

NEW ZEALAND.

ANNO VICESIMO SEXTO

VICTORIÆ REGINÆ.

No. 42.

ANALYSIS:

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An Act to provide for the ascertainment of the Ownership of Native Lands and for granting Certificates of Title thereto and for regulating the disposal of Native Lands and for other purposes.

Title.

[Reserved for the signification of Her Majesty's pleasure thereon 15th September, 1862.]

WHEREAS by the Treaty of Waitangi entered into by and between Her Majesty and the Chiefs of New Zealand it was among other things declared that Her Majesty confirmed and guaranteed to the Chiefs and Tribes of New Zealand and the respective families and individuals thereof the full exclusive and undisturbed possession of their lands and estates which they collectively or individually held so long as it should be their desire to retain the same And it was further declared that the Chiefs yielded to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof might be disposed to alienate

Preamble.

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AND WHEREAS it would greatly promote the peaceful settlement of the Colony and the advancement and civilization of the Natives if their rights to land were ascertained defined and declared and if the ownership of such lands when so ascertained defined and declared were assimilated as nearly as possible to the ownership of land according to British law AND WHEREAS with a view to the foregoing objects Her Majesty may be pleased to waive in favor of the Natives so much of the said Treaty of Waitangi as reserves to Her Majesty the right of preemption of their lands and to establish Courts and to make other provision for ascertaining and defining the rights of the Natives to their lands and for otherwise giving effect to the provisions of this Act And it is expedient that the General Assembly of New Zealand should facilitate the said objects by enacting such provisions as are hereinafter contained

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

Short Title.

I. The Short Title of this Act shall be "The Native Lands Act, 1862."

Title by Native Custom to be recognized.

II. All Lands in New Zealand over which the Native Title shall not have been extinguished may save as hereinafter excepted and after the respective owners by Native Custom of the same shall have been ascertained as hereinafter provided be dealt with and disposed of under the provisions of this Act.

Proviso as to such recognition by Courts of Judicature.

III. Provided always that nothing herein contained shall be construed as rendering the rights of the Natives in respect of such lands or the usages or customs on which such rights depend cognisable or determinable by any Court of Law or Equity or other Judicature until the same shall have been defined and a Certificate of Title (hereinafter called the "Certificate") issued according to the provisions of this Act.

Governor may establish Courts to ascertain Native Title.

IV. It shall be lawful for the Governor from time to time by Commission or Order in Council to constitute a Court or Courts (hereinafter termed "The Court") for the purpose of ascertaining and declaring who according to Native Custom are the proprietors of any Native Lands and the estate or interest held by them therein, and for the purpose of granting to such proprietors Certificates of their title to such Lands.

Court to be presided over by Europeans.

V. Every such Court shall be under the Presidency of a European Magistrate and the Court shall have and exercise such powers as the Governor may from time to time appoint.

Governor may make rules for Courts.

VI. The Governor may make rules for regulating the Sittings of such Courts and the notices thereof the notification of proceedings the empannelling of any Jury and generally for the conduct of business in the said Courts under this Act and may from time to time alter or revoke such rules.

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VII. Upon the application of any Tribe Community or Individuals of the Native Race it shall be lawful for the Court to ascertain by such evidence as they shall think fit the right title estate or interest of the applicants or of any other claimants to or in any land within the jurisdiction of the Court and upon the Court being satisfied that such Tribe Community or Individuals are according to Native Custom possessed of or entitled to any estate in any Native lands it shall be lawful for the Court to define such right title estate or interest and register the same in such manner as may be appointed in that behalf and the Court shall thereupon certify their proceedings for the Governor's confirmation.

Courts to ascertain and define Native ownership.

VIII. If the Governor shall confirm the proceedings of the Court such confirmation shall be signified in such form as the Governor shall appoint to the President of the Court.

Governor may confirm Proceedings of Courts.

IX. Before the issue of any Certificate it shall be lawful for the Governor whenever it shall appear to him requisite for the future benefit of the Native proprietors or their descendants so to do to cause any portion of the Land described in the Certificate to be reserved from sale and the Governor may at his discretion and as effectually as if such Lands had been ceded to her Majesty authorize the making of any Grant under the Public Seal of the Colony of any such Lands unto or in trust for the benefit of any person or persons of the Native Race either in Fee simple and the Governor may at his discretion make such Grants and settlements accordingly and any such Deed of Grant or settlement may contain powers of revoking all or any of the estates or interests thereby limited or created and of appointing or creating new estates or interests in lieu thereof either for the purpose of resettling the Lands comprised in such Grant, or any of them or for effecting any sale exchange mortgage or lease thereof or for any other purpose whatsoever, such powers being exercisable by or at the discretion of the Governor or at the discretion of any person or persons to be appointed or designated in that behalf by such Deed of Grant or Settlement.

Governor may make Reserves and Settlements for benefit of Native owners.

X. It shall be lawful for the Governor by the provisions of any such Deed of Grant or Settlement to prohibit the alienation or restrict the alienability of any estate or interest created by such Grant any rule of Law or Equity to the contrary notwithstanding.

And may make such Reserves inalienable.

XI. Whenever any Grant or Deed of Settlement shall be so issued or made on the reservation of any such lands as hereinbefore provided a copy of such Grant or Deed shall be transmitted to the President of the Court.

Copies of Grants &c., to be sent to President.

XII. Subject to any such reservation as hereinbefore provided and upon the confirmation of the proceedings of the Court as aforesaid the President and Members of the Court shall sign and issue a Certificate of Title in favour of the Tribe Community or Individuals whose title shall have been ascertained defined and registered as aforesaid.

Court to issue Certificate of Title.

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Land to be surveyed before Certificate issued.

XIII. Provided always that no such Certificate shall be issued until a survey of the Lands to be therein described shall have been made by a Surveyor licensed by the Governor and the boundaries of such Lands distinctly marked out on the ground and every Certificate shall have written or endorsed thereon or annexed thereto an accurate plan of the Lands therein described and shall particularly set forth the metes and bounds of such Lands.

Certificate to be conclusive as to ownership.

XIV. Every Certificate shall be conclusive as to the particulars limits and extent of the Land affected thereby and as to the Native proprietors thereof.

Governor may sign Certificates and affix Public Seal.

XV. In the case of any Certificate issued in favour of any individual person or number of persons not being more in number than twenty the Governor may endorse his signature upon the Certificate and may cause the Public Seal of the Colony to be affixed thereto and every Certificate so endorsed and sealed shall have the same force and effect as if the same were a Grant from the Crown in fee simple under the Public Seal of the Colony of the land described in such Certificate to the person or persons in whose favour the Certificate shall be issued.

Rules may be made for Registration of Certificates and Transfers.

XVI. It shall be the duty of the President of the Court to transmit to the Governor copies of all Certificates issued by the Court and the Governor may make such Regulations as he shall think fit for the registration by the Court or in any Land Registry Office of the Certificates and of Transfers thereof and such Regulations being published in the *New Zealand Gazette* shall have the force of law.

Persons named in Certificate may dispose of Lands described therein.

XVII. The individual person or persons named in any Certificate as the owner or owners thereof or as having any particular estate or interest therein may dispose of the estate or interest which he or they may have in the Lands described in such Certificate by way of absolute sale or lease or in exchange for other lands or otherwise to any person or persons whomsoever.

Governor may issue Grants in exchange for Certificates.

XVIII. The Governor upon the application of the person or persons named in any Certificate or of the person in whose favor any such instrument of sale shall have been made under such Certificate may issue in exchange for such certificate or instrument Grants under the Public Seal of the Colony in like manner as he is by law empowered to do as regards Waste or Demesne Lands of the Crown as effectually as if such land had been ceded by the Native proprietors to her Majesty Provided that in every such case the Certificate shall be delivered-up and cancelled before the issue of the Grant.

Duties to be paid on the sale of lands.

XIX. Upon each first sale of Land after the issue of the Certificate or Crown Grant in exchange for the Certificate the purchaser of the lands then sold shall pay a duty or sum after the rate of £10 in every £100 upon the amount of the consideration or purchase money of such lands and upon each subsequent sale of the same lands the purchaser thereof shall pay a duty or sum after the rate of £4 in every £100 upon the amount of the consi-

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deration or purchase money of such lands which said duty shall be payable to the Registrar of Deeds or Registrar of Titles or other Officer authorised to register Transfers or Conveyances of Land under this Act and no transfer or conveyance of Land under this Act shall be valid until such duty shall have been paid and such duty shall be deemed to be part of the Land Revenue of the Province in which such lands shall be situate.

XX. If any Tribe Community or Individuals in whose favour a Certificate shall have been issued shall be desirous that any subdivision should be made of any land included in the Certificate for the purpose of effecting a partition of such land among the owners thereof and of individualising the title thereto such Tribe Community or Individuals may apply to the Court from which the Certificate issued to approve of and effectuate such subdivision and the same may in the discretion of the Court be effectuated accordingly or the Court in its discretion may refuse to give effect thereto And for the purpose of effectuating any such subdivision the original Certificate shall be given up to and new Certificates issued by the Court according to the plan of subdivision approved of by the Court and so on from time to time as such subdivisions may take place.

Mode of sub-dividing Tribal right.

XXI. If any Tribe or Community in whose favour a Certificate shall have been issued shall be desirous that Regulations shall be made or that a Plan should be adopted for the purpose of the Sale Letting Occupation or other Disposal of the Lands included in such Certificate or any part thereof or for a Partition Grant Lease Appropriation or Disposal thereof or any part thereof to between or amongst themselves or any other person or persons or for granting Licenses to dig or work mines or minerals or cutting timber or depasturing stock or for any purpose of common use or benefit Such Tribe or Community may apply to the Court to recommend to the Governor the adoption of any such Regulations or plan and the Governor may either approve and confirm the same or return the same to the Court with amendments or alterations and so on from time to time until such Regulations or Plan shall have been finally approved as well by the Governor as by the Court And upon such final approval such Regulations or Plan shall be published in the *New Zealand Gazette*.

Governor may at request of Tribes make Regulations and Plans of Settlement of Native Lands.

XXII. All such Regulations and Plans so approved of and published as aforesaid shall be good valid and binding on Her Majesty and all other persons and every Sale Lease Partition Grant License and Instrument of Disposition of or relating to such land made under or in accordance with such Regulations or Plan shall be deemed to be good and valid in law.

Regulations so made to be valid.

XXIII. In any such Regulations or Plan lands may be reserved or set apart for Public Roads and Highways or for Schools Hospitals Churches Chapels or other eleemosynary institutions and for the endowment of such institutions and for any other purposes of public or common utility to the Native Proprietors or any of them and such reserved lands may be vested in any persons or bodies corporate to be nominated by the Governor on the recommendation of the Court as Trustees for the proposed objects with such powers of management and disposition as the Governor on such recommenda-

In such Regulations Reserves may be made for Public purposes.

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tion shall deem right and as may be contained or specified in such Regulations or Plan.

Grants &c., may be made for giving effect to such Regulations.

XXIV. The Governor may make and issue Grants Leases Licenses or other instruments for giving effect to such Sales Leases partitions Grants dispositions and Licenses in like manner as he is by law empowered to do as regards Waste or Demesne Lands of the Crown as effectually as if such land had been ceded by the Native Proprietors to Her Majesty and may cause the Public Seal of the Colony to be affixed to all Grants Leases Licenses and other instruments of disposition for giving effect to such Regulations or Plan.

Regulations may provide for the raising of money for Public objects.

XXV. In any such Regulations or Plan provision may be made for Raising upon the Sale Lease or disposal of any Land either by way of rent or annual payment and whether in perpetuity or for any limited period or by way of purchase money in gross any sum or sums of money to be applied to the purposes hereafter specified that is to say:—

For paying or reimbursing the cost of maps and surveys for making maintaining and repairing roads bridges ferries and other public works within the limits of such lands or by way of contribution to roads bridges or ferries or trunk or main lines outside such limits for building and repairing schools churches chapels or places of worship and for endowing the same for maintaining scholars in such schools for payment of stipends to school masters and ministers of religion for erecting and repairing mills and other buildings of common use or benefit to the inhabitants for improving the lands of the district and for supplying the native inhabitants of such lands with grass and other seed and with stock and agricultural implements and generally for such purposes of social advancement of the native inhabitants as may be thought fit.

Custody of Monies so raised.

XXVI. The custody management and expenditure of all monies raised under such Regulations or Plan shall be from time to time regulated in such manner as the Governor with the concurrence of the Court from which the Certificate issued shall order or direct.

Reserves may be made for Public Roads.

XXVII. From and out of any Lands which may be purchased from the Native proprietors thereof under the provisions of this Act it shall be lawful for the Governor at any time thereafter to take and lay off for public purposes one or more line or lines of Road through the said Lands, Provided that the total quantity of Land which may be taken for such line or lines of road shall not be more than after the rate of five acres in every one hundred acres.

Surveys may be made at request of Natives.

XXVIII. The Governor may at the request of the Native Proprietors cause Maps and Surveys to be made of any Native lands and may defray the costs thereof out of and charge the same against any Fund specially appropriated to Native Purposes such cost to be repaid by the Native proprietors in such manner as the Governor may direct.

Persons not to be liable to penalties for purchase &c., after Certificate issued.

XXIX. No person shall be liable to any penalty for the purchase lease or occupation of any Native lands if prior to such purchase

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lease or occupation the Native proprietors thereof shall have obtained a Certificate under the provisions of this Act anything in the Native Land Purchase Ordinance to the contrary notwithstanding.

XXX. Every contract promise or engagement for the purchase lease or occupation of any Native Land or of any interest therein made prior to the issue of a Certificate of title under this Act shall be absolutely void and no action shall be maintained for the recovery of any monies or other consideration paid or given thereon.

Contracts before Certificates issued to be void.

XXXI. AND WHEREAS by an Act of the General Assembly of New Zealand intituled the "Land Orders and Scrip Act 1858" it was provided that in certain cases within the Province of Wellington holders of Land Orders issued by the New Zealand Company and purporting to grant certain rights of selection should be entitled to select land in respect of such Land Orders within any blocks of land laid out by the New Zealand Company for selection at Manawatu or elsewhere within the said Province whenever the Native Title to such blocks should be extinguished And by the same Act it was further provided that if the Superintendent of the said Province should set apart or reserve out of any of the said Blocks lands for a Township or otherwise as in the said Act mentioned then and in that case the holders of such Land Orders should be entitled to select land in respect thereof out of any land laid out as Rural land within any District the Native Title whereto should at the time or within two years afterwards be extinguished And whereas by reason of the indefinite extent over which the rights of selection so conferred as aforesaid may be held to run disputes may hereafter arise as to how far such rights would interfere with the operation of this Act and for the purpose of preventing such disputes it is expedient to define and limit the exercise of such rights in manner hereinafter mentioned

"Manawatu Block" excepted from the operation of this Act.

BE IT ENACTED that all rights of selection by the said Act conferred upon the holders of land orders of the New Zealand Company within the Province of Wellington shall be exercised and exercisable within the Block of land called the "Manawatu Block" described in the Schedule to this Act whenever the Native Title to the said Block shall have been ceded to Her Majesty and not otherwise or elsewhere and the said Block shall accordingly be and be deemed to have been excepted from the operation of this Act and the Native Title therein shall only be capable of being extinguished by Her Majesty.

XXXII. AND WHEREAS at various times agreements have been made between the Native owners of land in various Districts on the one part and officers duly authorised to make or enter into the same on the other part for the cession of Native Territory to Her Majesty but such agreements are not yet completed and it is expedient to provide for the completion thereof according to the intention of the parties thereto at the time of making or entering into the same.

Pending agreements for cession of Territory to be completed.

BE IT ENACTED that all Native Territory affected by any agreements so made or entered into whereof there is evidence in writing shall be and be deemed to have been excepted from the operation of this Act and such agreements may be carried to completion according to the intention of the parties thereto as aforesaid in like manner as if this Act had not passed.

XXXIII. Nothing herein contained shall interfere with the settlement of any claim arising out of dealings with the Natives prior

Act not to interfere with Land Claims Act.

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to the Fourteenth day of January 1840 which may still be heard determined and settled in pursuance of any Act for the settlement of Land claims in force at the time of the coming into operation of this Act.

Act not to interfere with acquisition of land by Her Majesty. XXXIV. Nothing in this Act contained shall be construed to hinder or interfere with the acquisition of land by Her Majesty by purchase and cession from native proprietors.

Interpretation of term "Native Lands." XXXV. The term "Native Lands" shall mean and include lands over which the title of the Native inhabitants shall not have been extinguished.

Act to come into operation in Districts proclaimed by Governor. XXXVI. This Act shall come into operation and be in force with- in such Districts only as shall from time to time be proclaimed by the Governor in that behalf and such Proclamation may be revoked by the Governor as to the whole or any part of such District and upon such revocation this Act shall cease to be in force within such District or part thereof accordingly and the Governor may again proclaim this Act to be in force therein

Act reserved for the Queen's assent. XXXVII. This Act shall not come into operation until Her Majesty's pleasure shall have been taken thereon and the same shall have been confirmed by Her Majesty with the advice of Her Privy Council and a Proclamation of such confirmation having been given shall have been issued by the Governor and published in the *New Zealand Gazette*.

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SCHEDULE.

MANAWATU BLOCK.

Schedule. THE Boundary of this Block commences at the mouth of the Ohau river and proceeds thence by a line bearing 99° to the Tararua range, thence along the summit of the Tararua and Ruahine ranges to the source of the Oroua river, thence by a line bearing 282° to the Rangitikei river, thence by the Rangitikei river to the Sea Coast, and thence by the Sea Coast to the commencing point.