

No. IV.

CROWN TITLES.

AN ORDINANCE for Quieting Titles to Land in the Province of New Ulster. [25th August, 1849.]

Preamble.

WHEREAS since the Proclamation of Her Majesty's sovereignty in and over the Islands of New Zealand various Laws Ordinances Royal Letters Patent and Instructions have from time to time been in force relating to the disposal by the Crown of lands within the Colony, prescribing the terms and conditions on which such lands should be alienated and disposed of, and limiting and appointing the power and authority of the Governor for the time being to make grants of the same in the name and on behalf of the Crown: And whereas during such period as aforesaid numerous grants of land within the Province of New Ulster have been made, in the name and on behalf of Her Majesty, by the Governor, Lieutenant-Governor, or other the Officer Administering the Government of the Colony or Province for the time being: And whereas in many cases doubts are entertained whether such Governor or other officer was duly authorized and empowered to make such grants in the name and on behalf of the Crown, and whether such grants were otherwise made in conformity with the regulations for the time being in force in that behalf: And whereas numerous grants of land claimed under the provisions of the Land Claims Ordinance (Session I., No. 2,) have also been made, wherein the land of which the grantee is recited to be entitled to a grant forms a part only of the whole quantity claimed to have been purchased by him from the aboriginal native owners, and is not particularly set forth and described in such grant, and it is doubtful in point of law whether by reason of such uncertainty any or what portion of land is validly conveyed by such grant: And whereas certain cases have already been submitted to the judgment of the Supreme Court, and it is essential

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essential to the prosperity of the Colony that such doubts should in all cases be removed with the least possible delay: Now therefore, for the more speedy removal of such doubts, and for the effectual quieting of Crown titles:

BE IT ENACTED AND DECLARED by the Governor-in-Chief of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

1. Every grant of land within the Province of New Ulster, sealed with the Public Seal of the Colony or Province and made before the passing of this Ordinance, in the name and on the behalf of the Crown, by the Governor, Lieutenant-Governor, or other the Officer Administering the Government for the time being, shall be deemed and taken to be a good valid and effectual conveyance of the land purported to be conveyed by such grant, and of the estate or interest purported to be conveyed thereby, as against Her Majesty, her heirs and successors, and as if the same had been a valid grant of the demesne land by the Crown, and against all other persons whatsoever: Provided always that in case the land comprised in any such grant shall not be set forth and described by definite metes and bounds, the quantity of land deemed to be conveyed by such grant shall not exceed by more than one-sixth part thereof the quantity of land to which the grantee shall be therein recited to be entitled.

Grants made before passing hereof declared to be valid.

2. Provided always and it is hereby further enacted, that if it shall be proved to the satisfaction of a Judge of the Supreme Court that the Native title to the land comprised in any such grant made or purporting to be made on the report of a Commissioner appointed to hear examine and report upon claims to land hath not been fully extinguished, it shall be lawful for any such Judge to award to the Native claimant or claimants proving title to the same, such sum or sums of money in satisfaction of the claim so to be substantiated as aforesaid as shall appear to such Judge to stand with equity and good conscience, and to direct the payment of the same to be made by instalments or otherwise and at such time or times and in such manner as to him may seem meet: Provided that proceedings before such Judge shall be commenced on or before the first day of January, one thousand eight hundred and fifty-three.

Compensation to be made in case Native title not fully extinguished.

3. All sums of money so to be awarded as aforesaid shall be paid by the Colonial Treasurer, on demand, to the person or persons in whose favour such award shall be made, and shall in the first instance be payable out of the general revenue of the Province of New Ulster.

Such compensation to be payable out of general revenue of Province.

4. Every sum of money so paid shall be chargeable and charged upon the land in respect of which the same shall have been awarded, and in default of payment thereof, together with interest thereon after the rate of five per cent. per annum, to the Colonial Treasurer, by the grantee, his heirs or assigns, within three years after such sum shall have been so awarded, it shall be lawful at any time thereafter for a Judge of the Supreme Court, on motion to be made in that behalf, to make order for the sale of the whole or any part of the land by public auction or private contract, and subject to such conditions as to him may seem meet, and to direct a conveyance to be made of the same to the purchaser or purchasers thereof by such officer of the Supreme Court or other person as such Judge may for that purpose direct or appoint; and every conveyance so to be made as aforesaid shall be deemed to confer a good and valid title to the land conveyed therein upon the purchaser thereof free from all incumbrances whatsoever. It shall also be lawful for such Judge to order out of the money to arise from any such sale as aforesaid in the first place the payment of any expenses attending such sale, and secondly to cause the repayment to the

Compensation to be charged on the land and repaid to the Colonial Treasury.

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the Colonial Treasurer of the principal money and interest which shall have been advanced in respect of such land, together with any costs or expenses occasioned by the nonpayment thereof; the surplus if any shall be paid to the grantee or such other person as shall be found by such Judge to be entitled thereto.

Operation of certain grants declared to confer a right of selection.

5. And be it further enacted that, until it shall be amended as hereinafter provided, every such grant as aforesaid which shall recite that the grantee is entitled to receive a grant of a specified quantity of land, but which shall not set forth and describe the particular piece or parcel of land intended to be thereby conveyed, or in which such particular piece or parcel of land is not set forth or described by definite metes and bounds, or is otherwise insufficiently described, shall be deemed and taken to vest in and confer upon the said grantee, his heirs and assigns, the right of selecting out of the whole of the land included within the boundaries named in the grant the quantity of land to which he may be so recited to be entitled: Provided always that such right of selection shall be exercised before the first day of July, one thousand eight hundred and fifty-one, and that the particular portion of land so to be selected shall be in one block, to be as near as conveniently may be a rectangular figure, the breadth of which shall not be more than half its length: Provided that in case two or more such grants shall contain the same description of the land comprised therein it shall be lawful for the Governor, or other the Officer Administering the Government of the Province for the time being, to convey to such grantees respectively such particular piece or parcel of land comprised within the boundaries set forth in such grant not exceeding the quantity to which such grantees respectively shall be recited to be entitled as may be reported to be just and reasonable by a Commissioner to be appointed by the Governor in that behalf.

Right of selection how to be exercised.

6. Such right of selection as aforesaid shall be deemed, to have been exercised by every such grantee, his heirs and assigns, so soon as he or they shall have furnished to the Surveyor-General a description in writing particularly setting forth the boundaries of the land to be selected under the authority hereof, together with a map or plan of the same, which shall have been executed by a Surveyor licensed by the Surveyor-General.

Map and description of boundaries to be indorsed on grant.

7. It shall be the duty of the Surveyor-General and he is hereby required to ascertain that the land so chosen forms part of the land purported to have been conveyed by the said grant, and also to cause such reservations to be made as may be required for roads and landing-places, and if he shall be satisfied that the land so chosen is of the figure hereinbefore prescribed in that behalf, and of the sufficiency of such map or plan and description, to cause a copy of the same showing such reservations as aforesaid to be indorsed upon the deed of grant relating thereto, and to certify such description by subscribing his name to the same.

Grant to be valid when indorsement shall have been signed by Colonial Secretary.

8. It shall be lawful for the Colonial Secretary of the Province for the time being and he is hereby required to countersign such description; and every deed of grant so countersigned as aforesaid, shall be deemed and taken to be a good valid and effectual conveyance of the land so described thereupon to the grantee named therein as against Her Majesty, her heirs and successors, and all other persons whatsoever. And the legal estate in such land shall be deemed to have been vested in such grantee at the date of the grant upon which such description shall have been so indorsed as aforesaid.

In certain cases land may be taken in exchange.

9. Provided always and it is hereby further enacted that in case the person or persons entitled to such right of selection shall meet with any serious obstruction in the exercise of the same from any Native

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Native claimant, it shall be lawful for the Governor, or other the Officer Administering the Government of the Province for the time being, on being satisfied that it would be expedient so to do, to grant to the persons entitled to such right of selection other land within the Province of equal value (not being town land) which may have been offered for sale by public auction and which may have been selected by such person as aforesaid: Provided that the provision last hereinbefore contained shall not come into operation to enable such Governor or other officer to grant such other land in exchange for a greater quantity of land in any case than the Commissioner who actually heard examined and reported on the claim shall have reported the claimant to be entitled to, until this Ordinance shall have received the Royal confirmation, and until such confirmation shall have been notified in the Government *Gazette*.

10. In every such case as aforesaid the value of the land so given up by such person shall be determined by two Appraisers, one to be appointed by such Governor or other officer and the other by the person entitled to such right of selection; and the value of the land hereby authorized to be given in exchange shall be ascertained and determined by the upset price at which it may last have been offered for sale by public auction as aforesaid.

Value how ascertained.

11. And be it further enacted that if such selection as aforesaid be not made by the grantee, his heirs, appointees, or assigns, before the said first day of July, one thousand eight hundred and fifty-one, it shall be lawful for the Governor or other the Officer Administering the Government of the Province for the time being, in the case of deeds of grant wherein the land of which the grantee is recited to be entitled to a grant forms a part only of the whole quantity claimed, and is not set forth or described by definite metes or bounds, to cause the particular piece or parcel of land not exceeding the quantity to which such grantee shall be recited to be entitled to, to be determined by such Commissioner as aforesaid, and to make a grant thereof to the grantee named in such grant as aforesaid, his heirs or assigns, on payment into the Colonial Treasury by such grantee, his heirs or assigns, of the costs charges and expenses incurred by the Commissioner in the discharge of such duty as aforesaid, and in causing the necessary surveys to be made of the land to be comprised in any such grant; and the legal estate in such land, unless it be otherwise provided in such last-mentioned deed of grant, shall be deemed to have been vested in such grantee at the date of such first-mentioned grant as aforesaid: Provided always that in case such payment shall not be made within twelve calendar months after it shall have been notified in the Government *Gazette* that such grant as aforesaid is ready for delivery, the land comprised therein shall thereupon become and be deemed and taken to be to all intents and purposes demesne lands of the Crown.

Selection if not made by claimant to be made by a Commissioner.

12. And whereas in certain of the said Crown Grants an exception is made from the land comprised therein of "sacred places," or land claimed by a certain Native or Natives therein mentioned, but the particular piece or parcel of land so excepted is not particularly set forth and described: Be it enacted that it shall be lawful for the Governor, or other the Officer Administering the Government of the Province for the time being, to ascertain, by means of an inquiry to be made in that behalf by a Commissioner to be appointed for that purpose, the particular piece or parcel of land so excepted as aforesaid, and at the request of the grantee named in any such grant, his heirs appointees or assigns, to cause a description of such piece or parcel of land to be indorsed upon such grant; and every such description shall be deemed and taken to define the land so excepted from such grant as aforesaid.

Reservations to be defined.