

Hon. Sir P. A. Buckley.

LAND TRANSFER ACT AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Date of coming into operation.</p> <p>3. Clauses in existing Acts repealed.</p> <p>4. Person other than barrister or solicitor may be appointed Registrar.</p> <p>5. Registrar-General and Examiners of Titles must be barristers or solicitors.</p> <p>6. Persons appointed not to be concerned in private practice.</p> <p>7. Orders of Native Land Court may be provisionally registered.</p> <p>8. Fees on registration of Crown grant.</p> <p>9. Lease may be registered in triplicate.</p> <p>10. Deputy Official Assignee not to deal with land of bankrupt.</p> <p>11. Trusts not to be noted on register. Instruments declaring trusts may be deposited. Instrument may be registered notwithstanding trusts declared or referred to. Caveat for protection of trusts. Registrar may dispense with notice of caveat in certain cases.</p>	<p>12. In lieu of recording instruments in Deeds Registry, copies to be filed on presentation.</p> <p>13. Limitation of actions against Registrar-General for recovery of damages out of Assurance Fund. Special cases.</p> <p>14. Action for trespass or recovery of land may be brought in District Court or Resident Magistrate's Court, notwithstanding dispute as to title, if value of interest does not exceed jurisdiction of Court and the land is under the Land Transfer Act. Court or Judge may grant injunction. Provisions of "Resident Magistrates Act, 1867," extended where land under Land Transfer Act.</p> <p>15. Substitution of amended forms of certificate.</p> <p>16. Exemptions from stamp duty.</p> <p>17. Persons showing reasonable cause entitled to inspect evidence lodged in support of application to bring land under Act.</p> <p>18.</p> <p>19.</p> <p>20.</p> <p>Schedule.</p>
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A BILL INTITULED

AN ACT to amend "The Land Transfer Act, 1885."

Title.

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

1. The Short Title of this Act is "The Land Transfer Act Amendment Act, 1892." Short Title.

2. This Act shall come into operation as from the *first* day of *January*, one thousand eight hundred and ninety-three. Date of coming into operation.

3. Sections seven, one hundred and eighteen, one hundred and twenty-two, and two hundred and ten of "The Land Transfer Act, 1885" (hereinafter called "the principal Act"), and sections forty-one and forty-seven of "The Deeds Registration Act, 1868," are hereby repealed. Clauses in existing Acts repealed.

Person other than barrister or solicitor may be appointed Registrar.

4. It shall be lawful for the Governor to appoint any fit and proper person to be District Land Registrar in and for any land registration district: Provided that it shall not be lawful for any District Land Registrar who shall not have been admitted as a barrister or solicitor of the Supreme Court of New Zealand to hold the office of Examiner of Titles. 5

Registrar-General and Examiners of Titles must be barristers or solicitors.

5. No person shall be appointed to the office of Registrar-General of Land or Examiner of Titles unless such person shall have been admitted as a barrister or solicitor of the Supreme Court of New Zealand; but any person qualified as aforesaid may be appointed Examiner of Titles in and for more than one land registration district. 10

Persons appointed not to be concerned in private practice.

6. No person holding the office of Registrar-General of Land, District Land Registrar, or Examiner of Titles, shall, during tenure of such office, practise, either directly or indirectly, as a barrister or solicitor or land-broker, or be in partnership with any person so practising. 15

Orders of Native Land Court may be provisionally registered.

7. For the purpose of provisional registration, every order heretofore or hereafter issued by the Native Land Court entitling the person named in such order to a Crown grant, or certificate of title in lieu of grant, shall be and be deemed to have been an order to hold in freehold tenure within the meaning of sections ten and forty-two of the principal Act. If the original cannot be produced for registration, a copy of any such order, certified by the Registrar of the Native Land Court as "Correct for the purposes of the Land Transfer Act," may be placed on the provisional register; but, except on proof of loss, no second copy so certified shall be issued. 20 25

Fees on registration of Crown grant.

8. The words "when the title consists of a Crown grant," in the Seventh Schedule to the principal Act, shall be deemed to include and to have included the case of a Crown grant of land already under the provisions of the Act, and the fee of two shillings shall be chargeable in respect of the registration of each such grant or of the certificate of title in lieu thereof; but no further or other fee shall be chargeable in respect of such registration. 30

Lease may be registered in triplicate.

9. A lease executed in accordance with the provisions of the principal Act may be received for registration, and indorsed with a certificate of registration in triplicate: Provided that the instrument bearing the *ad valorem* stamp shall be held by the lessee, and shall, for the purpose of registering dealings with such lease, be deemed the only outstanding instrument of title. 35 40

Deputy Official Assignee not to deal with land of bankrupt.

10. No Deputy Official Assignee shall be registered as the proprietor of the estate or interest in land of any bankrupt except on the application of the Official Assignee; nor shall it be lawful for any Deputy Assignee to transfer any estate or interest in land of which the Official Assignee is the registered proprietor. 45

Trusts not to be noted on register. Instruments declaring trusts may be deposited.

11. Except as provided in the Appendix to the principal Act, no entry shall be made on the register of any notice of trust; but any instrument, or a duly-certified copy of any instrument, declaring a trust relating to land, may be deposited with the Registrar for safe custody and reference. 50

Instrument may be registered notwithstanding trusts declared or referred to,

No instrument shall be incapable of registration by reason only that the same may be deemed to create or disclose a trust; but

the registration of such instrument shall not operate as notice of trust, nor shall such instrument be deemed constructively embodied in the register as regards any trust therein expressed or referred to.

No fee shall be payable in respect of the entry of a caveat for protection of trusts declared or created by any instrument deposited as aforesaid. And no caveat entered for the protection of trusts shall be withdrawn except with consent of the persons beneficially interested, or by order of the Court or a Judge.

Caveat for protection of trusts.

The Registrar may dispense with the notice of caveat required to be given by section one hundred and forty-three of the principal Act in any case in which it shall appear unnecessary or impracticable to serve the same.

Registrar may dispense with notice of caveat in certain cases.

12. With every instrument presented for registration under "The Deeds Registration Act, 1868," after the coming into operation of this Act, there shall be lodged with the Registrar of Deeds a copy of such instrument in such form as shall be prescribed by regulation under this Act, which copy shall be retained and filed for reference in the Deeds Registry Office in like manner as duplicates of instruments presented for registration under the Land Transfer Act; and such copy, when filed and stamped with the seal of the Registry of Deeds, shall be deemed the "recorded copy" for all purposes of the Deeds Registration Act.

In lieu of recording instruments in Deeds Registry, copies to be filed on presentation.

13. Section one hundred and eighty-seven of the principal Act is hereby repealed, and in lieu thereof it is enacted that no action shall lie or be sustained against the Registrar-General of Land, as in the said Act provided, unless such action be commenced within six years from the date when the person entitled to maintain the same, not being under any legal disability, shall have had notice or knowledge of the matters constituting the cause of action: Provided that the whole period within which any action may be brought as aforesaid shall not exceed twelve years from the date when the right to bring such action accrued to some person not under disability of infancy or unsoundness of mind.

Limitation of actions against Registrar-General for recovery of damages out of Assurance Fund.

The foregoing section shall extend to enable effect to be given to the recommendation of the Public Petitions Committee of the House of Representatives upon the claim of one Rutu Peehi in respect of deprivation of interest in Manawatu-Kukutauaki Block, and to any recommendation of any Committee of the said House or of the Legislative Council which may hereafter be made upon any other claim barred by section one hundred and eighty-seven aforesaid, as if the foregoing section had been in force from the first day of January, one thousand eight hundred and eighty-six: Provided that no such recommendation shall be acted upon unless formally approved by the said House or by the said Council, as the case may be.

Special cases.

14. An action by a registered proprietor for recovery of possession of land held under the provisions of the principal Act, or for recovery of damages for trespass or injury thereto, may, notwithstanding any dispute or alleged dispute as to the title to the land, be brought and determined in any District Court or Resident Magistrate's Court having jurisdiction to the amount of one hundred pounds and upwards, if neither the amount claimed, nor the value of the interest involved, exceeds the amount for which such Court has jurisdiction

Action for trespass or recovery of land may be brought in District Court or Resident Magistrate's Court, notwithstanding dispute as to title, if value of interest does not exceed jurisdiction of Court and the land is under the Land Transfer Act.

as aforesaid: Provided that such Court shall, on the application of either party, stay proceedings pending the removal of any caveat affecting the matter at issue.

Court or Judge may grant injunction.

Such Court, or any Judge or Resident Magistrate, having jurisdiction as aforesaid, shall, in every case in which power is hereby given to adjudicate, have the same power, by interim injunction or otherwise, to restrain and prevent trespass or injury to land, as the Supreme Court or a Judge thereof would have in the like case under the like circumstances. Any person disobeying an order so made shall incur a penalty not exceeding *twenty* pounds.

Provisions of "Resident Magistrates Act, 1867," extended where land under Land Transfer Act.

The provisions of sections eighty-two and eighty-four of "The Resident Magistrates Act, 1867," are hereby extended to cases where the value of the land or the rent payable in respect thereof exceeds fifty pounds, but does not exceed one hundred pounds, by the year, and the land is under the provisions of the principal Act.

If any party to a suit in which jurisdiction is hereby given shall be aggrieved by the decision of the Court upon any question either of law or of fact, or as to the admission or rejection of evidence, the party aggrieved shall be entitled to appeal to the Supreme Court from such decision, in the same manner and form as an appeal may be had without leave from the decision of such Court upon any question of law under the provisions of any Act now or for the time being in force giving or regulating such right of appeal.

Nothing herein contained shall affect or take away the powers of the District Court or any Judge thereof under sections eighteen and twenty-five of "The District Court Act, 1858."

Substitution of amended forms of certificate.

15. The First Schedule and Form B in the Second Schedule to the principal Act are hereby repealed as from the fifteenth day of July, one thousand eight hundred and eighty-six, and the Forms A and B in the Schedule hereto substituted.

Exemptions from stamp duty.

16. Declarations made for the purpose of bringing land under this Act, or the principal Act, or in verification of any plan or survey for land transfer purposes, are hereby exempted from stamp duty.

Persons showing reasonable cause entitled to inspect evidence lodged in support of application to bring land under Act.

17. After notice of application to bring land under the provisions of the principal Act has been gazetted, and at any time before the issue of a certificate of title thereon, any person showing reasonable cause, to the satisfaction of the Registrar or of a Judge of the Supreme Court, shall be entitled to inspect such application and all evidence lodged in support thereof:

Provided that, before allowing such inspection, the Registrar shall give at least three days' notice in writing to the applicant of the intention to allow the same.

18. Where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture under any covenant, condition, proviso, or stipulation in a lease, the lessee may apply to the Court for relief, and the Court may grant or refuse relief as the Court thinks fit, and in case of relief may grant it on such terms as to compensation damages, costs, expenses, penalties, injunctions, and otherwise as the Court may think proper.

19. In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession or disposing of the land or property leased without license or consent, such

covenant, condition, or agreement shall be deemed to be subject to a proviso to the effect that such license or consent shall not be unreasonably withheld; and no fine or sum of money in the nature of a fine shall be payable for or in respect of such license or consent:

5 Provided that, in any case coming within the operation of this section, the lessor may require the assignee or under-lessee, or other person to whom possession is given, at his own cost, to produce to the lessor or his agent, and allow him to inspect and make a note of the deed of assignment or under-lease, or other document transferring
10 possession, and to pay a reasonable fee to the agent of the lessor for making the inspection and note, and also to execute and deliver to the lessor a deed of covenant on the part of such assignee, under-lessee, or other person to pay the rent reserved by and to observe and perform the covenants and conditions of the lease; and any license or
15 consent given by the lessor shall in such case become void if such deed of assignment, under-lease, or other document be not produced, or if a reasonable fee be not paid or tendered as aforesaid, within six months from the date of such assignment, under-lease, or other document, or if such deed of covenant be not executed and delivered to
20 the lessor or his agent within the same time.

20. Where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if
25 any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in such property,
30 upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages - compensation, giving security, or otherwise as the Court in the circumstances of each case shall think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had
35 under his original sub-lease.

The three *last-preceding* sections shall apply to all existing and future leases or agreements for leases relating to land, whether the title thereto is held under the Land Transfer Act or not, and shall have effect notwithstanding any stipulation to the contrary; and the
40 word "lessor" in this Act shall include the Crown.

SCHEDULE.

Schedule.

FORM A.

CERTIFICATE OF TITLE IN LIEU OF GRANT.

THIS certificate, dated the _____ day of _____, one thousand eight hundred and ninety-_____, under the hand and seal of the District Land Registrar of the Land Registration District of _____, being a certificate in lieu of grant, under warrant of His Excellency the Governor, in exercise of the powers enabling him in that behalf, witnesseth that A.B., of &c., is seised of an estate in fee-simple [*or as the case may be*] (subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial underwritten or indorsed hereon; subject also to any

existing right of the Crown to take and lay off roads under any Act of the General Assembly of New Zealand) in the land hereinafter described, as the same is delineated by the plan hereon, bordered _____, be the several admeasurements a little more or less; which said land is in the said warrant expressed to have been originally acquired by [original purchaser], as from the _____ day of _____, one thousand eight hundred and ninety-_____, under [Refer to Act or other authority under which acquired], that is to say: All that parcel of land containing [Describe land so far as necessary to identify with plan or diagram].

(Seal of office.)

(Signature of Registrar.)

FORM B.

FINAL CERTIFICATE OF TITLE.

THIS certificate, dated the _____ day of _____, one thousand eight hundred and ninety-_____, under the hand and seal of the District Land Registrar of the Land Registration District of _____, witnesseth that A.B., of &c., is seised of an estate in fee-simple [or as the case may be] (subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial underwritten or indorsed hereon; subject also to any existing right of the Crown to take and lay off roads under the provisions of any Act of the General Assembly of New Zealand) in the land hereinafter described, as the same is delineated by the plan hereon, bordered _____, be the several admeasurements a little more or less, that is to say: All that parcel of land containing [Describe land with sufficient certainty to identify with plan or diagram].

(Seal of office.)

(Signature of Registrar.)