

New Parliament.

Mr. McDonald.

Native Lawsuits.

ANALYSIS.

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A BILL INTITULED

AN ACT to make provision for the Determination of Native Lawsuits commenced in the Supreme Court. Title.

WHEREAS in several parts of the colony purchases of land have been made, or are alleged to have been made, from aboriginal owners, and disputes and differences in reference thereto have since arisen between the alleged vendors and purchasers: And whereas in many cases suits have been commenced in the Supreme Court, but it is found that the mode of procedure therein in ordinary cases is not adapted for the determination of such disputes and differences as aforesaid, and it is expedient that special provision should be made for the determination thereof: Preamble.

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

1. The Short Title of this Act is "The Native Lawsuits Act, 1879." Short Title.
2. It shall be lawful for the Governor in Council to appoint by commission one of the Judges of the Supreme Court to exercise the jurisdiction conferred by this Act, or, if he shall see fit, to appoint under section seven of "The Supreme Court Judges Act, 1858," another Judge of the Supreme Court, to exercise the said jurisdiction, and any Judge so to be appointed is hereinafter referred to as "the Judge." Governor in Council may appoint Judge for purposes of this Act.
3. The Judge shall have jurisdiction to try all cases in which any disputes or differences exist between Europeans and Maoris, in reference Jurisdiction of Judge.

to rights, titles, and interests in or to land held under titles heretofore derived through the Native Land Court, or referred to and included in the fourth section of "The Native Grantees Act, 1873," according to the law and equity of the case as administered by the Supreme Court; and shall direct himself by the best evidence that can be procured or that is laid before him, whether the same be such evidence as law would require in other cases or not: Provided always that any party to any suit or proceeding hereunder shall have full power to avail himself of any grounds of law or equity which he may please to use, in the same way as he could use the same in any ordinary case in the Supreme Court, and judgment shall in all cases be delivered as it would be in the Supreme Court if such grounds were taken.

4. The Judge shall determine all questions of fact as well as of law, except in cases heard before Assessors as hereinafter provided.

5. It shall be lawful for the Judge to give such judgments and make such orders upon such terms and conditions as he may think fit, for all or any of the purposes following:—

- (1.) For the completion of any contract or arrangement for the sale and purchase or lease of such land as aforesaid;
- (2.) For declaring any such contract null and void;
- (3.) For the apportionment of any such land between the parties in litigation;
- (4.) For the payment by the Maoris of any moneys which they may have received under any contract for the sale or leasing of such land, when such sale or leasing has not been fulfilled;
- (5.) For vesting in any person the whole or any portion of such land for an estate of fee-simple in possession, or for any lesser estate:

And every such judgment or order shall have the full force and effect of a judgment or order of the Supreme Court, and shall in all respects be subject to and enforced by the law in force in relation to such judgments or orders.

6. When any of the parties to any suit shall require that the same shall be heard by the Court with the aid of Assessors, they shall make application to the Judge, who shall thereupon make an order to that effect.

7. Each party shall thereupon name some person, being duly qualified as a common or special juror, whom he appoints to act as Assessor in the suit, and when a case is heard before Assessors it shall be necessary that one Assessor, or if there be more than two, then the majority in number of such Assessors, shall concur with the Judge, in order that the judgment may be given or an order made.

8. In all such cases if no judgment can be given in consequence of the Judge and one Assessor, or majority of Assessors, not being able to concur, then the case shall be adjourned to a future day, and shall be heard then, or on a further day to be appointed by the Judge, who shall then sit with fresh Assessors named as aforesaid, and so on *mutatis mutandis*.

9. The Governor in Council shall have power from time to time to make, amend, alter, and repeal rules of practice and procedure hereunder, which rules shall be published in the *New Zealand Gazette*.

10. In all cases the Judge shall have the same power and functions generally which a Judge of the Supreme Court has in ordinary cases, and may make the like orders; and also shall have power to make orders for costs, which he may either fix at the hearing, or order to be taxed by the Registrar of the Supreme Court in the district in which the respective suits or proceedings may be

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conducted; all which orders shall have the same effect, and be enforced, as if made in ordinary cases by Judges of the Supreme Court.

11. All suits at present existing in the Supreme Court may, on the application of either party, be continued and completed under this Act, and all costs heretofore incurred may be ascertained by taxation, and made costs in the cause.

Suits now existing in Supreme Court may be continued and completed under this Act.

12. Where any question shall arise in the hearing of any case in the Supreme Court which under the existing law would require to be sent to the Native Land Court for determination, then, and in all such cases, the Judge of the Court last named shall call in the aid of two Assessors appointed under "The Native Land Act, 1873," and with such aid may determine the said question: Provided that such determination shall be made by the last aforesaid Judge together with one Assessor, and such judgment shall be subject to the ordinary rules regulating rehearings in cases heard by the Native Land Court; and in case such Judge and one Assessor cannot agree, the same procedure shall be followed as hereinbefore provided in section eight of this Act.

Proceedings where case requires to be sent to Native Land Court.