

the Maoris had an equity, as aforementioned. This total was made up under old land claims 71,155 acres, under the ten shillings-an-acre waiver, 9 acres, and under the penny-an-acre waiver, 16,418 acres.

89. (a) This unanimous decision of the Commission answers question (a) of the order of reference.

(b) Regarding this question we are at variance, hence the necessity for the separate memoranda.

(c) This question has been referred to in the unanimous report of the Commission and is being decided together with the general question of surplus lands.

90. We have not had to consider the legal aspect of this long-standing dispute. That has been decided long since. We are solely concerned with settlement on the broad basis of equity and good conscience as directed by Your Excellency's Commission.

91. Mr. Meredith, in his submissions to the Commission, endeavours to show that the Maoris had no claim under what he refers to as "the equity and good conscience doctrine." His reasoning under the above heading is in contradistinction to the unexpressed but implied sentiments of Judge McCormick, Mr. Justice Sim's Commission, and the three Judges of the Native Appellate Court hereinbefore referred to.

92. However, the Commission have decided to disagree with Mr. Meredith by declaring that the Maoris have an equity; therefore there is no necessity to quote his submissions *in extenso*, with the exception of one important statement as follows:—

*Supposing 100,000 acres of land, and it should have gone back to them. The greatest equity you could say, "Well, here, take it." Supposing it was given back to them. Well, the test is, What could they have got for it? isn't it?*

93. Had these lands been returned when the surplus was created, the test might have been as suggested by Mr. Meredith, in which case there would have been no necessity for this Commission; but as they were not returned and have been in the possession of the Crown for over a hundred years, the crucial test is no longer what the Maoris might have got for their lands then, but the amount of compensation to be paid to them *now* as directed by (b) in the order of reference, which is as follows:—

(b) If it be reported that the surplus lands or any part thereof ought in equity and good conscience to have been so returned or vested or so regarded, then to recommend what compensation in money or money's worth should *now* be granted to the representatives or descendants of the aboriginal owners, parties to such original alienation or disposition as aforesaid.

94. We deem it important to quote fully the submissions of Mr. Cooney, which are as follows:—

(1) This Commission is the culmination of numerous and vigorous complaints and protests extending over many years by a large body of Maoris who claim that the Crown has not honoured its obligations of protecting their rights and property, whereby they have suffered grave injustice.

(2) Whatever factors and motives induced the British to take steps to establish British sovereignty in New Zealand, the protection of the rights and property of the Maoris and to secure to them the enjoyment of peace and good order was a dominant consideration. This is clear from Hobson's instructions.

(3) The serious view taken by the British Government of unfair purchases of land from the Maoris for inadequate consideration is evidenced by the Proclamations of 30th January, 1840—declaring all such transactions would not be recognized, and prohibiting further purchases from the Maoris. This, it is to be noted, was prior to the signing of the Treaty of Waitangi, and the Maoris would be entitled to assume when accepting the Treaty that all such transactions would result in the restoration to them of lands purchased on unfair terms by Europeans or, at any rate, that such transactions would be revised and their interests protected and justice done to them.

(4) Prior to British sovereignty all lands were owned and occupied by the Maoris tribally and communally according to their customs and usages.

(5) The existing communal right was recognized by the Treaty of Waitangi.