

[AS REPORTED FROM THE EAST COAST TRUST LANDS BILL COMMITTEE,
27TH AUGUST, 1902.]

Hon. Sir J. G. Ward.

EAST COAST NATIVE TRUST LANDS.

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A BILL INTITULED

AN ACT to provide for the Postponement of the Sale by the Mortgagees of certain Lands held upon Trust for Natives, and to make other Provision relating thereto and to other Lands held in Trust for Natives upon the East Coast of the North Island.

Title.

WHEREAS certain lands held upon trust for Native owners in the East Coast district of the North Island of New Zealand are comprised in mortgages to the Bank of New Zealand to secure large sums of money due and owing to the said bank: And whereas certain other such lands are comprised in mortgages to the said bank to secure specific sums forming part of the general debt to the bank, and as to some of such lands the bank has for several years past been in possession and has carried on farming operations thereon, and sales of the said properties, or of some of them, by direction of the bank as mortgagee thereof, have been advertised to be held under the conduct of the Registrar of the Supreme Court at Gisborne and Napier respectively: And whereas certain other lands in the said district are held by trustees for Native owners, over many of which the trustees and beneficiaries of the lands so mortgaged to the said bank as aforesaid make claims for contributions and assistance, which claims have not as yet been considered by the Validation Court or any other Court: And whereas it is desirable in the interests of the Natives concerned in the said lands that such sale should be postponed for a definite period, and that to facilitate the arrangements to be made by the trustees for the redemption of the mortgages to the said bank and for the disposition of the lands all future litigation in respect of the titles to the same and other matters dealt with in this Act should be prevented:

Preamble.

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 East Coast Native Trust Lands Act, 1902."

Interpretation.

2. In this Act, if not inconsistent with the context,—

"Bank" means the Bank of New Zealand :

~~"Council" means the Tai Rawhiti District Maori Land Council constituted under "The Maori Lands Administration Act, 1900" ; Board means three trustees appointed by the Governor in Council :~~ 5

"Trustees" means the Hon. James Carroll and Wiremu Pere, and in sections nine, ten, and eleven includes other trustees of lands dealt with under this Act : 10

"Securities" means all lands, stock, and other properties heretofore mortgaged or assigned by the trustees to the Bank of New Zealand Estates Company (Limited) or to the bank and the deeds and memoranda effecting such mortgages : 15

"Principal security" means the lands, stock, and properties mortgaged or assigned by the trustees to the said Bank of New Zealand Estates Company (Limited) or to the bank to secure general moneys due and to fall due to the bank, and the deeds and memoranda effecting such mortgages : 20

"Specific securities" means mortgages made by the trustees in favour of the Bank of New Zealand Estates Company or of the bank over specific lands with charges limited to specific amounts fixed by the Validation Court, and the memoranda effecting such mortgages, and includes mortgages made over specific lands to secure cash advances made by the bank. 25

sale of lands by bank postponed.

3. The bank shall not without the consent of the ~~Council Board~~ 30 sell or cause to be sold any of the lands comprised in the securities before the thirty-first day of August, one thousand nine hundred and four ; but on or after that date the bank may without such consent sell the whole or any of the lands comprised in the securities whereof it is then mortgagee, either under the conduct of the Registrar of the Supreme Court or otherwise, and the bank shall not be required to give any of the notices required in respect of Native lands before a sale by the mortgagee thereof ; and nothing in any Act relating to Native lands shall prevent the bank from becoming the purchaser of any of such lands sold under the conduct of the Registrar of the Supreme Court, and it shall not be necessary for the bank to wait until the said thirty-first day of August, one thousand nine hundred and four, before giving notice by advertisement and otherwise of its intention to sell all or any of such lands on or after that date. 45

Title of bank and power of sale not to be questioned.

4. The title of the bank as mortgagee of the lands comprised in the securities and the power of the bank to sell the same on or after the thirty-first day of August, one thousand nine hundred and four, shall not be questioned in any action or proceeding in any Court by the trustees, or by any *cestui que trust*, or by the ~~Council Board~~, 50 or by any other person or persons whomsoever, and this Act may be pleaded in bar to any action or proceeding whereby the title of the bank as mortgagee or its power to sell as aforesaid may be impeached.

5. The title of the *Council Board* to mortgage any lands comprised in the securities for the purpose of redeeming the existing mortgages to the bank or subject to such existing mortgages, and the title of the *Council Board* to sell or let any of the said lands subject to the mortgages to the bank, shall not be questioned in any action or proceeding in any Court, and this Act may be pleaded in bar to any action whereby the title of the *Council Board* to so mortgage, sell, or lease any of the said lands may be impeached: Provided that any Natives claiming to be entitled to any lands vested in the *Council Board* shall not be barred as against the *Council Board* from claiming an account of the dealings of the *Council Board*.

Title of trustees to mortgage, sell, or lease not to be questioned.

6. The agreement between the trustees and the bank set forth in the Schedule to this Act providing for the ascertainment from time to time of the amounts due to the bank upon the principal security and upon the specific securities respectively shall be valid and have effect as if the provisions thereof were hereby enacted.

Agreement for ascertaining amounts due to bank.

7. The *Council Board* may from time to time, after the ascertainment directed in the second clause of the said agreement, redeem any specific security, and may from time to time pay off any moneys in reduction or discharge of any specific security or of the principal security.

Council may redeem security.

8. The *Council Board* may from time to time borrow money upon the security of all or any of the said lands subject to the mortgages to the bank for the purpose of improving, subdividing, selling, or letting any of the lands comprised in the security and for the purpose of redeeming any of the mortgages to the bank.

Council may borrow money.

9. ~~The Judge of the Validation Court at Gisborne~~ *Chief Judge of the Native Land Court of New Zealand* is, upon application by any party interested, hereby required to inquire whether any land or lands named in such application not now comprised in the securities, whether vested in the trustees or Council or in any body of Natives corporate or otherwise, ought in equity to be added to the securities in relief of the principal security, and to ascertain and determine to what limited amount any such land or lands should so be charged in relief of the principal security; and any decree of ~~the Validation Court~~ *such Judge* directing the execution of a mortgage of any such land or lands, and the terms and conditions of such mortgage, shall have effect as if a mortgage of such land or lands were executed pursuant to such decree, and all provisions of this Act shall thenceforth apply to such land or lands as if a mortgage of such land or lands to the bank had been given before the passing of this Act and had constituted a specific security as hereby defined: Provided that nothing herein shall be construed as requiring the bank to proceed in any manner to acquire any such additional security, or as affecting the power of the bank to sell its present securities, whether such additional securities shall or shall not be obtained.

Validation Court to inquire if other lands should be included in securities.

10. All lands now held by the trustees, either by themselves or with other trustees, in trust for Native beneficiaries, and whether comprised in the securities hereinbefore referred to or not, shall immediately upon the passing of this Act and by virtue hereof be vested in the *Council Board* for an estate of fee-simple in possession, subject to the mortgages, securities, claims, and trusts affecting the same, and the title of the *Council Board* shall be indefeasible save as if

Trust lands to vest in Council.

Other lands may be transferred.

herein provided; and all lands within the district formerly known as the Registrar's District of Gisborne, as the same was constituted under "The Native Land Court Act, 1886," held in trust for Natives may be transferred to the *Council Board* by deed signed by a majority of the trustees holding such lands or beneficiaries respectively, to be held by the *Council Board* on the same trusts and liabilities as exist concerning the same at the time of such transfer, and upon such deed of transfer being executed the title of the *Council Board* thereto shall be indefeasible, subject as aforesaid: Provided that, for all purposes of any Act relating to taxation, the bank shall continue to be liable only as if the equity of redemption of the lands mortgaged had continued to be vested in the trustees.

Terms and conditions of management, selling, &c.

11. The terms and conditions of management and of selling, leasing, mortgaging, improving, or otherwise dealing with the said lands, and of all properties by this Act vested or hereafter to be vested in the *Maori Council Board*, shall be agreed upon between the trustees or beneficiaries and the *Council Board* by deed, but, so far as relates to securities and lands vested in the trustees either alone or with others by decrees of the Validation Court, they shall have no force or effect until approved of by the *Validation Court at Gisborne* by order under the seal of the Court and signed by the *Judge thereof Chief Judge of the Native Land Court*: Provided that the bank shall retain the control and management of any lands, stock, and properties heretofore controlled and managed by the bank.

Schedule.

SCHEDULE.

THIS deed, made the _____ day of _____, one thousand nine hundred and two, between the Honourable James Carroll and Wiremu Pere, both of the Colony of New Zealand, aboriginal natives (hereinafter termed "the Trustees"), of the one part, and the Bank of New Zealand (Limited), (hereinafter called "the Bank"), of the other part, witnesseth:—

1. No further proceedings shall be taken under the decree of the Supreme Court of New Zealand, Northern District, in an action wherein the Trustees and one Henry Cheetham Jackson are plaintiffs and the said Bank is defendant (No. 797 on the Gisborne Registry).

2. The accountants, to be appointed as hereinafter provided, shall ascertain and determine the amount due to the Bank as on the thirtieth day of September, one thousand nine hundred and two, for principal, interest, costs, and charges secured upon its principal security by mortgages executed by the Trustees, and also the specific amounts due as on the same day for principal, interest, costs, and charges in respect of each specific security not forming part of the principal security.

3. The accountants shall ascertain such amount according to the best of their skill and judgment upon examination of the Bank's accounts, not reopening accounts stated and settled in the year 1895. They shall, in determining the amounts to be credited in the accounts of the principal and specific securities respectively, adjust the same according to the best of their judgment and in such manner as to them shall seem fair and equitable, it being admitted by both parties that such credits are not capable of exact adjustment in detail though the aggregate is ascertained from the accounts. Any dependency of revenue or expenditure not exactly ascertainable before the thirtieth day of September may, as the accountants think fit, be either estimated by them and comprised in their ascertainment subject to subsequent adjustment, or may be excluded from such ascertainment, and in such case shall be included in the subsequent accounts hereinafter provided for.

4. The accountants shall in like manner ascertain and determine the amount due to the Bank as on the thirtieth day of September, one thousand nine hundred and two, for principal and interest in respect of the recent redemption by the Bank of a first mortgage upon certain blocks in the Mahia Peninsula, forming specific securities to the Bank, and shall allocate such amount against such several blocks in such

manner as shall appear to them to be just and equitable, and shall include such allocations in their determination of the specific amounts due in respect of such specific securities.

5. The accountants shall, on or as soon as possible after the thirtieth day of September, one thousand nine hundred and two, deliver to the parties their statement in writing of the amounts so ascertained, but need not supply the details showing how such ascertainment was arrived at.

6. Such ascertainment shall conclusively determine the amounts due as on the thirtieth day of September, one thousand nine hundred and two, to the Bank upon its principal security, and also the amounts in respect of which each specific security as on that day stands charged to the Bank.

7. The accountants shall from time to time, whenever required by either party, ascertain the amount due to the Bank and charged upon the principal security, and the amount charged upon each specific security, as on any date prior to the first day of September, one thousand nine hundred and four, and such ascertainment shall be made by them in the same manner as is hereinbefore directed for the ascertainment as on the thirtieth day of September, one thousand nine hundred and two, and shall be conclusive upon all parties.

8. No action shall hereafter be brought by the Trustees or by their *cestuis que trustent* or any of them, or by any other person, challenging or questioning the method by which the accountants shall ascertain any amount hereby directed to be ascertained or the result of such ascertainment.

9. The Bank shall not be charged or made accountable for any moneys other than such as have actually been received by the Bank, and all claims against the Bank in respect of its past management of any of the properties whereof it has had possession, except for moneys actually received, are hereby declared to be abandoned, and all moneys actually expended by the Bank are to be deemed to have been duly expended and chargeable upon the properties comprised in the securities. The accountants shall determine every matter of accounts in such manner as may appear to them to accord with equity and good conscience.

10. The Bank shall not henceforth be deemed to be under any duty or liability to improve the lands comprised in its securities or any of them, or to let the same, or to manage the same to the best advantage, or liable to account in any other way than for moneys actually received in respect of the properties.

11. The Trustees admit that it is not possible to keep the accounts of any block entirely separate from the accounts of others, and it is agreed that the Bank shall not henceforth be required to keep separate the accounts of each specific security, but that the amount of revenue derived from and to be credited to each specific security may be referred by the Bank to the accountants, to be by them ascertained in such manner as they may think fair and equitable.

12. The charges of the accountants shall be deemed to be proper mortgagees' costs and charges, and shall be paid by the Bank and charged against the general security and the specific securities in such proportions as the accountants shall determine.

13. "The accountants" in this agreement means and includes John Wilson Bright, agent for the New Zealand Loan and Mercantile Agency Company (Limited), Gisborne, and Alfred Henry Miles, of Murray, Roberts, and Company, Wellington, who are hereby appointed, and a third person to be appointed by them by indorsement on these presents to act with them. The decision upon any point of a majority of the accountants shall be conclusive, and an ascertainment or determination signed by any two of them shall be as valid and effectual as if signed by all. In the case of the death, incapacity, refusal to act, or departure from the colony of any one or more of the accountants, a person or persons to act in his or their place may be appointed by a Judge of the Supreme Court upon the motion of either party to this deed to be made in a summary manner.

14. Either party to this deed may, within one month after the passing of the Act to which this agreement is intended to be a Schedule, submit to the accountants a written statement of any matters to which such party desires to call their attention; but, with that exception, the accountants shall proceed with the investigation of the accounts and matters submitted to them in such manner as they think fit, without formality and without hearing the counsel or solicitors of either party.

15. In this deed—"Bank" means the Bank of New Zealand: "Securities" means all lands, stock, and other properties heretofore mortgaged or assigned by the trustees to the Bank of New Zealand Estates Company (Limited) or to the Bank

and the deeds and memoranda effecting such mortgages: "Principal security" means the lands, stock, and properties mortgaged or assigned by the trustees to the said Bank of New Zealand Estates Company (Limited) or to the Bank to secure general moneys due and to fall due to the Bank, and the deeds and memoranda effecting such mortgages: "Specific securities" means mortgages made by the trustees in favour of the Bank of New Zealand Estates Company or of the Bank over specific lands with charges limited to specific amounts fixed by the Validation Court, and the memoranda effecting such mortgages, and includes mortgages made over specific lands to secure cash advances made by the Bank.

In witness whereof the Bank has caused its common seal to be hereunto
affixed, this day of , one thousand
nine hundred and two.

Signed, sealed, and delivered by the said James Carroll
and Wiremu Pere, in the presence of .

The common seal of the Bank of New Zealand was
hereunto affixed, pursuant to an order of the board
of directors, in the presence of