1930.

NEW ZEALAND.

NATIVE AFFAIRS COMMITTEE.

TONGARIRO TIMBER COMPANY AND WEST TAUPO TIMBER LANDS.

REPORT OF NATIVE AFFAIRS COMMITTEE, TOGETHER WITH MINUTES OF EVIDENCE AND APPENDIX.

(MR. C. H. CLINKARD, CHAIRMAN.)

Report brought up on the 21st day of August, 1930, and ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

WEDNESDAY, THE 23RD DAY OF JULY, 1930.

Ordered, "That a Native Affairs Committee, consisting, by leave, of sixteen members, be appointed to consider all petitions, reports, returns, and other documents relating to affairs especially affecting the Native race that may be brought before the House this session, and from time to time to report thereon to the House; with power to call for persons and papers; three to be a quorum: the Committee to consist of Mr. Broadfoot, Mr. Clinkard, the Right Hon. Mr. Coates, Mr. Endean, Mr. Healy, Mr. Henare, Mr. Howard, Mr. Langstone, Mr. Makitanara, Mr. McDougall, Mr. Martin, Mr. O'Brien, Captain Rushworth, Mr. Waite, Mr. Williams, and the mover."—(Hon. Sir APIRANA NGATA.)

WEDNESDAY, THE 6TH DAY OF AUGUST, 1930.

Ordered, "That Paper No. 88, West Taupo Timber Lands and the Tongariro Timber Co., Ltd.: Statement as to Claims made in respect of Liabilities of the Tongariro Timber Co., Ltd., and regarding effect on Egmont Box Co., Ltd., of the Determination of the Tongariro Timber Co.'s Rights, be referred to the Native Affairs Committee."—(Hon. Sir APIRANA NGATA.)

REPORT.

WEST TAUPO TIMBER LANDS AND THE TONGARIRO TIMBER CO., LTD.

PAPER NO. 88.—STATEMENT AS TO CLAIMS MADE IN RESPECT OF THE LIABILITIES OF THE TONGARIRO TIMBER CO., LTD., AND WITH REGARD TO THE EFFECT ON THE EGMONT BOX CO., LTD., OF THE DETERMINATION OF THE TONGARIRO TIMBER CO., LTD.'S RIGHTS.

I HAVE the honour to report that the Native Affairs Committee has duly considered the above-mentioned paper, and begs to report the following resolutions:—

1. That the Committee, having investigated the case, is of opinion that the Tongariro Timber Co., Ltd., has not been able to substantiate any claim against the State.

2. That the Committee is of opinion that the Egmont Box Co., Ltd., has legal rights to the Western A Block, and that these should be defined by legislation, or a fresh agreement.

CECIL H. CLINKARD, Chairman.

21st August, 1930.

MINUTES OF EVIDENCE.

TUESDAY, 12TH AUGUST, 1930.

WILLIAM HEUHEU GRACE examined. (No. 1.)

The Chairman.] Will you now proceed, Mr. Grace?—Yes, sir. The position is that I am interested in this matter of the Tongariro Timber Co. in at least four different ways. First of all, I am interested as an owner of the territory affected by the Tongariro Timber Co.'s agreements; secondly, I am interested as a creditor of the Tongariro Timber Co.; thirdly, I have been interested as a promoter of a company which would have taken over the rights of the Tongariro Timber Co.; and, finally, I am connected with the Government over the matter in a subsidiary way. Being in the position I am, I took it upon myself to compile a memorandum on the subject, and this memorandum has been circulated among you. [Appendix A.] It was circulated last Friday, and I hope that you, sir, and all the members of the Committee have duly received your copies. I may say that my object in compiling this memorandum was to indicate some basis of settlement as among the interested parties. Well, sir, perhaps it would be as well if I just ran briefly through the memorandum. There may be one or two points that may require explanation—that may require bringing out. In the first paragraph of the memorandum I deal with timber figures. I think they speak for themselves. You will observe that the stand is 1,465 million log feet of timber, and it is generally admitted that that appraisement is very much on the conservative side. In fact, the State Forests Service, in a report which they made on the timber, stated that when the timber actually came to be milled those figures would probably be exceeded by 20 per cent. or more. However, all my proposals are based on the stand of 1,465 million log feet, so that if there is any excess—and it appears that there will be an excess—that will be all to the good, and will be a profit to the Crown. Now, the second paragraph deals with the quality and value of the timber. I venture to say that there is no timber anywhere in New Zealand that is as good as what is to be found on most parts of this territory. I think that is a matter that is agreed upon by all people who have been on the territory.

Mr. Langstone.] What is the size of the block?—It comprises two long big compact blocks.

What is the area?—The area of one block is, in round figures, about 40,000 acres, and the other block is about 18,000 acres.

The Chairman.] Is it broken country?—No; it is all growing on gentle sloping hills, and is remarkably free of broken country. Well, you will observe that I assign a value of 3s. per 100 log feet to the timber. I cannot see how you can get behind the value placed on the timber by the State Forests Service, 4s. per 100 log feet; and I cannot see how you can get behind the binding offer referred to in that paragraph of 4s. 7½d. per 100 sawn feet, or the equivalent of 3s. 1d. per 100 log feet. The suggestion is that the property be acquired on its present-day value, which I place at 3s. per 100 log feet. To come now to paragraph 3, which deals with access. Perhaps I had better just describe a little more fully what the territory is like. The major portion of the territory, on which there is about 45,000 acres of solid bush, comprises a long, narrow, flat-bottomed valley, and the timber, as I have just mentioned, is growing on the slopes of the hills on either side; but those slopes are very gentle, and not broken. The bottom of the valley is open country, and the only vegetation growing there is tussock and a small shrub called Monoao, which grows about 3 ft. high. The bottom of the valley is virtually flat, and the one river which will have to be bridged is the Kuratau—a small one. Access is simple. Sixteen miles of new road would provide all the access required. The road would branch off from the National Park–Tokaanu Road at the 20-mile point, and strike northwards along the bottom of the valley I have just described, and the road would be within at least half a mile of the edge of the bush. To deal with paragraph 4. In that paragraph I go into the position to date. I think you, gentlemen, are as well acquainted with that as I am. I take it that you, gentlemen, have read the memorandum. I now come to the 5th paragraph, which deals with the interested parties. This is one of the most important paragraphs in the whole memorandum, and I think I had better read it together with the rest of the memorandum:—

The Interested Parties.—These are the Native owners, the Tongariro Timber Co., its creditors, and the Duncan Syndicate. The claims of the Native owners are both real and well founded, legally, inasmuch as they own the interests to be acquired. Fair and adequate provision must therefore be made for them.

I do not think there can be any doubt about that.

The position of the other parties is, however, not so secure. Their claims all centre round the rights of the company, and, as those rights have been cancelled, or are immediately cancellable, the parties are now without legal foundation for their claims.

There is no doubt about that either, according to the opinion given by the Solicitor-General. But there is one party which might be mentioned as being an exception, and that is the Egmont Box Co.

All parties (including the Native owners) complain, however, that there has been far too much interference on the part of the Government with the rights of the company, with the result that, if such interference did not actually prevent the carrying-out of the company's undertaking, it certainly hampered that undertaking very greatly and in a manner that was not warranted. In the light of this the parties contend that their claims are all entitled to a certain measure of recognition, and that whether they have any legal foundation for the same or not. The main acts of interference complained of are—

(1) The imposition in 1921 by the Government of a very substantial increase in the standard of the railway-line, the construction of which was one of the main conditions on which the company held its rights. The new standard was never contemplated by the original parties to the company's agreements [that is to say, the Native owners], and the Government (which had then acquired perhaps one-sixth of the territory) took the action indicated without even consulting the Native owners.

Without any alternative ?—It was imposed by the Crown, and the company at the time had no option; they had to take it. That was the action of the Government of the day, and the company had to accept the imposition, whether it wanted to or not; and, further, I would add that the Native owners were never consulted in the matter.

The increase operated most disastrously against the company. It increased the cost of constructing the line from some £300,000 to over £650,000, and its effect was to more than double the capital requirements of the company. It is evident now that these two factors in reality killed all prospects that the company had of carrying out its undertaking, though it made valiant efforts to do so.

Mr. Williams.] What was the original arrangement between the company and the Native owners? What were the main conditions?—There were two conditions: one was the payment of royalty, and the other was the construction of the railway-line. So far as the royalty was concerned, the company undertook to pay £5,000 per annum, this £5,000 to be paid on account of, and in anticipation of, future royalties.

Was any time stated when they had to start operations?—There was no stated time as to when they had to start operations.

Mr. Langstone.] Was there not a time-limit when the line had to be constructed?—Yes. It was to be constructed within five years from the date of the original agreement of 1908—that is, 1913. But subsequently various extensions of time were granted until the final one, which was to the 1st of September, 1928.

Do not you think that was not in the interests of the Native owners?—I say it was in the interests of both the Native owners and the company.

Hon. Sir Apirana Ngata.] You say the line had to be completed in five years from 1908—that is 1913?—Yes; the line had to be completed by Christmas, 1913; but in 1915 the company was granted a moratorium which carried it on to 1921. And then, of course, in 1921 there came this imposition of the increased standard of line. The second act of interference complained of is—

The granting of numerous extensions of time to the company which, of course, effectively prevented the Native owners dealing with their timber themselves.

The third act of interference was—

The acquisition by the Crown of its present holdings in the territory. These operations commenced about the year 1920, long after the company's agreements were executed, and were all conducted while the rights and obligations of the agreements were still subsisting. The total area acquired by the Crown in this way was, approximately, 35,000 acres. As already pointed out, 19,130 acres of this is in standing timber, and the balance comprises open country. The total cost to the Crown for the area acquired was £77,000-odd.

What rights are you referring to?—The rights of the Tongariro Timber Co.

If any?—They were very much alive then.

There can be no real objection to the acquisition itself, except, perhaps, on the score that the price paid by the Crown was much too low; but it is pointed out that when the Crown acquired the interests there was in existence the "hotchpotch" created by the agreements. The effect of the hotchpotch was to make one big pool of the timber, and it is contended that no action should have been taken in regard to that pool, and the rights centred round the same, without the concurrence of the majority of the owners, whoever they may be. There was certainly no such concurrence when the Government interfered in the manner first described [that is, in imposing an increased standard of railway-line], or when it adopted the attitude which will be described in the next paragraph.

I do not think that calls for any explanation. The fourth act of interference complained of is—

The rejection by the Government of the Duncan Syndicate project. This syndicate was formed with the object of floating a new company which would take over the Tongariro Timber Co.'s undertaking, have a working capital of £300,000, and make fair and equitable provision for all parties interested in the latter company. It was, however, a prime condition of the syndidate's project that the old standard of the railway-line should be reverted to.

The £300,000 capital would have been ample for all requirements of the new company, and, so far as the old standard of railway-line is concerned, £150,000 would have built the first twenty-five miles, and the intention was to build the remaining fifteen miles out of revenue.

In its project the syndicate had the support and approval of most of the interested parties, and particularly of the Native owners (see resolutions passed by them at Waihi, Lake Taupo, on the 21st February, 1929), who then owned, and still own, over two-thirds of the territory.

The Native Minister was present when the resolutions were passed by the Native owners. In passing, I might mention that the resolutions provided, among other things, that the creditors and all the Tongariro Co.'s connections had to accept the provision made for them in the project.

By October of last year, and but for one thing, the syndicate was in a position and ready to carry out its project. That one thing was the procuring of the consent of the Crown to the project. The syndicate approached the Government repeatedly for such consent, but it was never forthcoming, until it was finally made unprocurable by the recommendations of the Native Affairs Committee and the legislation referred to above.

That is section 29 of the 1929 Native Land Amendment Act.

As a result of all this the syndicate was reluctantly compelled to abandon the project, and the interested parties thereby lost all the benefits which they would have derived from it.

It might be mentioned that the syndicate received no little encouragement from the late Government. Then it might be further mentioned that the meeting of Native owners at which the above resolutions were passed was expressly convened for the purpose of enabling the owners to consider the project, and was actually presided over by and held at the suggestion of the Native Minister. As already pointed out, the resolutions approved the project (all present at the meeting except two voted for them), and the syndidate, not unnaturally, assumed, in all the circumstances mentioned, that the Government would give due effect to the resolutions, and it proceeded accordingly with the project—a thing which it would never have done had it known that the Government's consent would, finally, have not been forthcoming.

That, gentlemen, was, exactly, the position.

What about improving the royalties?—I think that is covered by the correspondence on the subject. On behalf of Mr. Duncan I wrote to the Native Minister pointing out that the syndicate could not possibly consider any increase in the royalties, although they were prepared to make the annual instalment on account of royalty payable in the first few years larger than would ordinarily

have been the case. The scale proposed by the syndicate was the scale of royalties laid down by the original agreements, plus 20 per cent. The 20 per cent. increase was to commence in 1936, and on that increase taking effect the value of the timber to the Native owners would have been about £15 an acre, or the equivalent of 1s. per 100 log feet.

Mr. Williams.] What time had they to complete the arrangements ?—Six months from the date when the Government gave its consent to the syndicate's project.

Mr. Langstone.] Do you say that there was £300,000 of capital ? — Yes, there was. Actually £240,000 had been subscribed. I have evidence of that, which I will put in later.

Were they not going to sell debentures ?—The method adopted by the syndicate for raising its capital of £300,000 was to divide that capital into fifty shares or blocks of £6,000, and to get sound business men to take up the blocks. Of the £300,000 no less than £240,000 was actually taken up in that way. I will put in formal evidence on that point later.

Apart, however, from these considerations, it is contended by the interested parties that, as the Native owners (who owned the greater part of the territory) had themselves approved the project, and in the light of the hotchpotch above described, the Crown should have followed the lead of the Native owners, and given its consent to the project. As it did not do so, the interested parties hold that the Government is morally responsible for all the consequences of its failure to consent to the project, and among these consequences is the loss to the interested parties of the benefits which they would have derived from the project.

In the face of all that has been written above, it would seem that there is much in the view held by the interested parties that they are morally and equitably entitled to a certain measure of recognition for their claims at the hands of the Government, and, assuming that they are justified in holding that view, the question is, what should that measure of recognition be ? Under are proposals which answer that question, and at the same time afford a satisfactory solution to the problem presented by the claims. As the loss of the benefits of the project constitute the main and final ground on which the parties base their claim for recognition, the terms of that project are made the basis of the proposals.

Incidentally, there is another reason, which I have already mentioned, why the project should be made the basis of the settlement, and that is, by virtue of the resolutions passed by the Natives, the project was in effect an ultimatum to the company and its connections. My memorandum continues—

Part II.—Proposals whereunder the Crown will acquire the Tongariro Timber Territory and settle with all Interested Parties.

1. *The General Proposition.*—The general proposals are that the Crown should—
   (1) Acquire the outstanding Native interests in the timber:
   (2) Settle with the interested parties in manner described below, due provision being made for the legitimate profit of the Crown:
   (3) Deal with the timber on the lines which will be indicated in Part III of this memorandum so as to enable the Crown to meet the commitments of the proposition and, at the same time, and ultimately, give it a reasonable profit on the undertaking:
   (4) Provide the road access previously described, in order to enable the Crown to secure full value for and deal with the timber in the manner suggested.

As I have pointed out in Part I, the cost of constructing the proposed road access would not exceed £40,000.

Hon. Sir Apirana Ngata.] Where is that access from ?—From a point near Lake Roto-Aira—at a place called Otoukou. It will branch off somewhere about the post-office at Otoukou, and run due north up the valley that I described a little while ago.

Mr. Langstone.] What about the position near Kakahi ?—The access to that will be from Kakahi. It comes within three miles of Kakahi, so it is already provided with access. Then I proceed—

The Native Owners.—The proposal is that the Native timber be acquired by the Crown at the flat rate of 1s. per 100 log feet. This is the price they would have secured under the Duncan project, and they cannot conscionably be asked to accept anything less than that.

Hon. Sir Apirana Ngata.] In what year ?—Over the whole period, but not in the first few years. In addition to their royalties, the Native owners would have received 120,000 out of 300,000 fully paid-up shares in the new company, and it was estimated that the dividends from these shares would be equivalent to at least another 8d. per 100 log feet.

The price proposed is 1s. 4d. per 100 ft. under the value (3s. per 100 log feet) ascribed above to the timber; but it must be remembered that the proposal is that the timber be taken over as it stands, and with present means of access. It must also be remembered that the timber would only have a value of 3s. per 100 log feet if treated as one big proposition under one administration. Being the unwieldy body that they are, and having regard to their diversity of interests and opinions which actually exists among them, it is obvious that the Native owners could not give the timber the treatment mentioned, and 1s. 8d. per 100 ft. is probably the maximum price that they, as a body, could obtain if they were handed back the timber and left to their own devices. Furthermore, it is only fair that the Crown should be left with a reasonable margin for the provision of access, for its expenses and legitimate profit, and for the other purposes of which mention will be made later.

Hon. Sir Apirana Ngata.] At the end of your Part I you speak of the measure of recognition. Do you emphasize that that recognition be at the hands of the Government ?—I do. Most certainly it should not be at the hands of the Native owners. The proposition is that the Native owners should get the full value of their timber, and the value to them of the timber to-day is 1s. 8d. per 100 log feet.

That is, net to them on any claim that may be recognized as the result of this inquiry ?—Yes. The Government should recognize the claim out of the gross legitimate profits it makes on the purchase from the Native owners.

Mr. Langstone.] Because of the Government interference ?—Yes. Because it is recognized that the Government has interfered, and stopped the Duncan Syndicate from operating ?—That is so.

Whether the Government makes a profit or not ?—I do not say that. You cannot expect the Government to come into it without being reasonably assured of a profit.

Supposing it does not make a profit: will the claims be waived?—That is a different matter. I do not admit that the Government will not make a profit.

On the figures quoted above, the total price payable by the Crown to the Native owners will be approximately £860,000 (1,035,000,000 log feet of totara, matai, rimu, and kahikatea at 1s. 8d. per 100 ft.)

I may mention incidentally that there is also 123,000,000 log feet of miro, which is thrown in. It has a value of at least 1s. per 100 feet. Then—

The price can be paid in the manner following:—	£
(*a*) In cash, and as soon as State acquisition is decided upon	10,000
(*b*) In annual instalments spread over twenty-five years	300,000
(*c*) In 5-per-cent. bonds having a term of thirty-three years, in lieu of the balance outstanding (£550,000) of the £860,000	250,000
	£560,000

I think some provision of the kind last mentioned should be made, otherwise the Native owners will eat up all their royalties, and no provision will be made for posterity. If they are paid in bonds, they and their descendants will have the bonds for all time, and incidentally the bonds can be tied up so that the owners can have only the interest.

If effect is given to this proposal the annual outgoings of the Crown would be—	
For each of the first twenty-five years—	£
(*a*) Annual instalment on account of the £300,000	12,000
(*b*) 5 per cent. interest on the £250,000 bonds	12,500
(*c*) 1 per cent. sinking-fund charge for the redemption of the £250,000 bonds in thirty-three years	2,500
	£27,000

At 3s. per 100 log feet, an annual output of 18,000,000 log feet (*i.e.*, an actual output of approximately 12,000,000 sawn feet) would cover these outgoings.

For each of the next eight years—	
(*b*) and (*c*) above	£15,000

At the end of twenty-five years the £300,000 will have been paid off.

At the 3s. mentioned an annual output of 10,000,000 log feet (*i.e.*, an actual output of approximately 6,700,000 sawn feet) would cover these outgoings.

At the end of thirty-three years, and by paying the outgoings out of revenue derived from output, the Crown would have paid off the whole of the price, and will be in a position to redeem the £250,000 bonds out of the sinking fund created for that purpose.

It will not be necessary to make provision for the acquisition of the land on which the timber is growing, as that has been provided for in the Native Minister's scheme for the settlement of the territory generally, the scheme being that the Native owners consolidate their interests into the open parts of the territory.

Then I come to "the Crown's margin":—

After making provision for the Native owners, and on the basis of the value of 3s. per 100 log feet mentioned above, the Crown will have a margin of 1s. 4d. per 100 ft. on its purchase of the Native timber. This margin works out at £690,000 (1,035,000,000 ft. at 1s. 4d. per 100 ft.). Then, in addition to this, there will be the Crown's margin on the purchase of its present holdings, As already mentioned, the total cost of the holdings was £77,000-odd; but, as against that, the value of the timber acquired is actually £645,000 (430,000,000 ft. at 3s. per 100 ft.), so that the margin on this transaction is £568,000, which added to the £690,000 mentioned above gives the Crown a total margin, on a royalty basis, of £1,258,000 over what it paid and will pay to the Native owners. This is a very substantial margin indeed, and the Crown could well make equitable provision for the other interested parties and still leave itself with a handsome profit.

Mr. Williams.] In the section of the memorandum where you say "It will not be necessary to make provision for the acquisition of the land on which the timber is growing," who does this plain country belong to now?—Partly to the Natives, and partly to the Crown. The total area of the territory, if I remember rightly, is 135,000 acres.

You propose that the owners of the bush land should move into the open country. Is there enough open country to provide for them?—Yes. The total area of the blocks affected by the scheme is 135,000 acres. Of that, 59,000 acres is bush.

Is there enough Crown interest in the open country to follow up the bush natives?—There will be, ultimately.

Has this open country been subdivided between the Crown and the Natives?—No. The interests of the Crown and the Natives are all intermixed. They are undivided interests. Next I deal with "the other interested parties":—

The proposal is that there be allocated to these parties a sum of £223,800, to be paid in 5-per-cent. bonds having a term of, say, thirty-three years. This £223,800 can be apportioned among the parties in manner following:—

(*a*) *The Company's Creditors.*—Under the Duncan project the creditors would have received among them in cash and second debentures (mostly the latter) a sum of £225,000 in full settlement of their claims, and, but for one or two exceptions, they were ready to accept the provisions so made for them. Moreover, the respective merits of all claims were carefully and fully investigated by Mr. Duncan, and the £225,000 was apportioned among the creditors strictly in accordance with the merits of their claims.

In these circumstances it is suggested that there be allocated to the creditors £180,000 of the bonds, and that the same be apportioned among them *pro rata* to the amounts which they, respectively, would have received under the project. This actually involves writing down the provisions of the project by exactly 20 per cent., but it is considered that the fact that the creditors are receiving Government bonds in lieu of second debentures is a heavily loaded undertaking would of itself warrant the writing-down.

I again draw your attention to the fact that, so far as the company and its creditors are concerned, the provisions of the Duncan project were an ultimatum to the company and its creditors.

Hon. Sir Apirana Ngata.] What was the amount of the second debentures under the Duncan project ?—The original arrangement was for an " A " series of £300,000, which would have provided the new company's working capital, and a " B " series of £200,000, which would have gone to the creditors. The syndicate reserved to itself the right to issue a further series of £50,000, which was to have priority over the other two series, to secure overdrafts with the bank and suchlike. It was only to be a temporary charge.

How much further writing-down was there to be for cash ?—I do not suppose the interested parties would write down any more for cash. Surely Government bonds are the equivalent of cash. That paragraph proceeds—

> These £180,000 bonds will settle claims which now aggregate some £320,000, and among the creditors will be the Egmont Box Co., which will receive for itself some £15,000, and for its debenture party another £16,000.

It would be just as well if I went more into detail with regard to the manner in which it was proposed to deal with the creditors under the project. The creditors of the company were divided into six classes. The first class comprised the creditors of the Native owners and their connections. Under the project those creditors would have been paid in full, naturally. As a matter of fact, the Native owners insisted upon it. The second class comprised what the syndicate called the " workers "—the men who started the company, and who rendered services solely with a view to keeping it going. All they wanted was a reasonable return for their services ; they were not looking for huge profits. That class comprised the Heuheu-Grace party, who have been with the company from its very inception—as a matter of fact, for five years before its inception—and right up to the time when the company's rights were cancelled. This second class also comprised the company's solicitors (Messrs. Findlay and Moir), and the company's officers (Messrs. Atkinson, Martin, and Ross). Under the Duncan project the claims of all the members of this party were written down 20 per cent. The third class comprises creditors who had advanced moneys which were paid to the Native owners. That class consists of what is known as the Houfton-Chapple party and Mr. Bertram Philipps. The Houfton-Chapple party found £36,000. This money went to the Native owners in the form of royalties. That money carried 10 per cent. interest. Under the Duncan project the party would have received £50,000—£36,000 on account of their principal and £14,000 allowance on account of interest. Mr. Bertram Philipps paid over to the Board £10,900, which also went to the Native owners. In addition to that, he incurred over his own venture to float a new company out-of-pocket expenses of about £3,000, making a total outlay of roughly £14,000. The Duncan syndicate allocated to him £20,000. The fourth class comprises what were called the speculators. They were Messrs. Armstrong, Whitworth, and Co., Messrs. Cammell Laird and Co., Mr. Bertram Philipps, and the Houfton-Chapple party. The Armstrong, Whitworth Co. came into the matter about 1923. Their venture concerned the formation of a new company which would take over the rights of the Tongariro Timber Co. They sent out here a huge staff, which conducted its operations on a most lavish scale —such, for instance, as engaging suites of rooms at the Midland Hotel. They investigated the position, and finally turned the whole proposition down. Notwithstanding that, they put in a claim for, I think, £15,000.

The Chairman.] What service do they suggest that they rendered ?—Their claim is based upon out-of-pocket expenses, largely due to the lavish way in which they went about things. Under the Duncan project they were to receive £8,000.

Hon. Sir Apirana Ngata.] Why ?—As a reimbursement of some of their out-of-pocket expenses. I think it was too much ; but, still, the provision was made. We wanted to be generous. The position of Cammell, Laird, and Co. was exactly the same as that of the Armstrong, Whitworth Co. I think their expenditure was not so great. Their claim for services was between £6,000 and £7,000. The Duncan syndicate allocated to them £4,000. The Houfton-Chapple party, in addition to finding the £36,000 I have mentioned, has also come into the matter as company-promoters, and, among other things, I think the party induced Cammell, Laird, and Co. to come into the matter. For their services in that connection, and their services in connection with the finding of the £36,000, which undoubtedly saved the company at the time, the party was given by the Tongariro Co. some inchoate royalty rights, and in respect of those rights the Duncan syndicate allowed the party £10,000.

Mr. Langstone.] Did they receive any other commission ?—I do not know, but the syndicate allowed them £10,000. I might mention that the syndicate was prepared, instead of paying them the £50,000 and the £10,000, to let them have the cutting-rights over a portion of the territory known as the Western B Block. It happened to suit the syndicate to do that, but it is not possible now. The Native owners, rather than allow that to be done, would sooner reserve the Western B area from the sale to the Crown.

Mr. Williams.] Is there any evidence to show that the gentlemen you have mentioned were prepared to accept the sums you had set down ?—No. I say that the provision made for them was in effect an ultimatum from the Native owners. They had to take it or leave it.

There is no evidence that they were satisfied to take it ?—No positive evidence. We understand, as a matter of fact, that it would have been acceptable to them. Mr. Bertram Philipps came into the matter in 1925. Like the others, he was going to float a new company, and to that end acquired from the Tongariro Co. an option over its rights. One of the terms of the option was that he should form and register a company. He formed and registered a company, but it had no capital, and, practically speaking, it was never in a position to go on with its undertaking. Later he dropped out. As a matter of fact, he was pushed out by the Tongariro Timber Co., but to get him out they had to agree to pay him £15,000 damages. Under the Duncan project he got nothing, and under my proposition he gets nothing in respect of this claim of his for damages. The fifth class comprises the Egmont Box Co. Their position is entirely different from that of the other creditors. They appear

to have legal rights, and under the Duncan project the proposal was to allot them £18,000 in settlement of a claim of £22,000 for money advanced for railway-construction and other purposes, and to allot the debenture party connected with them, to whom they owed £20,000, 20,000 debentures in Mr. Duncan's new company. At that time the Egmont Box Co. were ready to accept the provision made for them under the project. What their attitude is now I do not know. Incidentally, Mr. Bertram Philipps and the Egmont Box Co., besides coming into the matter as creditors, are also interested in the cutting-rights over another portion of the territory—viz., the Western A area. By a deed of 1919 the cutting-rights over this area were vested in the Egmont Box Co. The company have since assigned their rights under the deed to Mr. Philipps. Under Mr. Duncan's proposal and my proposition it is not intended to interfere in any way with these rights over Western A. The sixth class comprises the other creditors of the Tongariro Timber Co., all unsecured, and all claiming in respect services rendered. The Duncan proposal was to write their claims down by 25 per cent. In the final result and all told, the provision made for the creditors of the company was a payment of £25,000 in cash and £200,000 in second debentures.

Hon. Sir Apirana Ngata.] Take the claims as they are set out in parliamentary paper G.-7 ? That paper is far from accurate. The claims are all mixed up. The claim of the Tongariro Timber Co. is shown there as £330,000. That sum represents the total debts owing by the company.

Mr. Perry.] May I interrupt to say that I know that the Tongariro Timber Co. itself put in a claim under the Act of 1929 for approximately £330,000. In that claim it included all its creditors, but subsequently individual creditors put in claims under subsection (6) of the Act of 1929, so that where we find the total claims stated in the parliamentary paper as £523,503, including the claim of the company for £330,000 and other items up to a total number of thirteen, all the other items are included in the £330,000.

Witness: In my memorandum I deal next with the claim of the Tongariro Timber Co., as follows:—

The company's actual share capital is £60,000, £30,000 being held by Mr. E. T. Atkinson (now deceased) and £30,000 by the other shareholders. The proposal is that the company be settled with on the basis of 10s. in the £1, which will mean that there be allocated to it £30,000 bonds in settlement of its claims.

Hon. Sir Apirana Ngata.] That is not in settlement of the £330,000 ?—No. Under my proposition the matter will work out in this way: The creditors in class 1 will be paid 16s. in the £1—that is to say, the creditors of the Native owners. Class 2, the workers, will be paid about 13s. 6d. in the £1. Class 3, the men who found the money, will be paid on their principal about 22s. in the £1—in other words, they will get their principal plus a little more.

You are asking the Government to pay 22s. for every £1 that was paid to the Natives, but the Natives are not to pay any part of that: why ?—Because by reason of the Government's interference the moral obligation is imposed on the Government to make provision for all creditors.

Pretty hot, is it not, that the Natives should get the money and the Government should pay ?—Why should the Maoris pay it ? They have been innocent parties throughout.

The Chairman.] Is it not a mere supposition that if the Government had not interfered the arrangement would have been gone on with ?—As a matter of fact, it would have been gone on with.

Mr. Langstone.] Not by the old company ?—No, but the Duncan Syndicate.

Hon. Sir Apirana Ngata.] Who are the creditors of the Native owners ?—Mr. M. H. Hampson, to whom £2,500 was allocated by the Duncan syndicate; myself, £2,500; Mr. C. W. Neilson, £400; and sundry others, totalling all told £7,000. I have not the full particulars with me. All these people would be paid 16s. in the £1. The second class, the workers, would be paid, roughly, 13s. 6d. in the £1.

Who were the workers ?—The Heuheu-Grace party, Findlay and Muir, George Ross, R. B. Martin, and E. T. Atkinson.

What would the 13s. 6d. in the £1 total ?—I cannot say, but it will not exceed £50,000, anyhow.

What was the amount paid to the owners ?—By the creditors whom I have already mentioned —£45,900. Those creditors will receive, roughly, 22s. in the £1. That is on their principal, of course. As to the fourth class, it is hard to say exactly what their dividend will be. Armstrong-Whitworth and Cammell-Laird will probably get about 8s. or 9s. in the £1. Bertram Philipps is also included in the third class, but as a speculator and member of the fourth class, he gets nothing. The Committee should not confuse the claims of Bertram Philipps and the Houfton-Chapple party as speculators with their claims as members of the third class—people who advanced money which went to the Native owners. As to the fifth class, the Egmont Box Co. will be receiving on their debentures 16s. in the £1. As to the sixth class, the general body of creditors will receive about 12s. 6d. in the £1. Now I come to the Duncan syndicate:—

The nature, quality, and circumstances of the services rendered by this syndicate have already been described and it only remains to add that it is considered that of all the parties interested (next to the Native owners) it is entitled to most consideration. Its task was an enormous one, but it would have been carried out had the Government allowed it to do so. Then, all the other parties (including the Native owners) were relying on it to save the situation for them, and this it could also have done had the Government consented to the project.

The syndicate's claim is for £13,800, and in the notice of the claim which it lodged with the Aotea Maori Land Board it was careful to explain that the claim had been reduced to the absolute minimum. In the light of that and of all the circumstances of the claim, it is suggested that the claim be paid in full, and that the syndicate, accordingly, be issued £13,800 of the bonds.

I quite imagine that there will be some squealing about this, particularly from the speculator class, but I think there are at least three very sound reasons why the syndicate's claim should be paid in full. First, its claim has already been drastically cut down. Under the project the promotors of the company would have received in commission as remuneration for their services £40,000 in shares. The promoters have cut their claim down to £8,000. The second ground is that the syndicate was ready and in a position and willing to carry out its project, a position which none of the other speculators

ever occupied. Thirdly, the syndicate had a mandate from the Native owners themselves. None of the other speculators or company-promoters had that. Finally, I would point out that the company and its creditors are really climbing to recognition on the back of the Duncan syndicate, and it would be most ungenerous and ungrateful on their part to object to the syndicate being paid in full.

Always remembering the *tertium quid*, the Government ?—These are the proposals I submit for the consideration of the Government. To continue with my memorandum and as to the cost of State acquisition—

This may be summarised as follows :—	£
(1) Price payable to Native owners in bonds and annual instalments	560,000
(2) Amount allocated to the company and its connections in settlement of their claims ..	223,800
(3) Cost of the Crown's present holdings	77,000
	£860,800

Captain Rushworth.] Does the £860,000 represent roughly five-ninths of the estimated value of the timber at 1s. 8d. ?—The estimated value of the timber is £2,000,000. The State Forest Service valuation is £3,000,000, but I write that down by 25 per cent. In Part III of my memorandum, as to working the timber, I say :—

Owing to the commitments involved in the transaction, the Crown could not treat the timber acquired entirely as a holding proposition. It would be necessary for it to realize on part, at any rate, of the timber. Undoubtedly, the best way for it to do this would be to subdivide the timber into suitable holdings, and sell the rights over the holdings to millers in the usual way.

With sixteen miles of road built, all that the Crown would have to do would be to subdivide the territory into long strips having a frontage to the road. That will mean that the millers would, in addition to the bush growing on their strips, also have a certain amount of open land, on which they could install their mills and erect dwellinghouses and such like for their employees.

The Crown could arrange for the timber operations to start straightaway, for, as pointed out above, over one-fifth of the timber is already accessible. Ultimately, however, the sixteen miles of road previously mentioned will have to be constructed in order to provide access to the rest of the territory, and, as shown, the cost of construction will be about £40,000. Provision will also have to be made for the preliminary expenses of the undertaking, which might amount to £5,000, but no more.

Those expenses would be subdividing the territory, expenses of sale, and so forth.

When the timber is sold, it is suggested that an annual output of 20,000,000 sawn feet (the equivalent of 30,000,000 log feet) of totara, rimu, and kahikatea be arranged for during the first twenty-five years, and of 15,000,000 sawn feet (22,500,000 log feet) during the next eight years. Intermixed with the kinds of timber just mentioned there is also a certain proportion (about one-twelfth) of miro, which will, of course, have to be sold along with the other kinds of timber, and should realize, at any rate, 1s. per 100 ft.

The Duncan syndicate had no difficulty in arranging to sell 800,000,000 log feet on the basis of 3s. 1d. per 100 log feet, and I am sure that the millers who were prepared to buy in this way will be prepared to buy now.

It may be objected that a production of 20,000,000 ft. per annum would be too much for the market to absorb at present, but it is pointed out that round and about the central portions of the Main Trunk line there are millers whose present annual output is 23,000,000 sawn feet and more, who will all have cut out their present holdings by the end of the year 1931.

The Chairman.] Are you aware that the millers at the present time are unable to get sale for what they have ?—I am not aware of that. It may be so this year, but surely that state of affairs is not going to continue for ever. We must have timber.

It is assumed that the timber will be administered by the State Forest Service or some such Department, and, so administered, the administration expenses would be very low. Two supervisors on the territory itself could cope with all the outside work, and a clerk at headquarters could deal with all the inside work. The administration expenses should not in these circumstances exceed £2,000 per annum.

The Duncan syndicate was composed of sound business men, and its total administration expenses, which involved the running of a railway-line, were estimated at £12,000. Of that, £10,000 was assigned to the running expenses of the railway.

It might be mentioned that in addition to the timber itself there is another very considerable source of revenue—viz., adjacent open land which can be leased by the Crown to millers and their employees, &c., for mill-sites, homes, &c. There will probably be at least ten mills operating at a time on the territory, with at least ten separate sets of millers and employees, and they must all have land for the purposes mentioned. This land they can only get from the Crown, and it would be putting the revenue at a very low figure to say that the land will bring in at least £200 per mill.

Then I give figures showing the profit of the Crown after providing for all outgoings, after which I conclude the memorandum as follows :—

It will be observed that no provision is made in the foregoing account for the £77,000 expended by the Crown in acquiring its present holdings. Such provision is omitted because there is a complete set-off to this amount in the land which the Crown will possess after the timber has been removed. An official of the Lands Department who has inspected the territory informed the writer that it was eminently suited for sheep-farming. His view was that the territory should be settled as the timber is cleared, and when so cleared each settler's holding should comprise part of what is now timbered land and part of open land. He was of opinion that if the territory was settled in this way the holdings would be capable of carrying a sheep to the acre, which would give it a value of at least £6 per acre. Such being the case, and as the greater part of the clearing of the timber (which is a very costly proceeding to the settler) will be done by the millers, one could safely put a potential value of £3 an acre on the territory when cleared of timber. The entire Crown holdings in the territory would be about 75,000 acres, so that the potential value of those holdings is £225,000, which, as already stated, afford a complete set-off to the £77,000 already expended by the Crown.

If the Crown thought fit to increase production above the figure suggested, its profits would be increased by practically the royalty value (3s. per 100 ft.) of the increase in output; but, assuming that the Crown restricted production to the figures given above, its position at the end of thirty-three years will be—

(1) It will have effected complete and final settlement with the Native owners, and all other interested parties, and be in a position to redeem all bonds issued by it out of the sinking funds created for that purpose.
(2) It will, after paying all outgoings and effecting the settlement first mentioned, have made a profit of some £3,122 in each of the thirty-three years.
(3) It will have cut out 930,000,000 log feet of totara, matai, rimu, and kahikatea, and will still have in hand 535,000,000 log feet thereof, having a royalty value of £802,000. It will also have in hand some 30,000,000 log feet of miro, which will be worth at least £15,000.
(4) It will have constructed sixteen miles of road out of the proceeds of the sale of the timber. This road, as already pointed out, will serve at least 150,000 acres of land, of which half will belong to the Crown.

Such are the material benefits which will accrue to the Crown, but, over and above all of them, it will have the final satisfaction of knowing that it has made fair and equitable provision for every one interested in the Tongariro Timber Co.'s undertaking.

The question may arise as to how effect is going to be given to the proposals contained in my memorandum, assuming that they are adopted. The answer is that the company and its connections come to the House as suppliants—no more, and no less. It therefore rests with this Committee and the House to decide what they are to receive. That being the case, if the Committee and the House approve the proposals, all they have to do is insist that the company and its connections accept the provision made for them in the memorandum.

Hon. Sir Apirana Ngata.] Your proposals in the memorandum are based on (1) what you describe as interference with rights, which is the basis of your claim in equity; and (2) the assumption that the Crown will purchase?—The Government is morally bound to purchase or do something of that sort.

Assuming that the Crown will not purchase, what is to happen to all these claims?—I would suggest that the Crown would not act so inequitably.

What is to force the Crown to buy, if it is bad business?—I have endeavoured to show that it is not bad business, but good business.

Well, assuming that the Crown will not buy, what is to happen to these claims?—As far as I am concerned, and I think I can speak for the Native owners, we want our land back, free of all encumbrances.

My point is this: your claim is against the Crown for having interfered. Does not that claim still go on as a moral claim if the Crown does not buy?—Yes, it does.

Mr. Langstone.] Goes on with the Crown?—The fact that the Crown does not go on with the acquisition of the territory does not rid it of the moral obligation to settle the moral claims of the company and its connections.

Hon. Sir Apirana Ngata.] Now come to the element of interference. The position was, under the 1908 agreement, that the Natives expected a low royalty, because at that time the construction of a railway was very much in their minds, and that was part of the consideration?—Yes.

Was not the first variation a matter of arrangement, in that the company, in 1910, varied as against itself the covenant as to royalties?—Yes.

It agreed to a lower amount for the initial years?—Yes.

The condition as to the railway was to have been fulfilled by 1913?—Yes.

That covenant failed?—Yes. But I have an idea that it was in 1915.

The variation was made in 1910, when the company anticipated that it would be able to comply with the condition as to the railway by 1913?—Yes.

Up to that time the Government had not, as you say, interfered?—No. It had in one direction, and in a beneficial direction. It had granted the company a moratorium up to 1922. That was by the Act of 1915.

That was interference against the interests of the Natives, and in favour of the company?—Yes, the moratorium was. It was in favour of the company, but against the creditors.

Parliament, in 1915, on the company's petition, which alleged difficulties created by the war, suspended any remedies till two years after the war. That provision ran out in 1920, and was subsequently extended to 1922?—The Order in Council was issued in 1921.

Mr. Perry: I think the company claims that the moratorium still exists.

Hon. Sir Apirana Ngata: It cannot very well substantiate that now, can it?

Mr. Perry: I have here a letter from Messrs. Findlay and Moir, solicitors to the Tongariro Timber Co., to the Minister of Native Affairs, dated the 29th January, 1930, which is as follows:—

Acting under instructions from the Tongariro Timber Co., Ltd., we have been requested to bring under your notice the position and claims of the company and of its creditors as affected by the Act passed by Parliament during last session, known as the Native Land Amendment and Native Land Claims Adjustment Act, 1929, and under which the company has received from the President of the Aotea Maori Land Board a notice dated 15th November, 1929, of intended determination of its rights under its agreements of 1908 as subsequently modified by later deeds. The notice calls for the payment of arrears of advance royalties £26,562 10s., and the completion of the railway from Kakahi to the terminus forthwith, and while the company had arranged to comply with the money payment, the completion of the railway within six months of the service of the notice, as demanded, is physically impossible.

Should the notice of intended forfeiture be proceeded with, questions will inevitably arise as to the claims of the shareholders of the company and of its creditors, as stated by you in your speech in Parliament on the Bill, and it is with the object of ascertaining your views and the attitude of the Administration in regard to these claims that we now bring the matter before you. If the Government decides to proceed in these steps for the unconditional determination of the rights of the company for the purpose of acquiring the property freed from such rights, the shareholders and creditors would undoubtedly have a grievance against the Government, and their claims would be strengthened by the fact that the Native owners have, as shown later, formally agreed to terms which provide for their protection.

The position to be taken by the company and the nature of the steps to be taken by its directors are matters of grave concern to those interested, and the decision as to what course shall be adopted in respect to the steps now being taken under the above-mentioned Act of last session will to a great extent be dependent on the question of what

assurance can be given that the claims of the shareholders and the company's creditors will receive fair and equitable consideration and treatment in the circumstances. For this reason, and for the purpose of assisting you in such consideration, we take the liberty of bringing under your notice certain aspects of the matter bearing on the consideration of the claims of the company and its creditors.

The company has expended the whole of its paid-up capital, amounting to £25,000, together with another £15,000, making £40,000 in all, in appraisement of the timbers on the block and the survey of the proposed railway-line Kakahi to Taupo, and in part construction of permanent-way.

The company has paid in advance royalties £53,553 15s., or more, in respect of which less than £8,500 represents the value of royalties on timber cut by the Egmont Box Co.

The position in which the company found itself in 1928 was almost entirely due to the imposition of most onerous conditions in regard to railway standards, imposed by the Government of the day in 1921, and again in 1925, when further conditions were imposed requiring a still higher standard of the railway from that of a tramway to Government standards, thereby increasing the costs by £9,000 a mile, or thereabouts. It was undoubtedly due to this action of the Government that the company found itself unable to complete negotiations with English capitalists for the carrying-out of its undertaking. In this position of affairs the Duncan syndicate was formed in 1928, and this syndicate, after making representations to the then Prime Minister, the Right Hon. Mr. Coates, received an assurance that the Government would permit what in effect was a reversion to the original standards, on certain conditions which were agreed to by the syndicate, subject only to the consent of the Native owners.

This consent was finally granted at a meeting of the Native owners under your chairmanship on the 21st day of February, 1929. At the end of October, 1929, more than eight months after the resolution of the Native owners was passed, the present Government, instead of confirming the arrangement, which it was repeatedly urged to do, submitted the whole position to the Native Affairs Committee, and, after inquiry, the latter recommended the Government to acquire the property. In pursuance of that recommendation, section 29 of the Native Land Amendment and Native Land Claims Adjustment Act, 1929, was passed. This enactment authorized steps for the acquisition of the property, subject to parliamentary confirmation, and the first step in this direction is the notice above mentioned, purporting to determine the company's rights. Quite clearly the Act of Parliament contemplated the settlement of claims by the creditors and shareholders of the company as part and parcel of the terms of acquisition of the property by the Crown (*vide* the provisions of subsection (6) of section 29 of the above-mentioned Act). An outstanding feature of the position is that the Act, section 29 (1), removes a statutory moratorium created in 1915 and extended by the Act of 1923, against proceedings against the company in respect of the Aotea District Maori Land Board, for the purpose of determining the company's agreements; but this provision removes the moratorium for this purpose only, and, in effect, continues the moratorium as far as the company's shareholders and creditors are concerned. It is not correct to say that this moratorium extended only to the 15th day of September, 1922.

The clear effect of section 28 (1) (*e*) of the Native Land Amendment and Native Land Claims Adjustment Act, 1923, was to create a moratorium without limit of time, and this moratorium exists to-day against both creditors and shareholders of the company. Thus, while directing that steps be taken for the determination of the company's rights, and consequently the creditors' right also, the Government retains the power to refuse permission to the shareholders and creditors to enforce their claims against the company or protect themselves in any way.

In these circumstances we respectfully submit that some indication should be given by your Government as to what attitude it proposes to adopt in regard to the shareholders and creditors in anticipation of acquisition by the Crown.

The company has always been, and still is, prepared to proceed with the Duncan project, which made equitable provision for shareholders and creditors, and which had the consent of the Crown, but the Government having determined to acquire the property in pursuance of its statutory authority, we respectfully submit that the first matter for its consideration is the question of negotiating a fair and equitable settlement of all claims. To this end the company is quite prepared to recommend to its creditors and shareholders the making of a transfer to the Crown of the whole of their rights, leaving to a Court of Arbitration or other fair tribunal the question of the amounts that should be paid to them respectively, and we are instructed to say that if the Government will indicate its willingness to act on this suggestion we will take the necessary steps to secure consent to this course.

We respectfully request that you place the whole position of the matter before Cabinet, as we consider that should the steps now contemplated be carried out without taking some such course as that indicated, the Administration will lay itself open to grave criticism that it is proceeding in an unconscionable way, which we feel confident it has no wish to do.

We should be grateful for a reply as early as possible, as, failing some such solution as that outlined, the directors of the company will be reluctantly compelled to call its creditors together, with a view to taking concerted action for the purpose of protecting the interests of all concerned.

Hon. Sir Apirana Ngata: Is the Tongariro Timber Co. standing on that to-day?

Mr. Perry: Well, it finds itself in a difficulty to-day.

The Chairman: Is it not rather an extraordinary contention?

Hon. Sir Apirana Ngata: Is it not a matter for the Courts?

Mr. Perry: I have read the letter to show that there may be two views as to whether the moratorium expired in 1922 or not. I do not know at the present moment that the Tongariro Timber Co. is going to push that aspect of the matter very far. The view we take now is that if an equitable arrangement is made by all parties, we are perfectly willing, and most of our creditors have agreed, to fall in with it.

Hon. Sir Apirana Ngata (to Mr. Grace).] Now we come to the proceedings which are characterized as an imposition—the imposition by the Government of a very substantial increase in the standard of the railway-line. Was not the position that for thirteen years the company had defaulted?—Yes.

And that the time had arrived, and the Natives had been keeping themselves out of one thing and another right up to that?—For ten years.

Even to the extent of assisting the company before this Committee to get its extension?—I am aware of that. But they did not ask for an increase in the standard of the railway-line.

They were asking Parliament to make a further variation of this agreement, and one function of Parliament is the consideration of the public interest, and the interests of the parties?—I submit that it was not acting in the interests of the Natives in imposing that increase in the standard. They should have done something else. It would have been far and away better to have increased the royalties.

Was not the Government in a position at that time to use its own judgment as to what conditions it should impose?—I do not know that I can agree with that. I think the Government should have taken the Native owners into its confidence. I doubt if the Government owned at that time one-sixth of the territory. I have no doubt that the Government thought at the time that it was doing the right thing, and it appeared that it was, but the result was that it killed the company.

Was not the company in a position to be interfered with in some signal way ?—I admit that.

What did it owe in 1921 in the matter of royalty ?—I should say about £25,000.

It had built no part of the railway ?—Yes, it had. It had not completed the railway, but at that time some £6,000 had been expended by the Egmont Box Co. on construction work—for the Tongariro Co., of course.

And the company accepted the provisions of the Order in Council ?—With a pistol presented at its head, it did.

That happens in business ?—I dare say, but I would suggest that the Government should not adopt such tactics.

I am wondering all the time, supposing all these claims were those of Maoris, and the owners and operators were pakehas, the Tongariro Timber Co., what would have been their attitude to the claims ?—I do not think any of us Maoris want to adopt the attitude you have in mind.

Mr. Endean.] If there had been no moratorium, and you had applied to the Court for relief against forfeiture, the company would not have complied with it, would it ?—I do not know. It could not have complied with the terms at the time.

Captain Rushworth.] Do I understand that the company, at the end of thirteen years, required some consideration, but that you think that consideration should not have been an increase in the standard of the line, but an increase in the royalties ?—That would have been better.

To the same extent ?—Not necessarily to the same extent. As to the question of the increase of royalty, when the Duncan syndicate came along, it acted on that principle. It in effect said to the Native owners, "If you are prepared to revert to the original standard of the railway-line, we are prepared to increase the royalty by 20 per cent." The Native owners agreed to that.

The Chairman.] Do you consider that at the time that alteration in the standard was made the Government would have had a legal right to have terminated the agreement altogether ?—I do not think so. I think the moratorium was still in force. It might have been able to determine it later on. However, that is an involved legal question.

Hon. Sir Apirana Ngata.] The moratorium was a concession ?—There is no doubt about that.

The Native owners have been debarred since 1913 from exercising their remedies ? They have no claim against that ?—Their claims have been recognized in that they are getting the present-day value of their timber. I doubt if they could have got 1s. 8d. ten years ago.

The Chairman.] I want to be quite clear on this point: The original contract frankly failed in execution. This alteration in the standard of the railway-line was a condition for the extension of the agreement, as it were, for a further period ?—It was. I have no doubt that was the intention of the Government—namely, to make it a condition of the granting of the extension of time asked for by the company.

Mr. O'Brien.] Did not the company suggest the improving of the standard of the line if it got the extension ?—It did not.

Right Hon. Mr. Coates.] Why did the Government come into the matter at all in connection with the construction of the railway-line ?—I do not know.

I think the Ngatituwharetoa knew very well why. What was the real object of the railway in the first place ?—For the carriage of the goods and persons of the Native owners from the Western Taupo district.

From Waihi ?—That was not the original intention.

Were you present when we went up the hill and looked where the line was to go ?—That was a modification of the route originally laid down.

Before the modification was talked of. The position was that the Ngatituwharetoa Natives had for many years asked that access should be given to Taupo. They were afraid that the company would construct a line that would leave them in the air. At certain stages of the discussion it was pointed out by the Maoris that it was part of the conditions that permanent access should be provided. The standard of line set down in the agreement was in another conpany's line. In consideration of the extension of that, all that the Government asked for was that when the line was completed the railway-line should be competent and safe to carry the Government rolling-stock. That was the position. The question of increased royalty was never mentioned by the company ?—Of course, it was not. I do not suggest that the question of increasing the royalty was not mentioned at all. I say that probably that would have been a fairer condition to impose.

Since that time it has been stated that to-day the road will carry timber. At that time road transit was not thought of as a means of carrying the products of the district. What was done was done in the interests and for the protection of the Maoris of West Taupo ?—That is so.

The Chairman.] Do you not also represent some other interests ?—Yes. I represent Mr. C. W. Neilsen, solicitor, whose claim, as shown in parliamentary paper G.–7, is for £569 9s. 6d. Mr. Neilsen's position is that he has been associated with the Heuheu-Grace party and my section of owners from about 1916 to date. We had to have a solicitor to do the actual legal work, and Mr. Neilsen was retained for that purpose. Under the Duncan project provision was made for the payment to him of £400, and under my proposition he is written down by 20 per cent., which reduces the amount payable in satisfaction of his claim to £320 if effect is given to my proposition. I endorse his claim, and think he is entitled to as much consideration as his principals—namely, the Heuheu-Grace party and my section of owners.

Mr. Langstone:] Is not the obligation on the Heuheu-Grace party to pay its solicitors ?—The arrangement was that our costs and the costs of my Native party were to be paid by the company. I also represent the Heuheu-Grace debenture party, whose claim is set out in detail in claim No. 7 on pages 11 and 12 of G.–7. I also appear for myself and particulars of my claim are to be found on pages 9, 10, and 11 of G.–7. I appear finally for the Duncan syndicate, whose claim is set out

in detail on pages 13, 14, and 15 of G.–7. The claim is No. 8. As all these claims are set out in full in that paper so I will not take up your time going into them. All I ask in fairness to us, is that you read the claims as there set out carefully, and that you give them your careful consideration. To produce now formal evidence as to the ability of the Duncan syndicate to give effect to its project had the consent of the Government been forthcoming. Mr. Duncan set out to raise a working capital of £300,000, and everything was centred upon that. To raise this £300,000 he divided it into fifty blocks of £6,000 each. His object was to get these blocks taken up by sound, substantial men. By the 30th March, 1928, Mr. Duncan had had fourteen of these blocks taken up, representing a sum of £84,000. At the same time he invoked the services of what is known as the New Zealand Underwriting and Development Corporation, Ltd. This corporation underwrote the first £100,000 of the £300,000 capital, but subject to the liability of the persons who had taken the fourteen blocks. That was the position on the 30th March, 1928. By the 3rd May, 1928, three more of the blocks had been taken up, and another £100,000 underwritten by the Underwriting and Development Corporation. So that on the 3rd May, 1928, the position was that seventeen blocks, representing £102,000, had been taken up, and the company's flotation had been underwritten to the extent of £200,000. In addition to that, there were other subscriptions offering from two quarters. There were certain gentlemen in New Zealand who were definitely ready to take up among them five of the blocks, representing £30,000, but they were not prepared to sign up for them, and so tie up their money, until the syndicate has secured all consents to its project. They, however, promised that when the company was ready to be floated they would be forthcoming with their five blocks, or in other words their £30,000. In addition to that, Mr. Duncan had practically sold to millers, subject to the flotation of the company, 800,000,000 log feet of the timber, and made arrangements with the millers for the production of 1,800,000 feet of timber in their first year's operations and thereafter to gradually increase production until it reached an output of 45,000,000 ft. per annum. These millers, subject to the flotation of the company, undertook to take up £27,500 of the syndicate's capital. So that at the end of 1928 the position was this: Seventeen blocks at £6,000 had been actually taken up, five at £6,000 had been definitely promised, and the millers had also definitely promised £27,500 making a total of £159,500. Collateral to that was the underwriters' guarantee of the first £200,000 of the syndicate's capital. In addition to what had been raised in this way, Mr. Duncan had got in touch with Australian friends, and they had definitely promised £40,000 more, to be made available as soon as he was ready to proceed, with a further promise that he could have another £40,000 if he wanted it. The final position was that when the matter came before the Native Affairs Committee in October of last year Mr. Duncan, in one way and another, had £240,000 of his £300,000 capital either actually subscribed or promised in a binding way. Incidentally, it was his intention to pay all preliminary expenses by issuing bonds that would have absorbed probably another £20,000. I hand in documentary evidence of all that I have just stated.

The Chairman.] Were those items put before the Committee last year?—No. I thought it would be taken for granted that the position of the syndicate was assured.

Mr. Langstone.] What inducement did they offer to take up these blocks?—Ten per cent. interest, and bonus shares.

DAVID G. B. MORISON examined. (No. 2.)

The Chairman.] What claim do you support?—That of Morison, Smith, and Morison, solicitors. The designation of Morison, Spratt, and Morison in the parliamentary paper G.–7 is an error. The letter printed on page 5 was written by Morison, Spratt, and Morison on behalf of the late firm of Morison, Smith, and Morison. As a matter of fact, I would like to make a further amendment. On examining the records I find that the claim should be £62 6s. 6d., instead of £100 9s. 8d. The claim is one against the Tongariro Timber Co. for legal work done by the firm of Morison, Smith, and Morison, through the late Mr. C. B. Morison, who acted as solicitor to the company. The work done was for the protection of the company's rights, about 1915–17.

Do you mean in negotiations with the Crown?—There was an application before the Native Affairs Committee in 1915, which was part of the work claimed for. It was in dealings with the Crown. It is a claim against the company, and I think it should receive the same consideration as the other claims of persons who did work on behalf of the company. We were prevented from enforcing payment, had we wished to do so, by reason of the fact that the 1915 Act provided that no petition should be lodged for the compulsory winding-up of the company. That, in effect, practically prevented any effective legal proceedings being taken against the company.

Captain Rushworth.] Is there any bar to the legal claim being prosecuted now?—Yes. The Statute of Limitations will prevent us from issuing proceedings.

Mr. O'Brien.] It would not prevent you from taking proceedings if the company has acknowledged the debt since?—I have no written acknowledgment within six years. I understand that the only asset of the company is its timber rights, and if the timber rights have been determined the company has probably no assets, even if we were entitled to take legal proceedings.

Mr. Williams.] Could you have taken proceedings in the last six years?—The last of the work was done in February, 1916, so that in February, 1922, the Statute of Limitations would have barred the claim.

ALAN MURRAY COUSINS examined. (No. 3.)

The Chairman.] As to what claim do you wish to speak ?—That of the late Sir John Findlay for £1,000 in connection with costs for work done. On the 30th March, 1926, a promissory note for £863 4s. 2d. was given by the company for work done to that date. Since then there have been further sums totalling £502 19s. 9d. I understand that the work done was vital to the company, and it extended over two years.

Mr. Langstone.] Was not the promissory note honoured ?—No. It still exists, payable on demand, and signed for the Tongariro Timber Co. by Tudor Atkinson, managing director. It was payable to Findlay and Moir, and endorsed, without recourse, to Findlay, Hoggard, and Morison.

Mr. D. M. Findlay : It was obtained from the company at the request of Mr. Cousins's firm. Sir John Findlay was retained as counsel in various proceedings, and the account was for counsel's fees.

Witness : I also advance the claim of Mr. Wilfred Findlay, shown in the schedule in G.–7 as £4,000. A deed was entered into on the 13th September, 1921, between the Tongariro Timber Co., for certain purposes. I regret that I am unable to give the Committee any details on the point. Mr. Hoggard, who was to have come before you, has had to attend the Supreme Court to-day. But I am informed that the claim has always been admitted by the company. It was for services actually rendered prior to the agreement, and to be rendered. A considerable amount of the work was done in England.

Mr. D. M. Findlay : It was an arrangement made with Mr. Tudor Atkinson. I understand that it was for introductions and services in obtaining capital.

Mr. Grace : I am sorry, but Mr. Findlay should have been included in the third class of creditors, referred to as the speculators. We understand that his claim was for £10,000, partly for introducing people who might have put capital into the Tongariro Timber Co., but who did not. Under the Duncan project he was allotted £4,000 of debentures in full settlement of his claim.

Witness : Since the schedule was prepared further work has been done. The total charge for work to date is £1,366.

WEDNESDAY, 13TH AUGUST, 1930.

P. B. COOKE examined. (No. 4.)

The Chairman.] What is your full name, Mr. Cooke ?—Philip Brunskill Cooke.

You are a solicitor ?—Yes.

Who do you represent ?—The executors in the estate of Sir John Houfton, deceased.

Will you proceed, Mr. Cooke ?—As I have already stated, sir, I represent the executors of the estate of Sir John Plowright Houfton, who, as the Committee probably knows, was a member of the House of Commons, and who died on the 18th November of last year. The claim made on behalf of his estate is set out in the letter from my firm, dated the 13th May, 1930, to the Aotea District Maori Land Board, and which appears on pages 5 and 6 of Paper G.–7. With the Committee's permission, I will just read that letter :—

We have been instructed to write to you on behalf of the executors of Sir John Plowright Houfton, who died on or about the 18th November, 1929, and to place before you their claims as creditors of the above-named company.

Those claims fall into the two following parts :—

(*a*) A claim for the sum of £14,000 with interest from 5th September, 1922.

(*b*) Certain royalty claims to which we shall hereafter refer.

In respect of the sum and interest mentioned under claim (*a*) above, Sir John (then Mr.) Houfton received as security sixteen first-mortgage debentures of the Tongariro Timber Co., Ltd., of £1,000 each, numbered 1 to 14 inclusive and 39 and 40, and in respect of which a mortgage dated the 7th November, 1922, was executed by way of collateral security. This mortgage provides for a specific first charge over the timber and timber-cutting rights of the company in the Western B Block, and for a specific charge over the timber and timber-cutting rights of the company in the Western A Block, subject to all charges thereon existing at the date of the mortgage. The debentures provide for interest to be paid at 10 per cent. per annum ; but we understand that our clients are willing to accept interest at a lower rate—a matter upon which we are at present awaiting their instructions by cable.

May I parenthetically say here, sir, that those instructions have since arrived, and I am authorized to say in regard to this claim that our clients are willing to accept such interest as the Government consider reasonable.

Hon. Sir Apirana Ngata.] Was that £14,000 a cash advance ? Yes, sir, it was a cash advance ; and it was, I understand, earmarked from the time it left the hands of Mr. Houfton in England until it reached the Board here. I cannot tell the date, because I do not know the particulars. But I understand it was sent through a trustworthy channel. I understand the money was actually transmitted through some bank straight from my client to the Board.

The Native Land Board ?—Yes. It was not paid to the Tongariro Timber Co. in the ordinary way, but I understand the money was, as it were, watertight, and earmarked all the way until it went into the coffers of the Board.

We understand that the advance of £14,000 was made to enable the company to pay to the Natives advance royalties as prescribed by the agreement between the Native owners and the company. We understand that the timber in respect of which those advance royalties were paid has not yet been cut, and we therefore submit that it would be a very severe hardship on our clients if the Native owners are permitted to retain not only the money, but also the timber in respect of which the money was paid in advance.

The claims comprised under (*b*) above are as follows :—

(i) A share of a royalty of 6d. per 100 ft. of the timber in Western B Division :

(ii) A royalty of 2d. per 100 ft. of the timber in the Northern and Eastern Divisions, or, alternatively, a right to commute the share in the royalty mentioned under (i) above to a royalty of 2d. per 100 ft. of the timber in the Northern and Eastern Divisions.

We understand that the share of royalty referred to under (i) is 3d. out of the 6d., and that the documents under which the claims under (i) and (ii) are made provide, *inter alia*, for payment as and when the timber is taken.

Now, if I may just interpose there—some members of the Committee may think that looks a tall order, but I have a suggestion to make in regard to that claim which I think will satisfy you.

We have been informed that on the 19th March, 1930, the shareholders of the company passed a resolution purporting to authorize the directors to transfer the company's rights under its various concession agreements to the Crown, subject to the Government settling the claims of creditors and shareholders either by negotiation or by arbitration. We desire to say that our clients were not parties to and do not consent to this resolution. On the contrary, they rely on and desire to keep open whatever legal rights they have and amongst these is, we submit, the right to have their claims dealt with under the provisions of section 29 of the Native Land Amendment and Native Land Claims Adjustment Act, 1929. For this reason, we address this letter to you, and we ask you to treat it as an application by our clients to have their claims dealt with under that section.

We have sent a copy of this letter to the Hon. the Minister of Native Affairs, and asked him to treat it as addressed to him also.

Now, sir, before I deal with these claims—you will have noted that there are two of them—may I just remind the Committee of the position with regard to what was called yesterday the moratorium. As I understand the position—and if I am wrong no doubt those who follow me will correct me—the initiation of the moratorium was in 1915. Under section 19, subsection (1), of the Act (No. 63) of that year—I am giving the reference in case you desire to refer to it—the moratorium was fixed for a period until two years after the end of the war. Then, sir, under section 19, subsection (5) of the Act of 1921 (No. 62), it was extended to the 16th September, 1922. And then, sir, under section 28 (1) (*e*) of the Act of 1923 (No. 32), it was made perpetual. But, sir, under section 29 (1) of the Act of 1929 (No. 19), it was removed. I am merely giving the references to the general position, because I think it may be of some assistance. Now, sir, that brings me to the circumstances under which the advance of £14,000 in cash was made by Sir John, or, as he then was, Mr. Houfton; and, if the Committee will allow me some small indulgence, I would like to refer in some little detail to the situation when he advanced the money. Under the Order in Council of the 16th September, 1921, which is contained in the *New Zealand Gazette* of that year, Volume 3, page 2363—I am not going to trouble you with a lot of references, but I just wish to give you an outline of the situation at the time the advance was made by Mr. Houfton—under that Order in Council the period for the construction of the line was extended on certain conditions, one of which was that the Order in Council should take effect unless within twelve months from its date a certificate, signed by the President of the Board, that all moneys due for royalties up to the date of such certificate had been paid was published in the *New Zealand Gazette*. Now, sir, I think I am right in saying that the moneys that would have been due in the following twelve months were arrears amounting to something like £35,000. The Order in Council was passed on the 16th September, 1921, and the arrears up to September, 1922, owing by the company were something like £35,000. I think, as a matter of fact, that figure is absolutely accurate. By section 19 of the Act of 1921 that Order in Council was, I think, validated, but varied to this extent; that of the moneys that the company was required by the Order in Council to pay to the Board within twelve months £6,000 had to be paid by the 30th June, 1922—three months before the certificate was required. So that as a matter of practical politics the Tongariro Timber Co. was in this position: that it had to find £6,000 by the end of June, 1922, and a further £29,000 by the end of August, 1922, or it would have been liable to lose its concessions then and there. Now, sir, it cannot be denied that at that point of time the company was in a desperate plight financially, and it cannot be denied that the people who came to its rescue and saved it from complete disaster were Mr. Houfton, Dr. Chapple, and, to a very minor extent, Miss Wright, who, I understand, found £1,000. I do not represent her or Dr. Chapple, but I understand that that is the position. Now, the point is this: Dr. Chapple provided, I understand, the £6,000. That was paid before the date that the Act required—before the end of June, 1922. Then the remaining £29,000 which had to be got within the next three months was provided, as to £1,000, by Miss Wright, and as to £14,000 by Mr. Houfton, and as to £14,000 by Dr. Chapple. As a matter of fact, sir, I have said that Dr. Chapple provided £14,000, and so he did so far as the Tongariro Timber Co. was concerned; but I think I am entitled to mention that Mr. Houfton not only provided his own £14,000, also actually lent Dr. Chapple the £14,000 that Dr. Chapple advanced. That, however, is not now material, because the £14,000 that Mr. Houfton lent Dr. Chapple was recovered by Mr. Houfton from Dr. Chapple in certain proceedings that had to be taken by Mr. Houfton for that purpose afterwards. So that it comes back to this: that the Committee will be concerned, in so far as this claim is concerned, only with the sum of £14,000 that was advanced by Mr. Houfton on his own account. Now, sir, I want to read one or two very short extracts from certain letters that about that time Mr. Atkinson wrote to Dr. Chapple, because those letters put very pointedly, and quite sufficiently for the purposes of this Committee, the yeoman service that was done for the company by the provision of these moneys by Mr. Houfton. Here is an extract from a letter written by Mr. Atkinson to Dr. Chapple, dated the 7th August, 1922:—

Under these circumstances I want to make a modified proposal to you and Mr. Houfton to help me through. You have now worked long enough with me to have tested all my figures, promises, and strongly definite anticipations as to value and demand for the timber, and have, I think, learned to rely upon such with full confidence.

I have often told you how much I owe to you for the invaluable assistance you have given me, from day to day, over a long period of time, and to Mr. Houfton also I owe so much for his understanding appreciation and substantial generous help even after disappointment, and to you two therefore I am very much indebted.

Then, further on in the letter, he says:—

I would add that if the Belgian contractors should undertake the building of the whole line on the scheme now being considered by them it should be accepted, and I would suggest that then you and Mr. Houfton might share 6d. per 100 ft., on the basis of 4d. to you and 2d. to Mr. Houfton, on the 1,400,000,000 ft. as a sufficient reward, seeing that the whole problem would be solved forthwith. I shall be glad if you will see Mr. Houfton at once and put the whole proposition before him and try to get it concluded, so that we may send out the £29,000 immediately. This will have a magic effect in New Zealand, and will enable us to complete our plans in full within a comparatively short time.

The only other extract I desire to trouble you with is not from that letter, but is part of what I understand is an extract from Mr. Atkinson's official report to his company in New Zealand, dated London,

1st November, 1922. I have not got a copy of this document. I am reading from a letter in which an extract is set out by Dr. Chapple. But this is what I understand is part of an extract from the official report of Mr. Atkinson to his company in New Zealand, dated London, 1st November, 1922 :—

Through him [Mr. Houfton] and Dr. Chapple himself ultimately came our salvation from disaster, since they found the royalty moneys . . . The terms arranged with Mr. Houfton and Dr. Chapple for thus saving our company from disaster will be found set out in Exhibit C.

And then, a little further on in the extract this appears :—

He [meaning Dr. Chapple] found with Mr. Houfton the £35,000 (a sum considerably exceeding the company's paid-up capital) which saved our company from overthrow, and I must say that his rewards are fully earned.

Now, sir, I have read those extracts because they probably will satisfy you better than a great deal of argument from me that the fact was that, at that point of time, all concerned thought, and all concerned knew, that Mr. Houfton, as he then was, was doing an act which saved the company from complete disaster. Now, sir, I submit to the Committee that with regard to that advance there are four things that are as plain as day. The first of these things is this : that the company — and I, of course, mean the Tongariro Co. — did not receive the money for itself. The point I am endeavouring to make is that the money was kept earmarked from England to the Board. I do not know the particulars, but no doubt the records of the Board will describe what took place. Secondly, that it was advanced to save disaster ; thirdly, that it was paid on account of royalties that were due in advance under the company's concession agreements ; and, fourthly, that those royalties were received by the Natives in respect of timber that we understand is still standing. Now, sir, with all respect, I submit that those are the four cardinal and unassailable circumstances in connection with Mr. Houfton's claim. In other words, to make a long story short, we say that the Natives, in so far as our claim is concerned, have got the money and the timber. We submit, with all respect to this Committee and to the Government, that it is hard to imagine a stronger moral claim than our clients have in respect of this sum. And, sir, I am supported in that by two circumstances to which I desire to draw the Committee's attention. I am supported in it by the fact that two parties independent of us, who we have no particular reason to regard as our friends and no particular reason to regard as our enemies, have both taken the view that I am putting to the Committee. First of all, in the Duncan scheme, of which you know the history, it was proposed that in respect of this advance of £35,000 there should be allotted debentures to a nominal value of £50,000 to cover the total advance of £35,000 and interest. Now, sir, I am not for one moment suggesting that the Committee is in the least degree bound by what Mr. Duncan and his syndicate decided on that matter, but I am putting the suggestion to the Committee that people in that position, who had the means and opportunity to consider the relative merits of the claims, did come to the conclusion that our claim should be treated on a twenty-shillings-in-the-pound basis. Now, sir, the matter does not end there, because precisely the same view was taken by Mr. Grace in his evidence before this Committee last year, which is printed in paper I.-3A, on pages 13 and 14. Mr. Grace said to this Committee, at the bottom of page 13 :—

The next creditor is the Houfton-Chapple party. This group in 1922 or 1923 found the sum of £36,000 ; £35,000 was paid to the Maori Land Board in payment of arrears of royalty. For this money they received a debenture charge over a specified portion of the Tongariro territory, the portion that is known as the Western B area, but it was never put in the same position as the Western A area—that was separated from the rest of the territory, but the Western B area never was ; so that, as far as the Native owners are concerned, the Western B area still remains part of the one big area. This £36,000 was charged on this Western B area.

That is not all quite accurate, but accurate enough for the purpose. As a matter of fact, we have a charge on Western A as well as Western B.

And there is no doubt that this group has a good claim, and as far as that claim is concerned the provision that will be made for the party will be the allocation of 50,000 C debentures ; that is, £36,000 plus £14,000 on account of interest. The interest payable to this party under the original arrangement was 10 per cent., but I do not think that rate is equitable. We will not allow 10 per cent.

Now, sir, that brings me to the point to which I referred to a few moments ago : that I am instructed to say, on behalf of the executors of Sir John Houfton, that they are content to accept in satisfaction of their claim such interest as the Government consider reasonable ; and may I say, in connection with that—which must be known to everybody—that, of course, not one penny of interest has been paid to Mr. Houfton or to his executors. Now, sir, I also say with regard to that claim that we received no notification of the date of hearing and were not represented on this Committee last year. As a matter of fact, Dr. Chapple apparently informed the Committee that he represented Sir John Houfton's estate. I do not know that very much turns on it, but I merely mention the matter because, although what Dr. Chapple stated was no doubt of interest, the fact was that he was not authorized to represent Sir John Houfton. Moreover, there is one point that I certainly would have made to the Committee if I had been here—that was that Mr. Grace, in his suggestion that we should get this £50,000 of debentures, did not refer to the circumstances under which this advance was made by Mr. Houfton and Dr. Chapple, which actually saved the company. He did not draw the Committee's attention to the fact that the money was advanced under such critical circumstances, and that in fact it saved the company. But he said, in regard to the Egmont Box Co. that they were one of the few big creditors that had rendered valuable service ; and I would suggest to the Committee, without hesitation, that so are we. However unfortunate the position may be to-day, we are entitled, I submit, to have our claim considered in the light of the circumstances that existed and what we did when we made the advance. The essence of our claim is that the advance of £14,000 was made to save the company from disaster—and the Natives have got the timber and the money ;

and I submit that what this Committee must consider is whether it is a fair thing that the Natives should have their cake and eat it too.

After waiting all these years?—Yes, sir. But the cake gets more valuable with time. It is not stale. We suggest there is no harm caused to the cake. It is one of those cakes that improve with age. Now, sir, I do not know what the Committee would like from me as to formal proof of these claims. The position is that a copy of one of the debentures was duly registered at the company's office on the 5th February, 1923, in accordance with the provisions of the Companies Act, and a copy of the mortgage that supported the security was also duly registered. I propose later on to hand in to the Committee a schedule containing copies of all these documents. That will be better, I think, than handing them in one by one.

There is one point I would like you to go into further, and that is the position of your clients in regard to Western A?—Well, sir, the position in regard to Western A is this: We got debentures and a collateral mortgage providing for a first charge over Western B, where we had no one in front of us. But when it came to taking Western B our charge was subject to charges then existing. I have not the details now. One reason I think was the rights of the Egmont Box Co. I think another reason was a series of debentures, which I think, was the £26,000 issue. I will read what the debentures say with regard to Western A: "Subject to all charges thereon existing at the date hereof." So that our circumstances were better in respect of Western B than in respect of Western A.

What is the value of your security over Western A?—Of course, I am in a difficulty in answering that, because, if the cancellation is effective, our security may not be any good at all.

There is the position of the Egmont Box Co. to be taken into consideration?—Well, my personal view, for what it may be worth, is that all those provisions that were inserted to give protection to the Egmont Box Co. in respect of Western A on cancellation of the concessions were applicable to the Egmont Box Co. only, and did not enure for the benefit of subsequent encumbrancers. I may be wrong, but that is what I think myself and have advised my clients. I do not think that they could, so to speak, climb in on the shoulders of the Egmont Box Co., and take advantage on cancellation of the concession of the protection that the Egmont Box Co. have got in respect of Western A as a separate undertaking. Naturally, however, I do not desire to make any admission to this effect.

Have you any moral claim against the Government?—Well, sir, we contend we have a claim against the Board and the Government. We ask them both. We say that, as a matter of fairness, whatever the legal position is, and whatever our rights are, that the indisputable fact of our claim is that the Natives have got the money and the timber.

Should not the legal rights of the Egmont Box Co. be respected?—I am not sure what the legal rights of the Egmont Box Co. over Western A are. As I understand the position, the Egmont Box Co. have a charge over Western A—an assignment of the rights.

Is not the Egmont Box Co. ahead of you?—Oh, yes, I must respect whatever legal rights they may have after cancellation of the concessions. I do not think my clients could very well ask the Committee to do otherwise. But I submit it is not necessary for the Committee to go into that aspect of the question. That is not our case. With regard to our claims we came here on the assumption that we have no legal rights, except possibly a right to arbitration under the Act of last year. The advisers of the Government and the Crown have advised that we have no legal claim. If so, we are entirely at the mercy and in the hands of the Committee. But we say that when the Committee comes to look into these various claims, and to consider them, that there will be no claim in the whole lot that will have the moral strength that ours has got, because of the fact that the timber is there and the money is there.

Hon. Sir Apirana Ngata: While we are on these cash payments, I wonder if any of you can provide us with a list showing from whom the cash was obtained which comprised the royalties paid to the Natives.

Witness: I am afraid I cannot; I only know my own, and Mr. Mackenzie is in the same box as I am.

Mr. Mackenzie: I only know what we supplied ourselves. Mr. Ross may be able to let you have that information.

Mr. Ross (secretary of the Tongariro Timber Co.): £25,000 was provided by the Heuheu group, £10,900 was provided by Philipps, and the balance was provided by the company itself. Out of the £25,000 that we had from the Egmont Box Co. we paid £2,500, so that that accounts for the whole £55,000. The balance was provided by the company out of its capital. I can only give you the figures in round numbers at the moment, but we could supply a list in detail.

Witness: Now, that is all I desire to submit to you about that part of our claim, which is our main and substantial claim, and upon which, I submit, the Committee is bound to come to the conclusion that, as a matter of fair play, we should receive recognition. The other part of our claim is in a different position to some extent. By "the other part of our claim" I mean the part that is described under the heading (*b*) in paragraph (2) of our letter of 13th May, 1930, on page 6 of paper G.-7, and it is more fully described in paragraph (5) of the letter on that page. I call it the royalty claims. Now, sir, the position was this, as I understand it: In consideration of these advances that I have just been dealing with, which were secured by the mortgage and debentures, and in consideration of any further advances to be so secured, the Tongariro Timber Co. agreed to pay Mr. Houfton, Dr. Chapple, and Miss Wright a royalty of 6d. per 100 ft. on the timber as and when taken from Western B. Now, sir, the agreement provided that Mr. Houfton was to have 3d. out of the 6d. A copy of that agreement was registered at the companies' office with the other two documents; but I had better, perhaps, furnish a copy of it for the Committee to see, which I will do later. Now, that agremeent was executed by the Tongariro Timber Co. under its seal. First of all, it was executed by Mr. Atkinson in England, and I think I am right in saying that the seal of the company was subsequently affixed in New Zealand by way of confirmation.

Mr. Findlay: I doubt that.

Witness: Mr. Findlay says he doubts that, but I think it was done. My copy of the document shows it. At any rate, it does not matter much. That is the first royalty—namely, 6d. per 100 ft. on Western B Division. In addition to that, there is an agreement, dated the 5th February, 1923, the original of which is, I understand, held by Dr. Chapple, which provided, in effect, that he and Mr. Houfton had a right to commute the royalty I have just mentioned to a royalty over the Northern and Eastern Divisions—4d. for Dr. Chapple and 2d. for Mr. Houfton. I am giving the Committee a copy of that document later, or what I believe to be a copy. Now, I want to tell the Committee quite frankly the position about these documents, because I want you to know our attitude. The second agreement that I have mentioned is the one that purports to give the right to change the 6d. on Western B Division to 6d. on Northern and Eastern Divisions, and this has not been signed by Mr. Houfton; and, indeed, in a letter to us from his solicitors, dated the 9th August, 1923, they told us that he had heard nothing of the draft agreement. Moreover, there are these two considerations to be borne in mind: The first is that this document—the second agreement—provides in effect that the royalties on the Northern and Eastern Divisions were to be in substitution for the 6d. on Western B, not in addition thereto, as it is firstly put in paragraph (5) of our letter of the 13th May, 1930. The Committee will notice that in paragraph (5) of that letter this part of the clause is stated as "a royalty of 2d. per 100 ft. of the timber in the Northern and Eastern Divisions, or, alternatively, a right to commute," and so on. In other words, a royalty of 2d. over Northern and Eastern is claimed, firstly, by way of an addition. But this document (the agreement dated the 5th February, 1923) says it is a substitution of the royalty over Western B, and not in addition to it; and when I say it is a substitutionary royalty I mean it is, if valid, not a royalty, but a right to a royalty on giving proper notice. But there is another consideration about the document. That document was executed by Dr. Chapple on behalf of the Tongariro Timber Co., by Dr. Chapple as the attorney of the Tongariro Timber Co., and my own view is that Dr. Chapple had no power under his power of attorney to bind the company to confer the right to claim that royalty on himself and Mr. Houfton; although the question might arise as to whether correspondence from Mr. Atkinson to Dr. Chapple contains any admission as to the existence of rights in Dr. Chapple and Mr. Houfton in this respect. So that, to make a long story short, with regard to this question of a claim to a right to the Northern and Eastern royalty, it looks as if we cannot support it as a claim to an additional royalty, but must, if at all, claim it as a right (on giving proper notice) to a royalty that is substitutionary for the Western B royalty; and there is, on top of that, the question I have indicated as to whether the Tongariro Company was and is bound at all by the agreement or otherwise in respect of a Northern and Eastern royalty. Now, sir, those are the difficulties, and I want to put them frankly to the Committee in connection with the claim in paragraph (5) (ii) in our letter of the 13th May, 1930. Before I tell you about the attitude of my clients as to these royalty claims, may I tell you, roughly, what they amount to. This 6d. per 100 ft. royalty on Western B, would, according to my calculation, mean about £19,250 for Mr. Houfton's 3d.—that is, assuming Western B to contain 154,000,000 ft. Now, allowing for the fact that it was to be payable as and when the timber was taken, there would have to be a discount for the purpose of assessing the present value of such a claim as that. Then, if I may give you the figures, the 2d. per 100 ft. on Northern and Eastern, a right to which Mr. Houfton would have been entitled to on giving notice under the second agreement (if valid), would amount to about £116,666—that is, assuming the Northern and Eastern districts to contain 1,400,000,000 ft. That sum, again, would have to be discounted, because it was only payable as and when cut and taken. I have referred to these royalty claims because I want to tell the Committee plainly what our attitude is about them. The attitude of Sir John's estate is this: that it does not mind about these royalty claims as long as it gets back the £14,000 for its advances, plus such interest as this Committee and the Government think fair. In other words, the Committee may take it that Sir John's estate is prepared to drop these royalty claims if, but only if, the Committee and the Government is disposed to let Sir John's estate have this £14,000, plus such interest as you gentlemen may consider to be a fair thing. But, sir, I want to make that as plain as I can, because I am sure you will at once appreciate that Sir John's estate would get itself into a very false position if it abandoned the royalty claims unconditionally. You see just what might happen. Supposing my clients abandoned the claims unconditionally—and I am speaking quite frankly—and supposing this Committee and the Government recognizes all the claims of the present claimants to an extent less than their total amount, my clients would receive less than £14,000 in respect of their debenture claim or advances, which they suggest would be unfair. They suggest that anything would be unfair that gives them less than their money back, with such interest as is reasonable. There is another reason why they do not want to abandon these royalty claims unconditionally. If Dr. Chapple makes any royalty claim, or if any other claimant at all includes in his claim items that the Committee or the Government thinks should not be considered at all, those items might nevertheless remain in the respective claims for the purpose of sharing in any available dividend: you gentlemen can see that at once. Supposing that you recommend to the Government, and the Government decide to say to all the claimants, "Here is an amount available for distribution among you: take it away," if it came to a dividend, that dividend would be calculated on the amount of their claims, and it would be unfair to my clients, if they withdrew their royalty claim to which I am referring, while other people with claims that should also have been withdrawn were left in and accordingly got an enhanced dividend. That brings me to another aspect of the matter. The object, of course, of any claimant before this Committee is to get recognition for his claim, rather than to make an attack on the claim of any other claimant. To put it bluntly, we are not here to knock any one else out: primarily we are here to endeavour to get the Government to recognize our own particular troubles. But, sir, if it should happen that the Government or this Committee should determine to award or recommend an amount less than the total of the claims made, and so to put a sum into the melting-pot for division

in some appropriate way, the total amount of each claim becomes a crucial matter to each claimant. So I am vitally concerned in the sum that every other person is claiming. It is a matter of acute interest to me whether Jones, or Brown, or Williamson is claiming just what he ought to claim, or too much. For that reason—and it is a very important aspect of the matter—I respectfully submit to the Committee that we are entitled to more definite and accurate information than we have got to-day as to the total claims that arise for adjudication. Now, what I mean is this: if you would be good enough to look at G.–7, page 1, you will see a list of claims totalling no less than £523,000-odd. Now, we are told, and we understand, that that amount is plainly wrong, because claims (1) to (7) inclusive, claim (9), claim (10), and claim (12) are all included in claim (11). Now, that is what we understood yesterday was said to be the position. This is very important.

Hon. Sir Apirana Ngata.] Also claim (13). Is that not for rates?—Yes, but there is no amount mentioned there for rates. Now, sir, these claims I have mentioned as being included in claim (11) total, according to my mathematics, £179,703. In other words, we are told how £179,703 out of the £330,000 is made up. We are able to see how £179,703 of it is made up, but what I want to know is how the difference is made up. What I want to know is why the Tongariro Timber Co. is claiming £330,000, when, as far as I know, it has only told the Committee how £179,703 of that sum is made up. Now, it may be, for all I know, that my question can be answered in a breath. It may be that I have overlooked some obvious and important thing. If I have, well and good, but I want to ask respectfully that that information should be supplied, and I ask the indulgence of the Committee to be heard again upon my claim after that information has been supplied.

The royalty part of your claim?—On both parts, because my main part is in regard to £14,000. My point is that I am unable to discover in any of these documents furnished yesterday how that £330,000 is made up.

On page 21 of G.–7 there are two items—"The company's capital, £60,000," and "Claims of creditors as at 30th June, 1929, £270,000."—That does not enlighten me very much, sir, but I am obliged to you for mentioning it. To begin with, I think I am right in saying that the whole of the company's capital was not subscribed. I think that £30,000 was paid. But you will see, if you would mind looking at Mr. Grace's memorandum—the one with the blue-paper cover—page 4, that the company's creditors are stated at at least £50,000 more than they are stated in the passage to which the Hon. the Native Minister has directed my attention. In that passage the claims are stated at £270,000 and the £330,000 is made up of creditors' claims plus the company's capital. But in Mr. Grace's memorandum they are treated separately, and there is no doubt that the debts of the company, as distinct from the capital, are treated as £330,000.

Mr. Grace: It is between £320,000 and £330,000; that is the total amount of the debts, excluding the company's claim in respect of its share capital.

Witness: I want to deal with the matter when those particulars have been supplied, if I may have another opportunity of doing so. I should have thought that this was a most important matter, and, in fact, I cannot see any answer to my submission. Now, in connection with that aspect of the matter, may I say this: let me for the moment make the assumption that the Committee will be disposed to adopt Mr. Grace's scheme. First of all, to that there is the serious objection that I have just made—that he proposes to divide £180,000 worth of bonds among £330,000 worth of creditors without telling us who those £330,000 worth of creditors are or what their claims are. That is what I want to know.

Mr. Grace: If you will refer to pages 19 and 20 of G.–7 you will see who the creditors are.

Hon. Sir Apirana Ngata: We have Mr. Grace's allocation.

Witness: But, sir, that allocation gives no information as to the amounts of the claims.

Mr. Grace: Your client, Mr. Cooke, is getting 22s. in the £1 on the principal.

Witness: We do not want to be unreasonable about the thing; our object is to get our claim recognized, but we want to know how the claims are made up. As far as the pages to which Mr. Grace has referred me are concerned, the figures there are an estimate of what each creditor should get—that is what appears on pages 19 and 20 of G.–7. There is no information there as to the amount of each creditor's claim. Now, that is why at the present time I do not want the Committee to think that I am opposing Mr. Grace's scheme, but I ask the Committee's leave to defer my comments upon Mr. Grace's scheme until I see how the £320,000 is made up, because these matters go further than that. I have had some little difficulty in seeing, for instance, why, under Mr. Grace's scheme the Duncan syndicate should get 20s. in the £1 unless we all do. Now, Mr. Grace said just now that we were getting 22s. in the £1 on our principal under his scheme. That means that, roughly, eighteen thirty-seconds of my principal, plus interest, will give me 22s. in the £1 on my principal alone, with nothing for interest. But my claim is for my principal plus interest, and I ask for 20s. in the £1 on my principal, and for such interest as this Committee or the Government thinks is a fair thing. Now, sir, with regard to the Duncan syndicate, I have a strong disinclination to saying anything about that, because it is not my wish to knock anyone-else's claim down; but here is a proposal that they should get £13,800 at the rate of 20s. in the £1, of which £5,000 is to go to Mr. Duncan and £2,000 to Mr. Grace, whereas I would get 11s. or 12s. in the £1. In other words, it is suggested that the Duncan syndicate should get 20s. in the £1 and I should get 11s. or 12s. I say that is not fair. Why should Mr. Duncan and his co-syndicators get preferential treatment in respect of their work over me in respect of my money? I saved the company in a crisis: why am I not entitled to just as much consideration as those who gave their services afterwards, at a time when the desperate nature of the company's situation was far more evident than it was when we advanced our money? I ask the Committee very respectfully to take these comments in the spirit in which they are meant—not with the object of depriving any other claimant of anything to which he is entitled, but with the object of seeing that the Committee knows precisely what each claim is, and seeing that it will not

make an award that may have the effect of giving one set of claimants an undue and unfair preference over another. In conclusion, may I say this: I am not now concerned, as I formerly was, to represent Messrs. Armstrong, Whitworth, and Co., but during their negotiations with the Tongariro Timber Co. they were represented by the late Sir Charles Skerrett (then Mr. Skerrett), and I was in close and constant touch with him and with the whole matter as his assistant. I do know of my own knowledge that they went to endless pains and trouble to try to straighten out the mess into which the Tongariro Timber Co. had got, and I say that although it may well be that certain items in their claim require consideration, and although it is quite true that certain of their representatives stayed at the Midland Hotel, it is grossly unfair and grossly unjust to describe their claim in the way in which Mr. Grace described it yesterday. I ask the Committee to disregard that sort of criticism. I do not now represent Messrs. Armstrong, Whitworth, because I thought it better that I should not act for both them and Sir John Houfton's estate; but I have felt constrained to make these observations because I want to protest against the tone and spirit of those comments. The Committee probably knows that they sent out here two highly qualified engineers, both of whom had, I believe, had war experience, and one of whom had been concerned in the building of railway works in Africa, and from here, as far as I remember, went to some harbour works at Rangoon or somewhere else in India. They also sent out an influential representative from Home in the person of Sir Edwin Cornwall; and although their claim may be open to objection in certain respects, I suggest to the Committee that it is quite unbecoming to characterize their claim as a claim for the expenses of people who stayed at the Midland Hotel.

Captain Rushworth.] With regard to page 6 of G.–7, clause 5, the figure that I have down is £19,250 ?—That is in respect of Western B; that is our 3d. out of the 6d. royalty.

And the other figure is £116,666 ?—That is what I worked it out at.

I was wondering what the consideration was—why the difference ?—You mean, what the difference was for. I understand that the Tongariro Timber Co. was at its wit's end, and was prepared to give almost anything to get the money to save them from ruin at that moment. That is shown by Mr. Atkinson's letter to Dr. Chapple of the 7th August, 1922, from a copy of which I read extracts. The original of the letter is in Dr. Chapple's possession. Perhaps you would not mind my leaving him to deal with the matter as I understand he knows all about the royalty claims.

That was really in consideration of the £14,000 ?—I am reading from the copy of the letter from which I read extracts. It is a copy of a letter from Mr. Atkinson to Dr. Chapple, and is dated the 7th August, 1922. That was after the £6,000 was advanced. [Letter read—to be put in later.] It was, I submit, a further offer to Mr. Houfton and Dr. Chapple to get them to put up this £29,000 which the Tongariro Timber Co. in its desperation was anxious to get.

But, leaving Dr. Chapple out for a moment, the £14,000 was to be provided by Mr. Houfton ?—£29,000 came out. £1,000 was provided by Miss Wright and £28,000 was provided by Mr. Houfton, and half of it was for Dr. Chapple. There may be another reason for the difference in the royalty. I think there may possibly have been a suggestion that it was to be in substitution not only for the 6d. in respect of Western B, but perhaps also for another 6d. on Western B that belonged to Dr. Chapple, in which Mr. Houfton had no share. That may possibly be the answer to your question as to why the jump; but I do not know. But I have explained my clients' attitude about this claim to the Committee. Dr. Chapple can answer any questions in detail about it.

Can you put it this way: as far as Mr. Houfton's investment is concerned, he invested £14,000 in the expectation of getting £166,666 ?—I submit that cannot be said, because I have a letter from Mr. Houfton's solicitors, dated the 9th August, 1923, in which they say he had heard nothing of the draft agreement as to this Northern and Eastern royalty. I can put it in this way; that what Mr. Houfton was entitled to under the documents was the original 6d. on Western B, because that document is registered here. But as to a royalty on Northern and Eastern we have that letter from his solicitors, dated seven years ago, saying that he had not heard about the draft agreement; and there is the other difficulty, that the document was executed by Dr. Chapple as attorney for the Tongariro Timber Co., and I have expressed my own view about that. His solicitors said he had never heard of the draft document.

On the other hand, what I understand to be copies of extracts from Dr. Chapple's diary state that (on the 9th August, 1922) Mr. Atkinson's letter to Dr. Chapple of the 7th August, 1922, was explained to Mr. Houfton by Dr. Chapple, and that Mr. Houfton said he thought the 4d. and 2d. a reasonable division and was agreeable to this. And Mr. Atkinson, in his report to his company dated the 8th November, 1922, said that Mr. Houfton was to receive the £14,000 back within a year, with 10 per cent. added, and, in addition, the 2d. per 100 ft. log measurement (see the 1,400,000,000 ft. in Northern and Eastern areas as cut). However, in a document dated the 4th September, 1922, addressed to Mr. Houfton and signed by Mr. Atkinson, the only royalty mentioned is a royalty of 6d. per 100 ft., presumably on Western B. I am unable, however, to give accurate or complete information on this aspect of the matter, and if the question is of importance I should like an opportunity to refer to the English solicitors representing Sir John Houfton's executors for information as to his expectation or otherwise (at the time when he advanced his money) of getting any royalty on Northern and Eastern.

WEDNESDAY, 13TH AUGUST, 1930.

A. K. S. MACKENZIE, examined. (No. 5.)

Mr. Mackenzie: I represent Messrs. Cammell, Laird, and Co. Cammell, Laird, and Co.'s claim may be divided into two parts, and if you will permit me I will read a part of the letter which my firm wrote to the President of the Aotea Maori Land Board, and which appears on page 6 of G.-7. It begins with a statement to the effect that we had received advice that the Tongariro Timber Co. had offered its property to the Crown, and goes on to say:—

> Nevertheless, it seems to us we should formulate and place before you and the Hon. the Minister for Native Affairs the claim of our client company, Cammell, Laird, and Co., Ltd., 3 Central Buildings, Westminster, London.
>
> The company's claim may be divided into two parts, consisting of—
>
> (*a*) A sum of £15,630, with interest at 6 per cent. from 31st December, 1926;
>
> (*b*) A sum of £5,090, with interest at 6 per cent. from 26th July, 1926.
>
> In respect of these debts the company holds as security—
>
> (*a*) Twenty-three first-mortgage debentures of the Tongariro Co. of £1,000 each, numbered 15 to 34 inclusive and 36 and 38 inclusive.
>
> (*b*) An agreement to mortgage from the Tongariro Co. (subject to prior charges) covering the whole of its timber concessions and assets, supported by caveat on its titles.
>
> In this memorandum we have separated the two sums and the securities therefor for this reason: The first sum represents moneys advanced to Dr. Chapple to enable the Tongariro Co. to pay in advance to the Native owners royalties on timber which is still standing, and should, we submit, be repaid as a first charge, as it would be inequitable to allow the Natives to have the timber and retain the money as well.
>
> The second sum consists of the expenses incurred by Sir Haviland Hiley as representing Cammell, Laird, and Co., in coming to New Zealand, investigating the concessions and titles, making reports, &c., and, as above noted, is secured by general agreement to mortgage over the whole of the Tongariro Co.'s property.
>
> We have not the debentures themselves before us, but, so far as our recollection serves, they are a first charge on the division known as "Western B" and a second or third charge on other parts of the concession as well.

There will be no necessity for me to read anything further, because I can now say those debentures are on the same footing as those held by Sir John Houfton, and the explanation which Mr. Cooke gave as to the security which they covered has already been before the Committee. But the debt was incurred, as I understand the position, in this way: Sir John Houfton and Dr. Chapple, between them, had, as you have heard, provided a large sum of money for advance royalties at a time when the Tongariro Timber Co. was in such difficulty that it would have lost its concession had money not been obtained. Part of the money provided by the late Sir John Houfton was a debt due to him by Dr. Chapple and, as I understand the position, that debt was not paid on the date of maturity. After some proceedings, with which we were not concerned and which took place in London, it was decided by an English Court that a certain sum of money was due by Dr. Chapple to Sir John Houfton. Dr. Chapple then interested Cammell, Laird, and Co., Ltd., who were large shipbuilders and not connected with New Zealand, in the venture, and, to make the story as short as possible, Cammell, Laird, and Co. agreed to take an interest in this venture, and sent a man to New Zealand to see if it was as stated to them in London. They then lent to Dr. Chapple the sum of £12,500 to enable him to repay Sir John Houfton. At the same time Dr. Chapple delivered to Cammell, Laird, and Co. these first-mortgage debentures with a memorandum of charge or mortgage, of which I have here a copy which I will read, and put in later:—

> To Cammell, Laird, and Co., Ltd., 3 Central Buildings, Westminster.
>
> IN consideration of your having advanced to me the sum of twelve thousand five hundred pounds the receipt whereof I acknowledge I agree to secure the repayment of the same and do and execute or cause to be done and executed the following acts deeds and things.
>
> 1. To execute an assignment to you or your nominees of the debt now owing to me by the Tongariro Timber Company Limited (hereinafter called "the said company") particulars of which debt are set forth in the schedule hereto and all interest which is or may become due to me from the said company thereon and which debt I warrant is not less at this date than as stated in the said Schedule such assignment to contain all such covenants (including covenant to repay the said sum and interest as hereinafter mentioned) agreements and declarations on my part as you may reasonably require.
>
> 2. The said sum of twelve thousand five hundred pounds is to be repayable on the thirty-first day of January one thousand nine hundred and twenty five with interest at the rate of ten per cent. per annum net that is without deduction of income-tax.
>
> 3. To execute if required a mortgage in favour of yourselves or your nominees of twenty thousand pounds first-mortgage debentures part of an issue for the total sum of forty thousand pounds created by the said company and which I have this day delivered to you with a transfer thereof which I hereby authorize you to complete such transfer and register the same in the names of yourselves or your nominee or nominees.
>
> To endeavour to obtain and when obtained
>
> 4. To deliver and transfer to you or your nominee or nominees or to deliver to you a transfer thereof with the name of the transferee in blank on or before the thirty-first day of January one thousand nine hundred and twenty-five three thousand pounds further part of the said issue of first-mortgage debentures of the said company and I authorize you to complete any such transfer and register the same in the name of yourselves or your nominee or nominees I agree to execute if required a mortgage on such debentures in favour of yourselves or your nominees.
>
> 5. I hereby charge such debentures and all moneys thereby secured with repayment to you of the said sum of twelve thousand five hundred pounds and interest at the rate aforesaid.
>
> 6. To do all things in my power to procure the said company to repay the said debt to you or as you shall direct and to assist you in the recovery thereof.
>
> 7. To aid and assist you by all means in my power in all your business relations engagements and contracts that you may have entered into or may hereafter enter into with the said company.
>
> 8. To prove my title to the said debentures and to the said debt to your reasonable satisfaction.
>
> 9. Whilst and so long as such debentures are in my name to exercise all powers thereby conferred as you shall direct.
>
> 10. To do and execute all other acts and deeds and to give such notices as you may from time to time require for urther assuring the said debt and all the said debentures to you or your nominee or nominees.
>
> 11. To pay your costs charges and expenses of this agreement and of incident to and consequent upon the carrying-out and completion of the matters herein mentioned.
>
> 12. This agreement is to be construed according to English law.

THE SCHEDULE ABOVE REFERRED TO.

	£	s.	d.
1. Cash lent by me to the said company for payment of exchange on £290 cabled to New Zealand September 4th 1922	290	0	0
2. Cost of cable	1	10	0
2. Interest at rate of £10 per cent. to July 16th 1924	58	6	0
4. Sum paid to Mr. Houfton on account of the said company part of £14,000 guaranteed ..	6,387	4	7
5. Interest on £6387 4s. 7d. at £10 per cent. to July 16th 1924	282	14	0
6. Sum due to Mr. Houfton on judgment as per writ	9,995	0	0
7. Interest from writ to judgment (estimated)	136	0	0
8. Costs of action Houfton *v.* Chapple (estimated)	100	0	0
	£17,250	14	7

Dated this twenty-first day of July one thousand nine hundred and twenty-four.

W. A. CHAPPLE.

Witness: Harvey Clifton, Solr., 4 New Court W.C. 2.

Hon. Sir Apirana Ngata.] Is this the same amount as was paid by Dr. Chapple?—No, it is part of the £29,000. Dr. Chapple borrowed part of the money from Sir John Houfton, but did not repay it on maturity. I do not know how much he owed Sir John Houfton, but he borrowed £12,500 from Cammell, Laird, and Co. to repay it. I cannot tell you how it was made up, but it was settled by an English Court. There was a date of maturity fixed in 1925, but the money was not paid on the due date. Time was allowed, and eventually what in England is called a foreclosure action was commenced, and the English Court declared that the twenty-three debentures held by Cammell, Laird, and Co. belonged to them absolutely. I have a letter from Messrs. Cammell, Laird, and Co. dated 19th December, 1927, saying that they thereupon became the absolute owners of these debentures:—

Cammell, Laird, and Co., Ltd., London, 19th December, 1927.

Messrs, Bell, Gully, Mackenzie, and O'Leary,
Panama Street, Wellington, New Zealand.

DEAR SIRS,—

Re *Tongariro Co.*

I duly received your letter of the 22nd October, and note contents.

Since writing you on the 3rd November an order of the Court was made on 12th December for foreclosure absolute in respect of the debentures. We are now, therefore, the absolute owners, and can do what we please with them.

Meanwhile Dr. Chapple and his solicitor have been pressing us to give an option over the debentures. This we refused to do, but stated that if a satisfactory proposal to repurchase them was made we might be prepared to consider it.

We lent Mr. Riley a number of reports and plans, and he has been in touch with Messrs. Robert Benson and Co., Ltd., in connection therewith, but we doubt if anything will come of it. Mr. Riley is returning to New Zealand to obtain certain further information for Messrs. Benson.

Yours, &c.,
W. L. HICHENS.

So I take it that the sum of £15,630 referred to is the amount which the English Court declared to be due on the 31st December, 1926, and that is made up of the amount of £12,500 lent with interest at the rate reserved in the memorandum of charge with costs of the proceedings.

Supposing it was decided to recognize these cash payments, we would not have to pay Dr. Chapple £14,000 and Cammell, Laird, and Co. £15,000?—No, only one of those sums would have to be paid, and that is why some of these figures are confusing. That claim is in a different category to the remainder. It must be admitted that when Cammell, Laird, and Co. advanced this money they did so on the understanding that if it were not repaid they were to stand in the position of the holder of those debentures, and the holder of those debentures had a first charge on Western B in conjunction with the remainder of the debenture-holders. Had it not been for what they assumed to be the security given to them by these debentures Cammell, Laird, and Co. would not have advanced the money.

The net result is that Cammell, Laird, and Co. are in the same position as the Houfton estate?—Exactly. Everything that Mr. Cook said to the Committee in support of moral right to consideration on the ground that the money was advanced for royalties, and that the timber is still standing, I submit, applies to Cammell, Laird, and Co. It is unnecessary for me to take up the time of the Committee, for the issue stands on exactly the same footing as that of Sir John Houfton's executors. The debentures we hold give us exactly the same rights as those which Sir John Houfton's estate can produce, as far as that particular branch of the claim is concerned. The remaining part of the claim is for a sum of £15,090, which represents the expenses incurred by the emissary of Cammell, Laird, and Co. in coming to New Zealand and estimating the value of these concessions with a view to advising the company to take up the contract or otherwise. That emissary was Sir Haviland Hiley, and I must confess that he too stayed at the Midland Hotel. He came out here, and he was a man who could not be sent to New Zealand without incurring considerable expense. He came out as a railway man and as a man of business, accustomed to dealing with business people in London. When he got here he found that the concession would run out before he could possibly complete his railway, and must be extended. He found that the titles to the route upon which the railway was to run were by no means complete. They were all Native titles. He found that the Government's conditions with regard to the linking-up of the Taupo–Kakahi line with the main line were very stringent, and required modification to some extent, which he secured. He found also that there were rights in regard to Western A given to the Egmont Box Co., of which he had not realized the effect when he left London. He found that there were a number of creditors with competing claims and also that the expenditure likely to be involved in the building of the railway would be higher than his firm had anticipated. But that was only discovered after his examination of the route. Still, the work that he did here was very onerous indeed, and of an expensive nature. It required professional assistance of all descriptions, and altogether

he was in New Zealand for a long time. He had no intention of abandoning the claim, or doing anything but investigate this concession until the Tongariro Timber Co., for some reason which I do not know, thought they could get better terms from somebody else. They had somebody else negotiating, and Sir Haviland Hiley was approached to recede from the negotiations and his company's contract, which he did on the basis of an agreement with the Tongariro Timber Co. that his company was to be repaid the expense of sending him out here to investigate the concession. That was an unconditional agreement, secured by a general agreement to mortgage over the Tongariro Co.'s property, subject only to the prior charge given to the Armstrong, Whitworth, Co. when it made the previous investigation. That these expenses were incurred there cannot be the smallest doubt. I could give details of the various items, but I do not think that at this stage of the proceedings anybody will question them. They were not questioned by the Tongariro Timber Co. at the time. The list was supplied to them and the agreement to mortgage given, a copy of which will be handed in later. As far as the claim of Cammell, Laird, and Co. is concerned, I have nothing further to say, except that the first branch of it is one that, I submit respectfully, the Committee will consider to be one in which the amount should be paid in full, if it is possible. I would deprecate any quarrel between the creditors as to the order of ranking of their respective claims. For some reason or another, Mr. Grace, in ranking the various creditors, puts down Cammell, Laird, and Co. amongst those whom he calls the speculators. They were not speculators in the ordinary sense of the word at all. They had never heard of New Zealand, but they do not pretend that they sent a man out here with a view to undertaking this railway formation, except with some hope of profit to themselves. They are shipbuilders and railway-builders, and they did think they were going to make a good profit out of the construction of this railway. But that they should be put down as mere speculators seems unfair to a company of their standing, a company that was not looking for anything but legitimate business. I shall have some other comments to make upon the order in which these claims have been set out by Mr. Grace in his memorandum, when I come to Mr. Philipps' claim.

Mr. Williams.] You say that Sir Haviland Hiley made this trip of investigation: was that trip after the £15,000 had been lent to Dr. Chapple?—Contemporaneously with it. They took an interest in the concession and agreed to send out a man, and lent the money at the same time.

Do I understand that the company had lent the money before the man left London?—Yes. He left just immediately after. It was all done together.

Mr. Langstone.] In consideration of that the company got the £23,000 worth of debentures?—Yes, that was their security.

Hon. Sir Apirana Ngata.] Can you give us the divisions of the claim of Bertram Philipps—in regard to the money that went to the Native owners?—It was after the Order in Council of 1925 that Mr. Philipps found that £10,000.

THURSDAY, 14TH AUGUST, 1930.

A. K. S. MACKENZIE (continuation of examination). (No. 5.)

The Acting-Chairman (Mr. Williams).] Will you continue your evidence, Mr. Mackenzie?—Yes, sir. I finished Cammell, Laird, and Co.'s claim yesterday, with just one exception. A member of the Committee asked me to clear up the sequence of the arrangements made between the company and Cammell, Laird, and Co., in London, and I can clear that up by the documents I have here, and copies of which are being put in. The first agreement was made in London, sir, on the 16th July, 1924, and that was the agreement which brought Sir Haviland Hiley to New Zealand. The agreement with Dr. Chapple, which I said was contemporaneous, was not made until the 21st July, 1924—one week afterwards. I think I said yesterday that they were made on the same day, but really one followed the other. The agreement for reimbursement of expenses—that is, the agreement under which the Tongariro Company said they would refund to Cammell, Laird, and Co. the amount of expenses incurred by their emissary in coming to New Zealand to investigate the concession, was made after the arrival of Sir H. Hiley here, on the 26th January, 1925. Thus two were made in London, and one was made in New Zealand after he arrived.

Mr. Langstone.] What agreement was it under which the payment of the £14,000 was made?—That was the second one, that was made in London on the 21st July, 1924. I propose to put in copies of the three documents and the originals of two of them, if they are required. I will now turn to the claim of my other client, Mr. Bertram Philipps. His claim may be divided into three parts. One of them I can dispose of very shortly, for the present at any rate, although I may have more to say about it afterwards. That is the claim for a title to Western A. Mr. Philipps's position in that is that he is a purchaser from the Egmont Box Co. He has bought under an agreement which he is prepared to carry out if the Egmont Box Co. can give him a good title. And to enable him to get a title from the Egmont Box Co., that company must make it clear to Mr. Philipps that the Western A Block is severed from the remainder of the concession, and that the cancellation of the concession does not necessarily cancel Western A. Therefore I propose to say nothing about that part of the claim, but to leave it entirely to the Egmont Box Co.'s representative, who will make the claim for a separate title to Western A on behalf of the Egmont Box Co., so that they can pass it on to Mr. Philipps later on. The other two parts of Mr. Philipps's claim consist of a sum of £10,900 which he, at the request of the Tongariro Timber Co., paid to the Aotea Maori Land Board as an instalment of royalty paid in advance, in respect to which the bush is still standing. I would just like to refer to G.-7, page 7, and read out the first part of that memorandum, omitting for the present the reference to the Egmont Box Co.

We have been informed by the secretary of the Tongariro Timber Co., Ltd., that on the 19th March, 1930, the directors were authorized by the shareholders to transfer their rights under the several agreements held from the Maori Land Board to the Crown subject to the Government settling the claims of creditors and shareholders either by negotiation or arbitration. Neither we nor our client hereafter referred to assented to that resolution. Nevertheless, it seems to us we should formulate and place before you and the Hon. the Minister for Native Affairs the several claims of our client, Mr. Bertram Philipps, of Salisbury, England, as a creditor of the Tongariro Timber Co.

The first claim of Mr. Philipps consists of two several sums consisting of—

(*a*) £14,700, with interest at 6 per cent. from 19th January, 1927;

(*b*) £15,000, with interest at 6 per cent. from 25th March, 1927.

The above sums are those stated to be due to Mr. Philipps by an agreement between him and the Tongariro Co. dated 25th March, 1927, admitted as a settlement of an action, No. 799/1926, Supreme Court, Wellington.

The foregoing moneys are secured by—

(*a*) An agreement to mortgage dated 24th February, 1926, covering the whole of the Tongariro Co.'s concessions and assets subject to prior charges, and supported by a caveat on the title:

(*b*) An agreement to mortgage dated 11th April, 1927, on similar lines;

(*c*) Pledge of twenty-seven mortgage debentures of £1,000 each issued by the Tongariro Co., and charged upon certain of its properties and rights Nos. 276 to 297, 310 to 313, and 409.

The agreements between the Maori Land Board and the Tongariro Timber Co. provide for the latter company paying to the Aotea Board certain sums in each year representing royalties in advance of timber to be afterwards cut. We understand that the total amount paid by the Tongariro Co. to the Aotea Board in respect of royalties is about £53,000. With the exception of a small area of timber upon the Western A Division cut by the Egmont Box Co., the whole of the timber in respect of which that royalty has been paid is still standing, and presumably on cancellation or expiry of the Tongariro Co.'s concession will revert to the Native owners.

Of the royalties paid in advance, at least £10,000 has been provided by Mr. Philipps on the urgent request of the Tongariro Timber Co., and such sum of £10,000 forms part of the above-mentioned sums mentioned as owing by the Tongariro Co. to Mr. Philipps.

It is respectfully submitted that the Board will not permit the Native owners to have both the timber and the money, and that the advances made by Mr. Philipps in respect of royalties should be repaid as a prior charge on the property with interest at 6 per cent., and that the remainder of the Tongariro Co.'s debt to him should also be charged upon the property, as being secured by the agreement to mortgage and debentures given to him.

Hon. Sir Apirana Ngata.] Does not the latter state that the amount claimed is £10,000?—That is correct. The £900 of interest was omitted from the letter. But that is in the claim itself. I will refer to that in one moment. The rest of the letter deals with the Egmont Box Co.'s claim, which I propose to omit for the present for the reason I have already stated; and I will now first correct, if I can, one or two slight errors in the letter.

The Acting-Chairman.] I would like to be clear on one point—that is, with respect to the advances on the timber. Those royalties were really due to the Natives?—Yes. Those royalties were payable under the Tongariro Company's agreement with the Natives, but it was the Tongariro Company who should have paid them, and not Mr. Philipps.

The money was advanced because the payments were behind?—Yes; £5,000 was in arrear. The agreement provided for royalties to be paid at the rate of £5,000 per annum in advance. The first one was behind. That is why Mr. Philipps paid it.

Was the advance a loan?—What was really intended was that the advance was really a loan to the Tongariro Timber Co., and paid direct to the Aotea Land Board.

Mr. Langstone.] What was the date that amount was paid?—The date is in the agreement. The Tongariro Company, under this agreement, was bound to pay royalties on a certain day, amounting to the sum of £5,000; but the timber was not necessarily cut, or to be cut, on the day of payment.

But the payment was vital?—It was absolutely vital under the agreement. Well, the Tongariro Company, being unable to find these moneys out of its own funds, asked Mr. Philipps to pay the money instead of them, and so keep the concession on foot. Otherwise it would have been competent for the Maori Land Board to say, "You have not paid the sum in advance royalties that you agreed to pay, and therefore we have to cancel it." So Mr. Philipps made the payment, and, I presume, on his first payment he took a receipt from the Tongariro Company, but when they applied to him for the second instalment he entered into an agreement with them which I would like permission now to read. [Handed in agreement of 24th February, 1926.] So, sir, it will be seen from that agreement that the Tongariro Company had made default in the payment of the £5,000, and that it had arranged with the Aotea Board that it should be debited with the accumulated interest, an amount, as far as I recollect, of about £300. And then, also, another instalment had fallen due, and there was interest overdue on that amounting to £600; the ultimate result being that Mr. Philipps paid the lot. £10,900 was on that particular head paid direct to the Aotea Board. Then, sir, he made other advances to the Tongariro Company, which are referred to in another document altogether. Mr. Philipps was engaged in forming a company to take over this concession, and intended to go back to England for the purpose of arranging for his capital. The Tongariro Company, for some reason or other, very hastily—I will refer to that later—purported to cancel the agreement it had made with him. Mr. Philipps came back to New Zealand, refused to accept the cancellation of the agreement with the Tongariro Company for the flotation of the company; and they commenced an action against him. That action reached the stage when the statement of claim was filed, and statement of defence filed, witnesses' evidence briefed, and ready for trial, when one morning it was settled between the parties. The terms of settlement are set out in an agreement, of which I will put in a copy if required.

Hon. Sir Apirana Ngata.] Does it matter very much that all this should be gone into?—I submit that it does matter. On the first day we were here there was a proposal made by Mr. Grace for a general settlement, and in it he crossed out £15,000 of Mr. Philipp's claim. It is, therefore, necessary that I supply evidence on that point. The sum of £15,000 was what was agreed to be paid to Mr. Philipps by the Tongariro Company consequent on the cancellation of his agreement.

Does not Mr. Perry admit that?—He cannot help himself. It was a settlement of an action, and it was filed in the Supreme Court. I can dispose of that very shortly without referring again to the action when I say that subsequently to the settlement of the action—namely, on the 11th April,

1927—an agreement to mortgage was entered into between Mr. Philipps and the Tongariro Company, by which, after reciting the several sums due to Mr. Philipps, the Tongariro Company agreed to give him a mortgage to secure the full amount and to pledge debentures as collateral security.

In the second paragraph on page 9 of G.-7 you say that "the Egmont Box Co. has a statutory title to the timber on the Western A area and a legal charge on the lands specified in the Fifth Schedule to the agreement of 1913 made between the Tongariro Timber Co. and the Egmont Box Co. That Fifth Schedule comprises the areas known as 'Western A' and 'Western B'" ?—Yes.

I would like to hear what you have to say about Western B ?—I do not know that I am concerned much with that charge. I think I would rather leave that, if you do not mind, until after Mr. Weir has put the Egmont Box Co.'s claim.

But they only claim Western A ?—Yes, they only claim Western A. If they can get a title to Western A, then we take if from them.

Under what Act ?—There is a statute. I do not think I have it with me, but I think it is referred to in this letter. I would like, sir, if I could leave that point until I can look up the statute. Well, in connection with Mr. Philipps's claim an agreement was entered into on the 11th April, 1927, between the Tongariro Company, which, after stating that the Tongariro Company is the holder of the concession, goes on to refer to the agreement to mortgage of 1926, which I have read, and to the action which I referred to just now, and to the settlement of that action. The Tongariro Company then agreed that the sum owing to Bertram Philipps under the agreement of the 24th February, 1926, was £12,065 0s. 3d.; that the Tongariro Company would reimburse to Mr. Philipps certain other payments made by him, estimated to be £2,580; and that the Tongariro Company would, in addition, pay to Mr. Philipps the sum of £15,000, subject to discount as therein provided. Now, that £15,000 was the amount which Mr. Grace in his memorandum proposes to allow Mr. Philipps nothing for. I maintain, sir, that there was an agreement with the Tongariro Company, and that amount is a debt owing by the Tongariro Company. So that the total amount is £14,700 and £10,900; and the documents which I will put in, if required, give the details.

The £14,700 claim includes the sum of £10,900 paid in respect of royalties ?—Yes.

And with reference to Western B ?—I would like to look up the statute again. I will not delay the Committee with the charge on Western B; I will look it up, and say something about it later on. Now, when the question of this £15,000 was raised by Mr. Grace he said that Mr. Philipps had formed a company with no capital, and, as there appears to have been some feeling about that, it is necessary to make an explanation. Mr. Philipps left New Zealand on the 1st April, 1926, with a view to forming in England a company. He was not forming it here, because it was English capital he relied upon. And on the next day—the 2nd April, 1926—notwithstanding that the Tongariro Company had on the 24th February, 1926—only a month or two before—borrowed from him £10,900 with which to pay royalties, they sent him a notice saying that in terms of clause 20 of the agreement of the 30th March, 1925, between him and them, they required him to forthwith incorporate a new company. Well, Mr. Philipps was at sea at the time, and he wrote from Suva to my firm saying that he had got this cabled notice; that it was entirely unexpected; that he thought he should be allowed at least two months in which to get to England and see his financial friends. If, however, the Tongariro Company would not allow that delay, could we incorporate a company ? Well, we applied to the Tongariro Company for further time, and that was refused. In order to comply with the notice we did form in New Zealand a company which, at the time, had no capital, or next to none, because the capital expected was in England. There was in England at that time a committee known as the Trades Facilities Committee. It was formed for the purpose of lending money for colonial enterprises where the promoters of the enterprise would agree to purchase goods and material required in England. It was formed under the ægis of the English Government of the day, with a view to keeping local industries going to as full an extent as possible after the war. Well, sir, Mr. Hichins, the Chairman of Cammel, Laird, and Co., had something to do with that committee, and I think it was he who started the financial arrangements for the construction of the railway. When Mr. Philipps took over the concession he continued that arrangement through Cammel, Laird, and Co. for the supply of material from England and the advance of money from the Trades Facilities Committee. That is why he wanted to form his company in England and not here. So that there was not only the capital arranged for with the Trade Facilities Committee, which, as far as I recollect, was limited to £150,000, but there was the capital arranged for by Mr. Philipps himself and his friends. After Mr. Philipps got to England he received from us information as to the establishment of this company in New Zealand, and decided he would make use of it.

Is it necessary to go into all this ?—Well, sir, I will leave it for the Committee to say. But there is no question that it is part of Mr. Grace's scheme to eliminate part of Mr. Philipps's claim. So long as there is no question of crossing part of his claim out according to the suggestion made by Mr. Grace, I am quite content to make no further reference to the details.

But that is Mr. Grace's scheme ?—But, sir, if the Committee take the same view as Mr. Grace and the Duncan syndicate, it will mean the omission from Mr. Philipps's claim of this sum of money. There was another reference in Mr. Grace's memorandum which, although I do not think the Committee will be influenced by it, I must refer to. Mr. Grace said, as far as I recollect, that the Armstrong, Whitworth, representative came to New Zealand, looked round, did nothing, and sent in a bill. That Cammel, Laird, and Co. did the same; that Bertram Philipps did the same; and that the only work done was performed by the Duncan syndicate, with the result that in Mr. Grace's order of sequence of the various claims he puts the Duncan syndicate at the top, to be paid in full, and he puts Mr. Philipps near the bottom, to be reduced by approximately 50 per cent. The result of that would be a complete reversal of the legal position. If the Tongariro Company were in liquidation, the liquidator would have to prepare a list of claims, and Mr. Philipps, as a secured creditor, would be right at the top, and the

Duncan syndicate would be right at the bottom. Mr. Philipps has, in addition to his mortgage security, £27,000 first-mortgage debentures equivalent to those held by Mr. Grace, forming part of the £80,000 issue. I know of nothing that puts Mr. Philipps down below any of the other debenture-holders of that issue. I have always understood that they were all equal. That is the position we would endeavour to maintain if the company was in liquidation. The result of putting Mr. Philipps down in the way proposed by Mr. Grace would be that he would get 5s. or 6s. in the £1 on his whole claim on the Tongariro Company. But the Tongariro Company's own claim is put in as £60,000, and is then halved, with the result that the shareholders would get 20s. in the £1 on the actual amount of cash that they subscribed. I do not want to keep the Committee any longer, beyond saying that the £10,900 advanced for royalties is, I respectfully submit, a charge upon the bush itself, which is there uncut, and we should be repaid that amount in full. The remainder of the claim is a debt due by the Tongariro Company for which Mr. Philipps has certain securities, which I ask should be recognized reasonably and fairly according to the order in which the various claims are allowed to rank.

W. H. CUNNINGHAM examined. (No. 6.)

The Acting-Chairman (Mr. Williams).] What is your full name, Mr. Cunningham ?—William Henry Cunningham.

You are a solicitor ?—Yes, sir.

And who do you represent ?—I represent the Armstrong, Whitworth Co., and also the Anglo-French and Belgian Corporation, which has a small claim.

Will you now proceed ?—Yes, sir. I am grateful for the remarks which Mr. Cooke made yesterday in reference to Armstrong, Whitworth's claim, and I confirm absolutely what he says, because he personally knows a good deal more about the detail work than I do. I took over the claim for the reason that he gave, that he did not feel he could act for two parties whose interests might conflict. Now Armstrong, Whitworth's claim is based, first of all, on an agreement which is dated the 20th October, 1922. It was made in England between Sir W. G. Armstrong, Whitworth, and Co., Ltd., of the first part; the Tongariro Timber Co., Ltd., of the second part; and Edmond Tudor Atkinson, of the third part. The negotiations leading up to this agreement were conducted by Mr. Tudor Atkinson in England. Under this agreement Sir W. G. Armstrong, Whitworth, and Co., Ltd., agreed to construct a railway in accordance with the Order in Council of the 12th September, 1921, upon the terms set out in the agreement, and to find the money required to provide for the cost of construction of the railway. The moneys so found were to be repayable by the company within twelve months of the completion of the line, the construction for purpose of payment being divided into two portions —the first eighteen miles to be paid for within twelve months of the completion of such eighteen miles, and the further twenty-two miles to be paid for within twelve months after completion of that particular portion. The agreement to construct the railway was entirely conditional on the part of the Sir W. G. Armstrong, Whitworth, and Co., Ltd., on the result of a preliminary survey of the proposed line and the examination of the value of the timber in the Northern and Eastern Divisions. In terms of clause 13 of the agreement Sir W. G. Armstrong, Whitworth, and Co., Ltd.'s, representatives were to be sent out forthwith to make the necessary survey and examination, and to report the result to England. Clause 14 provided that, in the event of the contractors determining not to proceed with the contract, their costs, charges, and expenses of the investigation were to be paid by the company, and were to be secured by a mortgage of certain of the company's timber interests and the land granted or to be granted for the railway route. A memorandum of mortgage was subsequently executed by the Tongariro Company under its seal, dated the 14th April, 1923, and a caveat was duly lodged by Sir W. G. Armstrong, Whitworth, and Co., Ltd., against all the titles affected by the mortgage to protect the interests of the mortgagee. At the end of 1922 representatives were sent by Sir W. G. Armstrong, Whitworth, and Co., Ltd., to New Zealand, amongst whom were Colonel Wilson, Colonel Greenhough, Sir Edwin Cornwall, and Mr. Geard from the staff of Messrs. Roney and Co., the company's solicitors. These representatives remained in New Zealand for a good many months, and examined every aspect both of the railway construction and the proposed development of the timber rights. A tremendous amount of work was involved in investigating not only the company's concessions and titles, but also the value of the timber and the prospects of successfully placing the timber on the market. After the fullest investigation and after negotiations extending over many months Sir W. G. Armstrong, Whitworth, and Co., Ltd., decided not to go any further. A formal demand under the mortgage for their expenses to date was served on the 25th February, 1925. The amount demanded was £13,171 11s. 6d. I am handing in the details of this claim. In terms of the mortgage, interest is payable on the amount secured at current rates, in default of agreement between the parties. It is submitted that, as against the Tongariro Company, interest at 6½ per cent. would be fairly claimable since the 25th February, 1925, on the amount secured by the mortgage. This, taken on the amount claimed, for five years amounts to £4,275, approximately. The exact amount which is due to Sir W. G. Armstrong, Whitworth, and Co., Ltd., has never actually been settled between the parties, the Tongariro Company not being altogether satisfied that it has not been debited by Armstrong, Whitworths, Ltd., with expenses some portion of which is properly chargeable against other jobs Armstrong, Whitworths then had in hand or in anticipation in New Zealand. That is the position so far as the Armstrong, Whitworth claim is concerned.

Hon. Sir Apirana Ngata.] In regard to that last point you raise, you say the amount has never been actually settled ?—Yes. That was as between the company and Armstrong, Whitworth. The company was not absolutely satisfied with the details available, and, apparently owing to the unfinancial position of the company, they did not bother to go further into it.

You say the amount is £13,171 ?—Yes; that is approximate. I have the details here, and they will be handed in. The only other point is the position of the title to the interests of Armstrong, Whitworth's mortgage. I am not familiar with the details of the title, but my friend Mr. Cooke, who has made an examination, states that Armstrong, Whitworth have some claim on some portions of the title, and, as mentioned by Mr. Izard, in his opinion to the Board, probably it may be found on that account alone that Armstrong, Whitworth may be or should be given some consideration for discharging their claims against those particular titles. I do not think I need at this stage go into the question of how much has been done by Armstrong, Whitworth, but I do rather resent the remarks which Mr. Grace has made in regard to them, and I am quite sure that the Committee will not take those remarks seriously. I do not think he meant them seriously. I have a copy here of the actual mortgage; perhaps it will be as well to put that in also. I now come to the claim of the Anglo-French and Belgian Corporation, Ltd. This is a claim which came out through Armstrong, Whitworth, and is apparently based on a contract dated the 7th November, 1922. Unfortunately the records I have do not contain a copy of that agreement, but the details of the claim are here. They claim for remuneration at the rate of £1,000 per annum, payable quarterly from the 1st November, 1922, to the 1st August, 1924 (end of quarter in which negotiations broken off), £1,750; out-of-pocket expenditure—agreement stamps and stamp on power of attorney to Dr. Chapple, £11 6s.; cables and telegrams, £2 4s. 2d.; travelling-expenses, £30 1s. 10d.; and stationery and postages, £5: making a grand total of £1,787 17s. 6d. I think that may have something to do with this corporation that was alluded to yesterday by one of the speakers, in reference to an Anglo-Belgian Corporation which was considering the railway proposition. This has probably something to do with the financial arrangements at Home. I do not know whether the solicitor for the company can give you any information on that point.

Mr. Perry: No. With regard to this claim I am instructed by the company that no formal claim has ever been made on the company by the Anglo-French and Belgian Corporation. No record of this claim can be found in the books of the company.

Mr. Cooke: May I say a few words with regard to that. It is really not my province, but I may say that when we were making the Armstrong, Whitworth claim there was also a claim made on the Tongariro Company on behalf of the Anglo-French and Belgian Corporation. I think it was made contemporaneously with the Armstrong, Whitworth claim. It was made a separate claim, but contemporaneously.

Dr. Chapple: Perhaps I may explain what took place when I was in London in regard to the Anglo-French and Belgian Corporation. Sir Ernest Roney, of Armstrong, Whitworth, and Co., is also a director of the Anglo-French and Belgian Corporation, and when Armstrong, Whitworth decided to withdraw Sir Ernest Roney was so impressed with the prospects and possibilities of the Tongariro proposition that he submitted it to his own board of directors in the Anglo-French and Belgian Corporation, and they thought so well of it that they made inquiries from me about it, and entered into negotiations to see how far they could get in taking over Armstrong, Whitworth's contract. These expenses apparently were incurred in those investigations.

JOHN LINDSAY WEIR examined. (No. 7.)

The Chairman.] On whose behalf do you appear ?—The Egmont Box Co., Ltd., which comes before the Committee on a somewhat different basis to the other claimants. It is a different kind of organization to the other companies that have given evidence. It is really what is known as a co-operative company, and is formed not of individuals, but of companies, its membership consisting of fifty-seven dairy companies, comprising practically every dairy company of any moment in Taranaki and one or two in Wairarapa. The dairy-farmers of Taranaki have a capital of £188,000 invested and locked up in this concern. It was formed over twenty years ago solely for the purpose of providing timber for the dairy industry, to enable the cheese and butter to be shipped Home. The company makes no profit of its own, but operates solely for the use and benefit of the dairy enterprise. The company, in pursuance of its objects when formed, in 1914 entered into an arrangement for the first time with the Tongariro Timber Co. for the purchase of considerable areas of bush alongside the latter's line. The agreement of 1914 was duly executed, but, owing to the unfinancial and somewhat dangerous position of the Tongariro Company even in those days, we, as solicitors for the Egmont Box Co., required that legislation should be passed in order to safeguard the arrangement we had made with the Tongariro Company, and in pursuance of that arrangement there was passed on our behalf section 5 of the Native Land Claims Adjustment Act, 1914.

Hon. Sir Apirana Ngata.] It would shorten matters very much if we accept the statements on the file as to your present position regarding the first two points. The third point you might address yourself to is as to the position of the block known as the Western A or Whangaipeke Block, and whether that is a good lease. That will still leave a number of small points to be cleared up as between you and the Land Board or the Native owners. I am personally more interested in that question than in hearing the substantiation of the larger claim, which the Board acknowledges.—I thank you for the suggestion, because it will shorten my address. The company's claim is really threefold. The first is that we have claimed the timber rights in the Whangaipeke Block, and that claim, I think, is now admitted; secondly, we have a claim of £25,000 as a guarantor of a series of debentures for £26,000 which were issued by the Tongariro Timber Co. in 1920, and which when that issue was launched out to the public was guaranteed by the Egmont Box Co. The reason for that issue was that at the time we took over the block there was an old issue of debentures to the extent of £15,000; and it was in the terms of the legislation that we agreed to in the first instance, and again in 1919, that we had to obtain the consent

of the Aotea Land Board before the Government would issue the Order in Council validating the agreement. But we found that in regard to the series of £15,000 worth of debentures the owners refused that consent. We also found that a lot of those debentures had been issued to various people for expenses—solicitors, surveyors, and such people—who, instead of receiving money, had been given debentures; also, the amount comprised a further sum of about £4,000-odd which had been paid for royalties to the Natives. That being so, the debenture-holders refused to carry on any longer, and we got over the difficulty by raising this sum of £26,000 on first issue. We paid them then, I think, £15,000, or between £15,000 and £25,000. I think that £2,500 had been prepaid in royalties, and the rest went in stamp duties and solicitors' costs, which had been incurred under the agreement whereby we derived our cutting-rights, and, naturally, those concerned would not go out until they were paid. We disbursed this sum, and I managed to keep it down to the £25,000, and thereupon saved £1,000 on the issue. Under our guarantee those debentures were for a term of seven years, and they became overdue in 1927, and they are overdue to-day. Quite a number of debenture-holders have claimed under our guarantee, and our company has been compelled up to date to pay a very great proportion of the debentures. As to the remainder that are still outstanding, the holders are now clamouring for payment, and in the near future we shall probably have to pay those claims too. These debentures were secured on the royalties of the Western A Block, known as Whangaipeke; and also, I think, over the land the Tongariro Company waived their rights to, as far as they did, for five miles.

The Chairman.] That would be the first five miles?—Yes, from Kakahi, on the Main Trunk, to the Whangaipeke Bush (Western A), five miles from Kakahi; and about £2,500 of the £25,000 was for prepaid royalties.

Was that for royalties over this one particular block, or over the whole area?—I do not know. When we went to the Aotea Maori Land Board for its consent to the 1919 agreement the President of the Board wrote to the Tongariro people and said that one condition of the assent was that they should pay £2,500 in royalty, and at the request of the company I deducted that sum from the £25,000; but I do not know the basis on which the royalty question in general is arranged. Roughly, the £25,000 that we have guaranteed went in this way: About £19,000 went to pay the original debentures, plus the accrued due interest. The balance was paid to the parties to clear our title; and I therefore submit to the Committee that the Whangaipeke Block tenure has benefited to the extent of the amount we are liable for under that heading, and that, if it has been receiving the benefit, then whoever has the block has also benefited.

Hon. Sir Apirana Ngata.] You kept your agreement substantially right to the final word?—The attitude I take up as far as the legal aspect of the matter is concerned is this—and I rely on the legal standpoint: that the title to the block and the moneys coming to us on account of railway-construction are secured under the terms of the agreement and legislation; and I gather from the opinions we have had that that is also the view held by the Solicitor-General. But I think there is a question with regard to the debentures for the £26,000.

Secured on your lands?—Yes; but I do not agree with the Aotea Maori Land Board on that point. In so far as we have a legal title, it is, of course, desirable to retain it, and the suggestion I propose to make is made without prejudice to any legal position we may have, and with a view to helping all round. My third claim is one for £18,746 as at the last interest day, that is known as the "railway-construction money." The origin of that claim was brought about by the fact that in our 1919 agremeent the Tongariro Company undertook to build the first five miles of railway as rapidly as possible.

A Member.] Over what land does that railway go?—From Kakahi to Te Rena. The railway between Kakahi and Te Rena does not touch any of the Tongariro ground at all.

Whose land does it go over?—It went over the papa kainga (Taurewa Block).

Is that freehold or railway right?—Two miles is the freehold; afterwards it is held generally under railway right—some deed given by the Railways Department. For the next three miles there is a freehold strip; and, incidentally, we hold that freehold strip on mortgage security for our railway construction.

Mr. Langstone.] But none of the line has been constructed?—Yes; we have done a very large quantity of formation work. Rails have been laid for getting our timber out, and the material has been bought for the bridge over the Whakapapa. The origin of this third claim was due to the fact that we had to get access to the block, and we arranged with the Tongariro Company to build the railway as quickly as possible. But they had no money, and we undertook to find it for them for that first five miles of line. We proceeded to obtain it, the amount to be secured to the Box Company by a charge over the royalties of the block, the freehold strip on the line of railway, the railway rights for the first two miles, and any extension thereof. These securities were arranged between the two companies, and the Box Company built a portion of the line, at any rate, on that security.

Hon. Sir Apirana Ngata.] Is that amount a charge on Western A Block?—Yes, on the royalties of the Western A. Also, by virtue of the 1914 legislation, I think we can suggest that we have a claim on B as well, because this clause in that Act recites: "In respect of all moneys which shall be or become payable to the Egmont Box Company, Limited, under the said agreement of the ninth day of September, nineteen hundred and fourteen, such company shall, in addition to the security agreed to be given by the Tongariro Timber Company, Limited, over the lands on which the said railway is to be constructed, be entitled to a legal charge on the lands specified in the Fifth Schedule to the said modifying agreement dated the twenty-fourth day of October, nineteen hundred and thirteen, but only to the extent of the rights and interests expressed." The lands comprised in that schedule contain Western A and B, and to that extent we may have a claim on B, although we have never seriously looked for it. In any case, Mr. Bertram Philipps, if we were called upon to find

the money for that railway, would also be called upon to find it, he having taken over the obligations of that 1919 agreement.

Did you get anything for the railway; or did Mr. Philipps get some of it?—No, because this is money actually expended. We admit that the money comprised in this amount of £18,746 is money actually expended, and interest accruing to date at 6 per cent. We assigned all the rights under the agreement, and if Mr. Philipps had shared in the expenditure of that money on that railway he would be the creditor to the extent so involved.

Mr. Langstone.] Have you paid the royalty in respect to the timber you have been cutting in the meantime?—We paid, on taking over the block, a deposit of £15,000, which was to be considered prepaid royalty, or an amount paid for royalty in advance. Roughly speaking, we gave about £9,000 or £10,000 in royalties on the block, for which we received credit—that is, we got the timber and did not pay anything, because we were already paid; so that when Mr. Philipps took over the block he had to pay to us on the present rates the difference between what we had received for the block and the £15,000.

You paid £15,000, and there was the interest, £10,000; then there was the old £5,000 which Mr. Philipps had paid to your company. Is that the position?—Yes, or he will pay. He has paid a portion of that; and so we claim, therefore, that this £18,746 is money we have been paying for the construction work in accordance with our covenant with the Tongariro Company; and in the furtherance of the object with which that railway was to be built we have done as much as we possibly could, and whenever we were asked for money we paid it, and it was never held up as far as our Box Company is concerned. They were all anxious to get that money, and we contend that by virtue of the legislation and the agreement we have a legal claim against the Board in respect of that sum. Although the amount includes interest, it cannot be looked upon as profit to us, because, unfortunately, our company has to work upon an overdraft, and, while we are only getting 6 per cent. from the Tongariro Company, we have, of course, to pay the usual bank rate. So that we have lost on the transaction, and therefore in justice to the company we wish to make good our claim to the amount of railway construction.

Hon. Sir Apirana Ngata.] There is a further point in that regard. Supposing that we admit the question of the apportionment of the amount for royalties, what would be the apportionment for the Western A and the Western B?—I do not know.

Would not that question arise?—No, sir. But I think that it applies to a railway for the whole block. It was the start of the railway to go through to Taupo.

And the question was the development of Western A?—Of Western A only as far as our requirements were concerned. Having bought it, we naturally wanted to get into it, and in doing so we started a railway to go to Taupo, when it would go through the whole block; so that, if that charge is to be admitted it should be over the whole block, unquestionably, and not over a particular portion. That is my opinion; because the railway could not have been started otherwise; and if the line were being built to-day you would have the advantage of all that portion of the money which has been spent on that track. The formation work has been done practically over the whole five miles.

What kind of work?—The bridge-girders, ironwork, and practically everything else, is lying there; and I have no doubt that whoever obtains that block will get the benefit of the expenditure, and therefore I claim the full amount under that particular heading. Our claim is a threefold one: First, we wish to get the title to the timber rights of the block, and I think you will admit we have right on our side in respect to that claim. We claim £25,000 owing on the debenture issue, and we claim £18,746 for railway-construction works. Some time ago, when the Duncan syndicate was being organized, we brought this matter up, and as the result of the negotiations—I intend to be quite frank—we agreed to write off £5,000. Of course, as you know, that matter went no further; and I am instructed by my company to say that we make the same claim in that respect as we would have made to the Duncan syndicate. On behalf of the dairy factories of Taranaki we are prepared to give the benefit to the Government to no less an extent, and we will write off £5,000. I make that offer so far as the debenture issue is concerned—that is to say, the debenture issue shall be paid up to £20,000. You can put it towards the railway-construction work, and provide us with a good title to the block. We will repeat the offer made to the Duncan syndicate, and will be prepared to write off £5,000. I wish to point out—and I do not do so in any way to draw invidious comparisons—as far as other obligations are concerned, as they have treated my claim and my company with every respect—that the concession I am making is somewhat greater than appears in this claim. The claim we are making here to-day does not represent one penny-piece of capital at any time, but it was cold money that has gone out of our pockets; and we are prepared, even in the face of that fact, to write off another £5,000. We have not charged the Tongariro Company with any legal expenses of any kind; and when we were brought into contact with Cammell Laird, Armstrong Whitworth, and other people, we paid their costs. So that, in making that offer, I suggest to you that we have a right to do so, because our actions and our conduct throughout the whole undertaking bear out that our position has been based on proper motives.

As to the debenture claim: if you get your right to Western A, would that not settle that claim?—I am not sure. That matter is full of legal difficulty, and I am somewhat doubtful about it. I do not know whether I am right or not, but I look upon this notice of cancellation that has been initiated, and which has taken effect although we received the benefit, as a rescinding of the Tongariro Company's rights, determining anything they may have in the block. Those debentures are expressly charged upon the Tongariro rights in the block, and if this cancellation takes effect in the way I think it might there will be a charge made for the debentures. But it is a legal point and I prefer not to express an opinion.

It is an important point as far as the owners of the Whangaipeke Block are concerned, is it not ?—We cannot make good at present, as, unlike the rest, we have no clear title.

That is where your offer to write off £5,000 comes in. You have a right there, have you not ?—We have the added right with the others; but it is not the case that we are writing off any profit. We are writing off cold cash, and, naturally, the Duncan syndicate was prepared to accept that offer; and I make the same suggestion to you to-day.

So far as the Natives are concerned generally, £2,500 reaches them in cash, and £18,000 was spent on the railway, which, under the original agreement, was an immense benefit. Is that not so ?—That is correct.

Mr. Langstone.] I suppose that if you still keep on cutting on the block you will have to pay this royalty on the balance of that standing timber ?—The position will be this: Mr. Bertram Phillips purchased our interest in that block, and we sold it to him at exactly what it cost us—that is, with no difference between the royalties held, the roading we put in, and so forth. Roughly, the purchase price was something between £13,000 and £14,000. Mr. Philipps has paid £6,000 due on that, and there remains two payments still to be made of the balance, between £3,000 and £4,000. I take it that if the title is granted the Aotea Maori Land Board—the Government—will create a fresh title in respect of the block, offer the rights to Mr. Philipps, and allow him to go on with the cutting. If he does that, he will, of course, have to pay the Board 3s. for every 100 ft. before he would be entitled to deal with the £5,000 in connection with the timber, and the balance will go to the Natives.

That is to say, that the debentures of £5,000 would go to Mr. Philipps, and 3s. royalty for every 100 ft. would be paid to the Natives as their share ?—Yes. The reason I think the £20,000 of debentures ought to be paid by the Board or the Government is because they will eventually have to get from that timber the 3s. which will go to pay those debentures.

How much timber do you think there is there ?—We have taken it at over 69,000,000 ft., and we have worked out the royalties, at the rate of 3s. per 100 ft., at about £10,000.

There is ample security left on that basis ?—I take it to be so.

In your opinion, if the Government liquidates your claim of £18,000, would they be justified in charging that amount to the Native owners, seeing they paid it out and the Natives received an actual portion of it ?—Most certainly I think so. I think it should be charged against the railway-construction and to the Natives owning the block. It would not amount to very much, and would be to the advantage of the railway in the future. The Natives might have to increase the royalties. In other words, we put on nothing that the block would not be able to pay back.

The Chairman.] Do you wish to add anything ?—May I say that if I had made a claim on the block for my £25,000 of debentures 3s. per 100 ft. in royalty would go towards the payment of that sum. If you pay my debentures, the 3s. will go for the distinct good of the Natives, as against the 1s. they were getting before. It would require a new agreement between the Aotea Maori Land Board and the Box Company. It could not apply to Mr. Philipps, because he has not made any payments on account of his balance for some time. I am quite sure that my company wishes it had never seen the Tongariro Timber Co., because we have had nothing but trouble since 1914.

The Committee adjourned at 11.30 a.m.

FRIDAY, 15TH AUGUST, 1930.

Dr. CHAPPLE examined. (No. 8.)

The Chairman.] Will you now proceed with your statement, Dr. Chapple ?—Mr. Chairman, and gentlemen of the Committee, I realize that we are here to-day under the good will of the Government, and that we cannot base our claims on any legal right now, but only upon our moral right; and we are therefore seeking to present and justify our claims in equity and good conscience. I realize that the whole of the affairs of the Tongariro Company are in the melting-pot of good will. Before I come to the specific claims which I am making on behalf of myself and Miss Wright, I would like to make a few preliminary observations. First of all, I would like to draw the Committee's attention to the enormous value of this property. We are not dealing now with a dead horse, but with a very live elephant.

Mr. Langstone.] Not a white one ?—No; it is a very capable good working-elephant. It is very rarely that a Committee in New Zealand has to deal with so valuable a property as this is, which is not either in liquidation or has a number of losses which it is called upon to repair. It is dealing with a property that has enhanced in value by six times its original value when the contracts were first signed up. The Forestry Department has comparatively recently valued it at £3,747,500 in royalties alone, apart from the freehold of the land. Captain Ellis told me that it was the best exploitable forest he had ever seen in any country. The sawmilling combine which entered into a contract with the Duncan syndicate to purchase 800,000,000 ft. of timber for £2,500,000 in royalties and freight spent a considerable time camped in the forest, and when they came out after their investigation was complete the head of the combine—which consisted of twelve different mills—told me that they had agreed that the forest was a "saw-miller's dream." Sir Francis Bell, the late Minister of Forestry, told me that the Government had always held Tongariro too cheaply; that they did not realize it was so valuable. He said they had no conception of its real value. The Duncan syndicate was going to pay 10 per cent. interest for twenty years on their railway debentures,

with a bonus and participation in profits, and pay 20 per cent. in dividends. And Mr. Duncan told me that in his estimates he had kept 20 per cent. up his sleeve. Within the last twenty-four hours the value of this property has enormously increased by the new tariff which now safeguards the timber forests, and the State's revenue from them, in this country. It is one of the most amazingly rich properties that the New Zealand Government has ever dealt with. To the Dominion it is much more valuable than it was going to be to the Duncan syndicate. The Government will not have to pay 10 per cent. for the money to exploit and develop it. It will not have to complete the railway. Roads will serve the Natives better, and will open up not only £3,747,000 worth of the last remaining totara and matai forests in New Zealand, but they will open up 150,000 acres of land as well which the Crown's land officers have already reported as of good soil intermixed with humus, and capable of being cut up into dairy and sheep farms. And if the Government chooses to do so it can, through the Prime Minister, when in London, get all the money it requires for the development of this wonderful property from the British Government at 2½ per cent. and make this area the garden of New Zealand. There are great and beautiful open spaces through the forest that can be settled at once as soon as roads give access. If the Prime Minister enters into communication, on his arrival in London, with the Overseas Settlement Committee, he can get £1,000,000 for this purpose at 2½ per cent. It is just a matter of arrangement with Mr. Thomas, who is now the Secretary for the Dominions, as to what proportion of British settlers to New Zealand settlers can be put upon that area when it is ready for settlement. The Government will be able to find this money in any case at the cheapest possible rate; and, as I have already stated, the Government will not have the railway to complete.

The Chairman.] We have to inquire into what has taken place in the past, not as to the prospects for the future?—I am coming to that. I am endeavouring to show that the small amount of the total debts upon this property is a mere bagatelle as compared with its enormous value. We do not want to give it up. The real source of all the trouble is the enormous value of this property. The Natives want it back; the Duncan syndicate wants it; the Tongariro Company wants it; and the State wants it. The State would not be taking it over now unless they saw its value.

Hon. Sir Apirana Ngata.] Is the State taking it over?—There was a report from this Committee recommending the State to take it over last year, and the State passed an Act to take it over. The State decided by Act of Parliament last year to take it over.

I must object, Dr. Chapple, to your using the words "to take it over." The Act only makes provision to take it over if necessary?—Quite so, sir. I agree that it is to make provision for taking it over. I accept your correction. I am afraid my oratory must have rather carried me away. I will try and not overstate the case.

The Chairman.] It is facts rather than oratory that we require?—It is the facts that I will endeavour to give. But it must be remembered that we have spent our money to open up the whole of that tremendous area, and to enhance the value of this property, and we expect and are hoping that the Committee will give us fair compensation. I am showing that there is no reason for the Government being niggardly over these comparatively small claims, considering that the advance royalties already paid by the company to the Natives represent in value something like £320,000 for timber still standing, and even that is of small significance as compared with its total value. Now I will say a word or two upon this memorandum of Mr. Grace before I come to the specific claims I am placing before the Committee. The first noticeable thing about this memorandum, which I think is an accurate and eminently fair document, as far as I am able to follow it, is that it is based upon the arrangements made by the Duncan syndicate with the Natives. The Natives, I imagine from this document, are content to accept what the Duncan syndicate was willing to give them under the arrangements made. Now, that is a very generous thing on the part of the Native race. They have been extraordinarily patient in this matter. They have been kept out of their full royalties throughout all these years, and they have exhibited a patience, almost an indulgence, which results from the generosity so characteristic of their race. Now, these arrangements with the Natives are based upon the Duncan syndicate's arrangements, and if the arrangements with the Natives are based upon that there is no reason why the arrangements with the creditors should not be based upon that too. I do not see very well how a creditor can come here before this Committee and ask for more from the Government then he was willing to accept from the Duncan syndicate. Now, if the plan suggested in this memorandum is adopted, all the profits that were going to the Duncan syndicate are now going to the State. If this plan is adopted, and the Government can secure all this property on the terms arranged by the Duncan syndicate, the whole of the profits in that great concern are going into the hands of the State for nothing. They were going to reap the whole of the unearned increment of this valuable property. Now, what does this memorandum state? It states: "The proposal is that the Native timber be acquired by the Crown at a flat rate of 1s. 8d. per 100 log feet. This is the price they would have secured under the Duncan project, and they cannot conscionably be asked to accept anything less than that." I quite agree. Now, if the Government acquires this property on this arrangement, all those profits will go to the State. And what are those profits? The Duncan syndicate was going to pay 10 per cent. interest for twenty years to all the investors, together with a 20-per-cent. dividend and participation in the profits. And Mr. Duncan told me that he still had 20 per cent. up his sleeve; so that it was still more valuable than was represented on the face of the Duncan project. As a matter of fact, 800,000,000 ft. were sold to one combine of sawmillers in this country for £2,500,000.

Hon. Sir Apirana Ngata.] I am afraid I must question that. Was there not to be a prospectus issued in connection with that?—This contract was made by the Duncan syndicate with the sawmilling combine and signed subject to the consent of the Government. And the issue of the syndicate's prospectus was justified, because it was out of the profits of this sale that the Duncan syndicate was going to make the 20-per-cent. dividend and the profit it still had up its sleeve. Now, what I suggest is that, the value of this property having been demonstrated and its results being assured, the Government be asked to make provision for those whom it has dispossessed of this property.

The Chairman.] How ?—By compensating for their acquisition of the concession.

The question before this Committee is to secure evidence in regard to certain payments. That is what we want. We want to go into these claims ?—I am dealing now with the general claims of over £300,000 incurred in connection with this property in the last twenty years, during which time it has risen in value six times.

Will you explain what was done during the first few years ?—Yes, I will explain that. The Tongariro Company spent the first two or three years after 1910, when the documents were completed by the aid of the Native Land Board, in surveying and measuring the whole of the blocks, and surveying the routes for the railway. They had to make several preliminary surveys. That work took until about 1914.

When was the contract signed ?—The contract was signed in 1908 and completed in 1910. During that time they were measuring the whole of this vast forest of 60,000 acres and surveying the railway routes; and during that time they spent the whole of their capital of £25,000 on this preparation. Then they went to London to raise money. A very distinguished and wealthy timber-merchant, a Norwegian, in London, told me the whole of the facts of the case. He told me that all the money was subscribed, but when the war broke out all the money handed in had to be returned and all the documents cancelled, and so the whole thing fell through. But that was not the fault of the Tongariro Company.

Hon. Sir Apirana Ngata.] Those four years seemed a very long time ?—Well, sir, those years were spent in doing the preliminary work, and the cost was £25,000. They had plenty of time to get the money to fulfil their contract in time if it had not been for the war. The war stopped them. And then the Tongariro Company applied to the Government for the moratorium that was given to everybody else in the country. It was not a special moratorium for the Tongariro Company. On the 11th October, 1915, the moratorium Act was passed, and that moratorium Act entitled the Tongariro Company, after the termination of hostilities, to an Order in Council fixing the time for the completion of the railway. We were entitled to that as soon as the war was over—to have the period fixed for the completion of the railway. But the Government kept the Tongariro Company waiting three whole years before issuing that Order in Council, during which time they were trying to buy the concessions from Mr. Atkinson.

The Chairman.] What Order in Council are you referring to ?—The Order in Council of September, 1921. The Government kept the Tongariro Company waiting all that time. I was attorney for the company in London, and I was kept waiting eighteen months. I could do nothing with my financial friends until the Order in Council was issued. We were never able to say that we had our concession, because that Order in Council was consequential upon the moratorium Act of 1915, and had not been issued.

What was the moratorium for ?—It was caused by the war. It protected the Natives.

How did it protect the Natives ?—The Natives had a contract, and they were perfectly well satisfied with that contract, and if the Tongariro Company had been allowed to fulfil its obligations they would have done so.

Hon. Sir Apirana Ngata.] The Natives were starving ?—Then the Government was responsible for their starvation.

You say the moratorium was made to protect the Natives ?—Yes, and also the Tongariro Company. It was not a moratorium granted as a special concession to the Tongariro Company. Moratoriums were granted to every one in this country.

The Chairman.] When did the moratorium expire ?—The moratorium did not expire until September, 1922. It specifically says so in the Act. Now, what I say is this: The Tongariro Company was not in default in the sense that they neglected in any particular to carry out their obligations, because they were not permitted to so do. They could do nothing until the Order in Council fixed the time for the completion of the railway.

Did not the Tongariro Company originally have a fixed time in which to build the railway ?—Quite so. The Tongariro Company had a fixed time during which they had to build the railway, which time was interfered with by the war.

The time had expired ?—It had not expired. It did not expire until 1916, at which period the war prevented the company from carrying out their obligations. Their preparations were all complete for carrying out their obligations.

Where was the cash ?—The cash was found in London in 1914, but when the war broke out they had to give back all the undertakings. When the Tongariro Company applied to the Government for the moratorium, it was the only time they ever applied to the Government for a concession, and that was a war concession. Ever afterwards every appeal that the Tongariro Company made to the Government was an appeal to lesson the oppressive terms which the Government had imposed upon them. And then when the Order in Council was issued it raised the standard of the railway to such a height—to the Government standard—that it would have cost £9,000 more a mile; and that has been the stumbling block before the Tongariro Company ever since. I saw Sir Francis Bell on the 31st July, 1922, in London at Whitehall Court, and he said to me that Atkinson would never get the money. I said, "Why ?" And he said, "Because the railway conditions are too onerous." He was a true prophet. The railway conditions were too onerous. Armstrong, Whitworth, and Co. found them too onerous, and withdrew from their contract when they discovered those railway conditions set out in the Order in Council of 1921. Those railway conditions imposed such a standard upon the railway not in the interests of the Natives or in the interests of the company, but in the interests of the State. They imposed such conditions that Armstrong, Whitworth, and Co. refused to go on with the contract because of the cost. It would have cost £13,000 a mile, instead of £4,000 in the original agreement. Then the Anglo-French and Belgian syndicate came forward,

and they withdrew because of the cost of the railway. Then Cammell, Laird, and Co. came forward, and they withdrew because of the cost of the railway. It was then handed over to Bertram Philipps, and Bertram Philipps spent two years in London trying to get the money for that railway, and failed. The high standard of the railway was going to cost £13,000 a mile, without any prospects of revenue, excepting the carriage of timber one way. Then Mr. Coates, in a very fair and generous way, told Mr. Duncan that he would allow him to revert to the original standard of railway which the Tongariro Company had contracted to complete; and then in a few weeks Mr. Duncan was able to raise amongst his friends £240,000, the whole amount required to float his company and fulfil the Tongariro Company's obligations. And he offered to the Aotea Native Land Board the payment of all the arrears of royalties, and to go on with the obligations as soon as he could get the consent of the Government. And that consent had been consistently and persistently withheld. This Government has persistently and consistently refused every endeavour of the Duncan syndicate on behalf of the Tongariro Company, and every appeal to them to consent to the wish of the Natives. There was a unanimous resolution passed by the Natives. Something like four hundred Natives were present, and there was only two dissentients. The Natives considered their own interests in the matter, and wanted to get the £22,000. Mr. Duncan said he would pay them out of his own private account as soon as the Government's consent was given. It was the first time in the history of the Tongariro Company that the whole thing was a going concern. All the money was available, and terms were available to satisfy all the creditors and all the shareholders. At that moment the State steps in. At the same time, I must say that I approve of what the Government did. I heartily approve of the Act. I consulted my friend Sir Robert Stout, and he said to me, "Are you in favour of the State acquiring the property?" and I said, "I cannot object. No reasonable man can object to the State acquiring it; but if the State acquires private property, and dispossesses private people, then it should pay reasonable compensation."

Is it not a fact that the change in the standard of railway was provided for by an extension of time?—No. That is a fiction. I know that a number of members have that notion. It was not so. The extension of time was consequential on the moratorium Act of October, 1915, and we were entitled to it. It was a consequential provision, and this Order in Council was necessary under Native law provisions in order to fix the time.

Did the moratorium protect the company from any action whatever?—Yes. No action was taken against the Tongariro Company during the moratorium.

They were relieved of all responsibility?—Yes, of all responsibility and liabilities. In referring to liabilities I am referring to consequential activities. The war and the delay in issuing the Order in Council of September, 1921, quite paralysed the company as to raising money. As I told you, I was eighteen months in London, and I interviewed no less than forty-eight financial firms and persons in London, and placed before them the whole of the facts of this complex problem, and no one would look at it until the Order in Council was issued. I was asked at a great meeting of the Armstrong, Whitworth directorate what was the title to this property, and I said, "The title to this property is an Act of Parliament, and the honour of the New Zealand Government." I would like to be able to return and tell those men that an Act of Parliament and the honour of the New Zealand Government are a good title. I really want to be very explicit about this, Mr. Chairman, and I hope I have made myself clear that the Order in Council of 1921 killed the Tongariro Company. And Sir Francis Bell admitted it to me on the 31st July, 1922, when he said that no one would invest money to build a railway for timber purposes with the onerous conditions of a Government standard. The Armstrong, Whitworth Company withdrew, and all the others withdrew. And no one has succeeded except the Duncan syndicate, and they succeeded on the promise of Mr. Coates' terms. Mr. Coates recognized that it was only fair, if investors would not find the money for a Government standard railway, to revert to the old standard. What the original contract required was that the Tongariro Company should build the railway for timber purposes, and the specifications were for 30 lb. rails, with a track 3 ft. 6 in. wide.

The Chairman.] Was a time specified for the construction of that line?—Yes; I think they got to 1916 for the completion of part of the line to open up the forest; then they had to build twenty miles beyond the forest at a later period.

What portion did they build prior to the expiration of their contract?—Three miles of railway and two miles of earthworks.

What was the total length to be done by 1916?—I think, twenty miles. They entered into a contract with the Egmont Box Co. to do the three miles for them at the ultimate cost of the Tongariro Company.

For timber purposes?—That was their contract, and they completed three and did the earthworks for two, and put a large amount of plant and material on the ground for the purpose of finishing the five miles. That is all there now. The Box Company claimed £18,000 for the railway-construction, and they had, in addition, to build that railway with 30 lb. rails for timber purposes only. The Tongariro Company had paid their royalties right up to the date at which all those engineering firms reported that they would not undertake the work with the Government standard rail; and they have not been able to do it since. We were ready and willing to pay through the Duncan syndicate all arrears of royalty, but no one would do this until the Government gave its consent to revert to the original standard of railway. The difficulty had been got over for the Tongariro Timber Co., and the whole thing was a going concern when the Government stepped in and made provision to acquire it. Up to the time when the engineers reported to their respective firms that the thing was not a safe investment because of the standard of rail required, the whole of the royalties paid to the Natives amounted to £53,000, on timber worth six times as much as the royalties paid. So that the royalties already paid have bought timber for the Tongariro Company to-day worth £320,000, according to the

Government valuation—that is to say, £320,000 worth of timber is standing in that forest to-day owned in equity by the Tongariro Company, and paid for by them, and it falls into the hands of the Government if they acquire it. Not only does it fall into the hands of the Government, but the Government have been buying since 1920 this forest and freehold at £2 an acre. There are 19,000 acres of this land which the Government have been buying since 1920 up to date at £2 an acre, and £645,000 worth of timber is standing on the land bought, and will fall into the hands of the State.

Did the Crown purchase this land subject to any timber rights?—Yes; they have the whole of the rights over the land that they have bought from the Natives.

You mean when the Crown bought that land the land was charged with the sale of the timber on the different royalties?——

Mr. Grace: That is correct.

The Chairman.] Do you wish to refer further to that point, Dr. Chapple?—Mr. Grace confirms it. The Government bought land for £2 an acre subject to the right of the Tongariro Company to the timber upon it, and now that those rights are cancelled, £645,000 falls into the hands of the State for nothing, if they acquire it on those terms. Now, the £35,000 of royalty was found by me and my co-mortgagees in London. I have been dealing first with the Tongariro Company. My own personal claim and costs come in now. I was attorney of the company in London for five years, and I conducted the whole of the negotiations during that period with all the firms mentioned—Armstrong, Whitworth, and Co., the Anglo-French and Belgian Corporation, Cammell, Laird and the British Government. I found for Cammell, Laird £250,000, obtained from the British Government under the Trade Facilities at 5 per cent., to carry out their contract. I saw the Secretary to the Treasury in London and Sir Otto Niemeyer, who is now in Australia straightening up their affairs, and from that source I secured under the Trade Facilities finance up to £250,000 for Cammell, Laird. That information was published officially in the London *Times* of the 17th October, 1924, page 25. I carried out these arrangements on behalf of the Tongariro Company, Mr. Tudor Atkinson, as governing director, having full power from the board to enter into certain contracts with me personally. The first contract is dated the 24th November, 1921, and is as follows: -

> With regard to your remuneration for your assistance in obtaining capital to build the Tongariro Railway, I want to say that, on behalf of the company, I am prepared to give you just what you would have been entitled to under your expired option—that is, £25,000. I now confirm the undertaking that you are to receive £25,000 so soon as sufficient money is secured to build the railway to the eighteen-mile point.

I would have been entitled to the £25,000 when the Duncan syndicate found the money. I surrendered that right, and Atkinson undertook to pay me £2,000 a year as financial representative of the company in London, to date back from the original power of attorney I held from the company in New Zealand, and which was executed here. I have no wish to revive it now. The next agreement is dated the 24th June, 1922, and the following is the operating clause in that agreement:—

> If the £6,000 is found for the company by the said William Allan Chapple on or before the 30th June, 1922, this amount will be secured by a first mortgage of the timber in Western B, containing 154 million feet, and by a first mortgage on the equity of the timber in Western A, sold to the Egmont Box Co., Ltd., and being of an estimated value, after payment of existing mortgages, of about £25,000, and also by a mortgage over all the other interests of the company, together with a bonus of 6d. per 100 ft. as and when cut of the timber in Western B. Such bonus of 6d. to be reduced by 3d. if this latter amount is required to make up to 9d. any bonus payable for the advance royalty due on or before the 12th September, 1922. The rate of interest on this advance of £6,000 to be 10 per cent. per annum.

I may here say that unless the £6,000 had been found by the 30th June, 1922, the concession would have been forfeited. I had been unable to find the money to build the railway, and fulfil all the obligations of the company. It was necessary, therefore, to save the company from extinction and cancellation, and the clause in the agreement I have read indicated what was done. The bonus of 9d. was not required, and the 6d. remained. I found that £6,000 out of my private resources, and had to sacrifice a good deal of property in order to provide the cash to save the company from extinction. The 10 per cent., which may seem a high rate, was one which nobody else would accept. I could not get my friends to do it. Sir Haviland Hiley would not do it, and Sir Charles Skerrett said I gave hostages to fortune when I found that £6,000 on such precarious security.

Mr. Langstone.] You knew what you were doing?—I did it myself against the advice of everybody except Tudor Atkinson. That, then, is the history of my finding this £6,000 for the Native Board in time to save $3\frac{3}{4}$ million pounds' worth of property from cancellation, and Mr. Atkinson said in his report afterwards to the directors that this was very cheap at the price. It was a serious risk to myself that I should have to do it, but I did it with confidence at the time.

The Chairman.] I do not think there is much value in this. The question we have to consider is the position of the company, and it appears to be admitted as far as it is concerned that they were liable to reimburse you for those amounts. You have a splendid case against the company, provided they are in a position to meet it; but we have to consider whether the Crown should accept the liability of the company to discharge that account. I think that seems to be the position?—Thank you for that intimation. It enables me to add that this £6,000 did not go to the company; it never handled it; it went direct to the Aotea Maori Land Board to be put into the pockets of the Natives, and it bought six times as much timber, because it was paid to the Natives at the old royalty of 5d. per 100 log feet, which was the rate before 1926. In the second place, it paid for £36,000 worth of timber still standing there ready for the Government to exploit; and in the third place, it saved the company from extinction. Those are the three functions it performed, and for my performance of that function I was to get 10 per cent. interest for the money I raised, and 6d. royalty on Western B. That has never been varied since, nor disputed. That is the contract under which I advanced that

money. I am not going to stress my own personal claims further, but on behalf of the company, Mr. Atkinson wrote officially in a report to his directors on the 1st November, 1922, as follows:—

Through Mr. J. P. Houfton and Dr. Chapple himself ultimately came our salvation from disaster, since they found the royalty moneys, and thus enabled us later to negotiate the agreement with Messrs. Armstrong, Whitworth, and Co. In the meantime the date for payment of £6,000 to the Board (Aotea Native Board) as required by the Order in Council, approached without any apparent immediate prospect of meeting it; it was then that Dr. Chapple, by conversion of securities at considerable discount, found the £6,000 which, as you know, was cabled just in time.

The finding of the £29,000, to be paid and gazetted before 12th September, 1922, was also a hard and anxious task. Here again Dr. Chapple offered the help required, but was unable to finance his securities in time to make the cash available. Then Mr. Houfton came to the rescue. He was able to find the amount in cash, taking £14,000 on his own account, and lending £14,000 to Dr. Chapple, who handed his securities to him for this loan of £14,000. Miss Wright, a friend of Dr. Chapple's, advanced the £1,000, thus making in all the £29,000 required.

Mr. Houfton had gone away on a holiday and only returned in time to come down to London, accept an undertaking from me (4/9/22) that all that was required to be done in the way of signing of deeds would be done, and remit the £29,000 by cable on the last available day. The terms arranged with Mr. Houfton and Dr. Chapple for thus saving our company from disaster will be found set out in Exhibit "C." I want particularly to put on record Dr. Chapple's invaluable services. He has spared no time or trouble in co-operating with me to secure the best possible terms for Tongariro Company. He has a very full knowledge of all the properties, agreements, and timber information in all its branches; he and I have during this long period been in almost daily conferences and frequent interviews. He has sacrificed many other things in order to give his whole attention to our business. He knows a very large circle of influential men; he has always been ready to readjust his reward to the conditions under which from time to time we found ourselves, and his final rewards were my own arrangement with him. He found with Mr. Houfton the £35,000 (a sum considerably exceeding the company's paid-up capital) which saved our company from overthrow, and I must say that his rewards are fully earned. I am giving him a power of attorney to act for our company on my leaving.

With reference to Western B he says,—

Mr. J. P. Houfton, for advancing the £14,000 for royalties, is to receive this amount back within a year with 10 per cent. added, and, in addition, 2d. per 100 ft. log measurement on the 1,400,000,000 ft. in Northern and Eastern areas.

He further says,—

As to Dr. W. A. Chapple, his position is similar to that of Mr. Houfton as above, except only that he stands for £21,000 (of which £1,000 belongs to Miss Wright), but for purposes of reward this £21,000 receives 4d. per 100 ft. log measurement on the 1,400,000,000 in Northern and Eastern areas as cut. Dr. Chapple, however, is entitled, in addition, to £10,000 for his very special help in securing the contract, and in helping to settle the terms of the Armstrong, Whitworth contract.

That £10,000 I am withdrawing, although I was entitled to it, as soon as the Armstrong, Whitworth contract was signed, and they acknowledged it. Still, since the company derived no benefit from the Armstrong, Whitworth contract, I am not claiming that amount. Three months after I had found that £6,000, which nobody joined me in, we had to find £29,000. That was another task, and I induced Mr. Houfton to provide the £28,000, with Miss Wright's £1,000, to be cabled out direct to the Native Land Board, not to the company at all. The company never handled it; the only people who handled it were the Native Board. It was cabled direct to them and went direct into the pockets of the Natives, as the £6,000 of my own had already done, and it finally saved the company from disaster. It put £29,000 into the pockets of the Native owners.

Hon. Sir Apirana Ngata.] It was a gift to them?—Undoubtedly it is a gift to them, if they now take the timber and the money, too.

The Chairman.] What date was that?—The 4th September, 1922. The money was cabled out on that date.

Was that subsequent to the alteration in the standard of the railway?—Yes. The alteration in the standard of the railway was made in September, 1921; and the payment of £35,000 arrears was required by the Government, and this task was imposed upon the Tongariro Company quite rightly. I am not objecting to it in the least.

Hon. Sir Apirana Ngata.] It simply insisted on the company carrying out the terms of the agreement, did it not?—To the extent of finding the royalty.

After several defaults?—No; there was no default other than the hopeless position imposed on us by the Government, with restrictions and burdens that we could not carry out. This was done in the interests of the State, not in the interests of the Natives or the company. Why did not the Native Land Board go to the Government and say, "The Natives over whom we have jurisdiction and to whom we owe a duty, are starving"? Why did not they go to the Government and say, "You are imposing conditions upon the Tongariro Company which they cannot possibly meet, and, because they cannot meet them, the Natives are starving; they would pay them their royalties if you allowed the company to do so, but in the meantime they are being deprived of their legitimate royalties"?

The Chairman.] This is eloquence?—It is not eloquence, but indignation, when an attack is being made on the Tongariro Company which is certainly unmerited.

Mr. Williams: I rise to a point of order. When we started the work in this Committee on this case I understood that the different financial interests concerned would wish to place their claims before us, but so far we have heard more this morning about the Tongariro Company than Dr. Chapple's claim.

Witness: I am dealing with my own case now.

The Chairman: My ruling is, that Dr. Chapple is here to give evidence on his own behalf as to his own claim that he expects the Crown to reimburse him.

Witness: I am indebted to you, sir, for calling attention to that point, but I was drawn aside. Three months after the payment of the £6,000 I was required to find another £29,000 to prevent the

concessions being cancelled, and I induced Mr. Houfton to come in, and he did so on the ground that I had already found the £6,000 three months before. He said, "If it is good enough for your money to go into it, it ought to be good enough for mine"; and we together found the balance of the £35,000, which went to the Natives, and paid them for the £210,000 worth of timber still standing there. Mr. Houfton, however, would not part with his money unless I entered into a bond to indemnify him and guarantee the amount he was putting in, which up to this time I had refused to do; but at Mr. Atkinson's appeal, and on his undertakings, lest the concession should lapse if the £29,000 were not found, I gave to Mr. Houfton all my unencumbered security. After the concession had been made secure, I negotiated with Armstrong, Whitworth, and entered into an agreement with them—Tudor Atkinson having the opportunity of assisting, too—and they sent out their engineers, who reported that the Order in Council issued in 1921 had added such a heavy cost to the railway, which they had never anticipated, that it would not prove a remunerative contract. They said it had raised the cost of the line by £9,000 a mile, that there was no settlement along the route or at the terminus, and that the only railway revenue would be from timber-freights on one-way traffic. Then Mr. Houfton threatened legal proceedings against me. At that time I was negotiating with the British Government for a grant of £250,000 to Cammell, Laird under the Trade Facilities, as this firm had agreed to take over Armstrong, Whitworth's agreement under more favourable terms to themselves. A Court action at the moment would have been fatal to these Trade Facilities negotiations, and I cabled Atkinson, as follows:—

20/8/23. Sanders [Houfton's lawyer] after consultation with Roney [Armstrong's lawyer] demands my £14,000 before 25th. If I sell unencumbered Vancouver property costing £16,000 to highest bidder to satisfy him, will you guarantee the difference?

Atkinson replied immediately:—

Yours 20th. Agree to give guarantee requested.

The proceeds of this forced sale of my Vancouver property were £6,500, and Houfton took that in part payment for the money due to him, together with the costs of the case. I succeeded both in securing the credit under the Trade Facilities of £250,000 for Cammell, Laird, and also in completing a contract with them for the financing and construction of the railway. At this moment Houfton took proceedings against me for the balance of the amount he had advanced (together with 10 per cent. interest) that he had paid to the Native Land Board, and that I had guaranteed. He secured judgment against me with costs, and Cammell, Laird, as part of their agreement with me, paid the amount into Court. When Mr. Bertram Philipps took over the contract from Cammell, Laird, and secured an option from the Tongariro Company, Cammell, Laird immediately appealed to me to pay off my guarantee to them, and, as they knew that the Tongariro Company had nothing, they took the matter to Court also, and seized my debentures that I had pledged to them as security. All these long and harrowing proceedings were very costly to me, as well as embarrassing, on account of the pledges I had given when I found the £35,000 which the Natives had received. I had to borrow from private friends on the same precarious security, and in this way I secured £3,400 on a mortgage of my 6d. royalty on Western B at 10 per cent. interest. After coming to New Zealand solely on this business, I found that Bertram Philipps had taken an option over the property, but after that had been disposed of I brought the project before the New Zealand Underwriting Corporation and Mr. K. Duncan, and Mr. Duncan raised the necessary money for a light line, which formerly nobody else could raise for a Government standard line, and I subsequently induced Mr. R. W. Smith to help in the matter. Mr. Smith organized a sawmilling combine that entered into a contract for the purchase of 800,000,000 ft. for £2,500,000 in royalties and freights. In order to put himself on a safe footing, Mr. Duncan forced all creditors down to bed-rock; and in order to help his scheme I made such arrangements with my co-mortgagees and with a sawmilling syndicate that I was able to accept his offer of Western B, over which we had a first mortgage, in lieu of cash. [Offer put in.] At this stage the Government stepped in and passed the Act of 1929, making provision for the State acquiring the property. One other point I wish to deal with: Clause 31 of the original deed between the Aotea Native Land Board and the Tongariro Company provides,—

That, if this agreement shall be cancelled and determined, either by mutual agreement or through the default of the company or the Board, the Board shall grant to the company, free of cost, such an area of the said trees on (Western B) blocks to be selected by the company as shall be equivalent in value to the amounts actually advanced, or paid in cash, by the company to the Board and Native owners—and in respect of which amounts the company shall not have cut and received timber: Provided that the company's rights under this paragraph shall determine upon the expiry of fifteen years from the date of these presents. (23rd December, 1908.)

That was a provision indicating the intention of the Native owners not to seize the timber and the money too, but, instead, to transfer to the Tongariro Company timber equivalent to the amount of the royalty that had been paid. And it also showed the intention of the Government that confirmed this arrangement by Act of Parliament. I contend that if the concessions were cancelled the equivalent of the amount of money paid—£53,000—should be given to the company in return for money which the Natives had received in respect of timber which was still standing on the property. This provision was limited to fifteen years, and the period would have expired in 1923 if it had not been for the moratorium Act of October, 1915, which suspended its currency for the period of the war. That Act says,—

Whereas in consequence of the outbreak of war the Tongariro Company has been prevented from completing its financial arrangements for the construction of the remainder of the said railway, and it is just and equitable that provision should be made for the protection of the Tongariro Timber Co.'s rights pending the termination of hostilities. Be it therefore enacted as follows:

Those rights would have included the right to this timber at the end of the fifteen-year period, which under the moratorium would have been November, 1930, and the company itself would have been protected in regard to the timber in Western B, even though cancellation had taken place. A lawyer may contest this contention of mine. I do not know—I am not skilled in the law—whether it can be shown technically that the right to this timber could be sustained in law; but I am sure that my contention is sound in equity, and that the intention of the moratorium Act was to protect the company's rights, one being to the timber in Western B, as an equivalent to the money paid in respect of timber that had not been removed; and no timber had been removed from Western B. Therefore £53,000 worth of timber is now due to the company, £35,000 of which is due to me and my co-mortgagees at Home. This moratorium was extended for two years after the war, and was subsequently fixed at 16th September, 1922. If this period of suspension is allowed for, and the Tongariro Company is thus protected in its rights, the fifteen years will not expire until November, 1930. This timber is thus ear-marked on Western B, and I have a map here I desire to put in showing its position. [Map put in.] It must be remembered that the Duncan syndicate was going to reap an enormous advantage, which the Government will now secure, if they acquire this property, the value of which the new tariff is going to increase enormously. I realize that we come here as suppliants only, and that we have now no legal claim, and I submit that that is the position with respect to my personal claim. In order to summarize those claims I desire to put this document in:—

I withdraw my claim to £25,000 under my agreement with Tongariro Company dated 24th November, 1921, the original of which is herewith handed in. [Letter of 24th November, 1921, T. Atkinson.] That sum was to be payable on the completion of the arrangements for the raising of the money to build the railway.

I withdraw my claim to £10,000 set out in Tudor Atkinson's report to his directors, dated 1st November, 1922, and which I was entitled to on the consummation of the agreement with Armstrong, Whitworth.

I withdraw my claim to 4d. royalty on the Northern and Eastern Divisions set out in deed of agreement explained by Mr. Cooke on behalf of Sir John Houfton's estate.

I withdraw, in common with Mr. Cooke, on behalf of Houfton, my claim to a share in the 6d. royalty on the Western B area, shared by Sir John Houfton and Miss Wright—that is, the second 6d. I have not elected to withdraw anything on behalf of Miss Wright. Her share of the £35,000 is only one thirty-fifth of this 6d., and it is therefore very small.

I withdraw practically two-thirds of my legitimate claims, and I am content with about 6s. 8d. in the pound on these.

Hon. Sir Apirana Ngata.] You referred to having no standing in law?—Yes, I know I have now no standing in law, and cannot claim in that respect, excepting what we can claim under clause 31 of the original deed under which I and my colleagues stand as first mortgagees of Western B and we claim that we are entitled to the timber of that block. We might have a legal standing there. I submit that this matter is one of good will, and we have to meet it in that spirit; so that I withdraw about two-thirds of my total claims. My statement of claim is as follows: (1) Cash advanced in London to the Aotea Native Board on the 24th June, 1922, £6,016 4s.; (2) cash paid to Houfton in refund of his payment to the Aotea Board, £6,500; (3) Vancouver property pledged to Houfton for advance to Aotea Board, £9,500; (4) costs and expenses in securing the £35,000 for the Native Board, and borrowed on the security of my 6d. royalty on Western B at 10 per cent, £3,400; (5) exchange on Houfton's cheque to the Native Board, £240; (6) cables from London to New Zealand *re* above, £79; (7) salary in London for five years from 1920 to 1925 at £2,000 as agreed by Atkinson in lieu of the bonuses of £25,000, £10,000: total of claim, £35,735. These items do not include interest nor the 6d. royalty on Western B which I still claim. In the total of £35,735 are comprised all the principal sums that I have been out of pocket in respect of, and that I have paid out in consequence of, the raising of that £35,000. The only other item is the £10,000 for my services as attorney for the company, and financial representative for over five years. The cash advanced by Miss Wright is £1,000. She is entitled to her share in the 6d. royalty which Sir John Houfton and I have agreed to forgo. All the documents dealing with the claim are perfectly legal.

Mr. Williams.] I understood Dr. Chapple to say in the earlier part of his address that the feeling displayed against the Tongariro Company was unjust and unfair?—Some of the expressions.

Who was that remark aimed at?—I was not speaking of this Committee, because I do not know the view of any member of it. I have never discussed the matter with them, and have never seen any member of this Committee, nor the Native Affairs Committee of last year. But, outside, a great deal of criticism has been levelled at the Tongariro Company—criticism that, I think, is unwarranted in the presence of the facts, because the critics do not know the facts. I know the facts, as I have been connected with the company ever since the war.

Hon. Sir Apirana Ngata.] You mentioned the fact that if the English creditors were not recognized—I refer to Cammell, Laird, Sir John Houfton, Mr. Bertram Philipps, and the other people who were interesting themselves financially in your company—it would reduce the credit of New Zealand in London. I would like to hear you as to that?—Mr. Bertram Philipps took Home all the documents in relation to this case and the evidence which was brought before the Committee last year, and told me he had access to the financial press of London, and he would make full use of it if he were not treated fairly. I feel sure that they are preparing now. At the present moment Mr. Philipps is in London and there are no less than one thousand shareholders of the various firms concerned in London, and I fear very much that he may arouse the indignation of those people, and that they, if they feel they are not being treated fairly, might make use of the financial press as it was made use of against Queensland, and which did that country a great deal of harm. I am certainly concerned about that aspect. I know the temper at Home, and how the correspondents of the financial press in London like to obtain in these financial troubles what they think is good copy. They attacked Queensland up hill and down dale, and that country was boycotted on the English market, because the Government imposed its will on private contracts to that Government's advantage. That is a factor to be reckoned with. This country enjoys a reputation that no other country in the Empire enjoys.

That is what you have been telling us, and I thought we should have it on record before the Committee ?—It is the basis of my suspicions, and I think I can fairly claim to be heard on the merits of this matter. For the last five years I have been in New Zealand striving to keep the company afloat, and I have been reduced to absolute poverty and surrounded by debts because of my undertaking to find that £35,000. I hope the Committee will forgive me if I speak warmly on the subject. I have not in the past interviewed any member of this Committee nor last year's Committee. I have given information to Cabinet Ministers and to Sir Apirana Ngata himself from our point of view, in order that they should be acquainted with the facts not to influence them apart from this ; and I think I am justified in thinking that Mr. Bertram Philipps when he went Home and threatened to make use of the financial press in London that they could raise a great storm ; and it is not worth while, because the issue from the Government's point of view is simply this : Shall we settle with these people on a fair and honourable basis or ignore them—an action that will leave a great amount of bitterness behind ?

The other point you have enforced in communications with myself and the Minister of Lands—now the Prime Minister—is that we should submit the whole of the claims to arbitration ?—Yes, I have done that. First of all, let me say that I interviewed the Hon. Mr. Forbes on the 21st March, 1930, and called attention to the arbitration clause in the Act, which we all thought provided arbitration for us, and that we were all at one upon, and Mr. Forbes specifically promised that our claims would be submitted to arbitration, and I reported that to the Tongariro Company.

Hon. Sir Apirana Ngata : That is wrong.

Witness : I saw Mr. Forbes.

Hon. Sir Apirana Ngata : I have all the correspondence.

Witness : There is none ; it was a personal interview. With regard to this suggestion that an arbitration tribunal should be set up, I know the procedure of the House of Commons. A House of Commons Committee would recommend the Government on general principles. Whenever numerous claims are made against the Crown those claims are submitted to an arbitration tribunal, consisting of two assessors and a Judge of the High Court, that can take evidence on oath ; that can cross-examine all the witnesses ; and that can be aided by expert accountants, and thus test the validity of the claims, and assess accordingly.

Hon. Sir Apirana Ngata.] Who fixes the basis of the arbitration ?—The Committee. It might recommend, as it is conceivable this Committee might recommend, the Government to settle with the various interests on the basis of the Duncan syndicate. The Committee would report on general principles that the claim should be settled on, say, the basis of the Duncan syndicate arrangements, and within those limits the arbitration tribunal would be set up to assess the various individual claims. I cannot imagine any creditor asking more from the Government than he was willing to accept from Duncan. That seems to me to be fair. There is no individual who could reasonably ask from the Government anything more than he was willing to accept from Duncan. The Natives have taken up that attitude, and the award under such an arbitration would be as between the claimants and be binding on all parties.

We do not know what the Natives' attitude is ?—The proposal with regard to the Native owners is according to the Grace memo., that the timber be acquired by the Crown at 1s. 8d. per 100 ft. That is the price under the Duncan scheme, and the Natives cannot be asked to accept anything less. It is a very fair price, and if the owners accept that I cannot see that any of the creditors or shareholders can ask any more from the Government than they would have been willing to take from Duncan. If the Government get the property at that rate it gets an estate of enormous value, and it would place to the credit of the State all the unearned increment on that property over all these years. The following are the documents I refer to :—

London, 26th June, 1922.

RECEIVED from Dr. W. A. Chapple in terms of agreement with him dated 24th June, 1922, and signed by me on behalf of the Tongariro Timber Co., Ltd., six thousand and sixteen pounds four shillings (£6,016 4s.) to be remitted by cable to Mr. C. P. Skerrett, solicitor, Wellington, and to be paid over to the Aotea District Maori Land Board on account of timber royalties.

TUDOR ATKINSON.

AN AGREEMENT entered into this 24th day of June, 1922, between Tudor Atkinson of Wellington, New Zealand, Governing Director of, and Attorney for, the Tongariro Timber Company, Limited, of the one part, and William Allan Chapple, M.D., of 1 Horseferry Road, Westminster, London, of the other, whereby it is agreed as follows :—

1. There is to be found by the said company on account of royalties in advance due to the Aotea District Maori Land Board under section 19 of the Native Land Amendment and Native Land Claims Adjustment Act, 1921-22, the sum of £6,000 on or before the 30th of June, 1922, in order to make effective the right granted to the said company under the said section for the extension of time to seven years from the 12th September, 1921, within which to build the Lake Taupo Railway.

2. If the £6,000 is found for the company by the said William Allan Chapple on or before the 30th of June, 1922, this amount will be secured by a first mortgage of the timber in Western B, containing 154 million feet, and by a first mortgage on the equity of the timber in Western A, sold to the Egmont Box Company, Limited, and being of an estimated value after payment of existing mortgages of about £25,000 and also by a mortgage over all the other interests of the company together with a bonus of 6d. per 100 ft. as and when cut of the timber in Western B. Such bonus of 6d. to be reduced by 3d. if this latter amount is required to make up to 9d. any bonus payable for the advance royalty due on or before the 12th September, 1922. The rate of interest on this advance of £6,000 to be 10 per cent. per annum.

3. If the £6,000 is found by the said William Allan Chapple and the £29,000 due on or before 12th September, 1922, is not found the Tongariro Company shall refund the £6,000 with a bonus of £6,000 in consideration of the accommodation provided, but shall not in the event of such refund and the payment of such bonus be liable for the 6d. bonus mentioned in the last preceding clause provided that the said W. A. Chapple or any one finding the £6,000 on his behalf may elect to allow the said £6,000 to remain and to enjoy the royalty, and provided also that if those providing the £6,000 elect to allow it to remain they shall release the Tongariro Company from the general mortgage over its assets mentioned in the last preceding clause.

4. If the moneys required to be raised to build the railway to the 18-mile point are found and the construction of the railway to that point is assured and if the said Tongariro Company shall provide equivalent securities for the amounts due to the said William Allan Chapple set out in clause 2 hereof then the said William Allan Chapple shall release the securities over Western B mentioned in these presents in exchange for such equivalent securities.

5. All expenses of and incidental to this agreement to be borne by the Tongariro Company.

6. It is agreed between the parties hereto that the advance of the said £6,000 is a temporary loan in order to make effective the provisions of the said Act and that the said William Allan Chapple may on or after 12th September, 1922, take any steps he may deem proper in order to realize the moneys due under these presents.

TUDOR ATKINSON,
Governing Director of, and Attorney for, the said Company.

Dr. W. A. Chapple, 28 Talavera Terrace, Wellington.

MY DEAR CHAPPLE,—

I am in receipt of your letter of the 16th inst., and have to advise you that the position with regard to Western B is as follows:—

1. Western B will be transferred to the first-chargees, viz.: to those who are being asked to take over the rights in settlement of their debt from the Tongariro Timber Company, or their nominee, free of royalty to the Native owners, up to £50,000, and free of mortgages.

2. Tongariro Standing Timbers, Ltd., to secure title to the chargees or their nominee from the Aotea Maori Land Board, but subject to payment of royalty in excess of £50,000, if any.

3. Western B will be entitled to the usual transport facilities at Government rates on the railway to be built, up to 3,000,000 ft., sawn, per annum up to 1935. Rates and taxes are paid out of the Native royalties.

4. After 1935 all timber will be carried at Government rates on the Tongariro Standing Timbers, Ltd., railway.

5. Land up to 50 acres for milling-area will be leased to the chargees or their nominee, at 3s. per acre per annum, and they must pay rates and taxes thereon; or if preferred, they can purchase that area of land outright at cost.

I think the foregoing covers everything in your letter.

Yours, &c.,
K. D. DUNCAN.

WILLIAM PERRY examined. (No. 9.)

The Chairman.] Whom do you appear for, Mr. Perry?—I represent, with my friend Mr. Findlay, the Tongariro Timber Co., Ltd., and all creditors whose claims that company recognizes. I have circulated a list amongst the Committee showing, first, the Tongariro Company's claim for £60,000, being the amount of capital; and, secondly, the claims made by the various creditors. The total claims add up to £313,264 10s. 9d. At the end of the list you will see this note: "In addition to the foregoing there was owing to the owners of the timber territory as on the 1st March, 1930, a sum of approximately £30,000 on account of arrears of royalty and interest and of commission owing to the Aotea Maori Land Board." That brings the claim really to £343,264 10s. 9d.

Hon. Sir Apirana Ngata.] Who would get the £30,000?—That is arrears of royalty.

You have to make good a claim to that along with the others. It is a claim on the company, surely?—Yes; but the company at present has no assets whatever, and if claims are to be recognized, we submit, of course, that those royalties ought to be included by the Tongariro Company in the list of its creditors, and sent in to the Government for consideration. I have also supplied the members of the Committee with a statement showing the amount paid for royalties by the Tongariro Company to the Aotea Land Board and the Native owners. The total there is shown as at £56,176 7s. 4d., and you will observe that between the years 1905 and 1911 on the first two items the company claims to have paid to the Natives, and to the solicitors representing them, the sum of £3,537 10s. 2d. That claim, we understand, is not admitted by the Aotea Land Board, and if you will look at parliamentary paper G.–7, containing the report of the President of the Board, Judge Browne, you will notice he says that "There is no doubt, I think, but that included in the £300,000 is a claim for refund of the royalties, amounting to £52,000-odd, paid by the company." I want to point out at this stage that, although we show royalties as having been paid to the Native owners and to the Board, amounting to the sum of £56,176, the Board itself only recognizes as having been paid the sum of £52,000, and does not recognize, for some reason or other, the original payments made between 1905 and 1911 direct to the Native owners or to the solicitors representing them.

Mr. Endean.] Were those payments made under a lease?—They were made under the agreements existing between the Tongariro Company and the Native owners, and which have ultimately brought us here to-day. You will notice that we have not included in this list of creditors either the Duncan syndicate claim of £13,800 or the Anglo-French and Belgian Corporation claim for £1,700-odd, the reason being that the Duncan syndicate, of course, was formed apart from the Tongariro Company, and cannot possibly be a creditor of the company, and the company cannot therefore include its claim in the list of claims submitted to the Committee for consideration. That claim must stand on its own base, and it has been put before you on behalf of the syndicate by Mr. Grace. The company also does not include in its list the Anglo-French and Belgian Corporation's claim for £1,700-odd. I am instructed by the Secretary, Mr. Ross, who has acted for it for many years, that the Tongariro Company has not received any actual account from the corporation; but Mr. Cooke informs us that a letter did actually go from his firm to the company some time ago claiming, I think, on behalf of the Armstrong, Whitworth Co. and the Anglo-French and Belgian Corporation this amount of £1,700, and it may be that the letter in question may have been overlooked by the Tongariro Company; and, although we do not at the present moment admit that claim, we do not at the same time dispute it now that Mr. Cooke has told the Committee that the claim was actually made. All we can say with regard to that claim is that we have no record of it. It is also explained in parliamentary paper G.–7 that the claims amounting to £523,503 include the sum of £330,000 to the Tongariro Timber Co. That claim, of course, includes, or endeavours to include, all the other claims set out on page 1 of G.–7, and all the other claims set out in the list you have before you. You will find on pages 3 and 4 of G.–7 a memorandum by Mr. Izard, solicitor to the Aotea Maori Land Board, embracing his opinion on the subject

of the total claims put down as £330,000. That opinion was given by him to the Board. He says there, " I do not think that the Board can consider any claims by creditors of the company as distinct from a claim by the company itself." And in the last paragraph he says, " In view of my opinion in regard to what claims the Board can deal with, I will now review the various claims made, and when I denote the words ' claim against the company only ' I mean that they are not claims that should be considered by the Board at all, but may be considered *if put in as part of the company's claim.*" That is the reason why the Tongariro Company in the first place made a claim for £330,000. I wish to say here that the Tongariro Company, of course, has no objection whatever to creditors coming before the Committee, either personally or by their representatives, and putting their claims before it individually. On the contrary, the company is obliged to my friends, Mr. Cooke, Mr. Mackenzie, Dr. Chapple, and others, who have come here and personally advocated their claims. The Tongariro Company was bound, in my opinion, by Mr. Izard's opinion to include all those claims in the one sent to the Board, and to include them all in the claim which they have put before the Committee this morning. Although the Tongariro Company has not included in its claim that of the Duncan syndicate for £13,800, I wish it to be clearly understood that the company has no quarrel with the syndicate. On the other hand, the company appreciates to the full the great, and almost successful, efforts made by the Duncan syndicate to rescue the company and its assets. Under the scheme as formulated by the Duncan syndicate the company would have received £60,000 worth of fully paid up shares of £1 each in the new company to be formed, which would have recouped practically the whole of its original capital of £60,000. So that the company, although it cannot include in the list of its creditors the Duncan syndicate's claim, desires me to express to the Committee its sense of obligation to the Duncan syndicate for the work that syndicate did. Mr. Chairman, and gentlemen, all those who have come before you in this Committee have agreed that they do so as suppliants, and that they have no legal claim. The Tongariro Company entirely adopts that attitude, and we say at the outset that the company either by itself or its creditors has no legal claim, with the possible exception of the legitimate claim existing under the Egmont Box Co.'s agreement which has been put before you by Mr. Weir. But we come before the Committee because we are invited by Parliament to do so. And here may I express the appreciation of the people I represent to Parliament and the Government for having referred these matters by a " short-cut," if I may use the term, to this Committee, instead of our having to do so by going to the trouble of preparing a cumbersome petition. When I say that we are invited to come before you I refer of course to section 29 of the Act of last year, subsection (6) (*a*) of which reads as follows :—

> The Aotea District Maori Land Board is hereby constituted the lawful agent of the Native owners of the lands mentioned in or affected by the agreements referred to in subsection (1) hereof [That is the agreement originally made between the Tongariro Company and the Natives] and each of the said lands respectively, to take all lawful ways and means to recover possession of the said lands or any of them, to prevent or recover damages for any trespass, waste, or other injury on or to the said lands or any of them, and to commence, prosecute, or enforce or to defend or oppose any action or other legal proceedings and demands of or concerning the said lands or any of them or in respect of the timber-trees, timber, and other wood or flax and minerals thereon, and with the consent of the Native Minister to settle, adjust, compound, submit to arbitration, or compromise all actions, accounts, claims, or payments arising out of the agreements mentioned in subsection (1) hereof which are now or hereafter pending between the said owners or any of them and any other person or persons whatsoever in such manner as the Board shall think fit.

Subsection (*b*) says,—

> The Minister of Lands may authorize the said Maori Land Board to act as his agent in respect of the interest acquired by the Crown in any such lands for all or any of the parties mentioned in this subsection, and the Maori Land Board shall thereupon be deemed to be the lawful agent of the Crown in respect of the matters in which it is so authorized to act.

We find that the Maori Land Board is appointed the agent of the Natives and of the Crown in this matter. The history of the transaction has been dealt with earlier, and the Committee is perfectly familiar with it. It is set out in the report sent in in 1929 by the officers of the Forestry Department to the Commissioner of State Forests; it has been printed, and has been before the Committee on previous occasions. That report shows that from time to time extensions of the period under the agreement were granted by the Government, sometimes with the consent of the Natives in the first case, although sometimes apparently without their knowledge, to the Tongariro Timber Co. We come first to the longest extension of time granted in 1915 by the moratorium. As Dr. Chapple told you this morning, that was not the only moratorium by any means granted in 1915, and Sir Apirana Ngata made the point, quite pertinently, that the moratorium protected the company and did not protect the Natives, because it possibly deprived them of any remedy they had against the Government. But I would like to remark that necessarily at that time there was interference with many things by Governments that passed such legislation, and that moratoriums existed all over the Empire, and probably all over the world, and in very many instances people were adversely affected by the operation of such moratoriums. The moratorium, passed in 1915 for the protection of the rights of the company, to a certain extent possibly also conserved the rights of the Natives, and was only natural in the usual course of events during the war years. Let me refer to the section in the Act of 1915 whereby that moratorium was created. This is the recital :—

> And whereas the said company has paid large sums of money in advance to the Native owners of the said land and to the said Board on account of royalties for timber to be cut on the said land, and has expended large sums of money on the necessary surveys for the construction of a railway through the said land and incidentally thereto.

So you will notice that Parliament specifically stated in this Act the fact that the company has spent large sums of money in payment of royalties to Natives, and large sums in having surveys made, and so on.

Mr. Langstone.] They agreed to do that.

Mr. Perry.] Quite so. Then the section goes on to say,—

And whereas in consequence of the outbreak of war the Tongariro Timber Company, Limited, has been prevented from completing its financial arrangements for the construction of the remainder of the said railway, and it is just and equitable that provision should be made for the protection of the Tongariro Timber Company's rights pending the termination of hostilities. Be it therefore enacted as follows:—

I want to stress to the Committee the wording of that section, as showing how the position was viewed and recognized by Parliament. That moratorium took us up to September, 1922, and by the end of 1923 it was apparently made perpetual; but in 1929 it was totally removed, at least in so far as the Aotea Maori Land Board was concerned. In 1921, as Mr. Cooke informed the Committee two days ago, there was gazetted an Order in Council which followed previous Orders in Council concerning the operations of the Tongariro Timber Co., and the concessions, or extensions of time, which had been granted to it. Now the Order in Council of September, 1921, provided that the sum of £6,000 should be found by the Tongariro Company by the 30th June, 1922, and that £29,000 should be paid by the company on the 5th September, 1922. And here, as the Committee has already heard, was where Sir John Houfton and Dr. Chapple came to the rescue of the company, the £6,000 being paid on the 30th June, 1922, and the £29,000 on the 5th September, 1922; and as the report of the Commissioner of State Forests says, "The company, having paid this amount at that time, had fulfilled its monetary obligations to that date." But on the 16th September, 1921, there was also the Order in Council which altered the standard of the railway; and as far as that aspect is concerned I am not going to say that the Government of the day acted in any harsh or arbitrary manner as far as our company was concerned in altering the standard of the line. It may have done so, or it may not have, and we will concede that at that stage the Government acted, as they did during the whole of the transactions from 1906, in what they considered was the best interests of the Natives, in increasing the standard of the line. But the effect of increasing the standard was to place an absolutely insuperable barrier in the way of the success of the Tongariro Company's project. The position simply then was that it was impossible for the Timber Company to carry out its obligations under its agreement to build the line to the specification required.

Mr. Findlay.] They tried pretty hard?—Yes, but were not able to obtain the money for the purpose of carrying out the work as then required by the Government. In 1925, as members will see from page 5 of the parliamentary paper I.–3A, it is stated that the date for the completion of the railway was extended for seven years. I do not know whether the Committee requires any reference to the question of the standard of the railway.

The Chairman.] Not at this stage.

Mr. Langstone.] The reason was that rolling-stock was to be run over the line and therefore they had to have a track up to the standard of the Government lines. Is that not so?—That is correct; but that was not the position as originally contemplated under the agreement, which indicated a railway of a certain standard, and the subsequent Order in Council of 1921 contemplated a railway of a different standard, because it was then seen there were possibilities in the development of a railway in that particular district.

The Chairman.] And probably the working of the Totara Timber Co. would affect it, too, as it necessitated the transfer of the timber to the Main Trunk Railway, and the State railway trucks would have to pass over the line?—I believe that was so. I understand from Mr. Findlay that the contemplated Taupo-Totara Timber Co.'s railway did have some effect on the decision of the Government in promulgating the Order in Council of 1921 for the reason you mention. That brings us then to 1921, and if you will look at the statement with regard to the Tongariro Company in the same parliamentary paper in the report made for the Commissioner of State Forests (page 5) you will see it says this:—

In 1925 an Order in Council dated 25th August, 1925 (see *New Zealand Gazette* No. 61), was proclaimed whereby the date of the completion of the railway from Kakahi to Tokaanu was extended for a period of seven years as from the 1st January, 1925, provided the first eighteen miles of this railway were completed within three years from the 1st September, 1925, to be constructed in accordance with the new specifications agreed upon by the company and the Public Works Department. The carrying-out of these provisions was dependent on the company, or its assigns, procuring Messrs. Cammell, Laird, and Co., with whom they were negotiating, or some other particular firm, to enter into a contract for the construction of the railway. The company failed to comply with these provisions.

The company failed to comply with this provision, because, as already explained, Messrs. Cammell, Laird and others would not take on the financing of the construction of the railway to the standard required. Now we come to 1928, when the Duncan syndicate was initiated. It has already been demonstrated by Mr. Grace that the syndicate some time in 1929 had arrived at the stage when it had £240,000 of its capital, or debentures, subscribed or applied for or promised, and that it then only required the consent of the Native owners and the Government to finalize the project, and to bring it to fruition. The Duncan syndicate had every reason to believe at various stages in its history that the consent of the Government would eventually be granted to the project; and I desire to refer to parliamentary paper G.–7, at pages 15 and 16, where you will find set out certain communications between the Hon. Mr. Coates, then Native Minister, and Mr. Duncan. I do not know whether, Mr. Chairman, you desire me to read this correspondence. I would like to do so if the Committee has time, especially as we have here to-day a number of members who have not been present on other occasions.

The Chairman.] We will leave it to your own judgment, Mr. Perry.—I will read it. There is this letter from the then Minister of Native Affairs to Mr. K. D. Duncan :—

Wellington, 14th February, 1928.

K. D. Duncan, Esq., Wellington.

Tongariro Timber Co., Ltd.

I HAVE the honour to inform you that Cabinet has considered the request made to me by you recently—namely, that assuming you can float a company with a working capital of £300,000 to take over the rights of the Tongariro Timber Co., Ltd., under the agreements between the Aotea District Maori Land Board (as agent for the Native owners) and the Tongariro Timber Co., Ltd., whether the Government will—

(1) Extend the times for building the railway-line by, say, three years and ten years :
(2) Extend the time for paying arrears of royalty now due, 1st April, 1928, to, say, 1st September, 1928 :
(3) Agree to a modified standard of line, provided the consent of the owners is obtained :
(4) Grant the above concessions to you alone.

It has been decided that the Government cannot see its way at the present to grant any extension of the time within which the company is bound to complete the construction of the railway-line, but, if on or before the 12th September, 1928 (being the date on which the company was required by the Order in Council of the 12th September, 1921, to complete the construction of the railway-line) you float the proposed company, arrange for the necessary finance for building the railway, pay all arrears of royalty, together with interest thereon at 6 per cent. while unpaid, pay outstanding rates and taxes, Board commission, and any other charges or sums due by the Tongariro Timber Co., Ltd., under its agreements with the Aotea District Maori Land Board, the Government will undertake—

(1) To give sympathetic consideration to your requests as mentioned above ; and
(2) Protect the company's rights in the meantime by refusing consent to any application under subsection (1) of section 19 of the Native Land Amendment and Native Land Claims Adjustment Act, 1915, as amended by section 19 of the Native Land Amendment and Native Land Claims Adjustment Act, 1921, and section 28 of the Native Land Amendment and Native Land Claims Adjustment Act, 1923.

It is possible that in the event of the above decision being acceptable to you, and the requirements enumerated above being fulfilled, that certain terms and conditions would be imposed in consideration of the concessions asked for being granted, in addition to which it may be found necessary to obtain the consent of the Native owners to any concessions as to the standard of the railway-line to be constructed which it may be decided to grant.

J. G. COATES, Native Minister.

On the following day Mr. Duncan replied to Mr. Coates as follows :—

Tongariro Timber Co., Ltd.

I HAVE the honour to acknowledge the receipt of your favour of the 14th instant, and have to thank you for advising me that if on or before the 12th September, 1928, I am in a position—

(1) To float the proposed company :
(2) To arrange for the necessary finance for building the railway-line, &c. :
(3) To pay all arrears for royalty, together with interest thereon at 6 per cent., yet unpaid :
(4) To pay outstanding rates and taxes, Board commission, and other charges or sums due by the Tongariro Timber Co. under its agreement with the Aotea District Maori Land Board,

then the Government will undertake to give—

(1) Sympathetic consideration to my request as already mentioned :
(2) To protect the company's rights in the meantime by refusing consent to any application under the various sections of the Acts mentioned in your letter.

That is satisfactory to me, and I greatly appreciate the manner in which you have met my request. At the same time I feel that I should possibly be open to criticism from my friends in this venture if I did not ask you to make more clear your concluding paragraph. I take it that the modification of the standard of the railway-line and the Native owners' approval of same may have been in your mind when writing this. Assuming I am correct in this, I suggest that if, in addition to the conditions already mentioned,—

(1) I obtain the Native owners' consent to modification of the line ;
(2) That I increase the royalties as at present existing to figures that the Native owners agree to,

then it will be admitted by your Government that I shall have completed my part of the bargain, and that no further terms or conditions will be imposed upon me in consideration of the concessions asked for being granted.

I think it will be apparent to you that in asking for a sum of £300,000 it would be hardly fair to subscribers if I were to spend any portion of their money—and a certain amount must certainly be spent to enable me to carry out the above obligations—if the fulfilling of my part of the contract does not carry with it the definite approval of the Government.

An assurance of finality from you in the event of my carrying out all my undertakings would enable me to proceed at once in this manner.

I should be much obliged if you could meet me to this extent.

K. D. DUNCAN.

On the 21st February Mr. Coates wrote to Mr. Duncan as follows :—

Your assumption as to the meaning of the last paragraph of my letter is correct as far as it goes, but, in addition to the modification of the standard of line, I also had in mind the possibility of a further request from you as to an alteration in the route of the proposed line.

Subject to your obtaining the consent of the Native owners through the Aotea District Maori Land Board to—

(1) The modification of the standard of the proposed railway-line (including radius of curves and grades) ;
(2) The modification or alteration of the route of the proposed line ; and
(3) The acceptance of any increase offered by you in the amount of the royalty payments to be made for the timber on the lands subject to the Tongariro Timber Co.'s agreements ;

the Government will not, in the event of it being decided to grant an extension of the time within which the Tongariro Timber Co., Ltd., is bound to complete the construction of the proposed railway-line, impose further or other terms in consideration of the concessions asked for being granted.

J. G. COATES, Native Minister.

Now, here is a memorandum on page 17 to the Minister of Native Affairs as follows :—

1. The undersigned are the leading owners of the land which forms the subject of the timber, railway, and other rights of the above-mentioned company.
2. The said company has approached the owners of the said land, and made the following requests :—
   (*a*) That the present standard and specifications of the railway-line mentioned and described in the company's title deed be modified in such manner as to make them conform to the requirements originally stipulated for in the said title-deeds, with such adjustments or variations as may be arranged between the Hon. Minister and the company or its assignee or assignees,

(*b*) That the company or its assignee or assignees be granted leave to deviate the route of the said railway-line between, say, the 5-mile point (Kakahi end) and the 20-mile point, so that the line will pass to the latter point over the saddle lying between the Maungaku and Maungakatote peaks, instead of proceeding thence by the present surveyed route.

(*c*) That the times laid down for the construction of the said railway-line (with its standard modified and its route deviated as aforesaid) be extended respectively as follows:—

(1) To the 31st December, 1932, for the construction of the first twenty miles (Kakahi end) thereof:

(2) To the 31st December, 1945, for the construction of the remaining portion of the lines.

(*d*) That the term of the aforesaid company's rights be extended by five years—that is to say, to the 28th February, 1966.

(*e*) That the Hon. Minister be empowered to effect such alterations or amendments in the provisions of the aforesaid title-deeds, as may be rendered necessary or equitable by aforesaid deviation, or, by reason of any change or changes in general conditions that have occurred since the title-deeds were executed.

3. The undersigned agree to the granting of all the aforesaid requests, and respectfully authorize and urge the Hon. Minister to give effect to them accordingly. Such effect, however, shall only be given on the express condition that the scale of royalty laid down in the aforesaid title-deeds and payable to the owners shall be increased in manner following:—

(*a*) For the period ending the 29th February, 1936—no increase:
(*b*) For the period ending the 28th February, 1946—from £11 5s. to £12 10s. per acre:
(*c*) For the period ending the 29th February, 1956—from £13 2s. 6d. to £15 per acre:
(*d*) For the period ending the 28th February, 1966—from £15 to £20.

4. The undersigned further authorize and urge the Hon. Minister to grant the afore-mentioned company or its assignee or assignees complete immunity from all proceedings for the determination of its rights under the afore-mentioned title-deeds until the 12th day of December, 1928; and, further, if at any time or before that date it shall appear to the Hon. Minister that the said company or its assignee or assignees have made such financial arrangements as will enable it or them to pay the owners all arrears of royalty owing to them and to construct the afore-mentioned first twenty miles of railway-line, the Hon. Minister may, in his own absolute discretion, extend the period of the afore-mentioned immunity to such date or dates as he shall think fit.

Dated the 7th September, 1928, and signed by Hoani te Heuheu and 149 others.

Then a committee, consisting of Messrs. R. W. Smith, M.P., Hampson, Grace, and Findlay, met and passed the resolutions set out on pages 17 and 18, and on page 18 we have a record of the resolutions passed by the Native owners on the 21st February, 1929; and, as we have already been informed, those resolutions were passed practically unanimously at a meeting of, approximately, four hundred Natives, held for the purpose of considering these proposals. The meeting was presided over by the present Native Minister, Sir Apirana Ngata.

Hon. Sir Apirana Ngata: I was not Minister then.

Mr. Perry: From the way I put it it might have been inferred that the Minister was then Minister of Native Affairs, and I thought that was the case. The resolutions were all passed by the Natives with, I think, two dissentients; and can any member of this Committee blame the Duncan syndicate for assuming out of the correspondence previously passing between Mr. Duncan and the then Native Minister (Mr. Coates), and after the meeting of Native owners on the 21st February, 1929, presided over by the present Minister of Native Affairs—can Mr. Duncan be blamed for believing that no further difficulties would be set in his way, and there would be no difficulty in obtaining the consent of the Government?

Mr. Langstone: The Government had been changed in the meantime.

Mr. Perry: No; the point I am making deals with the period before the change of Government took place in 1928. There was the correspondence between Mr. Coates and Mr. Duncan, which led the Duncan syndicate to believe the consent of the Government would be granted. But after the general election a change of Government took place, and negotiations had to be begun over again, and then the new Government came in and the new Native Minister presided over this meeting at which the Natives passed all the resolutions. I was not a member of the Duncan syndicate, and never heard of it until, I think, a week ago, but if I had been a member I should have been very much inclined, if I may be permitted to use the expression, to lay substantial odds that the consent of the Government would have been given. Notwithstanding the fact that the Duncan syndicate had broken the back of all the obstacles as far as the subscription of capital was concerned, the consent of the Government was not granted to the project, and my friend Mr. Findlay just informs me that no reasons were submitted by the Government for declining the consent. The Government, instead of consenting to the project, placed the whole matter before the Native Affairs Committee, which reported on it as per parliamentary paper I.-3A, 1929, and recommended that the Government take steps to acquire the property. I do not propose to read the recommendations which are contained in the report. Following the recommendation as to the Government taking steps to acquire the property, in 1929 the Act was passed, and by section 29 all claimants, or persons having claims arising out of these agreements, are invited by Parliament to come along and place their claims before the Committee; and here we are. As far as the Tongariro Timber Co. is concerned, as Dr. Chapple says, there seems to be the impression somewhere—I do not suggest it is in the minds of the Committee—that the Tongariro Company was originally formed for the purpose of exploiting the Native owners. But the complete answer to that is, that the preliminary arrangements began in 1906 between the Tongariro Company and the Native owners, and in 1908 the Government of the day set up a Commission consisting of Sir Robert Stout and the Hon. Sir Apirana Ngata—it was known as the Stout-Ngata Commission—for the purpose of investigating the matter. Members of the Committee will agree that the personnel of that Commission was absolutely unimpeachable. That Commission reported to the Government that the proposed agreements between the Tongariro Company and the Natives were for the benefit of the Natives, and in the public interest.

Mr. Endean: Has timber gone up since then?

Mr. Perry : I think it has not gone up very much since then. I think some years ago the basis worked out at something over 4s. per 100 log feet, and I think the basis suggested now is 3s. per 100 log feet.

The Chairman.] We had evidence this morning that the value was vastly increased, Mr. Perry ?—In the parliamentary paper I.–3A, in which is set out the history of this matter and of the Tongariro Company (page 4), it states, "In 1908 the Stout-Ngata Commission took evidence on the question of the equity of the agreement between the vendors and the company, and came to the conclusion that it was in the interests of the Natives as well as in the public interest." You will have noticed that from the outset the State, throughout the whole of the transactions, stood, as the guardian of the Natives, between the Native owners on the one hand and the Tongariro Timber Co. on the other. It was the paterfamilias of the Natives throughout the whole business.

Mr. Williams : When the State came into it at first it was either because the Natives had petitioned against the royalties being unpaid, or the company had applied for a further extension of time.

Mr. Perry : That may be so, sir, but when I say the State acted as paterfamilias right through, and took upon itself certain functions, what I meant to suggest was that the State did take upon itself in 1908 to set up the Stout-Ngata Commission to inquire as to whether the agreement was equitable.

Hon. Sir Apirana Ngata : It was an inquiry into the general conditions as to Native lands, and this matter concerning the Tongariro Timber Co. was one question put before the Commission.

Mr. Perry : Am I right in saying that prior to 1908 the State entered into the transaction, or at any rate took a beneficent interest in the transaction, by appointing the Stout-Ngata Commission. I think that must be conceded.

Hon. Sir Apirana Ngata : No ; the whole of New Zealand really came into line under the inquiry then ordered, and after the Commission had been sitting, and travelling around New Zealand for nearly twelve months, this matter was referred to it, but the Commission was not set up particularly for this matter.

Mr. Perry : I thought it was set up for this particular matter. But even so, that does not alter the fact, that at that stage the Government did refer it to the Commission.

Hon. Sir Apirana Ngata : It was not referred to it by the Government. It was brought before the Commission by the parties. We had a roving commission, and we could investigate anything we liked in regard to Native lands that was brought before us by the parties.

Mr. Perry : Do I understand that this matter was brought before the Stout-Ngata Commission by the Native owners and the Tongariro Co. ?

Hon. Sir Apirana Ngata : The parties approached Sir Robert Stout, and then we made our recommendation to Parliament, when there was introduced legislation to validate the agreement in 1908.

Mr. Perry : What I wished to impress on the Committee was the fact that the State almost from the beginning had acted as paterfamilias in the matter, because the Stout-Ngata Commission, which was set up by the Government, reported that the proposed agreements were in the interests of the Natives, and in the public interest, and then we find that in 1908 the Government passed legislation validating the agreements entered into between the Native owners and the company. So that, we submit, the State was interested in the matter right from the beginning, and that from the inception of the project the State has acted as a kind of intermediary between the Native owners and the company and its creditors. And, sir, we come to the final position that—when the Duncan syndicate, having had every reason to believe that the consent of the Government would be granted to the carrying-out of its project, found that that consent was not given, so that its project fell to the ground, and also found not only that the Government did not consent to the Duncan syndicate's project, under which the company and its creditors would have received very substantial payments, but had decided to take power to acquire the land—the only conclusion we can come to is that the State, having interested itself in the matter almost since the start, now takes power under the Act of last year to acquire this property. In pursuance of that power notice was given on the 9th November, 1929, to the company that within six months it must—(1) Pay up all arrears of royalty, which then amounted to probably some £25,000 or £26,000 ; (2) within the same period build the railway-line. Well, sir, did ever so heavy a hammer fall upon the head of any one so suddenly—within six months to find £25,000 or £30,000 ; and build the railway-line ?

Mr. Endean.] On what standard was the railway to be completed ?—The original standard of 1921. The State did not say, "Because you have made default in payment of royalties, and in building the railway-line, we therefore terminate your agreement." Instead of at the start doing that, they went on to say, "Your agreement is terminated unless you pay the royalties, and unless you build the railway within six months."

The Chairman : That in itself constitutes a default.

Mr. Endean : Supposing it had been a lease from the Natives to the company, and the Court was applied to for forfeiture, you say there should be considered the terms the Court would impose on the company regarding the relief.

Mr. Perry : Probably the payment by the company of at least part of the arrears of royalties, a substantial part ; and, secondly, some undertaking from the company that it would be in a position sometime in the six months to make a start with the railway-line—some conditions of that nature. Mr. Cooke says if it would have been a termination, in the last degree the company would go to the Court for relief against forfeiture, and the Court would have granted relief probably on some conditions the company would find itself capable of complying with.

Mr. Endean : That would be fair and just.

Mr. Perry: Quite. If members will look at page 2 of paper G.–7 they will see there the observations of Judge Browne. Having set out the claims, he says this:—

> There only remains, therefore, the claim by the company itself for £300,000. In the absence of details it is impossible to say how this sum is made up, but it is reasonable to suppose that it includes a part, at any rate, of the claims made by the individual creditors and also other of the company's debts. Obviously, the position the company takes up is that it was entitled as of right to concessions, and that because it was decided to grant none beyond those already allowed, and to call upon it to carry out the terms of the agreement, which, it was recognized, it was unable to do without further concessions, it should be refunded all its expenditure, whether reasonable or unreasonable, and whether or not of any benefit to the Native owners.

The company does not say that it claims on its legal rights, or that it is entitled as of right to concessions, as Judge Browne seems to believe, when he makes that statement here. We submit that if it is suggested that the Government gave undue consideration to the company on certain occasions by granting it concessions—even if the suggestion is that that was done at the expense of the Native owners—we cannot help repeating that when the Government came down on the company with a very heavy hand and effectually settled the prospects of the Duncan project under which the company would have had an opportunity (*a*) of making a fair deal with the Natives who had consented to the resolutions passed at the meeting on 21st February, 1929; (*b*) of making an honourable settlement with its creditors; (*c*) of recouping some of its lost capital.

Mr. Endean.] Of this £60,000 nominal capital how much was paid up in cash, and what was the consideration for the balance?—The nominal capital of the company was £60,000, and I think £25,000 was subscribed in cash, mostly in New Zealand, and £5,000 worth of shares was allotted to the subscribers for the first 5,000 shares—that is, £30,000; and the balance of £30,000 was never actually allotted to any one, but those shares were the subject of contracts between the company and the English shareholders whereby the company, in consideration of certain subscriptions by the English shareholders, agreed to allot the latter those shares, although I think they were actually allotted to Mr. Tudor Atkinson.

What service did he render?—Atkinson was the man who originally conceived the idea of getting out absolutely inaccessible pieces of bush, and it was he who got into touch with the Natives with the idea of coming to an arrangement whereby the bush could be utilized for their benefit, and for the benefit of the company.

But the fact remains that only £25,000 was in hard cash?—Yes. Mr. Findlay points out that there is a deed signed by one thousand Native owners.

The Chairman.] Do you wish to add anything? I suggest you be as brief as possible in the light of the necessity for the Committee to deliberate?—I want to make one more remark on an observation by Judge Browne on page 2 of the paper G.–7. He says,—

> Many of them (the Native owners) were on the verge of starvation every winter, and were actually compelled to sell any land they possessed not affected by the agreement, and even some of the land subject to it, in order to provide food for themselves. In addition to this, the company knowingly permitted unauthorized persons to go on the land the subject of the agreement, and cut, remove, and sell the timber to such an extent that some of the blocks are absolutely denuded of totara. The Forestry Department has been requested to estimate the damage. So far a complete report has not been received, but I think it will be somewhere in the vicinity of £10,000.

On behalf of the company I wish to say that it disputes that statement made by Judge Browne. The company says that it did not knowingly allow any person to go on the land at any time to cut the timber. It ascertained that certain persons were there, and sent a constable or constables at one time to remove them, or to endeavour to do so, but was not successful in removing them. There is this to be observed also: that those unauthorized persons who were going on the land which is the subject of the Timber Company's rights paid certain moneys in royalty, or whatever they were for, to certain individual Native owners. I do want to dispute, on behalf of the company, the statement made by Judge Browne that the company intentionally permitted people to go and cut the timber. Obviously there was no use in their doing so. I also wish to say that the company has not claimed for the work it has done there, the surveys in opening up the country, the salvation of the timber interests owned by the Natives, the estimating of the timber quantities and the tabulation of the results. It has been admitted by the President of the Aotea Land Board that he appreciates the fact that the conservation of the Native interests has been for the benefit of all concerned. In view of these facts, and of what the company has done during the period of its existence since 1908, which has really made it possible for the State to acquire this valuable property for the benefit not only of the State itself, but for the benefit of the present Native owners, we submit that we are entitled to every consideration at the hands of Parliament. We also submit that when Parliament passed the Act of last year inviting us to come along and put these claims before the Committee it felt from its sense of justice that, after terminating the agreement in the way it did, it ought to give us the opportunity indicated. We appeal to the justice of Parliament, we feel we have a moral claim, and we hope you will give it your most earnest consideration. I had intended dealing with certain individual claims, but as the time is late I will not do so, leaving it to the Committee to go through the individual list I have submitted this morning.

Hon. Sir Apirana Ngata: The question is whether the claims put in by Mr. Grace should not be taken off the list.

Mr. Grace: Provision was made for them in the Duncan project.

Mr. Perry: The negotiations naturally involved the Native owners in a very large amount of expense, and provision has been made for them under the Duncan project; so that the amount is included in the company's claim. (Item D, page 3, list of claims made by Tongariro Co., on behalf of itself and its creditors.)

Hon. Sir Apirana Ngata: The position is, that the rights that the Tongariro Company had have reverted to the owners of the freehold.

Mr. Perry: That seems to be the position. If the State has acquired this property it has acquired a very valuable estate, developed and surveyed, and now a much more practical proposition than it was when the company first took it over.

Hon. Sir Apirana Ngata.] As to the company's capital of £60,000, and its creditors, which should have preference do you think, Mr. Perry ?—Surely that is a matter for the Committee. The company's capital, certainly to the extent of the £25,000 cash subscribed, was, of course, the initiation of the project.

I understand that a large proportion of the company's capital was paid in cash on account of the royalties ?—A proportion was so paid to the Aotea Land Board, or to the Native owners, and it amounted to over £10,000.

Mr. Endean.] Is it possible to trace the value of the improvements you have made apart from the freehold value ?—I am not in a position to answer that question. Mr. Findlay might be able to.

The Chairman.] Would it be possible to ascertain what you paid for surveys ?—I do not propose to deal with individual claims.

Mr. Healy.] With regard to the unauthorized cutting of timber, were those persons given permission by the Native owners ?—Yes, in some instances, and in some cases for a certain amount of money paid to the Native owners.

Mr. Langstone.] Was the timber confiscated ?—I do not know.

The Chairman.] At the last meeting of the Committee certain statements were made that the owners, deceived by the fact that no results had taken place, took it into their own hands to sell the timber. Is that correct ?—There was a report that certain Natives, exasperated by the delays, took the law into their own hands, and entered into these arrangements with these unauthorized persons. But what we are complaining about is that the Tongariro Company should be blamed for allowing any of those persons to go there.

Mr. Langstone.] Supposing that the Tongariro Company had not been in the picture at all to hold up the whole thing, does it not seem probable that other people would have gone in and exploited that land, and the Natives would have been very much better off than they are ?—I think the contrary would have been the position.

Seeing that all the timber around Taumarunui has been taken out, and there are no mills at work, is it not the fact that timber people could not deal with the block simply on account of the agreement with the Tongariro Company ?—In answer I submit that the fact that the Natives were not allowed to be exploited by other companies cutting out their timber, as has been done all over the country during the last twenty years, may rather have been to the benefit of the Natives at this stage than otherwise. One suggestion I intended to put before this Committee was that if the company had done nothing else in its operations over the last twenty years it has at any rate conserved the bush.

Is there a Statute of Limitation as to the lawyers' costs ?—The company was granted the freehold of the railway-line and the certificate of title for it is held by Messrs. Findlay and Moir, and they claim a lien upon it for their costs, and they refused to produce it for the purpose of enabling Armstrong, Whitworth to register its mortgage.

DAVID M. FINDLAY examined. (No. 10.)

The Chairman.] I understand that you wish to address the Committee ?—Yes, in order to refer to one point mentioned by Sir Apirana Ngata, who said he thought this inquiry should be confined to two questions—(1) the interference, if any, by the Crown taking power to acquire the property, and (2) the nature of the claim. I do not propose to go into the question of the nature of the claim, but I do most earnestly say that the acquisition by the Crown is a distinct interference between private individuals who had come to a concluded contract. That concluded contract was the one which was signed between the Duncan syndicate, which had accomplished its purpose, and the Natives who owned the block. The Crown, knowing that a moratorium against creditors exists, stopped in and lifted that moratorium in order to enable the trustees for the Natives to take away the whole of the rights. That determination took place. We say that that was a distinct interference between two contractors in order to enable the Crown to acquire the property. Probably it was quite a right and proper thing to do, and they are acquiring a great and noble heritage, as we have heard. I am not going to say more about it now; but this aspect of the matter must impress itself upon Parliament, and upon this Committee, as a very serious consideration, when one knows that the Crown must do nothing unjudicial, but must act as the fountain of justice and with reasonable fairness to every subject. We are here petitioning the Crown to recognize the services of those who have served the company—Mr. Martin here, and Mr. Ross—and to all who served the company well, and to whom it is greatly indebted for their services. We can say that with the best of intentions, and after rendering those services to the best of our ability, we have been held up from any possible remedy against the assets of this company by the moratorium established by the Parliament of this country. They left it until the last moment, and now we are bound and tied, and prevented from asserting any rights. It is conceivable that we have none; it is conceivable that we would have had an apparent right; it is not for us to say whether or not we have any right. If we have any, the Government has prevented our endeavouring to exercise those rights; and, having done that, assuming it acquires this property, I say it is a most undoubted and sacred duty to protect those people who by legislative moratorium have been prevented from asserting those rights.

Mr. Langstone.] Did you make any offer prior to the moratorium to get the moneys owing to you for services rendered paid up?—Several offers were made.

And you never got it?—We never got it.

Why did you not take legal action then?—Because the moratorium existed.

I mean, prior to the moratorium?—Yes, but the claim has arisen since the enactment of the moratorium of 1915.

Hon. Sir Apirana Ngata: Reference was made to the interference with the rights of the Native owners, but I ask counsel to consider that the claim of the Native owners to recognition after twenty-odd years is one that the Government was bound to uphold. The suggestion put forward by Mr. Findlay that all this is being done in order that the Crown might acquire the forest is one beyond my comprehension, as the feeling of this Committee last year, and the effect of the legislation, was that this action was required because we were entering into negotiations with the Natives for the joint control of the forest, and I personally felt that that would be the best solution of the question. With regard to the Duncan scheme, I could see that the whole wangling was being done on the railway concession.

Witness: I question that word "wangling."

Hon. Sir Apirana Ngata.] I do not use it in any offensive sense. It was the feeling at the time, in 1928, that any concessions made to the Natives with regard to royalties were only to the extent if variations in the bush referred to occurred. That was the position before this Government took office; and when after the formal meeting I asked the representatives of the Duncan syndicate to consider an increase in the royalties it was refused, and that finished the Duncan syndicate as far as I was concerned. The whole matter had to be referred to Parliament again, because the element of the public interest had then become one of the paramount considerations, and no Government would go on with the matter without the recommendation of a responsible body.

Witness: They were getting an increase of royalty.

Hon. Sir Apirana Ngata: After ten years.

The Committee adjourned at 1.5 p.m.

APPENDICES.

WEST TAUPO TIMBER LANDS AND THE TONGARIRO TIMBER CO., LTD.

STATEMENT AS TO CLAIMS MADE IN RESPECT OF THE LIABILITIES OF THE TONGARIRO TIMBER CO., LTD., AND WITH REGARD TO THE EFFECT ON THE EGMONT BOX CO., LTD., OF THE DETERMINATION OF THE TONGARIRO TIMBER CO., LTD.'S RIGHTS.

WEST TAUPO TIMBER LANDS AND THE TONGARIRO TIMBER CO., LTD.

SECTION 29 of the Native Land Amendment and Native Land Claims Adjustment Act, 1929, removed the embargo that had been placed upon the Natives seeking to enforce their contract with the Tongariro Timber Co., Ltd., and appointed the Aotea Maori Land Board the lawful agent for the purpose of recovering possession of the lands affected by the agreements.

The agreements required that certain notice should be given to the company, and accordingly on the 19th November, 1929, the Board notified the company that unless within six months it paid the £26,562 10s. which was due in respect of royalties up to the first day of March, 1929, and completed the railway-line contracted to be constructed, the contract would be terminated in terms of the agreement.

In the meantime various claims were received by the Aotea Maori Land Board arising out of past proceedings of the company. These are—

	£	s.	d.
(1) Morison, Spratt, and Morison	100	9	8
(2) Sir J. P. Houfton's estate	14,000	0	0
(3) Cammell, Laird, and Co...	20,720	0	0
(4) Bertram Philipps	29,700	0	0
(5) C. W. Nielsen	569	9	6
(6) W. H. Grace	4,500	0	0
(7) Te Heuheu Grace party	62,326	0	0
(8) K. D. Duncan (inclusive of £2,000 in No. 6)	13,800	0	0
(9) Armstrong, Whitworth, and Co.	15,000	0	0
(10) Anglo-French and Belgian Corporation	1,787	17	6
(11) Tongariro Timber Co., Ltd.	330,000	0	0
(12) Egmont Box Co., Ltd.	31,000	0	0
(13) Rates			
	£523,503	16	8

The Board was advised that most of these claims were made as creditors of the company, and therefore could not be considered by the Board. Copies of all the claims received by the Board are attached, together with the opinion of the Board's solicitor and the report of the President of the Board thereon.

A further question has arisen as to the position of the Egmont Box Co., Ltd., under an agreement made with the Tongariro Timber Co., Ltd., dated the 23rd October, 1919, and which was purported to be made a valid instrument under the provisions of section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919. The legal status of this claim depends upon the proper construction of the statute. The Solicitor-General and the Board's solicitor are of opinion that the Egmont Box Co. have some claim against the owners. It appears that claim is mixed up with that of Mr. Bertram Philipps, to whom the Egmont Box Co., Ltd., on the 4th May, 1926, agreed to sell the timber rights reserved by the agreement of the 23rd October, 1919, for £13,000.

The Board, as agent for the Natives, may find it difficult to recognize such a large claim without some judicial pronouncement, but the matter appears to be eminently one for some amicable settlement.

It is proposed to place all the documents before the Native Affairs Committee for its consideration.

Native Land Court, New Plymouth, 3rd June, 1930.

The Under-Secretary, Native Department, Wellington.

Tongariro Timber Co. and Claims lodged under Subsection (6) of Section 29 of Act of 1929.

IN reply to yours of the 26th ultimo, as I had some doubt as to whether many of the claims lodged came under the provisions of the section, I discussed the matter with the Board's solicitor and requested him to give an opinion, a copy of which I attach. He advises—

(1) That the claim must arise out of the agreement between the Board and the company:
(2) That the company or its assignees may make a claim, but not its mortgagee:
(3) That any person may make a claim contemplated by the section, provided it is a claim (*a*) arising out of the subject-matter of the agreement; (*b*) in regard to some matter in which the owners or any of them are interested as distinct from the Board.

He further states that he does not think the Board can consider any claims by creditors as distinct from a claim by the company itself—that the Board should consider any claim by the company, but that claims against the company should not be considered unless put in as part of the company's claim.

He specifies the following as claims against the company, and therefore not to be considered by the Board:—

	£	s.	d.
(1) Morison, Spratt, and Morison	100	9	8
(2) Sir J. P. Houfton's estate	14,000	0	0
(3) Cammell, Laird, and Co.	20,720	0	0
(4) Bertram Philipps	14,700	0	0
(5) C. W. Nielsen	569	9	6
(6) W. H. Grace	4,500	0	0
(7) Te Heuheu Grace party	62,326	0	0
(8) K. D. Duncan	13,800	0	0

A further claim on behalf of Armstrong, Whitworth, and Co. for £15,000 was lodged on the 28th May, not with the Board, as required by the section, but with the Board's solicitors. This claim is secured by mortgage over certain of the company's concessions, and particularly the land taken for the route of the railway. At the same time there was lodged a claim on behalf of the Anglo-French and Belgian Corporation for £1,787 17s. 6d.

Neither of these claims appears to come within the section, but the Board's solicitor suggests it might be advantageous to consider the Armstrong, Whitworth claim apart from the others, on the condition that any payment made would be in exchange for a transfer of the land back to the Natives.

There only remains, therefore, the claim by the company itself for £300,000. In the absence of details it is impossible to say how this sum is made up, but it is reasonable to suppose that it includes a part, at any rate, of the claims made by the individual creditors and also other of the company's debts. Obviously, the position the company takes up is that it was entitled as of right to concessions, and that because it was decided to grant none beyond those already allowed, and to call upon it to carry out the terms of the agreement, which, it was recognized, it was unable to do without further concessions, it should be refunded all its expenditure, whether reasonable or unreasonable, and whether or not of any benefit to the Native owners.

It is clear that the company has no legal right to a refund of any part of the amount claimed, and the Board is not prepared to admit that it has any equitable right. During the existence of the agreement the Board and the Native owners were always prepared to carry out their part of it, and therefore the result of the failure on the part of the company should be borne by the company alone.

Time was of the essence of the contract so far as the Native owners were concerned, for the greater the delay in the commencement of operations the greater their interests were prejudiced. Yet, for the purpose solely of assisting the company, delays were granted, the agreement was varied, and concessions were allowed from time to time, in many instances without the consent of the owners being obtained or their wishes ascertained. The result was that a large majority of them actually knew nothing of the position. All they were aware of was that the company had not commenced operations, and that the royalty had not been paid. The bulk of their property was so tied up by the agreement that they could make no profitable use of it, and they suffered as a consequence considerable hardship. Many of them were on the verge of starvation every winter, and were actually compelled to sell any land they possessed not affected by the agreement, and even some of the land subject to it, in order to provide food for themselves. In addition to this, the company knowingly permitted unauthorized persons to go on the land the subject of the agreement, and cut, remove, and sell the timber to such an extent that some of the blocks are absolutely denuded of totara. The Forestry Department has been requested to estimate the damage. So far a complete report has not been received, but I think it will be somewhere in the vicinity of £10,000.

It certainly looks now as if the company had acquired the rights to the timber merely as a speculation and without having any reasonable means of carrying out the agreement. It, clearly, had not the necessary capital at its command, and, judging from the claims made, it was compelled to hawk the rights around at a considerable expense endeavouring to induce persons with capital either to invest in the company or take over its rights. Every failure resulted in an increase in the expenses incurred: in order to pay what royalty it did pay and make some show of complying with the terms of the contract, it had to raise money at exorbitant rates of interest. In the end these expenses probably amounted to something in the vicinity of the sum claimed, but the Board, as stated before,

does not admit that the Native owners are either legally or equitably liable for any part of it. That the company had not the means to carry out the contract, that it showed extreme want of business ability in the management of its affairs, and that it overvalued its rights where purchasers were concerned was no fault of the Native owners, and the company has no right to claim anything from them on that account.

A great deal has been made of the fact that the Duncan syndicate was not allowed to go through with its proposal. It appeared to the Board, however, from what little it knew of the matter, that the syndicate's proposal amounted to an entirely new project, and that the moribund Tongariro Timber Co. was simply used as an instrument to enable it to get some hold on the timber. For this it was prepared to pay something like £100,000 to the company's creditors. This £100,000 was to come out of the timber and was reflected in the price offered for it by the Syndicate—that is, that the Native owners would have had in the end indirectly to pay the company's creditors.

There is no doubt, I think, but that included in the £300,000 is a claim for refund of the royalties, amounting to £52,000-odd, paid by the company. The Board looks upon this sum as being paid merely to keep the agreement alive, and in most cases of payment with the object of obtaining some concession. It regards it as compensating the Native owners to an extent, but to an extent only, for their disappointment, the hardships they have had to undergo, and the inconvenience they were put to through their lands being tied up by the agreement for so long and the failure of the company to carry out its part of the contract. In addition they were forced by the circumstances in which they were placed by the company to sell about one-third of the area affected by the agreement, at a price much less than its real value, and, as before mentioned, have had a considerable portion of the balance of their bush damaged by unauthorized cutting, which the company only had power to stop, and which it neglected to do, although it knew well that the cutting was going on.

JAS. W. BROWNE, President.

Enclosures :—

(1) Copy of the opinion of the Board's solicitor.
(2) Copy of letter to the Board's solicitors from Luke, Cunningham, and Clere with respect to claims by Armstrong, Whitworth, and Co. and the Anglo-French and Belgian Corporation.
(3) Claims numbered one to nine.

RE TONGARIRO TIMBER COMPANY.—MEMORANDUM *RE* CLAIMS RECEIVED.

FOR the purpose of this opinion I adopt the facts as set out in the memorandum by the Hon. Sir Apirana Ngata to the House of Representatives in 1929, printed as Paper I–3A.

The provisions of section 29A 6 (*a*) of the Native Land Amendment and Native Land Claims Adjustment Act, 1929, leaving out the parts unnecessary for the present purpose are as follows :—

> " The Board is hereby constituted the lawful agent of the Native owners . . . with the consent of the Native Minister to settle, adjust, compound, submit to arbitration or compromise all actions, accounts, claims, or demands arising out of the agreements . . . which are now or hereafter shall be depending between the said owners or any of them and any other person or persons whatsoever in such manner as the Board shall think fit."

The section is somewhat involved, but it apparently makes at least one condition essential before the Board can consider any claim—viz., the claim must arise out of the agreement between the Board and the Company.

The next point to be considered is by whom may these claims be made.

There is no doubt the company may make them, and the company would include its assigns, but not its mortgagees. It would also appear that any other person may make a claim contemplated by the section provided it is a claim (*a*) arising out of the subject-matter of the agreement, and (*b*) it is in regard to some matter in which the owners or any of them are interested as distinct from the Board.

I think that the Board is entitled to disregard the legal aspect of any claim and treat it from the equitable point only.

I do not think that the Board can consider any claims by creditors of the company as distinct from a claim by the company itself. I cannot conceive that Parliament has given to the Board, with the consent of the Native Minister, authority to pledge the Native owners to a liability to pay any moneys to a person simply because that person is a creditor of the company. To do so would place the Board in the position of having to decide upon the rival claims of the creditors of the company *inter se*, and plainly it is not in a position to do that. That would involve the Board deciding whether the moneys advanced by creditor A of the company were expended by the company to more advantage to the owners than the moneys advanced by creditor B. The Board cannot be in a position to decide such a point as this.

In view of my opinion in regard to what claims the Board can deal with, I will now review the various claims made, and when I denote the words " claim against the company only " I mean that they are not claims that should be considered by the Board at all, but may be considered if put in as part of the company's claim.

1. £100 9s. 8d.—*Messrs. Morison, Smith, and Morison*, solicitors: Work done on behalf of company; a claim against the company.

2. £14,000 and interest, and a share of royalties in Western B and Northern and Eastern Divisions.—*Sir J. P. Houfton estate*, per Messrs. Chapman, Cooke, Tripp, and Watson: Moneys advanced for payment of advance royalties and secured by debentures.

   It is not clear whether the royalty claim is part of the security for the £14,000 or whether it is a separate transaction altogether. If the latter is the case, there are no particulars as to why the royalties were granted.

   The debenture claim is a claim against the company only, and so also is the royalty claim if collateral to the debenture security.

3. (*a*) £15,630 plus interest; (*b*) £5,090 plus interest.—*Cammell, Laird, and Co.*, per Messrs. Bell, Gully, Mackenzie, and O'Leary.

   (*a*) Is money advanced to Dr. Chapple to enable the company to pay royalties and secured by mortgage debentures of the company; (*b*) expenses incurred by Sir Haviland Hiley in investigating concessions and titles on behalf of Messrs. Cammell, Laird, and Co., secured by an agreement to mortgage its timber concessions and assets. Both are claims against the company.

4. (*a*) £14,700 plus interest; (*b*) £15,000 plus interest.—By *Bertram Philipps*, per Messrs. Bell, Gully, Mackenzie, and O'Leary.

   Secured by agreements to mortgage the company's assets and pledge of debentures.

   (*a*) £10,000 of this amount for advance royalties. A claim against the company.

   (*b*) This is a claim as assignee of the Egmont Box Co. whose contract still subsists by statute. The position between the Egmont Box Co. and the Board has not yet been considered.

5. £569 9s. 6d.—*C. W. Nielsen*, solicitor: A claim for legal services as representing the Heuheu (L. M. Grace and others) debenture-holders from the company.

   This is a claim against L. M. Grace and others, and arises not out of their position as owners of the land, but as debenture-holders from the company, and so is not a claim against the company, but against a section of the debenture-holders, and is not, I think, a claim contemplated by the section, as it does not arise out of the agreement.

6. £2,500.—*W. H. Grace:* (*a*) For services rendered to the Heuheu-Grace party and to his section of Native owners (up to 1927); (*b*) On account of £10,000 worth of shares that would have been allotted if the Duncan syndicate scheme had been finalized.

   (*a*) The Heuheu-Grace party's claim is for debentures, and, so far as any portion of this claim relates to that, is not, I think, a claim contemplated by the section. In so far as the claim is for work on behalf of certain Native owners, there are not sufficient particulars supplied upon which to base any opinion.

   (*b*) This is a claim for payment for services rendered to the Duncan syndicate, and is not a claim contemplated by the section.

7. £62,326 5s.—A claim by the Heuheu-Grace party under debentures from the company.

   This claim represents (*a*) an original debt of £18,000 plus interest, of which debt and interest £5,000 has been paid, and (*b*) a debt of £8,200 plus interest, being the unpaid purchase-money of land sold to the company, the purchase-money being paid by debentures.

   There can be no possible claim in respect of (*b*) the land is still the company's, though probably mortgaged, and the claimants agreed to accept debentures instead of cash, and does not arise in any way out of the agreements.

   The debt of £18,000 was for services rendered the company on its formation.

   (*a*) is therefore a claim against the company.

8. £13,000.—*K. D. Duncan syndicate:* A claim for loss incurred by reason of the failure by the syndicate to float a company to take over the Tongariro Co.'s rights.

   I have read Mr. Duncan's letter, and his claim appears to be based on the ground that, as the Government has prevented, by the 1929 Act, his scheme of reconstruction from coming to fruition, the Native owners should pay him his expenses and compensation for the loss of profits he would otherwise have made.

   I can see no justification for this claim either legally or morally.

   I think that you should not deal with any claims of individual creditors of the company. The company itself should formulate its claim and it can urge the reasons put before it by its creditors in support of its general claim. If you decide to make any payment to the company, then the creditors of the company can arrange amongst themselves how the money is to be divided. If they cannot arrange this amongst themselves, it is hardly to be expected that the Board could do so.

   I think the general attitude the Board should take up in regard to all these claims of an equitable nature is, What benefit have the owners derived from the expenditure of the moneys referred to in the claim. However, from a general point of view, I fail at present to see that the company has even any moral claim.

   In 1908 it made a contract under which certain annual payments were to be made and a railway was to be built. In the petitions to Parliament for extension of time to build the railway it was made a strong feature that the great benefit the Natives would derive from the railway was the opening-up of their lands and the added value thereby given. The correspondence shows that because of this benefit the royalties payable were less than the usual ones then current.

The main contention of the claimants is that the Natives have been paid £52,000 and still have the trees, and it is unfair they should have both. Is not the answer this? It is true we have had your £52,000, but certain trees have been cut by the Egmont Box Co. You have not put in the railway which was to increase the value of our land, and by the continual extensions of time that have been granted you by Parliament we have been prevented from selling our timber when the demand was great, and we have lost the benefit of those sales.

No doubt the inducement to the creditors of the company to lend their moneys was the big profits held out to them. They took a chance that has failed; why should the Natives pay for their mistakes?

If there is such an advantage to the Natives by the cancelling of the agreement, surely there must have been a corresponding advantage to the company or its creditors to have carried it out.

I can at present see no justification for payment of any of the claims I have dealt with.

Wanganui, 29th May, 1930. W. A. IZARD.

Wellington, 28th May, 1930.

Messrs. Marshall, Izard, Barton, and Wilson, Solicitors, Wanganui.

DEAR SIRS,— Re *Tongariro Timber Co., Ltd.*

In reference to the writer's conversation with your Mr. Izard on Saturday last, the amount due by the Tongariro Timber Co., Ltd., to Sir W. G. Armstrong, Whitworth, and Co., Ltd., is £13,171 11s. 6d., together with interest for several years, which will bring the total amount owing to over £15,000. The debt is secured by a memorandum of mortgage over certain of the Timber Company's concessions, and particularly over the route of the proposed railway which was, we understand, transferred for an estate in fee-simple to the Tongariro Timber Co., Ltd.

We are now examining the position of the title to the interests comprised in our client company's mortgage, and if you require any further information in reference to our client's security we shall be pleased to supply same. We presume that the Aotea Maori Land Board will eventally desire to clear up all outstanding interests in the various blocks, and no doubt a settlement with our client company for a release of its mortgage could be arranged.

In addition to the amount due to Sir W. G. Armstrong, Whitworth, and Co., Ltd., there is a claim for £1,787 17s. 6d. due to the Anglo-French and Belgium Corporation, Ltd., by the Tongariro Timber Co., Ltd., in respect of which Sir W. G. Armstrong, Whitworth, and Co., Ltd., were acting as agents for collection. The claim arises under a memorandum of agreement dated the 7th November, 1922, and was for services rendered and out-of-pocket expenses in connection with negotiations in connection with the Tongariro Timber Co., Ltd.'s enterprise, probably in regard to financing their undertaking.

The latter claim is not, of course, covered by Sir W. G. Armstrong, Whitworth, and Co., Ltd.'s mortgage.

Yours, &c.,
LUKE, CUNNINGHAM, AND CLERE,
per W. H. CUNNINGHAM.

CLAIM No. 1.

49 Ballance Street, Wellington, N.Z., 20th May, 1930.

The President, Aotea Maori Land Board, Wanganui.

DEAR SIR,— Re *Tongariro Timber Co., Ltd.*

We understand that you are dealing with claims against the Tongariro Timber Co., Ltd., and we have to advise you that the sum of £100 9s. 8d. is owing by the company to the late firm of Morison, Smith, and Morison for work done on behalf of the company. Full particulars of these accounts have already been furnished to the company from time to time.

Yours, &c.,
MORISON, SPRATT, AND MORISON,
per D. G. B. MORISON.

CLAIM No. 2.

20 Brandon Street, Wellington, N.Z., 13th May, 1930.

The Aotea District Maori Land Board, Wanganui.

DEAR SIRS,— *Tongariro Timber Co., Ltd.*

(1) We have been instructed to write to you on behalf of the executors of Sir John Plowright Houfton, who died on or about the 18th November, 1929, and to place before you their claims as creditors of the above-named company.

(2) Those claims fall into the two following parts—

(*a*) A claim for the sum of £14,000 with interest from 5th September, 1922.

(*b*) Certain royalty claims to which we shall hereafter refer.

(3) In respect of the sum and interest mentioned under Claim (*a*) above, Sir John (then Mr.) Houfton received as security sixteen first-mortgage debentures of the Tongariro Timber Co., Ltd., of £1,000 each, numbered 1 to 14 inclusive and 39 and 40, and in respect of which a mortgage dated the 7th November, 1922, was executed by way of collateral security. This mortgage provides for a specific first charge over the timber and timber-cutting rights of the company in the Western B Block, and for a specific charge over the timber and timber-cutting rights of the company in the Western A Block, subject to all charges thereon existing at the date of the mortgage. The debentures provide for interest to be paid at 10 per cent. per annum; but we understand that our clients are willing to accept interest at a lower rate—a matter upon which we are at present awaiting their instructions by cable.

(4) We understand that the advance of £14,000 was made to enable the company to pay to the Natives advance royalties as prescribed by the agreement between the Native owners and the company. We understand that the timber in respect of which those advance royalties were paid has not yet been cut, and we therefore submit that it would be a very severe hardship on our clients if the Native owners are permitted to retain not only the money, but also the timber in respect of which the money was paid in advance.

(5) The claims comprised under (*b*) above are as follows:—

(i) A share of a royalty of 6d. per 100 ft. of the timber in Western B Division:

(ii) A royalty of 2d. per 100 ft. of the timber in the Northern and Eastern Divisions, or, alternatively, a right to commute the share in the royalty mentioned under (i) above to a royalty of 2d. per 100 ft. of the timber in the Northern and Eastern Divisions.

We understand that the share of royalty referred to under (i) is 3d. out of the 6d., and that the documents under which the claims under (i) and (ii) are made provide, *inter alia*, for payment as and when the timber is taken.

(6) We have been informed that on the 19th March, 1930, the shareholders of the company passed a resolution purporting to authorize the directors to transfer the company's rights under its various concession agreements to the Crown, subject to the Government settling the claims of creditors and shareholders either by negotiation or by arbitration. We desire to say that our clients were not parties to and do not consent to this resolution. On the contrary, they rely on and desire to keep open whatever legal rights they have and amongst these is, we submit, the right to have their claims dealt with under the provisions of section 29 of the Native Land Amendment and Native Land Claims Adjustment Act, 1929. For this reason, we address this letter to you, and we ask you to treat it as an application by our clients to have their claims dealt with under that section.

(7) We have sent a copy of this letter to the Hon. the Minister of Native Affairs, and asked him to treat it as addressed to him also.

Yours faithfully,

CHAPMAN, TRIPP, COOKE, AND WATSON,
per P. B. COOKE.

CLAIM No. 3.

Memorandum for the President, Aotea District Maori Land Board, Wanganui.

Re *Tongariro Timber Co., Ltd.*

WE have been informed by the Secretary of the Tongariro Timber Co. that on 19th March, 1930, the directors were authorized by the shareholders to transfer their rights under the several agreements held from the Maori Land Board to the Crown, subject to the Government settling the claim of creditors and shareholders either by negotiation or arbitration. Neither we nor our client hereafter mentioned assented to the resolution.

Nevertheless, it seems to us we should formulate and place before you and the Hon. the Minister for Native Affairs the claim of our client company, Cammell, Laird, and Co., Ltd., 3 Central Buildings, Westminster, London.

The company's claim may be divided into two parts, consisting of—

(*a*) A sum of £15,630, with interest at 6 per cent. from 31st December, 1926;

(*b*) A sum of £5,090, with interest at 6 per cent. from 26th July, 1926.

In respect of these debts the company holds as security—

(*a*) Twenty-three first-mortgage debentures of the Tongariro Co. of £1,000 each, numbered 15 to 34 inclusive and 36 to 38 inclusive;

(*b*) An agreement to mortgage from the Tongariro Co. (subject to prior charges) covering the whole of its timber concessions and assets, supported by caveat on its title.

In this memorandum we have separated the two sums and the securities therefor for this reason: The first sum represents moneys advanced to Dr. Chapple to enable the Tongariro Co. to pay in advance to the Native owners royalties on timber which is still standing, and should, we submit, be repaid as a first charge, as it would be inequitable to allow the Natives to have the timber and retain the money as well.

The second sum consists of the expenses incurred by Sir Haviland Hiley as representing Cammell, Laird, and Co. in coming to New Zealand, investigating the concession and titles, making reports, &c., and, as above noted, is secured by general agreement to mortgage over the whole of the Tongariro Co.'s property.

We have not the debentures themselves before us, but, so far as our recollection serves, they are a first charge on the division known as "Western B" and a second or third charge on other parts of the concession as well.

We understand that the debentures held by Messrs. Cammell, Laird, and Co., Ltd., form part of an issue the remainder of which are held by the executors of the late Sir John Houfton, for whom Messrs. Chapman, Tripp, Cooke, and Watson act as solicitors in New Zealand.

On reference to your files in this matter it will be found that we have on previous occasions indicated the nature of the claims of Messrs. Cammell, Laird, and Co. against the Tongariro Co., and this memorandum is written in amplification.

Messrs. Cammell, Laird, and Co. are the well-known ship-builders employed on numerous occasions for Admiralty contracts. They investigated this concession with a view to constructing the railway from Kakahi to Taupo, but by arrangement with the Tongariro Co. the project was abandoned so far as Messrs. Cammell, Laird, and Co. were concerned, and they have never been repaid the sums advanced.

BELL, GULLY, MACKENZIE, AND O'LEARY,
Solicitors for Cammell, Laird, and Co., Ltd.

Ballance and Featherston Streets, Wellington, 12th May, 1930.

CLAIM No. 4.

Memorandum for the President, Aotea District Maori Land Board, Wanganui.

Re *Tongariro Timber Co., Ltd.*

WE have been informed by the secretary of the Tongariro Timber Co., Ltd., that on the 19th March, 1930, the directors were authorized by the shareholders to transfer their rights under the several agreements held from the Maori Land Board to the Crown subject to the Government settling the claims of creditors and shareholders either by negotiation or arbitration. Neither we nor our client hereafter referred to assented to that resolution. Nevertheless, it seems to us we should formulate and place before you and the Hon. the Minister for Native Affairs the several claims of our client, Mr. Bertram Philipps, of Salisbury, England, as a creditor of the Tongariro Timber Co.

The first claim of Mr. Philipps consists of two several sums consisting of—

(*a*) £14,700, with interest at 6 per cent. from 19th January, 1927;
(*b*) £15,000, with interest at 6 per cent. from 25th March, 1927.

The above sums are those stated to be due to Mr. Philipps by an agreement between him and the Tongariro Co. dated 25th March, 1927, admitted as a settlement of an action, No. 799/1926, Supreme Court, Wellington.

The foregoing moneys are secured by—

(*a*) An agreement to mortgage dated 24th February, 1926, covering the whole of the Tongariro Co.'s concessions and assets subject to prior charges, and supported by a caveat on the title;
(*b*) An agreement to mortgage dated 11th April, 1927, on similar lines:
(*c*) Pledge of twenty-seven mortgage debentures of £1,000 each issued by the Tongariro Co., and charged upon certain of its properties and rights Nos. 276 to 297, 310 to 313, and 409.

The agreements between the Maori Land Board and the Tongariro Timber Co. provide for the latter company paying to the Aotea Board certain sums in each year representing royalties in advance of timber to be afterwards cut. We understand that the total amount paid by the Tongariro Co. to the Aotea Board in respect of royalties is about £53,000. With the exception of a small area of timber upon the Western A Division cut by the Egmont Box Co., the whole of the timber in respect of which that royalty has been paid is still standing, and presumably on cancellation or expiry of the Tongariro Co.'s concession will revert to the Native owners.

Of the royalties paid in advance, at least £10,000 has been provided by Mr. Philipps on the urgent request of the Tongariro Timber Co., and such sum of £10,000 forms part of the above-mentioned sums mentioned as owing by the Tongariro Co. to Mr. Philipps.

It is respectfully submitted that the Board will not permit the Native owners to have both the timber and the money, and that the advances made by Mr. Philipps in respect of royalties should be repaid as a prior charge on the property with interest at 6 per cent., and that the remainder of the Tongariro Co.'s debt to him should also be charged upon the property, as being secured by the agreement to mortgage and debentures given to him.

Mr. Philipps' second claim is not so much a claim for money as a claim for title, and we will endeavour now to set out the basis of his claim, omitting for the present much detail and extracts from documents and statutes, which can be supplied later.

The Tongariro Co.'s bushes have always been divided into three areas known as "Western A," "Western B," "Northern and Eastern."

The sketch map attached will show the location of the respective areas.

The agreements between the Aotea Maori Land Board and the Tongariro Timber Co. covering the bush on all three areas are three in number, dated 1908, 1910, and 1913 respectively. The royalties set out in those agreements as payable to the Natives are calculated on an area basis, but are said to work out on survey at approximately 1s. per 100 ft. sawn measurement.

In the year 1914 the Tongariro Co. entered into an agreement with the Egmont Box Co., Ltd., by which the latter company acquired the bush growing upon the Western A Division on a royalty basis of 3s. per 100 ft.

The agreement of 1913 between the Aotea Maori Land Board and the Tongariro Co., and the agreement of 1914 between the Tongariro Co. and the Egmont Box Co. are recited and confirmed by section 5 of the Native Land Claims Adjustment Act, 1914. By subsection (3) of that section it is declared that default by the Tongariro Co. under its main agreement with the Aotea Board shall not prejudice or affect the rights intended to be conferred upon the Egmont Box Co. by the sale agreement of 1914. It is further declared by the subsection that in the event of the loss, forfeiture, surrender, or abandonment by the Tongariro Co. of its railway or timber rights the following provision shall take effect:—

"(*a*) So far as the said agreement of the ninth day of September, nineteen hundred and fourteen, shall at the time of such loss, forfeiture, surrender, or abandonment be unperformed the Egmont Box Company, Limited, shall continue to be under the obligations on its part expressed and implied therein, and such obligations shall be enforceable against the Egmont Box Company, Limited, by the Aotea District Maori Land Board in the same manner and to the same extent as if such agreement had been entered into by the Egmont Box Company, Limited, with the Aotea District Maori Land Board instead of with the Tongariro Timber Company, Limited; and the Egmont Box Company, Limited, shall against such Board, and against every person claiming title thereunder, and against the Native owners of the lands comprised in the Fifth Schedule to the said modifying agreement dated the twenty-fourth day of October, nineteen hundred and thirteen, and all persons claiming under them have all the rights conferred or intended to be conferred on the Egmont Box Company, Limited, by the agreement of the ninth day of September, nineteen hundred and fourteen; and the Aotea District Maori Land Board is hereby empowered and directed to do all acts and to execute all documents necessary to give effect to the said agreement of the ninth day of September, nineteen hundred and fourteen, and to the provisions herein contained.

"(*b*) In respect of all moneys which shall be or become payable to the Egmont Box Company, Limited, under the said agreement of the ninth day of September, nineteen hundred and fourteen, such company shall, in addition to the security agreed to be given by the Tongariro Timber Company, Limited, over the lands on which the said railway is to be constructed, be entitled to a legal charge on the lands specified in the Fifth Schedule to the said modifying agreement dated the twenty-fourth day of October, nineteen hundred and thirteen, but only to the extent of the rights and interests expressed to be given to the Tongariro Timber Company, Limited, therein by the agreement referred to in section thirty-seven of the Maori Land Laws Amendment Act, 1908, and any agreements modifying the same; and such moneys shall be payable by the Aotea District Maori Land Board to the Egmont Box Company, Limited, out of the net proceeds received by the Aotea District Maori Land Board in respect of the sale and disposal of timber or timber-rights therefrom."

Further provisions from the statute referred to affecting or securing the Egmont Box Company's rights are quoted as follows:—

"(4) The rights and securities given or agreed to be given by the Tongariro Timber Company, Limited, to the Egmont Box Company, Limited, under or in pursuance of the said agreement of the ninth day of September, nineteen hundred and fourteen, and under this Act shall have priority over all debentures issued by the Tongariro Timber Company, Limited, so that such debentures shall be postponed and be subject to the same to the extent defined by the terms of an agreement dated the twenty-third day of October, nineteen hundred and fourteen, between the trustees for the respective sets of debenture-holders and the Egmont Box Company, Limited.

"(5) Nothing herein or in the said agreement of the ninth day of September, nineteen hundred and fourteen, shall be construed as imposing on the Egmont Box Company, Limited, any liability to perform any obligations of the Tongariro Timber Company, Limited, under the agreement referred to in section thirty-seven of the Maori Land Laws Amendment Act, 1908, or under any agreement modifying the same other than as expressly set forth in the said agreement of the ninth day of September, nineteen hundred and fourteen."

* * * * * * * *

"(7) With the consent of the Native Minister, the agreement of the ninth day of September, nineteen hundred and fourteen, may at any time and from time to time hereafter be modified by mutual agreement between the parties thereto in such manner as they may think fit, and all the provisions of this section with respect to the said agreement of the ninth day of September, nineteen hundred and fourteen, shall extend and apply to any such modification."

In the year 1919 the Tongariro Co. and the Egmont Box Co. entered into another agreement, abrogating or modifying that of 1914, but to the same tenor so far as the purchase of Western A timber and royalty of 3s. per 100 ft. are concerned. The substituted agreement between the two companies (subject to the obtaining of certain consents, which were duly obtained) is confirmed by section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919. By the said statute section 5 of the Act of 1914 is declared to apply to the agreement of 1919 in the following terms:—

" . . . the provisions of subsection three of section five of the Native Land Claims Adjustment Act, 1914 (and the other provisions of that section so far as the same are applicable), shall apply

to any such deed or agreement as aforesaid in the same manner as such provisions were declared by the said Act to apply to the agreement mentioned therein of the ninth day of September, nineteen hundred and fourteen, to the intent that the said Egmont Box Company (Limited) shall have in all respects as full and complete protection in respect of the rights conferred, or purporting to be conferred, upon it by any such deed or agreement as aforesaid as it had in respect of its rights under the agreement of the said ninth day of September, nineteen hundred and fourteen, by virtue of the said section five of the Native Land Claims Adjustment Act, 1914. . . . "

It will be seen from the foregoing extracts that the Egmont Box Co. has a statutory title to the timber on the Western A area and a legal charge on the lands specified in the Fifth Schedule to the agreement of 1913 made between the Tongariro Timber Co. and the Egmont Box Co. That Fifth Schedule comprises the areas known as " Western A " and " Western B " as follows :—

" All those pieces or parcels of land situated in the West Taupo County being parts of the blocks named Whangaipeke, Pukepoto, Waione, Ruamata, Hohotaka, and Puketapu, as such parts are shown upon the attached plan marked ' D ' and are therein coloured some in yellow and some in green, comprising the subdivision of the bush on the lands comprised in the First Schedule to the first deed called in the said attached plan the ' Western Division ' and being Blocks A and B thereof."

On the 4th May, 1926, the Egmont Box Co., which had already constructed some cuttings and other earthwork for access purposes, agreed to sell its right to cut Western A timber to Mr. Philipps for a sum of £13,000 subject to Mr. Philipps paying to the Tongariro Co. the royalty of 3s. per 100 ft. sawn measurement. That agreement, which, upon payment of the full purchase-money is to be followed by a formal assignment, is intended to confer upon Mr. Philipps as purchaser all the rights of the Egmont Box Co. It is consented to by the Tongariro Co. and by the Aotea Maori Land Board.

Therefore, upon payment of the balance of purchase-money, Mr. Philipps should stand in the position of the Egmont Box Co., and will have, we submit, a statutory title to the timber upon Western A and a legal charge upon the lands of Western A and Western B in respect of all moneys which shall be or become payable by the Tongariro Co. to the Egmont Co.

In this memorandum we have set out what we believe to be Mr. Philipps's claim to Western A timber on the assumption that the Egmont Box Co. can give him a good title thereto. We do not act for the Egmont Co., nor at the time of writing has its solicitor seen this letter. Hence it is open for the Box Co. to amend or amplify the grounds upon which it relies for title in such manner as its directors think proper.

BELL, GULLY, MACKENZIE, AND O'LEARY,
Solicitors for Bertram Philipps.

Featherston Street, Wellington, 12th May, 1930.

CLAIM No. 5.

T. and G. Building, Corner Lambton Quay and Grey Street,
Wellington, N.Z., 17th April, 1930.

His Honour Judge J. W. Browne, President, Aotea District Maori Land Board, Wanganui.

DEAR SIR,— Re *Tongariro Timber Co., Ltd.*

I wish to bring under your notice my claim for the sum of £569 9s. 6d., costs incurred to me for legal services rendered in connection with the affairs of this company. I was instructed as solicitor for members of the Heuheu party (L. M. Grace and others) whose interests as debenture-holders from the company were in question in the various negotiations undertaken by it, and, as consequence, the interests of the Native party were incidentally involved in the business transacted by me. I may say that had the company's rights been assigned to and taken over by the syndicate organized by Mr. Duncan, my claim would have been recognized by it and admitted.

I apprehend that it is desirable that I should inform you of my claim in view of my position as solicitor for the party above named, and I respectfully ask you to note the same.

Yours, &c.,
CHAS. W. NIELSEN

CLAIM No. 6.

Wellington, 14th March, 1930.

Judge Browne, President, Aotea Maori Land Board, Wanganui.

SIR,— Re *Tongariro Timber Co.*

In compliance with the provisions of paragraph (6) of section 29 of the Native Land Amendment Act, 1929, I hereby beg to furnish you with particulars of my claim in respect of the above company. The claim is for services rendered, and affects, firstly, the Heuheu-Grace debenture party ; secondly, the section of Native owners whom I represented from the end of 1924 to the end of last year ; thirdly, the Duncan Syndicate ; and, finally, the Government. The claim can be, very conveniently, presented under the four headings just indicated, and I therefore purpose dealing with it accordingly.

Heuheu-Grace Debenture Party.—This party holds £41,900 debentures in the company, carrying 5 per cent. interest, and there is owing to it at the present time over £62,000, principal and interest. I have been its trustee since 1911. Until the year 1919 my duties were merely nominal, but from then onwards I was actively engaged on the party's behalf.

As you no doubt know, in the year 1919 the above company renewed its efforts to carry out its undertaking, and to that end it entered into successive negotiations with, *inter alia*, the Egmont Box Co., Messrs. Armstrong-Whitworth, Messrs. Cammell-Laird, Mr. Bertram Philipps, and finally in 1927–28 with the Duncan Syndicate. All these negotiations were spread over the period 1919–1928, and were long and protracted. In all of them I acted for the party and practically carried the entire responsibility of watching and protecting its interests, and of conducting the party's own negotiations with the persons mentioned. In the course of doing all this, I think I can safely claim that the party's interests never suffered in the slightest degree, and that, in all negotiations made on its behalf, it secured very favourable terms.

For all these services rendered by me, over a period of ten years and more, I have not received a penny remuneration, though it was understood that I would be amply remunerated when and if the party's debt was paid; and I am sure that, if this event should ever come to pass, the party will honour the arrangement. It is difficult to assess the amount of such a claim as this, but I think that on an application to the Supreme Court for the payment of trustee's commission the Court would, in all the circumstances of the case, probably award a commission of at least 2 per cent. to 3 per cent., which on £60,000 would work out at £1,200 to £1,800.

My Section of the Native Owners.—Towards the end of the year 1924 it became apparent that the affairs of the company had reached a critical stage. The negotiations with Messrs. Armstrong-Whitworth had already fallen through, and there was every prospect of the negotiations with Messrs. Cammell-Laird meeting with a like fate. On the other hand, there was in the field a local syndicate known as the Hope Gibbons syndicate. In these circumstances, a meeting was held of the leading members of the Heuheu-Grace party and of other leading owners who had no interests in the debentures, and the meeting finally resulted in my undertaking, actively, to engage myself in the direction of assisting the company float its venture. This arrangement necessitated my having to resign from my position on the legal staff of the Public Trust Office, and in which position I was drawing a salary of £400 a year.

In pursuance of my undertaking, I, in 1925, placed my services at the disposal of the Hope Gibbons syndicate and I was associated with them over nine months as assistant organizer. This syndicate was a particularly strong one and would undoubtedly have succeeded in its venture and in placing the company's undertaking on a sound and satisfactory basis, but for the intervention of Mr. Bertram Philipps. This gentleman came on the scene in March, 1925, and in a very short time induced the company to give him an option over its rights. The syndicate, however, held on for some months in the hopes that Mr. Philipps would not exercise or carry out his option, but finally the syndicate was dissolved about September, 1925.

As you know, Mr. Philipps failed to carry out his undertaking, but, on the other hand, he succeeded in tying up the company until the early part of 1927, when the company finally got free of him by undertaking to pay him some £29,000 and interest.

As soon as the company was free of Mr. Philipps I associated myself with certain other gentlemen interested in the company in an effort to influence local support for the undertaking. We finally succeeded in our effort at the end of the year 1927, when we induced the Duncan syndicate to undertake the flotation of a new company, which would acquire the rights of the old company and place its undertaking on a sound and satisfactory footing. As soon as the syndicate was formed, I became associated with it as assistant manager and organizer to Mr. K. D. Duncan, and was so engaged during the years 1928 and 1929. This position I took up with the hearty approval of my debenture party and my section of Native owners.

As in the case of the Heuheu-Grace party, I have not received any remuneration from any one for my services rendered to my section of owners, the arrangement being that I was to look to the purchaser of the company's rights for payment. Here, again, I have some difficulty in assessing the amount of my claim, but in view of the fact that up to the end of the year 1927 I was actively engaged on behalf of the section well over eighteen months, and on the basis of the £400 a year which I gave up in order to serve the section, I think the amount of this part of my claim could well be placed at £600 or £700.

The Duncan Syndicate.—As already mentioned, I joined the syndicate as assistant manager and organizer, and was so engaged from the beginning of 1928 to last November, when the syndicate was dissolved. The terms of my engagement were that for my services to the syndicate I would be allotted £10,000 fully-paid-up shares in the new company projected by the syndicate, though it was understood that I would have no claim against any member of the syndicate if that company was not formed. In addition to this, the syndicate agreed that for my services to the Heuheu-Grace party and to my section of owners I would be paid by the new company the sum of £2,500, payable £1,500 in cash and £1,000 in 7-per-cent. debentures in that company.

As you know, everything necessary to ensure the successful formation of the new company was done by the syndicate, and it was only prevented from carrying out its project by the final refusal, at the end of last year, of the Government to approve the project, although the Native owners, the Tongariro Co., and its creditors had either agreed, or were ready to agree to the project.

Incidentally, I am aware that Mr. Duncan has already presented to you his syndicate's claim and that, in doing so, he has claimed on my behalf a sum of £2,000 as compensation for the loss of my £10,000 shares. This he did with my approval, and I am prepared to accept the £2,000 in settlement accordingly.

The Government.—As a result of the Government's action in refusing its consent to the Duncan project and in deciding itself to acquire the territory affected by the Tongariro Co.'s rights, the proposed new company was not, and could not, be formed, and I, in consequence, lost all the benefits described above. Furthermore, through the self-same action and for the reasons already indicated, I appear to have no right of recourse in respect of my claim against any of the parties to whom my services were rendered. In all these circumstances I consider that I have a strong moral claim, if not a legal one, against the Government.

This concludes the presentation of my claim in all its main details, and it now only remains for me to commend it to you for the favourable consideration of yourself and the Government.

Summarized, the position is that, in all, I claim—

(*a*) £2,500 on account of services rendered to the Heuheu-Grace party and to my section of the Native owners—in the case of the latter as up to the end of the year 1927.

(*b*) £2,000 on account of the £10,000 fully-paid-up shares, which would have been allotted to me for services rendered the Duncan syndicate during the years 1928 and 1929.

For the reasons already indicated, it would appear as if I must look to the Government either for payment or for protection if it comes to terms with the parties to whom my services were rendered.

In conclusion, I would mention that, in associating myself as I did with the affairs of the Tongariro Co., I did so in the firm and honest conviction that the best interests of all those for whom I acted, and also of the Native owners generally, lay in the successful carrying-out of that company's undertaking, and I have yet to be convinced to the contrary. I would further add that the £4,500 claimed by me barely covers the financial loss which I have incurred since the year 1924, through my association with the company's affairs.

I shall be glad if you will kindly advise me of any further action that I may be required to take.

I have, &c.,

W. H. GRACE.

CLAIM No. 7.

Wellington, 14th March, 1930.

Judge Browne, President, Aotea Maori Land Board, Wanganui.

SIR,— Re *Tongariro Timber Co.*

In compliance with the provisions of paragraph (6) of section 29 of the Native Land Amendment Act, 1929, I hereby beg to furnish you with particulars of the claim against the above company of what is known as the Heuheu-Grace party. This I do as the duly appointed trustee of the party. The leading members of the party are:—

(1) The estate of Te Heuheu Tukino (deceased).
(2) Mr. L. M. Grace, of Wellington.
(3) The estate of Keepa Puataata (deceased).
(4) Mr. J. E. Grace, of Tokaanu.

Briefly, the party's claim is for the payment of a sum of £41,900, together with interest thereon at the rate of 5 per cent. from the 1st July, 1920. On the 28th of last month the amount of the claim, principal and interest, was £62,326 5s.

The grounds on which the party bases its claims are as follows:—

(1) It holds £41,900 of the company's debentures which were payable on the 31st of December, 1914, and which carry interest at the rate of 5 per cent. per annum.

(2) None of these debentures have been paid nor has any interest been received in respect of them since the 30th June, 1920.

(3) These debentures belong to a series of £80,000 created by the company on the 12th May, 1911. This series now constitutes the paramount general charge on the rights and assets of the company, though that charge is postponed to certain other charges in respect of—

(*a*) The Western A timber area.
(*b*) The Western B timber area.
(*c*) The route of the company's railway-line and its mill-site, &c., areas.

(4) As among the holders of the £80,000 series and by virtue of a deed of modification made on the 13th October, 1920, the party has priority over the other holders, both as to charge and payment.

(5) The party holds as a collateral security for the payment of these debentures a mortgage over the company's rights in respect of the Western B timber area, but subject to a mortgage-debenture charge in favour of the Houghton-Chapple group for £36,000 and interest.

This completes the formal presentation of the party's claim. I must confess, however, that I am not at all clear as to what exactly is the object of paragraph (6), but I take it that the Government is desirous of being furnished with particulars of all claims affecting the company with a view, perhaps, to arriving at some equitable settlement with the claimants when, and if, it acquires the Tongariro timber territory. On the assumption that this is the object of the Government I think that it would not be amiss if, in addition to what I have already done, I set out briefly the history and merits (as distinguished from the formal grounds already stated) of the party's claim.

The party's debt was contracted for services rendered during the period 1906–1911. In the former year Mr. E. T. Atkinson conceived the idea of forming the company with the object of acquiring its present rights. To that end he engaged the original members of the party (including the four named above) to assist him in acquiring the rights and generally in floating his undertaking. These members rendered Mr. Atkinson faithful and exceedingly valuable services, and it can safely be said that but for their assistance he would never have acquired the rights or floated his undertaking. Two of the members, Te Heuheu Tukino and Mr. L. M. Grace, were actively engaged

throughout the whole of the period mentioned; the others were only engaged at the outset or intermittently.

For all these services the members of the party should have received some £18,000 (£6,000-odd being owing to Te Heuheu Tukino and a similar amount to Mr. L. M. Grace). The company was unable to pay this amount in cash, and the debt was finally settled by the party accepting in 1911 £27,000-odd of the above debentures in lieu of the £18,000 cash. At the same time, the Grace family sold the company its township-site on the shore of Lake Taupo. The price was £8,200 which, however, was not paid in cash, but in the debentures just mentioned. This made the grand total of the debentures £35,000-odd, and so it remained until the year 1920, when the company paid the party £5,000 on account of arrears of interest (from the 1st March, 1911), capitalized the balance of interest owing, issued further debentures for the amount capitalized, and so made the total principal of the debentures held by the party £41,900—the amount of debentures at present held by it. As already pointed out, the company has paid no interest on the debentures since all this took place.

Such, in brief, is the history of the party's claim. As for the merits of that claim, the more outstanding of them are as follow:—

(1) There is no doubt that, at its inception, the company's undertaking was highly beneficial to the Native owners, and was so rated by the Commission which sat in 1908 to consider the whole question of granting the rights. As already stated, the company's undertaking would never have been floated but for the services rendered by the party. The party therefore has it to its credit that it was responsible for an undertaking which, at its inception, was highly beneficial to the Native owners, and which, last year at any rate, promised to turn out exceedingly well for them. In saying this, I refer to the Duncan project. Under that project the Native owners would have received in the form of increased royalties and dividends a sum of at least £900,000, as against the £400,000-odd which they would have received had timber operations commenced immediately after the company's agreements were executed. Having regard to the difficulties of access presented by the timber territory as a whole, it is exceedingly doubtful if they would ever have secured such a good price from any other private buyer for the territory as a whole. As is known to every one, the successful carrying-out of the Duncan project was assured, and was only prevented by the final refusal, at the end of last year, of the Government to sanction it, although the Native owners and other interested parties had agreed to it. Furthermore, the mere existence of the undertaking has, really, preserved the territory for the owners, for, but for its existence, the greater part of the territory would have been sold long ago for prices much below even what was payable under the company's agreement. As it is, but only because of the existence of the undertaking, the owners retain the greater part of the territory, and, by reason of the price put on the same by the Duncan project, they are now, and for the first time, in a position to deal advantageously with their timber.

(2) In 1919 the party had an excellent opportunity of being paid in full all the money which was then owing to it. In that year overtures were made to it on behalf of the Government for the purchase of its debentures. These overtures, however, formed part of a general scheme to buy out, first, the company and then the Native owners; and it was desired to acquire the debentures, apparently, because of the power of sale which they carried, and because that power could be used as a lever against the company. The party considered, however, that under the scheme the Native owners would not receive a satisfactory price, and, for that reason and that reason only, it rejected the overtures; but the fact remains that had it ignored the interests of the Native owners it would have been paid in full the money then owing to it. That the party was justified in forming the view just expressed was clearly demonstrated by the fact that in the succeeding two years (1920 and 1921) the Government bought extensive areas of the timber territory at prices ranging from £1 19s. to £3 5s. per acre.

(3) In 1922 the party again subserved its interest to those of the Native owners. Under clause 31 of the agreement of 1908, if the company's rights were cancelled before the 1st March, 1923, it had the right to retain, free of cost, an area of the timber territory having, on the royalty basis laid down in the agreement, a value equal to the amount paid by the company in the form of advance royalties. The amount of advance royalties then paid was about £8,000, but the then value of its timber equivalent was at least five times that amount, for the timber could have been taken in an accessible portion of the territory. The party then had the paramount charge on the company's rights and assets and by exercising its power of sale (which was fully exercisable) it could have brought about the cancellation of the company's rights, stepped into its shoes in regard to the right mentioned, and, in that way, obtained satisfaction of its (the party's) debt. The question of taking this course was seriously considered by the party; but, as it meant wrecking the undertaking and thus depriving the Native owners of its benefits, the party refrained from adopting the course, although it afforded them an easy way out of their difficulties. It is true that the consent of the Government was required before such a course could be taken; but, in all the circumstances, the Government would have been obliged to grant its consent, or else to arrange for the severance of a proper security for the debentures.

(4) Last year, and through the action of the Government in refusing to grant its consent to the Duncan project, the party was deprived of the assured benefits of the project. That project was designed, among other things, to secure the equitable settlement of the claims of all parties interested in the company's undertaking. Under the project the Native owners would have obtained the benefits already touched upon, and the company and its creditors would have received, in cash and in shares and debentures in a projected new company, amounts representing from 65 per cent. to 80 per cent. of their claims. The party itself would have received 20 per cent. of its claim in cash, 60 per cent. in debentures, and would have written off the remaining 20 per cent. All these parties were, however, deprived of these benefits by the action of the Government already described, and notwithstanding the fact that they all had either agreed, or were ready to agree, to the project.

(5) By virtue of its position as a creditor of the company, the party is entitled to share in the benefits of all rights and equities to which the company is entitled.

(6) Finally, the party is easily the company's oldest creditor.

This concludes the exposition of the chief merits of the party's claim. It also concludes the general presentation thereof, and it now only remains for me to commend the claim to the earnest consideration of yourself and of the Government.

I shall be glad if you will kindly advise me of any further action that may be required to be taken by the party, or by me, in connection with the claim.

I have, &c.,
W. H. GRACE.

CLAIM No. 8.

Box 1496, Wellington, 9th January, 1930.

Judge Browne, President, Aotea Maori Land Board, Wanganui.

SIR,— Re *Tongariro Timber Co.*

In pursuance of the provisions of section 29 (6) of the Native Land, &c., Amendment Act, 1929, I beg to present to you the claims of myself and of a syndicate known as the "Duncan syndicate."

As you will no doubt anticipate, our claims are for services rendered as the promoters of a proposed new company, to the Tongariro Co., to the owners of its territory and generally to all persons interested in its undertaking.

Before proceeding to state the grounds and the particulars of our claims, I think it would be as well if I first sketched briefly how the syndicate came into being, its aims and objects, the composition of its membership, the measure of success achieved by it, and its history generally down to the time when the above Act came into force.

The syndicate was formed early in 1928 as a result of my having secured an option over the Tongariro Co.'s rights and concessions, and also as the result of overtures which I made to the then Native Minister in February of that year (see copy of correspondence of that month which passed between the Native Minister and myself).

The aim and object of the syndicate was to form the new company, and to procure the subscription or the guaranteeing of its working capital.

The objects of the new company were :—

(1) To take over the rights and obligations of the Tongariro Co., subject, *inter alia*, to the payment of all royalties (including arrears) payable to the owners of the timber territory under its agreements.
(2) To build the railway-line stipulated for by the agreements in accordance with a standard higher than that laid by the agreements, but lower than the standard laid down by an Order in Council issued in 1921. By way of a return for this modification, the royalties payable to the owners under the agreements were to be increased approximately 20 per cent.
(3) To settle with the Tongariro Co. and its creditors in a fair and equitable manner.
(4) To place the whole undertaking, as taken over from the Tongariro Co., on a sound and satisfactory basis.

The new company was to have an actual working capital of £300,000, which would have been more than sufficient for all its requirements, and which would have been raised per medium of a series of debentures carrying 10 per cent. and other benefits. The new company was not to be formed until at least £240,000 of the £300,000 had actually been subscribed or guaranteed. The syndicate was composed of the following gentlemen :—

Managers and organizers—

(1) Myself, who undertook the general conduct, management, and organization of the syndicate's whole undertaking.
(2) Mr. W. H. Grace, of Wellington, who undertook the organization of the Native side of the undertaking, and also assisted me generally.
(3) Mr. R. W. Smith, of Ohakune (ex member of Parliament), who undertook the organization of the milling side of the undertaking.

Guarantors and underwriters—

(1) Messrs. B. H. Edkins, D. M. Findlay, J. G. Duncan, A. D. S. Duncan, Ian MacEwan, E. O. Hales, G. Magnus, A. Pirie, R. B. Martin, George Ross, Wellington; Mr. R. W. Smith, Ohakune; and myself, who among them guaranteed £84,000 of the new company's working capital.
(2) The New Zealand Underwriting and Development Corporation, which, subject to the liability of the guarantors just named, and also any other that may be secured, underwrote the first £200,000 of the £300,000 working capital, and procured the actual subscription of a considerable amount thereof.

By the end of October, 1928, the measure of success achieved by the syndicate was as follows :—

(1) It had been arranged for the subscription or guaranteeing of £240,000 of the working capital. No difficulty would have been experienced in raising the remaining £60,000 if required.
(2) It had secured the consent of the Native owners of the timber territory to the modifications in the standard of the railway-line referred to above (see copies attached of memorandum dated the 7th September, 1928, from Hoani te Heuheu and 149 others to the Native Minister, and of memorandum dated the 10th October, 1928, signed, *inter alia*, by Mr. M. H. Hampson and Mr. W. H. Grace, as the representatives of the Native owners).

(3) It had secured the consent of the Native owners to the postponement of the date for the payment of arrears of royalty to the 31st January, 1929 (see the two memoranda last quoted).

(4) But for the two consents which were still outstanding, it was ready to proceed with the formation of the new company, and put it in the way of carrying out all the objects mentioned above. The two consents were :—

(*a*) The formal consent of the Government to the whole undertaking. It was anticipated on the strength of the correspondence with the Native Minister referred to above that this would follow as a matter of course, as soon as all other consents had been obtained.

(*b*) The consent of certain English creditors, which would also have been forthcoming in due course.

Such was the position of the syndicate in November, 1928, and it is claimed that, in all the circumstances, the syndicate had discharged all its obligations to date, and that no one could have done more than it did.

In the month mentioned there was held the general elections, which resulted in the Government of the day being replaced by the present Government. As the latter was not a party to the negotiations of February, 1928, it was considered that fresh negotiations with the present Government would be necessary, and overtures were accordingly made to the present Native Minister. These negotiations finally culminated in a meeting of the Native owners being held at Waihi, Lake Taupo, on the 21st February, 1929.

At the meeting the syndicate's project as described above, but modified in two directions, was submitted to the Native owners for their approval and authorization. The modifications were in the direction of giving the owners of the timber territory £120,000 fully paid up shares out of the new company's share capital of £300,000 (which must not be confused with its working capital of the same amount) in addition to their royalties, and in the direction of making it mandatory on the Tongariro Co. and its creditors to accept the provision respectively made for them in the project.

The meeting was presided over by the present Native Minister and at the meeting the owners passed resolutions approving of and authorizing the project, and granting a period of six months for its consummation (see copy of resolutions attached). The real intention in regard to this six months was that it should run from the time when the Government, in its turn, gave its consent to the project, though, as a matter of form, and in anticipation of that consent being forthcoming before that date, the 1st April, 1929, was set down in the resolutions as the date on which the six months commenced to run.

For the reasons already indicated, the syndicate was in a position to give effect to the project as soon as the resolutions were carried, but as an ordinary business precaution it refrained from so doing until the Government's formal consent to the project had been obtained. The syndicate pressed repeatedly and continuously for this consent, but without avail, until finally the Act of 1929 already referred to came into force and rendered it impossible for the syndicate to proceed with its project and undertaking.

This concludes my sketch of the syndicate's aims, objects, operations, &c., and I come now to the grounds and particulars of our claims. To deal first with the former—they are as follows :—

(1) By reason of the correspondence which passed between the then Native Minister and myself in February, 1928, and by reason of the memorandum signed by Hoani te Heuheu and 149 others, and by Mr. M. H. Hampson and Mr. W. H. Grace, my syndicate and I were, in effect, granted a mandate (the term of which did not expire until the 31st January, 1929) by the Government of the day and the Native owners to proceed with the formation of the new company for the objects above described.

(2) That in the resolutions described above my syndicate and I received from the Native owners a further mandate, the term of which had not even commenced to run when the 1929 Act came into force.

(3) That in the option already referred to, and in the support and assistance accorded me by the Tongariro Co. and its creditors, my syndicate and I had from them a like mandate to those described above.

(4) That my syndicate and I did all that could reasonably have been required of us, and that from the end of October, 1928, until the Act of 1929 came into force we stood ready to consummate our project and undertaking.

(5) That my syndicate and I were prevented from consummating our project and undertaking solely by the actions of the two Governments concerned in withholding their consents to our projects and undertaking, although all other parties interested in the Tongariro Co.'s affairs had approved of the same, including the Native owners who owned over three-quarters of the timber territory.

The foregoing sets out the formal grounds on which our claims are based, and I will now proceed to deal with the particulars of the same. To arrive at these particulars I think the best principle to adopt would be to base our claims on the benefits which would have accrued to us had our undertaking been carried out. Adopting this principle, the following are the main benefits which would have accrued to the members of my syndicate as a reward and remuneration for all their services :—

Managers and organizers—	£	
(*a*) Myself	25,000	fully-paid-up shares in the share capital already mentioned (not the £300,000 working capital).
(*b*) Mr. W. H. Grace	10,000	
(*c*) Mr. R. W. Smith, on certain conditions ..	10,000	

The guarantors—

A sound and attractive investment carrying 10 per cent. and more, plus certain other benefits. On the other hand, they were virtually obliged to set aside, or at any rate make provision for, the amounts covered by their respective guarantees, to be paid when called upon.

The New Zealand Underwriting and Development Corporation—

Its underwriting fee, which would have amounted to a substantial figure.

Applying now the principle adopted above, I think that the least that Mr. Grace and I could reasonably be asked to accept is 20 per cent. in cash or its equivalent of which we would have received had our project been carried out. He and I worked hard for over two years on the project, and the remuneration which we would have received from the new company, or the percentage just mentioned, is no more than is commensurate with the nature and quality of our services or the magnitude of our undertaking. The position was almost, though not quite, the same with Mr. R. W. Smith, and, as the allocation of his shares was conditional, I think that he is entitled to a percentage of 10 per cent.

As for the guarantors, the position with them was that each of them guaranteed one or more blocks of £6,000, and I think that an allocation of, say, £200 for each block would be little enough in the circumstances set out above.

As for the New Zealand Underwriting and Development Corporation, its compensation could well be fixed at, say, £2,000.

Finally, and in addition to the foregoing claims, there is one for out-of-pocket expenses. These were all paid by me, and amounted to over £1,000, and I think I should be recouped this amount.

This brings me to the stage where I can set out in detail the particulars of our claims. They are as follows, and are, of course, for cash or its equivalent :—

	£
(1) Myself	5,000
(2) Mr. W. H. Grace	2,000
(3) Mr. R. W. Smith	1,000
(4) Among the guarantors on account of fourteen blocks of £6,000 each taken up by them (£200 per block)	2,800
(5) The New Zealand Underwriting and Development Corporation ..	2,000
(6) My out-of-pocket expenses	1,000
	£13,800

This completes the presentation of our claims, and I now commend them to you for your most favourable consideration. I have only to add that, in presenting them, I have tried to put the position fairly and squarely before you and that, in fixing the amounts of our claims, we have reduced them to the minimum.

If you require any further particulars, I shall be glad to supply them. I shall also be glad if you would, as each occasion arises, advise me of any further steps which you will require me or my syndicate to take.

Yours, &c.,
K. D. DUNCAN.

Office of the Minister of Native Affairs,
Parliament Buildings, Wellington, N.Z., 14th February, 1928.

K. D. Duncan, Esq., 3 Halswell Street, Wellington.

DEAR SIR,— *Tongariro Timber Co., Ltd.*

I have the honour to inform you that Cabinet has considered the request made to me by you recently—namely, that, assuming you can float a company with a working capital of £300,000 to take over the rights of the Tongariro Timber Co., Ltd., under the agreements between the Aotea District Maori Land Board (as agent for the Native owners) and the Tongariro Timber Co., Ltd., whether the Government will—

(1) Extend the times for building the railway-line by, say, three years and ten years :
(2) Extend the time for paying arrears of royalty now due 1st April, 1928, to, say, 1st September, 1928 :
(3) Agree to a modified standard of line, provided the consent of the owners is obtained :
(4) Grant the above concessions to you alone.

It has been decided that the Government cannot see its way at the present to grant any extension of the time within which the company is bound to complete the construction of the railway-line, but if on or before the 12th September, 1928 (being the date on which the company was required by the Order in Council of the 12th September, 1921, to complete the construction of the railway-line) you float the proposed company, arrange for the necessary finance for building the railway, pay all arrears of royalty, together with interest thereon at 6 per cent. while unpaid, pay outstanding rates and taxes, Board commission, and any other charges or sums due by the Tongariro Timber Co., Ltd., under its agreements with the Aotea District Maori Land Board, the Government will undertake—

(1) To give sympathetic consideration to your requests as mentioned above ; and
(2) Protect the company's rights in the meantime by refusing consent to any application under subsection (1) of section 19 of the Native Land Amendment and Native Land Claims Adjustment Act, 1915, as amended by section 19 of the Native Land Amendment and Native Land Claims Adjustment Act, 1921, and section 28 of the Native Land Amendment and Native Land Claims Adjustment Act, 1923.

It is possible that in the event of the above decision being acceptable to you, and the requirements enumerated above being fulfilled, that certain terms and conditions would be imposed in consideration of the concessions asked for being granted, in addition to which it may be found necessary to obtain the consent of the Native owners to any concessions as to the standard of the railway-line to be constructed which it may be decided to grant.

Yours faithfully,
J. G. COATES, Native Minister.

15th February, 1928.

The Right Hon. J. G. Coates, Native Minister, Parliamentary Buildings, Wellington.

SIR,— *Tongariro Timber Co., Ltd.*

I have the honour to acknowledge receipt of your favour of the 14th instant, and have to thank you for advising me that if on or before the 12th September, 1928, I am in a position—

(1) To float the proposed company;
(2) To arrange for the necessary finance for building the railway-line, &c.;
(3) To pay all arrears for royalty, together with interest thereon at 6 per cent., yet unpaid;
(4) To pay outstanding rates and taxes, Board Commission, and any other charges or sums due by the Tongariro Timber Company under its agreement with the Aotea District Maori Land Board,

then the Government will undertake to give—

(1) Sympathetic consideration to my request as already mentioned;
(2) To protect the company's rights in the meantime by refusing consent to any application under the various sections of the Acts mentioned in your letter.

That is satisfactory to me, and I greatly appreciate the manner in which you have met my request. At the same time, I feel that I should possibly be open to criticism from my friends in this venture if I did not ask you to make more clear your concluding paragraph. I take it that the modification of the standard of the railway-line and the Native owners' approval of same may have been in your mind when writing this. Assuming I am correct in this, I suggest that if in addition to the conditions already mentioned—

(1) I obtain the Native owners' consent to modification of the line;
(2) That I increase the royalties as at present existing to figures that the Native owners agree to,

then it will be admitted by your Government that I shall have completed my part of the bargain, and that no further terms or conditions will be imposed upon me in consideration of the concessions asked for being granted.

I think it will be apparent to you that in asking for a sum of £300,000 it would be hardly fair to subscribers if I were to spend any portion of their money—and a certain amount must certainly be spent to enable me to carry out the above obligations—if the fulfilling of my part of the contract does not carry with it the definite approval of the Government.

An assurance of finality from you in the event of my carrying out all my undertakings would enable me to proceed at once in this manner.

I should be much obliged if you could meet me to this extent.

Yours faithfully,
K. D. DUNCAN.

Office of the Minister of Native Affairs,
Parliament Buildings, Wellington, N.Z., 21st February, 1928.

K. D. Duncan, Esq., P.O. Box 1496, Wellington.

DEAR SIR,— *Tongariro Timber Co., Ltd., and your Project.*

I have to acknowledge the receipt of your letter of the 15th instant in reply to my letter of the 14th idem.

Your assumption as to the meaning of the last paragraph of my letter is correct so far as it goes, but, in addition to the modification of the standard of line, I also had in mind the possibility of a further request from you as to an alteration in the route of the proposed line.

Subject to your obtaining the consent of the Native owners through the Aotea District Maori Land Board to—

(1) The modification of the standard of the proposed railway-line (including radius of curves and grades),
(2) The modification or alteration of the route of the proposed line, and
(3) The acceptance of any increase offered by you in the amount of the royalty payments to be made for the timber on the lands subject to the Tongariro Timber Co.'s agreements,

the Government will not, in the event of it being decided to grant an extension of the time within which the Tongariro Timber Co., Ltd., is bound to complete the construction of the proposed railway-line, impose further or other terms in consideration of the concessions asked for being granted.

Yours faithfully,
J. G. COATES,
Native Minister.

To the Hon. the Minister in Charge of Native Affairs.

Memorandum regarding the Tongariro Timber Co., Ltd.

1. The undersigned are the leading owners of the land which forms the subject of the timber, railway, and other rights of the above-mentioned company.

2. The said company has approached the owners of the said land and made the following requests :—

(*a*) That the present standard and specifications of the railway-line mèntioned and described in the company's title-deeds be modified in such manner as to make them conform to the requirements originally stipulated for in the said title-deeds, with such adjustments or variations as may be arranged between the Honourable Minister and the company or its assignee or assignees.

(*b*) That the company or its assignee or assignees be granted leave to deviate the route of the said railway-line between, say, the 5-mile point (Kakahi end) and the 20-mile point, so that the line will pass to the latter point over the saddle lying between the Maungaku and Maungakatote peaks, instead of proceeding thence by the present surveyed route.

(*c*) That the times laid down for the construction of the said railway-line (with its standard modified and its route deviated as aforesaid) be extended, respectively, as follows :—

(1) To the 31st day of December, 1932, for the construction of the first twenty miles (Kakahi end) thereof :

(2) To the 31st day of December, 1945, for the construction of the remaining portion of the lines.

(*d*) That the term of the aforesaid company's rights be extended by five years—that is to say, to the 28th day of February, 1966.

(*e*) That the Honourable Minister be empowered to effect such alterations or amendments in the provisions of the aforesaid title-deeds, as may be rendered necessary or equitable by aforesaid deviation, or, by reason of any change or changes in general conditions that have occurred since the title-deeds were executed.

3. The undersigned agree to the granting of all the aforesaid requests and respectfully authorize and urge the Honourable Minister to give effect to them accordingly. Such effect, however, shall only be given on the express condition that the scale of royalty laid down in the aforesaid title-deeds and payable to the owners, shall be increased in manner following :—

(*a*) For the period ending the 29th day of February, 1936—no increase :

(*b*) For the period ending the 28th day of February, 1946—from £11 5s. to £12 10s. per acre :

(*c*) For the period ending the 29th day of February, 1956—from £13 2s. 6d. to £15 per acre :

(*d*) For the period ending the 28th day of February, 1966—from £15 to £20.

4. The undersigned further authorize and urge the Honourable Minister to grant the aforementioned company or its assignee or assignees complete immunity from all proceedings for the determination of its rights under the aforementioned title-deeds until the 12th day of December, 1928 ; and, further, if at any time or before that date it shall appear to the Honourable Minister that the said company or its assignee or assignees have made such financial arrangements as will enable it or them to pay the owners all arrears of royalty owing to them and to construct the aforementioned first twenty miles of railway-line, then the Honourable Minister may, in his own absolute discretion, extend the period of the aforementioned immunity to such date or dates as he shall think fit.

Dated the 7th day of September, 1928.

Signed by Hoani Te Heuheu and 149 others.

Re TONGARIRO STANDING TIMBERS, LTD.

THE committee, consisting of Messrs. R. Smith, M.P., Hampson, Grace, and Findlay, met on the 4th day of October, 1928, and unanimously resolved as follows :—

1. That the Honourable the Native Minister be recommended and requested to consent to the following modifications of the rights of the Tongariro Timber Co., Ltd., under its title-deeds from the Aotea District Maori Land Board :—

(*a*) That the present standard and specifications of the railway-line mentioned and described in the company's title-deeds be modified in such manner as to make them conform to the requirements originally stipulated for in the said title-deeds, with such adjustments or variations as may be arranged between the Honourable Minister and the company or its assignee or assignees.

(*b*) That the company or its assignee or assignees be granted leave to deviate the route of the said railway-line between, say, the 5-miles point (Kakahi end) and the 10-mile point, so that the line will pass to the latter point over the saddle lying between the Maungaku and Maungakatote peaks, instead of proceeding thence by the present surveyed route.

(*c*) That the times laid down for the construction of the said railway-line (with its standard modified and its route deviated as aforesaid) be extended respectively, as follows :—

(1) To the 31st day of December, 1935, for the construction of the first twenty miles (Kakahi end) thereof :

(2) To the 31st day of December, 1945, for the construction of the remaining portion of the line.

(*d*) That the term of the aforesaid company's rights be extended by five years—that is to say to the 28th day of February, 1966.

(*e*) To consent to such alterations or amendments in the provisions of the aforesaid title-deeds as may be rendered necessary or equitable by aforesaid deviation, or by reason of any change or changes in general conditions that have occurred since the title deeds were executed.

2. That it be a condition of such consent that the scale of royalty laid down in the aforesaid title-deeds and payable to Native owners shall be increased in manner following:—

(*a*) For the period ending the 29th day of February, 1936—no increase:

(*b*) For the period ending the 28th day of February, 1946—from £11 5s. to £12 10s. per acre:

(*c*) For the period ending the 29th day of February, 1956—from £13 2s. 6d. to £15 per acre:

(*d*) For the period ending the 28th day of February, 1966—from £15 to £20.

3. That the present arrears due by the Tongariro Timber Co., Ltd., to the said Board be paid in cash on or before the 31st day of January, 1929.

4. That the Tongariro Standing Timbers, Ltd., provides for the obtaining of the consent of the creditors of the Tongariro Timber Co., Ltd., to the transfer to the Tongariro Standing Timbers, Ltd., of the assets of the former company to be transferred to the latter company.

5. That on or before the 31st day of January, 1929, the Tongariro Standing Timbers, Ltd., shall be duly incorporated with a sufficient capital to carry out the construction of the first twenty miles of the projected railway.

6. That the goods of the Natives, including flax and timber produced by the Tuwharetoa Co., Ltd. (such timber not to exceed one million superficial feet per annum), will be carried on the company's railway at Government railway freight rates.

7. That no portion of the 1s. 2d. per 100 ft. timber-tax leviable on the milling of timber shall be deducted from royalties payable to the Board.

8. That in any settlement with Mr. Bertram Philipps in respect of his claim against the Tongariro Timber Co., Ltd., by virtue of which he now holds certain mortgages and debentures totalling approximately £30,000, the Tongariro Standing Timbers, Ltd., be empowered to pay him £12,000 in cash and 13,000 C debentures of the latter company, and no more.

R. SMITH.
M. H. HAMPSON.
W. H. GRACE.
D. M. FINDLAY.

RESOLUTIONS PASSED BY THE OWNERS OF THE TIMBER COMPANY'S TERRITORY AT A MEETING HELD AT WAIHI ON THE 21ST DAY OF FEBRUARY, 1929.

1. That as a final concession to the Tongariro Timber Co., Ltd., this meeting approves of and agrees to join in and support the project outlined in the memo. attached hereto.

2. That a period of six months from the 31st day of March, 1929, shall be granted—

(*a*) For the making of the cash payments set out in paragraph 6 of the project.

(*b*) For the consummation of the project. The project shall be deemed to be consummated when and as soon as it can be shown to the satisfaction of the Minister in Charge of Native Affairs that the promoters of the new company contemplated by the project are ready to register the company, and that, when registered, it will have at its command at least £240,000 of the £300,000 working capital for which provision is made in the project.

Provided, however, the Minister aforesaid may extend the said period by three months if he is satisfied that good and substantial progress has been made in carrying out the project, and if there has been paid before the expiration of the six months aforesaid at least 25 per cent. of the cash payments aforementioned.

3. That, if the cash payments aforementioned be not made, and if the project be not consummated within the period or periods hereinbefore provided, then the project shall be deemed to be abandoned and all and singular the rights of the Tongariro Timber Co., Ltd., shall be finally cancelled and determined.

4. That the Tongariro Timber Co., Ltd., and its creditors must agree to the project and accept the terms set out therein. If that company or any other creditor refuses or fails to accept the provision made for it or for him in the project within a period of three months from the 31st day of March, 1929, then the company or such creditor shall be entirely excluded from any benefit under the project. To ensure that this will be so, the owners will stand ready to divest the Tongariro Timber Co., Ltd., of all its rights (by cancelling and determining them), and to vest the same or similar ones in the new company, subject to the terms of the project and the provisions made therein for the assenting parties, and to the conditions imposed by the two preceding paragraphs, but omitting from the project all provision made therein for dissenting parties—*i.e.*, those who refused or failed to accept as aforesaid.

5. That six months' formal notice of cancellation of determination be given to the Tongariro Timber Co., Ltd. Such notice shall be so given as to take effect as from the 31st March, 1929, or the first day thereafter as can be conveniently arranged, but shall be withdrawn if that company and all its creditors accept the provision made for it and them in the project within the three months aforementioned and if the provisions of paragraph 2 hereof be complied with.

6. That the task of promoting and forming the new company and of raising its working capital shall be entrusted to the Tongariro Standing Timber Syndicate, of Wellington. This syndicate is itself engaged in a project which also concerns the Tongariro Timber Co., and its project can, conveniently and advantageously for all concerned, be merged in the present one.

A PROJECT REGARDING THE TONGARIRO TIMBER CO., LTD.

1. A new company will be formed which will take over all the rights of the Tongariro Timber Co., subject to all its present obligations to the owners of the land which forms the subject of the rights, but with the obligations modified in the manner indicated in a memo. dated the 7th September, 1928, from Hoani te Heuheu and others to the Minister in Charge of Native Affairs, and subject also to the new company satisfying the claims of the Tongariro Co. and its creditors in manner hereafter provided.

2. The task of promoting and forming the new company and providing it with its working capital will be entrusted to the Tongariro Standing Timbers Syndicate, which will transfer such capital as it is now able to command to the new company's working capital.

3. The new company will have a share capital of £300,000, which will be issued fully paid up and be allocated as follows:—

	£
(*a*) To the owners (*i.e.*, the Government and the Native owners) *pro rata* among them according to their shares in the land	120,000
(*b*) To the syndicate, by way of remuneration for its services, past, present, and future, and as a consideration for the transfer of its capital ..	120,000
(*c*) To the Tongariro Timber Co. (or its shareholders, *pro rata* among them) for its equity in its rights and assets	60,000
	£300,000

4. The new company will have a working capital of £300,000, although the whole of the same need not necessarily be called up. This capital will be raised per medium of a series of first debentures. The flotation of this series and the terms on which the same is issued will be left entirely to the discretion of the syndicate, provided that any bonus shares offered to subscribers of the debentures shall come out of the £120,000 fully-paid-up shares allocated to the syndicate.

5. The debts of the Tongariro Timber Co. will be discharged by allocating £250,000 to the creditors, including the owners, in respect of their arrears of royalty and other moneys due to them. The £250,000 will be paid, £50,000 in cash, and £200,000 in the form of debentures, which will carry 7 per cent. interest, and which will rank after the £300,000 series.

6. The £50,000 will be applied to the purposes of paying—

(*a*) The arrears of royalty and other moneys owing to the owners and the Aotea District Maori Land Board. The arrears of royalty shall carry 5 per cent. simple interest per annum, but no more, and no interest shall be charged on instalments of royalty which accrued due before the end of February, 1925.

(*b*) Any debts due to Government Departments.

(*c*) Certain creditors whose debts were incurred for services rendered in the interests of the Native owners. Mr. W. H. Grace, of Wellington, has full particulars of these debts, and it will be left to him to decide what each creditor is to receive, and his decision shall be final.

(*d*) To the Heuheu-Grace party 20 per cent. of the amount owing to them on account of their debentures, which constitute the paramount general charge over the assets of the Tongariro Timber Co.

(*e*) To Mr. L. M. Grace, of Wellington, in addition to what he receives under the preceding subparagraph, the sum of £1,600 for releasing the company's township-site of approximately 1,600 acres from his mortgage thereover.

(*f*) To Messrs. Findlay and Moir, who have long been the solicitors of the company, 20 per cent. of their claim for costs.

(*g*) To Messrs. R. B. Martin and G. Ross, who have long been officers in the employment of the company, 20 per cent. each of their respective claims for salaries and moneys advanced to the company.

If the £50,000 is not sufficient for the above purposes, or if there is a surplus, the deficiency or the surplus, as the case may be, shall be borne or divided *pro rata* among the last four groups of creditors enumerated above.

7. The £200,000 debentures will be divided and allocated in manner following:—

(*a*) Mr. Bertram Phillips will receive £20,000 of debentures in full satisfaction of his debt. He will retain his timber and other rights over the Western A area subject to the provisions of the deed of purchase (made in 1919) affecting the same.

(*b*) The holders of the £40,000 series of mortgage debentures carrying 10 per cent. interest charged on the Western B area will receive £50,000 of debentures in the new company in full satisfaction of their claim.

(*c*) The Houghton, Chapple, and Wright party will receive £10,000 of debentures in satisfaction of all royalty charges which they, or any of them, may have against the Tongariro Timber Co. The £10,000 debentures will be divided among them *pro rata* to the contributions which they originally made to the £40,000 series mentioned above. As an alternative to taking debentures, the creditors named in this and the preceding subparagraph may amalgamate their claims and take over the Western B area in full satisfaction of their debts and claims. If they do that, the new company shall be responsible for all royalties payable to the owner on the area up to a sum of £50,000 and shall afford on its railway-line reasonable transport facilities for the carriage of the timber extracted from the area. Productions from the same must, however, be limited to 3,000,000 sawn feet per annum until after the end of the year 1935.

(*d*) The holders of the £20,000 series of mortgage debentures carrying 7 per cent. interest charged on the Western A area will receive £20,000 of debentures in the new company in full satisfaction of their charge and debt.

(*e*) The remaining £100,000 of debentures will be divided among the outstanding creditors in manner set out in the Schedule attached hereto, and in full satisfaction of all and singular their respective claims.

8. If thought advisable, a series of £50,000 A debentures may be created which will take priority of the £300,000 and the £200,000 series mentioned above. This series must, however, only be used for the purposes of procuring temporary accommodation from banks and like institutions, and will carry the current bank rate of interest.

9. The management of the business and affairs of the new company will be vested in a Board of five directors, who will comprise, say, a representative of the Government, a representative of the Native owners, a representative of the other shareholders, and two representatives for the holders of the £300,000 series of debentures.

THE SCHEDULE.

Creditors.	Amount of Debentures allocated in Full Satisfaction of all Claims outstanding.
	£
Heuheu-Grace party (including Eru te Kuru) ..	36,000
Findlay and Moir	4,200
R. B. Martin	3,200
George Ross	3,000
L. M. Grace	600
Andrew Gray	2,000
Gray Bros.	1,500
F. St. Hill	800
E. T. Atkinson	4,000
Sir John Findlay	1,000
Wilfred Findlay	4,000
J. E. Fulton	4,000
F. W. Frankland	400
Chapman, Skerrett, Tripp, and Blair	500
R. W. Holmes	230
E. G. Atkinson	1,035
H. Clifton	200
Egmont Box Co.	13,000
Armstrong, Whitworth, and Co.	8,000
Cammell, Laird, Ltd.	5,000
A. D. Riley	1,050
Sundry small debtors, *pro rata* to their claims ..	580

CLAIM NOS. 9 AND 10.

Wellington, 28th May, 1930.

Messrs. Marshall, Izard, Barton, and Wilson, Solicitors, Wanganui.

DEAR SIRS,—

Re *Tongariro Timber Co., Ltd.*

In reference to the writer's conversation with your Mr. Izard on Saturday last, the amount due by the Tongariro Timber Co., Ltd., to Sir W. G. Armstrong, Whitworth, and Co., Ltd., is £13,171 11s. 6d., together with interest for several years, which will bring the total amount owing to over £15,000. The debt is secured by a memorandum of mortgage over certain of the Timber Co.'s concessions, and particularly over the route of the proposed railway, which was, we understand, transferred for an estate in fee-simple to the Tongariro Timber Co., Ltd.

We are now examining the position of the title to the interests comprised in our client company's mortgage, and if you require any further information in reference to our client's security we shall be pleased to supply same. We presume that the Aotea Maori Land Board will eventually desire to clear up all outstanding interests in the various blocks, and no doubt a settlement with our client company for a release of its mortgage could be arranged.

In addition to the amount due to Sir W. G. Armstrong, Whitworth, and Co., Ltd., there is a claim for £1,787 17s. 6d. due to the Anglo-French and Belgian Corporation, Ltd., by the Tongariro Timber Co., Ltd., in respect of which Sir W. G. Armstrong, Whitworth, and Co., Ltd., were acting as agents

for collection. The claim arises under a memorandum of agreement dated the 7th November, 1922, and was for services rendered and out-of-pocket expenses in connection with negotiations in connection with the Tongariro Timber Co., Ltd.'s enterprise, probably in regard to financing their undertaking.

The latter claim is not, of course, covered by Sir W. G. Armstrong, Whitworth, and Co., Ltd.'s mortgage.

Yours, &c.,
LUKE, CUNNINGHAM, AND CLERE,
per W. H. CUNNINGHAM.

CLAIM No. 11.

The Tongariro Timber Co., Ltd., 6th December, 1929.

The President of the Aotea District Maori Land Board, Wanganui.

SIR,—

As secretary of the Tongariro Timber Co., Ltd., I have to acknowledge receipt of your notice of the 15th November, 1929, purporting, upon the expiry of six months from the date thereof, to determine the company's rights under its agreements in respect of Tongariro timber blocks.

The directors assume that this notice is given under the authority of the legislation of last session authorizing the Government to negotiate for the acquisition of the Tongariro Block. We may say that the company was quite prepared to carry out the terms of the project as promulgated by Mr. K. D. Duncan, which had the consent of the Native owners.

The notice above referred to makes the carrying-out of the project quite impossible, as it is not practicable to complete the railway in terms of the notice.

In view of the position above stated and of the proposed acquisition by the Government, we beg to submit for consideration the claims of the company and its creditors, which are as follow :—

	£
The company's capital	60,000
Claims of creditors as at 30th June, 1929	270,000
	£330,000

The above does not include the arrears of royalty referred to in the notice.

Yours, &c.,
GEORGE ROSS, Secretary.

THE TONGARIRO TIMBER CO., LTD. (LEGAL OPINIONS *RE* POSITION OF).

(1) Liability of Natives to the Egmont Box Co., Ltd. (Mr. W. A. Izard.)
(2) Liability of Natives to the Egmont Box Co., Ltd. (The Solicitor-General.)

OPINION FOR THE AOTEA DISTRICT MAORI LAND BOARD AS TO ITS RIGHTS AND LIABILITIES WITH THE EGMONT BOX CO.

SHORTLY put, I think the relevant facts are these :—

1. In the year 1906 an agreement was entered into between a majority of Native owners of timber lands between Lake Taupo and Kakahi whereby the Native owners purported to grant to the Tongariro Timber Co., Ltd. (hereinafter called " the Tongariro Company ") the right to cut and remove timber and certain other rights incidental thereto.

2. The main considerations for the granting of such rights were—(*a*) the payment of a royalty, and (*b*) the construction of a railway from Kakahi to Lake Taupo, a distance of some forty miles.

3. The above agreement was from time to time modified until by section 37 of the Maori Land Laws Amendment Act, 1908, statutory authority was given whereby the Maniapoto-Tuwharetoa District Maori Land Board, for and on behalf of all the Native owners, was authorized to enter into a binding agreement to the like effect with the Tongariro Company.

4. The agreement was duly entered into, and is dated the 23rd December, 1908.

5. The Aotea District Maori Land Board (hereinafter called " the Board ") is the successor to the Maniapoto-Tuwharetoa Board, and has entered into all subsequent agreements.

6. The agreement of the 23rd December, 1908, has been altered from time to time, and the time for building the railway has been from time to time extended, but the alterations do not affect the present position in so far as the agreement of the 24th October, 1913, hereinafter mentioned, is concerned.

7. By an agreement dated the 24th October, 1913, between the Board and the Tongariro Company the original 1908 agreement was modified to the extent (*inter alia*) that two blocks of land known as Western Divisions A and B were deemed to be the subject of a separate agreement as between the Board and the company, and the royalties in respect of the timber thereon were to be regarded as one-tenth of the whole payable under the original agreement, and it was especially provided that a cancellation of the 1908 agreement was not *ipso facto* to operate as a cancellation of the 1913 agreement. This last condition, however, was not to take effect unless the first section of the railway, some five miles in length, was commenced by the 22nd October, 1915, and completed by the 22nd October, 1916.

8. By section 19 of the Native Land Amendment and Native Land Claims Adjustment Act, 1915, it was provided (*inter alia*) that the Board could not cancel the agreements with the Tongariro Company upon any default except by authority of an Order in Council, and the time for building the railway could be extended by an Order in Council.

9. By an agreement dated the 9th September, 1914, made between the Tongariro Company and the Egmont Box Co., Ltd. (hereinafter called " the Egmont Company ") the Tongariro Company agreed to build the first five miles of railway by the 9th March, 1917, the Egmont Company to advance the necessary funds upon certain securities and to have running rights over the line. These rights they required for development of their adjoining timber rights.

10. The agreement of the 9th September, 1914, was given statutory validity by section 5 of the Native Land Claims Adjustment Act, 1914, and that section provided further what was to happen in the event of the loss, forfeiture, surrender, or abandonment of rights by the Tongariro Company, and provided further that the agreement of the 9th September, 1914, could, with the consent of the Native Minister, be modified by mutual agreement between the parties and that all the provisions of such section 5 would apply to any such modification.

11. A new agreement was entered into between the Tongariro Company and the Egmont Company on the 23rd October, 1919 (hereinafter called " the 1919 agreement "), and it is the rights and liabilities under this agreement that I have now to consider.

12. By section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919, the Governor-General was empowered to approve and consent to the 1919 agreement, provided that the trustees for certain debenture-holders of the Tongariro Company and the Board consented thereto, and on such consents and approval being obtained the agreement was to be held valid and binding in all respects, and the provisions of subsection (3) of section 5 of the 1914 Act above quoted and the other provisions of that Act so far as applicable were to apply to such agreement as if that agreement were the one referred to in the 1914 Act.

13. All necessary consents and the approval of the Governor-General were obtained to such agreement, and the prior agreement of the 9th September, 1914, was cancelled.

14. By section 28 of the Native Land Amendment and Native Land Claims Adjustment Act, 1923, power was given to the Egmont Company to assign or release without further consent or authority to the Tongariro Company or its assigns all or any moneys, benefits, and advantages to which it is entitled under the 1919 agreement, and to alter or modify that agreement.

This section is in direct conflict with the provisions of subsection (7) of section 5 of the 1914 Act above quoted, in that by that Act the authority of the Native Minister was required for the validity of any modification of the 1919 agreement, and by the later Act the modification could take place without such consent. There is nothing in the 1923 Act to show that its provisions are retrospective, so that any modification in the 1919 agreement made between 1919 and the 29th August, 1923, the date of the coming into force of the 1923 Act, required for its validity the consent of the Native Minister, but any modification after that date did not require any such consent.

15. Under the 1919 agreement the time for building the first five miles of railway was two years from the date of payment of £15,000 therein referred to, but in September, 1921, an Order in Council was gazetted, such Order being subsequently validated by statute extending the time for constructing the railway generally, and in particular the first five miles, for another two years.

16. By an Order in Council of the 25th August, 1925, a further time was given for the building of the first eighteen miles of the railway until the 1st September, 1928, provided certain conditions were complied with by the Tongariro Company. These conditions were not complied with, nor were the first eighteen miles of railway built.

17. Since 1925 the Tongariro Company appears to have made endeavours with various firms to contract for the building of this railway, but without success, and, as a matter of fact, the Egmont Company has itself, under the powers in the 1919 agreement, done a certain amount of construction work on a small part of the line from Kakahi.

18. Until 1929 the Board, notwithstanding any default by the Tongariro Company, was precluded by statute from determining the agreement between itself and the Tongariro Company, but by section 29 of the Native Land Amendment and Native Land Claims Adjustment Act, 1929, the Board was given power to determine that agreement if default was made thereunder owing to non-payment of the royalties and the failure to complete the first eighteen miles of the railway.

19. Up to the 1st March, 1929, the Tongariro Company had made default under the 1908 agreement, as amended by subsequent deeds, by the non-payment of royalties amounting up to that date to £26,562 10s.

20. Owing to non-payment of the royalties and the failure to complete the first eighteen miles of the railway, the Board did so terminate the agreement as from the 18th May, 1929, and that agreement is now at an end.

21. As I have already said, by the provisions of section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919, the agreement of the 23rd October, 1919, between the Tongariro Company and the Egmont Company comes within the protection afforded by section 5 of the Native Land Claims Adjustment Act, 1914.

The Act of 1914 provides, *inter alia*, (subsection (3))—

> " In the event of any loss, forfeiture, surrender, or abandonment of rights by the Tongariro Timber Company, Limited, or its assigns, by reason of default in the performance of the agreement referred to in section thirty-seven of the Maori Land Laws Amendment Act, 1908, or of any agreement modifying the same or any provisions thereof respectively, or for any other reason, the same shall not prejudice or affect the rights intended to be conferred on the Egmont Box Company, Limited, by the agreement of the ninth day of September, nineteen hundred and fourteen. In the event of the loss, forfeiture, surrender, or abandonment by the Tongariro Timber Company, Limited, or its assigns, either of its rights in respect of the construction of the said railway or of its rights in respect of the timber on the lands described in the Fifth Schedule to the said modifying agreement of the twenty-fourth day of October, nineteen hundred and thirteen, held by the company by virtue of the said company's election under clause eight of the said modifying agreement, the following provisions shall take effect :—
>
> " (*a*) So far as the said agreement of the ninth day of September, nineteen hundred and fourteen, shall at the time of such loss, forfeiture, surrender, or abandonment be unperformed the Egmont Box Company, Limited, shall continue to be under the obligations on its part expressed and implied therein, and such obligations shall be enforceable against the Egmont Box Company, Limited, by the Aotea District Maori Land Board in the same manner and to the same extent as if such agreement had been entered into by the Egmont Box Company, Limited, with the Aotea District Maori Land Board instead of with the Tongariro Timber Company, Limited, and the Egmont Box Company, Limited, shall against such Board, and against every person claiming title thereunder, and against the Native owners of the lands comprised in the Fifth Schedule to the said modifying agreement dated the twenty-fourth day of October, nineteen hundred and thirteen, and all persons claiming under them, have all the rights conferred or intended to be conferred on the Egmont Box Company, Limited, by the agreement of the ninth day of September, nineteen hundred and fourteen ; and the Aotea District Maori Land Board is hereby empowered and directed to do all acts and to execute all documents necessary to give effect to the said agreement of the ninth day of September, nineteen hundred and fourteen, and to the provisions herein contained.

"(*b*) In respect of all moneys which shall be or become payable to the Egmont Box Company, Limited, under the said agreement of the ninth day of September, nineteen hundred and fourteen, such company shall, in addition to the security agreed to be given by the Tongariro Timber Company, Limited, over the lands on which the said railway is to be constructed, be entitled to a legal charge on the lands specified in the Fifth Schedule to the said modifying agreement dated the twenty-fourth day of October, nineteen hundred and thirteen, but only to the extent of the rights and interests expressed to be given to the Tongariro Timber Company, Limited, therein by the agreement referred to in section thirty-seven of the Maori Land Laws Amendment Act, 1908, and any agreements modifying the same; and such moneys shall be payable by the Aotea District Maori Land Board to the Egmont Box Company, Limited, out of the net proceeds received by the Aotea District Maori Land Board in respect of the sale and disposal of timber or timber-rights therefrom."

22. The agreement in such section referred to of the 9th September, 1914, is now the agreement of the 23rd October, 1919.

23. The 1919 agreement affects only part of the lands affected by the original agreement between the Board and the Tongariro Timber Co.—viz., the Western Division A Block.

24. As the first section of the railway referred to in the 1913 agreement has never been completed, the provision for exemption from forfeiture in that agreement did not apply at the time when notice was given by the Board terminating the whole agreement, and with the cancellation of the 1908 agreement the 1913 agreement fell too.

25. This, however, did not dispose of the matter in regard to the Western Division A Block so far as the Egmont Company is concerned, because of the above quoted provisions of section 5 of the 1914 Act. I am of the opinion that by reason of that Act the 1919 agreement between the Tongariro Company and the Egmont Company does not fall with the cancellation of the 1908 and 1913 agreements, but the 1919 agreement is now to be read and construed as if it was an agreement between the Egmont Company and the Board.

26. The next question that arises is, What are now the rights and obligations of the Egmont Company and the Board under the Act and the 1919 agreement? and this will depend upon the construction of subsection (3) of section 5 of the 1914 Act and what has taken place between the Tongariro Company and the Egmont Company prior to the 18th May, 1930.

Stripped of extraneous matter and altered to comply with the present position, subsection (3) (*a*) of the 1914 Act says this:—

"So far as the 1919 agreement shall on the 18th May, 1930, be unperformed, the Egmont Company shall *continue* to be under the obligations on its part expressed and implied therein, and such obligations shall be enforceable against the Egmont Company by the Board in the same manner and to the same extent as if such agreement had been entered into by the Egmont Company with the Board instead of with the Tongariro Company; and the Egmont Company shall against such Board have all the rights conferred or intended to be conferred on the Egmont Company by the 1919 agreement, and the Board is hereby empowered and directed to do all acts and execute all documents necessary to give effect to the provisions of the 1919 agreement and to the provisions herein contained."

Subsection (3) (*b*) says this:—

"In respect of all moneys which shall be or become payable to the Egmont Company under the 1919 agreement, such company shall, in addition to the security agreed to be given by the Tongariro Company over the lands on which the railway is to be constructed, be entitled to a legal charge on the lands in Western Divisions A and B, but only to the extent of the rights and interests expressed to be given to the Tongariro Company by the 1908 agreement as amended, and such moneys shall be payable by the Board to the Egmont company out of the net proceeds received by the Board in respect of the sale and disposal of timber or timber rights therefrom."

27. Reading the subsection in this way, I am of the opinion that the intention of the Legislature is quite clear, and it is this: the Egmont Company is not to be affected by any forfeiture of the 1908 agreement, and the 1919 agreement is to be interpreted as if it had originally been made between the Egmont Company and the Board. In this connection it is to be noted that the words used in the beginning of subsection (3) (*a*) are that "the Egmont Company shall *continue* to be under the obligations" &c.

The use of this word "continue" goes, in my opinion, to show that it was the intention of the Legislature, on the forfeiture of the 1908 agreement, to treat the 1919 agreement as if it had been originally made between the Board and the Egmont Company, and by statute to effect a transfer of the respective rights and obligations of the parties thereunder, so that the agreement could continue to be in full force and effect. That this is so is exemplified by the position that would have arisen had the Tongariro Company built the railway with money advanced by the Egmont Company as provided by the 1919 agreement, and then the 1908 agreement was forfeited at a time when the Tongariro Company owed large sums to the Egmont Company. It would be plainly contrary to the intention of the 1914 Act that the Board should in such case accept the railway and decline the liability for its construction, which was part of the consideration for the agreement.

This is further demonstrated by the provisions of subsection (3) (*b*). It contemplates by that section that the railway has been built and certain debentures given in payment of the cost thereof by the Tongariro Company to the Egmont Company, and that those securities have become insufficient by the reason of the forfeiture of the company's main assets (its cutting rights) and provides in

such a case that the Board shall give certain securities to the Egmont Company to secure the balance owing by the Tongariro Company and thus shows that the moneys owing by the Tongariro Company to the Egmont Company are to be regarded as liabilities taken over by the Board.

I am therefore of the opinion that the Board and the Egmont Box Company are now to be treated as the respective contracting parties to the 1919 agreement, and each undertakes towards the other the liabilities and rights existing as between the Tongariro Company and the Egmont Company on the date of forfeiture and that arise out of the agreement.

28. The next question is, What were the rights and liabilities of the Tongariro Company and the Egmont Company under the 1919 agreement ?

Briefly put, the main provisions were these :—

(*a*) The Tongariro Company sold all the timber-trees to the Egmont Company on Western Division A, with the right to make roads, &c., the right to extend until the 31st December, 1959.

(*b*) The Egmont Company was to pay a royalty of 3s. per 100 ft., estimated total, 69,000,000 ft.

(*c*) The Egmont Company was to pay £15,000 on account of royalties and £6,000 a year for seven years in advance of royalties, the first payment to be made after the first five miles of railway were built.

(*d*) The Tongariro Company was to build five miles of railway from Kakahi Railway-station within two years, the Egmont Company to advance the moneys for construction, the moneys to be repaid within seven years at 6 per cent. interest.

(*e*) All moneys expended by the Egmont Company under the 1914 agreement, amounting, with interest to 30th June, 1919, to £4,234, were to be deemed to be expended under the terms of the 1919 agreement, and to be repayable with interest at 6 per cent. as therein provided.

(*f*) All moneys except construction repayment moneys were to be deducted from royalties due for cutting.

(*g*) The Egmont Company, on default by the Tongariro Company, could elect to complete the construction of the first five miles of railway itself, and on so constructing and completing it could recover the cost from the Tongariro Company.

(*h*) The Egmont Company guaranteed to find £30,000 for construction of an extra four miles of railway on certain conditions.

(*i*) The agreement is binding on the parties' assigns.

Then there were certain conditions laid down, and not until the satisfaction of these was the agreement to be operative. These have evidently been complied with, as the 1919 agreement has since been acted upon.

29. The final clause in the agreement refers all matters in dispute to arbitration, and is in the words following :—

> " Any dispute or difference which may arise between the parties hereto whether during the continuance of these presents or after its termination as to the meaning construction effect or application of these presents or as to anything contained herein or arising thereout or as to anything made done or omitted in respect thereof or otherwise in relation to the premises and any claim which either party may make against the other with regard to this agreement or any matter in anywise arising thereout or connected therewith saving and excepting only such matters disputes or differences as it is expressly provided by these presents shall be settled in some other manner shall unless the parties otherwise agree be referred to two arbitrators one to be appointed by each party or an umpire to be appointed by the arbitrators before proceeding with their reference and which umpire shall be a barrister of the Supreme Court of New Zealand in active practice of not less than seven years' standing and who shall sit with the arbitrators during the hearing of the matters in difference and the provisions of the Arbitration Act 1908 or any statutory modification or re-enactment thereof for the time being in force shall apply in all respects except to the extent herein modified or varied and these presents shall be deemed a submission within the meaning of the said Act or any such modification or re-enactment thereof."

30. The agreement does not provide for continuous cutting by the Egmont Company, so that a failure to cut does not operate as a breach of the agreement. No timber has been cut since 1926.

31. I am advised that timber has been cut prior to that date up to the value (at 3s. per 100 ft.) of about £9,000, and this has been credited to the Tongariro Company as against the first payment of £15,000.

32. The 1919 agreement also states, in clause 1 thereof, that the sale is subject to a specific charge which the Tongariro Company reserves the right to give to first-debenture holders for £15,000. This charge was actually given. The Egmont Company is not liable to pay this £15,000. It is a liability of the Tongariro Company only, but by the provisions of section 8 of that agreement the Egmont Company *may* pay the £15,000 to the debenture-holders, and, if it does so, such payment is to be credited against royalties.

33. As already mentioned, the 1919 agreement was not to come into force until the compliance of certain conditions, one of which was that the holders of these £15,000 debentures had to consent. These debenture-holders refused to consent, with the result that they were paid off by the Tongariro Company in 1920.

34. The Tongariro Company, in order to pay off these debentures issued new debentures in 1920, totalling £26,000, and these were guaranteed by the Egmont Company. These debentures are now overdue.

35. The agreement as consented to by the Governor-General and the Aotea Board is the 1919 agreement, containing reference to the £15,000 debentures only, which are now paid off. The new transaction between the Tongariro Company and the Egmont Company was made in 1920, and is either a modification of the 1919 agreement, which by subsection (7) of section 5 of the 1914 Act required the consent of the Native Minister for its validity, or is a transaction entirely outside the 1919 agreement altogether.

36. I am advised the Native Minister has never been asked to consent to such modification of the 1919 agreement, if, in fact, it is a modification.

37. The Tongariro Company has not built the first five miles of railway, nor has the Egmont Company done so itself, as it was empowered to do under clause 12 of the 1919 agreement.

38. The time in which the Tongariro Company was given, so far as the Board is concerned, to build the first five miles of railway was, under the 1921 Order in Council, extended to 1923, and by the 1925 Order in Council, for the first eighteen miles to the year 1928. The Egmont Company was not bound by these Orders in Council, and could, if it had so desired it, built the first five miles of railway at any time under the terms of the 1919 agreement.

39. I can find no trace of any agreement between the two companies not to build this five miles of railway, and, as it has not been built by either, it must be assumed that the agreement to build it was mutually abandoned.

40. It may be of importance, in view of the provisions of subsection (7) of section 5 of the 1914 Act that the agreement could not be modified without the consent of the Native Minister, to ascertain at what date this mutual agreement not to build was arrived at.

The Tongariro Company was not bound to build except in terms of the 1925 Order in Council, and I do not think the Egmont Company could have at any time till 1923, by reason of the 1921 Order in Council, have compelled it to build, and the default by the Tongariro Company in not building between 1923 and 1925 was overcome by the 1925 Order in Council.

I think it is quite possible that the 1923 Act, whereby the 1919 agreement could be altered without the consent of the Native Minister, was passed to meet this very default—especially as the Board could take no action, because it could not cancel the 1908 agreement by reason of the default without an Order in Council (see clause 18 hereof).

I think, therefore, that the apparent mutual agreement not to build was not made until after the 1923 Act, and so did not require the consent of the Native Minister.

41. By the provisions of clause 12 of the 1919 agreement it is provided that if the Tongariro Company makes default in constructing the first five miles of railway the Egmont Company may elect to complete its construction, and on so constructing and completing the same may recover the cost from the Tongariro Company. The Egmont Company has not seen fit so to do, and if no other evidence were available this alone would show the mutual intention of the two companies to abandon the undertaking.

42. With the failure to build the railway apparently agreed to by mutual consent between the parties, most or practically all of the provisions of the 1919 agreement, except for the cutting of the timber, are mutually abandoned also, they being dependent on the railway construction.

43. By clause 12 of the 1919 agreement it is provided that all moneys theretofore expended by the Egmont Company under the terms of the 1914 agreement, amounting, with interest to the 30th June, 1919, to £4,234, should be deemed expended by the Egmont Company under the terms of the 1919 agreement, and should carry interest at £6 per cent. per annum from the 30th June, 1919, and should be repayable with all further moneys to be advanced as thereinafter provided.

44. The 1919 agreement further provides by clause 20 that the Egmont Company has the right to retain all moneys to become due for royalties until all moneys due to the Egmont Company under the agreement have been repaid.

45. The sum of £4,234 appears from the recitals in the 1919 agreement to represent moneys expended in construction work of the first five miles of railway.

46. This £4,234 is deemed to be expended in terms of the 1919 agreement—that is, in construction work—and there is no liability to repay the same unless, as provided by clause 12 of the 1919 agreement, the whole of the five miles of railway is completed by the Egmont Company; and as these five miles have not been completed, but abandoned, no liability on the Board to repay exists.

47. In 1926 the Egmont Company sold the timber trees on Western Division A, that it had the right to cut under the 1919 agreement, to Mr. Bertram Phillips for £14,582, payable £6,500 in cash, £4,041 on the 15th April, 1931, and £4,041 on the 15th April, 1934. Mr. Phillips agreed to pay the interest on certain debentures over Western Division A given by the Tongariro Company, upon which £20,000 was owing, until they were repaid, and further agreed with the Egmont Company to pay for certain construction work.

48. The debentures here referred to are the balance of the £26,000 of debentures issued by the Tongariro Company and guaranteed by the Egmont Company.

49. It is to be noted here again that Mr. Phi lips is not liable for the principal of the debentures. It was no doubt recognized that, as he cut the timber, he would have to pay 3s. a 100 ft. royalty to the Tongariro Company, out of which that company would pay its debenture-holders.

50. The sale to Mr. Phillips is an assignment of the cutting rights under the 1919 agreement, and, as the other rights appear to have been mutually abandoned by the parties, is in effect an assignment of the whole agreement, and by virtue of the provisions of the 1914 Act and the 1919 deed is binding on the Board. The Egmont Company has still considerable interest in the agreement as an unpaid vendor.

51. A question arises as to whether this £26,000 debenture issue guaranteed by the Egmont Company is a liability that the Board takes over under the agreement by virtue of the 1914 Act.

This £26,000 was used for—

(*a*) Payment of the £15,000 debenture ;
(*b*) Payment of some arrears of royalties to the Board ;
(*c*) Costs and various other payments.

There appears to be but little doubt that had the Egmont Company paid the debenture-holders the £15,000 under the provisions of the 1919 deed, that that would have been in effect a payment in advance by the Egmont Company to the Tongariro Company on account of royalties, and so a credit against the Board.

It may be said that sum was paid under the deed by reason of the guarantee of the £26,000 debentures, and I think that that is the proper and reasonable way to look at it, and that if the Egmont Company is called upon under its guarantee to pay these debentures that that company should be entitled to credit against the Board for £15,000 out of the £26,000.

I, however, do not think that the Board is liable for the balance of £11,000. It is not a liability under the deed—in fact, it is not even mentioned, and there is no modification of the deed consented to by the Native Minister.

The Board is not, in my opinion, liable to the debenture-holders at all, as the debentures themselves are over an asset of the Tongariro Company which, so far as the Tongariro Company itself is concerned, ceased to exist on the cancellation of the 1908 agreement. It is true the 1914 Act preserves the rights of the Egmont Company, but it is the rights of that company only that are preserved, and not the rights of other creditors of the Tongariro Company.

The position with regard to these debenture-holders who have a specific charge over the timber on Western Division A is exemplified perhaps more clearly by the following illustration : A owns land and agrees to sell it to B. B mortgages his interest in the agreement to C. B then makes default in his agreement with A, and A cancels the agreement. It is quite clear that C, the mortgagee of B, has no rights as against A or A's land. In this case A is the Board, B is the Tongariro Company, and C is the debenture-holder with a charge over the Tongariro Company's agreement with the Board. The original agreement is cancelled between the Board and the Tongariro Company, with the result that the Tongariro Company's assets disappear and C has no claim against any one except the company and its guarantor.

The same reasoning will apply to all debenture-holders of the Tongariro Company who have a general charge.

To sum up the position therefore I am of opinion as follows :—

(*a*) The notice of the 18th November, 1929, effectually cancelled the whole of the rights of the Tongariro Company under the 1908 agreement, including Western Divisions A and B, notwithstanding the separation of those blocks under the 1913 agreement.
(*b*) The immunity from forfeiture of the Western Division A and B Blocks on the cancellation of the whole agreement was inoperative because the railway has not been built.
(*c*) The cancellation of the 1908 agreement did not by virtue of the provisions of the 1914 Act effect a cancellation of the 1919 agreement between the Tongariro Company and the Egmont Company.
(*d*) The 1919 agreement is still in force, and is now to be read as if the Board were substituted for the Tongariro Company therein.
(*e*) That the rights and liabilities of the Tongariro Company under that agreement are now vested in and are to be exercisable and borne by the Board.
(*f*) That the mutual abandonment by the two companies of the obligation to build the five miles of railway is quite legal, with the result that neither the Board nor the Egmont Company can now raise the non-compliance of the building of the railway as a breach of the 1919 agreement so as to entitle either to cancel it for that reason.
(*g*) That the £4,324 referred to in clause 12 of the 1919 agreement was expended in construction work on the railway, and is not now a debt due by the Board to the Egmont Company.
(*h*) That the holders of any debentures given by the Tongariro Company over the timber on the Western Division A have, by reason of the cancellation of the 1908 agreement, lost their security, and the Board is under no liability to pay anything to such debenture-holders.
(*i*) That if the Egmont Company is called upon to pay by the holders of the debentures for £26,000 under its guarantee, the Egmont Company can, on payment, claim to set off as against the Board future royalties amounting to the £15,000 under the express provisions of the 1919 agreement.
(*j*) That the Board is not liable for the balance of the £26,000—namely, £11,000.
(*k*) That Mr. Philipps is bound to pay, and the Board is entitled to receive, a royalty of 3s. per 100 ft. for all timber cut on Western Division A as soon as the royalties for timber cut since 1919 exceeds the £15,000 originally paid by the Egmont Company to the Tongariro Company in advance of royalties.
(*l*) That if the Egmont Company is called upon to pay the £15,000 on account of the guarantee on the debentures, the Board must repay this amount out of the royalties payable by Mr. Philipps so soon as the same become payable.
(*m*) That no default has been made by the Egmont Company under the 1919 agreement, and the Board is not now entitled to cancel that agreement.

(*n*) That the Egmont Company has waived that part of the agreement by the Tongariro Company to build the five miles of railway, and no other default existing by the Tongariro Company, the Egmont Company has no claim for damages against the Board.
(*o*) That the Board, the Egmont Company, and Mr. Philipps should meet and endeavour to come to some amicable agreement, and that a new contract setting out the terms of such agreement should be entered into and all the old agreements cancelled.
(*p*) That such agreement should either be on a basis of the purchase of Mr. Philipps's rights or a new license to cut at a royalty and the cancellation of the railway provisions altogether.
(*q*) That the assignment of the timber-cutting rights to Mr. Philipps is a good assignment.
(*r*) That the amount payable by the Board to the Egmont Company or Mr. Philipps is the difference between the royalty value of timber already cut (about £9,000) and the £15,000 advanced by the Egmont Company to the Tongariro Company—viz., about £6,000—plus the sum of £15,000 when paid by the Egmont Company under its guarantee with the debenture-holders, or a total liability of about £21,000.
(*s*) That these moneys are not payable in cash, but can only be deducted from royalties as and when earned and paid.
(*t*) That Mr. Philipps is under no liability to continue cutting the timber.
(*u*) That payment of the £21,000 depends entirely upon whether the timber is cut or not by Mr. Philipps.
(*v*) That no interest is payable by the Board on the £21,000 or any part thereof.

W. A. IZARD.

Wanganui, 20th June, 1930.

Solicitor-General's Office, Wellington, 23rd July, 1930.

The Hon. the Attorney-General.

The Egmont Box Co., the Tongariro Timber Co., and the West Taupo Lands.

ADVERTING to your reference of the 29th May last to me in connection with this matter, my reply of the 30th idem, and your subsequent reference of the 28th June forwarding a copy of the opinion of the solicitor to the Aotea Maori Land Board, and the subsequent request of the Minister of Native Affairs that I should advise thereon, I have to report that I have now been able to consider Mr. Izard's opinion and the questions raised. As you are aware, the history of the Tongariro Timber Co. and its dealings with the timber lands in question commenced about the year 1906, and has been the subject of frequent legislation by statute, and by Order in Council, and of consideration by Parliament. I have not had occasion to go into the questions before, and in order to get a thorough grasp of the legislation and dealings in detail would require much more time than I have been able to give to it. I have accordingly assumed that the facts stated in the opinion of the Board's solicitor are correct, and that the references are correct, except in matters which appear on the face of them to require further investigation.

Further notice required.—I should first point out that the Tongariro Timber Co.'s rights are not automatically cancelled by the expiry of the period of six months notice, as seems to have been assumed. The notice dated the 15th November, 1929, is a notice requiring certain defaults to be made good. Unless there are some further provisions or some legislation, modifying paragraph 34 of the 1908 deed as set out in such notice, then the Board will require to give a further notice cancelling and determining the deed owing to the non-compliance with the requirements of that notice.

Position of Egmont Box Co., Ltd.—The first question which I am asked is as to the position of the Egmont Box Co., Ltd.

I agree with Mr. Izard, the solicitor to the Aotea Land Board, that this company will not be affected by the cancellation of the Tongariro Timber Co.'s agreement, but upon such cancellation has the same rights against and the same obligations to the Aotea Land Board as it had against and to the Tongariro Timber Co.

In two respects, however, I differ from Mr. Izard's opinion as to the extent of these rights. In my opinion, it may well be that the Egmont Box Co. is entitled to claim from the Board repayment of the sum of £4,234, with interest thereon at 6 per cent., being the amount expended by it on formation work in connection with the proposed branch line from Kakahi. This is dependent on the construction of clauses 12 and 18 of the 1919 agreement between the Tongariro Timber Co. and the Egmont Box Co. Upon my view, this amount is payable, as more than seven years have elapsed from the advance of the £15,000 by the Egmont Box Co.

I am very doubtful whether the right of the Egmont Box Co. to call for the construction of the railway, and the right of the Tongariro Timber Co. to call upon the Egmont Box Co. to provide the moneys for its construction, has elapsed by mutual agreement or abandonment. Under the circumstances of both companies, it would, I think, require cogent evidence to establish such an alteration or waiver. To arrive at a final decision on this point would require an examination of the dealings between the companies, but for reasons which I shall now state this seems unnecessary.

As by clause 18 of the 1919 agreement any advances by the Egmont Box Co. have to be repaid within seven years from the date of the advance of £15,000, and this period has now elapsed, the right to call on the Egmont Box Co. to supply funds for the construction of the railway seems valueless.

These, however, seem to be matters in which the Board is primarily concerned, and it should, I think, be guided by the advice of its solicitors. It will be sufficient for the purpose of replying to the deputation that first raised the question to say that the Board admits that the Egmont Box Co. is in the same position as regards the Board and has the same rights against it as it had against the Tongariro Timber Co.

Position of Tongariro Timber Co. and Duncan Syndicate.—As far as the position of the Tongariro Timber Co., Ltd., and the Duncan Syndicate is concerned, I have to advise, in my opinion, they have no legal ground upon which to base a claim against the Crown. The same is true of the creditors of the company.

It is clear that section 29 (6) (*a*) of the Native Land Amendment and Native Land Claims Adjustment Act, 1929, allowing the Board to compromise claims or refer them to arbitration, has no application to any claims advanced against the Crown.

Without a full investigation into the whole history of the dealings with this land, the circumstances under which the various loans were raised and moneys expended, and the consideration received for them, it is impossible to express a concluded opinion as to whether there is any moral claim against the Crown and the Natives. I can only say that my present impression is that persons advancing moneys and giving services did so with the knowledge that they were engaged in a speculative enterprise, and might reasonably be assumed to have been taking a risk of losing money in the hope of a possibly large return, and that any payment made will be made as a matter of grace.

I should like to express my gratitude to Mr. W. H. Grace, of the Native Affairs Department, for the assistance which he has been kind enough to give me in considering this matter.

I return to you herewith your file N. 1921/415 (two parts), together with your memorandum of the 23rd June and the copy of the Board's solicitor's opinion, and the more recent file N. 1930/225.

ARTHUR FAIR,
Solicitor-General.

MEMORANDUM REGARDING A PROPOSITION WHEREUNDER THE CROWN WILL ACQUIRE THE TONGARIRO TIMBER TERRITORY AND SETTLE WITH ALL INTERESTED PARTIES.

PART I.—PRELIMINARY OBSERVATIONS.

1. Timber Figures.

The area of the territory actually in forest is 58,610 acres, and there is growing thereon approximately 1,465,000,000 log feet of totara (25 per cent.), matai (32 per cent.), rimu (38 per cent.), and kahikatea (5 per cent.). This land and timber is owned—

(*a*) **Native owners :** 39,480 acres, carrying, roughly, 1,035,000,000 log feet of timber :

(*b*) **The Crown** (scattered all over the territory) : 19,130 acres, carrying the balance of the timber—*i.e.*, 430,000,000 log feet.

The foregoing figures are taken from the appraisement and survey made by a Mr. Sealey in 1906 and 1907. It will be noted that, in addition to the kinds and quantities of timber mentioned, there is also growing on the territory some 123,000,000 log feet of miro, which is now extensively utilized by millers.

In 1923 the State Forest Service made what was understood to be a confirmatory appraisement. According to that appraisement, the total stand of timber was 1,160,000,000 superficial *sawn* feet, and to convert that figure into terms of *log* feet it will be necessary to add roughly 50 per cent. thereto, so that the State Forest appraisement is the equivalent of about 1,640,000,000 log feet. The State Forest figures no doubt include miro.

2. The Quality and Value of the Timber.

It is admitted on all hands and by all millers who have inspected the territory that the size, quality, and general merchantability of the timber is " unique " (see, *inter alia*, report of the State Forest Service to the Commissioner of Forestry made in 1923), and, having regard to the area of the territory, it is an undoubted fact that nowhere in New Zealand can there be found such a magnificent stand of totara and matai as is growing on the territory.

The timber was valued in 1923 by the State Forest Service. That Department's valuation was based on the assumption that a light railway giving access to the timber was built. On this assumption the Department's valuation was £3,747,500. Allocating to the construction of the line mentioned the odd £747,500 (which really would be far in excess of the amount required), the timber would be left with a value of £3,000,000, which, on the stand of 1,465,000,000 log feet mentioned above, works out at over 4s. per 100 log feet.

It may be that the value of standing timber has receded somewhat since 1923, but it is submitted that an allowance of 25 per cent. would more than cover the reduction in value. In other words, and assuming that the requisite access is provided, *the present-day value of the timber as it stands is at least 3s. per 100 log feet.* That this is so is confirmed by the fact that there was a group of millers who in 1928 made a *binding offer* to the Duncan Syndicate to take over (subject to the construction of the line mentioned) cutting-rights in respect of 800,000,000 log feet of the timber and to pay therefor an all-round royalty of 4s. 7½d. per 100 sawn feet (the equivalent of 3s. 1d. per 100 log feet). This group comprised some of the soundest millers operating in the North Island, and under their offer they bound themselves to produce and pay for, at the royalty mentioned, 18,000,000 sawn feet of timber in their first year's operations, and thereafter to increase that output annually until at the end of fifteen years production stood at 45,000,000 sawn feet per annum.

3. Access.

There is now no occasion to construct the railway-line referred to above. Equally as good access can be afforded by road, and it would be a much cheaper and sounder proposition.

Already some 11,500 acres of the timber is provided with access by existing roads, &c., viz.—

(*a*) The Whangaipeke Block, on which there is 5,300 acres or thereabouts of timber, and which is situated less than five miles from Kakahi on the Main Trunk Line ;

(*b*) The Okahukura Nos. 3, 4A, and 6, Waimanu Nos. 1 and 2, Oraukura, and Waiunu Blocks, having among them a stand of about 6,200 acres of timber, from the National Park – Tokaanu Road.

Then, in a year or two, on completion of the road from Taumarunui up the Pungapunga Valley, the western part of Puketapu 3A Block will become accessible. The area of timber on this part is approximately 5,600 acres.

As for the remaining portions of the timber, they can all be made accessible by the construction of, at the most, sixteen miles of road, which can branch off the National Park – Tokaanu Road at the 20-mile point or thereabouts (near Lake Roto-aira) and run northwards along the front of the bush.

The road would traverse open and practically flat pumice country. There would be no engineering difficulties, and the cost of construction should not exceed £2,500 per mile, or a total cost of £40,000.

To sum up, in order to provide the timber with the requisite access and to give it the value of 3s. per 100 log feet mentioned above, all that is required is a capital outlay of some £40,000 on road-construction.

Incidentally, and apart altogether from the functions it will discharge in connection with the timber, the road will be of permanent and valuable use in the direction of opening up quite 150,000 acres of land which at present has no road access.

4. The Position to date.

In October of last year the Native Affairs Committee recommended that the rights of the Tongariro Timber Co. over the territory be cancelled and that the outstanding Native interests in the same be acquired by the Crown. These recommendations involved, among other things, the rejection of a project formulated by what was known as the Duncan Syndicate, and further and fuller mention will be made later of this syndicate and its project.

The enabling legislation for the recommendations is contained in Section 29 of the Native Land Amendment Act, 1929, and in pursuance of the provisions of that section notice of cancellation was duly served on the company and took effect on the 18th May last. It still remains, however, for the Crown to give effect to the second of the recommendations. Incidentally, and in that connection, *it was understood by all parties interested in the company's undertaking that fair provision would be made for them when the State acquired the territory.*

5. The Interested Parties.

These are the Native owners, the Tongariro Timber Co., its creditors, and the Duncan Syndicate.

The claims of the Native owners are both real and well founded, legally, inasmuch as they own the interests to be acquired. Fair and adequate provision must therefore be made for them.

The position of the other parties is, however, not so secure. Their claims all centre round the rights of the company, and, as those rights have been cancelled, or are immediately cancellable, the parties are now without legal foundation for their claims. All parties (including the Native owners) complain, however, that there has been far too much interference on the part of the Government with the rights of the company, with the result that, if such interference did not actually prevent the carrying-out of the company's undertaking, it certainly hampered that undertaking very greatly and in a manner that was not warranted. In the light of this, the parties contend that their claims are all entitled to a certain measure of recognition, and that whether they have any legal foundation for the same or not. The main acts of interference complained of are—

(1) *The imposition in 1921 by the Government of a very substantial increase in the standard of the railway-line*, the construction of which was one of the main conditions on which the company held its rights. The new standard was never contemplated by the original parties to the company's agreements, and the Government (which had then acquired perhaps one-sixth of the territory) took the action indicated without even consulting the Native owners. The increase operated most disastrously against the company. It increased the cost of constructing the line from some £300,000 to over £650,000, and its effect was to more than double the capital requirements of the company. It is evident now that these two factors in reality killed all prospects that the company had of carrying out its undertaking, though it made valiant efforts to do so.

(2) *The granting of numerous extensions of time to the company*, which, of course, effectively prevented the Native owners dealing with their timber themselves.

(3) *The acquisition by the Crown of its present holdings in the territory.* These operations commenced about the year 1920, long after the company's agreements were executed, and were all conducted while the rights and obligations of the agreements were still subsisting. The total area acquired by the Crown in this way was, approximately, 35,000 acres. As already pointed out, 19,130 acres of this is in standing timber, and the balance comprises open country. The total cost to the Crown for the area acquired was £77,000-odd.

There can be no real objection to the acquisition itself, except, perhaps, on the score that the price paid by the Crown was much too low; but it is pointed out that when the Crown acquired the interests there was in existence the "hotchpotch" created by the agreements. The effect of the hotchpotch was to make one big pool of the timber, and it is contended that no action should have been taken in regard to that pool, and the rights centred round the same, without the concurrence of the majority of the owners, whoever they may be. There was certainly no such concurrence when the Government interfered in the manner first described, or when it adopted the attitude which will be described in the next paragraph.

(4) *The rejection by the Government of the Duncan Syndicate's project.* This syndicate was formed with the object of floating a new company which would take over the Tongariro Timber Co.'s undertaking, have a working capital of £300,000, and make fair and equitable provision for all parties interested in the latter company. It was, however, a prime condition of the syndicate's project that the old standard of the railway-line should be reverted to.

In its project the syndicate had the support and approval of most of the interested parties, and particularly of the Native owners (see resolutions passed by them at Waihi, Lake Taupo, on the 21st February, 1929), who then owned, and still own, over two-thirds of the territory.

By October of last year, and but for one thing, the syndicate was in a position and ready to carry out its project. That one thing was the procuring of the consent of the Crown to the project. The syndicate approached the Government repeatedly for such consent, but it was never forthcoming, until it was finally made unprocurable by the recommendations of the Native Affairs Committee and the legislation referred to above. As a result of all this the syndicate was reluctantly compelled to abandon the project, and the interested parties thereby lost all the benefits which they would have derived from it.

It might be mentioned that the syndicate received no little encouragement from the late Government. Then it might be further mentioned that the meeting of Native owners at which the resolutions referred to above were passed was expressly convened for the purpose of enabling the owners to consider the project, and was actually presided over by and held at the suggestion of the Native Minister. As already pointed out, the resolutions approved the project (all present at the meeting except two voted for them), and the syndicate, not unnaturally, assumed, in all the circumstances mentioned, that the Government would give due effect to the resolutions, and it proceeded accordingly with the project—a thing which it would never have done had it known that the Government's consent would finally have not been forthcoming.

Apart, however, from these considerations, it is contended by the interested parties that, as the Native owners (who owned the greater part of the territory) had themselves approved the project, and in the light of the hotchpotch above described, the Crown should have followed the lead of the Native owners and given its consent to the project. As it did not do so, the interested parties hold that the Government is morally responsible for all the consequences of its failure to consent to the project, and among these consequences is the loss to the interested parties of the benefits which they would have derived from the project.

In the face of all that has been written above, it would seem that there is much in the view held by the interested parties that they are morally and equitably entitled to a certain measure of recognition for their claims at the hands of the Government, and, assuming that they are justified in holding that view, the question is, What should that measure of recognition be ? Under are proposals which might answer that question and at the same time afford a satisfactory solution to the problem presented by the claims. *As the loss of the benefits of the project constitute the main and final ground on which the parties base their claim for recognition, the terms of that project are made the basis of the proposals.*

PART II.—PROPOSALS WHEREUNDER THE CROWN WILL ACQUIRE THE TONGARIRO TIMBER TERRITORY AND SETTLE WITH ALL INTERESTED PARTIES.

1. The General Proposition.

The general proposals are that the Crown should—

(1) Acquire the outstanding Native interests in the timber :
(2) Settle with the interested parties in manner described below, due provision being made for the legitimate profit of the Crown :
(3) Deal with the timber on the lines which will be indicated in Part III of this memorandum so as to enable the Crown to meet the commitments of the proposition and, at the same time and ultimately, give it a reasonable profit on the undertaking :
(4) Provide the road access previously described, in order to enable the Crown to secure full value for and deal with the timber in the manner first suggested.

2. The Native Owners.

The proposal is that the Native timber be acquired by the Crown at the flat rate of 1s. 8d. per 100 log feet. This is the price they would have secured under the Duncan project, and they cannot conscionably be asked to accept anything less than that.

The price proposed is 1s. 4d. per 100 feet under the value (3s. per 100 log feet) ascribed above to the timber ; but it must be remembered that the proposal is that the timber be taken over as it stands and with present means of access. It must also be remembered that the timber would only have a value of 3s. per 100 log feet if treated as one big proposition under one administration. Being the unwieldy body that they are, and having regard to the diversity of interests and opinions which actually exists among them, it is obvious that the Native owners could not give the timber the treatment mentioned, and 1s. 8d. per 100 ft. is probably the maximum price that they, *as a body*, could obtain if they were handed back their timber and left to their own devices. Furthermore, it is only fair that the Crown should be left with a reasonable margin for the provision of access, for its expenses and legitimate profit, and for the other purposes of which mention will be made later.

On the figures quoted above, the total price payable by the Crown to the Native owners will be approximately £860,000 (1,035,000,000 log feet of totara, matai, rimu, and kahikatea at 1s. 8d. per 100 ft.). This price can be paid in manner following :—

	£
(*a*) In cash and as soon as State acquisition is decided upon ..	10,000
(*b*) In annual instalments spread over twenty-five years	300,000
(*c*) In 5-per-cent. bonds having a term of thirty-three years, in lieu of the balance outstanding (£550,000) of the £860,000	250,000
	£560,000

If effect is given to this proposal, the annual outgoings of the Crown would be—

	£
For each of the first twenty-five years—	
(*a*) Annual instalment on account of the £300,000	12,000
(*b*) 5 per cent. interest on the £250,000 bonds	12,500
(*c*) 1 per cent. sinking-fund charge for the redemption of the £250,000 bonds in thirty-three years	2,500
	£27,000

At 3s. per 100 log feet, an annual output of 18,000,000 log feet (*i.e.*, an actual output of approximately 12,000,000 sawn feet) would cover these outgoings.

For each of the next eight years—

(*b*) and (*c*) above £15,000

At the 3s. mentioned an annual output of 10,000,000 log feet (*i.e.*, an actual output of approximately 6,700,000 sawn feet) would cover these outgoings.

At the end of thirty-three years, and by paying the outgoings out of revenue derived from output, the Crown would have paid off the whole of the price and will be in a position to redeem the £250,000 bonds out of the sinking fund created for that purpose.

It will not be necessary to make provision for the acquisition of the land on which the timber is growing, as that has been provided for in the Native Minister's scheme for the settlement of the territory generally—the scheme being that the Native owners consolidate their interests into the open parts of the territory.

3. The Crown's Margin.

After making provision for the Native owners, and on the basis of the value of 3s. per 100 log feet mentioned above, the Crown will have a margin of 1s. 4d. per 100 feet on its purchase of the Native timber. This margin works out at £690,000 (1,035,000,000 feet at 1s. 4d. per 100 feet). Then, in addition to this, there will be the Crown's margin on the purchase of its present holdings. As already mentioned, the total cost of the holdings was £77,000-odd; but, as against that, the value of the timber acquired is actually £645,000 (430,000,000 feet at 3s. per 100 feet), so that the margin on this transaction is £568,000, which added to the £690,000 mentioned above gives the Crown a total margin, on a royalty basis, of £1,258,000 over what it paid and will pay to the Native owners. This is a very substantial margin indeed, and the Crown could well make equitable provision for the other interested parties and still leave itself with a handsome profit.

4. The other Interested Parties.

The proposal is that there be allocated to these parties a sum of £223,800, to be paid in 5-per-cent. bonds having a term of, say, thirty-three years. This £223,800 can be apportioned among the parties in manner following:—

(*a*) **The Company's Creditors.**—Under the Duncan project the creditors would have received among them in cash and second debentures (mostly the latter) a sum of £225,000 in full settlement of their claims, and, but for one or two exceptions, they were ready to accept the provisions so made for them. Moreover, the respective merits of all claims were carefully and fully investigated by Mr. Duncan, and the £225,000 was apportioned among the creditors strictly in accordance with the merits of their claims.

In these circumstances *it is suggested that there be allocated to the creditors £180,000 of the bonds, and that the same be apportioned among them* pro rata *to the amounts which they, respectively, would have received under the project.* This actually involves writing down the provisions of the project by exactly 20 per cent., but it is considered that the fact that the creditors are receiving Government bonds in lieu of second debentures in a heavily loaded undertaking would of itself warrant the writing-down. These £180,000 bonds will settle claims which now aggregate some £320,000, and among the creditors will be the Egmont Box Co., which will receive for itself some £15,000, and for its debenture party another £16,000.

(*b*) **The Tongariro Timber Co.**—The company's actual share capital is £60,000, £30,000 being held by Mr. E. T. Atkinson (now deceased) and £30,000 by the other shareholders. *The proposal is that the company be settled with on the basis of 10s. in the £1, which will mean that there will be allocated to it £30,000 bonds in settlement of its claims.*

(*c*) **The Duncan Syndicate.**—The nature, quality, and circumstances of the services rendered by this syndicate have already been described, and it only remains to add that it is considered that of all the parties interested (next to the Native owners) it is entitled to most consideration. Its task was an enormous one, but it would have carried it out had the Government allowed it to do so. Then, all the other parties (including the Native owners) were relying on it to save the situation for them, and this it could also have done had the Government consented to the project.

The syndicate's claim is for £13,800, and in the notice of claim which it lodged with the Aotea Maori Land Board it was careful to explain that the claim had been reduced to the absolute minimum. In the light of that and of all the circumstances of the claim, *it is suggested that the claim be paid in full, and that the syndicate, accordingly, be issued £13,800 of the bonds.*

5. The Cost of State Acquisition.

	£
This may be summarized as follows :—	
(1) Price payable to Native owners in bonds and annual instalments	560,000
(2) Amount allocated to the company and its connections in settlement of their claims	223,800
(3) Cost of the Crown's present holdings	77,000
	£860,800

In the next Part of this memorandum it will be shown how the Crown may recoup itself this outlay and other incidental commitments, and finally show a handsome profit on the transaction.

PART III.—WORKING THE TIMBER.

Owing to the commitments involved in the transaction, the Crown could not treat the timber acquired entirely as a holding proposition. It would be necessary for it to realize on part, at any rate, of the timber. Undoubtedly, the best way for it to do this would be to subdivide the timber into suitable holdings and sell the rights over the holdings to millers in the usual way. The Crown could arrange for the timber operations to start straightaway, for, as pointed out above, over one-fifth of the timber is already accessible. Ultimately, however, the sixteen miles of road previously mentioned will have to be constructed in order to provide access to the rest of the territory, and, as shown, the cost of construction will be about £40,000. Provision will also have to be made for the preliminary expenses of the undertaking, which might amount to £5,000 but no more.

When the timber is sold, it is suggested that an annual output of 20,000,000 *sawn* feet (the equivalent of 30,000,000 *log* feet) of totara, matai, rimu, and kahikatea be arranged for during the first twenty-five years and of 15,000,000 *sawn* feet (22,500,000 *log* feet) during the next eight years. Intermixed with the kinds of timber just mentioned there is also a certain proportion (about one-twelfth) of miro, which will, of course, have to be sold along with the other kinds of timbers, and should realize, at any rate, 1s. per 100 ft.

The wonderful qualities of the timber already described are well known to millers, and it is a fact that there are numbers of them who are anxiously awaiting an opportunity of acquiring rights in the timber. For these reasons there is no doubt that the timber will sell readily on the basis of output suggested and for a royalty of at least 3s. per 100 log feet.

It may be objected that a production of 20,000,000 ft. per annum would be too much for the market to absorb at present, but it is pointed out that round and about the central portions of the Main Trunk Line there are millers whose present annual output is 23,000,000 sawn feet and more, who will all have cut out their present holdings by the end of the year 1931. This is clearly pointed out in a report on that very question furnished by the State Forest Service to the Prime Minister at the end of 1928. Then, in addition to this, there must be other millers in other parts of the North Island who are similarly situated, so that it appears very much as if in the course of the next year or two there will be a deficiency in supply of probably 50,000,000 ft. or more per annum, and there is no reason why this deficiency should not be made up by the Tongariro territory, It must also be remembered that 57 per cent. of the timber is totara and matai, which can always command a market of their own.

It is assumed that the timber will be administered by the State Forest Service or some such Department, and, so administered, the administration expenses would be very low. Two supervisors on the territory itself could cope with all the outside work and a clerk at headquarters could deal with all the inside work. The administration expenses should not in these circumstances exceed £2,000 per annum.

It might be mentioned that in addition to the timber itself there is another very considerable source of revenue—viz., adjacent open land which can be leased by the Crown to millers and their employees, &c., for mill-sites, homes, &c. There will probably be at least ten mills operating at a time on the territory, with at least ten separate sets of millers and employees, and they must all have land for the purposes mentioned. This land they can only get from the Crown, and it would be putting the revenue at a very low figure to say that the land will bring in at least £200 per mill.

Assuming that effect is given to the proposals made above, the Crown's expenditure and revenue account will be somewhat as follows :—

In each of the first twenty-five years—	£	£
By 30,000,000 log feet (actual output, 20,000,000 sawn feet) of totara, matai, rimu, and kahikatea at 3s. per 100 ft. ..	..	45,000
Say, 2,500,000 log feet of miro at 1s. per 100 ft.	..	1,250
Rentals from land leased to millers, their employees, &c., say	..	2,000
To (1) Annual instalment payable to Native owners on account of their £300,000	12,000	..
(2) Interest (5 per cent.) and sinking-fund charge (1 per cent.) on their £250,000 bonds	15,000	..
(3) Interest and sinking-fund charge as above on the £223,800 bonds issued to the company and its connections	13,428	..
(4) Interest and sinking-fund charge as above on initial outlay for road access and preliminary expenses (£45,000)	2,700	..
(5) Administration expenses, say	2,000	..
(6) *Crown's profit* on each year's operations	3,122	..
	£48,250	£48,250

In each of the last eight years—

	£	£
By 22,500,000 log feet (actual output 15,000,000 sawn feet) of totara, matai, rimu, and kahikatea at 3s. per 100 ft.	..	33,740
Say, 2,000,000 log feet of miro at 1s. per 100 ft...	..	1,000
Rentals as above, say	..	1,500
To (2), (3), (4), and (5) above	33,128	..
Crown's profit on each year's operations	3,122	..
	£36,250	£36,250

It will be observed that no provision is made in the foregoing account for the £77,000 expended by the Crown in acquiring its present holdings. Such provision is omitted because there is a complete set-off to this amount in the land which the Crown will possess after the timber has been removed. An official of the Lands Department who has inspected the territory informed the writer that it was eminently suited for sheep-farming. His view was that the territory should be settled as the timber is cleared, and when so settled each settler's holding should comprise part of what is now timbered land and part of open land. He was of opinion that if the territory was settled in this way the holdings would be capable of carrying a sheep to the acre, which would give it a value of at least £6 per acre. Such being the case, and as the greater part of the clearing of the timber (which is a very costly proceeding to the settler) will be done by the millers, one could safely put a potential value of £3 an acre on the territory when cleared of timber. The entire Crown holdings in the territory would be about 75,000 acres, so that the potential value of those holdings is £225,000, which, as already stated, affords a complete set-off to the £77,000 already expended by the Crown.

If the Crown thought fit to increase production above the figure suggested, its profits would be increased by practically the royalty value (3s. per 100 ft.) of the increase in output; but, assuming that the Crown restricted production to the figures given above, its position at the end of thirty-three years will be—

(1) It will have effected complete and final settlement with the Native owners and all other interested parties and be in a position to redeem all bonds issued by it out of the sinking funds created for that purpose.
(2) It will, after paying all outgoings and effecting the settlement first mentioned, have made a profit of some £3,122 in each of the thirty-three years.
(3) It will have cut out 930,000,000 log feet of totara, matai, rimu, and kahikatea, and will still have in hand 535,000,000 log feet thereof, having a royalty value of £802,500. It will also have in hand some 30,000,000 log feet of miro, which will be worth at least £15,000.
(4) It will have constructed sixteen miles of road entirely out of the proceeds of the sale of the timber. This road, as already pointed out, will serve at least 150,000 acres of land, of which half will belong to the Crown.

Such are the material benefits which will accrue to the Crown, but, over and above all them, it will have the final satisfaction of knowing that it has made fair and equitable provision for every one interested in the Tongariro Timber Co.'s undertaking.

CLAIMS MADE BY TONGARIRO TIMBER CO., LTD., ON BEHALF OF ITSELF AND ITS CREDITORS AND SUGGESTED MODE OF SETTLEMENT.

The claims are set out under the following headings :—

	Amount of Claim.	Amount payable under Duncan Project.	Amount payable under Grace Proposition.
	£ s. d.	£	£
A. The Tongariro Timber Co., Ltd.'s, claims (refund of capital of £60,000, whereof £25,000 was paid up in cash)	60,000 0 0	60,000	30,000
B. The company's creditors—			
(1) Morison, Spratt, and Morison	100 9 8	100	80
(2) Sir J. P. Houfton's estate, plus interest ..	14,000 0 0	20,000	16,000
(3) Cammell, Laird, and Co., plus interest ..	20,720 0 0	24,000	19,200
(4) Bertram Philipps, plus interest	29,700 0 0	20,000	16,000
(5) C. W. Nielson	569 9 6	400	320
(6) Te Heuheu Grace party	62,326 0 0	49,237	39,390
(7) Armstrong, Whitworth, and Co.	15,000 0 0	8,000	6,400
(8) Egmont Box Co., Ltd. .. .. .. (Also has a claim for £10,000 against timber rights over Western A Block)	43,748 0 0	38,000	33,000
(9) Rates (year ending 31st March, 1927) ..	1,349 14 3	(Payable by Native Owners.)	
(10) D. M. Findlay and Moir (solicitors to company from inception, and who have received nothing on account of costs)	6,903 0 0	5,600	4,480
(11) George Ross (secretary to company since inception, and who also advanced money to it)	4,989 0 0	4,000	3,200
(12) Executors of E. T. Atkinson, deceased (arrears of salary as managing director of the company)	5,250 0 0	4,000	3,200
(13) R. B. Martin (arrears of salary as assistant manager and consulting engineer, and includes moneys advanced to the company)	5,307 0 0	4,300	3,440
(14) J. E. Fulton (claim for surveys of the route of the railway-line)	5,300 0 0	4,000	3,200
(15) R. W. Holmes (claim for surveys of the route of the railway-line)	308 0 0	230	184
(16) L. M. Grace (moneys advanced to Native for debenture)	869 18 0	600	480
(17) Andrew Gray (commissions on sales of shares and sale to Egmont Box Co., Ltd.)	2,452 6 0	2,000	1,600
(18) Gray Bros., Vancouver (commission on sales of shares)	1,973 15 0	1,500	1,200
(19) F. St. Hill, engineer	1,099 5 0	800	640
(20) Sir John Findlay (counsel's fees)	1,350 0 0	1,000	800
(21) Wilfred Findlay (moneys payable for commission under agreement with company)	11,000 0 0	4,000	3,200
(22) Executors of F. W. Frankland, deceased (actuary)	500 0 0	400	320
(23) Chapman, Skerrett, Tripp, and Blair (legal costs)	720 11 4	500	400
(24) E. G. Atkinson (advances to E. T. Atkinson in England)	1,380 0 0	1,035	828
(25) H. Clifton, solicitor, London (legal costs) ..	271 4 0	200	160
(26) A. D. Riley (commissions on sales of shares) ..	1,394 0 0	1,050	840
(27) Dr. Collins	30 0 0	25	20
(28) H. H. Tombs, Ltd. (printing)	5 2 6	5	4
(29) Buddle, Richmond, and Co. (legal costs) ..	59 4 3	45	36
(30) Duncan, Cotterill, and Co. (legal costs) ..	3 4 1	3	3
(31) Paine, Blythe, and Huxtable (legal costs) ..	17 11 4	15	12
(32) Bell, Gully, Bell, and Myers (legal costs) ..	59 6 6	45	36
(33) Mrs. Waldegrave (cash loaned to company)	75 0 0	60	48
(34) E. M. Boulton (audit fees)	45 19 0	35	28
(35) Hopkirk and Martin (report on timber) ..	50 0 0	40	32
(36) Eru te Kuku (amount for which debenture should have been issued)	739 10 4	600	480
(37) State Forest Department	100 0 0	100	80
(38) Dr. Chapple	6,000 0 0	8,570	6,856
(39) Miss Wright	1,000 0 0	1,430	1,144
Carried forward	306,764 10 9	265,925	197,341

CLAIMS MADE BY TONGARIRO TIMBER CO., LTD., ON BEHALF OF ITSELF AND ITS CREDITORS AND SUGGESTED MODE OF SETTLEMENT—*continued.*

The claims are set out under the following headings :—

	Amount of Claim.	Amount payable under Duncan Project.	Amount payable under Grace Proposition.
	£ s. d.	£	£
Brought forward	306,764 10 9	265,925	197,341
C. Royalty payable to Houfton-Chapple on Western B Block (estimated to produce £37,500 over a period of, say, thirty years)	..	10,000	8,000
D. Amounts payable to creditors of Native owners—			
(1) M. H. Hampson	2,500 0 0	2,500	2,000
(2) W. H. Grace	2,500 0 0	2,500	2,000
(3) Sundry creditors	1,500 0 0	1,500	1,200
	313,264 10 9	282,425	210,541
Add amount allocated to Duncan syndicate under the Grace proposition	..	..	13,800
			£224,341

NOTE.—In addition to the foregoing there was owing to the owners of the timber territory as on the 1st March, 1930, a sum of approximately £30,000 on account of arrears of royalty and interest and of commission owing to the Aotea Maori Land Board.

STATEMENT SHOWING AMOUNT PAID FOR ROYALTIES TO THE AOTEA MAORI LAND BOARD AND NATIVE OWNERS.

		£ s. d.
1905–11.	Amount paid by Tongariro Timber Co., Ltd., to Natives or their solicitors	3,537 10 2
1911—May.	Amount paid by Tongariro Timber Co., Ltd., to Aotea Maori Land Board	1,000 0 0
1912—April.	Ditto	1,500 0 0
1913—Nov.	Ditto	2,500 0 0
1920—Oct.	Ditto	2,638 17 2
1922—Sept.	Ditto (from moneys provided by Houfton-Chapple)	35,000 0 0
1925—March.	Amount paid by Tongariro Timber Co., Ltd., to Aotea Maori Land Board (from moneys provided by Bertram Philipps)	5,000 0 0
1926.	Ditto	5,000 0 0
		£56,176 7 4

LETTER AND STATEMENT OF K. D. DUNCAN.

The Chairman, Native Affairs Committee, Parliament Buildings, Wellington.

Wellington, 13th August, 1930.

DEAR SIR,— Re *Tongariro Timber Company.*

It occurs to me that it might be as well if I confirmed in writing the statements made by Mr. W. H. Grace yesterday morning concerning the financial position of my syndicate as in November of last year, when it was compelled to abandon its project.

Appended is a statement showing the actual position, and from it you will see that £240,000 of the £300,000 working capital was definitely secured. This, as a matter of fact, was the minimum subscription on which my syndicate could proceed to the flotation of the projected new company, and I could have so proceeded as soon as the consent of the Government to my project was made available.

I might mention that I had made arrangements whereby preliminary expenses would have been paid in debentures of the series employed to raise the working capital. The amount of these expenses (which would have been considerable) could therefore have been regarded as a further subscription to the capital, as, but for the arrangement mentioned, the expenses would have had to be paid out of capital.

I also append spare copies of my statement for the other members of your Committee.

Yours faithfully,
K. D. DUNCAN.

DUNCAN SYNDICATE AND ITS PROJECT *re* THE TONGARIRO TIMBER CO.

Statement showing how much of its Capital of £300,000 was subscribed when it was compelled at the End of 1929 to abandon its Project.

	£	£
(1) By seventeen blocks of £6,000 actually taken up by guarantors and subscribers, 1928	112,000	
(2) By five blocks definitely promised to be taken up when all consents were secured and the syndicate was in a position to finalize its project	30,000	
(3) By amount definitely promised by millers on the conditions just described ..	27,000	
		169,000
(4) By amount of capital underwritten by the New Zealand Underwriting and Development Corporations, subject to the liability of the subscribers mentioned above	200,000	
(5) By amount definitely promised by a group of Sydney business men subject to the conditions described above*	40,000	
		240,000

* This group was also ready to find another £40,000 if the same was required.

Approximate Cost of Paper.—Preparation, not given; printing (475 copies), £92 10s.

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