1883.

NEW ZEALAND.

NATIVE AFFAIRS COMMITTEE.

(REPORT ON PETITION OF PIRIPI WHATUAIO, TOGETHER WITH MINUTES OF EVIDENCE.)

Report brought up 3rd August, and ordered to be printed.

REPORT.

PETITIONER complains that the Land Court awarded Waotu No 2 (otherwise called Waotu South) to Ngatihurikapu, though it belonged to himself and tribe (the Ngatingarongo.) He asks for a rehearing.

I am directed to report as follows:—

That application for a rehearing should be made to the Chief Judge of the Native Land Court, in whom the law vests the right to decide.

Disappointed claimants seem to think that they can bring Parliamentary influence to bear upon the Chief Judge by petitioning the House and getting their case stated to this Committee, and the sooner this erroneous impression is removed the better for all parties concerned.

The Native Affairs Committee cannot sit as an extra-judicial Court of Appeal to investigate title to Native land. Even were its members chosen as specially fitted for this work, it is evident that the time at its disposal would be quite insufficient for the magnitude of the task; indeed, a single case might not be got through during a session.

The Committee has had some interesting evidence placed before it relating to the working of the Native Land Court and the evils attending the present system of dealing in Maori land. It recommends that this evidence be printed.

The Committee is of opinion that the practice of previous Judges of the Native Land Court in giving their judgments with their reasons at length, so that all might see that they were in accordance with law and justice, was a very proper one; and the Committee regret that they cannot express an opinion as to whether the allegations in the petition are correct or not, as the Judges of the Land Court have given no reasons whatever why they decided against the petitioner, thus affording the Committee no data to go on.

That, in the view of probable legislation of questions on this kind, the Government be recommended to consider this matter, and see if it can be brought under the class of cases under their consideration.

3rd August, 1883. ROBERT TRIMBLE, Chairman.

[TRANSLATION.]

No. 79.—Pukapuka-inoi a PIRIPI WHATUAIO.

E whakahe ana te kai-pitihana ki te whakataunga a te Kooti i Waotu No. 2 (e kiia ana ano ko Waotu ki te Tonga) ki a Ngatihurikapu ahakoa nona ke ano ko tona iwi taua whenua (no Ngatingarongo). E tono ana ia kia whakawa tuaruatia taua whenua.

Kua whakahaua ahau kia ki penei.

Ko te tono mo te whakawa tuarua me tono ke ki te Tumuaki o te Kooti Whenua Maori notemea kei a ia hoki te mana whakatau i aua tono i runga i te ture.

Kei te mahara nga tangata e hinga ana i te Kooti ki te pitihana ratou ki te Whare, a me te whakaatu i o ratou take ki tenei Komiti, tera te Paremete e tahuri ki te whai tikanga atu ki te Tumuaki; na ko tenei me wawe te whakaatu i te he o tera whakaaro kia marama ai nga tangata e pa ana ki tenei mea.

E kore e ahei te Komiti mo nga Mea Maori kia tu hei Kooti Whakawa-tuarua mo nga take whenua Maori, ahakoa mehemea i ata whiriwhiria ona mema hei pera, e kore ano e taea taua mahi nui e ratou i te poto o te taima hei mahinga. Otiia e kore ano pea e oti tetahi keehi i te tuunga kotahi o te Paremete.

I takoto ano etahi korero nui ki te aroaro o te Komiti whakaatu mo nga whakahaere a te Kooti Whenua Maori, me nga kino e puta ana i roto i nga whakahaere whenua Maori o tenei takiwa. E mea ana tenei Komiti me perehi enei korero.

E whakaaro ana tenei Komiti ko te huarahi pai ano tera ko ta nga Kaiwhakawa o mua, ara, ka whakatau ana ratou e ata whakaaturia ana ano nga take i whakataua ai, kia marama ai ki te katoa i haere te whakataunga i runga i te ture raua tahi ko te tika; na ko tenei e pouri ana te Komiti i runga i to ratou kore kaha ki te ki he tika he he ranei nga korero o te pitihana, i te mea hoki kihai nga Kaiwhakawa nei i whakaatu i nga putake i turakina ai te kai-pitihana hei mohiotanga ma te Komiti.

Na i te mea tera ano pea ka hanga he ture mo enei tu keehi me whakahau te Kawanatanga kia whiriwhiri i tenei keehi me kore e taea te whakauru atu ki roto ki nga mea e whiriwhiria mai nei e ratou.

3 Akuhata, 1883. ROBERT TRIMBLE, Tiamana.

MINUTES OF EVIDENCE.

WEDNESDAY, 11TH JULY, 1883 (Colonel TRIMBLE, Chairman).

PIRIPI WHATUIAO, examined.

1. *The Chairman.*] Did you appear before the Court at the hearing of this case?—Yes.

2. Did you get a full hearing?—Yes.

3. Have you applied for a rehearing?—Yes; I applied in this way: I seized hold of my land and never let it go.

4. Have you made any formal applications to the Chief Judge, as is required by the law, for rehearing?—Yes; my son wrote.

5. *Major Te Wheoro.*] Did you write an application to the Chief Judge asking for a rehearing?—No; my son suggested a rehearing. The only rehearing I understood was to keep on the land.

6. *The Chairman.*] Have you any facts to adduce in favour of your title which you did not bring before the Court?—I had not time to finish the whole of my case. There were parts of the evidence which I intended to bring out that I had not an opportunity of doing because of the judgment of the Court being given before I had time. I had merely stated the main grounds on which I claimed, how my ancestors got the ground before me, and that was all.

7. Why did the Court come to a decision without having heard your whole case stated?—The reason was because I was not with the lawyers or the company. I was by myself.

8. What company do you refer to?—The company that is at Cambridge.

9. Who is acting for that company?—Mr. Sheehan.

10. Had you any lawyer acting for you?—No.

11. If I understood you aright, you have not made any application to the Court for a rehearing?—I did demand in Court a reinvestigation of the case verbally, but whether my voice was heeded or not I cannot say.

12. But you made no written application?—No; I did not. My son may have written, but I have never signed.

13. Did you know that it was requisite to send a written application to the Chief Judge if you required a rehearing?—I am quite an ignorant person in those matters. That was the first case in which I appeared in the Native Land Court. For many years past I have been amongst the Hauhaus.

14. *Hon. Mr. Bryce.*] Did you stand up in Court and make yourself heard, so that the Judges would understand you had a claim?—I stood up in Court. I addressed the Bench. They heard me, and what I said was, "I claim the land."

15. Then what happened? Did the lawyer speak, or did the Judge speak, or what?—Immediately after my telling the Court that the land belonged to me the lawyer spoke, and he addressed his words to the Chief Judge.

16. And what did the lawyer say?—The lawyer said to the Court, "I have asked this old man to join in my case, but he will not do so. He wants to set up a separate case of his own on his own ancestral grounds."

17. Joined in the case: I apprehend you mean by that that the lawyer meant that your name should be associated with his clients?—Yes.

18. And did you notice then what the Judge said in reply to the lawyer?—The Judge said to Mr. Sheehan, "How is it he will not agree? On what ground does he refuse to join your case?" And Mr. Sheehan said, "He is anxious to set up a case of his own; to go on his own claims."

19. Did the Judge then decline to take your evidence, and that of your witnesses, as substantiating your claim?—The Court would not listen to what I said. The Court made this remark: that I should have agreed to Mr. Sheehan's proposal; that if I went on my own hook I would suffer.

20. Did not the Court make any inquiry as to the nature of your claims, that is, who your ancestors were, or whether they had been possessed of the land, or any inquiry of that kind?—Yes; and I informed the Court of the ground upon which I claimed. The Court heard my statement as to the manner in which my ancestors originally became possessed of the land, how they defeated those who were in occupation before them, how they occupied the land, how they cut it up subsequently, and how it was occupied by those immediately before my time.

21. Did any other person besides you give evidence to a similar effect?—I was the first one who spoke, but all the others belonging to my hapu also spoke.

22. And gave evidence in support of your claims?—Yes.

23. *The Chairman.*] Who occupies this land now?—I do.

24. Any one else?—My hapu is occupying the land. I told them that, in the event of the block being surveyed, or cut up by surveys, they were not to interfere, but to remain in occupation, as I was going down to Parliament.

25. Is there any other hapu on the land? Yes; there is another hapu living on it—my opponents.

26. Do your opponents and your tribe live together jointly on the land?—We are both living on the land, but there is a distinct boundary between the two portions. But by the action of the Court my portion was taken.

27. And given to the other hapu?—Yes.

28. And how long have you and your hapu occupied this land?—My hapu have always remained there. They have never come away in the different migrations from that part of the country at different times. Whenever they have been raided upon by the Waikatos they have left it temporarily, but have gone back to it in a short time afterwards. They have done that frequently. But those hapus to whom this land was awarded by the Court came away to Kapiti in the olden days, and stayed at Kapiti in the Ngatiraukawa descent from Waikato, and had only recently gone back.

29. Who were the presiding Judges at this Court?—Judge Puckey and Judge Macdonald.

30. *Major Te Wheoro.*] Did Mr. Sheehan, the lawyer, make any application to you before the judgment was given?—Mr. Sheehan came in person to me, and asked me to consent to become one of his party.

31. Did the lawyer tell you what he required you for?—He asked us to make one case of it; that is, join our case with the case of those whom he represented.

32. On what grounds?—He said it would be better for each case if they joined as one. He represented them and conducted the case for them.

33. What sort of Natives were those represented by Mr. Sheehan; were they land-sellers?—Yes; they were land-sellers, and they also claimed the land as belonging to themselves.

34. Was anything said to you about this sale of the land, supposing you got it?—Mr. Sheehan did propose that we should sell all the land; but I said no, I will not sell.

35. *Mr. Tawhai.*] Was that what Mr. Sheehan meant by asking of you to associate your party with his? Was it for the reason that he wanted to purchase that land, and was that why you refused?—My answer was that I did not want to sell the land to him, that I wanted to keep it for myself.

36. *Mr. Hobbs.*] Did Mr. Sheehan ever offer you any money on account?—Yes; he did say that I could get money from the company on that land.

37. *The Chairman.*] Did any one else ask you to sell, or offer you money on it?—No.

38. *Mr. Hobbs.*] Did you ever ask for any money on that block?—No.

39. You never proposed to Mr. Sheehan?—No.

40. *Hon. Mr. Bryce.*] Was Mr. Sheehan the only lawyer in the Court at this time?—Dr. Buller was there also. In this case Mr. Sheehan was the only lawyer. Dr. Buller was connected with other cases previous to that.

41. Dr. Buller did not represent you in any way?—No.

42. Have you been represented by a lawyer in any other case than this?—No.

43. *The Chairman.*] Had you any other case in the Court?—Yes; I was in the Matanuku case, which was adjudicated upon before this. There were no lawyers in the Court when that case was heard—on neither side. It was conducted in Maori fashion, and it was awarded to me.

44. *Hon. Mr. Bryce.*] What is your opinion as to lawyers being in the Court? Do they assist in the proper investigation of the title, or impede it in any way?—My opinion is this: that, had I engaged a lawyer to conduct my case, in the event of my winning I would have received no land. It would have all gone for expenses.

45. *The Chairman.*] Were there rival claimants in the case in which the land was awarded to you?—Yes; they were all represented by Natives.

46. And was there no difficulty amongst you in getting the case settled on that occasion?—The difficulties were not to be compared with the difficulties that arise in cases where lawyers are engaged.

47. And in the case where there were no lawyers, were all the parties satisfied with the decision? Has there been any appeal?—The judgment of the Court in that case gave general satisfaction. There were no objections made afterwards. I got the whole of the land.

48. And did your opponents not protest against this?—No. They made no objections afterwards. They have sent in no claim for a rehearing. I put them down when I spoke in Court. They have not protested against it since.

HARAWIRA, examined.

49. *The Chairman.*] Were you present in the Court at Cambridge when Waotu No. 2 was heard?—I was there, and I conducted the case.

50. Was the case on all sides fully heard?—The whole of the evidence in some of the cases was not taken; but the case that I represented was fully heard, with the exception of one or two points. Some of the sections of claimants in Court never spoke.

51. Did your case get a fair and full hearing by the Court?—Yes.

52. And were you dissatisfied with the judgment of the Court?—I was dissatisfied with the judgment of the Court in this way: I asked the Court whether it had any reason to disallow the evidence which was given by my witnesses; if they could point out where any part of the evidence given by my side was wrong. I have a copy of the judgment given by the Court, and a copy also of the evidence given by my witnesses.

53. Have you applied in writing for a rehearing?—I have sent in an application to the Native Land Court to have this case reheard, but I have received a reply to the effect that the rehearing could not be granted because it was the Chief Judge himself who had given judgment in this case. That is why I thought it best to apply to Parliament.

54. When did you get that reply?—I got it when I was there, and I have a copy of it. I have got it at the place where I am staying.

55. Have you any facts to bring before the Court which were not brought out at the time of the

hearing?—Yes. Were the case to come on again for investigation I could bring out further points in the matter which were not brought out in the original hearing.

56. What is the nature of those points—in relation to occupation, or ancestry, or what?—They deal with the question of ancestral claims, of permanent and continuous occupation by the claimants.

57. Did you not bring out that case of occupation—of continuous occupation—before the Court?—Yes; these points were brought out before the Court; but the lawyer spoke, and the Court appeared to take heed to what the lawyer said. He said that my witnesses were old men, and could not be expected to have a clear idea of what they were saying.

58. *Mr. Hobbs.*] Did you ever make proposals to sell that land to these opposite parties?—We did receive proposals for selling. The Waikato and Cambridge Company made us offers for that land. Major Jackson was the principal man, and Mr. Sheehan was the lawyer.

59. Did you ever make any proposals to the company—did you ever ask for any money on account?—No.

60. Nor to anybody else?—No; because we particularly wished to retain the land for ourselves.

61. *The Chairman.*] Is it a large block?—Yes; and a very good block of land. Europeans desire very greatly to obtain it.

62. *Hon. Mr. Bryce.*] You say Major Jackson made you offers of money on behalf of the company?—My allusion to Major Jackson was only in this sense: he was one of the heads of the company; but those who came to the Natives and spoke to them about the land were Mr. Sheehan, McLean, E. B. Walker, and Moon.

63. I understood you to say that Major Jackson had offered money for the land, and Mr. Sheehan was the lawyer?—No; I did not mean it that way; I meant his agents, those working for the company—the lawyer, Mr. Sheehan, for instance.

64. Why did you connect Major Jackson's name with Mr. Sheehan?—I can explain it in this way. At Cambridge, at the establishment of Robert Kirkwood, all these persons are to be met with—Major Jackson, Mr. Sheehan, and Dr. Buller. We have had occasion to go there on different occasions, and sometimes we have met Dr. Buller and sometimes Mr. Sheehan, who have spoken to us on business. We have heard that Major Jackson is at the head of the company; that is how we have connected the whole three. The Maoris could not separate them as belonging to different companies.

65. *Mr. Hobbs.*] Were there not two companies there?—We could not say whether there were two or three; we only know of one company, and it is a company for the purchase of Native land.

66. *Major Te Wheoro.*] How many separate parties of counter-claimants were there in this block?—There may be more as written down in the books, but I can only remember four at present, the four hapus—Ngatikapu, Ngatikapuhure, Ngatihineone, and Ngatitauira.

67. How many of these sets were represented by lawyers and how many were not?—Ngatikapu and Ngatikapuhure had lawyers, but Ngatihineone and Ngatitauira were told by the lawyer who conducted the other cases that there was no necessity for them to give evidence—no necessity for them to speak—that he would conduct the whole case and settle it.

68. During the residence of those Natives at the place where the Court sat, who befriended them; how were they provided for in the way of accommodation and provisions?—I saw them myself give orders for rations, and I know the company was giving them food. I know this because I was offered an order to get some rations for myself and hapu, and I declined to receive it.

69. When the Court gave judgment in that block, was that judgment in favour of all these hapus?—The case of Waotu No. 2 was objected to by the real claimants, by those who sent in the claim for the hearing; but Mr. Sheehan prevailed upon the claimants to allow the claim of those hapus, so that, united together, they would be sufficiently strong to oppose the claim set up by our hapu, Ngatingaro. Hamiora Mangakahia was the name of the person who conducted the case of the hapu, which was objected to at first by the claimants, and the judgment of the Court was in favour of the whole of these four hapus. The land was awarded to these four hapus. Mr. Sheehan, previous to this, held three meetings, and at each meeting he proposed that we should associate ourselves with these Natives, but we always declined; and even before the Chief Judge he asked the Court to allow him an hour to see if he could not arrange matters between his people and ours. We would not agree then, and next day he again applied to the Court to allow the matter to stand over for a certain time, until he had an opportunity of taking us to his office and trying to arrange matters with us. We would not agree. On the third day he did not come himself, but sent the chiefs of the hapus he was representing to speak to us. Our old people stood up, and would have nothing to do with them.

70. *Hon. Mr. Bryce.*] Have your hapu, then, no title to the land now under the certificate of the Court?—No.

71. *Mr. Tawhai.*] In the petition you condemn the action of the Court in this case. Can you explain on what grounds you do so?—I blame the Court in this way: that, when the Maoris apply to it to disallow lawyers in the Court, to allow the Natives to conduct their own cases, the Judge would not reply to the Natives, but would ask Mr. Sheehan for his opinion, and it always rested with Mr. Sheehan whether the Court would agree or not. Another thing I thought was not right with the Court was that, after the sitting was ended for the day, Mr. Sheehan could be seen walking with the Judge back to the one establishment where they lived together. We, the Maoris, never saw this done before in the days of Mr. Fenton. It is only in these times we see this sort of thing done. I know it is the general feeling amongst Natives that there is some tie between the Court and the lawyers. Judge Macdonald is the person I refer to. I observed also, in cases like ours, and many other cases I am acquainted with, that wherever the Maoris are not represented by lawyers they generally suffer—their claims suffer. And from all these things which we have frequently seen we cannot suppress our feelings. There are many other things, but I will not mention them.

FRIDAY, 13TH JULY, 1883.

HARAWIRA, further examined.

72. *Mr. Hursthouse.*] You told us you had applied for a rehearing, which was refused; will you put in the document containing the refusal?—I was under a misconception when I said that I did apply for a rehearing.

73. *Mr. Tawhai.*] I wish to question you about the faults you found with the Court?—I have already stated that one of the faults I found with the Court was the fact of the Judge and Mr. Sheehan constantly being together; and even while the case was going on, before all the evidence in the Waotu No. 2 case had been concluded, the Court several times said that the evidence was wrong, and found fault with the person conducting the case. Te Morihu was conducting it at first, but after some time he was afraid of what was said by the Court, and left the case in my hands. In the hearing of the case of Waotu South, after all the evidence had been taken, I got up, on behalf of those I was representing, and addressed the Court on the evidence, but before I had time to finish my address the Court interposed and said that the Waotu No. 2 case had already been ousted, and it was no use my continuing my address. Upon that, Piripi Whatuaio and myself asked the Court to inform us what hapus its judgment had been given in favour of, and what hapus had been shut out. After the judgment was given I informed the Court that I had, by law, three months in which to take action in the matter, and the Court told me that it was no use my doing the thing; the case had gone against me, and I could do nothing. Mr. Sheehan and the other lawyers laughed at what the Judge said to me in the Court. I have nothing more to say against the Court; but there was a block of land adjoining Waotu No. 1 awarded by the Court to another tribe; and this other tribe, to which it was awarded, said that our claim was a very good one, that the land belonged to us. Those who got No. 1, according to the judgment of the Land Court, stated to Mr. Williams that we were the right owners of No. 2. The Court paid no attention to this, but listened rather to Mr. Sheehan.

74. *Mr. Tomoana.*] Have you a map of the land with you?—I have a map of Waotu No. 2, which shows also the locality of No. 1.

TUESDAY, 17TH JULY, 1883.

Chief Judge MACDONALD, examined.

Witness: I take the evidence of the old gentleman first, as that seems to contain most of the allegations; the others are not more than a repetition. The first thing I notice is the statement, "I had not time to finish the whole of my case. There were parts of the evidence which I intended to bring out that I had not an opportunity of doing, because of the judgment of the Court being given before I had time. I had merely stated the main grounds on which I claimed—how my ancestors got the ground before me, and that was all." That I need not say is a mistake, because the case was conducted most amply. Certainly his case was conducted very badly by his agent—very badly indeed—and if I remember aright I recommended him to get a fresh man, because I thought the man he had did not do him justice; and the other witness took charge of the case next day. Moreover, the witness himself subsequently says, in answer to this question, "Did any other person besides you give evidence to a similar effect?—I was the first one who spoke, but all the others belonging to my hapu also spoke. And gave evidence in support of your claims?—Yes." Then, the young man says, in answer to a question "Did your case get a fair and full hearing by the Court?—Yes." I think I may leave that point. The next matter, although part of what I have already referred to, is, "Why did the Court come to a decision without having heard your whole case stated?—The reason was because I was not with the lawyers or the company. I was by myself." I suppose, in giving my evidence, I must confine myself to facts and not to comment.

The Chairman.] We shall be glad of your comments afterwards. Facts are the main things. We shall be very glad indeed of comments on the general bearings of the matter.

Witness: I do not know that I wish to make any comment except as to lawyers, and that is this: I do not think the old gentleman is responsible for it. As to the company, I really know nothing. I know some half a dozen gentlemen who manage or constitute some two or three companies, but as to any particular company I have certainly no knowledge. Then comes the statement that he made an application for a rehearing, by himself and by the young man, who says that no application was made. So I need not refer to that; and so with the reason he gives for having made a verbal application for a rehearing, instead of one in writing, that "he was ignorant of the practice of the Court;" that goes in the same manner. Then there is an answer to the Hon. Mr. Bryce, "Did you stand up in Court and make yourself heard, so that the Judges would understand you had a claim?—I stood up in Court. I addressed the Bench. They heard me, and what I said was, 'I claim the land.' Then what happened? Did the lawyer speak, or did the Judge speak, or what?—Immediately after my telling the Court that the land belonged to me the lawyer spoke, and he addressed his words to the Chief Judge. And what did the lawyer say?—The lawyer said to the Court, 'I have asked this old man to join in my case, but he will not do so. He wants to set up a separate case of his own on his own ancestral grounds.' Joined in the case: I apprehend you mean by that that the lawyer meant that your name should be associated with his clients?—Yes. And did you notice then what the Judge said in reply to the lawyer?—The Judge said to Mr. Sheehan, 'How is it he will not agree? On what ground does he refuse to join your case?' And Mr. Sheehan said, 'He is anxious to set up a case of his own; to go on his own claims.'" I have no doubt something which might fairly be interpreted in those words did take place; but what took place is strictly in accordance with what took place at every other case at the Courts I have conducted. Then the evidence is, "Did the Judge decline to take your evidence and that of your witnesses as substantiating your claim?—The Court would not listen to what I said. The Court made this remark: that I should have agreed to Mr. Sheehan's proposal; that if I went on my own hook I would suffer."

That is contradicted by the fact that they said themselves that they had a full hearing, satisfactory in every way except the judgment. Of course nothing of that sort was said. The foundation for that is this: that immediately on the judgment being given, when the old man found he was left out, he became very violent. I do not know what he said, but I was told that he was abusing the Court. I said to Mr. Puckey, "It is not worth while bothering; he has lost his case." Moreover, Mr. Puckey and myself had, during the progress of the case, expressed a little regret that the old man's case had fallen through; and I said, "We will let him have his say," and he had his say. At the end of it I certainly expressed regret that he had not met with better success; but the statement that if he did not go into Mr. Sheehan's case he would certainly suffer is a pure invention. I have a distinct recollection of that part of the case, because, when the old gentleman was at last induced to sit down, the young man, seeing how easily he got off, began to address the Court in the same strain. Directly I was informed of what he was saying I stopped him, and said that we had let the old man speak in consideration of his age, but we were not going to let him. Thereupon he stopped the abusive strain, and commenced to talk about applying for a rehearing. I told him that he had three months to make the application in; that he must sit down: the case was over, and he had no right to speak. There is a matter here I might as well explain, because the old man is on the land, and has been there for some time. That might give rise to the inference that he had some claim by occupation. Of course, I am not addressing myself to defending the judgment. If the judgment has to be defended I would rather that Mr. Puckey did that. He has a better knowledge of the case, and could do it more concisely and accurately than I can. In the neighbourhood of Waotu the ordinary difficulties attending the investigation of title are increased by this fact: that in 1863, or about that time, when the Natives were opposed to the Queen's troops, all the people who were living on the confiscated lands were pushed back and settled on these different blocks—Waotu and others. The real owners did not object to these people squatting on the land, but they objected to squatting being made a ground of title. The difficulty was to find out between the occupation of the original owners and the occupation of those who simply retreated there. I may add that I do not think that there was one case investigated before me at the Cambridge Court in which the claimant and every one of the counter-claimants did not show occupation, either on the particular block itself, or just over the border on some adjoining land which was in the same predicament. There is one matter which really had nothing to do with me, but which I ought to refer to, because there is an inference—in fact, it is assumed broadly—that the Court decided against him because he would not become a seller. Although I have nothing to do with this, I think I may make make this explanation: In every case that has come before me at the Court the land was scrambled for amongst the different purchasers; but in every case there were some persons who had sold the land or had contracted to sell it. The Court did not recognize purchasers, although we did use the term sellers and non-sellers so as to distinguish between the two parties. The land was apportioned between the non-sellers, who selected their pieces where they liked; and the sellers were willing to take the residue, quite irrespective of the quality. The mere fact of the old gentleman not announcing himself as willing to be a seller could have no bearing in my mind, or even in the mind of Mr. Sheehan, so far as I can see, because he was not simply trying to keep out people who were non-sellers, but was looking after his clients, whether any of those clients turned out sellers or not. I think the old gentleman said what was not true when he stated that Mr. Sheehan kept him out because he was not a seller. The evidence closes with a comparison between the relative advantages and disadvantages of having lawyers in Court. I have nothing to do with that. I am not responsible for their presence. I may say, as to that, it is almost the invariable practice in the beginning of a case for some of the litigants to ask that lawyers be excluded; but I generally find that he who does so is one of the sharpest fellows himself, and has a lawyer in the background. I shall now briefly refer to the evidence of the young man. He says he applied for a rehearing, but subsequently he utterly disclaims that. He is asked, if the case came on for reinvestigation, if he could bring out further points. He says he could. I have no doubt he could; but I did not say that I could not allow a rehearing. Of course, the case would be quite different if it were brought on again. There is a curious statement here. He is asked whether the fact of his occupation was brought out before the Court. He says, "Yes; these points were brought out before the Court; but the lawyer spoke, and the Court appeared to take heed to what the lawyer said. He said that my witnesses were old men, and could not be expected to have a clear idea of what they were saying." The evidence of an old man may be very much more valuable than that of a young man. There is a statement that the lawyer said there was no necessity for these people to take action. I have nothing to do with that. In the first place, I do not see how it could be; and, in the second place, they left no stone unturned to carry the case to a successful termination. Then he says, "I blame the Court in this way: that when the Maoris apply to it to disallow lawyers in the Court, to allow the Natives to conduct their own cases, the Judge would not reply to the Natives, but would ask Mr. Sheehan for his opinion; and it always rested with Mr. Sheehan whether the Court would agree or not." That is simply utterly untrue. It was explained to the Natives what the law was; any one could have a lawyer if he wanted; and if no one wanted lawyers they need not have them. Then he comes to myself and Mr. Sheehan walking together. I do not know that we walked together so much as represented; but at all events there is no doubt we were very often together. I do not know that we did so much walking in the street. If we did I do not suppose it mattered much. Mr. Sheehan and I have been friendly ever since I have been in the colony; and there is this, further, that Mr. Sheehan and one or two other persons were the only souls I knew at Cambridge. In the evidence given by the young man on Friday is this extraordinary statement: "I got up, on behalf of those I was representing, and addressed the Court on the evidence, but before I had time to finish my address the Court interposed, and said that the case had been ousted, and it was no use my continuing my address." That is simply literally untrue, because he went on speaking until he had finished. I remember the gratification I felt when he said "heoi ano." I cut him exceedingly short after the judgment was

given, when he began to abuse the Court. He says, "After the judgment was given I informed the Court that I had, by law, three months in which to take action in the matter, and the Court told me it was no use my doing the thing; the case had gone against me, and I could do nothing." What really took place was as I have already stated. When he proposed to abuse the Court I stopped him; and when he proposed to abate his manner, and talk of a rehearing, it was then I told him that that was not the right place to talk about a rehearing; that the case was ended, and he had three months in which to make the application.

75. *Mr. Postlethwaite.*] Are records kept of the cases brought in the Court?—Yes; every word of evidence is taken down in the first place by one of the Judges. During that sitting Judge Puckey took down all he thought necessary, and the Clerk took all down.

76. Do those records show the cases where lawers were engaged, and how many the Natives themselves conducted?—Yes; the names of every one who appeared are given. It shows also the name of the Native agent, where there is one.

77. Do they show how many cases have been decided in favour of those who employed lawyers, and how many by those who did not?—Inferentially that can be got from the records.

78. It can be shown?—Clearly.

79. Was it known at the time this case was brought before the Court that the lawyer engaged in it had offered a price for the land to the petitioners?—I had no knowledge whatever of this until to-day.

80. Did you not know who were the persons in these companies?—I know many people mixed up in the buying of Native land, but how they are associated together I do not know.

81. I think you said it appeared that the Natives had been settled on this land since 1863?—I referred to the various times they had been driven back by the troops. I said 1863, but I am not clear as to the date.

82. *Hon. Mr. Bryce.*] You have used the terms "seller" and "non-seller." Are you not aware that the law takes no cognizance of sales before the investigation of title?—I am. When the first case came on I said publicly that we knew nothing of sellers or buyers, but that, simply for the purpose of convenience, to distinguish between one set of persons and another, we would adopt the terms sellers and non-sellers.

83. I quite understand you merely used the terms for convenience. Still, there must have been something implied; and was there not the implication that negotiations had been going on for purchase, and, in fact, that something had been paid to a portion of the claimants? Was not that implied in the terms?—Clearly. That came out pretty clearly. Non-sellers were allowed to have the pick of the land.

84. I am going to ask you a question to which I attach great consequence myself, and my saying that may perhaps make you careful in answering. I want to ask if you find that these previous negotiations for so-called purchases, which are not recognized by the law, prove an inconvenience to the Court in the investigation of the title?—I think they are the cause of nineteen-twentieths of the difficulties. The Maoris amongst themselves have a pretty shrewd idea to whom the land belongs. There may be cases, such as in this district, where, by reason of mixed occupation, extraordinary difficulty may arise, and they may have doubt themselves—may not have such accurate information as to the ownership. But generally they have a pretty shrewd idea of how things stand, and would not fight so bitterly as they did at Cambridge if they were not supported and urged on by purchasers.

85. When I said that I attached importance to the question, I meant that it might make you more deliberate and distinct, as well as elaborate, in the answer. If, therefore, you can strengthen your reply by instances it would, at any rate, answer my purpose in putting the question?—At Waipawa there were neither lawyers nor purchasers that I know of. There was simply a piece of land going through for the railway. No trouble occurred there. At Rangipo there was only one lawyer employed, and I think I am right in saying there were no purchasers. In neither case did the grievances I have referred to exist so far as I saw. My only other experience as a Judge has been at Cambridge, and I believe there they existed in every case. I believe that in every case that came before the Court at that sitting it was really the matter of the parties who had contracted for purchase more than a matter for the Maoris.

86. You have made a statement which I never heard before, and which I think very remarkable. You said the non-sellers were allowed the pick of the land, leaving the remainder for the sellers?—Not the quantity but the quality.

87. That is just as I understood you. You said that a certain number of acres were awarded to the non-sellers, and the non-sellers had the pick of the best of the quality?—To speak within my own knowledge I will just say what actually took place. Take it that the entire block is awarded in favour of one hapu. Over and above that the Court is empowered to subdivide the land into one or more parts among the representatives of that hapu. What the Court said to them was, We are quite willing to do that, but you must arrange among yourselves outside what are to be the divisions. Generally they came to an agreement as to what the divisions should be. Sometimes they were many days over it, but ultimately they would come into Court with the land subdivided into several pieces, because the non-sellers would have divisions among themselves. In the progress of the negotiations for these subdivisions they would sometimes come before the Court thinking that they were all agreed, whereas difficulties would arise. I have heard it said, and it was invariably stated, that the non-sellers had the pick where they liked.

88. Did that suggest to your mind that the so-called buyers had, in fact, resold to some other persons at an agreed price per acre, which had been paid in full, and therefore the interests of the intermediate purchasers had ceased and become the interests of the second purchasers?—I do not think I have a most exalted opinion of human nature, but anything of that sort never suggested itself to my mind. I was told it was so. I had a theory, and it was this (as I have already mentioned, the

Court would not carry out a subdivision unless it was agreed upon by the parties): I assumed that the first or intermediate purchasers were most anxious to get their title at once, and would accept any terms rather than run the risk of what might happen before the sitting of another Court.

89. Then it appeared to you that these concessions were made for the purpose of expediting the settlement of the title?—Yes; getting the title settled there and then, instead of waiting for subdivision at another Court.

90. If nineteen-twentieths of the trouble of the Court is caused by these previous negotiations the subject must have been very much impressed upon your mind. Can you suggest any means by which previous negotiations for the purchase of land—previous to the investigation of the title—could be prevented? The present position of the law, I understand, is that these previous purchases are void in law, but there is no other penalty?—Except the loss of the purchase-money.

91. Just so. My question, then, really amounts to this, Can you suggest any penalty that would be effectual in preventing it?—Yes; six months in the stockade is one remedy; the resumption by the Government of the pre-emptive right of purchase is the other. Of course, I express no opinion either one way or the other, but simply answer the question as a lawyer.

92. *Mr. Hobbs.*] Where is the evidence taken at this Court?—I think, with the exception of one book, which is here, all the evidence is between Auckland and Wellington. It will be here by the steamer which leaves Auckland to-day. I gave instructions for every book and paper belonging to the Cambridge Court to be sent here.

93. One important point in that petition, on which you have been questioned this morning by Mr. Postlethwaite, was as to the occupation of this block; and in your reply and explanation you spoke in a general way when stating that these Natives had retreated at the time of the war and had settled on this particular piece of land. Although you did not state it in explicit terms, will the evidence taken at that Court exhaust that question; will it show as to the point of occupation clearly?—Judge Puckey will tell you all about that at once. I ought to explain, perhaps, that all the time I was sitting on the Native Land Court I was really administering the business of the Native Land Office. I was continually at work on the Bench; but although I was doing that I could still hear the evidence and form my own opinion, although I had not time to take notes, and did not pretend to take any. Yet I had an accurate recollection of what evidence was given in the case. Just like a man playing a game at whist: he will have an accurate knowledge of the hand he is playing, but will have no knowledge of that hand after playing two or three others. So I could not pretend to give the precise evidence.

94. Did these petitioners ever apply for a rehearing of the case?—No. In the first place the witness said he did, and was refused, and afterwards he said he did not apply. Perhaps I ought to make it understood. There may be half a score of applications for rehearing in the office. I merely go on this: he himself says he sent in an application and was refused; and afterwards, when I was here on Friday, he distinctly said he never made an application, and consequently could have had no refusal.

95. Then you are not prepared to say whether there has been an application in this particular case?—No. It fell from the Chairman or one of the Committee that, inasmuch as there was no application for a rehearing, perhaps this Committee had no jurisdiction over the matter. Of course I do not express an opinion on the matter. If the Natives will send in an application for a rehearing I will at once refuse it. That gets over that difficulty, supposing it exists.

WEDNESDAY, 18TH JULY, 1883.

Chief Judge MACDONALD, examined.

96. *The Chairman.*] Are you cognizant of the case here referred to, namely, "There was a block of land at Waikato, containing 12,000 acres, sold for six shillings an acre. The case was conducted by lawyers, and their charges amounted to £3,700; the price of the land came to £3,600, leaving us actually £100 in debt"?—No; I never heard of it before. It does not give the name of the block, I think.

97. You are represented to have said on one occasion at the meeting of the Court at Cambridge that the fees of the lawyers required serious revision; would you tell the Committee what you said?—I never said that. The only case in which I meddled with fees at all was when there was a rumour out of Court that lawyers spun out cases for the purpose of the daily refresher. I consulted the people on that point, and ultimately the lawyers themselves; and it was agreed in Court that there should be no further daily refreshers, but a lump sum taken as a fee, and that stated in the Court in a statutory declaration.

98. Did this occur at the Court at Cambridge?—Certainly.

99. *Hon. Mr. Bryce.*] At what period was this latter arrangement made?—I think after half the time had expired. It was certainly immediately on the newspapers speaking on the matter.

100. *The Chairman.*] I am only asking this question from what I have seen in the newspaper, which may make mistakes in such matters. Do you remember whether Dr. Buller at that time made some remarks on the subject?—None that I remember.

101. Do you remember his saying anything to this effect: that such an arrangement would be good if it could be carried out, but there would be a difficulty in the carrying of it out; and then he gave an instance where a lawyer had nominally done the work for two guineas, but, by skilful manipulation of the clerk's fees and in other ways, he brought it up to seventeen or nineteen?—I cannot say that that was said at the time the arrangement was come to, nor do I recollect any particular instance such as that, but Dr. Buller did say, after the arrangement was come to, "The arrangement is made; all right; but let us understand what it means. Is it to cover everything the lawyer is to receive, or is he, in addition, to be allowed to receive money from his clients to pay A, B, and C for doing work?" My conclusion upon that was that the sum stated should include all moneys received by the lawyer, whether for himself or for distribution to other people. But that, as

to moneys which the Natives paid directly to third persons—not through the hands of the lawyers—of course, the Court had no control over those. That arrangement was agreed to.

102. By the Natives and the lawyers?—The Natives had nothing to do with that question.

103. I understood that you brought the matter before the Court?—Yes; the first question. That was had out in open Court, and this conversation took place in Court, and was interpreted, I have no doubt.

104. Can you state to the Committee what the main sources of the heavy expense of passing land through the Court arise from? What I mean is that it is probable this petition refers to a very extreme case—no doubt it does; but still it is a well understood thing that the expense of passing land through the Court is excessive—is very great—and I should be glad if you can tell the Committee, so as to have it on record, what the main sources of the expenditure arise from?—I think I can name all the sources of expenditure, but I can hardly undertake to say which is the largest. First of all there are the Court fees.

105. Are the Court fees excessive?—No; each party pays £1 a day, 2s. for each witness sworn, and a fee on the issue of the certificate. Then there is the 10 per cent., the lawyers' fees, the expense of attendance of witnesses, if any, and the expense of the parties attending the Court during the hearing and whilst waiting for the case to come on.

106. *Hon. Mr. Bryce.*] Subsistence?—Yes.

107. *The Chairman.*] Has your attention being called to a report in the *New Zealand Herald*, and quoted by Sir George Grey in the House last Tuesday week, that you stated at the Land Court at Cambridge that after a visit to the racecourse at Auckland you had returned with a conviction that the worst practices of the racecourse were fully matched by practices around the Court?—I saw the newspaper report, but I did not hear or see anything of Sir George Grey's remarks.

108. And did the newspaper report fairly represent what you said?—It was an accurate report.

109. Will you kindly state to the Committee what the practices were you referred to?—In the first place, my remarks have been construed, I believe, as reflecting upon the Court itself. I may say at once I had no matter relating to the Court in my mind at the time, nor do I think the words themselves will bear that construction.

110. Then, the remarks did not apply to anything you noticed inside the Court?—Certainly not.

111. Will you be good enough to say as to the practices outside the Court?—The matters I had in my mind, or the causes of them, was the excessive competition for land among rival buyers, and the jealousies which that competition led to; and the manœvvring and the way in which everybody slandered everybody else.

112. Do you mean Europeans or Natives, or both?—More among Europeans, I think. I will give an instance of what I call everybody slandering everybody else. I will give one instance, and I think that was the final one that got my temper up and led me to say what I did. I will mention names, or not, if desired. In the first place I will just use letters. A comes to me and says, I heard it yesterday stated at the public dinner-table by B that C bribed the Assessor with a diamond ring, five-and-twenty pounds, and a double-barrelled gun. A day or two afterwards B—the person who is heard to make the statement at the public dinner-table—comes to me and says, I heard it stated publicly at the dinner-table—naming the same place as mentioned by the other gentleman, and stating the same circumstances and precisely the same articles. I thereupon said to him, That is very true, I believe, and you are the man who said it. I told him, as I had told the other gentleman—but I was more emphatic with B—not to come to me with any more of these tales, and if he had anything to complain of to do it in open Court. Both A and B were very much dismayed at the idea of doing it in open Court, and refused. That was just the last instance of that style of thing, and, of course, what weighed in my mind with regard to all those people's tricks—hunting the Natives for their land, and playing tricks upon each other when they knew one Native had sold to go and get him to sell over again to them.

113. Have you observed what effect these practices have on the Native mind and Native conduct?—My experience has not been great with regard to Maoris. I have no knowledge of the language. I have always heard it stated that the Natives who have little or no communication with the Europeans are described as of better moral character than those who have.

114. *Hon. Mr. Bryce.*] Have you observed excessive drinking about the Court?—First of all, speaking relatively to other Courts, at Waipawa there was very little drinking; in fact, none at all. I never saw one drunken Maori all the time I was there; but there was no money passed there.

115. *The Chairman.*] How is it there was no money passing at Waipawa?—Because the only land that went through there was a block for a railway-line.

116. That is, there was no competition between European buyers?—There were no buyers at all. At Taupo and Rangipo, when the great case was before the Court, and some other cases, certainly there was infinitely more drinking there than at Cambridge during my time. But then my time at Cambridge was during the latter part of the Court, and I do not think there was so much money passing as previously. As to the previous part of it I can say nothing.

117. At Rangipo and Taupo, was there competition there amongst the land-buyers?—There was plenty of money moving about there from parties—Europeans. No doubt, at Cambridge, during my time, when money did pass, there was a certain amount of drinking; but I could not say there was anything excessive; certainly nothing excessive by comparison with Taupo.

118. *Hon. Mr. Bryce.*] About the declaration that the lawyers make, and have to make, in respect to charges with regard to particular cases: that declaration, I understand you to say, goes to all the money paid by the Maoris to the lawyers?—Yes.

119. But in connection with that I understood you to say yesterday that the fight in the Court was in reality carried on by these so-called purchasers, rather than by the Maoris themselves? I have no means of positive information, but I have a very shrewd suspicion that the Maoris do not suffer so much by lawyers' fees as it is thought, and I will explain why. In almost every case, before the land comes for investigation by the Court, the whole or part of the land has been con-

tracted to be sold; of course, at a given price per acre. And not only has it been purchased, but in all probability it has been purchased twice over, and money paid by two sets of parties—one to one set of Natives, and the other to the other set. There are not only two sets, but probably three, four, or five sets, according as the different speculators think this man has a title or that man. These several speculators who really do the fighting, and, I am pretty well sure, bear the brunt of the expense. No doubt, in settling accounts with the Natives, to a certain amount they debit the Natives as much as they can; but I think that, generally speaking, if we could get at it, it would be found that the Natives get as their money the original price per acre agreed upon, and the lawyers' fees are borne by the purchasers. That that is the case to a certain extent I am satisfied, and I believe it is to a considerable extent.

120. The point I want to bring out is this: Although the declaration goes to the whole of the money paid by the Maoris to the lawyers, are you equally sure that it goes to the whole of the money paid by the real fighters in the case—the so-called purchasers to the lawyers?—I am not sure, but if the declaration is faithfully followed, it should do. The statutory declaration—the form used—although it bears my signature as approving, was proposed by the late Chief Judge, and sanctioned by all the other Judges; but, as I then pointed out, what seems to be the really valuable part of the declaration is not worth anything, being only a promise not to take more. There could not be a prosecution on breach of a promise made.

121. How is the lump sum, as you call it, for each case arrived at; upon what scale of fees is it calculated?—There was no attempt at a scale made. It was left simply for the lawyers and the parties employing them to make their own bargain; the parties who employed them being, I understand, in almost every case, not the Maoris but the Europeans, as I have already explained.

122. These costs, can they be taxed the same as costs in the Supreme Court?—Yes.

123. If an excessive "lump sum" was charged, would it not be competent for the Court to object to it?—I think so. It might object with effect, and say, If you do not abate the fee you shall not appear at all.

124. That brings me back again as to how the sum is calculated. There must be some idea of what is a reasonable charge. I would ask you whether it is based on the assumption that ten guineas a day is a reasonable charge for a lawyer attending the Court?—That, no doubt, would be the basis upon which they would settle. I should imagine so. But upon what principle they went I do not know.

125. The real fighters in these cases, in your opinion, have a good deal to do with the employment of the lawyers. When a lawyer takes a brief, in addition to these fees to which their declarations go, have you any reason to suppose that any other fees are paid, such as, for instance, the brief being indorsed with the sum of £100, or any other sum; or do you think that that would be a violation of the declaration?—To take a fee for a hundred guineas marked on a brief, with a daily refresher of ten guineas, would not be a violation of the declaration as it originally stood.

126. Or, if by agreement with the real fighters in the case, the so-called purchasers, the sum of 1s. 4d. or any other sum, was to be paid for every acre passed through the Court, would that be a violation of the declaration?—I think that would depend on the particular circumstances. I never heard of such a case as that. I have heard of 1s. 4d. an acre, but not for assisting to pass the land through the Court.

127. If the agreement was in this form: 1s. 4d. to be paid for two services—namely, the passing of the land through the Court, and the purchase of the land—in that so-called kind of purchase for certain parties, would that be a violation of the declaration?—No doubt, if that particular emolument were not mentioned in the declaration.

128. Have you any reason to suppose that the case suggested in my last question has actually occurred?—Not quite. There was the fee and the daily refresher specified in the declaration. I have no reason to believe that anything more was paid for that work. But I do know that, in addition to the emoluments paid as counsel's fee, there was a separate bargain with Europeans, by which the Europeans were to pay 1s. 4d. for each acre of the land under investigation which was sold by the Natives to the Europeans.

129. *The Chairman.*] Was not that taking a double fee, taking from both parties?—There is the fact.

130. What I mean is this: would not that be recognized by the Court as taking a fee from both sides?—The Court would have nothing to do with that. It might be a matter for the Supreme Court.

131. But if it were a case in the Supreme Court, or any other ordinary Court, would a lawyer be allowed to take fees from both sides in that way?—I do not know what that Court would say to it, but if my Court had interfered in the matter it would have been told to mind its own business.

132. That is, you have no power by Act to interfere?—Yes.

133. Because, I suppose, lawyers are not officers of the Court?—Except so far as the business of my Court is concerned. As to the transaction of 1s. 4d. per acre, that would be a matter not within my cognizance at all.

134. That would not be covered by the declaration?—No; a different transaction altogether.

135. Have you reason to believe that such practices as you have now detailed are common?—I only know of one case.

136. I will read from the petition: "Your petitioners pray that all lawyers be removed from the Court before our lands have all disappeared." From your experience in the Court, have you come to any opinion as to whether it is advisable to hold Courts without the presence of lawyers?—I think that the lawyers in a Court may make themselves a great blessing or a great curse, according

to the way they perform. They could be of very great use to the Court in arriving at the real merits of a case, and in shortening the proceedings.

137. If they choose to make themselves what you call a great curse—I suppose that means obstructive—have you any means, as a Judge of the Court, to bring them round to a proper course?—Except by saying, "If this style of things goes on, you shall not appear;" and that would only be preventing mischief inside the Court. I have no power outside the door.

138. I have always understood that lawyers were officers of the ordinary Courts of law, but I understand you to say they are not officers of your Court?—Not in the sense in which they are officers of the Supreme Court. Supposing it came to my knowledge that a solicitor had been guilty of malpractices to a Maori client, I should have no power over him in regard to such practice. I could only say he should not appear in Court any more. I could not make him account for his wrong-doing.

139. *Hon. Mr. Bryce.*] You could not, for instance, strike him off the rolls?—No.

140. As a matter of fact, in regard to the appearance of lawyers in the Court, have the lawyers shortened the cases, in your judgment, as you say they ought to do and could do?—At Waipawa, of course, there were no lawyers. At Taupo there was only one, I think. In that case proceedings were shortened by my having to deal with a lawyer. As to Cambridge, there was nothing shortened there. I am going too far to say there was nothing shortened. I think a fair way of putting it is this: proceedings were not shortened to the extent they might have been if the lawyers had co-operated in shortening them.

141. You have agents who are not lawyers appearing for Natives in the Court?—Yes; they are entitled to do so.

142. What is your experience with regard to the services they render?—At Cambridge there were no agents whatever excepting lawyers or Natives. The Native agents certainly seemed to do the work very well, excepting one or two who were not qualified.

143. Has there not been some rule amongst the Judges whereby European agents other than lawyers are excluded?—I think there was something of the sort before my time. I do not recollect the particular regulation. It is not in force now.

144. *The Chairman.*] Supposing there were no lawyers in the Court, and you had to deal with these Maori agents, could you carry on the business of the Court with satisfaction?—With certain of the agents, certainly.

145. Supposing that both agents and lawers were excluded, have you any machinery connected with your Court by which you could have arrived at your decision by simply allowing the owners and alleged owners to appear before you in person?—I could have arrived at a decision ultimately, but the proceedings would have been much more prolix.

146. *Hon. Mr. Rolleston.*] Is it the theory of the Court that the determination of title rests upon the evidence that is brought before the Court by the lawyers or other agents, and that the Court has no function itself apart from the evidence that is brought before it?—The Court has to decide upon the evidence that comes before it, but that evidence may be put before the Court by the parties—that is, by their agents; and the Court also has the power to ask any questions or call for any evidence it likes. It must decide on the evidence. Perhaps a more accurate answer would be to say the Court must decide on the facts that come before it.

147. What is the case in a rehearing where no facts come before it; what I mean is a case heard and a decision given in favour of one set of claimants. The Chief Judge determines to grant a rehearing presumably because the judgment given is open to question. Influences are brought to bear outside, which result in no appearance in Court. Would the decision of the Court, therefore, be that the previous decision was right, there being evidence before the Chief Judge that there was reason for doubting the previous decision?—Yes; and, upon an express ruling of the Supreme Court, there was a case not very long ago which decided that very point. My predecessor always held in that case that the original tribal title was revived; in other words, the land became Native land again. I never quite agreed with that myself; still it was always accepted until lately a case was carried to the Supreme Court, and Mr. Justice Richmond decided against it.

148. Is not this coming to a decision only upon facts that are brought before the Court liable to lead to ousting parties who may have a title, but who do not appear in the Court?—I do not think there is any danger of such an occurrence. The difficulty is not the people with a title keeping away, but people without a title coming to the Court.

149. *Hon. Mr. Bryce.*] If the Court is dissatisfied with the evidence before it, or thinks it insufficient, is it competent for the Court to summon itself further evidence?—Yes; certainly.

150. Is that course adopted frequently?—No; for this reason: the difficulty is that a mass of unnecessary evidence is thrust on the Court, rather than that material evidence is kept away.

151. If these so-called purchasers, lawyers, and other agents were altogether removed, you do not, at any rate, apprehend that the Court would fail for the want of the attendance of proper claimants?—Certainly not.

152. *The Chairman.*] Supposing that the lawyers and other agents were excluded from the Court, could the Court devise means by which, through its own officers, it could get cheaply and accurately at the facts of a case?—I hardly think so. Perhaps I might express my meaning by taking a case now before the Supreme Court, Hunt *v.* Gordon. I think it would be impossible for the Judge, without the intervention of some one, to get at the bottom of the case; at all events, not without frequently constituting himself an agent for both parties, and not even then without great delay.

153. Are you aware of the action of the West Coast Commission?—No.

154. *Mr. Hobbs.*] Is it not a fact that there are many cases heard without lawyers appearing?—No doubt it is, but not in my experience.

155. Are there not some of the Judges of your Court at present who refuse to allow lawyers to appear?—No; I do not see how they could refuse, unless they disallowed agents generally.

156. Is it within your own knowledge whether Judge Brookfield declines to allow lawyers to appear in his Courts?—I never heard of him doing so.

157. Taking all the circumstances into consideration, from your experience do you think it would be better or otherwise to exclude lawyers?—It depends upon what they did when they were admitted.

158. I am speaking now from your experience. Do you think you could get on without them?—Certainly we could; some of the Native agents are very shrewd fellows; as well able to conduct a case as any one.

159. *Hon. Mr. Bryce.*] You are speaking of persons of the Native race?—Yes.

160. *Mr. Hobbs.*] Could you not get on better with lawyers?—If one lawyer happened not to be very jealous of the other I think I could.

161. Do you not think the Natives are well able to conduct their own cases?—It depends entirely on whether the contending party has one of themselves competent. I remember a case in which the Natives proposed to conduct their own cases. There was one old man who was really so incompetent to do it, that I asked his friends to get some one else to do it in place of him. He was the chief man, and thought he ought to conduct the case himself.

162. Do you think you would have any difficulty where the land had not been dealt with in purchase or anything connected with it, where the Natives were simply investigating their own title?—If it were not for the European purchasers and money there would be no trouble, or very little.

163. You have a very strong view to that effect?—Yes.

164. *Major Te Wheoro.*] Do you consider that a lawyer is more able to lay the case before the Court than the Native, with regard to the Natives' own claim?—I think that Dr. Buller, as a lawyer, would be able to do better, and I think that Mr. Sheehan, as a lawyer, would be able to do better; but I, as a lawyer, would not.

165. Do you think all lawyers are better acquainted with the grounds upon which the Natives claim than the Natives are themselves?—Some of them are, I believe. They have a more general knowledge of the subject.

166. You said that if the lawyers were to conduct the cases in Court these cases would not take such a length of time: they would be disposed of much sooner than if the Maoris conducted their own cases?—If the lawyers set themselves to abbreviate the case as much as they could they would manage it much better than any of the Natives could, I believe, so far as the negotiations are concerned, and in the choosing of what evidence to bring before the Court, and what was useless. The weak part of the best Native agents is that they cannot discriminate between what is worth bringing before the Court and what is not; nor can they cross-examine; they do it at great and useless length.

167. Could not the Court ascertain by questioning the Natives upon their own claims: could not the Court ascertain satisfactorily?—I suppose it would be possible, but the Court would have to go negatively into the matter by process of exhaustion.

168. How many days did the investigation of the Waotu Block take?—I have no idea.

169. *Mr. Hobbs.*] Did the lawyers assist you at Cambridge?—The lawyers did not. I may convey my meaning better by saying, "How happy could I be with either, were t'other dear charmer away."

Chief Judge MACDONALD, further examined.

Witness: There is one point, Mr. Chairman, I should like to refer to. So many people told me yesterday that I had said that I would grant a rehearing that I should like it clearly on record that I said I would refuse it.

170. *Major Te Wheoro.*] How many separate cases were there in the Waotu No. 2?—I could not say precisely. There might be three or four; but all that information can be got from the books.

171. Why I asked that question is, I wanted to arrive at a knowledge of the number of cases that were in the hearing, and the number of those cases that were successful and the number that were unsuccessful?—I could not possibly say from memory. Mr. Puckey will be able to give every information on that point.

172. How many lawyers were there practising in that particular case?—I think there were two. Dr. Buller had a case, I think; but I am not sure.

173. Were there lawyers conducting those cases that were defeated?—Mr. Sheehan succeeded, and I think Dr. Buller did; but I am not sure.

174. I wanted to ask you whether you could say that those cases that did not succeed in proving their claims were represented by lawyers?—In a measure I have already answered that question. I think some succeeded who had no lawyers.

175. *Mr. Postlethwaite.*] I understand that the books and papers of the Court are on their way to Wellington. When they arrive will they be open for inspection by the Native Affairs Committee?—Certainly.

WEDNESDAY, 25TH JULY, 1883.

Chief Judge MACDONALD, examination continued.

176. *Mr. Tawhai.*] In your opinion, is the business of the Court got through more readily with the assistance of lawyers than without them?—Where the lawyers applied themselves to assist the Court in that direction, I answer yes; where they were jealous of each other, and did not so assist the Court, then, of course, I answer no.

177. Supposing the investigation of a case lasted for ten days, and one side was represented by counsel, and the other by Native agents: after the expiration of the case, from which would the Maori suffer most, in the way of fees, and that sort of thing?—I can hardly answer that question; each matter would depend upon the bargain made. I have no knowledge of the subject, but I fancy Native agents do not charge so much as lawyers.

178. Did you ever hear of a block of land that was investigated on the West Coast, called Rangatira?—Only to this extent, that I refused an application for a rehearing of it.

179. Previous to the application coming to you for a rehearing, did you not hear that such a block was investigated by the Court, and that lawyers acted in the case?—I never heard of the block at all in any way. I have no knowledge of it, nor anything in relation to it. The investigation took place before I was Chief Judge.

180. Since your appointment to the office of Chief Judge of the Native Land Court, have you never yet availed yourself of an opportunity of looking through the Land Court papers referring to past investigations?—No; certainly not. That would be the work of a life-time. When a matter arrives at a termination, then the papers are marked "file," and are put away until something in relation to it arises again.

181. You stated that you were present at three different sittings of the Court. Was it only during those three sittings that you received proof that lawyers in Court conducted the cases better than the Natives themselves?—In each case I should say so. In addition to that, I have my experience from the bar. I ought to qualify my remarks as to the Cambridge Court by saying that their usefulness there was very much lessened by circumstances to which I have already referred.

182. How is it that the Waotu case took such a long time?—Entirely owing to the mass of evidence brought to support the respective cases. I forget the time it did take, but that would be the reason.

183. I think you stated to the Committee that the principal evidence that was adduced at the Court at Cambridge was as to the occupation of the land from the year 1863, the time of the Waikato war?—I think you misunderstood me. It was called to my attention that Piripi alleged, in his evidence, very stoutly that he had been in occupation of the land; and one of the Committee, Mr. Hobbs, I think, seemed to have it on his mind that, if the land had been in occupation, Piripi must have a title; and then it was I explained that possibly he might have been in occupation since the time they were driven back by the European troops, because it was quite common for the Natives so driven back to squat on other people's land. But I have found out since, having seen Judge Puckey, and had access to the books and papers, that the fact of occupation, as alleged by him, never existed at all except to this limited extent: that he did in 1881 have a slight occupation just inside the boundary. That is how the evidence stands.

184. Was there no evidence taken before you to show the dispersion of Ngatiraukawa by Ngatimaru, some of the fugitives going to Rotorua, Kapiti, and other places?—That was generally dealt with. It has been held, I believe, throughout all the decisions, that those Natives who fled to Kapiti, or anywhere else, forfeited the title they undoubtedly had up to that time, and those Natives who stopped behind maintained their title by reason of continued occupation. That is the theory, I believe, on which numerous judgments have gone.

185. Did you never hear it said that the only hapu who continued to occupy this land (Waotu) from the time before the Treaty of Waitangi was Ngatingarongo?—I really cannot answer the question.

186. Do you know that those of Ngatiraukawa who came to Kapiti went back again in 1862, long after the Treaty of Waitangi?—Yes; I remember it being in evidence that they began to straggle back. I do not know that any of the people belonged to this particular case or not.

187. I might assist you by mentioning the name of one of the chiefs who went back. Te Rei went back about the time the Waikato war broke out, and settled upon Ngawehenga?—I do not remember the circumstance.

188. Do you know whether your judgment in the Waotu case is in favour of any of those who went to Kapiti?—I could not say.

189. You did not hear before the Court that some of the owners put into the block were Kapiti men?—I have no recollection of it; but it might be that some were admitted by favour by the other people.

190. *Hon. Mr. Bryce.*] I suppose the records of the Court will show the names?—The records of the Courts will show every word that was said.

181. *Harawera* (one of the petitioners).] Did you say in your evidence that those Natives who did not apply for lawyers were those who knew a great deal?—I do not remember saying that; but I think I said the negative of it. Sometimes I have told Natives who were trying to conduct their own cases, and who were perfectly incapable of doing it, that they ought to get some one to assist them.

192. Are you aware of any application to you from Patuaia and Ngatingarongo applying for a rehearing?—It turns out that both you and I were wrong in our statements. You said there had been an application which had been refused, and afterwards you said there was no application or refusal. I said there had been no application that I knew of. I am informed by Judge Puckey that at some period in Court the counsel or agent did bring an application to him (Judge Puckey), professing to be signed by Piripi; but he pointed out that Piripi happened to be a long way off at the time, and therefore the application was no good. All that took place in Maori, and I had no knowledge of it until Judge Puckey told me. Judge Puckey has just mentioned to me that afterwards an application was sent in,

193. *The Chairman.*] A formal one?—Yes. I may state that, throughout all the Courts I have presided at—to say nothing of the one at Taupo—at Waipawa and Cambridge, in every case I made it an invariable rule in no way to allow Judge Puckey or the Assessor to give me the least inkling of their views on the case; nor did I let them have the least inkling of my views on the case; and I preserved silence until they said they were prepared to give me their views; and it so happened that in all cases I fairly agreed with them.

Judge PUCKEY, examined.

194. *The Chairman.*] I do not know whether your special attention has been called to this petition of Piripi Whatuaio about Waotu South?—No. [Petition read.]

195. I should like to ask if you know all the circumstances of this case, Waotu No. 2?—Yes; I think so.

196. With that petition before you to guide you in the general line of information, perhaps you would be good enough to give us your version of this transaction?—I cannot refresh my memory, because I have not my notes as to the number of parties who appeared. The claim was brought by one Te Rei Paehua and others. After a *primâ facie* case had been established, counter-claimants were called, amongst others of whom Piripi appeared. There were several other counter-claimants, who withdrew their claims, leaving Whatuaio and his hapu the only counter-claimants, and a small section called Ngatihinemata. No learned counsel appeared on either side. It is true Mr. Sheehan represented a certain section; but he withdrew, and allowed a half-caste named James Ransfield to conduct the case on behalf of the claimants. The counter-claimants were not able to establish any claim on the ground of occupation. A block immediately to the southward of this, called Matanuku, had been previously awarded by the Native Land Court to Piripi's people. Some two or three years previously a survey of Waotu South and Matanuku had been made. It appears that Piripi's people and the claimants of Waotu South were there at the time, and agreed upon this survey-line. It is a remarkable fact that, at one point on the survey, there was a dispute as to the direction the line should run, in order to exclude certain burial-grounds. Some of Piripi's people at a certain point on the line pointed out the direction in which the line should go, and flagged it off. There was a dispute somewhere near a wood, and Piripi's people took away the surveyor's arrows. A discussion took place, and, upon their agreeing between themselves as to the direction in which the line should run, these arrows were returned. I think that is a general outline of the case.

197. Was there anything exceptional in the hearing of this case?—Nothing whatever. There were certain concessions made to Harawira, who appeared as agent on behalf of the petitioners. He had closed his case completely, and was subsequently allowed to call an additional witness. He was also permitted to address the Court prior to giving judgment, although he had only the right to reply.

198. Had he exercised that right of reply?—He had not the opportunity of exercising it; the claimants would have the right of reply.

199. And, although he had no right of reply strictly speaking, you allowed him to speak before judgment was given?—Yes.

200. Has an application been made for a rehearing—a formal one?—Yes; dated the 9th June. An application was handed to me to be given to the Chief Judge. On looking it over I noticed that it apparently was signed on that very day. I asked where the applicant was, and it appeared he was some fifty miles away. I remarked that he must have a very long arm indeed to be able to have signed that application. I thereupon returned the application, and suggested that Piripi's signature should be got to it, as otherwise it might not be considered. About a week later it was brought to the Court with Piripi's signature attached to it.

201. What is the position of the application just now; has it been considered?—I do not know.

202. It was passed to the Chief Judge, I suppose, in the ordinary form?—Yes.

203. *Major Te Wheoro.*] Speaking of the survey that took place where there was a dispute between the two hapus, and it was arranged between them?—Ngatingarongo represented the land to the south, and Ngatihuia and Ngatikapu the land to the north of the line. Waotu is on the north side of it, and Matanuku on the south.

204. *Mr. Tawhai.*] Is there any land to the north of Waotu No. 2 that was previously investigated and adjudicated to Ngatihuia?—Yes.

205. Ngatihuia, in giving their evidence before the Court, did they not allude to the boundary between themselves and Ngatingarongo, and say that Waotu No. 2 belonged to Ngatingarongo?—I cannot say. I was not Judge on that occasion.

206. Was not the evidence taken before that Court produced before the Court in which Waotu was investigated?—It was not produced, but I looked through it, and could not find any point in favour of Ngatingarongo to the land to the south of that line.

207. *Harawira* (one of the petitioners).] You mentioned that for a time Mr. Sheehan did represent one party in Court, and that he withdrew in favour of James Ransfield, who continued to conduct the case for Mr. Sheehan. Did you not observe, after James Ransfield had taken up the case, that Mr. Sheehan returned and conducted the case in person?—I did not say Mr. Sheehan did not represent a case in Court. I say that he did not appear on behalf of any party. He was present merely to watch the case, and took no active part whatever. Mr. Sheehan was in precisely the same position as Mr. Mangakahia was. During the whole time he only asked one question, but I really forget what it was.

208. Do you not know that Mr. Sheehan really was the lawyer acting in the case, although James Ransfield was conducting it?—Do you mean solicitor or counsel for the parties?

209. Either outside or inside the Court?—I know nothing of what took place outside the Court; but I know that inside the Court the entire conduct of the case was in the hands of James Ransfield.

210. *The Chairman.*] Were there any circumstances at Cambridge, as to European dealings with Natives, which rendered that sitting exceptional?—I have heard there were.

211. It has been told us in evidence that there were various transactions between Europeans and Natives outside the Court, which rendered that Court rather difficult to deal with. Could you inform us of any of these circumstances?—All I know about it is hearsay. I do not know anything of it as a fact. What I might be telling might not be true.

212. Then, you could put it in the form of a general rumour. We can put it in that form if you have no absolutely personal knowledge of what occurred, and perhaps we may be able to get from other sources a more exact account of it?—I heard at Cambridge that there was a legal gentleman there who was receiving ten guineas a day and 1s. 4d. an acre for all lands he succeeded in buying for a certain company; and that whilst he was apparently appearing in the Court on behalf of certain Native clients he had an engagement with other parties.

213. Were the ten guineas from the Natives?—I do not know. It was stated that there were two engagements: ten guineas a day from the Natives, and certain other guineas from a company outside the Court; and 1s. 4d. an acre in addition for all lands acquired.

214. Were the interests of the Natives and the interests of the company for which he was acting conflicting—according to rumour; of course, I am taking it entirely in that way?—That I cannot say. There was one case of a block of land which was six weeks before the Court, which contained 5,000 acres, and a fee of £820 (I think those were the figures) was paid to a solicitor by the company, but it was rumoured that it was to go against the purchase-money.

215. So that, although nominally the company paid, the Natives would really have to pay it in the end?—Yes.

216. Is it considered right on the part of lawyers to take fees from different parties in the same case?—From a Native Land Court point of view?

217. No; I want it from the general Court point of view. We have already in evidence that the Native Land Court cannot take cognizance of these things, but I want to know whether another Court could not?—I am not a lawyer.

218. Have any other specific cases of extravagant charges either come under your notice, or have you heard of them on ordinary rumour, such as you have heard of those other cases?—I think that was the only one; I cannot recollect another.

219. Here is a petition from an entirely different party in reference to this general subject. They say there was a block of land at Waikato, containing 12,000 acres, sold at 6s. an acre. The case was conducted by lawyers, and their charges amounted to £3,700; the price of the land was £3,600, leaving them actually £100 in debt. Did you ever hear of such a case as that?—No, never.

220. Could the services of lawyers and agents be dispensed with in the Court without serious inconvenience?—I think so; although in many cases the assistance of a counsel or good agent would be very valuable to the Court in determining matters of subdivision, for instance, or in connecting the details of a difficult case to lay before the Court in a concise form.

221. We have a great many petitions from various parts of the country asking that lawyers and agents should be excluded from the Court. Now, supposing they were excluded, has the Court any machinery of its own by which it could arrive at a definite and just conclusion?—I presume the exclusion of agents would not prevent the Native claimants or counter-claimants, or sets of counter-claimants, from conducting the cases on their behalf.

222. No. I would reckon that as the Natives conducting their own cases. For instance, supposing a tribe chose its chief, or any one that it thought could state the case fairly for it?—The Court has all the machinery in itself to conduct the business. That was the system for five years: between 1873 and 1878 the Native Land Court conducted its business in that manner successfully.

223. You say it conducted its business successfully during those years?—Yes.

224. Then, would there be any difficulty in reverting to that system—I mean, as far as the Court is concerned?—I think not.

225. Supposing you reverted to that system, would it have a tendency to cheapen law in your Courts?—I think it would, as a general thing; but some cases would be considerably prolonged, there is no doubt, because amongst Natives there is a good deal of jealousy with one another. They are less liable to make concessions to one another than two learned counsel would be.

226. Supposing the Court came to a decision in the way stated—that is, without these agents and lawyers being in—would there be a greater or less chance of appeals, judging from your own experience? At present it seems as if in every case where there is a claim and counter-claim the judgments are appealed against?—I do not think it would make any difference in the number of appeals, for this reason: that from year to year the area of land is decreasing, and the Natives fight more eagerly for what remains to them now than formerly.

227. *Mr. Postlethwaite.*] Perhaps you would state what was the supposed value of the 5,000-acre block you referred to?—There is just one point I ought to make clear. The block of land contained 5,000 acres; the fee was that to one legal gentleman alone, but, as there has been no title to the land yet given to the Court, it has not been a charge against the Natives.

228. Could you state what was the value of the land?—About 5s. or 6s. an acre.

229. *The Chairman.*] There may be considerably more expense as I understand, because the land has not yet passed through the Court finally?—Very likely.

NOTE.—On looking over the Court notes I find I made an error in stating before the Committee yesterday, that in the Waotu South case, Mr. Sheehan had asked only one question. He cross-examined only two of the witnesses, and then took a back seat, *i.e.*, he then simply watched the case on behalf of his clients, leaving the matter in the hands of Mr. Hemi Roropiri.—E. W. P.

FRIDAY, 27TH JULY, 1883.

Mr. J. SHEEHAN, M.H.R., examined.

Witness: The petitioner first states, "This land, belonging to me and my hapu, we were divested of by the joint action of the Native Land Court and a lawyer." Now, there were several lawyers in Cambridge; but, before going further, I will assume that I am the lawyer referred to, and I believe I am. The statement that I helped to divest him of his land is absolutely untrue. The petition goes on to say, "The Court and the lawyer," which, again, I will assume refers to me, "gave this land—undoubtedly our own—together with our dwellinghouses, our cultivations, and our burial-grounds, to the Ngatihurikapu and three other hapus." I wish to explain to the Committee that in this very case referred to in the petition I did not appear. At first I did announce to the Court that I was going to appear on behalf of certain hapus. Whatuaio having told the Court that he would not employ counsel, and Dr. Buller, the only other lawyer then present, having informed the Court and myself that he was not appearing for any parties to the case, I went to my clients and proposed that, as they were not going to employ a solicitor, I would prefer to remain outside of it. That advice of mine was taken, and the case, so far as relates to the investigation of the title, was conducted entirely by the Natives themselves. A Native appeared for Whatuaio; a vote of want of confidence was carried against him, and Whatuaio took a second man, who is here now, Harawira—who, by-the-by, is an excellent speaker of English, and a European to all intents and purposes. The Ngatihuri section referred to here appeared through one of their own tribe, Kumareane Heretaunga. The Ngatihurikapu appeared through a half-caste named James Ransfield, and Ngatitauira appeared through a Native agent, a Maori, named Hamiora Mangakahia. I ceased to have anything to do with the case until the decision of the Court had been given as to who were the owners; and then, at the request of all the hapus who were found to be entitled, I undertook the task of settling amongst them their respective subdivisions. The petition goes on to state, "My hapu, Ngatingarongo and I are now as wanderers, without land, houses to sleep in, or food. All our food and our homes have gone, together with our land, which the Court and the lawyer gave to the Ngatihurikapu and the three other hapus." That statement is also untrue. I am very glad to be able to inform the Committee that the petitioner is not without land; he has plenty of land; nor is he without houses or food or money. It is evidenced by the fact that he is able to come down here to attend to this petition. The petition continues: "I, Piripi Whatuaio, have fault to find with the Court which commenced its sittings at Cambridge, in Waikato, on the 28th September, 1882, and during which sitting the Waotu No. 2 came on for hearing on the 25th April, 1883, because it was not explained to me and my hapu why the Court had decided against us." That is a matter respecting the Court duties, but I was present when the judgment was given, and it was very clearly explained to them why the Court found they had no title; and if I had to make any remark at all on the action of the Court in regard to the case it would be this: I think the Court allowed even too much license to Whatuaio and his people to express their dissent and remonstrate with the Court as to the terms of the judgment. The petition continues: "No tribe or hapu ever came forward to dispossess our ancestors and parents of this land during their lifetime. It is only now in our generation that any persons have come to turn us off the land which was occupied by our ancestors. (The Court and this lawyer are those who have expelled us from our land.)" I again assume I am the lawyer referred to, and I believe I am. So far as I am concerned, I can tell the Committee that on several occasions I proposed to Whatuaio to meet the other hapus who were claiming the land; that they should discuss the title amongst themselves after their own fashion, and come to a conclusion, and thus render it only necessary for the Court to give judgment. And, while all the other claimants, even those having as amongst themselves antagonistic interests, met and discussed amongst themselves outside the Court, the Ngatingarongo, to which Whatuaio belongs, declined to have any intercourse whatever with the other people. So far as the petition makes any reference to myself, I desire to repeat that every allegation respecting me is grossly untrue. I might at this point touch on the general question that arises out of this petition, which may enable the Committee to suggest to themselves questions to put to me afterwards. This case of Waotu South may be taken as a type of a number of cases which come before the Native Land Court. Some of the members of the Committee understand, of course, but others may not understand, that a tribe of Natives may consist of a number of sub-tribes; and that while in the case of Waotu South the tribal title in favour of Ngatiraukawa was almost without dispute, yet as amongst the subdivisions of Ngatiraukawa there was a lot of disputing as to which particular hapu owned the property. When this case was called on in Court for the first time to ascertain who were appearing to claim—the practice of the Court being this: a Native or Natives have previously sent in a claim to the land, and a survey being made, the application is put into the *Gazette*, comes before the Court, and is called on. The claimant is called upon to establish what is called a *primâ facie* case, and, having done that, then the Court asks the assembled Natives if any persons are present to oppose the claim. That course was pursued in the Waotu South Block; and, I am speaking now from memory only, but I believe I am correct in saying, there were seventeen different cases set up. When I say cases, I mean separate claims on the block—distinct and different titles. At my request the Court gave an adjournment for that day to enable the people to come together and endeavour to reconcile their differences: and the result was, by agreement amongst themselves, that the seventeen different claims were reduced to four; and to enable that to be done I myself withdrew from the case to prevent one side having a lawyer and the other not having one. I do not know how far the Committee expect me to go in respect of these personal matters. There are allegations in other petitions respecting myself; for instance, in the petition respecting the Whakamaru Block.

The Chairman: They are all very much alike. There is nothing particular in that.

Witness: There are allegations against me of having bribed an Assessor. I am alleged to have given him a diamond ring, a watch and chain, and a sum of money. It is in one of the petitions before the House. I might perhaps shorten the time of the Committee by simply saying that these allegations are absolutely untrue. There is not the shadow or shade of foundation in one of them.

230. *The Chairman.*] Were you present at the hearings of both the Waotu Blocks?—Yes; I appeared in the Waotu No. 1 Block, the northern block. Dr. Buller also appeared. I think there were three other appearances by Natives. Arekatera was one, and a Native known as Pare Rekana was another, and I think there was third appearance of a sub-hapu of the same tribe, Ngatiraukawa.

231. After your knowledge of the general conduct of Land Courts, is it your opinion that, upon these particular cases of Waotu Nos. 1 and 2, there was a full and fair hearing given?—Yes; in my opinion there was an exceedingly full and complete investigation. I will give the Committee just one example from the case to show the extent and fulness of the inquiry. I appeared for the claimant in the Waotu North Block. I had only to establish in the first instance a *primâ facie* case. After I had finished my *primâ facie* case other claims were then heard at length. Then I think—I might be mistaken by a day or two—they spent fourteen or fifteen days in doing that, conducting their own cases. Then it came to my turn. To give the Committee an idea of the patient nature of the investigation I may say that, after I had examined my witnesses for several hours, they were examined by Dr. Buller for a day and a half, and by Arekatera, who was really Dr. Buller's client, for two days and a quarter. There was hardly a question from the time of the migration from Hawaiki down to the present time that was not brought out in some shape or other. And that has been the practice in all the Courts. I have never seen a single case of a Native Land Court, by any pretence or excuse whatever, endeavour to stop any Native, but they allow them to go a long way beyond the license that would be allowed to a European witness.

232. A good deal has been said in regard to the expense of passing land through the Court. Can you tell the Committee the source of that expense; what is the cause of it?—The first expense in connection with the acquisition of a piece of land is the survey. In respect to that I think the Government—I do not mean the present Ministry—are mainly to blame. They have ample power to control—in fact, the right to conduct—all surveys; but they allow these things to be done just by chance and haphazard. The result is that the rates for the survey vary exceedingly. I will give the Committee a case in point, which has come within my own personal knowledge. A block of land or certain blocks of land were to be heard before the Kaipara Court. Going up the Kaipara on other business than that of the Court, a Native on board the steamer, who knew me, showed me a document signed by a licensed surveyor offering to survey all this Native's land then coming before the Court at 1d. an acre less than any other surveyor in the district. When the surveys were completed and the cases came before the Court I was retained to appear in a great many of them. It turned out that this surveyor, on account of his offer, obtained the survey of all the blocks but one. The surveyor who had the one block charged 4d. an acre, and the other gentleman claimed 2s. 6d. an acre. It was similar land, adjoining blocks. I happened to have in my possession at that time the original document signed by him, and I gave it to him to read. He having read it, I asked him if a fair price was not 3d. an acre—1d. less than the survey adjoining, and in the same district. To that he declined to give anything like a clear explanation; and the case being so glaring I took steps to have the matter referred to the Chief Judge, who cut him down to 3d. an acre. If the Committee would like to have my opinion on the question of surveys I would say this: that the fairest and best plan would be for the Government to make all the surveys, and make them without any expectation of realizing a profit for the work done. The result would inevitably be within a short time the conversion of nearly all the outstanding Native lands from their present tribal title to certificate of Crown grant. It is only fair to say that the rates for survey now are nothing like that I have just referred to, but are much lower. But there is a want of that supervision on the part of the Government to prevent an apparently fair contract for survey being largely added to, in respect to price, upon a number of pretexts, such as delay and things of that kind, by which large sums are added to the original bargain. Cases are not unfrequent of the following kind: Blocks surrounding a certain block on three sides are surveyed, and the people owning the land in the centre apply for a survey; only one line remains to be cut, but the surveyor charges the full rates right round. He simply goes to the public office, and obtains from the previous surveys the maps and notes and the necessary information to construct the last line, and he charges the full rates right round the block.

233. There has been a good deal of evidence taken by the Committee in reference to the influence of the Europeans outside the Court, who are endeavouring to purchase land. It has been stated that the effect of these persons entering into negotiations before the land has gone through the Court has greatly complicated the investigation of title inside. One of the witnesses stated that they are the cause of nineteen-twentieths of the difficulties. I should be glad to have your evidence upon that point?—I was going to follow up to that point and give the Committee my idea in regard to the expenses connected with the investigation of title to the land. The next cause of expense is this: I think there are members of the Committee who know that if you ask a Maori in regard to any particular block of land within fifty miles of where he is living himself he will reply emphatically, "Naku"—it belongs to me, although he may have, upon investigation of the title, not a shadow of foundation to claim. Europeans coming to a district where a block of the kind is situated, and desiring to lease or purchase, as the case may be, each party so desirous of investigating fortifies himself as a rule with an interpreter; negotiations go on, moneys are paid, and each interpreter and agent, through the whole course of the negotiations, solemnly assures his principal that the persons with whom he is dealing are the only persons entitled to succeed at the Court, so that by the time the case has reached the Court for investigation there may be four or five antagonistic negotiations in respect to the same block of land. Each European, of course, backs up that particular case which will make the title of his people good, and the Natives themselves are compelled to defend their respective titles in self-defence, because they have eaten so much money on account of the block, and that, in the event of their failing to succeed, they might be obliged to have recourse to the operation performed by one the other day at Cambridge—filing their schedule. Following up that point, another cause of expense, which has, I believe, been pointed out in the printed report of

the Chief Judge, arises in this way: the holding of Courts to deal with a large amount of business; so that it will happen, as in the case of the Cambridge Court, that applications as old even as seven or eight years come before the Court for the first time for investigation, and the Court therefore sometimes extends over six months or eight months, as in the case of the Cambridge Court. The Natives who have to attend the Court, who are either claiming or asserting a claim to the land, of course, must come into the European township where the Court is held. To give the Committee some idea of the length to which some of them have to travel to attend a Court, I will mention that at the Cambridge Court there were people from the Bay of Islands in the north, and from as far as Otaki in Cook Strait, Tauranga, Maketu, Napier, and I think there were one or two from the South Island. Every case cannot be taken at once, and those whose cases come on later at the sitting of the Court have to live in the meantime. As a rule they are people without means, and they have to obtain what are called *raihanas*, that is, orders for the supply of food, which are generally obtained from the particular European or Europeans with whom the applicant for the rations is dealing for his land. I should say that two-thirds of the people who attend a big Court like that subsist in that way. A few of the people living, say, from twenty-five to fifty miles from the locality where the Court is held are more provident. I knew several cases of the kind where these people brought their food with them, and from time to time, as the food was exhausted, fresh supplies were brought in again from the settlement to which they belonged. The great bulk of the people subsist during the sitting of a Court in the way I first mentioned. Another cause of expense, more especially of recent years, is the development of a special class of people who attend the Court, who are known familiarly as blackmailers. A person in that line of business can, without the slightest trouble, protract an honest and straightforward negotiation for the sale or lease of Native land to an indefinite period. He has only to get over to his way of thinking two or three of the grantees of the block, at an expense of, say, £10 or £15, with an almost absolute certainty that he will receive a hundredfold from the European, who is powerless to refuse. I knew two cases, which I could mention if the Committee wish, to illustrate that. In the Cambridge Court of 1880 the European clients for whom I was acting, absolutely against my advice, paid a person of this class, upon the flimsiest possible pretext, the sum of £1,000; and when I say a flimsy pretext the Committee might allow me to explain. The case had come before the previous Court and had gone through the Court, and this person had so little concern in the business that he did not even attend the Court himself. At the second Court he turns up and says, "I advanced two or three of these people some pounds in money two or three years ago, and I intend to stick to my money, and if you do not pay me I will make it warm." I will give another case which occurred during the sitting of the last Court at Cambridge. There is a block referred to in one of these petitions before the Committee called Whakamaru Block. When the investigation of the title was complete the parties proceeded to close up the title on behalf of the Native owners. I went to the office of the Patetere Land Settlement Company to investigate the accounts. The very first item on the debit side against the Native people was the sum of £1,100, or thereabouts, paid to a gentleman of the class to which I am referring. I challenged it, and upon investigation it was found that his story to the effect that he had paid these moneys to the grantees was entirely untrue, and the company, being satisfied it was a false account, struck it out, the Natives thereby being saved the amount of £1,100. As to the other point I would prefer if the Committee would examine me upon it themselves, because it has become somewhat personal —as to the legal profession and Native agents attending Courts.

234. Does not all the cost incurred by the delays you have described come eventually out of the Maoris, either in a direct charge, or by lowering the price paid to them?—So far as my experience goes that is rarely the case. I had the charge of two very large Courts at Cambridge in 1880 and 1881, and I can speak for myself that the fees paid to me and my then partner, Mr. Whitaker, were entirely outside and apart from the price of the land. The price of the land rose during the negotiations from an average of about 2s. an acre to about 12s.

235. Will not the buyer make allowance for all the cost that he is put to before he gets possession of the land?—Some may, and do perhaps; but in the case I have referred to, which affected 200,000 acres of land the agreement under which Mr. Whitaker and I undertook to conduct the case contained a distinct provision between ourselves and the directors of the company that all our fees were to be paid over and above the price they had agreed to pay for the land. That condition was fulfilled to the letter, and the price of the land was increased, as I said before. I can honestly say the Natives did not pay one single penny for legal advice and assistance.

236. Does not that simply show that the price of the land had been originally too low?—On that point I am not competent to give an opinion. Some of the transactions were several years old.

237. Of course, one can easily understand in a particular case the European purchaser might get into a corner, but surely the case you refer to, even if the full value was paid, must be an exceptional one?—No; it applied, as I told you, to two different Courts, and extended over about, I think, 200,000 acres of land—all that property known as Patetere, and also that known as the Whaitekau Company's property. I have no doubt, in most cases, the European, in settling the price of the land, contemplates and takes into account the expense put to in acquiring the title, and upon that question I might be allowed to add this: in one petition it is mentioned that 12,000 acres were sold for a certain sum, and the expenses connected with inquiring into the title amounted to £300 more. I know of no such block of land, and never heard of it.

238. *Hon. Mr. Bryce.*] If the buyers had not been put to these legal expenses, would they not be in a position to give much more as added price for the land?—The legal expenses form a very small portion of the cost.

239. If the European speculators were by some means excluded from negotiating with the Natives before the land passed through the Court, would that, in your opinion, be a benefit?—If they could be it would be a benefit.

240. Could you suggest any means by which this mode of dealing could be stopped?—Two courses suggest themselves, I might say three. The resumption by the Government of the purchase of Native land would stop it altogether.

241. The exclusive right?—Yes. The second remedy is to make the offence of negotiation with the Natives before the land goes through the Court penal, but that proposed remedy is open to two very grave objections. First of all, it would be almost impossible to give effect to the provision, the means of evading it are so ample and so easily handled. The second objection to it is this: that amongst the class of people who desire to acquire Native land there are some people who hold themselves bound, as a matter of conscience, to obey the law strictly and to the letter. They are the very best dealers, and who make a fair bargain and give a fair price. There is another class, who make the hardest bargain, and stop short at almost nothing. Therefore, I think, a penal provision would have the effect of operating against the respectable class of Native-land buyers, and would not affect those against whom allegations might be fairly made of unfair dealing. The remedy I would suggest, I think, would meet the case completely, and would save Parliament from the necessity of passing a law to imprison men for being desirous to acquire a homestead. The Committee will bear in mind that the mischief arises mainly from the payment of moneys before the investigation of title. Now, that can be stopped most effectually by adopting two provisions. First of all, the law which at present bears upon the point should be made clear and distinct that all moneys so paid before investigation of title are not recoverable at law. On that point I may state that an opinion does prevail that these moneys are not recoverable; but I know they are recoverable. I have seen them recovered in a Court of competent jurisdiction; and in cases where people have been in doubt of their position in this matter this device has been resorted to. In paying a Native money for a block of land a promissory note has been taken and transferred to a third party, who becomes thereby an innocent holder, and hence entitled to recover against the Native. Therefore my proposal would be to make it absolutely clear and distinct by statute that all moneys paid before investigation of title should be utterly irrecoverable. The second is a remedy which, almost of itself, would suffice, but it could be worked in with the first one. At present, on the completion of a deed in relation to Native land, the document of title is taken before the Native Lands Frauds Commissioner, and he makes inquiry into the facts in relation to the transaction—as to the consideration, as to the fact of its having been paid, that there has been no breach of trust in the transaction, and, generally speaking, that the deed is one understood by the parties. I would suggest to add to these inquiries by the Frauds Commissioner the following inquiry: Was any portion of this consideration-money paid directly or indirectly, either in the shape of money, food, or clothing, to these people before the completion of their title? And upon that point I would suggest that affidavits be required from the actual purchasers, not from the purchasers acting by their agents, because a good many of the class of people who go in before the completion of the title would not scruple in this matter, but the actual purchasers, men of good standing, capitalists, who would shrink from making a false affidavit that money was not paid before the investigation of the title. It may be by declaration or affidavit—either one will do, because, as the Committee are aware, the making of a false affidavit or declaration is equally perjury, and punishable by fine and imprisonment. Under that provision I have every confidence that the evil, though it would not be absolutely repressed, would be reduced down to limits hardly worth while considering.

242. *Mr. Hobbs.*] About the Survey Department you remarked that the Government were in a measure to blame. I should like to know how the difficulty would be avoided if the parties themselves got persons to survey the land?—The Government have got power under the existing law, and can appoint their own surveyors.

243. Is it not a fact within your own knowledge that many parties have had a survey executed in spite of the objection of the Government?—Yes.

244. *Hon. Mr. Bryce.*] Not legally?—Yes. I remember one case in connection with this very Patetere Block. When I was in office in 1878 I was interviewed at Cambridge by a deputation, who stated that a survey was being made by a surveyor and interpreter named Drummond Hay. I told him that if he went on any further with the survey in that district I would at once telegraph to Wellington to have his license cancelled as a surveyor and interpreter. He expressed great penitence, and sent away at once to stop the surveyors and bring them in, but the messenger, I afterwards learned, took fourteen days to travel thirty-five miles, and by that time the surveys were completed. That is one case. I might mention what the general practice is now with regard to these things: A European purchaser, or intending lessee, having seen a piece of land that he would like to have, and having made some preliminary arrangement about the terms and so on, gets the Natives to agree to the land being surveyed and put through the Court. He makes a bargain with a surveyor—nearly always private persons doing the work now; he gets an authority from the Natives to survey the land; the head of the Survey Office in the district agrees to the survey, and the surveyor is entitled to go to work.

245. *Mr. Hobbs.*] Have not these illegal surveys been all recognized by the Government?—Yes. The survey being completed, the plan is sent back to the office from which the authority came to survey, the measurements are checked and worked out by the Government officers, and compared with existing surveys. The plan is then returned to the Native Land Court, with the certificate on the face of it that it is correct, and sufficient for the purposes of the Court.

246. Have you not heard of some surveys even being carried out at night or by stealth?—Yes; I have heard of surveys by candle-light. There was one case which gave several Governments a lot of trouble—the Ruakaka Block on the Thames River. I know, as a matter of fact, that a miner's lantern—made by breaking a bottle at the neck and inserting a candle—was largely used in taking points and ascertaining bearings.

247. *Hon. Mr. Bryce.*] You spoke of surveys being authorized. Were there not means until lately whereby a private lien might be established over Native land?—Yes; there was a printed form of lien which described the block and boundaries as nearly as possible, and on the foot was an agreement by the Native people to pay so much for the survey.

248. That system being now abrogated, there can be no private liens over Maori land in respect of surveys?—No; because the surveyor, as a rule, is protected with regard to his lien by the Europeans desirous of purchasing the block.

249. Do you know of any authority being given now for surveys of the kind you have described without the expense being borne by the Government?—Yes.

250. I mean now?—Yes; I know of a case that has occurred since I came down here, a fortnight ago, in which the office has given authority for private surveys.

251. Yes, guaranteeing the expense?—Unless you have made any fresh departure within the last few days, I know it is so, because it was shown in two cases recently before the last Court.

Hon. Mr. Bryce: I know two cases anterior to the date of the new departure. I may inform the Committee that the Government have broadly accepted the responsibility of paying for all surveys in the first instance. That is in view of the responsibility of establishing private liens in respect of surveys; and that gives the Government—first, a more distinct right to be particular as to the surveyor who is authorized; and, secondly, it enables the Government reasonably to tax the arranged costs.

Witness: I may state to the Committee that in 1872 a very valuable paper was laid on the table of the House by the late Mr. W. S. Moorhouse on this very question. In that report he raised for the first time the theory that the Government should take charge of all surveys.

Hon. Mr. Bryce: I said that the Government had accepted the responsibility of all surveys; but cases may occur, exceptional cases, in which the Government could not do so. For instance, we have had applications to survey down to three or four acres, in which case the survey would cost more than the total value of the land. That would be an exceptional case.

TUESDAY, 31ST JULY, 1883.

Mr. J. SHEEHAN, M.H.R., further examined.

252. *The Chairman.*] You are aware we have a great many petitions from various parts of the country asking that lawyers and agents should be excluded from the Court. Supposing they were excluded, has the Court any machinery of its own by which it could arrive at a definite and just conclusion?—I have heard that there are some petitions sent in to Parliament, and which have come before this Committee, having for their prayer the exclusion of lawyers and agents from the Court. I think it will be found that the great majority of those petitions come from the losing side. In the case of the Waotu South Block I have pointed out to the Committee that no lawyers appeared until the owners had been found by the Court's judgment; when, at the request of all the parties found to be entitled, I took in hand the subdivision of the block amongst themselves, and in the course of the operation satisfied myself that the experiment of leaving Natives to conduct cases themselves would not be successfully worked.

253. The question I asked was this: Supposing agents and lawyers were excluded from the Court, has the Court itself any machinery by which it could arrive at a definite and just conclusion?—I do not think the Court as at present constituted has any machinery of the kind. The Court consists generally of one or two European Judges and the Native Assessor. The other officers of the Court are the Clerk—who, by no means, can be an assistance to the Court in determining the title, because his function is to take down the evidence—and the Interpreter, who can be of no assistance, because his impartiality must be above suspicion. The Court would soon be more in disfavour than solicitors and agents are if it tried itself to conduct the investigation; so that, assuming that solicitors and agents were excluded from the Court, then it would come to this: the Natives themselves would conduct their own cases before the Court; and I have seen a good many instances of the kind. The older class of the people, like Whatuaio, have no notion whatever of the method of conducting a case or bringing out their evidence before the tribunal. There are always a few young men amongst the sections appearing before the Court claiming particular blocks, who, by contact with Europeans, and having acquired a knowledge of the English language, are very much superior in ability to conduct the cases. I have known some very clever men of that stamp, but I do not always find that each side has one of them.

254. I understand that it is your opinion that the Court could not dispense, without serious inconvenience, with the services of lawyers and agents?—It is my opinion.

255. Judge Puckey stated in evidence that for five years, between 1873 and 1878, the Native Land Court conducted its business successfully without lawyers and agents. As I understand it, you differ from that opinion?—Yes. Besides differing from Judge Puckey, I may say that he is labouring under a mistake in regard to the practice between 1873 and 1878, because the practice of the Court was not uniform. In some Courts lawyers and agents did appear, and in others they did not; but in nearly every case heard between 1873 and 1878 agents did appear.

256. Here is another question I asked Judge Puckey: "Supposing you reverted to that system, would it have a tendency to cheapen law in your Courts? and he says, I think it would as a general thing." As I understand you, you do not concur in that opinion?—It might in certain cases, if the professional man employed understands his work, and is anxious to do that work as expeditiously as possible for his clients. His exclusion from the Court would not tend to reduce the cost or shorten the trials. It is to reduce the cost, I understand, that the Chief Judge altered the practice in regard to solicitors, by requiring them to fix a lump sum before taking up the case or appearing. That might have a beneficial effect in some instances where the case is not a very important one, and is likely to run over a number of days. It has also an objectionable side, because, supposing a block of considerable magnitude, likely to last long, were to be under investigation, and I were to file a declaration that my total fee was £500, including all expenses, it might

happen—and it often happens—that in a block of that kind the parties come to an amicable arrangement, and the land goes through the Court in a couple of days. There are two things, in my opinion, which would very materially help to reduce the cost of the Court and to shorten the time taken up in investigation. One is, that at the opening of the case every exertion should be made to reduce the number of appearances. Each hapu of a tribe may set up a separate case, and, as I pointed out to the Committee the other day, every one has a right to call witnesses and cross-examine the other parties' witnesses. When the Waotu case first came before the Court there were about seventeen cases, with separate witnesses, and seventeen cross-examinations of the witnesses of the other parties. Another thing, which would tend very materially to shorten the Court, is giving the utmost possible facility to the people to discuss, in the first instance, the questions outside the Court. I found that to be by far the best way. I can give one instance. At Cambridge, between the Thursday of one week and the Monday afternoon of the next week, three days, I was able to put through thirty-three blocks, comprising, I think, an area of 150,000 acres, all being done outside the Court in the morning and evening. I had simply to come into Court and say that the parties had settled.

257. *Mr. Tawhai.*] You were asked by the Chairman on Friday last to give evidence before this Committee on the petition of Whatuaio, in which certain charges are made against you in your capacity as lawyer; you were asked to give evidence and defend yourself on those charges?—No.

258. I took particular notice of a part of your evidence; I have kept it in mind ever since: and I wish to ask you a few questions about that, so as to make it thoroughly clear to the Committee?—I might say, before answering the question, that I did not understand that the Committee on Friday last called on me to defend myself. I volunteered a statement. The Committee are really endeavouring to ascertain how far improvements may be made in the administration of the Court.

259. You said that you did not conduct the Waotu South case?—I did not appear in Court. I appeared at the opening, and then retired.

260. You said that the case was left in the hands of James Ransfield, a half-caste, to conduct?—No; I said there were four appearances: the Ngatihurikapu appearing by James Ransfield, Ngatihuri, by another person; Whatuaio's people appearing by two different Native agents: and I myself took no active part in the case until the Judges determined to whom the title belonged, when I came, at the request of the Natives, and assisted in getting the land subdivided.

261. Are you quite certain in what you say that you did not take a part in the proceedings of Waotu South?—I have already answered that question several times both on last day and this. I was retained by, and appeared at the opening of the case for, Ngatihurikapu. I found them disagreeing amongst themselves, and at my request the case was given over to one of the principal men, whereupon I retired from it, and did not return until I was sent for to take it up at the subdivisional point. I might also explain that, when I say I retired from the case, I did not cease to act on behalf of the people who had retained me, in advising them outside the Court.

262. On the 7th of May, at 10 o'clock in the morning, at the Court, Whamainga stood up and gave evidence; did you not question him on his evidence?—I might have done so. I think on one occasion, when one of the parties could not attend the Court, I went in and examined a witness.

263. You say that the effect of lawyers being allowed to conduct cases in Court actually makes the work much lighter; that the business is got through more readily. Supposing there were two parties claimants in a case in Court, one side being represented by lawyers and the other side by the owners, the side which engages the lawyer pays regularly so much a day, and the other side do not. In that case which side would pay the most money?—That is exceedingly doubtful; because when the Natives do not have a solicitor they generally have two or three of their own people in pay. I have seen seventeen Native clerks at the Court table, and I have known cases where they have received more than the solicitor employed.

264. Do you know whether any petition has been presented to this House, coming from the claimants or counter-claimants, objecting to Native agents conducting their own cases?—Native agents of the Maori race, I presume?

265. Yes?—I know of none. It may be so. I do not know of any.

266. Of course you know lawyers are petitioned against?—Yes.

267. Do you know why they petition against lawyers? Is it because they work well?—I cannot say what their thoughts are. I only know, as a rule, petitions come from the losing side.

268. *Major Te Wheoro.*] You say that as a lawyer you did not take an active part in the Court?—Yes; until the subdivision of the block. I appeared at the opening, I know, and might have appeared perhaps once in the course of the case for a special reason, but I left generally the conduct of the whole case to Kamiriere.

269. Did you not say just now that in the temporary absence of some of the conductors of the case you took their place?—I believe I did on one or two occasions; but I would not say that it was on this block.

270. Was it not so that you were the adviser, as it were, of those agents?—I was the adviser of only one party. There were four parties appearing before the Court.

271. Did Ngatingarongo agree to associate themselves with your case?—No. When the original appearances were cut down from about, I think, seventeen to four, I was able to get the case adjourned for a day or a day and a half to try to get the whole of the four people to compare notes and see if they could not come to an agreement. It was only when it was found an arrangement could not be brought about that the case came before the Court in the ordinary way.

272. How many weeks or months did the investigation of Waotu last?—I cannot say. There is official information here, I think. There were two Waotus. The first lasted a considerable time, because it was practically reheard. Waotu South did not last a very long time.

273. *Mr. Tomoana.*] Were you paid by the Natives for acting in that case?—Yes.

274. What did the Maoris agree to give you?—I was engaged by Ngatihuri, and my fee was to

be £200, of which amount I have received only £102, and I do not see much prospect of getting the balance—that is another thing.

275. Have you not taken a promissory note from them for the balance?—No; the only document between myself and the Natives is the declaration filed in the Court.

276. When you were connected with that case, were you representing solely the Maori side?—Yes; from the opening of the Court down to the final settlement of the title and subdivision of the land I appeared entirely in their interests. After the land had gone through the Court, and the owners had been ascertained, I acted between them and the European lessee.

277. Could you say how many times altogether you have appeared in the Native Land Court?—No; but I can say when I began to appear in it. I appeared first in 1869, I think, in the Orakei case.

278. Can you inform me, as to the cases in which you have appeared, whether those lands are still in the hands of the Natives, or whether they have been disposed of?—Some are; wherever they were made inalienable, at their own request. I might mention that this very Waotu North Block contains 15,000 acres. Of that, only 2,300 acres are available for sale; 2,000 acres are available for lease for twenty-one years without power of sale or mortgage; and the whole block, except 500 acres, is absolutely tied up for the benefit of the Natives themselves. Waotu South is a 12,000-acre block, and pretty much the same proportions are followed. I could mention a great many other blocks.

279. Was not Waotu sold?—Only the part, I think, I told you of—2,300 acres; that is, the Waotu North Block. In Waotu South about 2,000 acres, I believe, were available for sale; and I believe that has been sold; I do not know; I have nothing to do with that; I have only heard of it.

280. Did you appear in the Rangipo case?—Yes; I appeared when the case was first heard; and when the judgment was given I was present in the Court at Taupo; but I did not appear except sometimes when called on by the Court to advise on questions which might be raised as to practice. Mr. Gill was present watching the interests of the Crown in the block, and I assisted him so far as it was in my power.

281. Did the Maoris pay you at all at that Court?—No; but they did this, which they like much better: they borrowed money from me.

282. Was it not because you had associated yourself with them, and you were a sort of adviser for them, and belonged to the one party, that they borrowed from you?—It might have been that. Cases are frequent, in my experience, where a Maori has come and given the conduct of his business, and next day has returned and borrowed £5, for the reason that he has given you his work to do. That I have known to occur frequently.

283. Can you point out clearly your reasons for thinking, that if the cases were left alone to the Maoris to conduct themselves in Court, why it should not be successful?—I have answered that question at some length previously, but I will give one reason now. Let us assume that Mr. Tawhai is appearing in Court for his hapu, and Whatuaio for his. I think that would be a case of the earthen pot and the iron vessel, simply from want of knowledge. As you know, many of the older chiefs think it is quite sufficient for them to say, "Naku-te whenua," and think they ought not to be called upon to give proof.

284. Could you show where Judge Puckey is wrong in saying that for a certain time no lawyers appeared in the Court, and the Maoris conducted their own cases, and the business was got through successfully?—I have explained that Judge Puckey was mistaken in saying that from 1873 to 1878 solicitors did not appear in Court. The practice of the Court was not uniform. Some solicitors appeared in some Courts, and others did not. In the great bulk of the cases European agents appeared. And I was going to add, when giving my answer, that, as a matter of fact, the operations of the Court during that time were very small indeed comparatively. The Act proved to be thoroughly unworkable, and the Chief Judge had a document in writing admitting that the Act was unworkable, and indemnifying him for simply overriding its provisions.

285. Were there any petitions at that time sent in by the Natives complaining of the proceedings, that the practice had the effect of taking away their land and putting them to a fearful amount of expense?—Yes.

286. Were not the complaints of the Maoris directed mostly against the Land Acts that were in force, and not against the working of the Act?—I can speak mainly of petitions I drew up myself for you and your people in Hawke's Bay, and they were directed against the Native Land Acts and the Native Land Court—the bulk of them. I dare say there were a great many more of the same kind, because I remember that this Committee used to have before them Maoris in forties and fifties in the course of a single session.

287. *Major Te Wheoro.*] Did you not say that that part of the petition which stated that their dwellinghouses were taken away, and cultivations and everything belonging to them, through the Court giving the land away to another hapu——?—I said this: that, as to the allegation that the petitioners were left landless, and so on, they were not left landless; to my own knowledge they had other lands.

288. Do you think it is with reference to Waotu that they say they have no houses and no land?—It may be, but it does not appear so from the context. Probably it may mean that.

289. Were Ngatingarongo admitted in that block?—I said they had other blocks; they were not left landless.

290. Have they any cultivations or houses on that land?—I could not say. I have been on the block, but only as a person travelling through it.

291. *Mr. Hobbs.*] Following up Major Te Wheoro as to the other blocks in which the petitioners are interested, do you know of any?—The next block to Waotu South is one named Matanuku.

292. Is there any other?—There is a block of land that has not gone through the Court, where the Ngatingarongo, as a hapu, are bound to come in.

293. *Mr. Tawhai.*] Do you know if a person named Kereopa Tukumara is in the Matanuku Block?—I could not say. The Matanuku Block was heard before I arrived at Cambridge. I know that Whatuaio is in it.

294. You know that Kereopa belongs to Ngatingarongo?—I had quite enough to do to find out whom my own people belonged to. Ngatingarongo are a hapu of Ngatiraukawa, and they are undoubtedly owners of land in that district.

The Chairman: I will read the judgment of the Court:—As to the question at present before the Court, viz.,—the title, or otherwise, of Ngatingarongo, the Court was decidedly of opinion that they had failed to prove their title, and the judgment of the Court must therefore go for the Ngatikapu and the other hapus associated with them.

MONDAY, 27TH AUGUST, 1883.

Dr. BULLER, examined.

295. *The Chairman.*] I understand, Dr. Buller, that you would like to make a statement in reference to some things that were said on a previous petition (Piripi Whatuaio's petition). I think it would be best that you should do that before we go into this petition?—Yes; my attention has been called to evidence given by Mr. Puckey, which appears on page 14, I.-2A. Mr. Puckey is reported to have said: "There was one case of a block of land which was six weeks before the Court, which contained 5,000 acres, and a fee of £820 (I think those were the figures) was paid to a solicitor by the company, but it was rumoured that it was to go against the purchase-money." That must refer to me, because I was the solicitor employed by the Auckland Native Lands Colonization company for the purpose of proving their title in the Court. It is quite true the case was before the Court for a period of some six weeks. I received ten guineas per diem during the period I was engaged in the Court, namely, from the 4th to the 16th December inclusive, and from the 16th January to the 13th February inclusive. I received for this period, at the rate of ten guineas per diem, £430 10s. In addition to which, the Auckland Company paid my clerk a guinea per diem, amounting to £43. I received no fee on the brief, as I had been generally retained by the Auckland company. I claimed nothing on the ground I have now mentioned. So that the full amount received by me scarcely amounts to half the amount mentioned by Mr. Puckey as having been paid to me. I believe the accounts which the company had against those Natives did amount to something over £800; but I never saw those accounts. I never had anything to do with them. In addition to being charged with my fees, they were also charged with rations given during the sitting of the Court, and certain advances made by Major Jackson, of which other charges I have no personal knowledge whatever. In another place I am referred to inferentially as the lawyer who received a commission of 1s. 4d. per acre in addition to his counsel's fees for putting the land through the Court. As a matter of fact, I never received as much as 1s. 4d.—but the amount is immaterial I suppose—it was a little over 1s. an acre, and that was under a specific agreement with the Patetere Company as regards two blocks only, the Matanuku and the Waotu. The agreement was that I was to be paid a bonus of £2,000 if I acquired the whole of those blocks, and *pro ratâ* for any smaller area that I might acquire for them. In the case of Matanuku I acquired all but 3,000 acres, which the Natives wished to have reserved; but in the case of Waotu North and South nearly the whole of the block passed through the Court with restrictive clauses, and I acquired a very small portion of that block. The most valuable portion acquired by me was the bush, where I negotiated a lease, the Natives being paid a royalty of £1 per tree. And all I received in this case from the company was this commission of a little over 1s. an acre. They took a timber lease of twenty-one years, the land being made inalienable. I negotiated that lease, but there I protected the Natives by putting in, with the consent of the company, a clause entitling the Natives to have any timber they required for their own domestic or other purposes, but not for sale. Under the agreement with the company I was also to be entitled to claim from them such counsel's fees for acting in Court as my clients should give authority for.

296. *Hon. Mr. Bryce.*] So in this case the company paid the Natives by the tree and you by the acre?—Yes. They paid the Natives £1 per tree (which might amount to several hundreds per acre), and myself 1s. 1¾d. per acre. But, under the agreement with the company, in addition to paying me this commission for acquiring the land, they were to make a first charge upon the purchase-money of any fees which might be incurred. I may observe that the company honourably fulfilled their contract with me, and have paid to the uttermost farthing the whole amount claimed by me.

297. Which was?—I am ready to bring my books and show to a shilling what has been paid in this and all other cases. I will make this general statement: During the whole time I have been in practice, the last nine years, I have never, so far as I know, taken a less fee than ten guineas a day for appearing in Court, and never a greater one, except in the *Waka Maori* newspaper case (which was not in the Native Land Court). There, I received fifteen guineas a day from the Government—ten guineas as solicitor and five guineas extra for my special Maori knowledge. I received that fifteen guineas per day on taxation by the Supreme Court. During the period of eighteen months I was acting as counsel for the Crown, I received ten guineas a day for appearing in Court. The Hon. Mr. Bryce had the pleasure of paying a large portion of it.

Hon. Mr. Bryce: Had the pleasure of stopping it also. I know I was frightened when I saw the accounts.

Witness: I have never on any occasion received a larger retainer than a hundred guineas in an important case. I have heard of another solicitor getting £300. Mr. Bryce, in asking questions of previous witnesses, seems to reflect upon my conduct as solicitor in acting, as he imagined, for both sides. I should like to say a word about that. Following upon questions asked by Mr.

Bryce, the Chairman asked the Chief Judge as follows—I will read the questions and answers from page 9 of I.-2A.: "129. *The Chairman.*] Was not that taking a double fee, taking from both parties?—There is the fact. 130. What I mean is this: would not that be recognized by the Court as taking a fee from both sides?—The Court would have nothing to do with that. It might be a matter for the Supreme Court. 131. But if it were a case in the Supreme Court, or any other ordinary Court, would a lawyer be allowed to take fees from both sides in that way?—I do not know what that Court would say to it, but if my Court had interfered in the matter it would have been told to mind its own business." I wish to say this: I know how particular an officer of the Supreme Court should be in matters of this kind, and I will repeat here what I told the Chief Judge myself at Cambridge, that before going to the Waikato I submitted privately to a Judge of the Supreme Court the arrangement I had come to with the Patetere Company, and asked his Honour whether he saw any impropriety in my acting for the Natives in Court and for the purchasers out of Court immediately afterwards. His answer was, "No impropriety whatever, provided both sides perfectly understand what you are doing;" and in these cases to which I have referred the Natives knew I was acting solely in their interest in Court, and often against the interests of the company, and that immediately after the completion of the title, I was acting in the interests of the company and the company paying me. That is all I have to say on this point, but I shall be happy to answer any questions upon it.

298. *Hon. Mr. Bryce.*] You said you did not receive any fee on the brief from the Natives because you were generally retained by the Auckland company?—Yes.

299. Did I understand you meant to imply that if you had not been retained by the Auckland company you would have expected a fee on the brief from the Natives?—Yes, in every case. As a rule, the amount of the fee is determined by the importance of the case and the extent of the land affected.

300. Is the Committee, then, to understand that the Auckland company really took the place of the Maoris in this respect?—The Auckland company did this: they gave me a retainer of a hundred guineas, with the condition that I should give them the first refusal of my services in all cases on the Cambridge list, except the two in which I was already pledged to look after the interests of the Patetere company—the Waotu and the Matanuku. I received the retainer in the usual way, through solicitors (Messrs. Jackson and Russell), and written instructions to act for the company in any such cases as Major Jackson might from time to time indicate, Major Jackson being one of the directors.

301. The effect of that general retainer would be to prevent you from appearing in Court for the opponents of the company, no doubt?—Yes; but I do not think the company had, in that sense, opponents, inasmuch as that company was acting as agents for any Natives who might come to them with their cases. It was not a purchasing company like the Patetere company.

302. Then, was the company acting for those Natives from whom you would have received a brief if you had not received it from the company?—Yes; for the Natives. And by their going to the company instead of coming to me direct they saved a fee on the brief in every case, but no other advantage, so far as I am aware, except that they were kept in rations and supplies.

303. Would not the company in that case charge the fee against the Natives?—Certainly.

304. Now, about the Patetere company. I understand you were representing the Auckland company?—I was acting for the Auckland company in all cases Major Jackson indicated to me, except the two cases in which I had a previous engagement with the Patetere company—Waotu and Matanuku.

305. And in respect of these two cases you had an agreement with the Patetere company?—I had, dating back nearly two years; in the first instance with the company and Mr. Patrick McCaughan, M.H.R., who afterwards retired, leaving the company to carry out the agreement by consent.

306. You were endeavouring to secure the purchase of the land for them by your good offices?—Yes.

307. Now, I want to ask you, when you attempted to purchase that land, was it after the title was secured or before. I want you to answer me in the spirit as well as in the letter?—Speaking under a full sense of responsibility I state this: Not a syllable was said by me to the Natives in either case on the subject of price until after the case was passed through the Court; nor did I know, until after the title had passed through the Court, what price the Company was prepared to give. Indeed, I scrupulously avoided disscussing the matter with the company, lest it should complicate my relations with my Native clients: beyond this—that in the case of Matanuku, which was the first in which I was engaged, a royalty of £1 per tree was fixed by the company, and the Natives might reasonably have expected that the same rule would apply to Waotu. Beyond that, I did not know what arrangements would be made in respect to the Waotu bush.

308. Previous to the title being ascertained, did you pay or cause to be paid to the owners or supposed owners any money in respect of the purchase?—Nothing whatever; but I am aware that prior to my going to Cambridge large sums were owing by the presumptive owners to the Patetere company. With the contraction of those debts I had nothing whatever to do, but I was instrumental, after a good deal of negotiation, in getting the company to forego more than half of those debts in favour of the Natives.

309. Were the Natives supplied with goods or other valuable consideration at your instance in respect of the purchase?—None whatever; the only payments made with my knowledge and through me were small payments—£1 per day, I think—to defray the cost of the Court. Indeed, I did my utmost to discourage payments, pointing out to the directors that the more they advanced the more difficult would be my position as negotiator afterwards.

310. Then, I will widen my question a little beyond the Patetere company. Whilst you were at Cambridge, did you cause payments to be made to the Maoris in respect of any land whatever, the title to which was not ascertained?—I am not aware that I did. I was present on several occasions when Major Jackson made small payments on account of lands that had not passed the Court. I acted without fee on every occasion as interpreter, and several times interpreted promissory notes. But I think I am right in saying that in no single instance was the payment made by

my advice. On the contrary, I remember strongly protesting against the payment of £100 to Harata in respect of Maungatautari, which had not passed the Court; but, notwithstanding my advice, the payment was made, on the authority of Mr. Thomas Russell, and I believe the money is lost.

311. Can you give the same unqualified answer in respect to lands covered by Government Proclamations?—Do you refer to the Thermal Springs Act or to the general Proclamations.

312. I refer to both—first as to the general Proclamations, and next as to the Thermal Springs Proclamation?—I am not aware of a single instance in which money was advanced, either with or without my advice, on lands under Proclamation, except in the case of the Thermal Springs District. In the case of certain blocks under the Thermal Springs Proclamation, Major Jackson did make small advances, but I believe they were all made before he discovered that those lands were covered by the Proclamation.

313. Acting under your advice?—No.

314. Then, I do not understand what you had to do with this?—Nothing whatever; but I do not want to conceal the facts. I am pretty sure that after Major Jackson met the Native Minister at Alexandra he advanced nothing, beyond making himself responsible for rations. I was acting as counsel for the company and nothing more, but I frequently gave Major Jackson my gratuitous assistance as solicitor. The advances made were extremely small, perhaps £5 or £10 here and there.

315. Was there one sum of £200 within your knowledge?—I never heard of it; and as I was in daily communication with Major Jackson I think I must have heard, if such a payment had been made.

316. Then, to go back, you say that no money was paid by you to the Natives in respect to the purchase of the land, nor was the price arranged previous to the ascertainment of the title?—Just so.

317. Were negotiations current during the time the case was before the Court for the purchase, as between yourself, representing the company, and the Natives?—Certainly not. I may add this: that Mr. Searancke, Mr. Moon, and others were also acting in the interests of the company. What they may have done I am not prepared to say. In the case of Matanuku, where we acquired all but the reserve of 3,000 acres, I found that Mr. Moon had actually fixed the price with the Natives before I was called in to negotiate, and I believe large payments were made by him either in money or rations during the progress of the case, but I was never consulted upon them.

318. Well, I must refer you now to the answer you gave to a previous question of mine [Question No. 307 and answer read]?—Yes; I wish to emphasize that answer by saying that the knowledge of Mr. Moon's transactions did not reach me till after the title was determined in the Court.

319. Had you known that this was the case, that the price had really been fixed beforehand, what would you have done?—Well, that is a hypothetical question. I scarcely know what I should have done. But, as it was, finding that the Natives were perfectly satisfied with the price, and having no reason to believe it was an unreasonable price to pay, I accepted the position, and completed the company's titles.

320. Your first answer led my mind completely astray as to your meaning—unintentionally on your part. I assumed your clients had been frank with you, and had placed you in the knowledge of what they were doing. Now, you say you did not know even that the price had been fixed until after. I think that justified me in putting a hypothetical case in asking you what you would have done in case you had known?—I may add, further, that, in the case of Waotu, although it was my duty to complete the titles and make the agreement, I found that other agents acting for the company had acquired other portions, partly bush and partly open. There, likewise, finding the price a fair one, I accepted the position. I do not want to cast any imputation on the company. No doubt, having large advances out, there was considerable eagerness on their part to complete their titles by every means, and so they seized every opportunity and every avenue. I do not cast any reflection on the company. On the contrary, I think they treated the Natives with liberality. There was every disposition to treat the Natives well, to forgive debts, and to close up transactions, because they wanted to complete their engagements with the English buyers. Indeed, the royalty of £1 per tree is the highest royalty paid that I know of in my experience in the country—that was for totara, rimu, matai, and kahikatea—the Natives reserving the right to select all the best trees, without limitation, so long as they used the timber for houses, fences, canoes, and domestic purposes—not for sale.

321. Did you ever hear the phrase used in Court, "sellers" and "non-sellers"?—Constantly.

322. What idea did that convey to your mind in the absence of all negotiations within your knowledge?—I do not remember hearing the expression in regard to these blocks; it did not come up. It was over the question of Whakamaru that the words were largely used, and they were used in Court because there was a contest between sellers and non-sellers.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1883.