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 Why did you say, first of all, there were no proceedings?—Because the case was withdrawn.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 But, still, this conversation took place?—I wrote on the cause list "Withdrawn," and I remember it.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.