

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

20th August, 1943.

Hon. Mr. Barclay

SERVICEMEN'S SETTLEMENT AND LAND SALES

ANALYSIS

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2 *Servicemen's Settlement and Land Sales*

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A BILL INTITULED

Title. AN ACT to provide for the Acquisition of Land for the Settlement of Discharged Servicemen; and to provide for the Control of Sales and Leases of Land in order to facilitate the Settlement of Discharged Servicemen and to prevent Undue Increases in the Price of Land, the Undue Aggregation of Land, and its Use for Speculative or Uneconomic Purposes; and to provide for Matters incidental thereto.

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

1. (1) This Act may be cited as the Servicemen's Settlement and Land Sales Act, 1943. Short Title and commencement.

(2) This Act shall come into force on the eighteenth day of October, nineteen hundred and forty-three.

2. In this Act, unless the context otherwise requires,— Interpretation.

10 “ Agricultural purposes ” has a meaning corresponding to the term “ agriculture ”, which for the purposes of this definition means the cultivation of the soil for the production of food products or other useful products of the soil, and includes the use of land for horticultural or pastoral purposes, or for the keeping of pigs, bees, or poultry:

15 “ Basic value ” or “ basic rent ”, in relation to any land, means the basic value or basic rent of the land as determined for the purposes of this Act by the Land Sales Committee or, as the case may be, by the Land Sales Court:

20 “ Court ” means the Land Sales Court constituted under this Act:

25 “ Discharged serviceman ” means a serviceman who has received his discharge from any of His Majesty's Forces or, as the case may be, a serviceman who has ceased to serve in any British ship (whether before or after the commencement of this Act):

30 “ Farm land ” means land that, in the opinion of the Land Sales Committee or, as the case may be, of the Land Sales Court, is or should be used exclusively or principally for agricultural purposes:

35 “ Land Sales Committee ” means a Land Sales Committee appointed under this Act; and the expression “ the Land Sales Committee ” or “ the Committee ”, when used in relation to
40 any land or transaction, means the particular Land Sales Committee to which any application or other matter arising under this Act and relating to that land or transaction has been referred:

- “Minister” means the Minister of Lands:
- “Registrar” means a Registrar of the Land Sales Court; and includes a Deputy Registrar of that Court:
- “Serviceman” means any person who, while 5
ordinarily resident in New Zealand, has at any time during the present war (whether before or after the commencement of this Act)—
- (a) Served outside New Zealand as a 10
member of any of His Majesty's Naval, Military, or Air Forces; or
- (b) Served in New Zealand as a member of the training staff of any of His Majesty's Forces; or 15
- (c) Served in New Zealand as a member of any of His Majesty's Permanent Forces, or as a member of any of His Majesty's Forces mobilized for continuous service within New Zealand; or 20
- (d) Served in any capacity in any British ship which while he was serving therein was damaged or destroyed as a result of enemy action, or in any other British ship which was not a home-trade ship within the meaning of 25
the Shipping and Seamen Act, 1908:
- “Transfer” includes a conveyance, assignment, or other disposition.

See Reprint of Statutes, Vol. VIII, p. 249

PART I

THE LAND SALES COURT, AND LAND SALES COMMITTEES 30

The Land Sales Court

Land Sales Court.

3. There is hereby established a Court of record, to be called the Land Sales Court, which, in addition to the jurisdiction and powers specially conferred on it by this Act, shall have all the powers inherent in 35
a Court of record.

4. Subject to the provisions of section *sixteen* of this Act, the Court shall consist of three members, who shall be appointed by the Governor-General in Council. Of the three members of the Court, one shall be the
5 Judge of the Court and shall be so appointed, and the other two members shall be appointed as hereinafter provided.

Constitution of Court.

5. (1) No person shall be eligible for appointment as the Judge of the Court unless he is eligible for
10 appointment as a Judge of the Supreme Court.

Appointment of Judge of Court.

(2) So long as the Court continues in existence, the Judge so appointed shall, as to tenure of office, salary, emoluments, and privileges, have the same rights and be subject to the same provisions as a Judge of the
15 Supreme Court.

(3) This Act shall be deemed to be a permanent appropriation of the salary of the Judge of the Court.

(4) Notwithstanding anything in the foregoing provisions of this section, the Governor-General may
20 appoint a Judge of the Supreme Court to be the Judge of the Land Sales Court, and in that case the Judge so appointed shall hold both offices concurrently.

(5) If and so long as a Judge of the Supreme Court holds office as the Judge of the Land Sales Court he
25 shall be deemed to be absent from his office as a Judge of the Supreme Court, and a Judge may be appointed in his stead, pursuant to section eleven of the Judicature Act, 1908, to hold office during the pleasure of the Governor-General:

See Reprint of Statutes, Vol. II, p. 63

30 Provided that nothing herein shall be construed to deprive the Judge of the Land Sales Court, in any such case, of power to exercise any jurisdiction as a Judge of the Supreme Court.

6. (1) The members of the Court other than the
35 Judge shall be appointed to hold office for such term as the Governor-General in Council in each case thinks fit.

Appointment of other member.

(2) The remuneration and travelling-allowances of such members shall be fixed from time to time by the Governor-General in Council, and shall be paid out of
40 moneys to be appropriated by Parliament for the purpose.

Judge of Court to take judicial oath.

7. The Judge of the Court (not being a Judge of the Supreme Court), as soon as may be after his acceptance of office, shall take and subscribe the Oath of Allegiance and the Judicial Oath, in accordance with section seven of the Promissory Oaths Act, 1908, as if he had been appointed a Judge of the Supreme Court. 5

See Reprint of Statutes, Vol. I, p. 1017

Oath to be taken by other members.

8. Before entering upon the exercise of the duties of their office, the members of the Court other than the Judge shall take and subscribe an oath before the Judge that they will faithfully and impartially perform the duties of their office. 10

Registrars and other officers of Court.

9. (1) There shall from time to time be appointed such Registrars and Deputy Registrars of the Court as may be required. 15

(2) There may also from time to time be appointed such clerks and other officers of the Court as may be necessary.

(3) The office of Registrar or Deputy Registrar or any other office may be held either separately or in conjunction with any other office in the Public Service. 20

Rules of Court.

10. (1) The Governor-General may from time to time, by Order in Council, make rules for regulating the practice and procedure of the Court in all matters within its jurisdiction, and prescribing the fees payable in respect of any matters relating to the proceedings of the Court. 25

(2) Subject to the provisions of this Act and of any rules made under the authority of this section, the practice and procedure of the Court shall be determined by the Court as it thinks proper. 30

Evidence in proceedings before Court.

11. (1) The Court may receive as evidence any statement, document, information, or matter that in the opinion of the Court may assist it to deal effectually with the matters before it, whether or not the same would be otherwise admissible in a Court of law. 35

Ibid., Vol. III, p. 106

(2) Subject to the foregoing provisions of this section, the Evidence Act, 1908, shall apply to the Court and to the members thereof, and to all proceedings therein, in the same manner as if the Court were a Court within the meaning of that Act. 40

12. (1) The presence of the Judge and of at least one other member shall be necessary to constitute a sitting of the Court. Quorum of Court.
- (2) The decision of a majority (including the Judge) of the members present at a sitting of the Court shall be the decision of the Court. If the members present are equally divided in opinion the decision of the Judge shall be the decision of the Court.
- 10 13. The Court shall have in the custody of each Registrar and Deputy Registrar a seal of the Court for the sealing of all orders of the Court and other documents that require to be sealed. Seal of Court.
- 15 14. It shall not only be the duty of the Court to sit as a judicial body for the determination of appeals and other matters formally submitted to it, but it may also of its own motion issue general directions to be observed by the Land Sales Committees in the exercise of their powers and functions under this Act, and may at any time exercise any power or function of a Land Sales Committee under this Act. Court may issue general directions to Land Sales Committees.
- 20 15. Proceedings before the Court shall not be held bad for want of form. No appeal shall lie from any order of the Court, and no proceeding or order as aforesaid shall be liable to be challenged, reviewed, quashed, or called in question in any Court. Proceedings before Court not to be questioned for want of form or appealed against.
- 25 16. (1) Notwithstanding anything in the foregoing provisions of this Part of this Act, the Governor-General may from time to time, by Order in Council, if he thinks fit, appoint not more than two additional Judges of the Court and not more than four other additional members of the Court, to hold office as such during his pleasure. Any person may be appointed and may hold office as a Judge under this section, notwithstanding that he may have attained the age of retirement prescribed for Judges of the Supreme Court by section thirteen of the Judicature Act, 1908. Power to appoint additional members of Court.
- 30 (2) Except as provided in this section, the foregoing provisions of this Part of this Act shall apply with respect to any Judge or Judges or other additional member or members appointed under this section. See Reprint of Statutes, Vol. II, p. 64
- 35 (3) Where any additional Judge is in office under this section references in this Act to the Judge of the Court shall be deemed to include a reference to that additional Judge.
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Land Sales Committees

Power to
establish Land
Sales
Committees.

17. (1) For the purposes of this Act there shall be established such number of Land Sales Committees as the Governor-General in Council thinks necessary. Every Land Sales Committee shall be given such distinctive name as the Governor-General in Council determines, and any such name may from time to time be changed by the Governor-General in Council. 5

(2) Every Land Sales Committee shall consist of such number of persons (not exceeding three) as the Governor-General in each case thinks fit, to be appointed by the Governor-General in Council and to hold office during his pleasure. Where a Committee consists of more than one person, one of the members shall be appointed by the Governor-General in Council to be the Chairman of the Committee, and the quorum at sittings of the Committee shall be such number as the Governor-General in Council determines. 15

(3) The Governor-General in Council may from time to time appoint any person to be the deputy of any member of any Land Sales Committee. The deputy of any member shall have authority to act as a member of the Committee in the event of the absence from any meeting of the member whose deputy he is, and while so acting shall be deemed to be a member of the Committee. 25

(4) Any person may be appointed to hold office concurrently as a member or deputy member of two or more Land Sales Committees.

(5) In the event of the sickness or other incapacity of any member of a Land Sales Committee, the Governor-General in Council may appoint any person to act in the place of that member during his incapacity. 30

(6) Every Land Sales Committee shall, within the scope of its jurisdiction, be deemed to be a Commission under the Commissions of Inquiry Act, 1908, and subject to this Act and to any rules or regulations made under this Act, all the provisions of that Act shall apply accordingly. 35

See Reprint of
Statutes, Vol. I,
p. 1036

(7) The procedure of a Land Sales Committee shall, subject to this Act and to any rules or regulations made under this Act, be such as that Committee thinks fit. 40

18. Before entering upon the exercise of the duties of their office the members and deputy members of every Land Sales Committee shall take and subscribe an oath before the Judge or a Registrar that they will
5 faithfully and impartially perform the duties of their office.

Oath to be taken by members of Committees.

19. (1) Where any application, objection, claim, or other matter is referred to a Land Sales Committee to be dealt with by that Committee in accordance with the
10 provisions of this Act, the Committee shall as soon as practicable fix a time and place for the hearing of the matter, and shall give notice of the time and place so fixed to all parties.

Procedure where matters are referred to a Land Sales Committee.

(2) Every party, and every other person who
15 satisfies the Committee that he is interested in the hearing (whether as a party to any transaction or proposed transaction or as a creditor or otherwise), shall be entitled to appear at the hearing personally or by solicitor, counsel, or agent, and to be heard and
20 to produce evidence and to cross-examine witnesses.

(3) The Committee may from time to time alter the time and place fixed for the hearing and may adjourn the hearing from time to time and from place to place.

(4) The Committee may from time to time before
25 the hearing or during any adjournment thereof exercise such of its powers of inquiry and investigation and such of its other powers as it thinks fit.

20. (1) Every order made by a Land Sales Committee under this Act shall be signed by the Chairman or a member of the Committee and shall be filed in the
30 Court. The Committee shall cause notice of the filing of any order under this section to be given, in such manner as, subject to any rules or regulations made under this Act, the Committee deems sufficient, to all
35 persons affected by the order.

Orders of Committees to be filed in Court.

(2) If an appeal is not lodged under the *next succeeding* section, the order may be sealed by the Court, and thereupon it shall be deemed to be an order of the Court.

40 21. (1) Within fourteen days after the filing of any order of a Land Sales Committee as provided in the *last preceding* section, or within such further time as may be allowed by the Court, any person affected by

Appeals to Land Sales Court.

the order may, in accordance with the rules of the Court, appeal to the Court from the order or from any part thereof. Every such appeal shall be by way of rehearing.

(2) If an appeal is not lodged as aforesaid, the Court, at any time before it seals the order of the Committee, may, of its own motion, direct that the order be reviewed before the Court as if an appeal had been lodged, or that the matter be referred to the Committee for further consideration.

(3) Upon any such appeal or review the Court may confirm, discharge, or vary the order of the Committee, or direct that the matter be referred to the Committee for further consideration, as it thinks fit, and generally may make such order as it considers just and equitable in the circumstances of the case.

Proceedings before Committee not to be questioned except by Land Sales Court.

22. (1) Every Land Sales Committee shall in the exercise of its powers and functions be subject to the general jurisdiction of the Land Sales Court.

(2) Proceedings before a Land Sales Committee shall not be held bad for want of form. No proceeding or order of a Land Sales Committee shall be liable to be challenged, reviewed, quashed, or called in question in any Court except the Land Sales Court.

PART II

25

SETTLEMENT OF DISCHARGED SERVICEMEN

Taking of Farm Land

Power to take farm land for settlement of discharged servicemen.

23. (1) In order to provide for the settlement of a discharged serviceman or of two or more discharged servicemen the Minister may take any farm land under the provisions of this Part of this Act:

Provided that no land shall be so taken unless in the opinion of the Land Sales Committee it is or will be capable of subdivision into two or more economic holdings, and that the owner shall have the right to retain any part of the land constituting an economic holding and containing the homestead (if any) or, at his option, any smaller area containing the homestead, and that if the area to be so retained is not agreed upon it shall be determined by the Minister, subject to the right of the owner to object under section *twenty-five* of this Act:

Provided also that during the present war the land of any serviceman who is for the time being serving outside New Zealand in any of His Majesty's Forces or in any British ship shall not be so taken:

5 . Provided further that no land shall be so taken if it is—

(a) Native land within the meaning of the Native Land Act, 1931:

See Reprint of Statutes, Vol. VI, p. 103

10 (b) Land owned by Natives within the meaning of that Act:

(c) Land held or administered by any statutory trustee or statutory Board or body for and on behalf of Natives within the meaning of that Act.

15 (2) Nothing in this section shall be deemed to affect the power of the Crown to acquire land by way of purchase or by way of gift or otherwise under the Small Farms Act, 1932-33, or any other Act.

1932-33, No. 43

20 **24.** (1) Whenever the Minister intends to take any land under this Part of this Act he shall give notice of his intention to the owners and occupiers of the land and to all other persons having any interest in the land, so far as they can be ascertained.

Notice of intention to take land.

25 (2) Every notice under this section shall specify the date on which possession of the land is required, and a date (being not less than thirty days after the date of the notice) on or before which objections may be made under the *next succeeding* section.

30 (3) Every notice relating to part only of any property shall have attached thereto a plan or diagram showing the boundaries and area of the land to which the notice relates.

(4) Any notice under this section may be at any time revoked by a subsequent notice under this section.

35 **25.** (1) Any owner or occupier of any land affected by a notice under the *last preceding* section or any other person having any interest in the land may object to the taking of the land.

Objections.

40 (2) Every objection under this section shall be made in writing setting out the grounds of the objection and shall be served on the Minister within the time specified in that behalf in the notice of intention to take the land.

45 (3) If after receiving any such objection the Minister does not revoke the notice, he shall cause a copy of the objection to be filed in an office of the Land Sales Court.

Objections to
be referred to
a Land Sales
Committee.

26. (1) As soon as conveniently may be after the filing of any objection under the *last preceding* section, the Registrar in whose office the objection has been filed shall refer the matter to a Land Sales Committee to be dealt with by that Committee in accordance with the provisions of this Act. 5

(2) Unless the Court otherwise directs, the Land Sales Committee to which any matter is referred as aforesaid shall be the Committee usually exercising its functions under this Act in the locality in which the land to which the objection relates is situated. 10

(3) After hearing any such objection the Committee may make an order allowing the objection or disallowing it either unconditionally or upon or subject to such conditions (whether as to the date of vesting or as to the area of land to be taken or otherwise) as the Committee thinks fit: 15

Provided that the area of land to be taken shall not be varied by the inclusion of any additional land without the consent of the objector. 20

Land to be
taken by
notice in
Gazette.

27. (1) If no objection is made as aforesaid to the taking of the land specified in any such notice, or if the Court disallows all such objections, the Minister may by notice in the *Gazette* declare that the land is taken for the settlement of discharged servicemen. 25

(2) Subject to any conditions imposed under subsection *three* of the *last preceding* section, the land so taken shall be the land specified in the notice of intention to take the land, except where the Minister, at the request of the owners and occupiers, agrees to a variation of the area to be taken, whether by the exclusion of any part of the land or by the inclusion of any additional land. 30

(3) Upon a date to be specified in that behalf in the *Gazette* notice (in this Part referred to as the date of vesting) the land specified in the *Gazette* notice shall be deemed to be vested in His Majesty the King, and to be freed from all restrictions, encumbrances, liens, and interests, except those specified in that behalf in the notice, and if the land is freehold land it shall be deemed to be Crown land subject to the Small Farms Act, 1932-33, and shall be deemed to be included in the expression "Crown land subject to the principal Act" as defined in subsection three of section two of the Small Farms Amendment Act, 1935. 35
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1932-33, No. 43

1935, No. 9

Compensation

28. (1) Every person having any estate or interest in any land taken under this Part of this Act shall be entitled to compensation therefor. Compensation.

5 (2) In any case where land is taken under this Part of this Act the Minister shall offer such sum as he thinks fit, and if the offer is not accepted by the claimant the compensation payable shall be ascertained by the Land Sales Court as hereinafter provided.

10 (3) The amount of compensation to be awarded on a claim under this Part of this Act shall be assessed at the value (as at the date of vesting) of the claimant's estate or interest, based on the basic value of the land as determined under this Act:

15 Provided that the Court may add to the compensation as so assessed such amount or amounts as the Court considers the claimant to be entitled to by reason of any special loss arising out of the compulsory taking of the land. Full particulars of every amount
20 so added and of the grounds on which it is added shall be specified in the award of the Court.

29. (1) No claim for compensation under this Part of this Act shall be made after a period of six months from the date of vesting specified in the *Gazette* notice
25 taking the land. Claims for compensation.

(2) Every claim for compensation shall be made in writing in the prescribed form or to like effect, and shall be filed in the office of the Court nearest to the land to which the claim relates.

30 (3) A copy of the claim shall be served on the Minister.

30. (1) As soon as conveniently may be after the filing of any claim as aforesaid, the Registrar in whose office the claim has been filed shall refer the matter
35 to a Land Sales Committee to be dealt with by that Committee in accordance with the provisions of this Act. Claims for compensation to be referred to a Land Sales Committee.

(2) Unless the Court otherwise directs, the Land Sales Committee to which any matter is referred as aforesaid shall be the Committee usually exercising its
40 functions under this Act in the locality in which the land to which the claim relates is situated.

31. Every order of the Court determining a claim for compensation shall be final as regards the amount awarded, but shall not be deemed to be final as regards Order awarding compensation.

the right or title of the claimant or any other person to receive the same or any part thereof.

Power to discontinue proceedings on payment of costs and expenses.

32. (1) At any time before an order fixing the compensation to be paid in respect of the taking of any land has been made, the Minister may discontinue the proceedings on terms of paying costs and expenses as hereinafter provided. 5

(2) The discontinuance shall be effected by gazetting a notice under the hand of the Minister that the *Gazette* notice taking the land is revoked and the proceedings are discontinued. 10

(3) A copy of the notice shall be filed in the office of the Court nearest to the land to which the notice relates, and a copy shall be served on each claimant.

(4) The claimants shall be entitled to payment of the proper costs and expenses incurred up to the date of the discontinuance, and the amount thereof shall, where necessary, be fixed by the Land Sales Court. 15

Title to and Application of Compensation

Public Trustee to represent absentee claimants.

33. If the Court so directs in any case where any person who has any right or title to prefer a claim for compensation is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the Public Trustee shall represent the claimant and may act on his behalf in all matters incident to the claim or the hearing thereof, and the moneys payable as compensation shall be paid into the Public Trust Office and shall there remain subject to the provisions of section *thirty-four* of this Act. 20 25 30

When title doubtful, compensation to be paid into Public Trust Office.

34. If any doubt or dispute arises as to the right or title of any person to receive any compensation awarded under this Part of this Act, or any compensation agreed to be paid by the Minister under this Part of this Act,— 35

(a) In the case of compensation awarded by the Court, the Minister may, within the period of sixty days after the sealing of the order awarding the compensation, cause the sum awarded to be paid into the Public Trust Office; and the Public Trustee shall deal with and apply the moneys in such manner and shall pay the same to such persons as the Supreme Court, upon the application of any of the parties interested, may order: 40 4

5 (b) In the case of compensation agreed to be paid, the Minister may pay the same into the Public Trust Office; and the Supreme Court may make such order in relation thereto, upon the application of any of the parties interested, as it thinks just and proper; and the Public Trustee shall deal with and pay the compensation in accordance with that order:

10 (c) In any case which may be heard or disposed of by the Supreme Court under this section, that Court may order that all or any costs incurred in or in relation to the case, either before the Land Sales Court or before the Supreme Court, shall be paid by such of the parties, whether claimant, Minister, or a person interested as aforesaid, or that the costs be apportioned between such parties in such manner respectively as the Supreme Court may order; and that Court may vary or revoke any order previously made by the Land Sales Court as to costs.

25 **35.** (1) If compensation is awarded or has been agreed to be paid as last aforesaid in respect of land or any interest therein taken from any person having a partial or qualified interest only in the land, and not entitled to sell or convey the same, the compensation shall be dealt with as follows, that is to say:—

How compensation in case of limited interests to be dealt with.

30 (a) If the compensation amounts to two hundred pounds or upwards it shall be paid into the Public Trust Office, and the Public Trustee shall apply the same, upon an order of the Supreme Court made on the petition of any person claiming any estate or interest in the same, to one or more of the following purposes, that is to say:—

35 (i) To the discharge of any debt or encumbrance affecting the land, or affecting any of the land settled therewith, or to the same or like uses, trusts, or purposes:

(ii) In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, or purposes:

(iii) In removing any buildings on the said land, or substituting others in their stead: 5

(iv) In the purchase of such securities as the Supreme Court may direct, to be settled in the same manner as the said land:

(v) In payment to any party becoming absolutely entitled thereto: 10

(b) If the compensation is more than twenty but less than two hundred pounds it shall be paid into the Public Trust Office, and the Public Trustee may apply the same to any of the above-mentioned purposes; but no order of the Supreme Court shall be necessary: 15

(c) If the compensation is not more than twenty pounds it shall be paid to the parties entitled to the rents and profits of the said land; or, in case of the disability or incapacity of the parties, to their respective husbands, guardians, committees, or trustees, as the case may be. 20

(2) The provisions of this section shall not be deemed to prevent any person who has a partial or other qualified interest in land to which interest he is solely entitled, and which he may absolutely sell or dispose of, from receiving any compensation in respect of that interest to which he may be declared entitled under any order, or which has been agreed to be paid to him as aforesaid. 25 30

Public Trustee
may invest
compensation-
money.

36. Until any compensation deposited in the Public Trust Office under this Part of this Act is applied as provided by the *last preceding* section the Public Trustee shall invest the same upon investments upon which any moneys in the Public Trust Office may by law be invested, and shall pay the annual proceeds thereof to the party for the time being entitled to the rents and profits of the land in respect of which the compensation was awarded. 35 40

37. (1) If the land in respect of which compensation is awarded is subject to a mortgage, the compensation, or so much thereof as is required for the purpose, shall, upon the application of the mortgagee, be paid in discharge of the mortgage debt, or of part thereof, so far as the compensation will go; and if the land is a part of lands subject to a mortgage debt, and the mortgagee requires a part of the debt to be discharged, the Land Sales Court shall determine what part of the compensation shall be paid in discharge of part of the mortgage debt, so that the remaining part of the mortgaged lands constitute as good security as theretofore for the part of the mortgage debt remaining undischarged.

Mortgaged lands.

(2) In this section the expression "mortgage debt", in relation to any mortgage, includes the interest payable on the mortgage up to six months beyond the day on which notice was received by the mortgagee of the land affected being taken under this Part of this Act.

38. (1) If the land is subject to any rent-charge, the Land Sales Court shall determine what part of the compensation shall be paid to the party entitled to the rent-charge in redemption thereof; and if the land is part of land subject to any rent-charge, the Court shall determine what part of the rent-charge shall be redeemed and what part of the compensation shall be paid in the redemption thereof, so that the remaining part of the land subject to the rent-charge shall be as good security as theretofore for the part of the rent-charge remaining unredeemed.

Lands subject to rent-charge.

(2) In this section the expression "rent-charge" includes an annuity.

39. If the land is part of land in respect of which any rent is payable, the Land Sales Court shall determine what part of the rent shall cease to be payable, so that the rent ceasing to be payable shall bear the same proportion to the whole rent as the value of the land in respect of which compensation is awarded bears to the value of the whole land.

Lands on which rent is payable.

Miscellaneous

Land taken to be properly farmed until date of vesting.

40. (1) During the period between the giving of the notice of intention to take any land under this Part of this Act and the date of the vesting of the land in His Majesty, the owner or occupier of the land— 5

(a) Shall continue to farm the land in accordance with the accepted practice of good husbandry in the district in which the land is situated:

(b) Shall maintain all buildings, fences, structures, and fixtures on the land in good and substantial repair, excepting depreciation from fair wear-and-tear, weather or natural causes without neglect of the owner or occupier, damage by fire, earthquake, tempest, or inevitable accident: 10 15

(c) Shall not overstock the land to the extent that the grazing value of the land may be injuriously affected:

(d) Shall not do anything upon or under the land with the purpose or effect of rendering the development or settlement of the land more difficult or costly. 20

(2) If any owner or occupier fails to comply with the provisions of this section the Court may reduce the compensation to be awarded to him by the amount of the loss or damage caused by the non-compliance, and may if necessary amend its award accordingly. 25

Power to carry out works on land before date of vesting.

41. (1) The Minister or any person authorized by him either specially or generally may from time to time after the publication in the *Gazette* of the notice taking any land under this Part of this Act and before the date of the vesting of the land in His Majesty enter upon the land and carry out any works or do any other things considered necessary for the purpose of promoting the development or settlement of the land. 30 35

(2) Any person having any estate or interest in the land who is prejudicially affected by the exercise of the powers conferred by this section shall be entitled to compensation therefor as for a special loss under this Part of this Act. 40

(3) The value of any improvements effected by the Minister under this section shall not be taken into account by the Court in assessing the value of the land for the purposes of compensation.

5 42. The Minister or any person authorized by him either specially or generally may enter on any land at any time for the purpose of making any inspection, valuation, or survey for the purposes of this Part of this Act.

Entry on land for purposes of inspection, &c.

PART III

CONTROL OF SALES AND LEASES OF LAND

Consent of Court required to certain Transactions

10 43. (1) Subject to the provisions of this section, this Part of this Act shall apply to every contract or agreement—

Transactions to which this Part applies.

- 15 (a) For the sale or transfer of any freehold estate or interest in land, whether legal or equitable:
- (b) For the leasing of any land for a term of not less than three years:
- (c) For the sale or transfer of any leasehold estate or interest in land, whether legal or equitable, of which a period of not less than three years is unexpired:
- 20 (d) For the granting of an option to purchase or otherwise acquire any freehold or leasehold estate or interest in land as aforesaid, or to take any lease as aforesaid.

25 (2) Nothing in this Part of this Act shall apply with respect to—

- (a) Any transaction entered into before the commencement of this Act, or the exercise of any option granted before the commencement of this Act:
- 30 (b) Any contract or agreement for the transfer of any estate or interest in land, or for the leasing of any land, without any valuable consideration in money or money's worth:
- 35 (c) Any renewal of a lease or of a contract or agreement for a lease pursuant to a provision in that behalf contained in the lease or contract or agreement:
- 40 (d) Any contract or agreement for the transfer of any estate or interest in land by way of security only, or for the retransfer of property so transferred on the discharge of the security:

- (e) Any contract or agreement for the transfer of any estate or interest in land from a trustee to a trustee on the appointment of a new trustee or on the retirement of a trustee:
- (f) Any contract or agreement for the transfer by a trustee, executor, or administrator to a beneficiary of any estate or interest in land to which the beneficiary is entitled under any trust, will, or intestacy: 5
- (g) Any contract or agreement for the transfer of any estate or interest in land to be held on a charitable trust in New Zealand: 10
- (h) Any contract or agreement for the sale or transfer of any estate or interest in land, or for the leasing of any land, by or to the Crown: 15
- (i) Any transaction for which the approval, consent, or permission of the Minister of Lands or of a Land Board or of both that Minister and a Land Board is required under any Act or regulations: 20
- (j) Any transaction in respect of which the confirmation of the Native Land Court is required under Part XIII or Part XVIII of the Native Land Act, 1931: 25
- (k) Any contract or agreement for the sale or transfer of any estate or interest in land, or for the leasing of any land, by or by direction of the Board of Native Affairs or any Maori Land Board or to any such Board: 30
- (l) Any transaction for which the approval, consent, or permission of the Board of Native Affairs is required under any Act or regulations:
- (m) Any contract or agreement for the dedication of a road or street: 35
- (n) Any transaction of a class for the time being exempted from this Part of this Act by regulations made under this Act.
- (3) Where any lease or any contract or agreement for a lease contains a provision enabling the lease or the contract or agreement for a lease to be renewed for any period or successive periods upon the expiration of 40

See Reprint
of Statutes,
Vol. VI, p. 103

the original term thereof, the period or periods for which the lease or the contract or agreement may be so renewed shall, for the purposes of this Part of this Act, be deemed to be part of the original term thereof.

- 5 (4) In considering any application for the confirmation of an alienation under Part XIII of the Native Land Act, 1931, or for the confirmation of a resolution under Part XVIII of that Act, the Native Land Court shall have regard to the provisions of this Act.

See Reprint
of Statutes,
Vol. VI, p. 103

- 10 44. (1) Unless the consent of the Court has first been obtained, no person shall (whether as vendor, purchaser, lessor, lessee, or other party, and whether as principal or agent) enter into any transaction to which this Part of this Act applies.

Prohibiting
transactions
without consent
of Court.

- 15 (2) No person shall procure or induce any other person to enter into any transaction in contravention of this Part of this Act.

- (3) No person shall be entitled to any commission, reward, or other valuable consideration in respect of
20 any transaction entered into in contravention of this Part of this Act.

45. Where a transaction to which this Part of this Act applies has been entered into subject to the consent of the Court, the transaction shall not be
25 deemed to have been entered into in contravention of this Part of this Act if an application for the consent of the Court is made within one month after the date of the transaction, but the transaction shall not have any effect unless the Court consents to it and the
30 conditions upon or subject to which the consent is granted are complied with.

Transactions
may be
entered into
subject to
consent of Court.

46. Where any transaction is entered into in con-
travention of this Part of this Act, or where any
condition upon or subject to which the Court grants
35 its consent to any transaction is not complied with, the transaction shall be deemed to be unlawful and shall have no effect.

Transactions in
contravention
of this Part to
be invalid.

Powers of District Land Registrar and Registrar of Deeds.

47. The District Land Registrar or the Registrar of Deeds may, upon the submission to him for registration of any instrument relating to a transaction in connection with any land, require such evidence as he deems necessary that the transaction to which the instrument relates is not in contravention of any provision of this Part of this Act, and may refuse to register the instrument until such evidence is submitted to him. 5

Applications for Consent 10

Applications for consent.

48. (1) Application for the consent of the Court to any proposed transaction may be made in accordance with this section by or on behalf of the intending vendor or lessor.

(2) Application for the consent of the Court to any transaction entered into subject to the consent of the Court may be made in accordance with this section by or on behalf of any party to the transaction. 15

(3) Every application under this section shall be filed in the office of the Court nearest to the place where the land or any part of the land to which the transaction relates is situated. 20

(4) Every application under this section shall contain or be accompanied by such particulars, information, or documents as may be prescribed or as may be required by the Court or the Land Sales Committee, and shall be verified by the statutory declaration of the applicant or of some other person with a knowledge of the facts. 25

(5) Any application under this section may be amended by the Court or the Land Sales Committee of its own motion or on the application of the applicant or any other person interested in the application, at any time before the application is finally determined, and upon or subject to such conditions as the Court or the Committee thinks fit. 30 35

Application to be referred to a Land Sales Committee.

49. (1) As soon as conveniently may be after the filing of any application under the *last preceding* section, the Registrar in whose office the application has

been filed shall refer the matter to a Land Sales Committee to be dealt with by that Committee in accordance with the provisions of this Act.

(2) Unless the Court otherwise directs, the Land Sales Committee to which any matter is referred as aforesaid shall be the Committee usually exercising its functions under this Act in the locality in which the land to which the application relates is situated.

Granting or Refusal of Consent

10 50. (1) If in any case the Land Sales Committee is satisfied that the application should be granted, the Committee may make an order consenting to the transaction in accordance with the application without calling on the applicant or hearing evidence.

Decision of
Land Sales
Committee.

15 (2) After hearing any application for the consent of the Court to any transaction the Land Sales Committee may make an order refusing the application or granting it either unconditionally or upon or subject to such conditions as the Committee thinks fit.

20 (3) In considering any such application the Land Sales Committee shall have regard to the desirability of facilitating the settlement of discharged servicemen and of preventing undue increases in the price of land, the undue aggregation of land, and its use for
25 speculative or uneconomic purposes, taking into account the circumstances of the particular case and all other relevant considerations, including in particular the following matters:—

30 (a) The amount of the purchase-money, rent, or other consideration to be paid, and the extent to which it exceeds the consideration paid in any previous transaction:

35 (b) The terms of the transaction, and the terms of any other transaction in any way related thereto:

40 (c) The suitability of the purchaser or lessee having regard to the purposes for which the land is being or in the opinion of the Committee should be used and to the area of the other lands (if any) held by him:

(d) In the case of farm land the suitability or adaptability of the land for the settlement of a discharged serviceman or of two or more discharged servicemen.

(4) Except in cases where the Land Sales Committee decides that it is not necessary to determine the basic value or basic rent, no application for the consent of the Court to any transaction shall be granted if the purchase-money, rent, or other consideration exceeds the basic value or basic rent of the land, as the case may be. 5

Special provisions as to land suitable for settlement of discharged servicemen.

51. Where in the opinion of the Land Sales Committee the land to which any application relates or any part thereof is farm land suitable or adaptable for the settlement of a discharged serviceman or of two or more discharged servicemen, the following provisions shall apply:— 15

(a) If the Committee is satisfied that the Crown has decided not to acquire or arrange for the acquisition of the land, the Committee shall disregard the suitability or adaptability of the land as aforesaid in considering the application: 20

(b) If the Committee is not so satisfied, the Committee shall make an order determining the basic value of the land: 25

(c) At any time within one month after the sealing of that order or, in the event of an appeal from the order, within one month after the sealing of the order determining the appeal, the Minister may by notice in the *Gazette* declare that the land is taken for the settlement of discharged servicemen: 30

Provided that during the present war the land of any serviceman who is for the time being serving outside New Zealand in any of His Majesty's Forces or in any British ship shall not be so taken: 35

5 (d) Where the land is taken as aforesaid the provisions of Part II of this Act shall, so far as they are applicable and with the necessary modifications, apply as if the *Gazette* notice had been duly given under section *twenty-seven* of this Act, and as if the reference in subsection *one* of section *forty* of this Act to the giving of notice of intention to take the land were a reference to the filing of the application:

10 (e) If the land is not taken as aforesaid within the time limited in that behalf by paragraph (c) of this section, or if the Committee is at any time satisfied that the Crown has decided not to acquire or arrange for the acquisition of the land, the Committee shall disregard the suitability or adaptability of the land as aforesaid in considering the application.

15 52. (1) The Land Sales Committee may call upon any person to whom consent has been granted under this Part of this Act to show cause why that consent should not be revoked on the ground—

Power to revoke consent in certain cases.

20 (a) That a false or misleading statement has been made in connection with the application for consent; or

25 (b) That all the material facts in connection with the transaction were not submitted to the Land Sales Committee.

(2) Where the Land Sales Committee calls upon 30 any person to show cause under this section, that person shall forthwith forward to the Committee the order granting consent and shall not enter into or complete or proceed with the transaction to which the consent relates until the Committee has determined whether or 35 not the consent shall be revoked.

(3) Unless cause is shown to the Land Sales Committee why the consent should not be revoked, the Committee may by order revoke the consent, which shall thereupon, for the purposes of this Act, be deemed not 40 to have been obtained.

PART IV

BASIC VALUE AND BASIC RENT

Basic value of farm land.

53. (1) For the purposes of this Act the basic value of any farm land shall be deemed to be the productive value of that land, as ascertained in the manner provided by this section, increased or reduced by such amount as the Land Sales Committee deems necessary in order to make it a fair value for the purposes of this Act. 5

(2) In determining whether it is necessary to make any increase or reduction in the productive value as aforesaid the Land Sales Committee shall consider— 10

(a) The nature and extent of the estate or interest of the claimant or, as the case may be, of the vendor or lessor in the land: 15

(b) The extent to which the value of the improvements on the land exceeds or is less than the value of the improvements normally required:

(c) Any special value that the land may have by reason of its locality: 20

(d) Such other matters affecting the land as the Committee considers relevant.

Productive value.

(3) For the purposes of this Act the productive value of any farm land shall be deemed to be an amount equal to the net annual income (as ascertained in the manner provided by this section) that can be derived from the land by the average efficient farmer, capitalized at the rate of four and one-half per centum. 25

(4) In order to ascertain the net annual income referred to in the *last preceding* subsection, there shall be deducted from the gross income that can be derived from the land as aforesaid all expenses, other than capital expenditure, required to be incurred in the production of such income. The amount of the gross income as aforesaid shall be determined on the basis of the prices for farm products ruling on the fifteenth day of December, nineteen hundred and forty-two. 30 35

(5) For the purposes of the *last preceding* subsection the expenses required to be incurred in the production of the income shall be deemed to include (in addition to all other amounts properly included therein) rates and land-tax, provision for reasonable 40

5 maintenance, reasonable remuneration for the work performed by the farmer or any other person in the production of the income, and interest on the average annual value of the stock and chattels required to be used in the farming operations, computed at the rate of five per centum per annum.

10 **54.** (1) For the purposes of this Act the basic value of any land other than farm land shall be deemed to be the value thereof as at the fifteenth day of December, nineteen hundred and forty-two, as determined by the Land Sales Committee, increased or reduced by such amount as the Committee deems necessary to make it a fair value for the purposes of this Act. Basic value of other land.

15 (2) In determining whether it is necessary to make any increase or reduction as aforesaid, the Land Sales Committee shall consider—

(a) The nature and extent of the estate or interest of the vendor or lessor in the land:

20 (b) Any increase or reduction since the fifteenth day of December, nineteen hundred and forty-two, in the value of the improvements on the land:

(c) Such other matters affecting the land as the Committee considers relevant.

25 **55.** For the purposes of this Act the basic rent of any land shall be deemed to be such rent as is determined by the Land Sales Committee, having regard to the basic value of the land, the value of the lessee's interest (if any) in the improvements on the land, and Basic rent.
30 all other relevant considerations, including the basic rent or the fair rent (if any) of the land under the Fair Rents Act, 1936, or the Economic Stabilization
Emergency Regulations 1942. 1936, No. 14
Serial number
1942/335

PART V

35 MISCELLANEOUS

56. (1) In any case where it is provided by this Act that any notice or document is to be served on any person, the notice or document shall be delivered to that person, and may be delivered to him either Service of notices or documents.
40 personally or by posting it by registered letter

addressed to that person at his last known place of abode or business in New Zealand. A notice or document so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.

(2) If the person is absent from New Zealand, the notice or document may be delivered as aforesaid to his agent in New Zealand. If he is deceased the notice or document may be delivered as aforesaid to his personal representatives.

(3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or document shall be delivered in such manner as may be directed by an order of the Court or of the Land Sales Committee.

(4) Notwithstanding anything in the foregoing provisions of this section, the Court or the Land Sales Committee may in any case make an order directing the manner in which any notice or document is to be delivered, or dispensing with the delivery thereof.

Applications for consent and orders granting consent to enure notwithstanding death of vendor or lessor.

57. (1) In the event of the death of the vendor or lessor under a transaction or proposed transaction in respect of which an application for consent is pending under Part III of this Act, the application and all proceedings in respect thereof shall enure and be continued as if it had been made by or in respect of the personal representatives of the deceased person.

(2) In the event of the death of the vendor or lessor under a transaction or proposed transaction to which consent has been granted under Part III of this Act, the order granting consent shall enure as if it had been granted to or in respect of the personal representatives of the deceased person.

Proceedings to be in public unless Court or Land Sales Committee otherwise determines.

58. (1) All proceedings before the Court or a Land Sales Committee shall be heard in public, unless the Court or the Committee in any particular case, due regard being had to the interests of the parties and of all other persons concerned, considers that the hearing or any part thereof should take place in private:

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Provided that the Court or Committee may deliberate in private as to its decision in the proceedings or as to any question arising in the course of the proceedings.

(2) The Court or a Land Sales Committee may
5 make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any matter before the Court or the Committee:

Provided that no such order shall be made pro-
10 hibiting the publication of the names and descriptions of the parties to the matter, particulars of the land affected, or the amount claimed or awarded as compensation, or, as the case may be, the amount of the purchase-money, rent, or other consideration for which
15 the consent of the Court is applied for or granted.

59. The Court may at any time dismiss any
objection, claim, or application under this Act if it is
satisfied that the objection, claim, or application is
frivolous or vexatious or is made solely for the purpose
20 of delay.

Court may
dismiss
frivolous
or vexatious
objections, &c.

60. (1) On the hearing of any proceedings before
the Court or a Land Sales Committee the Crown may
be represented by any person appointed by the Minister
in that behalf either generally or in respect of any
25 class of proceedings or in respect of any particular
proceedings.

Crown
representatives.

(2) The Crown representative at the hearing of any
proceedings shall have a right to be heard and to
produce evidence and to cross-examine witnesses.

30 61. Subject to this Act and to any rules or regu-
lations made under this Act, the Court or a Land Sales
Committee, upon the hearing of any proceedings, may
order that the whole or any portion of the costs of the
proceedings or of any party thereto shall be paid by
35 the Crown or by any of the parties to the proceedings.

Power to
award costs.

62. The Governor-General may from time to time,
by Order in Council, fix the maximum fees that may
be charged by any solicitor to any client in respect of
proceedings in the Court or before any Land Sales
40 Committee under this Act.

Power to fix
solicitors' fees
in respect of
proceedings
under this Act.

63. (1) In order that full effect may be given to
the intent and purpose of this Act the Court and
(subject to the control of the Court) every Land Sales
Committee shall, in every matter coming before it, have
45 full power and jurisdiction to deal with and determine

General
jurisdiction of
Court and Land
Sales
Committees.

the matter in such manner and to make such order, not inconsistent with this Act, as it deems just and equitable in the circumstances of the case, notwithstanding that express provision in respect of the matter is not contained herein.

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(2) In the course of any proceedings before it the Court and every Land Sales Committee may, with or without any application, and upon such terms as to notice to parties and otherwise as it thinks fit, proceed to exercise any part of its jurisdiction the exercise of which in those proceedings it deems necessary or advisable.

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Enforcement of orders.

64. For the purpose of enforcing any order of the Court a copy of the order, under the seal of the Court, may be filed without payment of any fee in any office of the Supreme Court or of a Magistrate's Court, as the Land Sales Court directs, whereupon the order shall have the effect of a judgment of the Supreme Court or of the Magistrate's Court, as the case may be, and may be enforced accordingly.

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Stamping of agreements, transfers, leases, and other instruments to which this Act applies.

65. (1) The Commissioner of Stamp Duties or other proper officer of the Stamp Duties Office may, upon the presentation for stamping of any instrument relating to a transaction in connection with any land, require such evidence as he deems necessary that the transaction to which the instrument relates is not in contravention of any provision of Part III of this Act, or, in the case of a transaction entered into subject to the consent of the Court, that the consent of the Court has been granted, and may refuse to stamp the instrument until such evidence is submitted to him.

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(2) Where an application for the consent of the Court to any transaction entered into subject to the consent of the Court is filed in any office of the Court, any instrument relating to the transaction may be filed in that office of the Court together with the application or at any time while the application is pending, and in any such case, if the application is granted, the Registrar shall transmit the instrument to the Stamp Duties Office, and the instrument shall be deemed for the purposes of sections thirty and thirty-one of the Stamp Duties Act, 1923, to have been presented for stamping by the Stamp Duties Office on the date of its filing in the Court.

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See Reprint of Statutes, Vol. VII, p. 411

5 **66.** (1) No stamp duty under the Stamp Duties Act, 1923, or any other Act shall be chargeable in respect of any order of the Court, or in respect of any statutory declaration that is required for the purposes of this Act.

Exemptions from stamp duty and registration fees. See Reprint of Statutes, Vol. VII, p. 402

(2) Regulations may from time to time be made under this Act exempting from stamp duty any other classes of instruments required for the purposes of this Act.

10 (3) No fees shall be payable to any District Land Registrar or Registrar of Deeds for registering any instrument that is exempted from stamp duty by this section or by any regulations made as aforesaid.

15 **67.** (1) The Governor-General may from time to time, by Order in Council, make all such regulations as in his opinion may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

Regulations.

20 (2) All regulations made under this section shall be laid before Parliament within twenty-eight days after the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the commencement of the next ensuing session.

25 **68.** (1) Every person commits an offence against this Act who—

Offences.

30 (a) Without lawful excuse acts in contravention of or fails to comply in any respect with any provision of this Act or of any regulations, order, or condition made or imposed under this Act:

35 (b) With intent to deceive makes any false or misleading statement or any material omission in any communication with or application to the Court or any Land Sales Committee or any person (whether in writing or otherwise) for the purposes of this Act.

(2) Every person who commits an offence against this Act shall be liable on summary conviction—

40 (a) In the case of an individual, to imprisonment for a term not exceeding *three months*, or to a fine not exceeding *one hundred pounds*, or to both such imprisonment and such fine:

45 (b) In the case of a body corporate, to a fine not exceeding *five hundred pounds*.

(3) In any proceedings for an offence against this Act, the burden of proving that the consent of the Court has been granted to any transaction or that Part III of this Act did not apply to any transaction shall be on the person charged with the offence. 5

See Reprint of
Statutes,
Vol. II, p. 365

(4) Section fifty of the Justices of the Peace Act, 1927, shall not apply with respect to a prosecution for an offence against this Act.

Repeals.
1940, No. 28

69. Sections four to eleven of the Small Farms Amendment Act, 1940, and the First and Second Schedules to that Act are hereby repealed. 10

Duration
of Act.

70. (1) This Act shall continue in force until the expiration of five years from the termination of the present war, and shall then expire.

(2) The expiry of this Act shall not affect the right of any person to any compensation under this Act, or the liability of any person for any offence against this Act, and any proceedings may be taken, continued, and completed accordingly after the expiry of this Act as if the Act were still in force. 15 20