

New Zealand



ANALYSIS

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1946, No. 15

AN ACT to amend the Servicemen's Settlement and Title.
Land Sales Act, 1943. [7th October, 1946

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

Short Title.

1943, No. 16

Witnesses may be compelled to give evidence.

Witnesses making true discovery to be freed from all penalties.

1. This Act may be cited as the *Servicemen's Settlement and Land Sales Amendment Act, 1946*, and shall be read together with and deemed part of the *Servicemen's Settlement and Land Sales Act, 1943* (hereinafter referred to as the principal Act).

2. (1) In any proceedings before a Magistrate for an offence against the principal Act the Magistrate may require any person to be examined as a witness.

(2) A person so required to be examined shall not be excused from being so examined, or from answering any question put to him in relation to any offence against the principal Act, on the ground that his evidence will tend to incriminate him.

(3) If any such person refuses to be examined, or to answer any such question as aforesaid, he shall be deemed to be a witness appearing under subpoena and refusing without lawful cause or excuse to be sworn or to give evidence.

3. (1) Every person required to be examined as aforesaid in any proceedings in relation to any offence against the principal Act who on the examination makes to the best of his knowledge true and faithful discovery of all matters whereon he is so examined in relation to that offence and thereby gives evidence tending to incriminate himself, shall, on application, receive from the Magistrate before whom he is so examined a certificate in writing that he has made that true and faithful discovery as aforesaid.

(2) If that person receives such a certificate (but not otherwise) he shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures, and punishments, to which he was liable for anything done before the time of the examination in respect of the matters in relation to which he is so examined:

Provided that no person who has received any excess consideration as mentioned in the next succeeding section shall, by reason of his receipt of any such certificate, be freed from prosecution or from the fine

provided for by the next succeeding section unless he has paid in the same manner as a fine the amount of that excess consideration or the value thereof as assessed by a Magistrate, or has secured such payment to the satisfaction of a Magistrate. All moneys so paid shall be deemed to be paid as a fine and shall be dealt with accordingly.

4. (1) Where, upon the conviction of any person before a Magistrate of an offence against the principal Act in relation to any transaction to which Part III of that Act applies, the Magistrate is satisfied that any consideration (hereinafter referred to as the excess consideration) has been received by that person in contravention of the principal Act (whether before or after the passing of this Act, but not before the twelfth day of June, nineteen hundred and forty-six, being the date of the making of the Servicemen's Settlement and Land Sales Emergency Regulations 1946), the Magistrate, in addition to or instead of imposing any other punishment, shall fine that person an amount equal to the amount or value of the excess consideration so received by him.

Excess consideration received in contravention of principal Act to be recoverable by Crown as a fine, and may be refunded to person paying same.

Serial number 1946/90

(2) Where in any such case the Magistrate is satisfied that the whole or any part of the excess consideration so received by the convicted person has been given, paid, or transferred by any other person who has received a certificate under the last preceding section that he has made true and faithful discovery in relation to the offence as mentioned in that section, the Magistrate, if having regard to all the circumstances of the case he deems it just and equitable so to do, may make an order authorizing the payment to that other person of such amount as the Magistrate thinks fit, not exceeding the amount or value of the excess consideration so given, paid, or transferred by that other person.

(3) All amounts so authorized to be paid shall, without further appropriation than this section, be paid accordingly out of the Consolidated Fund:

Provided that in no case shall the total amount so paid exceed the amount recovered in respect of the fine imposed on the convicted person under this section.

Cancellation of land-agents' licenses.

See Reprint of Statutes, Vol. I, p. 30

Section 54 of principal Act (as to valuation of improvements) amended.

Revocation of emergency regulations. Serial number 1946/90

Part III of principal Act to apply to contracts for sale of personal property or execution of works in connection with sale or leasing of land.

5. Without limiting the grounds specified in section twenty-seven of the Land Agents Act, 1921-22, it is hereby declared that a license under that Act may be cancelled under that section if the licensee or any partner, servant, or agent of the licensee is convicted of an offence against the principal Act.

6. Section fifty-four of the principal Act is hereby amended by repealing paragraph (b) of subsection two, and substituting the following paragraph:—

“(b) The extent to which the improvements that were on the land on the fifteenth day of December, nineteen hundred and forty-two, have been added to, altered, destroyed, or removed, or have depreciated since that date; the value of any improvements added to or effected on the land since that date (determined as at the time of the adding or effecting of the improvements); and the extent to which any improvements so added or effected have been added to, altered, destroyed, or removed, or have depreciated:”.

7. (1) The foregoing provisions of this Act are in substitution for the Servicemen's Settlement and Land Sales Emergency Regulations 1946, and those regulations are hereby accordingly revoked.

(2) No proceedings for the recovery of any moneys under Regulation three of the regulations hereby revoked shall be commenced after the passing of this Act, and no such proceedings that are pending or in progress shall be continued after the passing of this Act.

8. (1) Where, as part of any transaction to which Part III of the principal Act applies, the parties to the transaction enter into a contract or agreement (whether in writing or otherwise)—

- (a) For the sale, transfer, hiring, or delivery of any personal property; or
- (b) For the execution of any works or the erection of any building; or

(c) For the granting of an option in relation to any such matter,—

Part III of the principal Act shall apply with respect to that contract or agreement as well as to the rest of the transaction of which it forms part, whether that contract or agreement is entered into before or after the rest of the transaction.

(2) No application for the consent of the Court to any contract or agreement to which this section applies shall be granted if the purchase-money, rent, contract price, or other consideration exceeds such amount as the Committee deems fair and reasonable, having regard to the prices and costs ruling at the date of the contract or agreement.

(3) For the purposes of this section the term “personal property” means any property of any kind other than a freehold or leasehold estate or interest in land, and includes any debt, any thing in action, and any other right or interest.

(4) For the purposes of this section, where two contracts or agreements entered into by the same parties are not expressly or impliedly entered into as parts of the same transaction they shall nevertheless be deemed to be entered into as parts of the same transaction—

(a) If they are collateral with each other, or if either of them is dependent upon the other; or

(b) If they are contained in or evidenced by the same instrument, or in or by two instruments which are collateral with each other, or either of which is dependent upon the other; or

(c) In the absence of proof to the contrary, if they are entered into on the same date or on dates within six months of each other.

(5) For the purpose of ascertaining whether any contract or agreement is entered into by the parties to any transaction within the meaning of this section,—

(a) The wife or husband of any party to the transaction and that party shall be deemed to be one person:

- (b) Any company of which any member is entitled to a majority of the votes at general meetings of the company shall be deemed to be the same person as that member; and where a husband and wife are both members of any company they shall for the purposes of this paragraph be deemed to be one person.

Land Sales Committee may treat certain payments as part of consideration.

9. (1) Where the Land Sales Committee that is considering any application for the consent of the Court to any transaction is satisfied that any moneys have at any time within two years before the date of the transaction been paid or agreed to be paid by the purchaser or lessee to the vendor or lessor in respect of the land to which the transaction relates, whether as rent, or as consideration for the granting of any lease, or as consideration for the granting of any option, or otherwise, and the Committee is not satisfied that there was adequate consideration for any such payment, the Committee, if it makes an order consenting to the transaction, may make the order subject to the condition that so much of the moneys so paid or agreed to be paid as the Committee specifies in the order shall be deemed to have been paid or agreed to be paid as part of the consideration for the transaction.

(2) For the purpose of ascertaining whether any payment has been made or agreed to be made by any party to a transaction to any other party to the transaction within the meaning of this section,—

- (a) The wife or husband of any party to the transaction and that party shall be deemed to be one person:

- (b) Any company of which any member is entitled to a majority of the votes at general meetings of the company shall be deemed to be the same person as that member; and where a husband and wife are both members of any company they shall for the purposes of this paragraph be deemed to be one person.

Empowering Police to obtain information in relation to Part III of principal Act.

10. (1) If any Magistrate is satisfied by information on oath that there is reasonable ground to believe that an offence against Part III of the principal Act has been committed by any person, the Magistrate may, in his discretion, grant a warrant under his hand by virtue whereof it shall be lawful for any constable, for the

purpose of obtaining any information or evidence in relation to the commission of any such offence by that person, to do from time to time all or any of the following things:—

- (a) Inspect and examine any books, accounts, vouchers, records, or documents:
- (b) Require any person to produce any books, accounts, vouchers, records, or documents in his possession or under his control, and to allow copies of or extracts from any such books, accounts, vouchers, records, or documents to be made:
- (c) Require any person to furnish, in a form to be approved by or acceptable to the constable, any information or particulars that may be required by him, not being information or particulars tending to incriminate the person furnishing the same:

(d) Enter any land, building, or place.

(2) Any person who is exercising or attempting to exercise any power or function under this section may be accompanied by such other person or persons as may be specified in that behalf in the warrant.

(3) Every person commits an offence against the principal Act who—

(a) Resists, obstructs, hinders, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or function under this section:

(b) Makes any false or misleading statement or any material omission in any information or particulars furnished under this section:

(c) Fails to comply in any respect with any requirement under this section.

(4) Every person who aids, abets, counsels, or procures or is in any way knowingly concerned with the commission of an offence under this section shall be deemed to have committed an offence against this Act.

11. (1) Where any transaction is, as to part of the land affected thereby, a transaction to which Part III of the principal Act applies and is also, as to any other part of the land affected thereby, a transaction which is exempted from Part III under paragraph (i) of subsection two of section forty-three of the principal

Land Sales
Committee
may consent
to transactions
on behalf of
Land Board in
certain cases.

Act as being a transaction for which the approval, consent, or permission of the Minister of Lands or of a Land Board, or of both that Minister and a Land Board, is required under any Act or regulations, the Land Sales Committee may, if it thinks fit, deal with any application for the consent of the Court to the transaction as if Part III of the principal Act applied to the whole of the transaction, but as if the Committee were bound by the provisions of any Act or regulations by which the Minister of Lands or a Land Board would have been bound in considering any part of the transaction.

(2) Where the Land Sales Committee makes an order consenting to the whole of any such transaction it shall not be necessary to obtain the approval, consent, or permission of the Minister of Lands or of a Land Board to any part of the transaction.

Exempting certain transactions from Part III of principal Act.

12. Section forty-three of the principal Act is hereby amended, as from the commencement of that Act, as follows:—

(a) By adding to paragraph (j) of subsection two the words “and any transaction which is effected by an order of the Native Land Court or of the Native Appellate Court”:

(b) By omitting from paragraph (l) of subsection two the words “Board of Native Affairs”, and substituting the words “Native Minister or of the Board of Native Affairs or of both that Minister and that Board”:

(c) By adding to subsection two the following paragraph:—

“(o) Any contract or agreement for the sale or transfer of any estate or interest in land, or for the leasing of any land, by the Government of a foreign State to the Government of any other foreign State.”

Extending time for application for consent to transactions in Chatham Islands.

13. Section forty-five of the principal Act is hereby amended by inserting, after the words “within one month after the date of the transaction”, the words “or, in the case of a transaction relating to land situated in the Chatham Islands, within three months after the date of the transaction”.

14. (1) Where any trustee is about to enter as vendor or lessor into any transaction to which Part III of the principal Act applies and which the trustee has power to enter into, application for the consent of the Court to the proposed transaction may be made in accordance with section forty-eight of the principal Act, notwithstanding that the name of the proposed purchaser or lessee is not known.

Provisional consent to proposed sales or leases by trustees.

(2) In any such case the Land Sales Committee, if it thinks fit, may make a provisional order consenting to the proposed transaction subject to the approval by the Committee of the purchaser or lessee, and after the transaction has been entered into, if the Committee approves the purchaser or lessee, may make a final order consenting to the transaction.

15. (1) A transaction to which section eighty of the Rating Act, 1925, or section eighty of the Property Law Act, 1908, or section one hundred and twelve of the Land Transfer Act, 1915, or any other enactment providing for a minimum or fixed consideration, relates may be completed in accordance with the consent of the Court under Part III of the principal Act, notwithstanding that the consideration consented to by the Court for the transaction may be less than the minimum or fixed consideration provided for by that section or other enactment.

Special provisions as to sales under Rating Act and sales by mortgagees. See Reprint of Statutes, Vol. VII, pp. 1009, 1107, 1201

(2) Where by virtue of this section any land is transferred or conveyed under section eighty of the Rating Act, 1925, for a consideration that is less than the sum required to pay the arrears of rates and the costs incurred, the balance shall cease to be charged on the land but may be recovered as a debt due by every person who was liable therefor immediately before the transfer or conveyance of the land.

16. Section ten of the Servicemen's Settlement and Land Sales Amendment Act, 1945, is hereby amended by inserting, before the word "widow", the words "wife or".

Urban land withdrawn from sale may be sold to wife of serviceman. 1945, No. 34

17. (1) Any Land Sales Committee may, of its own motion or on application by the Crown Representative or by any party to the proceedings, refer any matter arising in any proceedings to the Court for its directions.

Land Sales Committee may refer matters to Court for directions.

(2) In any such case the Court, in its discretion, may give such directions or make such order as it thinks fit, and may before doing so receive such evidence and representations from such persons as it thinks fit (whether they are parties to the proceedings or not):

Provided that the parties and the Crown representative shall be given an opportunity of being present when the Court receives any such evidence or representations, and of being heard thereon.
