

1454

NATIVE LAND COURT.

OBSERVATIONS on a Bill intituled "An Act to amend and consolidate the Law relating to the Native Land Court of New Zealand."

THE Native Land Administration Bill renders unnecessary any provisions regulating Native assurances of land.

The Bill is in the main a bringing-together of the useful parts of existing statutes, which are referred to by marginal notes.

In the absence of such reference, a clause may be assumed to be more or less new, and it is such clauses only that are now observed upon.

PART II.

Section 15. Resident Magistrates may be constituted, under the title of "Recorder," auxiliary Judges, for the performance of such limited duties as the Governor may require.

PART III.

Original Investigation.

Section 18 is new, insomuch as, instead of giving the Court the option of adjudicating before survey, it makes the survey a *sine quâ non*. Where the Court arrives at a decision without prior survey the case has to be fought again when the land comes to be surveyed, to say nothing of the expansion of boundaries pointed out by Natives who have procured an award in their favour of an undetermined area.

Section 22 follows section 25 of "The Native Land Court Act, 1880," save in the important particular that it causes the order to be for the issue of a Land Transfer title instead of a Land Court certificate of title. The nature of the estate conferred by such certificate and of the kindred memorial of ownership has been a fruitful source of litigation, until at last the Court of Appeal decided that they conferred no estate at all. The estate of a Native under Land Transfer title will be just as amenable to restrictions on alienation, and to other special provisions thought desirable, as were certificates of title, with this material advantage: that outside any such special provisions there can be no question as to the nature and effect of the title.

Partition.

Section 23. Intended to obviate difficulties discovered in "The Native Land Division Act, 1882," by enabling persons who have heretofore become tenants in common by purchase to exercise the natural right of reducing their joint occupancy into one in severalty; the procedure therefor, whether initiated by the Native owners or others entitled with them, being more definitely pointed out. The denial of partition against the will of a first mortgagee is reasonable.

Sections 31, 32, and 33. Where land partitioned is held under Land Court title, "The Native Land Division Act, 1882," which provides for the cancellation of the existing title and the issue of a new title, has to be followed; and, by reason of "The Land Transfer Act, 1885," the new title must now be one under that Act.

But where the title prior to partition is Crown grant or Land Transfer certificate, cancellation of such title is abandoned as being at once troublesome, costly, and useless, and, instead thereof, to partition orders is given the effect of conveyances of the respective parts into which the land is partitioned.

Section 35. So far as relates to land dealt with by the Native Land Court, this section is intended to insure the very necessary protection intended to be afforded by sections 22 and 23 of "The Crown Grants Act, 1883."

Sections 36 and 39. For the adjustment, on partition of land subject to a lease, of the relative rights of landlord and tenant.

Section 42. This provision is new, and intended, where partition is not desired, to determine the proportions in which the owners are entitled to participate in any benefit accruing from the land.

Section 51. The matter of this section is new, and is intended to utilize the Court in determining incidental questions on matters which otherwise might have to be investigated by Commission.

PART IV.

Practice.

Sections 52 to 67 contain nothing new, only bringing together matter dispersed over the prior Acts; with the exception of section 65, which allows lawyers to appear, subject to the sanction of the Court, in each case. This privilege has heretofore been allowed, then denied, again allowed, and again disallowed, and is now proposed to be again conceded, if for no better reason than as having been proved to be by far the lesser of evils.

PART VI.

Rehearing.

Section 76 provides that on application for rehearing in a cause wherein the Chief Judge took part his functions in relation to the application shall devolve on two other Judges.

PART VII.

Surveys.

Sections 79 to 90 relieve the matter of surveying and surveyors from the confusion at present existing. Sections 88, 89, and 90 are to meet the case of Natives who, on legal advice as to the present inoperative state of the law, have learned to delay the rights of others by obstructing necessary surveys.

PART VIII.

Roads.

Section 91. As to private roads, the necessity for and the propriety of the powers given are obvious.

Section 96. As to public roads, care has been taken not to enlarge or lessen relative rights of owners and the public as at present existing.

PART XI.

Miscellaneous.

Section 109 (Moneys of Natives under disability). Private dealings being precluded by the Native Land Administration Bill, it is thought this section provides all that is necessary in the place of the first three in the Schedule of Repealed Acts.

Section 110 is a re-enactment of some provisions still necessary, but contained in several repealed Acts. For safety, the words of the sections are reproduced as near as possible.

Section 111. The Act of 1869 has been long since repealed, and the present object is to get rid of the residuary evil of its 15th section—thought to have been devoid of any merit other than that of causing litigation and confusion.
