

New Zealand.



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1882, No. 52.

AN ACT to consolidate the Law relating to the Administration of Native Title Reserves. [15th September, 1882.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

GENERAL PROVISIONS.

1. The Short Title of this Act is "The Native Reserves Act, 1882."
2. In this Act, if not inconsistent with the context,—
 - "Board" means the Board constituted under "The Public Trust Office Act, 1872," together with two Natives to be from time to time appointed by the Governor to hold office during pleasure.
 - "Court" means the Native Land Court:
 - "Native" means an aboriginal native of New Zealand, and includes all half-castes and their descendants by Natives:

Short Title.

Interpretation.

“Owner” means Native owner:

“Public Trustee” means the Public Trustee appointed under “The Public Trust Office Act, 1872.”

Native reserves.

3. All lands coming within any of the definitions following shall be deemed to be Native reserves, that is to say,—

- (1.) Lands which have been or shall hereafter be excepted or reserved by Natives on the cession or surrender of lands to the Crown, and specified as so excepted or reserved in the deed of conveyance, cession, or surrender :
- (2.) Lands which have been or shall hereafter be reserved or excepted for the benefit of Natives upon the sale by them to the Crown of any lands :
- (3.) Lands which, by virtue of the provisions of the fourteenth section of “The New Zealand Native Reserves Act, 1856,” or the seventh section of “The Native Reserves Amendment Act, 1862,” may have been subject to the provisions of “The New Zealand Native Reserves Act, 1856 :”
- (4.) Lands comprised in blocks guaranteed to or set apart for the benefit of Natives by Colonel McCleverty, or according to the directions of any Commissioner appointed to investigate purchases of land made from Natives by the New Zealand Company :
- (5.) Lands reserved for the benefit of Natives by the New Zealand Land Company or New Zealand Company :
- (6.) Lands vested in the Public Trustee under this Act.

Provided however, and it is hereby declared, that the whole of the land between the Turakina and Whangaehu Rivers, in the Whanganui District, which, by a deed of cession dated the fifteenth day of May, in the year one thousand eight hundred and forty-nine, was reserved by the owners thereof as a gathering-place for the men of Ngatiapa, shall be deemed to have remained and to be Native land, and subject to the jurisdiction of the Court from the beginning.

Certain reserves to be subject to Act.

4. All Native reserves made within the territory described in the Schedule hereto, and which at the commencement of this Act were subject to the provisions of any Act repealed by this Act, shall be subject to the provisions of this Act.

Act not to be in operation in West Coast confiscated territory.

5. Except as mentioned in the last-foregoing section, this Act shall not have any operation in that part of the colony known as the Confiscated Territory, described in the Schedule to this Act.

Jurisdiction of the Court.

6. Subject to this Act the Court shall have the same jurisdiction over any Native reserve to which the Native title has been or shall be extinguished, and may take all such proceedings and make such orders with respect to any such Native reserve which comes before it for investigation or for any other purpose, as it has and may do with respect to any land owned by Natives under their customs or usages.

Native Land Acts incorporated herewith.

7. The Acts for the time being in force for regulating or relating to the practice and procedure of the Court, and the Acts for the time being in force establishing, regulating, and relating to the Public Trust Office, so far as the same may be respectively applicable, are hereby incorporated with this Act.

ADMINISTRATION BY PUBLIC TRUSTEE.

Native reserves vested in Public Trustee.

8. All lands and personal estate now vested in the Governor or any Commissioner or public officer (as such) under any Act heretofore in force relating

to Native reserves shall, from the commencement of this Act, be deemed to be placed in the Public Trust Office, and shall vest in the Public Trustee, subject to the trusts attached thereto respectively.

9. The Governor in Council may from time to time make regulations under the thirteenth section of "The Public Trust Office Act, 1872," for the administration of Native reserves under this Act, and for fixing the charges to be paid as cost for managing the same. Power to frame regulations.

The salaries of all officers appointed for the administration of this Act, or the carrying out any of the purposes thereof, shall be defrayed out of such moneys as shall from time to time be appropriated by the General Assembly in that behalf.

10. Every contract, promise, or agreement heretofore lawfully made by the Governor, or by any Commissioner or delegate heretofore duly appointed, shall be deemed to have been made with the Public Trustee, and shall be carried out by him according to the true intent and meaning thereof. Previous contracts transferred.

11. All such Commissioners and delegates shall, within six months from the commencement of this Act, furnish to the said Public Trustee, for examination and approval, a full and true statement and account of each estate and matter in their hands or under their management and control. Former Commissioners to account to him.

12. Before the thirtieth day of April, in the year one thousand eight hundred and eighty-three, the Public Trustee shall furnish to the Minister for Native Affairs a full statement of all such accounts, with such remarks appended to the account of each reserve as he may think fit to make : Public Trustee to furnish annual accounts to Minister.

And, so long as any reserve shall remain under his management or control, the aforesaid Trustee shall annually furnish such account of each reserve as aforesaid to the Minister for Native Affairs.

A copy of all such accounts shall be laid by the aforesaid Minister before each House of the General Assembly as soon as may be after the receipt thereof by him. To be laid before Parliament.

13. Every Native reserve shall be used, and the rents and proceeds thereof be applied, for and towards the purposes or objects to which the same are applicable respectively, and none other. Application of proceeds from reserves.

Provided that where any such purposes or objects have become obsolete or no longer possible of attainment, the Board, with the consent of the Governor in Council, may direct to what purpose or object similar to the original object any such reserve may be devoted.

14. Where any Native reserve has been or shall be made for the benefit, or in trust for the benefit, of any Natives, whether individually or collectively, the said word "benefit" in any instrument constituting the trust shall be construed to mean the physical, social, moral, or pecuniary benefit of such Natives, and shall extend to include the providing of medical assistance and medicines ; and the proceeds of any such reserve may be applied accordingly. Interpretation of "benefit."

15. The Public Trustee may, with the sanction of the Board, from time to time, lease any portion of the reserves vested in him or under his control, in respect of which no trust shall have been created inconsistent with the exercise of this power— Power to lease.

- (1.) For agricultural or mining purposes, to any person or persons for any term not exceeding thirty years in possession, subject to such covenants and provisos as shall seem fair and equitable ; and
- (2.) For building purposes, for any period not exceeding sixty-three years by renewable terms, not exceeding twenty-one years each, subject to a new assessment of ground rent at every such renewal, subject as aforesaid.

Express provision to be made therein for certain purposes.

Every such lease shall be subject to such regulations as may be prescribed under this Act, and also to the following conditions, that is to say,—

- (a.) Every lease shall be disposed of by public auction or public tender, after due notification thereof has been given by advertisement in a newspaper having general circulation in the district wherein the land to be leased is situate, as the Board shall think the most fitting in each case.
- (b.) The rent to be reserved shall be the best improved rent obtainable at the time.
- (c.) No fine, premium, or foregift shall, in any case, be taken upon any lease.
- (d.) No person in any way concerned with the administration of this Act shall in any case be personally interested, directly or indirectly, in any lease, nor shall there be imported therein any provision or covenant for the private advantage of any such person.

If beneficiaries not known.

16. Wherever doubts shall arise as to the persons who may claim to be beneficially interested in any portion of the land comprised within any Native reserve, the Public Trustee shall make application to the Court for the purpose of ascertaining the names of all persons who shall be deemed to be beneficially interested therein.

And the Court shall hear any such application, and determine the same according to such evidence and in such manner as it shall think best, and shall make such order therein as to it shall seem fitting.

Default of beneficiaries.

17. In case there shall be at any time no Native entitled to the benefit of the proceeds accruing out of any Native reserve, the Public Trustee shall hold such reserve and the proceeds thereof upon trust for such purposes as the Governor in Council may appoint.

Limitation of this part of Act.

18. The above sections, from eight to seventeen both inclusive, shall apply only to land and personal estate vested in the Public Trustee under section eight of this Act.

As to bringing Reserves under Act.

No land subject to Act until Native title extinguished.

19. Except as hereinbefore provided, no Native reserves shall be subject to the administration of the Public Trustee under this Act until the Native title over such land shall have been extinguished, nor until the assent of the Natives to bring any such land under the provisions of this Act has been ascertained in manner as is provided in the next succeeding section, and vesting orders made as therein mentioned.

The Native title shall be deemed to be extinguished when the land is held under Crown grant or under a certificate of title or memorial of ownership issued by the Court under any Native Land Act for the time being in force.

Public Trustee may apply to Native Land Court with consent of owners.

20. In any case where it would be advantageous for the owners of any Native reserve, over which the Native title has not been extinguished as aforesaid, to bring the same under the operation of this Act for the purpose of management, the Public Trustee, with the consent of the Natives beneficially interested therein, may make application to the Court for that purpose; and thereupon,—

Procedure by the Court.

- (1.) The Court shall hear and determine any such application as if the same had been made by the owners of the land, and shall ascertain in the manner it shall think fit the names of all the owners of the land comprised in the application, the proportionate undivided share of each owner therein, and the assent or dissent of the said owners to such land being dealt with in the manner proposed :

- (2.) If the Court shall be satisfied with the inquiry made, it shall order the names of all the persons who have been found to be the owners thereof to be placed on the register as the owners, and a certificate of title to issue to such owners either collectively or individually, and also may order that the land comprised in the application, or so much thereof as the Court shall think fit, shall thenceforth vest in the Public Trustee as a Native reserve subject to the provisions of this Act : Extinguishing Native title.
- (3.) Upon any application as aforesaid, either the Public Trustee or the owner may make a suggestion to the Court of the particular trusts or purposes upon or for which it may be proposed that the land shall be held for the future : Trusts may be declared.
- And thereupon, if the Court shall be satisfied that the owners all concur in the suggestion, and that such intended trusts or purposes are likely to be beneficial to such owners, the said Court shall make an order declaring that the land shall be held in future upon or for such trusts or purposes accordingly :
- (4.) The land described in any such order shall, from the date thereof, vest in the Public Trustee, to be held in fee-simple upon such trusts and for such purposes and with such powers as shall be declared by the Court in each case, and shall be dealt with by him subject to the said trusts only : Land vested in Public Trustee.
- (5.) Every application made to the Court on behalf of the Public Trustee by any person duly appointed or authorized in writing to act in his behalf shall be deemed to be made by the Public Trustee : Applications by agents for Public Trustee.
- (6.) Every order made by the Court under the provisions of this section shall forthwith, after the time allowed for an application for the rehearing of any case, be published in the *Gazette* and also in the *Kahiti*. Orders to be published in *Gazette* and *Kahiti*.

21. The owners of any land in respect of which the Native title has not been extinguished, as hereinbefore mentioned, may apply to the Court for the purpose of transferring all their estate and interest in such land to the Public Trustee, upon such particular trusts and purposes as they shall declare to the Court. Native owners may transfer land to Public Trustee.

Upon any such application the Court shall proceed, as provided in the last foregoing section, to determine the Native title over the land comprised in the application, and may make an order vesting such land to be held in fee-simple in the Public Trustee, subject to such trusts as the Court shall declare in that behalf.

22. Where any Native reserve vested in the Public Trustee, or under his control, or held by any Natives under Crown grant, memorial of ownership, or certificate of title, is subject to any restrictions, limitations, or conditions, such Trustee or Natives respectively may apply to the Court to have the same or any of them annulled and removed. Restrictions may be varied or annulled.

The Court, on proof in all cases being made of the consent of the Public Trustee or persons interested respectively to the application, may hear the same, and may make such order in compliance therewith or otherwise, or reject such application, as it shall think fit.

Any such order shall be good and valid in law, and may be registered as an instrument of title under "The Deeds Registration Act, 1868," or under "The Land Transfer Act, 1870."

Before altering or removing any restrictions, limitations, or conditions attached to any Native reserve, the Court shall be satisfied that a final reservation has been made, or is about to be made, amply sufficient for the future wants and maintenance of the tribe, hapu, or persons to whom the reserve wholly or in part belongs.

Form of order.

23. Every order removing any such restrictions, limitations, or conditions as aforesaid shall be signed by the presiding Judge, and sealed with the seal of the Court, and shall have the effect of rendering the land or hereditaments described absolutely as free and clear of and from all restrictions, conditions, and limitations as if none had ever been contained therein; and any order partially annulling or changing any restrictions, limitations, and conditions therein contained, shall operate and have effect according to the intent and meaning thereof.

Grants may be surrendered, and others substituted.

24. Where all the grantees named in any Crown grant whereby any land has been granted to them in trust for themselves and others, but no trust has been expressed in the grant, shall agree to surrender the same, or where the majority of the persons beneficially interested in such land shall apply to him for the purpose of having the grant cancelled, the Public Trustee may apply to the Court to have such grant annulled and to have another instrument of title substituted therefor, wherein the names of all the persons entitled to the land shall be inserted, and the trusts upon which such land is to be held indorsed thereon; and the Court, on proof in all cases being made of the consent of the persons concerned to the application, may hear the same, and may make such order in compliance therewith or otherwise, or reject such application, as it shall think fit.

Such order shall be good and valid in law, and the effect shall be the same as if the Crown grant had been absolutely repealed by *scire facias*.

Judgment to be subject to rehearing.

25. Every final judgment given under this Act shall be subject to rehearing under the provisions of any Native Land Act for the time being in force; and a copy of every such judgment, and of the subsequent judgment on a rehearing (if any), shall be forthwith forwarded by the Clerk of the Court to the Public Trustee.

Copy to be sent to Public Trustee.

Notices of sittings of Court.

26. The Clerk of the Court shall punctually furnish to the Public Trustee copies of all notices of sittings issued by the Court.

MISCELLANEOUS PROVISIONS.

Native Reserves Commissioner appointed.

27. The Governor may, from time to time, appoint a Native Reserves Commissioner, (herein referred to as "the Commissioner,") who shall, subject to the direction of the Public Trustee, conduct all or any portion of the routine business relating to the administration of Native reserves vested in the Public Trustee or under his control.

His duties.

28. The said Commissioner may personally, or by agent appointed in writing, in the name of the Public Trustee and on his behalf,—

- (1.) Make all applications and conduct any proceedings in the Court in relation to any Native reserve, and do all other things necessary or required to be done in relation thereto respectively.
- (2.) Take all necessary proceedings, criminal as well as civil, in law or in equity, when authorized thereto in writing, touching or concerning any Native reserve, or any proceeds thereof whatsoever, vested in the Public Trustee.

Final reservations for Natives.

29. It shall be the duty of the Commissioner, in person or by agent, to apply to the Court, and show why any land being adjudicated upon by the said Court or any part thereof,—

Surplus lands.

- (1.) Should not be adjudicated upon, as being surplus lands vested in Her Majesty, the Native title over the same having been extinguished by former land claimants; or
- (2.) Should be made inalienable to any person other than Her Majesty, as being required for the purpose of a road, wharf, landing-place,

Reserves for public purposes.

or any other object of public utility or convenience, or on the grounds that the public peace might be affected by the alienation ; or

- (3.) Should be rendered subject to any restrictions, conditions, or limitations on alienation, so as to prevent the Natives from so far divesting themselves of their land as to retain insufficient for their support and maintenance.

Grants on special trusts.

On any such application the Court may make such order as it shall think just ; and, where any land is to be reserved inalienably to Natives, it may, as to any part or the whole of such land, issue a memorial of ownership or certificate of title for the same, or, with the concurrence of the Natives beneficially interested therein, order that a grant may be made thereof, or a part thereof, to the Public Trustee, stating in such order the objects of the trust, the names of the *cestui que* trust, and the estates or interests to be created by such grant.

30. Wherever on the cession or sale of any lands to Her Majesty by Natives, any of such lands have been or shall be excepted from such sale by the Native sellers, or where any lands have been or shall be set apart for Natives by the Governor or the Court, the Commissioner may apply to the Court for an order defining the individuals for whom any such land shall be deemed to be set apart and the proportionate share of each such individual therein respectively ; and the Court may hear such application and make order therein accordingly.

Court may nominate individual owners of reserves.

31. Nothing in any Disqualification Act for the time being in force affecting members of the General Assembly shall be deemed to disqualify or impose any penalty upon any Native in consequence of his being appointed to or of holding any appointment under this Act to which any salary is attached.

Disqualification Acts not to apply to Natives holding appointments under this Act.

32. Nothing in this Act contained shall apply to or affect the land granted under the provisions of "The Poverty Bay Grant Act, 1869," and "The Poverty Bay Grant Act Amendment Act, 1871."

Act not to apply to land granted under Poverty Bay Acts.

REPEAL.

33. The several Acts enumerated below are hereby repealed :—
 1856, No. 10—The New Zealand Native Reserves Act, 1856.
 1858, No. 47—The New Zealand Native Reserves Amendment Act, 1858.
 1862, No. 14—The Native Reserves Amendment Act, 1862.
 1867, No. 42—The Auckland and Onehunga Native Hostelries Act, 1867.
 1873, No. 60—The Native Reserves Act, 1873.

Repeal.

SCHEDULE.

DESCRIPTION OF CONFISCATED TERRITORY.

Schedule.

Sec. 4.

ALL that part of the Colony of New Zealand comprised within the following boundaries, that is to say: Commencing at the tunnel at Parininihi, or the White Cliffs, and thence by a line running due East, twenty miles ; thence by a line running in a South-westerly direction to the Ngaire Swamp ; thence by a line known as the "Confiscated Line" to the point where it strikes the Waitotara River, and by that river to the sea ; and thence by the sea to the commencing point.