

17. (i) *Petition No. 120 of 1923, of Heta Kiriwi and others*, relates to the *Aurere* Block; but the *Tangonge* Block has to be considered in conjunction with *Aurere*. There have been several petitions regarding the *Tangonge* Block, but they are not included in the schedule to the Commission, though the matter of this particular block has been specifically brought before us by letter from the secretary to the Pukepoto Tribal Committee. The land in both cases was the subject of purchase by one and the same person—namely, the Rev. J. Matthews—and these two purchases, and also the purchase of another block, have always been considered to have been more or less inter-related, as, indeed, they must be because of the provision in the Ordinance of 1841 prescribing a maximum area of 2,560 acres to be granted to any one person. The petitioners in respect of the *Aurere* Block prayed for relief upon the alleged ground that no arrangement had ever been made for sale of the land to a European or to the Crown, and that the land had been “confiscated.” In the *Tangonge* case the prayer for relief was based upon an allegation that Mr. Matthews had promised to return part of the land to the Maoris. The *Tangonge* petition was in 1907 referred, under the Commissioners Act, 1903, to Mr. R. M. Houston, M.H.R., who reported that the land had been given back to the Native owners by Mr. Matthews, that it did not become “surplus land,” and was and should still be Native land vested in the Native owners. The report was not adopted by the Government, and in 1924 there was a further petition by the Maoris which was referred to the Native Land Court pursuant to section 45 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924, and was inquired into by Judge McCormick, who in his report dated 25th March, 1925, said that it was quite clear that no verbal or written promise, nor even a deed, by Mr. Matthews, could have any effect against the Crown, and that the Natives in law had no claim to the land. He added, however, “Whether there should be any concession to the Natives out of the bounty and equity of the Crown is a matter entirely for His Majesty’s Advisers, and it would be improper for me to express any opinion on that.” The whole matter was again the subject of consideration by Mr. Justice Sim’s (Confiscated Lands) Commission in 1927. That Commission took the same view as Judge McCormick, and said: “From the evidence produced at the hearing of this petition it is evident that the *Tangonge* Block was sold by the Maori owners to the Rev. Joseph Matthews, and the petitioners have failed to prove that Mr. Matthews agreed to give any part of the block back to the vendors.” We agree entirely with the views taken by Judge McCormick and Mr. Justice Sim’s Commission; Mr. Houston was clearly wrong in saying that the land had not become “surplus lands.” Mr. Justice Sim’s Commission, however, said in this connection: “It is a question whether or not, in good conscience and equity, ‘surplus lands’ in purchases of that kind”—it must be remembered that the Commission had the special circumstances of the *Tangonge* transactions in mind—“should be treated as belonging to the original Native owners and not to the Crown, and we do not express any opinion on that question.”

(ii) Reverting now to the *Aurere* petition, plainly any suggestion of confiscation is out of the question, and, even if the question involved were merely one of a promise by Mr. Matthews to return the land, clearly the land came within the category of “surplus lands,” and in law, as Judge McCormick rightly says, the promise could not be effective. That, however, still leaves open the question which was expressly reserved by both Judge McCormick and Mr. Justice Sim’s Commission and is now before us for consideration—that is to say, the question, there being surplus land in these cases, whether the Maori vendors would have had a right in equity and good conscience to the return of the surplus areas, and we have considered this petition on that basis. What we have said in regard to *Aurere* and *Tangonge* is said merely by way of explanation, though we doubt whether such explanation was really necessary, because Mr. Cooney expressly and correctly admitted that the grounds upon which the petitions were based could not be supported, and that the only question that arose for consideration in respect to the petitions was the question of surplus lands.