

by its subjects prior to the Crown obtaining sovereignty in New Zealand, and that the purchases from the Natives were to be null and void *as against the Crown*. There was no legal obligation on the Crown to part with any of these lands or any portions thereof to the purchasers. No doubt, had that attitude been taken up by the Crown, the purchasers would have had very grave reason to complain, but the Maoris would have had no legal ground of complaint, nor would they have had any moral ground of complaint unless it were shown, in respect of any particular purchase, that such purchase had not been made in good faith and on equitable terms.

29. It is plain, then, that the Maoris had no claim at law to any of these surplus lands, and indeed that is admitted now by Mr. Cooney. I use the word “now,” though it should in fairness be said that I am not aware that Mr. Cooney can be said at any time to have disputed the legal position.

30. The determination of the question of rights in equity and good conscience to the “surplus lands” depends upon an examination of the Land Claims Ordinance, 1841, and subsequent legislation, and the way in which the old land claims were dealt with. Clause 3 of the Land Claims Ordinance, 1841, recited that Her Majesty had in her instructions dated the 14th August, 1839, under the hand of one of her principal Secretaries of State been pleased to declare her gracious intention to recognize claims to lands which might have been obtained on equitable terms from the chiefs or aboriginal inhabitants of the colony and which might not be prejudicial to the present or prospective interests of such of Her Majesty’s subjects who had already resorted or who might thereafter resort to and settle in the colony. It then recited that it was expedient and necessary that in all cases wherein lands were claimed to be held by virtue of any purchase, conveyance, lease, agreement, or any other title from the chiefs or tribes, or any other aboriginal inhabitants, an inquiry be instituted into the mode in which such claims to land had been acquired, the circumstances under which such claims might be and were founded, and also to ascertain the extent and situation of the same. It then proceeded to authorize and empower the Governor to appoint Commissioners with power and authority to hear, examine, and report on all claims to grants of land in virtue of such titles.

31. By clause 6 it was enacted and ordained, *inter alia*, that in hearing and examining all claims to grants and reporting on the same, the Commissioners were to be guided *by the real justice and good conscience* of the case—i.e., as between the purchaser and the Maori vendor—without regard to legal forms and solemnities. It is plain that clauses 3 and 6 imposed upon the Commissioners the primary duty of ascertaining, in the case of each claim, whether the transaction on which the claim was based was made on equitable terms, and it is also plain that the determination whether or not the purchase was made on equitable terms involved an examination and determination as to the adequacy of the consideration for the purchase. I should have thought that that was beyond doubt implicit in the language used in clauses 3 and 6 of the Ordinance, but, if authority be necessary to support this view, it is to be found in the judgments of the Supreme Court and the Court of Appeal of New Zealand in *Moore v. Ngarino Horima and others*, 14 N.Z.L.R. 609, in which it was held that where the consideration was not a reasonably adequate or fair one, such an inadequacy of consideration would, without other circumstances, be a ground upon which a Trust Commissioner might refuse his certificate in respect of an alienation of land by Natives as being “contrary to equity and good conscience” within the meaning of section 5 of the Native Land Frauds Prevention Act, 1881.

32. Moreover, there is documentary evidence that Commissioners Godfrey and Richmond, who had been first appointed under the New South Wales Ordinance and subsequently confirmed or reappointed under our own Ordinance of 1841, acted upon this view, for in a letter written by them to the Colonial Secretary, dated 22nd July, 1842, they say: “It is impossible for a Court like ours—wherein *we are obliged to ascertain very clearly that the Natives have actually received a fair consideration for their*