valuable assistance which counsel usually afford in important cases before the Courts. As my judgment is very greatly influenced by my opinion of the effect of the 73rd clause of the "Constitution Act" upon the transactions which we have to consider, I especially feel the pressure and responsibility which is thus thrown upon me; but, as a judgment must be given, I will proceed to set forth as clearly as the limited time which the avocations of counsel and the urgency of the parties to this and other applications have allowed me, the course of reasoning which has conducted my mind to the conclusions which I shall hereafter declare.

The ground on which Messrs. Whitaker and Lundon rest their objection to the claim of Mr. De Hirsch is simple and clear, viz., that that gentleman claims by a lease which, under the 75th section of the "Native Lands Act, 1865", is void, having been made before the issue of the certificate of title, and that they have a claim to the same land by virtue of subsequent deeds from the same parties, or some of them, which are valid and effectual, because made after the issue of the certificate, and that the Court ought not to interfere to upset a title which is alleged to be perfectly legal for the purpose of validating transactions which are clearly void. All the other arguments adduced by the opponents will avail nothing if their own position is not superior at law to that of the claimants; and this superiority, as it cannot have the advantage of priority of title or claim, must consist in superior virtue or validity, for otherwise "*qui prior tempore potior est jure.*"

It is, therefore, clearly necessary to ascertain, in the first place, the legal status of the parties; no one of *the circumstances* can, taken alone, have as much weight as having the law on one's side, and in the absence of some great public and general principle, or necessity, private wrongs in private cases can scarcely induce a Court to upset a man who has a clear lawful title in favor of one who by mistake, misapprehension, or negligence has failed to secure the protection of the law to his supposed rights.

There are two enactments bearing directly on the legal status of the parties—I., the 73rd clause of Con. Act (15 and 16 Vic. cap. 72) passed by the Imperial Parliament; and II., the 75th clause of the "Native Lands Act, 1865." I will consider the latter first. I. The 75th clause of the "Native Lands Act, 1865," is as follows:—"Every conveyance, transfer, gift, contract, or principle affecting or relating to any Native land in respect of which a certificate of title shall not have been issued by the Court, shall be absolutely void;" and "Native lands" are defined to mean "lands in the Colony which are owned by Natives, under their customs or usages." There can be no doubt whatever that the lease to Mr. De Hirsch, which is admitted to have been made before the issue of the certificate by the Court is, under this enactment, absolutely void, but there is no taint of illegality about Mr. De Hirsch's lease, or his antecedent negociations. I cannot find that such negociations are now, or were then, anywhere forbidden. The law simply is, that a man who undertakes such negociations undertakes them at his own risk, but if he negociate with the right parties, and they keep faith with him, he may, at the proper time, get the sanction and protection of the law to his acquirements. On referring to the "Native Land Bill, 1865," as originally printed, I find that it contained clauses similar to those contained in the Native Land Purchase Ordinance, provisions which made illegal all transactions with the Natives for their Native lands; but these clauses were struck out by Parliament, its intention being thus clearly shown. And the relaxation thus commenced has been since extended further by the Legislature. The "Native Lands Act, 1867," contains provisions very effectually protecting persons who negociate with and advance money to the Natives about their lands even previous to the sitting of the Court to investigate the titles to them, "notwithstanding," as it says, "the 73rd section of the Constitution Act, or any other law."

Mr. De Hirsch might have availed himself of this Act if he had thought fit, but he simply trusted the Natives, and, after the true owners were pointed out by the Court, got a lease from them in the usual form. His lease is therefore simply an ineffectual instrument, but in no way offensive to the law.

But there clearly existed in the mind of the claimant at the time he executed this lease a belief that by the operation of some statute, or by some means resulting from the practice of the Court, or of the Secretary for Crown Lands, his lease would become at a time then future a valid instrument; and I cannot doubt that, for some reason which does not clearly appear, that this belief was from the middle to nearly the end of 1868 very general indeed. Now, the effect upon my mind by what I have heard in this trial is that the Crown Grants Act was the original cause of this belief, and I am of opinion that if these Acts had not failed, from technical defects of language, to have carried out what I cannot but think was the intention of the Legislature, this belief would not have been ill founded. Lawyers, remembering what Lord Ellenborough said in Rex v. Skene, may object to this doctrine, but I cannot doubt that the Legislature desired by this Act to effect certain objects, which desire has not been expressed in language, and, as Lord Ellenborough in the same case added, "*quod voluit non dixit.*" I am the more confirmed in this impression from the knowledge that by the same Act, and by similar defect of language, Parliament divested the Secretary of Crown Lands of all power to charge fees for the preparation of grants of Native land, and, as a fact, none have since been charged by him. It is quite irrational to suppose that Parliament knowingly, and of judgment aforethought, would do such a thing as that.

It is not necessary for me to enter at length into an enquiry into these Crown Grant Acts. It appears to me sufficient to state that I am of opinion that Parliament intended to give a certain retrospective validity to transactions with Native lands; and, in fact, to relax still more the stringency of the old law which had been so greatly modified in 1865. But that this intention has not been expressed in language, and that, therefore, in a legal point of view, must be supposed never to have existed. Contemplating the case for the purpose of discovering what is justice in the premises, as the Court is by the Act required to do, I cannot think that the above referred to very general and not unreasonable belief can be ignored as an important element in the "circumstances of the case."

The lease to Messrs. Whitaker and Lundon was undoubtedly good and valid, so far as section 65 of the Act of 1865 is concerned.

II. What is the effect of the 73rd clause of the Constitution Act on transactions with Natives about their lands previously to the issue of Crown grants?