

SUPPLEMENTARY ORDER PAPER.

HOUSE OF REPRESENTATIVES.

Tuesday, the 4th Day of September, 1894.

NATIVE LAND COURT BILL.

Hon. Mr. SEDDON, in Committee, to move the following amendments and new clauses :—

PART I.

Section 3. In definition of the term "customary land," to strike out the word "duly" in the 4th line, and to add after the words "ascertained by the Court," the words "or other duly-constituted authority."

In definition of "Land Transfer Acts," to substitute "Act" for "Acts" in the 1st line, and strike out the words "'The Land Transfer Act, 1870,' or," and the word "respectively."

To strike out present definition of Native land, and to substitute the following: "'Native land' means land in the colony owned by Natives under their customs or usages, the title whereto has not been ascertained by the Court or other duly-constituted authority as aforesaid."

In definition of "owner," to strike out the words "'The Land Transfer Act, 1870,' or," and the figures "1885."

In definition of "Provisional Register," to strike out the words "Native Land Court," and "provided by this Act," and to add the words "under the Land Transfer Act" after the word "Register" in the 2nd line.

In definition of "registered," strike out the words "Provisional Register" in 3rd line, and substitute the words "Native Land Court."

Clause 6. To strike out the words "together with such Assessors."

Clause 9. To omit the words "notwithstanding that the Chief Judge may also be exercising his powers and performing his duties."

After clause 9, to insert the following new clause :—

9A. The Governor may from time to time appoint any Native to be an Assessor for the purposes of this Act.

Section 15, subsection (3). Add the words, "also, on application of the Governor, to effect an exchange of lands between Natives and the Crown."

Section 15, subsection (5). To strike out the words, "and to rehear any application for such grant."

Section 15, subsection (6). Before the words "one thousand eight hundred and eighty-eight," insert the words "the thirtieth day of August."

To add new subsection, as follows :—

By order to vest land in any person whom, in the exercise of the powers aforesaid, it determines to be entitled thereto, and generally to do all acts and things necessary or ancillary to the effectual exercise of the jurisdiction conferred upon the Court by this Act.

To add the following new clause, to follow section 15 :—

Extension of Jurisdiction.

15A. The Governor in Council may, by Order, confer upon the Court as effectually as if the same were conferred by this Act jurisdiction in any matter or question exclusively affecting the rights of Natives in any real or personal property, and thereupon the Court

and each Judge thereof shall have full jurisdiction and power in such matter to decide and make order as it may deem fit; and such decision or order, subject to the right of appeal as hereinafter provided, shall be valid and binding in law, and may be dealt with as nearly as may be in the same manner as an order of a similar nature made by the Court in exercise of the jurisdiction conferred upon it by this Act.

Section 18. To strike out the words "shall be assisted by an Assessor," and substitute the words "Such Judge may, if he think fit, at any stage in the proceedings call in an Assessor for the purpose of assisting and advising with him in dealing with any question of Native custom or evidence; but the concurrence of such Assessor shall in no case be necessary to the validity of any judgment."

Section 30. After the word "order," to insert the words "or application to amend or vary any order."

Section 35. To strike out all the words from "requiring," in 1st line, to "Court," in 3rd line, both inclusive, and substitute the words "under subsection nine of section fifteen of this Act may be filed."

Sections 38 and 39. To strike out the whole of these clauses, and to substitute the following:—

38. The Court or any Judge may at all times amend at discretion all defects and errors in any proceeding or document, whether there is anything in writing to amend by or not.

38A. All amendments necessary for the purpose of determining the real question in controversy between the parties, or for giving effect to and recording the intended decision in any proceeding, may be made at any time by the Court or a Judge.

Amendments may be made whether applied for or not, and may be made with or without costs, and upon such terms as the Court or Judge may think fit.

38B. The decision of the Court or a Judge shall, subject to any such amendment and to any dealing therewith on appeal, be final and conclusive.

39. After the title to land has become ascertained under an order of the Court, made before or after the coming into operation of this Act, any person who is or claims to be entitled to an interest in such land, and alleges that he has been deprived of such interest, or that such interest has been prejudicially affected by reason of some mistake or omission in such order, may apply at any time to the Chief Judge to inquire into the matter of such alleged mistake or omission.

Such application shall be made in writing and state specifically the grounds upon which it is made, and shall be verified by the affidavit or statutory declaration of the person applying.

Upon the receipt of any such application the Chief Judge may either—

- (1.) By order under his hand, dismiss the application; or
- (2.) Hold an inquiry in open Court; or
- (3.) Refer any question to a Judge sitting in open Court for his inquiry and report.

Public notice of the intention to hold an inquiry shall be given in such manner as the Chief Judge may deem expedient.

If it appear to the Chief Judge that the alleged mistake or omission has been made, he may make such order in the matter for the purpose of remedying the same as the nature of the case may require:

Provided that no such order shall affect or be deemed to affect the validity of any alienation of such land, made before the application to hold such inquiry shall have been registered.

The like appeal shall lie from any decision of the Chief Judge under this section as from a decision of the Native Land Court, subject as nearly as may be to the like conditions, except that notice of appeal shall be given within seven days from the making of any order as aforesaid.

Section 41. After the word "confirmed" to add "in so far as the same is not contrary to the provisions of any law in force at the date of such alienation."

After section 41 to insert the following new clause:—

Every application for partition shall be signed or assented to in writing by at least one-third in number of the owners of the land to be partitioned owning at least one-third of the whole land, otherwise the Court shall not proceed with the partition.

Section 51. To strike out all words after "executor," in 6th line.

Section 52. To strike out the words "by the Governor on the recommendation of the Court," in the 5th line; and to substitute the following: "either absolutely or in respect of any particular dealing." Also to add the following proviso:—

Provided that restrictions on alienation existing prior to the thirtieth day of August, one thousand eight hundred and eighty-eight, may be removed or varied only by the Governor.

To insert following new clauses after section 67:—

Public Roads.

67A. It shall be lawful for the Governor at any time hereafter to take and lay off for public purposes one or more line or lines of road through any land, provided that the total quantity of land which may be taken, inclusive of any already taken, for such line or lines of road shall not exceed one-twentieth part of the whole.

The Governor may at any time, by indorsement on the Crown grant or on a subsequent or other instrument of title, or by deed, release the land the subject of such right therefrom, or from any part thereof.

67B. There shall not be taken under the authority of the *last-preceding* section any land occupied by any pa, village, Native cultivation, or burial-ground, except subject to the provisions of "The Public Works Act, 1882," and the several Acts amending the same.

67c. The powers hereby given as to public roads shall cease—

- (a.) As to land the subject of a Land Transfer certificate issued in accordance with the provisions of this Act, at the end of _____ years from the date of such certificate;
- (b.) As to grants, certificates, or other instruments of title issued under any Act heretofore or hereby repealed, at the time when such power would have ceased under such repealed Act.

67D. Whenever any lines of road are surveyed and laid off on or over any land or Native land under the direction of the Surveyor-General, the site of such road shall be deemed to be a road dedicated to the public, and shall vest in Her Majesty. When any road is laid off along the boundary between land owned by Natives and land owned by Europeans, such road shall be taken equally from both such lands where practicable:

Provided that the Governor shall have the right to lay off or take roads on or from the lands of both owners.

Section 53. After the words "Justice of the Peace," in subsection (e), to insert the word "Postmaster."

Section 68. To strike out all words after "Parliament," in 14th line.

Section 69. After the word "shall," in the 2nd line, to insert the words "without the consent of the Governor in Council as hereinbefore provided." Also after the words "unlawfully acquired," in 13th line, to insert "or purporting by the terms of any deed executed for that purpose to have been so acquired."

Section 70. After the words "to hold," in the 5th line, insert the words "either in one or in several blocks"; and after the word "exceeding," in the 6th line, insert the words "in the aggregate."

Section 72. After the words "three calendar months" add "and the land unlawfully acquired or attempted to be acquired by virtue of such false declaration and of any deed whereon the same is indorsed shall vest in the Crown."

To strike out all clauses from 75 to 85 inclusive, and to substitute the following:—

75. All land which is customary land at the date of the coming into operation of this Act shall thenceforth be and become subject to the provisions of the Land Transfer Act, and every Native owner of such land shall, subject to all equities affecting his estate or interest therein, be deemed to be the proprietor thereof under the said Act for an estate of inheritance in fee-simple in possession.

Any person claiming to have acquired an interest in any such land by virtue of any alienation prior to the coming into operation of this Act may apply to the Court to have such alienation confirmed. And upon confirmation thereof the claimant shall be entitled to be registered under the Land Transfer Act as proprietor of the estate or interest acquired.

Every order hereafter made by the Court whereby the title to any Native land shall have become ascertained shall be forwarded by the Registrar of the Court to the District Land Registrar, who shall as soon as may be thereafter issue a certificate of title in lieu of grant to the persons in such order expressed to be entitled, subject to such restrictions (if any) as may have been imposed by the Court, and shall in the meantime embody such order in the Provisional Register as a folium thereof, and the land the subject thereof shall as from the date of the inclusion of such order in the Provisional Register be subject to the provisions of the Land Transfer Act.

Until the issue of a certificate of title in lieu of grant all dealings with land which shall become subject to the provisions of the Land Transfer Act by virtue of this Act shall be provisionally registered, and the existing Native Land Court certificate, memorial of ownership, or other instrument of title under the seal of the Court, or a duplicate or certified copy thereof, shall for that purpose be embodied in the Provisional Register as a folium thereof. The Chief Judge shall from time to time cause to be forwarded to the several District Land Registrars, for the purpose of constituting such Provisional Register, all necessary documents which shall be in his custody or control or in that of any officer of the Court.

No estate or interest existing by virtue of any deed registered in the Native Land Court at the date of the coming into operation of this Act shall be capable of being transferred or otherwise dealt with under the Land Transfer Act until the same has been confirmed by the Court, but such registration shall operate as a caveat for the protection of the estate or interest expressed to be created by such instrument, subject to any order which may be made in relation thereto by the Supreme Court or a Judge thereof.

Every person entitled to be registered under the provisions of this Act for an estate of inheritance in fee-simple in possession shall be entitled to a certificate of title for the same, and no warrant other than the authority of this Act shall be necessary to enable the District Land Registrar to issue such certificates in lieu of grant or otherwise as may be necessary for giving effect to the provisions of this Act: Provided that the District Land Registrar may at his discretion retain any title on the Provisional Register so long as the number of Native owners shall exceed ten, and shall in no case issue a certificate of title in lieu of grant except on a certified plan approved by a Judge of the Court.

It shall not be necessary in any case to issue separate certificates to Native owners as tenants in common.

The Registrar-General of Land may from time to time, by regulation, with the approval of the Governor in Council, make such alterations and modifications in the mode of registration hereinbefore prescribed, and make such other provisions for the same, as may be necessary or expedient.

The Chief Judge shall at the request of the Registrar-General of Land refer to the Native Land Court for inquiry and decision any question which may be necessary for the purpose of ascertaining the persons entitled to be registered as aforesaid, and of defining their estates and interests respectively.

Section 101. After the word "Judges," in 3rd line, to insert the word "and." Also to strike out the words "and such Assessors of the Native Land Court," in 3rd and 4th lines.

Section 108. To insert after the words "at any time," in 4th and 5th lines, the words "before the right of appeal has actually lapsed."

Section 110. To strike out all the words from the word "who," in the 5th line, to the end of the section.

To insert the following new clause, after section 113:—

The Appellate Court shall have the like power to associate with itself an Assessor to assist and advise the Court as is hereinbefore given in the case of the Native Land Court; but the concurrence of such Assessor shall not be essential to the validity of any judgment.