

resolves to grant the land it can be done without much delay or expense. But in that case I beg leave, on my own account, to make one observation. If the surplus land is to be given, let it be done on the only principle which is fair. Make a new declaration that every man shall be entitled to a grant for what he *bona fide* bought, irrespective of the original restrictions in the Ordinance of 1840 [*sic*]. Let it be announced that the old landmarks are removed, and give to those who abandoned their claims when they found they could merely get the maximum award, a fair chance to come in now and prove them. Remove, with the maximum, the schedule that fixed a scale at the rate of 8s. an acre for worthless hills bought from the Natives in 1839, while in 1862 you may buy finely grassed land from the Crown for 5s. an acre.

80. It is quite plain, however, from the context in Mr. Commissioner Bell's report that he was not advocating any such alteration; he was merely stating his view of the equities of the case if any alteration were contemplated by the Legislature. His own view, like that of the British and colonial authorities, was that the surplus land was, and should remain, the property of the Crown. He no doubt thought, as the British Government thought, that any lands which the purchaser lost by the application of the yardstick and the grant on that basis of an area substantially less than the area comprised in the deed of sale were amply compensated for by the security of title and personal and other advantages which the purchaser obtained by reason of the British Crown taking over the sovereignty of the country. But he makes it quite clear that, in his view, if the surplus were not to be retained by the Crown, it should in justice and equity go to the purchaser who had bought it in good faith and for fair consideration. That view certainly appeals to me: it seems to do no more than follow the dictates of common honesty.

81. Since the sittings of the Commission concluded my attention has been called to some observations made by a Dr. S. M. D. Martin in certain of a series of letters published in book form in 1845. In my opinion, neither the book nor the author commands any authority, but I refer to it because I understand that the other members of the Commission are inclined to place some reliance on it, and, if I refrained from reference to it, I might possibly be thought by some critic of this memorandum or student of Maori history to have omitted to consider something which may at first sight appear to be relevant to the question of "equity and good conscience."

82. The first letter that I refer to, though not the earliest in point of date, is dated the 6th April, 1844, and purports to describe what happened on the occasion of the ceremony that took place immediately after the landing of Governor Fitzroy at Auckland on the 26th December, 1843. The material part of the letter (Martin's book, pp. 183 and 184) is as follows:—.

Among the parties introduced to the Governor were several Natives, whom he addressed at great length through the Chief Protector, Mr. Clarke, informing them of the anxiety of the Home Government to benefit them, for which purpose he said he had been sent to them. After this address, the Natives handed to him two well-written Native addresses, embodying the subject of their numerous grievances since the establishment of British authority. They particularly dwelt on the injustice of preventing them from selling their lands to Europeans, as well as that of the Crown resuming the surplus lands of the old settlers, or land-claimants. The subject of Customs, especially the duty on tobacco, was also dwelt upon. These addresses were read in English by Mr. Clarke, who was instructed by the Governor to inform the chiefs that he would do all he could to adjust their grievances; that he was requested to assure them that the Queen of England sought no benefit to herself from their lands; that she had sent a Governor to them for the purpose of preserving peace and order, and teaching them to grow up in the habits and arts of civilized life. With regard to the surplus lands, he disclaimed on the part of the Crown any intention of reserving them—they would revert to the Natives themselves. The other subject—the liberty of selling their own lands—he hoped would also be granted to them. He was required to report upon it, and if proved to their benefit, the right would be conceded; in the meantime, Europeans would as soon as possible, under certain regulations, be permitted to rent lands from them. The Natives having so far received favourable answers to their various questions, appeared highly pleased, and left with the impression that they were immediately to be permitted to sell their lands—for they have no idea of the difference between the promise and the fulfilment of the same, especially if the party concerned be a European. I feel quite certain, unless the Governor almost immediately permits them to sell their lands, that they will be more discontented than ever. They have been so anxiously looking out for his arrival, and so fully impressed with the idea that he was immediately to remove all restrictions, that they will not rest quite so satisfied unless he do it.