

62. Then there was a provision in the Act of 1894 providing for incomplete transactions such as agreements or contracts to sell or lease, but there was no provision in it for agreements or contracts to mortgage?—There was no provision for the completion of agreements to mortgage.

63. All mortgages other than registered mortgages were left out of the Act of 1894?—Yes.

64. Then the Natives were established in their rights in certain loans which had been the subject of agreements to mortgage previous to 1894?—Yes.

65. Then the Act of 1895 made further provision that Native lands were to be liable for debts which they owed?—Yes. Section 11.

66. In short, the Natives were liable, and their lands were liable, for the debts they owed?—Yes.

67. Are you aware that in the Act of 1895 no provision was made with regard to agreements to mortgage?—No provision was made.

68. They were not referred to at all?—No, not at all.

Mr. Heke: May I say a few words as far as *Mr. Pharazyn* is concerned? During our conversations and attempts to bring about an arrangement, *Mr. Pharazyn* has always expressed his full desire to accept the arrangement which was set out in my proposals to him. Then, regarding the notices which were sent to the Native owners not very long ago, he gave me to understand that it was not he himself who was enforcing or compelling the Natives to sign a legal mortgage, but it was *Te Ama* and *Sinclair*. I thought it was only fair for me to state that, as far as *Mr. Pharazyn* is concerned.

69. *The Chairman*.] That you came to the conclusion that he was sincerely desirous of seeing the Natives fairly treated?—Yes. He expressed himself that if a provision could be made to secure to the Natives their interest in the land and for the repayment of the liabilities to him he would be perfectly satisfied.

MONDAY, 6TH DECEMBER, 1897.

Mr. G. B. DAVY, Chief Judge of the Native Land Court, examined.

1. *The Chairman*.] I suppose when last year the Bill, an amendment of which is now before this Committee, was before the House your attention was drawn to it?—Well, I drafted most part of that Bill myself.

2. I refer now particularly to clause 23. By that clause the law which had been in existence up to that time was altered by the insertion of the word “mortgage” after the word “lease,” and I wish to ask you whether you were consulted after the word “mortgage” was inserted as to the effect it would have?—I could not say that I was consulted upon it.

3. Was your attention drawn to it?—*Mr. Sheridan* brought a copy of the Bill to me. I think it was on the last day of the session, and my attention was drawn to the alterations that had been made in it. My attention was more particularly drawn to another section. That is the only section I can remember my attention being drawn to. The interview between us was not long, and I cannot recollect whether my attention was drawn to the section to which you refer. I know that it was drawn to another section which has nothing to do with this one.

4. Then you gave no opinion as to what effect the insertion of the word “mortgage” would have?—I have no recollection of saying anything about that. It was a very hurried interview. *Mr. Sheridan* came into my office. It was in the very last days of the session, and there was barely time to make any alterations at all.

5. Is it the case that by the legislation of 1894 in respect to Native land purchases it was not open to Natives to enter into contracts to execute legal binding mortgages on their property?—Yes.

6. They could do so previously to the Act of 1894, but the Act passed in that year altered that condition of things?—Yes, as to all future time.

7. And the Act which was passed in 1896, by inserting the word “mortgage” in the clause saving incomplete transactions, put the Natives back into the position which they held before the legislation of 1894?—Yes; that is as regards agreements made before the Act of 1894.

8. We have had some evidence as to dealings with a block called *Piripiri* in *Hawke's Bay*, the leases of which were granted to *Rathbone* and *Mathews*, and we have been told that that case, so far as it is disputed, is at present before the Court?—Yes.

9. In your opinion, has the Court at present power to deal with that case?—The case is at present before the Supreme Court on a case submitted to it by the Native Appellate Court, and I think the Supreme Court has sufficient power to deal with it.

10. *Mr. Sheridan* informed us that in his opinion this clause 2 of the Bill which we are considering is unnecessary, because the Courts have at present power to deal with such cases; what I want to elicit is whether this clause 2 is necessary?—I do not approve of the clause.

11. On the ground that it is retrospective?—On the ground that there must be some finality in these things. If confirmation by the Court is not to be final, and the transaction has to be registered, then the Land Transfer Department will have to go over the whole inquiry again. There must be finality sooner or later if the land is to be brought under the Land Transfer Act, so that the Registrar can give a title. I think that clause which it is proposed to repeal was inserted with a view to the operation of the Land Transfer Act, and to enable the District Land Registrars to register transactions on which the Court had given a decision. It is all done in open Court, after notification in the *Gazette*, and so forth, so that there can be an appeal within a certain time. There are facilities for appealing, but when the time for appeal is past there ought to be finality—either that or the Court is not fit for its work.

12. *Hon. T. Kelly*.] Before “The Native Land Court Act, 1894,” came into operation, had the Natives full power of mortgaging their lands?—It was considered a little doubtful.

13. I think you said they had power?—Well, at one time it was forbidden, but the practice grew up again.