

1327. You did?—Yes.

1328. Had you any power to do so?—No. That clause gave the power.

1329. That clause gave power to “the Court.” Did you assume that you were the Court, sitting by yourself, without an Assessor or Judge O’Brien?—Yes. Section 9 says, “Every Judge of the Court sitting alone shall have the jurisdiction and may exercise the same powers as are given to the whole Court.”

1330. Were you sitting alone?—Yes, at Auckland, I think. Was I not?

1331. I do not know. I want to know?—However, I was alone. The Rules furnish more provisions for that.

1332. Would you read the order you made, Judge, and see if you were sitting alone?—Yes. I see what you are meaning.

1333. This order purports to be made by the Chief Judge, Judge O’Brien, and an Assessor. Did you, Judge O’Brien, and an Assessor ever make such an order as this?—No. The Act says all orders of the Court not hereinbefore made shall be sealed with the seal of the Court, and signed either by the Judge presiding or the Chief Judge. So I had abundant power to sign.

1334. Yes; but you notice that it meant to be under the date of the making of the order. Ought not that to have been done judicially?—We should have done it at Napier sitting if we thought we had power.

1335. Yes; but you did not?—We did not.

1336. Now, if you read the letter of Dr. Buller (it is set out in the memorandum—I think you will find it on page 19 of the memorandum), “As the Chief Judge has been good enough to ask my opinion as to the proper date for the order confirming the original Owhaoko judgment, I would suggest that the safest date would be the 30th October, 1880.” So you see Dr. Buller was not relying under the Act of 1880 to fix a date?—Yes; but you are not going to make me responsible for him.

1337. But you acted upon his decision?—Yes; I relied upon him to make it correctly in his own interests, as is the practice in such cases in the Supreme Court. He drew the order himself, and took the whole responsibility.

1338. You signed anything that Dr. Buller asked you, because he took the risk as to its being wrong or right?—If he had asked me to sign for a date earlier I should have done so.

1339. Even though the Court had not made a judicial determination?—Yes.

1340. How could you be a Court, when on the face of the order it is made by three persons?—Yes, there is a technical objection there, no doubt.

1341. You notice that section 48—if you rely upon that—says that the Court, if it thinks fit, shall fix the date. It does not leave it to the person applying for the order?—Of course, we put whatever date counsel asks us when he is the only person concerned—*i.e.*, when all litigation is over. I must say I think that all through these proceedings I have felt that almost every point that has been suggested in this paper ought to have been decided by the Supreme Court. If I was wrong—if the Court was wrong—if I ought to have dealt with Heperi Pikirangi—there was Mr. Lascelles present, and he could have got a mandamus at the time. There were abundant opportunities of taking it to the Supreme Court. Although I have answered your questions as well and respectfully as I could, I do feel that this is not a Court of Appeal from my decisions, which are law until upset by a superior tribunal.

1342. I put it to you, did you really, when you carried out Dr. Buller’s letter when he suggested the 30th October, and made out a document dated the 30th October, and you put your signature to it on 4th March, 1882—did you consider that you were acting under the Act of 1880?—Yes.

1343. If you considered you were acting under the Act of 1880, does not that Act clearly point out that it is the Court that is to fix the date?—Yes.

1344. You were not the Court—you were only one of the Court?—Not the Court that sat at Napier?

1345. You were not the Court that made the order?—We made no order.

1346. You are not the Court such as is mentioned here, in section 48 of the Act. The Act says, “such day as the Court thinks fit.” Now, the Court at Napier fixed no date?—No.

1347. And you were not sitting as a Court. The Court had not been gazetted. You were only doing this as in chambers?—Yes. I suppose you may call it that—there was no Court gazetted.

1348. Do you think you were acting under the Act of 1880?—Yes, I do.

1349. And you had power to do so?—If you look at it from the technical point of view, I apprehend that, if you say my sitting ought to have been gazetted, and so on, there was a defect, and my position did not justify me in making an order as if at Napier sitting with others. But I considered that we had the power.

1350. But you did not consider the question at Napier? That is my question. That was never brought before you?—I considered, as any lawyer would, I think, that when a lawyer has got his order the Court says “Go and prepare it;” and he prepares it in his own fashion. It happened to me in the Supreme Court the day before I came here, and the Judge never questioned it.

1351. But that is a different thing, because here this section 48 gives not merely the date of the order, but the judicial function to fix the day?—The Court was not there, but everybody knows it was taken the same day. The date is part of the order.

1352. I put it to you this way: In Mr. Buller’s letter the reason he gives for the 30th October was that it was the last day on which such rehearing could take place?—The reason he gave the 30th was that he relies on the 48th section.

1353. I do not care what he relies upon. Did he place it in?—It does not concern me what his reasons were.