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