

TUESDAY, 20TH JULY, 1886.

MR. BELL addressed the Committee as follows :—

Sir, I have already stated to the Committee—I do not know that it has appeared upon the notes of evidence—that I hold no brief for the owners of the land the subject of this inquiry, nor for the lessees, nor for Dr. Buller. I am not concerned nor interested for them in any way, nor have I any relation of any sort or kind with them. Therefore I may be said, as the Chairman put it to me when I first appeared before the Committee, to appear solely upon Mr. Fenton's petition, which has been referred by separate order of reference to this Committee, and not upon that part of the Committee's duties which arises upon the order of reference on the Bill itself. Neither have those for whom I appear any interest in opposing the rehearing, nor are we concerned in the question whether there should or should not be a rehearing. Again, I wish to say, further, that it is not of any importance for the cause that I advocate that I should contend that the judgments, or the proceedings, of the Native Land Court, were valid in law, or that the proceedings were in every respect regular. But I am concerned to prove that they were honest judgments, honestly delivered, and that the proceedings were taken with a desire of doing right and justice, though perhaps under a mistaken impression of what was law, in the two particular cases which the Committee have to consider. I would like to add this, if the Committee will permit me: that I feel I am better able to advocate the position which I have stated because for the last twelve years I have been engaged in the contests between Natives and Europeans—almost without exception upon the side of the Natives—and have been engaged, like Sir Robert Stout, in attacks upon the Native Land Court and the manner in which it has carried on its functions under the various Native Land Acts. But until this memorandum appeared annexed to this Bill I say that no one engaged in such contests ever heard a suggestion or whisper against the honesty of Judge Fenton, or the honour and reputation of either of the two gentlemen who are made the subject of animadversion in this memorandum—I mean Mr. Fenton and Mr. Rogan. It has been contended by many—and by myself, perhaps, as much as any—that the proceedings of the Native Land Court have been too summary; but until this memorandum appeared we have never heard a suggestion of bad faith or misconduct on the part of Judge Rogan or Chief Judge Fenton.

I propose, before I sum up the effect of the evidence, to ask the Committee to allow me to refer very briefly to some of the provisions of the Native Land Acts, in order to show the position of the Court when it dealt with these two blocks. The Act of 1865 had remained in force with immaterial amendments, if I except the amending Act of 1867, until 1873. By section 6 of that Act—of 1865—the first Judges held office during good behaviour. They were in the same position as Judges of the Supreme Court. By section 13 all administrative business was given to the Chief Judge, and section 21 and the sections on to 29 provided for the investigation of title. Now, I am not going to read the sections, of course; but their effect is this: Section 21 provided for the making of application to the Court, and section 22 provided that upon receipt of the application notice should be given by the Court, and circulated in such manner as to give due publicity thereto, and by the same notice or subsequent notice it was to be notified when and where the Court would sit. Then, section 25 required the Court, before it proceeded with the inquiry, to have before it a correct survey; but that was a requirement which was practically dispensed with by section 71, which provided that upon any investigation it should be lawful to proceed without a regular survey. Such, Sir, were the provisions of the Act of 1865, under which the Court was acting when the Act of 1873 came into force. The Judges of that Court were not lawyers, with the exception of the Chief Judge, in whom the whole administrative functions were vested. They had been carrying on their business under an Act which required them to give notice in a way which they should think best calculated to bring the notices to the knowledge of the Natives. Then they were allowed to use imperfect plans. That was the method in which they had been proceeding from 1865 to 1873; and—addressing the Committee, some of whom are lawyers—if I am permitted to refer to this point, I think it is utterly preposterous to suppose that before arriving at a judgment *in rem* the Court could prove service upon every one interested. When any Court deals with any matter *in rem* it provides by some method or other for service upon all the world. Every judgment *in rem* binds all the world, and the Court determines some method by which all the world shall have notice. Throughout Sir Robert Stout's memorandum there appears a criticism upon the non-service upon persons in the Patea District. People might have turned up who were interested at Akaroa. Non-service upon certain Natives is no proof of any misconduct of the Court. It is only evidence which would justify a rehearing. Then I pass on to the Act of 1873. The Act of 1873 altogether altered these provisions of the Act of 1865. The Act of 1873 was intended to insure by some means that the Natives interested in any particular block should be informed before the sitting of the Court what the Court was engaged to inquire into. Now, a most important provision of the Act of 1873 is section 8. The Judges had previously held office during good behaviour, but they were now to hold office during pleasure, and were no longer independent Judges, and they were subject to the instructions of the Government as to where they should sit, and various administrative details. There was, of course, no control over their judicial functions; but still their position was entirely altered by section 8 of the Act of 1873. The other sections have been referred to in the evidence, and I desire only to shortly refer to them. Section 16 provided for the vesting of administrative functions in the Chief Judge, and section 33 provided that surveys should be a necessary preliminary, and there was no longer any section which allowed the Court to proceed without an accurate initial survey—a survey approved by the Inspector of Surveys. A more absurd provision was never inserted into any statute, I believe. It was found utterly unworkable, and was abolished in 1880 by Parliament for this reason: that the boundary was often the very thing in dispute; and to bring before a Court a complete survey-plan was to bring before the Court as finally settled that which was the matter in dispute. That is the most absurd provision that is to be found in any statute in the colony; and, Sir, upon the effect of this section a great deal of this memorandum turns, because you know from Judge Rogan that he absolutely could not have pro-