151z. Their Lordships are therefore of opinion that the order of the Court of Appeal should be reversed, and a declaration should be made in answer to the third and fourth issues of law as follows: That it not appearing that the estate and interest of the Crown in the subject-matter of this suit, subject to such Native titles (if any) as have not been extinguished in accordance with law, are being attacked by this proceeding, the Court has jurisdiction to inquire whether as a matter of fact the land in dispute has been ceded by the Native owners to the Crown in accordance with law, and the respondent should be ordered to pay the costs of the hearing before the Court of Appeal, and they will humbly advise His Majesty accordingly.

Their Lordships observe that the declaration asked for by the statement of claim is too wide in its terms, and if the appellant succeeds in the action he can at the most be entitled to a declaration that the Native title in the lands in dispute has not been, or is not shown by the respondent to have been duly extinguished according to law (which is probably what is meant), and the injunction asked for should be limited by omitting the word "perpetual" and inserting "until the Native title in the said lands has been duly extinguished according to law," or some similar words. Their Lordships, of course, say nothing as to the other defences, and express no opinion on the question which was mooted in the course of the argument, whether the Native title could be extinguished by the exercise of the prerogative, which does not arise in the present case.

By the Order in Council of July 8, 1895, leave is given to the appellant to appeal from the judgment of the Court of Appeal of July 13, 1894, it is not denied by the respondent, and the appeal has been argued on the assumption on both sides that the order of May 28, 1894, was intended, and that leave to appeal from that order was intended to be given. Their Lordships, therefore, will humbly advise His Majesty that the Order in Council should be read and have effect as if the words "the judgment of the Court of Appeal of New Zealand of May 28, 1894," were substituted therein instead of the words "the said judgment of the Court of Appeal of New Zealand of July 13, 1894."

The respondent will pay the costs of this appeal.

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Solicitors for respondent: *Mackrell, Maton, Godlee, and Quincey.*

152. I would draw particular attention to that passage of the judgment which I have numbered as paragraph 151w and 151x, as it appears to be the guide by which the true value of a Native Land Court decision in the Kauaeranga 28A Block (a strip of foreshore between high- and low-water mark) may be assessed.

The status of the particular class of land, of which Kauaeranga 28A formed part, is discussed in parliamentary paper (House of Representatives) F. No. 7 of 1869, and in a preamble to a proposed resolution by Mr. J. C. Richmond there appears in the following terms what might be styled the politic or diplomatic (as opposed to the legal) conception of the potentialities of an exercise of the Crown's prerogative as a means whereby the assertibility of Native customary rights may be denied:

The claims of the Maori owners of adjoining lands stand on a better basis. Such claims have been tacitly admitted in practice to have some force. (See Mr. Williamson's and Mr. Mackay's evidence.) Their equitable value is not inferior to that of the claims to *terra firma* recognised by "The Native Lands Act, 1862." The Treaty of Waitangi, which is supposed to cede all prerogative rights to the Crown, cannot with wisdom or policy be insisted on, in the face of that Act, for the purpose of establishing any proprietory or usufructuary rights on the part of the Crown or the Colony. It would be inconsistent with past practice reaching back to a period long before the passing of "The Native Lands Act, 1862," and impolitic with a view to the early and peaceful extension of the gold fields and