

*Mr. Welsh:* I do not ask your sympathy, but it is not fair to say that he has done well out of the bargain. I only ask the Commission to take up a neutral position, and I think that is a fair way to put it. Now, regarding the rights of conversion. You will see, sirs, that it is my intention only to touch upon each point as I make it. I do not think it would have escaped the attention of the Commissioners that the rights of conversion are not so plain to the ordinary intelligence as may appear at first sight. First of all the Commissioners will have noticed the names of the statutes by which the rights were given. It is odd, at any rate, to the lay mind. I should imagine that if a lease under which a lessee held or the Act under which he held—the West Coast Settlement Reserves Act—was going to be altered in any way that the amending Act should have the same title; but for reasons best known to the legislators they always headed these amendments as Native Acts and under various names. Your Worships will also have noticed the gaps in the legislation from time to time, and the technical manner in which the amending Act always antedates itself. It says it is going to have two years' operation, but when you come to work it out it only has one year's operation. Under the amending Act, which was not called the West Coast Native Reserves Act, but the Native Empowering Act, the right was only for twelve months, and the next Act gives the right for another two years. You must take that with all its limitation. It may be said, and has been said, that it was not for the Public Trustee or the legislators or any one else to warn the lessees of their rights; but, nevertheless, the fact remains that there are the gaps, the technical wording of the statute, and the peculiar way the legislators tried to hide the Acts so that the lessees would not be made aware that Acts for which they were to be held responsible would be for their benefit. That brings us down to the positive testimony of the witnesses regarding their want of knowledge after 1892, and I venture to say that it is impossible to think that some of those witnesses at all events were saying what was not true. I venture to think that some of those witnesses carried conviction to any one who listened to them. I specially desire to refer to Hughson, Foreman, the two Bests, Newell, Palmer, McKenzie, and Mrs. Mitchell. In their cases I think they have all demonstrated to the Commission by the nature of the improvements put upon the land after their knowledge of the right of conversion that it would have been highly profitable for them to have converted after 1893, especially in 1900; also the distinction taken by the two Bests, that in 1892 and 1893 when they were hard up and were struggling, and when things were just on the balance with them as to whether they should carry on at all, as compared with their better position from 1895 on to 1900. Again, it is said there is proof positive that they received this notice referred to by the Under-Secretary for Native Affairs in the witness-box this morning. Now, I want to put it to you, sirs, that there is no evidence whatever that any one of the lessees on that list ever received the notice at all. I do not care how you take it; the evidence at the most against us is that Mr. Fisher directed a clerk in his office to send those notices out.

*Mr. Kerr:* More than that, there is the list itself.

*Mr. Welsh:* I am coming to that. Mr. Fisher believed the notices had been sent out because on the file there is a report from this clerk that he had sent the notices out—a report to his superior officer. Mr. Bell points out that there is evidence of one notice having been received by one lessee. My point is that all those gentlemen who have gone into the witness-box, especially those nine I have mentioned, have sworn positively that they did not receive that notice. I point out that their acts after that date are consistent with their not having received the notices, and I say there is no evidence that any one of those persons ever received the notice referred to by Mr. Fisher in the witness-box; on the other hand, the evidence lies all the other way. A document of State is presumed to be properly written, to be properly executed, and to be properly sent out; but to begin with, this is no document of State. A document of State is only taken because it is the best evidence, but this is not the best evidence; any amount of evidence could, if it were true, have been called to prove that these notices were sent out. The clerk is in Auckland, there are the Post Office receipts, but we have seen nothing of them. If I send a registered letter out I receive the receipt to show it has gone out, and the ordinary practice is to attach the receipt to the letter-book. That is the best evidence that could be called in proof of the fact, but it is no evidence to quote a memorandum that purports to be signed by no one. It is not even signed by this man Oswin, the clerk. It is a mere list of names with the date, and says that those notices were sent out to the lessees named.

*Mr. Bell:* There is a covering letter by Mr. Fisher.

*Mr. Welsh:* Yes, because he believed his clerk had sent out those notices. The covering letter is from Mr. Fisher to the Public Trustee reporting that he has done a certain thing. My point is that Mr. Fisher, in sending that letter, relies upon the report that his clerk puts in front of him that he has sent those circulars out to those people—a memo. from a clerk to his superior officer. Mr. Fisher is no evidence at all against us. It is not the best evidence; it is not evidence even purporting to be a list signed by the clerk and handed in to his superior officer.

*The Chairman:* I do not know whether it is exactly parallel in the case of notices for calls, but if a man denies having got a notice, is it not sufficient to produce before the Court evidence that a certain list is made out and been given to an ordinary clerk to post: is not that taken as evidence?

*Mr. Welsh:* I think there is special provision in the Companies Act with regard to calls. The point is met in Taylor on Evidence.

*Mr. Kerr:* Is there not some special provision in the Rating Act?

*Mr. Welsh:* Yes. In the Rating Act there is no power to prove notice of a rate in that way, and here, because there is no power, therefore it is not evidence. Now, I know it is in the minds of the Commissioners, because of the various observations which have fallen, that it is difficult to understand that these men did not know of their right of conversion. I am going to suggest a reason. Most of those men who went into the witness-box, you will notice, were