

10. It is said that the Crown made no payment to the Native vendor. Of course it didn't, for the very good reason that the Native vendor had already been paid by the European purchaser, and if any one was entitled as a matter of justice and equity to claim any purchase-money or anything else from the Crown, I say again that it was the purchaser and not the vendor. Any further payment by the Crown to the Maori would have meant that he would be paid twice over for the same property ; although in point of fact it did happen in quite a number of cases that the Maori was paid over again in this way.

11. Nor, indeed, is it correct to say that the Crown gave nothing to the European purchaser for the land. True it made no payment and gave no consideration in the sense in which that expression is used in referring to a transaction as between vendor and purchaser, but it did give a great deal to the purchaser. It gave law and order in place of chaos and anarchy ; it gave an English title to land in exchange (as Mr. Commissioner Bell puts it) for " a precarious occupation under the law of the strong arm " ; it gave the individual security of his person and of his rights and liberty. All this was surely valuable consideration to the land-purchasers for what amounted to a surrender of portion of their land, a surrender which, after all, was necessary to provide the necessary sinews for the carrying-on of Government.

12. But although, as I have said, the Commission has to consider the question of the claims of the Maori vendors in equity and good conscience—in other words, to consider the position on the basis of broad justice as opposed to strict justice according to law—it is necessary to a proper determination of this issue that the legal rights should be first ascertained. If the legal rights appear to do substantial justice, they should not be lightly disregarded and set aside. After all, justice even in the most liberal sense should be based upon reason, common-sense realities, and reasonable inferences, and not upon sentimentality, expediency, speculation, or fanciful theories. What I apprehend the Commission has really to do in this case is to see if, in what way, and to what extent, the legal position falls short of doing justice in the broad sense, and, in substance, to recommend how any apparent deficiency may be made good.

13. Fortunately, there is no doubt or dispute as to the legal position. It is briefly, and for practical purposes correctly, stated in a memorandum of the 25th April, 1887, written by Mr. John Curnin, who was then, or subsequently became, Parliamentary Law Draftsman. The statement is as follows :—

By international law all the territory in a country which becomes conquered by or ceded to a nation belongs to the nation and not to its individual members, or, as it is generally said, vests in the Sovereign of the nation as part of the estate of the Crown.

This was the case in New Zealand, saving as modified by the Treaty of Waitangi, which conserved to the Natives their lands—that is to say, the lands in their possession at the time of making the Treaty.

If at the time of that Treaty it could be proved that they had parted with any of their lands, those lands at once belonged to the Crown.

The question of surplus lands must not be debated in relation to the Natives, but really in relation to the Crown. For it is indisputable that all lands bought by individuals from Natives in New Zealand became absolutely the property of the Crown on the Treaty of Waitangi, or even before that ; and that it was out of the just bounty and equity of the Crown that the old land claimants were granted some land ; which no doubt they had originally bought, but which equally without doubt belonged to the Crown by right of International Law.

14. Mr. Curnin was only expressing the view which had been taken throughout by the British Government in and from the year 1839, when Captain Hobson was first commissioned to come to New Zealand. It was the view of English lawyers and of American authorities alike, as shown in a very lucid speech of Sir George Gipps, Governor of New South Wales, on the 9th July, 1840, on the second reading of the New South Wales Bill for appointing Commissioners to inquire into claims of grants of land in New Zealand. It was the view taken in 1847 by the Supreme Court of New Zealand (Chief