

Hon. Mr. Taiaroa.

CROWN SUITS ACT 1881 EXTENSION.

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A BILL INTITULED

AN ACT to extend the Operation of "The Crown Suits Act, 1881," and to enable certain Native Land-claims against the Crown to be heard and determined in the Supreme Court of New Zealand.

Title.

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WHEREAS by the fortieth section of "The Crown Suits Act, 1881," it is provided that nothing in Part II. of the same Act shall apply to claims or causes of action which have arisen before the commencement thereof: And whereas there are at present no means whereby

Preamble.

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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, in the fifteenth and sixteenth years of the reign of Her Majesty Queen Victoria, chapter seventy-two, by the Imperial Parliament of Great Britain and Ireland, a certain contract or agreement was made and entered into for the purchase of lands belonging to the aboriginal natives of the colony by the duly authorised agents of a company, mentioned and referred to in the said Constitution Act as the New Zealand Company, and the translation in the English language of such contract or agreement which is indorsed thereon is set forth in the Schedule to this Act: And whereas by certain Acts of the Imperial

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Parliament the rights and liabilities of the said New Zealand Company under the said contract or agreement became vested in and devolved upon Her Majesty: And whereas it is alleged that the promises, stipulations, and obligations on the part of the said New Zealand Company and on the part of Her Majesty, contained in or arising out or by virtue of the said contract or agreement, or made or undertaken in relation thereto, have never been completely fulfilled or performed: And whereas it is desirable that the claims of the aboriginal natives parties to or bound by the said contract or agreement, 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 is "The Crown Suits Act 1881 Extension Act, 1896."

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 contract or agreement 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 contract or agreement, 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 the aboriginal natives immediately or mediately interested in or entitled under the said contract or agreement, 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 contract or agreement 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, promises, and obligations contained in or arising out of or by virtue of the said contract or agreement, or made or undertaken in relation thereto, either expressly or impliedly, on the part of the said New Zealand Company, or on the part of Her Majesty, have not been performed and fulfilled, and such petition shall conclude with a general statement of the relief asked and sought by the 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 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.

Petition to be submitted to the Governor.

8. After such petition shall have been so filed in the Supreme Court 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, appear and file a statement of defence 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 Court.

Attorney-General to appear and plead after security given.

9. 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 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 persons engaged or concerned in the said trial, from the Maori into the 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 bound to act upon the 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.

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

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

10. 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. 5

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

11. 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 receive evidence of the true meaning and rendering of the Maori or Native terms and language used in the said contract or agreement, notwithstanding the translation in English which is 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 contract or agreement. 10

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

12. 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 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. 15 20 25 30

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

13. 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. 35

Lapse of time and absence of writing not to be a bar.

14. In the determination of any question, whether of law or fact, arising upon or under the said petition, lapse of time shall not, nor shall the fact that any such promise, stipulation, or agreement as aforesaid was not in writing, be deemed either legally or equitably a ground for refusing relief to the petitioner or those on whose behalf he sues, and the Statute of Frauds passed in the twenty-ninth year of the reign of His Majesty King Charles II., chapter three, shall not be set up or be pleadable as a defence or answer to such petition. 40 45

Jury to find facts specifically.

15. 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, stipulations, and obligations contained in or arising out or by virtue of the said contract or agreement, or made or undertaken in relation thereto, either expressly or impliedly, 50

have not been fulfilled by the said New Zealand Company, or by Her Majesty.

16. The jury shall also upon the trial aforesaid severally and respectively append to each item of their verdict, should they find that
 5 any promise or stipulation or obligation has been left unperformed or unfulfilled on the part of the said New Zealand Company or Her Majesty, the amount of compensation which in the opinion of the jury should be paid by Her Majesty in respect of each such items: Provided
 10 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 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
 15 Majesty has benefited, by the non-fulfilment and non-performance of the said promises, stipulations, and obligations; 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 since the making of the said contract or agreement in performing and fulfilling the said promises, stipulations, and obligations.

Jury to assess compensation specifically.

17. 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
 25 of the successful party.

Judge may order special allowance to jury.

18. 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
 30 good 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 benefits of
 35 the said order, decree, 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 approved, as altered or varied, shall be entered in the records of the said Supreme Court and shall form part of the proceedings in
 40 connection with the said petition.

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

19. 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
 45 be held 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.

20. 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 ninety-nine, and no longer.

Temporary operation of Act.

Schedule.

SCHEDULE.

Know all men, by this document, we, the Chiefs and men of the Ngaitahu Tribe in New Zealand, whose names are undersigned, consent, on this 31st day of July, in the year of our Lord, 1844, to give up, sell, and abandon altogether to William Wakefield, the Principal Agent of the New Zealand Company, of London, on behalf of the Directors of the said company, all our claims and title to the land comprised within the under-mentioned boundaries. The names of the said lands are Otakou, Kaikarae, Taieri, Mataaaua, and Te Karoro. These are the boundaries: The northern boundary-line commences at Purehurehu, runs along the sea-shore, crossing the entrance of Otakou (Harbour) to Otupu, thence along the coast to Poatiri; the eastern boundary is the ocean, from the Poatiri to Tokata; thence the southern boundary runs along the summit of Taukohu to Pohueroa, it then runs along the summit of the Kaihiku Range, and crosses the Mataau River, thence along the summit of the Maungaatua Range to Waikaari, along the summit of Waikaari to Mihiwake, Otuwareroa, thence it descends to Purehurehu on the sea-coast.

We also give up all the islands—Tamautarua, Rakiriri, Okaihe, Moturata, Paparao, Matoketoke, Hakinikini, and Aonui—excepting the following places, which we have reserved for ourselves and our children, that is to say: A certain portion of land on the eastern side of Otakou, called Omate; the boundary-line commences at Moepuka, crosses over to Poatiri, thence along the coast to Waiwakaheke, then crosses to Pukekura, and runs along the side of the harbour to Moepuku. Also a certain portion of land at Pukekura, the boundaries of which are marked by posts, containing one acre, more or less. Also a portion of land at Taieri, the boundary-line of which commences at Onumia, and runs across in a straight line to Maitapapa; the Taieri River forms the other boundary. Also a portion of land at Te Karoro, bounded on the south by the Karoro River; on the east by the ocean; the northern boundary includes the village of that place, and extends inland about one mile: which said reserved places we agree neither to sell nor let to any party whatever without the sanction of His Excellency the Governor of New Zealand.

We have received as payment for the above first-mentioned land the sum of £2,400 in money, on this day, in the presence of these witnesses.

JOHN TUHAWIKI.	MOKOMOKO.
TAIAROA.	TE AO.
KARETAI.	KORAKO KARETAI.
KORAKO.	TUTE WAI UO.
KAIKOARERE.	PAPA KAWA.
TAKAMAITU.	TE HOKI.
TE RAKI.	KAIWAKANA.
JOHN TUHAWAIKI (for TOPI).	TE RAKI.
KIHOU.	POTIKI.
HOROMONA POHIO.	POHOTA.
POHAU.	TAIAROA (for POKIHI).
KAHUTI.	POKENE.
KURAKURA.	

Witnesses—

JOHN JERMYN SYMONDS, P.M.
 FREDERICK TUCKETT.
 GEORGE CLARKE, Jun., Protector Aborigines.
 DAVID SCOTT.