

issuing of the certificate, inasmuch as the essential and cardinal thing was the ascertainment by the Court of the title, which was completely ascertained at the time of the order. The Act of 1869, indeed, which does not affect the present case for this purpose, expressly provides for vesting at the date of the *order*; and it may be, therefore, as has been argued, only declaratory in this respect.

37. There seems, therefore, to be no reason, as far as the apparent general policy and intention of the Legislature are concerned, which should make it inconsistent or improbable that they should finally adopt the date of the *order* as the time at which the owner should be deemed entitled to a Crown grant, and the time at which the legal estate should vest for the purpose of giving complete titles to grantees under subsequent deeds from the Native owner. Indeed, it would seem much more reasonable and consistent with the enabling policy manifested in the course of legislation, that the date of the order should be adopted rather than the date of the issue of the certificate; and it is to be particularly noticed, that while the date of *issuing* the certificate was fixed in the Act of 1865 as the time before which transactions were to be void, the ante-vesting provisions of the Crown Grant Acts of 1866 and 1867 make the date of the certificate itself the time for the vesting of the grantee's title: and it appears from the case that certificates have usually not been issued on the day of their date.

38. And now comes the last important question, viz., whether the words in "The Crown Grants Act, 1867," section 7, subsection 1—"or *interlocutory orders*"—mean or include orders under the 23rd section of "The Native Lands Act, 1865," for the issue of a certificate of title, such as had been made before the lease to De Hirsch and Graham.

39. It was argued, against the claimants, that the orders made by the Native Lands Court respecting the lands in question were final, and had the same effect as a certificate; but it seems to me that, unless the orders can be treated as "*interlocutory*" under this subsection, they can give no prior right to Messrs. Hirsch and Graham which would defeat the claimants' right.

40. I cannot find that any legal (*i.e.* statutory) interpretation is given to the words or term "*interlocutory order*." In the course of the legislation on the subject, the only occasion in which I find this term used is in the 27th section of "The Native Lands Act, 1865," which provides that "in any case the Court may make any *interlocutory* or *final* order which in its judgment may be necessary and just."

41. Now, do the words "*interlocutory*" and "*final*" in that Act apply to orders for a certificate? I think it can hardly be held that they can do so, after the provision of section 23, which had already enacted that, on ascertaining the title, the Court "*shall order*" a certificate. It would rather seem, that these words must apply to other matters within the cognizance of the Courts. But at all events it cannot well be suggested that the "*interlocutory orders*" in the Crown Grant Act of 1867, mean only such *interlocutory orders* as are mentioned in section 27 of the Act of 1865.

42. There being, therefore, no statutory interpretation of the term for the purposes of the Act of 1867, it is necessary to inquire what meaning can be assigned to it. Had the Act been a penal or disabling one, it might, on the strict and narrow construction which ought to be adopted for such enactments, have been proper to hold that the intention of the Legislature to make the words applicable to an order for a certificate was not sufficiently clearly manifested; but as this is, undoubtedly, an enabling statute, for the benefit of both races in the Colony, and for the removing of pre-existing disabilities, it would be the duty of a court of law—and I therefore, consider it my duty also as Commissioner, (appointed to investigate into a claim of right at law or equity)—to give the words an interpretation of which they are capable, and which will make them of some effect for the purpose of carrying out the apparent intention of the Legislature.

43. Now, I am unable to see what kind of orders the words of the Act of 1867 can refer to, other than orders affecting the certificate of title. I have already pointed out that it is not inconsistent, but, on the contrary, in consonance, with the manifested intention of the Legislature that the ante-vesting date should refer back to the *order* for the certificate.

44. But it is now to be ascertained whether the word "*interlocutory*" in the Act of 1867 can be applicable to the order under section 23 of the Act of 1865; and it seems to me that, according to the principles of liberal and extensive construction to which I have referred, the order for the certificate may well be called "*interlocutory*."

45. The proceedings in the Native Lands Court commence by application, proceed by notice and investigation, to order for certificate, the making of the certificate, and the issuing of the same to the Governor; all being preliminary steps to the issue of the Crown grant; and it seems to me, therefore, that it may properly be said that the order for the certificate is an "*interlocutory*" proceeding in the Lands Court.

46. It may be urged that if it had been intended to refer the title back to the date of the order for the certificate, it would have been unnecessary to mention the date of the certificate itself; and this may be so; but in the absence of any other kind of orders to which the enactment could reasonably be applied, I think it must be taken that the date of the ante-vesting is to be either that of the certificate (not of the issue of it), and if the date of the certificate should be posterior to that of the order, then the date of the order.

47. There remains to be disposed of the contention that, even if the Acts of 1865, 1866, and 1867 did give the Native owners a good title from the date of the order for certificate, yet the 75th section of the Act of 1865 made void all transactions before the issue of the certificate.