1911.

NEW ZEALAND.

MOKAU-MOHAKATINO BLOCK

(STATEMENT IN RESPECT OF THE).

Laid on the Table by Leave.

[Extract from *Lyttelton Times* (Christchurch), *Otago Daily Times* (Dunedin), *Evening Post* (Wellington), *Dominion* (Wellington), of 20th July, 1911.]

(By Telegraph.—Press Association.)

[Mr. Massey's Address at Auckland, on 19th July, 1911.]

. . . . Mr. Massey then spoke at length on the Mokau lands case. He said the lawyers who acted for the individual who owned the mortgage and who was purchasing from the Natives were Findlay, Dalziell, & Co.; the gentleman who signed the Order in Council was Sir James Carroll, Acting Prime Minister; and the chairman of the syndicate which secured the land was an ex-Minister of Lands with strong leasehold proclivities—Mr. R. McNab. He (Mr. Massey) wanted to see the Native lands occupied, but what he wanted to know was, why was not sufficient land reserved for the Native people, and why did not the Government insist on that sale being under the limitation clause, with the optional tenure, so that no man could have secured more than the limit? Or why did not the Government purchase the land and utilize it for European settlers? He was going to call for an inquiry in the House of Representatives. He wanted to know why 50,000 acres had been allowed to pass into the hands of a gang of speculators instead of the hands of *bona fide* settlers. "Sir James Carroll says," added Mr. Massey, "that I know nothing of Native lands." Thank God, I do not know as much as he does. I never trafficked in an acre of Native land, nor has any member of the Opposition, but I know quite a number on the Government side who have been interested in Native lands. I am going to force the thing to a division.

[Extract from the *New Zealand Herald*, Thursday, 20th July, 1911.]

A Deal in Maori Land.—The Mokau Estate.—A Big Purchase.—Where was the Limitation Clause?—Mr. Massey seeks an Inquiry.

During his reference to the Native-land question at his meeting last night, Mr. W. F. Massey dealt with some recent transactions in connection with the famous Mokau Estate. He described the block as being about 50,000 acres, fairly good pastoral land, and a lot of it fit for dairying. Upon it were coal and limestone; it had a large water frontage to a navigable river. It was leased to a European, and he went Home to raise money to work the estate. While there he got into financial difficulties. There was a covenant in the lease compelling him to spend at least £3,000 a year on the development of the land, but as time went on his difficulties increased, he did not comply with that covenant, and at last he mortgaged his interest in the estate and came out. A Royal Commission, consisting of Sir Robert Stout (Chief Justice), Mr. Jackson Palmer (Chief Judge of the Native Land Court), was set up, considered the conditions of the lease, and found it had not been complied with. Therefore they found it void, so that the land again became Native land. They recommended the Government to deal with it, and to set apart a part of it for the Native owners and open the rest for settlement. But the interest of the mortgagees in the estate was sold in Wellington for a nominal sum, and the individual who purchased it set to work to approach the congregated Native owners, and offered them a price, which they declined.

"Now, I want to know," said Mr. Massey, "how he became aware that the Government would give him the freehold of the block if the Natives had consented to let him purchase. The Act states that no European can purchase more than 400 acres of first-class land from Native owners. But there is another clause in the Act which says that when it is in the public interest the Governor may by Order in Council issue a title to the purchasers. Evidently this person had convinced himself that it would be in the public interest to allow him to acquire this freehold. The Natives were called together again and some more inducement offered, and this time they agreed and sold the estate. You know what the land in Taranaki is like, and you know about the land-hunger. That 50,000 acres was sold to him for about 10s. an acre. He turned round and sold it straight away to a syndicate at a profit of more than 100 per cent.

"The lawyers who acted for the individual who owned the mortgage and who was purchasing the land from the Natives," Mr. Massey continued, "were Findlay, Dalziell, & Co.; the gentleman who signed the Order in Council was Sir James Carroll, Acting Prime Minister; the chairman of the syndicate is an ex Minister of Lands of very strong leasehold proclivities—Mr. Robert McNab."

Mr. Massey continued that he had been informed that the syndicate had purchased another 15,000 acres, and thus held nearly 70,000 acres of Taranaki land. Why were they allowed to acquire it? He wanted to see the Native land settled and occupied. But why was not a sufficient area reserved for the Native people? Not a single acre was so reserved. If it was necessary to part with the land, why was it not sold under the limitation clause? Why was it not sold by auction or by tender so that nobody could purchase more than 400 acres of first-class or a corresponding area of second- or third-class land? Why did the Government not purchase it themselves and then utilize it for closer settlement?

He had referred to this matter in Wellington a few nights ago and had asked for an inquiry. Next night Sir James Carroll had to some extent replied; but he had evaded the main points. Mr. Massey said he still asked for an inquiry, and he would do so in the House. He wanted to know why this 50,000 acres had been allowed to pass into the hands of speculators instead of going into those of *bona fide* settlers.

"I have never," said Mr. Massey, "trafficked in Native lands, and I do not know a single member of the Opposition who has. It does not suit us. But I know a good number of Government men who have. If there is nothing wrong about this business there can be no objection to an inquiry. A few years ago this position was before the Legislative Council, who asked for an inquiry, but it was refused. If a majority of the House say no inquiry will be held now that is their lookout, and it will become a matter between them and their constituents. I am going to force this question to a division."

Mokau-Mohakatino Block.

This matter was first brought under the notice of the Government by a letter dated the 25th September, 1908, from the solicitor for Mr. Herrman Lewis, the registered owner of the leases formerly held by Mr. Joshua Jones, to the Native Minister. In this letter it was stated that the lessee was willing to join with the Native owners of the lands in any scheme which would facilitate the immediate settlement of the block in small areas, and it was suggested that the Native Commission, consisting of the Chief Justice and the Hon. Mr. Ngata, which was then sitting, should inquire into the matter, with a view to the area being disposed of under the Native Land Settlement Act, 1907. It was also suggested that the respective values of the interests of the Natives and the lessees might be determined by some independent tribunal.

At about this time Mr. Joshua Jones petitioned Parliament, claiming to be entitled to an interest in the Mokau Block, and the application of Mr. Lewis was hung up for some time in the hope that Messrs. Jones and Lewis would be able to arrive at some arrangement.

In the month of February, 1909, the Native Commission, then consisting of the Chief Justice and Chief Judge Palmer, of the Native Land Court, dealt with the matter. The Commsision found that there were four subdivisions of the block, containing about 53,000 acres, leased to Mr. Jones, the main subdivision comprising about 26,500 acres, and three other subdivisions containing together about 26,500 acres; also that the lease of the main block contained a clause requiring the lessee to form a company with a capital of £30,000 to work the coal upon the property, and expend a sum of £3,000 per annum in development-work, the lessors receiving 10 per cent. of the profits in addition to a small rental. It appeared, however, that Mr. Jones had obtained from some of the lessors of the main block a deed purporting to release him from the covenants as to the formation of the company and the expenditure of £3,000 per annum in consideration of an additional rental of £100 per annum. The Commission arrived at the conclusion that there were serious doubts as to the validity of the leases, and reported against the proposal that the lands should be disposed of in the manner suggested by the lessee.

In consequence of the report a caveat was directed to be lodged against dealings with the property. The caveat was not removed until after proceedings in the Supreme Court were threatened and after the Registrar-General and the local Registrar had satisfied themselves that it was impossible in law to support the caveat.

On receipt of the Commission's report, the Natives were notified by the Government of its terms, and it was suggested that they should take the opinion of counsel as to their position. At this time the Government was being approached by the Natives, and by the respective solicitors for Messrs. Jones and Lewis, with a view to the settlement of the difficult questions which had arisen in relation to the block, and it was desirable that the Natives should be represented by counsel in these negotiations. Mr. Skerrett was accordingly retained by the Natives who had approached the Government, and acted for them in the subsequent negotiations which took place.

The substantial legal questions raised as to the validity of Mr. Jones's leases, as understood by the Government at this time, were, shortly, that the lease of the main subdivision, though originally valid, had become liable to forfeiture owing to the non-performance of the covenants as to the formation of a company and the expenditure of £3,000 per annum, and that the other leases had been illegally granted to Mr. Jones, and should never have been registered by the District Land Registrar. The lessee's answer to these suggestions was, as to the main subdivision, that the Natives had received the additional rental of £100 per annum for a period of over twenty years, and had waived any forfeiture that had been incurred, and even if this were not so, the Supreme Court had power to, and would in the circumstances, relieve from forfeiture, leaving the lessee to perform the covenants for the future; and as to the other subdivisions, he contended that, even assuming the leases to have been illegally granted and registered, his title to them was made good by the terms of the Land Transfer Act, he having purchased from the registered proprietor without notice of any defect.

The Government was informed that Mr. Skerrett had advised the Natives that the leases other than the lease of the main subdivision were invalidly granted, and that if they had been made good by the provisions of the Land Transfer Act the Native owners of these blocks were entitled to claim damages from the Assurance Fund of the Land Transfer Office, and that accordingly formal notice had, on the 19th April, 1910, been given to the Registrar-General of Lands on behalf of the Natives claiming £80,000 damages.

As the result of many months of negotiations, the Government came to the conclusion that the best way out of the difficulties was to purchase the interests of the Natives and the lessees in the block, which they believed could have then been acquired for £1 an acre. The Government valuation of the blocks comprised in the leases was at this time £31,273, but Cabinet decided to have a special valuation made by the Lands Department. Mr. Kensington, Under-Secretary for Lands, accordingly instructed the Commissioner at New Plymouth to have a valuation made. The Commissioner employed two Crown Lands Rangers, who made an exhaustive inspection of the property, and on receipt of these officers' reports the Commissioner reported to Mr. Kensington that the Government could not safely pay more than £26,000 for the land. Mr. Kensington then reported fully to the Government, suggesting that it might be advisable, in order to have the area settled, to pay from £30,000 to £35,000 for the whole estate, but that there would be considerable risk of loss if more than £30,000 were paid. It also appeared that the District Surveyor who inspected the land in 1905 reported then that in his opinion the block was not suitable for small settlement.

The Government decided that, in the face of this report, it could not purchase at the price demanded. It next went into the question of taking the block compulsorily. The law did not permit the compulsory taking of the Natives' interest. Their representatives, however, stated that they were willing to sell their interest to the Government for the sum of £22,500. It only remained, therefore, to exercise the power conferred upon the Crown of determining the interest of the lessee in the lands. The Government found itself faced with these difficulties,—

(*a*.) It was advised that it should not pay more than £35,000 for the whole estate in the land.

(*b*.) Assuming the leases to be good, the respective actuarial values of the interests of the lessors and lessee were £14,300 and £20,700.

(*c*.) It could not purchase the Natives' interest for less than £22,500—that is, £8,200 more than its value, assuming the leases to be good.

(*d*.) If it purchased the Natives' interest for £22,500, it had then to determine the lessee's interest in the land, and having done so it must either have admitted the leases as good (in which case it had paid the Natives £8,200 too much), or entered upon litigation of an extraordinarily difficult nature; and, more important still, it would have had to face a claim by the lessee not only for the loss of the occupation-rights, but also for the loss of the right to work the coal on the property for a period of nearly thirty years, for which a very large sum would probably be claimed, and as to which it was impossible to accurately estimate what compensation might be allowed.

The Government was forced to the conclusion, therefore, that it could not acquire the property.

At this stage the position was as follows: Expensive and prolonged litigation appeared necessary to determine the relative rights of the Natives and the lessee in the land. Claims for large sums against the Land Transfer Assurance Fund were threatened both by the Natives and the lessee, and an area of 53,000 acres of land which had never been developed, and had blocked the settlement of lands behind it, would continue to be locked up for an indefinite time until these disputes could be settled.

On the 20th September, Mr. Skerrett, on behalf of the Natives, wrote to the Native Minister as follows:—

"I have the honour to apply on behalf of the Native owners of the above blocks, being Subdivisions 1F, 1G, 1H, and 1J, containing about 53,185 acres, that His Excellency the Governor may be recommended to issue an Order in Council, pursuant to section 203 of the Native Land Act, 1909, authorizing the acquisition by, and the alienation thereof to, Mr. Herrman Lewis, notwithstanding the provisions of such last-mentioned Act, upon the ground that it is expedient in the public interest that such Order in Council should issue. I propose to narrate quite briefly the facts connected with the blocks, the terms of the proposed alienation, and the circumstances which I venture to submit render it desirable that the alienation should be authorized.

"As you are aware, the Natives are the owners of the above blocks, subject to various leases, all registered under the Land Transfer Act, to Mr. Joshua Jones, for the term of fifty-six years from the month of July, 1882, at various rents, and subject to various covenants. Mr. Joshua

Jones's interest under these leases has become vested in Mr. Herrman Lewis. Mr. Lewis's leasehold interests are subject to a first mortgage to Flower's executors to secure the sum of £14,000 and interest, and subsequent mortgages to F. G. Dalziell and T. G. Macarthy to secure the sums of £1,000 and £25,000 respectively. The amounts owing on these securities thus total to the sum of over £40,000. The Native lessors, my clients, claim that these leases are invalid on various grounds, and, in the alternative, claim that they are entitled to re-enter under some or all of the leases by reason either of non-payment of rent or by reason of breaches of covenant. Should the registration of the leases to Mr. Joshua Jones under the Land Transfer Act give to him and his assigns an indefeasible title, then the Natives claim a large sum of money against the Assurance Fund as compensation for the improper registration of these leases. It will be seen that very difficult questions will arise, and a litigation of an extensive character is likely to ensue, which may occupy many years and involve a very large cost to the Natives and to the Crown.

"The existing leases reserve a very low rent, and are, generally speaking, disadvantageous to the Natives, apart from the circumstances that they keep the Natives out of possession of the land for some thirty years to come. Under these circumstances an arrangement between the Natives on the one hand and Mr. Herrman Lewis and his mortgagees on the other is very desirable, both in the Natives' interest and in the public interest. It is desirable in the interests of the Natives because it will put an end to what may be an expensive and long-drawn-out litigation, and will put an end to leases granted by my clients upon disadvantageous terms. It is desirable in the interests of the public because such an arrangement would at once make available for settlement a large area of land suitable for subdivision and sale, a condition of things much to be desired in the interests of the public generally and of the west coast of the North Island in particular.

"Negotiations have therefore taken place between myself as representing the Natives on the one hand and Mr. Dalziell as representing Mr. Herrman Lewis and his mortgagees on the other hand. I think that an arrangement can be made by which the Native owners should sell their reversion in the block expectant on the determination of the leases for a sum of £25,000, to be paid in cash within three months from the date of the contract. It would be a term of the contract for sale that Mr. Herrman Lewis should, within a period of three years, subdivide and sell the blocks of land in areas not in excess of the areas prescribed in Part XII of the Native Land Act, 1909, and that Mr. Lewis should not be entitled to call upon the Native vendors for conveyances or transfers of any part of the block except to purchasers of the same in the prescribed areas. The interests of the Natives will be protected, because if the purchase-money is not paid within three months they will be entitled to rescind the contract for sale, and the parties will revert to their legal rights anterior to the making of the contract. The whole arrangement will be made without prejudice to the existing rights of the Natives to avoid the leases or to re-enter and determine the leases should for any cause the sale not eventuate.

"This arrangement can only be given effect to by an Order in Council under section 203 of the Act, and I am accordingly applying for an Order in Council under that section.

"I have already pointed out cogent reasons why it is in the interests of the public that the alienation should be permitted. I may further add that the Crown is greatly interested—and, indeed, only less so than the Native owners—in the settlement of the litigation which may take place in connection with the registration of the leases under the Land Transfer Act.

"It is clear that the policy of the Act in limiting the area of Native land to be acquired by individuals is carefully safeguarded by the proposed arrangement. The Order in Council would only permit the particular alienation contemplated by the contract to be carried into effect, and it is part of the term of such alienation that the purchaser cannot call for a conveyance or transfer except to subpurchasers of the prescribed limited areas. Under these circumstances, therefore, I venture to express the confident hope that you will be able to recommend the Governor to issue the Order in Council applied for.

"There is only one other topic to which I wish to refer. The Court of Appeal has expressly decided that Mr. Joshua Jones has no claim to the leasehold interests, but if the Government so desires I understand that Mr. Lewis and his mortgagees would not object to agree that the proceeds of the sales of the block should be held by them subject to any claim or right thereto which Mr. Joshua Jones could hereafter establish in a Court of law or equity. It appears to me that the only merit of Mr. Jones's claim is that of unwearied persistence. But I desire to point out that he has no claims and never had any claims against my clients, the Native owners, and it would be an act of injustice if any claim of Mr Jones, whether fanciful or real, should be allowed to stand in the way of the Native owners making an arrangement which is so advantageous and desirable in their interests.

"I have, &c.,

"C. P. SKERRETT."

The Government finally decided to agree to Mr. Skerrett's proposal, and on the 5th December, 1910, Cabinet resolved that an Order in Council should issue permitting the lessee to purchase the Natives' interest in the land. In arriving at this conclusion the Government was influenced by the fact that, unless it took compulsorily, there was no means by which the settlement of the land in small areas could be secured during the remaining term of the leases—about thirty years—without the consent both of the Natives and the lessee.

With regard to the proceedings subsequent to the Cabinet resolution, these were purely departmental, and were carried out in every respect strictly in accordance with the procedure of the Native Department. All necessary notices were given, and the provisions of the Native Land Act and regulations were fully complied with. (See *New Zealand Gazette*, 22nd December, 1910, page 4319, in which the President of the Board publicly notifies that the Board would consider the applications for recommendations to His Excellency the Governor to authorize acquisition of

areas under section 203 of the Native Land Act, 1909.) The Order in Council was not issued until after the meeting of assembled owners, because it was not deemed advisable to issue it until the lessee had, after that meeting, entered into an arrangement securing the settlement in small areas of the block. The issue of the Order in Council at that time was plainly valid, and could not prejudice the rights of any one.

The gazetting of the Order in Council was delayed owing to the absence of His Excellency the Governor from Wellington, but that delay did not and could not affect the rights of any of the parties concerned.

The Government was not in any way concerned with the negotiations between the Natives and the lessee as to the terms of purchase of the interest of the Natives. This is a matter purely within the jurisdiction of the Maori Land Board. There can be no doubt, however, that the price received by the Natives is greatly in excess of the actuarial value of their interest subject to the leases, and the question of a fair price for a compromise of the threatened litigation as to the lessee's title was one very difficult to determine. A fresh valuation of the block was made by the Valuation Department at the instance of the Maori Land Board, and the value was certified to be a little over £40,000.

With regard to Mr. Jones's claims to the block, the Government, as his solicitor will no doubt acknowledge, did all in its power to obtain for Mr. Jones some interest in this land, but they were finally driven to the conclusion that as our Courts had held that he had no claim of any kind to the leases, and the Crown could not acquire the land, they could do nothing for him.

The position to-day is that the title of the Mokau Block is vested in the Chairman of the Maori Land Board. The land is being surveyed and roaded, and must be sold in areas not exceeding 400 acres of first-class or equivalent areas of second- or third-class land to persons making the necessary statutory declaration. If it is not so sold within three years the Maori Land Board is empowered to conduct the sale.

It has been suggested that the Order in Council should have been issued so as to permit any one to acquire the interest of the Natives in the block, and not merely the lessee. The answer to this suggestion is simple—namely, that if this course had been adopted the Land Transfer Assurance Fund would have been left open to attack, and, further, the lessee would have been under no obligation to subdivide the land during the thirty years of his term.

To summarize the position: There were three separate interests involved—(*a*) The Native owners, (*b*) the lessees, (*c*) the Crown, on account of the threatened attack on the Assurance Fund and the desirability of securing the settlement of the block in small areas.

The alternative courses open to the Government were—(1) To do nothing in the matter; (2) to purchase the land; (3) to purchase the interest of the Natives and take compulsorily the interest of the lessee; (4) to permit the Natives and the lessee to come to an arrangement under which the claims against the Assurance Fund would disappear and the settlement of the block in small areas could be secured.

If (1) had been adopted, the Assurance Fund would probably have had to pay a considerable sum of money either to the Natives or the lessee, and the settlement of the land would not have been secured. The Government did not adopt (2) because the best advice it could get was to the effect that it should not pay more than £35,000, and the parties would not sell for less than £53,000. If (3) had been adopted, the Crown would have had to pay the Natives what may have been very much more than the value of their interest. It would have been involved in very serious and expensive litigation, and have had to meet a claim for a large sum for the lessee's interest in the coal rights. By adopting (4) the Government has obtained the immediate settlement of the block in small areas without the risk of a penny to the State, and has saved the Assurance Fund from a serious attack. In adopting this course, it relied upon the fact that the interests of the Natives were protected by their counsel, Mr. Skerrett, and that with a full knowledge of the circumstances Mr. Skerrett applied for an Order in Council to permit this method of settlement.

This statement probably gives sufficient information to enable the Government's part in this very complicated matter to be understood. There is no reason, however, why every detail of the transaction should not have the fullest publicity, and the Government will be very glad to assist so far as it can in this direction.

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