

MEMORANDUM BY THE CHAIRMAN

1. Even if the Commission were unanimous in a recommendation as to the amount of compensation to be paid in this case, Your Excellency's advisers and the public who have to pay would be entitled to expect a full statement from the Commission by way of explanation and justification. Where there are, as is the case, two widely differing recommendations, a statement of the supposed justification for each becomes all the more necessary. Hence the separate memoranda, one by Messrs. Samuel and Reedy, the other by myself. My personal view is that the importance and complexities of the case call for a comprehensive survey, which I shall endeavour to make.

2. As will be seen in due course as I proceed, the Maori case was based upon a certain principle, the principle of what has been called the "yardstick." That basis, for my own part, I totally rejected, and, after a great deal of understandable dubiety (for on first impression, and, indeed, until one has acquired a clear understanding of the whole problem the question is a very perplexing one), and as the result of very much discussion and consideration, I understood the other members of the Commission to accept my view. Expressing again my own point of view, the rejection of the "yardstick" basis would have been fatal to the Maori claims, which would accordingly fail unless some other principle or principles could be found to support them.

3. As the result of much consideration, I found myself able to propound certain principles which do not appear to have been previously developed or even enunciated, but which seemed to me to be equitable and to justify a finding in partial support of the Maori claims. Again, after much discussion, I understood the other members of the Commission to accept the principles that I propounded. At all events, we acted upon them in considering and deciding, in the case of each transaction, the area (if any) of surplus land, and to what portion (if any) of such area the Maoris would have a claim under the terms of our Commission. The principles so acted upon will be stated in due sequence, so that he who reads may understand. But, seeing that I myself propounded them and accept responsibility for them, I consider it due to Your Excellency's Advisers, to the public, to the Maoris, and to myself, though I fear it may involve a somewhat lengthy dissertation, that I should give a history from my own point of view of what I regard as the essential facts and features of the case.

4. But first, in order that there may be no misconception as to the Commission's line of approach to the investigation and determination of the matters confided to it, I propose to state my own view, in which I understood the other members to concur, of the interpretation of the mandate upon which the Commission's inquiry was based.

5. The term "equity," like the term "justice," is used in different senses. As is pointed out by various learned text-writers, including Sir John Salmond in his work on jurisprudence, justice is of two kinds, being either (i) natural or moral justice, or (ii) legal justice. "The first of these is justice in itself—in deed and in truth; the second is justice as actually declared and recognized by the civil law and enforced in the Courts of law." Similarly, when a lawyer speaks in legal parlance of equity or of rights in equity, he refers to that branch of our law or jurisprudence called equity as administered in our Courts. As Sir John Salmond points out, equity, according to the nomenclature of lawyers, is now really a particular kind of law, being that body of law which is administered in the Court of Chancery, as contrasted with the other and rival system administered in the common-law Courts. (In New Zealand we have but the one Court, the Supreme Court, which administers both systems.) "Equity," he says, "is Chancery law as opposed to the common law The final result was the establishment in England of a second system of law standing over against the older law, in many respects an improvement on it, yet, no less than it a scheme of rigid, technical, predetermined principles." The term "equity" is also used in a popular sense as being practically equivalent to natural justice, and, indeed, as Sir John Salmond says, it is really nothing more than a synonym for natural justice, or, may I put it, justice in a broad and popular sense.