

No doubt this Act of the Legislature did not confer title on the Crown, but it declares the title of the Crown to be subject to the "rightful and necessary occupation" of the aboriginal inhabitants, and was to that extent a legislative recognition of the rights confirmed and guaranteed by the Crown by the second article of the Treaty of Waitangi. It would not of itself, however, be sufficient to create a right in the Native occupiers cognizable in a Court of law.

151H. In the year 1852 New Zealand, which up to that time had been a part of New South Wales, received a constitution as a self-governing colony. By the New Zealand Constitution Act of that year (15 and 16 Vict., c. 72), s. 72, the Assembly was empowered to make laws for the sale, disposal, and occupation of waste lands of the Crown and lands wherein the title of Natives shall be extinguished as thereafter mentioned, and (s. 73) it was made unlawful for any person other than Her Majesty to purchase or accept from aboriginal Natives land of or belonging to or used by them in common as tribes or communities, or to accept any release or extinguishment of the rights of such aboriginal Natives in any such land. By s. 8 of 25 & 26, Vict. c. 48, power was given to the General Assembly to repeal s. 73 of the previous Act.

151J. By the Native Rights Act, 1865, of the Colonial Legislature (29 Vict., No. 11) it was enacted (s. 2) that every person of the Maori race within the Colony of New Zealand, whether born before or since New Zealand became a dependency of Great Britain, should be taken and deemed to be a natural-born subject of Her Majesty to all intents and purposes whatsoever; (s. 3) that the Supreme Court and all other Courts of law within the colony ought to have and have the same jurisdiction in all cases touching the persons and the property, whether real or personal, of the Maori people, and touching the titles to land held under Maori custom or usage, as they have or may have under any law for the time being in force in all cases touching the persons and property of natural-born subjects of Her Majesty; (s. 4) that every title to and interest in land over which the Native title shall not have been extinguished shall be determined according to the ancient custom or usage of the Maori people so far as the same can be ascertained. And (s. 5) that in any action involving the title to or interest in any such land, the Judge before whom the same shall be tried shall direct issues for trial before the Native Land Court.

151K. By the Native Lands Act, 1865 (29 Vict. No. 71), after a recital that it was expedient to amend and consolidate the laws relating to lands in the colony which were still subject to Maori proprietary customs, and to provide for the ascertainment of the persons who according to such customs were the owners thereof, and to encourage the extinction of such proprietary customs, and to provide for the conversion of such modes of ownership into titles derived from the Crown and for other purposes therein mentioned, it was enacted (s. 2) that "Native land" should mean lands in the colony which were owned by Natives under their customs or usages; (s. 5) that the Native Land Court (which had been established under earlier legislation) should be a Court of Record for, amongst other purposes, the investigation of the titles of persons to Native lands; (s. 21) that any Native claiming to be interested in a piece of Native land might apply for the investigation of his claim by the Court in order that a title from the