151. There seems no need to pursue the political situation further because its changes and the manner in which the provisions of the Treaty were made effective or left ineffective are reflected in the legislation of the country. This legislation has had the attention of the Privy Council in the case of *Nireaha Tamaki* v. *Baker*, (1901) A.C. 561, and I feel that in no way can one sense the assertability of Native rights better than by a study of its judgment. The argument and judgment as reported are as follows (NOTE.—The judgment has been sub-paragraphed for convenience of reference) :—

J.C., 1900, May 9, 16; 1901, May 11.

151A. NIREAHA TAMAKI, Plaintiff; and BAKER, Defendant.

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND.

Law of New Zealand—Native Title to Possession of Land—Land Act, 1892, ss. 136, 137—Jurisdiction as to Cession to the Crown—Native Rights Act, 1865, ss. 3, 4, 5.

The Civil Courts have jurisdiction under the Native Rights Act, 1865, ss. 3, 4, 5, to ascertain as therein provided Native title to and interest in land according to custom or usage of the Maori people. And they are bound in any action in which such title is involved to recognize the rightful possession and occupation of lands by the Natives until lawfully extinguished, and to give effect to it.

The appellant having alleged a Native title of occupancy to the lands in suit in a manner which was consistent with the Crown's seisin thereof in fee,

Held, That his suit to restrain an unauthorized invasion of it was maintainable, and that the Court had jurisdiction to decide at least that the title alleged was in existence and had not been extinguished by cession to the Crown in manner provided by statute, or by other proceeding legally effective for that purpose.

Wi Parata v. *Bishop of Wellington*, 3 N.Z.J.R. (N.S.) S.C. 72, considered.

Quaere, Whether Native title can be extinguished by an exercise of the prerogative.

The respondent, as Commissioner of Crown Lands, having notified the land in suit under s. 136 of the Land Act of 1892, offered it for sale or selection in terms of s. 137, and advertised the sale thereof,

Held, That the appellant was entitled to sue for an injunction until his title was extinguished according to law, and the Court had jurisdiction to decide whether the respondent's action was within his statutory powers.

151B. Appeal from a judgment of the Court of Appeal (May 28, 1894) upon certain points of law which had been ordered to be argued before the trial of the action. The case is reported in 12 N.Z.L.R. 483.

Present: The Lord Chancellor, Lord MacNaghten, Lord Davey, Lord Robertson, and Sir Henry De Villiers.

J.C., 1901

Nireaha Tamaki v. *Baker.*

The appellant is an aboriginal Native and a member of the Rangitane Tribe of Maoris. The respondent is the Commissioner of Crown Lands in the Provincial District of Wellington, appointed under the Land Act, 1892.

The subject-matter of the action was the title to a certain triangular block of land containing about 5,184 acres, and a further piece of land between the southern boundary thereof and the Makahaki River, which the appellant claimed to be either lands owned by the Natives under their customs and usages, or lands belonging to his tribe under an order dated September 13, 1871 (set out in their Lordships' judgment), of the Native Land Court, but which the respondent contended were vested in Her Majesty the Queen.

151C. Upon the settlement of the colony in the year 1840, a Treaty, known as the Treaty of Waitangi, and set out in their Lordships' judgment, was entered into by Lieutenant-Governor Hobson and a number of the Native chiefs, by which the latter ceded to Her Majesty all their rights and powers of sovereignty, and Her Majesty confirmed and guaranteed to the chiefs and tribes of New Zealand and to the