

536

(AS REPORTED FROM COMMITTEE OF WHOLE HOUSE, 29TH JUNE, 1882.)

Mr. McDonald.

NATIVE LAND COURT ACT 1880 AMENDMENT.

ANALYSIS.

- | | |
|--|---|
| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Interpretation. 3. Allotment of shares in severalty. 4. Application may be made by one or more owners. 5. An order may be made to two or more owners. 6. Lessee of shares may apply to have them allotted in severalty. 7. Constitution of Court. | <ol style="list-style-type: none"> 8. Production of document of title necessary. Proviso. 9. When land dealt with is encumbered. 10. Land to be accurately surveyed. 11. Restrictions on alienation. 12. Procedure of Court. 13. Order invalid until time allowed for rehearing has elapsed. 14. Issue of certificate of title. 15. Costs and expenses. |
|--|---|

A BILL INTITULED

AN Act to amend "The Native Land Court Act, 1880."

Title.

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

5 1. The Short Title of this Act is "The Native Land Court Act 1880 Amendment Act, 1882." Short Title.

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

Interpretation.

10 "Owner" means any person, ~~whether a Native or not, owning any free hold interest in land held having any interest in land either under Crown grant, certificate of title, or memorial of ownership, who holds such interest~~ either as a joint tenant or tenant in common with one or more Natives or other persons who, or some one or more of whom, have derived title from Natives; and also, as to any such interest belonging to a minor, shall include the trustees in whom such interest is vested under "The

15 Maori Real Estate Management Act, 1867:"

20 "Land" means any land ~~owned in fee simple, and whether held~~ in joint tenancy or tenancy in common, by more than one Native, or by one or more Natives with one or more other persons not being Natives, and whether the title to such consist of one or more Crown grants or of certificates of title under "The Land Transfer Act, 1870," or of a certificate of title or memorial of ownership under any Acts relating to lands belonging to Natives, or of more than one of such last-mentioned certificates of title or memorials of ownership, or of any title derived under any such titles as above-mentioned:

25 "The said Act" means "The Native Land Court Act, 1880."

Allotment of shares in severalty.

3. If any owner shall be desirous of having his share in any land allotted to him in severalty, such owner may apply to the Court to allot to him his share in severalty, and the Court may thereupon, if it thinks fit, make an order declaring which portion of such land shall be the share of the said owner; and if any one or more of the other owners of such land appear at the hearing of such application and desire to have their shares in the land respectively allotted to them in severalty, the Court may, if it thinks fit, make similar orders allotting in severalty to each owner so desiring it the share of such owner; or if it shall appear to the Court at the hearing of such application that a majority in number of all the owners of such land desire that the whole of such land shall be subdivided and the share of each of the owners thereof allotted in severalty, the Court may make orders accordingly, allotting in severalty to each owner the share of such owner in such land: *Provided that it shall not be necessary for the Court to ascertain or to allot in severalty the share of each owner in any land where the Court is satisfied that two or more of the owners desire to obtain an order as tenants in common for the aggregate amount of their several interests, but in such case the Court may make an order as provided in the fifth section hereunder.*

Application may be made by one or more owners.

4. Such application as mentioned in the preceding section may be made either by one or more owners of shares in the land the subject of the application.

An order may be made to two or more owners.

5. An order may also be made hereunder, if two or more owners so desire it, so as to allot to such two or more owners their shares in the land to them as tenants in common, stating, however, *if desired*, in such an order as is last mentioned the extent of the interest of each such tenant in common.

In the case of an order being made hereunder to two or more persons as tenants in common, all the other provisions of this Act as to orders in severalty shall, *mutatis mutandis*, apply to such an order in favour of such two or more persons.

Lessee of shares may apply to have them allotted in severalty.

6. An application may also be made by any person being a lessee of any shares in land from any one or more owners, *with the consent of such owner or owners*, to have the shares of any one or more of the shares of the owners from whom he has leased allotted in severalty, and upon the hearing of such application the Court may make one or more orders allotting in severalty to each of the owners whose shares the lessee has applied to have so allotted their shares in the said land, and thereafter the lease shall, in respect of and to the extent of the share so allotted, operate as a lease of the portions so ordered to be allotted, and not as a lease of an undivided interest in the whole land. *The costs of such application shall be paid by the lessee.*

Constitution of Court.

7. Whenever an application is made in respect of land then or originally held in joint tenancy, at least one of the Judges constituting the said Court shall be a barrister or solicitor of the Supreme Court of New Zealand, and the said Court in making the orders shall, as nearly as may be, allot the shares so that the owners shall have equal shares in value.

Production of document of title necessary.

8. The document of title under which the land is held shall, when and so often as any one or more orders are made hereunder, be produced in Court, and a memorandum indorsed on it, by the Judge making the order, of the order as aforesaid having been made.

Proviso.

Provided that whenever the non-production of such document of title is not occasioned by any negligence or default of the applicant, the Court may dispense with the production thereof.

When land dealt with is encumbered.

9. Whenever any land dealt with by any such order is subject to a lease or mortgage or other encumbrance, the validity of such lease, mortgage, or encumbrance shall not be in any way affected by an order made hereunder, but the following provisions shall have effect:—

537

5 (1.) If the land comprised in any order is subject to a lease, the Court may in such order declare how much of the rent payable under the lease shall henceforth be payable to each owner of the land allotted in severalty by such order or orders, and thenceforth each owner as aforesaid and the lessee shall, for all purposes, be deemed to have executed a lease of the portion of the land referred to in the order for the rest of the term, subject to the same covenants, conditions, and agreements in all respects as the original lease, save that the rent payable under such lease shall be deemed to be the amount mentioned in such order as aforesaid.

10 (2.) If the share so allotted in severalty shall be subject to a lease, such lease shall, after the making of the order in respect of and to the extent of the share so allotted, operate as regards such share so leased as a lease of the land specified by the said order, and not as a lease of an undivided interest in the whole land.

15 (3.) If the land be subject to a mortgage, the Court may charge each portion so allotted in severalty, with a specific portion of the mortgage debt.

20 (4.) If the share so allotted in severalty be subject to a mortgage, such mortgage shall, in respect of and to the extent of the share so allotted thereafter, operate as a security on the land so allotted in severalty, not as mortgage of an undivided interest in the whole.

25 (5.) If the land is subject to a mortgage, and orders hereunder are made as to the whole of it, a specific part of the mortgaged land may be set apart and sold under direction of the Court for the satisfaction of the mortgage, and the remaining portion of the land may be allotted in severalty as above mentioned, and the Court may make orders for giving effect to this provision, and for directing the application of proceeds of the sale as it may deem just.

30 **10.** No final order shall be made hereunder unless the land mentioned in the order has been accurately surveyed, and such order shall contain an accurate description of the land mentioned therein by boundaries, with a plan showing the external boundaries thereof, sufficient in all respects to enable a certificate of title under "The Land Transfer Act, 1870," or any Act passed in lieu thereof to be prepared and issued.

Land to be accurately surveyed.

35 **11.** In making any orders hereunder in favour of a Native, the Court shall, unless it be satisfied that such Native is possessed of other lands sufficient for his subsistence, order that he shall hold such lands, subject to such restrictions, upon his power of alienating the same as it shall think desirable; but free from any other restrictions to which it may be subject at the time of the making of the order, whether imposed by Act or otherwise.

Restrictions on alienation.

40 **12.** In carrying this Act into execution, the Court shall, as nearly as conveniently may be, proceed in accordance with the provisions of the said Act and the practice of the Court in respect of original applications for the investigation of titles to Native land, and may exercise all the powers as to costs or other matters in the said Act contained.

Procedure of Court.

45 **13.** No order made hereunder shall have any force or effect whatever until the time provided by the said Act within which an application for a rehearing may be made has elapsed, and if such application be duly made such order shall not operate until the application be determined by the Chief Judge, or until the rehearing has taken place and the original decision has been affirmed, and if such decision be not affirmed then the order made on such rehearing shall operate or have effect as if it had been made on the original application.

Order invalid until time allowed for rehearing has elapsed.

50

Issue of certificate of title.

14. Subject to the provisions of the preceding section, and when and so soon as any order made hereunder has come into operation or become of effect, unless it be an order in favour of more than three persons as tenants in common, the ~~Judge making the order~~ Court shall forward the same to the District Land Registrar of the district in which the land dealt with thereby is situate, who shall, if such order contain such a description and plan as referred to in section nine hereof, thereupon issue a certificate of title to the said land to the person named in the said order as being entitled to the said land, which certificate shall thereafter for all purposes whatsoever have the same force and effect as any other certificate issued under the Land Transfer Act, 1870," or any Act passed in lieu thereof. 5 10

Provided that no claim whatsoever shall be capable of being made on the assurance fund under the said "Land Transfer Act, 1870," or any Act passed in lieu thereof, or in any way satisfied thereout in respect of the land included in such certificate by reason of the order on which the same is issued having been in any way erroneously made by the Court. 15

In the case of an order being made in favour of more than three persons as tenants in common the Court shall, on such order coming into operation and taking effect, grant a certificate of title under the said Act in respect of the lands dealt with by such order. 20

Costs and expenses.

15. When an order for costs on any application made hereunder has been made against any owner of the land in respect of which the application was made, such costs shall remain a charge upon the share in the said land of the owner against whom the order for costs has been made and no order hereunder in respect of his share shall be capable of being made hereunder or of taking effect until the costs specified in the said order for costs are paid. 25

This provision is without prejudice to the provisions of the said Act for the recovery of costs.