1951
NEW ZEALAND

REPORT OF ROYAL COMMISSION APPOINTED TO INQUIRE INTO AND REPORT UPON CLAIMS PREFERRED BY CERTAIN MAORI CLAIMANTS CONCERNING THE PAYMENT OF CERTAIN MONEYS BY THE AOTEA DISTRICT MAORI LAND BOARD IN RESPECT OF THE WEST TAUPO TIMBER LANDS

Laid on the Table of the House of Representatives by Command of His Excellency

Royal Commission to Inquire Into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Payment of Certain Moneys by the Aotea District Maori Land Board in Respect of the West Taupo Timber Lands

GEORGE THE SIXTH by the Grace of God, of Great Britain, Northern Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith:

To Our Trusty and Well-beloved Counsellor, SIR MICHAEL MYERS, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, and to Our Trusty and Well-beloved subjects, HUBERT MAXWELL CHRISTIE, of Wellington, Company Director, and RICHARD ORMSBY, of Te Kuiti, Farmer: GREETING:

WHEREAS, pursuant to section 14 of the Maori Purposes Act, 1935, the Aotea District Maori Land Board paid to the Egmont Box Company, Limited, a sum of £23,500 in terms of the said section:

And whereas it is provided by the said section that the aforesaid sum together with certain costs and expenses shall be deemed to be a loan to the owners, including the Crown, of the whole of the lands described and referred to in a certain deed of agreement bearing date the 23rd day of December, 1908, made between the Maniapoto-Tuwharetoa District Maori Land Board of the one part and the Tongariro Timber Company, Limited, of the other part, excepting such portions of the said lands as have been actually transferred to the Tongariro Timber Company, Limited, for an estate in fee simple:

And whereas it is further provided by the said section that upon payment of such sum as is therein referred to the said Board shall by virtue of the said reciting Act and as security for the repayment of the moneys hereinbefore referred to, and together with interest thereon, be deemed to have a charge upon the said lands and the revenue therefrom, excepting any of such land or any interest therein acquired or owned by the Crown:

And whereas the said section makes provision for the apportionment of the liability for the repayment of the said loan-moneys as between the Crown and the Maori owners of the said lands and as between certain blocks of land therein referred to:

And whereas certain Maoris have contended that if by the operation of the said section they are rendered liable for the repayment of the said moneys, or any part thereof, they ought not to have been so rendered liable, and that their lands should not have been made subject to any charge as security for the repayment of the said moneys, or any part thereof:

. . . . . .

And whereas the Government is desirous that the truth and justice of the respective claims and complaints of the Maoris as hereinbefore set forth should be tested by inquiry so that, if such complaints be well founded and of substance, the Government will be able to take order for the redress of the grievances laid upon the Maoris:

Now know ye, that We, reposing trust and confidence in your impartiality, knowledge, and ability, do hereby nominate, constitute, and appoint you, the said

Sir Michael Myers,

Hubert Maxwell Christie, and

Richard Ormsby

to be a Commission:

(*a*) In respect of the sums of money paid by the Aotea District Maori Land Board as aforesaid, to inquire and report—

(i) Whether the charge imposed upon Maori lands, pursuant to section 14 of the Maori Purposes Act, 1935, ought, in equity and good conscience to have been imposed upon the whole or any part of such lands;

(ii) Whether, in equity and good conscience, the Maori owners of such lands if liable ought to have been rendered liable for the repayment of the whole or any part of the moneys paid by the said Board to the Egmont Box Company, Limited, pursuant to the said section;

(iii) If it be reported that such charge ought not, in equity and good conscience, to have been imposed and that in equity and good conscience the said Maori owners if liable should not have been rendered liable for the repayment of the whole or any part of the said moneys as aforesaid, then to recommend what further sum, if any, should now be paid to the said Board by the Crown in respect of interest moneys and the costs and expenses incurred by the said Board in defending actions brought against it with regard to the payment of the said moneys:

. . . . . .

Provided, further, that you shall be at full liberty to disregard or differ from any findings, whether of fact or otherwise, conclusions, opinions, or recommendations of any former tribunal in respect of any matters or questions of similar character or import to those confided to you by these presents:

And We do hereby appoint you, the said

Sir Michael Myers

to be Chairman of the said Commission:

And for the better enabling you to carry these presents into effect, you are hereby authorized and empowered to make and conduct any inquiry under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and so that these presents shall continue in force, and the inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose save to His Excellency the Governor-General in pursuance of these presents, or by His Excellency's direction, the contents of any report so made or to be made by you or any evidence or information obtained by you in the

exercise of the powers hereby conferred upon you except such evidence or information as is received in the course of a sitting open to the public:

And you are hereby authorized to report your proceedings and findings under this Our Commission from time to time if you shall judge it expedient so to do :

And, using all due diligence, you are required to report to His Excellency the Governor-General in writing under your hands not later than the thirtieth day of June, one thousand nine hundred and fifty, your findings and opinions on the matters aforesaid, together with such recommendations as you think fit to make in respect thereof:

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His late Majesty dated the eleventh day of May, one thousand nine hundred and seventeen, and under the authority of and subject to the provisions of the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council of the Dominion of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this sixth day of December, in the year of our Lord one thousand nine hundred and forty-nine, and in the thirteenth year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—

P. FRASER, Minister of Maori Affairs.

Approved in Council—

T. J. SHERRARD, Clerk of the Executive Council.

Appointment of Another Member of the Royal Commission Constituted to Inquire Into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Payment of Certain Moneys by the Aotea District Maori Land Board in Respect of the West Taupo Timber Lands

---

GEORGE THE SIXTH by the Grace of God, of Great Britain, Northern Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith:

To Our Trusty and Well-beloved DOUGLAS JAMES DALGLISH, of Wellington, a Deputy Judge of the Court of Arbitration, HUBERT MAXWELL CHRISTIE, of Wellington, Company Director, and RICHARD ORMSBY, of Te Kuiti, Farmer: GREETING:

WHEREAS by Our Warrant of date the 6th day of December, 1949, issued under the authority of the Letters Patent of His late Majesty dated the 11th day of May, 1917, and under the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council, the late Sir Michael Myers, and you the said Hubert Maxwell Christie, and Richard Ormsby were appointed a Commission to inquire into and report upon certain claims preferred by certain Maoris:

And whereas the said Sir Michael Myers died after the members of the Commission had entered upon their labours but before they had made any report thereof, and it is desirable to appoint another member and a new Chairman of the said Commission:

Now know ye that We, reposing trust and confidence in your impartiality, knowledge, and ability do hereby nominate, constitute and appoint you, the said

Douglas James Dalglish,
Hubert Maxwell Christie, and
Richard Ormsby,

to be the Commissioners and members of the said Commission for the purposes and with the powers and subject to the directions specified in the said Warrant:

And We do hereby appoint you, the said

Douglas James Dalglish,

to be Chairman of the said Commission:

And We do hereby confirm the said Warrant and the Commission thereby constituted save as modified by these presents.

In witness whereof We have caused this Our Commission to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this 26th day of April, in the year of our Lord 1950, and in the 14th year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—
E. B. CORBETT, Minister of Maori Affairs.

Approved in Council—
T. J. SHERRARD, Clerk of the Executive Council.

Extending Period Within Which the Royal Commission Constituted to Inquire Into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Payment of Certain Moneys by the Aotea District Maori Land Board in Respect of the West Taupo Timber Lands Shall Report

---

GEORGE THE SIXTH by the Grace of God, of Great Britain, Northern Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith.

To Our Trusty and Well-beloved DOUGLAS JAMES DALGLISH, of Wellington, a Deputy Judge of the Court of Arbitration, HUBERT MAXWELL CHRISTIE, of Wellington, Company Director, and RICHARD ORMSBY, of Te Kuiti, Farmer: GREETING :

WHEREAS by Our Warrant of date the 6th day of December, 1949, issued under the authority of the Letters Patent of His late Majesty dated the 11th day of May, 1917, and under the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council, the late Sir Michael Myers, and you the said Hubert Maxwell Christie, and Richard Ormsby, were appointed a Commission to inquire into and report upon certain claims preferred by certain Maoris :

And whereas the said Sir Michael Myers died after the members of the Commission had entered upon their labours but before they had made any report thereof, and it was desirable to appoint another member of the said Commission :

And whereas by Our Warrant of date the 4th May, 1950, you the said Douglas James Dalglish, Hubert Maxwell Christie, and Richard Ormsby, were appointed to be the Commissioners and members of the said Commission for the purposes and with the powers and subject to the directions specified in Our said Warrant first hereinbefore mentioned :

And whereas by virtue of Our Warrant first hereinbefore mentioned you are required to report not later than the 30th day of June, 1950, your findings and opinions on the matters thereby referred to you :

And whereas it is expedient that the time for so reporting in respect of the said matters should be extended as hereinafter provided:

Now, therefore, We do hereby extend until the 31st day of December, 1950, the time within which you are so required to report in respect of the said matters :

And We do hereby confirm the said Warrants and Commission save as modified by these presents.

In witness whereof We have caused these presents to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this 28th day of June, in the year of our Lord, one thousand nine hundred and fifty, and in the fourteenth year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—

E. B. CORBETT, Minister of Maori Affairs.

Approved in Council—

T. J. SHERRARD, Clerk of the Executive Council.

Extending Period Within Which the Royal Commission Constituted to Inquire Into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Payment of Certain Moneys by the Aotea District Maori Land Board in Respect of the West Taupo Timber Lands Shall Report

---

GEORGE THE SIXTH by the Grace of God, of Great Britain, Northern Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith :

To Our Trusty and Well-beloved DOUGLAS JAMES DALGLISH, of Wellington, a Deputy Judge of the Court of Arbitration, HUBERT MAXWELL CHRISTIE, of Wellington, Company Director, and RICHARD ORMSBY, of Te Kuiti, Farmer : GREETING :

WHEREAS by Our Warrant of date the sixth day of December, one thousand nine hundred and forty-nine, issued under the authority of the Letters Patent of His Late Majesty dated the eleventh day of May, one thousand nine hundred and seventeen, and under the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council, the late Sir Michael Myers and you the said Hubert Maxwell Christie, and Richard Ormsby, were appointed a Commission to inquire into and report upon certain claims preferred by certain Maoris :

And whereas the said Sir Michael Myers died after the members of the Commission had entered upon their labours but before they had made any report thereof, and it was desirable to appoint another member of the said Commission :

And whereas by Our Warrant of date the fourth day of May, one thousand nine hundred and fifty, you the said Douglas James Dalglish, Hubert Maxwell Christie, and Richard Ormsby, were appointed to be the Commissioners and members of the said Commission for the purposes and with the powers and subject to the directions specified in Our said Warrant first hereinbefore mentioned :

And whereas by virtue of Our Warrant first hereinbefore mentioned you were required to report not later than the thirtieth day of June, one thousand nine hundred and fifty, your findings and opinions on the matters thereby referred to you :

And whereas by Our further Warrant of date the twenty-eighth day of June, one thousand nine hundred and fifty, the time within which you were so required to report was extended until the thirty-first day of December, one thousand nine hundred and fifty :

And whereas it is expedient that the time for so reporting should be further extended as hereinafter provided:

Now, therefore, We do hereby extend until the thirty-first day of July, one thousand nine hundred and fifty-one, the time within which you are so required to report in respect of the said matters :

And We do hereby confirm the said Warrants and Commission save as modified by these presents.

In witness whereof We have caused these presents to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this sixth day of December, in the year of our Lord, one thousand nine hundred and fifty, and in the fourteenth year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—

E. B. CORBETT, Minister of Maori Affairs.

Approved in Council—

T. J. SHERRARD, Clerk of the Executive Council.

To His Excellency the Governor-General, Lieutenant-General the Right Honourable Lord Freyberg, V.C., G.C.M.G., K.C.B., K.B.E., D.S.O.

MAY IT PLEASE YOUR EXCELLENCY,—

1. We have the honour now to make the second report as the result of our inquiries into the four matters specified in Your Excellency's Commission of 6th December, 1949, as confirmed in your warrant of 26th April, 1950, appointing the present members of this Commission. Our first report, which had reference to the Opouturi Block, was made on 4th December, 1950. This present report relates to claims by certain Maori claimants (members of the Ngati Tuwharetoa Tribe) concerning a sum of £23,500 paid by the Aotea District Maori Land Board to the Egmont Box Co., Ltd., pursuant to section 14 of the Maori Purposes Act, 1935, in respect of the West Taupo Timber Lands.

2. The Commission sat at Wanganui to hear representations in respect of this matter on 12th March, 1951, and on the two following days. Mr. T. P. Cleary appeared as counsel for the Maori claimants, Mr. N. R. Bain as counsel for the Crown, and Mr. N. M. Izard as counsel for the Aotea District Maori Land Board.

3. The terms of the order of reference require the Commission to examine whether in equity and good conscience the charge imposed on certain lands by section 14 of the Maori Purposes Act, 1935, should have been imposed. In our view we are called on to determine whether and at what stage anything was done which was unfair to the Maori owners of the lands. We were invited to have regard to certain of the events which led up to the payment of the £23,500 already referred to and to find that the charge in question should not have been imposed. In order to give proper consideration to the matter we have examined the whole of the facts in relation to the transaction from the beginning and have had regard to the circumstances as they existed from time to time. In this report we have not set out all the details in relation to the history of the transaction, but we have set out sufficient to give an adequate background for the consideration of the material facts.

4. The lands affected by the transaction into which we have to inquire are referred to as the West Taupo Timber Lands and constitute an area of approximately 134,500 acres lying roughly between Lake Taupo and Taumarunui, the nearest point on the North Island Main Trunk Railway line being at Kakahi. The area was estimated in 1908 to contain approximately 82,000 acres of timber-bearing land, and it was estimated that of this 82,000 acres some 59,445 acres could be profitably milled. The Crown, through the Native Land Purchase Board (now the Board of Maori Affairs), has since 1920 acquired substantial interests in these lands by purchase from individual Maoris and now owns approximately two-fifths of the area. The remainder represents, so we were informed, almost the whole of the lands from which the Tuwharetoa people derive their living.

5. In 1906, the Tongariro Timber Co., Ltd. (hereinafter referred to as the Tongariro company), entered into an agreement with the majority of the Maori owners of the West Taupo Timber Lands under which the company was granted certain timber-cutting rights and under which the company agreed to construct a railway from Kakahi on the Main Trunk Railway line to Lake Taupo, a distance of approximately forty miles. This agreement was considered by the Maniapoto-Tuwharetoa District Maori Land Board and also by the Royal Commission comprising Sir Robert Stout and Mr. (later Sir) Apirana Ngata. This last-mentioned Commission reported (parliamentary paper G–1F of 1908) that it was of opinion that the agreement (subject to certain modifications agreed upon) was in the public interest, and, in view of the great advantages which would accrue to both the Maori owners and the Dominion, the Commission recommended that Parliament should lend its aid to the speedy execution of the agreement with the agreed modifications. It is quite clear that at this time the proposal that a railway should be constructed was a substantial factor leading to the approval of the agreement.

6. Section 37 of the Maori Land Laws Amendment Act, 1908, was accordingly passed authorizing the Maniapoto-Tuwharetoa Maori Land Board to execute in its own name on behalf of the owners an agreement incorporating the terms of the original agreement with modifications approved by the Royal Commission above referred to. A deed of agreement was accordingly executed on 23rd December, 1908.

7. This deed provided that the railway was to be completed and supplied with rolling-stock within a period of five years from the date of the agreement, with a reasonable extension of time if, using all due diligence, the company could not complete within that period. No definite time was fixed within which the work of felling and removing the timber was to be commenced and completed, but there was provision for a sliding scale of royalties with what was intended to be a prohibitive royalty of £100 per acre after the expiry of fifty

years. The deed also provided that, whether any timber was felled or not, certain sums should be paid annually in anticipation of royalties, and the Board, on default by the Tongariro company, could cancel and determine the deed without being liable, if the cancellation took place after 1923, to repay any of the moneys received by the Board.

8. On 1st July, 1910, the Aotea District Maori Land Board was constituted and became the successor to the Maniapoto-Tuwharetoa Board in respect of the area within which the West Taupo Timber Lands were situated. The Aotea Board thus stepped into the shoes of the Maniapoto-Tuwharetoa Board in respect of this transaction.

9. Section 37 of the Maori Land Laws Amendment Act, 1908, also provided that the agreement could be modified at any time by mutual agreement of the parties, but that the approval of the Native Minister to any such modification had to be obtained. In 1910 the Tongariro company asked the Aotea District Maori Land Board to agree to a modification of the agreement. The Board held a special meeting on 9th December, 1910, to consider the application, and at this meeting the Maoris were represented by Messrs. Skerrett and Fell. Mr. Skerrett said that he accepted the responsibility of advising the Maoris that the modifications proposed were advantageous to them. Te Heuheu Tukino, the chief of the Ngati Tuwharetoa, and other Maoris were present and, except in two cases, they were in agreement. The modifications were agreed to. They included a reduction of the royalty payment and also an extension of time for the completion of the railway. As regards the railway, the date for completion was postponed until 1st March, 1916.

10. Even with the concessions granted to it, the Tongariro company still found it impracticable to do anything, and it approached the Aotea District Maori Land Board again. A further agreement was made between the Board and the Tongariro company on 24th October, 1913. Under this agreement the company was given the right to construct the first five miles of the railway and to have the timber-cutting rights over the Whangaipeke Block and certain adjacent land as a separate undertaking, and the rights in respect of that land were not to be liable to cancellation or forfeiture for default with respect to the other lands affected by the previous agreements. In addition, the Tongariro company was granted immunity from cancellation or forfeiture conditional upon the first section of the railway being commenced by 22nd October, 1915, and being completed by 22nd October, 1916. Before the modifications in this agreement of 24th October, 1913, were agreed to by the Board it heard representations from counsel for Maori owners as well as from individual owners.

11. On 9th September, 1914, the Tongariro company entered into a contract with the Egmont Box Co., Ltd. (hereinafter referred to as the Egmont company), whereby the Egmont company covenanted that it would provide all the moneys necessary for constructing or would, as contractor for the Tongariro company, construct the first five miles of railway in two sections, the first section to be constructed within two and a half years and the other within four years. The Egmont company was to obtain running-rights over the line, which it required for the exercise of timber-cutting rights which it had on adjoining lands. The Aotea District Maori Land Board was requested to consent to the terms of this agreement, but declined to do so unless it was directed or authorized by statute. The Egmont company petitioned Parliament asking that legislative sanction be given to the agreement, and the Native Affairs Committee recommended that the petition be referred to the Government for favourable consideration (parliamentary paper I–3 of 1914, p. 10). Section 5 of the Native

Land Claims Adjustment Act, 1914, was passed as a result. This section validated the agreement and provided that in the event of any loss, forfeiture, surrender, or abandonment of rights by the Tongariro company, the rights of the Egmont company under the agreement should not be prejudiced or affected. The section also provided that the Egmont company should continue to be subject to its unfulfilled obligations under the agreement which should be enforceable by the Aotea District Maori Land Board, and that the Egmont company should have against the Board and against the Native owners of the Whangaipeke Block and certain adjacent land all the rights conferred on the Egmont company by the agreement. In explaining the legislation to the House of Representatives, the Hon. Mr. Herries, the then Native Minister, stated that the only effect it might have on the Tongariro company was with regard to the extension of time to make their railway. He pointed out that if the company did not have an extension of time the Maori Land Board might determine the leases and the Maoris would get possession of the land again, but it was almost impossible for any company to finance a railway of five miles by debentures or any other method. He stated that he thought that the arrangement was in the best interests of both companies and of the Maoris, and also of the Dominion at large because the big stands of bush would be worked. In reply to a question by Mr. Young (who at that time was Chairman of the Native Affairs Committee) as to whether the Maoris approved of the extension, the Minister said, "Yes" (1914 *Hansard*, Vol. 171, p. 787).

12. On 23rd October, 1919, the Tongariro company entered into a further agreement with the Egmont company whereby the Tongariro company agreed to sell the timber on the Whangaipeke Block to the Egmont company, and the Egmont company was to advance to the Tongariro company all the moneys necessary for the construction of the five miles of railway from Kakahi. On account of and in advance of the royalties the Egmont company was to pay to the Tongariro company the sum of £15,000 and thereafter £6,000 per annum for seven years. Section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919, empowered the Governor in Council to approve and consent to any agreement made or to be made between the two companies, provided the trustee for certain debenture-holders of the Tongariro company and the Aotea District Maori Land Board consented thereto. On such approval and consents being obtained the agreement was to be valid and binding and to receive the same protection as that given to the 1914 agreement by section 5 of the Native Land Claims Adjustment Act, 1914.

13. Section 32 of the 1919 Act did not in itself give effect to the agreement which had been entered into, but it enabled the Governor in Council to consent to any agreement after it had been approved by the Maori Land Board. The agreement of 23rd October, 1919, was brought before the Board on 18th November, 1919. The minute-book of the Board (Vol. 12, folio 79) shows that Te Heuheu Tukino appeared at the proceedings with Hira Te Akau and Eruera Te Akau to represent the Native owners, and records that the following statement was made by Te Heuheu Tukino: "We have come to support the agreement between the Tongariro company and the Box company. One advantage is the railway." The Board, and subsequently the Governor in Council, approved the agreement. Subsequently the debenture-holders who had refused their consent to the agreement were paid off out of a new debenture issue guaranteed by the Egmont company and the prior agreement of 1914 was cancelled. The Egmont company subsequently was called upon to pay £25,000 in respect of its guarantee of these debentures.

14. The rights of the Egmont company from 1919 onwards were governed exclusively by the 1919 agreement. In view of the fact that the £23,500 in question in these proceedings was paid in settlement of claims by the Egmont company arising out of this agreement, it is necessary to refer to its main provisions. Briefly put, the main provisions were these:—

(*a*) The Tongariro company sold to the Egmont company all the timber trees on Western Division A (being the Whangaipeke Block), with the right to make roads, &c., the right to extend until 31st December, 1959.

(*b*) The Egmont company was to pay a royalty of 3s. per 100 superficial feet, sawn measurement (estimated total, 69,000,000 ft.).

(*c*) The Egmont company was to pay £15,000 immediately and thereafter £6,000 a year for seven years on account and in advance of royalties, the first of such annual payments to be made after the first five miles of railway were built.

(*d*) The Tongariro company was to build five miles of railway from Kakahi Railway-station within two years, the Egmont company to advance the moneys for construction, the moneys to be repaid within seven years with interest at 6 per cent.

(*e*) All moneys expended by the Egmont company under the 1914 agreement, amounting (with interest to 30th June, 1919) to £4,234, were to be deemed to have been expended under the terms of the 1919 agreement and to be repayable with interest at 6 per cent. as therein provided.

(*f*) The Egmont company on default by the Tongariro company could elect to complete the construction of the first five miles of railway itself and on so constructing and completing it could recover the cost from the Tongariro company.

15. Following this agreement the history of the West Taupo Timber Lands for the next ten years is a story of efforts made to find finance to keep the Tongariro company afloat. Negotiations for the bringing-in of English capital were almost successful on more than one occasion. Meanwhile further extensions of time for the construction of the railway were granted and the specifications as to railway construction were varied from time to time. At first the royalty payments due by the Tongariro company under its agreement were brought up to date from time to time, sums amounting to £48,428 15s. being paid during the period October, 1920, to March, 1926, but by the beginning of 1927 the Tongariro company was again in arrears with the payments and there was no sign of the resumption of the railway construction which had been begun but had ceased before the completion of the first five miles.

16. Steps were accordingly commenced by the Aotea District Maori Land Board with a view to cancelling the agreement with the Tongariro company and certain Maoris petitioned Parliament asking that no further extensions of time be granted and that the owners be permitted to recover possession of their land. The Native Affairs Committee recommended that no extension be granted after the end of March, 1928 (parliamentary paper I–3 of 1927, p. 12). Further negotiations took place over the next two years, and in October, 1929, the whole matter was referred to the Native Affairs Committee of the House of Representatives. That Committee duly reported (parliamentary paper I–3A of 1929), and section 29 of the Native Land Amendment and Native Land Claims Adjustment Act, 1929, was passed to give effect to the Committee's recommendations. Pursuant to that legislation the Aotea District Maori Land Board cancelled the agreement with the Tongariro company early in 1930.

17. Under the agreement the total amount paid on account of royalties up to this date was £53,553 15s. The amount of timber cut during the whole period represented royalties amounting to approximately £10,800.

18. From 1919 until the cancellation of the agreement with the Tongariro company the steps which were taken varying the requirements as to the standard of railway and granting extensions of time were all taken, so far as the Board and the Government of the day were concerned, with a view to securing the best interests of the Maori owners and it is not necessary to examine in any detail the transactions which took place in connection with the West Taupo Timber Lands during that period. The 1929 report of the Native Affairs Committee referred to in the last preceding paragraph sets out the history of this period and also contains a considerable amount of detailed information concerning the whole of the transaction up to that time.

19. By virtue of the provisions of the 1914 and 1919 legislation the cancellation of the agreement between the Tongariro company and the Board did not affect the 1919 agreement between the Tongariro company and the Egmont company, except that the Tongariro company's place was taken by the Board.

20. The position of the Tongariro company and of the Egmont company was examined by the Native Affairs Committee of the House of Representatives in 1930, and that Committee reported that it was of opinion that the Egmont company had legal rights to the Western A Block (Whangaipeke Block) and that these should be defined by legislation or by a fresh agreement (parliamentary paper I–3A of 1930). Section 18 of the Native Land Amendment and Native Land Claims Adjustment Act, 1930, was passed to give effect to this report. By it the Board, acting as agent for the owners, was authorized, empowered, and directed to enter into a contract with the Egmont company respecting the timber on the lands and the other matters referred to in the 1919 agreement. The contract was to incorporate such of the terms and provisions of the 1919 agreement as the Board and the company should mutually agree upon and such other terms as the Board might reasonably require. If there was any dispute concerning the terms and conditions, the Native Minister might decide it, but if the company was dissatisfied with the Minister's decision it could decline to execute the contract, the parties being left to their rights and obligations under the 1919 agreement. If for any reason the contract was not entered into within nine months from the commencement of the Act, the right of the Egmont company to obtain the contract was to cease and determine, but the Governor-General in Council might extend the period for such time as he thought proper.

21. Negotiations were accordingly entered into between the Egmont company and the Board with a view to entering into a new agreement, and the parties first endeavoured to arrive at some definite understanding as to the nature and extent of the Board's liability to the Egmont company under the 1919 agreement and the legislation in relation thereto. At a conference on 1st May, 1931, the Egmont company claimed that it was entitled to be paid a sum of £46,806, made up as follows:—

	£
For railway construction	11,594
Interest thereon to 31st March, 1931	7,752
Debenture issue (*i.e.*, amount paid under guarantee)	25,000
Interest thereon to 25th January, 1931	2,460
	£46,806

In addition, as the Egmont company had paid £15,000 as advance royalties and had up to this stage cut timber from the Whangaipeke Block to the value of only £10,798 6s. 6d., there was a sum of £4,201 13s. 6d. also outstanding in

respect of royalties paid in advance. There was no dispute as to the liability for this last-mentioned amount, but there was a substantial dispute as to the liability of the Board in respect of the other amounts.

22. At this conference the Board contended that whatever was owing to the Egmont company was secured on the royalties which would be derived from the Whangaipeke Block and that if, therefore, the timber on the Whangaipeke Block was insufficient to meet the amount, then the company would lose to that extent. This aspect of the matter was left in abeyance while other angles were discussed with a view to seeing how close the parties could get to a settlement. The Egmont company indicated that it was willing to accept £30,000 in satisfaction of its claim, provided the amount was paid within a reasonable time and not left to be satisfied out of the Whangaipeke royalties. The Board, on the other hand, offered £26,000 in full settlement, to be paid out of the Whangaipeke royalties as they were received. It was clear that if the amount fixed in satisfaction of the Egmont company's claim had to come out of Whangaipeke royalties alone and had to be paid as those royalties were received, the Egmont company was not prepared to come to any settlement. The parties were unable to get closer to an agreement than this, and it was therefore suggested on behalf of the Board that the matter should be left to the Court to settle in accordance with the provisions of the 1930 legislation. It is recorded by Mr. W. A. Izard, solicitor for the Board, and by Judge Browne, the President of the Board, who conducted the negotiations on behalf of the Board, that Mr. Murdoch, manager of the company, said that the company did not propose to go to the Court, but would adopt other means of getting its claim satisfied. We think that we should say immediately that we have found no evidence which indicates any improper approach by the Egmont company with a view to securing a more satisfactory settlement than it would otherwise have got. It appears, however, that at this time and at all times subsequently the company sought to obtain settlement by negotiation and was not prepared to force the position by taking Court proceedings to obtain satisfaction of its claims.

23. Following this conference on 1st May, 1931, various discussions took place between interested parties, and the time for the completion of a new contract under section 18 of the Native Land Amendment and Native Land Claims Adjustment Act, 1930, was extended from time to time. The claims of the Egmont company varied from time to time and the views of the legal adviser to the Board as to the liability of the Board to the Egmont company appear to have changed from time to time. At one time there was a suggestion that there should be a substantial payment to the Egmont company by the Government, and Cabinet actually approved of a payment, but the matter was not brought to finality. It is not necessary to traverse all these matters in detail in this report as, in our opinion, nothing turns on them. It is necessary, however, to examine closely what took place in 1934 and 1935.

24. In May, 1934, following an interview with representatives of the Egmont company, the Minister of Finance referred the matter to the Native Land Settlement Board constituted under the Native Land Amendment Act, 1932. The matter came before that Board in August, 1934, and that Board appointed a sub-committee to investigate and make recommendations. The sub-committee consisted of Messrs. Rodda (of the Treasury) and Pearce (Under-Secretary, Native Department) and Judge Browne (President of the Aotea District Maori Land Board).

25. This sub-committee held a meeting on 25th October, 1934, which was attended by Mr. W. A. Izard, solicitor for the Aotea District Maori Land Board, and by representatives of the Egmont company. The representatives of the

Egmont company, relying on previous negotiations, intimated that they were prepared to accept £29,000 plus £4,201 13s. 6d. Mr. W. A. Izard pointed out that there had been no agreement on the part of the Aotea Board, and he thought that negotiations should begin anew. When the Board had some time previously agreed to offer £29,000 plus £4,201 13s. 6d., it was with a view to facilitating purchase of the timber by the Government and the payments were to be made out of royalties. After an adjournment to enable the parties to confer among themselves, the Egmont company's representatives advised that they were prepared to accept £27,000 in cash in full settlement of their claims. Mr. Izard, on behalf of the Aotea Board, made a counter-offer of £17,500 cash, but after considerable discussion he increased the offer to £20,000.

26. A further meeting of the sub-committee with the representatives of the parties was held on 16th November, 1934. After a considerable amount of discussion, the company's representatives were asked if they would make an offer of £23,500, a figure which subsequently increased to £23,750. They offered to accept £24,500, but said that they had no power to go below it. It was arranged, however, that they would consult the company's directors and advise Mr. Pearce, the Under-Secretary of the Native Department, whether the company would make an offer to accept that amount. On 21st November, 1934, the solicitors to the Egmont company wrote to the Under-Secretary of the Native Department stating that they had been instructed to make an offer to the Aotea District Maori Land Board, strictly without prejudice, to accept a payment of £23,750 in cash together with certain railway and bridge material.

27. Mr. W. A. Izard, the solicitor to the Aotea District Maori Land Board, advised that Board that the offer should be rejected and that the outside amount which should be paid was £20,000, but that an offer to pay £20,000 for the cancellation of the agreement should be subject to confirmation by the Forestry Department that the timber on Whangaipeke Block was worth at least 3s. per 100 ft. royalty all over. There was, however, no final rejection of the Egmont company's offer, and an extension of time for acceptance was arranged by the Under-Secretary of the Native Department with the Egmont company. On 26th February, 1935, the Aotea Board advised the Under-Secretary that as a trustee it had no option but to act in conformity with its solicitor's advice, which was that the limit the Board would be justified in paying was £20,000, and then only if there was a certificate from the Forestry Department that the timber on the Whangaipeke Block would be worth a royalty of at least 3s. per 100 ft. all over and that there was timber on the block worth at least, at that royalty, the amount of £20,000. This notification of refusal was duly communicated to the solicitors for the Egmont company.

28. On 14th March, 1935, Mr. Pearce, the Under-Secretary of the Native Department, reported to the Native Minister in writing concerning the negotiations with the Egmont company. The letter stated:—

> Messrs. Rodda of the Treasury, Judge Browne of the Maori Land Board and I were deputed by the Native Land Settlement Board to meet the Company representatives and several discussions took place until finally the sum of £23,750 appeared to be more or less agreed upon as a reasonable sum to pay to the Company for the cancellation of its rights. It was left to the Company to submit a definite offer in writing at this figure which the Aotea Board could accept or reject. However, when the written offer was received it was found that the Company had introduced a new factor in that it desired to retain certain tramlines which had already been laid.
>
> The Company's offer was duly conveyed to the Aotea Board, but it insisted upon certificates being obtained from the Forestry Department to the effect that the royalty value of the timber on the block averaged at least 3s. per 100 feet, and that a sufficient quantity of timber existed to defray the cost of settlement plus interest for a restricted period. As

these certificates could not be obtained without making careful appraisements of the timber which would take months to carry out, there was no option but to inform the Company that the offer could not be accepted.

It would be a great pity if the negotiations which have progressed so far and favourably, were allowed to break down at this juncture. The Egmont Box Company is extremely anxious to dispose of its rights for a cash consideration and is making a big sacrifice at the figure mentioned in its offer. It states that its unrecouped expenditure to date is over £40,000 and when it formerly agreed to accept £33,000 through the then Native Minister (part in cash and part in instalments over a period of years) it felt that that was the limit to which it could go. The Native owners who eventually have to find the money to pay to the Company also suffer hardship, but they are both legally and morally bound to make some payment and in the circumstances I think the sum of £23,750 is reasonable. The tramline already laid between the Whakapapa River and Te Rena should be transferred to the Board and be included in the £23,750.

If the Government is disposed to settle with the Company, power will have to be taken by legislation, preferably this Session. The Company's Solicitor considers this is unnecessary but I do not agree and in any case provision must be made to enable the Aotea Board to charge the land with the sums advanced by it on behalf of the owners.

The Company has verbally agreed to its previous offer of the 21st November, 1934, remaining open to the Government until the end of the present month. The Native Land Settlement Board has not had an opportunity of considering the latest developments in the negotiations and is therefore unable to submit a recommendation. Mr. Rodda, however, concurs with me in recommending:

(1) That the Government intervene and settle with the Egmont Box Company for £23,750 for the complete cancellation of its rights—the Company to retain the loose bridge material but to cede the tramlines already laid.

(2) That the Government pass the necessary empowering legislation.

(3) That the Aotea Board continue to act as agent for the Native owners in all respects as if the settlement had been arranged, and agreed to, by it.

29. The Native Minister on 15th March directed that legislation should be prepared accordingly, and on 27th March, 1935, the Egmont company was advised that the Native Minister had decided to intervene and fix the amount payable as £23,750, this to be for the whole of the company's rights and interests in lands, &c., incidental to the timber, but not to include loose rails and bridging material acquired by the company and not built into position. The legislation providing for the settlement was passed on 5th April, 1935, being section 10 of the Finance Act, 1934–35.

30. Following on this there were some discussions between representatives of the Treasury and the Egmont company concerning the adjustment of the figure by reducing it to £23,500, the company to take over more of the railway and bridge material than had originally been intended. It would appear that the agreement on the figure £23,500 was made in the course of a discussion between the general manager of the Egmont company and the Treasury on 14th May, 1935. Following on this the Egmont company had discussions with the President and the solicitor of the Aotea District Maori Land Board concerning certain detailed matters. In due course, on 13th June, 1935, the Egmont company completed a formal offer to accept £23,500 from the Aotea Board for the release and discharge of the Board and the Native owners from all claims had demands arising out of the agreement between the Tongariro company and the Egmont company dated 23rd October, 1919, and the company gave certain undertakings with regard to collateral matters. On 21st June, 1935, the Native Minister approved of the sum of £23,500 to be paid by the Aotea District Maori Land Board to the Egmont Box Co. in accordance with the offer made by that company.

31. Settlement was effected as between the Aotea Board and the Egmont company on 25th June, 1935, by payment of a sum of £23,300 to the company, the remaining £200 being paid over on 3rd December, 1935, when certain transfers of mortgage which had to be completed by the company were handed over to the Board's solicitors.

32. Before the payment had actually been made the President of the Aotea Board had raised questions concerning section 10 of the Finance Act, 1934–35, stating that it did not carry out what had really been intended. The Aotea Board had consistently contended that it should have as security for any amount which the Board agreed or was directed to pay to the company a charge over the whole of the lands affected by the Tongariro company's agreements, and that the charge was to be against the interests acquired by the Crown as well as the interests retained by the Maoris. The reason for this was that the moneys received by the Aotea Board from the Tongariro company by way of royalties were paid to the owners of all the blocks in the West Taupo Timber Lands in proportion to the estimated quantity of timber in each block. Section 10 of the 1934–35 Act, by making the amount to be paid to the Egmont company, which to all intents and purposes was a refund of portion of the royalties received, a charge against the Whangaipeke Block and a certain limited adjacent area alone, had imposed a grave injustice on the owners of those subdivisions by freeing the owners of the other blocks from any liability. Certain other points were also raised, and before the payments were made the Board had received an assurance that the points raised by it would be provided for in amending legislation. Section 14 of the Maori Purposes Act, 1935, was passed to give effect to this undertaking. It replaced section 10 of the Finance Act, 1934–35, and was ante-dated so as to come into force on the date when the Finance Act, 1934–35 had been passed. The payment of the amount of £23,500 is therefore to be regarded as having been made in pursuance of the provisions of section 14 of the Maori Purposes Act, 1935, and in this report we have referred to it as having been made under that section.

33. Very shortly after payment had been made to the Egmont company the representatives of the Maori owners claimed that the payment had been improperly made, and Court proceedings were commenced by Hoani Te Heuheu Tukino in his representative capacity as chief of the Ngati Tuwharetoa. He claimed that there had been negligence on the part of the Board in failing to obtain from the Court directions as to the legal liability (if any) of the Board or the Maori owners to the Egmont company. He made certain other claims in respect of negligence and breach of duty and he also claimed an order requiring the Board to indemnify the Maori owners and their lands against the payment of £23,500 or any part thereof. The plaintiff was unsuccessful in these proceedings, the Court holding that the Board was under no liability for doing what it was required to do by Act of Parliament. He failed also on appeal in the Court of Appeal and in the Privy Council, [1939] N.Z.L.R. 107; [1941] N.Z.L.R. 590.

34. We are now called upon to consider whether in equity and good conscience the owners of the West Taupo Timber Lands should be required to pay the whole or any part of the £23,500 and costs and interest as referred to in section 14 of the Maori Purposes Act, 1935.

35. Mr. Cleary, counsel for the Tuwharetoa people, submitted that the origin of the whole of their claim rested in the legislation passed in 1914 and in 1919. But for that legislation the Aotea Board would have been under no liability to the Egmont company. The provisions of the legislation of 1914 and 1919 reached their culmination in the legislation passed in 1935. He pointed out that the legislation of 1914 appeared to go beyond what was asked for in the petition and that there existed no documentary or other evidence which would justify the Minister in saying that the Maoris had approved the legislation. Probably all that they had approved was the extension of time. It was

also clear that in 1914 (and the same could be said for the position in 1919) everybody contemplated that the railway would be built and nobody contemplated that twenty years later when the Egmont company invoked the legislation the railway would not have been completed.

36. Mr. Cleary put the question which we have to consider as being, "Is it equitable that the Maoris should assume all or any of the obligations which the Tongariro company had incurred towards its sub-concessionaire, the Egmont company?" In the course of his submissions he pointed out that both the Egmont company and the Tongariro company must be looked at as commercial undertakings engaged in commercial enterprise. In the case of the Tongariro company, it had speculated for an enormous profit with wholly inadequate funds. While agreeing that the Maoris had received substantial sums between 1910 and 1930 he emphasized that they had had their lands completely tied up for twenty-five years or more, during which time they were prevented from deriving any revenues from the land. Mr. Cleary, in conclusion, examined in detail the discussions which had taken place during the negotiations following the cancellation of the Tongariro agreement in 1930. He claimed that the legislation of 1914 and 1919 "unconsciously and unintentionally" imposed an unfair burden on the Maoris, and finally in 1935, by Ministerial intervention, the Board was required to make a cash payment contrary to the opinions of the Solicitor-General and of the Board's solicitor as to the rights of the Egmont company.

37. We consider that, having regard to the circumstances as they existed in 1914 and again in 1919, the legislation that was passed in 1914 and 1919 with reference to the agreements between the Egmont company and the Tongariro company was fair and reasonable. In 1914 and in 1919 everybody contemplated the construction of the railway, and when everybody was looking forward to the construction of this railway and expecting that it would be constructed it was fair enough to say that if the railway or even a portion of it were built with money provided by the Egmont company and the Maoris cancelled the agreement with the Tongariro company, then the Maoris should not have the benefit of the Egmont company's expenditure without recompensing that company. That much was admitted by Mr. Cleary. In 1935 everybody knew not only that the railway had not been built, but that it never would be built; and Mr. Cleary, speaking for the Maoris, said "our whole complaint really is that the Minister and the Legislature applied the rights given by the legislation of 1914 and 1919, when everybody expected the railway to be built, to a wholly changed position and state of affairs in 1935, when no one expected the railway to be built, and everybody knew there would be no railway."

38. The legislation passed in 1929 authorized the cancellation of the agreement between the Aotea Board and the Tongariro company, and the legislation of 1930 was passed with a view to having timber-cutting continued under a new agreement which was to be substituted for the Egmont company's agreement of 23rd October, 1919, and the parties were left to their remedies under that agreement and the 1914 and 1919 legislation only if it was not possible to conclude a fresh satisfactory agreement. The 1930 legislation seems to us to have been fair and reasonable, but the legislation of 1935 departed from the principle of leaving the parties to their legal remedies. We have come to the definite conclusion that in intervening in the negotiations between the Aotea Board and the Egmont company and in taking steps under which the Board was required and directed to pay the sum of £23,500 to the Egmont company

in cash to settle that company's claims against the Aotea Board, the Government acted unfairly towards the Maori owners in view of the opinion of the Board's solicitor as to the Board's liability and in view of his opinion, with which the Solicitor-General has agreed, as to the Egmont company's right of recovery being limited to future royalties. If the Egmont company had been left to seek satisfaction of its claims by Court proceedings on failing to obtain a settlement by negotiation, there could have been no reasonable complaint by the Maori owners.

39. It is clear that in any such Court proceedings the Egmont company might have been successful in obtaining a declaration that a much greater sum than £23,500 was owing to it. On the other hand, a much lower amount might have been fixed. The only liability actually admitted by Mr. W. A. Izard in his last opinion was for £4,201 13s. 6d. on account of advance royalties; he denied liability for any debenture moneys and had grave doubts about the railway moneys. Furthermore, most of, if not all, the moneys likely to be found to be owing to the Egmont company would have to be got from the royalties obtained from the future cutting of timber on the Whangaipeke Block, and this factor might limit the amount actually recovered by the Egmont company to an amount much less than the amount found to be owing to it. Several times during the negotiations we find it on record that this was stressed on behalf of the Aotea Board. For example, this was done at the conference between representatives of the parties on 1st May, 1931, to which we have already referred. Again, on 14th August, 1934, in a memorandum to the Under-Secretary of the Native Department, the President of the Aotea Board said—

> So far as the Board is concerned, it does not hold itself bound by anything that has happened in the past negotiations for an agreement. It has consistently taken up the attitude that any money agreed to be paid to the Company in satisfaction of its claim had to come from Whangaipeke royalties as they were received by it. The Company wanted a substantial payment in cash, but it was given clearly to understand that the Board had no funds out of which such a payment could be made.
>
> On this understanding it is quite prepared to renew negotiations with the Egmont Box Company, but as stated in a previous memorandum it considers it would be much more satisfactory if the claims could be settled by a Court.

40. Having regard to the whole of the circumstances of the negotiations which had taken place and having carefully considered the legal position, Mr. W. A. Izard, the solicitor to the Aotea Board, in a letter to the Board dated 24th November, 1934, dealing with the Egmont company's offer to accept £23,750 upon certain terms, said—

> (*a*) My own view is that the Natives' interests would be best served by the Egmont Company being left to its legal remedies to ascertain the amount for which it is entitled to credit against royalties payable in respect of the timber on Western Divisions A and B and that the Egmont Company should be left to work out its own salvation by cutting the timber from these Blocks.
>
> In the alternative, if the Board prefers not to resort to law, then:
>
> (*b*) I advise payment of not more than £20,000 at the outside to cancel the agreement but upon the following terms:
>
> (1) That the offer be subject to confirmation by the Forestry Department that the timber on Whangaipeke is worth at least 3s. per 100 feet royalty all over.
>
> (2) That the Egmont Company hand over to the Board a registered first mortgage over and the otherwise unencumbered title to the lands in the Taurewa Block containing 10 acres more or less being the lands on which the present railway is built from the Whakapapa River to the Wanganui River at Te Rena.
>
> (3) That the Egmont Company procure an assignment to the Board of the railway rights of the Tongariro Company from Kakahi Railway Station to the land mentioned in clause (2) hereof.
>
> (4) That authority be given by Statute to the Board to pay such £20,000 and the whole agreement be thereby confirmed.

A copy of this letter was sent to the Under-Secretary of the Native Affairs Department, and was on the files of that Department when the Under-Secretary wrote to the Native Minister on 14th March, 1935, and with the concurrence of Mr. Rodda, of the Treasury, recommended that the Government intervene and settle with the Egmont company for £23,750 (which sum, as already mentioned, was later reduced to £23,500). We consider that greater attention should have been paid to the opinion of the Aotea Board's solicitor.

41. A Conservator of Forests who was asked to report on the timber on the Whangaipeke Block expressed the opinion that for the timber on the Whangaipeke Block an average royalty of 3s. per 100 ft. was reasonable, but he could not commit his Department in regard to the quantity of millable timber without first making a cruise of 10 per cent. of the area. This was not proceeded with because of the cost. It is clear, however, from subsequent appraisements that there was sufficient timber on the Whangaipeke Block to cover £20,000 and interest for several years. The second and third conditions laid down by Mr. Izard in his letter of 24th November, 1934, relate to minor matters, and authorizing legislation was, of course, duly enacted.

42. As we have already said, we consider that the Government acted unfairly towards the Maori owners in intervening and directing the Board to pay £23,500 to the Egmont company. In our opinion, the owners of the West Taupo Timber Lands (including the Crown, in respect of the interests owned by the Crown) can fairly be said to have had debited to them as a loan under section 14 of the Maori Purposes Act, 1935, £3,500 more than should have been so debited (being the difference between £20,000 and the amount actually paid—namely, £23,500). We consider that the Crown should accordingly pay the sum of £3,500 to the Board, in reduction of the loan-moneys referred to in subsection (2) of the said section 14.

43. In accordance with the said section 14, the costs and expenses incurred by the Aotea Board have been added to the amount paid to the Egmont company and the whole sum treated as a loan by the Board to the owners (including the Crown) of the West Taupo Timber Lands. We consider that this is right and proper. The Aotea Board has also paid a sum of £1,921 6s. for costs in connection with the action by Hoani Te Heuheu Tukino, and this sum has been reduced by £499 7s. 6d. costs awarded by the Court to the Board and paid by the unsuccessful plaintiff. The net amount of £1,421 18s. 6d. has been treated as part of the loan under subsection (2) of the said section 14. This seems to us to be a proper action on the part of the Board. We consider, however, that as the unsuccessful plaintiff and the people he represented were labouring under a sense of injustice which we have found to have been, in part at least, reasonable, the Crown should pay a sum of £750 in reduction of the sum of £1,421 18s. 6d. above referred to. In fixing this amount of £750 we have had regard to the fact that the plaintiff would have paid a considerable sum for his own costs, but we can see no justification for the matter having been taken to the Privy Council.

44. Interest is being charged on the loan account at the rate of 3 per cent. per annum, and such payments in reduction of the capital liability in that account as are made in accordance with the recommendations in the last two preceding paragraphs should have added to them interest at the rate of 3 per cent. per annum for the same period as that for which interest has been charged by the Aotea Board on the capital sum in respect of which the payment is made.

45. By paragraph (*b*) of subsection (2) of section 14 of the Maori Purposes Act, 1935, the Aotea Board is given a charge, as security for repayment of the loan account and interest, over so much of the West Taupo Timber Land as is

not owned by the Crown. It is clear, however, from paragraph (*a*) of the same subsection and from the other provisions of the said section 14 that it is intended that the Crown, as an owner of portion of the lands, shall bear its fair share of the loan account and interest, and it was agreed by Mr. Bain, on behalf of the Crown, that the Crown's proportion should be ascertained by the Commission referred to in subsection (3) of the said section. Bearing that in mind, we are of opinion that it is fair and reasonable that the charge imposed by paragraph (*b*) of subsection (2) should be so imposed, provided that the total capital liability under the loan account is reduced by the payment of the amounts of £3,500 and £750 already referred to and the liability for interest under the loan account is reduced to the extent of interest on those amounts as already mentioned.

46. Mr. Cleary informed us that as between the Maori owners of different blocks in the West Taupo Timber Lands they are all on the same footing as to the charge. The apportionment of liability as between the various blocks of land is a matter for the Commission under subsection (3) of the said section 14.

47. We have been informed that the Aotea Board has retained in its hands portions of certain moneys which have been received by it for the owners of various blocks of land in the West Taupo Timber Lands, and that it is intended to apply the moneys so retained towards payment of the charge created by section 14 of the Maori Purposes Act, 1935, as soon as the liability for the amount of the charge is apportioned by the Commission referred to in subsection (3) of the said section 14. We are also informed that these moneys are earning interest at a lower rate than the 3 per cent. which is being charged on the loan account. It does not seem right that there should be any difference between the rate being charged and the rate being earned, and we recommend that a reduction should accordingly be made in the rate of interest charged in cases where moneys are held for the purpose of being applied in or towards satisfaction of the amount apportioned to the owners whose moneys are so held.

48. The three questions on which we were directed to inquire and report, and our answers thereto, are as follows:—

"(i) Whether the charge imposed upon Maori lands, pursuant to section 14 of the Maori Purposes Act, 1935, ought in equity and good conscience, to have been imposed upon the whole or any part of such lands."

Answer: The charge ought not to have been imposed to secure repayment of the full amount of £23,500. Subject to reduction of that amount to £20,000 and subject to apportionment as between the Crown and the Maori owners and as between the various blocks of land in accordance with subsection (3) of the said section 14, the charge may be said to be a proper one, in equity and good conscience.

"(ii) Whether in equity and good conscience, the Maori owners of such lands if liable ought to have been rendered liable for the repayment of the whole or any part of the moneys paid by the said Board to the Egmont Box Company, Limited, pursuant to the said section."

Answer: The Maori owners of the land ought not to have been rendered liable for repayment of the whole sum of £23,500 paid by the Aotea District Maori Land Board to the Egmont Box Co., Ltd., but they ought to have been rendered liable for repayment of £20,000 (from which the Crown's proportion ascertained in accordance with the said subsection (3) should be deducted).

"(iii) If it be reported that such charge ought not, in equity and good conscience to have been imposed and that in equity and good conscience the said Maori owners if liable should not have been rendered liable for the repayment of the whole or any part of the said moneys as aforesaid, then to recommend what further sum, if any, should now be paid to the said Board by the Crown in respect of interest moneys and the costs and expenses incurred by the said Board in defending actions brought against it with regard to the payment of the said moneys."

Answer: We recommend that, in addition to the payment of £3,500 necessary to reduce the sum of £23,500 to £20,000, the following further sums should now be paid to the Aotea District Maori Land Board by the Crown:—

(*a*) £750 on account of the costs of defending the action by Hoani Te Heuheu Tukino.

(*b*) An amount equal to interest at 3 per cent. per annum on £750 from the date of the payment of the costs by the Board until the date of the payment of the £750.

(*c*) An amount equal to interest at 3 per cent. per annum on £3,500 from 25th June, 1935, to the date of the payment of the sum of £3,500 to the Board.

49. As, in our view, the Maori claimants who were represented in the proceedings before us by Mr. Cleary were justified in claiming that they, and other owners of the West Taupo Timber Lands, should not be made liable for the payment of the whole sum of £23,500 in issue before us, we think that they should receive a payment towards their costs of the proceedings before us. Under the circumstances we consider that it would be a gracious act on the part of the Government to pay a sum of £150 to them towards those costs.

We have the honour to be,

Your Excellency's humble and obedient servants,

D. J. DALGLISH, Chairman.
H. M. CHRISTIE, Member.
R. ORMSBY, Member.

Wellington, 16th July, 1951.

By Authority: R. E. OWEN, Government Printer, Wellington.—1951.

Price 9d.]