adopted by the Legislature with regard to the alienation of lands by aboriginal natives, I would state that, as I assume it to be the duty of the claimants (Messrs. Lundon and Whitaker) to make out, affirmatively, the existence of their rights immediately before the passing of the Act of 1869, I think it would not be sufficient for them to show that Messrs. Graham and Hirsch had no right to the land in question. As the facts stand, Messrs. Lundon and Whitaker could have no right, if Messrs. Graham and Hirsch had acquired by their leases a right, which were prior in time to those of the claimants.

10. I understand the real position of the parties to be this:—The claimants say that just before the passing of the Act of 1869 they were in possession of leases from Native proprietors, granted by the latter after a certificate of the Native Lands Court of their title to the land had been issued; and that, as the law then stood, the Native owners were entitled to Crown grants, antevesting their legal title to the date of the certificate, and thereby making the claimants' titles under their leases complete; and that they thus had an existing "right" as against the Native owners.

11. To this it is answered by the Counsel for the Governor, on behalf of the public, that the claimants had no such rights; because, as the law then stood, the leases granted to Messrs. Graham and Hirsch were valid, because the title of the Natives under the Crown grant would antevest to the date of the *order* for the certificate, and *their* leases, being prior in time, must override the claims of Messrs. Lundon and Whitaker.

12. This being the state of the case, it becomes necessary to follow the current of legislation affecting the question, and to observe the policy and intention which it manifests.

13. The Treaty of Waitangi, which has been assumed by the Imperial Parliament and the Legislature of the Colony as the basis of the policy and legislation of both respecting the aboriginal inhabitants of New Zealand, granted to the Natives the undisturbed possession of their lands, and provided that the Crown should have the right of pre-emption of all portions of such lands as the Natives might desire to alienate. The object of this compact, on the part of the Imperial Government, seems to have been twofold—first, to protect the Natives against improvident alienations to Europeans; and next, to provide for the introduction of a uniform and consistent system of titles to land in the Colony, based on cession by the Natives to the Crown, and grants from the Crown founded thereon.

14. In pursuance of this policy, "The New Zealand Constitution Act" (15 and 16 Vict. c. 71) enacted, by section 73, that it should not be lawful for any person but Her Majesty to purchase or acquire from the Natives any land occupied by them in common as tribes or communities, or to accept the release or extinguishment of rights in such land; and further, that no absolute or conditional transfer of such land should be valid, unless entered into and accepted by Her Majesty.

15. It may be remarked here, that, while this enactment continued in full force, it might have been said to be sufficient to prevent any one from getting a title in fee or obtaining a lease even from aboriginal inhabitants who had already got Crown grants,—which could scarcely have been deliberately intended.

16. But although it was not competent for the General Assembly of New Zealand in the first instance, or even by virtue of "The Constitution Amendment Act, 1857," to repeal or amend section 73 of the Constitution Act, power was given to the Assembly, by the Imperial Act 25 and 26 Vict. c. 48 (passed in 1862), section 8, to alter or repeal all or any of the provisions contained in that section of the Constitution Act. And it was *further provided thereby, that no Act or part of an Act passed by the General Assembly should be deemed invalid by reason of its being repugnant to any of such provisions.* It must therefore be taken, that every statutory provision of the General Assembly at variance with the 73rd section of the Constitution Act must be held so far to repeal it.

17. The first Colonial Act passed after the Imperial Act of 1862, referring to the matter, was "The Native Lands Act, 1862," (amended in 1864,) to which, although repealed and replaced by "The Native Lands Act, 1865," it is desirable to refer for the purpose of tracing the policy of the Legislature.

18. The preamble of that Act recites the Treaty of Waitangi and the stipulation for pre-emption by the Crown, and that it would greatly promote the peaceful settlement of the Colony if the rights of the Natives to land were defined, and then assimilated as much as possible to ownership of land according to British law; and further, that Her Majesty might be pleased to waive, in favour of the Natives, so much of the treaty as gave her the rights of pre-emption; and to establish Courts for defining the rights of the Natives, and otherwise giving effect to the provisions of the Acts.

19. The Act then went on to direct a mode of proceeding by which the rights of Natives to land were to be ascertained, and a Court appointed for the purpose. That Court was bound, on confirmation of its finding by the Governor, to issue a certificate of title in favour of the tribe, community, or individual who had applied to it; and it was provided by section 16, that the persons mentioned in the certificate might dispose of their interest anyhow and to any person (a provision not repealed in the substituted Act), and that the certificates might be delivered up and exchanged for Crown grants, as if the lands had been ceded by the Natives. The 30th section enacted that every contract for Native land made before the issue of the certificate should be absolutely void, and that the consideration money should not be recovered back.