1948

NEW ZEALAND

REPORT OF ROYAL COMMISSION APPOINTED TO INQUIRE INTO AND REPORT UPON CLAIMS PREFERRED BY CERTAIN MAORI CLAIMANTS CONCERNING THE PUKEROA-ORUAWHATA (ROTORUA TOWNSHIP) BLOCK

Laid on the Tables of both Houses of the General Assembly by Command of His Excellency

Royal Commission to Inquire into and Report upon Claims preferred by certain Maori Claimants concerning the Pukeroa-Oruawhata (Rotorua Township) Block

GEORGE THE SIXTH by the Grace of God, of Great Britain, 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 HANARA TANGIAWHA REEDY, of Ruatoria, Farmer, and ALBERT MOELLER SAMUEL, of Auckland, Retired: GREETING.

WHEREAS by the arrangement referred to in the preamble to the Thermal Springs District Act 1881 Amendment Act, 1883, as having been made on or about the 25th day of November, 1880, and as having been confirmed on or about the 20th day of November, 1881, and by the agreement likewise therein referred to as having been made on or about the 25th day of February, 1883, it was, in effect, agreed amongst other things that certain lands adjacent to Lake Rotorua, thereafter known as the Pukeroa-Oruawhata Block, should be vested as therein provided, and be controlled by the Crown and officers of the Crown in the manner and subject to the terms and conditions therein set forth:

And whereas by the Thermal Springs District Act 1881 Amendment Act, 1883, the said arrangement and agreement were confirmed, and it was declared that the said arrangement and agreement should be deemed and taken to have conferred on and given to the Governor all the rights, powers, and authorities specified or mentioned in the Thermal Springs District Act, 1881, in respect of the lands the subject of the said arrangement:

And whereas the Crown, by its officers and servants, amongst other things, laid off within the boundaries of the said Pukeroa-Oruawhata Block the Township of Rotorua, and otherwise undertook the management, administration, and control of the said Pukeroa-Oruawhata Block:

And whereas the management, administration, and control of the said block having, from divers causes, been beset by difficulties, the Maori owners of the said block and the persons holding under leases granted by the Crown generally represented to the Crown that it should, in their interest and the public interest, purchase the said Pukeroa-Oruawhata Block from the Maori owners thereof:

And whereas the Crown in the year 1889 and following years, by deeds of conveyance and otherwise, did so purchase and acquire the said Pukeroa-Oruawhata Block or divers interests therein:

And whereas, amongst other things, the aforesaid deeds of conveyance respectively contained a recital to the effect that from time to time certain portions of the said Pukeroa-Oruawhata Block had been demised by deeds of lease for certain terms of years in accordance with the Acts therein referred to, and sums of money had from time to time been paid or had accrued due as and for the rent reserved by the said several deeds of lease respectively, and witnessed, amongst other things, that the parties named therein as vendors and each of them did as to the respective share or shares of them thereby assign unto Her Majesty the Queen all the rents and profits which had accrued due under and by virtue of any such deeds of lease:

And whereas by section 10 of the Thermal Springs Districts Act, 1910, the land described in the Second Schedule to the said Act, being substantially the said Pukeroa-Oruawhata Block, was declared to be Crown land instead of Native land and to be vested absolutely in His Majesty the King accordingly, subject to all valid leases affecting the same at the commencement of the said reciting Act, but free from all right, title, estate, or interest vested in the former Native owners of the said land or their successors in title:

And whereas certain of the former Maori owners of the said Pukeroa-Oruawhata Block, or their descendants or representatives, have alleged that they suffered loss and damage by reason of various acts or omissions on the part of the Crown's officers and servants in relation to the management, administration, and control of the said Pukeroa-Oruawhata Block and by reason of the inadequacy of the purchase-price paid by the Crown in respect of the said Pukeroa-Oruawhata Block:

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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,
Hanara Tangiawha Reedy, and
Albert Moeller Samuel

to be a Commission:

(*a*) In respect of the Pukeroa-Oruawhata Block aforesaid, to inquire and report—

(i) Whether, due regard being had to the economic conditions prevailing in the Colony at the material time and any difficulties attending those conditions, and due weight being given to the circumstances surrounding the purchase of the said Pukeroa-Oruawhata Block by the Crown, and, in particular, the assignment to the Crown by the Maori vendors of all the rents and profits which had accrued due under and by virtue of any deeds of lease, the former Maori owners of the said Pukeroa-Oruawhata Block have suffered, as a result of the acts or omissions of the officers or servants of the Crown in the management, administration, and control of the said Pukeroa-Oruawhata Block, any loss or damage for which the Crown should in fairness be held liable; and

(ii) Whether the purchase of the said Pukeroa-Oruawhata Block was concluded by the Crown on terms which were, in the circumstances, otherwise than fair and reasonable; and

(iii) If it be reported that the former owners of the said Pukeroa-Oruawhata Block have suffered any loss or damage as aforesaid, or that the purchase thereof was concluded on terms which were otherwise than fair and reasonable, then to recommend what compensation, if any, in money or money's worth, should now be granted to the former Maori owners of the said Pukeroa-Oruawhata Block, or their descendants or representatives;

* * * *

Provided, however, that in any case where you shall see fit to recommend that compensation in money or money's worth be granted in respect of the purchases or cessions hereinbefore set forth, you shall have regard to the value of the land, as nearly as may be, at the time of the purchase or cession thereof, and not to any later increment in the value thereof:

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 thirty-first day of March, one thousand nine hundred and forty-eight, 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 thirteenth day of August, in the year of our Lord one thousand nine hundred and forty-seven, and in the eleventh 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.

B. C. FREYBERG, Governor-General.

[L.S.]

By His Excellency's Command—
P. FRASER, Native Minister.

Approved in Council—
W. O. HARVEY, Clerk of the Executive Council.

Extending Period within which the Commission appointed to Inquire into and Report upon Claims preferred by certain Maori Claimants concerning the Pukeroa-Oruawhata (Rotorua Township) Block shall report

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GEORGE THE SIXTH by the Grace of God, of Great Britain, 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 HANARA TANGIAWHA REEDY, of Ruatoria, Farmer, and ALBERT MOELLER SAMUEL, of Auckland, Retired: GREETING.

WHEREAS by Our Warrant of date the thirteenth day of August, one thousand nine hundred and forty-seven, 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, you, the said

Sir Michael Myers,
Hanara Tangiawha Reedy, and
Albert Moeller Samuel,

were appointed to be a Commission to inquire into and report upon claims preferred by certain Maori claimants concerning the Pukeroa-Oruawhata Block, as set forth in the said Warrant:

And whereas by Our said Warrant you were required to report not later than the thirty-first day of March, one thousand nine hundred and forty-eight, 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 claims relating to the Pukeroa-Oruawhata Block should be extended as hereinafter provided :

Now, therefore, We do hereby extend until the thirtieth day of September, one thousand nine hundred and forty-eight, the time within which you are so required to report in respect of the claims relating to the Pukeroa-Oruawhata Block aforesaid :

And We do hereby confirm the said Warrant 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 thirty-first day of March, in the year of our Lord one thousand nine hundred and forty-eight, and in the twelfth 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—

W. E. PARRY,

For the Minister of Maori Affairs.

Approved in Council—

T. J. SHERRARD,

Clerk of the Executive Council.

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

MAY IT PLEASE YOUR EXCELLENCY,—

PUKEROA-ORUAWHATA (ROTORUA TOWNSHIP) BLOCK

1. We have the honour now to make our second report as the result of our inquiries into the matters specified in Your Excellency's Commission of the 13th August, 1947. Our first report, which had reference to the Mokau Block, was made on the 8th March, 1948. This present report relates to the Pukeroa-Oruawhata Block, which block constitutes the Township of Rotorua.

2. Both the Crown and the Maoris (Ngati Whakaue) were represented by counsel—Mr. Meredith and Mr. McCarthy for the Crown; Mr. Cooney and Mr. Thomson for Ngati Whakaue. Mr. Kepa Ehau, a prominent member of the Ngati Whakaue, also appeared with counsel as a member of the tribe; and, in addition, some of the members of the tribe were represented by Mr. Mafeking Pere. The cases of the various parties were very fully and comprehensively placed before the Commission. We should like to acknowledge in particular the ability and, on the whole, the fairness and good spirit, with which the two Maori representatives, Mr. Ehau and Mr. Pere, presented the aspects of the matter with which they were respectively dealing, though, when it came to discussing the quantum of compensation in the event of a report in their favour, their suggestions cannot be said to have been lacking in optimistic imagination.

3. The matter has already been the subject of inquiry by the late Mr. R. N. Jones, a former Chief Judge of the Native Land Court. The inquiry originated from a petition to Parliament in 1928 by Pirika Te Miroi and others, who made various allegations as to failure by the Government to account for (i) moneys received as rents, and (ii) fees collected by the Government from the use of the baths and springs at Rotorua from the year 1880 to the date of the purchase of the land by the Crown, and also as to the inadequacy of the purchase-money paid by the Crown for the land in 1889. Chief Judge Jones, acting under section 6 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922, held an inquiry in 1930 regarding this petition, but no report or recommendation seems ever to have been made after such inquiry.

4. In 1934 another petition was presented to Parliament by members of the Ngati Whakaue Tribe praying—

(*a*) An inquiry into the whole circumstances surrounding the purchase by the Government of the lands in the Township of Rotorua known as the Pukeroa-Oruawhata Block.

(*b*) That the purchase by the Crown of the said block be declared null and void and, subject to such exceptions as may be deemed necessary, and subject to such charges as are right just and reasonable, the land be revested in the rightful owners.

(*c*) That the purchase of the said lands and the trust created be dealt with on inquiry in the same manner as such a purchase and such a trust would be treated if it had existed between beneficiaries and a private trustee, all consideration of lapse of time to the contrary notwithstanding.

(*d*) In the alternative, that such sum or sums shall be paid to the Native owners in respect of all lands purchased by the Government, or granted to the Crown by the Natives as in the circumstances is just and reasonable.

(*e*) That the Native owners have such other relief as your Honourable House shall deem fit.

The petitioners again alleged, *inter alia*, that the Government had not accounted for the income received, and also alleged breaches of trust on the part of the Crown in that "the Government, whilst acting as trustee for the Native owners, purchased the trust property."

5. The last mentioned petition and also the previous petition of 1928 were, by section 9 of the Native Purposes Act, 1934, referred to the Native Land Court for inquiry. An inquiry was accordingly held by Chief Judge Jones in August, 1935, and for all practical purposes may be regarded as a continuation of the inquiry held in 1930. The Chief Judge made his report on the 21st May, 1936, to the Right Honourable the Native Minister and the report was duly presented to Parliament in pursuance of section 9 of the Native Purposes Act, 1934. We shall, of course, comment and deal with

the report in detail later, but it is sufficient to say at the moment that neither side quarrels with the statement of the facts as made by the Chief Judge in his report, which statement is accepted by all parties as being substantially correct. It is unnecessary for us, therefore, to make any general statement of facts in this report: to do so would, it seems to us, be supererogatory, because the report of Chief Judge Jones is on record as well as the proceedings upon which it is based, and may be referred to by Your Excellency's Advisers or by any person who may be interested in the subject-matter or who may wish to criticize or comment upon the report which we are now making. Of course, the Chief Judge's report does not state all the details of the transactions involved, but it does seem to us to be a sufficient statement of the material facts.

6. The quarrel is not with the facts as set out in the report, but with the Chief Judge's recommendations.

The Maoris accept—but the Crown does not—the basic recommendation that a payment should be made by way of compensation. The Crown says that no wrong or injustice was done, and therefore there is no case for compensation. What the Maoris complain of is the quantum of compensation recommended, which they contend is inadequate.

7. At the inquiry held in 1935, counsel for the Ngati Whakaue petitioners concluded his final summing-up thus: "We are sure, your Honour, that only considerations of justice and fairness will enter into your mind, and we, the suppliants, will be satisfied, Sir, if, after you have considered the matter fully in all its aspects, you give a decision." It must be remembered that the petitioners had no legal claim to relief, and what they were really asking for was compensation based upon principles of fairness for the wrongs or grievances which they claimed to have suffered. Their petition was made to Parliament, and Parliament in its wisdom delegated a competent Court to inquire into it. The statement of counsel to which we have referred was in the circumstances well open to the interpretation that the Chief Judge's report, which the Ngati Whakaue were satisfied would be just and fair, would be accepted by them as a final determination.

8. If, therefore, the Government had accepted and had been prepared to act upon the recommendations in the report, they might properly have taken up the attitude that the inquiry was intended to settle the matter once and for all, and that the report must be taken accordingly as final and binding upon both the Government and the Maoris. Had that attitude been adopted, the Maoris, so it seems to us, would have had no right to complain further.

9. But the Government did not take up that attitude, and the Maoris did complain. Indeed, in September, 1936, almost before the Government had had time to consider what course it should adopt, the Maoris, emulating a well-known character in one of our famous English novels, sent Mr. Cooney as their representative to Wellington to see the then Prime Minister and ask for more. The request then was for interest for the period since 1890 upon the amounts recommended by the Chief Judge. That request not being conceded, in February, 1938, a deputation attended before the Minister of Native Affairs at Wellington and complained more specifically of the inadequacy of the compensation recommended by the Chief Judge.

10. It is proper to say that the Government at that stage was, in our view, justified in not accepting the Chief Judge's recommendations. Firstly, some of the Departments concerned considered that these matters of complaint relating to the township in respect of both the leasing administration and the subsequent purchase were included in the settlement of the Arawa claims (generally spoken of as "the Lake claims") in 1922, and that on other grounds there was no case for compensation. We shall deal at a later stage with the point relating to the 1922 settlement, as it was raised again before us as a matter of defence to the whole of the claims. Secondly, the Minister of the day, as is plain from files to which we have had access, believed, upon what appeared to be authentic information, that the claims were not supported by the majority of the Ngati Whakaue people. As to this second point, the Minister's attitude is quite understandable on the information that was before him. It must be remembered that the petition of 1928, though numerously signed, was signed by only a minority (103 in all) of the members of the Ngati Whakaue Tribe who were interested at that time in this land, and Mr. Kepa

Ehau, who appeared with Mr. Tai Mitchell at the inquiry before Chief Judge Jones in 1930 as representing the people who had *not* signed the petition, is recorded as saying: "I want first of all to make the position clear. We disassociate ourselves from subject-matter of petition dealing with the rents. We disassociate ourselves with regard to petition so far as it affects any further purchase-money that is claimed. We do associate ourselves with the rights to which Ngati Whakaue are entitled and which may be jeopardized by the present proceedings. The question of reserves is far more important to us than the question of money that may be due. There are two sets of reserves:—

"(i) Those given to the Government by N'Whakaue.

"(ii) Those given to N'Whakaue by Order in Council of 1897 which are still to come before the Court.

". . . If there is any suggestion that we should be paid for these reserves" (that is to say, the reserves given by Ngati Whakaue) "I say that they were not intended to be paid for . . . If there is any more purchase-money or rent coming I make no claim and I think I have received them in full." In regard to the last statement about having received purchase-money in full (which he repeated at the hearing before us), Mr. Ehau was obviously speaking for himself alone. But it appears plain that he and those whom he represented disassociated themselves from the claims to compensation: what they were concerned about was the protection of the reserves and a continuance of the right given to members of the tribe in the original arrangement made with Chief Judge Fenton in November, 1880, to free hospital treatment. In this last connection, this is what Mr. Ehau is recorded by Chief Judge Jones as saying: "'Maori sick are to be admitted to the hospital without payment.' It is a short clause but means a lot inasmuch as the charges are 12s. per day. At times there are as many as ten persons being treated at once. One fails to grasp what this actually means to members of the tribe. We desire this right of N'Whakaue to be retained as it is of benefit to the Natives." But that was not the only material before the Minister. It would appear that information was given to him personally in Rotorua on the occasion of one of his visits there in 1937 that the Ngati Whakaue by a very large majority disavowed the claims made for compensation.

11. But whatever may be said of Mr. Ehau's statement at the inquiry in 1930, he could not, of course, bind the Ngati Whakaue as a whole (nor, indeed, did he even purport to do so), and the same observation applies to the information given to the Minister in Rotorua by some unnamed but said to be influential person.

12. However all that may be, nothing further was done after the Chief Judge made his report in 1936, and neither party was bound, so that the whole matter became at large. Further petitions to Parliament were presented in 1944 and 1945, and in the last mentioned petition the petitioners prayed that the subject-matters involved should be referred to a Royal Commission; and presumably this Commission was resolved upon by Your Excellency's Advisers with the intention that its recommendations will be accepted and acted upon by both the Government and the Maoris as a final settlement of all the claims, troubles, and grievances involved.

13. Before we consider further the report and recommendations made by Chief Judge Jones, we think it desirable to clear the ground by disposing of and eliminating a number of matters which have been referred to in the proceedings before us, some of them irrelevant, some ill-founded, and some fallacious.

14. First: There is the suggestion that in the action brought by the Maoris in 1890 (*Eruera te Uremutu* v. *The Queen*) in respect of the non-distribution or non-collection of rents, it was admitted by the Crown that the claim was a just one, but that nevertheless the Crown pleaded the Crown Suits Act as a bar to the Maori claims. The only warrant for this suggestion is a certain reference contained in the report of the Rees-Carroll Commission of 1891 (Native Land Laws Commission). Mr. Howorth, who had acted as solicitor for the Maoris, said in evidence: "To the action that is pending, the Crown Suits Act has been pleaded in bar of the claim; and, although these Maoris claim something like £20,000 against the Government, they are unable to get their case into Court owing to this 39th section of the Crown Suits Act. If it

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 those 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

Thermal Springs Act, 1881, itself by section 3 and section 5, subsection (1), expressly recognized the right of the Crown to acquire interests in Native land subject to the Act, and the Solicitor-General said that in his opinion these provisions were sufficient authority for the proposed purchase. It may be that the Crown had some other power or authority than the provisions of the Act of 1881, but, assuming that there was no such other power or authority, we see no reason to doubt the correctness of the Solicitor-General's opinion that there was sufficient power and authority conferred by the Act of 1881. Even if the correctness of that view could in years gone by have been challenged, the point has certainly long since lost any importance or relevance that it otherwise might have had, as the Thermal Springs Districts Act, 1910, expressly declared the land to be vested in the Crown.

17. Fourth: There was much reference to the Stout-Ngata Commission of 1908 on Native lands and Native land tenure, particularly with regard to a memorandum which was placed before that Commission as to the Arawa grievances and the reference thereto in the Commission's report, and it is true that that memorandum complained both of the alleged mismanagement of the leasing administration by the Government between 1880 and 1889 and the alleged smallness of the price paid by the Crown on the purchase in 1889. It was well known, however, that the Commission had no power or authority to deal with these matters of complaint, and the memorandum, admirable as it undoubtedly is as a piece of English literature, is open to the comment that probably it was not intended as anything more than a rhetorical gesture. Indeed, Mr. Kepa Ehau at the inquiry in 1930 explained this by a statement which is recorded by the Chief Judge as follows: "One other point I think should be cleared up. The memorandum submitted by N'Whakaue to Stout-Ngata Commission in 1908 includes the name of Mr. Tai Mitchell. The object for which the Stout-Ngata Commission sat was with regard to the undeveloped lands and those required for Native occupation. The excess area was to be submitted to Crown for settlement. Incorporation was suggested, and it was suggested that the excess area should be vested in the Maori Land Board, and accordingly many blocks were so vested. Before consulting the rest of N'Whakaue the memorandum was submitted to the Commission to indicate to that Tribunal that the tribe had had private dealings with the Government, but the course of such dealings with the Government required explanation. They did not wish to have doubts with regard to the new portions of land to be dealt with by the Government. That, and that alone, was the purport of the memorandum. Had Mitchell and Bennett thought there was any real grievance they would have pushed the matter on, but what was really desired was to inform the Commission of the matter which raised suspicion among the petitioners regarding the Government dealings with them." The Commission reported as follows: "We have placed in an appendix to this report a memorandum signed by the Chiefs and some of the members of the Ngati-Whakaue Hapu. It was read to us at the sitting of the Commission, and expressed the views of the hapu. The allegations made in the memorandum, especially those affecting the acquisition of the Township of Rotorua by the Crown, are such that they deserve explanation or denial by the Native Land Purchase Department. The truth or falsity of the charges must be known to that Department. If it be a fact that, whilst acting as trustee for the Native owners, the Crown, having prohibited the Natives from selling their lands, *bought them at an inadequate price*, the action of the Crown cannot be defended. A transaction of that character would, if it took place between an ordinary trustee and a beneficiary, be set aside by any Court of justice before whom the transaction came for decision. If it be found, therefore, that the statments in the memorandum cannot be disputed by the Department, then certainly the Ngati-Whakaue Hapu should now receive from the Crown beneficent consideration. This is a matter in our opinion that deserves the careful inquiry and consideration of Your Excellency's Advisers." (The italics are ours.) It is not without significance that two years afterwards the Thermal Springs Districts Act, 1910, was passed, which *inter alia*, declared the land to be vested in the Crown. Some legislation of that kind was necessary, if for no other purpose than to make provision for the assessment of compensation to those few of the original owners or their descendants who had not been parties to the deed of sale or to the previous agreements made with Mr. Fenton and Mr. Clarke.

The point is, however, that the Stout-Ngata Commission recommended inquiry by the Government, and the natural assumption would be that the Government, before introducing the legislation of 1910, had made inquiries and had satisfied itself rightly or wrongly that there was little, if any, foundation for the complaints. Particularly would that be so, one may very well think, as the principal speaker supporting the Bill of 1910 was Mr. Ngata himself, who was a member of the Executive at the time, and his speech contains not a word of the Maori complaints. Moreover, Mr. Ehau himself said in the proceedings before us that the Act of 1910 "was instigated at the request of Ngati Whakaue to remedy the Thermal Springs Act," and he, Mr. Ehau, had been one of the deputation early in 1908—meaning, presumably, the deputation that attended before the Stout-Ngata Commission. Incidentally, it may be pointed out that Sir Robert Stout, who was then Chief Justice of New Zealand, and Mr. Ngata, the two members of the Commission, had no doubt as to the power and the right of the Crown to purchase. They point out in their report, referring to the Thermal Springs Districts Act, 1881, that after a Proclamation made by the Governor thereunder it was "not lawful for any person *other than Her Majesty* to acquire any estate or interest in Native land" in the proclaimed district "except by virtue of or through the means prescribed or permitted by" the Act. The report proceeds: "The Act does not prescribe or permit any mode of private alienation. *The Native owners could sell only to the Crown*"; and later on in their report is contained the passage we have already quoted, in which the Commission said that in their opinion the matter deserved the careful inquiry and consideration of His Excellency's Advisers. But the point is that again in that statement the Stout-Ngata Commission recognized the power to purchase. It was only if the purchase was made "*at an inadequate price*" that the action of the Crown could not be defended, and if the Crown had bought at an inadequate price, then the Ngati Whakaue should receive from the Crown beneficent consideration of their complaint. The power of the Crown, however, to purchase was never doubted, and, as we have already said in a previous paragraph of this report, we can see no reason now to doubt it.

18. Fifth: There was a claim made by the petitioners to bath fees collected by the Government from persons who used the baths. But that claim was not pressed either in 1935 before Chief Judge Jones or in the proceedings before us. On the contrary, it is admitted that the claim cannot be supported.

19. Sixth: A submission was made that the position of the Crown is in some way prejudiced by the fact that the deed of sale refers to an area of 3,020 acres, whereas Judge Clarke's order of 1884 covered an area of only 2,766 acres. This point is quite immaterial and has no validity. The suggestion is that portions of the total area of 3,020 acres covering the springs and medicinal waters and certain other areas were gifted by the Maoris to the Crown as reserves, and that by the deed of sale the Maoris were purporting to convey land that they had already disposed of and did not therefore belong to them. The obvious explanation, however, is that when the purchase was made it was a matter of convenience, seeing that there had been no previous deed in respect of the gifted portions, to include the whole of the land in the conveyance or deed of sale. It makes no difference what the acreage was: the point is that the course adopted was simply a conveyancing method of assigning and transferring to the Crown all the interest of the Maoris who executed the deed in the whole area of 3,020 acres or any part thereof. In other words, as Chief Judge Jones suggests, it was simply a matter of assurance of title.

20. Seventh: As to the purchase in 1889, it is asserted that the purchase should not have been made and that some other course should have been adopted. This, in fact, is not now a live question. But if it were, the answer is that the leasing system had broken down, that the conditions of the district and of the country generally, economic and otherwise, were in a deplorable state, and that a purchase by the Crown seemed to be the only feasible way of dealing with a most difficult problem. It has been said that this purchase was brought about in consequence of the pressure brought to bear upon the Government by the Europeans in the district. It would appear from the material before us that that is not an accurate statement. There is no doubt that

the Europeans were pressing the Government to purchase, but there is evidence to show that the Maoris, or a large section of them, though they had not been prepared to sell in 1880, were, in 1888 and 1889, pressing the Government to purchase. Furthermore, a statement to this effect was made by Mr. Ngata himself in moving the committal of the Bill of 1910, when he stated in his speech that " pressure was brought to bear *by the Natives themselves* and by Europeans in the locality for the Crown to purchase the township." (Our italics.)

21. Eight: Suggestions have been freely made that some of the Government officers who had to deal with these matters between 1880 and 1889, and, indeed, some members of the Government itself, were guilty of bad faith in connection with these various transactions, and that there was some dishonesty connected with the sale itself. We have considered all these suggestions very carefully because, whether they are relevant or not to the particular matters that we have to inquire into, it is very important in our opinion, the allegations having been made, that they should not be left on record without an expression of the Commission's view concerning them. We say without hesitation that we see no reason whatever to doubt the honesty and good faith of the Government officers and Ministers concerned in any of these transactions. A letter or telegram here and there might, unless considered in its proper context and in conjunction with the other correspondence and all the surrounding facts and circumstances, appear to bear some sinister implication. But in our view all these various documents, fairly and properly considered in the light of all the facts and circumstances, are capable of honest explanation. The transactions in connection with the leasing administration and with the sale were honestly conducted, and we have no doubt that both Ministers and Government officers thought that they were acting for the best and that ultimately the consideration that was paid on the sale in 1889 was a fair and adequate consideration. That, however, does not mean that errors of judgment may not have been made—errors of judgment of sufficient importance to justify in part the Ngati Whakaue's present claims.

22. As already stated, we have had a special purpose in introducing into this report the various matters comprised in the last eight preceding paragraphs. If it is desired and intended that our recommendations are to be acted upon, and that all these complaints and grievances should be ended once and for all, we think that the recital of all the matters detailed in the last eight paragraphs is important, if only to clear away misconceptions, some of which have previously been shown and admitted to be misconceptions, but which, nevertheless, have been subsequently set up and alleged again.

23. All these matters were indeed cleared away during the course of the proceedings before us, and, after the ground had been cleared by their disappearance, it was admitted on all sides that there were only two issues involved, namely:—

(i) The question of neglect or mismanagement in connection with the leasing operations between 1882, when the first leases were sold, and 1889, when the Crown effected its purchase from the Maori owners; and

(ii) The adequacy of the purchase-money or consideration on the sale as at the time when the sale was made and having due regard to the then existing conditions.

That, indeed, was the way in which the case was dealt with by Chief Judge Jones, and those are the two issues which he considered and upon which he made the recommendations to which we shall refer presently.

24. Before we do that, however, the ground must be further cleared. So far we have dealt with a number of allegations and claims made by the Maoris which in our view cannot be supported. The additional matter to which we refer now is a contention made not by the Maoris, but by the Crown; we mentioned it briefly in paragraph 10. It was made before Chief Judge Jones in 1930 and again in 1935, and it was also made and pressed in the proceedings before us. The contention is that these claims by the Ngati Whakaue in regard to Rotorua Township or the Pukeroa-Oruawhata Block were included in the settlement made in 1922 and expressed in section 27 of the Native Land Amendment

and Native Land Claims Adjustment Act, 1922. What may have been in the minds of the Government negotiators in connection with that settlement we cannot say. We can only infer their intention from the language used in the statute itself, in the document expressing the agreement of the parties, and in the correspondence leading up to that agreement. We cannot, for the purpose of imputing an intention to the parties or either of them, read into the documents words that are not there.

25. There are certainly features in connection with this aspect of the matter which seem very strange. First of all, it is curious that the questions regarding the Rotorua Township were allowed by Ngati Whakaue to lie dormant between 1908, the year of the sitting of the Stout-Ngata Commission, and 1922. It is also strange that they were not expressly raised in 1922 when the claims by the Arawas generally were being discussed with a view to settlement. However that may be, the fact is that there is no record of the claims by Ngati Whakaue, who are a hapu of the Arawas, being specifically raised. Then again, even after 1922, it is strange that nothing is heard of the Ngati Whakaue claims or grievances until the petition to Parliament in 1928. On the other hand, it is exceedingly strange, if the 1922 settlement had been intended to include the settlement of these Ngati Whakaue claims, that this defence was not raised when the petition was presented in 1928. Indeed, it would have been a complete answer, and it would have been the duty of the Government of the day to make that answer. But, in fact, the answer was never made or even suggested. It was not suggested by the official reply or comment of the Native Department which it was called upon to make to the Native Affairs Committee upon the petition, nor apparently was it suggested to that Committee by the Minister. Furthermore, at that time Sir Francis Bell, who had negotiated the 1922 settlement for the Government, was still closely associated with the Government, being Leader of the Legislative Council and Minister without portfolio, and we cannot doubt, if in fact the Ngati Whakaue claims had all been intended to be settled in 1922, and consequently the claims made in the 1928 petition should have been incontinently rejected, that Sir Francis would have seen to it that the Government and Parliament were left in no doubt as to the true position.

26. It is also strange that Chief Judge Jones, although this gound of defence raised by the Crown was brought before him in both 1930 and 1935 and discussed at considerable length, says not a word about it in his report. It would appear necessarily to follow, however, from his making recommendations in favour of the Maoris, that he must have rejected the Crown's contention, but it is extraordinary that he did not refer to it and give his reasons for rejecting it. Had he done so, it well may be that the point would not have been brought up again by the Crown before this Commission.

27. But although we reject the contention that these claims were included and disposed of in the 1922 settlement, the fact that that settlement was made and the facts and circumstances relating to it are not without some relevance now. Mr. Cooney emphasizes that the Maori claims should now be disposed of in the spirit of fairness. That is so; but, when it comes to considerations of fairness, the circumstances and conditions affecting both sides should be kept in view. It must not be assumed, because the Maoris may be thought to have certain just grievances, that they have not in other respects relating to these same transactions been treated with the utmost fairness and liberality. It has been said, and truly said, that the Arawas have always been a loyal tribe, and that they have been exceedingly generous in their gifts to the Crown of the medicinal springs and waters, and other reserves, and also in their gift of land in connection with the construction of the railway. The fact of that liberality is not in itself relevant to the questions that we have to consider; as we have already stated, the only questions that we have to consider are—

(i) What loss, if any, the Ngati Whakaue may fairly be said to have suffered by reason of the alleged neglect and mismanagement of the leasing administration; and

(ii) On the point of adequacy of consideration, what was the market value of the land at the time it was purchased in 1889.

But if the liberality of the Maoris is relevant, and the question is one of fairness and conscientious dealing, there should at least be some kind of reciprocity. Indeed, the gifts made by the Arawas have, according to Kepa Ehau, already been taken into consideration—namely, in arriving at the settlement in 1922. Mr. Ehau said in the proceedings before Chief Judge Jones in 1930: "The claim of the Arawas was as to the Lakes, but in the settlement other matters were brought in arising out of certain promises made to the Arawas and gifts of land by N'Whakaue to the Crown. These latter things were used as levers as showing that the Arawas had strong claims upon the Government's consideration." Further, in the payment of £6,000 per annum in perpetuity which was made under the 1922 settlement and the legislation of that year, the Government treated the Arawas magnanimously. It is true that one of the principal matters settled was the dispute as to the ownership of the lakes, but it seems beyond question that in agreeing to this considerable annual payment the Government was influenced by the gifts made by the Ngati Whakaue (as Mr. Ehau suggests), and also by the Maori representations, and the Government's own belief, that the indigenous fish such as the koura, which had been part of the staple food-supply of the Arawa Tribe, had been destroyed by fish such as trout imported by the Europeans. That appears to be plain from the memorandum previously referred to which was brought before the Stout-Ngata Commission, and by a statement in the report of that Commission that "It hardly comes within our province perhaps to deal with a grievance of which the Arawas make great complaint. The matter, however, was brought before us, and we think it is our duty to represent it to Your Excellency. The indigenous fish in the streams and lakes of their district have been almost wholly destroyed by the trout that have been placed in these streams and lakes. The trout were placed there as a great attraction to tourists and others visiting the Thermal-Springs District. That the Maoris have suffered a grievous loss by the destruction of the indigenous fish cannot be denied. These fish were a great part of their food-supply . . . The bitterness felt at the destruction of their indigenous fish, and at the punishment inflicted on them if they fish for trout in their own streams, is very great." But it has turned out, and for this—apart from general knowledge—we have the authority of Sir Apirana Ngata in a letter written by him on the 12th June, 1929, to the Minister of Internal Affairs, that the koura have become re-established in the lakes in apparently as plentiful a supply as had existed before the introduction of the trout.

28. Again, it would seem that the Government some time after taking over the construction of the railway from the Thames Valley and Rotorua Railway Company, Ltd., paid the Maoris a sum of £2,750 or thereabouts, being 5s. 6d. per acre, in respect of land which the Maoris had gifted to the company in connection with the construction of the railway. We do not feel that we can make any positive statement regarding this particular matter, because the transaction, as explained to us, is somewhat confusing, but it would appear that the payment of the £2,750 to the Maoris was probably one that the Government was not under any legal obligation to make. We merely mention this matter because of the references made to it on both sides during the inquiry; at most, assuming that the payment was in effect a gift, it shows that liberality was not altogether the monopoly of Ngati Whakaue—it does not affect the question of the adequacy of the consideration given for the sale of the township.

29. There is another matter which should not be passed over without notice—namely, the provision, which was continued after the purchase, of free hospital treatment. It will be remembered that under the Fenton Agreement one of the provisions was "Maori sick are to be admitted to the hospital without payment," and that Mr. Kepa Ehau said in the proceedings before Chief Judge Jones in 1930: "It is a short clause but means a lot inasmuch as the charges are 12s. per day. At times there are as many as ten persons being treated at once. One fails to grasp what this actually means to members of the tribe." It may be, though it is not necessary to determine this, that the sale and purchase of the land in 1889 put an end in law to the provisions of the Fenton Agreement, but whether that be so or not, the fact is that the provision for free hospital treatment has continued ever since. That the provision is a valuable one

to the Maoris appears from the fact that during the eleven years from 1924 to 1935 the value of this free hospital treatment of the Ngati Whakaue Tribe was £12,811. The amount varied in the various years. In 1926–27 it was as low as £633; in 1932–33 it was as high as £1,714. The average of the eleven years is £1,164. Prior to 1924 the figures are not available, but it appears that "prior to 1924–25 the cost of free treatment of Maoris entitled to free treatment was treated in the same way as bad debts and written off." This, of course, does not mean, as was suggested at the hearing before us, that the Maoris were actually charged; what it obviously does mean is that entries were made of the cost, and corresponding entries writing off these amounts, these debits and credits being necessary for book-keeping purposes and being made solely for those purposes. The importance of the continued provision of hospital treatment and of the liberality of the perpetual annuity of £6,000 provided for by the Act of 1922 is this: that they provide an answer to any contention or suggestion that the gifts by the Maoris of the baths and medicinal waters, &c. (even if it were otherwise open to us on the terms of the Commission), should be taken into consideration in assessing the value of the township at the time of its purchase by the Government.

30. We come now to the recommendations in the report of Chief Judge Jones. His first recommendation is for an *ex gratia* payment of £3,155 in respect of moneys which may be said to have been lost to the Maoris during the administration of the leasing system by reason of a number of the leases having been, what the Chief Judge calls, "forfeited by arrangement." He refers, of course, not to the case of leases where a forfeiture was brought about by the inability of the lessee to pay the rent, but to the cases where the agent, Mr. Tole, with the consent of the Ministers and officers of the Department concerned, accepted payment of arrears of rent up to a certain date, leaving two months' rent still in default, and then purporting to exercise his right of re-entry under the lease by reason of that default, irrespective of whether the lessee was or was not in a financial position to keep up his payments of rent. Mr. Tole, under instructions from the Department, had taken legal advice on this matter and had been advised that it was within his legal rights to make these arrangements with the lessees and exercise his power of re-entry as he did. Chief Judge Jones expresses the view that Mr. Tole had no power, as a Government official, to enter into a compact of this kind, which had the effect of terminating the lease. Whether the view of the solicitors was sound or whether the Chief Judge's contrary view is the correct one we do not think it necessary to consider, because, even if the solicitors were right, we are of the opinion that the re-entry in any case where it was not reasonably clear that the payments could not be kept up was an error of judgment which prejudiced the interests of the Maori owners, and we agree with the Chief Judge that the circumstances were such in connection with the exercise by Mr. Tole of his power of re-entry as to call for the payment of some compensation. The circumstances were admittedly most difficult. The auction sale in 1882 afforded no real criterion of the rental values. There was speculative buying at reckless prices, and it was very fortunate for the Maori owners that one of the conditions of sale was that the first half-year's rent should be paid in advance. Some of the lessees became bankrupt or at least insolvent; others were resident abroad. The district, and, indeed, the whole country, was in a state of deep depression, and, as if all that were not enough, there happened the Tarawera eruption in 1886. Mr. Tole had had to resort to litigation in order to assert his rights, and this litigation, in which ultimately he succeeded, lasted a year, during which time practically none of the lessees paid any rent at all. A number of the lessees had refused to sign their leases and the Government was advised that specific performance could not be enforced. In all these circumstances, the Government officers were at their wits' ends to know what to do for the best, and it was in these circumstances and under these conditions that it was ultimately considered best, in the interests of the Maoris and the country generally, that the Crown should purchase the land. On the whole, the rentals actually recovered by the Crown amounted to something like £4,000,

and, as previously mentioned, this money was all accounted for to the Maoris, who may perhaps be considered fortunate in that they received so much. But, making all due allowances for the circumstances and conditions, we agree with the view, implicit in the Chief Judge's report, that the Maoris did suffer loss by the re-entry into possession in a number of cases practically by arrangement with the lessees, and that the complaint of the Ngati Whakaue should to that extent be recognized.

31. The Chief Judge, as we have already mentioned, assessed compensation on this head at £3,155. We agree that he was right in restricting compensation in respect of the non-collection of rents to those cases where there had been a re-entry practically by arrangement with the lessee. We do not think it can reasonably be said that in any of the other cases Mr. Tole or any other officer can be shown to have been guilty of any neglect or mismanagement; on the contrary, it seems to us that he showed a very great measure of diligence, but the circumstances and conditions of the times were all against him, and he was practically helpless against them. To charge the Crown with the payment of compensation in such circumstances would be unjust. Even in assessing compensation in respect of the cases where there had been re-entry by arrangement, we find it exceedingly difficult to make any assessment except in what might be called a very rough and ready way. On the whole, if we had to consider just the one question of compensation in regard to the leasing administration, we very much doubt whether we could say that the Chief Judge's assessment was not a reasonable one. Inasmuch, however, as the deed of sale in 1889 included an assignment by the Maoris to the Crown of all outstanding rents, we prefer, in making our recommendation as to compensation, to deal with the whole case *in globo*, and make one comprehensive recommendation in respect of the two aspects of the case which are submitted to us by Your Excellency's Commission.

32. The second recommendation of the Chief Judge was that in respect of the purchase of the township by the Crown there was an inadequacy of consideration, which the Chief Judge thought might be met by an *ex gratia* payment now of £4,000. The Chief Judge treats the area sold as being 2,755 acres, upon which he places a value as at the time of the sale of £5 per acre. This makes £13,775, from which he deducts £9,775 which he regards as approximately the purchase-money.

33. As to the area of the land, the deed of sale simply follows the certificate of title originally issued to the Maoris in 1881, and describes the land as containing 3,020 acres. That area, of course, includes the gifted reserves. It appears that further reserves were created by the Crown after its purchase of the township, but with that we are not concerned. What Chief Judge Jones did was to assess the value of the township on an acreage basis, and he took for this purpose an acreage of 2,755, being the original area of 3,020 acres less what he assumed to be the area of gifted lands. An acreage valuation might perhaps be used as some kind of a test or guide as to the value, but we think that the only way in which to assess the value as in 1889 is to endeavour to take, as best one may, a common-sense over-all view of the realities of the case as they then existed, and value as one entity the Maori interests in the whole area, of course omitting, as Chief Judge Jones did, from the subject-matter of the sale and purchase such items as the thermal springs, the sanatorium grounds reserve, and Pukeroa Hill, which had been gifted by Ngati Whakaue prior to the purchase and which could not be taken into consideration, even if (contrary to what would seem to be the case) they had not already been taken into account as part of the consideration for the annual payment in perpetuity of £6,000 agreed in 1922.

34. For the purposes of sale in 1889 it would not be fair to regard the land merely as rural land, and it is only fair to say that the Minister and Government officers concerned in the purchase recognized that it could not be so regarded, and they added what they considered a fair sum at the time to the per-acre price that the land would

have been worth merely as rural land. But we do not think, and evidently Chief Judge Jones did not think, that the consideration actually paid was quite adequate. The land had some prospective or potential value, as, indeed, was recognized by the Government of the day, but we do not think that it was quite sufficiently recognized. At the same time, when considering the question of prospective or potential value, it must always be remembered that the vendor of such property is not entitled to a price based upon the added value which is created by Government expenditure in respect of the construction of the railway or of public buildings and amenities or otherwise. Nor, of course, is there any relation whatever between the value in 1889 and the value to-day. Incidentally, it may be mentioned that the Government expenditure in the development of Rotorua has amounted to many hundreds of thousands of pounds.

35. As to the purchase-money, it has been said, as Chief Judge Jones pointed out, that the total cost of the township to the Crown was £10,834. The purchase-money was expressed in the deed to be £8,250, although the actual receipts in the schedule total £9,138 7s. 2d. Apparently in none of these figures is the sum of £1,800 paid to Mereana Clayton taken into account, and it is quite right that it should not be taken into account, because Mereana Clayton was paid for her interest by virtue of the Thermal Springs Districts Act, 1910, the sum of £1,800, but that was based upon the value of the land as at 1910 and of her not having executed the original agreements, so that in respect of her share there was no encumbrance, either actual or hypothetical, of a ninety-nine years' lease. We think that for our purposes the purchase should be considered as a purchase for £8,250, and not £9,775, which is the figure taken by the Chief Judge. The Chief Judge took substantially as his basis the figure of £15,000 at which the township was offered for sale to the Government on behalf of the Natives by Mr. Howorth and Mr. Taiwhanga in 1889, but working upon that basis and then resorting to acreage he obtained the sum of £13,775, being 2,755 acres at £5 per acre, and then deducted £9,775, which he assumed to be the price actually paid by the Government. That is how he obtained his sum of £4,000 which he recommended should be paid as compensation. But, assuming that the Chief Judge is basically correct, it seems to us that he should have taken £15,000 as the value of all the rights and interest in the township which the Maoris had and were able to sell and deducted from it only £8,250. On that basis the proper recommendation would have been £6,750.

36. It is extremely difficult to arrive with any satisfaction at anything like an accurate value of the land in 1889. We are not, however, without some evidence on this point. We have first the evidence of Mr. Osmond and Mr. Bennett given before Chief Judge Jones in 1935. Mr. Osmond assumes an area of 2,776 acres; Mr. Bennett, 2,766 acres; and each of them values it on an acreage basis. Mr. Osmond values it at £12 10s. per acre, or a total of £34,700. Mr. Bennett at £10 per acre, or a total of £27,660. But in each case there must, of course, be deducted the sum of £8,250, the purchase-money agreed with the actual sellers in 1889. The evidence of those two gentlemen is of very little, if any, value, because, firstly, it is a matter of opinion which they express based very largely on subsequent events, and, secondly, their valuations are open to the same objection as Mr. Cooney's estimates, to which we shall now refer. Mr. Cooney suggests that the land was worth, say, £24,000, made up in this way: there were, he says, in 1889 leases in existence which produced a rental of £600 per annum, and he capitalizes this sum on a 5-per-cent. basis as £12,000. He admits that the sections comprised in those assumedly existing leases represented the most valuable parts of the township and that the leases were for a term of ninety-nine years. He says, as to the rest of the valuable portions of the land, that it should have brought in an aggregate of another £600 per annum, which, capitalized at 5 per cent. is another £12,000; and he would presumably add a comparatively small amount to these two sums of £12,000 each as the value of some inferior portions of the land. The first observation to be made regarding Mr. Cooney's estimates is that, while he had what was

then accepted by both parties as good ground for believing that there were in 1889 existing leases bringing in £600 per year, that was not correct in fact. His belief was based upon a statement made by Mr. Knight, an officer of the Lands Department, at the 1930 inquiry, but further investigation has been made since we held our sittings at Rotorua, and it turns out that either Mr. Knight was mistaken in his statement or else that the statement was wrongly recorded. It would appear that the actual rent that was coming in at the time of the purchase was only about £30 a year, and if that sum were capitalized at 5 per cent., it would be £600. It may be that that is how the mistake arose. But, even apart from that possible mistake, both Mr. Cooney's estimate and the valuations of Mr. Osmond and Mr. Bennett are subject to the comment that the value of the lands could not be taken for sale purposes on the basis of a capitalization of the rentals at 5 per cent. A person buying land subject to a ninety-nine years' lease at a rental of, say, £500 would never think of paying £10,000, which would be the rental capitalized at 5 per cent., and that, indeed, is shown by what happened in the case of Mereana Clayton. Her interest in the land was valued as at 1910 in the proceedings taken under the 1910 Act at £1,800 if she was found not to be a party to the Fenton and Clarke agreements, and the land was therefore, so far as she was concerned, unencumbered by any actual or hypothetical ninety-nine year leases, but at only £300 or £310 if she was found to be a party to the agreements and her interest was therefore to be regarded as subject to the encumbrances. (It must be remembered, of course, that the general conditions in 1910 were vastly different from those of 1889, and that values had enormously increased in the intervening years.) It is difficult to understand this very large reduction of £1,500 in the event of Mrs. Clayton's interest being held to be bound by the Fenton and Clarke agreements and therefore subject to an actual or hypothetical encumbrance of a ninety-nine years' lease ; but there the fact is—the figures of £1,800 or £310 respectively were agreed between Mrs. Clayton's legal advisers and those of the Crown. We say that these observations are applicable also to the valuations of Mr. Osmond and Mr. Bennett, because they too seem to have worked upon the theory of the capitalization of the rentals at 5 per cent. Of course, on Mr. Cooney's estimate, as in the case of any other valuation, there would have to be the deduction of £8,250. It may be added, as showing the fallacy of these valuations, that in 1930 the annual rent from 306 leases granted by the Crown was only £1,800.

37. On the other hand, as evidence of value, there is the statement of Wi Hapi in 1930 when he appeared before Chief Judge Jones as representing the Ngati Whakaue. He assumed the area to be 3,020 acres. He was dealing with the matter on an acreage basis, and he suggested a price of £6 per acre on 3,020 acres, which would place the value at £18,120. From this the sum of £8,250 would, of course, have to be deducted, which would leave £9,870.

38. But, as against all the subsequent values to which we have referred, there is the actual offer which was made in 1889 by Mr. Howorth and Mr. Taiwhanga on behalf of and as representing the Maori owners. Mr. Taiwhanga was one of the Maori members of Parliament and Mr. Howorth was a well-known and reputable solicitor practising in Wellington. These two gentlemen made an actual offer to sell the land at £15,000, leaving open the question of compensation for the alleged mismanagement of the leasing system. It has been suggested that if negotiations had proceeded with Messrs. Howorth and Taiwhanga, the price of £15,000 would or might have been reduced by agreement. That may be so ; but we do not think that any intendments of that kind should be made in favour of the Crown, seeing that the Government refused to deal with Messrs. Howorth and Taiwhanga and preferred to deal with the Maoris direct. If £15,000 be taken now as a basis, there would still have to be deducted the sum of £8,250, which would leave £6,750. We would add that, if the Government had accepted in 1889 the offer made by Messrs. Howorth and Taiwhanga and purchased at £15,000, instead of going direct to the Maori owners and agreeing upon £8,250, it would hardly

have been open to the Maoris to make any complaint as to inadequacy of price, although of course, the question of compensation in respect of the alleged mismanagement of the leasing system would have still been open.

39. We are all in agreement that in fairness—and, after all, it is upon principles of fairness that Your Excellency's Commission directs us to consider these questions—the Ngati Whakaue are entitled to some compensation on the basis of the recommendations made by Chief Judge Jones, but to a somewhat larger sum than he recommended. As already indicated, we prefer to treat the two issues as one and to make a recommendation *in globo*. But we have found difficulty in agreeing upon what the amount of compensation should be. Bearing in mind, however, that this is a class of case where, on the question of quantum of compensation, it may well be said *quot homines, tot sententiæ*, and bearing in mind also the desirableness of securing finality in regard to these claims, we have considered ourselves at liberty to approach the matter in a spirit of compromise. In that spirit we recommend, taking both items together, that payment be made of a lump sum of £16,500 as a comprehensive settlement of all these Ngati Whakaue complaints and grievances. There should be no additional payment in respect of either interest or costs. We have considered both those matters in making our recommendation of £16,500 to cover everything, and we would regard the payment of that amount as sufficient in all the circumstances to meet the case with fairness and justice.

40. If this recommendation be adopted, we would suggest that the money should be disbursed through the Maori Land Board of the district pursuant to orders to be made by the Maori Land Court. After the costs incurred by the Maoris have been paid, the balance should be ordered to be distributed in accordance with any agreement between the Maoris themselves, or, if the Maoris so agree, to be applied to Maori purposes in the district. In default of agreement the distribution should be settled by the Court. We understand that all parties concur in desiring that the distribution should be settled by the Court in default of agreement. We understand also that in all probability the allocation of the compensation would be according to the order made by the Native Land Court determining the relative interests in the 20 acres of land which, after the purchase, was returned by the Crown to the Maoris. Mereana Clayton would not be entitled to share in this compensation, as she has been already paid full compensation under the Act of 1910; nor would any others who have been paid compensation under the Act of 1910. As to Kepa Ehau and any others who signed the purchase deed in the years subsequent to 1889, their interest in the compensation may require adjustment; if they are desirous of sharing in the distribution, they should be permitted to do so only on the condition of bringing into hotchpot the difference between what they would have received on the basis on which the £8,250 was assessed—*i.e.*, £7 10s. per share—and what they actually received eventually for their respective interests. We think it better, on the whole, subject to these suggestions, that the matter should be left to agreement amongst the Maoris themselves, and if they cannot agree, then the Maori Land Court would have to hear the parties and make its own order.

We have the honour to be,

Your Excellency's humble and obedient servants,

MICHAEL MYERS, Chairman.
A. M. SAMUEL, Member.
H. T. REEDY, Member.

Wellington, 6th July, 1948.

Approximate Cost of Paper.—Preparation, not given; printing (803 copies), £38 10s.

By Authority: E. V. PAUL, Government Printer, Wellington.—1948.

Price 9d.]