NATIVE PURPOSES BILL, 1942.

EXPLANATORY NOTES.

Clause 3: By subsection (2) of section 3 of the Native Purposes Act, 1941, the Native Land Court was given power, in the case where a child had been adopted by a Native, to make, during the lifetime of that parent and while the order of adoption remained in force, an adoption order in favour of the European wife or husband of that parent. Questions have now been raised as to whether, on the making of the further adoption order in favour of the European spouse, the prior order is not superseded. The proposed amendment makes the position clear by enabling the Court to make an order in favour of both parents jointly.

Clause 4: The purpose of this clause is to give the Maori Land Boards power to make miscellaneous payments from moneys in their Profit and Loss Accounts for welfare and suchlike purposes. The expenditure by a Board is limited to £50 in any one year.

Clause 5: Section 21 of the Native Housing Amendment Act, 1938, gives the Court power to make an order in respect of the charging of housing advances against land in two instances:—

(1) The Court can make an order under section 21 (2) to evidence a charge which has already arisen under section 21 (1) over land on which the moneys advanced for housing purposes have actually been expended:

(2) In those cases where such a charge exists, the Court can also under section 21 (3) make an order charging any other land or interest in land owned by the same Native, but not other land owned by any other Native or Natives even though such Native or Natives may derive substantial benefits from the advance.

Some time ago the Board of Native Affairs directed that a charge be taken over the interests in land owned by an applicant for a housing advance and his wife, but it was found that the Court had no power to make an order in respect of the interests of the wife. It is to obviate this difficulty that the present clause has been drafted.

New.

Clause 5A: This clause is to give effect to a recommendation made by the Chief Judge. Ngakete Hapeta, to whom his wife, Ani Karo, devised her lands, left all his estate to the children of his informally adopted daughter, thus outing out the next-of-kin of both Ngakete and Ani from the succession. Upon an inquiry undertaken by the Court, following a petition, the persons who have been appointed successors agreed to allow the next-of-kin of the two Natives mentioned to participate in the estates. The clause enables the Court, by consent, to cancel the subsisting succession orders and to make new succession orders as arranged.

Clause 6: The Crown, on the 1st August, 1905, acquired an area of land for settlement purposes, and when this was surveyed and subdivided as Selwyn Settlement in 1906 an error occurred in the redefinition of boundaries which resulted in parts of the Whaiti Kuranui Block, owned by Natives, being included within the settlement. The area of Native land concerned is 29 acres 1 rood and 10 perches. Leases were issued by the Crown and registered by the District Land Registrar, and action has been taken to grant the fee-simple. Endeavours have been made to acquire the land in question from the Natives, but, for various reasons, the negotiations have lapsed. This clause provides the machinery by which the Crown becomes possessed of the land and the Native owners receive compensation for it. Separate arrangements have been concluded to protect a burial-ground on the area affected.

Clause 7: Public moneys were made available, as loans, to certain of the Natives living in the Tangoio and Eskdale districts for the restoration of their properties which were damaged by the floods of 1938. There were thirteen cases where loans, which were to be interest free for three years, were made, the amount involved being approximately £1,550. Besides the loans, substantial free moneys were granted for labour, and the people were otherwise assisted from Government and private sources in the purchase of household and personal effects. In only two cases has any real attempt been made at repayment—in one case the whole amount has been repaid, and in another, something over half. For the rest, difficulties of various kinds have been met in obtaining securities for, and repayment of, the advances. This clause enables the Native Land Court to determine whether the Natives concerned ought reasonably be required to repay the whole or part of the loans, and to charge the amount determined by it on the lands owned by them.

Clause 8: The lessees of section 305 on Deposited Plan No. 1400, City of Nelson (being part of the Nelson Native Reserve), were the owners of an estate in fee-simple of a certain small area of land adjacent thereto containing 1·7 perches, being Lots 6 and 8 on a subdivisional plan of Section 303, Nelson, and being part of the land comprised and described in certificate of title, Volume 78, folio 136. Being desirous that this second piece of land and the leasehold should be treated as a single property so as to facilitate a subdivision thereof, they have transferred their estate in fee-simple in such land to the Native Trustee. The Native Trustee now desires that the various trust provisions relating to the Nelson Native Reserve should be made applicable to this land. The present clause has been drafted to give effect to this.

[AS REPORTED FROM THE NATIVE AFFAIRS COMMITTEE.]

House of Representatives, 16th October, 1942.

Hon. Mr. Mason

NATIVE PURPOSES

ANALYSIS

A BILL INTITULED

AN ACT to amend the Laws relating to Natives and Native Land, to adjust certain Claims and Disputes in relation to Native Land, and for other Purposes. Title.

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

1. This Act may be cited as the Native Purposes Act, 1942. Short Title.

2. Words and expressions used in this Act shall, unless the contrary intention appears, have the same meaning as in the Native Land Act, 1931 (hereinafter referred to as the principal Act), and the provisions of the principal Act, so far as applicable, shall extend and apply to the cases provided for by this Act in as full and ample a manner as if this Act had been incorporated with and formed part of the principal Act. Provisions of Native Land Act, 1931, to apply to this Act. See Reprint of Statutes, Vol. VI, p. 103

PART I.

AMENDMENT OF LAWS.

As to adoption orders in favour of husband and wife where one spouse is a European.
1941, No. 22

3. Subsection two of section three of the Native Purposes Act, 1941, is hereby amended, as from the passing thereof, as follows:—

(*a*) By inserting, after the words "in favour of", the words "that adopting parent and":

(*b*) By adding, after the word "parent" where it last occurs, the word "jointly".

Maori Land Board may expend moneys for Native purposes.
See Reprint of Statutes, Vol. VI, p. 138

4. Section ninety-six of the principal Act is hereby amended by adding thereto the following new subsection:—

"(4) Out of moneys referred to in the last preceding subsection, the Board may, with the approval of the Native Minister, expend or apply for any purpose having for its object the promotion of the health, education, or moral, physical, or social welfare of any Native or Natives or for any other appropriate purpose approved by the Native Minister, such amount or amounts as it thinks fit:

"Provided, however, that the total expenditure by the Board under this subsection shall not exceed in any one financial year a greater sum than fifty pounds."

Section 21 of Native Housing Amendment Act, 1938 (as to security for advances), amended.
1938, No. 17

5. Subsection three of section twenty-one of the Native Housing Amendment Act, 1938, is hereby amended as follows:—

(*a*) By omitting the words "any other land or interest in land owned by that Native":

(*b*) By adding the words "any other land or interest in land owned by that Native or by any other Native who has derived or may derive any benefit from the expenditure of the moneys".

PART II.

MISCELLANEOUS POWERS.

New.

Tokerau District.

Authorizing Court to effect a redistribution of the estates of Ani Karo and Ngakete Hapeta.
1935, No. 39

5A. To give effect to the recommendation made by the Chief Judge, pursuant to the provisions of section twenty-two of the Native Purposes Act, 1935, upon petition Number 344 of nineteen hundred and thirty-four nineteen hundred and thirty-five by Wi Hapeta and others, praying for a rehearing of the application for probate of the will of Ngakete Hapeta, deceased: Be it enacted as follows:—

The Court is hereby authorized and empowered, on application made to it in that behalf within six months from the passing of this Act, with the consent (given either in writing or orally in open Court) of the persons

presently entitled under any succession order heretofore made by the Court in respect of any land or interest in land devised by the will of Ani Karo, *alias* Ani Kaaro, *alias* Ani Kaaro Patuone or Ngakete, deceased, or by the will of Ngakete Hapeta, deceased, to cancel any such succession order; and, in its ordinary jurisdiction, to make all such new succession orders as may be necessary to give effect to the terms of any arrangement which has been or might hereafter be come to between the persons presently entitled as aforesaid and any other persons who are next-of-kin of the said Ani Karo, *alias* Ani Kaaro, *alias* Ani Kaaro Patuone or Ngakete, deceased, or of the said Ngakete Hapeta, deceased, or who are descendants of any of the said next-of-kin.

Waiariki District.

Native land comprised in Whaiti Kuranui overlap vested in Crown.

6. Whereas the Native land described in subsection *four* hereof (hereinafter in this section referred to as the said land) was, through an error on survey, included, with certain Crown land, in the settlement styled as the Selwyn Settlement: And whereas the said land has been alienated from the Crown for subsisting estates in fee-simple and leasehold as if it was Crown land: And whereas it is desirable that the said land should be vested in the Crown and that the Native owners thereof should be awarded compensation in respect of the extinguishment of their rights therein: Be it therefore enacted as follows:—

(1) The said land shall be deemed to have become Crown land on the first day of August, nineteen hundred and five, free from all the right, title, estate, and interest of the former Native owners thereof or their successors, and shall be deemed to have become on that date subject to the Land for Settlements Consolidation Act, 1900. 1900, No. 52

(2) The former Native owners of the said land or their successors shall be entitled to compensation therefor in the same manner as if it had presently been taken under the Public Works Act, 1928, for a public work, and within six months after the commencement of this Act the Minister of Lands shall cause application to be made to the Court to ascertain what amount of compensation ought to be paid to the former Native owners of the said land or their successors. In hearing and determining such application, the Court may exercise all the powers conferred upon it by Part IV of the Public Works Act, 1928, and the Court may order that the compensation payable shall be paid, on

See Reprint of Statutes, Vol. VII, p. 622

behalf of the persons entitled thereto, to the Waiariki District Maori Land Board, or may direct that such compensation shall be paid to the persons so entitled, or may, with or without the consent of any of the persons entitled, order that the same shall be paid to such fund or expended or applied for such purpose or in connection with such project as to the Court seems proper, and the same shall be paid or expended or applied accordingly.

(3) The compensation awarded by the Court under this section shall, without further appropriation than this section, be paid out of the Land for Settlements Account.

(4) The said land is particularly described as follows:—

The several pieces of land in the Auckland Land District, Matamata County, being parts of Whaiti Kuranui Block and being particularly Part 5C 3, containing 9 acres and 8 perches, coloured pink; Part 5C 3, containing 4 acres 1 rood 11 perches, coloured yellow; Part 5C 3, containing 2 roods 25 perches, coloured blue; Part 5D, containing 5 acres 1 rood 18 perches, coloured pink; Part 5D, containing 17 perches, coloured red; Part 5D, containing 8 acres 1 rood 6 perches, coloured blue; and Part 5D, containing 1 acre 2 roods 5 perches, coloured purple, on the plan numbered N.L.C. 15122, lodged in the office of the Chief Surveyor at Auckland.

Ikaroa District.

Securing advances made to Natives in Hawke's Bay for flood relief.

7. Whereas, for the purpose of repairing or replacing houses and other improvements on lands which were damaged or destroyed by floods in the Hawke's Bay District in the year 1938, certain moneys from the public funds (in this section referred to as the loan-moneys) were advanced to or expended for the benefit of certain Natives: And whereas, in certain cases, difficulties have been experienced in obtaining security for, or the repayment of, some of the loan-moneys: And whereas it is desirable that inquiry should be made for the purpose of determining what portions of the loan-moneys now remaining unpaid the said Natives ought, in reason and in equity, to repay, and how they should be secured: Be it therefore enacted as follows:—

(1) On proof of the amount of the loan-moneys advanced to or expended for the benefit of any Native as aforesaid or of the amount of the loan-moneys now remaining unpaid, the Court may inquire and determine

whether that Native or his successors ought, reasonably and equitably, to be required to repay the whole of that amount or a part of that amount, and, if so, what part. A certificate under the hand of the Registrar of the Native Land Court, Ikaroa District, as to the amount of the loan-moneys or as to the amount thereof now remaining unpaid may be accepted by the Court as sufficient evidence of the amount certified.

(2) The Court may, in its discretion, make such orders as it thinks necessary charging the amount determined by it under the *last preceding* subsection to be repayable, together with interest thereon, if the Court thinks fit, at such rate not exceeding five pounds per centum per annum as the Court shall fix, on the land whereon the house or other improvements are situated, and upon the revenues and proceeds of any alienation thereof, and, in addition or in the alternative, upon any other land or interests in land (whether Native land or European land) owned by the owner of that house or other improvements.

(3) On or after any subsequent partition, exchange, alienation, or other disposition of the land so charged, the Court may make a further order varying any former order and apportioning the charge in such manner as it thinks just, and any such subsequent order shall supersede all earlier charging-orders so far as inconsistent therewith. When any charge has been so apportioned, each portion thereof shall be deemed to constitute a separate charge.

(4) Any such order shall, subject to all prior encumbrances, constitute a legal charge upon the land and the revenues and the proceeds of the alienation thereof, according to its tenor, notwithstanding anything to the contrary in any will or other instrument.

(5) Any charge so constituted may, from time to time, on the application of the Native Minister, be enforced by the appointment of a receiver in respect of the land so charged. Every such receiver shall have the same rights, powers, duties, and liabilities as a receiver appointed pursuant to section forty-two of the principal Act.

(6) The provisions of this section shall extend and apply to any case where a mortgage has heretofore been given in respect of any loan-moneys and the moneys expressed to be secured by the mortgage have not been wholly repaid; and in any such case, the Court may, on granting a charging-order under this section, make an order discharging the mortgage aforesaid.

(7) Any order made by the Court under this section may be registered against the title to the land affected by it under the Land Transfer Act, 1915.

See Reprint of Statutes, Vol. VII, p. 1162

(8) A certificate given by the Registrar of the Native Land Court, Ikaroa District, that the amount secured by any charge under this section has been paid or otherwise satisfied in whole or in part shall be accepted as sufficient evidence of the satisfaction or discharge, and may be registered in the same way as an order made under this section.

Native Reserves.

Lots 6 and 8 on Subdivisional Plan of Section 303, City of Nelson, included in Nelson Native Reserve.

1882, No. 52

1887, No. 29

See Reprint of Statutes, Vol. VI, p. 373

8. Whereas by a certain Memorandum of Lease Registered Number 2632, Nelson Registry, the Native Trustee, by virtue of the powers and authorities in and by the Native Reserves Act, 1882, and the Westland and Nelson Native Reserves Act, 1887, and the Native Trustee Act, 1930, and any other powers in that behalf enabling him leased to Ada Lacy Strachan and Vera Lacy Grant Dodson (hereinafter referred to as the lessees) all that piece of land situated in and being part of the Nelson Native Reserve containing three roods thirty-seven perches and one-tenth of a perch, more or less, being Section 305 on Deposited Plan Number 1400, City of Nelson, and being part of the land comprised and described in certificate of title, Volume 51, folio 202, Nelson Registry (hereinafter referred to as the land firstly above described), upon the terms and conditions (including a perpetual right of renewal) therein set forth: And whereas the lessees were also the registered proprietors of an estate in fee-simple in the following pieces of land situated adjacent to the land firstly above described—namely, the pieces of land situate in the City of Nelson containing together one perch and seven-tenths of a perch, more or less, being Lots 6 and 8 on a subdivisional plan deposited in the Land Registry Office at Nelson as Number 3136, being parts of Section 303, City of Nelson, and being parts of the land comprised and described in certificate of title, Volume 78, folio 136, Nelson Registry (hereinafter together referred to as the land secondly above described): And whereas for the purpose of utilizing more effectively their leasehold interest in the land firstly above described the lessees are desirous of treating the land firstly above described and the land secondly above described as if they constituted one property and have accordingly transferred all their estate and interest in the land secondly above described to the Native Trustee with the intention that the land secondly above described

should be held by him upon and subject to the same trusts and conditions as the land firstly above described and included in any renewals from time to time of Memorandum of Lease Number 2632: Be it therefore enacted as follows:—

The land secondly above described shall be deemed as from the passing of this Act to form part of the Nelson Native Reserve and shall be held by the Native Trustee for the same estate, upon the same trusts, and with the same functions, powers, duties, liabilities, and engagements as if it had originally formed part of the Nelson Native Reserve and shall also be deemed as from the passing of this Act to be included in the land comprised in the said Memorandum of Lease Number 2632 and to be affected by the provisions thereof as fully and effectually as if it had originally been included in the land comprised in the said Memorandum of Lease Number 2632.

New.

General.

9. (1) The Chief Judge is hereby authorized to refer to the Native Land Court, or to a Judge thereof, for inquiry and report, the claims and allegations made by the petitioners in the petition mentioned in the Schedule hereto. Chief Judge may refer petition in Schedule to Native Land Court for report.

(2) The Chief Judge may, upon such inquiry and report, make to the Native Minister such recommendation as appears to him just and equitable.

(3) Except with the leave of the Court, it shall not be lawful for any person to alienate or otherwise deal with any land the subject of the petition mentioned in the Schedule hereto until the report and recommendation under this section have been considered by the Native Affairs Committee of the House of Representatives.

(4) The report and recommendation under this section shall be laid before Parliament on as early a date as possible, and shall stand referred to the Native Affairs Committee of the House of Representatives.

SCHEDULE. Schedule.

PETITION TO BE REFERRED TO THE NATIVE LAND COURT, OR A JUDGE THEREOF.

PETITION No. 39 of 1942, of Reremoana Kemara and others, praying for an inquiry into the beneficial ownership of Tawapata South Nos. 1 and 3 Blocks.

By Authority: E. V. PAUL, Government Printer, Wellington.—1942.