

Hon. Mr. Carroll.

[AS REPORTED FROM THE NATIVE AFFAIRS COMMITTEE, 8TH AUGUST, 1893.]

NATIVE TRUSTS AND CLAIMS DEFINITION AND REGISTRATION.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>NATIVE TRUSTS.</p> <p>2. Court may ascertain and determine <i>cestuis qui trustent</i>.</p> <p>3. Effect of order.</p>	<p>NATIVE EQUITABLE OWNERS.</p> <p>4. Effect of order under "Native Equitable Owners Act, 1886," sections 2 to 5.</p> <p>5. When land subject to a lease.</p> <p>6. Court may ascertain Natives entitled to benefit of engagement on "Ngaitahu deed."</p> <p>7. Court may exercise jurisdiction in South Island and Stewart Island.</p> <p>8. Lease to be deemed "outstanding interest."</p>
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A BILL INTITULED

AN ACT to define and give effect to certain Native Trusts and Claims. Title.

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

1. The Short Title of this Act is "The Native Trusts and Claims Definition and Registration Act, 1893." Short Title.

NATIVE TRUSTS.

10 *New clause.*

15 2. To enable *cestuis qui trustent* to become the certificated owners of the lands to which they are entitled, the provisions of sections two to five of "The Native Equitable Owners Act, 1886" (herein referred to as "the said Act"), shall apply to the lands in the Bay of Plenty District more particularly referred to in "The Whakatane Grants Validation Act, 1878," and which have been granted to persons who were selected to be trustees thereof for themselves and others, but who have been placed by such grants in the position of absolute owners of such lands.

20 Notwithstanding anything contained in section eighteen of "The Native Land Court Acts Amendment Act, 1889," any application for the purposes of this section may be made under section two of the said Act to the Native Land Court (herein referred to as "the Court") before the expiration of three years from the date of
25 the commencement of this Act, but not afterwards.

Struck out.

2. Where any certificate of title to land has heretofore been issued or ordered to be issued by the Native Land Court (hereinafter called "the Court"), or where any land has hereto-

Court may ascertain and determine *cestuis qui trustent*.

fore been granted by the Crown, to a tribe or hapu or to a portion of a tribe or hapu of aboriginal natives collectively named in the grant, certificate, or order, or to some person on behalf of, or upon or in trust or as trustee for, a tribe or hapu or portion of a tribe or hapu, it shall be lawful for the Court, on the application of the Governor, or of any Native claiming to be beneficially interested therein, to inquire and determine who are the persons beneficially entitled thereto under and by virtue of such grant, certificate, or order, or of the trust or trusts therein set forth or intended to be expressed, and by order to declare that such land shall, from the date to be named in such order, be vested in the persons so found to be beneficially entitled for an estate of freehold in fee-simple, as tenants in common in the relative proportions to be named in such order.

Effect of order.

3. An order so made, or as varied or amended on rehearing, shall have the effect of vesting the land comprised therein in the persons therein declared to be the owners as tenants in fee-simple, in the relative proportions therein mentioned, and such persons shall, when the title under such order becomes ascertained, be entitled to be registered as proprietors and to have issued to them a certificate of title under "The Land Transfer Act, 1885," or a Crown grant if the antevesting date is prior to the coming into operation of "The Land Transfer Act, 1870," in respect of the land comprised in such order and from the date of such order, or, if an antevesting date be mentioned therein, from such antevesting date, the original Crown grant, certificate, or order affecting such land shall be deemed to be null and void:

Provided always that, if any such land is subject to a lease, the Court may by the same or a subsequent order declare that such lease shall be and remain valid and subsisting for the benefit of the lessees, subject to such modifications as to the manner of payment of rent, and as to the burden and benefit of the covenants and conditions expressed or implied in such lease, as in the opinion of the Court the justice of the case may require. Any lease in respect of which such order as aforesaid is made shall be for all purposes deemed to be a valid and subsisting lease, subject to such modifications as aforesaid, as if the same had been duly executed by all the persons interested therein.

NATIVE EQUITABLE OWNERS.

Effect of order under "Native Equitable Owners Act, 1886," sections 2 to 5.

4. Any order heretofore made or that may hereafter be made in pursuance of proceedings already commenced under sections two to five, both inclusive, of "The Native Equitable Owners Act, 1886," declaring the persons beneficially entitled to any land subject to the said last-mentioned Act shall be deemed to have the effect of vesting such land in the persons so declared to be entitled for an estate of freehold in fee-simple, as tenants in common, as from the date of the making of such order, *anything in "The Native Lands Act, 1865," or any other Act to the contrary notwithstanding.* And such persons, and the successors of such of them as may be dead, shall, on the production of such order to the District Land Registrar of the proper district, be entitled to be registered as proprietors and to have issued to them a certificate of title under "The Land Transfer Act, 1885," in respect of the said land, antevesting to the date of the order of the Court.

Where the title to the land the subject of such order is a Crown grant, such grant shall, upon the issue of a certificate as aforesaid, be deemed to be null and void as from the date of the making of such order.

5 5. Where land subject to "The Native Equitable Owners Act, 1886," is also subject to a lease for an unexpired term of years, any order made or certificate issued as aforesaid shall not prejudice the estate or term of the lessee; but the lessee, after notice of such order or certificate, shall pay any rent to accrue due under
10 his lease to the Natives for the time being registered as the owners of the land comprised in such lease in the proportions in which they appear in the certificate of title to be interested therein; and in case the relative interests shall not be specified, and in so far as the certificate shall not provide to the contrary, the Natives mentioned
15 in the certificate shall be deemed entitled to receive their rent in equal shares.

When land subject to a lease.

Struck out.

20 6. Whereas, in fulfilment of an engagement entered into by the Government of New Zealand with certain Natives, parties to the deed of purchase known as the "Ngaitahu deed," lands in the South Island of New Zealand were and still are appropriated to and for certain Natives, being the Natives aforesaid or their representatives: And whereas it is desirable that the names of such Natives should be ascertained and determined:

Court may ascertain Natives entitled to benefit of engagement on "Ngaitahu deed."

25 The Court shall, for the purpose of ascertaining and determining who the Natives were to whom such lands were appropriated as aforesaid, have the like authority to deal with any of such lands which have not already been dealt with in pursuance of proceedings commenced under section six of "The Native Equitable Owners Act, 1886," as it would have if such lands were still lands over which the
30 Native title had not been extinguished, and such lands shall be deemed to be Native land: Provided that the right to ownership of such lands shall be confined to the Natives aforesaid and their representatives.

35 7. It is also hereby further declared that the Court shall have and may exercise the like jurisdiction in respect of any Native reserves situate in the South Island or in Stewart Island which may be submitted to such jurisdiction by Order in Council, which the Governor is hereby authorised to issue from time to time for the purpose.

Court may exercise jurisdiction in South Island and Stewart Island.

40 But the Court, in determining the title or interests to any of such reserves, shall give effect to the original intention for which the said lands were respectively set apart.

45 8. Any lease of land subject to "The Native Equitable Owners Act, 1886," executed before the thirtieth day of July, one thousand eight hundred and eighty-six, with the formalities required by the law in force at the time when such lease was executed for the execution of a lease by Natives, and having a Trust Commissioner's certificate indorsed thereon in accordance with the law for the time being in force in that behalf, shall be deemed to be an "outstanding interest" within the meaning of "The Land Transfer Act, 1885," and
50 shall be noted accordingly.

Lease to be deemed "outstanding interest."

Native Trusts and Claims Definition and Registration..

New clause.

At the close of the proceedings upon an investigation of title to Native land, or during proceedings upon partition, the Court may, if a majority in number of the Native owners signify their assent thereto in writing, order that a part of such land or Native land be set apart and vested in one or more persons, who shall hold the same upon trust for such religious, educational, or other purposes of general or public utility as shall be specified in such order. The land the subject of such order shall be and remain incapable of alienation in any way whatsoever without the consent of a Judge; such consent shall not be given unless a Judge is satisfied that the land is no longer needed for the purposes for which it was originally set apart as aforesaid. The Court may, on the death of any of the persons so appointed, make other appointments in substitution thereof, and may, for good cause shown, remove any person in whom the land may be vested by virtue of any order and appoint some other person as a substitute for the person so removed, and the parcel of land shall thereupon vest in the person or persons so appointed without any conveyance, and shall be held by him or them subject to the trusts expressed in the original order.