

Hon. Mr. Seddon.

NATIVE LAND LAWS AMENDMENT.

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A BILL INTITULED

Title.

AN ACT to amend the Native Land Laws.

BE IT 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 Native Land Laws Amendment Act 1895". 5

Interpretation.

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

"Appeal" includes applications for rehearing treated as appeals under section ninety-four of the Act:

"The Act" means "The Native Land Court Act, 1894": 10

Unless inconsistent with the context, words used in this Act shall, subject as aforesaid, have the same meaning as is assigned to them in section two of the Act.

ALIENATION.

Land within limits of town district or borough, and blocks not exceeding 500 acres, excepted from operation of section 117 of the Act.

3. Nothing in the Act contained shall preclude the alienation by 15 any Native grantee from the Crown, or registered proprietor under the Land Transfer Act, of land within the limits of any town district or borough, whether constituted before or after the passing of this Act; nor shall the Act preclude the alienation by any grantee or registered proprietor as aforesaid of any land, wheresoever situate, being the whole 20 or part of a block or section not exceeding five hundred acres, the title to which as a separate holding has become ascertained by partition or otherwise prior to the passing of this Act: Provided that every such alienation shall be confirmed by the Court in manner provided in the 25 Act.

Blocks not exceeding 500 acres, the title to which shall be hereafter ascertained, may be excepted.

4. The Governor may, by Order in Council, permit the alienation by any Native grantee or registered proprietor as aforesaid of any block or section of land, not exceeding five hundred acres, the title to which shall hereafter be ascertained by the Court, and as to which the Court shall have certified on the investigation of the title thereto 30 that the same is a separate block or holding according to Native custom and usage, and is not portion of a larger block.

Purchaser to make declaration in form in First Schedule.

5. Before confirming any alienation under the provisions aforesaid, the Court shall require every person in whose favour such alienation is expressed to take effect, to make and subscribe a declaration in 35

the form in the *First* Schedule hereto, and no such alienation shall be confirmed if made in favour of any person holding in fee-simple in the Colony of New Zealand, either in severalty or jointly with any other person or persons, more than six hundred and forty acres, including the land the subject of such alienation.

No alienation to be confirmed by Court in favour of person holding more than 640 acres.

Any person making a false declaration under the provisions of this section shall be guilty of a misdemeanour, and on conviction shall be liable to a penalty not exceeding *two hundred* pounds, or to be imprisoned for any term not exceeding *one* year, with or without hard labour.

6. No land owned by a Native shall be sold under any power of sale in any mortgage, or by virtue of any judgment, decree, or charging order, except by public auction and to the highest bidder. Notice specifying the time and place of any intended sale shall be given in writing to the Commissioner of Crown Lands for the district, and published not less than three times in one or more newspapers circulating in the district; and no sale shall take place until after the expiration of *three* months from the publication and giving of such notices. It shall be the duty of the Court, before confirming any such alienation, to satisfy itself that the provisions of this section have been duly complied with.

Sales by mortgagees or by order of Court to be by public auction.

Notice of intended sale to be given.

7. Nothing in the Act contained shall operate to defeat or prejudice any right or remedy which, but for the passing of the Act, any person might or would have against land owned by a Native in respect of any debt or liability incurred by such Native prior to the passing of the Act, but such right or remedy may be exercised as fully and effectually as if the Act had not been passed, nor shall anything in the Act contained preclude the acquisition by any person of land sold under process of law in exercise of any right or remedy as aforesaid: Provided that the Court shall, as regards the exercise of any such right or remedy, make all inquiries which before the passing of the Act would have been required to be made by a Trust Commissioner in respect thereof, and may, if satisfied with the result of such inquiries, and that the sale is in accordance with the provisions of this Act, confirm such alienation.

Rights and remedies against land owned by Natives in respect of debts incurred prior to passing of the Act to remain effectual.

No person shall be debarred from the benefit of the foregoing provision by reason only that such person has, since the passing of the Act, taken or accepted any promissory note or other obligation or security, or has recovered judgment in any Court of law, in respect of any debt or liability as aforesaid.

8. Nothing in the Act contained shall invalidate any transfer heretofore made, or hereafter to be made, to the Wellington and Manawatu Railway Company (Limited), for the purpose of completing the title of the company to land taken for railway construction under the provisions of "The Railways Construction and Land Act, 1881."

Title to land taken for railway construction may be completed.

CONFIRMATION OF ALIENATIONS.

9. A confirmation order under the seal of the Court, indorsed on any deed or instrument, shall, for all purposes of title, be conclusive evidence that such deed or instrument is not in contravention of any of the provisions of the Act or of this Act, but shall not exonerate any

Confirmation order conclusive evidence for purpose of title.

person from penalties incurred in respect of any false declaration or evidence made or used for the purpose of obtaining such order.

Powers of Trust Commissioners continued.

10. All acts done, or hereafter to be done, for the completion of proceedings commenced under the provisions of "The Native Lands Frauds Prevention Act, 1881," and the Acts amending the same, shall, if done by any person holding the office of Trust Commissioner at the date of the passing of the Act, be as valid and effectual for the purpose aforesaid as if the said Native Lands Frauds Prevention Act and the several Acts amending the same had not been repealed. 5

REGISTRATION. 10

Persons entitled to land under orders of the Court may be registered as proprietors under Land Transfer Act.

11. Every order heretofore made or hereafter to be made by the Court, under subsections two, three, or four of section fourteen of the Act, shall, if the land the subject of such order is subject to the provisions of the Land Transfer Act, entitle the person named in such order as the owner of or entitled to such land to be registered as the proprietor thereof: Provided that, except as regards land acquired by the Crown, no partition order for land subject to the provisions of the Land Transfer Act shall be made otherwise than in favour of a registered proprietor. 15

If land not previously under Land Transfer Act, certificate of title to be issued.

12. If the land the subject of any order under subsections two, three, or four aforesaid is not subject to the Land Transfer Act, but is land held under grant from the Crown, the person named in such order as the owner of or entitled to such land shall be entitled to a Land Transfer certificate of title for the same, subject to all registered encumbrances, liens, and interests; and the issue of such certificate shall, as to the land included therein, effectually cancel any existing Crown grant. 20 25

Orders under Tauranga District Lands Acts to confer right to registration.

13. Division or partition orders heretofore made affecting land awarded, or recommended to be awarded, to Natives under the provisions of "The Tauranga District Lands Act, 1867," and "The Tauranga District Lands Act, 1868," and orders heretofore made in accordance with the provisions of section seven of "The Native Land Court Act 1886 Amendment Act, 1888," declaring the residue of any such land to be the property of Native owners, shall be as valid and effectual as if such land had at the time of the making of such order been held under Crown grant, or Land Transfer certificate of title; and the person or persons named in any such order as entitled to such land shall be entitled to a Crown grant or Land Transfer certificate of title for the same, as the case may be. 30 35

No warrant necessary for issue of Land Transfer certificate in lieu of Crown grant on orders of Native Land Court.

14. No warrant other than the authority of this Act shall be necessary for the issue of a certificate of title under the provisions of the Land Transfer Act to and in the name of any person for land for which such person has, by virtue of any order of the Court, whether made before or after the passing of this Act, become entitled to a Crown grant or certificate of title, whether in lieu of grant or otherwise: Provided that, in case of land not previously subject to the provisions of the Land Transfer Act, such order shall be forwarded to the District Land Registrar through the Chief Judge of the Court, who shall at the same time notify to such Registrar what instruments (if any) affecting the land the subject of such order have been registered in the office of the Native Land Court; and the Registrar shall, on issuing a certificate of title, make such entries on the Land Transfer 40 45 50

Orders to be forwarded through Chief Judge.

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Register as may be necessary for the protection of the rights of parties claiming under such registered instruments.

15. Any lessee from a Native owner who, in order to obtain registration of his lease, shall have been compelled to pay, or shall
5 have elected to pay, and shall have paid to the person entitled to receive the same any survey charges, Court fees, probate or succession duties, or other moneys properly payable by the Native owner, shall be entitled to deduct the sums so paid from the rent payable by him under the lease: Provided that the amount to be deducted by the
10 lessee in respect of any single payment reserved under such lease shall not exceed one-half the payment reserved.

Lessee paying survey charges, &c., on behalf of Native owner may deduct same from rent.

16. A certificate under section sixty-seven of the Act may be registered against land under the provisions of "The Deeds Registration Act, 1868," and, except by order of the Court, no dealing with
15 such land by any Native owner shall thereafter be registered until the amount certified to be due in respect thereof has been fully paid and satisfied.

Certificate under section 67 of the Act may be registered.

17. No confirmation order shall be necessary to enable the registration of any deed or instrument which has been validated under the
20 provisions of "The Native Land (Validation of Titles) Act, 1893."

Instrument validated under Native Land (Validation of Titles) Act may be registered.

EXCHANGE.

18. No exchange shall be made, under subsection three of section fourteen of the Act, of less than the whole interest of any Native in any block or section.

No exchange of less than whole interest of Native in block.

CONSTRUCTION OF ACT.

19. Section sixty-seven of the Act shall be read and construed as if the words "on behalf of the Crown" had been inserted after the words "Surveyor-General" in the second line thereof.

Section 67 of the Act amended.

20. Section one hundred and seventeen of the Act shall be read
30 and construed as if the words "in this Act" had been used instead of the word "hereinafter," in the first line thereof. And it is hereby expressly declared and enacted that nothing in the Act shall be construed to take away or restrict, or in any manner to have taken away or restricted, any jurisdiction, power, or authority conferred or
35 pressed to be conferred on the Court, or on the Appellate Court, by the Act.

Section 117 amended.

Nothing therein to take away or restrict jurisdiction of Court.

21. Nothing in the Act shall be deemed to have taken away any right of testamentary disposition by any Native: Provided that land acquired by virtue of any will or testamentary disposition after the
40 passing of this Act shall not be deemed to be land acquired by testamentary disposition within the meaning of section one hundred and seventeen of the Act. No interest in land or personal estate shall pass by any unwritten will or "ohaki."

Right of testamentary disposition by Natives not taken away.

No interest to pass by unwritten will.

22. Subject to the foregoing provisions with regard to debts and
45 liabilities incurred before the passing of the Act, the term "acquire" in section one hundred and seventeen of the Act shall extend to and preclude the acquisition by any person under any adjudication in bankruptcy of land owned by a Native.

No interest in land to pass by bankruptcy of Native owner.

23. The term "lessee," in section one hundred and twenty of the
50 Act, shall include and shall be deemed to have included the executors, administrators, and assigns of a lessee.

Section 122 of the Act. Definition of "lessee."

Second Schedule to Act.
Heading amended.

24. The heading to the Second Schedule of the Act is amended by substituting the words "Land excepted from the Provisions of Section 118" for the words "Native District wherein Land is subject to this Act," and the said Schedule shall be read and construed as if the heading hereby substituted had been the original heading thereof. 5

PROCEDURE.

Appeal and Appellate Court.

Seal of Appellate Court.

25. The seal now in use by the Appellate Court shall be and be deemed to have been the proper seal of the said Court, and all documents sealed therewith shall be deemed to have been duly sealed. 10

Appeal may be withdrawn.

26. The appellant in any appeal now pending or hereafter to be instituted may, subject to any regulations under the Act, withdraw such appeal at any time before the hearing thereof.

Appeal may be dismissed by Native Land Court for non-payment of deposit.

27. If the appellant in any appeal now pending, or hereafter to be instituted, has or shall have failed to deposit with the Registrar the sum required to be deposited as security for costs under section eighty-five of the Act, or to pay any fees due and payable in respect of such appeal by virtue of any regulation under the Act, or under any Act thereby repealed, the Native Land Court may, on the application of the Registrar, dismiss such appeal; and such dismissal, if expressed to be made on the ground of such non-payment, shall take effect as if the decision appealed from had been affirmed by the Appellate Court upon the hearing of such appeal: Provided that if it shall appear to the Court that the appellant is unable to pay the amount required, and that injustice may be done by the dismissal of such appeal unheard, the Court may remit such payment either wholly or in part, or make such order in relation thereto as to the Court shall seem fit. 20 25

Discretionary powers.

Appellate Court to have the like powers as Native Land Court in case of non-payment.

28. The Appellate Court shall have the like powers with regard to any appeal in case the required security has not been deposited, or in case of non-payment of fees, as are hereinbefore given to the Native Land Court in the like cases. 30

Appellate Court.

Provision for securing uniformity of decisions.

29. The Chief Judge shall have power from time to time to refer to the Judges of the Appellate Court, severally or collectively, any question of Native custom, or of practice and procedure, which he may think necessary to have decided for the purpose of securing uniformity in the decisions of the Court; and the opinion of the majority of such Judges upon any question referred shall be binding upon the Court, and upon all the Judges thereof, and shall be followed in all subsequent decisions of the Court and of the Native Land Court. 35 40

Time within which statement of grounds of appeal to be lodged.

30. The time within which a statement of the grounds of appeal may be lodged shall be three months from the date of the decision appealed from: Provided that the Chief Judge or the Court may at any time require an amended statement to be furnished.

Notice of appeal, time for giving.

31. When by any regulation made or to be made under the Act public notice is required to be given of any decision, the time within which notice of appeal from such decision may be given shall run from the date of the publication of such notice. 45

Appellate Court may annul or vary decision.

32. The Appellate Court shall have power, in the exercise of the jurisdiction conferred on it by the Act or by this Act, to annul or 50

vary any decision of the Native Land Court or of a Judge thereof, and to give such other decision as to the Court shall seem just.

33. No appeal shall lie from any order of incorporation under section one hundred and twenty-two of the Act, nor from any order 5 dismissing an appeal under section twenty-six of this Act.

No appeal in certain cases.

Native Land Court.

34. An order under subsection nine of section fourteen of the Act shall be revocable at any time by the Court or by any Judge, notwithstanding that such order may have been filed in the office of 10 the Supreme Court: Provided that the order of revocation shall in such case be also filed.

Order under subsection (9) of section 14, how revocable.

35. The Chief Judge may refer to the Court, or to a Judge, for inquiry and report, any application or other matter as to which such inquiry is, in his opinion, necessary for the purposes of the Act, 15 or of any Act conferring jurisdiction on the Court or on the Chief Judge for any purpose whatsoever.

Applications may be referred to Court by Chief Judge for inquiry and report.

36. When application shall be made to the Court to determine the succession to the personal estate of any Native dying intestate, the Court may, on the hearing of such application, appoint any fit person 20 to administer such personal estate on behalf of the persons beneficially entitled thereto, and may grant letters of administration accordingly: Provided that no estate or interest in the land of any Native dying intestate shall pass by virtue of letters of administration.

Court may appoint administrator of personal estate of Native dying intestate.

37. The Court may refuse to partition any land if it shall 25 appear to the Court that, from the nature of the case and of the interests involved, such land cannot fairly be partitioned.

No interest in real estate to pass to administrator. Court may refuse to partition land if not fit subject for partition.

JURISDICTION.

38. From and after the passing of this Act, the Native Land Court and every Judge thereof shall, in dealing with all questions as 30 between Natives and Natives affecting the title to any Native land, or to land or personal estate owned by Natives, be absolutely free from the control or interference of any superior Court other than the Native Appellate Court.

In questions as between Natives, Native Land Court to be subject only to Appellate Court.

39. In any case in which, but for this Act, recourse might be 35 had to the Supreme Court, the remedy shall be by application to the Native Appellate Court, which shall have full power on such application to deal with and finally determine all questions at issue, and to grant such relief as to such Court shall seem just, or as shall in the opinion of the Court be necessary, having regard to the nature of 40 the case and the rights of the parties.

Appellate Court to have power of Supreme Court to grant relief.

40. The Native Appellate Court shall have supreme jurisdiction in all questions as between Natives and Natives affecting the title to any Native land, or to land or personal estate owned by Natives, and shall exercise or decline to exercise such jurisdiction free from the 45 interference or control of any other Court whatsoever, nor shall any proceeding relating to any such matter as aforesaid be removed from the Native Appellate Court into any other Court by writ of *certiorari* or otherwise.

Appellate Court to have supreme jurisdiction in questions between Natives relating to real or personal estate.

Saving of proceedings pending in Supreme Court.

41. Nothing herein contained shall prejudice or affect any proceeding actually pending or commenced in the Supreme Court at the date of the passing of this Act.

Section 39 repealed.

42. Section thirty-nine of the Act is hereby repealed.

MISCELLANEOUS.

Interest of lessee in land acquired by the Crown may be determined.

43. When any land heretofore acquired, or hereafter to be acquired, by the Crown from Natives is subject to lease, the Governor may, by Order in Council, absolutely determine such lease, either as to the whole or any part of the land, and the Crown shall thereupon be entitled to enter into possession of such land, subject only to payment of such compensation as may be agreed on between the Minister of Lands and the persons entitled thereto. In default of such agreement, the amount of compensation, and the person or persons to whom such compensation is payable, shall be determined by the Native Land Court, on the application of the Minister of Lands, in the same manner as nearly as may be as is provided by section ninety of "The Public Works Act, 1894," with regard to claims for compensation in respect of leasehold interests in land owned by Natives which has been taken for public purposes under the provisions of the said Public Works Act.

Compensation to lessee, how to be ascertained.

In case of dispute money belonging to Natives may be paid to Public Trustee.

44. Any lessee or other person holding moneys belonging to Natives, and being unable to pay such moneys by reason of any doubt or dispute as to who are the persons entitled to receive the same, may by leave of the Court, or a Judge, pay such moneys to the Public Trustee, whose receipt shall be a sufficient discharge to the person paying the same. Payment of rent by a lessee under the provisions of this section shall be deemed a payment made in accordance with the terms of the lease.

Public Trustee to hold money subject to order of the Court.

45. The Public Trustee shall hold such moneys subject to the order of the Court, for the benefit of and to be payable to such persons as the Court shall by order from time to time direct: Provided that any lessee availing himself of this provision shall be chargeable with commission at the rate of five pounds per centum on all moneys paid by him to the Public Trustee, which charge shall be levied as a fee of the Public Trust Office. All orders heretofore made under section ten of "The Native Land Court Act Amendment Act, 1888," are hereby annulled.

"Native Land (Validation of Titles) Act Amendment Act, 1894," section 3 amended.

46. Section three of "The Native Land (Validation of Titles) Act Amendment Act, 1894," is hereby amended by striking out the words "being a barrister or barristers of the Supreme Court of New Zealand," and by adding to the said section the following proviso:—

"Provided that any person party to any case before the said Court may, by notice in writing to the Registrar, not later than fourteen days before the sitting of the Court, require that such case shall be heard before a Judge being a barrister or solicitor of the Supreme Court of New Zealand."

"Native Land (Validation of Titles) Act Amendment Act, 1894," section 6 amended.

47. No stay of proceedings shall take place by virtue of section six of "The Native Land (Validation of Titles) Act Amendment Act, 1894," except upon the application of some person interested in the subject-matter of such proceedings, and upon such terms with regard 50

to payment of costs as to the Court in which such proceedings are stayed shall seem just.

48. All applications under section one hundred and eighteen of the Act in respect whereof the applicant shall have failed to pay the required fees, and to comply with the regulations, within one month from the date of the passing of this Act, shall be deemed to have been abandoned by the applicant, and shall be dealt with accordingly.

When applications under section 118 treated as abandoned.

49. Section two of "The Owhaoko and Kaimanawa-Oruamatua Reinvestigation of Title Act, 1886," shall be read and construed as if the words "The Native Land Court Act, 1886," had been used in the last line thereof instead of "The Native Land Court Act, 1880."

"Owhaoko and Kaimanawa-Oruamatua Reinvestigation of Title Act, 1886," section 2, amended.

50. All acts done and orders made by any Judge of the Native Land Court, purporting to have been done or made under "The Native Land (Validation of Titles) Act, 1892," and "The Native Land Court Certificates Confirmation Act, 1893," or under either of the said Acts, shall be as valid and effectual as if such Judge had been duly authorised to exercise jurisdiction under the said first mentioned Act in terms of section fifteen thereof.

"Native Land (Validation of Titles) Act, 1892," confirmation of acts done under.

51. Notwithstanding any provision to the contrary contained in "The Maori Real Estate Management Act, 1867," or "The Maori Real Estate Management Act, 1888," any real or personal estate heretofore vested in any trustee, either original or substituted, appointed under either of the said Acts shall vest and shall be deemed to have vested, without any conveyance or assignment thereof, in the *cestui qui trustent* (if not otherwise under disability) on whose behalf the estate was held, on their respectively attaining the age of twenty-one years; and for this purpose the definition of the term "hereditaments" in the said Acts respectively shall be deemed to have included land held under memorial of ownership or certificate of title under any Native Land Act: Provided that nothing herein contained shall prejudice or affect any right or title already acquired or affect any decision already given.

Maori Real Estate Management Acts, 1867 and 1888.

Estate of *cestui que trustent* to vest without conveyance on attaining majority.

52. Section two of "The Native Lands Claims and Boundaries Adjustment and Titles Empowering Act, 1894," is hereby repealed, and the following section substituted in lieu thereof:—

Rangipo Waiu and Motukawa Nos. 1 and 2 Blocks.

"The Native Land Court certificate of title issued for the Rangipo Waiu Block, on the thirteenth day of April, one thousand eight hundred and eighty-two, is hereby declared void as to those portions of Motukawa Number One and Motukawa Number Two Blocks, containing respectively six hundred and twenty-four acres and seven hundred and ninety acres, more or less, erroneously included therein, as appears on the record maps of the District Land and Survey Office, Wellington, and on the said certificate of title respectively: Provided always that the said areas of six hundred and twenty-four acres and seven hundred and ninety acres shall not vest in the owners of the Motukawa Number One and Motukawa Number Two Blocks respectively for any purpose whatsoever other than sale to Her Majesty or partition by the Native Land Court, before the expiration of the lease to John Studholme and Thomas Morrin of the said Rangipo Waiu Block, on the thirty-first day of May, one thousand nine hundred and two, and shall in the meantime for all other purposes be deemed to be a portion of and included in the said Rangipo Waiu Block, and to be

Certificate of title corrected and boundaries adjusted.

subject to the lease aforesaid. The boundaries between the said Motukawa Number One and Motukawa Number Two Blocks are hereby adjusted in accordance with the descriptions set out in the *Second* Schedule to this Act, and the Chief Judge is hereby empowered to amend the titles of the said several blocks, in accordance with the provisions of this section. 5

REPEAL.

53. So much of sections seventy, seventy-one, and seventy-two of the Act as is inconsistent with sections ninety-one to ninety-five inclusive of "The Public Works Act, 1894," is hereby repealed. 10

Repeal of clauses
inconsistent with
Public Works Act.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

FORM OF DECLARATION UNDER SECTION 5.

In the matter of "The Native Land Laws Amendment Act, 1895," and of an Application to the Native Land Court for confirmation of [*Specify nature of alienation in respect of which confirmation is required*].

I, A. B., of _____, do solemnly and sincerely declare that I am the person [or one of the persons] beneficially entitled by virtue of the above alienation, and that I do not, either in severalty or jointly with any other person or persons, at the date of making this declaration, own in fee-simple more than six hundred and forty acres of land in the Colony of New Zealand, including the land the subject of the above alienation; and, further, that I am not acquiring the said land directly or indirectly for the benefit of any person not named in the instrument effecting such alienation: And I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of "The Justices of the Peace Act, 1882."

Declared, &c.

SECOND SCHEDULE.

DESCRIPTION OF BOUNDARIES OF MOTUKAWA No. 1.

BOUNDED on the north by the Rangipo Waiu Block, 19591·6 links; on the south-east by the Motukawa No. 2 Block, 18584 links; thence towards the south and west by the Hautapu River, to the starting point.

DESCRIPTION OF BOUNDARIES OF MOTUKAWA No. 2.

Bounded on the north by the Rangipo Waiu Block, 53778·6 links; on the north-east by the Moawhangoiti Stream; on the east by the Moawhango River; on the south-east by the Mangarautawiri Stream, Awarua Block, Ngawaka Stream, and Hautapu River; on the west by the Hautapu River; and on the north-west by the Motukawa No. 1 Block, 18584 links, to the starting point.