Here it is admitted that the Natives can properly commence a proceeding in the Native Land Court to have their claim of title investigated. If they could not, then a writ of prohibition would lie against them and the Court at the suit of any stranger. That carries with it the consequence that unless their proceeding is stopped by some legal obstacle, they have and can assert at least a possible claim. They, therefore, have some right, and the first thing to be considered is what that minimum right is. To ascertain this the whole body of legislation may be looked at. I assume, as has generally been assumed, that the proposition is made out that the lands of Natives were vested in the Crown by virtue of the sovereignty, and that until individual titles are ascertained, they remain so vested. Our own statute law supports that view, but that does not dispose of the matter. Throughout the greater part of the history of New Zealand there have been three separate sets of statutes relating to the alienation of the lands, and the privileges of the Crown, namely, the Land Acts, or as they were formerly called, the Waste Lands Acts, the Mining Acts, formerly Goldfields Act, and the Native Land Acts. None of them are expressly declared to be binding on the Crown; all of them are from their very nature framed to create rights adverse to those of the Crown. Formerly some of these Acts contained express declarations that they did not affect the rights of the Crown—*e.g.*, "The Otago Waste Lands Act, 1866," section 129: "The Goldfields Act, 1866," section 116. These declarations were invariably regarded as repugnant to so much of the Acts as created titles against the Crown.

From the earliest period of our history, the rights of the Natives have been conserved by numerous legislative enactments. Section 10 of 9 and 10 Vict., cap 103, called an Act to make further provision for the Government of the New Zealand Islands (Imperial, 1846) recognizes the laws, customs and usages of the Natives which necessarily include their customs respecting the holding of land. Section 1 of 10 and 11 Vict., cap 112, called an Act to promote colonization in New Zealand and to authorize a loan to the New Zealand Company (Imperial, 1847), recognizes the claims of the aboriginal inhabitants to the land. To the same effect is the whole body of Colonial legislation. The expressions "land over which the Native title has not been extinguished," and "land over which the Native title has been extinguished" (familiar expressions in Colonial legislation) are both pregnant with the same declaration. In the judgment of the Privy Council in *Nireaha Tamaki* v. *Baker*, 1901 A.C. 561, importance is attached to these and similar declarations in considering the effect of Colonial legislation. There the whole of the legislation from the date of the constitution is summarized. This summary includes the principal Colonial Acts. Referring to section 5 of "The Native Rights Act, 1865," their Lordships say: "The legislation both of the Imperial Parliament and of the Colonial Legislature is consistent with this view of the construction of "The Native Rights Act, and one is rather at a loss to know what is meant by such expressions as 'Native title,' 'Native lands,' 'owners,' and 'proprietors,' or the careful provision against sale of Crown lands until the Native title has been extinguished, if there be no such title cognizable by the law, and no title therefore to be extinguished." I might refer further to less precise but equally important expressions such as "tribal lands," in "The Native Land Act, 1873," section 21. The various statutory recognitions of the Treaty of Waitangi mean no more, but they certainly mean no less than these recognitions of Native rights.

The due recognition of this right or title by some means was imposed on the colony as a solemn duty. *Nireaha Tamaki* v. *Baker* (at p. 579). That duty the Legislature of New Zealand has endeavoured to perform by means of a long series of enactments culminating in "The Native Land Act, 1909." In this series of statutes one of the most important provisions is that which sets up a special Court charged with the duty of investigating Native titles. The creation of that Court shows that Native titles have always been regarded as having an actual existence. It is quite true that the Courts administering the ordinary laws have never had the means of conveniently investigating such titles. There arose, therefore, a case calling for a special tribunal, and such a tribunal was provided. The lands may be Crown lands, but they are not vacant Crown lands. Such an expression as "Crown lands," may have its fullest meaning or a very modified meaning according to what the Legislature has declared concerning the thing described: *McKenzie* v. *Couston*, 17 N.Z.L.R. 228. In "The Native Land Act, 1909," what was formerly sometimes spoken of as Maori land and was included in the term: "land owned by Natives," is now called "customary land," which term is used to describe land which being vested in the Crown, is held by Natives or the descendants of Natives, under the customs and usages of the Maori people