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Title.

An Act to amend the Laws relating to Natives and Native Land, to adjust certain Claims and Disputes in relation to Native Land, to confer Jurisdiction upon the Native Land Court and the Native Appellate Court, and for other Purposes.

[*29th September, 1939.*

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. This Act may be cited as the Native Purposes Act, 1939.

Provisions of Native Land Act, 1931, to apply to this Act.

See Reprint of Statutes, Vol. VI, p. 103

2. Words and expressions used in this Act shall, unless the contrary intention appears, have the same meaning as in the Native Land Act, 1931 (hereinafter referred to as the principal Act), and the provisions of the principal Act, so far as applicable, shall extend and apply to the cases provided for by this Act in as full and ample a manner as if this Act had been incorporated with and formed part of the principal Act.

PART I.

Amendment of Laws.

Court may determine status of persons and land.

3. (1) The Court shall have jurisdiction, whether on application made to it or of its own motion or in the course of and for the purposes of any proceedings in the Court, to determine—

(*a*) Whether any person is a Native or a European; or

(*b*) Whether any land is Native land or European land,—

and may make an order in accordance with its determination.

(2) Where any order is made by the Court determining that any person is a Native or a European and that person has been or is possessed of or entitled to any estate or interest in land (whether at law or in equity), the fact that he has been or is

so possessed or entitled as aforesaid may be set forth in the order; and the order may be registered against the title to the land under the Deeds Registration Act, 1908, or the Land Transfer Act, 1915, as the case may be. The production of any certificate of title shall not be necessary for the purposes of any such registration under the Land Transfer Act, 1915.

See Reprint of Statutes, Vol. VII, pp. 1143, 1162

(3) Subsection three of section twenty-seven of the principal Act is hereby repealed.

Repeal.

Ibid., Vol. VI, p. 113

4. Where any land has, under section seven of the Native Land Amendment Act, 1936, been declared to be subject to Part I of that Act, the District Land Registrar shall, at the request of the Board of Native Affairs, issue in the name of His Majesty the King a certificate of title for an estate in fee-simple in the land, with a memorial endorsed thereon that the land is subject to Part I of that Act, and shall, at the like request, cancel the memorial as to the whole or any part of the land. Notwithstanding any Act or rule of law to the contrary, the fee-simple estate in the land shall not be merged in any other interest possessed by His Majesty, but shall enure as a separate estate available for the purposes of Part I of that Act.

Empowering the issue of certificates of title for Crown lands declared by notice to be subject to Part I of the Native Land Amendment Act, 1936.

1936, No. 53

5. (1) The Governor-General may by Proclamation declare that any Crown land shall be subject to Part I of the Native Land Amendment Act, 1936. At the request of the Board of Native Affairs, the District Land Registrar shall issue in the name of His Majesty the King a certificate of title for an estate in fee-simple in the land so proclaimed with a memorial endorsed thereon that the land is subject to the said Part I and to this section, and, at the like request, shall cancel the memorial as to the whole or any part of the land.

Empowering the issue of certificates of title for Crown lands proclaimed to be subject to Part I of the Native Land Amendment Act, 1936.

1936, No. 53

(2) Notwithstanding any Act or rule of law to the contrary, the fee-simple estate in any land so proclaimed shall not be merged in any other interest possessed by His Majesty, but shall enure as a separate estate available for disposal by the Board of Native Affairs under the provisions of Part I of the Native Land Amendment Act, 1936, as extended by this section.

(3) In addition to the powers conferred by the said Part I in respect of any land proclaimed under subsection one of this section, the Board of Native

Affairs may from time to time sell or otherwise dispose of any such land or any part thereof, whether to a Native or to any other person.

(4) Such amounts as may be mutually agreed upon by the Board of Native Affairs and the Minister of Lands in respect of the land so proclaimed may be transferred from or to the Land for Settlements Account to or from such other account as the Minister of Finance may determine.

Preventing merger in respect of lands acquired under section 6 of the Native Land Amendment Act, 1936.

1936, No. 53

6. (1) Where the Board of Native Affairs has, whether before or after the passing of this Act, acquired on behalf of the Crown, under section six of the Native Land Amendment Act, 1936, any land or any interest in land or any right to cut and remove trees or timber or to take any other substance from any land, then, notwithstanding any Act or rule of law to the contrary, the fee-simple estate in the land or the other interest or right so acquired shall not be merged or be deemed to have been merged in any other interest possessed by His Majesty, but shall enure as a separate estate, interest, or right, as the case may be, available for disposal by the Board of Native Affairs in accordance with the provisions of that Act.

(2) The District Land Registrar shall endorse on the certificate of title or other relevant instrument of title a memorial that the land, interest, or right, as the case may be, has been acquired and is held subject to Part I of the said Act, and, at the request of the Board of Native Affairs, shall cancel the memorial as to the whole or any part of the land or as to the interest or right, as the case may be.

As to marriages between Natives.

See Reprint of Statutes, Vol. VI, p. 188

7. The Governor-General may from time to time, by Order in Council, make regulations providing that notice of the intended marriage be given by parties proposing to marry under paragraph (*b*) of subsection one of section two hundred and thirty-two of the principal Act, and prescribing requirements in relation to any such notice; and the regulations may provide for the issue of a marriage certificate in accordance with the notice. The regulations may also provide that no marriage between two Natives shall be celebrated by any Officiating Minister until such certificate is issued.

PART II.

MISCELLANEOUS POWERS.

Tokerau District.

Kororipo Pa.

8. Whereas it appears desirable that the land hereinafter described whereon is the site of an old Maori pa, known as Kororipo, which has associations with the history of the Maori tribe known as Ngapuhi, should be set apart as a memorial reserve as herein mentioned and that proper access thereto should be provided: And whereas the proprietors of various areas of land affected by this section have signified their intention of assisting by generously donating the land required for the above-mentioned purposes: Be it therefore enacted as follows:—

(1) The Native Land Court may, with the consent of Kingston Orchards, Limited, or whoever for the time being may be the owner of the land mentioned in subsection twelve hereof (hereinafter called the said land), make an order declaring that the said land shall be set apart and reserved as a place of historical interest and may by the same or any other order vest the said land for an estate in fee-simple in the body corporate mentioned in subsection two hereof as and for a place of historical interest and a site for a model Maori pa, and the District Land Registrar shall register such vesting-order without payment of any fee.

(2) For the purpose of administering and managing the said land there is hereby constituted a Board which shall be a body corporate under the name of "The Kororipo Pa Board", with perpetual succession and a common seal, and which shall be capable of holding real and personal property and of doing and suffering all that bodies corporate may do and suffer.

(3) The Kororipo Pa Board shall consist of three members of whom—

(*a*) One shall be the member of Parliament for the time being for the Northern Maori Electoral District:

(*b*) One shall be nominated by the Court:

(*c*) One shall be nominated by Kingston Orchards, Limited, but if it fails for three months to nominate a member the third member shall be nominated by the Court.

(4) Each of the nominated members shall be appointed by the Governor-General for such term not exceeding three years as the Governor-General shall determine and shall be eligible for reappointment.

(5) A nominated member may at any time resign from office by notice in writing to the said Board posted to or left at its office, and the Governor-General may at any time remove any nominated member from office for any cause that he thinks fit. Any casual vacancy in the membership of the Board shall be filled in the manner in which the appointment of the member vacating office was made.

(6) All the powers and functions of the Board shall be exercised on its behalf by a majority of the members for the time being.

(7) The corporate identity of the Board shall be in no way affected by the fact that for the time being there may be no members of the Board in office, and no act of the Board shall be invalid because of any vacancy in the membership or because of any person continuing to act as a member of the Board after he has ceased to hold office or because of any defect or illegality in the appointment to such office.

(8) The Board shall have and may exercise in respect of the said land all or any of the functions and powers which by the Public Reserves, Domains, and National Parks Act, 1928, or any other Act are conferred upon Domain Boards in respect of public domains controlled by them:

See Reprint of Statutes, Vol. VI, p. 1134

Provided that the Board may levy such charges as it deems reasonable for admission to the said land and on as many days of the year as it thinks proper.

(9) The funds of the Board shall consist of all moneys received by it in respect of such land or from any other source, and all moneys shall forthwith after receipt be paid by the proper officer of the Board into such bank as the Board from time to time appoints to an account to be called "The Kororipo Pa Board Account". The funds of the Board shall be applied in managing, administering, and improving the land under its control, and for no other purpose. Any Maori Land Board, or any local authority, corporate body, company, or person (including trustees), may contribute

to the funds of the Board, and any contribution so made shall be deemed to be a payment lawfully made, anything in any Act to the contrary notwithstanding:

Provided that no contribution by a Maori Land Board shall be made without the consent of the Native Minister first obtained.

(10) Within thirty days after the thirty-first day of March in each year the Board shall cause to be prepared and submitted to the Audit Office for audit a statement of assets and liabilities, together with a statement of accounts (including a Receipts and Payments Account) showing fully the financial position of the Board at the thirty-first day of March then last past. The said statements shall, when duly audited, be submitted to the Native Minister accompanied by a report on the operations of the Board up to that date.

(11) The Governor-General may from time to time, by Order in Council, make all such regulations as he deems necessary for effectually carrying out the provisions of this section.

(12) The land affected by subsection one hereof is an area of six acres the boundaries whereof have been defined by survey, being the eastern portion of Lot 22 on Deposited Plan Number 21496 and part of the land comprised in certificate of title, Volume 620, folio 94, Auckland Registry.

(13) (*a*) In order to give access or better access to the said land the Court, on being satisfied of the consent of the respective owners or their accredited representatives, may make one or more orders laying out a road-line one chain wide to be defined by the Court traversing—

(i) Land vested in the Church Missionary Society for Africa and the East, being part of Old Land Claim 39, the road-line containing about one rood and seven perches;

(ii) A small triangular piece of land containing about three perches belonging to Alfred Ernest Kemp, being other part of Old Land Claim 39; and

(iii) Other part of the said Lot 22 referred to in subsection twelve hereof estimated to contain about one acre two roods and twenty and one-half perches.

(*b*) Road-lines laid out under this subsection may be dealt with and proclaimed as public roads in the manner set forth in Part XX of the principal Act, but no compensation shall be payable in respect thereof.

(*c*) The Trustees of the Church Missionary Society hereinbefore referred to shall be deemed to have power to consent to the Court making an order as herein referred to, and the land included in such road-line shall be freed from all trusts (if any) theretofore affecting it.

(14) All land vested in the said Board shall be exempt from the provisions of the Rating Act, 1925, and from any liability for rates.

See Reprint of Statutes, Vol. VII, p. 977

(15) If for any reason the Board should cease to function or the said land should no longer be required for the purposes for which it was set aside, the Court may, on the application of the Native Minister, make an order dissolving the said Board and closing, if it sees fit, any public roads or road-lines and any access to the said land, and by the same or any subsequent order may vest the said land and the closed roads or road-lines in such persons as it deems entitled thereto.

Authorizing exchange of Takahiwai School site for Native land.

9. To give effect to an arrangement made for the exchange of an area of Crown land situated in the Tokerau Native Land Court District and called or known as the Takahiwai Native School site, being the land delineated on the plan deposited in the office of the Chief Surveyor at Auckland under Number 6795 (hereinafter in this section referred to as the school site), for certain Native freehold land: Be it enacted as follows:—

(1) Notwithstanding anything contained in the principal Act or in any other Act, the Court may effect, by means of orders made in accordance with the provisions of Part VII of the principal Act, an exchange of the school site for the whole or such part or parts of the areas of Native freehold land situated in Block II, Ruakaka Survey District, and called or known as Takahiwai No. 5D 1 and No. 5D 2 Blocks, or such interests therein as may be agreed upon by and between the parties to the exchange.

Ibid., Vol. VI, p. 158

(2) Upon the making of any order of exchange whereby the school site is vested in any Native or Natives, the land so vested shall become Native freehold

land, anything to the contrary in the principal Act notwithstanding; and the District Land Registrar is hereby authorized to issue a certificate of title therefor without any warrant or authority other than the order of the Court.

(3) The Governor-General may issue a Proclamation declaring that any land vested in His Majesty the King by virtue of any order made in pursuance of the power and authority conferred by this section has become Crown land subject to the provisions of the Land Act, 1924, and the provisions of section four hundred and fifty-four of the principal Act shall, with all necessary modifications, apply to any such Proclamation and the land affected thereby.

See Reprint of Statutes, Vol. VI, p. 279

Waiariki District.

Authorizing Court to exclude land erroneously included in Tawaroa Block.

10. Whereas upon the investigation of title to the Tawaroa Block, situated in the Waiariki Native Land Court District, and being the land comprised and described in certificate of title, Volume 69, folio 264, Gisborne Registry, certain land, not forming part of the Tawaroa Block, was erroneously included in the title to that block: And whereas by section thirteen of the Native Land Claims Adjustment Act, 1913 (since repealed), power to rectify the error was conferred upon the Chief Judge: And whereas no record can be found of any final order or orders in the premises having been made by the Chief Judge in pursuance of the power so conferred upon him: And whereas it is desirable that the error or the effect thereof should be rectified: Be it therefore enacted as follows:—

1913, No. 71

(1) The Court is hereby empowered and directed to make such order or orders as it thinks necessary excluding from the title to the Tawaroa Block so much of the land included therein as it shall find to have been erroneously included therein (hereinafter in this section referred to as the said land).

(2) The Court may make one or more orders vesting the said land in the person or persons found by it to be entitled thereto and, if two or more persons be so found entitled, in the relative shares or interests determined by the Court; or the Court may, if it thinks it necessary or expedient so to do, amend the existing instrument of title to any other parcel of land so as

to include therein the whole or any part of the said land. For the purpose of adjusting the boundaries of any lands affected, the Court may, if it thinks fit, cancel any partition or other order of the Court conferring title to land, notwithstanding that such order has been registered, either finally or provisionally, under the Land Transfer Act, 1915.

See Reprint of Statutes, Vol. VII, p. 1162

(3) With respect to any subsisting lease or mortgage of the Tawaroa Block, the Court may, if the lessee so requires or if the mortgagee consents thereto, as the case may be, make an order excluding the said land or any part or parts thereof from the lease or mortgage, and upon the making of any such order the land comprised therein shall cease to be subject to the lease or mortgage accordingly. Where the Court makes an order excluding any land from such lease the Court may by the same or any other order abate, to such extent as to it appears just and equitable, the rental payable under such lease. If no order of exclusion as aforesaid is made, or if only a part of the said land is so excluded, the Court may make all necessary orders apportioning as between the Tawaroa Block and the said land or any part or parts thereof all rights, obligations, and liabilities arising under the lease or mortgage as aforesaid and such orders of apportionment shall have effect according to their tenor in the same manner in all respects as if all necessary transfers, releases, covenants, and other dispositions or agreements had been duly made in that behalf by all persons concerned.

(4) When any existing instrument of title to any other parcel of land which is subject to any lease or license is amended so as to include therein any part or parts of the said land, the Court may, with the consent of the lessee or licensee, and notwithstanding any of the provisions of the principal Act, by order declare that the lease or license shall apply to any such part or parts of the land so included as aforesaid, and may, in like manner, vary or amend, to such extent as it thinks just and equitable, the terms of the lease or license, whether as to the rental payable thereunder or otherwise howsoever, and the lease or license shall be modified accordingly.

(5) Nothing in this section contained shall invalidate the distribution of any rents or profits arising from the Tawaroa Block effected before the making of any order under this section.

(6) Any order made by the Court under this section affecting the title to any land or any lease, license, or mortgage to which any land is subject may be registered against the title to such land under the Deeds Registration Act, 1908, or the Land Transfer Act, 1915, as the case may be, and the District Land Registrar is hereby authorized to make all such amendments in the registration of any title, and to issue such new certificates of title, as may be necessary to give effect to any order as aforesaid.

See Reprint of Statutes, Vol. VII, pp. 1143, 1162

Waikato-Maniapoto District.

Declaring Kopuarahi No. 2 to have become Crown land.

11. Whereas by a deed of conveyance dated the ninth day of January, nineteen hundred and seven, the Crown, pursuant to the power and authority contained in section twenty of the Maori Land Settlement Act, 1905, purchased the land referred to in subsection two hereof from the majority in value of the Native owners thereof: And whereas the owners, including those owners who did not execute the said deed, have been paid their respective shares of the purchase-money for the said land: And whereas the said land has been dealt with as Crown land, but the said deed has not been registered: And whereas it is expedient to extinguish the Native title to the said land and to declare the same to have become Crown land: Be it therefore enacted as follows:—

(1) The said land is hereby declared to have conclusively become Crown land on the first day of June, nineteen hundred and seven, free from all right, title, estate, or interest vested in the former Native owners or their successors in title.

(2) The land to which this section relates is all that parcel of land situated in Block XI, Thames, and Block II, Waihou, Survey Districts, containing eight hundred acres, more or less, being the Kopuarahi No. 2 Block.

Declaring Koukourahi No. 3A to have become Crown land.

12. Whereas by a deed of conveyance dated the thirty-first day of December, nineteen hundred and six, the Crown, pursuant to section twenty of the Maori Land Settlement Act, 1905, purported to acquire the

land referred to in subsection three hereof from the majority in value of the Native owners thereof: And whereas all of the owners save one executed the said deed and the purchase-money payable to the owner who had not executed the said deed was paid to the Receiver-General on his behalf and is still held to his credit: And whereas the said land has been dealt with as if it were Crown land: And whereas it is expedient to validate the said deed, to extinguish the Native title to the said land, and to declare the said land to have become Crown land: Be it therefore enacted as follows:—

(1) The said deed of conveyance in favour of the Crown shall be deemed to be and to have been valid and effectual for all purposes as if it had been validly executed by all the owners, and the said land is hereby declared to have conclusively become Crown land on the first day of June, nineteen hundred and seven, free from all right, title, estate, or interest vested in the former Native owners or their successors in title.

(2) Any unclaimed purchase-money held by the Receiver-General for any of the former Native owners may be paid or caused to be paid by him to a Maori Land Board on behalf of such owners, and the receipt by that Board for the moneys so paid shall be a good and effectual discharge to the Crown.

(3) The land to which this section relates is all that parcel of land situated in Block II, Waihou Survey District, containing seventy-four acres, more or less, being the Koukourahi No. 3A Block.

Aotea District.

Amending section 17 of the Native Purposes Act, 1933.
1933, No. 50

13. Section seventeen of the Native Purposes Act, 1933, is hereby amended by adding to subsection three the following words: "The Court may authorize the trustees or any two or more of them to lease the said land or any part thereof for any term, including any term or terms of renewal, not exceeding twenty-one years. The revenue arising from any such lease shall be paid to the Aotea District Maori Land Board and be expended by that Board in such manner and for such purposes as the Court or a Judge thereof shall direct."

South Island District.

14. Notwithstanding anything contained in section eight of the Native Purposes Act, 1936, applications to the Court under subsection one thereof may be lodged at any time within six months after the passing of this Act.

Extending time for lodging applications under section 8 of Native Purposes Act, 1936.

1936, No. 56

General.

15. To give effect to the recommendation of the Native Affairs Committee of the House of Representatives upon petition No. 18, nineteen hundred and thirty-nine, of Charles Gaukrodger with regard to the will of William O'Meara, deceased: Be it enacted as follows:—

As to the will of William O'Meara, deceased.

(1) The Court shall, upon application made to it by or on behalf of the petitioner within six months from the passing of this Act, inquire and ascertain whether or not the deceased was a Native within the meaning of the principal Act.

(2) If the Court finds that the deceased was a Native it may make an order accordingly, and by the same order may declare that the probate of the will of the deceased granted by the Supreme Court on the eleventh day of December, nineteen hundred and thirty-five, shall, as from that date, be deemed to have, and to have had, the same operation and effect as if it had been granted by the Court, and the order of the Court shall take effect accordingly.

16. Section fifty-one of the Native Purposes Act, 1931, is hereby amended by inserting, after the words "and to act as guarantors to" in paragraph (*e*) of subsection two, the words "His Majesty the King or".

Amending section 51 of the Native Purposes Act, 1931.

1931, No. 32

17. Whereas by petition No. 100 of nineteen hundred and thirty-seven, Robert Victor Tipene prayed that legislative authority be enacted enabling a certain order of adoption, alleged to have been orally made by a Stipendiary Magistrate on the fifteenth day of December, nineteen hundred, declaring the petitioner to be the adopted son of Teo Tipene (now deceased), to be completed, or alternatively that such order of adoption be validated: And whereas the Native Affairs Committee of the House of Representatives has recommended that the petition be referred to the Government for consideration: And whereas it is

As to the lands of Teo Tipene (deceased).

desirable to make the following provisions until the Government has been able to give consideration to the said petition: Be it therefore enacted as follows:—

(1) It shall not be lawful, except with the consent of the Native Minister, for any person deriving or who has derived title to any lands by succession to the said Teo Tipene (deceased) to alienate or otherwise deal with such lands for a period of two years from the passing of this Act.

(2) Nothing herein contained shall prejudice or affect any alienations or dealings made in good faith and for value before the passing of this Act.

Chief Judge may refer petition in Schedule to Court for report.

18. (1) The Chief Judge is hereby authorized to refer to the Native Land Court, or to a Judge or Commissioner thereof, for inquiry and report, the claims and allegations made by the petitioners in the petition mentioned in the Schedule hereto.

(2) The Chief Judge may, upon such inquiry and report, make to the Native Minister such recommendation in any case as appears to him just and equitable.

(3) Except with the leave of the Court, it shall not be lawful for any person to alienate or otherwise deal with any land the subject of a petition mentioned in the Schedule hereto until the report and recommendation under this section have been considered by the Native Affairs Committee of the House of Representatives.

(4) The report and recommendation under this section shall be laid before Parliament on as early a date as possible, and shall stand referred to the Native Affairs Committee of the House of Representatives.

Schedule.

SCHEDULE.

PETITION TO BE REFERRED TO THE NATIVE LAND COURT OR A JUDGE OR COMMISSIONER THEREOF.

1. Petition No. 113 of 1938, of James Raihe Reweti and another, praying for an inquiry into surplus land in the Whaiti-Kuranui Blocks.