

Hon. E. BLAKE: Perhaps it would be more convenient, Mr. Gully, if you would deal with the mining reserves first.

Mr. Gully: Shall I finish with clause 18 first? I shall be very short.

Hon. E. BLAKE: Very well.

Mr. Gully: My first point, under clause 18, is, that the company has not the power which it has assumed to have—namely, the exclusive right to select their timber upon mining reserves. It must be so contended, because, at least I apprehend it will be so contended, that the Crown has no right to deal with the timber on those reserves. We submit that the two rights are co-existent.

Hon. E. BLAKE: I rather understand the contention on the other side to be that they have; perhaps the term “exclusive” does not express the meaning—“absolute” is more what you mean.

Mr. Gully: Yes; that expresses the meaning.

Hon. E. BLAKE: You contend that the company has not got an absolute right because—

Mr. Gully: Because the right of the Crown is not excluded. That is to say that, although the company has the right to ask for timber licenses upon these areas, that does not prevent the Crown from issuing timber licenses to a third person.

Hon. E. BLAKE: Do you contend that the limitation on the right of the company is not larger than is expressly provided in the clause? “Provided that such option shall not be exercisable so as to in any way interfere with *bonâ fide* mining purposes: Provided also that such option shall not be exercisable over lands the timber on which shall, in the opinion of the Governor, be or be likely to be required for sawmilling industries in existence at the date when the Queen shall consent to the exercise of such option by the company, or where such timber shall be or be likely at any time to be required for holders of timber licenses or miners’ rights respectively, or for mining purposes.”

Mr. Gully: My broader point is—first, that, apart from the proviso altogether the, right of the Crown to issue licenses to other persons is not destroyed by this section. The second point is that the consent of the Queen is essential, and that it will be necessary for the company, in order to establish any claim at all under the section, to show that the consent had been asked for and refused.

Hon. E. BLAKE: By that you do not mean that the Queen has, so to speak, an arbitrary power of refusing consent, but that it is a necessary preliminary to ask the consent and have a refusal?

Mr. Gully: I say, at least that is necessary. And the third point is this: Under the proviso protecting the sawmilling industries, all sawmilling industries in existence at the time when the option is asked to be exercised are protected. This to some extent affects the first proposition which I advanced under this section. The proviso, in fact, shows clearly enough that it is contemplated that the Crown should issue timber licenses to sawmillers after the date of the contract, and at any time and anywhere, until an option has been exercised under clause 18 in favour of the company. I shall submit that any evidence given inconsistent with this interpretation is irrelevant. Then, as to clause 16—

Hon. E. BLAKE: I think we might dispose of this point.

Mr. Cooper: In answer to the objections which my friend has raised, I think Mr. Gully scarcely appreciates the position which we take. Clause 18 is solely applicable to mining reserves, and reserves for public recreation, charitable or education purposes. No such reserves as those mentioned in subsection (d) of clause 16 have been made; consequently, it is simply applicable under the state of circumstances which has arisen under the mining reserves. Now, our contention is that, if these mining reserves were properly made, then it is unnecessary for the Court to consider the provisions of clause 18 at all, because in no portion of the contract has the Queen power to deal with the timber except upon reserves which have been properly made. She has no power to deal with the timber by issuing licenses in respect of the timber growing on any land within the authorised area other than those lands which have been reserved for mining purposes.

Hon. E. BLAKE: Your right of selection under clause 18 is admitted.

Mr. Cooper: Our right of selection of timber, and not our right of selection of the land. Probably it may be in consequence of the Crown not being in full possession of our particulars in reference to the timber.

Hon. E. BLAKE: But take this point: You have a right—a limited right—to select timber as apart from the land. That right is limited to the selection of lands reserved for mining purposes.

Mr. Cooper: Our grievance is this: Supposing that the land has been properly proclaimed, then we say that the value of our right to select the land has been destroyed, because the timber has been taken off it. We would have had a right to say—

Hon. E. BLAKE: But that would come in under your complaint under the mining reserves.

Mr. Cooper: No doubt it does.

Hon. E. BLAKE: If there is any merit in what you suggest you simply say, “We have a right to select suitable timber; you were bound to conserve that timber; you did not conserve it—you wasted it, or allowed it to be removed, and therefore we are affected to that extent.”

Mr. Cooper: If we show that the mining reserves were improperly made, then, of course, clause 18 would have no application, as it only speaks as to reservations properly made.

Hon. E. BLAKE: We are discussing it now on the theory that you fail on the first contention.

Mr. Cooper: Then, if we fail, we say that our option has been injured—our right to select timber has been injured—because there has been on the part of the Crown an abuse of the powers which are reserved to the Crown in relation to the timber under clause 18. We do not dispute that, if these lands are rightly reserved, the Crown has a right—or, rather, the company’s right to select the timber is admitted to that quantity of timber which is not required for mining purposes or for sawmilling industries in existence at that date.

Hon. E. BLAKE: Mr. Gully contends there is a larger power in the Crown, which, in my opinion, would swallow up the proviso altogether.