

In the meantime I had been appointed Law Officer of the Crown. After I held that appointment about six years, Sir Frederick Weld came into office. He asked me if I would take charge of the Native Land Court. I said I would if it were founded upon my own principles, and held office during good behaviour, responsible only to Parliament. That was agreed to. I became Chief Judge of the Native Land Court under the Act of 1862. Afterwards, when the Act of 1865 was passed, I became Chief Judge under that Act. I am speaking now in reference to your question as to the length of my experience. Two or three years afterwards I was appointed Chief Judge of the Court under the New Zealand Settlements or Confiscated Land Act. I held that office until, I think, the duties were completed so far as they could be completed by the Court. I held the office of Chief Judge of the Land Court until I finally left the public service a few years ago. But, during the period to which I have referred, I held other offices as well, such as District Judge; but that does not affect this question.

535. Will you be good enough to inform us what opinion you have formed of this Bill. You say that you have read it?—I will take it backwards, if you please. I find that the whole policy of the country, as it seems to me, so far as the disposal of Native lands is concerned, is comprised in clause 62, and the effect of that clause, as it appears to me, is to make Parliament delegate entirely to the Governor in Council its own proper functions. It seems to me a question affecting very large ideas of policy, into which I should not like to enter, as to whether you deal with the principle of leasing or selling land in large quantities or in small quantities. I would merely say that this whole provision appears to me a delegation by Parliament of its powers to the Governor in Council.

536. *Mr. Ormond.*] Would it be so if you were told that the aspect of the Bill had been entirely changed. The Government has stated that it is their intention not to deal with lands in the manner prescribed by clause 62, as it first appeared in the Bill; but to introduce a clause which will put the land in such a position that it can be dealt with by the Waste Lands Board. I think Mr. Fenton should be acquainted with that, so that he may be perfectly right in the point of view he takes.

*Sir G. Grey:* But there is this to be considered: that is only a contemplated alteration. Mr. Fenton's evidence might go to reverse that.

*Hon. Mr. Ballance:* I should wish him to go through the Bill from the beginning. The clause just referred to gives power to bring the land under the authority of the Waste Lands Board; but there is no difference between the Bill as it stands with the clause proposed and as it was, except that here it is more definite.

*Sir G. Grey:* As they have not yet agreed to clause 62, I think it is better to allow the witness to take his own way.

*Mr. Fenton:* When I was in the Legislative Council I made it a rule to object to clauses conferring extensive powers on the Governor in Council. My opinion remains the same as it was. It is for Parliament to lay down a policy, in my judgment. I now come to the restrictions, Part VIII., clauses 60, 61. I find that the Court, the Native Land Court, or the Chief Judge or two Commissioners, sit to inquire into the advisability of removing restrictions; but the result of this judicial proceeding is a report for the consideration of the Governor in Council. It seems to me objectionable that a Court of justice should sit, whose opinions or objections should have no effect except to aid the Governor in Council in forming their opinion. I pass over "Unconcluded transactions," and the clauses entitled "remediable," and come to the clause regulating the disposition of moneys, Part VII. I find that moneys received for purchase or rent of Native land are subject to a percentage, to the cost of surveying roads, and to the cost or part cost of making roads, as well as the cost of surveys. I am afraid—apart altogether from the justice or injustice of a clause of that sort, of which I would like to say something—that after all these things were paid for there would be very little left for the Maoris. There was a case in which a Maori cut up a piece of land near Auckland, called Taupaki. It was very favourably situated. It was surveyed, put into the market for sale. The Helensville railway now runs through it. But it did not pay as a commercial undertaking. The last block of it was sold two years ago: it was cut up into several blocks or pieces; but they did not sell immediately. Ultimately, the remainder, that is several of these subdivisions, were sold together. I am quite certain, speaking of lands that I know of in the Provincial District of Auckland, that they are not able to bear the expense of cutting-up and surveying in parcels. I think, further, with reference to the same part of the Bill, that this perpetual intervention of the Government in one form or other will be found very distasteful to the Maoris. I cannot help thinking that any law relating to Native lands, to be successful, must be acceptable to both races. I now come to Part V., the duties of Boards: Here I must say that it is difficult to form an opinion of much value, because the Board is to be guided by "regulations," which have to be made under clause 62, and we do not yet know what they may be. The power which is given to lay off such roads as it shall think fit, coupled with the power of afterwards charging Maori lands with the cost, seems to me to be very oppressive. I do not refer to the provisions which give, I think, twelve months' imprisonment for sitting on Maori land; that is the same as was provided by an old Native ordinance. I believe I was subject to the process myself for about two years.

537. *Sir G. Grey:* What is the date of that ordinance?—1846.

*Mr. Fenton:* I now come to the Board itself. Here I can speak with very great confidence. Each Board is to consist of a Commissioner, being the Chairman of the Native Committee, and another person to be appointed by the Governor—that is, as I read it, there are two Government officers and one Maori. In the first place, I feel very sure—that is to say, as certain as a man can be of anything that is a matter of opinion—that there are no Natives in New Zealand that will recognize a Board so constituted as competent to deal with their lands; and the other officer, in most cases, will probably be quite as objectionable—that is, the Chairman of the Native Committee.