

29. But the provisions of the Act of 1865 would probably not have been sufficient to enable the purchasers or lessees of Native lands, even after certificate issued, to get available legal titles, referring back to the date of their purchase or lease, even in cases under section 47. And supposing the obstacles presented by the 73rd section of the Constitution Act to have been removed, the purchasers and lessees would not have had complete titles as from the date of their purchases or leases, if the Crown grants to be issued under the Act bore date and were operative only at and from the time of their execution.

30. In this respect, persons entitled to Crown grants otherwise than through the operation of "The Native Lands Act, 1865," were exposed to similar difficulties, as there probably was, in many cases, a considerable interval between the purchases from the Crown and the actual issuing of the grants.

31. To meet this inconvenience, the principle of antevesting dates was adopted by "The Crown Grants Act, 1866."

(1.) The preamble of that Act referred to the provisions made for the preparation and issue of Crown grants, the payment of fees thereon, the vesting of the legal estate in grantees, and other matters connected therewith; and the Act does not appear to have been specially addressed to cases of title acquired through "The Native Lands Act, 1865."

(2.) The antevesting sections of "The Crown Grants Act, 1866," are sections 26 to 33. Section 26 is as follows:—

"And whereas it is expedient that the legal estate in lands comprised in grants from the Crown should in certain cases and to a certain extent be deemed to have been in the grantees prior to the dates of such grants: Be it therefore enacted, that all deeds heretofore or hereafter to be executed by grantees of Crown lands, their heirs and assigns, after the dates at which they have or shall become entitled respectively to Crown grants of the said lands, but before the dates of the Crown grants by which the same have been or shall be subsequently granted, shall, for the purpose of completing the titles of parties to such deeds, but for no other purpose, be deemed to have the same force and effect as though the Crown grants respectively in which such lands are comprised had been executed immediately upon the grantees named therein having become or becoming entitled to receive such Crown grants respectively."

(3.) The 27th section goes on to give a statutory declaration of the date at which grantees shall be deemed to have become or to become entitled; and it mentions six classes of cases, none of which includes the case of grants by Natives of lands for which they had got certificates from the Native Lands Court.

32. If, therefore, the law had remained as it was under "The Crown Grants Act, 1866," it could scarcely have been suggested that the antevesting principle would apply, so as to give validity to transactions which were invalidated by the 73rd section of the Constitution Act, or the 75th section of the Native Lands Act of 1865.

33. But "The Crown Grants Act, 1867," imported fresh definitions of the time at which the grantees referred to in the 26th section of the said Act (the Act of 1866) shall be deemed to have become or to become entitled to receive Crown grants; and the first of five classes of cases enumerated is that of grantees of land the title to which has been decided in the Native Lands Court, in which cases the dates are to be "the dates of the certificate or *interlocutory orders* issued by such Court with reference to such lands respectively."

34. Putting, therefore, the Act of 1866, section 26, and the Act of 1867, section 7, subsection 1, together, the result will be—It is enacted that "all deeds heretofore or hereafter to be executed by grantees of Crown lands, their heirs and assigns, after" [*in the case of lands the title to which has been decided in the Native Lands Court*] "the dates of the certificates or interlocutory orders, but before the dates of the Crown grants, by which the same have been or shall be subsequently granted, shall for the purpose, &c., be deemed to have effect, &c., as though the Crown grants, &c., had been executed immediately upon (*i.e.* after) the dates of the certificates or interlocutory orders."

35. This, then, is substantially the enactment which is to determine the right of the claimants. If upon the true interpretation of its words, and a proper construction of its language so interpreted, along with the other statutory provisions affecting the case, the dates of the orders made on the 27th and 28th of June, for the issue of certificates for the lands in question, are to be taken as the dates at which the Native owners were entitled to a grant, the rights of Messrs. De Hirsch and Graham must prevail as prior to those of the claimants, unless the invalidating operation of the 75th section of "The Native Lands Act, 1865" still exists, notwithstanding the Crown Grants Acts of 1866 and 1867.

36. Now, it seems quite clear that the policy and intention of the Legislature in the passing of the Crown Grant Acts was to give further facilities for transactions between Natives and Europeans in respect of the lands of the former, the ownership of which had been duly ascertained by the Native Land Court, and to remove the impediments created by the previous enactments respecting such delays. And it is, moreover, to be observed, that while it might be deemed desirable still to keep up the prohibition against dealings between Natives and Europeans before the title of the Natives had been investigated in the Native Lands Court, there seems to be no good reason for making the date of the issue of the certificate the *terminus à quo* the right should be recognisable, rather than the date of the certificate, (which from the case appears to have, sometimes at least, been different from the date of issue,) or the date of the order for the