

New Zealand.



ANALYSIS.

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1889, No. 32.

Title. AN ACT to amend "The Native Land Court Act, 1886," and "The Native Land Court Act 1886 Amendment Act, 1888."

[16th September, 1889.]

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

Short Title. 1. The Short Title of this Act is "The Native Land Court Acts Amendment Act, 1889." This Act shall be read and construed together with "The Native Land Court Act, 1886" (hereinafter called "the said Act"), and "The Native Land Court Act 1886 Amendment Act, 1888" (hereinafter called "the said amending Act").

Repeal of section 11. 2. Section eleven of the said Act is hereby repealed.

Witnesses may be summoned. It shall be lawful for the Court, by summons in writing under the hand of a Judge, to require any person whose evidence shall, in the opinion of such Judge, be material to the subject-matter of any proceeding before the Court to attend the Court, at such time and place as shall be specified in the summons, to give evidence in the matter of such proceeding, and such person may be required by such summons to produce any books, deeds, papers, and writings

relating to such proceeding and in his possession or under his control.

3. Any person on whom any such summons shall have been served personally, or in such manner as may be prescribed by any rules to be made in that behalf, and to whom at the same time payment or a tender of his expenses shall have been made on the scale to be fixed by such rules, and who shall neglect or fail, without sufficient cause, to appear, or to produce any books, deeds, papers, or writings required by such summons to be produced, and any person, whether summoned to attend or not, who, being present in Court and being required to give evidence, shall refuse to be sworn or to give evidence, shall be liable to a penalty not exceeding twenty pounds, and, in default of payment, to be imprisoned for any term not exceeding fourteen days; and such penalty may be set upon such person by the presiding Judge after he shall have been afforded opportunity to show cause why he should not be so fined, and shall have failed to satisfy the presiding Judge, or may be recovered before a Resident Magistrate or two Justices of the Peace by way of summary proceedings in the manner provided by "The Justices of the Peace Act, 1882," and its amendments; but the payment of any such fine or the undergoing of such imprisonment shall not exempt any person from any civil liability he may have incurred by disobeying such summons.

Penalty for failing to give evidence.

4. If any person shall wilfully insult any Judge or Assessor, or any clerk, interpreter, or officer of the Court for the time being, during his sitting or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for a constable or any officer of the Court, with or without the assistance of any other person, by order of the presiding Judge, to take such offender into custody and detain him till the rising of the Court; and the presiding Judge may, if he shall think fit, by a warrant under his hand and the seal of the Court, commit any such offender to prison for any term not exceeding fourteen days, or impose upon such offender a fine not exceeding ten pounds for every such offence, and in default of payment thereof commit the offender to prison for any time not exceeding fourteen days unless the said fine be sooner paid.

Power of committal for contempt.

5. Section twenty-seven of the said Act is hereby repealed, and in lieu thereof it is enacted as follows:—

Repeal of section 27.

The Court may give authority for any valuer or other person to enter upon any land the subject of a partition, and any person impeding any one acting under such authority shall be guilty of an offence punishable summarily before two Justices of the Peace, and upon conviction shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding one month.

Substituted provision.

6. No order for partition in favour of any applicant other than a Native owner shall be signed and sealed unless and until the deed or instrument upon which the application is based shall have indorsed thereon the certificate of a Trust Commissioner, and shall be duly stamped.

Deed must be certified and stamped before partition order signed.

7. In addition to the powers conferred by section fifty-one of the said Act, it shall also be and be deemed to have been lawful for the Governor in Council, by order, to declare that any matter or question

Addition to powers of section 51.

which may arise in relation to the interests of Natives in any land other than Native land, or land within the meaning of the said Act and the said amending Act, or in any personal property, over which no jurisdiction is given by the said Act or the said amending Act, shall be within the jurisdiction of the Court, and the provisions of the said section shall apply and be deemed to have applied to such order.

Repeal of section 58.

8. Section fifty-eight of the said Act is hereby repealed.

Court may make order in lieu of letters of administration.

9. If any Native dies possessed of personal estate not exceeding two hundred pounds, and the Court shall grant a certificate in respect thereto under the forty-seventh or forty-eighth section of the said Act, a Judge may, subject to any rules as to security or otherwise to be made in that behalf, order that some one or more person or persons may administer the estate on behalf of those entitled to succeed, and such order shall have the same force and effect and be subject to the same duties as if a grant of letters of administration had been made by a Court of competent jurisdiction. This power may also be exercised in the case of any Native who died before the passing of this Act, whether such certificate as aforesaid had been heretofore or be hereafter granted.

Section twenty of the said amending Act is hereby repealed.

Survey charges may be apportioned at any time.

10. The Court may, at any time after having made, in favour of a surveyor or of the Surveyor-General, an order having the effect of a mortgage under the provisions of Part Seven of the said Act, on the application of the person in whose favour such order has been made, or of any person entitled to or who has acquired any estate or interest in the said land or in any part thereof, cancel such order, and by further order direct that the estate and interest of any person in any part of the said land shall be charged with the payment of the whole or any proportional part of the money still owing and unpaid to the surveyor or Surveyor-General. Such further order shall have the effect of a mortgage of the land described therein in favour of the person therein mentioned for the amount specified in such order.

Amendment of orders on suggestion of surveyor.

11. If it shall appear to a surveyor, when making a survey in pursuance of any order of the Court, that a deviation from the line laid down by the Court would for any reason be expedient, he shall give immediate notice thereof to the Registrar, and upon receipt of such notice a Judge may make such inquiries in the matter as he may think fit, and amend the order if he shall consider it advisable so to do.

Chief Judge may amend errors and omissions.

12. It shall be lawful for the Chief Judge, at his discretion, when sitting in open Court for the purpose of determining an application for rehearing, to investigate the matter of any alleged error or omission in the decision of the Court, the subject of such application, and, with the concurrence of the Assessor, to determine the same, and to make such order in relation thereto as the nature of the case may require. An order made under the provisions of this section shall be final and conclusive.

Errors, &c., may be amended after title ascertained.

13. It shall be lawful for any person entitled to or claiming an interest in any land, who shall allege that his interest therein has been prejudicially affected by any error or omission committed or made in any decision or order of the Court, to apply at any time after the title

of such land has been or shall hereafter become ascertained to the Chief Judge to inquire into the matters alleged in such application.

Such application shall be made in writing and state specifically the grounds upon which it is made, and shall be verified by the statutory declaration of the person applying.

Upon the receipt of any such application the Chief Judge may either—

- (1.) By order under his hand, dismiss the application;
- (2.) Hold an inquiry in open Court with the assistance of an Assessor; or
- (3.) Refer any question to a Judge sitting in open Court with an Assessor for his investigation and report.

Public notice of the intention to hold an inquiry shall be given in the *Gazette* and *Kahiti*; and such further and other notice may be given as the Chief Judge may deem expedient.

If it appear to the Chief Judge that the alleged error or omission has been committed or made, and that the interest in such land of the person applying has been thereby prejudicially affected, the Chief Judge may make such order in the matter for the purpose of remedying such error or omission as the nature of the case may require:

Provided that no such order shall affect or be deemed to affect the validity of any registration under a Land Transfer Act, or of any conveyance, transfer, mortgage, lease, contract, lien, or transaction made, given, or entered into of or in respect of such land, after the title to such land shall be ascertained and before public notice is given of the intention to hold an inquiry.

An order so made shall be final and conclusive.

14. Where in any order of the Court or will made or to be made by a Native in favour of Natives more persons than one are declared to be successors to or are made devisees of the estate, share, or interest of a deceased Native in any land held under Crown grant or Land Transfer certificate, such persons shall be deemed to be tenants in common of such estate, share, or interest: Provided that this section shall not invalidate or affect any conveyance, transfer, lease, or other assurance of such estate, share, or interest heretofore executed or made.

Successors to be tenants in common.

15. Section one hundred and three of the said Act shall be read as if the words "Chief Judge" had been inserted after the words "lawful for the" in lieu of the word "Judges." So much of section twenty-six of the said amending Act as purports to amend section one hundred and three of the said Act is hereby repealed.

Chief Judge may make rules.

16. The rules in existence on the thirtieth day of August, one thousand eight hundred and eighty-eight, shall be deemed to have continued in force until the thirtieth day of October, one thousand eight hundred and eighty-eight.

Rules deemed to have continued in force.

17. Where application is made to the Governor to remove or make void any restrictions on alienation under the provisions of section five of "The Native Land Act, 1888," or where the consent of the Governor to any alienation of the land comprised in any grant heretofore or hereafter to be issued is required by the terms of such grant, before such power is exercised or consent given, inquiry shall be made by the Court in accordance with the provisions of section six

Procedure on removal of restrictions.

of the said amending Act, and the Court, if satisfied that the provisions of that section, so far as they are applicable to such inquiry, are complied with, shall report accordingly to the Governor.

In exercising its jurisdiction under section six of the said amending Act, the Court shall consist of one or more Judges and of one Assessor, whose assent shall be necessary to the validity of any decision of the Court.

18. No application under the second section of "The Native Equitable Owners Act, 1886," shall be made after the expiration of two years from the date of the passing of this Act.

19. The inquiry directed by section four of the said amending Act to be held by the Chief Judge may be held by a Judge, who shall report the result of such inquiry to the Chief Judge, who may act thereon as he shall think fit.

20. It shall be lawful for the Governor, by Order in Council, to appoint two or more persons, of whom at least one shall be a Native, to be Commissioners for the purposes hereafter mentioned, and from time to time to remove and appoint substitutes for such Commissioners or any of them, as occasion may require. The said Commissioners shall inquire into all the circumstances attending any alleged alienation or acquisition of land, or of any interest therein, before the first day of July, one thousand eight hundred and eighty-seven, which may be barred or invalidated by any law now or at any time heretofore in force, and report on each case that may be brought before them, and generally on all matters connected therewith, and make such recommendations as may appear proper. The Commissioners may report from time to time as they may consider advisable.

21. The Commissioners shall forthwith, by notice in the *Gazette* and *Kahiti*, appoint a place where applications for inquiry will be received by them or on their behalf. All such applications must be made within six months after the publication of such notice.

22. The Commissioners may from time to time make rules prescribing the form and manner in which applications for inquiry may be made, and the particulars to be supplied in support of such applications, and the payment or the securing of the payment of the fees and other charges, and of the costs which may be ordered in respect of the hearing of such claims, and generally to regulate and determine the procedure of the Commission. All fees and other payments made to the Commissioners in respect of the proceedings before them (other than costs directed to be paid as between parties) shall be paid into the Consolidated Fund.

23. Out of any sums voted, or to be voted, by Parliament for the purposes of this Commission, there shall be paid such sums as may be ordered by the Commissioners in respect of the payment of witnesses, or other necessary or proper charges and expenses, and also such sums as may be authorised by the Native Minister in payment of the services of the Commissioners.

24. The Commissioners shall hold open Courts of inquiry at such times and places as they may from time to time determine. No inquiry shall be commenced until at least thirty days' notice shall have been given in the *Gazette* and *Kahiti*. The Commissioners may exercise in reference to such inquiry all the powers of summoning

"Native Equitable Owners Act, 1886." Limit of time.

Amendment of section 4 of Amendment Act, 1888. Inquiry may be held by a Judge.

Governor may appoint Commissioners.

Commissioners to give notice.

To make rules.

Payment of expenses.

Commissioners' powers.

witnesses, taking evidence on oath, punishing for disobedience or contempt of Court, making order as to payment of costs by or between parties to claims, and generally of conducting the proceedings which a Judge of the Supreme Court could exercise in reference to any proceedings in the Supreme Court.

Every person wilfully and corruptly giving false evidence before the Commissioners shall be deemed guilty of perjury, and shall, on conviction, be liable to the penalties prescribed by section five of "The Commissioners' Powers Act, 1867."

25. An order for payment of costs signed by two Commissioners may be registered in the Resident Magistrate's Court of the district in which such order is made if the amount mentioned therein do not exceed the jurisdiction of such Court, and otherwise in the Supreme Court. An order so registered shall have the effect of a judgment recovered in Court in which the same is registered. Recovery of costs.

26. The Commissioners shall not be bound by any legal rules of evidence or precedents, and may appoint counsel or agent (to be paid from the fund provided for witnesses' expenses) to appear and act for any Native or Natives who, in the opinion of the Commissioners, ought to be allowed such assistance, and would otherwise be unable to obtain it. Equity and good conscience.

27. If the Commissioners shall find that any intended alienation of land cannot be registered, or is liable to be or has been impeached because such alienation being of land under memorial of ownership or Native Land Court certificate did not include the whole of the signatures of the Natives owning under such memorial of ownership or Native Land Court certificate, or that the completion of such intended alienation was prevented by a subsequent alteration of the law, and that the transaction was entered into in good faith, and was not in any way contrary to equity and good conscience, and that the agreed purchase-money has been properly paid, they may sign a certificate to that effect, and thereupon such intended alienation shall be deemed to be valid and effectual from the date of the instrument purporting to effect such alienation, or from such other date as the Commissioners may determine, and such instrument may thereupon be registered under "The Land Transfer Act, 1885." Technical defects.

28. No action shall be brought in any Court for the purpose of questioning the validity of any alienation of land which might form the subject of inquiry before the Commissioners under this Act until the expiration of the period of six months within which application for inquiry may be made to the Commissioners, nor for the purpose of questioning the validity of any alienation in respect of which such application is made, until the end of the next session of Parliament. Stay of proceedings.

Where an application is made to the Commissioners to inquire into any alienation or acquisition of land already registered under any Land Transfer Act, the applicant shall at the same time lodge with the District Land Registrar of the district in which the land is situate a copy of such application. The said Registrar shall thereupon enter a caveat against the land mentioned in such application. A caveat so entered shall not be removed unless and until the Commissioners have given to the applicant a certificate under the

twenty-seventh section, or until the end of the next session of Parliament if such certificate be refused.

Concerning Taupo-
nuiatia Block.

29. Whereas, at a sitting at Taupo, the Native Land Court, on the twenty-fourth day of September, one thousand eight hundred and eighty-seven, gave its decision on an investigation of the title to the block of land known as Tauponuiatia, in the Taupo District, in the Provincial District of Auckland, and a question arose as to the western boundary of the said block: And whereas the Honourable Theodore Minet Haultain and Hanita te Aweawe were, on the ninth day of July, one thousand eight hundred and eighty-nine, appointed to be a Royal Commission, to inquire, among other things, as to the correct boundary thereof: And whereas the said Commission, on the seventeenth day of August, one thousand eight hundred and eighty-nine, reported thereon, which report has been presented to both Houses of the General Assembly during the present session, and marked G.-7:

And whereas it is expedient that effect should be given to such report in respect of the matters hereinbefore mentioned, and that further investigation should be made with regard to the blocks of land known as Maraeroa and Horaaruhe-Pouakani:

Be it enacted as follows: The western boundary of the land known as Tauponuiatia is hereby declared to be, and shall be deemed to have been, the line defined as such western boundary in the said report, and shown in the map numbered one hundred and eighty, and deposited in the office of the Surveyor-General in Wellington.

The lands excluded from the Tauponuiatia Block by the alteration of the boundary and the subdivisions of the Horaaruhe-Pouakani Block, known as Pouakani, containing by estimation sixty-three thousand acres, more or less; Pouakani number two, containing by estimation thirty thousand acres, more or less; Kaiwha, containing by estimation seven thousand two hundred acres, more or less; and Hapotea, containing by estimation two thousand five hundred acres, more or less, are hereby declared to be Native land within the meaning of "The Native Land Court Act, 1886," and its amendments.

The Court may, by order, direct that the cost of surveying the boundary adopted by the Court in its decision of the twenty-fourth day of September, one thousand eight hundred and eighty-seven, before mentioned, and also the boundary described in the said report, shall be a charge upon the estates and interests of the persons who may be declared to be the owners of the said Maraeroa Block, in manner provided in Part VII. of "The Native Land Court Act, 1886."

Nothing in this section shall affect any interest acquired by the Crown, or any order made in its favour.

Registration of
instruments under
"The Chattels
Transfer Act, 1889."

30. Any instrument which may be registered under "The Chattels Transfer Act, 1889," if executed after the passing of this Act by a grantor who is an aboriginal native resident in the North Island, shall be void as against such grantor, unless such instrument is executed with the formalities required in the execution of a deed by section three of "The Native Lands Frauds Prevention Act 1881 Amendment Act, 1888," so far as the same are applicable to such instrument.

31. All the words after the word "lease" in the twelfth line of the fifth section of "The Native Equitable Owners Act, 1886," are hereby repealed, and the following is enacted in lieu thereof: "to the Natives for the time being registered as the owners of the land comprised in such lease, or the proprietors in the proportions in which such Natives appear in the certificate of title to be interested therein; and, in case the respective interests shall not be specified, and in so far as the certificate shall not provide to the contrary, the Natives mentioned in the certificate shall be deemed entitled to receive the rent in equal shares."

Amendment of section 5 of "The Native Equitable Owners Act, 1886."

32. The proviso of section twelve of the said amending Act, and the restriction of five thousand acres in section three of "The Native Lands Frauds Prevention Act Amendment Act, 1889," shall not apply to any lands at present under the operation of "The Thermal Springs Districts Act, 1881."

Concerning lands under "The Thermal Springs Districts Act, 1881."