

ceeded with any of his cases had he insisted on compliance with its provisions. In no case was there any complete survey before him. As he tells us, at Gisborne he would have had to send over four hundred Natives to their homes if he had insisted upon this provision. It became the practice of the Court—a practice which, I think, though irregular, was not improper or unjust—to proceed upon a sketch-plan, and postpone making the order till a correct plan was before the Court. That is to say, the Court always directed a survey to be made, and at the investigation it minuted that the memorial of ownership would be issued directly the plan arrived. That was not strictly in accordance with the law, and I frankly admit that it was not. But it was required by the state of the Native title throughout the country. At that time a very small portion of the country had been investigated, and it would have been monstrous to say to the Natives that their land could not be investigated till a full survey was before the Court, in accordance with the statute. I have referred to this section specially, because very much of Sir Robert Stout's memorandum turns upon it. What Judge Rogan did in the Owhaoko Block was in pursuance of the practice of the Court of avoiding the effect of section 33. Then, by section 35 applicants were required to send notice to each person whom they believed to be interested, and it was provided that the applicants should satisfy the Court, at the sitting for the hearing of the claim, that they had served such notices. Now, Sir Robert Stout's memorandum refers to this in several places. He says there is no entry of any proof of service upon the minutes. Well, section 35 had really no application; and for this reason: Applicants never admitted the title of any one else in applying for an investigation into a block. When I say "never," I should say "seldom," perhaps—they seldom admitted that there were any other persons entitled. Those who know anything of Native cases, or the investigation of Native titles, know this: that if you ask a Native to whom the land that is to be investigated belongs, he says "It is mine;" and therefore the provision which bound the applicants to serve notices upon those whom they believed to be interested other than applicants was entirely ineffectual. Section 36, however, which required that copies of the notice of claims should be sent to District Officers for their reports upon them, and also required that such notices should be inserted in the *Kahiti*, was complied with strictly. Section 37 was also in part complied with, though not to the extent which the Act contemplated, for a reason that I shall shortly refer to. Section 38 requires that the Judge shall make preliminary inquiries as to the *bona fides* of the claim; and when he shall have satisfied himself on that point he shall order a survey of the block to be made, and shall minute how he was satisfied. This was impossible. For instance, with reference to these very blocks it would have required the Judge to go to Patea, and make a preliminary investigation, and then, after having satisfied himself as to the result of those preliminary inquiries, to hold a second Court again at Patea for the purpose of investigating the same title. Why, those who know anything about investigations of Native title know that any attempt to carry out such a procedure would have been perfectly hopeless, because the Natives would not have met twice for the purpose. In fact, the first investigation was the only one; and that clause was struck out of the law in 1878 by Parliament, which repealed section 38, and provided that all titles that had been granted without a preliminary inquiry should be as good as if there had been a preliminary inquiry. Section 41 requires that the Court should have satisfied itself that the notices "hereinbefore" required to be given had been duly served, and should ascertain the title. This, then, was what was required in the way of notice. It was required of the applicants that they should serve those whom they believed to be interested, and it was required of the Court to issue notices of the claim in such a way as to enable every one to know of the sitting of the Court; but the Act did not require any personal service by the Court or the officers of the Court in any single case; and there never were, or seldom were, any persons whom upon investigation the Court could find that the applicants *believed* to be interested, and who had not received notice. But there were also provisions, from sections 21 to 32, inclusive, which required the District Officers to perform certain functions which were never carried out. It was for the Government to find the funds for the carrying-out the duties of the District Officers, as Mr. Lewis has told us; but those functions were never performed, and their duties were resolved into an inquiry whether the peace of the country was likely to be disturbed. Then, section 103 of this Act of 1873 provides for the sending of cases to the Supreme Court. I only refer to this here (I shall have to refer to it again in a moment) as being in the order of the sections which I think are material for the Committee's purpose. Section 104 is, I think, however, of very great importance. It provides that the Judge may at all times amend all errors in any record of proceedings of the Court, and may make such amendments as may be necessary. I wish the Committee to give special attention to the latter part of the clause: "and for the purpose of this provision everything done in or by the Court or the Judge shall be *deemed to be a proceeding in the Court* up to the issue of the memorial of ownership." Now, I ask any honourable member of this Committee who is a lawyer to say whether that does not provide that the Judge may make any amendment at any time, and when he makes any such amendment he shall be deemed to have made it in Court. I submit with every confidence that section 104 is a sufficient answer to the paragraphs in the memorandum in which Sir Robert Stout comments upon the alterations which were made by Judge Rogan, or by the Clerks, in the minute-book, and upon Judge Rogan in connection with the issuing of memorials the dates of which did not correspond with the Clerk's entries in the minute-books. I submit that section 104 is a complete answer to any part of the memorandum which attacks Judge Rogan's action in that respect. I have already stated that the section of the Act of 1873 which required a preliminary inquiry was repealed in 1878 as useless and unnecessary; and I say the Legislature recognized that by confirming the titles which had been granted without a preliminary inquiry. And it also provides—the Act of 1878 provides—for a provisional survey—that the Court may proceed upon a provisionally-certified plan without having the complete survey which had previously been required by the Act of 1873. In 1880 the House stepped in and abolished every one of these provisions of the Act of 1873 upon the non-compliance with the strict language of which the Attorney-General so strongly comments. In 1880 the Act of 1873 was practically repealed—all that was repugnant to the Act of 1880 was