

Hon. Mr. Carroll.

NATIVE LAND (VALIDATION OF TITLES).

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A BILL INTITULED

AN ACT to provide a Court for Inquiry into Purchases and Leases of Native Lands. Title.

WHEREAS Europeans have for years past held possession of lands Preamble.
5 claimed by them under alleged purchases and leases from Natives entitled to lands under statutes now repealed, and whose right to lease or sell such lands was regulated by the provisions of such repealed statutes :

10 And whereas Europeans have also for some years past claimed to be entitled to lands or undivided shares in lands alleged to have been purchased or leased from Natives entitled as aforesaid :

15 And whereas the said alleged agreements, purchases, and leases are incapable of being enforced, either because of some repealed statutory prohibition against the making of such purchases or leases, or because, although not forbidden, they were made not in conformity with the requirements of such statutes, or were rendered invalid through some irregularity or informality, or by reason of some unlawful act of omission or commission by the Native Land Court or some other Court :

20 And whereas it is notorious that many Europeans were by various means enabled to obtain indefeasible Land Transfer titles notwithstanding such statutory prohibitions, irregularities, illegalities, omissions, or commissions, while other Europeans similarly situated as to their titles have been hindered and prevented from obtaining

similar indefeasible titles, notwithstanding the repeal of the prohibitory enactments aforesaid :

And whereas Natives allege that they have been and still are deprived of the possession of their lands by Europeans, who profess to hold them under leases or sales to them, and said Natives complain that no Court with sufficient jurisdiction for the redress of their grievances is practically open to them :

And whereas all these persons complain with justice that the statutes in force from time to time respecting Native lands have been cumbersome and conflicting, and sometimes contradictory in their provisions, so that obedience to them has been always difficult and sometimes impossible :

And whereas it would be a scandal that such a state of things should be allowed to continue to the public detriment, and it is therefore expedient that a special Court should be constituted, endowed with sufficient powers and jurisdiction to deal with and settle finally all conflicting interests, disputes, and claims of right and ownership in the said lands, and all claims, debts, and demands whatsoever arising out of the said transactions, or out of the occupation of the said lands, or out of any of the wrongs and grievances hereinbefore mentioned :

And whereas the said Court ought to have power to make all such orders and decrees, and issue all such muniments of title, as shall be required for the settlement of all the said conflicting interests, and for determining all the aforesaid rights, debts, claims, and demands, and all other rights, debts, claims, and demands whatsoever existing or claimed to exist by or against parties asserting rights, titles, and interests, liens, mortgages, debts, and other demands whatsoever, upon or over said lands, or in respect of the occupation thereof :

BE IT THEREFORE 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 (Validation of Titles) Act, 1893.” It shall come into operation on the first day of *January*, one thousand eight hundred and ninety-four.

Interpretation.

2. In this Act, if not inconsistent with the context,—
“Court” or “Validation Court” means the Court created by this Act :

“Native” means a Maori Native, and includes half-caste Maoris and their descendants :

“Land” means any land owned by or vested in Natives, under any title whatsoever, except land the ownership of which has not been determined by the Native Land Court.

Constitution of Court.

3. There shall be within the colony a Court of Record, to be called “The Validation Court,” having jurisdiction over lands situate within any Native Land Court district that the Governor may hereafter proclaim to be within the jurisdiction.

The Court shall be entitled, upon the application of any Native or European claimant, to inquire into, settle, and determine finally and conclusively (subject only to the right of appeal hereinafter provided) all disputes, rights, titles, and interests whatsoever concerning the said lands or any of them.

In exercising its jurisdiction in the hearing of any matter before it, the Court shall consist of one Judge, who shall be assisted by a Native Assessor; in all other respects the jurisdiction, powers, and authorities vested in the Court may be exercised by a Judge.

5 4. The Governor may appoint such and so many Judges of the Court as he shall think fit. Every Judge of the Court shall be appointed for the term of three years, and shall not be removable from office except for such causes and in such manner as a Judge of the Supreme Court is removable, nor shall any action, suit, or other proceeding be brought against him for anything done or to be done in the discharge of the duties of his office, except such action, suit, or proceeding as may be brought against a Judge of the Supreme Court for anything done or to be done by him in the discharge of his duties.

Status and tenure of office of Judges.

15 The salary of every such Judge shall be fixed at the time of his appointment, and shall not exceed the sum of *one thousand* pounds per annum; and no alteration in such salary shall be made during the term of office of any such Judge.

20 5. The Governor shall from time to time appoint such Native Assessors, Registrars, Interpreters, and Clerks, as may be required for the conduct of the business of the Court, all such persons to hold office during the Governor's pleasure, and to be paid for their services such salaries as shall from time to time be appropriated for the purpose; and out of the moneys so appropriated there shall be paid such travelling allowances as the Governor may determine.

Appointment of officers.

25 6. The Court shall have power to call before it all persons interested in the said lands, and all persons claiming any right or ownership or debt or demand whatsoever in respect of said lands, or the occupation thereof, and may require the attendance of all witnesses, and the production of all documents whatsoever, even where
30 the same are filed or recorded or otherwise lodged in any public office or registry, where such documents may be necessary for a full and perfect inquiry, and may order said filed documents or certified copies thereof (if he shall deem such copies sufficient for the purpose of
35 evidence before him) to be transmitted, by the person having the custody of said filed documents, to the Registrar of the Validation Court, to be under his charge and care during the continuance of said inquiry, and on its close to be returned to the said person having custody thereof.

Powers of Judge over suitors and witnesses.

40 7. The Court shall have jurisdiction—

Jurisdiction of Court.

(1.) To hear and determine the right, title, and interest of every person claiming the freehold, or any lesser estate or interest in land, or undivided shares in land, then in dispute before it, and may bar and destroy the right, title, and interest of every person considered by the Court to be not entitled:

(2.) For the purpose of determining all questions in dispute before it, and to call before it all persons claiming the other undivided shares and interests in said land, and may, if the Judge shall deem it necessary or advisable,
50 make partition of the said land in order that the lands

claimed before the Court, and to be dealt with by the Court, may be separated and defined from the lands of persons not interested in the matters in contest before the Court :

- (3.) To hear, settle, and determine the right to the use and occupation of the said lands or shares in lands claimed before the Court, whether as to past, present, or future use and occupation, and whether under purchase, lease, or agreement for lease : 5
- (4.) To hear, settle, and determine all claims and demands for rents and other moneys arising out of the use and occupation of lands, and for unpaid purchase-money, or for liens (including liens for survey and survey-charges), debts, mortgage claims, claims for interest, or claims for damages in the nature of a debt or money-demand, whether such claims or demands be upon or by any Maori or half-caste Maori, or upon or by any corporation or banking company, or other company or co-partnership : 10
and 15
- (5.) To hear, settle, and determine all claims and demands whatsoever, whether based upon contract or otherwise, which, in the opinion of the said Court, ought to form part of the settlement of the conflicting interests of the parties before it, or arising between any of them respecting said lands, or the use and occupation thereof. 20

Duties of Registrars
of Native Land
Courts, &c.

8. It shall be the duty of the Registrar of the Native Lands Court, and of the Registrar of Deeds and District Land Registrar, to keep the Judge of the Validation Court informed of all rights, titles, and interests registered in their respective offices affecting the lands in dispute before the Court, or any part of them, and to furnish the original deeds, agreements, and documents filed or lodged in their respective offices, or certified copies of the same, as may be required, to said Judge, and such copies may be used in evidence before the Court if the said Judge shall deem them sufficient. 30

Powers of Judge as
to admission of
evidence, and over
all questions arising
before him.

9. The Court may admit any evidence that seems to the Judge to be pertinent to the matters in issue, whether such evidence would be admissible in the Supreme Court or not. Every question of law or of fact, of whatever kind and nature it may be, may be determined by the Court, and the Judge may exercise and shall have all such jurisdiction, powers, and authorities as are vested in a Judge of the Supreme Court, and also all such jurisdictions, powers, and authorities as are vested in a Judge of the Native Land Court : it being the true intent and meaning of this statute that the Court shall have sufficient powers to deal fully and effectually with every class of case that shall come before it for validation, and with all questions arising in such cases, and to settle finally and for ever all differences, conflicts, and disputes between the parties relating to the lands and matters before it. 35
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Powers of validation.

10. The Court may, subject to the conditions prescribed in sections *fifteen* and *sixteen* of this Act, in its discretion validate and decree the performance of any deed, agreement, contract, or memorandum of contract of imperfect obligation or authentication entered into 50

between Europeans and Natives, or between Natives and Natives, concerning any lands or interests in lands to which any Native a party to said deed, agreement, contract, or memorandum of contract was then entitled under any statute now repealed, and which deed, agreement, contract, or memorandum of contract, is incapable of being enforced because it was not made in accordance with the requirements of such repealed statute, or was forbidden by said statute, or was not authenticated in the manner required by such statute.

The Court may also validate and decree the performance of any deed, agreement, contract, or memorandum of contract, signed or executed before the passing of "The Native Land (Validation of Titles) Act, 1892," purporting to effect an alienation of any land by way of sale, transfer, or lease, or purporting to contract for such alienation, whether such alienation was to be an alienation of the whole of the shares and interests of the Native owners of the said land, or of any one or more of such shares and interests, or of any part of such shares or interests :

Provided that ~~in any and every such case~~ in every case brought before the Court under any section of this Act the claimant for validation is able to show to the satisfaction of the Court,—

- (1.) That the said agreement or contract, irrespective of form, was one which, had it been made between Europeans touching and concerning lands held under Crown grant, would have been a valid and binding contract capable of being enforced in the Supreme Court :
- (2.) That the said agreement or contract was not in any respect contrary to equity and good conscience :
- (3.) That the said agreement or contract was fully and perfectly understood at the time it was entered into by the agreeing or contracting parties, and was a fair agreement or contract for a reasonably sufficient and lawful consideration at the time and under the circumstances in which it was made.

The Court may refuse to validate any contract or agreement which fails to comply with any of the aforesaid requirements, or which in the opinion of the Court was not fair and reasonable, or was contrary to equity and good conscience, or tainted with actual fraud and improper dealing.

11. The Court shall not have power to validate any transactions for the purchase or lease of any Native land entered into by any person, corporation, or company after the publication of and during the subsistence of a notification by the Governor in the *Gazette* and *Kahiti*, in terms of any Act heretofore or hereafter to be in force, giving notice that he proposed to enter upon negotiations for the acquisition of the said land for Her Majesty.

12. When, however, negotiations have heretofore been entered upon by any person, corporation, or company, for the purchase or lease of any Native land, before any notification as mentioned in the *last-preceding* section was issued and such negotiations were thereafter continued and completed, the Court may exercise its powers and validate all or any such transactions as shall seem to it to be fair and equitable ; but shall not validate any transaction which it shall deem fraudulent in any degree, or unjust to the Natives.

Court may not validate private purchases of land after notice published of prior rights of the Crown.

Court may validate *bonâ fide* land transactions when such notice not published.

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Finality of decrees,
and duty of District
Land Registrar to
act in obedience to
them.

13. Every order and decree of the Court, *when signed by the Judge and sealed with the seal of the Court*, shall, subject to being first laid before both Houses of the General Assembly, as prescribed in sections *fifteen* and *sixteen* of this Act, and subject to appeal as hereinafter provided, be final and conclusive, and shall not be hindered or interfered with or lessened in its effect by any other Court whatsoever. Every order and decree shall be registered in the Court, and a duplicate of every order and decree affecting lands shall be forwarded to the Governor ~~if the said lands are defined in the said order so soon as the lands affected thereby are defined by any order of the Court, or of the Native Land Court, as provided by this Act~~; and thereupon, if the lands are defined and the owners thereof declared, either by the said order of the Validation Court or by an order of the Native Land Court on partition, the Governor may, by warrant under his hand, direct the District Land Registrar of the district wherein the land is situated to issue a certificate of title, or separate certificates of title, to the person or persons in whose favour such order or decree of the Validation Court is made, for the land described in such warrant, and for such estate or interest and subject to such conditions, liabilities, charges, annuities, liens, mortgages, or other debts as may be directed by the said order or decree of the Validation Court; and thereupon all previous titles to the same land, whether vested in the same or any other person, shall thenceforth, if so directed by the Validation Court, cease and become void and of none effect, and the registration thereof in any office or other Court shall be cancelled, if so directed by the Validation Court.

Money orders and
decrees for posses-
sion of land.

14. Orders for payment of money, and decrees for performance of conditions, or delivery of possession of land by any person before the Court holding such possession, to any other person before the Court declared entitled to such possession, may be filed in the Supreme Court of the district wherein the land is situated; and thereupon all such proceedings may be had and taken in the Supreme Court for the enforcement of payment, or performance of the conditions ordered to be performed, or for the delivery of possession, as might be taken before the Supreme Court upon a judgment or decree of that Court, and all such writs may be issued for levying debt or enforcement of payment of the moneys ordered to be paid, or for enforcing the performance of the conditions or delivery of possession of the land, as might be issued on a Supreme Court judgment for the like purpose and to the like effect. There shall be no necessity, before issue of execution or enforcement of obedience to such filed order or decree, for any inquiry before a Commissioner under the Frauds Prevention Acts, or for obtaining any certificate from him as to the absence of fraud or otherwise in the said order or decree of the Validation Court.

Return to be laid
before Parliament.

15. A return of all certificates given and all applications in which certificates are refused, in pursuance of the provisions of this Act, applications lodged, and of all orders and decrees made in pursuance of this Act, shall from time to time be laid before both Houses of the General Assembly, ~~together with the report of the Court on each case~~, as soon as may be if Parliament be sitting, and if not then within ten days after the opening of the next session thereof.

16. Notwithstanding anything in this Act contained, every ~~certificate given~~ *final order or decree affecting land made* by the Court shall be of no effect and shall remain in the office of the Court, and shall not be delivered to any person for any purpose
 5 whatever or be capable of registration under any Act until ten days after the prorogation of the session in which the return has been laid before both Houses of the General Assembly as provided by the *last preceding* section hereof: Provided that in the case of ~~any certificates or reports~~ *final orders or decrees* laid on the table of both
 10 Houses of the General Assembly during the last ten days of any session no action shall be taken thereon until ten days after the expiry of the next session held thereafter.

Confirmation of certificates by Parliament.

Every certificate laid before Parliament during any session as aforesaid shall be deemed to be confirmed by Parliament unless a
 15 resolution to the contrary be passed during the said session by either House of the General Assembly.

New Paragraph.

20 There shall be excepted, however, from the provisions of this section interim orders made by the Court to give effect to a voluntary arrangement mutually agreed upon between the parties, or where there are technical mistakes, or errors, or omissions, or irregularities only, in the instruments of title in respect whereof an order of the Court has been made.

17. All costs of and incidental to any proceedings under this
 25 Act shall be in the discretion of the Court, who may order the same to be paid by or to any of the parties before it, and the Court may impose on any of the parties such hearing and other fees payable to the Court as may be settled by rules of Court to be issued by the Governor from time to time.

Costs of Court.

30 18. The Governor may make general rules for any of the following purposes:—

Governor may make general rules.

- (1.) For regulating the sitting of the Court :
- (2.) For regulating its practice and procedure :
- 35 (3.) For settling the course of procedure in cases where no defence is offered against the claim made, and providing whether any and what evidence shall be required when the validation of the contract or agreement is not contested or disputed by the person entitled to contest the same, and for providing for the admission or rejection of evidence concerning any fact alleged to have been already settled by
 40 some other Court by a judgment between the same parties or their privies in title :
- (4.) For the issue and service of process on parties sued to appear and attend at the hearing of the case :
- 45 (5.) For the issue and service of subpoenas, and for payment or tender of any and what expenses to the witnesses, and for the production before the Court of documents required as evidence :
- (6.) For the payment of expenses, if such be required by the
 50 Court, for the valuation or identification of any land :
- (7.) For the ~~adoption~~ *admission* or exclusion of persons desiring to practise before the Court as counsel, agents, or conductors, and for their remuneration :

- (8.) For such other matters as are usually provided for in rules of like Courts, and which the Governor may think ought to be provided for this Court :
- (9.) For the taking of evidence by commission of witnesses living at a distance, *and providing for the costs thereof* :

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New subsection.

- (10.) For the payment by parties before the Court of such fees, duties, and assessments, whether by way of percentage on the value of the land adjudicated upon or otherwise, as may be deemed necessary, towards recouping the public revenue the cost of maintenance of the Court and of its departments :

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Provided always that, until a general rule is made on any subject, it shall be lawful for the Judge in his discretion to lay down a rule for the case before him, and afterwards to continue to act upon such rule so long as he shall deem it advisable, and until the Governor shall have promulgated a general rule concerning such matter.

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Voluntary arrangement.

19. It shall be lawful for the Court, in any proceeding under this Act, to give effect to any arrangement voluntarily come to by the Natives, either amongst themselves or with the Europeans before the Court; and if such arrangement is deemed by the Court a fair and reasonable settlement of the matters, or any of the matters, in dispute, and not injurious to the interests of other suitors in the cause, the Court shall base its decision as regards the interests of such persons upon the arrangements they have made, and such decision shall be as effectual and binding upon the parties who have so arranged between themselves as if arrived at on evidence taken.

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Stay of proceedings in all other Courts upon transactions brought for validation in this Court.

20. No action or proceeding shall be brought in any Court other than the Validation Court for the purpose of questioning the validity of any alienation of land which might form the subject of inquiry before the Validation Court until the expiration of six months after the opening of the Validation Court; and if any such action or proceeding shall be so brought within the said six months in any other Court, ~~the plea of *lis pendens* before this Court~~ a plea that it was brought within the said six months shall be a bar to the commencement of the said action or proceeding, and if, after the commencement of any such action or suit in any other Court, after the said six months, proceedings are taken in this Validation Court which would when heard decide the matters in dispute between the parties, a plea of *lis pendens* shall bar all further proceedings in the said other Court upon payment of all costs up to the date of *delivery* of said plea according to the course and practice of the Court in which it is pleaded.

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Appeal to Appeal Court of New Zealand.

21. Any person aggrieved by the decision of the Court in any matter of law, except as to the improper admission or rejection of evidence, may within thirty days after the decision of the Court lodge in the office of the Court a notice of appeal, setting forth all the grounds of his objection to the said decision, and thereupon a special case may be agreed upon between the parties and the Judge, or, if no such special case be agreed upon within fourteen days or within such extended time as the Judge may allow,

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then such portion of the proceedings as shall be requisite for the settlement of the questions to be decided by the ~~Appeal Court~~ *Court of Appeal of New Zealand* shall be forwarded by the Validation Court to the said ~~Appeal Court~~ *Court of Appeal*, and thereupon the said ~~Appeal Court~~ *Court of Appeal* shall have jurisdiction to hear and determine the matter of the said appeal; and every judgment, order, or decree of the Validation Court shall be subject to appeal as aforesaid. No appeal from any interim ~~or other~~ decision, or from any *interim* order, shall operate as a stay of further proceedings between the parties in the Validation Court, except such stay be assented to by all the other parties interested or be directed by the Judge: Provided always that no final order or decree, issue of which would enable the successful party to obtain any indefeasible or other title elsewhere than in the Validation Court, shall issue out of the Validation Court pending any appeal from it.

22. The Governor may, by general rule, provide what fees shall be paid, and what security shall be given by appellants from the Validation Court, and may, if he think fit, direct whether and under what circumstances, and in what manner, the payment of such fees, or the giving of security, shall be a stay of proceedings, or be a condition precedent to the right of appeal, or to the right to be heard in the said ~~Appeal Court~~ *Court of Appeal* on said appeal.

23. The Judge of the Validation Court shall have all the powers of a Judge of the Supreme Court of punishing for contempt of his Court, or of the processes of his Court, or of the orders and decrees of his Court, any person deemed by him to be guilty of the same; and any person who shall wilfully and without just excuse allowed by the Court disobey any subpoena or process of the Court shall be guilty of contempt, and may be brought before the Court and punished in the same manner as such person could be punished by a Judge of the Supreme Court for a like disobedience.

24. It shall be lawful for the Judge of the Validation Court, whenever any person or persons shall have been declared entitled to any undivided share or shares, or interest in land, to direct that the land to be apportioned for the said shares or interests shall be ascertained in the Native Land Court; and thereupon the Chief Judge of the Native Land Court shall take such steps to cause the making of a partition between the person or persons so declared entitled, and the remaining owners of the block of land, as shall be just, and in accordance with the course and practice of the said Native Land Court.

25. "The Native Land (Validation of Titles) Act, 1892," is hereby repealed.

New clause.

26. No action shall be brought or proceedings taken in any Court for the purpose of calling in question, or which may have the effect of calling in question, the validity of any alienation, or of any deed, memorandum, or document purporting or intended to effect in alienation, or containing a contract for alienation which may form the subject of inquiry under this Act, until the first day of January, one thousand eight hundred and ninety-four, the day on which this Act shall come into operation, as hereinbefore provided.