

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”—