The *Hon. J. Carroll* (proceeding with his statement) said: That was the case as laid before the Government by the Natives. In the year 1894 the Legislature thought fit to alter the Native policy by forbidding all transactions between private individuals and the Natives. Selling and leasing, excepting under certain conditions, were strictly prohibited by the Act which received the sanction of the Legislature in 1894. There were, however, certain provisions in the legislation of that year which provided for incomplete cases. Such provisions affected transactions in respect to incomplete leases of Native lands, sales, and purchases thereof, but they made no condition whatever in respect to incomplete mortgages. Registered mortgages, complete mortgages—that is to say, legal mortgages of that time—were not questioned by the Act, but the Act took no cognisance of any contract or agreement to mortgage which was then held to be in an inchoate state. Section 121 of "The Native Land Court Act, 1894," has the following: "Nothing in this Act contained shall render nugatory any power of sale in any existing mortgage, or under any existing decree, judgment, or charging order, or prevent the completion of any existing contract for the sale, lease, or purchase of land, but the same shall have effect as if this Act had not been passed." Therefore I would point out to the Committee that in 1894 the contract to mortgage—the contract which had been signed by the Natives to Mr. Pharazyn—had no legal standing. The Act of 1894 afforded him no rights whatever under that contract.

In 1895 the Native Land Laws Amendment Act was passed, and there an attempt was made to improve the position of incomplete transactions. For instance, section 11 reads as follows: "Nothing in the Act contained shall operate to defeat or prejudice any right or remedy which, but for the passing of the Act, any person might or would have against land owned by a Native in respect of any debt or liability incurred by such Native prior to the passing of the Act; but such right or remedy may be exercised as fully and effectually as if the Act had not been passed; nor shall anything in the Act contained preclude the acquisition by any person of land sold under process of law in exercise of any right or remedy as aforesaid: Provided that the Court shall, as regards the exercise of any such right or remedy, make all inquiries which before the passing of the Act would have been required to be made by a Trust Commissioner in respect thereof, and may, if satisfied with the result of such inquiries, and that the sale is in accordance with the provisions of this Act, confirm such alienation. No person shall be debarred from the benefit of the foregoing provision by reason only that such person has, since the passing of the Act, taken or accepted any promissory-note or other obligation or security, or has recovered judgment in any Court of law, in respect of any debt or liability as aforesaid." This provides rights and remedies against land owned by Natives in respect of debts incurred. Now, section 13 of the same Act takes into account confirmation orders; it reads as follows: "A confirmation order under the seal of the Court, or a certificate under section fifty-five of the Act, indorsed on any deed or instrument, shall, for all purposes of title, be conclusive evidence that such deed or instrument is not in contravention of any of the provisions of the Act or of this Act, but shall not exonerate any person from penalties incurred in respect of any false declaration or evidence made or used for the purpose of obtaining such order." Though that gave a right to one in the position of Mr. Pharazyn, we will say, to get from a Judge of the Native Land Court a confirmation order, providing, of course, that the Native Land Court Judge made all the inquiries that were required of a Trust Commissioner, still only a confirmation order could issue; the Act did not go any further. That is to say, supposing a confirmation order under the section which I have just quoted had been issued, there was nothing to compel the Natives to fulfil or execute a mortgage.

Then we come to the Native Land Laws Amendment Act of 1896. An amendment was inserted in that Act which further affected the position of those holding as Mr Pharazyn held. Section 121 of the Act of 1894, as I have already explained to the Committee, had left out any provision whatever with respect to contracts to mortgage. Section 23 of the Native Land Laws Amendment Act of 1896 reads as follows: "Section 121 of the said Act is amended by the insertion of the words 'Subject to the provisions of section 65 of this Act' after the words 'the same shall,' and by the insertion of the word 'mortgage' after the word 'lease.' Completion of existing contract in said section 121 shall be construed to mean and intend fulfilment thereof." If you have the Act before you, you will understand how the section will read with the insertion of these words. It will read as follows: "Nothing in this Act contained shall render nugatory any power of sale in any existing mortgage, or under any existing decree, judgment, or charging order, or prevent the completion of any existing contract for the sale, lease, mortgage, or purchase of land; but the same shall (subject to the provisions of section 65 of this Act) have effect as if this Act had not been passed." Now, that is the whole position. The insertion in 1896 of the word "mortgage" puts Mr. Pharazyn, by virtue of his contract with the Natives to mortgage to him, in line with those who were in 1894 considered to have certain rights of confirmation capable of fulfilment.

Taking the circumstances into consideration—taking the position of the Natives that their land is practically gone from them if the mortgage is allowed to be good and completeable; that the rents they are receiving are far less than the interest they have to pay, or they are liable for upon their indebtedness — taking all these matters into consideration, the Government has decided, as instanced by the Bill which is now before this Committee and under its deliberation, to put the whole question back to the position it stood in before the 1896 Act was passed. We do not take away any title from Mr. Pharazyn. He has no registered title at present; the mortgage has not been executed. The alteration of the law has simply altered his position to this—that it has given him the right of getting a title under his contract. We say, before that actually comes o pass, it is only fair to the Natives, taking all the facts into consideration, to put them and Mr. Pharazyn back to the position they occupied in 1894, or prior to the amendment of 1896.

Hon. Dr. Grace: The Bill seems to go further than the Act, because it alters the Act of 1895; it does more than put the position back to the position of 1894, because it alters the position of 1895.