

P A P E R S

RELATIVE TO THE

PURCHASE AND INHERITANCE

OF

NATIVE LANDS,

BEING ENCLOSURES TO A DESPATCH FROM HIS EXCELLENCY THE GOVERNOR

TO HER MAJESTY'S SECRETARY OF STATE FOR THE COLONIES,

DATED 20TH SEPTEMBER, 1859.

*Presented to the Honorable the House of Representatives, August 21st, 1860,
and ordered to be printed.*

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RELATIVE TO THE PURCHASE OF NATIVE LANDS.

I.

The Native Districts Colonization Act, 1860.

A BILL to provide for the Colonization of Native Districts.

WHEREAS it is expedient to make better provision for the Colonization of Districts in New Zealand over which the Native Title has not been extinguished :

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

1. Whenever any Aboriginal Natives being the owners according to Native custom of a District of not less than 30,000 acres in area, shall be willing to cede their rights over such District to Her Majesty, under the provisions of this Act, it shall be lawful for the Governor to accept such cession accordingly upon such lawful terms as shall be agreed upon.

Governor with assent of Natives may cause Native Title to be extinguished over not less than 30,000 acres in a block.

2. It shall be lawful for the Governor to obtain the release of the Native rights in such land either by payment of money in one sum or by instalments, or by way of annuity or of annual payment, or for such consideration either in money or land, or other consideration whatsoever, as the Governor in Council shall think fit and determine.

Governor may obtain release of Native Title by sum of money or otherwise.

3. It shall be lawful for the Governor within any such District to cause a town to be surveyed and laid out, and also suburban and rural allotments.

Governor may cause a town, &c., to be laid out.

4. All such town, suburban, and rural lands shall be sold, let, occupied and disposed of for such pecuniary or other consideration, in such manner, for such purposes, upon such terms, and subject to such regulations, as the Governor in Council shall from time to time think fit to prescribe.

Lands how to be disposed of.

5. The money to arise from the sale and disposal of every District ceded to the Crown under this Act shall be disposed of, as the Governor in Council shall from time to time direct for the following purposes,—

Proceeds how to be disposed of.

1. In defraying the expenses incident to the preparation and laying out of the District for settlement, the re-payment of any sums advanced from any other fund for the extinguishment of the Native Title, and the payment of any annual, or other periodical, payments provided for by the contract for the cession of the District.
2. In the construction of Roads, Bridges, Docks, Quays, Landing Places, Wharfs, Piers, Public Buildings, and other Public Works, within such District, and in repayment of any loans advanced for such purposes.
3. In establishing, endowing, and maintaining Public Schools and other Public Institutions.
4. In promoting emigration from other places, for the purpose of securing the efficient colonization of the District.

Provided always that all such money shall for the purposes of the "New Zealand Loan Act, 1856," be deemed and taken to be Revenue arising from the disposal of the Waste Lands of the Crown in the Colony of New Zealand, and shall be chargeable with the sums of money borrowed and raised under the authority of the said Act, and with the interest thereon.

6. This Act shall not come into operation until Her Majesty's pleasure shall have been taken thereon, and the same shall have been confirmed by Her Majesty with the advice of her Privy Council, and a Proclamation of such confirmation having been given, shall have been made by the Governor or Person administering the Government of New Zealand.

(Commencement of Act.)

7. The Short Title of this Act shall be "The Native Districts Colonization Act, 1860."

Short Title.

II.

The Native Crown Grants Act, 1860.

A BILL to authorize the Grant of Crown Lands to Natives in consideration of the surrender of their Territorial Rights; and also the Grant of Crown Lands in certain cases to Europeans resident amongst the Natives.

WHEREAS it is expedient in order to facilitate the extinguishment of the Native Title over lands in New Zealand, that the Governor should be enabled to make Grants of Crown Lands to Aboriginal Natives releasing their rights over land; also, to make such Grants, in certain cases, to Europeans resident amongst the Natives :

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

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One-tenth of blocks ceded by the Natives may be granted to them under Crown Title.

1. As part of any contract with Aboriginal Natives for the cession to Her Majesty of their rights in or over any block or parcel of land, it shall be lawful for the Governor in Council to agree that there shall be granted by the Crown unto, or in trust for the benefit of, all or any of the ceding parties, or unto, or in trust for the benefit of, any other Aboriginal Natives named or otherwise designated by the ceding parties, portions of such block, not exceeding in the whole one-tenth part thereof; and it shall be lawful for the Governor to make and issue such Grants accordingly.

Reserves may be made for the purpose of compensating Natives ceding their Territorial Rights, and Grants made thereout in consideration of such cession.

2. It shall be lawful for the Governor in Council from time to time to reserve lands over which the Native Title shall have been extinguished, and which shall appear adapted for the formation of Native Settlements, and from time to time, as part of any such contract for cession as aforesaid, to agree that there shall be granted by the Crown, portions of any lands so reserved, unto, or in trust for the benefit of, all or any of the ceding parties, or unto, or in trust for the benefit of any other Aboriginal Natives named or otherwise designated by the ceding parties; and it shall be lawful for the Governor to make and issue such Grants accordingly.

Grants may be in fee simple or for a less estate, and may create successive estates.

3. Any Grant made under this Act, may be either in fee simple or for any less estate or interest, and may contain any limitations or remainders, over, to, or in trust for the children or remoter issue of the original beneficiaries, together with all such powers of selling, exchanging, leasing or mortgaging, the hereditaments therein comprised, or any part thereof, and of appointing new Trustees of any Settlement effected by such Grants, and other powers and provisions whatsoever, as the Governor shall think fit.

Alienation of estates created by Grants may be restricted.

4. It shall be lawful for the Governor by the provisions of any such Grant, to prohibit the alienation or restrict the alienability of any such estate or interest created by such Grant, any Rule of Law or Equity to the contrary notwithstanding.

Limited rights of pre-emption over ceded blocks may be reserved in favor of Natives by contracts of cession.

5. It shall also be lawful for the Governor in Council, as part of any such contract for cession as aforesaid, to agree that the ceding parties, or any of them, shall have a right of preemption over any specific lands forming part of the ceded block, not exceeding in area one-tenth part thereof, at a price to be fixed by such contract, being not less than at the rate of ten shillings per acre; such right of preemption to be exercised within a specified time, not exceeding one month after the extinguishment of the Native Title over such block.

Right of preemption over homesteads may be allowed to European residents upon ceded blocks.

6. It shall also be lawful for the Governor in Council, to permit any person who, for a period of five years previous to the passing of this Act, shall have resided on land over which the Native Title has not been extinguished, to select out of such land, within three months after the extinguishment of the same, and upon such conditions as the Governor in Council shall prescribe, a section of land not exceeding 300 acres in area, including, and adjacent to, the site on which such person shall have resided; and it shall be lawful for the Governor to make and issue Grants of any sections so selected: Provided that no Grant shall be issued or made for any land selected as last aforesaid, unless and until the sum of ten shillings per acre, for every complete acre of land to be so granted, shall have been paid to the Colonial Treasurer as the price thereof—which payment shall be made by instalments or otherwise, at such time or times, being within the period of five years from the date of the permission to select, as the Governor in Council shall appoint.

Commencement of Act.

7. This Act shall not come into operation until Her Majesty's pleasure shall have been taken thereon, and the same shall have been confirmed by Her Majesty, with the advice of Her Privy Council, and a Proclamation of such confirmation having been given, shall have been made by the Governor, or Person administering the Government of New Zealand.

Short Title.

8. The Short Title of this Act shall be, "The Native Crown Grants' Act, 1860."

III.

The Native Crown Titles Act, 1860.

AN ACT for regulating the Tenure, Descent, and Disposal of Lands held under Crown Grant by persons of the Native Race in the Colony of New Zealand.

WHEREAS it is expedient to make provision for the Tenure, Descent, and Disposal of Lands held under Crown Grant by persons of the Native Race in the Colony of New Zealand,

BE IT THEREFORE ENACTED by the General Assembly of New Zealand, as follows:—

1. Whenever any lands shall be or shall have been granted by the Crown to any person of the Native Race, it shall be lawful for the Governor to declare by any Crown Grant or otherwise, by any written instrument under his hand either before or after the issuing of such Grant, that the lands so granted, or any part thereof, shall not be alienated by the Grantee without the license of the Governor, or some person or persons to be specially appointed by him in that behalf.

2. No land respecting which such Declaration shall be made, shall be alienated by the Grantee without such license.

3. The Governor may from time to time appoint and authorise any person whom he shall deem fit to issue licenses for permitting the alienation of lands by persons of the Native Race.

4. All such appointments shall be notified in the Public Gazette of the Colony.

5. Every License of alienation under this Act shall be in the form or to the effect in Schedule to this Act.

6. Upon the death of any person of the Native Race, dying seized of land in the Colony, whereof the title shall be derived under or through a Grant from the Crown, the Governor shall in such manner as he shall think fit, and shall from time to time direct by Regulations under his hand, notified in the Public Gazette of the Colony, cause an enquiry and report to be made on who the persons may be who, according to Native custom or most agreeable thereto, may be entitled to succeed to the lands whereof such person may have died seized.

7. Such enquiry and report shall be conducted and made according to such Regulations aforesaid.

8. Upon such report being made agreeably to these Regulations, the Governor may cause a new Grant or Grants to be issued in favour of the person or persons who by such report shall appear so entitled to succeed as aforesaid, and shall divide and grant the land in such shares or in such separate parcels as shall give effect to the rights of the parties so endowed; upon the issue of such new Grant or Grants, the original Grant shall, so far as the same shall affect the lands newly granted, be vacated and cease to be of effect.

9. The Governor may in such manner and with such conditions as shall be prescribed by such Regulations as aforesaid, call in, cancel, and destroy any such original Grant, when the same shall wholly cease to be of effect by virtue of the last Proclamation when the original Grant shall be vacated only as to a portion of such lands.

10. The Governor may cause an endorsement on the original Grant to be made, in accordance with such Regulations as aforesaid, so as to describe the particular portions of land respecting which the same shall be vacated, and shall re-deliver the original Grant so endorsed to the person or persons from whose custody the same shall have come.

And whereas by an Act passed or intended to be passed in the present Session of the General Assembly, it is provided or intended to provide for the establishment of a General Registry of Titles in and for the said Colony.

Be it enacted as follows:—

11. For every District in which the said last-mentioned Act shall be brought into operation every Title to land derived under a Crown Grant made and issued in accordance with the provisions of this Act shall be registered in such Registry, of Titles accordingly and subject to such Regulations as shall be from time to time made by the Registration Commissioners, which Regulations the said Commissioners are hereby authorised to make, subject to the same Regulations as are in the said Act contained relating to the Commissioners' Regulations.

12. This Act shall be entitled the "Native Crown Titles Act, 1860."

IV.

The Native Land Partition Act, 1860.

AN ACT to provide for the partition of Lands over which the Native Title is not extinguished between the Native owners thereof.

WHEREAS the partition of lands held in common by Native Tribes and the individualization of the Title to such lands would greatly conduce to the material advancement and promote the civilization of the Native Race, and it is expedient that such partition and individualization should be affected by the Natives themselves, with the assistance of the Resident Magistrate of the District, in such a manner as to avoid the necessity of the interference of the Government for the purpose of conducting such proceedings or of upholding any awards, decisions, or arrangements made in furtherance of the objects aforesaid;

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

This Act shall come into operation at such times and during such periods, and in such places as the Governor in Council shall from time to time by Order in Council direct, and any such Order may by the like authority be revoked.

In the construction of this Act the words and phrases hereinunder mentioned shall have the following signification. The word "District" shall mean any District lawfully constituted under "The Native Circuit Courts Act, 1858," or any part of any such District.

The word "Tribe," and the phrase "Subdivision of a Tribe," shall mean any number of Aboriginal Natives (more than 3) having a common title to land.

The word "Land" shall mean any hereditament corporeal or incorporeal.

The word "Court" shall mean The Resident Magistrate of the District, one or more Native Assessors, and a Jury constituted according to the mode of constituting a Jury for the purposes of criminal jurisdiction under the said Act.

The word "Native" shall mean any person of the Native Race of New Zealand, and any Half-caste and other person of mixed race living as members of any Native Tribe and Aboriginal Natives of any Island of the Pacific Ocean.

The word "Owner" shall mean a person entitled to any interests or estate in land.

In each Court House in a District there shall be deposited and kept a Book of Record, to be called the "Land Register," in which book shall be entered in the Maori language in manner hereinafter provided the names and descriptions of all persons who may, in pursuance of this Act, be deemed to be the

owners of any land in such District, and the boundaries and description of such land, and any other matter affecting such lands which the Courts shall cause to be entered therein. Such book shall be kept in the custody of the Resident Magistrate.

A copy of, or extract from, such book, certified under the hand of the Resident Magistrate of the District, shall be received as legal evidence in any Court sitting in pursuance of this Act, and in any District Court established under the said "Native Circuit Courts Act, 1858."

Any tribe or subdivision of a tribe desiring to have the land of which they claim the ownership partitioned, and any tribe subdivision of a tribe or individual desiring to have the land of which they or he claims the ownership defined by metes and bounds, must give notice in writing of such claim and desire to any Native Assessor of the District in which such land is situate, specifying in such notice the names of the claimants or claimant and the description and boundaries of such land.

Such Native Assessor shall deliver such notice to the Resident Magistrate on or before the first Circuit Court held after the receipt thereof. And the Resident Magistrate shall unless in his judgment there is good and sufficient cause to prohibit or delay the investigation of such claim, cause the same to be entered in the Land Register, and a copy thereof to be affixed to the door of the Court House, and otherwise published in such manner as he shall think best to secure general cognizance thereof, and shall append to such entry and copy, a notice under his hand that any adverse claims must within a time to be specified in such notice not exceeding _____ months, be made out in writing and delivered to any Native Assessor of the District.

If within the time so specified no adverse claim is so delivered, or, if any adverse claim that may be delivered is in the judgment of the Resident Magistrate, capable of being investigated and decided on, without political excitement or undue risk, the Resident Magistrate shall give notice under his hand to each claimant, both original and adverse, that on a day to be named in such notice the claims will be heard and the title to the land will be investigated at the Court House of the District, and that all Claimants and Witnesses must then and there attend or the matter will be decided in their absence. Such notice shall also be entered in the Land Register and affixed to the door of the Court House.

In case the adverse Claims appear to the Resident Magistrate to be of too intricate a nature, or the judicial consideration thereof is, in his judgment, likely to create political difficulty, he shall in lieu of the notice mentioned in the last clause, give notice in like manner, that the investigation of the claim will not take place, or is postponed until further notice, as to him may seem best.

On the day of hearing and investigation notified as aforesaid, the Court shall hear the claimants, both original and adverse, themselves, their agents and witnesses, and shall decide the matter before them according to equity.

For the purpose of the procedure of the Court, part 2 and part 4 of the said "Native Circuit Courts' Act, 1858," shall (so far as applicable thereto and not inconsistent herewith) be deemed to be incorporated with, and form part of this Act.

Immediately after such decision, the Court shall define with posts, or otherwise with good and permanent marks, the boundaries of the said land; and if the Court has decided that the land shall be divided between the contending claimants in one or more pieces, it shall similarly define the boundaries of each such piece.

The proceedings on the decision of the Court shall be entered in the Land Register, and shall be signed by the Court, and by so many of the claimants as shall be willing to sign the same.

Any person who has been decided, as before described, to be an owner of land, may take a copy of such entry, and such copy shall be certified by the Resident Magistrate.

If any tribe or subdivision of a tribe who have had any land registered as aforesaid, shall at any time subsequent to such registration desire to have such land further partitioned, the Resident Magistrate shall proceed to cause further partition and entry to be made in manner hereinbefore provided for the original partition or investigation, and similarly and at any subsequent time *toties quoties*.

Every alienation either partial or complete, and every devise or descent of any land registered as aforesaid, shall be presented by the Jury at a Court, and shall be investigated and decided upon, and entry thereof shall be made in the Land Register in manner aforesaid.

In any case of such alienation, devise or descent, the copy of the Land Registration (if any) then in existence shall be delivered up, and a copy of the new entry may be taken and certified as aforesaid.

The person whose name shall be last entered in the said Land Register shall be deemed to be the owner of the land of which he is therein described as the owner.

All notices required by this Act to be given to any person shall be served personally.

This Act shall be called, "The Native Land Partition Act, 1858."

V.

DRAFT OF AN INTENDED PROCLAMATION HAVING REFERENCE TO THE ACQUISITION BY EUROPEANS OF LAND FROM THE NATIVES.

By, &c.

WHEREAS there are large tracts of land in the Province of Auckland in a wild and unproductive state, over which the title of the Aboriginal Inhabitants has not been extinguished; and whereas it would promote the interest of both races of Her Majesty's subjects, if certain portions of such lands, situate in various parts of the said Province, were made available for the purposes of beneficial and productive

occupation, and it is therefore expedient that facilities for acquiring the same under proper regulations, should be afforded to persons desirous of settling thereon :

Now, therefore, I, the Governor, do hereby proclaim and declare that from and after the day of next, and until this Proclamation shall have been amended or revoked, the following regulations will be acted upon :—

1. Whenever any person shall be desirous to purchase land, over which the Native title has not been extinguished, he may make an application in writing, addressed to the Native Secretary, requesting that a purchase of the same may be made on his behalf.

2. Every such application must state the estimated number of acres of land required, and describe the same as accurately as may be, both as to position and boundaries.

3. The Governor will give or refuse his assent as to the land being purchased, as he may deem most expedient, having regard to all the circumstances of the particular case ; and will also exercise his discretion at any time before the purchase is complete, whether negotiations for the same shall not be discontinued and the purchase abandoned.

4. If the Governor shall accede to the application that the purchase may be made, the applicant will be informed thereof by letter left at his address in Auckland, or put into the Post there, and he must within seven days thereof pay to the Native Secretary the sum of 5s. an acre on the estimated quantity of the land required ; authority will then be given to Land Purchase Department to effect the purchase, and negotiations will be commenced with the Native owners, so soon as the convenience of the public service will permit.

5. The purchase will be made, and the release of the rights of the Aborigines taken in the name and on behalf of Her Majesty, when the land then comprised will become Waste Lands of the Crown.

6. When the purchase is complete, the land will be surveyed by a surveyor appointed by the Government, and the survey being completed, a Crown Grant will be made to applicant on payment of the sum of an acre, together with the cost of the survey ; the sum previously paid by way of deposit will be deducted from the amount payable.

7. If the Native owners from special circumstances require a larger sum than the price usually given by the Government for Native lands, and the Government deems proper to give, the applicant will, if there be no valid reason against such a course, be permitted to provide the additional funds required for extinguishment of the Native title.

8. If the applicant neglect or refuse to pay the balance of the purchase money and cost of the survey within one month after a notification shall have appeared in the *New Zealand Government Gazette*, requiring the payment of the same, the sum deposited will be deemed forfeited, and every claim whatever on the part of the applicant to have ceased and determined.

9. If the Government deem it advisable to extinguish at the same time the Native Title over other land adjacent to that applied for, a fair proportionate part of the cost of the survey will be charged to the applicant, for the land to be granted to him.

10. In every Crown Grant made in pursuance of these Regulations, there will be reserved a right of constructing Roads, Bridges, and other public works, through, and upon the land therein comprised, for which the owner will be entitled to be partly compensated, either in money, or by other land, at the option of the Government ; the amount of such compensation to be settled by arbitration in the usual manner.

11. All sums of money under these regulations will be applied, first in payment of the expenses incurred, and next in extinguishing the Native rights over other land in the Province of Auckland ; all sums not required for that purpose will be paid over to the Provincial Treasury to be expended in public improvements.

12. No negotiations may be commenced by any person wishing to acquire Native land, with the owners thereof, before application has been made to the Native Secretary, and not afterwards without his written permission ; and the Governor will, in cases where this rule has been contravened, withhold or withdraw his assent to the purchase being undertaken or completed, as the case may be.

13. In the event of the death of any applicant after he shall have paid a deposit, and before the Crown Grant of the land shall have been made, the Governor will, on payment of the balance of the purchase money, and the cost of survey, cause the land to be granted to the heir at law of the applicant, or such other person as the Governor may consider most fairly and equitably entitled to the same, and such grant will be made subject to any trusts or conditions that the Governor may deem just and proper.

