

1930.
NEW ZEALAND.

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.

Laid on the Table of the House of Representatives by Leave.

STATEMENT.

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 Phillips, 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 No. 1-3A.

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 Phillips*, 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 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 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 everyone, 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 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-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-mile 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 ON THE 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>i.e.</i> , the Government and the Native owners) <i>pro rata</i>	£
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, <i>pro rata</i> 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 £8,200 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, <i>pro rata</i> 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
	<hr/>
	£330,000
	<hr/>

The above does not include the arrears of royalty referred to in the notice.

Yours, &c.,

GEORGE ROSS, Secretary.

