

MAORI SUITS.

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 43. Court to give necessary orders for carrying out Act.
 44. When interpreter required in Maori suit, Court may appoint one, and fix his fees, half of which is to be paid by each party.
 45. Court may appoint persons to take affidavits of Maori in Maori.
 46. After final judgment, proceedings to be stayed for a month.
 47. Party aggrieved may give notice of appeal to Queen in Council to opposite party within that time.
 48. If notice given, proceedings to be further stayed until result of petition known in colony; and, if leave to appeal granted, proceedings to be stayed pending appeal.
 49. In appeals from a District Supreme Court to Court of Appeal, proceedings to be stayed.
 50. Final judgment to be a charge upon appellant's property until judgment reversed or satisfied.

A BILL INTITLED

AN ACT to lessen the Expenses of Litigation in Maori Suits.

WHEREAS the Maoris are divided into communities called respectively "iwis," "hapus," and "nohoangas" or householders, each whereof has its own distinct property: And whereas, with but very few exceptions, they have no knowledge of the English language and they are altogether unacquainted with English law and the procedure of the colonial Courts: And whereas, by reason of their poverty and of the heavy expenses of litigation in the Courts of judicature in the colony, more especially in the superior Courts, they are unable to vindicate or defend their rights in and to their respective properties; by reason whereof they have to submit to grievous wrongs and oppression, a state of things detrimental to the best interests of the colony: And whereas it is expedient to make temporary provision for diminishing the said evils until a more comprehensive measure in that behalf can be prepared and passed into law, and for that purpose to amend "The Supreme Court Act, 1882," and "The Court of Appeal Act, 1882," in manner following:

BE IT THEREFORE 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 Maori Suits Act, 1886."

2. In the construction of this Act, unless there is something in the subject or context repugnant thereto, the several words and expressions hereinafter mentioned shall have or include the meanings following—that is to say:—

The word "Maori" shall include a half-caste; also it shall extend to and include two or more Maoris, or one or more iwis, hapus, or nohoangas:

The word "non-Maori" shall mean and include any person or persons who is or are not Maoris; also any corporate or collective body not consisting of Maoris:

The term "Maori suit" shall mean and include any suit, action, appeal, or proceeding of a civil nature in a Court of judicature, between a Maori and a Maori, or between a Maori and a non-Maori:

"Action" shall include a matter or proceeding:

The word "land" shall extend to and include any estate, interest, right, title, claim, or demand in, to, or upon the same:

The words "plaintiff" and "defendant" shall respectively include two or more plaintiffs or two or more defendants in a Maori suit:

"Oath" shall include a solemn affirmation.

3. All laws that would in any way interfere with or prevent the operation of this Act are hereby repealed so far (and so far only) as they would interfere with or prevent the operation thereof.

4. Every iwi, hapu, nohoanga, or individual Maori may sue and defend actions in the superior and inferior Courts of judicature, by a friend, or by a barrister, solicitor, or agent. Also, an individual

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Maori may sue and defend such actions in person; and an iwi or hapu may sue or defend the same by its ariki or head-rangatira. The head of a nohoanga may sue or defend such actions in person on behalf of the nohoanga.

5 5. The assent of an iwi, hapu, or nohoanga to any document which shall be required for the purposes hereof may be signified, in the case of an iwi or hapu, by the seal or signature of its ariki or head-rangatira being affixed thereto, and in the case of a nohoanga, by the signature of its head being affixed thereto.

How iwis, hapus, and nohoangas may signify their assent to documents.

10 6. Every such document shall be in Maori; and the affixure of the seal or signature of the ariki or head-rangatira of an iwi or hapu to any such document shall be witnessed, in the case of an iwi, by three rangatiras thereof, and in the case of a hapu, by two adult members thereof. The signature of the head of a nohoanga shall be

Documents to be in Maori, and witnessed by Maoris.

15 7. Every married woman, being a Maori, may, in respect of her property, whether movable or immovable, sue and be sued in the said Courts with or without her husband, as she may deem meet.

Married woman may sue without her husband.

20 8. Every infant, idiot, or lunatic, being a Maori, may sue and be sued by a guardian *ad litem*, to be appointed for that purpose by the ariki or head-rangatira of his or her iwi.

Ariki may appoint guardians *ad litem* for infants and others.

25 9. Where there are eight or more Maoris having the same interest in an action respecting movable or immovable property, one or more of them may sue or be sued, or may defend in such action on behalf of himself or themselves and all the other Maoris so interested.

Where eight or more Maoris interested in an action, one or two may sue on behalf of all.

10. The claims, defences, complaints, and other documents of any iwi, hapu, or nohoanga may be headed in the following or in any similar form (*mutatis mutandis*)—that is to say:—

Forms for heading of claims and other documents.

In the SUPREME COURT of NEW ZEALAND, NORTHERN DISTRICT:—

30 Between the Ngapuhi iwi, plaintiff, and John Roe, of Russell, boat-builder, defendant; or

Between John Roe, of Russell, boatbuilder, plaintiff, and the Ngatittoa hapu, defendant; or

35 Between the nohoanga, by Hone of Kaikohe, its head, plaintiff, and John Roe, of Russell, merchant, defendant; or

Between John Roe, of Russell, merchant, plaintiff, and the nohoanga, of which Hone of Kaikohe, is the head, defendant.

11. No costs of action shall be awarded to the plaintiff or defendant in a Maori suit: each party shall defray his own expenses.

Costs of action abolished in Maori suits; each party to pay his own expenses.

40 12. No action shall lie against the plaintiff or defendant in a Maori suit by any barrister, solicitor, friend, or agent, for or in respect of professional or other services therein, whether rendered or performed in Court or out of Court: Provided that this enactment shall not apply to actions now pending or heretofore decided: Provided

No action to lie for costs in such suits in future.

45 that in these latter cases the Court may, to prevent unnecessary sacrifice of property, order that the costs of action be paid by monthly or other instalments.

Costs of past suits may be paid by instalments.

50 13. No action shall lie against a Maori on or in respect of any bond, promissory note, bill of exchange, cheque, or other instrument made, given, accepted, indorsed, or otherwise dealt with by him for or in respect of such professional or other services as mentioned in the last-preceding section. In every action against a Maori on any bond, note, or other security or instrument, the Court, before passing

No action to lie on bond, note, or bill to be given for costs of action.

judgment, shall ascertain the consideration for or in respect of which the Maori became a party to the instrument.

14. All Maori suits respecting Maori land shall be decided according to Maori law and custom, and, in the absence of such law or custom, according to the principles and rules of equity jurisprudence as recognized and administered in the Chancery Division of Her Majesty's High Court of Justice in England. All Maori suits shall be decided on their merits, and not on technical grounds.

15. In every case wherein a Maori has entered upon land or shall enter upon land for the purpose of residing thereon or of cultivating it, deeming the land to be his own, or to be the property of his iwi, hapu, or nohoanga, no criminal or penal suit or action shall be commenced, continued, or carried on against such Maori for or in respect of such entering, residing, or cultivating, unless and until the person occupying the land, or the mortgagee thereof (if any), shall have first sued in trespass or ejectment the Maori so entering upon the land, and until the question of right thereto shall have been, in the ordinary course of litigation, heard and decided by Her Majesty in Council. In the event of either party being unable, owing to lack of means, to carry on the suit, funds shall be supplied them from time to time; for that purpose, by the Colonial Treasurer.

16. All issues of fact in Maori suits shall be tried by a Maori jury where the plaintiff and defendant are Maoris, and by a mixed jury where the plaintiff or defendant is a non-Maori: Provided that the plaintiff and defendant may in either case, by agreement between themselves, agree to have the issues tried by the Judge of the Court or by a non-Maori jury. Due notice of every such agreement shall be given by the litigants to the Registrar of the Court wherein the suit is pending.

17. Every such jury shall be an indifferent jury, and may consist of four, six, or eight indifferent jurors, as the Court may direct. The one-half of the members of a mixed jury shall be Maori jurors.

18. In Maori suits between rangatira and rangatira the whole of the jury shall be rangatiras; but where one of the litigants is a Maori commoner and the other a rangatira, one half of the jury shall be rangatiras, and the other half Maori commoners.

19. In a Maori suit between a rangatira and a non-Maori the Maori members of the mixed jury trying the issues shall be rangatiras.

20. Each of the four Maori electoral districts shall be a Maori jurors district for the purposes of this Act; and the Maori electoral roll for such district for the time being in force shall, for the purposes hereof, be the Maori jurors' list for such district: Provided that such Maori jurors' list shall continue in force until a new Maori electoral roll for the district shall have been made out and brought into force, in which case the new Maori electoral roll so made out and brought into force shall be the new Maori jurors' list for such district.

21. Every Maori elector of a Maori electoral district shall be a Maori juror of such district for the purposes hereof.

Maori suits about
Maori land to be
decided by Maori
law and by
equity.

Criminal or
penal proceedings to
be carried on against
Maoris entering
upon land in good
faith until civil suit
deciding same
is decided.

Parties to suit too
poor, Government
shall supply them with
funds of litigation.

Issues of fact in
Maori suits to be
tried by Maori or
mixed juries;
litigants may waive
their right.

Juries to consist of
four, six, or eight
indifferent jurors;
one-half of a mixed
jury to be Maori
jurors.

Where litigants
are rangatiras, jury to
be of same status;
where one of them
is a commoner, half of
jury to be
commoners.

Juries in suits between
rangatiras and non-
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jury to be rangatiras.
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jurors' districts;
until new Maori electoral
lists to be made out
and brought into force.

Maori electors to be
Maori jurors.

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22. Until better provision in that behalf can be made, the Maori representative for a Maori electoral district shall be the Maori Sheriff of such district for the purposes hereof, but for no other purpose. He shall hold such office during good behaviour so long as he shall continue to be such representative, and until he shall be re-elected the representative of such district or until some other Maori shall be elected therefor.

Maori member for a district to be the Maori Sheriff of same for purposes of Act, and until better provision can be made. Office to be holden during good behaviour while such member.

23. The Maori Sheriff of a Maori electoral district shall execute within the limits thereof all such precepts, orders, and commands as may be issued or given to him from time to time by any Court of judicature for the purposes hereof: Provided that he may, by any writing under his hand, appoint a good and sufficient deputy to act in his place and stead as such Sheriff for and during the time he shall be attending his legislative duties in the House of Representatives: Provided also that if he shall be unable, owing to the great extent of his district, to discharge all the duties of his office, he may, with the assent of the Minister of Justice, appoint so many Under-Sheriffs as may be required for the purposes hereof, but for no other purpose.

Maori Sheriff to carry out orders of Courts.

May appoint a deputy during the session of Parliament;

24. The Supreme Court of every judicial district shall, for the purposes hereof, hold sittings on every Thursday in the year, except during vacation and holiday times, commencing at half-past ten o'clock in the morning. If the Judge of the Court, or, where the Court consists of two Judges, a Judge of the Court, shall be, from illness, absence, or other cause, unable to hold the Court on any of the said days, the Court shall be holden in such case by the Registrar of the Court, for the said purpose.

may, with assent of Minister of Justice, appoint Under-Sheriffs if district too extensive.

Supreme Courts to hold sittings on Thursdays for purposes of Act, except in vacation. If Judge unable to attend, Registrar to hold Court.

25. In all Maori suits which shall be commenced in any Supreme Court after the passing of this Act, the defendant shall be summoned to appear in his proper person on a certain day in open Court before the Court out of which the summons shall have issued, prepared to answer upon oath the several allegations contained in the plaintiff's statement of claim served on him. The day for appearing shall be fixed by the Court.

Defendant to answer claim on oath in open Court.

26. Upon appearing in Court on the day so appointed, or on any other day to which the Court may adjourn his examination, the defendant shall be sworn to answer, to the best of his knowledge, remembrance, information, and belief, all the material allegations contained in the statement of claim aforesaid.

Answer to be given to best of knowledge and belief.

27. The Judge shall then proceed to examine the defendant, in regular order, touching the said allegations, going through them *serialim*.

Allegations in claim to be answered *serialim*.

28. The Judge shall commit to writing or cause to be committed to writing, as the examination proceeds, the answers of the defendant to such allegation, until the examination shall have been completed.

And to be committed to writing.

29. The answers of the defendant to the said allegations must be full and perfect according to the rules for the examination of witnesses in Courts of equity. A general denial of an allegation shall be deemed an admission thereof, and an evasive answer shall be deemed no answer. The answers must be specific.

Answers to be full, not evasive.

30. The answer of the defendant, if a Maori, shall be taken down in Maori, and shall be translated into English.

Answers of Maoris to be taken down in Maori.

Defendant may, after perusal, suggest corrections; then sign answer.

31. When the examination of the defendant, as and in manner aforesaid, shall have been finished and committed to writing, the same shall be read over to him, or it may be given him to peruse in Court. He shall be asked if there are any corrections which he would wish to be made in it; and if he should suggest any, the Court may in its discretion make or cause the same to be made. Such paper-writing shall be deemed the answer of the defendant to the plaintiff's statement of claim. It shall then be signed by the defendant, and countersigned by the Judge, and filed in the Court as part of the record of the suit.

Copy of answer, with or without translation, to be given to plaintiff.

32. A copy of the answer shall be given to the plaintiff: Provided that if the plaintiff shall not understand the language in which the answer is written a translation of the answer into the language of the plaintiff shall be given with the copy.

Court, with consent of parties, may hear cause when answer taken.

33. If the defendant admits all the material allegations in the statement of claim the Court may then, or on a subsequent day, pronounce judgment. But if there are issues of fact or law to be decided between the parties, and both parties are present and willing that the issues of fact should be tried by the Court, and are prepared with their witnesses and written evidences to proceed to trial, the Court may proceed to hear the cause and pronounce judgment.

If parties are not prepared, Court shall appoint the day for hearing.

34. If either party is not prepared or willing to proceed to trial, the Court shall appoint a day for the trial or hearing.

When defendant cannot attend Court, his answer may be taken in the Court.

35. Where the defendant, owing to distance, illness, poverty, or other cause, cannot without great inconvenience or expense attend to be examined in open Court in manner aforesaid, the Judge may, upon the matter being brought to his knowledge, by letter or telegram, or otherwise, appoint any District Judge, Resident Magistrate, or Justice of the Peace, or any Maori chieftain or Maori Sheriff or Under-Sheriff in the case of the defendant being a Maori, to take the answer of the defendant on oath, as and in manner aforesaid, and to transmit it, when signed and countersigned, to the Court to be filed as if taken before the Judge thereof. Every such chieftain, Maori Sheriff, and Under-Sheriff is hereby empowered to administer an oath to every such Maori defendant for the purposes hereof, but for no other purpose.

Chief or Maori Sheriff may take answer of Maori and administer an oath to him.

36. The defendant shall appear before the person so appointed to take his answer, and he shall fully answer the questions which shall be put to him respecting all the material allegations in the plaintiff's statement of claim, as if he were interrogated respecting the same by the said Supreme Court Judge.

Defendant to answer examiner fully.

37. The answer of a Maori shall be taken down in Maori, and upon its being transmitted to the Court, signed and countersigned as aforesaid, the Judge shall cause it to be translated into English. A copy of the answer and of the translation shall be given to the plaintiff.

Answer of Maori to be taken in Maori, and to be translated.

38. Any Maori who is too poor to employ a barrister, solicitor, or agent to prosecute a claim for him, and who cannot find a friend to do it for him gratis, may appear before the Court to have his statement of claim made out by or under the direction of the Judge, or he may present himself before any District Judge, Resident Magistrate, or Justice of the Peace, or before any ariki or head-rangatira, or before any Maori Sheriff or Under-Sheriff for such purpose.

Where Maori poor, his claim to be made out for him in Maori.

39. The Court, District Judge, Magistrate, Justice, ariki, rangatira, Maori Sheriff or Under-Sheriff, as the case may be, shall elicit by questions from the Maori the nature and particulars of his claim, and shall commit the same or cause the same to be committed to writing in the Maori language.
40. The claim, when so taken down, shall be read over to the Maori, or shall be given to him to peruse if he should desire it, and he shall be asked if there are any corrections he would wish made therein; which corrections, if any, shall be made as he may require.
- 10 A copy of the claim, as corrected, shall be given to the Maori, and the original shall be filed in the Court, or transmitted to the Court to be filed therein, to form part of the record of the cause.
41. The Court shall cause a copy of the claim to be served on the defendant if a Maori, or an English translation thereof if a non-Maori, and shall appoint a day for such defendant to appear in Court to answer, in manner aforesaid, the plaintiff's claim.
- 15 42. No fees of Court shall be demanded in a Maori suit from the plaintiff or defendant, except the following—that is to say: the sum of thirty shillings shall be paid by the plaintiff and defendant respectively at the close of the trial or hearing, which two sums shall be in lieu of all claims for the said fees of Court. The said two sums shall be paid to the Registrar of the Court. No fees of Court shall be paid or payable by plaintiff or defendant if poor.
- 20 43. The Court is hereby empowered and required to issue and give from time to time, in every Maori suit, and as the occasion may require, by word of mouth, letter, telegram, or otherwise, all such orders and directions as it may deem meet for the carrying-out of the provisions hereof, all which orders and directions shall be obeyed by the persons to whom issued or given.
- 25 44. The Court may appoint from time to time fit and proper persons to act as Maori interpreters in Maori suits, and to make translations from Maori into English and from English into Maori, and the reasonable fees to be paid for such services, one half of which shall be paid by the plaintiff, and the other half by the defendant.
- 30 45. The Court may appoint fit and proper persons to take the affidavits of Maoris in Maori suits, and every person who shall be so appointed is hereby empowered to administer an oath in such suits.
- 35 46. All proceedings shall be stayed in a Maori suit, whether in the Court of Appeal of New Zealand, or in the Supreme Court of New Zealand for any district, for one calendar month from the day on which final judgment in the suit shall have been pronounced.
- 40 47. Any party to the suit feeling aggrieved by the judgment may give notice to the opposite party of his intention of petitioning the Queen in Council for leave to appeal to Her Majesty in Council from such judgment: Provided that the notice shall be given within the month, and that a copy thereof shall be filed in the office of the Court which pronounced the judgment.
- 45 48. In the event of the notice being given, and a copy thereof filed, within the month, as aforesaid, the proceedings in the suit shall be further stayed for seven months from the day on which the judgment was pronounced, so as to allow the aggrieved party time to present his petition to Her Majesty in Council and to have the result

Particulars to be elicited by questions.

Corrections suggested by Maori to be made in claim.

Copy to be given to Maori; original to be sent to Court.

A copy or translation of claim to be served on defendant.

Parties to pay £1 10s. each in lieu of all Court fees;

if too poor, no fees to be paid.

Court to give necessary orders for carrying out Act.

When interpreter required in Maori suit, Court may appoint one, and fix his fees, half of which is to be paid by each party.

Court may appoint persons to take affidavits of Maori in Maori.

After final judgment, proceedings to be stayed for a month.

Party aggrieved may give notice of appeal to Queen in Council to opposite party within that time.

If notice given, proceedings to be further stayed until result of petition known in colony;

and, if leave to appeal granted, proceedings to be stayed pending appeal.

thereof made known in the colony. And in the event of such leave to appeal being granted to the petitioner, all proceedings in the Court pronouncing the judgment shall be stayed pending the appeal; and if the judgment shall have been pronounced in the Court of Appeal aforesaid, then all proceedings, both in that Court and in the Court 5 below, shall be stayed pending such appeal.

In appeals from a District Supreme Court to Court of Appeal, proceedings to be stayed.

49. If any party to a Maori suit in a District Supreme Court shall feel aggrieved by the final judgment of the Court, he may appeal from the same to the Court of Appeal of New Zealand: Provided that he shall give notice of such his intention to the opposite party within 10 the said month, and shall file a copy of the notice in the office of the Court. Upon such notice being given, and such copy thereof filed within the month, all proceedings in the cause shall be stayed pending the appeal.

Final judgment to be a charge upon appellant's property until judgment reversed or satisfied.

50. The final judgment from which an appeal shall be brought, 15 whether to the Queen in Council, or to the Court of Appeal of New Zealand, shall be a charge upon the real and personal estate of the appellant, even in the hands of an innocent party or purchaser, until such judgment shall have been reversed or satisfied.