

not involve any question of prerogative or of the validity of any act of the Crown. The real point at issue is the authority of the respondent to notify and advertise for sale or selection the land in suit. The respondent is an executive officer of the Crown, whose authority is limited and defined by statute. The question is whether he has exceeded his authority, and its decision turns on the construction of statutes and other documents from which his authority is alleged to be derived. He has no power to exercise the prerogative, or by any act of his to extinguish the Native title to the lands in suit. Nor has the Crown through any other agent dealt with the appellant or with any other Natives for the extinction of their title, whether the aboriginal title or the title as judicially ascertained. The Court has and must have jurisdiction to decide the main issue in this suit—whether the respondent's acts are acts of usurpation done without any warrant of authority. The prerogative title of the Crown is not attacked. The Native title, that of possession and occupancy, coexists with and is based upon the Crown title. The case of *Wi Parata v. Bishop of Wellington*(1), on which the Court of Appeal founded its judgment, has no application. The respondent founded his claim to take the proceedings complained of upon s. 136 of the Land Act, 1892. The question of prerogative does not arise. The appellant is entitled to question, and the Court has jurisdiction to decide, the legality of the respondent's acts, whether they were duly authorized by ss. 136 and 137 of the Land Act, 1892, which depends upon the true construction of those sections, the true effect of the circumstances which led to his acts, and the nature and regularity of those acts: see *Tobin v. Reg.*(2). The questions raised by this suit are all within the cognizance of a Court of law; there is no act complained of which can properly be regarded as an act of State; the act complained of is one done by a servant of the Crown in the supposed performance of his duty. *Blake, Q.C.*, and *G. R. Northcote*, contended that the Court had no jurisdiction to entertain or decide this suit. The Crown has the sole right, as invariably held by the Courts of the colony, of determining whether the interests of the Natives in any lands had or had not been ceded to the Crown. Any declaration by the Crown to that effect, or any proceeding of the Crown, such as the proceeding complained of in this suit, implying such a determination, was conclusive of the fact and could not be reviewed by a Court of law. This view, moreover, has been adopted by the Legislature in several Acts: see Native Lands Act, 1867, s. 10; Native Land Act, 1873, s. 105; Land Act, 1885, s. 247; Land Act, 1892, s. 250. All transactions with the Natives for the cession of their rights in any lands to the Crown are acts of State. The right of determining when the title of Natives to any lands has been extinguished is a prerogative right of the Crown. The assertion by the Crown of its title to the lands in suit as Crown lands involves an exercise of that prerogative right, and cannot be called in question in any Court. Reference was made to *Cook v. Sprigg*(1). A case of *Reg. v. Symonds* was also referred to as reported in parliamentary paper, December, 1847, relative to the affairs of New Zealand, p. 64. It was a case as to the legality of the course pursued by Sir G. Grey's predecessor in waiving the Crown's right of pre-emption from the Natives over large tracts of lands in favour of specified individuals, and it decided that such waiver was illegal and void, and that the persons specified acquired no legal right by such waiver. The view adopted

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

(2) (1864) 16 C.B.
(N.S.) 310, 359.

(1) (1899) A.C. 572.