

them the drift of what they wished to say, I drew out the draft, which resulted in the letter to the Acting-Premier.

43. Did you suggest to Mr. Seddon that he should bring in a Bill to repeal the word "mortgage" inserted in the Act of 1896?—Yes.

43A. Did you call attention to the case of the Piripiri Block, and suggest that it might affect that?—I think I did.

44. Then this legislation is introduced on your suggestion?—I do not say that. I think the whole thing is brought about by the letter and a deputation introduced by Wi Pere and myself to the Premier.

45. Would the repeal of the word "mortgage" be a fair way of settling this matter as regards all the parties?—I do not think it would. The repeal of that word would only place Mr. Pharazyn in the position of suing the Natives for their liability as a personal debt, which he could do, and by process of law he could get a charging-order from the Court against each individual.

46. We understand that; but this is the point: You say it would not be fair to all parties to repeal the word; why then did you suggest to Mr. Seddon to repeal it?—It is this: The introduction of the word "mortgage" gave Mr. Pharazyn a course of procedure which would enable him at once to compel the Natives to sign a legal mortgage, whereas if the word were not there he would have to take the usual course of suing the Natives for the amounts as a personal liability, which is a different thing. It would throw him back into the position in which he was placed by the Act of 1895. Under section 11 of that Act he had a right to sue the Natives for the personal liability.

47. We quite understand the position if the word is repealed; but what I am anxious to know is this: Would you advise the Committee to recommend that the clause in the Bill under consideration should be passed? Would you recommend the repeal of the word "mortgage"?—I would advise the Committee to suggest that the word "mortgage" should be eliminated from the Act of 1896, and I would further suggest that, as Mr. Pharazyn is quite willing that an arrangement should be made securing to the Natives the interests in their lands, but making provision for the repayment of the liabilities which their parents and some of themselves have incurred, that should be arranged for.

48. Would you suggest the passing of a Bill with that clause as it is and a proviso in the direction you suggest?—Yes.

49. *The Chairman.*] Saving Mr. Pharazyn's interests?—Yes, and the Natives'; also, by providing some means for the repayment of their liabilities and the retention of their landed interests.

50. Is it your opinion that Mr. Pharazyn's position had been detrimentally affected by the passing of the Act of 1894?—Yes; that debarred him from having any recourse at all to obtain repayment of moneys lent to Natives.

51. And the passing of the Act of last year put him back to the position he occupied when he lent the money?—The passing of the Act of 1895 gave him the right to sue the Natives for the money lent, and by the insertion of the word "mortgage" in the Act of 1896 it placed him in the same position he was in in 1893.

52. That is to say, the passing of the Act of last year put him back into the position he occupied when he lent the money?—Yes.

53. *Mr. Monk.*] Would you suggest that this legislation should be absolutely retrospective?—Yes, although it is open to that construction.

54. If the Bill under consideration is retrospective, do you agree with that?—In this case, entirely.

55. That it should have the effect of destroying transactions that were entered into, *bona fide*, between Europeans and Natives—for if retrospective that must be its effect?—It is retrospective, but it does not deprive Mr. Pharazyn of any right of recovery.

56. That is not the question. Supposing there are other transactions of which we have no knowledge which were entered into *bona fide*—small transactions where there is a mortgage—do you believe in legislation which will destroy the satisfaction of that amount retrospectively?—Your question is a most difficult one if I am to be forced to reply in the negative or the affirmative, and therefore requires me to explain. Any money lent to a person by another before the passing of the Act of 1894 was placed in the same position by the passing of the Act of 1895, section 11. Therefore, they were not deprived of their right to recover. They were deprived of that right by the Act of 1894, but it was reinstated by the Act of 1895. They were in the position of suing for the repayment of the moneys.

57. There is an ambiguity recognised by the lawyers in section 11 of the Act of 1895?—No.

58. It was so, as is shown by the introduction of this amendment, which was introduced to make absolutely clear what was the intention of section 11 of the Act of 1895?—That might be; but the position, in my opinion, is that section 11 was clear enough in this: that it enabled any person who lent moneys to Natives to sue them for the repayment of those moneys.

59. The doubt came in in this way: If a Native owed, say, £100, it was doubtful whether the person had the alternative of obtaining judgment against him and getting a charging-order when he had a mortgage?—Regarding that, there is no doubt about it. Section 11 is clear. Supposing a man lent £100, section 11 of the Act of 1895 gives that person a clear right to enforce repayment of that debt; but if that £100 was given to the Natives on the security of an agreement to mortgage of certain interests, that was where the doubt arose—whether the Natives could be compelled to sign a legal mortgage by virtue of the agreement.

60. *Hon. J. Carroll.*] Was not the Act of 1895 retrospective in this way?—Yes, because it travels back and repeals part of a former Act.

61. For instance, the Act of 1894 shuts down upon all transactions between private persons and Natives?—Yes; upon agreements to mortgage.