

respective families and individuals thereof the full, exclusive, and undisturbed possession of their lands, estates, forests, fisheries, and other properties which they might collectively or individually possess so long as it was their wish and desire to retain the same in their possession; but the chiefs yielded to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof might be disposed to alienate at such prices as might be agreed between the respective proprietors and persons appointed by Her Majesty to treat with them in that behalf.

151D. The Governor having on July 7, 1893, notified in the *Gazette* under s. 136 of the Land Act, 1892, that a block of land which included the land in dispute in this action was open for sale or selection, subsequently advertised the same for that purpose as second-class rural land. The appellant thereupon sued for a declaration that the same still remained land owned by Natives under their customs and usage, whether under the aforesaid order of September 13, 1871, or otherwise, and for an injunction against selling or advertising the same. The respondent by his defence raised (*inter alia*) objections to the jurisdiction of the Supreme Court of New Zealand to try the matter put in issue by these proceedings, and by consent certain issues of law were formulated and submitted for decision. The third and fourth issues with were as follows:—

(3) Can the interest of the Crown in the subject-matter of this suit be attacked by this proceeding?

(4) Has the Court jurisdiction to inquire whether as a matter of fact the land in dispute herein has been ceded by the native owners to the Crown?

At the hearing of those issues it was admitted that the Attorney-General should have been made a defendant, and it was agreed that the questions should be argued and determined as though he had been made a party and had raised the defences raised by the respondent.

151E. The Court held that, so far as the plaintiff based his title on the order of September 13, 1871, the fact that no survey had ever been deposited in pursuance of such order was fatal to his claim, which consequently rested on a pure Maori title of occupancy; and that the case accordingly fell within the direct authority of *Wi Parata v. Bishop of Wellington*⁽¹⁾, according to which the assertion of the claim of the Crown was sufficient to oust the jurisdiction of that or any other Court in the colony to try a claim which rested on such a title. “There can be no known rule of law,” it said, “by which the validity of dealings in the name and under the authority of the Sovereign with the Native tribes of this country for the extinction of their territorial rights can be tested. Such transactions began with the settlement of these islands: so that Native custom is inapplicable to them. The Crown is under a solemn engagement to observe strict justice in the matter, but of necessity it must be left to the conscience of the Crown to determine what is justice. The security of all titles in the country depends on the maintenance of this principle.”

The course of legislation bearing upon the questions decided in this appeal is stated in their Lordships’ judgment. Cohen, Q.C., and J. W. Gordon, for the appellant, contended that the assertion of a claim by the Crown was not sufficient to oust the jurisdiction of the Courts. The decision of the matters in controversy in this suit does

(1) 3 N.Z.J.R. (N.S.)
S.C. 72.