

was repealed, and my successor appointed, I held a dual position, being not only a Judge, but also a sort of Registrar to the Native Lands Department, or some such title;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.