

6. In the present Commission the inquiry is not limited to the ascertainment of rights merely in equity. The expression used is “in equity and good conscience.” This expression has not been uncommon in New Zealand legislation, particularly in legislation dealing with the Maori and the alienation of his land. It has been actually the subject of a judgment of the Court of Appeal, to which I shall refer a little later. Suffice it to say for the present that the use of the expression “good conscience” strengthens the view that what the Commission is directed to consider is the question of doing justice in a broad sense to the Maori in connection with the surplus lands. Wherever, therefore, I may hereinafter use the term “equity” or “rights in equity” or “in equity and good conscience” I must be understood as using these terms in the popular meaning and not in the legal sense; and I also use the terms “equity” and “justice” as synonymous.

7. I shall proceed presently to state as briefly as possible, and without going further than I consider is strictly material to the questions that the Commission is asked to report upon, the history of the original purchases from the Maori and the way in which these “surplus lands” arose. In the meantime, there are certain preliminary observations that should be made. The question of the rights generally to the surplus lands has given rise to a great deal of confusion of thought, and it is necessary to dispel that confusion if a clear understanding of the position is to be obtained.

8. For example, it has been urged upon the Commission over and over again that “the Crown acquired these surplus lands for nothing”; that, having acquired them for nothing, the Crown can have no equitable or moral right to them, and that therefore they should have reverted to the Maoris. That is entirely fallacious; and the basic statement that the Crown acquired the lands for nothing (even if it be the fact) completely begs the whole question. The rights of the Maoris in equity and good conscience must depend upon the moral strength of their own case, not upon some fact which they suggest constitutes a weakness in the Crown’s case, but which, even if correct, is really quite irrelevant to the issue. For example, if one person has bought property, whether real or personal, from another (whoever and whatever the vendor may be)—assuming for present purposes that the purchase was made on equitable terms—and then the Crown comes along and confiscates the property, whether with or without good reason, or in some way the land becomes forfeited, the vendor obviously can have no rights, either legal, equitable, or moral, as against the Crown. The vendor would have parted with the property by his sale to the purchaser, and the only person who could possibly have any claim or any right in equity against the Crown would be the purchaser. In this inquiry, however, the words “despoiled” and “spoliation” have been used by counsel for the Maoris to describe the actions of the Crown as against the Maoris; but the truth is that, speaking generally, and subject to certain exceptions which will be mentioned and developed later, if any one has been “despoiled” of his property or rights, it was not the Maori vendor, but the purchaser who bought from him.

9. The Maori argument before the Commission from beginning to end assumed a case of conflicting rights or equities as between *the Crown* and the Maori. It is really nothing of the kind. It is primarily a case of conflicting equities as between *the purchaser* (in whose place the Crown now stands) and the Maori vendor; and if in any case a purchase was made *bona fide* and on equitable terms which would have entitled the purchaser in justice either to the whole of the land purchased or to a particular portion of it, and the Crown then takes, or confiscates—if one wishes to use strong language—any of the land to which the purchaser was in justice entitled, I repeat that, if any one had any right to complain, it was the purchaser, and not the vendor. The fact, if fact it be, that the Crown took or acquired the land from the purchaser for nothing was no concern whatever of the original Native owners and has no bearing on the matter that the Commission is called upon to consider. Any assertion to the contrary merely tends to confuse an issue which to my mind is perfectly clear and not open to doubt as a matter either of law or of conscience.