of colonisation generally, to insist on any such rights in the present case. At the same time the prerogative rights, however fictitious, may be binding on the Courts of Law. I therefore propose the following as Resolutions to be adopted by the Committee.

One can now add that up to the present day it has still been found impolitic to oppose the fictitious title of the Crown under its prerogative against the statutory customary title of the Natives.

153. The full text of the Kauaeranga 27A judgment, which was delivered by Chief Judge F. D. Fenton at the end of November, 1870, is as follows :—

Native Land Court November, 1870.

KAUWAERANGA JUDGMENT

(BEFORE CHIEF JUDGE FENTON)

THIS is an application by Hoterene Taipari, and others, for a certificate of his title to a piece of land near Shortland, bounded towards the east by high-water-mark, towards the south by a line nearly at right angles to the shore line commencing near the Kauwaeranga Creek, towards the north by a line nearly parallel to the southern boundary, and towards the west by a low-watermark on the Waihou or Thames river. The land is covered by high-water of ordinary tides, but is left by the water as the tide recedes. It forms an extensive mudflat, and is not available for use as a highway by persons on foot when the waters have left it, except along a narrow margin near the shore.

The other facts, as proved in evidence, are as follows : The land at Shortland abutting on the land claimed has been granted by the Crown, upon certificates of the Court, to the claimants and opposing claimants.

The land claimed had been possessed and used by the claimants and opposing claimants and their ancestors for generations, for fishing with stake nets, and as a preserve for curlews, and as a private ground for gathering shellfish (pipis).

That such use has been exclusive, other tribes having been kept off.

The New Zealand Government has endeavoured to deal with the claimants and others for the purchase of their rights in this land.

The Crown opposes the claim, on the following grounds :—

By the law of England, the foreshore belongs to the Crown, and can only be held by a subject by grant of the Crown, either existing or presumed by prescription. This seisin of the Crown is an incident of sovereignty. The sovereignty of the Crown in New Zealand must not be held to be founded on the Treaty of Waitangi solely, but upon settlement. That this incident of sovereignty has been consistently sanctioned and maintained by decisions of the Courts of England and by the Courts of the United States of America. That the Native Lands Acts do not affect the Crown ; and that Maoris cannot own the foreshore according to their customs and usages, as such ownership would be in derogation of the prerogative of the Crown ; and that the Court has, therefore, no jurisdiction to try the claim.

On behalf of the claimants, it is urged that the above arguments cannot apply to New Zealand, the relations between the Crown and the Maoris being strictly defined by the Treaty of Waitangi and by that document only. That in England not only the foreshore, but all other land, belonged at one time to the Crown by the right of the conquest made by William I ; that grants from the Crown are presumed respecting both classes of land alike, and that the foreshore remains in the Crown simply because, generally, it was of no use to anyone. Whereas, in England, all land was originally in the Crown, in New Zealand all land originally belonged to the Maoris. That the doctrines of feudalism can have no application to the lands of New Zealand, and that neither English law, nor the Civil Law can be allowed to influence the rights of Maoris to lands to which, in the words of the statute, they own according to their customs and usages. That the treaty took none of their territorial rights from the Maoris, but expressly guaranteed the preservation of them as they were in 1840. These rights are not disputed over the main land, and they should not be disputed over land covered by the sea, if they can be proved to have existed. That the Goldfields Act, 1868, recognised these rights to a certain extent ; the Shortland Seabeach Act, 1869, repeated such recognition ; and that the Executive Government had made attempts to acquire them from the Maoris by purchase.

It is at once evident what a vast range of constitutional and international law the inquiry into this subject must embrace, and the Court feels that Parliament could never have contemplated that the Native Land Court should have to determine questions demanding so much research, and involving such great responsibility and such important consequences. Influenced by this thought, I endeavoured to induce the parties to agree to a formal judgment framed by arrangement in such a manner that resort could easily and immediately be had to the Supreme Court, where alone such grave matters should be decided. But the parties did not accede to this proposal, and this Court is therefore bound to give decision. Could the Court suppose that this decision would be final, it would content itself with simply expressing its opinion in the usual manner ; but, influenced by the hope that it may yet be the wish—as the Court thinks it is the duty—of the parties to apply to the Supreme Court to review this judgment, it seems that due respect to that tribunal demands that this lower Court should not limit itself to a bare statement of the conclusions at which it has arrived, but should set forth the reasoning through which its decision has been arrived at.