

is within the province of the Commission to make any recommendation upon that point I should say it ought to be done." And, in answer to Mr. Rees, who said, "I think it is open for us to make report upon that, and a recommendation," Mr. Howorth said: "Probably that would obviate the necessity for petitioning Parliament. At any rate, I would ask the Commissioners to report upon the justice or injustice of the case. I submit that it is a monstrous thing that the Government should set up this technical clause of the Act in order to prevent the case being heard upon its merits." In their majority report Messrs. Rees and Carroll said: "A very grave accusation is made concerning the land comprised in the Thermal Springs Act . . . Land was leased there in one day for rentals amounting to nearly £3,000 per annum. For years the Natives have received no rent. Recently they sued the Government, after waiting for six years, for accounts and payment. The Government *it is said* has admitted the justice of their claim, but pleaded the Crown Suits Act in order to bar it . . . " (The italics are ours.) We can find nowhere any record of any such admission, and we should find it difficult to believe that it ever was made: we cannot doubt that the adoption by any Government of a purely technical defence for the purpose of defeating an admittedly honest and just claim would meet with general public condemnation. The proceedings of the Rees-Carroll Commission were referred to before us as if the majority report had contained a statement that the Government of the day had admitted the justice of the Maori claim, but pleaded the Crown Suits Act in order to bar it. That is not so. The majority report made no such finding of fact. On the contrary, they used the words "*it is said*," and then they proceeded to say: "Is it wonderful, in the face of such conduct, *supposing these allegations to be correct*, that the Maoris are too doubtful of the Government to intrust to it either their land or their money." (Again the italics are ours: we cannot indeed find any record that any *allegation* was made that the Government had admitted the justice of the claim.) Irrelevant though the matter may be, we feel it to be our duty to say plainly that there is no evidence whatever to support the suggestion that the Government of the day took up such an unworthy attitude.

15. Second: It was alleged that moneys collected by the Crown from lessees for rentals between the years 1880 and 1889 had not been accounted for. This suggestion has been completely answered by certificates from the head of the Treasury, and it is now conceded that the allegation cannot be supported.

16. Third: Breaches of trust by the Crown are alleged—

(a) In connection with the management of the leasing system prior to the purchase of land in 1889; and

(b) In connection with the purchase itself.

As to the management of the leasing, the Crown was in the position of a fiduciary agent, as was held by Sir James Prendergast, C.J., in *Uremutu v. The Queen*. There might have been negligence or breaches of contract on the part of the Crown, but we do not see how it could be said—and certainly the learned Chief Justice did not suggest—that there were breaches of trust in the sense in which that expression is ordinarily used. These questions of negligence and breach of trust will be considered and dealt with later when we come to comment upon the report of Chief Judge Jones. With regard to these questions and also the question of the purchase itself by the Crown, we doubt very much, if the Maoris had to rely upon breaches of trust, whether an action against the Crown would lie. But it is not necessary to come to any conclusion upon that question because, so far as the management of the leasing is concerned, the matter, as we have said, is one where negligence or breach of contract may be complained of, but not breach of trust; and so far as the purchase itself is concerned, the matter depends really upon whether or not the Crown had power to purchase, notwithstanding the arrangement known as the Fenton Agreement. The contention made by and on behalf of the Maoris has been that, by reason of the fiduciary relationship created by the Fenton Agreement, the Crown was prevented from purchasing or had not the right or the power to purchase. Before the purchase was made, however, the question was submitted to the then Solicitor-General, Mr. W. S. Reid, who advised the Government that the Crown was not prevented from purchasing, and that, indeed, the provisions of the