

To this I answer, that the very purpose of the antevesting provisions in the Acts of 1866 and 1867, taken together, was to complete the titles of persons who were parties under deeds from Native proprietors, executed between the time at which they were statutorily to be deemed to have been entitled to Crown grants and the issuing thereof.

48. It was argued by Mr. Travers, for the claimants, with much ingenuity, that the provisions of the Crown Grants Acts are to be taken as passed only for conveyancing purposes, and cannot be taken as conferring new rights, or removing previously existing disabilities. But I think it can hardly be argued that the Legislature was deliberately providing a conveyancing scheme for completing titles which were to continue null and void under the previously existing law.

49. I think, therefore, that the provisions of the Crown Grants Acts, taken together, must be deemed to have repealed the 75th section of the Act of 1865, as far as it affects transactions after an order for a certificate, and before the issue of the certificate; and with regard to the annulling power of the 73rd section of the Constitution Act, I think there is no doubt that it has been repealed so far as it is at variance with the enabling Acts of the Colonial Legislature.

50. This result, no doubt, is arrived at by a very liberal interpretation of words, and construction of enactments, for it is tantamount to holding that the Legislature has enacted that purchases and leases of Native lands from Native owners, after an order for a certificate under "The Native Lands Act, 1865," are to be valid notwithstanding the 75th section of that Act and the 73rd section of the Constitution Act; and that, in order to give them full force and effect, the title of the Native owners under the Crown grants shall date from the date of the order.

51. In conclusion, I would repeat the expression of my opinion that the decision of a single individual on a question so narrow yet so important cannot be very satisfactory, and that I feel in some degree relieved from responsibility by the consideration that there will probably be an appeal.

52. For the present, I must hold, for the reasons above mentioned, that the claimants have not conclusively established a right to the land in question, at law or in equity, taken away or prejudicially affected by "The Native Lands Act, 1869," because they have not satisfied me beyond doubt that the prior leases to Messrs. Hirsch and Graham were void.

Wellington, 15th April, 1872.

ALEXANDER J. JOHNSTON,
Commissioner.

B.

In the Court of Appeal of New Zealand. In the matter of "The Lundon and Whitaker Claims Act, 1871."

I HEREBY certify that, at a sitting of the Court of Appeal of New Zealand, held at Wellington on Friday, the 14th day of June, 1872, at which I was presiding Judge, the said Court, after reading and hearing arguments on a special case stated by agreement between His Excellency the Governor on the one part, and John Lundon and Frederick Alexander Whitaker of the other, under the provisions of "The Lundon and Whitaker Claims Act, 1871," which case had been submitted to and decided by His Honor Mr. Justice Johnston, one of the Judges of the Supreme Court, appointed Commissioner under and for the purpose of the said Act, and which was thereafter submitted to the said Court of Appeal under the 4th section of the said Act, did decide and determine that the said John Lundon and Frederick Alexander Whitaker did not possess any rights, at law or in equity, in respect of the lands in the said Act mentioned, which were improperly or unconstitutionally taken away or prejudicially affected by the passing of "The Native Lands Act, 1869," or by the proceedings taken in the Native Lands Court in pursuance of the last mentioned Act.

Given under my hand, and under the seal of
the said Court, at Wellington, this 14th day
of June, one thousand eight hundred and
seventy-two. } (L.S.) GEORGE ALFRED ARNEY, C.J.

ALEX. S. ALLAN,
Registrar.

C.

In the matter of "The Lundon and Whitaker Claims Act, 1871."

DECISION OF COURT OF APPEAL, delivered 14th June, 1872.

THIS is a special case stated by agreement between the Governor on the one part, and John Lundon and Frederick Alexander Whitaker on the other part, pursuant to the 3rd section of "The Lundon and Whitaker Claims Act, 1871."

The case having been originally heard by Mr. Justice Johnston, the Commissioner appointed under the Act, his decision was adverse to the claimants, Messrs. Lundon and Whitaker; and they have exercised the right, conferred upon them by the 4th section of the Act, of submitting the question at issue to the decision of this Court. The question stated in the words of the Act is, "Whether John Lundon and Frederick A. Whitaker possessed any rights, at law or in equity, in respect of certain lands situate at Grahamstown, in the Province of Auckland, which have been improperly or unconstitutionally taken away or prejudicially affected by the passing of