

Committee, but think I should be permitted to ask for two stipulations—first, that this agreement should be treated as confidential, except for such purposes as the Committee may think proper for, the purpose of making up their minds on the particular matter under consideration; and, secondly, that the agreement should not be printed as part of the evidence.

2. The Committee agreed to that course before you were called in?—I am glad to hear that. I now hand in the agreement; but, perhaps, it would be better if I explained the meaning of the different clauses.

3. Perhaps it would?—The agreement is made between the Natives mentioned in the schedule and Messrs. Gamman and Co. [Clauses referred to at length.] I may say that the agreement is based on a rule that undoubtedly prevails in England—namely, that a person owning a piece of land can sell the standing timber on the land as a chattel, and the purchaser acquires what is known in law as a license, which is distinct from an estate, to cut such timber. I understand that if a gentleman in England becomes what is called “hard up,” and desires to sell part of the timber on his estate, he calls in a timber-merchant, who goes round and marks the trees he intends to purchase. A contract is made, and that timber is then the property of the timber-merchant, who cuts it when convenient. But that right gives him no interest in the land on which the timber stands. Parliament, of course, is the highest Court in the land, but all Courts have adopted the principle that legislation should not be retrospective so as to affect right acquired before the passing of such legislation. I quite admit that there are cases where the Legislature would act quite rightly in making legislation retrospective. Where it is thought there has been fraud or overreaching, or anything of that kind, then there is a justification for retrospective legislation. But I venture to suggest to the Committee that where there is no such thing, it is inconsistent with the principle guiding this and all other Courts to make legislation retrospective. The agreement has not been prepared without the very gravest consideration as to its validity, and we are quite prepared to take the risk as to whether it is valid or not.

4. *Mr. Remington.*] The agreement has not been prepared with the distinct idea that it was evading the Maori Land Act?—No. It is in consonance with the English law.

5. The Natives sell the chattel interest in the timber when felled?—Yes.

6. *Mr. Hone Heke.*] The basis of this agreement is not made, at least, from the Native land leases of this country?—No.

7. What is your opinion with regard to the provision in “The Native Land Act, 1894,” section 117, which restricts any dealings in regard to Native land?—My opinion is that it would apply only to a contract or instrument creating an estate or interest in land, and does not apply to any chattel interest.

8. What is the law now in regard to standing timber on the land: is not standing timber regarded as part of the land?—For some purposes; but the timber may be sold as a chattel interest apart from the land itself.

9. And in instances where the timber is considered to be part of the land the timber cannot be removed?—Yes. Take an illustration: I sell a building containing a number of fixtures that are attached more or less to the land; the sale would *prima facie* include the fixtures, but I may sell those fixtures without selling the land. I sell the fixtures only, and if I do the purchaser acquires a chattel interest, and what is known in law as a grant to go in and take and remove the fixtures. The timber is part of the land in this respect—that if you sell the land you sell the timber; but if you sell the timber apart from the land the timber passes like the fixtures.

10. *Mr. Vile.*] You sell the timber standing just as you would sell a house?—Yes.

11. *Mr. Hone Heke.*] Has it not been laid down that timber is part of the land, and therefore in the assessment of value that timber is included in the valuation?—Undoubtedly.

12. And that would not prevent any person owning the land with timber upon it from selling the timber as a chattel, as you say?—No.

13. In the case of land leased to any person for the purpose of grazing, and no provision being made in the lease authorising the lessee to cut and sell the timber, has he any power to do so?—You have raised an extremely difficult question. I have had to consider it. My view is that if a piece of forest land is leased to a person that person can fell and remove the timber, providing he does it for the purpose of converting the land into cultivation or pasture. I do not think a saw-miller would be allowed to go on the land to remove the timber only for the purpose of selling it. I think the lessee would be restrained from doing that. If a timber-merchant acquires a piece of land and makes up his mind to cut out portion of it, he may do so, providing he afterwards cuts out the remaining timber. He must not riddle out the trees on the land, and leave the remainder of the bush standing. If I had not had to consider the question I should have felt very much at a loss to answer it.

14. *Mr. Herries.*] You are speaking of leases?—Yes.

15. That has nothing to do with this question?—Nothing whatever to do with it.

16. One of your remarks expressed a doubt—or Mr. Weston, one of your partners, expressed a doubt—as to whether you could cut the timber when growing?—Yes. The agreement provides, *ex abundanti cautela*, for the case of it being doubtful whether property can pass in growing timber.

17. There could be no possible doubt, even if there was a doubt about the other thing, if the timber was felled, that it could be sold?—No doubt whatever.

18. And, so far as the Native land laws are concerned, is there anything to prevent the Maori owners selling the timber after it is felled?—None whatever.

19. There can be no doubt?—None. I prepared the agreement in this particular matter, but I gave an opinion long before this agreement was contemplated, and this agreement is based on the opinion of Mr. Bell as well as my own.

20. Your opinion is that the timber is a growing crop?—Yes.

21. And therefore is a chattel?—Yes.