

Crown might be issued to him; (s. 23) that the Court (after certain notices had been given) should ascertain the right, title, or interest of the applicant and all other claimants to or in the land in question, and order a certificate of title to be issued specifying the names of the persons or of the tribe who, according to Native custom, own or were interested in the land, describing the nature of such estate or interest and describing the land comprised in such certificate. By s. 25 it was provided that no order for a certificate of title should be made unless a survey of the lands in question made by a duly licensed surveyor was produced during the investigation, and it should be proved that the boundaries had been distinctly marked out on the ground. It is from the neglect of this very useful provision that the whole difficulty of fact has arisen in the present litigation. By ss. 46 to 48 provision is made for the issue of Crown grants to the persons mentioned in any certificates and to purchasers from them, which latter grants were to be as valid and effectual as if the lands had been ceded by "the Native proprietors" to Her Majesty.

By the Native Land Act, 1877 (41 Vict. No. 91), s. 6, power was given to the Native Minister to apply to the Native Land Court to ascertain and determine what interest in any plot of land had been acquired by or on behalf of Her Majesty, and all lands declared in any order made on such application to have been so acquired should from the date of the order be deemed to be absolutely vested in Her Majesty. This section has been repealed, but is re-enacted in a subsequent Act.

The Native Land Act, 1865, has been repealed by the Native Land Act, 1873, but was in force at the date of the orders made by the Native Land Court on September 13, 1871, hereafter mentioned. The provisions of the earlier Act, with some alterations and additions, were re-enacted in the Act of 1873. The only sections to which reference need be made for the present purpose are ss. 101 and 102, by which the Native Land Court is directed to hear and determine any reference from the Supreme Court under the Native Rights Act, 1865, and the effect of the decision of the Land Court thereon is defined, and s. 105, by which it is enacted that any notification published in the *New Zealand Gazette*, and purporting to be made by or by the authority of the Governor, and stating that the Native title over any land therein described was extinguished previously to a date therein specified, shall for all purposes be received as conclusive proof that the Native title over the land described in such notice was extinguished at some time previously to the date therein specified, and that such land on such date ceased to be Native land within the meaning of the Act.

151L. Their Lordships do not think it necessary to review the series of Land Acts which were passed prior to 1892 for the purpose of enabling the Government to sell and dispose of Crown lands discharged from Native claims. The Act in force at the commencement of the present action was the Land Act of 1892, No. 37. By s. 3 of that Act Crown lands are defined to mean and include (amongst other things)—

All native lands which have been ceded to Her Majesty by the Natives, or have been purchased or otherwise acquired in freehold from the Natives on behalf of Her Majesty, or have become vested in Her Majesty by right of Her prerogative.