to the area previously awarded the allowances authorized by the Act of 1856, and on this basis a new grant was issued to the claimant. In those cases, again, the difference between the area finally granted and the surveyed area was "surplus land" which belonged in law to the Crown.

61. The aggregate of all these surplus lands, according to Mr. Commissioner Bell's report (inclusive of "surplus lands" in connection with Governor Fitzroy's proclamations), amounted to 204,000 acres. Mr. Cooney suggests that this aggregate should be increased by about 28,000 acres. On the other hand, counsel for the Crown contend that there are no real "surplus lands" at all or, if there are any, that Mr. Commissioner Bell's figure of 204,000 cannot be accepted and must be considerably reduced for various reasons. One reason is that Mr. Commissioner Bell, in his description of surplus lands, includes areas which are not surplus land at all, but simply lands which in various ways he found to be waste lands available for settlement, and he was not, after all, concerned with the distinction between those lands and surplus lands in the true sense. Indeed, he was not so much concerned in the question of surplus lands as he was in the question of determining what area each claimant was entitled to; and, according to his treatment of the case, the ascertainment of the surplus lands was simply a matter of arithmetic—that is to say, of subtracting the area actually granted from the total area surveyed. Moreover, Mr. Commissioner Bell did not deduct from his aggregate some of the so-called surplus land which had already been the subject of separate purchases by the Crown itself from the Maoris and which therefore had changed its character from "surplus" to "waste lands"; and in any case there have been purchases since Mr. Commissioner Bell's report of large areas (which have been referred to as "blanket" purchases) which include some of the so-called surplus lands and would therefore further reduce Mr. Commissioner Bell's figure. Be all that as it may, so far as this Commission is concerned, the area of surplus lands has had to be ascertained by meticulous examination of each case and by aggregating the results; and it is the indisputable fact that the ultimate area of true surplus lands, taking into account all the circumstances and particularly the Crown purchases direct from the Natives both before and after the date of Mr. Commissioner Bell's report of lands which he included as "surplus," is very much less than his figure of 204,000. It is also less than the figure shown in the schedules supplied by the Lands Department. That is accounted for by the fact that those schedules are based on the "yardstick" computation which the Commission rejects.

62. Mr. Cooney contends first in substance that the Natives were *deprived* of the surplus lands by a "highly technical rule of law which was implied in the act of cession." That, he says, is his "essential submission." If that were really the essence of the case, the present claim by the Maori would entirely fail. But the contention is fallacious. It was their own act of sale, and not any technical rule of law applied in their cession of sovereignty, that extinguished their title and "deprived" them of the lands of which the "surplus lands" form part.

63. But I take the real case for the Maori as presented to this Commission to be that all the "surplus lands" should on a somewhat different ground have reverted in equity and good conscience to the Maori vendor. The basis of the argument is that the schedule or "yardstick" was a statutory measuring rod of *value* of the land *as between the purchaser and the Maori vendor* according to the year, or portion of the year, in which a purchase was made, and therefore of the area which the purchaser must be assumed to have bought and paid the Maori vendor for. If that argument were sound, then no doubt *prima facie* the whole of the "surplus" land should in each case have reverted to the Maori vendor because *ex hypothesi* it had never been sold. Mr. Meredith, on behalf of the Crown, vehemently disputes the soundness of Mr. Cooney's argument. To meet the possibility, however, of its being upheld, Mr. Meredith has produced voluminous and elaborate tabulated lists purporting to show that, if the yardstick was the