109. On the other hand, it is difficult to see that the Maori vendor had any right in equity and good conscience, seeing that he had been actually paid for the excess area of land. The Proclamation was made as a result of his insistence. The transaction was not pressed upon him; it was made on his own volition and at his own initiative—and he was paid for all that he had agreed to sell, including what we call the surplus. As far as the Crown is concerned, although Governor Fitzroy exceeded his instructions, the Crown did in substance elect ultimately to recognize the full extent of the purchases made by the holders of the waiver of pre-emption certificates, but refused to grant to the purchaser, or (where payment was made instead of granting land) to pay him for more than the area actually named in the certificate.

110. At law the surplus lands arising from these penny-per-acre Proclamation transactions vested in the Crown, and, seeing that neither the purchaser nor the Maori vendor had any equity in them, the strict legal position should prevail. But it may be said that there is a difference in the Crown's position between these lands and the surplus lands arising under the "old land claims" in cases where on the principles laid down there is no equity in the Maori vendor. Before the Crown assumed sovereignty over the country the purchasers were at liberty to make their purchases if they chose at the risk, of course, of losing the land or part of it if the Crown subsequently assumed sovereignty, but the Crown could not interfere unless it did assume sovereignty. After the Treaty, sales were prohibited by its terms except to the Crown, and the lands now being considered were purchased under proclamations made by the Governor without authority. Apart from that, some of the purchasers bought land in excess of their permits which they knew or should have known it was unlawful for them to acquire. In these circumstances I can quite understand the force of the sentiment that it may not appear to be equitable that the Crown should have retained the surplus. Nevertheless, if there were nothing more than that, I should feel compelled to say that there was no equity in either the purchaser or the Maoris, and that therefore the legal position must prevail; that the land should have been (as it in fact was) retained by the Crown; and that no allowance should be made to the Maoris; and this would apply to the 9 acres of surplus under the 10s. per acre waiver Proclamations as well as the 16,418 acres under the one-penny-per-acre-waiver Proclamation.

111. But I think that there is another aspect of this surplus land question which justifies a broader view being taken as a matter of equity and good conscience to the advantage of the Natives. In determining the surplus lands under the "old land claims" in respect of which the Commission considers the Native vendors could have had a claim in equity and good conscience, the total of 71,155 acres would have been somewhat increased but for the "survey allowances" made by Mr. Commissioner Bell under the Land Claims Settlement Act, 1856. The effect of those "survey allowances" was that, in cases of surplus where the Native vendor would in this Commission's view have had an equity, the area fixed for survey allowance came out of the surplus whereas in equity only part of it should have been, as it were, debited in that way. In the result the total of 71,155 acres is less than it would have been if the charge for "survey allowance" had been apportioned. Just by how much the total of 71,155 would have been increased it is very difficult to say, but I think that it would be fair to regard the 16,427 acres of "pre-emption surplus" as being a reasonable equivalent of the aggregate area lost to the Maoris in the manner I have just indicated. On that ground—and that ground alone—I feel justified (though not without some hesitation) in, as it were, setting off the surplus against the loss and including the 16,427 acres with the 71,155 as surplus lands in which the Maoris would have had an equity. I am satisfied that this is on the whole quite fair to the Maoris.

112. There is one class of case that perhaps calls for some special mention. Not all the claims where the purchasers were found by the Commissioners to have made *bona fide* purchases from the Natives were dealt with on the basis of the purchaser being