Minister, having undertaken to give advice to the Crown, and failed to do so over a series of years, would not persons, acting *bonâ fide* on the assurance that the advice would be given, failing its being given, have a claim to compensation?—That point has not been raised; it is probably one for the Committee to consider, if they see fit.

93. But I would like to ask you this question, which has reference to the extension of that principle: Suppose the promise made in this instance would injure innocent parties whose names are not in the grant, would not that give rise rather to a claim for compensation against the State? Would not these innocent parties have a claim to compensation because the promise was ignorantly made?—Yes; quite as much; that is, if there had been injustice done to the grantees and their heirs, but not as regards reopening the awardship.

94. Suppose this promise then made to the injury of innocent people, ought the State to carry it out because a promise had been made to another?—which is now said to be a recommendation which would have the effect of doing such an injustice; who would have the first claim to be considered—the innocent people, or the man to whom such a promise had been made?—I should say that both would be entitled to consideration. The innocent persons I understand you to mean are the heirs of the grantees, who derive injury through the grantees being allowed to sell their property would have the first consideration; but both parties would be entitled to consideration. The point depends on this: whether the recommendation is operative on the Government or not. I understand that it is not. It is a question within the Governor's own discretion, acting on the advice of Ministers, whether or not he accepts the recommendation of the Court. I have shown you that the Court has considered itself an instrument of the Government, and merely done what they wished.

95. Are you aware that in the majority of cases in England the Judicial Committee of the Privy Council would consider such a recommendation, and would decide the question whether the law required the Crown to give effect to the recommendation before anything further could be done?—That is a point which I have not considered; but I recognise that such a tribunal is different from the Land Court, and is a proper one to try such matters, and that the Crown would follow its decision.

FRIDAY, 16TH DECEMBER, 1887.

Sir F. WHITAKER, Attorney-General, examined.

96. *The Chairman.*] We have before us a statement made by you in reference to this petition of Sir James Fergusson?—Yes; it was I who made that statement; it contains all that I know on the subject.

97. The Committee is anxious to have produced the several papers and documents referred to in your statement?—Yes; first, here is a telegram, stating that inquiry has been made respecting the Maungatautari lands, that the Government make no objection, and that the Governor will be recommended to remove restrictions. The next is a letter dated the 5th June, 1874; refers to Captain Wilson negotiating the purchase, &c.: it is from Mr. Clarke, Native Under-Secretary, and says that His Excellency the Governor will be advised to remove the restrictions. The next is a deed of conveyance.

98. A conveyance from the Natives?—Yes.

99. *Mr. Hutchison.*] Have you the certificate?—The certificate is, of course, with the Court. I have a copy of the certificate, or certificates, for there are two certificates.

100. *Major Jackson.*] For the two blocks?—Yes; for the blocks No. 1 and No. 2.

101. *Mr. Hutchison.*] The date here is important; what is the date?—17th April, 1871. I should state here that the petition does not ask that a title should be vested in the petitioner. All that is asked is that the title be vested in the Natives. There appears to have been some impression that Sir James Fergusson was buying lands off the Natives while he was Governor. That has no foundation.

102. It would be necessary to show to the Committee how Sir James Fergusson has derived his title, and for that purpose it is required to produce all the papers?—But, in point of fact, there is no title. You are not asked to mix up the question of the title of the Natives with the prayer of this petition. If the Committee should decide in favour of the prayer of the petition, everything will have to be done that is required by the Native land laws before the petitioner can obtain a title.

103. But it is important to know how the title originated?—Under the Native Land Act of 1865. In one of the certificates there are ten Natives, and there are one or two names absent.

104. Where the whole of the names do not appear in the conveyance?—There would have to be a partition; as I have already said, the petitioner would have to do everything that remains to be done by law to complete his title. He would, among other things, have to apply to the Court for a partition.

105. Under what Act?—Under the Act of 1886; Mr. Ballance's Act.

106. You are aware of the judgment recently given by Mr. Justice Richmond in the case of Seymour *versus* Macdonald; that case appears to be on "all fours" with this?—It is exceedingly like this, except that in this case there was an undertaking on the part of the Government to remove the restrictions. The effect of the case was this: The Court held that clause 24 provided only for cases where the land was held under Crown grant—it did not include certificates of title. There is a misapprehension in reference to this case. The restrictions were recommended by the Court. There it was a different provision under the Act of 1873. Under the Act of 1865 the Court (the Native Land Court) had only power to recommend any restriction it pleased, but not to put any on: the Governor was left to put it on or not as he pleased. The distinction is that the restrictions under the Act of 1873 could be put on by the Court. In this case there is a mere recommendation. The case has been misunderstood; they have been treating it as a case under the Act of 1873.