70. *Prima facie*, that would seem undoubtedly to be the position. In any case where a purchase was made in good faith and for a fair consideration, and the purchaser would have been entitled but for the yardstick to a grant of the whole of the land purchased, but by reason of the yardstick he received a grant for a smaller area than he had agreed to buy and the vendor to sell, thus giving rise to an area of what has been included in the general term of "surplus lands," the land would remain as demesne land of the Crown, and the Maori could have no claim to it either at law or in equity and good conscience. That seems to me to result as a matter of principle.

71. It is suggested by Mr. Cooney that the question of surplus lands going to the Crown was not thought of until Mr. Commissioner Bell had made his report in 1862. That is not correct, although it is correct that the question attained a prominence by reason of Mr. Commissioner Bell's report which had not previously attached to it. As a matter of fact, the question was specifically raised by Governor Fitzroy before he took office as Governor in New Zealand. In a letter of 16th May, 1843, to Lord Stanley, who was then Secretary of State for the Colonies, Captain Fitzroy asked the specific question: "To whom should land now belong which has been validly purchased from New Zealand aborigines, but which, exceeding a certain specified quantity, cannot be held under existing laws by the original purchaser or his representative?" Captain Fitzroy's own view was that the land in question ought to return to these aborigines from whom it was purchased, unless they or their descendants should not prefer any claim, in which case Captain Fitzroy presumed that it would lapse to the Crown. On 26th June, 1843, Lord Stanley replied to Governor Fitzroy on this question as follows:—

1. Your first inquiry is in the following terms: "To whom should land now belong which has been validly purchased from New Zealand aboriginals, but which, exceeding a certain specified quantity, cannot be held under existing laws by the original purchaser or his representative?"

The case thus supposed is (if I rightly understand it) a case in which the contract with the Natives shall be found by the Land Claims Commissioners to have been untainted by any such fraud or injustice as would render it invalid. It is assumed that neither on the ground of inadequacy of price nor on any other ground could the former proprietors of the land require that the sale of it should be set aside. But it is at the same time supposed that the land then acquired exceeded the limitation which defines the extent of land to be holden by any European under a title originally derived from the aborigines. The question then is: Who is the proprietor of the excess? To that question it must be answered that, by the terms of the supposition, the purchaser is not the proprietor; and that the hypothesis being that the claims of the aboriginal sellers have been justly extinguished, they are no longer the proprietors. Hence the consequence seems immediately to follow that the property in the excess is vested in the Sovereign as representing and protecting the interests of society at large. In other words, such land would become available for the purposes of sale and settlement.

But in reducing any such general principle to practice, not only the difficulties you yourself suggest, but others not now distinctly perceptible, will probably arise. Especially it may happen that the Natives may be found in possession of some such lands, or may be prompted by feelings entitled to respect, earnestly to solicit the resumption of them. In any such contingency it would be your duty (I am well aware how much it would be your inclination) to deal with the original proprietors with the utmost possible tenderness and even to humour their wishes so far as it can be done, compatibly with the other and higher interests over which your office will require you to watch.

72. The same view as is expressed by Lord Stanley in his letter of the 26th June, 1843, is implicit in the original Instructions of the 14th August, 1839, from the Marquis of Normanby to Captain Hobson. It must be understood that when Lord Stanley speaks of the limitation which defines the extent of land to be holden by any European under a title originally derived from the aborigines, he is by necessary implication referring to the excess created by the application of any limitation which might be imposed by the Crown, and the limitation created by the application of the yardstick is just as much a limitation for that purpose as the limitation created by the fixing of 2,560 acres as the maximum which could be held in any event; and obviously the same principle must apply to the surplus in either case.

73. Furthermore, as early as 19th September, 1842, the then Surveyor-General at a meeting of the Executive Council was asked certain questions: "Are you aware of the number of claims to be disposed of under the Land Claims Ordinance?" His