EDWIN WOON, Secretary to Judge. *Vide* folio 417."

364. I refer you to the minute-book on page 446, as shown in the memorandum. I just call your attention to this page. I dare say the members of the Committee may wish to ask you about it?—That is correct. It was a mere copy of the memorial of ownership.

365. Was it made at the sitting of the Court at Gisborne? Did you arrive at your decision then?—The decision was arrived at in the Court held at Napier, 1st August, 1876.

366. Did you determine the ownership of the large block at Gisborne?—No.

367. Is the minute correct when it states, "At a sitting of the Native Land Court held at Gisborne"?—There was no sitting of the Native Land Court held there with reference to these blocks.

368. *Hon. Sir R. Stout.*] But was this affirmed?—It was taken from the Act of 1865 simply by the Clerk. It had no reference to the order: it was a mere memorandum that the memorial of ownership was made. And, with regard to this matter, I might say that the orders for a memorial of the whole East Coast country have, although it is stated that they have been made at a sitting of the Court, been made in the office. Absolutely, they have been made in the Native Land Court Office in Gisborne.

369. *Mr. Bell.*] But in pursuance of the sitting of the Native Land Court held previously?—Yes; at Waiapu, Tokomaru, and other places along the coast.

370. *Hon. Sir R. Stout.*] But this minute before you: is it a true minute or an incorrect one of anything that occurred at Gisborne on the 31st October, 1877?—It is incorrect in stating that a sitting of the Land Court was held at Gisborne in regard to these particular blocks. Otherwise it is correct.

371. When was the order made?—On the 31st October, 1877. But it was made at the Native Land Court Office, and not at the sitting of the Court.

372. *Mr. Bell.*] What order did you make?—A memorial of ownership.

373. That is, you signed it?—Yes.

374. Why did you sign it then?—Simply because the plan was sent to me at the office, perhaps on the 30th October, and I promised to make a memorial of ownership when a correct plan came to hand.

375. Why did you make the memorial of ownership in the names of this number of persons. In pursuance of what did you do it?—In pursuance of the practice I had adopted for the orders.

376. I want to ask you now in reference to a matter in Sir Robert Stout's memorandum, at the top of page 2. He says, "The matter came before the late Sir Donald McLean; and, after receiving an explanation from Judge Rogan, in which he stated that the Natives could have had time to appear (of this, as I have said, there is not the slightest tittle of evidence), and on its being stated to Sir Donald that, as regards the Kaimanawa–Oruamatua Block, it had been leased to Captain Birch, and that the Natives who had now claimed interests had not claimed rents from Captain Birch, he instructed the Under-Secretary to write declining to grant the rehearing. Nothing more appears about this block, save that, in letters from the Natives, they insist that the title to the block had not been properly investigated."

377. *Hon. Sir R. Stout.*] This letter was sent to Sir Donald McLean: "Renata's letter attached affords sufficient reason, in my opinion, for refusing the application for rehearing in this case. I can show, if necessary, that Heperi's statement is an intentional misrepresentation, because he had received notice in time to attend the Court at Napier. I have sent yesterday to Gisborne for copy of the proceedings in full, for the information of the Hon. the Native Minister, to be attached to these letters.—J. ROGAN, 26th January, 1876." Did you write that memorandum?—I did.

378. That is dated the 26th January, 1876?—Yes.

379. You there stated that you could show that Heperi Pikirangi had actually received notice in time to attend the Court?—That is clear, by his own showing.

380. His own showing that it was sent on the 13th, and the Court sat on the 16th?

381. *Mr. Bell.*] How long did it take to get from Te Rinopuanga, Patea, to Napier?—I believe it is about ninety miles from Napier to that place.

382. *Hon. Sir R. Stout.*] And in the winter it is not pleasant travelling?—Captain Birch lives in that district. He was in the habit of riding it in a day and a half, and other travellers have ridden it in two days.

383. *Mr. Bell.*] I have only this to ask you: You say you did keep a memorandum or minutes of your own?—I did not say that I kept absolutely extensive minutes. I could not do it, because I could not write fast enough; but I can say that I have some minutes at home of other matters. All my other papers were burnt.

384. But did you keep minutes?—Yes.

385. With reference to the minutes kept by the Clerk in these books, were you in the habit of consulting these minutes, to ascertain what your decision had been, or what had been the proceedings of the Court?—No, I was not.

386. If you had looked at this book and had seen the minute that Mr. Brooking had entered on the 2nd December, would you have permitted it to remain there in the condition in which he had entered it?—I should have permitted it to remain there, but I should have written an explanation in red ink that would have shown the whole circumstances, and stating that it was wrong. But I have never cut a leaf out of a book, even although it might have been wrong. I made a

rule never to expunge anything; if it was wrong, it was there to be seen. I considered that from the moment it was written it became public property; it was not for me to cut it out or interfere with it, but simply to make an explanation.

387. You took Mr. Brooking to Gisborne with you. He was in the Court with you?—Yes.

388. Mr. Woon seems to have arrived pretty accurately at what you did determine?—He did so; it is marked down here.

389. And the alteration seems to have been made about that time?—Yes.

390. Had you anything to do with the making of the alterations?—I had nothing to do with them.

391. Is not the minute as altered substantially correct?—Yes, substantially correct.

392. If the heading "164,000 acres" were struck out on the first page the minute, as altered, would be substantially correct?—Yes. I should not like to say that this first portion is all of it correct. It cannot be correct, for there could not have been an order for 164,000 acres at this period, for I had not the plans before me for nearly twelve months.

393. But does not the minute, as altered, substantially indicate what you did?—Yes, quite so; but the whole thing is wrong. Here is an order for 164,000 acres, which should have been for the school reserve of 28,000 acres.

394. Suppose your Clerk had made a mistake in entering the minutes of what took place at the Court, and you saw that the mistake had been made, would you have conceived it your duty to leave the minute in its incorrect state in the books?—No; I should consider it right for me to write on the margin a memorandum explaining the mistake, because it is only confusing as it is.

395. Did you look at the minutes as kept by the Clerk as records absolutely determining what you did? Was it your practice when you were a Judge to regard these minute-books as binding the Court and concluding the Court?—No; certainly not.

396. What did you act on—what did you proceed upon when you made a memorial and signed the certificate before you?—In many cases I proceeded on the plan. It was the usual custom.

397. The plan would not tell you the owners. What did you proceed upon—what was your practice when you came to draw up your memorial?—I proceeded upon the minutes that were taken with regard to the number of owners—either upon my own minutes, or by this book, the ordinary deposition-book.

Mr. Montgomery: Which is the official record?

Mr. Bell: It is the book I produced the other day.

WEDNESDAY, 7TH JULY, 1886.

Captain BIRCH examined.

398. *The Chairman.*] What is your Christian name, Captain Birch?—Azim Birch.

399. You are a sheep-farmer, I believe?—Yes.

400. You are interested in some manner—I do not know what exactly—in this proposed Bill—the Owhaoko-Kaimanawa lands—are you not?—I am lessee of Kaimanawa.

401. You have seen the Bill, I suppose, and this memorandum?—Yes; I saw both.

402. Are you here to make some statement on the matter?—I have no statement to make; but I am willing to offer any information, or answer any questions that the Committee may wish to put to me.

403. I do not think your name is mentioned in the memorandum—is it?—I am mentioned as having been lessee of the Kaimanawa Block.

404. *Hon. Mr. Bryce.*] I think it would be as well to get down Captain Birch's statement in reference to the matter, if he will just say what he knows about it?—I have been connected with the land since 1868, when I first took up sheep there, under a conditional promise from the Maoris that they would pass the land through the Court—which they did in 1875, at which time I was resident on my run there. I was present in Napier at the time that the block of land—Kaimanawa—was passed through the Court, and was cognizant generally of the circumstances attending its passing through the Court. I was aware that some Natives came down from the run, and were desirous of reopening the case; and I believe that they made a plea that they had not time, between the time of their receipt of the notification that the Court was to sit and the sitting of the Court, to arrive. I believe the memorandum states that they had three days. I can only say that my practice at that time—I think I ought to say my practice—was to leave my homestead at eight o'clock and be in town on the following day at the opening of the business places at ten o'clock. I stayed overnight with one of my friends at Matapiro, and it took me fourteen hours in the saddle.

405. We had it in evidence that it is ninety miles?—It was eighty miles from my door to Napier, and the pa is further on—that would be about eighty-six miles from town.

406. You used to ride it in one day, and arrive the next morning?—Yes—twenty-six hours, including twelve hours' stoppage.

407. Then it is good country for travelling—a good road?—No—it was a horse-track over a mountain-range; but I had the advantage that there was a gradual descent of about 2,000ft.

408. All down hill?—Yes; for the most part. It was not exhausting to my horse or myself to do that journey.

409. You rode the same horse all the way?—Yes; but for the last four miles I used to take advantage of the coach to take me down, and leave my horse for pasture.

Hon. Mr. Bryce.] That is quite reasonable: that would be about seven miles an hour—not very fast riding.

410. *Mr. Montgomery.*] Seven miles an hour is very fast travelling for one horse over such a distance?—No; not more than six miles.

411. *Mr. Stewart.*] Had the Maoris horses?—Yes; they had an abundance of horses.

412. *The Chairman.*] I see it says here somewhere that they travelled day and night for three days. Yes; here it is, on page 3, in the letter from Heperi Pikirangi to Judge Fenton: "To Mr. Fenton. Greeting. This is a request to you to hold a sitting of the Native Land Court to adjudicate upon our lands which were brought before the Court held at Napier. The names of the lands are Ohaoko, Mataipuku, Papakai, Ruamatua, Whangaipotiki, Ohinewairua, Oarenga, and Kaimanawa. We were too late for the first Court, the reason being that we only received the notices on the 13th, and on the 16th the Court sat. We travelled night and day, but did not arrive in time for it; and therefore we send in this application. Friend, Mr. Fenton, do you accede to this request; and if the letter reaches you answer it, so that we may be aware of your decision on the subject. This is all—From Heperi Pikirangi te Hau and twenty-five others—rather, from all of us." Heperi Pikirangi and twenty-five others are said to have signed that?—I do not think twenty-five others did sign it. It says "twenty-five others," but it does not give their names. Their names would be given if signed.

413. Heperi is one that lives there, is he not?—Yes. I know him. I think he signed it.

414. Did he come in on horseback?—Yes, I saw him when he arrived in Napier on that occasion which he mentioned.

415. What time of day did he arrive? Do you know when he came?—I rather think it was Monday morning or Tuesday morning when he first appeared.

416. What day was the Court sitting?—Well, it must have been Friday or Saturday of the previous week. I cannot speak accurately, but I think that was the day.

417. *Mr. Montgomery.*] It was after the Court sat that you saw him?—Yes.

418. *The Chairman.*] But did he make any complaint to you?—Not at that time. He said what the purpose of his arrival was, but made no complaint, and appeared to be satisfied.

419. *Mr. Stewart.*] There is about a hundred and fifteen thousand acres in this block?—Yes.

420. Under what tenure is it held, or under what occupancy? Is it under lease?—Yes—under lease.

421. Granted by whom?—By the five grantees on the memorial—Renata Kawepo, Karaitiana te Rango, Ihakara te Raro, Te Retimana te Rango, Horima te Ahunga. I obtained the lease from them after the case was passed through the Court.

422. And the lease was approved of?—Yes.

423. And what rent do you pay?—I agreed to pay the sum of £800 a year.

424. What term have you yet to run?—I obtained a renewal of my lease three years ago for a period of twenty-one years.

425. So that under that lease you have only nineteen years to run?—Yes.

426. Was that lease also passed through the Court?—Yes. I may explain that when I took up the country it presented great natural difficulties to occupy it, and for sixteen years, I think, after I first occupied it, I had to pack my own wool, and everything I took into the country, for over forty miles.

427. What is the value of the improvements you have made, do you think?—Well, I have not put down any estimate, but they have cost me a very considerable sum—more than like improvements would to other people. I should think I have spent at least £10,000 in improvements since I went there first.

428. *The Chairman.*] Were you in the Court when the Natives were examined on the 16th September?—Yes.

429. Did you hear Noa Huke examined?—Yes, I did.

430. Noa Huke does not appear to have any claim himself. He did not make any claim for the land for himself?—No; he gave the genealogy.

431. He is made to say here that "there are Natives who are not present who have a claim. The people now living on the land have a claim. About twenty people—men, women, and children—are living on the land." Do you remember him saying that?—Yes. With regard to their "living on the land," they were not living absolutely on the land—their kaingas were not there—but they had huts there for use when they were passing over from one kainga to another. Their cultivations were some miles off.

432. I observe that Renata gives the names of those five persons as the owners who were afterwards certified as owners. He says, "These are all of whose claim I am aware. I claim from my ancestors. Noa Huke will trace the genealogy." And so he referred to Noa Huke as an authority?—Yes, that is so.

433. Did you know at that time that there were others who claimed an interest in the land?—No, I was not aware of anything except the decision of the Court. I accepted that as being definitive on the point. I may mention that in 1877 I went to England, and I started from Wellington. I came down here, and Sir Donald McLean had an interview with me. He desired to see me, and asked if I had any application from any Natives for rent other than those mentioned in the grant; to which I replied—as was the case—that I had had no application from any others.

434. *Mr. Stewart.*] Do you know whether any others than those mentioned in the grant obtained any portion of the rent which you had been paying?—No, I cannot say how it was divided. There were disputes amongst them; but it was because the person who had been appointed to receive the rent kept it chiefly for himself, and did not divide it amongst the others.

435. To whom did you pay the rent?—These disputes were all amongst the five persons mentioned in the grant. I was authorized, in the first instance, to pay it to Renata Kawepo, the principal man.

436. *The Chairman.*] Did Heperi ever apply to you for rent?—Never.
437. *Hon. Mr. Bryce.*] How long were you upon this land before it was adjudicated upon?—I took my first sheep up there in 1868.
438. What sort of agreement had you with the Maoris?—I had a sort of memorandum, reduced to writing, in which they agreed to pass the land through the Native Land Court and give me a lease for that portion which I now occupy, at a certain rental.
439. What Natives signed this agreement or memorandum?—All the Natives, I think, that are now contained in the lease, with the exception of Renata Kawepo.
440. Now contained in the memorial, you mean?—Yes.
441. That would be four out of the five?—Yes.
442. Were there more than these four?—Yes; I dare say there were.
443. Many more?—Yes; I dare say there were some ten more.
444. And Renata Kawepo was not amongst them?—No.
445. Is not that rather curious, in face of his now being pronounced principal owner?—Well, I cannot say as to that. I am not sufficiently cognizant of the Maori custom in the way as to their tenure of land, but I thoroughly believe myself that Renata has a very considerable claim there.
446. Would it not have been a matter of deep offence to Renata that they should have dealt with this land without consulting him or having his name on the lease?—No, I do not think so, because I have had a previous experience to the same effect.
447. Who were the others on the memorandum? Can you give their names?—No, I cannot.
448. Could you supply the Committee with the names?—I do not know. It is possible I might; but I have not got them here. I will try and get them by telegram.
449. *Mr. Stewart.*] Can you tell us whether Heperi was in it?—I cannot answer that, because the deed is not in my own possession. It might be in the hands of my lawyer.
Hon. Mr. Bryce: If Captain Birch could get the names on this original informal memorandum, it would be instructive to the Committee.
450. *Mr. Stewart.*] Who prepared it?—I wrote it out myself. Afterwards it came into Mr. Wilson's custody, I think. If anywhere, it is there. I think he has possession of all my papers.
451. *Hon. Mr. Bryce.*] You have read this letter on page 3, presumed to be signed by Heperi and others?—I have read it.
452. Do you know who "the others" are that this refers to: I mean generally?—Yes, generally, I do: the other Natives resident in Patea who are not named in the lease, or most of them.
453. Now, do you think the ten you have referred to who have signed this memorandum formed part of these twenty-five here referred to in this letter?—Yes, I think so.
454. You do think so?—Yes; why not?
455. It occurred to me to ask, because they are not in the present deed. Well, then, at any rate, at one time, Captain Birch, you appeared to consider these twenty-five, or these ten of them, as being owners of the land?—No, that does not follow, I think.
456. They signed your memorandum?—Yes; but all sorts of people sign these papers.
457. Yes; but you took your lease from them?—After the thing had been investigated by the Native Land Court I took my lease from the Natives named in the memorial of ownership.
458. But you must have considered them to be owners?—Well, my knowledge is that people's names do get down on memoranda of that sort who have no earthly title to get there. I cannot speak with knowledge as to their being owners or not.
459. I want to know if you thought they were owners?—I thought some of them were owners; in fact, I did not know the relative strength of the rights of any of them.
460. *Mr. Montgomery.*] You got as many as possible, I suppose?—Yes.
461. *The Chairman.*] I suppose, to be on the safe side, you got as many as possible to sign it?—As many as possible.
462. *Mr. Stewart.*] I suppose those people interested in the land thought they had an interest in the rent?—I do not know.
463. Had these people who signed the lease, or the twenty-five referred to here, been residing on or near the land?—They had been residing near it. As far as my communication with the Maoris goes, the people who are chiefly owners, who are owners of the land, are represented in the memorial granted to them by the Court. There are two tribes there—the Ngatiwhiti and the Ngatitamas. The Ngatiwhitis were all in my lease, and the memorial of ownership was granted to them; but the Ngatitamas, who are their relations, are not ground owners, as far as I have been able to ascertain.
464. *Hon. Mr. Bryce.*] Are these people connected with Renata?—The Ngatiwhiti belong to him.
465. To what tribe does Heperi Pikirangi belong?—The Ngatitama. The Ngatiwhiti are, I understand, a hapu of Renata's tribe.
466. Is it by virtue of his connection with these people that Renata claims ownership in the land?—Yes; by virtue of his descent.
467. Which he holds in common with the others?—Yes.
468. Do you know anything about this Donnelly?—I know Mr. Donnelly—yes.
469. Do you know whether he and this Heperi Pikirangi and this party of twenty-five are in any way connected or intimate?—There is no doubt there is a connection between Renata and Donnelly. He is married to a niece of Renata. But I believe they are not on the best terms.
470. *Mr. Montgomery.*] You took your sheep there in 1868?—Yes; in January, 1868.
471. After you had that memorandum or agreement signed?—Yes.
472. Did you pay rent?—Yes.
473. From that time?—The agreement was that I was not to pay rent till I got the land from the Court.

474. But did you pay rent?—Yes.
475. To whom?—To Karaitiana te Rango.
476. You paid it to him?—Yes.
477. Did you pay it to him to be distributed amongst those Natives who signed the lease; I mean those who signed the agreement—not the lease?—It was generally understood that he attended to the subdivision, if there was any, of the rent.
478. But did you expect that these men who had signed the agreement to lease would claim part of that rent?—I do not know. I know what did happen, if you want to know that. Karaitiana used to make such a subdivision of it as he thought fit; and on one occasion there was a complaint from one of them who did not get his share: but he was one of my present grantees.
479. Then you did not know, as a point of fact, how he distributed that money at all?—He never distributed it to any persons who are not now named in the memorial of ownership.
480. I have not gone so far as that. I am speaking of the memorandum. You had in that memorandum fourteen men to sign it; but Renata was not in it?—Yes; his name was not in it.
481. And you paid the rent that you had agreed to in that memorandum to Karaitiana to distribute?—Yes.
482. What was the intention in paying it—to be distributed among these fourteen men?—I did not know to whom it was to go.
483. But in paying it to Karaitiana did you expect that he was to keep it all himself, or to distribute it amongst those who had signed the memorandum?—I know that the rent then paid was not distributed outside the people who granted me my present lease.
484. And you took it for granted that the Natives interested would get the money?—Yes.
485. And did you hear from any of the other ten names written upon your lease, out of the fourteen—did you hear any complaint of them not receiving the money?—Only in one case—that of Retimana te Raro, who is one of my present lessors under the memorial of ownership.
486. Then you paid the rent from 1868 to 1875, when the thing passed through the Court, to Karaitiana?—Yes.
487. And since that time to whom did you pay it?—By direction of the Maoris, to Renata Kawepo.
488. By direction of whom?—By direction of the lessors.
489. Is Karaitiana one of the lessors?—Yes.
490. *The Chairman.*] Have you anything else to tell us?—I wish to say that I always knew Renata Kawepo had an overlordship over the property, even in the past, when I had not got his signature to the memorandum.
491. *Mr. Montgomery.*] Was he residing there?—No; he was not living there. He was up there though, I think, on two occasions—certainly on one.
492. What was his claim, in the opinion of the Natives, if he were not residing upon the land?—That has been recently investigated by the Court.
493. Can you not give us something, apart from that?—No, I cannot. Any opinion that I might give upon that point would be very vague, you know.
494. *Mr. Stewart.*] The question is, what colour of right did he put forward to this land, or what title had he to this right, before it was investigated?—In 1867, when I was negotiating with the Maoris, in the absence of Karaitiana, who was at Owhiti near Napier, for a portion of what is known as Owhaoko, Karaitiana returned to Patea, and said, "You shall not let him have Owhaoko, because that would displease Renata; but, if you like, we will rent him Oruamatua, which will not displease Renata." So that he evidently had a say in it.

[Addendum to Captain Birch's Evidence.]

Azim S. Birch, Wellington Club, Wellington.
Signatures to agreement 1867, are: Karaitiana Terango, Horima Teahunga, Kakapa Tehokemutu, Aperahama Teahunga, Ihaka Tekonga, Rota Tewhakaihopo, Te Awaawa, Te Taiimu Pirimiha, Tamakaitangi Heperi, Terangihuamui, Tehirauka Teraro, Wereta Patea, Rawiri Pikirangi, Hika te Rangi, Whakamanunu, Ihakara te Kohiti, Hohepa te Atarau, Henare te Ratarewa, Eruini Matarewa, Hoani Nga Muka, Kingi Topia, and Kieta te Rango.
Wilson and Cotterill.

Friday, 9th July, 1886.

Mr. Bridson examined.

495. *Mr. Bell.*] What is your name, Mr. Bridson?—William Bridson.
496. What are you?—At present, Registrar of the Native Land Court at Wellington.
497. How long have you been in the Native Land Court Department?—Twenty-one years.
498. In what capacities?—I was sent to Auckland by the Hon. Mr. Mantell in 1865, and I was then Registering Clerk in the Native Land Court in Auckland, under the late Chief Judge, Mr. Fenton.
499. And did you remain with the Chief Judge at Auckland until you became Registrar?—Yes—until I was sent to Wellington. I remained there as Registering Clerk.
500. Who was the Chief Clerk?—Mr. Dickey.
501. You were, then, Registering Clerk when the Native Land Act of 1873 was passed?—Yes.
502. And came into operation?—Yes.
503. I want you to look at the Act of 1873. You were aware of the practice of the Native Land Court, were you not, under that Act?—Yes, as regards registering titles and certificates of title to the memorials of ownership, and so on.
504. And the correspondence of the Court?—The correspondence of the Court was chiefly in the hands of the Chief Clerk.

505. Who kept the book in which the record of each block was made?—The Record Clerk.

506. Did you make any entries in that?—I did, frequently.

507. Was it part of your duty?—It was mainly the duty of the Record Clerk, but whenever a press of business occurred, which was frequently, I made up the entries.

508. Were you conversant with the practice of the Court under the Act of 1873?—Yes, I think so.

509. I want you to look at the Act. Look at clause 21 down to clause 32. Clause 21 says, "For every district established under this Act, the Governor in Council shall appoint some competent officer (hereinafter called the 'District Officer')." That was done, was it?—Yes.

510. Then it continues, in the first subsection, "To prepare for record a general skeleton-map of the district assigned to him, distinguishing the different tracts of country in possession of the various tribes or hapus of the Natives at the date of the signing of the Treaty of Waitangi, and the nature and tenure thereof." Can you say whether this part of his duties was ever carried out by the District Officer?—I cannot say. I only know from personal knowledge of one or two that it was not. I never saw it done.

511. Well, then, subsection (2) of section 21 says that another of his duties shall be "to compile, with the assistance of the Assessors and of the most reliable chiefs of the district, or with the assistance of such other person or persons as he may consider to be trustworthy, accurate and authentic information relative to the district aforesaid, defining the intertribal boundaries by their Native names, giving the estimated acreage of such tribal land, with a description of the course and direction of the principal rivers running through such land, and the names and positions of the various mountains, lakes, or other salient points in the general features of the country. They shall also supplement the information by tracing the genealogy and names of the various families or hapus to which the different portions of the original tribal land shall have descended." Can you say whether these statements were compiled by the District Officers? Did you ever see them?—Never.

512. Clause 22 provides, "The result of such inquiry shall be entered in a book to be kept in the office of the Court of the district, and called the 'local reference-book.'" Did you ever see such a book?—No, I never saw one.

513. You are conversant with these sections following down to section 32, are you not, as to reserves, &c.?—Yes; I think I know them.

514. Can you say generally whether these sections were complied with by the District Officers, and by the Court, acting upon the recommendation of the District Officers?—I cannot say that they were. I only know that the District Officer was acquainted with the claims, and the practice was, for about a year after the Act came into force, to publish a list of claims received. Subsequently to that the practice was to send the District Officer a copy of each claim, upon which he made a minute whether he thought there was any objection to it.

515. That was the practice after the first year?—Yes: after the first year we simply got a report upon each claim from the District Officer.

516. Following on the Act, look at section 33, which says, "Before any claim to land shall be investigated by the Court, and before any award in partition of any land shall be made by the Court, it shall be necessary that a survey of such land shall have been made, and approved maps thereof, in duplicate. Such surveys and maps shall be made in conformity with the provisions of this Act, and of any rules in force relating to surveys." Now, are you aware what was the practice of the Courts in respect to these surveys? Did they require a survey before they sat to adjudicate upon the title?—The Judges endeavoured to get plans certified by the District Officer as well as the Chief Surveyor; but it was not always the case. It was very seldom the case, I may say. The practice had obtained for so long of hearing claims upon sketch-maps that it continued.

517. Can you say anything of the practice of the Court, whether it was possible or practicable to obtain a complete survey of a block to be adjudicated upon, before determining the title?—I cannot say. I only know that in a measure it was deemed to be a disposal of the case if the correct survey of the land could be obtained before it came before the Court. The conflict of boundary was such an important matter that a correct survey was almost impossible, and I think it was deemed so.

518. The question of boundary was the important question for the Court to determine?—Yes—one of them.

519. I now call your attention to section 35, which requires that "a copy of such application shall be sent at the same time by the applicants to each of the tribes, hapus, or persons named in the application, or believed by the applicants to be interested in any portion of the land comprised in the application. And the applicants shall satisfy the Court at the sitting thereof for the hearing of the claim that such notices have been duly served upon such persons or parties; and in the minutes of the proceedings of the Court shall be entered a note of the manner in which the Court was so satisfied." May I ask if you know of any cases where section 35 has been complied with?—I know of instances where the latter part of the clause has been acted upon by the Court; but I have never known the Court to be satisfied with the former part of that clause.

520. Can you say whether or not, from your own knowledge, section 35 was not strictly and rigidly adhered to?—Do you mean my own opinion?

521. What you know of the practice of the Court?—I know it was deemed to be impossible that the Natives themselves could send a notice of the blocks to be adjudicated upon by the Court to the other parties, persons, or hapus interested.

Mr. Stewart: Does the witness say that the section was or was not complied with?

522. *Mr. Bell.*] He says he does not know any case where it was complied with. (To the witness:) You say you know of some such case: was it the practice of the Court to make such a minute?—No, it was not. You mean by the Clerk of the Court? No, it was not.

523. I call your attention now to section 37. You have told us that it was the practice to obtain reports on claims from District Officers. Passing to section 38, it was provided that "the Judge shall institute such preliminary inquiries as he may deem necessary, in the manner he may think best, with a view of ascertaining whether the application to bring the land under the Act is in accordance with the wishes of the ostensible owners thereof; and, if he shall upon that inquiry be satisfied that the application is *bonâ fide*, and no objections thereto have been offered by the persons hereinbefore required to report upon such application, and that the hearing of such claim is not likely to lead to any disturbance of the peace of the country, he shall require a survey of the land to be made under the direction of the Inspector of Surveys, and the boundaries thereof to be effectually marked out on the ground. The Judge shall in each case minute a note of the manner in which he shall have satisfied himself in respect to the aforesaid matters." I want to know if that was done?—I think I can remember two instances—certainly two.

524. And no more? Was it the practice to make this?—It was not the practice. May I explain: I said, in the early part of the operation of the Act of 1873, which provided that preliminary inquiries should be made, it was attempted, and found unsatisfactory, I think, by these two cases, made in accordance with this clause 38, that the Court was to make preliminary inquiries. It was afterwards found that it was difficult to get preliminary inquiries made, and the practice was abolished. The Judge was relying upon the report of the District Officer.

525. The result of the section 38 would be to have two meetings of the Natives and two meetings of the Court?—Yes. It was deemed costly to the Natives, and it was in consideration for them that it was decided to abandon the practice.

526. Do you not think the question of providing funds for the Government was a leading motive?—I do not think so. I believe it was consideration for the Maoris that induced them to alter it.

527. Section 39, you see, provides that "Provided always that the applicants shall in each case satisfy the Inspector of Surveys that the costs and charges of the surveys and requisite maps of the claim will be paid by them, either in money or in land to be transferred to Her Majesty." Are you aware whether that was strictly adhered to?—I know that it was attempted—that parties making application for survey had to sign an application in which they were to all intents and purposes bound to make payments for the cost of survey.

528. Now, section 46 says, "In carrying into effect the preceding sections, or any of the sections hereinafter contained regarding partitions, the Court may adopt, and enter of record in its proceedings, any arrangements voluntarily come to amongst themselves by the claimants and counter-claimants, and may make such arrangements an element in its determination of any case concurrently or subsequently pending between the same parties." Now, do you know, Mr. Bridson, whether the Court acted upon voluntary arrangements?—Yes, I know it did.

529. I am not speaking of partitions—I am speaking of investigations. Do you know whether upon investigations the Court did act upon voluntary arrangements?—Yes, it did.

530. I now call your attention to the latter part of the clause. Was that latter provision strictly carried out?—I do not think it was. I know I was Clerk at several sittings of the Court, and I entered upon record in the minute-book such points, but I know it was not the practice.

531. I should like to know, when you were sitting as Clerk of any Court, do you know whether invariably all the Natives named in the memorial were present?—No; sometimes several of them were absent.

532. Do you know of any case or cases—I am speaking of the practice; not of any particular cases—where persons at the Court claimed to represent absent Natives?—Oh, yes; that was a common event.

533. Can you say what proof of their right to represent absent Natives was required by the Court?—Sometimes a written authority was required. Frequently the Court was satisfied without it.

534. You have been Clerk of the Native Land Court, as you have told us; and as Clerk have you kept minutes?—I have.

535. Did you enter the minutes as the Court sat?—As the witness gave his evidence.

536. But did you enter matters other than evidence while the Court was sitting, invariably?—I do not know what would be other matters than evidence requiring to be entered.

537. Minutes of the decision of the Court?—I should enter up the order after the Court had pronounced a decision.

538. Yes; but did you, as Clerk, have any practice of entering your minutes after the rising of the Court?—Never.

539. Do you know whether that was ever done?—I do.

540. I am not speaking of the Owhaoko case. I wish to know whether you know of Clerks of Courts entering up their minutes after the rising of the Court?—I do.

541. *Hon. Sir R. Stout.*] You might ask him what he means by "after the rising of the Court"?—I mean that some days he would take notes on a separate piece of paper, and then enter them up in the book in the evening, after the sitting of the Court.

542. But not while the Court was sitting?—No. I have known where a Clerk has done this as a practice, and copied them into the minute-book afterwards from his own notes.

543. *Mr. Bell.*] I want to know this: Have you known cases of errors in the minute-book—errors of record, that is, or where the matter has not been properly, correctly entered in the book? Do you not understand?—Not quite.

544. I want to know whether you have known cases where the record in the minute-book, when looked at afterwards, was found not to correctly represent what took place in Court?—Yes.

545. You have known such cases?—Yes.

546. Were such cases frequent?—Well, I could not say. I can only recall one or two.

547. Within your own experience as Clerk?—I do not remember one alteration of statement or of fact in my own minutes.

548. I am speaking of minutes of others that came before you?—Yes, in my own knowledge.

549. And how was the error in the minute ascertained?—In the case I have referred to the error was discovered upon the perusal of the Judge's notes.

550. What was done when the error was discovered on perusal of the Judge's notes?—In the case I referred to an alteration or erasure was made and the correct statement inserted—that is, it was corrected from the Judge's notes.

551. I wish to know this from you, then: the Clerk keeps the minutes, and the Judge his notes?—That was the practice, and always has been the practice.

552. In cases of difference between the Judge's notes and the Clerk's minute-book, which would be looked upon to be correct by the Registering Clerk?—The Judge's notes were always relied upon.

553. And you say you have known one or two cases, at least, in which the minute-book was corrected to correspond with the Judge's notes?—Yes.

554. By whom was the minute corrected?—By the Clerk.

555. Can you say how long after the entry the discovery of the error was made?—I cannot say how long. I only know it was after the rising of the Court.

556. After the Court had been adjourned *sine die* and the staff had returned to the head office?—Yes.

557. After the staff had come from some place?—Yes.

558. On perusal of the Clerk's minutes?—Yes.

Hon. Mr. Bryce: Perhaps you would ask whether it was customary to compare the minute-book and the Judge's notes.

559. *Mr. Bell:* Can you answer that question, Mr. Bridson? Was it the practice to compare the Judge's notes with the minute-book kept by the Clerk?—I cannot say what the practice of other Clerks was. My own practice was that I did not.

560. Then I should like to ask you how it came about that the error was discovered in the case to which you have referred?—The Clerk himself told me that, on comparing the Judge's notes with his minutes, they did not correspond.

561. Then, in the case of that Clerk, he did make it a practice?—Evidently it was his practice.

562. It was not your own?—No, it was not mine.

563. Can you say what was the general practice?—I cannot say what was the practice with other Clerks.

564. *The Chairman.*] Did you, as a rule, see the Judge's notes, or did he keep them in his private custody?—They were always accessible for the Clerk if he had any doubt as to the correctness of his minutes. I know the Judges were always courteous enough to give access to their notes.

565. But they were not in your care or subject to your inspection unless you asked for them?—No.

566. *Hon. Sir R. Stout.*] What is the name of this Clerk that you refer to?—Mr. Austin.

567. It was not Mr. Woon or Mr. Brooking?—No; I have never been near enough to them

568. Suppose the Government asked the Chief Judge for information as to what took place in the Court, what would be forwarded to the Government—an extract from the minute-book or the Judge's notes?—I think it would be an extract from the minute-book.

569. Then it would be assumed that the minute-book was a correct record of the proceedings?—I presume so.

570. Was that the practice?—I know of no instance where the Government asked for the copy of the minutes.

571. Suppose applications for rehearings were made to the Government, would not the Government like to know what took place in the Court before they considered the advisability of granting a rehearing?—That is likely; but I do not remember a single instance where the Government have asked for a copy of the minutes.

572. But for what took place in the Court?—Yes; there is the case you referred to. On an application for rehearing the presiding Judge would be asked for his opinion, and if any copy of the minutes were required I have no doubt his minutes would be sent.

573. And then, if the Judge sent a copy of the minute-book as a record of what transpired, would the Judge say that the minute-book was correct?—I do not know; I do not think I could answer that question.

574. Very well then; I put it this way: Did your office consider that the minute-book was a true record until the contrary was proved?—Yes, I think so.

575. You assume, *primâ facie*, that the minute-book stated correctly what took place in Court?—Yes.

576. It was kept for that purpose, I suppose?—Yes, for that purpose.

577. Were minute-books of the Courts held outside Auckland sent there?—They were kept in Auckland except during the sittings.

578. For what purpose?—More as a record of the proceedings of the Court, I think, than anything else.

579. They were kept in Auckland to be considered as a record of what took place in the Courts, I suppose?—Yes. If I may go a little further, I would also say that the Clerk's minutes were frequently deemed of not much value as compared with the Judge's notes.

580. Were the Judge's notes filed in the head office in Auckland?—No; they were always deemed private property.

581. Then, do I understand this: that the administrators of the Native Land Court in Auckland

had sent to them the minute-book as a true record; but the Judge's note-book, that you consider a "truer" record, was never shown to them?—The minute-books were always received with the other documents from the Court.

582. But the Judge's notes were not sent?—They were deemed to be his own private property, I think.

583. The administrators who were in Auckland—we have heard that the head office was in Auckland—did not get the Judge's notes; they only got the minute-books as to what had taken place in the Court?—Yes.

584. You have mentioned several cases in which the Act of 1873 has not been complied with?—Yes.

585. To whom did you look as the head of your office?—The Chief Judge.

586. Did he know that this Act had not been complied with?—Yes, I think so.

587. To your knowledge was it ever reported to the Government that the Act was not being complied with?—Yes, I think so.

588. You know that of your own knowledge?—I have it quite distinctly on my own memory that the Chief Judge had several conversations with the then Native Minister as to the working of the Act, and they had come to some understanding on the subject.

589. You were not present?—No; I only know it from hearsay.

590. Now we come to the question of voluntary arrangement. Were you ever in Court when a voluntary arrangement was made?—I was.

591. Were the people who made it present in Court?—Yes.

592. Do you know of any case in which a voluntary arrangement was made without some of the persons interested being in Court?—I think so.

593. How would it be a voluntary arrangement if the Judge had not the Natives before him?—The parties would make a statement that it was a voluntary arrangement, and would produce authority on behalf of those who were absent, and their names would have to be entered or omitted according to the statement.

594. But, if no authority was produced, what then?—I do not think the Court would recognize the omission of names on that ground. I do not remember a single case where the Court would recognize the omission of any without a distinct authority in writing.

595. Suppose the voluntary arrangement was to be that the land was to be inalienable, would the Judge be justified in ignoring that, and omitting others from the grant or certificate? I want to know if you know any instance of this kind: Suppose Natives come into Court and say, "We have made a voluntary arrangement with Natives not here. We produce no authority from them; but they know all right that this block of land is to be rendered inalienable." Would the Judge be justified—or do you know any case in which he has acted so—that he gave it to these people, and did not make it a reserve?—No, I cannot recall any single instance.

596. Was it the practice of the Court to make blocks inalienable after 1873?—Under the Act of 1873 there was a clause which made all lands under the memorial of ownership inalienable except with the consent of the owners entered upon the memorial.

597. Was no land declared inalienable after 1873 at all?—Yes; but I think it was only after the Court was specially empowered to make the land inalienable.

598. By what Act do you mean?—I think by a later Act that is the case.

599. Then, suppose the Natives came and said a certain piece of land was to be reserved, did the Court make it a reserve?—I think so. That was after the Act of 1873.

600. I am asking, after the Act of 1873. Suppose the Natives came to the Court and said, "We have made arrangements that this shall be voluntarily reserved," would the Court join with the arrangement?—After special power was given to the Court; but I do not think much attention was given to the inalienability until then.

601. I am leaving that alone; I am going to reserves?—I do not think so.

602. Do you know any case where reserves were made to the Natives except upon their own recommendation?—I do not. After 1873 I do not remember a case.

603. Then do I understand you that you do not remember a case of a reserve being made under the Act of 1873? You do not remember a case of land being inalienable after 1873?—Yes, I am certain there were several cases in which land was made inalienable.

604. Then, would the Judge, if the evidence of the Natives was in favour of making the land inalienable, ignore them? Was it the practice?—It was not the practice.

605. Now, in cases where it was found out that the minute did not agree with the Judge's notes, was that matter brought before the Chief Judge?—I have not known it.

606. Who ordered the alteration in the minute-book to be made that you referred to?—I think the Clerk himself brought the attention of the Judge to it—the presiding Judge—who had it altered accordingly.

607. Was any Clerk in the habit of altering the minute-book without the sanction of the Chief Judge or Judge?—I am not aware of it.

608. That was not the practice?—I should not think so. I did not know of it.

609. Now, did you ever know minutes entered of sittings of Court that never sat, in all your twenty-one years' experience?—Of course not.

610. Do you know any single case in which a Clerk entered in a minute-book minutes stating that the Court sat at a certain place on a certain day, when the Court never sat?—No.

611. That was not the practice?—No.

612. Did the Chief Judge look over the minute-books—was that a part of his duty—or the Chief Clerk?—I do not think the Chief Clerk did. I am sure that he did not.

613. Did the Chief Judge?—I know that the Chief Judge perused my minutes more than once, but I do not know that he did those of any one else.

614. I presume the dates of sittings of Court were known in the Chief Judge's office at Auckland?—The notices were issued from Auckland.

615. And the Chief Judge, or whoever was attending to the executive business, would know of the days and places of Courts sitting?—Yes.

616. Then, if there was in the minute-book a statement with regard to the sitting of a Court that was not legal, that would be known to him at once?—If he saw the minute-book, yes.

617. Suppose a rehearing was asked for, and the Chief Judge was asked to advise upon it, would he necessarily go to the minute-book to find out what took place?—His practice was to go to the presiding Judge at the first hearing of the case.

618. Suppose the presiding Judge knew nothing about it?—I could not imagine such a case.

619. Was it easy for the presiding Judge to obtain evidence as to whether notices had been served or not upon Natives before he heard the case?—No, it was not. The presumption was that the notices had had the widest possible circulation without his interference or inquiry.

620. Then he never inquired as to whether notices had been served or not, nor did he inquire whether the notices had been gazetted or not?—He had the *Gazette* before him.

621. How long beforehand was it the practice to give notice before the sitting of the Court?—One month before the sitting of the Court. I have known notices of Courts sitting to have very much longer circulation than that, but that was the practice—one month.

622. Should I be right in assuming that one month was the least notice you know of having been given? Do you know of any less notice than one month being given?—I think it is possible that less than one month's notice has been given, but it was not by any means the practice.

623. Then they were sure to have a month's notice?—That was deemed the ordinary practice of the Court, and it was always endeavoured to be kept up.

624. Have you known rehearings being applied for on the ground that the Natives have not had notice?—Yes, I have known cases where that statement has been made a ground for rehearing.

625. Was a rehearing granted if that were proved to be true?—I cannot recall any case. I know it was never recognized as a very strong feature in their case.

626. Then, whether people had notice of the Court or not, that was not considered of importance?—Well, better grounds than that were always looked for.

627. Then, suppose people were living on the land, and it were proved that these people living on the land had not notice of the Court sitting, that would not be sufficient ground for the rehearing?—If they could bring proof I should think it would be sufficient for them.

628. I want to know the practice. Was that considered a sufficient ground?—I would not like to take upon myself to give an opinion.

629. I only ask the practice?—The practice was to look for stronger grounds than inefficient notice or no notice. The notices were distributed so very well through the country by means of the Resident Magistrates and local officers in the neighbourhood or locality of the land, that it was deemed to be impossible for any one to be in the district without getting notice.

630. We have learnt that one notice was gazetted on the 7th September, and the hearing was held on the 16th. Was that usual—to give such a short time as that?—That was a very unusual case.

631. Who were the officers that used to serve the notices—the Native District Officers?—Yes. Resident Magistrates were supplied with bundles of the *Panui*, and requested to circulate them.

632. Mr. Locke was the Native Magistrate at Hawke's Bay?—Or he was the district officer.

633. Then he would be the person to give the notices?—He would be one of them.

634. Now, do you know any case in which the minutes were entered up of the proceedings of the Court more than a day or two after the sitting of the Court?—No, I do not.

635. That was not the practice?—No; to my knowledge it was not.

636. You say corrections were made when it was compared with the notes of the Judge?—Yes.

637. Not afterwards?—No.

638. They might be made on comparison with the Judge's notes?—Yes.

639. *Mr. Stewart.*] Who in the Court was supposed to take minutes or a note of what was going on? Was it the Judge or the Clerk? Under the Act a record was required to be kept of the proceedings? Whose duty was it to keep that record? Was it the Judge or any other official, or the Clerk?—The Clerk, by ordinary practice, kept his minute-book, and the Judge kept his notes.

640. Was taking notes by the Clerk necessary? I mean under the Act. Would it have been sufficient for the Judge to take notes by himself, or for the Clerk to take minutes without the Judge's notes?—Well, the Clerk's notes were accessible to the office, but the Judge's were not.

641. You say the practice was for both parties to take them. Whose duty was it, under the Act, to take a record of what was going on?—That was the minute-book, kept by the Clerk.

642. Now, you were in the head office of the department?—Yes; I was in Auckland.

643. Communications relating to a block of land—what you would call the executive side of the record—would communications on that block of land be put together?—Yes: all the papers relating to a block of land were recorded in the register and filed one upon another.

644. That is irrespective of the question as to whether these documents related to what took place in Court, or were replies to communications sent out from the head office?—Yes.

645. Supposing a person applied to search, under the Native Land Act, papers relating to a certain block of land, would he have access to all those documents?—No: the rule was that he should simply have access to such documents as related to the claim.

646. Suppose I went to the office and said, "I want to search the record of papers in connection with this block," would you place the whole of the papers before me to examine?—My practice

was (and it remains) to hand you the papers and say, "You are at liberty to search the claim and all judicial documents relating to it, but the correspondence is not part of your right."

647. Would you take the correspondence out?—Only if there was any chance of my suspecting that there was any information to be obtained by the searcher. I would give him the pile of papers and say, "You are at liberty to search only papers judicially relating to the claim." If there was private correspondence I should tell him not to search that, but I should trust to his honour not to do so.

648. But you would not separate them, and hand him what you would consider records, and withdraw from it what you would consider not strictly part of the papers?—No.

649. You gave him the bundle, in fact, merely trusting to his honour not to look at what did not concern him?—Yes.

650. Now, with regard to the question of notice to these Natives: Was the distance of the block where these Natives resided from the Court ever an element in the length of notice? Supposing, for instance, Natives resided twenty miles from where the Native Land Court was sitting, was that ever taken into consideration as against Natives residing, say, one hundred and fifty miles away from the Court? Would not the question of distance be an element in considering what notice they should have?—I do not think it was the practice to consider them.

651. So that the question of distance was not taken into consideration in fixing the length of notice?—Well, I am not very sure on that point. I do not think it was an element.

652. I understand you to say that in some cases less notice than a month was given or considered sufficient?—It was not the rule.

653. You say that more than a month's notice was sometimes given?—Yes.

654. You have never known less except in certain cases, I understood you to say?—I have known less than one month's notice.

655. I want to know how did that period of less than a month's notice come to be considered as sufficient?—In all probability the convenience of the Natives to the Court.

656. Now, supposing the Court met, did the Court not first satisfy itself before it proceeded to the consideration of the cases that the Natives had proper notice of the sitting of the Court? What proof of notice to the Natives did the Court see before going on with the case?—It was taken for granted. In very many cases it was——

657. How was this notice given—through the *Gazette*, or how?—There was a separate notice in the form of a sheet.

658. Whose duty was it to serve this notice on the Natives? Was it addressed to individual Natives, or how?—The names of several of the first claimants in a case (where there was more than one name) were taken, and the notices were addressed separately and distinctly and put into a separate envelope, and the letter was sent to them containing these notices.

659. But who exercised discretion as to which Natives should be served?—The interpreter generally had that duty.

660. Who was despatched to serve the Natives?—They were delivered by post.

661. And the interpreter exercised discretion as to which Natives should get special notices, so to speak, or any notices?—Yes. The rule was to send them to all the important men; and the interpreter was expected, and in most cases did know, all the important men in most districts. The most important men in the claim, I mean.

662. Do I understand you to say that when the Court sat there was no inquiry as to how the notices were served, and, if so, by whom?—I do not think so.

663. The Judge went on the bench and proceeded to hear the claim?—Yes: the cause-list was read over and he proceeded to hear the claim.

664. Now, supposing, in the course of inquiry, it came out that other persons were interested in the block than those then before the Court, but that no definite information was got as to the extent of their interest or the particular interest, what would the Court do under such circumstances? That is to say, I am assuming this case: Supposing in the course of the inquiry it came out that persons not before the Court had an interest in the land, what did the Court do? Did it proceed to summon these witnesses before the Court?—It would adjourn the case until their appearance. It would adjourn the case, and give notice to those parties who were supposed to have a claim.

665. And then, I suppose, after their appearance the Court would proceed to adjudicate upon the claim?—If certain persons were not present who were known to be owners or had an interest, the Court would not proceed until they were present that were entitled to be included; but if they were not present, and others could show "sufficient authority" to justify the Court in proceeding, it proceeded.

666. Upon this question of sufficient authority: supposing two Natives attended the Court and stated that they had arranged with other Natives who were supposed to have an interest in the land that the titles should be issued in the names of the persons in Court, what proof would the Court require as to the absent Natives?—It would be very slow indeed to take cognizance of such a case.

667. Would they take the evidence of other persons in Court?—Yes; I have known cases of that kind.

668. That the Court has admitted the evidence of disinterested persons?—Yes—of a chief of considerable rank or men of standing with the Natives.

669. Do you mean to say it was not the practice?—I do not say it was not, though I only recollect, I think, one occurrence like that.

670. Did the parties who were present make any objection afterwards?—No. The case to which I refer was a matter of a Crown purchase in the North, where money had been paid in advance, or what they call——

671. Then, I will put this case to you. Without any such proof or consent being given, a memorial was issued in the name of five or six persons, when it appeared in evidence that other persons had a claim to the land: was that a usual thing?—I do not remember such a case.

672. I suppose you have had experience under different Judges of the Native Land Court?—Yes.

673. I suppose their practice was not uniform—each Judge exercised his own discretion—there was no recognized rule?—No. In matters of detail each Judge, I think, acted upon his own judgment.

674. Were there many cases in respect to which the Chief Judge had been corresponding with litigants or persons who claimed to be interested in the block? Were there many which ultimately came before him from the primary Judges?—No, I do not think so.

675. Supposing this: that the Chief Judge had been communicating with claimants in the block of land—or possible litigants—and making suggestions to them, have you known any cases such as that which have ultimately come before him in his judicial capacity? Was it a common thing for cases to ultimately find their way before the Chief Judge in his capacity as Judge?—Only on rehearings, if I understand you aright.

676. Well, but the rehearings came before the Chief Judge?—It was not always before him; but very often he was one of the Judges.

677. *Hon. Mr. Bryce.*] In whom did the administration of the Act of 1873 rest or vest?—I think in the Chief Judge.

678. In reply to a question put by Mr. Bell, it became evident that you were aware that considerable portions of that Act were ignored or not acted upon?—Yes.

679. You were aware of the fact that it was not acted upon, and you accounted for that in a certain way?—Yes—that I knew of the Chief Judge having a conversation with the then Native Minister.

Hon. Sir R. Stout: From hearsay.

680. *Hon. Mr. Bryce.*] But this witness has been perfectly aware that portions of the Act were not acted upon, and no doubt that occurred as curious to his own mind, and he became satisfied that it was owing to arrangement made. Who was the Native Minister that you alluded to?—Sir Donald McLean.

681. I want to ask you a few questions in relation to the subject of the Clerk's minutes and the Judge's notes. You said, in reply to Mr. Bell or Sir Robert Stout, that, in cases where there were discrepancies between them, the Judge's notes must prevail?—Yes.

682. But, in truth, are the Judge's notes not finally placed in the Native Land Court—the administrative part of the Court—are they not finally placed there?—They were not accessible to any but the Chief Judge himself. They were, in fact, the private property of the Judge who made them. That was the rule; but we have instances where the Judge has given up his notes to the possession of the office. Mr. Thomas Henry Smith has given up possession of the notes of Courts which he has held—Courts where no Clerk or interpreter was present; and these have been held as minutes.

683. *Hon. Sir R. Stout.*] That is, when there is no minute-book?—Yes.

684. *Hon. Mr. Bryce.*] Do you know of cases where they have given up their notes when the minute-book existed?—No, I do not.

685. Then I come back to this question: Are these notes any portion of the record of the Court?—The officers in the department did not recognize them.

686. Then, how can you say that as part of the administration of the Court these notes must prevail, when in fact they did not exist?—I mean to say, with regard to any discrepancy or incorrectness of the Clerk's entry. When he discovered that the entry was not correct he got access to the Judge's notes, and minuted it.

687. Then, in truth, it amounts to this: The Clerk's minutes were and are final records; so that it was possible the final records of the Court could be corrected by the private notes?—It was possible.

688. And sometimes it was done?—Yes.

689. You say that in certain cases, where minute-books have not existed, that these notes have been supplied as records. Do you know of any instance to the contrary? Do you know of any instance where there was no minute-book, and the Judge's notes were refused by the Judge to be made a record?—No; I do not know of one case where there is no minute, and the Judge has refused; but I know there are cases where the Judge's notes are the only record. I do not know of a case of refusal.

690. Do you remember an inquiry being made by Judge Wilson into the Tauranga claims under the Native Land Act?—I do not remember it.

691. Afterwards the inquiry was carried on by Mr. Brabant?—No; I do not call it to mind.

692. Then you are not aware, in that case, that Mr. Wilson refused repeated applications for his notes?—I beg your pardon. I recall circumstances of that kind now.

693. Mr. Wilson did refuse, as a matter of fact, and never gave them up to the present day?—Not to my knowledge.

694. Although no public records are in existence?—No; to my knowledge he has not surrendered them.

695. And, as a matter of fact, the claim had to be heard *de novo* by Mr. Brabant in consequence of not having these notes?—I cannot speak as to that.

696. However, the fact remains that the notes are the Judge's private property?—Yes.

697. And I offer this as a proof. It proves that they have no final place of necessity in the records of the Court?—Yes.

698. Now, as to these notices. Is there not generally a notice given in the *Kahiti?*—Yes; always.

699. How is that *Gazette* circulated amongst the Maoris?—The circulation of the *Kahiti* devolves upon the Native Office, I believe. The Native Land Court never took responsibility of it. It relied upon the *Panui*. It was an extract or a sheet out of the *Kahiti*, and the Court relied upon the circulation which of its own action it made for this *Panui*.

700. But is it not in your knowledge that the *Kahiti* has a considerable circulation—that these notices are contained in the *Gazette* as well as circulated in the manner you have mentioned?—Yes, I think so.

701. *Hon. Sir R. Stout.*] There is one question I should like to clear up. You have answered Mr. Stewart in reference to the correspondence on claims between the Native Land Court office at Auckland and claimants. Had you access, as Register Clerk, to that correspondence?—All the officers in the department would have access to the whole file of papers.

702. Was it usual for the Chief Judge to communicate with lessees of Native lands about granting to the Natives memorials of ownership or rehearings, or did he communicate with the Natives themselves?—It would be an unusual occurrence.

703. Do you know of any one occurrence that you can recall in all your twenty-one years' experience?—There is one cited in your memorial.

704. Is there any other case?—I know that the Chief Judge has been accessible to solicitors engaged for the parties.

705. I mean communication by letter with persons who were not owners and the simple lessees. Do you know of any case other than those mentioned in the memorandum during your twenty-one years' experience?—Yes, I think so. Where there was any difficulty about issuing the title the Chief Judge would be communicated with.

706. By the lessees?—By parties interested. I would not say lessees or purchasers.

707. Was it usual to recognize persons as being interested before the memorial of ownership was investigated?—No, of course it was not.

708. Was it not illegal to be interested before a memorial of ownership was issued?—Yes, it was.

709. Did the Chief Judge hold communication with persons whom he knew to be violating the law?—What I mean to say is this: If there was any obstruction or unreasonable delay in the title his assistance would be sought for the removal of that obstruction. I do not think parties would appear as interested to his knowledge.

710. Then how would he communicate with people who are not interested?—That would be a matter of assumption. He would assume that they were not.

711. There is only one other question. You attended the Native Land Court in a great many cases?—Yes.

712. Was it usual to allow barristers to appear for claimants and objectors at the same time?—I do not think so.

713. *Hon. Mr. Bryce.*] I should like to ask you a question about the use of the word "illegal." Sir Robert Stout asked the witness whether it was "illegal" for the Chief Judge to enter into correspondence with owners before 1873?—Yes, that is so.

714. Can you refer us to the law, or refer us to any law rendering it illegal?—I think the Act of 1873 makes it illegal.

715. But there is no penalty?—No, I do not know of any penalty.

716. *Mr. Stewart.*] Do you know of many instances in which persons had purchased the interest of Natives contingently upon their getting a title through the Court?—I know very little about these matters.

717. Where Europeans have purchased prospectively, so to speak, or contingently upon the Natives' title being adjusted, their interest in the land?—I have known of persons advancing money upon the possibility of their becoming owners.

718. Would the Chief Judge communicate with these persons?—I do not think so.

719. Or with lessees, tenants by lease, before the title was passed through the Court?—I do not think so.

720. *Mr. Bell.*] I wish to ask you this: Did you yesterday look at the file of the *Kahiti* for 1875?—Yes. You were in the office.

721. Did you notice that there was a copy missing before the 7th September?—Yes; you pointed it out.

722. Can you remember what was the *Kahiti* immediate preceding the 7th September?—I think you said it was May.

723. Did you not look?—Well, you pointed it out.

724. I want to call your attention to this matter. The *Panui* to which you have alluded were issued from the Native Land Court office in Auckland?—Yes.

725. In the case of the *Panui* dated the 9th in Auckland, how long a time do you suppose would elapse before that *Panui* would be circulated?—I think that within seven days the *Panuis* would be sent out.

726. From the day it would appear?—Yes.

727. Would you expect to have them sent out to every one?—Yes—whom the interpreter would consider entitled to receive them.

728. I understood you to say you sent bundles to the District Officers and those who were interested?—Yes.

729. That would be done within a week?—Yes. The *Kahiti* was printed in Wellington, and the *Panui* was sent from Auckland.

730. There is one question more. You have spoken of the practice of the Courts before the various Judges. Did the Chief Judge hold numerous Courts in the first instance—inquiries into titles—himself?—You mean in the early days of the Native Land Court? Yes, he had many Courts in the early days.

731. Can you say whether the practice of the Chief Judge was the practice which you have described? Was he more or less precise than other Judges?—I know he was more. I am speaking of my own personal contact with him at the Compensation Court. I never sat with him as Clerk at the Native Land Court, but I have at the Compensation Court; and he was much more punctilious than other Judges.

732. Do you know whether the Chief Judge endeavoured to carry out the Act, of your own knowledge of it?—Yes; I know it was his desire to administer the Act as far as it was in his power.

733. *Hon. Sir R. Stout.*] Would the sending of the *Panuis*, as you have termed the notice, be entered in your register-book—when they left the Auckland office? Even if they were sent after the 9th August, that would appear in the register-book as against this block?—Yes, it ought to.

734. If it does not, would you believe that the *Panuis* were sent?—Yes, I would. I would rather believe in the omission of the entry than the duty by the interpreter to issue the district notices. One would be an absolute fact, and the other simply an omission of duty. I do not think it would be possible for the circulation of these to fail.

735. This register-book may be inaccurate?—Well, we are all fallible.

736. The notices are in a different handwriting in the register-book?—Yes.

MONDAY, 12TH JULY, 1886.

HIRAKA TE RANGO was examined.

737. *The Chairman.*] What is your name?—Hiraka te Rango.

738. Where do you live?—Patea Maohongo.

739. Do you know the land called Owhaoko?—Yes; I know the land.

740. And that called Kaimanawa Oruamatua?—Yes; I know that block also.

741. Have you been living on either of these blocks of land?—Our residences are alongside of these two blocks. The lands of our cultivations run right alongside the boundary of one of these blocks.

742. What is it that you wish to state to the Committee about these blocks?—I wish to give evidence in reference to the adverse judgment that was made upon these blocks.

743. What is it that you wish to tell us about the matter?—I wish to state that I am one of those who were omitted in the grants, but I am the son of one of those who were admitted.

744. *Hon. Sir R. Stout.*] Who was your father?—Ihakara te Raro.

745. You are a son of Ihakara te Raro?—Yes.

746. Is your father dead?—No, he is alive still; but he has sent me to speak for him in this matter. Here is also a letter from another Native whose name appears in the grant.

747. What is his name?—Te Retimana te Raro.

748. *The Chairman.*] Your father's name appears as one of the owners of the Owhaoko Block?—Yes.

749. Then, what is your complaint in that case?—My father does not approve of the judgment that was given in that case.

750. In what respect: on what grounds?—It is because several people had put in claims to the block who had no claims, and, by the time my father had appeared, these parties had been admitted to it.

751. Who are the parties that you object to that should not have been in the grants?—My father objects to Renata.

752. Why does he object to Renata?—He has no claim to that land. He never had any fires lighted upon it. From his ancestors down to himself they never occupied the land, and never lighted fires upon it.

753. What tribe or hapu do you belong to?—To the Ngatiwhiti Kaupeka me Ngatitama.

754. What tribe or hapu does Renata belong to?—Ngatikahununu.

755. Do you know Judge Rogan?—I have heard of him, but I am not well acquainted with him.

756. I mean, do you know him by sight?—No; I should not know him if I saw him.

757. There was a Native Land Court held at Napier on the 1st September, 1876, ten years ago. Were you present at that?—I was not present.

758. Was your father present, do you know?—My father only went when they received the news by the mail; when they received the *Gazettes*.

759. After it was over?—Judgment, as it were, might have been given to-day, and my father arrived the day after.

760. That was a judgment on one of the blocks of land, was it not?—All we know about it was that judgment was given upon both blocks at that time. It is the judgment on the Owhaoko Block that was given. With regard to the judgment on the others, we do not know when it was given.

761. Did your father ever apply for a rehearing?—Yes.

762. Do you know when it was he made his application?—Yes. I recollect when he sent in the application for rehearing.

763. I suppose you cannot tell us when he sent it in?—I do not know when my father sent in his application, but the tribe sent in their application directly after the judgment was given. My father sent in his application afterwards.

764. Have you been present yourself at any Court where the matter has been considered?—No; I was not present. My father thought there were several cases to be heard before ours, and we thought we should have plenty of time before ours came on. But when the cases were heard, that was the first one heard by the Court.

765. You have sent in a petition to Parliament this year, have you not?—Yes.
766. That is your signature, is it?—Yes.
767. Who wrote this petition for you?—A child of mine wrote it. It is a child that has been at school that wrote it.
768. Now, you say in this petition that Judge Mair was the Judge that adjudicated upon and made the award upon these two blocks—that is, Oruamatua and Owhaoko. You say that Judge Mair made the award on these blocks?—Yes; when the division was made.
769. Of course, then, you do not mean that Judge Mair originally made Renata an owner?—No; I do not say that.
770. Where was this award made—the division by Judge Mair?—At Hastings.
771. Were you present or your father?—Yes; I was there, carrying out matters for my father and my tribe.
772. In that division, Renata got by far the largest share?—Yes.
773. Do you say Renata should have had no share, or that he got too much?—I think, myself, with regard to the Oruamatua Block, that Renata's name ought not to have appeared upon it at all.
774. *Hon. Sir R. Stout.*] What about the Owhaoko?—I approve of his having an interest in the Owhaoko Block.
775. Do you think Renata had too large a share?—Yes.
776. What share do you say Renata should have had?—I think myself that he should have had a less share in the Owhaoko Block than he has received; but, with regard to the Oruamatua Block, I do not see why his name should have been admitted there at all, or he should have been allowed to have an interest in it.
777. Why did your father not go to the first Court in time?—Because there were several cases before the Owhaoko case would come on for hearing. We, as it were, received the *Gazette* with reference to it to-day, and started for Napier the day after.
778. You did not delay starting?—No; we started the day after. We went night and day to get there in time.
779. And when you came the case was over?—Yes.
780. Now, there is one of the Owhaoko Blocks called a school reserve. Do you agree that it should be a school reserve?—Yes; we agreed to that for the sake of our children.
781. You did not agree that Renata was to get it for himself?—No; we gave it for the good of a school.
782. Now, at this division of the land, did you tell Judge Mair that Renata was not entitled to such a big share?—Yes; we stated so to Judge Mair.
783. For whom did Dr. Buller appear?—Renata.
784. Did you have any person appearing for you?—No; we had no counsel on our side. I acted myself in the matter.
785. Did Judge Mair say why he gave Renata such a large proportion?—He said, in giving his judgment, that why he gave Renata so much was because Renata was a man of influence, and because of a dispute between Te Heuheu and Renata.
786. Are there any other names in this block that should have been left out?—I think there are several left out that have a claim to these blocks.
787. Did your people or your father authorize Renata, or Noa Huke, or Te Hapuku, or Maiana, to speak for them at the Court? No; I have already stated that the award was made when we got there.
788. Did he authorize any one to appear for him, although he did not get there in time himself?—No; we never authorized anybody to act on our behalf.
789. And are the people of inland Patea desirous that there should be a new hearing of the Kaimanawa and Owhaoko Blocks?—Yes; we wish a rehearing for the three blocks.
790. And do they wish that the school reserve should remain a school reserve?—We think that there ought to be a careful judgment given of the blocks, and let it remain where it is.
791. Did your father have an opportunity of appearing in the Court, or his people?—No; he has never had an opportunity of prosecuting his claim to the block.
792. *Mr. Seddon.*] You have said there are several parties who should be in the block: will you give us the names of them?—I might be able to mention some, but not the whole, for it is a very large tribe—the Ngatiwhiti and Ngatitama Tribes.
793. We shall be satisfied for you to name those you know?—Te Rina, Hika Eruini, Heperi, Ho Ani, Moku, Rawiri, Te Oti, Oropoama; and there are many others that I cannot think of.
794. Do you recognize Heperi Pikirangi as one of them?—Yes; he is one of them. There are plenty of others that I cannot think of just now. Our tribe numbers altogether, old and young, about one hundred and seventy.
795. *The Chairman.*] Is there anything else you would wish to tell us about this matter?—Yes; I wish to say a little more. I wish to state that, by the time my father arrived at the Court, the judgment had been given upon the Owhaoko; and then my father and my tribe asked that there should be a rehearing of the case. The Judge stated that there would be a rehearing granted within two years afterwards—within two or three years. Some of the people's names who were in that application for rehearing were Topia Turoa, Rawiri, Kahia, and Hohepa Tamamutu. Dr. Buller went to Taupo, and asked these people to withdraw that application. He offered Hohepa £5 if he would withdraw the application, and also gave Rawiri £5 on the same score. He gave Topia £50. Therefore, they wrote to the Court, and said that they wished to withdraw their application for a rehearing. When I heard of that, I was very angry with Dr. Buller about it. That is all I have to say in the matter.
796. How do you know all this about the proceedings between Dr. Buller and the three Natives?—When Dr. Buller brought the statement from these Natives to the effect that they

wished to withdraw their applications, I sent for Topia's son, and asked him to give a clear explanation of the matter, whether it was Topia's own doings, or whether he had been asked to do it. When Kingi Topia arrived, he told us that it was Dr. Buller who had asked them to do it—to send in this withdrawal of the application.

797. *The Chairman.*] Did you speak to Dr. Buller yourself upon it?—Yes; I had some very high words about it. I had a mind to strike him. I did not care if I lost £5 as long as I could have struck him; I felt so angry with him.

798. What did Dr. Buller say about having given this money: did he say he had given it, or deny it?—He said that he did not give it to them, but Topia and they said he had given it to them.

799. *Mr. Stewart.*] Was Topia present when he denied it?—Topia was not present when Dr. Buller and I had a conversation on the matter. He was at the place, but was not present when Dr. Buller and I were having a conversation about the matter.

800. Did you see any money that these parties represented as having got from Dr. Buller?—I did not see him give it to them.

801. *Hon. Sir R. Stout.*] Do I understand that your people never consented to withdraw?—No; they never agreed to it.

802. *Hon. Mr. Bryce.*] Did Kingi Topia allege that he had seen this money given to Topia and the others?—No; Dr. Buller merely went to see them first, and asked them to give their consent, and to come to him to receive the money.

803. But did Kingi Topia say that he had seen the money paid to the others, or did he merely get that from some other person?—He heard it from his father.

804. *Mr. Stewart.*] Did Dr. Buller admit having asked these parties to withdraw the application for rehearing?

Hon. Sir R. Stout: He admits that in his letters.

805. *Mr. Seddon.*] Did Dr. Buller offer your people any money to withdraw?—No; Dr. Buller made no offer to my father or yet to my own tribe. When the first Court was held about it, Renata brought forward Whitikaupeka, as his ancestor, in claim to the land.

806. *Hon. Sir R. Stout.*] Was Whitikaupeka his ancestor?—He was his ancestor, but had no claim to the land from his time down to Renata himself. He also laid claim to the blocks by an ancestor called Te Pokaitara, who never had a claim. When the division was made he gave up his claim through these ancestors, and then claimed through Te Hono Mokai. That is, when the division took place.

807. *Hon. Mr. Bryce.*] Do you know anything about the block called Otamapukua?—Yes; I am acquainted with that block.

808. Did Renata establish a claim through his ancestors to that block?—Yes; he did.

809. Does it not lie more towards the West Coast than even this block in question?—Yes; it is some distance off.

810. To the westward?—Yes.

811. I was going to ask you, then, how Renata could have a claim to land lying to the westward when he would have to pass over the block in question, without having a claim to that block?—It was through negotiations being carried out through the Ngatiwhiti, who stated that it did not matter whether they lighted fires or not. He still had an interest in it.

812. Then, the Court recognized Renata's claim to Otamapukua, although he had not lighted fires upon it?—It was the tribe that consented to his being allowed to have his name put in as a claimant.

813. In that case his claim to the blocks in question would be somewhat the same as his claim to the Otamapukua Block?—No; he will not have the same interest.

814. What is the difference?—Because my tribe does not believe in his having a claim in the blocks.

815. Would not your tribe consent to Renata having some claim in the block in question, either great or small?—My people agreed that he has an interest in the Owhaoko Block.

816. *Hon. Sir R. Stout.*] But not in the other block?—No; not in the other two blocks.

817. *Hon. Mr. Bryce.*] Then, how does Renata derive the claim which your tribe would be willing to admit to the Owhaoko Block?—Because by the time my tribe arrived at the Court judgment had been given in the block.

818. You say the tribe would admit Renata to a small claim in this block, why would they recognize it—what is the reason?—It is because some of Renata's people occupied a place called Te Rinopuanga, which is part of the Owhaoko Block.

819. Had they occupied this from ancient time, or is it only a modern occupation by Renata's people?—His ancestors occupied it formerly. When Renata was admitted to a claim of the Oruamatua Block he received £250 of the rent. That is why I think there was a wrong award in these blocks of land.

820. *The Chairman.*] Can the other Maoris present give any evidence?—I think they will say nothing different to what I have said.

821. Do they wish to be examined?—You might ask them; but I think they will only give the same evidence as I have myself.

KARAITIANA TE RANGO was examined.

822. *The Chairman.*] Your name is Karaitiana te Rango?—Yes.

823. And you are a part owner of the Owhaoko and Kaimanawa Oruamatua Blocks?—Yes.

824. Where do you live?—At Patea.

825. Do you live on either of these blocks?—Yes; I am residing on one of the blocks.

826. What is it that you wish to say to the Committee?—I wish that there should be a rehearing granted.
827. Why do you wish for a rehearing?—Because I think there was a wrong judgment given.
828. In what respect?—Because all the people had not assembled at the Court when the judgment was given.
829. Were any names put in that should not have been, or left out out that should not have been?—Yes.
830. What names should have been left out, if any?—Some of those who were admitted as claimants. I could not tell you their names, because I have not heard who have been admitted as claimants to these blocks.
831. You know Renata Kawepo?—Yes.
832. Had he a right to be admitted into a share in the Owhaoko Block?—No; I do not think he had any right to be admitted into a share in the Owhaoko Block, because he did not explain the reason why he should be admitted as a claimant.
833. Do you think he had any right to a share in the Kaimanawa Oruamatua Block?—No; I do not think he ought to have been admitted as a claimant there.
834. Then, you think that Renata should not have been made an owner of either of the blocks?—No; I do not think he ought to have been admitted as a claimant to either one of them.
835. *Mr. Seddon.*] Did your tribe agree to let him go into the Owhaoko?—They did admit that he should be a claimant to part of it, on certain grounds.
836. That is, Owhaoko?—Yes.
837. *Mr. Stewart.*] Do you belong to the same tribe as the last witness?—Yes; Hiraka is a brother of mine.
838. *Hon. Sir R. Stout.*] Have you the same father?—There is only one mother, but two different fathers.
839. Did you attend the Court at Napier?—No.
840. Why did you not go there?—I was sick.
841. Did you attend the Court at Hastings?—No.
842. Did you give any authority for any chief to speak for you at the Court at Napier?—I do not know of any instructions being given to anybody.
843. How long does it take you to go from where you live to Napier in the winter?—Two days.
844. Do you remember any *Gazette* that was given to the tribe about the sitting of the Court, and when they started; or do you remember them starting after they received notice in the *Gazette*?—I do not recollect the time that we received the *Gazette*.
845. *The Chairman.*] Is there anything that you particularly wish to say to the Committee about these matters?—No; I have nothing more to say. All I wish to ask is that there may be a rehearing granted. That is what we desire.

TE RETIMANA was examined.

846. *The Chairman.*] What is your name?—Te Retimana.
847. Where do you live?—I live at Martinborough and Patea.
848. Is your father Te Retimana te Raro?—Yes.
849. He is one of the owners of Owhaoko?—Yes.
850. Do you appear here on your father's account?—Yes, I came on behalf of my father. Did not Hiraka produce a letter to that effect? [Letter produced by Hiraka was here read, to the effect that he was authorized to appear before the Committee on behalf of Te Retimana te Raro.]
851. Is that letter signed by Te Retimana himself?—Yes.
852. Who wrote that letter?—A man of the name of Charley, who is special clerk to Te Retimana.
853. Then, we understand that Hiraka makes his statement for your father and himself?—Yes.
854. Hiraka knows all about it, I suppose?—Yes; he is well acquainted with the matter.
855. Can you tell us anything more than Hiraka can tell us?—If I heard what Hiraka said to the Committee, I should be able to say.
856. Do you know anything yourself about any disputes or complaints with regard to the ownership of Owhaoko or Kaimanawa Oruamatua?—Yes.
857. What do you know about it?—I wish to know whether it is a dispute between Renata and us that you are inquiring about.
858. Is there any dispute between Renata and you?—Yes; there is a dispute between Renata and us.
859. What is it?—The dispute arose through the land being leased to Paki formerly, and the rent that we were to receive for it was £250 a year.
860. Paki is Birch, is he not?—Yes. About two or three years afterwards, Renata said that he thought that we were receiving too little rent for the land, and it was left in his hands to state what amount of rent we ought to receive. The Ngatiwhiti agreed to that. The tribe agreed to that; and it was left to Renata to get a bigger rental for the ground, and that was how it was that Renata became a claimant to it; and after that there was a Court held. Renata asked that there should be a Court held, and we never saw anything of it. By the time that Hiraka's father and those belonging to the tribe arrived, the judgment had been given in the case.
861. Was it at Napier?—Yes. And so our people never knew anything about the case, and that is how the trouble arose between us over these blocks of land. When the division took place at the last Court, Renata gave up his first claims by an ancestor to the land, and brought forward fresh ones when the division was made.
862. *The Chairman.*] Were you at Hastings?—Yes; when the division was made I was present.

863. And did you or your father object to the division at the time?—Yes; it can be seen by the records of the Court—that is, if you have them here in your posssession.

864. You agreed that Renata should have some share, but not that he should have such a big share?—Do you mean Owhaoko or all the three?

865. Owhaoko?—We never said anything to him about the matter whether he should be admitted as a claimant or not to Owhaoko; but the Court said he should have a right to it.

866. Do you consent that he shall have a claim in the Kaimanawa Oruamatua?—No; that is the reason we asked for a rehearing, and we objected to his having an interest in these two blocks.

867. Did you ever consent to withdraw these blocks from rehearing?—Dr. Buller carried out some deceitful transactions with some of these people at Taupo in asking them to withdraw their application.

868. But you never consented to the withdrawal?—No.

WEDNESDAY, 14TH JULY, 1886.

Mr. FENTON further examined.

869. *Hon. Sir R. Stout.*] I want, Mr. Fenton, to understand the action of the Native Land Court—not specially referring to any action of yours—to understand the action of the Judges, and ascertain from you the views of the Court in administering the Native Land Acts as to investigation of title, the views of the various Judges—that is, not specially referring to this case, but generally?—I do not think I quite understand you.

870. I want to know, generally, the duties of the Court, as you understood them, and as I apprehend the Judges generally agreed with you in the general matter of the administering of Native land laws. As far as you know, there was no serious difference between you and the other Judges during the time you were Chief Judge?—No, I think not. On the question of law, do you mean?

871. Yes?—I think not. We had two or three opportunities at different times of discussing questions; but they always ended, I think, in unanimity.

872. As I understand, it was the duty of the Native Land Court to find out who were the owners of the land—the Native owners of the land?—Yes.

873. That was its only function, was it not?—No.

874. What other function had it?—Under the Act of 1865, recommending restrictions.

875. Yes, on the owners?—On their powers of dealing with the land, not only over their own interests, but over the interests of the public. For instance, a place, I remember, on the Thames country turned out to be required for a wharf; and when we met a case of that sort we always put a restriction on, so that it would not fall into the hands of private owners.

876. But the first thing was to ascertain who were the owners, and the second thing to find out, or to recommend, how the land was to be dealt with by the owners?—Yes.

877. The Native Land Act of 1865 and the Native Land Act of 1873 were read together, were they not? One Act did not repeal the other, did it?

Mr. Bell: The Act of 1873 repealed the Act of 1865?

Mr. Fenton: Yes, that is so.

878. *Hon. Sir R. Stout.*] Then we will deal with the Act of 1873, and leave the Act of 1865. The Act of 1865 had nothing to do with this case?—No.

879. Now, after the passing of the Act of 1873 were any instructions issued from the Native Minister—from the Native Office—regarding the way in which you were to carry out the Act of 1873?—No.

880. As I understand it, before you investigated the title to land there had been a claim laid to the land by some one?—Yes.

881. That was the first step?—Yes. When you say "you" you mean the Court in future, I suppose.

882. Yes. I do not mean you personally. I want to get first, before I deal with this Kaimanawa-Owhaoko affair—I want to get the general practice of the Court; so that we may understand how the thing proceeded. The first step was to get a claimant?—Yes.

883. The next step was to give notice, was it not?—No, I think not. Of the Court, you mean?

884. We will take it like this, then: The first step is to lodge a claim, is it not?—Yes.

885. Under section 34 of the Act?—Yes.

886. And the application, according to section 34, had to set out the boundaries—I suppose not very particularly, so long as it was known where the land was, and the names of the persons interested in it?—Yes.

887. The next step, was it not, was to serve notices of the application under section 35?—No.

888. What was the next step?—That is section 35: I presume you will come to that afterwards. The next step was to refer it to the District Officer.

889. Well, then, after it was referred to him, what next happened?—If he wrote "No objection," then, if the Chief Judge felt that the peace of the country might not be disturbed, or there was no cause for anxiety, he instituted, or caused to be instituted, preliminary inquiries under the 38th section.

890. I see. Well, if all these things were gone through, the next thing would be the fixing of the sitting of the Court?—Yes.

891. And giving the notice to the applicants as well as to every person that was supposed to

be interested in the sittings of the Court?—Notice was given by slips enclosed in an envelope to every person known to have an interest in the land.

892. Now, will you look at the latter part of section 35? It is as follows: "And the applicants shall satisfy the Court on the sitting thereof, before the hearing of the claim, that such notices have been duly served upon such persons or parties; and in the minutes of the proceedings of the Court shall be entered the manner in which the Court was so satisfied." Is that so?—Yes; I read that.

893. You know that?—Yes.

894. That assumed, did it not, that minutes were kept of the proceedings of the Court?—Yes.

895. These were different from the Judge's notes of evidence: these are minutes kept by the clerk, I mean?—I do not suppose that is it.

896. What do you mean by "minutes of the proceedings" then?—Well, when I was sitting I considered my own notes as minutes of the proceedings, except as to the ordinary form of memoranda as to the date, names of the Judges sitting on the bench, what fees were paid, when they were paid, and so on.

897. Well, if you considered that the Judge's notes were the minutes, why did you not, as chief administrator of the Act, insist upon the minutes being kept on record in the chief office at Auckland?—The Judge's notes, I believe, not only in my own Court, but in the Supreme Court, are looked upon as private property; but they were always produced, of course, if necessary.

898. But are you not aware that in the Supreme Court there is a minute-book, independent of the Judge's notes?—Yes, the Registrar's book.

899. Yes: it is called a minute-book of the Court?—But there is nothing else in it.

900. They enter everything as far as I know. Did you enter in the minutes of the proceedings of the Court, as directed, "the manner in which the Court was so satisfied"?—It never struck me before, I must confess; but your interpretation does look more like the right one than the one I have put upon it. The clause was repealed in 1878.

901. Yes; but I mean the Act of 1873. This case was heard before 1878—in 1876 and 1877. I want to ask you this: Did you, as chief administrator of the Act, absolve Judges in any way from carrying out this provision—section 35—that I have read?—Did I assist in carrying it out?

902. No: did you tell the Judges not to carry it out?—I told you, I think, that I do not consider my interpretation as good an interpretation as yours. I did not read the Act in that way. But, at the same time, I should add that in the great bulk of the cases it was impossible to carry out the clause at all, because we never had the names of any counter-claimants.

903. I am coming to that. Did you enter the proof of the notice being served, which has to be given before the Court proceeded with the investigation. That proof, apparently, or manner in which the Court was satisfied, had to be entered in the minutes?—That is the only point which seems to be missing; all the rest was known to the people—that is, the officers.

904. You notice that, apparently, the Judge's duty was to be satisfied that persons likely to be interested had had the proper notice of the sitting of the Court?—Yes. He was perfectly satisfied of that, no doubt, because he knew the rule of the office.

905. Well, I want to know this: Was that preliminary to the investigation—of ascertaining whether the notice had been duly served—carried out?—I do not suppose it was in the sense in which you use the words. I think not. There was an invariable rule of the office; and all the Judges and everybody else had a room to write up their papers, and so they were all aware of it.

906. I will put it to you in this way, then: If you, as Chief Judge, were asked to advise upon a rehearing, and you found that this part of the Act had not been complied with, would you consider that the claim had been properly investigated?—You mean the making of a minute?

907. No: proof being given to the Court that the persons were duly served?—Knowing what I do, of course I should not have thought so. But an outsider I can well conceive now—although it never occurred to me before—an outsider, not knowing what we did know, would say that there had been insufficient notice given, or not sufficient proof of it.

908. But I ask you to put yourself in my position. Reading the minute-book I find there no entry of any proof being given that the notices were served or the Judge satisfied: would you, then, assume that this claim had any right to be investigated till that preliminary had been done?—Supposing your reading is correct, I should say so; but, knowing that this is merely a formal part of it, and knowing that all the Judges, the people in the office, clerks, and interpreter, were aware that the notices were sent always in the same way, I should not consider any impropriety in it.

909. But I put it like this—to come back to this case: You yourself recommended a rehearing of the Owhaoko Block?—Yes.

910. On the ground that there was an absence of positive information about the block?—Yes.

911. And you were aware that when Mr. Locke was pointedly asked if he sent notices, all that he replied was that he suggested a rehearing, not saying whether notices had been served or not?—I take it you are looking at the memorandum.

912. Yes—on page 8?—I see it.

913. You also notice there, do you not, that Judge Rogan, who heard the case, did not seem to be aware whether the notices had been served or not?—No; I think that is so.

914. Well, then, we understand that generally it was the duty of the Judge of the Native Land Court, before he investigated a claim, to ascertain that the notices had been served. That was his duty?—Doubtless it was his duty under the statute; but he knew it himself perfectly.

915. How could he?—Because he was constantly in the office, and he was aware of the regular practice.

916. But the practice would not tell him whether a special notice was served?—Yes: it was regular as the issue of a newspaper.

917. But suppose the person who serves the notices had not done his duty?—Yes, certainly; but it is contrary to the maxim of law, "*Omnia bene et rite facta præsumuntur donec probetur in contrarium.*"

918. We will take a case in the Magistrate's Court or the District Court: would they not ascertain before proceeding to investigate whether the notice had been duly served?—Yes; but that is a different thing. Here is a man, Mr. Dickey, who managed all these things, sending out his notices as regularly as the sun rises in the morning.

919. But Mr. Dickey did not personally serve these notices. They seem to have been left to the District Officer?—No.

920. But here it says Mr. Locke sent the notices, and he was a District Officer?—I will tell you what I mean. I will take the case of the Patetere Block, because there has been a great deal of talk about that, and the instance will better explain than anything else. The notices were issued in the usual way—that is to say, they were put in the *Gazette*—in the *Kahiti*—and before the *Gazette* was printed (it was not on the *Gazette* that we relied) a number of slips were issued (as far as my recollection goes it was 570, the ordinary number). We printed them in Auckland—the slips of the whole Court. They were sent to every person whose name appeared, or whom we knew as having anything to do with the land. Of course, in the first instance we knew nobody but the applicants, for they never disclosed any one else. It is contrary to the Native character that they should. Then, after every Native that was known to the Chief Judge or his officers had had a notice enclosed in an envelope, they were sent by post. The remainder were sent in batches of twenty or ten to the Resident Magistrates, District Officer, Postmasters, and everybody else that I could think of, and they were stuck upon the post-offices and Resident Magistrates' Courts, and everywhere else that they were likely to be seen. Of course this would only apply to places in which I judged the Natives would have some interest in the notices. In the case of the Patetere, it would be Taupo, Cambridge, Hamilton, and so on. When that case came on for hearing before myself, I think it was found that the claimants of that land began at Maketu, on the Bay of Plenty, extending across to Tauranga, on the Bay of Plenty, went right through the Rotorua country, by Taupo, all over the southern part of the Waikato, across to Kawhia, down through Wanganui, and ended at Otaki. The Ngatiraukawa who lived here were the same as those who were driven out of Waikato by the invading tribes. The result was that I had to adjourn that Court, and the next also, and had to close the whole of the Courts in the country, except down the West Coast and Napier way, whenever Patetere lands were on. Of course, all these persons had no notice, and it was impossible for them to know of the matter except from such information as they picked up accidentally from the slips which were circulated, and the *Kahitis;* afterwards, when the Court sat, I sent slips down to Otaki, to Maketu, and all over the world, I may say. It was to the slips—not to the *Gazette*—that I trusted; because the *Gazette* was never sent, in fact, to a great part of the country. For instance, in that time before the Native Land Court had broken up that land league which is called the King movement, they did not look at a *Gazette*, and they used to come to our Courts and say they were going to take us prisoners.

Hon. Mr. Bryce: There is evidently some misunderstanding between the witness and Sir Robert about this question of notice.

921. *Hon. Sir R. Stout.*] I understand, then, Judge, that notices were issued in the form of slips?—Yes—telling the sittings of the Court.

922. We have a copy of the slip before us bearing date 9th August. That would be a slip that would be sent to the Natives?—Yes—a copy of it.

923. That slip would be sent to the District Officer to serve?—Yes.

924. Duplicates of it, I mean?—Yes. The Natives had envelopes addressed to them separately, with these slips enclosed.

925. If there was no post-office where the Natives resided, I apprehend it would be the duty of the Native Department, or the Native Land Court, through its officers, to forward these notices to the Natives interested?—You mean personally?

926. Well, how else could they be served?—That would, of course, have been quite impossible, unless we had such an establishment as the General Assembly would never think of granting us.

927. How were these served, then. I understand you to say that they were served by the District Officers?—Yes—scattered over the country.

928. That is, scattered over the country by the District Officers?—Yes.

929. Now, in this case Mr. Locke was the District Officer in Hawke's Bay?—Yes—under this Act.

930. And it would be his duty to see that the Natives residing on this land—inland Patea—were served. That would be his duty, would it not?—No.

931. Whose duty, then?—The applicants' duty. We had served them in the sense in which you use the word, because every Native whose name was known to us had a letter addressed to him.

932. And if there was no post-office?—Then we could not help it.

933. If there was no post-office he never got it, I suppose?—Well, if he never got it, he never got it.

934. What would be the case in many parts of the country that you knew where the Natives had no post-office near them?—Then it was the duty of the nearest public officer to go to the village and leave them about.

935. Then it would have been the duty of Mr. Locke, if there had been no post-office at inland Patea, to send some one with the notices to the Natives?—Yes.

936. I pointed out in my memorandum that when you were of opinion that the rehearing had better go, there was no evidence of the service to these people?—I do not know whether that influenced my mind. It may have done. I was not satisfied.

937. And you are not satisfied now?—Do you mean up to that time?

938. Up to now, even, you having the evidence that the Natives were not served in reasonable time?—I think that is a question for the Committee, is it not?

939. However, from what was before you, you were asked and advised on the rehearing, and had then the statement before you that they only got the notices on the 13th?—I do not think that would weigh much on my mind.

940. Well, then, to return to the general question. After these notices were supposed to be served the Court met, and, of course, as I said, it was the duty of the Court to find out whether the notices had been served before it investigated the case?—Yes.

941. Then the next duty was to find out who were the owners, was it not?—Yes.

942. Was it the duty of the Court to take statements not on oath as to the ownership of land?—Well, I suppose one-third of the people, we may say, were not Christians—many of the elder witnesses were not Christians—and we made that the test of oath or no oath.

943. You took evidence without that?—Yes.

944. Then, I want to know if you made any distinction between calling for objectors, who gave their evidence, and the ordinary examination of witnesses in the procedure of the Court?—You have to consider the end, you know. It was the custom, I believe—it was mine, at any rate—to ask if there was anybody in the Court who wished to make any objection or make any remark. If not, the evidence was supposed to be concluded on behalf of the claimants.

946. It was the conclusion of the case if nobody wished to say anything?—Yes. We had a form—I forget the exact words of it now—that the interpreter used to go to the door and call out; because lots of the people used to sit outside the Courthouse and smoke. This used to be shouted out loud three times; and if there was anybody came, I asked if they wished to give evidence on behalf of themselves; and, if so, heard them.

947. Suppose he did not make any claim—did you generally treat him as a witness if he made no claim for himself?—I do not understand how he could be a witness.

948. I do not think so either. The reason I put the question is that a complaint seems to have been made against me of keeping out from the memorandum what an objector said who was not a witness?—It would form a very material element, of course, in the determination of the case; but you seem to think we carried out our proceedings as though it was in the Supreme Court. We could not do it; it was impossible.

949. I can see very well that you did not. I am making no charge of that kind?—I would like to mention, in connection with this matter, that if you apply strict rules of law in some of our early Courts in Taupo the whole of the proceedings would be upset altogether. After the Court had been sitting at Taupo a long time the news came that Te Kooti's people were coming up, and the Court had to make an illegal adjournment—that is, they had to run away; and an interpreter, who happened to be down a gully at the time with a party of soldiers, was shot. He was Mr. Gill's son. Again, Mr. Heale was sitting in the Court at Maketu, and they were blazing away over his head. That is what we had to put up with in the early days. Once, when I was sitting, myself, at Cambridge, the Natives came with a message from the king that if we did not discontinue to sit they would come down and take us all prisoners. I knew that if we gave in there would be a perpetuation of the Land League; and, as there was a body of Armed Constabulary near, we sent for them, and went on with the sitting of the Court. All these things produced a great many irregularities.

950. Yes, I have no doubt; but I am not speaking of the days of the war. Turning back to the question of notice, you will observe that section 41 emphasizes this question provided for in section 35. It says, "At such sitting of the Court the Court shall, after having satisfied itself that all notices hereinbefore required to be given have been duly served." You will notice it emphasizes what is already stated in section 35, as to the Court being satisfied that the notices were sent?—I would state broadly, in answer to that question, that the serving of notices in the way contemplated by Sir Robert Stout is absolutely impossible.

951. Why?—Because we had not the men to do it, and did not know whom to serve.

952. But you had the District Officers to serve them?—You mean, if they had gone to serve them personally?

953. Where there was no post-office, why could not that have been done?—They could not serve personally if they had not the men to be served.

954. Yes; but here there were people living on the land, and it was your duty to make the preliminary inquiry as to whether notice had been served?—Even being on the land is not evidence of ownership, or claim even. It is not *prima facie* evidence.

955. You notice this: that it was the duty of the Court to be satisfied that notices were served?—The word "service" in your meaning is impossible.

956. Then the Court sat, Mr. Fenton?—Yes.

957. Who should have been declared owners by the Court—I am speaking generally as to the practice?—Those persons that the Court thought to be owners.

958. Had the Court any right to exclude any person that was proved to be an owner?—Under the Act it provides that they shall prove to the Court's satisfaction.

959. Yes; and in that case had it any right to exclude any one from the ownership of the land?—Yes.

960. Who were proved to be owners, remember?—Yes. Under the Act powers are given to the Court to recognize voluntary arrangements.

961. Except that, there was no other power?—No; not that I know of.

962. Would you consider it right to have excluded a person from ownership without his consent?—You mean his personal consent?

963. Yes; or by an authorized agent?—No; he must have one of them.

964. You will notice, do you not, that in section 46, that in case of a voluntary arrangement there had to be a minute made or record made. It says, "In every such record there shall be entered the names of the persons with whose consent and the names of the persons by whom the claim shall have been settled by such arrangement." Did you investigate, when you were asked about a rehearing in this case—did you look at the minute-book to find whether there had been any such voluntary arrangement made?—I have no recollection of what papers I saw, none whatever.

965. You are aware, are you not, now, that there was no such record of any such voluntary arrangement as contemplated by section 46?—I read from Judge Rogan's evidence that his papers were all burnt.

966. No; the minute-book is there?—That is, the Clerk's book.

967. You notice there are only two people who gave evidence—Renata Kawepo and Noa Huke?—Yes; I think that is so.

968. I mean those who were put in the grant. But it was proved before him that there were other people living on the ground whose names were not even mentioned to him. You were aware there was no such voluntary arrangement as was mentioned in this section?—No, I am not.

969. Is there any evidence of it?—None. I understood his papers were burnt.

970. Do you think his notes would come within the meaning of the proceedings of the Court under section 46? You are aware, Judge, that minute-books were kept by the Clerk of the Court?—The clerk's book, do you mean?

971. Yes. As chief executive officer of the Court, what would you look upon to be the record of proceedings of the Court?—My notes, very probably, as a record of the witnesses' evidence; but for the purposes of stating what Judges were present, the days on which they sat, and for the purposes of fees, I should probably go to the clerk's book.

972. Will you look at section 46, which says, "In carrying into effect the preceding sections or any of the sections hereinafter contained regarding partitions, the Court may adopt and enter of record in its proceedings any arrangements voluntarily come to by the claimants and counter-claimants." Would you call a Judge's notes anything of a record of proceedings when you say a Judge's notes are private documents, belonging to the Judges themselves?—I have always treated it so. If you consider who our clerks were—men temporarily picked up wherever we could get them—and that we had not sufficient establishment of our own, it is not to be wondered at that I should not trust to their notes.

973. If you treated the Judge's notes as final, was it not your duty as chief executive officer to have that record filed in the office of the Court? How otherwise could it be a record if it was their private property?—No doubt that is a forcible remark. They are always available, however, and always have been, for the public use.

974. But, you see, do you not think, looking at the words "minutes of proceedings," "record of proceedings" of these jurisdiction duties of the Court, that there was something more meant than merely the Judge's notes of what transpired?—If it is a record it is one, and if it is not it is not. But I tell you this: that for many years I have been struggling with Ministers to get a sufficient establishment, so that these things might be properly done; and I never succeeded in doing it, nor do I suppose any one else will.

975. But you are aware that the minute-book was treated as a record of what was taking place, because they seem to have entered proceedings in it?—Yes; the clerks entered all sorts of things.

976. And that is the only record you kept officially in the Court, even at Auckland?—I fancy all the Judges' notes were there who have left the service. So long as they are in the service they kept them themselves, because they are constantly referring to them.

977. But Judge Rogan says he had some of his notes, although the notes about this thing are burnt?—I do not know that.

978. Well, at any rate, there had to be a record kept of the voluntary arrangements, and owners had to be entered somewhere?—Yes.

979. You never saw any such record in this case?—I imagine I did not; but I have no recollection of what I did see.

980. At any rate, you advised the rehearing?—I see I did, because it is here.

981. I do not know that there is anything else except about this rehearing. When this rehearing was made, you had Mr. Dickey's notice?—What I said was inaccurate. I had only the *Gazette* notice, and not the Order in Council.

982. Are you aware that Mr. Dickey's notices do not agree?—Yes.

983. And one or other of them must be inaccurate, then?—Yes. The second one is an error in date, as far as I can make out.

984. One says it was heard or determined on the 20th December, 1876, and the other says it was heard and determined on the 31st October, 1877?—Yes; that is so. It is a blunder. The 20th December is wrong, and how it originated is a curious thing; I cannot make it out.

985. Now, you tell us that you allowed people to search the records at the Native Land Court office if they were interested: would you deem to be interested any person representing a claimant or counter-claimant, before either person was found to be an owner or otherwise, but no one else?—If a person was a purchaser, and had registered documents (a lease or instrument of disposition, or anything of that sort), I should look upon him as interested. He would have a right to see the papers.

986. Mr. Donnelly apparently wanted to know who were the applicants for the rehearing, I see. Did you know in whose interest he was applying?—He was applying in nobody's interest, so Mr. Dickey says.

987. Would it not have been proper, before you declined to give him the information, to ask in whose interest he was asking the question?—No doubt he was not.

988. No; but there is nothing here to show that. He appears to have asked by wire; but there is no record of the Court showing that?—11th October, 1880; it is in the papers.

989. I refer to it there, although it is not so. It is not filed because there is no importance attached to it. However, the usual rule applied to him, I suppose. Would it not have been better, before declining to give him the information, to ask in whose authority he asked the question?—Yes.

990. It was not done?—It ought to have been done.

991. Will you say that this telegram of Buller's, of the 26th July, 1880, the latter part of it, is untrue?—Yes.

992. You have said, I think, that the Court was adjourned some time in July, 1880, because you were unable to overtake the work, being here, in Wellington, at the sitting of the session?—Not to overtake the work; I could not get away.

993. That means to get to the work, I suppose?—Yes. I may mention that, while you are on that subject, I do not think I clearly stated before that the letter which the Attorney-General comments upon on page 10—Dr. Buller's letter, in which he is asking me to adjourn the Court—the Attorney-General assumes that I did it in consequence of that letter. I may say I never saw it until I came to Auckland. The letter is not in existence, and there is only a *précis* of it. It bears on the face of it evidence that I could not have seen it, because it was sent to Auckland, and I was at Wellington.

994. On page 9 of the memorandum it is stated that "Dr. Buller, who acted for Renata Kawepo, applied to the Chief Judge, Native Land Court, for an adjournment of the sitting, stating that notice of the sitting had been received late." You say then, that, nobody applied to you to adjourn the Court?—Not that I know of.

995. If Dr. Buller says he did, would you contradict him?—I could not say that. All that I know is that I never saw this letter. I have seen the paper here, but it went to Auckland, and I was in Wellington.

996. And you do not know whether it arrived in Auckland?—No.

997. I want you to say that you did not receive it?—I did not if I did not see it.

998. When you got to Auckland?—I do not think I ever saw it at all.

999. Do you mean to say, then, that you did not inform Dr. Buller that you had adjourned the Court?—No; I do not say that. No doubt I did inform him.

1000. Do you say that you had no conversation with him in Wellington about adjourning the Court?—I say I do not recollect any.

1001. You are aware that you must have had some talk with somebody in Wellington about this case. You wired to the Chief Clerk, Mr. Dickey, saying that some people had told you that the rehearing had already taken place: it is so, is it not?—Yes.

1002. So that you must have had conversation with some people in Wellington about the matter?—Some people told me apparently that the case had been reheard.

1003. And you were aware also that on the 21st June you sent to Auckland for an epitome of what had been done in reference to the Owhaoko?—Yes.

1004. Though on the 10th June you had advertised that the Court was postponed?—On the 10th June I issued a notice that the Court was postponed.

1005. Why did you want an epitome of the case in Wellington?—Dr. Buller had asked me for it.

1006. And then you must have had a talk with him about it?—I had one or two with him. I had a room near to Mr. Rolleston's, and I remember him coming in to my room to see me.

1007. Then, my suggestion that you heard from him that the case had been reheard would be correct?—Quite possible.

1008. Nothing happens then; but Mr. Studholme asks you apparently to get him the names of the people that applied for the rehearing, and that was supplied to him?—Yes.

1009. Then, the next thing we have is this: on page 10 of the memorandum we have a notice that the Court was to sit at Napier on the 20th October?—I must have met Mr. Studholme somewhere.

1010. The next thing, at all events, was that a sitting of the Court was to take place on the 20th October?—Yes.

1011. Can you remember why you did not go to Napier to hold a sitting of the Court on the 20th October?—You mean on that day.

1012. To arrive there in time: you did not arrive there till November?—I see. I did not go because there was a Friday, and then came Saturday; and generally nothing is done on the first or second day.

1013. But you see you did not arrive there till November: you were a fortnight late nearly?—That surely is a mistake; I think it was the 29th October.

1014. I will point out this to you, that the notice in Maori is one date, and the notice in English is another date, in the papers: which is right I do not know. [Copy of *Gazette*, showing notice in Maori to be dated the 29th, and the notice in English on the 20th, was here produced.]?—The 29th is the date. Clearly that is a mistake in the English copy.

1015. Was it your impression that the rehearing must have been held within the three years limited by the Order in Council?—Yes.

1016. Do you think, then, considering that that only gave two days in the month for the sitting of the Court—the 29th or the 30th—that that was sufficient time to investigate a block like this?—We used to consider that, if we began it within the period mentioned, it was sufficient. Whether right or wrong, that is a question of law that would have to be considered.

1017. *The Chairman.*] Did you consider, as it were, that if the proceedings commenced on a certain date, they were considered as being on the one day?—I think so.

1018. *Hon. Sir R. Stout.*] I put it to you as a question of law now: Do you consider that the Order in Council would have been obeyed if the hearing was not finished within the time limited by the Order in Council?—I would rather not answer a question of law here.

1019. If you like to leave it like that, I do not care?—I mean as a witness: I do not think it is wise. There is a provision in some Acts that orders may be dated as from the first day of it.

1020. However, you do not give any opinion as to whether it would have been legal or illegal?—I think I would rather not as a witness give a legal opinion.

1021. *Hon. Mr. Bryce.*] Would you mind putting it this way: perhaps the witness would be willing to answer whether the Order in Council was complied with by him?—My unwillingness is this: I stated something on a law-point the other day, and I found myself getting into a long argument with the Attorney-General.

Hon. Sir R. Stout: Well, it is better for us to state openly one's views. If one differs from a person, let them state it at once, instead of keeping it back.

1022. *Hon. Mr. Bryce.*] Perhaps it would be the best to put the question this way: Did you comply with the Order in Council, directing you to have the hearing of this block within three years, or did you not: was that complied with?—It required that a rehearing of this block should be heard within three years from such a date. It would have been complied if there had been a rehearing.

1023. *Hon. Sir R. Stout.*] If the rehearing had gone on on the 29th October?—Yes, or the 30th.

1024. But if the rehearing had not been commenced until after the end of the month, then you do not say the Order in Council would have been complied with?—I have heard the opinion stated, which I do not know that I quite agree with myself, that if you begin it in time during the sitting of that Court it would suffice. But I do not think I quite go with that myself.

1025. Will you look at the *Gazette*, and see that I am correct: the English notice is dated the 20th, and the Maori the 29th?—Yes; that is a curious thing.

1026. Then, at any rate, you did not think there was any risk of the case not being heard in time by fixing such a late day as the 29th?—I do not think that I fixed the date myself. If I did, of course, I should not have fixed it if I thought there was any danger about it; but, as I told you a few days ago, I told Mr. Dickey to fix it as late as possible, because I did not know that I should be free from the Government, and it is very likely that he forgot it himself, and gave me the formal paper to sign afterwards.

1027. Had the fixing of the date anything to do with the fact that you knew Dr. Buller was trying to get the applicants to withdraw?—No, none whatever. It was a very unfortunate date that was fixed. It was the very date on which the steamer sailed.

1028. Do you know of any similar case ever happening where this question of complying with the Order in Council by a certain date, in your administering of the Act?—No; I do not remember any. You mean where the question has gone to the Supreme Court.

1029. No; where the question has been about a rehearing being fixed so late as really to leave only one day before the last on which the rehearing could be heard?—They were all fixed late; but this was especially late. In this case I gave special orders, because I was engaged with the Government.

1030. Now, this telegram of the 26th, you did not see for some time afterwards: can you fix the day on which you saw it?—On the morning of the 27th.

1031. Of what?—October.

1032. That is, before you left Auckland?—Yes; before I left Auckland.

1033. You saw it on the morning of the 27th; and I understand you to say, in your evidence—I am not repeating it accurately—that you were very much annoyed at it, and at Dr. Buller for his impertinence, or something to that effect? Am I mistaking you?—I answered your question with reference to Mr. Dickey's telegram.

1034. I am speaking of Dr. Buller's telegram of the 26th July, 1880?—Yes; I understand now. When I saw that, I cannot tell you. It was a long time afterwards, when looking over the papers for some other reason.

1035. Then, you do not know when?—No.

1036. Did you take any means of correcting that by minuting on the telegram anything to say it was incorrect?—Nothing at all. I remember I was annoyed, but did not consider it of much consequence, and did nothing with it.

1037. You notice that in your memorandum, or whatever it is, of October—I do not know what date: it is not dated—you simply said, "Ask Mr. Hamlin to open the Court, and adjourn till Monday, at two." You never said anything about adjourning the case, notwithstanding Mr. Dickey had pointedly drawn your attention to the reason for holding it?—But, before I knew of that, I was aware of the rehearing being withdrawn.

1038. The reason you did not do so, then, was that you knew from a telegram that Dr. Buller had sent, on the 26th October apparently?—On the 27th. Yes.

1039. Mr. Buller wired, "*Re* Owhaoko. Withdrawal of application for rehearing fully signed, and forwarded to you to-day by post." And that was the reason that you did not tell him to call on the case and adjourn it: you assumed that this withdrawal was complete?—Yes.

1040. And you minuted on it, on the 27th October apparently, "The application for rehearing is withdrawn." And then follows an undated one?—Yes.

1041. I do not know which was written first?—Of course, I assumed that this telegram was the ontcome of that memorandum, and I think that was a fair way of looking at it. Mr. Dickey appears to ask for instructions before he wires. I assumed that as this was undated this was filled in afterwards [showing the positions of the various memoranda on the original document]. That is very curious, as this is not Mr. Dickey's writing.

1042. At any rate, then, you understood that the application for the rehearing was withdrawn and hence there was no need to adjourn the case. It was ended: you understood so?—Yes.

1043. The case then comes before the Court, and we have a newspaper report of what took place. Can you say if there are any inaccuracies that affect this matter in the newspaper report, and if so, point them out?—Shall I begin at the beginning.

1044. I want to know if you will point out to me anything that you think of importance that the newspaper report has misrepresented?—It is impossible to assume that there were proceedings in the case. I say broadly there were none at all. I cannot call this conversation proceedings in a legal sense.

1045. But I want to know if anything like what the newspaper says occurred in Court or conversation?—I object to it altogether; it makes me talk nonsense. It says, "The Chief Judge said he was in doubt as to how such a course would affect the present title." That is absurd.

1046. But is there anything of substance that you object to?—As a matter of substance, I object to it all.

1047. Are you aware that Dr. Buller asked to represent Natives, and, if so, what Natives?—No, he did not.

1048. I want to know for whom did Dr. Buller appear. We will put it like that?—On behalf of Topia Turoa and Hohepa Tamamutu; but that was not on that day at all.

1049. When did he first appear?—On the second.

1050. Then, he did not appear on the first at all?—No.

1051. Then, this is not correct—that Dr. Buller did appear on Monday, 1st November, 1880. What appears in the minute-book, that Dr. Buller appeared for Renata, is incorrect?—That is incorrect as far as my notes go.

1052. Will you look at your notes, and see whether on the same day there was any succession order in reference to Rangono?—Yes: that came up on the first.

1053. Do your notes contain any reference to Owhaoko before Rangono?—Yes—"Owhaoko rehearing."

1054. Then it does not say whether Dr. Buller appeared or not?—He could not appear, because he appeared next day, and put in his retainer.

1055. Then you say that the newspaper and the minute-book are wrong, and your notes are right?—Yes.

1056. The minute-book is wrong. Then the next thing is that Dr. Buller appears on the 2nd, and puts in a retainer for Topia Turoa and Hohepa Tamamutu, and appears for Renata?—I have got no note of any appearance for Renata. In fact, there was nothing to appear about.

1057. Then Renata was not represented at all?—It seems not.

1058. Well, then, will you explain, if nobody appeared for Renata, why you proceeded to consider the case in Renata's absence?—Well, I cannot tell you what occurred to my mind at the time; but I think that when a legally-constituted Court, consisting of two Judges and an Assessor, has been dealing with this question, and has done certain things judicially, at any rate, in a Court, I do not think it is quite usual to ask one Judge to explain everything.

1059. But you must consider that this is a Court of Parliament, which is a higher Court than any other, and we have met to consider whether there should be a rehearing or not, and we want to get at the facts?—I would not at all depreciate the status of Parliament as a Court; but I dispute that the Parliament of any dependency is a Court.

1060. That is a point, I think, that would be easily settled if you would refer to what Mr. Justice Higinbotham has decided upon the question?—Not that I mean to dispute in any way the authority of the Committee; but what struck me was that there is a legally-constituted Court, sitting in proper form, and whenever anything is done by the Court, it is spoken of in your memorandum as "Mr. Fenton."

1061. I will put it to you this way: You do not now see any impropriety in considering this matter of sending a case to the Supreme Court without consulting Renata Kawepo, or having him before you, or the other persons in whose favour the order was made?—If I had not overlooked clause 50, speaking for myself, and not Judge O'Brien, I should not have sent the case at all, because it seemed the case was clear itself.

1062. But that is no answer. Do you think it was proper for a Court to deal with a matter without having before it some person—Renata Kawepo and the persons in whose favour the memorial of ownership was made?—I thought so then, clearly.

1063. At any rate, you did not understand that Dr. Buller was appearing for Renata. You say he was appearing for Topia Turoa and Hohepa Tamamutu?—I think the impression on the mind of the Court must have been so.

1064. Have you any minute of his appearance for Renata?—There ought to have been some entry, no doubt, about his appearance. I have only his appearance for Hohepa and Topia, and I have not in my notes in whose behalf he asked for the order to be set up.

1065. We will take it that, as far as you remember, he only appeared for Topia Turoa and Hohepa Tamamutu?—According to my notes. Do you think it is right to quote from memory. You asked me what I remembered?

1066. I do not know. You say your notes are a correct record of what took place. We had better say, at any rate, "to the best of your recollection"?—My recollection is this—not recollection, for that is the wrong word: it seems to me that in some irregular way we must have taken it for granted that Dr. Buller represented Renata; otherwise I do not see how we could have sent the case without an application from somebody. We must have had it in our mind that he was there for Renata.

1067. You do not remember whether he appeared for Renata or not. Your notes give that he only appeared for Topia Turoa and Hohepa Tamamutu, and you had no evidence before you that he appeared for Renata at all?—No.

1068. Then, I put it like this: Is it usual in the Native Land Court to allow counsel to appear for diverse claimants who had diverse interests?—It was done once; but I informed the presiding Judge of what I had heard, and he withdrew his permission to appear.

1069. Would you have allowed it?—I should in this case, because I do not think they were diverse claimants after Hohepa had withdrawn his claim. I did not think they were on opposite sides. I may mention that I heard of a case where a lawyer was engaged for two or three sides. I wrote to the Judge calling his attention to it, and asking him to take notice of it. He withdrew the permission to appear in consequence. Would you allow me to say that I look upon this as an entirely personal matter, and that my remarks in the long paragraph of the newspaper report, except some verbal alterations, I entirely agree with. I was reading them over last night, and I was greatly impressed with the propriety of them.

1070. Do you wish to explain anything?—Do you ask me to explain generally what I approve of? I say that, with a few verbal alterations, I quite agree with the *obiter dictum*. I should like, if the Committee will allow me, to read something which I said on the same subject many years before, and which I have said constantly ever since—that is, in 1867, two years after the Act was passed: "The intention of the Legislature appears to be that English law shall regulate the succession of real estate among the Maoris, except in a case where the strict adherence to English rules of law would be very repugnant to Native laws and customs. The leaning of the Court will always be to uphold Crown grants and the rules of law applicable to them, and the Court will decline to consider the particular circumstances under which the grant was originally obtained, or the equities which have been created, or understood to have been created, at the time thereunder, unless the evidence shall disclose strong reasons for deviating from so obvious and desirable a rule. It would be highly prejudicial to allow the tribal tenure to grow up and affect land that has once been clothed with a lawful title, recognized and understood by the ordinary laws of the country. Instead of subordinating English tenures to Maori customs, it will be the duty of the Court, in administering this Act, to cause as rapid an introduction amongst the Maoris, not only of English tenures, but of the English rules of descent, as can be secured without violently shocking Maori prejudices. In this case we think that the evidence discloses no equities in favour of the tribe, and we see no reason to make any interference with the ordinary law except in one particular. The Court does not think the descent of the whole estate upon the heir-at-law could be reconciled with Native ideas of justice or Maori custom, and in this respect only the operation of the law will be interfered with. The Court determines in favour of all the children equally."

1071. That is very interesting, but I do not see its bearing on the Owhaoko?—This paper speaks of succession.

1072. Yes; but I am not speaking about succession at all. I am dealing with a case of rehearing. I ask you if it was a correct report in substance. Well, we get to this, at any rate. I do not go into the preliminaries of stating the case; but the case was stated. You notice that in your statement of the case you say that the investigation was held on the 2nd December, 1876, while the Order in Council says it was held on the 20th December. I suppose you followed Judge Rogan's certificate? Now, you settled this case on the 9th July?—I drew it, did I not?

1073. You signed it, then, at all events; and it seems to have been determined during the same month, was it not?—I do not know the date. It is not stated in the paper.

1074. Now, in stating this case you did not consider it your duty to consult Renata or his solicitors before you settled a case dealing with their title?—There is no duty about it: I can send a case of my own accord, without consulting any one.

1075. Do you know if this case was ever argued before the Supreme Court?—I do not.

1076. Before you had settled this case you had got a telegram from Mr. Bryce telling you that the withdrawal had been obtained practically by fraud?—I saw that here. I never saw the letter.

1077. What letter?—From Mr. Bryce. Telegram, I mean.

1078. Do you mean to say that the telegram sent to you did not reach you?—I do not say that. I never saw it.

1079. How did it get on the Land Court file?—I assume the Clerk put it there.

1080. Mr. Bryce minutes on the telegram, "The telegram had better be repeated to the Chief Judge." "This telegram," as I said lower down, "was repeated to the Chief Judge. The Chief Judge took no notice of this telegram, and sent no reply to the Native Office." Were you sitting in Napier on the 12th November, 1880?—Yes.

1081. Did any person have any authority to open your telegrams?—Yes.

1082. Who had—the Clerk of the Court at Napier?—Yes. I never opened any of my telegrams.

1083. And he opened the telegram and put it on the file without showing it to you?—It seems he has done so.

1084. Then you mean to say you never saw the telegram of the 12th November, 1880, from Mr. Bryce?—I do say so. What date do you say?

1085. The 12th November, 1880?—You will find not an administrative paper in my office that I have read that has not been signed by me or marked "Seen." I do not say that I should have taken any notice as far as the Natives are concerned; but still, I did not see it. I say that with very great confidence.

1086. That you never saw the telegram?—Yes, I do say so, and you may take my word for it.

1087. Can you explain it?—I can only explain it in this way: that the Clerk got it and perhaps handed it to me. I find that I was engaged in making a genealogical table, which is a piece of work requiring great attention; and the probability is that I handed it down to him, and he put it on the file, so that I never saw it again. Of course that is only a guess.

1088. Do you notice that this telegram sent to you is filed in the Native Land Court Office in Auckland?—I saw it on the file.

1089. When did you see it there?—When I came to Wellington a fortnight ago.

1090. Yes; but this was filed in Auckland?—I only saw it when I came to Wellington.

1091. You are aware that a letter was addressed to you by the Natives, addressed the 3rd of November?—Yes.

1092. It must have been placed before you by Mr. Dickey on the 9th December, 1880?—I never saw it.

1093. How can you say that you never saw it?—Because there is no writing upon it of mine, and, moreover, I was in Napier at the time.

1094. When were you in Napier?—On the 17th November.

1095. But this is the 9th December?—It would be about the 20th November that I left Napier and went to Rotorua. I went overland, under the instructions of the Government, in reference to the thermal springs.

1096. Can you explain to me how it was that you did not see this letter from the Natives?—I cannot explain why I did not.

1097. Where were you on the 9th December?—At Ohinemutu. I was getting that township—the hot-springs township.

1098. Then the Clerk was neglecting his duty in not showing you these papers on your return to Auckland?—I cannot say whether he did or not. I should have written upon them if I had seen them. I should have written "Seen," which I wrote when I had nothing to say.

1099. Can we assume that you have seen none of the papers that you have not written "Seen" upon?—Yes; I made it a rule to make that mark. The reason was that many years ago, when I was Assistant Law Officer in the Attorney-General's office, he omitted to make a mark on some document, and afterwards, when it turned up, he said he had not seen it After that I always got him to write "Seen" upon papers, which he did. I subsequently followed the same rule myself when I became the head of a department.

THURSDAY, 15TH JULY, 1886.

Mr. ROGAN further examined.

1100. *Hon. Sir R. Stout.*] The point I wish to bring out from you is this, Judge: You are aware that in the Act of 1873 there is a reference to minutes of proceedings in the Court?—Yes.

1101. Did you understand by "minutes of proceedings" the minutes kept by the Clerk, or the Judge's notes?—I understood, to a certain extent, that it was the minutes kept by the Clerk; but I did not depend upon them, but upon my own minutes, in cases where there was particularity required, such as taking down the names of owners. Although my counsel the other day stopped me from making a statement with regard to the plans, the plans, or, often, the sketch, that was before the Court was a matter of the greatest consequence, and at times—for instance, in marking off a reserve—there are many instances where Judges have important evidence with regard to the portion which is required to be cut off, which was considered evidence although it was not taken down in the evidence-book.

1102. You notice that certain things are said to be recorded in the minutes of the proceedings, such as service of notices to the Natives? The Act says so. Do you remember that?—Yes.

1103. And also the Act says that, supposing a voluntary arrangement was made, it was to be entered in the minutes of the proceedings. Would that be entered in the Clerk's minute-book?—No: very probably it would be taken by myself, after the evidence was over.

1104. It would be his duty to enter it?—Yes. I might say also, with regard to that question of taking down the names of owners, that I made a rule for many years of insisting upon the names of the Natives being given to me in writing—the names of persons who were to be included in the grant; and that was attached to the books. That was most important evidence, as I could produce it simply against the Natives at any time in case of their disputing the names in the grants. I observe that there are very few of them attached to the books at the present day, and probably in moving from time to time these fly-leaves have been lost. It would have been very important for me now if the papers had been here, as it would dispose of the names at once.

1105. But that is not the point. The point is this: Did you, as Judge of the Native Land Court, in reference to the minutes of proceedings, keep minutes of the proceedings, as provided by the Act? Which did you recognize?—The minutes that were taken down by the Clerk were, as far as I was concerned, recognized to a certain extent, and my own minutes were also taken down.

1106. Well, I want to know which were the minutes of the proceedings in pursuance of the Act—your notes, or the Clerk's minute-book?—The Clerk's minute-book, I should say.

1107. Now, at the time you were asked your opinion of the granting of the rehearing of the Owhaoko, you had your own papers?—Yes.

1108. And you had access also to the minute-book if you wanted it?—Not to the minute-book, because it was in Auckland.

1109. Sent up to Auckland as a record of the proceedings?—Yes.

1110. You had your own notes?—Yes; I must have had them.

1111. You then advised Judge Fenton as follows as to the rehearing: "This land passed the Land Court at Napier without opposition. I am not able to say whether Topia has a claim or not. I know little or nothing of the boundary or the Natives. Mr. Locke, I believe, sent notices of the sitting of the Court to the applicants. I submit that Mr. Locke's opinion should be taken on this application. He knows the people, and was the District Officer—J. ROGAN, 21/8/78." When you were asked to give an opinion, I presume you would have referred to your notes in such a matter as this of the rehearing?—I do not know that I should.

1112. You would have trusted to your memory, then. You would never have given an opinion without referring to your notes, or having something in your mind?—I do not think I should have referred to my notes in this instance.

1113. Very well. Then, you say here, "Mr. Locke, I believe, sent notices of the sitting of the Court to the applicants." When you sent that you were not sure whether the Natives had had notices or not, when you referred to Mr. Locke?—Yes.

1114. Am I putting it correctly by saying that you yourself were not sure in your own mind whether the Natives had notices or not?—The only thing was that it was a general principle of the Native Land Court officers at Auckland to send these notices to the District Officers. Mr. Locke was District Officer—in fact Resident Magistrate in the Taupo District, and I assumed under these circumstances that he sent these things.

1115. I put it like this, then: Before you heard this case you had no direct evidence of the service of the notices, and you simply assumed that Mr. Locke had done what was usual in the matter?—Not exactly that.

1116. What then?—With regard to these notices, I might state that some short time—probably four or five days—after the Court sat at Napier—or probably it might have been sitting, but after the evidence was taken in these blocks—some Natives came from the interior. I could not possibly say if it was this Heperangi whose name is mentioned, but there were four or five young men. They were in Mr. Locke's office, and I was asked to see them. I did so, and they raised the question about these notices. I asked Mr. Locke at the time if these notices had been sent, and I understood that he sent his messenger to these people. Can I go on a little further?

1117. Certainly?—This is, of course, merely from memory; but I think I have a clear recollection of it. I had a conversation, I believe, with this identical Heperi Pikirangi, and several others, in Mr. Locke's office, and the conversation was shortly to this effect: "You have come from the interior?" "Yes." "And have you any claim to this land that has just been passed through the Court?" "We have no claim; but there are a lot of old men inland who have a claim." I asked, "Did you bring a letter from these people?" and they said, "No, we have brought no letter." "Well, then," my reply was, "we have got these old men. There are twenty old men and old women that have already been taken down, as it were, as joint owners with Renata Kawepo." In consequence of this conversation that I had with these men at that time, about three months afterwards, when Heperi Pikirangi's letter was referred to me—I think in Napier—that was the reason why I replied to the effect that this man was intentionally misrepresenting the case. He had time to come into the Court if he thought proper.

1118. But that only refers to the Kaimanawa?—Yes.

1119. I want to know about the Owhaoko. The reason that you gave for that was a different reason, I think?—The reason I gave the other day? I replied shortly to the effect that they had time to appear, and that it shows that they could have been there before any action was taken. They received notice on the 13th, and the Court sat on the 16th, and therefore I attempted to show that they could have been there before any action was taken.

1120. However, I am speaking of the Owhaoko?—Yes. The minute I have referred to was not my minute.

1121. You seem to have stated that Mr. Locke himself was not aware whether the notices had been served or not?—Yes.

1122. I want to know if you were at that time not sure whether the notices had been served or not?—I was not positively certain.

1123. May I say you were not satisfied in your own mind whether the notices had or had not been served?—I do not know exactly as to that; but it may be drawn from the minute I have written of these circumstances, when for the first time it came before my mind that they were counter-claimants to this block of land, and that, as I did not know the nature of their claim, it was proper for me to refer it to Mr. Locke, who was the District Officer, as to whether it was necessary to grant a rehearing. In fact, it would appear from that that, as these were counter-claimants, and as I did not know much about their claim, it would have been only fair for me not to interfere with the rehearing—that it would be only fair to let it be reheard.

1124. But the position is this: I want to know if you were in the habit of minuting in your notes anything about the service of the notices, or whether you only minuted the evidence called in Court?—I do not think I ever minuted anything with regard to the service of the notices. With regard to this matter, it was always the practice of the Native Land Court in Auckland—it was their duty to give the proper time and proper notice all over the country. I thought my duty was, when I received a letter from the Chief Judge, telling me to attend a Native Land Court, to go to the Court and pick up one of the notices that is printed, and read it out. If no one appeared, the case was struck out.

1125. And if any one appeared you went on with the case?—Yes.

1126. *Hon. Mr. Bryce.*] You assumed, in fact, that the practice of the Court with regard to the service of the notice insured the services of them?—Yes.

1127. You took no evidence as to the service of the notice, and made no minute as to the service?—I made no minute that I know of.

1128. And took no evidence with regard to that service, and assumed that it had been made?—Yes.

1129. And that is the reason that you advised the Chief Judge to ask Mr. Locke about the service. You say, "I submit that Mr. Locke's opinion should be taken on this application. He knows the people, and was the District Officer." That is one of the reasons why you advised him to send to Mr. Locke?—Yes.

1130. *Hon. Sir R. Stout.*] If it turned out that the people had not had sufficient notice—if you had that proved to you, would you have advised a rehearing if you thought that the Natives had not a chance of being heard?—I should have no hesitation in recommending it.

1131. Did you ever yourself sit on a rehearing?—I have. It was once—the only case, I believe.

1132. Did any person apply to be included in the owners of the land other than those whose names were in the application for rehearing?—No. I understand your question. The case in which I sat was at Kaiti.

1133. Where was that?—That was at Gisborne.

1134. When was that?—That was about nine years ago, I think.

1135. Well, I want to know if you found, regarding that block, any one entitled other than those who had applied for the rehearing or who had been in the block before?—I ought to say that this Kaiti was, after a little difficulty amongst the Natives in the Court, that they agreed to withdraw the rehearing altogether.

1136. Then you never made any award?—No.

1137. And never had any other case?—No.

1138. You do not know the practice in rehearings, I suppose?—Yes; I know the practice very well.

1139. The Act says that, in the matter of the rehearing, the proceedings are to be commenced *de novo*. You are aware of that?—Yes.

1140. When a Native Land Court sat to hear a claim to land, you called on the claimants, did you not?—Yes.

1141. Then, after you had heard them, you asked if there was any one else in Court who claimed a title to the land?—Yes.

1142. Whether they had given notice or not, you heard them?—Quite so.

1143. Suppose a rehearing took place, was it usual to call upon those who had made a claim to the land—who had applied for the rehearing—first?—I think the practice was to call on the persons who made the application for rehearing first.

1144. Did you then put the same question, asking if there were any other persons who claimed to be heard who were present?—Yes.

1145. And would you hear them?—Most certainly.

1146. That is, outside both claimant and counter-claimant?—Yes.

1147. In the event of applicants for rehearing withdrawing the application, would the Court go on with the question?—No; that disposed of the question.

1148. You would not enter into the question of either claims?—No.

1149. *Hon. Mr. Bryce.*] Well, then, practically, the people who applied for a rehearing applied not only on their own behalf, but on behalf of others interested. You say the claims of these others would be heard by the Court. Then, if it were so—that they applied on behalf of others as well as themselves—how can they withdraw the application at all unless the others concur?—The other persons interested are invariably in the Court, and it is always the chief who guides in these matters. In the case to which I referred just now it was a chief woman—a very important woman—who decided that they should withdraw, and all the others followed her.

1150. Supposing the people signing the application for rehearing desired to withdraw the application, and the other people in Court interested in the block did not wish it withdrawn—objected to the withdrawal—what would the Court do then?—I should think the Court would go on with the case.

1151. In case the applicants for rehearing wish to withdraw it, and the other people outside the applicants object to that withdrawal, the answer is that the Court would go on with the case?—Yes. I was never placed in that position, however.

1152. Then, speaking generally, the people who had made the application for rehearing had no right to withdraw that application unless the others outside consented to it?—No.

1153. *Hon. Sir R. Stout.*] About this Kaimanawa and Owhaoko. You seem to have, after the close of the evidence, asked in both cases if any objectors were present?—Yes.

1154. And there were no objectors?—No. Te Hapuku and Meihana, two leading chiefs—as no doubt they were—got up and said there were no objections.

1155. You would not call that part of the evidence, though it is part of the proceedings. They were not called as witnesses?—No, they were not called as witnesses. Any Native in the Court at that particular time who had an objection to the claim should have come forward and stated it. That was the proper time to make it.

1156. Te Hapuku was not a chief of the same hapu as Renata?—No; they were of totally different tribes, and not on very good terms at that time, I think.

1157. Nor yet Meihana?—No.

1158. That is what I understood?—Yes, they are totally different chiefs.

1159. Now, Mr. Bell somewhat found fault with my memorandum where I set out the evidence of Renata Kawepo and Noa Huke, on page 1, because I did not set out everything that appears in the minute-book about objectors. You would not call objectors' statements evidence, would you? They are not looked upon as witnesses? Would you call Te Hapuku and Meihana—would you set them down as witnesses? You did not examine them about the block?—No. They were not treated as witnesses. They were only there to affirm the statements made by the others.

1160. But you did not treat them as witnesses? They were not put in your notes?—To me theirs was most important testimony; but they were not treated as witnesses.

1161. Did you have any form of oath to administer to witnesses. You see here in the minute-book it says, "Renata Kawepo, on oath," and "Noa Huke, sworn;" but so far as the others are concerned nothing is stated?—There was a good deal of difficulty in dealing with some of these people. Te Hapuku was a heathen altogether, to begin with, and he was one of the most difficult men to deal with. On this occasion—if I may be allowed to say so, I had always a great deal of difficulty with him—I had to ask him to go away because he was interrupting the proceedings of the Court.

He came up to me on one occasion and said, "Did you ever kill a man?" and shook his fist at me. That was the kind of man I had to deal with in those days.

1162. *Mr. Stewart.*] You say you attached great importance to his evidence?—Yes; because he was a chief of great importance.

1163. But you do not seem to have examined him about any details about this block?—Yes, that is so.

1164. The evidence given before you—the sworn testimony—pointed out that there were Natives who had a claim to the land. That appears?—Yes, that appears on the evidence.

1165. Was it usual, then, when you found out the Natives who had a claim to the block, to award the land to other Natives, leaving them out?—Yes. I have done it frequently, all over the country.

1166. Why did you do that?—Because, under the circumstances, such as were before me, I could do nothing else. Renata was the chief, and he came forward, and I could not obtain the names of any other people than those who were on the grant of Renata.

1167. Then the fact is this: that you knew of other people who had a claim, but, as Renata refused to give you their names, you awarded the land to Renata and the names he gave you?—Yes; and I have done that repeatedly.

1168. *Hon. Mr. Bryce.*] But you stated before that you would have put these names on if you could have got them?—Yes.

1169. *Mr. Stewart.*] If you had got them you would have been satisfied as to their title to the land. In fact, you would have put them in the grant?—Yes, decidedly.

1170. *Hon. Sir R. Stout.*] There was one name you did not put in, although you got it—Matthew Taruarau?—Yes, that is quite right: I did not put that name in because they showed me that it was a matter of arrangement between themselves in this—that they decided amongst themselves, evidently agreeing before they came into Court, that there should be certain names go into the one block, and a certain number of names in the other.

1171. Yes; but you had no proof of it. Had you any proof of that?

1172. *Hon. Mr. Bryce.*] I would like to ask you, as was asked Judge Fenton, whether that would not have been a good reason for adjourning the Court—viz., the knowledge that there were other Natives whose names would have been put in if you had known their names. Would not that have been a good and sufficient reason for the adjournment of the Court—in order to get these names?—Renata and these people were perfectly satisfied. You see there was a school reserve, and there was an arrangement the object of which was that Renata was going to form a kind of small settlement there for these people, and they were all his particular relatives.

1173. *Hon. Sir R. Stout.*] That was not Kaimanawa?—No; this was the other block.

1174. *Mr. Stewart.*] You were a peripatetic Judge, I suppose?—Yes.

1175. You were so?—Yes.

1176. When you came to a Court—I mean held a Court—say, at Gisborne or Napier, or any particular place, were there any preliminaries which you did before you went on the bench? Did you do anything to see if the cases were right, or anything of that sort, or was that assumed by you to be all correct?—That was assumed by me to be all right.

1177. Did the service of these notices—the duty of seeing them served—devolve on you as Judge?—I did not consider them devolving on me, according to the practice of the Court.

1178. And you say that you assumed that the officers of the Native Land Department had done their duty in that respect?—Yes.

1179. Now, with regard to this question of rehearing. Supposing certain parties to the previous judgment were dissatisfied, and gave notice of application for a rehearing, understand, and that application was granted, and the day fixed for the case to be heard arrived, and these parties intimated to the Court in writing that they withdrew their application?—Yes, I understand.

1180. Well, then, supposing you went to the bench on that day, what would you do under those circumstances?—Under those circumstances, the first thing I should do would be to take up the notice for the application for rehearing, and read it in Court, and, as it were, call to know if there were any persons who came forward to claim for this rehearing. If no one appeared, I should have treated it as I should have treated any ordinary case.

1181. Supposing the parties who applied for the rehearing appeared in Court, and said, "We d not wish this rehearing to proceed"?—Yes.

1182. And that other persons who have been no parties to the previous decision were to come forward in Court and say they wished the rehearing to proceed—what would you do under such circumstances—that is to say, the original applicants for the rehearing wishing to withdraw, and certain parties not parties to the original judgment, who claimed an interest in the land, wishing the rehearing to be gone on with?—I was never placed in that position. But what I would do—I should be disposed to hear them, and ascertain their claims to the land.

1183. You would proceed to hear the case, in fact, disregarding the application for withdrawal?—Yes. I should certainly have some complete understanding that the persons who made the application, and those who came into Court who were not in the application who claimed to be reheard. I should not dispose of it without making full investigation.

1184. Supposing these persons who were not parties to the original judgment had proved to your satisfaction that they had an interest in the land, would you approve of upsetting it and giving a fresh judgment amongst all parties?—That would be the course I should adopt.

1185. You would treat the rehearing as an original hearing?—Yes.

1186. *Hon. Mr. Bryce.*] Let me put it this way, as a case in point: A, B, C apply for a rehearing; and A, B, C, the same people, write to the Judge or the Minister, as the case might be, withdrawing their application. The Court meets for the purpose of a rehearing, and the people who made the application and withdrew it are not in the Court at all; but certain other people who

previously claimed the land are in Court, and they say, in effect, "This rehearing must have been made on our behalf as much as on that of others who lately made it, because we are claimants too; and we desire you (the Court) to go on with the hearing of the application which has been formally withdrawn by A, B, C. Would you accede to the request, and go on with the rehearing?—I should, most certainly.

1187. *Mr. Stewart.*] But in the case put by the Hon. Mr. Bryce you will observe that the applicants for the rehearing are not in Court?—Yes; they are not in Court.

1188. Would you proceed in their absence to hear the case?—I think I should be disposed to send for those people in the first instance, before I proceeded with it.

1189. Yes. But you say that, assuming all parties to be present, you would pronounce a decision as in an original hearing?—Yes.

1190. That is to say, you would allow any parties who were not parties to the application or original hearing to come in?—Yes. It has been frequently done on the East Coast.

1191. Now, with regard to these minutes of yours, or notes, or the clerk's: did you say they were complete minutes, or merely notes—jottings?—No, they are not complete minutes; because I made a statement the other day in which I perfectly cleared that up.

1192. These two persons who came forward when you challenged objectors—you say they made a statement to you in the Court?—You mean Hapuku and Meihana.

1193. The two who stepped forward?—Yes. That is, Hapuku and Meihana—who came forward and, to the best of my recollection, said in effect that "there is no one here to object to the claims set forth by Renata Kawepo."

1194. Do you say you attached importance to the statements made by these two men?—It was most important to me. If I had left them out in the minutes, I should have considered it would have been serious to me, because I should not have completed the ordinary business of the Court, by not giving every one an opportunity to come forward in the Court to claim or substantiate their claim to the land. May I be allowed to say, with regard to one of the clerks that I referred to the other day—Mr. Woon—I wish not to associate him with the mistake that was made by the junior clerk. Although in attempting to explain what was done he did not absolutely do according to my satisfaction, yet it enabled me to trace the mistake that was made; and he certainly was very careful in not drawing out the order according to the minute made by the other clerk, and he drew out the memorials of ownership properly. Perhaps I blamed him unintentionally the other day in the evidence in the case.

1195. *The Chairman.*] There is only one question I wish to ask: With regard to the statements made in Court by the chief of the hapu, were you in the habit of taking a chief as speaking for the people, although they were not present?—Yes.

1196. In the same way with a written communication, was it usual or not for the chief to sign his own name and the names of his people?—It was.

1197. You expected that, as if it had been their own signatures?—Almost invariably. It may not be the practice now; but eleven years ago the state of society of the Natives was somewhat different to what it is now. There were chiefs in those days, but there are very few of them left.

1198. *Mr. Stewart.*] You treated the chief as the general agent of the tribe?—Yes.

1199. *The Chairman.*] These old chiefs—such men as Hapuku and Meihana—they had very despotic authority over their tribes?—Yes. I might say, in reply to that, that suppose Renata—who was an important chief at that time—that it is probable, if he had come forward and said, "I wish that my name alone should be in this grant"—the probability is that, with the consent of those people, I should have put in his name alone, because of his chieftainship.

Statement of Airini Tonore.

Airini Tonore states: I remember when the Native Land Court sat to investigate Owhaoko. The school reserve was investigated, but the remainder of the reserve was to be investigated at a future date. It was arranged that a certificate of title should issue in favour of Renata Kawepo, Ihakara te Raro, Karaitiana te Rango, Noa Huke, and Mr. Locke. I knew nothing of Hira te Oki being included. He was then a member of the School Committee at Omahu. Before the blocks were set down for hearing, Renata Kawepo had suggested to my mother and aunt that his name and Noa Huke's should be put into the grant, as Ane Kanara and my mother, Haromi Te Ata, would be easily persuaded to sell their shares; and he objected to Arapera going into the land. He said that they, being women, would be easily persuaded by Europeans to sell; that he would manage the land affairs, and, when money was paid, he would divide it between us. Renata at that time was strongly opposed to the sale of Native lands, and had taken an active part in endeavouring to put an end to sales. It was Renata's request that we should not urge our claims at the investigation. He admitted our claims. When the land was leased, Renata recognized our claim by paying us money—viz., £200 to Ane Kanara, £200 to Teira Tiakitai, £200 to Haromi, and £200 to myself. These sums were out of the first year's rent. Subsequently I married, contrary to the wishes of Renata Kawepo. He quarrelled with myself, my mother, and others who adhered to me, and he refused to give us any share of the money, nor did he appear to recognize our claim to the block. In consequence of this I took steps, in conjunction with my husband, to have the rents paid to the Public Trustee, as I was in hopes of having a rehearing of the case, and took these steps to protect the interests of myself and my relatives; or, in the event of that failing, I might bring pressure on Renata to give up a portion of the money. Subsequently Renata and I arranged matters peaceably. He

then suggested that he, Renata, and I should take the money and divide the shares of Ihakara and the Patea people. After this Renata renewed his quarrel with me, and matters have remained in this state ever since. The Land Court being about to make division of the land in question, in October, last year, Dr. Buller obtained the money from the Public Trustee. I then took steps in the Supreme Court, in conjunction with Ane Kanara and others, against Renata Kawepo, Dr. Buller, and Major Mair, to have Dr. Buller ordered to pay over our shares of the rents, also to have Renata ordered to admit our claim. I had previously asked the Native Lands Court to delay division until Renata admitted our claims. The Court declined to do this. The Supreme Court refused, on the grounds that a memorial of ownership must be conclusive of the ownership of the land described therein, and the reference could not be made to the Native Lands Court to ascertain whether other persons were owners according to Native custom.

The above statement of Airini Tonore was made before me in the presence of Ane Kanara and Arapera, who both testified to the statement.—GEORGE T. PREECE, Resident Magistrate, Resident Magistrate's Office, Napier, 9th July, 1886.

FRIDAY, 16TH JULY, 1886.

Mr. FENTON re-examined.

Mr. Fenton: I want to ask you, sir, with reference to the evidence given by me the day before yesterday. I want to have all the part referring to the service of the notices struck out, because the answers were given by me to the questions asked by Sir Robert Stout entirely under a misapprehension. That honourable member asked me to read the last part of clause 35, and then refer to another clause. I did read it, and then there was a long examination about the service of the notice. Now, I was very much puzzled with it, because, as Mr. Bryce observed, the whole difficulty was about the word "service," as applied to the Court, and I did not remember that the word ever occurred to me before. I found, on getting home and reading the whole of the clause, that it does not refer to the Court at all. The part of the clause that I read at Sir Robert Stout's request was this:—"shall satisfy the Court, at the sitting thereof before the hearing of the claim, that such notices have been duly served upon such persons or parties," and so on; and in all my answers I was under the idea that that referred to the Court. On reading the whole clause I found that it does not refer to the Court at all.

1200. *Hon. Sir R. Stout.*] Who does it refer to, then?—To the applicants. "A copy of such application shall be sent at the same time by the applicant to the different tribes, hapus," and so on, named in the application, or believed to be interested in any portion of the land comprised in the block. It was the duty of the applicants to serve those notices—not the Court.

1201. Well, I do not care who had the duty of serving it as long as it was served?—I think you were quite wrong, because all my answers were given under a misapprehension.

Hon. Sir R. Stout: I do not think it touches it.

1202. *Mr. Stewart.*] Of course, this means that the claimants are to serve the notices; but the question is whether the Court should not be satisfied that they were served?—I am not alluding to the question of service. I am explaining that my answers were given under a misapprehension. I did not read the first part of the clause: Sir R. Stout did not ask me to. I was explaining the best way I could; and the truth is the duty was not our duty at all.

1203. I think it is quite obvious that the Act refers to the service by the applicants; but the question is whether the Court should not be satisfied as to the service?—That is so, no doubt. I am merely speaking as to my evidence on Wednesday.

1204. *Hon. Sir R. Stout.*] If you will look at section 36, and sections 40 and 41, you will still see that it was the duty of the Court to have served the people living on the land and the hapus interested?—Not to serve.

1205. To serve as well?—No: the Court has simply to "forward." "Copies of all notices of claims, as soon as may be after the receipt of the application, and notices of all sittings of the Court for the investigation of titles, with a schedule of the cases to be investigated, shall be forwarded to each of the District Officers, Commissioners of Crown Lands, Inspectors of Surveys, and Native Reserves Commissioners in whose district the land or any portion thereof respectively is situate, also to the claimant and counter-claimant, or objector (if any), and to such other persons for distribution as the Chief Judge shall think fit, and shall be inserted in the *Kahiti* in the Maori language, and in the *Gazette* of the province in which the land affected is situate in the Maori and English languages."

1206. Well, the whole point is this: If you will read sections 35, 36, 40, and 41 altogether, you will see it was the duty of the Judge who presided at the Court to be satisfied that the hapus interested had the opportunity of being present—that is, that the notices had been served on them, both on the Natives to the claim—Renata Kawepo and the others—and the others also, of the sitting of the Court. That is abundantly plain from the Act. Now, as Renata himself admitted the right of Retimana and Ihakara te Raro to be in the title, it was the duty of the Court to be satisfied that these people, being a hapu interested, had received both notices mentioned in the Act. I do not see how you can make anything else of it?—I am not at all referring to that question. I am referring simply to this: that my evidence is entirely confined to the latter part of clause 35, which I read at your request. I did not read the first part, and I was entirely answering under the impression that it was the duty of the Court to serve the notices.

1207. *The Chairman.*] Your explanation now will be sufficient to the mind of the Committee that you answered the questions under the apprehension that it was the duty of the Court, and you find that it was the duty of the applicants to serve the notices?—I answer now that, as it is impossible to correct it properly, I would prefer to have it struck out.

1208. I do not think we can strike out the evidence now; but you can give us as full an explanation of it as you like, and that explanation will appear in the shorthand notes. I do not think we can strike out the evidence?—If I had read the whole clause I should have given different evidence.

1209. Yes; but you have explained that now, and it will appear in the notes of the evidence. Do you wish to say anything more about that before we go on with the questioning?—I am very sorry it is so. It is clearly a misapprehension on my part altogether, and I said things which I should not have said, and no explanation can set them straight. I cannot help thinking that, when the whole of what I said was based on an error, the simplest way would be to erase it altogether. Of course, if you say the contrary, I have no more to say.

1210. I think it should not be forgotten, Mr. Fenton, that, after your explanation, it will not affect the decision of the Committee. They will understand that you have withdrawn or recalled what you stated the other day, on account of that having been stated under a misapprehension. Therefore I do not think you need think that it will weigh with the Committee in any way.

1211. *Hon. Sir R. Stout.*] What I was going to ask you to-day, Mr. Fenton, is this: I understand you to say that you had a large amount of administrative work cast on you. Now, did you not leave the administrative work of the office to the Chief Clerk?—Great part of it.

1212. Then, the long list of things you mentioned that were done in the office you did not mean were done by yourself personally?—Oh, no!

1213. Was it your duty to supervise the papers that came into the office in any way?—The papers from the Judges?

1214. From the Judges and from the Natives?—I am supposed to have seen everything; but of course I did not.

1215. Well, looking through this bundle—if you would like to look through it—I think you will find that about three-fourths of the papers have no initials by you on them, or any remarks on them?—Yes, up to the rehearing. That is what I told Sir Donald McLean must be the course taken by me in carrying out his arrangement of a separate establishment for Mr. Rogan.

1216. No. I am speaking of 1875?—At the commencement of these papers, you mean.

1217. Yes; from 1875 on. You do not seem to have initialled them?—No. I told Sir Donald McLean that Mr. Rogan must correspond with Mr. Dickey. This I explained on a previous day.

1218. I am speaking of the Natives' correspondence with the office—letters addressed to you. For example: "Mr. Fenton, greeting. This is a request to you to hold a sitting of the Native Land Court, and adjudicate upon our lands which were brought into the Court at Napier. The names of the lands are Owhaoko," and so on. It does not seem as though there was any memorandum or words upon this?—I think you will find no minute of mine upon the papers until we get to the rehearing.

1219. I see?—It was taken away from me entirely, as Mr. Rogan has been explaining; but he had the use of my office.

1220. But I do not see that Mr. Rogan had anything to do with it?—It is his district, and he had everything to do with it. I should add that when that arrangement was made we found the unworkable character of this Act. It was absolutely unworkable. I asked for twelve months' leave of absence to let it be started by some one else.

1221. There is a letter here, Mr. Fenton, from Heperi Pikirangi, saying that "We were too late for the Court, the reason being that we only received the notices on the 13th, and on the 16th the Court sat. We travelled night and day, but did not arrive in time for it; and therefore we send in this application. Friend, Mr. Fenton, do you accede to this request; and if the letter reaches you, answer it, so that we may be aware of your decision on the subject," and so on. Do you remember that being brought before your notice in connection with the application for rehearing?—I do not remember it. Is that in the printed paper?

1222. It is referred to in the memorandum, I think. Yes, it is on page 3. On the face of it there is a memorandum, "A.C.N., send forms." I presume that is your writing. Will you see if it is?—Yes, that is my writing. Rehearings were the business of the Governor in Council, not mine.

1223. At any rate, I may take it, then, that so far as this application was made, you knew that the Natives wished a rehearing on the grounds mentioned there?—It is not likely I should remember that. I saw the letter, and told the clerk to send the forms of application for a rehearing. It was a matter of the Governor in Council. It was no business of mine. If you assume that I remember all these things——

1224. I do not assume that. You said you made a note when you had seen certain things. You said so on the last day you were examined. I think that the documents you saw you minuted?—That is, what I saw.

1225. Is that correct, that you saw nothing that you have not minuted? This telegram of Buller's is not minuted that you say was impertinent; and you saw that?—I did not see it till long afterwards.

1226. But it is not minuted at all?—No.

1227. Is it correct to say that you minuted everything?—Not absolutely. For instance, these papers which I have seen in Wellington when I came down here years afterwards.

1228. I mean in the office?—I did not see that in my office.

1229. Where?—At Auckland.

1230. But was not that your office?—Yes.

1231. It was filed with the papers?—Yes; but I only saw it long afterwards, when the whole thing had passed away, and there was nothing to do upon it.

1232. Do I understand that, though you had the administrative duty of this Act to look after,

you did not supervise the work of Mr. Dickey, such as looking over the papers dealing with such large blocks of land?—I looked over the papers he placed before me, for he opened all letters. Unfortunately I was a great deal away from home. Absence would probably explain how there was no minute on that paper.

1233. There are a great many papers with no minute on them that you seem to have seen, judging from the action taken afterwards?—I was going to say, in consequence of my long and frequent absences I got Mr. McDonald appointed to do my duty when I was away; and the papers when I was away were placed before him.

1234. He is away also, it appears?—I cannot say. He was appointed for the purpose of doing my office-work during my absence. I think it is rather hard that anything I cannot explain after this lapse of time should be set down against me.

1235. It seems extraordinary that, if a thing is directed to you, and your special attention is directed by the Clerk, how you can remember that you did not see it?—I explained it. I know that if I had seen it I should have written on it.

1236. Then I put it like this: You may have seen certain things, but unless your minute is on them you cannot remember having seen them?—I go further than that. I say my rule was to write something on every paper I saw, and the very fact that nothing is written is satisfactory evidence to my mind that I never saw it. I do not pretend to remember it, of course.

1237. *Mr. Stewart.*] I understand you to say that such a rule came into existence late in the course of these proceedings?—No. It was a rule that I acquired in the Attorney-General's office. That is so. When I put a paper before the Attorney-General I used to get him to write "Seen" upon it as evidence that it had been before him.

1238. *Hon. Sir R. Stout.*] I suppose there is no doubt you saw the retainer of Mr. Buller from the two Natives?—Topia, do you mean.

1239. Yes—Topia and Hohepa?—Yes; I have a note of it.

1240. There is no mark of it on the paper?—But that was not an administrative thing—it was in the Court.

1241. Very well; that is an explanation. Then there is a letter here, which says, "I have the honour to forward herewith a formal withdrawal of the application of Topia Turoa and others," &c. There is no minute on that of you having seen it?—Of course it was handed up to me in Court—the paper itself.

1242. Well, then, here is an application addressed to you, dated the 25th October, 1880, amongst Buller's papers. There are no marks upon them. I suppose they were handed to you in Court also, and that is the reason you have not minuted them?—I stated the rule which I adhered to—I stated it very broadly.

1243. Then I put it to you this way: The papers handed in to you in Court would not be handed in to you unless you had something to say about them?—Yes.

1244. This telegram, then, sent to you by Mr. Dickey, would have been handed in to you at the Court by the Clerk?—I think I stated that Mr. Grey, or whoever was the Clerk, would open it and hand it to me. Of course I do not pretend to remember anything about it, but probably he would do so. As I told the Committee, I was at that time—referring to my notes—taking down a pedigree, which is a very intricate and difficult thing to do, and requires the closest attention. I said I presumed that I handed it back to Mr. Grey, and that, as no minute was made upon it, I never saw it again. The probability is that I never saw it at all.

1245. I notice a minute here by Mr. Grey, pasted on the papers, "Mr. Fenton, shall you want these papers to make out a case for the Supreme Court, or shall I send them back with the other papers to Auckland"?—That means the whole file, I suppose.

1246. No; it means the papers Dr. Buller got signed by the Natives at Tokaanu?—Does it?

1247. Yes; it is pasted on them?—I think it is very likely Mr. Grey went back by sea, and I went back by land. He would want to know if I would take the papers with me.

1248. It is marked here "To Auckland." Apparently you have told him to send them to Auckland?—Yes; of course I should.

1249. Then that will recall to your recollection that Mr. Grey was the Clerk of the Court?—Yes, I remember now he was. I went back by land, and he went back by sea. He was a month earlier than I was, in his arrival.

1250. Now, would you consider that Mr. Dickey was fulfilling his duty properly if he did not draw your special attention to such a letter as this of Heperi Pikirangi's, complaining of Dr. Buller, and the manner in which the withdrawal of the rehearing had been obtained?—I should not like, if I may be allowed, to make any statement upon the way in which anybody discharged his duty unless it is absolutely necessary. I do not want anybody else to be brought into this affair as I have been.

1251. *The Chairman.*] It is only one special fact, in reference to this letter that should have been brought before you. You are not asked as to the general performances of his duties?—If Mr. Dickey had any letter and did not put it before me, I should think he did wrong; but I cannot conceive such a case.

1252. *Hon. Sir R. Stout.*] I notice in reference to Mr. Gill's telegram requesting information about this block the following minute by Mr. Grey: "Mr. Dickey. This case—Owhaoko—was to be concluded last Napier sitting; but the persons making application withdrew from the case: and if the case stand as before, I have no doubt the Chief Judge is aware he can make an order under the Order in Council. The Chief Judge stated he would submit a case for the Supreme Court. —W. Grey.——For Chief Justice's consideration. *Vide* Mr. Gill's telegram attached.—A. Dickey, January, 1881." It looks like January 18th, 1881, I should say. Were you in Auckland in 1881?—What is the date?

1253. January 18th, 1881. By the bye, whose writing is this?—It is my writing.

1254. That is your writing: "Reply, Owhaoko case is going to Supreme Court. Will not be decided before next session of Parliament, most likely.—January 19th." So you were in Auckland then?—Yes.

1255. Well, this paper seems to be immediately annexed to this other paper: "Owhaoko.—Give reasons for your being too late for the sitting of the Court." I notice there is a case here, Judge—a case stated by both Dr. Buller and Mr. Cornford. You do not seem to have minuted this by any signature. I suppose you would have seen them, though there is no minute. There is a letter minuted, "Write to Dr. Buller"?—Mr. Cornford's did not come at all until it was too late. The case was gone.

1256. I notice you minuted on the letter, "Write to Dr. Buller that in a case of this sort it is difficult to follow exactly the course indicated by the statute. I think that it is best to submit his case to Mr. Cornford, so that in stating a case myself I may have the assistance of his views." Well, then, I put it like this: Suppose you had seen this letter from Heperi and Mr. Bryce's telegram that was forwarded to you by the Under-Secretary, would you have proceeded with the statement of the case?—Yes.

1257. You would?—Yes.

1258. You would have ignored the notice of withdrawal of their withdrawal?—Yes, certainly. They cannot blow hot and cold in that way.

1259. Even though they charged Dr. Buller with having obtained the withdrawal by fraud?—That ought to be a matter for inquiry in some way. I do not know quite what I should have done if I had seen that letter from the Minister. Was it in English or Maori?

1260. You got it in both English and Maori apparently?—I should certainly have replied to Mr. Bryce's inquiry and said something about it, no doubt.

1261. Would you have considered it your duty before stating a case to have inquired whether the statements made by the Natives were true or not?—No; I do not say "before stating a case."

1262. How then?—I should have called Mr. Bryce's attention to it.

1263. But Mr. Bryce called your attention to it. Do you understand me? Mr. Bryce receives a telegram from the Maoris, and he sends it on to you?—Mr. Bryce wanted me to say something. I should have said something of this sort, no doubt: "It seems to me there is an imputation of some sort of fraud here, and it ought to be inquired into."

1264. Well, then, you would say this: that if you had seen the letters that I referred to—the letter of Heperi Pikirangi and the telegram that the Under-Secretary sent to you from Mr. Bryce—you would have considered it your duty, at any rate, before making an order in the case, to have inquired into the truth of these allegations?—That question is confined to Mr. Bryce's letter, I suppose?

1265. I put them both together. If you had received, first, Heperi Pikirangi's letter, and, secondly, Mr. Bryce's telegram, you would have considered it your duty, would you not, to have investigated the matter before ever stating a case or making an order?—I would like you to divide the two.

1266. I put them together because I assumed in my memorandum that they were both seen by you?—But the answers would be different. I should answer your question with reference to Heperi's letter differently from what I would answer the other.

1267. I will separate them, then. Suppose you had received nothing but Heperi's letter, would you have done anything then?—I do not think I should.

1268. If you had received this telegram, without Heperi's letter, and read it, would you have made inquiries?—No: I should have asked the Minister to make inquiries.

1269. You would have done nothing in the other case?—No. We received multitudes of such letters, as I said before.

1270. Did you see a copy of the order made by the Supreme Court before you made your order?—I have no recollection whatever about it. I took for granted that it is properly set out in your memorandum.

1271. Yes. But that is not the point. The point is, did you see the order?—I do not know.

1272. If you have not minuted it, did you see it? There is an order, which contains no minute from you on it, signed by Henry Hill, Deputy Registrar?—It is not this paper, so my people knew nothing. I issued my order.

1273. No. You are mixing up another thing. What Dr. Buller wires is this: he says that Judge Heale knew nothing of the rehearing being decided?—I think it was me. The question is, would I have admitted these things?

1274. No—whether you saw this order. There is no minute of yours upon it. Would you have made your order, as Chief Judge, until you saw the formal order of the Supreme Court, under the seal of the Court?—Certainly not.

1275. Then, I point out that this order—you have made no minute upon it——?—I think nothing of that. There is nothing for me to do upon it except the preparation of the case. In the case of a *mandamus* and all judicial papers no minutes are required. I do not wish that my practice as to minutes should be deemed to apply beyond correspondence and official papers.

1276. The order, you notice, says that Mr. Gully was counsel. You knew he was Dr. Buller's partner, and he appeared for Renata and the others mentioned in the order or memorial—that is, the order of the 31st September, 1877. You knew that the only counsel who had appeared before the Supreme Court was the counsel for Renata; and the other Natives were not represented. Only one side was represented at the argument?—I have nothing to do with that at all. That is no concern of mine.

1277. You made this order, which bears date the 30th October, 1880? It was prepared for you apparently by Dr. Buller?—Yes.

1278. You made that order?—Yes.

1279. Now, you will notice that the order begins by pointing out that the Court met on the 1st November, 1880, and you signed the order as if you made it in Court on the 30th October, 1880. Can you explain why that was done?—Of course, Dr. Buller was the only person interested, and, as usual in such matters in the Supreme Court, he prepared his own order. The date, which is on the day set down for the rehearing, is inserted under the 48th section of the Act, "Every order made or certificate granted by the Court on a rehearing shall bear date on such day as the Court thinks fit to fix not being earlier than the day on which the order of the Court was made on the hearing of the original application, and shall for all purposes have and be deemed to have had force and effect on and from the date so fixed." It looks absurd on the face of it, but it is correct according to the Act.

1280. What Act is that?—That is the Act of 1880.

1281. You say you were acting on the Act of 1880?—Yes.

1282. But that is not an order on a rehearing, because there was no rehearing. That is a very different thing?—But that was the very question that the Supreme Court settled—that we had to make an order. The Native Land Court said they had no power.

1283. No—pardon me—this is an order made or certificate granted by the Court on a rehearing. This was not an order or certificate granted on a rehearing. There was no rehearing. The point put to the Court does not come under this section at all. You said you could not affirm the order without a rehearing under the section; and they held that you could do so under section 50 of the Act of 1873?—You are now taking the position that I took in Court, and that the Supreme Court upset.

1284. No—pardon me—I do not?—The Supreme Court said that I was wrong, and that I could make an order.

1285. No: the Supreme Court decided the matter under section 50 of the Act of 1873. It did not decide the question under the Act of 1880 at all?—Oh! that is a new point.

1286. No. Did you not see that?—No; and I deny it altogether.

1287. Your own telegram to Dr. Buller shows that you had omitted to notice section 50?—There is no such clause under the Act of 1873. The question did not arise out of it at all.

1288. I will read the order made: "It is certified and adjudged, in cases of rehearing under section 58 of the above Act, where an order has been made for the rehearing, and the applicants subsequently abandon their application, the Native Land Court has power to affirm the original decision." "Of the above Act" means the Act of 1873, under which you state the case. So you see the decision of the Supreme Court was not under the Act of 1880, nor was your decision under the Act of 1880. It was under the Act of 1873. And, if you recollect, you wired Dr. Buller like this, when he wired you the decision. I will tell you what he wires, under date 27/7/81. "*Re* Owhaoko: Judge Richmond has decided that you have power to make order affirming original decision. In his judgment relies on section 50. Certificate now being drawn, and will be forwarded to you first steamer." You have marked on that "Filed August 1st;" and this telegram was sent: "Very glad. If I had known section 50 I should have done same. Many of our judgments are not gazetted. I was not aware of the importance. How did you find out that clause in such a funny place?" So you see you were proceeding under the Act of 1873, and not under the Act of 1880?—I was, up till that time—*i.e.*, in stating the case—under the impression that no question could possibly arise as to whether we made the order under the Act of 1873, because there is no provision: the only power is under the Act of 1880.

1289. I am sorry that we do not understand one another. Do you not see that the Supreme Court order does not refer to the Act of 1880 at all? It expressly refers to the Act of 1873, and says you had power under section 50 to make the order?—I do not see that at all.

1290. Yes. That is your own telegram. There is no reference to the Act of 1880?—It does not say under the Act of 1873.

1291. Well, then, you notice that the judgment apparently is not an interpretation under the Act of 1880, but of the 58th section of the Act of 1873, as to the powers of the Native Land Court under the Act of 1873?—That was the only power we had. Until the Act of 1880 was passed we never pretended to make an order.

1292. You notice that order. What does that order purport to be?—An order stating that the Court has power to make order on rehearing affirming the original title.

1293. Under what Act?—It does not state.

1294. I want to ask you this: Do you mean to say that the Supreme Court is not interpreting the Act of 1873?—It is interpreting the law.

1295. Is it interpreting the Act of 1873 or not?—Yes. It is part of the law, of course; but it is interpreting the whole of the law, not part of it.

1296. But it is not purporting to deal with the Act of 1880?—There is no other power anywhere else. The question could not arise; for if we could not do it under the Act of 1880 we could not do it at all.

1297. I am not asking that. When you sat in the Court to hold a rehearing did you purport to act under the Act of 1873 or the Act of 1880?—I forget the date of the Act.

1298. I do not care about the date. Take the papers and look at your own case, and see what you purport to state?—It does not say either one or the other.

1299. Did you not state the case under section 103 of the Act?—Of course I did, for there was no other power. The case is stated under section 103 of the Act.

1300. Under what Act?—1873.

1301. Then the case was stated under the Act of 1873?—Yes.

1302. Very well. Does not the case purport to interpret section 58 of the Act?—The case does not interpret anything.

1303. I mean the order of the Court—the judgment of the Supreme Court. It purports to interpret section 58 of the Act. Will you read it?—It does not say, under section 58 of the Act of 1873. It merely says we had power. We had no power before the Act of 1880 was passed. That was the only power we had.

1304. I am not dealing with that. Surely I am not putting an unfair question to you. Look at these telegrams. Now look at the telegram there, Dr. Buller to you, and your reply: "*Re* Owhaoko, Judge Richmond has decided that you have power to make an order affirming the original decision. In his judgment relies upon section 50. Certificate now being drawn up, and will be forwarded to you first steamer"?—As I said, if I had known of section 50, I should have sent no case at all, for the matter was clear.

1305. You reply, "Very glad. If I had known section 50 I should have done same. Many of our judgments," and so on. Then, you see, it appears from these telegrams that the Supreme Court relied upon the powers given to the Court by section 50 of the Act of 1873?—No. I say no such thing. There is no power given under the Act of 1873.

1306. Which Act are you referring to?—1873. It gives the Court no power at all to make an order.

1307. What gives the Court no power at all?—Section 50.

1308. Would you look at it? You said, if you had known of the section you would have done the same?—If I had known of that section of the Act I should have exercised the power given to me by the Act of 1880, without sending a case.

1309. What do you mean? I will read section 50. This is it: "The decision of the Court in every case of the hearing of a claim shall forthwith be published in the *Gazette*, in the same manner as hereinbefore provided with respect to notices of claims; and the persons in whose favour such decision shall be made shall be deemed to be the owners of the land referred to in such decision, unless the decision of the Court shall be amended or reversed upon a rehearing, as hereinafter provided"?—There is no power given to the Court there to do anything.

1310. What do you mean by your statement, then, where you said, "If I had known of section 50 I should have done the same"?—The point is simply this: At Napier Mr. O'Brien and I acted simply, in refusing Dr. Buller's application, under the Act of 1880. We entirely went on the Act of 1880, and he made his application under that Act. It says, "On a rehearing the Court may do so-and-so;" and, as there was no rehearing, we thought the power did not arise. Now, the Supreme Court says that we had power to exercise our discretion, and the discretion arose under the Act of 1880, for there was no such power anywhere else.

1311. Then you mean to say that, though you make no reference to the Native Land Act of 1880, the decision you gave at Napier was under its provisions?—The decision I gave?

1312. Yes—the decision the Court gave. By "you" I mean the Court, of course?—You mean on Dr. Buller's application?

1313. Yes?—That was under the Act of 1880. Yes.

1314. It was not under the Act of 1873 at all—your decision?—No. There is no such provision in the Act of 1873.

1315. Then, the first thing, you proceeded under the Act of 1880 at Napier?—So far as that order is concerned.

1316. Well, then, I would ask you to throw light on the paper. Look at the Act of 1880 and the Act of 1873: do you not think—I would ask this—if you acted on these sections 50 and 58 of the Act of 1873, that they are in force as well as section 48 of the Act of 1880?—At this time?

1317. Now. At the time of the rehearing. That they were both in force?—You mean, supposing I was sitting on a case?

1318. Now. I will take 1881: did you look upon it then as the practice of your Court? I do not care whether it was right law or not. Did you assume, as Judge, that sections 50 and 58 of the Act of 1873, and sections 47 and 48 of the Act of 1880, were all in force?—In my opinion, as respects suits commenced under the Act of 1873 these clauses are all in force.

1319. I do not want to know your opinion. I want to know what the Court acted upon?—There was no practice.

1320. What did you assume?—I say the whole of the Act of 1873 is still in force where it is not repugnant to the Act of 1880.

1321. I admit that. That is clear under the Act. But I want to know did you consider that sections 50 and 58 of the Act of 1873 and sections 47 and 48 of the Act of 1880 could be read together?—Yes. I see no repugnancy.

1322. Then, we will say that. Will you read section 50 and section 48? You assumed, then—I want to know this as the practice of the Court—you assumed that these four sections were all in force?—You speak of my practice. I believe this was the last case I tried. I resigned shortly afterwards. In fact, I resigned next session, only Government did not accept my resignation at once.

1323. Now, under section 47 of the Act of 1880 the granting of a rehearing was left to the Chief Judge. You are aware of that?—Yes.

1324. It was not left to the Governor, as under the Act of 1873?—No.

1325. And then it provides, "That on a rehearing the Court shall have power to affirm the original decision, or reverse, or vary, or alter the same, or to give such other judgment and make such orders as it may think the justice of the case requires. The decision of the Court on a rehearing shall be final and conclusive, and a certificate shall issue forthwith in accordance therewith." Then follows section 47, that I read before, as to the order of certificate being dated on any day the Court thinks fit?—Yes.

1326. Do you mean to say that you put in the 30th October, relying on the powers given to you by section 48?—Yes.

1327. You did?—Yes.

1328. Had you any power to do so?—No. That clause gave the power.

1329. That clause gave power to "the Court." Did you assume that you were the Court, sitting by yourself, without an Assessor or Judge O'Brien?—Yes. Section 9 says, "Every Judge of the Court sitting alone shall have the jurisdiction and may exercise the same powers as are given to the whole Court."

1330. Were you sitting alone?—Yes, at Auckland, I think. Was I not?

1331. I do not know. I want to know?—However, I was alone. The Rules furnish more provisions for that.

1332. Would you read the order you made, Judge, and see if you were sitting alone?—Yes. I see what you are meaning.

1333. This order purports to be made by the Chief Judge, Judge O'Brien, and an Assessor. Did you, Judge O'Brien, and an Assessor ever make such an order as this?—No. The Act says all orders of the Court not hereinbefore made shall be sealed with the seal of the Court, and signed either by the Judge presiding or the Chief Judge. So I had abundant power to sign.

1334. Yes; but you notice that it meant to be under the date of the making of the order. Ought not that to have been done judicially?—We should have done it at Napier sitting if we thought we had power.

1335. Yes; but you did not?—We did not.

1336. Now, if you read the letter of Dr. Buller (it is set out in the memorandum—I think you will find it on page 19 of the memorandum), "As the Chief Judge has been good enough to ask my opinion as to the proper date for the order confirming the original Owhaoko judgment, I would suggest that the safest date would be the 30th October, 1880." So you see Dr. Buller was not relying under the Act of 1880 to fix a date?—Yes; but you are not going to make me responsible for him.

1337. But you acted upon his decision?—Yes; I relied upon him to make it correctly in his own interests, as is the practice in such cases in the Supreme Court. He drew the order himself, and took the whole responsibility.

1338. You signed anything that Dr. Buller asked you, because he took the risk as to its being wrong or right?—If he had asked me to sign for a date earlier I should have done so.

1339. Even though the Court had not made a judicial determination?—Yes.

1340. How could you be a Court, when on the face of the order it is made by three persons?—Yes, there is a technical objection there, no doubt.

1341. You notice that section 48—if you rely upon that—says that the Court, if it thinks fit, shall fix the date. It does not leave it to the person applying for the order?—Of course, we put whatever date counsel asks us when he is the only person concerned—*i.e.*, when all litigation is over. I must say I think that all through these proceedings I have felt that almost every point that has been suggested in this paper ought to have been decided by the Supreme Court. If I was wrong—if the Court was wrong—if I ought to have dealt with Heperi Pikirangi—there was Mr. Lascelles present, and he could have got a mandamus at the time. There were abundant opportunities of taking it to the Supreme Court. Although I have answered your questions as well and respectfully as I could, I do feel that this is not a Court of Appeal from my decisions, which are law until upset by a superior tribunal.

1342. I put it to you, did you really, when you carried out Dr. Buller's letter when he suggested the 30th October, and made out a document dated the 30th October, and you put your signature to it on 4th March, 1882—did you consider that you were acting under the Act of 1880?—Yes.

1343. If you considered you were acting under the Act of 1880, does not that Act clearly point out that it is the Court that is to fix the date?—Yes.

1344. You were not the Court—you were only one of the Court?—Not the Court that sat at Napier?

1345. You were not the Court that made the order?—We made no order.

1346. You are not the Court such as is mentioned here, in section 48 of the Act. The Act says, "such day as the Court thinks fit." Now, the Court at Napier fixed no date?—No.

1347. And you were not sitting as a Court. The Court had not been gazetted. You were only doing this as in chambers?—Yes. I suppose you may call it that—there was no Court gazetted.

1348. Do you think you were acting under the Act of 1880?—Yes, I do.

1349. And you had power to do so?—If you look at it from the technical point of view, I apprehend that, if you say my sitting ought to have been gazetted, and so on, there was a defect, and my position did not justify me in making an order as if at Napier sitting with others. But I considered that we had the power.

1350. But you did not consider the question at Napier? That is my question. That was never brought before you?—I considered, as any lawyer would, I think, that when a lawyer has got his order the Court says "Go and prepare it;" and he prepares it in his own fashion. It happened to me in the Supreme Court the day before I came here, and the Judge never questioned it.

1351. But that is a different thing, because here this section 48 gives not merely the date of the order, but the judicial function to fix the day?—The Court was not there, but everybody knows it was taken the same day. The date is part of the order.

1352. I put it to you this way: In Mr. Buller's letter the reason he gives for the 30th October was that it was the last day on which such rehearing could take place?—The reason he gave the 30th was that he relies on the 48th section.

1353. I do not care what he relies upon. Did he place it in?—It does not concern me what his reasons were

1354. You filled it in because he asked you?—Yes. He desired that date, and he was the only person concerned.

1355. You notice he says, "The Clerk adjourned the case," which is incorrect. You know that?—I have not noticed this document.

1356. It is a letter. It says, "The Clerk of the Court attended and adjourned the case till Monday." You know that was incorrect. Now, there is only one point about the rehearing. I think you were examined on this in your evidence in chief. Suppose a person who had not applied for a rehearing appeared in Court and claimed to be entitled to the land, would you hear him?—Who had not got an order?

1357. Who had not got an order, and had not lodged a claim to be made?—No. I said that two or three times. That is where you differ from me in law.

Hon. Sir R. Stout: Well, I think so. Then I have nothing more to ask you.

1358. *Hon. Mr. Bryce.*] There is one point on which I wish to ask you. It is a point of great importance, I think, and I should like to have your opinion upon it, if you have no objection. The point is this: It has been contended, I understand, by Sir Robert Stout that if the Court makes an order in respect to a certain number of the claimants, knowing that there are other claimants outside, that that order must necessarily be invalid. That is the point I should like your opinion upon. If the Court, knowing that there are a number of people who claim in respect of the restricted number, that that order must necessarily be invalid?—I think the Act of 1873 is simple—that no voluntary arrangement can be made by persons unless those who are excluded have consented to their own exclusion?—Yes, clearly.

1359. How would you get their consent—what sort of consent? What certificate of consent would satisfy you; because they are not in the Court always?—I will tell you my practice, which is better than an abstract opinion. My practice was to have the people present; because you cannot trust Native letters. They write them and forge them—not in our notion of forgery; because a Maori often writes and signs a name to a letter simply because he thinks the person whose name he signs would approve of it. I could never trust a Maori letter. I never have done, I think—in recent days, at any rate. If the case the honourable member puts were my own case, and I was Judge, and there was a voluntary arrangement such as I have stated proposed to me, I should have the parties present and explain to them what was proposed to be done, and ask them whether they agreed or not to it. This is what I used to do under the Act of 1865, where there were only ten to enter. But, of course, I do not say that I am infallible—I begin to think I am very fallible indeed. But, as a rule, I always had the people present, and said "We cannot put in twenty: will you divide the land into two parcels, or will some of you stand out?" and I always had them there.

Hon. Sir R. Stout: I wish to explain that I understood this voluntary arrangement could be made; but I said this: "That you should not exclude people except they voluntarily agree to their exclusion."

1360. *Hon. Mr. Bryce.*] Then, suppose this next arose: that a statement was made to the Judge that other claimants to the block existed, and when he was about to get the names of these other claimants there stepped up a paramount chief saying that he, as the chief, was the owner of the land, and the owner of the people, but that nevertheless the title was ordered to issue in respect to the restricted number, excluding those others of whom the Court was aware. By this knowledge would that order be valid or invalid?—It would be invalid, I think.

1361. Well, that is conclusive?—That is so. I do not think it would be made in compliance with the law.

1362. Now I will go back to the Act of 1865, which prevented title issuing to more than ten people, I think?—Yes.

1363. Is it not a fact that, as a rule, the Court was perfectly well aware that there were more than ten people claimants to each particular block which was ordered to issue to ten?—It often was the case; but I might mislead you if I answer in that general way.

1364. Answer as fully as you like. I attach great importance to the information?—I should say that there are two answers to that question. One answer would apply to conquered territory, or territory recently acquired by force of arms: for instance, the Ngatihaua land in Waikato, which was only obtained possession of in 1831, and which had never been apportioned amongst the Natives. This class of land required a distinct treatment from ancestral lands—*i.e.*, where the ownership of land descends from one ancestor to the surviving descendants, excluding outsiders. Conquered territory unpartitioned belongs to the tribe altogether.

1365. Suppose we take ancestral lands, and confine your answer to them?—Whenever they come into Court, and we find there are twenty owners, under the Act of 1865 the Court tells the Natives, "We can only put ten into each of your grants, and you must run a survey-line. You must divide your land into two." The Natives then say, "We won't do that; it will cost a lot of money. Ten of us will stand on one side." And ten of them would be put in the grant. I believed in Natives in those days, Mr. Bryce, much more than I do now; otherwise I should not have assented to any such arrangement. The ten who got the land sold it, and spent the money, and did not apportion it properly; and we found that that would not do. Then, after we became aware of the thoroughly-decayed character of the Natives, we did not allow any arrangements of that sort, having discovered that the Natives would deceive and cheat each other, which I did not think in 1865.

1366. As a matter of fact, you often ordered a title to issue in respect to ten owners, although you knew there were other owners for the same piece of land?—Yes. Afterwards, when we found out they used to deceive the Court in this way——

1367. Yes, but I merely want to get at your practice in the first cases?—I am coming to it. I will mention the case of a block of land in the Upper Waikato country. The people gave me ten names. I knew the men in Court personally, and that there were others in Court who had an

interest in the land. There were men sitting there that I knew were owners; and I said, "Are there any more owners?" They said, "No." I addressed one, "Are you not an owner, Te Raihi? Are you not interested in this land?" and he said "No;" and so said many others whom I personally addressed. They were all interested, and were standing out on purpose to save expense in surveys of running dividing-lines.

1368. That case is clear; but that is not such a case as was in my mind at all. The case is whether the Court knew by evidence that there were other owners, but, nevertheless, issued to the restricted number? That case occurred, did it not?—Yes.

1369. Well, now I would ask you whether it occurred that the consent of all the owners—I mean to say, where there were owners who had not been made formal owners—known to the Court had not been put in the order?—Not where we knew of any dissentients.

1370. Perhaps they were not there to dissent—in a person's absence, I mean?—I know of no such case as that. They were all present to a greater number than ten, and they consented to their own exclusion. When we found out what the results of that were, and how mischievous it was, Sir William Martin and myself prepared a deed of trust. We collected all the cases where the mischief had occurred as far as we could, and Major Heaphy and some other person were sent all round New Zealand to get those ten who were in the orders to execute the deeds of trust. A great many of them are still in existence.

1371. The point in my mind, although I do not know how to bring it out, is that very possibly there are blocks of Maori land—I myself am aware of two—with very often a great many owners—far more than could be brought into Court—sometimes with a thousand owners. They could not be all present. What I want to know is, whether the Court knew there were more owners who were present, but who did not come in under a voluntary arrangement formally?—Under the Act of 1865?

1372. Yes. We are now confined to ancestral land?—I think the practice, from my own experience—I do not speak for the other Judges—I think I never passed a title in which every owner that I knew of was not either in the instrument or had voluntarily excluded himself.

1373. Is it common in this Island for any piece of land to have such a very small number of owners as ten?—Yes.

1374. It is common?—Yes. The numbers vary very much with the country. Up amongst the Ngatiwhatua the titles are very clear—sometimes two or three owners. The Ngapuhi titles are very clear too; but when you get down amongst the Arawas and Waikato, and in that direction, then they get very intricate indeed.

1375. I understand. If you were taking every case you would have to give different answers, according as to whether it was ancestral or conquered territory?—Yes. Most of the conquered territory has been divided; and in that case, if the division is recent, the titles are very simple. But if they have not been divided, as was the case of the Ngatihaua, then, of course, it must belong to the whole tribe. Sometimes they bring in allies, although I never allowed them to do so if I knew of it, because, in fact, it would be making the whole of New Zealand one vast estate.

1376. That is, some person in the tribe had some sort of claim to the piece of land?—Yes. There is no such thing as title in our sense. Te Waharoa was the man who brought in his allies and acquired all this Ngatihaua territory, and he and the other military leaders could have apportioned it as they liked. And, to my mind, here is one of the most ruinous results of our Native Land Acts. These old men, who enlarged the tribe and preserved the existence of it, are treated when they get into these titles of the Native Land Court as a returned slave from Ngapuhi is treated. That has been most disastrous, I think. Being to a certain extent a philo-Maori, if I had seen in 1865 what the result of our Acts would have been, I do not think I should have assisted in their introduction. I should have said, "Let colonization go to the wall."

1377. I agree that the effect of these Acts has been very levelling?—Yes, very much. It has destroyed the race.

1378. *Mr. Stewart.*] Can you state what were the grounds on which you recommended a rehearing?—I do not remember.

1379. When the rehearing came on I suppose the Act of 1880 was in force?—Yes.

1380. The rehearing was on the 20th October, and this Act was assented to on the 30th August, 1880. It came into force on the 1st October?—Yes.

1381. Now, was there any similar provision under the Act of 1873 to section 48 of the Act of 1880—that is, as to orders?—No, there was no such provision.

1382. That section says, "Every order made or certificate granted by the Court on a rehearing shall bear date on such day as the Court thinks fit to fix not being earlier than the day on which the order of the Court was made on the hearing of the original application." So that, if a solicitor applied to you to fix an earlier date than that on which the Court actually sat for the rehearing, and you saw that it would prejudice some parties, would you still accede to his request? Suppose those circumstances that there were two parties to the case?—If there were two parties, of course I should not fix a date without hearing parties and considering; but if there was only one party, I should take whatever he gave me, so long as it did not go beyond the date of the original hearing.

1383. Now, I notice the Supreme Court order says, "It is certified and adjudged in cases of rehearing under section 58 of the above Act, where an order has been made for the rehearing, and the applicants subsequently abandon their application, the Native Land Court has power to affirm the original decision." Would it have made any difference to you—altered your opinion in any way? You see, the Supreme Court holds that when the applicants "subsequently abandon their application the Native Land Court would have power to affirm the original decision"?—Yes.

1384. Would it make any difference in your mind where persons who are not applicants, but claim to have an interest in the land, wish the rehearing gone on with?—These are people, I have

said, that I do not recognize. I think I have consistently stated that that class of persons I do not recognize; and I should not consider them.

1385. You decided that you had no power to affirm the original decision; and, whether that was the law or not, Judge O'Brien concurred with you?—Yes.

1386. You see here that the Supreme Court holds that you had power to affirm the original decision?—Yes.

1387. Now, you have stated that you looked upon Judges, when sitting as Judges, as independent of you—as not being in any way under your control. Why was it, then, that you sent this telegram to Judge Heale asking him to dismiss the application with costs?—That was a mere suggestion. I often did that. For instance, I mentioned to the Committee that I heard that there was a lawyer at the Court at Wanganui appearing for two or three parties, one of whom was the Government. I wrote then to the Judge, suggesting that he should withdraw his permission. Of course, my letter had no authority at all.

1388. In your telegram to Judge Heale of the 12th January you say this: "Owhaoko has been heard, and is finished. This claim should be dismissed with costs." How did you consider you were justified in interfering with what would come before another Judge?—I apprehend that, strictly speaking, the objection that is in your mind would be a proper objection. But, having the advantage of a legal training, and knowing all the work of the office, the Judges used to come to me to give them hints as to that sort of thing. For instance, Mr. Heale could never have known the inconvenience that there would be in our office from having these claims coming in in another name.

1389. But you do not seem to have explained that to him. You say, "Judge Heale: Owhaoko has been heard, and is finished. This claim should be dismissed with costs"?—That is, Ngaroro?

1390. Yes?—I think he would gather from that what I meant—that it was an attempt to get a new hearing upon that claim under a different name. I should like, if you will allow me, to explain what I mean about costs. It did not strike me at the time, till I was reading again Sir Robert Stout's memorandum. He thought I meant payment to lawyers. I did not mean that at all. I meant costs that we put on ourselves.

1391. What were those?—Payments to the Natives that were brought unnecessarily to attend the Court.

1392. Not lawyers' costs?—No; I never thought of them. I remember in one case of my own I ordered £1 10s. all round to men who had been brought to the Court to defend such a case.

1393. *The Chairman.*] These were allowances to witnesses—not costs?—Expenses to the people who had been brought up to defend their ancient titles, I mean.

1394. *Mr. Stewart.*] Now, there is one point still in my mind, and that is this: How do you explain your communicating with Mr. Studholme? Do you say that he, having no interest, was entitled to such important information?—How I saw him, do you mean?

1395. No; that is not the point. Why did you communicate with him at all?—He was in Auckland.

1396. Why should you be in communication with him at all? What colour of claim had he to be there?—He had a lease registered in my office.

1397. I did not know that fact. I thought he came in afterwards?—It is registered. The word "approved" is a mistake of Sir Robert Stout's.

1398. Have you read Judge Rogan's evidence?—I read the first day's evidence.

1399. He says, "Renata was the chief; and just immediately after Noa Huke gave his evidence Renata came forward. It is just possible I would have obtained them (the names) from Noa, but Renata said, 'That is sufficient. We have an arrangement among ourselves about this land, and there are others living on the land; but that is sufficient for us. Those are the names that we have decided upon to put in this block.'" And there is a further statement here by the Assessor: "I said to him, 'What about this Hone Peti?' He said, 'You have got all the names which these chiefs will give you. They will not give you any more. Then, order this memorial; because Renata is a chief of great responsibility, and if he makes any mistake the mistake will be his, and the responsibility not ours.'" I do not know that it is very important: Do you think that would have satisfied you to see the memorial in the names of these persons whose names were given in by Renata?—Am I bound to answer that question? I would rather not answer it.

Mr. Stewart: I will not press it, then.

1400. *Mr. Seddon.*] There are one or two questions I would like to ask you. From what Mr. Bell said, you consider your good name of paramount importance as regards this inquiry?—I do indeed.

1401. On that basis, and with a view of being satisfied myself upon that point, I would like to ask you as to the communications from Mr. Studholme to you, commencing "Dear Fenton." You are on terms of intimacy with Mr. Studholme, are you not? When the question was asked you by Mr. Bell as to whether there were any business transactions between you and Mr. Studholme, you considered it an insult that he should put that question?—That is so.

1402. You were on friendly terms with Mr. Studholme prior to any transactions between you and him?—I was on friendly terms with him. I was, perhaps, on a little more friendly terms with him than I was with you, but much in the same way, occasionally meeting him in Parliament.

1403. Now, to set at rest rumours that have got afloat in this case, I will ask you this: You have resigned your judgeship: is there anything since between you and Studholme that would give a colouring to what is inferred by the memorandum?—I was here with him last year on a matter of private business, as the solicitor to the firm to which he belongs. I was retained by Mr. Green, of Whitaker and Russell, to push forward some matter that he had with the Government; and he was here with me some time last year in communication with the Government.

1404. Mr. Studholme?—Yes.

1405. Nothing in connection with this particular block of land?—No. I have never had any knowledge of this particular block of land. I did not even know the name when I saw in the newspapers that I was in disgrace about it.

1406. Then, you appeared simply as solicitor for the firm in which Mr. Studholme is interested. That is your business since?—Yes.

1407. *The Chairman.*] Do you say you have acted as solicitor for Mr. Studholme lately?—No; I do not say that.

1408. How are you acting for him professionally? In what respect?—I was engaged by Mr. Green, of Messrs. Whitaker and Russell, for the Messrs. Studholme and others.

1409. As solicitor?—Yes.

1410. *Hon. Mr. Bryce.*] Solicitor to the company or firm of which Mr. Studholme was a partner?—Yes.

1411. That was not till last year?—No.

1412. And you retired from the judgeship three or four years ago?—Yes—in 1882. If there is anything else the Committee would like to know I shall be pleased if they will ask me.

1413. *The Chairman.*] Have you anything further you wish to tell the Committee of your own accord?—I understood you to say that Mr. Bell was to do that.

1414. If you have anything further to say we shall be pleased to hear it, but we cannot allow you to comment on the evidence?—I should like to ask the Committee to consider the utterly unworkable character of the Act of 1873. I drew the attention of the Government to it in the early times, and asked that the Act might be repealed or amended at once, because we could not work it without evading it or disregarding its provisions altogether. But Sir Donald McLean seemed to think I was making difficulties in the working of the Act. Upon that I gave up office, or asked for leave of absence for twelve months, intending to give it up altogether if any one else succeeded. Dr. Pollen, who was in office at the time, asked me to go on with it and do the best I could; which meant, I may say, a disregard of a very considerable portion of it. I wrote a letter—which I cannot find—to the Government about two sections, and asked for authority to disregard them altogether.

1415. *Mr. Montgomery.*] Disregard what?—These two sections altogether. I got authority, and promise of an Act of Indemnity; but it is not in writing—at least, I cannot find it.

1416. *Hon. Sir R. Stout.*] That dealt with the plans, did it not?—No; the two sections to which I referred were clauses in which the Judges had to examine all the sellers or the parties to the deed, which, of course, is impossible. They are scattered, in some cases, all over New Zealand. I then withdrew my resignation, and went on trying to make the best I could of it, though there were a great many difficulties to contend with. I would also ask the Committee to consider that the Judges were sitting in the Courts amongst noise and disturbance, people talking, and every description of interruption; so that they must not expect us to be as strict in our observance of law as the Supreme Court, for the thing is quite impossible. In our early days we ran considerable personal risk sometimes. We made the nearest attempt we could to regularity; but these matters, I presume, are known pretty well to the Committee. What concerns me, I confess, in this paper is myself. I have been in the Government since 1851—I think thirty years—in fact, all my life—in many positions; and during the whole of that time there has not been a stain or an imputation cast upon my probity or integrity. I believe I have been looked upon rather as a cynical man. Ministers have not liked me sometimes, because I objected to their interference with me; but I am not aware that anybody till this time has ever suspected me of doing anything that was dishonourable.

1417. I am not aware that I have charged any corrupt action against you, as you seem to imply?—If you can understand me, it is what is left unsaid in your memorandum, more than what is said, that insinuates dishonour. A note of exclamation at the end of a remark is very expressive, and the memorandum abounds in them.

1418. I have already stated that I did not mean to imply so. If you wish it, I shall make a statement to that effect, to go on record with the evidence at the close of the inquiry?—I shall be very grateful to you if you will. My friends were very much distressed in Auckland. This paper has been scattered broadcast through New Zealand, and has formed the subject of many articles highly deprecatory of me. One paper stated, "How are the mighty fallen! Now, for the first time," &c.

Hon. Sir R. Stout: I shall make a statement at the end of the inquiry to that effect, so that it shall appear perfectly plain on the papers that I did not mean to imply it in the sense you mean. What I meant to say is this—and I think so still: that I did not think the Natives' title had been properly investigated of these two blocks; that people have been left out in the cold, and have not received justice. And I still think so. But I never meant to imply that as far as Judge Fenton is concerned; and it will be seen that the main charge is nothing with which he has to do. He only comes in at the rehearing. I shall make a full statement, so that it will be bound up with the papers; and it will show that I did not mean to cast a stain upon his character, as he seems to imply. I do not think he acted rightly, but that is a matter for the Committee to consider.

Hon. Mr. Bryce: I think it happens to be within my power to show that Sir Robert Stout did not mean to impugn your integrity in any way. This paper had been printed for the information of Ministers previous to its circulation, and a copy was put into Mr. Rolleston's hands and mine. I met Sir Robert on a matter of business in his office, before its general circulation, and we spoke about this. I said to Sir Robert, "I do not believe for one moment that Mr. Fenton has been corrupt;" and he said, "Nor do I. Such a thing as his being corrupt never crossed my mind. I did not mean to make any such assertion at all." This is what took place before the paper was circulated at all.

Mr. Stewart: There is no one thought there was an attempt to charge corruption against him. What is suggested is that he was swayed improperly.

Hon. Sir R. Stout: I may add that a copy of that paper was sent to Mr. Bryce and Mr. Rolleston privately, because it concerned themselves, as they had been Ministers in the Administration when these transactions occurred. I then stated to Mr. Bryce, as he has already said, that I did not mean to charge you, as apparently some papers appear to think, and as I stated plainly before ever the paper was published.

Mr. Fenton: It is very satisfactory to me to hear that, and I am very much obliged to Mr. Bryce for what he said. It now remains to ask if there is any way of making this public before I go to Auckland.

The Chairman: No, Mr. Fenton. Nothing that passes here can be made public until the Committee have reported.

TUESDAY, 20TH JULY, 1886.

Mr. T. W. LEWIS examined.

1419. *Mr. Bell.*] What is your name, Mr. Lewis?—Thomas William Lewis.

1420. You are Under-Secretary for Native Affairs?—Yes.

1421. How long have you been in the Native Office—since before 1873?—I was appointed Chief Clerk in the Native Office on the 1st January, 1873, but I acted as Private Secretary to Sir Donald McLean, who was Native Minister, from the time he came into office in 1869.

1422. You were in the Native Office, therefore, when the Act of 1873 was passed, and during the whole time that the Act of 1873 was in operation?—Yes.

1423. Did you know, in the Native Office, whether the provisions of the Act of 1873 were adhered to by the Native Land Court?—The Native Department was aware that the Act of 1873 was not carried out in all its provisions.

1424. Did you ever form any idea as to the cost of carrying out the provisions of the Act of 1873 strictly?—I never went into any calculations upon the subject; but I know that it would have cost a considerable sum to have carried out all the provisions in regard to District Officers and their duties as laid down by the Act.

1425. I want to call your attention to the sections of the Act from section 21 to section 32, which provide for the duties of District Officers. The District Officers, you see, were executive officers appointed by the Government—they were not officers of the Native Land Court—and their duty was to hold a kind of preliminary inquiry, and ascertain generally the title of Natives, including the preparation of skeleton-maps, &c. Do you know whether that was ever carried out by the District Officers?—I believe those duties were never carried out by the District Officers.

1426. Do you know whether the Government ever called upon them to do so?—My recollection of the matter is that a correspondence ensued shortly after the passing of the Act with regard to the question of the duties of the District Officers; and the difficulty of carrying out those duties, as laid down by the Act, was pointed out by the Chief Judge. The duties of the District Officers ultimately—in fact, shortly afterwards, I think—resolved themselves into stating whether the surveys could be safely carried on.

1427. By "safely" you mean with regard to the peace of the country?—Yes. And in some cases the District Officers attended the Native Land Court to watch the proceedings on behalf of the Government in connection with the Government titles.

1428. This is the point I want to bring your attention to: Did not the department recognize that the Judges of the Native Land Court could not be expected to know upon whom notices had been served—whether those persons most likely to be interested had received notices? Did not that strike you, as Chief Clerk in the Native Office? Judges sitting at Auckland, for instance, could not be expected to know what notice would likely be required by persons interested in a block situated at Taupo or Patea?—Well, I do not think I can answer that question in the way in which it is put. I had better explain that the Native Land Court under the Act of 1873 was under the administration of the Chief Judge, and the Native Office had really nothing to do with the internal working of the Court, and had very little knowledge of the way in which it carried on its work. It was only in 1882, during Mr. Bryce's term of office, that the administration of the Court was brought directly under the control of the Native Office.

1429. But I am asking you as to the duties of the executive officers. Who were the District Officers acting under—the Native Office or the Native Land Court?—I am not aware that the District Officers ever carried out any duties in regard to the issue of notices: the issue of notices was always, I think, carried out by the Court itself.

1430. Not the issue, but the serving of the notices. And the holding of a kind of preliminary investigation, which, it appears, they were expected to hold in the terms of the Act?—That is a portion of the Act which, I believe, was never carried out—as to the preliminary investigation.

1431. I put it to you this way, then: Were not the District Officers officers of the Native Office, and not of the Native Land Court?—That is a question of law, I think.

1432. What do you say, as Chief Clerk of the Native Land Office? I suppose we may ask you that. Do you say they were officers of the Government or the Native Land Court—the District Officers, I mean?—I should have said that as District Officers they were officers of the Court, had the duties been carried out. In fact, they were custodians of the Court-rolls, and so on.

1433. Had the Court any funds with which it could provide District Officers with money for the purposes of carrying out the duties laid down by the Act?—For the purpose of the District Officers' duties, No—not to the extent laid down by the Act.

1434. To any extent at all had the Court funds to provide District Officers?—The Court had no funds under its control. The salaries and contingencies of the Land Court are appropriated by Parliament, and expended under control of the Native Department.

1435. Just so. The Native Department provided funds for the purposes of the duties of the District Officers?—Yes,

1436. *Mr. Stewart.*] Under whose instructions did these officers act—those of the Chief Judge or the Native Office?—The difficulty arose immediately after the passing of the Act, with regard to

the position of District Officers; and the duties imposed upon them by the Act were never carried out as laid down by the Act. The District Officers became, very shortly, simply officers for reference as to whether surveys could be safely carried on in their districts.

1437. *Hon. Mr. Bryce.*] Supposing that clause had been carried out, from whom would the District Officers have received their orders—from the Native Department or the Native Land Court?—I should think that the District Officers, in relation to their duties under this Act, would be under the Court itself. Many of the duties, of course, are prescribed by the Act itself, and, so far, are directed by the Act.

1438. I put it to you this way: Certain things had to be done by the Chief Judge, as administrative officer, which were in no sense acts of the Court?—Quite so.

1439. Would not instructions to District Officers, as has been suggested to you, be rather administrative instructions than instructions of the Court?—I see the distinction you draw, which would have qualified my previous answer. By "the Court" you understand the Court in its judicial capacity.

1440. Yes. What do you mean? Do you mean the Court in its judicial capacity?—I was regarding the Court in its judicial and administrative capacity combined.

1441. *Mr. Bell.*] Well, now, the gentlemen appointed to be Judges, with the exception of Mr. Fenton, were, we have already been informed, not lawyers until the appointment of Mr. Brookfield and Mr. O'Brien. Can you tell me—not precisely, but nearly—when these gentlemen were appointed—Mr. Brookfield and Mr. O'Brien?—Mr. Brookfield was appointed in 1881, and Mr. O'Brien was appointed earlier, but not, I think, until after 1880. Yes—Mr. O'Brien was appointed on the 18th October, 1880.

1442. I want to know if you have, among the records of your office, a formal statement by the Judges of the Native Land Court to the Minister on the difficulties of carrying out the Act of 1873?—Yes. The Judges, in forwarding the first rules prepared under the Act, sent a very long memorandum to the Government.

1443. Would you put it in?—Yes; here it is. It is a very long affair indeed, and it is too long, I think, for reading here, or printing in the evidence.

1444. It is dated 1874, is it not?—Yes.

1445. And is signed by the Judges?—Yes.

1446. Can you say how much attention was paid to that by the Native Minister before the Act of 1880. How far do the notes on the margin go?—To the first page only.

1447. No further?—No, there are no further notes.

1458. *Mr. Stewart.*] In whose writing are the notes?—Sir Donald McLean's, who was then Native Minister. It would hardly do to conclude from the marginal notes that it received no further attention. It was sent round to all the Ministers.

1449. *Mr. Bell.*] How many pages are there?—Twenty-three.

1450. And there are notes only to the third section on the first page?—The notes are before you come to the sections at all, and simply refer to the preamble of the report.

1451. Do you know anything of the circumstances under which Judge Rogan went to Gisborne in the year 1875?—I cannot charge my memory with any specific circumstances. I believe he was sent into the district expressly by the Native Minister to settle the very complicated titles that were in that district.

1452. Was he told to get through his business?—I do not remember any specific instructions given to him.

1453. You do not know of any specific instructions?—No.

1454. But you say he was sent to settle and investigate the titles on the East Coast if he could?—Yes.

1455. And he was specially—I understand you to say—he was specially instructed to do that work?—He was specially detached for work on the East Coast.

1456. Do you know whether he saw the Native Minister—whether he was in personal communication with the Native Minister?—To the best of my recollection he was in frequent personal communication with the Native Minister.

1457. *Mr. Stewart.*] Who corresponded with the Native Office as from the Native Land Court? Did the Chief Judge correspond with you?—The correspondence was chiefly by the Chief Judge. I could not state positively, but the other Judges may have written on occasions to the Native Office. The Chief Judge, however, was recognized as administrative officer to the Court, and conducted correspondence with the Government.

1458. Did you know whether the Chief Judge carried on correspondence with persons who were litigants and persons who claimed to have an interest in the land. Was that the opinion of your department?—I have already explained that the Native Department had no knowledge of the interior working of the Native Land Court Office. It is only recently that the Native Land Court Office has been under the direct control of the Native Office.

1459. *Hon. Mr. Bryce.*] Might I put one question. You have stated that in recent years the Native Department has assumed control in the administrative portion of the Native Land Court work?—Yes.

1460. You draw a sharp line in that respect between the administrative portion and the judicial functions of the Court?—Quite so.

1461. And the Native Department has never assumed any control of the Native Land Court judicially?—Decidedly not.

1462. *Mr. Stewart.*] Can you give the date when this administrative department came under the Native Department—when it was removed from under the Chief Judge?—The Act of 1882 altered the administration. That is to say, the appointment of clerks and everything connected with the administrative work of the office, as distinct entirely from the judicial work, is under the control of the Native Department.

TUESDAY, 20TH JULY, 1886.

MR. BELL addressed the Committee as follows:—

Sir, I have already stated to the Committee—I do not know that it has appeared upon the notes of evidence—that I hold no brief for the owners of the land the subject of this inquiry, nor for the lessees, nor for Dr. Buller. I am not concerned nor interested for them in any way, nor have I any relation of any sort or kind with them. Therefore I may be said, as the Chairman put it to me when I first appeared before the Committee, to appear solely upon Mr. Fenton's petition, which has been referred by separate order of reference to this Committee, and not upon that part of the Committee's duties which arises upon the order of reference on the Bill itself. Neither have those for whom I appear any interest in opposing the rehearing, nor are we concerned in the question whether there should or should not be a rehearing. Again, I wish to say, further, that it is not of any importance for the cause that I advocate that I should contend that the judgments, or the proceedings, of the Native Land Court, were valid in law, or that the proceedings were in every respect regular. But I am concerned to prove that they were honest judgments, honestly delivered, and that the proceedings were taken with a desire of doing right and justice, though perhaps under a mistaken impression of what was law, in the two particular cases which the Committee have to consider. I would like to add this, if the Committee will permit me: that I feel I am better able to advocate the position which I have stated because for the last twelve years I have been engaged in the contests between Natives and Europeans—almost without exception upon the side of the Natives—and have been engaged, like Sir Robert Stout, in attacks upon the Native Land Court and the manner in which it has carried on its functions under the various Native Land Acts. But until this memorandum appeared annexed to this Bill I say that no one engaged in such contests ever heard a suggestion or whisper against the honesty of Judge Fenton, or the honour and reputation of either of the two gentlemen who are made the subject of animadversion in this memorandum—I mean Mr. Fenton and Mr. Rogan. It has been contended by many—and by myself, perhaps, as much as any—that the proceedings of the Native Land Court have been too summary; but until this memorandum appeared we have never heard a suggestion of bad faith or misconduct on the part of Judge Rogan or Chief Judge Fenton.

I propose, before I sum up the effect of the evidence, to ask the Committee to allow me to refer very briefly to some of the provisions of the Native Land Acts, in order to show the position of the Court when it dealt with these two blocks. The Act of 1865 had remained in force with immaterial amendments, if I except the amending Act of 1867, until 1873. By section 6 of that Act—of 1865—the first Judges held office during good behaviour. They were in the same position as Judges of the Supreme Court. By section 13 all administrative business was given to the Chief Judge, and section 21 and the sections on to 29 provided for the investigation of title. Now, I am not going to read the sections, of course; but their effect is this: Section 21 provided for the making of application to the Court, and section 22 provided that upon receipt of the application notice should be given by the Court, and circulated in such manner as to give due publicity thereto, and by the same notice or subsequent notice it was to be notified when and where the Court would sit. Then, section 25 required the Court, before it proceeded with the inquiry, to have before it a correct survey; but that was a requirement which was practically dispensed with by section 71, which provided that upon any investigation it should be lawful to proceed without a regular survey. Such, Sir, were the provisions of the Act of 1865, under which the Court was acting when the Act of 1873 came into force. The Judges of that Court were not lawyers, with the exception of the Chief Judge, in whom the whole administrative functions were vested. They had been carrying on their business under an Act which required them to give notice in a way which they should think best calculated to bring the notices to the knowledge of the Natives. Then they were allowed to use imperfect plans. That was the method in which they had been proceeding from 1865 to 1873; and—addressing the Committee, some of whom are lawyers—if I am permitted to refer to this point, I think it is utterly preposterous to suppose that before arriving at a judgment *in rem* the Court could prove service upon every one interested. When any Court deals with any matter *in rem* it provides by some method or other for service upon all the world. Every judgment *in rem* binds all the world, and the Court determines some method by which all the world shall have notice. Throughout Sir Robert Stout's memorandum there appears a criticism upon the non-service upon persons in the Patea District. People might have turned up who were interested at Akaroa. Non-service upon certain Natives is no proof of any misconduct of the Court. It is only evidence which would justify a rehearing. Then I pass on to the Act of 1873. The Act of 1873 altogether altered these provisions of the Act of 1865. The Act of 1873 was intended to insure by some means that the Natives interested in any particular block should be informed before the sitting of the Court what the Court was engaged to inquire into. Now, a most important provision of the Act of 1873 is section 8. The Judges had previously held office during good behaviour, but they were now to hold office during pleasure, and were no longer independent Judges, and they were subject to the instructions of the Government as to where they should sit, and various administrative details. There was, of course, no control over their judicial functions; but still their position was entirely altered by section 8 of the Act of 1873. The other sections have been referred to in the evidence, and I desire only to shortly refer to them. Section 16 provided for the vesting of administrative functions in the Chief Judge, and section 33 provided that surveys should be a necessary preliminary, and there was no longer any section which allowed the Court to proceed without an accurate initial survey—a survey approved by the Inspector of Surveys. A more absurd provision was never inserted into any statute, I believe. It was found utterly unworkable, and was abolished in 1880 by Parliament for this reason: that the boundary was often the very thing in dispute; and to bring before a Court a complete survey-plan was to bring before the Court as finally settled that which was the matter in dispute. That is the most absurd provision that is to be found in any statute in the colony; and, Sir, upon the effect of this section a great deal of this memorandum turns, because you know from Judge Rogan that he absolutely could not have pro-

ceeded with any of his cases had he insisted on compliance with its provisions. In no case was there any complete survey before him. As he tells us, at Gisborne he would have had to send over four hundred Natives to their homes if he had insisted upon this provision. It became the practice of the Court—a practice which, I think, though irregular, was not improper or unjust—to proceed upon a sketch-plan, and postpone making the order till a correct plan was before the Court. That is to say, the Court always directed a survey to be made, and at the investigation it minuted that the memorial of ownership would be issued directly the plan arrived. That was not strictly in accordance with the law, and I frankly admit that it was not. But it was required by the state of the Native title throughout the country. At that time a very small portion of the country had been investigated, and it would have been monstrous to say to the Natives that their land could not be investigated till a full survey was before the Court, in accordance with the statute. I have referred to this section specially, because very much of Sir Robert Stout's memorandum turns upon it. What Judge Rogan did in the Owhaoko Block was in pursuance of the practice of the Court of avoiding the effect of section 33 Then, by section 35 applicants were required to send notice to each person whom they believed to be interested, and it was provided that the applicants should satisfy the Court, at the sitting for the hearing of the claim, that they had served such notices. Now, Sir Robert Stout's memorandum refers to this in several places. He says there is no entry of any proof of service upon the minutes. Well, section 35 had really no application; and for this reason: Applicants never admitted the title of any one else in applying for an investigation into a block. When I say "never," I should say "seldom," perhaps—they seldom admitted that there were any other persons entitled. Those who know anything of Native cases, or the investigation of Native titles, know this: that if you ask a Native to whom the land that is to be investigated belongs, he says "It is mine;" and therefore the provision which bound the applicants to serve notices upon those whom they believed to be interested other than applicants was entirely ineffectual. Section 36, however, which required that copies of the notice of claims should be sent to District Officers for their reports upon them, and also required that such notices should be inserted in the *Kahiti*, was complied with strictly. Section 37 was also in part complied with, though not to the extent which the Act contemplated, for a reason that I shall shortly refer to. Section 38 requires that the Judge shall make preliminary inquiries as to the *bona fides* of the claim; and when he shall have satisfied himself on that point he shall order a survey of the block to be made, and shall minute how he was satisfied. This was impossible. For instance, with reference to these very blocks it would have required the Judge to go to Patea, and make a preliminary investigation, and then, after having satisfied himself as to the result of those preliminary inquiries, to hold a second Court again at Patea for the purpose of investigating the same title. Why, those who know anything about investigations of Native title know that any attempt to carry out such a procedure would have been perfectly hopeless, because the Natives would not have met twice for the purpose. In fact, the first investigation was the only one; and that clause was struck out of the law in 1878 by Parliament, which repealed section 38, and provided that all titles that had been granted without a preliminary inquiry should be as good as if there had been a preliminary inquiry. Section 41 requires that the Court should have satisfied itself that the notices "hereinbefore" required to be given had been duly served, and should ascertain the title. This, then, was what was required in the way of notice. It was required of the applicants that they should serve those whom they believed to be interested, and it was required of the Court to issue notices of the claim in such a way as to enable every one to know of the sitting of the Court; but the Act did not require any personal service by the Court or the officers of the Court in any single case; and there never were, or seldom were, any persons whom upon investigation the Court could find that the applicants *believed* to be interested, and who had not received notice. But there were also provisions, from sections 21 to 32, inclusive, which required the District Officers to perform certain functions which were never carried out. It was for the Government to find the funds for the carrying-out the duties of the District Officers, as Mr. Lewis has told us; but those functions were never performed, and their duties were resolved into an inquiry whether the peace of the country was likely to be disturbed. Then, section 103 of this Act of 1873 provides for the sending of cases to the Supreme Court. I only refer to this here (I shall have to refer to it again in a moment) as being in the order of the sections which I think are material for the Committee's purpose. Section 104 is, I think, however, of very great importance. It provides that the Judge may at all times amend all errors in any record of proceedings of the Court, and may make such amendments as may be necessary. I wish the Committee to give special attention to the latter part of the clause: "and for the purpose of this provision everything done in or by the Court or the Judge shall be *deemed to be a proceeding in the Court* up to the issue of the memorial of ownership." Now, I ask any honourable member of this Committee who is a lawyer to say whether that does not provide that the Judge may make any amendment at any time, and when he makes any such amendment he shall be deemed to have made it in Court. I submit with every confidence that section 104 is a sufficient answer to the paragraphs in the memorandum in which Sir Robert Stout comments upon the alterations which were made by Judge Rogan, or by the Clerks, in the minute-book, and upon Judge Rogan in connection with the issuing of memorials the dates of which did not correspond with the Clerk's entries in the minute-books. I submit that section 104 is a complete answer to any part of the memorandum which attacks Judge Rogan's action in that respect. I have already stated that the section of the Act of 1873 which required a preliminary inquiry was repealed in 1878 as useless and unnecessary; and I say the Legislature recognized that by confirming the titles which had been granted without a preliminary inquiry. And it also provides—the Act of 1878 provides—for a provisional survey—that the Court may proceed upon a provisionally-certified plan without having the complete survey which had previously been required by the Act of 1873. In 1880 the House stepped in and abolished every one of these provisions of the Act of 1873 upon the non-compliance with the strict language of which the Attorney-General so strongly comments. In 1880 the Act of 1873 was practically repealed—all that was repugnant to the Act of 1880 was

repealed; and I do not know—perhaps this Committee knows—which part of the Act of 1873 is not repugnant to the Act of 1880.

Mr. Stewart: Do you mean to say that by this section (104) when a Judge found he had made an erroneous decision he could reverse it in chambers?

Mr. Bell: No. Having made a decision, he could amend an error in the minute at any time prior to the issue of the memorial, to make his order correspond with the true facts of what was done. Sir Robert Stout says that no Court sat on the 2nd of December, and that the order was signed at a time and as of a date when no Court was sitting; but section 104 provided that everything done, whether the Court was sitting or not, should be deemed to be done in Court, provided it was done before the issue of the memorial of ownership.

Mr. Stewart: That is only for the purpose of correcting errors?

Mr. Bell: Yes, of course—not matter of substance. The Act of 1880 I only desire to refer to for a moment or two. Section 17 of the Act of 1880 provided that the application should contain a description of the land, what tribe and hapu, and a statement that the boundaries had been marked out by the owners, and, if a plan had been made, a statement that it had been deposited in the Court.

Mr. Seddon: Without interrupting you, I would like to know if you mean that one Judge had power to alter what another Judge had done.

Mr. Bell: No, I should say not; but a Judge up to the issue of a memorial could correct any error. In this case it was done by Judge Rogan only, and had nothing to do with what was done by another Judge. Section 19 provides that copies of notices of the opening of the Court should be forwarded, a reasonable time before the sitting of the Court, to the Commissioner of Crown Lands in the district in which the land was situated; and section 20 provides that after the receipt of the application notice shall be given by the Chief Judge in such manner as appears to him best calculated to give proper publicity to the same, and by the same or subsequent notices it is to be stated when the Court will sit. Such are the provisions of the Act of 1880. I submit that Parliament must have known that what was required by the Act of 1873 was impossible, and must have known that what had been done under the Act of 1873 was done because strict compliance with the Act of 1873 was absolutely impossible; and by the Act of 1880 Parliament directed that notice in the ordinary way, such as other Courts proceeding *in rem* require—a notice published in some sufficient manner—should be given to the world, inasmuch as it was impossible to personally serve everybody. Mr. Fenton explains that in the case of the Patetere Block it turned out that the Natives interested resided from Auckland southwards down to Napier on the East Coast, and to Porirua on the West Coast; and that shows how absolutely absurd it would have been had the Judges under the Act of 1873 required personal service upon everybody who ultimately turned out to be interested. Now, I have shown what were the provisions under which the Judges were required to act; and I have shown that strict compliance with the Act was, if the correct plans were insisted upon, if a preliminary inquiry was held, or the applicants were required to prove that they had served notices upon those whom they believed to be interested, impossible, or, if not quite impossible, would have involved the necessity of such a staff of officers as the Government would never have provided.

Now I come to the particular inquiry into these two blocks. You will find, Sir, that notices under section 36 were sent out to the District Officers on the 5th April, 1875. That is not mentioned in the memorandum, but you will find the fact recorded in the record-book, page 70, and you will find that the *Panui*, or the notice for sitting on the 16th September, bears date 9th August. We have the evidence of Mr. Bridson that such notices were invariably sent out to the District Officers and others, for service upon such persons as might be supposed to be interested, within a week from the day on which they bore date. And so there would have been, so far as the officials in Auckland knew, at least three weeks' notice of the Court sitting. It would give a month from the date of posting. I am not able to say whether there was a *Kahiti* between the 9th August and the 7th September, because a portion of the only file of *Kahitis* to which I have been able to refer is missing. Sir Robert Stout states that the *Gazette* of the 7th September contains notices of this Court. I apprehend that it is quite possible that the reason why there were no *Gazette* notices before that date was that there were no *Gazettes* between the 16th August and the 7th September. We have it in evidence that, even if there were, the *Gazette* would not be sent out, but that the *Panuis* would be distributed by the hundred. But, if it was not gazetted till the 7th, that was not the fault of the Native Land Court, for the *Panui* must have been received in Wellington shortly after the 9th August, and the Native Land Court had no control of the *Kahiti*, which is a Government publication published at Wellington. Now, coming to the Kaimanawa–Oruamatua Block, I do complain of the way in which this memorandum states the evidence. I complain of it because I think that it does not state the case fairly for the information of those who are not acquainted with the proceedings in the Native Land Court. The memorandum gives Renata's and Noa Huke's evidence, and it says "two witnesses only were examined." That is true if you restrict the word "examination" to examination on oath. A reference to the minute-book shows that what took place after these witnesses were examined was this: Objectors were challenged, and then Te Hapuku, a great Napier chief, came forward and said there were no objectors to the claim put forward, and Meihana, another great chief, said there were no objectors on his side. Now, I submit that it is not a fair statement to say that only two were examined, for it was of great importance to the Judge when arriving at his decision to know that there were two great chiefs who said there were no objectors. The decision upon the Kaimanawa Block was that when the map came to hand—a sketch-plan only being before the Court—a memorial of ownership would be prepared. Now, that was not, strictly speaking, in accordance with the Act; but it was in accordance with the practice, and a practice which was perfectly proper, and was, indeed, necessary to give any effect to the Act at all. I omit here the reference to the Owhaoko Blocks, because I am coming back to them. I find that Mr. Rogan's action after hearing Noa Huke's

evidence is called in question with considerable severity in the memorandum. Mr. Rogan's explanation in his evidence to the Committee was that the Natives of whom Noa Huke spoke did not attend the Court, but he got from Noa as many names as he could and he put these in the memorial. Renata said that that was all who were interested, and the Judge says he consulted Hone Peti, the Assessor, and that Hone Peti recommended the course adopted. There was only one other course open, which was to adjourn the Court until these Natives should come from Patea. The Natives, so far as the Judge knew, had had ample notice, and he supposed they were as little likely to come to the Court on an adjourned sitting as on the first. There was at that time no knowledge of any non-receipt of the notices. So without adjourning the Court he put these names in the memorial. He does not seem to be satisfied himself. Mr. Rogan's explanation is the simple explanation of a man who had, I submit, very good reason for acting upon the evidence of a chief like Renata, whom he knew to have a mana over the land, and who everybody in Court admitted had the mana. This is all that there is about the Kaimanawa so far as Judge Rogan is concerned, except that in the memorandum at the top of page 4 is a reference to his having given advice to the late Sir Donald McLean. Upon that I may say I do not think that the statement in the memorandum is a fair summary of what took place, though of course I admit that it was difficult to make a fair summary sufficiently brief for the purpose of this memorandum. What did take place, it will be seen by reference to the papers on the table of the House, was that there was before Sir Donald McLean not only the application for rehearing, but also a letter from Renata in which Renata declared that that application was signed by only one man, and that there were no real objectors; and then there is a letter from Judge Rogan in which he says he knew that the Natives could have come in time, and that he could prove that the statement that they had not time was incorrect. As a proof that their statement was incorrect, that they had to ride three days and three nights, you have Captain Birch's evidence. You must remember that at this time there was fresh in Mr. Rogan's memory the fact that Captain Birch had come down, and probably he knew the time which it had taken Captain Birch to come. And he knew that the statement of the Natives that they received the letter on the 13th, and had to ride day and night to attend the Court, must be a misrepresentation of fact. It was not sufficient notice—we agree as to that; but they had taken upon themselves to state that they had to travel night and day for three days and nights, and he could prove that that was incorrect. Now, he does not say that they had received the notice in time to appear: all he says is that their statement was untrue. That will be found among the papers on the table. There was no doubt they had time, because it only occupied Captain Birch less than eighteen hours to get from his place to Napier.

The Chairman: Twenty-six hours, including stoppage for the night, Captain Birch stated.

Mr. Bell: Yes: that would be about eighteen hours' riding.

Mr. Stewart: They said they did not start till the next day, on account of having to catch their horses.

Mr. Bell: That is so. Well, that is all as to the Kaimanawa. I say there was nothing in the investigation of the Kaimanawa Block which throws the least reflection upon Mr. Rogan's good faith or honesty. Now, as to the Owhaoko. The Court had before it on the 16th September a rough plan of the smaller blocks. The Owhaoko No. 1 and No. 2 are the two smaller blocks. The Court had not before it the larger block. What it was really investigating, then, was what is called the school reserve. Now, I complain here, again, of the memorandum. The writer sees fit to give Renata's evidence and Noa Huke's evidence on page 2 of the memorandum, and says, "The evidence is given in the first person, and I have no doubt it has been minuted in full." That is not, I submit, correct. The minute-book shows that upon the challenge of objectors none appeared, and that then Renata Kawepo and Noa Huke were recalled. It does not give the evidence of Renata Kawepo or Noa Huke upon their recall. I submit that it is not a fair statement to say that the writer has no doubt that the evidence was minuted in full when the minute-book shows it was not. A mere slip, of course; but it is a matter of great importance, because the recall shows that the Court did take some further trouble about the matter, though it did not minute the further evidence in full. The effect was given in a clear entry. Then, on the top of page 3 the memorandum remarks that it was peculiar that a Judge should, knowing there were other owners of the land, have, without their consent, stated that he would order a memorial to be issued to the people present. He did say that in effect, no doubt; but he did not issue any memorial whatsoever upon that inquiry. I do submit, Sir, that that fact should have been stated in the memorandum, and should not have been left to inference, or the careful perusal of those who might critically scan the whole document. He did not upon such evidence make a memorial of ownership. He did not issue a memorial upon the proceedings on the 16th September; 1875, for the whole thing was done afterwards, practically, *de novo*. The next date we have is the *Gazette* of the 27th June, 1876. The Court sat on the 27th July, 1876. That is on page 4 of the memorandum, in the middle of the page. The writer says, "No boundaries are given in the notice to the Natives." I complain of that statement, because the writer omits—I presume by accident—the fact that this notice on page 4 appears in the *Gazette*, headed as follows: "Adjourned Claims—boundaries will be found in the previous *Kahiti*." No doubt, that is not giving the boundaries in this notice; but I do submit that in a memorandum to be presented to Parliament, which attacks the character of several gentlemen, it was not sufficient to state that no boundaries are given, and to omit the fact that the notice was headed, "Boundaries will be found in the previous *Kahiti*." I think that fact should have been stated. It is not usual to repeat boundaries in the notice of adjourned claims. Then it is stated in the memorandum a little lower down that the Native Land Court at Napier was about a hundred miles distant from the homes of these Natives, and by a road almost inaccessible. That is not correct. It was proved not to be inaccessible, for you have the evidence of Captain Birch of its easiness of access. These statements characterizing the position of the Native Land Court as being so situated should have been more carefully scrutinized by the honourable gentleman when presenting such a document to Parliament. These people of

Patea had far easier access to the Court than it was, unfortunately, usually found practicable to afford. The Court sat on the 1st August, 1876, to investigate the title to the whole of the block, comprising Owhaoko proper and Owhaoko Nos. 1 and 2. It had before it a plan which showed 164,500 acres, and therefore must have been a rough sketch-plan. Indeed, we know from what happened afterwards that it was a rough sketch-plan; and again I do not agree that the Court acted improperly, though perhaps not strictly within the Act of 1873, when it sat without having an absolutely correct survey before it. The memorandum now says that "the only evidence was as follows," &c. That is at the foot of page 4. It gives the evidence of Renata Kawepo; but I again submit that that is not the whole of the evidence, because the minute-book shows that objectors were challenged, and "Wiremu te Ota said that there was not one objector. The only person he knew to own the land was Renata Kawepo himself." Surely it was of importance to know that a Native in the Court stood up to say that Renata was the only person they knew to be interested. I admit that the statement is correct in strictness that Renata was the only witness examined; but that is because he called no one else but himself. Then it was for the Court to ascertain whether there is any other person interested; and on that being done Wiremu te Ota got up and said Renata was the only owner. I submit it was not fair to Judge Rogan to leave this important evidence out of the memorandum.

The Chairman: You will observe that on page 5 there is a quotation from the minute-book saying that some person got up to substantiate his claim.

Mr. Bell: Yes, I am so far wrong in that. That is in the minute of the finding of the Court. But the learned writer of this memorandum has omitted altogether what appears on the minutes about the challenge of objectors, and the name given of the chief who made this direct statement that they knew no other owner. The minute quoted in the memorandum is very vague. Some person had stood up and substantiated "his" claim. It ought to be "Renata's" claim. This was the whole of the case before the Court as to the examination of this title. The minute says "as to Blocks I. and II. a memorial of ownership will be issued;" and this is a point at which there arises the question of the accuracy of the minutes. The Court said that, as soon as a corrected plan was produced an order would be made. The Court was here dealing with the whole block, including the subdivisions. It seems that the Court adjourned to Porangahau; and on the 2nd December the Court was sitting there. On that day, while the Court was sitting, Mr. Maney came down to the Court with plans of the Owhaoko No. 1 and Owhaoko No. 2. And the same Judge who had previously ascertained the title of these blocks subject to the production of the plans (having had evidence before him of the persons entitled; for he had evidence in 1875 as well as 1876) on the 2nd December, 1876, told the Clerk to make a minute of the receipt of these plans, and that an order should be drawn up for the issue of a memorial for Blocks I. and II. On the 2nd December, while the Court sat at Porangahau, a minute was entered by the Clerk of the Court which was altogether erroneous. There is no question that as it was entered it was quite wrong from beginning to end. It does not pretend to have been made as of a previous date, and nobody pretends that it was a minute entered at the sitting of the Court. It was simply ordered by Judge Rogan that a minute should be entered recording what had been done, and what was to be done in consequence of the receipt of the plans. And when they got to Gisborne it seems to have been found out that this was altogether wrong; and the clerks, without consulting Judge Rogan, proceeded to remedy the mistake which had been made in the entry of this minute. And then, about the 7th December, at Gisborne, it was determined by Judge Rogan that he could not issue a memorial for the large block until he got a more complete survey. And he then ordered a memorial to issue for the two smaller blocks. And I submit that, though this was not perfectly regular, yet the entries in the minutes were made honestly by the clerks; and, though they did not represent accurately what was done, there cannot be the slightest suspicion left in the minds of the Committee that the minutes were "cooked" for the purposes of justifying some action which was taken upon the order of the Native Land Court. I say that this, though not regular, was not in the slightest degree improper. In fact some "taking the bull by the horns" was necessary in order to prevent technical difficulties from interfering with the just administration of the Native Land Acts. If the investigation was held, then the Judge rightly refused to allow technical objections to stand in the way of a memorial. It was not likely that the Natives would again meet to hold a fresh investigation into the title upon the receipt of the full survey. There was an entry, "No order" in respect to the large block; but that was clearly a mistake. There had been the same resolution of determination of title with respect to the large block as to the small ones; the only difference was that the plan of the large block had not arrived, and did not arrive until after the plan of the smaller blocks. And so you find that the memorial of the smaller blocks was issued in 1876, whereas the memorial for the larger block was not issued until October, 1877, and was then issued upon the receipt of the proper plan. Now, there is an end of Mr. Rogan in the matter. He comes no longer into the memorandum or into the proceedings of the Court. And I venture to be confident upon this statement, which I believe to be a correct summary of the facts as they have been proved before the Committee, that the Committee will not hesitate to acquit Mr. Rogan of the slightest imputation upon his character. I assure the Committee with all the earnestness I can bring to such an assurance that Mr. Rogan does feel that this memorandum is a slur upon his character. It is impossible to treat it otherwise. It is not openly asserted, but one cannot help feeling that it is suggested, that Mr. Rogan's action was not that which an honourable man would have adopted; and it is, to say the least, suggested that there has been a "cooking" of the minutes of the Court for the purpose of supporting improper and irregular proceedings of the Native Land Court. Mr. Rogan feels that that has been suggested against him; and he appeals to the Committee—and to Parliament through the Committee—which has heard his evidence not to pass this matter over in silence, not merely to conclude that it is impossible for any one who reads this evidence to say there is any suggestion of improper conduct against him, but to accord him that specific acquittal to which he is entitled at the hands of Parliament. For

I submit that he has been libelled to Parliament, and is entitled from a Committee of Parliament to a statement which shall appear in the Appendix to the same Journals as shall contain this attack upon him—a statement that he is free from imputation of improper or dishonourable conduct.

Then comes in Mr. Fenton. And it is very extraordinary that he from the first recommended a rehearing. No doubt that is fairly stated in the memorandum. I say it is extraordinary for this reason: that it appears Mr. Fenton did exactly what the writer of the memorandum would have desired him to do. He recommended the rehearing of the case, and insisted upon obtaining a rehearing. It was through his exertions mainly that the rehearing was granted and the Order in Council made. He had determined that, so far as he was concerned, the matter should be thoroughly investigated. The Supreme Court, upon a case stated, held that he had power to reaffirm the original judgment; but he had himself held that he had not that power, and that the land was open as Native land under the Act of 1873.

Mr. Stewart: You will observe on page 18 that, in this order signed by Judge Fenton, he says at the end of it, "Upon such rehearing it was ordered that the original decision be affirmed and that the former order of the Court be confirmed accordingly." There never was, in point of fact, any such decision.

Mr. Bell: No. The order was drawn up by Dr. Buller; and I do not know that it is usual for Judges or any one else to take much trouble about the form of the document. I am glad you called my attention to it. But, as I say, the order was drafted by Dr. Buller; and the result of it was practically as the Supreme Court decided the point, though the judgment of the Native Land Court is slightly misrepresented. I here specially desire to call the Committee's attention to this fact: that throughout the papers there is but little to remind Mr. Fenton that there were Patea applicants for a rehearing as distinct from the Taupo applicants.

WEDNESDAY, 21ST JULY, 1886.

Mr. Bell resumed his address.

The Committee will find that the letter of Heperi on page 3 was sent to Mr. Fenton; but will also find that, of the blocks which Heperi mentioned in that letter, two only had actually been dealt with, and six had not. You will find on page 13 of the papers on the table that the minute on this letter was that the claims had been received only for Owhaoko and Kaimanawa. On this Mr. Fenton minuted, "Acknowledge, and send forms." So that the Committee will see that the attention of Mr. Fenton was drawn to a complaint respecting eight blocks, and the Clerk minuted for his information that, as to six of them, no application had been received, and all the Clerk had informed Mr. Fenton as to the remaining two blocks was, that claims had been received. He did not tell him that these two had been investigated. Six of the eight had actually not been investigated; so that Mr. Fenton's attention was not called specifically to the complaint that the Court had sat and investigated two. I call attention to this because there was nothing in the information that Mr. Fenton had before him upon that letter to show him that the Court had actually sat and investigated the title to these two claims out of the eight. Then, passing on, you will find, and, no doubt, with surprise, that when the Native Office made difficulties as to whether this rehearing could go on—made difficulties, that is, as to whether the time had not elapsed—Mr. Fenton, in the middle of page 8, on the 3rd November, 1879, pointed out that it was clear that the rehearing could and ought to go on. Everything was regular. Not only that, but on the 16th October, 1879, again on page 8, Mr. Fenton reiterates to the Native Minister his desire that the rehearing should be granted. He calls his attention to the fact that the application had not been at that time granted by Order in Council. But here, again, the Committee will see that Mr. Fenton is referring to the Taupo grievance as distinct from the Patea grievance. The rehearing which he had recommended was on the Taupo application. The insistence by him that the rehearing should go on referred to the grievance of the Taupo Natives, and there is nothing to show that Mr. Fenton knew of any grievance by the Patea applicants other than the letter of Heperi, to which, I have referred, and, I think, explained. He may have seen the letter of Captain Mair, which is in page 8, dated 13th October, 1879; but that paper was on the Native Office file, and not on the file of Mr. Fenton's Court. Therefore it would not probably be before him on any occasion when he was considering this matter. And when he called the attention of the Minister, on the 16th October, 1879, to the fact that the Order in Council had not been made, it is noticeable that he referred only to the application of the Taupo Natives, showing that at that time he had not in his mind the fact that anybody but the Taupo Natives felt aggrieved. As to the comments in the memorandum, on the top of page 9, upon the date of the order of the 31st October, 1877, I have already pointed out that the Court had power, at any time before the issue of the memorial, to make an order, whether the Court was sitting or not, and that the order so made would be deemed to be an order made in the Court. I submit that the date which was put in—namely, the 31st October, 1877—as the date of the adjudication was, in fact, the true date of the adjudication; as I have already pointed out that what Judge Rogan did was to determine who were entitled to be named in the memorial, and that a memorial should accordingly issue when the correct plan should come before him. I submit that, the Judge having taken that course, the order properly bears the date of the day when, the plan having been received, he signed the order. That, I submit, disposes of the part of the memorandum which bears upon this date which was put in the order respecting the larger block. There is a comment also upon the Order in Council in page 9. There, no doubt, was a mistake. The date in the order, I submit, was correctly stated; but no doubt it was a mistake to say that the order was made at Porangahau. The Committee have seen how that error arose. The order as to the two smaller blocks was made on the 2nd December, 1876, at Porangahau. That is to say, that is the date that Judge Rogan, having received the plan, directed the Clerk to enter a minute that the memorial for the smaller blocks should issue. No doubt there is a mistake in this notice; but it

is a mistake of no importance at all, and the Committee can now see how the mistake was allowed to creep in. The Clerk has mixed up the date of the 31st October, 1877, with the 2nd December, 1876, and has filled in the place "Porangahau," which was properly applicable to the order as to the smaller blocks. It is a trivial error; but it is made the subject, not only of comment, but of notes of admiration in the memorandum, and therefore I presume that the writer thought it was of some importance. However, the notice, as the date will show, was a recital of the Order in Council. We have already been informed that the Order in Council was not drafted at the Native Land Court Office—we have been informed that it was done in Wellington by Wellington officials, officials of the Native Department; and the notice Mr. Dickey drew up recited the Order in Council. No doubt the information for the Order in Council may have been obtained in some manner from the Native Land Court Office; but the origin was in the Native Office, and the Government was responsible for it. Now, on pages 9 and 10 of the memorandum it is suggested that Mr. Fenton was in communication in Wellington with Dr. Buller and Mr. Studholme. "Suggested," I say, because the memorandum uses these words: "At this time Judge Fenton was in Wellington, and the people who suggested to him that the case had been reheard must have been residents in or visitors to Wellington. Clearly it was not the Taupo Natives; and one can only infer who suggested it by the other surroundings of the case." I very much complain of suggestions of that kind made against a private person by a gentleman to whose word so much weight would be attached as the Premier of the colony. And I submit that the evidence has dispelled the inference which the writer of the memorandum sought to draw from the circumstances to which he alludes. For Mr. Fenton's evidence has disposed of the inference that the rehearing was postponed, to the damage of the Taupo and Patea Natives, at the instance of Dr. Buller or Mr. Studholme. The words from which I draw that inference are: "His object appears to have been, not, however, to obtain any redress for these Taupo claimants, but to get an adjournment of the Court, and that without consulting the claimants who resided at Taupo, or any person acting for them. Notwithstanding the enormous delays they had already been put to about their rehearing, Judge Fenton adjourns the Court *sine die*." Now, Mr. Fenton explained that he was in Wellington in attendance upon the Government; and the Committee will remember that in that year the important Act of 1880 was passed—an Act which could not very well have been passed without the advice and the assistance of the Chief Judge. And I believe it was passed late in the session of 1880. Mr. Fenton has explained that he did not know when he would be able to leave Wellington—when he would be able to get away from the duties which he was compelled to perform in connection with the passing of the Act of 1880. And therefore (not for the reasons suggested in the memorandum) he adjourned the rehearing *sine die*—because he could not fix a date. As to Dr. Buller's object in asking for an adjournment, I know nothing, and have nothing to say. Whether it is proper to attack an absent man I do not know; but, at all events so far as I can, I will abstain from doing so. However, Dr. Buller told the Chief Judge that some of the applicants resided at a considerable distance from Napier. I do not think that the Chief Judge would have been justified in assuming, as the writer of the memorandum assumes, that the gentleman who so informed him had some sinister object, and was practically endeavouring to work the interests of his clients by misrepresentation to a high judicial officer. Then I come to the telegram of the 26th July, 1880, and the comments of the memorandum upon that telegram. Mr. Fenton, giving his evidence before the Committee, was bound to tell the truth with reference to that telegram. It happened that the truth reflected upon Dr. Buller, and we could not by any possibility help doing so. Mr. Fenton and myself feel the unpleasant position in which we have been placed in having to refer to this matter. But we are not answerable for that position. The writer of the memorandum knew that Dr. Buller was absent from the colony; and the comment upon this telegram necessarily drove us into what has been a very unpleasant position—the contradiction of statements made by an absent man, who is not here to meet that contradiction. I say we were driven into that position by the writer of the memorandum, and I complain of being compelled to elicit evidence upon that point; but I felt bound to elicit it from Mr. Fenton, who positively denies that he did give the advice which he is stated to have given by Dr. Buller's telegram to Mr. Dickey of the 26th July, 1880; though he says frankly that he sees nothing improper in the course which is attributed to him by Dr. Buller, and that he should not consider it improper to advise litigants in his Court to see if they could not make terms among themselves. He denies that he said what was attributed to him. He did not see the telegram till long afterwards. It had been sent to Auckland, and he did not reach Auckland for some time afterwards. He has explained why. He was at Auckland for a short time, then he held his Court at Napier, and then he went to fulfil his duties as President of the Thermal Springs Commission before he returned to Auckland again. He says he did not see the telegram for a long time afterwards. Then it is suggested that when he did see it he ought to have taken some action to clear himself in the matter.

Hon. Sir R. Stout: You have mixed up this explanation with another matter. The going to the Thermal Springs was in connection with his going to Napier.

Mr. Bell: The explanation was given in connection with that, but it applies equally to this. I was saying, however, that it is suggested that he ought to have taken action immediately to clear himself. What action he should have taken I myself am unable to understand, nor what object there would have been months afterwards in entering into a controversy with Dr. Buller. I do not think that would have been a very dignified course, and I do not think it would have been consistent with the dignity of the Chief Judge to have entered into any discussion of the matter.

Mr. Stewart: Could he not have written across the telegram, "This statement is untrue"?

Mr. Bell: Yes, certainly. I suppose he could have done so, but I do not think there was any necessity for him to do so. No doubt he would have done so if he had thought that he was to be subjected to an attack of the kind he has been subjected to. I think the natural impulse of any man is to take some action in a case of this kind; but his well-considered course is to let it alone. Such a telegram as this was likely to cause him to take some action; but his well-advised action was to

leave it alone. Then, lower down on page 10 there appears a telegram from Mr. Bridson, of the 11th October, 1880, stating "that the Chief Judge wished to know if the signatures were in the writing of one of the several claimants, and what are the names attached." Then follows the comment upon that, "For what purpose did the Chief Judge require this information? Was it to enable Mr. Studholme, through his solicitor, Dr. Buller, to interview the applicants for a rehearing?" You will notice throughout this memorandum that it is not the tone of a Minister of the Crown advising Parliament, but rather that of a counsel for the prosecution endeavouring to make out his case against those whom he has considered it his duty to attack. The Chief Judge says he has no recollection of the matter, but he has no doubt that Mr. Studholme, in the exercise of the right which the statute had conferred upon him, had asked for the information, and that he had ordered the information to be given. He has no doubt about that, because it seems he afterwards ordered that the information should be supplied to Mr. Studholme. As he puts it, it was simply a matter of fees. No doubt Mr. Studholme ought to have paid the fees for this information; but, as Mr. Fenton puts it, he was entitled by law to it, and he obtained it. I submit with every confidence that that was the law. Then, passing to the telegrams on page 11, the Committee will remember one of the documents, which is called an undated memorandum. This, which asked Mr. Hamlin to open the Court and adjourn it till Monday at two, followed the memorandum of the 27th October, "Application for rehearing is withdrawn." I may say I cannot complain upon that point; because I quite admit it was possible for anybody reading these papers to be misled by the manner in which the minutes were written across the paper. I only refer to it as explaining what really happened, and to show the Committee what the evidence amounted to. What it comes to is this: On the 25th October Mr. Dickey wrote a memorandum to Mr. Fenton to say that he (Mr. Dickey) had been asked to order Mr. Hamlin to open the Court and adjourn it till the 1st proximo. Mr. Dickey said he had delayed doing so until he received further instructions, as the rehearing must be called on before the 31st instant. Now, that did not come before Mr. Fenton till the 27th, the reason being that he was not at his office on the 26th. So, on the 26th Mr. Dickey, not being able to get hold of Mr. Fenton, sent a telegram which he had been ordered to send.

Hon. Sir R. Stout: Ordered verbally—not in his handwriting—you mean?

Mr. Bell: Yes—ordered verbally. Mr. Fenton had verbally ordered Mr. Dickey to send the telegram, as the Attorney-General points out. Then there comes this: that on the 26th, or, rather, on the 27th, a telegram had arrived from Dr. Buller, to say that the withdrawal of the application for rehearing had been fully signed. Then Mr. Fenton minutes that the application for rehearing is withdrawn, and then he says, "Ask Mr. Hamlin to open the Court, and adjourn till Monday at two." Now, Mr. Fenton would in the ordinary course have been at Napier on Saturday—that is, the 30th; because the steamer generally leaves Auckland on Thursday, and arrives early on Saturday morning. It happened in this week, however, that for some reason or other the steamer did not arrive at Napier till Sunday; and the difficulty seems to have arisen, or, rather, to have been increased, by that steamer being a day late. There is no doubt that it was left till the last moment; but, through the delay of the steamer, which very seldom occurs, the case did not come on on the day mentioned.

Hon. Sir R. Stout: But the Court was adjourned on the Friday?

Mr. Bell: Yes; but Saturday would have been in time. Now, I would refer here to the power—the undoubted power—of the Court to adjourn in this way. In the rules, in the *Gazette* of 1874, page 570, there is this provision, in the fourth rule: "The Judge's Clerk, under section 11 of the Act, may, on the written request of the Judge, adjourn the Court." I am under the impression that there is another rule which provides that it may be done by any person appointed by the Judge for that purpose.

Hon. Sir R. Stout: I think these are the only rules until 1880.

Mr. Bell: I was under the impression that there were other rules, and I should like to refer the Committee to them later on, if I am allowed. It may be a doubtful question, I admit, whether the adjournment of the Court did adjourn all cases in such manner as to keep on foot the determination of the rehearing. I admit that it may be doubtful. I should myself, at all events, be prepared to contend that it is open to argument, and I submit to the Committee that it was a sufficiently reasonable argument to be satisfactory to the mind of the Native Land Court Judges. You must remember that you are dealing here not with Judges educated to the profession of the law; though it appears that in this case the learned Judges were both lawyers. But the Native Land Court was rather a Court of investigation than a Court of law. The Bench on this occasion assumed, not unreasonably, I think, that the adjournment of the Court would carry with it the adjournment of the cases, and would thus keep open the rehearing, which they were bound to hold within three years.

Hon. Sir R. Stout: You say "assumed:" is there a tittle of evidence to show that they ever considered it? It was never brought before them.

Mr. Bell: The Attorney-General says that it was never brought before them. I am obliged to him for mentioning that, because he says in his memorandum, "No notice seems to have been taken of Mr Dickey's pointed reference to the possibility of the rehearing being shut out by the adjournment of the Court." Therefore, while the writer of the memorandum says that pointed reference was made by the Clerk to this particular point, I understand the Attorney-General now to say that attention was never called to it at all.

Hon. Sir R. Stout: I mean the Court. You speak of the two Judges, Fenton and O'Brien.

Mr. Bell: Yes; I quite understand. The point never arose in their minds, because they deemed themselves *functi officio*. The question whether the adjournment of the Court would imply the adjournment of the case never arose for their decision. Now, as to the comment, at the foot of page 11, upon the correspondence between Dr. Buller and Mr. Fenton, and the assurance of Dr. Buller that the claim had been withdrawn, I confess I am surprised to find that comment in the writing of the leader of the profession to which he and I belong. We are, and the Attorney-

General himself is, in the habit of accepting the assurance of counsel without requiring an affidavit of any kind to satisfy either opposing counsel or the Court, and Mr. Fenton explained that he was always ready to accept the assurance of counsel upon these matters, and he says he was neves deceived. And certainly in this matter he was not deceived, because Dr. Buller's statement war correct, and that to which he gave credence turned out to be true. The Court was held before two Judges, one of them, Mr. O'Brien, a gentleman of experience, not only in law, but in practice—a gentleman who had been Registrar of the Supreme Court in Auckland, and who had therefore considerable experience in matters of detail. He sat with Mr. Fenton in this Court. Both of them, upon the withdrawal being presented to them, said that that put an end to the matter. They seem to have treated it as not being before them at all. Now, they may have been wrong in so thinking—they may have been wrong in thinking that that was the true construction of the section which has been before the Committee; and I am not here, as I have said, to contend that their decision upon this point was right. That is not the matter to which I have at all to address myself. But there is this matter of fact: that the Court had, according to the evidence of Mr. Fenton, put that construction upon the section from the very beginning of the existence of the Court. It had always concluded that an Order in Council allowing a rehearing upon the application of certain individuals let in the claim of those individuals alone, and did not let in the whole of the tribe. As I have said, I do not contend that that decision was correct, but I do contend that it would have been open to very grave comment had they in this case departed from a practice which had been followed from the very commencement of the Native Land Court. The point is not whether the Native Land Court was wrong, but whether they did anything exceptional.

Hon. Sir R. Stout: I may mention, as you were not here, that Judge Rogan stated in his evidence that he takes an opposite view entirely.

Mr. Bell: I did not know that.

Mr. Stewart: But he was not in the habit of conducting rehearings.

Hon. Sir R. Stout: But he speaks of the practice of the Court.

Mr. Bell: A rehearing must be held before two Judges, and in most cases, for that reason, the Chief Judge was one of the Judges who sat upon the rehearings; and the Chief Judge is still one of the Judges who sits.

Hon. Sir R. Stout: I think, under the new Act he must be one of the Judges if he has not heard the case before.

Mr. Bell: I think so, too. At all events, this is the fact: A single Judge used to sit in a district to hear cases; and, if a rehearing was ordered of some case, the Chief Judge came down and assisted another Judge in the rehearing. Therefore the Chief Judge is more likely to know the practice in regard to rehearings than any other Judge. There is no doubt that the clause as to rehearings is very wide; and it is provided that, upon an order being made, all proceedings theretofore taken in the matter should be void, and the proceedings be taken *de novo*. That is section 58; and, oddly enough, section 50, which everybody seems to have overlooked, says that the original owners shall be deemed to be owners unless the decision of the Court is reversed or amended on a rehearing. The omission to notice the effect of that section really caused a good deal of the difficulty and argument. The practice of the Court, according to the evidence of the Chief Judge, who held most of the rehearings, was that when an application for rehearing was withdrawn that put an end to the proceedings. Here comes in a peculiar matter. I have already pointed out to the Committee that what Judge Fenton had in his mind, so far as this rehearing was concerned, was the Taupo claim, and not the Patea claim at all. At that Court two gentlemen appeared—Mr. Cornford and Mr. Lascelles—and the writer of the memorandum comments upon the fact that there was objection made to Mr. Cornford addressing the Court. No counsel could at that time address the Court without the Judge's sanction; for Parliament, in its wisdom, has taken upon itself to clear the Court of gentlemen such as the Attorney-General and myself.

Hon. Sir R. Stout: It was time, perhaps.

Mr. Bell: It may have been time to exclude the Attorney-General, sir. However, Mr. Lascelles and Mr. Cornford appeared. We know now that Heperi was Mr. Donnelly in disguise; and, for this reason, I am quite sure that the writer of the memorandum will admit that he made a mistake in saying that Mr. Cornford was acting for Dr. Buller's clients. I asked for the telegrams referred to in the memorandum as showing that he so acted; but none such has been produced. There is a telegram from Mr. Cornford to Mr. Rolleston, of the 3rd November, 1880, asking who signed the application; and that information Mr. Rolleston declined to give. There was a previous telegram, of the 12th October, from Mr. Donnelly to the Native Land Court, asking for the same information. So far, therefore, as the telegrams go, they would seem to indicate that Mr. Cornford was acting for Mr. Donnelly; and we know now that Mr. Donnelly was really paying his costs, and that in the lion's skin of Heperi was concealed the person of Mr. Donnelly.

The Chairman: I do not think that Mr. Cornford ever got paid at all.

Mr. Bell: That adds some instructive information as to the gentleman who was in the lion's skin. Mr. Fenton has told us of the fear of this gentleman which the Court had in their minds at the time of the sitting of this Court, and he has given a full explanation of what the Court did in reference to the Pukehamoamoa Block, where they made special orders in order to prevent the upsetting of Renata's title by the gentleman who had married Renata's niece. Therefore the idea in the minds of the Judges probably was that the object of Messrs. Lascelles and Cornford was to upset the title at the instance of Mr. Donnelly. The Taupo Natives had withdrawn, and, so far as the Court knew at that time, there was nothing whatever to cast any doubt upon the *bona fides* of their withdrawal. Thus there was a withdrawal of the Taupo grievance, and the Patea grievance appeared to them to be represented by the two counsel whom they knew, or had good reason to suppose, were acting in the interests of, or supported by, the gentleman who had married Airini Kawepo. Now, I submit it would have been a strange thing if the Court had departed from the practice which had been laid down from the beginning, and had in this particular instance, of all instances, allowed the

matter to be reopened on the motion of one whom they believed to be acting with this lever behind him. No doubt it was no reason for barring the claim, but surely it was a good reason for not departing from the regular and the ascertained practice of the Court. I may add that among the papers of this year there is a very instructive telegram from Mrs. Donnelly, dated from Wanganui, 27th May, 1886. It is on the file of original documents, which I have been allowed an opportunity of seeing.

Hon. Sir R. Stout: I do not think I have seen that.

Mr. Bell: It is a very instructive telegram. It is to the Native Office, and says: "I hope you will be able to introduce a clause into your valuable Bill which will enable myself and relatives here, so wrongfully excluded from other blocks, as well as Owhaoko 1, 2, and 3. Renata is only acting as our trustee, and it would be a very great injustice to a large family if nothing is done." I say this is instructive. It is dated from Wanganui on the 27th May, 1876. And we find another of these Native gentlemen who claimed to be owners—Hirika te Rango—petitioning on the 20th of May, 1886, also from Wanganui, with reference to this Bill, and supporting it. Therefore we find not only Heperi directly, and by proof, connected with the persons whom the Native Land Court had reason to suspect were endeavouring to commit a wrong, but also this gentleman, Hirika te Rango, writing from the same place and at the same time as Mrs. Donnelly, to the Native Minister commending this Bill, and complaining of the grievance which a large family had suffered. Then, I say that the criticism of the memorandum upon the judgment of the Native Land Court is a criticism upon the law of the Court. I understood the Hon. the Premier to withdraw the portion of his comment which appears on page 14. I mean that part of it which says that Judge Fenton knew that the desire not to prosecute the rehearing did not come from the Natives because, the memorandum then goes on to say, "If Dr. Buller's telegram of the 26th of July was correct, it was at Judge Fenton's own suggestion that the Natives were asked to consent to a withdrawal of the rehearing." When I called Judge Fenton's attention to that part of the paper, Sir Robert Stout interposed, and stated that that part of the comment depended upon the correctness of Dr. Buller's telegram. That, I think, disposes of that part of the comment which attaches any suggestion of impropriety to the action of the Judge. As to that part of it which speaks of the practice and the law of the Court, I am neither concerned nor qualified to speak. So far as my advocacy has gone in the past, it has been rather in the direction which the Attorney-General has here indicated. But it is the law of the Native Land Court; and, bad law as it may be, possibly—I know not whether it is good or bad—it is, at all events, law till reversed on appeal, and a Judge is not likely to feel grateful for comment of that kind contained in a document whose writer is privileged. Now, as to what appears at the foot of page 14 and the top of page 15 of the memorandum, and the three grounds which the Attorney-General states for his conclusions, I have nothing to say as to the first and second grounds—they are matters of law, and the Attorney-General is much more likely to be right in his law than I, though I do not know that he is more likely to be right than two Judges who had given the matter special study—but as to the third ground, on the top of page 15, I confess I do not understand it. The Court was aware that Hohepa and Topia were the only Natives who had signed the petition to Lord Normanby. That appears by the letter, dated the 25th of October, at page 12. It was a fact that Hohepa and Topia were the only two who signed the petition to Lord Normanby, for Hohepa Tamamutu wrote all the names except Topia's, and on the 25th of October, 1880, a letter which was signed by Hohepa, and was carried by Dr. Buller to Mr. Fenton, called special attention to that fact, and pointed the attention of the Court to it. Now, I do not know whether the Attorney-General contends or says—because of course his opinion will guide the Committee far more than mine could—that a person authorized to commence proceedings is not authorized to drop them. I should have thought it was plain common sense and plain law that a person authorized to commence a proceeding in any Court is authorized to drop it.

Hon. Sir R. Stout: Suppose a person is authorized to sign a petition to the Governor for a rehearing, do you mean to say that the agency continues after the rehearing is granted?

Mr. Bell: I say that it is so. Either they had or had not authority to apply for it; and in either case they had authority to withdraw.

Hon. Sir R. Stout: The point is not as to the withdrawal. You overlook the point, which is as to the giving of the retainer to appear; and as to the retainer, it does not give Buller authority to appear for the other Natives who signed.

Mr. Bell: The retainer had nothing whatever to do with the matter. I submit the question was whether the document was signed, not whether Dr. Buller was authorized to present that document. The learned Attorney-General has already said he cannot see what reason there was for a retainer at all. No more do I. The Native Land Court had nothing to do with Dr. Buller's retainer. All they had to inquire was whether the application had been withdrawn. They came to the conclusion that it had—on what I contend were sufficient grounds. But there is another matter. There has not been a tittle of evidence to show that there was a single Native present ready to support an adverse claim. There were two learned counsel, and they do not seem to have taken the view which the Attorney-General takes of the matter, because they do not seem to have raised any of the points which the Attorney-General lays stress on. Nor when they came to draft a case did they consider it necessary to raise these points.

Hon. Sir R. Stout: Mr. Lascelles said he appeared for fifteen Natives who were interested in the land, although their names were not in the application.

Mr. Bell: Mr. Cornford, who appeared with Mr. Lascelles, had said that he appeared for Heperi, and as Heperi had signed for twenty-five others it was quite legitimate for any one who appeared for Heperi to say he was acting for the others. Doubtless Mr. Lascelles appeared for Heperi and those whom Heperi represented.

Hon. Sir R. Stout: Would you allow me, before leaving this point, to say that you overlooked the point which strikes me. When Dr. Buller applies for the order, on behalf apparently of Topia and Hohepa, he applies as their counsel for the order. He is not applying for the order as Renata's counsel.

Mr. Bell: Well, I must say that that appears to me to be utterly absurd.

Hon. Sir R. Stout: Yes, I think so, too; and, if you look, he says Mr. Cornford was not appearing for Hohepa or Topia.

Mr. Bell: I confess it seems to me a perfect muddle, and I did not understand Mr. Fenton's evidence on this point. He must have been mistaken, and I do not doubt that the application was made by Dr. Buller in Renata's interest.

Hon. Sir R. Stout: I do not know. If you look at the newspaper report you will see that Mr. Fenton was right. Either the Native Land Court allowed Dr. Buller to appear for two distinct parties, or else, as Judge Fenton put it in his evidence, he was only appearing for Topia and Hohepa.

Mr. Bell: Yes; I understand, the way you put it to me. What did happen was this—and any one can see that this is the fact: Dr. Buller appeared for Topia and Hohepa, and put in an application for withdrawal. Then, the next day he appeared for Renata, and asked the Court to affirm the original order.

Hon. Sir R. Stout: If you look at the second day's proceedings you will find that Judge Fenton is right, and you are wrong. You will see that Dr. Buller put in his retainer on the second day.

Mr. Bell: Yes. Well, Dr. Buller may have put in the retainer again, but nobody can doubt—and the Attorney-General has no doubt in his memorandum—that when Dr. Buller was contending for an affirmation of the original order he was really acting in the interests of Renata. That seems to be quite clear. The Attorney-General says Dr. Buller did not call special attention to the fact. The Court seems to have raised the point, "How will this point affect the original title?" That is the first thing done on the first day. The retainer is put in, the application is withdrawn, and then the Chief Judge begins by saying he is in doubt as to how such a course will affect the present title.

Hon. Sir R. Stout: The Chief Judge says that report is inaccurate. He says he never said anything at all of the kind.

Mr. Bell: At all events, it is of very little importance as affecting the honesty of the Court. It affects Dr. Buller in this sense: that he appears to have been acting for two different parties, perhaps in diverse interests. He may have satisfied himself by that time that they were in the same interest. I suppose the Committee will not form an adverse conclusion as to Dr. Buller's action in his absence. It may be that when he went to Taupo he found that the Taupo Natives had discovered whom the Patea applicants really represented, and therefore would be able to fall in with Renata's claim. You may be quite certain that, except Hohepa, no Taupo Native desired to proceed for the benefit of either Mr. or Mrs. Donnelly. Now, passing on—I am afraid I have detained the Committee rather too long upon this point—passing on to Heperi's letter of the 3rd November, Hohepa's letter of the 11th November, and Mr. Bryce's minute, Mr. Fenton says he never saw this telegram; and the reason he gives is this: He says that there is no minute of his on the papers, and that shows he never saw them.

Hon. Sir R. Stout: He says, "It may have been handed to me by the Clerk of the Court when I was investigating a very complicated title, and I may have handed it back without reading it."

Mr. Bell: Yes; I beg your pardon. Then he says, "It was never brought to my careful attention; because, if so, being from a Minister, I must have replied to it. It is my habit to minute upon all documents that I have seen, what steps are to be taken." If you look at the letter and the telegram you will see that there is no minute upon them; and I challenge the Committee to find any document which Mr. Fenton has seen and upon which he has not made a minute in his own handwriting. He says that is the reason why these matters were not noticed. "If I saw them at all, I must have seen them when I was on the Bench, for a moment, and I must have handed them down and they must have got on the file. I did not see the file, because it went to Auckland, and I did not return to Auckland for a long time afterwards." That is his explanation of that matter. I am quite sure that, after the explanation he has given, no one will doubt its sufficiency. As to the statement of the case for the Supreme Court, I have to remind the Committee again that what the Judges of the Native Land Court did determine was that they could not affirm the original order; and that would leave the title at large to be dealt with *de novo*. That was their conclusion; but they consented to state a case for the opinion of the Supreme Court. When the matter came before the Supreme Court, that Court held that under section 50 the Native Land Court might affirm their original decision.

Hon. Sir R. Stout: I would like to ask you whether the Act of 1880 was referred to either in the argument or the judgment.

Mr. Bell: I do not know. Of course, I had nothing whatever to do with it. But I would say that, so far as I am able to offer an opinion to the Committee, I differ from every word of the paragraph on pages 17 and 18 which comments upon the case sent to the Supreme Court. What the Native Land Court wanted was a decision upon a point of law, and not upon a question of fact; nor had it any authority whatsoever to state a case upon anything other than a bare question of law. The question whether or not these applications had been withdrawn was, I submit, a matter entirely of fact. In the 103rd section of the Native Land Act of 1873 it is provided "that on the application of either of the parties, or on its own motion, the Court may order that any question of law arising in any manner judicially before it should be sent to the Supreme Court." Now, I submit that the matters which arose afterwards, and which the learned Attorney-General thinks should have been referred to in the case—namely, Heperi's and Hohepa's letters—did not arise in any way before the Native Land Court; and the only question they could state was whether or not the Court had power to affirm its original decision. I say that no other point of law arose, and I do not think hat the Attorney-General, if he were addressing a Court, would insist upon arguing that which he submits in the paragraph to which I have referred.

Hon. Sir R. Stout: I will still keep to it. The point of view from which I looked on the matter

was this: not as stating the case, but if it came to his knowledge before he stated a case for the Supreme Court that this withdrawal had been obtained by fraud he should have investigated it before stating it to the Supreme Court, or have stated in the case what had come to his knowledge afterwards. Either he ought to have investigated it, or not stated a case at all. That is the point. Of course, I assumed that he had seen this letter of Heperi's, and also Mr. Bryce's telegram, or I should not have made the comments I have.

Mr. Bell: Supposing he had seen them, I confess I do not understand your contention. He might, perhaps, have investigated the question of fraud. But the Court wanted a point of law decided for its own guidance, and it had intimated that it would state that point of law. I cannot see any reason why that point should not be stated. Besides, by lapse of time, the time for the rehearing had certainly gone, and, as Mr. Macdonald says later on, they could have done nothing. If the Committee will examine the cases which were drafted, they will find this: Mr. Fenton invited Dr. Buller to draw a case. Dr. Buller sent him a draft case. Mr. Cornford was invited to make alterations in it; but Mr. Cornford's alterations did not arrive in time, and so the Court, not getting them, prepared a new case of its own, which was entirely different from Dr. Buller's draft. And at this point the comment of the memorandum comes in that Mr. Cornford was acting in the interests of Dr. Buller's clients. That gentleman was asked to look over the case. I do not think the Attorney-General will refrain from admitting that this comment is erroneous, because I submit there are no such telegrams as are stated to exist. At all events, my attention has not been drawn to any such, though I have asked the Attorney-General for them. Now, on page 18 the memorandum comments at great length on the date of the order, and the fact that Dr. Buller had suggested a day which was certainly the day upon which the Court did not sit. As to that, whether the Chief Judge had or had not in his mind section 48 of the Act of 1880 I do not know. This is the section: "Every order made or certificate granted by the Court on a rehearing shall bear date on such day as the Court thinks fit to fix not being earlier than the day on which the order of the Court was made on the hearing of the original application, and shall for all purposes have and be deemed to have had force and effect on and from the day so fixed." Whether he had it in his mind I do not know, but there seems to be no doubt that Dr. Buller had it in his mind.

Hon. Sir R. Stout: I would ask Mr. Bell, as a matter of law, whether section 48 would allow the Court to insert any date when really there was no rehearing.

Mr. Bell: I see the difference. I am inclined to agree with the Attorney-General; but that is not the question. The question is, whether those who acted upon it were justified in putting upon it the construction they did.

Hon. Sir R. Stout: I do not deny that they may have been deceived; but it does not warrant them in doing what they have.

Mr. Bell: Yes; but it was treated as an order of the day stated; and that section permits it. I say it was not unreasonable upon the authority of the section which I have quoted.

Hon. Sir R. Stout: You must read the two previous sections along with it.

Mr. Bell: I think section 48 is sufficient authority.

Hon. Sir R. Stout: My opinion of this is that the object of this section 48 is to provide for the same thing we have provided in the Crown Grants Act. I believe it was put in, as it appears to be, very likely by the Chief Judge, when he was not cognizant of the full effect of section 50 of the Act, or, very likely, drafted before he came up to Wellington, and no one had any idea of the effect this section would have. One has only to read the two together to see they fit in.

Mr. Bell: And now I have come to the last matter on which I shall address the Committee—that is, the letters and telegrams on page 19. I only desire to point out one or two circumstances which appear to me to be of very great importance. In the first place, the Natives had applied for a hearing of the same block, Owhaoko, under the name of Ngaruroro. It was a fact that that was a fraud upon the Native Land Court, and a very improper and unjust proceeding, whether the Natives did or did not see the injustice of it. There is no doubt it was a fraud upon the part of the Natives. They must have known well what they were doing when they applied for a hearing of the block under the name Ngaruroro, and it was perfectly right of Dr. Buller and Mr. Studholme, as persons who held a title under the Owhaoko investigation, to apply to the administrative officer of the Court to see that this case should not be allowed to be again heard. Dr. Buller, so far as I see, is here right in telegraphing to Mr. Studholme to make application to the Chief Judge, though, when he says "Get Fenton wire Heale judgment affirmed," it is, no doubt, a very familiar way to put it. I quite think it was right to make an application to the Chief Judge to take the course proposed. I think that was the proper course, because Mr. Fenton was the only person to whom a matter of this kind could be referred, as having the whole administrative business of the Court upon him, just as in the Supreme Court such an application would be made to the Registrar. It is quite true that Mr. Studholme writes, "My dear Fenton;" but I ask any member of the Committee what he would have done had he received that letter. It brought to the notice of the chief administrative officer of the Native Land Court that a fraud was being committed upon his Court; and, though it was in an irregular form, he had to consider what was his duty. He must either have replied to Mr. Studholme, "You must write to me, and commence your letter 'Sir,' and conclude with 'Having the honour to be,'" or put it upon his file, and direct his Clerk to answer it.

Hon. Sir R. Stout: You say it is a fraud: will you explain how it was a fraud?

Mr. Bell: It was a fraud because it was an application for a hearing of the same block which had previously been determined, but under the new name Ngaruroro. It was necessary, in order to prevent this being again heard and determined, that an immediate notification should be sent to Judge Heale. It was a fraud to bring the land before the Court under a new name, Ngaruroro, and so deceive Judge Heale, who was not aware of the circumstances.

Hon. Sir R. Stout: Will you allow me to ask this: Do you mean to say that, as no order had been made by the Court, the land was not open for application under section 58?

Mr. Bell: I say that the order had been made.

Hon. Sir R. Stout: But no order was made at this time, and, in the absence of an order, were they not strictly within the law in applying under the name of Ngarururoro? You will notice in previous letters the land was called Ngarururoro, and therefore they were strictly within their right.

Mr. Bell: There is no doubt in my mind that the Natives applied for investigation of this block under the name of Ngarururoro because an application under the name "Owhaoko" must have been instantly rejected. Of course, if that conduct was not wrong, I am wrong in saying it was a fraud. I submit that is the only possible deduction the Court could draw from the facts before them. The Attorney-General says no order was made; but that is a mere technicality.

Hon. Sir R. Stout: It is called Ngarururoro in Mr. Locke's minute on page 8, and therefore it could not be said to be a new name, seeing it was officially known by that name.

Mr. Bell: Yes, that may be; but they were using this name for the purpose of deceiving the Court, and for no other purpose. At all events, Mr. Fenton thought it was being used for this purpose. It is a mere technicality to say that the order was not signed, as everybody knew that the order would be signed. Well, Mr. Fenton received this letter; and, as I say, he could have taken one of two courses. He might return it to the writer and say that he is to be addressed as "Sir," and "I have the honour," &c., or he might put it upon the file and take action upon it. He took the latter course. If you could find a letter upon the file addressed "Dear Studholme," and signed "F. D. Fenton," that would be evidence of familiarity on the part of the Chief Judge; but there is no such letter. I submit that the course the Chief Judge took was the proper one. There was a matter brought before him of the greatest importance, and the proper way of treating it was to say, "I will take action upon it, and not return it to him and say it is not in proper form." Then, the only other point in these telegrams which has any bearing upon the matter before the Committee is that in which the Chief Judge asks Judge Heale to dismiss the case with costs. He explains that in this way: He says he wished the Natives to be compelled to pay the costs occasioned by the improper application which had deceived the Court, and he quotes an instance where, in a similar case to this, a second certificate had actually been granted when the Natives had applied under a fresh name. He says he had no other idea of any sort or kind. If the Committee do not believe Mr. Fenton in this, then of course they would have to come to the conclusion that his word could not be trusted in any part of the case.

Mr. Stewart: Mr. Fenton explained that he did not mean legal costs, but the expenses of the Natives.

Mr. Bell: Yes; he meant the expenses incurred by the witnesses in travelling, &c.

Hon. Sir R. Stout: There were no costs allowed in the Native Land Court at that time.

Mr. Bell: Yes, I think there were.

The Chairman: Mr. Fenton explained in the latter part of his evidence that the "costs" referred to were only amounts given to the Natives for their time and expenses.

Mr. Bell: That is what Mr. Fenton has said, and that confirms his evidence that there was no idea in his mind of assisting Dr. Buller or Mr. Studholme to get money out of the applicants. I submit he was bound by his oath, and by his position as administrator, to defend the title which had been issued by the Native Land Court, and which his Court was about to reaffirm on the rehearing. I complain here of this dramatic touch in the comments of the writer of the memorandum: "I have no doubt the Chief Judge's opinion was obeyed." Surely the writer might have adhered to facts, and, before making a comment of that kind, have examined the authority for it. For, if the Committee will refer to the minute-book, on page 79 they will see that "costs were not allowed."

Hon. Sir R. Stout: I did not have the minute-book before me when I wrote that memorandum.

Mr. Bell: But that appears not to mitigate the effect of what I state, that this dramatic touch introduced into the memorandum, and submitted to Parliament, is proved to be incorrect by documentary evidence.

Hon. Sir R. Stout: I do not see that. It is a different case you are referring to.

Mr. Bell: No: on page 79 it is stated "Court would not allow costs." "Owhaoko (new claim).—Wednesday, 18th January, 1882.—Dr. Buller applied for costs. Struck out, inasmuch as the claim had been brought before the Chief Judge."

Hon. Sir R. Stout: Will you give the names of those interested?

Mr. Bell: Retimana and others; Topia Turoa and others.

Hon. Sir R. Stout: Those are not the same claimants at all. Otherwise the minute-book is wrong again, because Retimana te Rango has not applied here, nor Topia Turoa. It is a different six altogether. Was this the rehearing of which the wire was sent? It is entered here as the 18th January.

Mr. Bell: Well, I have no doubt that it is the same. I thought that the production of this minute-book would satisfy the Attorney-General that the "Judge's opinion was not obeyed."

The Chairman: It was denied, I think, by Mr. Fenton.

Mr. Bell: Yes; Mr. Fenton said the Judge would not do it, and now I produce the minute-book to show that he did not.

Hon. Sir R. Stout: I should like this minute to go down, as it again shows that the Native Land Court, relying on counsel—that is, Dr. Buller—made another mistake. It is as follows: "Owhaoko (new claim).—(1) Retimana te Rango and others.—Dr. Buller applied to have the case struck out, inasmuch as the claim had been brought before Chief Judge on rehearing, and referred to the Supreme Court as to whether, the application for rehearing being withdrawn, the Native Land Court had power to affirm the original order. Dr. Buller then handed in the opinion of Mr. Justice Richmond, which said the Native Land Court had power to affirm the original decision. He also stated that an order had been made, and signed by the Chief Judge, and notice given, and therefore asked for the claim to be dismissed, and applied for costs.——Owhaoko (new claim.—(10) Topia Turoa and others. Same as above. Claim dismissed. Court would not allow costs." Then it

appears there were more claims than one, because the new claim (1) is for one set of Natives, and the second is Topia Turoa, "Same as above, claim dismissed. Court would not allow costs." You will notice that what Dr. Buller stated is again untrue.

Mr. Bell: I do not know the date of the order. I am not here, as I said, to speak for Dr. Buller, nor have I any connection of any sort or kind with Dr. Buller. I have now concluded my answer to the memorandum, Sir. I have ventured to treat the memorandum throughout as making the charge which I have had to meet; and I have gone through it very carefully, and referred to its various paragraphs. I have endeavoured to show that, so far as my clients are concerned, they have been able by their evidence and by the facts we have adduced to refute those charges. I have endeavoured also—and I hope successfully—to avoid anything which might seem to be an improper attack upon my opponent—if I may call him so—the writer of this memorandum; because I admit that the privilege which the Committee has granted me, by permitting a report of what I have said to be included in the Appendices to the Journals of the House with the attack that has been made upon my clients, would be abused by me if I were to refer in anything but respectful language to the Premier of the colony. But I protest, on behalf of my clients, in the most strenuous way I can with proper respect to the Premier and Attorney-General, against the manner in which they have been brought to defend their characters. Mr. Fenton—a gentleman who has served in the public service of the colony since he was almost a boy, and has retired with honour, and, I venture to say, without a suggestion even from those who have had to attack the Native Land Court of improper conduct on his part—is brought here to defend himself against a privileged communication addressed to Parliament, and in language which is the language of an advocate; and the writer of the memorandum tells us that he has used that language because he is appealing from the Native Land Court to the High Court of Parliament. We, too, appeal to the High Court of Parliament, and we ask this Committee and the House, which will consider the report of this Committee in Parliament, to say that its privileges shall not be used to attack the characters of individuals, even though the object be unquestionably to do justice to those whom the writer believes to have been unjustly deprived of their rights. I submit that if this practice is to be pursued nobody's character is safe. The document is privileged, and it is open to the writer to put in any documents he pleases, and to keep back, if he pleases, any documents. It is open to him to suggest any inferences, and to comment adversely upon facts, ask questions, and insert notes of interrogation and notes of admiration calling marked attention to circumstances which are capable of the simplest possible explanation; and it is open to him to do so without having to answer for it otherwise than by being called upon to defend his memorandum before a Committee of the House. We feel very much the position in which we are placed; and I am here speaking on behalf of a man who is, I assure the Committee, almost broken-hearted at having, after a long series of years spent in honourable service of the public, to defend himself against even a suggestion of impropriety—nay, something worse, which, I conceive, is suggested against him in this memorandum, though, perhaps, unintentionally. I appeal to a body of gentlemen to say what they would have thought—any one of them would have thought—if such a memorandum had been written against him by a gentleman holding the position of the Attorney-General, and addressed to Parliament. I believe that the Attorney-General did not recognize the weight which attached to the position which he occupies; but there can be no doubt that this memorandum, which is to be recorded in the Journals of the House, will go down to people who do not know Mr. Fenton, and, perhaps, never heard of him, as a document written by a gentleman occupying the highest position in the colony, and will be presumed to have been written with the caution which is expected in documents issued under the authority of the Crown. Unless Mr. Fenton can have from this Committee and the House a similarly-recorded judgment in this matter: unless he can have from them a record that he is free from the imputation of impropriety, and worse, which is insinuated against him in this memorandum, he will be for ever under that imputation, and his name will go down sullied to those who will not know him or his past reputation. I am content, Sir, to leave the matter to such a body as your Committee, and so is he; and if the decision of the Committee is, as I am confident it will be, that there is no reason for suggesting improper conduct on the part of the Chief Judge, I trust that it will be stated in clear and emphatic language, in order that the opinion of Mr. Fenton's judges may go down in the same record as that which will contain what I may call the indictment against him. The character of the Chief Judge should be above suspicion, and Mr. Fenton feels that his has been treated as if it were not above suspicion. The person who suspects is a Minister of the Crown, who has appealed to the High Court of Parliament to support his judgment. And, as I have said, we also appeal to the High Court of Parliament for a vindication of the character which has been there assailed. Sir, I am obliged to the Committee for its courtesy, and I regret that I should have been obliged to occupy its time at such great length.

STATEMENT by the Hon. Sir R. STOUT.

I intimated to the Committee that I did not intend to take part in their deliberations regarding the framing of a report. I have already expressed my opinion in the memorandum addressed to the Cabinet, and, so far as the evidence and addresses given before the Committee is concerned, I have seen no reason to modify my opinion that a rehearing should be granted, and that regarding both blocks justice has not been done.

I have stated to the Committee that I did not mean in my memorandum to charge corrupt conduct against the Judges; and Mr. Bryce has properly stated that before the memorandum was published I also expressed that opinion to him. I believe, however, that the title to neither of the blocks has been properly investigated; and that the evidence given by the Judges bears out this belief.

First, Judge Fenton was clearly of opinion that no memorial of ownership should have been issued to either the Kaimanawa, Oruamatua, or Owhaoko Blocks, if the presiding Judge who heard the case became aware that persons not present were interested in the blocks as owners. He also agrees with me that before voluntary arrangements could be recognized, allowing only a certain number of owners to appear as the owners, clause 48 should be given effect to. The persons consenting, or their agents, should have appeared before the Court, and the record should have been entered, stating the names of the persons who consented to the arrangements. It is perfectly clear from the evidence that those who were not at the Court did not voluntarily consent to surrender any of their rights, and, therefore, that the memorials of ownership in both blocks were wrongly issued. I do not say that when Judge Rogan issued these orders he was conscious of doing a wrong —I believe he was not; but at the same time it is abundantly plain that these orders ought not to have been issued. I do not care to go through all that occurred—the changing of the Court, the making, as it were, provisional orders, altering them, entering minutes in the absence of the Assessor, and the Judge purporting to deal in chambers as if he were in Court. My memorandum sufficiently states what was done; and the explanation given in the evidence and address by counsel only states that the practice of the Court was lax, and that the course adopted in these cases was, unfortunately, not unusual.

The next point that arises is, Was a rehearing properly held of the Owhaoko Block? Mr. Fenton has explained away some of my comments by stating—first, that Dr. Buller's telegram of the 26th July, 1880, is untrue in so far as it states that Mr. Fenton had advised Studholme to make terms with a view to withdrawal. Mr. Fenton saw that telegram on a file of the Native Land Court, and, though he considered the telegram impertinent, he took no means to do as Mr. Stewart suggested, to minute it as untrue, nor to complain to Dr. Buller of his conduct in sending a telegram to the Clerk of the Native Land Court that was incorrect. The Committee have not thought it desirable to cable to Dr. Buller to ask him anything regarding this telegram. It certainly places him in a peculiar position, that he should have telegraphed to the Clerk of the Court what was untrue, and casting, as it seems to me, a reflection on the Judge of the Court. Mr. Fenton also explains that the most important telegram from the Native Minister, forwarded to him while he was sitting in the Court at Napier on the 11th November, 1880, was, if seen by him, overlooked in his pressure of business, and that he never replied to it. His explanation is that it was possibly handed to him while he was investigating an intricate Native title, that he had handed it back to the Clerk, and it was never brought to his notice again. He states that, if it had been brought to his notice, he certainly would have replied to it. As to the letter from the Natives dated the 3rd November, 1880, on which there is an indorsement by Mr. Dickey addressed to Mr. Fenton, he states he never saw this important document.

If I had known when writing my memorandum that the administration of the business of the Native Land Court Office had been conducted with such laxity, not to mention carelessness, that an important telegram of this character from a Native Minister, charging fraud against persons appearing before the Court, and a request from the Natives to the Chief Judge urging that the withdrawal signed should not be acted upon, were not perused by the persons to whom the messages and letters were addressed, I should have made other comments. I should have withdrawn the charge that the Judge had, in the face of these documents, proceeded to state the case to the Supreme Court, which I stated was wrong. I mean I should have withdrawn the following words: "The Court does not deal with the facts of this case, but only gives a general opinion. It is, I think, to be regretted that the whole facts had not been stated in the case by the Chief Judge to the Supreme Court. He knew that persons who had applied for the rehearing had not abandoned the prosecution of their appeal, for the case was not settled until the month of July, 1881, and in 1880 he had forwarded to him the telegram which had been sent to the Hon. the Native Minister. He had also received the letter from Heperi Pikirangi and others before set forth. . . . . It was, in my opinion, the bounden duty of Judge Fenton, before he sent the case for the opinion of the Supreme Court, to have had the whole question of the signatures to the withdrawal and the telegram repudiating the withdrawal adjudicated on; and I can find no excuse for his neglect of such duty. It was entirely wrong for a Judge of the Native Land Court to certify to the Supreme Court that the Natives had abandoned their application for rehearing, when one of the Natives had repudiated such abandonment." But I should have felt bound to comment on the carelessness of the administration of a Native Land Court Office that allowed such a telegram and such a memorial not to be perused by the person to whom they were addressed.

I must, however, state that I do not withdraw my interpretation of section 58 of the Act of 1873. In my opinion, once a rehearing was granted, it was the bounden duty of the Court to hear the claims of all persons that might be brought before the Court, just as if the hearing was taking place for the first time. If, as I understand it, Judge Fenton says that it has been the practice of the Native Land Court to exclude claimants unless they were the persons who had been originally declared the owners, or were the persons who claimed the rehearing, then I think that practice has been wrong. I may add that Judge Rogan is of opinion that persons should be allowed to come in, and he believes that was the practice. See questions 1145, 1146, 1150:—

"1145. And would you hear them?—Most certainly.

"1146. That is, outside both claimant and counter-claimant?—Yes.

"1150. Supposing the people signing the application for rehearing desired to withdraw the application, and the other people in Court interested in the block did not wish it withdrawn—objected to the withdrawal—what would the Court do then?—I should think the Court would go on with the case."

From which questions it is plain, according to Judge Rogan, that the refusal to hear claimants in the Owhaoko rehearing case was wrong. I agree with Judge Rogan, and not with Judge Fenton.

I may say one or two words as to filling in the date of the order affirming the original decision of the Land Court—namely, filling in a day on which the Court never sat. Judge Fenton attempted

to justify this action by a reference to the Act of 1880. In my opinion, that section of the Act he quoted, section 48, cannot help him. It is perfectly plain to me that allowing a dating-back could never apply when a rehearing had not been heard, and could not apply to an acting on section 50 of the Act of 1873, which the Supreme Court held the Native Land Court could do. And, as Mr. Stewart very properly stated during Mr. Bell's address, the Court consisted of Judge Fenton, Judge O'Brien, and an Assessor, and the Court so constituted never did affirm the decision, and never authorized Judge Fenton to sign the order he signed. Mr. Bell states that the decision of the Native Land Court is slightly misrepresented. I think he should have said that the Native Land Court never gave any such decision as the order signed by Judge Fenton declared.

I wish to repeat the following points, showing concisely what I believe was wrongly done in reference to these two blocks:—

1. In my opinion, it was the duty of the Court to have ascertained from evidence that persons known to be interested had due notice of the decisions of the Court.
2. That Judge Rogan should not have allowed Renata and the names he gave to be inserted in the memorial if he knew that other persons were interested.
3. That section 104 of the Act did not allow the Judge to authorize the Clerk to make the entries in the minute-book in reference to the investigation of the titles of these blocks.
4. That the rehearing of the Owhaoko Block should not have been adjourned *sine die*.
5. That the hearing of the Court should not have been fixed for a time so close to the end of the three years.
6. That it showed great carelessness in the management of the Native Land Court Office that an important telegram from the Native Minister and an important memorial from Maoris interested in the land should not have been read by the Chief Judge, and consequently not replied to.
7. That the Court should have ascertained clearly for whom Dr. Buller appeared, and should not have allowed him to appear for two parties if their interests were conflicting.
8. That the order signed by Judge Fenton should not have been signed by him.

I repeat that if the mode adopted in dealing with the investigation of titles in Native blocks is similar to that followed in the investigation of the titles in these blocks, I am not surprised that the Native Land Court has been unpopular amongst the Maoris.

I have not thought it desirable to comment at length on Mr. Bell's speech. I might have done so—there are many passages in it which might call for comment; but I am content to leave the Committee to deal with the matter.

APPENDIX.

Telegram from the Chairman to Mr. Cornford.

Wellington, 2nd July, 1886.—Mr. Cornford, Solicitor, Napier.—On whose behalf did you peruse draft case for Supreme Court *re* Owhaoko in July, 1881? 2. Were you paid fees for such perusal; if so, when, and by whom? 3. When did you begin to act in the matter for Studholme and Renata?—E. T. CONOLLY, Chairman.

Telegram from Mr. Cornford to the Chairman.

Napier, 3rd July, 1886.—E. T. Conolly, Esq., M.H.R., Chairman, Select Committee on Owhaoko Bill, Wellington. —At request of G. P. Donnelly, I perused a case submitted to me by Judge Fenton in July, 1881. Was never paid any fees for so doing. Began to act for Mr. Studholme in March, 1884. Have never acted for Studholme and Renata or for Renata.—H. A. CORNFORD.

Telegram from the Chairman to Mr. Dickey.

A. J. Dickey, Esq., Auckland.—Owhaoko and Kaimanawa-Oruamatua Land Committee.—A telegram received by you from Under-Secretary Native Affairs, dated 12th November, 1880, repeating telegram to Mr. Bryce from Hohepa Tamamutu and others, requesting removal of their names from document withdrawing Owhaoko case from Court, they having been cajoled by Dr. Buller to sign same, and adding that Mr. Bryce did not understand; and a letter to Mr. Fenton from Heperi Pikirangi and others explaining their absence at first hearing, and complaining of Dr. Buller, the translation of which is minuted by you "Mr. Fenton, I understand that the rehearing application had been withdrawn—A. J. Dickey, December 9, 1880"—are among the file of papers produced to the Committee: can you state whether this letter and telegram were shown to Mr. Fenton, and, if so, when; and also, was Mr. Fenton in Auckland in December, 1880, and, if so, at what dates?

Telegram from Mr. Dickey to the Chairman.

Onehunga, 21st July, 1886.—E. T. Conolly, Esq., Chairman, Owhaoko Committee, House of Representatives, Wellington.—Your telegram only received this morning, being misdirected. Having left the service, and having no access to any documents or memoranda, regret I cannot give the information asked.—A. J. DICKEY.

Statement of Renata Kawepo re *Owhaoko and Kaimanawa Blocks.*

I was taken prisoner by the Ngapuhis, at Rotoatara, Te Aute, when quite a boy, probably about seventeen. I was taken by that tribe to Nukutaurua, Table Cape, which place they then occupied. I remained in captivity there for many years. I was tattooed there. When the Ngapuhis left Nukutaurua and returned to Bay of Islands I accompanied them, in captivity. I remained there about seven years, and became a Christian. The Rev. Mr. Williams, afterwards Bishop of Waiapu, wishing to send missionaries and native teachers to the southern parts of the Island, I was selected to accompany the Rev. Mr. Colenso to this district. I found that my own tribe had been driven to Manawatu by the same tribe by whom I was taken captive. The inland tribes under Te Hapuku had retreated to Te Mahia for protection. The whole of the inland country was deserted. The Napier hills, being close to the sea, were occupied by Tareha's father and other Natives. At that time Patea was occupied by Te Heuheu, of Taupo. I drove him out of that country about a year after. I occupied that country myself. Many years after this the late Sir Donald McLean was purchasing land from the Natives for the Government. The chiefs Te Hapuku and others were selling the land. Had they continued doing so the Natives would have been dispossessed of all their lands. They continued to sell. I objected, and wished the title of the parties to be ascertained by law. After failing to induce them to stop selling, I said, "The guns shall adjudicate the land." I fought them at Te Pakiaka, and beat them. Several of the chiefs were slain, and I held the land. I was in absolute authority over the land. Then I brought my own tribe back from Manawatu, where they

had been driven by Ngapuhi. I will now bring my statement to a more recent date. I had seen trouble through the Native school reserve at Te Aute not being used for the purpose for which it was reserved. I formed a plan of starting a school at my own settlement. I said, "I will set apart a piece of land for the purpose of supporting this school." I did so. I gave Owhaoko for the purpose of supporting it. Subsequently the parents of the children took them away from the school. The school being deserted, I used the land for my own purposes. When the land was heard before the Native Land Court it was adjudged to belong to myself, to Noa Huke, Ihakara te Raro, Karaitiana te Rango, and Retimana te Rango. I put these people into the certificate. I was aware of the adjournment to Porangahau. I did not attend that Court: I was ill. The judgment arrived at at that Court was a correct one. After I was put into the title I did not use it for my own benefit alone—I divided the money amongst my relations. I know there was a rehearing, and that the original decision was upheld. The people amongst whom I divided the money were descendants from the same ancestors as myself. I was the only descendant of the people who held the mana of the land. I had re-established this mana by driving Te Heuheu off the land, and also keeping Te Hapuku and others from selling land. I was present at the Provincial Chambers when the hearing was called. Noa Huke gave evidence of the genealogy of our people. I gave evidence before the Court. I said, "I will put these people—Ihakara, Te Retimana, and others—into the land, not because they are owners, but through friendship—because the land is mine." Karaitiana was present, and, I believe, Ihakara was also. The Court then asked if any one had anything to say. Wi Wheko stood up and said, "What Renata says is perfectly correct. I am one of the people, but I am not in the land." I know nothing about the last hearing of the case. It was in the hands of my solicitor. I object to the opening-up of these titles, as they have been adjudicated and settled for years. If the verdict of the Native Land Court is to be upset in this case, other titles will be interfered with. I have always understood that the judgments of the Native Land Courts were final after the time allowed for a rehearing. Dr. Buller was acting for me in the rehearing. I cannot state what he did. He is in England. He will have to speak for himself. With regard to the school reserve, that was set apart by me solely for the support of the school established by me at Omahu. That school having failed, the land reverted to me. None of the Patea, or Taupo, or Heretaunga Natives have ever said anything to me against the decision of the Court.—RENATA KAWEPO.—Taken before me at Napier this 23rd day of July, 1886—GEORGE A. PREECE, Resident Magistrate.

Explanation by Mr. Fenton of his Evidence on the Subject of "Service" of Notices, given on Wednesday, 18th July.

Sir Robert Stout desired me to read the latter part of clause 35, Act of 1873, which is as follows: "And the applicants shall satisfy the Court at the sitting thereof for the hearing of the claim that such notices have been duly served upon such persons or parties; and in the minutes of the proceedings of the Court shall be entered a note of the manner in which the Court was so satisfied." In my examination thereupon I understood Sir Robert Stout to assume, as I certainly assumed, that these notices of sitting should have been served by the Native Land Court; and I answered the questions on that supposition. The "forwarding" of the notices, directed by the following section (36), was clearly the duty of the Court; and I had that duty in my mind when I answered Sir Robert Stout's questions. When I got home in the evening I read the whole clause, which is as follows: "A copy of the application shall be sent at the same time by the applicants to each of the tribes, or hapus, or persons named in the application, or believed by the applicants to be interested in any portion of the land comprised in the application. And the applicants shall satisfy the Court, &c." (as above). I then perceived that the duty of serving these notices was on the applicants, and not on the Court. My answers are therefore irrelevant. If I had been aware of the whole of the clause I should have answered in this way: Applicants never in their applications disclosed opponents, and never served them at all. In fact, they did not recognize them even when standing up in Court. "*Kaore au e mohio*" was the invariable answer of a claimant when asked in Court if he admitted the claim of an opponent. "*Kaore au e mohio*" means "I do not recognize him." I do not remember a single instance of counter-claimants being disclosed by claimants. The slightest knowledge of Native character and customs would have forbidden the insertion of such a clause. It is one of the most fantastic clauses in an Act full of absurdities. The clause never operated at all; and in 1878 it was, at my suggestion, repealed by Parliament.

Letter from Mr. Fenton to the Chairman.

Auckland, 21st July, 1886.—Sir,—I have the honour to address you on the subject of my answer to the Hon. Mr. Bryce's supposititious question as to the relative rights of a dominant chief and persons whom he called his people. "Mine is the land, and mine are the people," was the phrase as put to me by Mr. Bryce, as words supposed to have been used by the chief. My answer was, I think on reflection, too general, because it should have been modified by a knowledge of the political status of the people referred to. Thus, (1) if the people were the chief's own relations, descended from one common ancestor, they should be heard, as their rights are the same as that of the chief, varying only in degree, not in character, and opportunity should be afforded to them to appear; if, (2) on the other hand, they are *pahi* or *rahi*, or descendants of persons who have been conquered in battle whose lives have been spared, their status would be different. The decisions have been consistent that in cases of this sort the conquering tribe, not having exercised at the time their admitted rights of killing the vanquished, have thereby granted them a right in the land—a necessity for their future subsistence. This right has always been recognized by the Court in all cases where the subjugated people were not moved off their old land and reduced to slavery. But in this case, too, the people (*pahi*) would have a right to be heard, and should have an opportunity. If my answer goes further than this, I should wish, if it is possible, that it may be qualified. I think that Mr. Bryce alluded to residence as conferring title. This, by itself, is not so. (See decisions in "Important Judgments," pp. 81, 87, 94.) I will take this opportunity, if I may be permitted, with reference to the point of law so strongly urged by the Hon. Sir Robert Stout, that at a rehearing all parties could come in and demand to be heard, of recalling your attention to the fact that the Court at Napier was sitting under the Act of 1880, which contains no provision about commencing the "case *de novo*," but merely says that there shall be a rehearing. The rules, moreover (No. 37), are very clear upon the point that there can be no new parties: "37. The Chief Judge may return the application for amendment or explanation, or may refer it for remark to the other party, or may fix a time and place at which he will hear the parties in reference thereto." Even under the Act of 1873 the intention of the Legislature appears to be sufficiently indicated by the use of the word "case" (to commence *de novo*) in the Act of 1873 as contrasted with the word "claim" (to commence *de novo*), used in section 16 of "The Native Land Act Amendment Act, 1878 (No. 2)." I shall feel much obliged to you if this note can in any way be appended to the proceedings.—I have, &c., F. D. FENTON.—The Chairman, Owhaoko Committee.

Letter from the Hon. Sir R. Stout to the Chairman.

Premier's Office, 7th August, 1886.—E. T. Conolly, Esq., Chairman, Kaimanawa-Owhaoko Committee.—Dear Sir,—In the letter from Mr. Fenton, dated the 21st July, 1886, which I have seen for the first time this morning, I find he refers to the rehearing of Owhaoko, and wishes the Committee to understand that the Court, in dealing with that rehearing, was acting under the Act of 1880. This contention is, to me, very surprising. It is certainly peculiar that not until 1886 does he discover that the Court was acting under the Act of 1880. On the face of the case submitted to the Supreme Court, as well as on the face of the order made under the decision of the Supreme Court, there is no mention or reference to the Act of 1880, and I feel certain the Court never contemplated that it was sitting under the Act of 1880 to hear this Owhaoko case. Nor do I see how it could. First: The only rehearing that could take place under the Act of 1880 was a rehearing ordered by the Chief Judge. (See section 47.) Second: This rehearing was ordered in February, 1880, by the Governor in Council, and the Act of 1880 did not come into force until the 1st October, 1880. If the rehearing was not, therefore, under the Act of 1873, the rights granted by the Order in Council must have been destroyed by the Act of 1880. Were this so, the sitting of the Court was entirely illegal. I need not say it was not so. Third: If the Court was sitting under the Act of 1880, then the Supreme Court was wrong in making any order or giving any decision as to the effect of section 50 of the Act of 1873, for clearly section 50 of the Act of 1873 was merged in or repealed by section 47 of the Act of 1880. Judge Fenton's contention, therefore, is of no avail; and the fact that he desires to raise it shows that he is not satisfied now in his own mind that the Court's

procedure was legal in dealing with the Owhaoko rehearing. I may add that, if he had been acting under the Act, of 1880, then the case was wrongly stated to the Supreme Court. Again, if he had been acting under the Act of 1880 that Act would still show that the procedure of the Court was wrong. That Act assumes that a rehearing is to take place. No one can contend for one moment that any rehearing did take place. Section 47 of the Act of 1880 also provides that the Court is to affirm, reverse, vary, or alter decisions or give such other judgment or make such orders as the justice of the case requires. The Court made no order whatever. The only order made was made by Mr. Fenton, without even, apparently, consulting the other members of the Court. As to the rules declaring that there may be no new parties, if they attempt to limit the powers given to the Court under the Act they are *ultra vires;* but I do not think that Rule 37 could be so construed. Again, I may point out that a rehearing means that all parties that could be heard in the original case are to be heard when the rehearing takes place, otherwise the word "rehearing" is misused. What is a rehearing? In an ordinary equity suit it means that every person that could be heard when the suit was first before the Court can be heard when it is reheard. Here again, therefore, the contention of Mr. Fenton is disposed of. I can see no difference between the words "case" and "claim." A claim once made and going before the Court is a case, and that is how the word is used in the Acts. If, however, it had been the practice of the Native Land Court, in rehearings, only to hear the parties originally before the Court by way of claimants or counter-claimants, then what was the need of Mr. Fenton wishing to rely on the Act of 1880. It seems to me that this reference to the Act of 1880 is a tacit admission that Mr. Rogan's view of the law is the correct one, and that all parties having an interest ought to have been heard on the rehearing. I need hardly repeat that, up to the writing of Mr. Fenton's letter of the 21st July, I always understood he defended his issuing of the order on the ground that he was following the decision of the Supreme Court in its interpretation of the 50th section of the Act of 1873. His letter practically abandons that position, and lands him in still greater difficulties in his attempts to defend his action. I respectfully request that this note be submitted to the Committee, as I had not seen Mr. Fenton's letter when I had written my previous note.—I have, &c., ROBERT STOUT.

Letter from Mr. J. Holmes, M.H.R., to the Chairman.

Wellington, 12th August, 1886.—The Chairman, Owhaoko-Kaimanawa Committee.—Sir,—Having read the evidence taken in connection with this inquiry, I would like, if possible, to record my views upon it. It seems to me beyond a doubt that the original inquiries made by the Native Land Court regarding the ownership of the respective blocks named Owhaoko and Kaimanawa were conducted very irregularly and incompletely; and that those blocks of land respectively were not awarded to all the true owners, or in the due proportions to which the true owners were respectively entitled. In order that anything like justice should be done to the appellants and true owners of these blocks respectively the Committee should recommend that an Act be forthwith passed to enable a rehearing of the respective claims to ownership of both blocks, with such reservations and conditions as will, as far as practicable, protect the interests of lessees and third parties without doing manifest injustice to the true owners.—Yours faithfully, JOHN HOLMES.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1886.