I think it quite probable that the Rev. Joseph Matthews did make some promise to the Natives to return part of the land which they had purported to sell to him. The witness Timoti Puhipi was, in my opinion, a straightforward and reliable man, and his son Riapo bore a similar reputation. But I do not see what power Mr. Matthews had to return any of this land to the Natives. The law on the subject is lucidly set out in memorandum to the Assistant Surveyor-General, Auckland, by Mr. John Curnin on the 15th April, 1887. This memorandum is as follows:—

"By international law all the territory in a country which becomes conquered by or ceded to a nation belongs to the nation, and not to its individual members; or, as it is generally said, vests in the sovereign of the nation as part of the estate of the Crown. This was the case in New Zealand saving as modified by the Treaty of Waitangi, which conserved to the Natives their lands—that is to say, the lands in their possession at the time of making the treaty. If at the time of that treaty it could be proved that they had parted with any of their lands, those lands at once belonged to the Crown. The question of surplus lands must not be debated in relation to the Natives, but really in relation to the Crown. For it is indisputable that all lands bought by individuals from Natives in New Zealand become absolutely the property of the Crown on the Treaty of Waitangi, or even before that; and that it was out of the pure bounty and equity of the Crown that the old land claimants were granted some land, which no doubt they had originally bought, but which equally without doubt belonged to the Crown by right of international law."

Mr. Curnin's view appears to me to be entirely sound, and is the principle that, so far as I know, has always been acted upon. It was followed in the Native Land Court by a decision at Rawene on the 16th March, 1885, where it was laid down that old land claims are demesne of the Crown.

The alienation to the Rev. Joseph Matthews was made prior to the Treaty of Waitangi, and therefore, as laid down by Mr. Curnin, when the treaty was passed the lands that had been parted with by the Natives at once belonged to the Crown. Consequently Mr. Matthews could not return any part of it to the Natives. As he says, it was out of the pure bounty and equity of the Crown that the old land claimants were granted some land. But such land as the Crown did not choose to grant to the claimants—that is, which is usually called "surplus land"—remained the property of the Crown. Therefore, in my opinion, any promise of return by Mr. Matthews was of no avail against the Crown. Mr. Matthews's deed was dated 20th July, 1835.

There is a report on the Crown Lands file by Sir Robert (then Mr.) Stout, Land Claims Commissioner, in 1878. This does not show any return of land to the Natives. It was suggested or contended that Mr. Matthews never claimed this area. Records of the proceedings before the Old Land Claims Commissioners are not now available, but the plan produced by the Lands Department of this old land claim shows it to have been for an area of 1,855½ acres. This area includes the land now the subject of the petition, which comprises 685 acres. In a memorandum from the Surveyor-General to the Chief Surveyor at Auckland on the 7th November, 1893, the former asks, "Is the land claimed [that is, the present land] shown on the plans of Matthews's claim as included in the original claim?" On the 15th November, 1893, the Chief Surveyor replied, "Yes, it is." That reply the plan shows to be correct. The grant to Mr. Matthews in the first instance was for 1,400 acres, dated 22nd October, 1844. This was subsequently recalled, and a grant issued for 1,170 acres.

I summarize, therefore, that this land was included in the conveyance by the Natives to Mr. Matthews in 1835; that on the passing of the Treaty of Waitangi in 1840 it became the property of the Crown; that the Old Land Claims Commissioners saw fit to recommend a grant to Mr. Matthews of 1,170 acres, and that the surplus area remained the property of the Crown. It is quite clear that no verbal or written promise, nor even a deed, by Mr. Matthews could have any effect against the Crown, and the Natives in law had no claim to it. Whether there should be any concession to the Natives out of the bounty and equity of the Crown is a matter entirely for His Majesty's Advisers, and it would be improper for me to express any opinion on that. I may say, however, that on inspection of the land it appeared to me to be totally unimproved and unoccupied. It consists of an area of swamp, readily drainable, especially in view of the drainage operations in regard to Tangonge Lake; but the greater portion consists of poor hills of little value except for the proximity to Kaitaia Township. The swamp area adjoins the Pukepoto Native block which the Natives themselves are farming, apparently with some success.

CHAS. C. MACCORMICK, Judge.

Approximate Cost of Paper.—Preparation, not given; printing (475 copies), £2 2s. 6d.

By Authority: W. A. G. SKINNER, Government Printer, Wellington.—1925.

Price 3d.]