

1880, No. 38.

NATIVE LAND
COURT.

AN ACT to amend and consolidate the Law relating to the Native Land
Court. [30th August, 1880.]

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

PRELIMINARY.

Short Title.
Commencement of
Act.
Interpretation.

1. The Short Title of this Act is “The Native Land Court Act, 1880.”
2. This Act shall come into operation on the first day of October, one thousand eight hundred and eighty.
3. In this Act, if not inconsistent with the context,—
“Native” means an aboriginal native of New Zealand, and includes all half-castes and their descendants by Natives ;

“Native land” means lands in the colony which are owned by Natives under their customs or usages :

“Court” means the Native Land Court created by this Act :

“Chief Judge” and “Judge” mean respectively the Chief Judge and a Judge of the said Court.

CREATION AND CONSTITUTION OF COURT.

4. There shall be within the Colony of New Zealand a Court of Record, to be called the Native Land Court, for the investigation and determination of titles to Native land, and for the several other purposes hereinafter set forth.

5. The Court shall consist of one Chief Judge, and such other Judges, together with such Assessors, as the Governor may from time to time determine.

6. It shall be lawful for the Governor from time to time to appoint the Chief Judge, Judges, and Assessors, and also such interpreters, clerks, and other officers as may be required for the conduct of the business of the Court throughout the colony.

Every person appointed under this Act shall hold office during the Governor's pleasure.

7. Such salaries shall be paid to the several persons appointed under this Act as shall be from time to time appropriated for the purpose by the General Assembly.

8. Out of money appropriated for the purpose, there shall be paid such travelling allowances as the Governor shall from time to time determine.

9. Every Judge of the Court sitting alone shall have all the jurisdiction and may exercise the same powers as are given to the Court by this Act.

10. The Court shall have, in the custody of each Judge, a seal of the Court for sealing all documents to which the seal of the Court is required to be affixed.

11. One or more of the Assessors shall sit at every Court and assist in the proceedings, and the concurrence of at least one Assessor shall be necessary to the validity of any judicial act or proceeding of the Court.

12. Registers of titles shall be kept by the Court, in which shall be recorded the result of every case brought before the Court.

13. It shall be lawful for the Judges, subject to the approval of the Governor in Council, from time to time to make rules for regulating the sittings, practice, forms, and procedure of the Court, and for the government of all persons acting under this Act, and also for fixing the fees to be paid, the time and mode of payment, and for enforcing the payment thereof, and such rules from time to time by other rules to alter and revoke.

14. All administrative business of the Court shall be carried on by the Chief Judge.

15. The Court shall have the same power of summoning and compelling the attendance of witnesses and the production of documents, and of punishing persons duly summoned for non-attendance, or for refusing to give evidence or to produce documents, and the same means of enforcing the observance of order and of its rules during its sittings, and of punishment for contempt, as is possessed by a District Court or any Judge thereof.

JURISDICTION AND PRACTICE OF COURT.

16. Any three or more Natives claiming to be the owners of any Native land may, subject to and in manner directed by any rules for the time being in force, make application to the Court to have the title thereto investigated.

What application to contain.

17. Such application shall contain—

- (1.) A description of the land by name or otherwise, sufficient to identify it;
- (2.) The name of the tribe or the names of the Natives admitted by the applicant to be interested therein;
- (3.) A statement that the boundaries have been clearly marked out on the ground by stakes or otherwise;
- (4.) And, if a plan has been made, a statement that it has been deposited in the Court.

Sittings of Court.

18. The Court shall sit at such times and places as the Chief Judge shall fix and give notice thereof, and the presiding Judge may adjourn for such times and to such places as he may from time to time think fit.

Copies of notices of sitting to be sent to Commissioner of Crown Lands.

19. Copies of all notices of sittings of the Court for the investigation of titles, and a schedule of all cases to be heard, shall be forwarded, a reasonable time before the sitting, to the Commissioner of Crown Lands in whose district the land is situate.

Notice of application to be given.

20. After the receipt of any application as aforesaid, notice thereof shall be given by the Chief Judge in such manner as appears to him best calculated to give proper publicity to the same.

Notice of time and place of hearing.

21. By the same or by any subsequent notice, the day and place when and where the Court will sit for hearing the application shall be notified.

Preliminary proofs required.

22. At the sitting of the Court it shall first require to be satisfied that the boundaries of the land have been marked out as stated in the application, and, if a plan has been deposited, that it is correct, and that the rules in respect of surveys have been complied with.

Title to be investigated.

23. After such facts have been established to the satisfaction of the Court, it shall proceed to ascertain, by such evidence as it shall think fit (whether admissible in a Court of ordinary jurisdiction or not), the title of the applicant and of other Natives to the land, whether appearing in Court or not.

Court to make such orders as it thinks fit.

24. On every such investigation it shall be lawful for the Court to decide that the title of the applicant or any other Natives to the land or any part thereof, according to Native custom or usage, has been proved, or to dismiss the case, or to make any other order or give such judgment as the Court may think fit.

Owners to be placed on register.

25. If the Court is satisfied as to the title of the applicants or of any other Natives to the land, or any part thereof, it shall order the names of those so entitled to be placed on the register as owners, and a certificate of title to issue.

Certificate of title to be issued forthwith when plan, &c., in Court.

26. In cases in which a survey has been made prior to the hearing, and a sufficient plan and description are in possession of the Court, a certificate of title shall be issued forthwith.

When no plan, survey to be made, &c.

27. In cases in which no such plan and description are in possession of the Court, it shall require a survey, if not already made, to be made, and a sufficient plan and description to be deposited in Court.

When plan ready for inspection, notice to be given.

28. As soon as the requirements of the next preceding section are complied with, it shall be the duty of the Court to give notice, in such manner as it may think best adapted to attract the attention of all persons whom it may concern, that the plan is ready for inspection at a place to be named in such notice.

Objections to plan.

29. If any person is desirous of making objection to the boundaries as defined by the plan, he shall give notice thereof to the Court, stating the grounds of objection.

Court to adjust boundaries.

30. On receiving such notice, the Court shall proceed to adjust the boundaries according to the rights of the several parties interested, and for such purpose shall have and may exercise all the powers vested in the Court,

- 31.** If no objection is made within a time to be fixed by the Court, or if objection is made and not substantiated, the plan as finally settled by the Court shall be signed by one of the Judges, and deposited in the Court as a record thereof. Settled plan to be record of Court.
- 32.** The land delineated by the plan so settled shall be deemed to represent the land in respect of which the order had been made at the original hearing, and, if any amendment has been made in the description, an amended description shall be placed on the records of the Court. Deemed to represent land in respect of which order made at hearing.
- 33.** As soon as the time for an application for a rehearing as provided by section forty-seven has expired and no rehearing is applied for, or if an application has been made and is refused, the Court shall then issue a certificate of title in pursuance of the order of the Court made at the original hearing. Certificate of title to be granted.
- 34.** The Court may, if it think fit, order one or more divisions to be made in such manner as the Court thinks fit, and in such cases shall place separately on the register the names of the owners of each division, and issue certificates accordingly. Division may be made.
- 35.** Every certificate of title granted under this Act shall bear date on the day on which the order in Court is made directing the same to issue, and shall, for all purposes, have and be deemed to have had force and effect on and after that day. Certificates of title, when to be dated and take effect.
It shall be in duplicate, and shall be authenticated by the signature of one of the Judges and of the Assessor sitting with such Judge, and by the seal of the Court. How to be authenticated.
- One of such duplicates shall be delivered to the Natives therein named, or some person appointed by them to receive the same, and the other duplicate shall be filed as a record in the Court. Duplicate.
- 36.** It shall be the duty of the Court in every case to inquire into and, if it think fit, take evidence as to the propriety of placing any restriction on the alienability of the land or any part thereof, or of attaching any condition or limitation to the estate of the owners thereof, and to direct that the certificate of title be issued subject thereto. As to restrictions, &c., on alienability.
- All such restrictions, conditions, and limitations shall be indorsed on the certificate of title before the issue thereof.
- 37.** When any minor shall be found by the Court to be entitled to any share or interest in any land, the Court shall ascertain as nearly as possible the age of such minor, and shall enter the same as so determined in the certificate of title; and in respect of such land the time at which such minor shall be deemed to attain his majority shall be computed from and in accordance with the age so fixed by the Court. Ascertaining age of minor.
- 38.** It shall be lawful for the Governor, before the commencement or at any stage of any case or proceeding under this Act, by notice in writing or by telegram to the Chief Judge or the presiding Judge, to declare that such case or proceeding shall not be tried or proceeded with, and upon the receipt of such notice the jurisdiction of the Court in respect of such case or proceeding shall cease and determine. Governor may stop proceedings in any case by notice.
- Any such notice may be revoked by the Governor in writing, and upon such revocation the jurisdiction of the Court shall revive. Notice may be revoked.
- SURVEYS.
- 39.** Surveys required by the Court shall be made by surveyors employed for that purpose by the Surveyor-General, and no survey shall be accepted or acted on by the Court unless it is made by a surveyor so employed, and certified as correct by the Surveyor-General or a surveyor authorized by him in that behalf. By whom surveys to be made.

Governor may cause surveys to be made.

40. The Governor may, at the request of the Native claimants to any Native land, cause surveys and plans thereof to be made, and may defray the cost of such surveys out of any money appropriated by the General Assembly for that purpose: Provided that if such request is made by less than two Natives, the cost of such survey must be prepaid by such Natives.

Expenses to be repaid.

The amount of such cost shall, if the Governor think fit, be repaid by the Native owners of the land surveyed. If the amount be objected to, the same shall be determined by the Court.

If not repaid, land may be sold, &c.

If the same be not paid when required, the Court shall, on the application of the Governor, order that a defined portion of the land surveyed be sold by public auction under the direction of the Court, and the proceeds so far as necessary applied to the repayment of the said cost, and in payment of all fees and charges in respect of the same land or any other land owned by the same Native, or may order that such defined portion be vested in Her Majesty in satisfaction and discharge of the said cost, fees, and charges.

Conveyances to be signed by Chief Judge.

41. Conveyances or transfers of land so sold shall be executed by the Chief Judge in his own name, and so executed shall be valid and effectual for the conveyance or transfer thereof. The land therein purported to be conveyed or transferred shall thereupon be held for an estate in fee-simple free from incumbrances.

Natives other than claimants found entitled, to pay cost of survey.

42. If any claimant to Native land shall have had the same surveyed at his own cost, and, on the investigation, it shall be found that other Natives are entitled to the whole or any part thereof, it shall be lawful for the Court, in case it shall order a certificate to any other than the claimant, to order also that the whole or a proportionate part of the cost of survey shall be paid to the claimant by the Natives in whose favour the order is made. The order for a certificate shall have no effect, and no certificate shall issue thereupon, until the amount so ordered to be paid is paid.

DIVISION OF NATIVE LAND.

How applications for division to be dealt with.

43. If any Native who is interested in any Native land comprised in a certificate of title issued under this Act makes application to the Court to divide the land or any part thereof in order that he may hold his share or interest therein in severalty, the Court shall deal with the case as nearly as conveniently may be in accordance with the provisions of this Act and the practice of the Court in respect of original applications for the investigation of titles.

Court may allot defined portions.

44. The Court may, if it think fit, allot to the applicant a defined portion of the land, and may grant a certificate of title for the same.

What certificate to contain.

Such certificate shall contain or have indorsed thereon an accurate description and plan of the land so allotted.

Effect of certificate.

The certificate so granted shall, in respect of the land therein comprised, have the like force and effect in favour of the Natives to whom the same is granted as the original certificate had in favour of the grantees thereof.

SUCCESSION TO NATIVE LAND.

Succession to Natives dying to be ascertained.

45. In case any Native who shall be entitled to any Native land under a certificate of title granted under this Act shall die, it shall be lawful for the Court, on the application of any Native claiming to be interested, to inquire and ascertain who ought to succeed to such land, according to Native custom or usage.

The Court to grant a certificate to Natives entitled.

46. The Court, having determined who ought in its judgment to succeed, shall thereupon grant a certificate accordingly.

The certificate so granted shall set forth the death of the Native owner, a description of the land, and the place of abode of the Native entitled to succeed. What certificate to contain.

The certificate so granted shall have the like force and effect in favour of the successor as the original certificate had in favour of the deceased owner. Effect of certificate.

REHEARING.

47. It shall be lawful for any Native who feels himself aggrieved by the decision of the Court, or for the Governor, to apply for a rehearing, provided the application be made within three months after such decision is given. Native aggrieved may apply for rehearing.

Such application shall be made to the Court in writing, subject to and in manner directed by any rules for the time being in force. How application to be made.

No further proceedings shall be taken until the application is finally disposed of. Stay of proceedings.

The application shall be determined by the Chief Judge, who shall have power to order a rehearing at a time and place to be specified in such order, or to dismiss the application. Application to be determined by Chief Judge.

If a rehearing is ordered it shall take place before two Judges, to be named by the Chief Judge, of which two he may be one, and before one or two Assessors, as the Chief Judge shall think fit. Rehearing to be before two Judges.

On such rehearing the Court shall have power to affirm the original decision, or reverse, vary, or alter the same, or to give such other judgment and make such orders as it may think the justice of the case requires. Court to give judgment as it deems just.

The decision of the Court on a rehearing shall be final and conclusive, and a certificate shall issue forthwith in accordance therewith. Decision to be final.

48. Every order made or certificate granted by the Court on a rehearing shall bear date on such day as the Court thinks fit to fix, not being earlier than the day on which the order of the Court was made on the hearing of the original application, and shall for all purposes have and be deemed to have had force and effect on and from the day so fixed. Order of certificate to be dated on day Court thinks fit.

COSTS.

49. It shall be lawful for the Court, in all cases and proceedings under this Act, to award costs to be paid by and to any person before the Court, and to fix the amount by an order of Court; and, on the application of any person interested in lands the property of any Native or Natives, the Court shall have power to tax all charges and bills of costs which may be incurred by any such Natives in any negotiation for sale or lease of the said property which shall have been entered into by any solicitor or agent either before or after the title to the same shall have been adjudicated upon by the Court; and the Court shall, in respect of such charges and bills of costs, have the same powers in reference to such solicitors or agents as are possessed by the Supreme Court in reference to barristers and solicitors practising under its jurisdiction. Costs may be awarded.

50. If costs are not paid in accordance with the order, they or such part thereof as is unpaid may be recovered as a debt by the person entitled to receive from the person liable to pay the same. Payment may be recovered.

51. Whenever the Crown shall appear in any case or proceeding, the Court may order costs to be paid by or to the Crown, as in other cases. Costs may be awarded to or against Crown.

52. The Colonial Treasurer shall pay costs awarded to be paid by the Crown, and costs payable to the Crown may be recovered as a debt due to Her Majesty. Colonial Treasurer may sue for or pay costs.

Official copy of order conclusive evidence.

53. An official copy of an order for payment of costs, under the hand of a Judge and the seal of the Court, shall be conclusive evidence that the amount specified therein was due and payable at the time and in manner specified in the order.

Order for costs may be rescinded, &c.

54. An order for payment of costs may, at the discretion of the Court, be rescinded, varied, or altered.

Court may order deposit as security for costs.

55. The Court may order any Native, who is appearing as a party in any case before the Court, to deposit such sum as the Court shall fix as security for any costs which may be awarded by the Court, and may refuse to proceed with the case or to hear any person who does not comply with such order.

MISCELLANEOUS PROVISIONS.

Court may give effect to voluntary arrangements.

56. It shall be lawful for the Court, in carrying into effect this Act, to record in its proceedings any arrangements voluntarily come to amongst the Natives themselves, and to give effect to such arrangements in the determination of any case between the same parties.

Court may make orders, and extend time.

57. The Court may, in any case before it for judicial investigation, make any order interlocutory or final which in its judgment may be necessary or just, and the Court or any Judge may at any time and from time to time extend any time limited by any such order.

Court may use evidence given in former cases.

58. The Court may receive and use as evidence in any case before the Court for the time being any evidence which may have been given in any case previously before the Court, provided that the parties are in the opinion of the Court substantially the same.

Amendments may be made.

59. The Court and any Judge thereof may at all times amend at discretion all defects and errors in any proceedings, whether there is anything in writing to amend by or not.

Certain amendments shall be made.

All amendments necessary for the purpose of determining the real question in controversy between parties in any proceeding before the Court shall be made at any time by the Court or a Judge.

May be made whether applied for or not.

All amendments may be made whether applied for or not, and may be made with or without costs upon such terms as the Court or Judge may think fit.

Governor may grant and revoke licenses to interpreters.

60. The Governor may grant under his hand licenses to such persons as he thinks fit, authorizing them to act as interpreters under this Act, and may revoke the same: Provided that all licenses granted to interpreters before the passing of this Act and unrevoked shall authorize the licensees to act as interpreters under this Act until the Governor shall otherwise direct.

Governor may suspend or remove, and Judge may suspend, interpreter.

61. The Governor may at his discretion suspend or remove any interpreter appointed under this Act. The Chief Judge or any Judge may suspend any such interpreter, but shall forthwith report such suspension to the Governor, with the reason therefor.

Penalty for acting without license.

62. Any person acting as or pretending to be a licensed interpreter under this Act who is not so licensed, or whose license is suspended, shall be liable to a penalty not exceeding fifty pounds, to be recovered in a summary way.

Persons, with assent of Court, may appear by counsel or agent.

63. It shall not be lawful for any person to appear or be assisted in Court by counsel or agent, unless the assent of the Court or a Judge thereof is first obtained, and the Court may at any stage of the proceedings withdraw such assent.

Judge may by order close publichouses during sittings.

64. When a Judge of the Court shall find that the selling of spirituous or fermented liquors to Natives by any person holding a publican's license is interfering with the business of the Court then being held, it shall be lawful for such Judge to issue an order under his hand directing that such person shall not sell

any such liquors or permit the same to be sold in his licensed house during the then sittings of the Court to any Native. Any such order may be revoked and given again from time to time.

Any person disobeying such order after the same shall have been served on him may be summoned before the said Court, and on conviction fined in any sum not less than ten pounds nor more than fifty pounds for each offence, and the said conviction shall be indorsed on his license. Disobedience of order.

QUESTIONS IN SUPREME COURT.

65. If any question of fact or of Maori custom or usage shall arise in the Supreme Court relating to Native land, it shall be competent for any Judge of the Supreme Court to cause a case to be stated, and to refer the same to the Court for its opinion thereon. Questions may be referred to Court by Supreme Court.

66. The Court shall forthwith proceed to determine the question so referred, and shall transmit a certificate stating its opinion to a Registrar of the Supreme Court. Court to determine questions.

67. It shall be competent for any Judge of the Supreme Court, if he shall think fit, to refer back any question so determined to the Court for reconsideration. Case may be referred back.

68. All the provisions of this Act in reference to hearing and determining cases brought before the Court shall, so far as applicable, and if the Court shall think fit, be available for the hearing and determining any case so referred as aforesaid. Provisions of Act to apply to hearing and determining cases.

69. The final opinion of the Court shall be received and acted on by the Supreme Court as an authoritative and binding determination of the question so referred. Opinion to be acted on.

70. So much of "The Native Land Act, 1873," as is repugnant to this Act is hereby repealed. Repeal.

Provided that a certificate of title issued under this Act shall have the same force and effect and may be dealt with as a memorial of ownership under "The Native Land Act, 1873."
