25. Commissioners were actually appointed under the New South Wales Ordinance mentioned in paragraph 22, but very shortly after that Ordinance was passed—viz., on the 3rd May 1841—New Zealand was, pursuant to Royal Charter dated the 16th November, 1840 created a separate colony with its own Governor and Legislative Council, and Captain Hobson, who had previously been Lieutenant-Governor when the country was a dependency of New South Wales, became Governor of the Colony. There was then enacted—on the 9th June, 1841 (Session I, No. 2)—an Ordinance which did not contain any short title, but which is always referred to and known as *The Land Claims Ordinance, 1841*. That Ordinance first of all repealed the New South Wales Ordinance and then proceeded to deal with the settlement of the claims made on the basis of purchases prior to the Proclamations by Sir George Gipps and Captain Hobson, of January, 1840. These claims are generally known as the "old land claims"; and it is the surplus lands arising out of those claims that this Commission is concerned with now. The Commission has also, under Your Excellency's direction, to deal with surplus lands that have arisen in connection with what are known as the "ten-shilling-per-acre Proclamation" and the "penny-per-acre Proclamation," which I shall explain later. Somewhat different considerations may apply to these last-mentioned "surplus lands" from those which apply to surplus lands arising from the settlement of the "old land claims." For the present I propose to deal only with the surplus lands arising from the settlement of the "old land claims."

26. The Ordinance then by clause (2), after reciting that it was expedient to remove certain doubts which had arisen in respect of titles of land in New Zealand, declared, enacted, and ordained that all unappropriated lands within the Colony of New Zealand, subject, however, to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the colony, were and remained Crown or domain lands of Her Majesty, her heirs and successors, and that the sole and absolute right of pre-emption from the aboriginal inhabitants vested in and could only be exercised by Her Majesty, and that all titles to land in the colony which were held or claimed by virtue of purchases or pretended purchases, gifts, conveyances or pretended leases, agreements, or other titles, either mediately or immediately from the chiefs or other individuals of the aboriginal tribes inhabiting the colony, and which would not or might not thereafter be allowed by Her Majesty were, and the same should be, absolutely null and void.

27. I pause again to make two observations. The first is that the *Land Claims Ordinance 1842*, Sess. II, No. 14, enacted (by clause 2) that "all lands within the colony which have been validly sold by the aboriginal Natives thereof are vested in Her Majesty, her heirs and successors, as part of the demesne lands of the Crown." The Ordinance of 1842 was disallowed by Her Majesty, and therefore did not come into effective operation. Clause 2, however, was merely declaratory of the common law, and, though the same words are not used in the previous Land Claims Ordinance of 1841, the same meaning is implicit in clause 2 of the earlier Ordinance. My second observation is that that clause and the provisions contained in other clauses of the 1841 Ordinance in substance give full effect to the promises of the Crown made to the purchasers of land from the Maoris by Sir George Gipps and Captain Hobson in their respective Proclamations of January, 1840, and to the Maoris by what Captain Hobson told the chiefs and by the provisions of Article Two of the Treaty of Waitangi.

28. Clause 2 of the Land Claims Ordinance, 1841, in substance vested in the Crown all the lands in the colony, subject, as to the lands still in the ownership of the Maoris, to their rightful and necessary occupation and use. The clause then provided, in effect, that all titles claimed to land by virtue of previous purchases, &c., should be absolutely null and void. But plainly that does not mean null and void as between the purchaser and the Maori vendor; all that it means is that, in accordance with the legal position, the Crown took over, as demesne lands of the Crown, lands which had been bought