20. This Act, therefore, showed the intention of the Legislature, at that time, that the 73rd section of the Constitution Act should not remain in full force, though it confirmed its annulling power as to contracts made before the issue of the certificate. Moreover, it appeared from its provisions that the obtaining of a certificate under them was to be equivalent to a cession by the Natives, and that the issue of the Crown grant implied the extinction of the Native title and the applicability of English law—(section 18.)

21. But this Act was repealed and superseded by "The Native Lands Act, 1865"—an Act which was not disallowed by Her Majesty—which was not suggested in argument to have been *ultra vires*,—and which was in force at the time when the leases were granted to the claimants and to Messrs. Graham and Hirsch. The terms of the preamble of this Act deserve notice. It recites that it is expedient to consolidate the laws as to land still subject to Maori proprietary customs, and to provide for the ascertainment of the owners, to encourage the extinction of the Maori proprietary customs, and further to provide for the conversion of such mode of ownership into titles derived from the Crown.

22. It may therefore be inferred that it was the intention of the Legislature by this Act further to facilitate the transfer of lands, and to enable the Natives, by getting Crown titles without sale or direct cession to the Crown, to overcome the inconveniences which must arise from the strict use of the Crown's right of pre-emption. In order to carry out this object, the Act provides for the establishment of a Court for the investigation of Native titles, the settlements of descents, and for dealing with Native lands in cases of intestacy.

23. The proceedings under this Act, so far as they are relevant to the present case, are as follows:—

(1.) Any Native claiming to be interested in any piece of Native land (*i.e.*, land with respect to which the Native title has not been extinguished) may make an application to the Court, containing certain particulars, in order to have a Crown title issued to him (s. 21); (2) and after certain notices, the Court is to ascertain the title or interest of the applicant and of all claimants (s. 23); (3) and to refuse or order a certificate of title to be made and issued (specifying certain matters) to the claimant or to other persons; (4) and such certificates (s. 44) are to be conclusive in all courts of law, and they may be registered in the Registry of Deeds. (5.) The certificates so made having been issued to and received by the Governor, he is empowered (s. 46) to cause a Crown grant to be issued to the persons, and for the estates or interests, mentioned in the certificates; (6) and in case any person has by deed, attested as provided by the Act, purchased the interest of any Native owner in the land comprised in the certificate (if there be no limitation therein), the Crown grant *may be issued to such purchaser* on his delivering up his deed (s. 47). (7.) The Act then specially provides (s. 48), that the Crown grants issued under it shall be as valid as if the lands were waste lands of the Crown, and had been ceded by the Native proprietors to the Crown. (8.) The 75th section of the Act provides that "Every conveyance, gift, transfer, contract, or promise affecting or relating to any Native lands in respect of which a certificate of title shall not have been issued by the Court, shall be absolutely void."

24. Stopping now for a moment to contemplate the policy and intention of the Legislature, as manifested by the provisions of this Act, following on the repealed Act of 1862, it seems to me evident that the intention was to give further facilities for the acquisition by the Natives of titles which would enable them to dispose of lands of which they had been ascertained by the Native Land Court to be owners, to any one, whether European or Native, under a title available in all the tribunals of the Colony, without any preliminary sale or direct cession to the Crown, as stipulated for by the Treaty of Waitangi; and that the certificate of title should be treated as the authoritative instrument which should free the Native land from the impediment upon its transferability.

25. Now it is necessary, for a reason which will afterwards appear, to notice that the *issue* of the certificate, and not the *date* which it bears, is the point of time from which, by this Act, the impediment is to be taken as removed.

26. Section 75, which says that contracts shall be absolutely void that affect land in respect of which a certificate had not been issued, may be only declaratory of the law already laid down in the Constitution Act, s. 73, as far as land held by Natives *in common* is concerned; but at all events it was conclusive with regard to transactions, whether with tribes or with individuals, entered into before the issue of a certificate.

27. Now, although the language of this section (75) seems to imply that transactions after certificate may be legitimate, I think it hardly could be contended that it would be sufficient of itself to make such transactions legal, in spite of the 73rd section of the Constitution Act, and so far to repeal or alter that section.

28. The Act of 1865 does not expressly provide, as the repealed Act of 1862 did, in section 16, that the persons mentioned as owners in a certificate may dispose of the land as they may think fit; but the 47th section contemplates the case of a person who has purchased or otherwise acquired the estate of a Native owner of land comprised in a certificate (not subject to limitation) as entitled to a Crown grant in his own name; and it does not clearly indicate that the purchase, &c., must have taken place after the certificate.