

*Mr. Cooper* : We dispute that. It seems to me the language is clear. On that other question, the larger power, I dispute the Crown's right as set up.

*Hon. E. BLAKE* : I rule that the Crown has a right to interfere with the option as prescribed in the clause. There is no general right, because, if there was, there would be an end of the whole business. You have not touched that point of consent in order to prove that you applied for consent and were refused.

*Mr. Cooper* : We shall produce evidence that we have applied, and that the reserves were made against our will, and in face of our protest. We shall adduce evidence as to that.

*Hon. E. BLAKE* : You have not said anything as to the proviso about the mining and the saw-milling industries. You say it applies to sawmilling industries in existence at the date?

*Mr. Cooper* : As to consent, evidence will be adduced.

*Hon. E. BLAKE* : Now about the mining reserves themselves. What do you say, Mr. Gully?

*Mr. Gully* : I suggest these two points in reference to subclause (c) : First, the opinion of the Governor is conclusive, and I put it broadly that there is no power to review any action founded upon the opinion of the Governor; secondly, and if not, I submit that evidence which merely shows that in fact the reserves or some portion of them are marked "auriferous" is not sufficient, but that the company must show that the reservations were not only wrongly made but that they were made *mala fides*. To put it shortly, in order to justify their own non-performance they must show there was a fraud in the carrying out of the contract.

*Hon. E. BLAKE* : I would point out some propositions which, according to my understanding, I should like to say a word or two about. I understand you are now talking shortly because these points have been discussed before. You are merely trying to clarify the propositions. There are some propositions which, as well as I can make out, are the points contended for by the company. The first is that the section is ambiguous and difficult. Upon that head I do not intend to trouble, because, in my opinion, there is no latent ambiguity; and I shall not prevent you tendering any evidence you please on that subject, but my present intention is that I shall decline to receive it, though I cannot distinctly refuse until you tender it. Then, the second point that was made for the company was that the Proclamations were not made under the Mining Act, and were therefore void. It seems to me the Crown has a right to exercise its opinion. If on the face of it the transaction was regular, the company contend that what is apparently an exercise of the opinion of the Crown was not an exercise of the opinion of the Crown that was binding on them. There is another allegation—that the bulk of the reserves were made not with regard to the requirements thought to be existing at the time the reserves were made, but palpably with regard to future requirements; and I rather understood that proposition of fact not to be disputed by the Crown—that the Crown thought they had a right to look ahead, and to consider, up to 750,000 acres, what in the future the exigencies of the mining interest might require, and to take all auriferous lands up to that point, as they ascertained in their judgment the lands were payably auriferous.

*Mr. Gully* : That is precisely the position the Crown has always taken up, except that I am not prepared to accede that the test is whether the land may be payably auriferous.

*Hon. E. BLAKE* : What you contend is that it was not required to be proved at the moment the reserves were made that they were payably auriferous, but that you had the right to take into consideration future development by science, and so forth, and that was a question for the opinion of the Crown.

*Mr. Gully* : Various other considerations will be submitted to you as to the land being required, not only for *bona fide* mining purposes, but for purposes connected therewith and appertaining thereto.

*Hon. E. BLAKE* : You claim that the words are enough to enable you to say it is not only the diggings you require to reserve, but sluices, water-races, and so forth. It is certainly contemplated by the contract that more lands will be required than those for actual diggings. Then, it is alleged as a proposition of law that this construction of the contract is wrong, and that the contract only warranted reserves with regard to requirements which, in the opinion at any rate of the Crown were existent at the time the reserves were made, and that therefore there has been a breach. On this point it is not necessary at this time to go into the question of *mala fides*. I do not propose to express any opinion at this moment upon what is alleged by the company—that the Crown acted on a wrongful construction of their powers. There is no issue of fact before me, and it is therefore unnecessary to express any opinion on a point of law. Many reserves which would make in the aggregate, if they had been proclaimed in form at one time, over 10,000 acres, were decided on from time to time, and were proclaimed at certain intervals. I do not understand that it is practically contested that the Crown was wrong in making these reserves from time to time. I observe that the company asks, and that the Minister communicates his intention to, proclaim reserves not exceeding in the aggregate 10,000 acres. I express no opinion upon the point of law at this moment. Then we come to the last point; that many of the reserves, either in whole or in part, never would be required or serviceable for mining purposes. You allege that?

*Mr. Cooper* : Yes.

*Hon. E. BLAKE* : That I understand to be a point which Mr. Hutchison raised, and which was pressed by Sir Charles Lilley at the time Mr. Hutchison alleges *mala fides* on the part of the officers of the Crown, and that therefore there was not a *bona fide* exercise of judgment. I do not understand that you propose to enter into a controversy upon the accuracy of the judgment. If it was a *bona fide* judgment on the part of the officers of the Crown, I should be sorry to preclude evidence on that point as to error of judgment. Mr. Hutchison put the case as high as fraud.

*Mr. Hutchison* : Not corruption.

*Hon. E. BLAKE* : Oh, certainly not; but that it was not *bona fide*; that it was *mala fide*; that they were not in good faith exercising their judgment; that these lands were such as should be proclaimed under the contract; but that nevertheless they did it. I do not propose at present to