

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.