

[Mr. Toiaraa.]

### Crown Redress Act Extension.

#### ANALYSIS.

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| <p>Title.<br/>Preamble.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Supreme Court to have original jurisdiction.</li> <li>3. Court of Appeal to have appellate jurisdiction.</li> <li>4. Costs may be awarded.</li> <li>5. Practice and procedure of Supreme Court and Court of Appeal to apply.</li> <li>6. Petition may be filed by any Native interested on behalf of himself and all others interested.</li> <li>7. Petition to be submitted to the Governor.</li> <li>8. No further proceedings to be taken until security given for costs of the Crown.</li> <li>9. Attorney-General to appear and plead after security given.</li> <li>10. Governor may appoint Assessors and Interpreter to act upon any trial.</li> <li>11. Assessors and Interpreter to receive allowances to be fixed by Judge.</li> </ol> | <ol style="list-style-type: none"> <li>12. Court not to be bound by existing English translations of contracts.</li> <li>13. Printed copies of official documents to be received in evidence in lieu of the originals.</li> <li>14. Right of succession, if in question, to be determined according to Native usages and customs.</li> <li>15. Lapse of time not to be a bar.</li> <li>16. Jury to find facts specifically.</li> <li>17. Jury to assess compensation specifically.</li> <li>18. Judge may order special allowance to jury.</li> <li>19. Judgment of Court to be in accordance with equity and good conscience.</li> <li>20. Decree not to be satisfied until General Assembly has had an opportunity of considering it.</li> <li>21. Temporary operation of Act.<br/>Schedule.</li> </ol> |
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#### A BILL INTITULED

AN ACT to extend the operation of "The Crown Redress Act, 1871," and to enable certain Native Land Claims against the Crown to be heard and determined in the Supreme Court of New Zealand. Title.

**W**HEREAS by the ninth section of "The Crown Redress Act, 1871," it is provided that no person shall be entitled by virtue thereof to prosecute or enforce any claim against Her Majesty the Queen in the nature of an action for specific relief for the performance of, nor any action for damages for the breach of, any contract for the purchase of waste or other lands of the Crown: And whereas there are at present no means whereby the validity of the claims hereinafter mentioned and referred to can be tested in any Court of judicature in the colony: And whereas before the passing of the Constitution Act of New Zealand (15 and 16 Vict., c. 72) by the Imperial Parliament of Great Britain and Ireland, certain contracts or agreements were made and entered into for the purchase of lands belonging to the aboriginal natives of the colony by the duly authorized agents of a company mentioned and referred to in the said Constitution Act as the New Zealand Company, and such contracts or agreements, together with the translations thereof in the English language indorsed thereon, are set forth in the Schedule to the said Act: And whereas by certain Acts of the Imperial Parliament, the rights and liabilities of the said New Zealand Company under the said contracts or agreements Preamble.

became vested in and devolved upon Her Majesty: And whereas it is alleged that the promises and stipulations on the part of the said New Zealand Company contained in the said contracts or agreements have never been completely fulfilled or performed; and it is further alleged that lands and hereditaments in the Middle Island of New Zealand over which the Native title has never been extinguished, and which were not comprised in or intended to be affected by the said contracts or agreements, have been taken possession of and sold and disposed of in the name of Her Majesty, under colour of the said contracts or agreements: And whereas it is desirable that the claims of the aboriginal natives, parties to or bound by the said contracts or agreements, or their representatives according to Native usages and customs, should be heard and determined in a Court of competent judicature in the colony, in order that right and justice may be done:

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

Short Title.

1. The Short Title of this Act shall be “The Crown Redress Act 1871 Extension Act, 1877.”

Supreme Court to have original jurisdiction.

2. The Supreme Court of New Zealand shall have jurisdiction in respect to the causes, matters, and things herein provided for, and shall make and pronounce orders, rules, judgments, and decrees therein, in accordance with the provisions herein contained.

Court of Appeal to have appellate jurisdiction.

3. The Court of Appeal of New Zealand shall have jurisdiction to alter, vary, affirm, or reverse any interlocutory or final order, rule, judgment, or decree made and pronounced by the said Supreme Court under the authority of this Act.

Costs may be awarded.

4. Costs may be awarded by the said Supreme Court and by the said Court of Appeal respectively, as an incident of or to any order, rule, judgment, or decree made and pronounced by the said Supreme Court in the first instance, or by the said Court of Appeal on appeal from the said Supreme Court under the authority of this Act.

Practice and procedure of Supreme Court and Court of Appeal to apply.

5. So far as they may not be inconsistent with anything herein contained, the general rules of practice and procedure of the Supreme Court and the Court of Appeal, and the provisions in the several Acts of the General Assembly of New Zealand relating to the practice and procedure in the said Supreme Court and the Court of Appeal, shall be applicable to all proceedings which may be had or taken under the authority of this Act.

Petition may be filed by any Native interested on behalf of himself and all others interested.

6. Any aboriginal native being one of the persons party to or bound by the said contracts or agreements in the said Schedule set forth, or any aboriginal native entitled by succession to the rights of any deceased Native person party to or bound by the said contracts or agreements, shall be entitled (subject to the conditions hereinafter imposed) to file in the office of the Attorney-General or of the Solicitor-General (in the event of the office of Attorney-General being then vacant) of the colony a petition in writing on behalf of all of the aboriginal natives immediately or mediately interested in or entitled under the said contracts or agreements, either as contracting parties or as being bound merely or as entitled by succession, and such petition shall allege clearly and specifically all matters of fact upon which the said aboriginal natives interested or entitled under the said contracts or agreements rely; and such petition shall in like manner show the grounds of complaint (if any) relied upon, and in what respects, if at all, the stipulations and promises contained in the said contracts or agreements on the part of the said New Zealand Company have not been performed and fulfilled, and what (if any) lands and hereditaments over which the Native title has not been extinguished, other than the lands and hereditaments comprised in and intended to be affected by the said contracts or agreements, have been taken in the Middle Island of New Zealand, or have been sold and disposed of by or

in the name and on behalf of Her Majesty, under colour of the said contracts or agreements, to the prejudice of the petitioner and all persons interested in common with him; and such petition shall conclude with a general statement of the relief asked and sought by the

5 said petition.

7. The said petition shall, after the receipt thereof by the Attorney-General or Solicitor-General as aforesaid, be forwarded to His Excellency the Governor, who shall, in the exercise of his own discretion, indorse thereon a memorandum in writing declaratory of

Petition to be submitted to the Governor.

10 his will and pleasure whether such petition shall or shall not be filed in the Supreme Court, and should the said Governor by such indorsement express his willingness that such petition may be so filed, then the said petition may at any time thereafter be filed in any office of the Supreme Court in New Zealand.

15 8. No further proceedings shall be taken upon or in respect of such petition unless and until security to the satisfaction of a Judge of the Supreme Court shall have been first given for the costs of Her Majesty in and about the said petition, and all proceedings which may thereafter be had and taken thereon.

No further proceedings to be taken until security given for costs of the Crown.

20 9. After such security shall have been so given as aforesaid, the Attorney-General or the Solicitor-General for the time being as aforesaid (who shall thereafter be named and treated as the respondent in the proceedings arising out of the said petition) shall, within a time to be limited by an order to be made by a Judge of the Supreme Court,

Attorney-General to appear and plead after security given.

25 appear and plead or demur to the said petition, and thereafter all other proceedings shall and may be had and taken between the parties to the said petition as if the matters in controversy between them formed the subject of dispute between an ordinary plaintiff and defendant in an action commenced and prosecuted in the Supreme

30 Court.

10. Upon the trial of any question of fact arising out of the said petition, which trial shall be held by and before a Judge of the Supreme Court and a jury of twelve men, as in all ordinary cases of trial by jury in the Supreme Court, it shall be lawful for the Governor

Governor may appoint Assessors and Interpreter to act upon any trial.

35 in Council, upon the request in writing of the Judge before whom the trial is to be held, to appoint under his hand and the Seal of the Colony two or more Assessors and an Interpreter, the former of whom shall be of the Native race: And such Assessors and Interpreter shall, before entering upon the duties of their respective offices, take an oath, to be administered in open Court by the Judge, that they the said Assessors will well and faithfully assist the said Judge during the course of the said trial in all matters and things wherein he shall require their assistance, and that the said Interpreter shall well and faithfully interpret the language of the Judge, counsel, witnesses, and all other

40 persons engaged or concerned in the said trial, from the Maori into English language, and *vice versa*, as occasion may require: Provided always that the said Assessors shall take no part in the proceedings at the trial further or otherwise than rendering such assistance as aforesaid, and the said Judge shall, if he dissents therefrom, be in no way

45 bound to act upon the views or opinions of the said Assessors: Provided always that the said Assessors and Interpreter shall be chosen from some Native tribe or tribes, and from a part or parts of the colony in no way directly or indirectly interested in the result of the said petition.

55 11. The said Assessors and Interpreter shall be entitled to receive such travelling maintenance and other expenses for their loss of time as shall be allowed by the said Judge, by an order under his hand, and the moneys paid in respect thereof shall be charged and claimable as costs of and incidental to the trial by the successful party.

Assessors and Interpreter to receive allowances to be fixed by Judge.

60 12. Upon the trial of any issue or question of fact arising upon the said petition, it shall be lawful for the said Supreme Court to

Court not to be bound by existing English translations of contracts.

receive evidence of the true meaning and rendering of the Maori or Native terms and language used in the said contracts or agreements, notwithstanding the translations in English which are indorsed thereon, and the said Supreme Court shall give effect to the true meaning and rendering of the said Maori or Native terms and language used in the said contracts or agreements. 5

Printed copies of official documents to be received in evidence in lieu of the originals.

**13.** In order to avoid unnecessary expense and delay in the proof of official documents and correspondence, it shall be lawful for a Judge of the Supreme Court, before the trial of any issues or questions of fact arising upon the said petition, by an order under his hand, to direct order and declare that any documents or correspondence pertinent to the matters in controversy, and which shall have been published by the authority of Her Majesty's Imperial Government, or the Government of the Colony, in any Parliamentary Blue Book or other compilation of a like nature, shall be admitted and received in evidence for all purposes at or upon the said trial, without production or proof of the loss of the original documents or correspondence: Provided always that if the said Judge shall be satisfied that any reasonable doubt exists regarding the authenticity or accuracy of any document or correspondence so published as aforesaid, it shall be lawful for him to exclude such document or correspondence from the category of documents or correspondence to be received and admitted at the time. 10 15 20

Right of succession, if in question, to be determined according to Native usages and customs.

**14.** In the event of any question arising at the trial respecting the right of succession of any aboriginal native or class of Natives, as to the share or interest of any deceased Native or class of Natives, the said Supreme Court shall not be bound by the laws applicable to the rights of succession in cases of Her Majesty's natural-born British subjects, or the proof thereof, but shall and may receive evidence of Native usages and customs, and give effect thereto. 25

Lapse of time not to be a bar.

**15.** In the determination of any question, whether of law or fact, arising upon or under the said petition, lapse of time shall not be deemed either legally or equitably a ground for refusing relief to the petitioner, or those on whose behalf he sues. 30

Jury to find facts specifically.

**16.** Upon the trial of the said issues of fact, the jury shall specifically find by their verdict wherein and in what respects (specifying them in detail) the promises and stipulations contained in the said contracts or agreements have not been fulfilled by the said New Zealand Company, or by Her Majesty as the purchaser from the said Company, and the jury shall also by their verdict specifically find what lands and hereditaments (specifying them in detail) over which the Native title has not been extinguished, have been taken in the Middle Island of New Zealand, or sold and disposed of to the prejudice of the petitioner and all other persons whose interests are common to his own, in the name or by and on behalf of Her Majesty, under colour of the said two contracts or agreements: Provided always that with regard to the last-mentioned subject-matter of inquiry, the finding of the jury shall be exclusively confined to lands and hereditaments in the said Middle Island, wherein the petitioner and the aboriginal natives represented by him were or are interested originally, or by succession or otherwise. 35 40 45 50

Jury to assess compensation specifically.

**17.** The jury shall also upon the trial aforesaid severally and respectively append to each item of their verdict, should they find that any promise or stipulation has been left unperformed or unfulfilled on the part of the said New Zealand Company or Her Majesty, or that any lands or hereditaments have been wrongly taken under colour of the said contracts or agreements, the amount of compensation which in the opinion of the jury should be paid by Her Majesty in respect of each of such items: Provided always that in estimating such compensation the jury shall be directed and required not to take into account or allow for any enhanced value in the price of land which may have been occasioned by the settlement and progress of the colony, or any part 55 60

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thereof, but the jury shall, as nearly as may be, assess compensation upon the basis of the extent to which the said New Zealand Company benefited or Her Majesty has benefited by the non-fulfilment and non-performance of the said promises and stipulation contained in the said  
 5 contracts or agreements, and by the taking or sale and disposal of the lands and hereditaments not comprised in or intended to be affected by the said contracts or agreements; and the jury shall also be at liberty to take into account and allow reasonable compensation for any unnecessary lapse of time which they may consider to have taken place  
 10 since the making of the said contracts or agreements in performing and fulfilling the said promises and stipulations, and the jury shall also be at liberty to take into account and allow reasonable compensation for the length of time during which Her Majesty may have benefited by the taking or sale and disposal of the lands and hereditaments not com-  
 15 prised in or intended to be affected by the said contracts or agreements.

18. The Judge shall, by an order under his hand to be made immediately after the trial, order and direct what (if any) special allowance should be made to the jury, and such special allowance shall be paid accordingly, and shall be recoverable as part of the costs  
 20 of the successful party.

*Judge may order special allowance to jury.*

19. The Supreme Court shall, upon a day to be set apart for the purpose, weigh and consider the verdict and findings of the jury, and shall make, pronounce, and adjudge such order, decree, or judgment thereon as may seem to it to be in accordance with equity and good  
 25 conscience, and without regard to any technical rule of law or equity; and the said Supreme Court shall, by such order, decree, or judgment, direct all necessary inquiries to be made and prosecuted with the view of ascertaining and determining what persons are entitled and in what proportions respectively to share in the benefit of the said order, decree,  
 30 or judgment; and such inquiries, when finally made, the said Supreme Court shall, if satisfied therewith, adopt, or if necessary alter or vary the same; and such inquiries when adopted, or if approved as altered or varied, shall be entered in the records of the said Supreme Court, and shall form part of the proceedings in connection with the said  
 35 petition.

*Judgment of Court to be in accordance with equity and good conscience.*

20. It shall not be lawful for the Governor to obey or satisfy, or in any way to compound for or in respect of the order, decree, or judgment so to be made as aforesaid until after the prorogation of the session of the General Assembly of New Zealand which shall be held  
 40 next after the making of the order, decree, or judgment by the said Supreme Court, or if an appeal shall be prosecuted to the Court of Appeal, then not until after the prorogation of the session of the General Assembly which shall be held next after the making of a final order, judgment, or decree upon such appeal.

*Decree not to be satisfied until General Assembly has had an opportunity of considering it.*

21. This Act shall come into operation from and after the day upon which His Excellency the Governor shall assent to the same on behalf of Her Majesty, and shall continue in force unto the thirty-first day of December, one thousand eight hundred and eighty, and no longer.

*Temporary operation of Act.*

SCHEDULE.

*Schedule.*

- I.  
Contract or agreement in Maori.
- II.  
Translation in English, indorsed on the foregoing.
- III.  
Contract or agreement in Maori.
- IV.  
Translation in English, indorsed on the foregoing.