

New Zealand.



ANALYSIS.

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1902, No. 5.

Title. AN ACT to provide for the Postponement of the Sale by the Mortgagees of certain Lands held upon Trust for Natives, and to make other Provision relating thereto, and to other Lands held in Trust for Natives upon the East Coast of the North Island. [28th August, 1902.]

Preamble. WHEREAS certain lands held upon trust for Native owners in the East Coast district of the North Island of New Zealand are comprised in mortgages to the Bank of New Zealand to secure large sums of money due and owing to the said bank: And whereas certain other such lands are comprised in mortgages to the said bank to secure specific sums forming part of the general debt to the bank, and as to some of such lands the bank has for several years past been in possession and has carried on farming operations thereon, and sales of the said properties, or of some of them, by direction of the bank as mortgagee thereof, have been advertised to be held under the conduct of the Registrar of the Supreme Court at Gisborne and Napier respectively: And whereas certain other lands in the said district are held by trustees for Native owners, over many of which the trustees and beneficiaries of the lands so mortgaged to the said bank as aforesaid make claims for contributions and assistance, which claims have not as yet been considered by the Validation Court or any other Court: And whereas it is desirable in the interests of the Natives concerned in the said lands that such sale should be postponed for a definite period, and that to facilitate the arrangements to be made by the trustees for the redemption of the mortgages to the

said bank and for the disposition of the lands all future litigation in respect of the titles to the same and other matters dealt with in this Act should be prevented :

BE IT THEREFORE 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 East Coast Native Trust Lands Act, 1902.” Short Title.
2. In this Act, if not inconsistent with the context,— Interpretation.
 - “Bank” means the Bank of New Zealand :
 - “Board” means the Board appointed under this Act :
 - “Trustees” means the Hon. James Carroll and Wiremu Pere, and in sections nine, ten, and eleven includes other trustees of lands dealt with under this Act :
 - “Securities” means all lands, stock, and other properties heretofore mortgaged or assigned by the trustees to the Bank of New Zealand Estates Company (Limited) or to the bank, and the deeds and memoranda effecting such mortgages :
 - “Principal security” means the lands, stock, and properties mortgaged or assigned by the trustees to the said Bank of New Zealand Estates Company (Limited) or to the bank to secure general moneys due and to fall due to the bank, and the deeds and memoranda effecting such mortgages :
 - “Specific securities” means mortgages made by the trustees in favour of the Bank of New Zealand Estates Company or of the bank over specific lands with charges limited to specific amounts fixed by the Validation Court, and the memoranda effecting such mortgages, and includes mortgages made over specific lands to secure cash advances made by the bank.
3. (1.) The Governor may from time to time, by Order in Council, appoint a Board consisting of three fit persons, who shall have power to carry out the duties imposed upon the Board by this Act. Appointment of Board.
 - (2.) No person shall be eligible for appointment who is a member of the Legislative Council or House of Representatives. Members of the Legislature not eligible.
 - (3.) There shall be paid to each member of the Board such salary as the Governor in Council prescribes, and such salaries and all expenses incurred by the Board shall be charged upon the lands vested in the Board and be paid out of the proceeds thereof. Salaries and expenses.
4. The bank shall not without the consent of the Board sell or cause to be sold any of the lands comprised in the securities before the thirty-first day of August, one thousand nine hundred and four; but on or after that date the bank may without such consent sell the whole or any of the lands comprised in the securities whereof it is then mortgagee, either under the conduct of the Registrar of the Supreme Court or otherwise, and the bank shall not be required to give any of the notices required in respect of Native lands before a sale by the mortgagee thereof; and nothing in any Act relating to Native lands shall prevent the bank from becoming the purchaser of any of such lands sold under the conduct of the Registrar of the Supreme Court; and it shall not be necessary for Sale of lands by bank postponed.

the bank to wait until the said thirty-first day of August, one thousand nine hundred and four, before giving notice by advertisement and otherwise of its intention to sell all or any of such lands on or after that date.

Title of bank and power of sale no to be questioned.

5. The title of the bank as mortgagee of the lands comprised in the securities, and the power of the bank to sell the same on or after the thirty-first day of August, one thousand nine hundred and four, shall not be questioned in any action or proceeding in any Court by the trustees, or by any *cestui que trust*, or by the Board, or by any other person or persons whomsoever, and this Act may be pleaded in bar to any action or proceeding whereby the title of the bank as mortgagee or its power to sell as aforesaid may be impeached.

Title of Board to mortgage, sell, or lease not to be questioned.

6. The title of the Board to mortgage any lands comprised in the securities for the purpose of redeeming the existing mortgages to the bank or subject to such existing mortgages, and the title of the Board to sell or let any of the said lands subject to the mortgages to the bank, shall not be questioned in any action or proceeding in any Court, and this Act may be pleaded in bar to any action whereby the title of the Board to so mortgage, sell, or lease any of the said lands may be impeached: Provided that any Natives claiming to be entitled to any lands vested in the Board shall not be barred as against the Board from claiming an account of the dealings of the Board.

Agreement for ascertaining amounts due to bank.

7. The agreement between the trustees and the bank set forth in the Schedule to this Act, providing for the ascertainment from time to time of the amounts due to the bank upon the principal security and upon the specific securities respectively, shall be valid and have effect as if the provisions thereof were hereby enacted.

Board may redeem security.

8. The Board may from time to time, after the ascertainment directed in the second clause of the said agreement, redeem any specific security, and may from time to time pay off any moneys in reduction or discharge of any specific security or of the principal security.

Powers of the Board

9. (1.) The Board may from time to time—

- (a.) Sell all or any of the said lands subject to the mortgages to the bank, either altogether or in lots, by public auction or by private contract, and either subject to the mortgage debt due to the bank, or to some ascertained part thereof, or freed and discharged therefrom; and
- (b.) Let the same lands or any part thereof, in such manner and for such term and subject to such conditions as may be agreed upon under the provisions of this Act; and
- (c.) Expend any moneys in their hands in improving any of the said lands, or in subdividing the same for the purpose of facilitating such sale or letting; and
- (d.) Borrow money upon the security of all or any of the said lands for the purpose of improving, subdividing, selling, or letting the same, and for the purpose of redeeming any of the mortgages to the bank.

(2.) The powers conferred by this section shall be exercised subject to the provisions of section twelve hereof.

10. The Chief Judge of the Native Land Court of New Zealand is, upon application by any party interested, other than the bank, hereby required to inquire whether any land or lands named in such application not now comprised in the securities, whether vested in the trustees or in any body of Natives corporate or otherwise, ought in equity to be added to the securities in relief of the principal security, and to ascertain and determine to what limited amount any such land or lands should so be charged in relief of the principal security; and any decree of such Judge directing the execution of a mortgage of any such land or lands, and the terms and conditions of such mortgage, shall have effect as if a mortgage of such land or lands were executed pursuant to such decree, and all provisions of this Act shall thenceforth apply to such land or lands as if a mortgage of such land or lands to the bank had been given before the passing of this Act and had constituted a specific security as hereby defined: Provided that nothing herein shall be construed as requiring the bank to proceed in any manner to acquire any such additional security, or as affecting the power of the bank to sell its present securities, whether such additional securities shall or shall not be obtained.

Chief Judge of Native Land Court to inquire if other lands should be included in securities.

11. All lands now held by the trustees, either by themselves or with other trustees, in trust for Native beneficiaries, and whether comprised in the securities hereinbefore referred to or not, shall immediately upon the passing of this Act and by virtue hereof be vested in the Board for an estate of fee-simple in possession, subject to the mortgages, securities, claims, and trusts affecting the same, and the title of the Board shall be indefeasible save as is herein provided; and all lands within the district formerly known as the Registrar's District of Gisborne, as the same was constituted under "The Native Land Court Act, 1886," held in trust for Natives may be transferred to the Board by deed signed by a majority of the trustees holding such lands or beneficiaries respectively, to be held by the Board on the same trusts and liabilities as exist concerning the same at the time of such transfer; and upon such deed of transfer being executed the title of the Board thereto shall be indefeasible, subject as aforesaid: Provided that, for all purposes of any Act relating to taxation, the bank shall continue to be liable only as if the equity of redemption of the lands mortgaged had continued to be vested in the trustees.

Trust lands to vest in Board.

12. The terms and conditions of management, and of selling, leasing, mortgaging, improving, or otherwise dealing with the said lands, and of all properties by this Act vested or hereafter to be vested in the Board, shall be agreed upon between the trustees or beneficiaries and the Board by deed; but, so far as relates to securities and lands vested in the trustees, either alone or with others, by decrees of the Validation Court, they shall have no force or effect until approved of by the Chief Judge of the Native Land Court: Provided that the bank shall retain the control and management of any lands, stock, and properties heretofore controlled and managed by the bank.

Other lands may be transferred.

Terms and conditions of management, selling, &c.

Annual balance-sheet.

13. (1.) The Board shall cause to be made up to the thirty-first day of March in each year a balance-sheet and statement of accounts setting forth all receipts and expenditure of the Board, and specifying all properties sold, leased, or otherwise dealt with, as well as a report of the transactions of the Board.

(2.) Such balance-sheet and statement shall be laid before Parliament within ten days after the commencement of the session next ensuing.

Schedule.

SCHEDULE.

THIS deed, made the _____ day of _____, one thousand nine hundred and two, between the Honourable James Carroll and Wiremu Pere, both of the Colony of New Zealand, aboriginal natives (hereinafter termed "the Trustees"), of the one part, and the Bank of New Zealand (Limited), (hereinafter called "the Bank"), of the other part, witnesseth:—

1. No further proceedings shall be taken under the decree of the Supreme Court of New Zealand, Northern District, in an action wherein the Trustees and one Henry Cheetham Jackson are plaintiffs and the said Bank is defendant (No. 797 on the Gisborne Registry).

2. The accountants, to be appointed as hereinafter provided, shall ascertain and determine the amount due to the Bank as on the thirtieth day of September, one thousand nine hundred and two, for principal, interest, costs, and charges secured upon its principal security by mortgages executed by the Trustees, and also the specific amounts due as on the same day for principal, interest, costs, and charges in respect of each specific security not forming part of the principal security.

3. The accountants shall ascertain such amount according to the best of their skill and judgment upon examination of the Bank's accounts, not reopening accounts stated and settled in the year 1895. They shall, in determining the amounts to be credited in the accounts of the principal and specific securities respectively, adjust the same according to the best of their judgment and in such manner as to them shall seem fair and equitable, it being admitted by both parties that such credits are not capable of exact adjustment in detail though the aggregate is ascertained from the accounts. Any dependency of revenue or expenditure not exactly ascertainable before the thirtieth day of September may, as the accountants think fit, be either estimated by them and comprised in their ascertainment subject to subsequent adjustment, or may be excluded from such ascertainment, and in such case shall be included in the subsequent accounts hereinafter provided for.

4. The accountants shall in like manner ascertain and determine the amount due to the Bank as on the thirtieth day of September, one thousand nine hundred and two, for principal and interest in respect of the recent redemption by the Bank of a first mortgage upon certain blocks in the Mahia Peninsula, forming specific securities to the Bank, and shall allocate such amount against such several blocks in such manner as shall appear to them to be just and equitable, and shall include such allocations in their determination of the specific amounts due in respect of such specific securities.

5. The accountants shall, on or as soon as possible after the thirtieth day of September, one thousand nine hundred and two, deliver to the parties their statement in writing of the amounts so ascertained, but need not supply the details showing how such ascertainment was arrived at.

6. Such ascertainment shall conclusively determine the amounts due as on the thirtieth day of September, one thousand nine hundred and two, to the Bank upon its principal security, and also the amounts in respect of which each specific security as on that day stands charged to the Bank.

7. The accountants shall from time to time, whenever required by either party, ascertain the amount due to the Bank and charged upon the principal security, and the amount charged upon each specific security, as on any date prior to the first day of September, one thousand nine hundred and four, and such ascertainment shall be made by them in the same manner as is hereinbefore directed for the ascertainment as on the thirtieth day of September, one thousand nine hundred and two, and shall be conclusive upon all parties.

8. No action shall hereafter be brought by the Trustees or by their *cestuis que trustent* or any of them, or by any other person, challenging or questioning the method

