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Hon. Mr. Cadman.

NATIVE LAND (VALIDATION OF TITLES).

ANALYSIS.

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A BILL INTITULED

AN ACT to provide for Inquiry into Incomplete Dealings with Native Land. 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 Native Land (Validation of Titles) Act, 1892." Short Title.

2. This Act shall be read together with "The Native Land Court Act, 1886," and the several Acts amending the same. Act to be read with Native Land Court Acts.

3. Sections twenty to twenty-eight, both inclusive, of "The Native Land Court Acts Amendment Act, 1889," are hereby repealed. Repeal.

4. Any deed, memorandum, or document executed or signed before the passing of this Act purporting to effect an alienation by way of sale, transfer, or lease, or containing a contract for such alienation whether of the whole of the shares or interests of the Native owners in any piece of land, or of any one or more of such shares or interests, and intended to enable the alienee to obtain by due process of law an estate of freehold in fee-simple, or a term of years, in the whole or part of such piece of land, may form the subject of inquiry by the Court on the application of any person claiming to be interested in the transaction, and may be dealt with in the manner hereinafter provided. Incomplete alienations may be inquired into.

5. Notice of the time and place of holding such inquiry shall be given in such manner as the Chief Judge may direct. Subject to any rules that may be made in that behalf the Court shall investigate the circumstances attending any transaction in respect of which such Mode of inquiry.

- application for inquiry is made, as nearly as may be in the manner in which matters within its ordinary jurisdiction are investigated. The evidence taken upon such inquiry shall be reduced to writing, and signed by the several witnesses giving the same and by the presiding Judge, and at the close of such inquiry shall be transmitted to the Chief Judge with the decision of the Court thereon. If it shall appear to the Court that the transaction in respect of which such inquiry is held is fair and reasonable, and not in any way contrary to equity and good conscience, and that each Native owner has received the share to which he is entitled of the purchase-money or other consideration agreed upon as the consideration for the alienation intended to be effected, the Court may give a certificate to that effect. Such certificate may be given as to the whole, or given as to some and withheld as to others, of the shares or interests of the Native owners who executed such deed or signed the document in question. 5
- Certificates may be given.**
6. Such certificate shall specify the land or parcel of land in respect of which the same is given, and the person or persons entitled to the benefit thereof. If more than one person is found entitled to the benefit thereof, such persons may be declared to be collectively entitled to the whole of the shares in respect of which such certificate is given, or some one or more person or persons may be declared entitled to such benefit in respect of some one or more of such shares, and another person or other persons entitled to such benefit in respect of others of such shares, as the justice of the case may require. 10
- Matters to be specified in certificate.**
7. The Court may, during the course of an inquiry, or at any time before granting such certificate, if the circumstances of the case appear to the Court to require it, direct that a partition of the land be made, or, if a partition has already been made, that further inquiry be made for the purpose of varying or amending such partition, if found expedient, and the Court shall thereupon have jurisdiction forthwith to make a partition, or to affirm, vary, or amend a partition already made, as may seem just; and such partition, so made or so affirmed, varied, or amended as aforesaid, shall be as valid and effectual as if made in pursuance of an application for partition under "The Native Land Court Act, 1886." 15
- Partition may be ordered.**
8. The Court may, in any case in which it appears expedient to do so, inquire and ascertain who would be entitled to succeed to the estate, share, or interest of any deceased Native owner in the land the subject of inquiry, and may, if the person so found entitled is an infant, appoint some person who is willing to act in that behalf, to appear and represent such infant upon the inquiry. The Court, or a Judge, may give such directions as to service of notices upon a successor so ascertained, or upon the person so appointed to represent an infant successor, as the nature of the case may from time to time require. 20
- Successors to deceased owners may be ascertained.**
9. If it appears upon the face of any such deed, memorandum, or document as aforesaid, or is disclosed by the evidence given before the Court upon inquiry as aforesaid, or by the records of the Court, that any of the formalities required by the law in force in that behalf at the time of the execution of such deed or memorandum, or the signing of such document, have not been complied with, or that there 25
- Informalities not to prevent grant of certificate in certain cases.**

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has been some irregularity in the procedure prescribed by such law in respect of the execution of such deed or memorandum, or signing of such document, or in respect of the removal of any restrictions imposed or recommended to be imposed upon the alienation of the land intended to be affected by such deed, memorandum, or document, or in respect of the time or manner of obtaining the Governor's consent to such alienation, or any irregularity in the proceedings of the Court upon which the title of the Native owners to the land is based or in any other matter, or that a doubt has arisen as to the power of the Court to make any order upon which the title to the land is based, or as to the effect or intended effect of any order made by the Court, whether such doubt is as to a matter of fact or a point of law, and the Court is satisfied that such failure to comply with such formalities, or such irregularity or doubt, has been caused by misapprehension as to the provisions of the law in that behalf, or through inadvertence on the part of any of the parties to the transaction or of the agent of any of them, or on the part of any judicial or other officer of the Government, and that there has been no intention to evade any of the provisions of the law on the part of the intended alienee or of his agent, and that the Native owners of the land have not been prejudiced thereby, the Court may give such certificate as aforesaid, specifying therein the nature of the formalities that have not been complied with or the irregularities in procedure that have occurred, or the doubt that has arisen, as the case may be, together with the opinion of the Court thereon:

Provided that in such case the certificate shall remain in the office of the Court, and shall not be delivered to any person for any purpose whatever, or be capable of registration under any Act, until the expiration of ten clear days after the close of the session of the General Assembly next following the giving of such certificate.

10. The Court shall also specify in such certificate the date from which the same shall be deemed to take effect, which date may be either before or after the date on which it determines to grant the same, and such certificate shall for all purposes be deemed to take effect as from the date so specified.

Date from which certificate to take effect.

11. A certificate so given shall have the effect of vesting in the person therein specified as entitled to the benefit thereof, as from the date therein specified in that behalf, the land or parcel of land comprised therein for an estate of freehold in fee-simple in possession, or for a term of years, as the case may be, as fully as if all the requirements of the law had in all respects been duly observed and complied with; and such person shall, on the production of such certificate to the District Land Registrar of the proper district, be entitled to be registered as proprietor of such land or parcel, and to have issued to him a certificate of title under "The Land Transfer Act, 1885," or to be registered as lessee, as the circumstances of the case may require, any provision in any Act to the contrary notwithstanding.

Effect of certificate.

12. If it appear that there has been any fraud or misfeasance on the part of any party claiming to be beneficially interested in a transaction under inquiry, or any intention or endeavour to evade the provisions of the law in respect thereof, or that the validation of the

When certificate to be refused.

transaction would on any ground be contrary to equity and good conscience, or injurious to the true interest of the Native owners of the land intended to be affected thereby, the Court shall refuse a certificate, either as to the whole transaction or as to such part thereof as the justice of the case may require.

Refusal to be reported to the Governor.

13. If the Court shall refuse to grant a certificate in respect of any transaction or of any part thereof inquired into under this Act, the Chief Judge shall forthwith report the same to the Governor, with the reasons for such refusal, and a certified copy of the evidence taken upon such inquiry.

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Adverse claims may be adjusted.

14. If, upon an inquiry held as aforesaid, adverse claims to be entitled to the benefit of any certificate that may be granted are advanced by two or more persons by virtue of their respective negotiations with the Native owners, the Court may inquire into the matter of each such claim as aforesaid, and may in its certificate declare such one or more of the persons so claiming as aforesaid to be entitled as aforesaid, as the justice of the case may require, and such declaration shall for all purposes be final and conclusive.

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Agreements may be approved.

15. The Court may approve of any agreement or arrangement made by or between any of the parties to a transaction under inquiry for the purpose of settling any matter in dispute between them, if the terms thereof appear fair and reasonable, and may give effect thereto in its certificate.

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Reference back for further inquiry.

16. The Chief Judge may from time to time refer any question or matter arising upon an inquiry to the Court for further inquiry, or for further consideration, with such directions as to the taking of evidence or otherwise as he may consider necessary.

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By whom jurisdiction to be exercised.

17. The jurisdiction conferred on the Court by the *preceding* sections of this Act shall be exercised only by such of the Judges and Assessors thereof as the Governor may specially authorise in that behalf.

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Return to be laid before Parliament.

18. A return of all certificates given, and all applications in respect of which certificates are refused, in pursuance of the provisions of this Act shall, from time to time, be laid before both Houses of the General Assembly, together with the report of the Court on each case, within ten days after the opening of each session.

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Stay of proceedings.

19. No action shall be brought or proceedings taken in any Court other than proceedings in the Native Land Court under this Act for the purpose of calling in question, or which may have the effect of calling in question, the validity of any alienation, or of any deed, memorandum, or document purporting or intended to effect an alienation, or containing a contract for alienation which may form the subject of inquiry under this Act until the expiration of the next session of the General Assembly.

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