

and not be kept by the Crown was directly due to seeds sown in their minds by purchasers who were suffering from what they considered to be a gross injustice at the hands of the Crown. One thing anyhow is clear—no equity could arise in favour of the return of the land to the Maori simply because of the Maori mind being inflamed or affected by diatribes against the Government authorities by disappointed purchasers.

89. But, notwithstanding all that I have said, and that in my opinion the foundation of the Maori claim as presented to the Commission according to my understanding of it cannot be sustained, it does not mean that there cannot be made out in favour of the Maoris a claim in equity and good conscience to at least some portion of the surplus lands on other grounds or in other respects than those urged by counsel. But even rights according to equity and good conscience must be based on reason and principle and not on mere sympathy, sentimentality, expediency, or speculation. I have endeavoured to find, and I think that I have found, a principle or principles which would seem to accord with good sense and reason, which would have done justice to both the original purchaser and the Maori vendor, and which therefore may be applied to-day as between the Maori vendor and the Crown as the successor in law and equity to the purchaser's rights. One principle which does not favour the Maori I have stated in paragraph 70. But the main principle upon which I am acting, and which does favour the Maori, may be best explained by illustration.

90. I have already said that, speaking generally, the boundaries of the land, the subject of each sale and purchase, were described by physical or geographical features. When the claim came originally before the Commissioners the purchaser was required to state the supposed area of the land purchased—that is to say, the area which he believed he was purchasing for the consideration expressed in the deed. Assume, for example, a case where the land sold was described in the deed of sale as being all the land from one hill to another in length and from one stream to another in breadth. Assume also that when the claim comes before the Commissioner the purchaser says that he supposed the area to be 1,000 acres, and that was in point of area what he thought he was purchasing and therefore paying for. The Commissioners find that the transaction was made in good faith, but that on the yardstick the purchaser would be entitled to a grant of only 800 acres. They recommend a grant accordingly, and a grant is then issued for 800 acres, but all that can be said in the absence of a survey is that the 800 acres, the lines of which are not defined, are located within the land described in the deed of sale. Later on, when the case came to be reviewed by Mr. Commissioner Bell, the area on survey was found to be, say, 5,000 acres. What Mr. Commissioner Bell then did was to make additions to the 800 acres in accordance with the provisions of the Land Claims Settlement Act, 1856, which, let it be assumed, brought the 800 acres to 1,200. The original grant having been called in, a new grant for 1,200 acres would then be issued, the boundaries of which would be defined in the grant. Thus there would be left 3,800 acres of "surplus land." Now, the question is as to which party—the purchaser or the Maori vendor—had the right in equity and good conscience to such 3,800 acres. There were a large number of cases of this kind.

91. There are two angles of approach to that question. The purchaser may say, "I bought the whole area as described in the deed and within the boundaries as there set out; what the actual acreage was is of no importance, because I bought, and the Maori intended to sell, the whole of the land whatever the area." On the other hand, the Maori may say, "Yes, but you had acreage in mind, whereas I knew nothing about acreages. You admit that you considered the area you were buying to be 1,000 acres, and you must be assumed to have computed your purchase-money on that basis. In those circumstances it is not in accordance with equity and good conscience that you should have more than the quantity you thought you were purchasing and paying for. If there is more than you thought you were purchasing and paying for, then the surplus should come to me."