

The Natives' Land Act

[No. 27, 1913.]

ACT

TO Make further provision as to the purchase and leasing of Land by Natives and other Persons in the several parts of the Union and for other purposes in connection with the ownership and occupation of Land by Natives and other Persons.

Be it enacted by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows: --

1. (1) From and after the commencement of this Act, land outside the scheduled native areas shall, until Parliament, acting upon the report of the commission appointed under this Act, shall have made other provision, be subjected to the following provisions, that is to say: --

Except with the approval of the Governor-General --

- a. a native shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a person other than a native, of any such land or of any right thereto, interest therein, or servitude thereover; and
- b. a person other than a native shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a native of any such land or of any right thereto, interest therein, or servitude thereover.

(2) From and after the commencement of this Act, no person other than a native shall purchase, hire or in any other manner whatever acquire any land in a scheduled native area or enter into any agreement or transaction for the purchase, hire or other acquisition, direct or indirect, of any such land or of any right thereto or interest therein or servitude thereover, except with the approval of the Governor-General.

(3) A statement showing the number of approvals granted by the Governor-General under sub-sections (1) and (2) of this section and giving the names and addresses of the persons to whom such approvals were granted, the reasons for granting the same, and the situation of the lands in respect of which they were granted, shall, within six weeks after the commencement of each ordinary session of Parliament, be laid upon the Tables of both Houses of Parliament.

(4) Every agreement or any other transaction whatever entered into in contravention of this section shall be null and void *ab initio*.

2. (1) As soon as may be after the commencement of this Act the Governor-General shall appoint a commission whose functions shall be to inquire and report --

- a. what areas should be set apart as areas within which natives shall not be permitted to acquire or hire land or interests in land;
- b. what areas should be set apart as areas within which persons other than natives shall not be permitted to acquire or hire land or interests in land.
- c. The commission shall submit with any such report --
 - i. descriptions of the boundaries of any area which it proposes should be so set apart; and
 - ii. a map or maps showing every such area.

(2) The commission shall proceed with and complete its inquiry and present its reports and recommendations to the Minister within two years after the commencement of this Act, and may present *interim* reports and recommendations: Provided that Parliament may by resolution extend (if necessary) the time for the completion of the commission's inquiry. All such reports and recommendations shall be laid by the Minister, as soon as possible after the receipt thereof, upon the Tables of both Houses of Parliament.

3. (1) The commission shall consist of not less than five persons, and if any member of the commission die or resign or, owing to absence or any other reason, is unable to act, his place shall be filled by the Governor-General.

(2) The commission may delegate to any of its members the carrying out of any part of an inquiry which under this Act it is appointed to hold and may appoint persons to assist it or to act as assessors thereto or with any members thereof delegated as aforesaid, and may regulate its own procedure.

(3) The reports and recommendations of the majority of the commission shall be deemed to be the reports and recommendations of the commission: Provided that any recommendations of any member who dissents from the majority of the commission shall, if signed by him, be included in any such report aforesaid.

(4) The commission or any member thereof or any person acting as assistant, or assessor, or secretary thereto may enter upon any land for the purposes of its inquiries and obtain thereon the information necessary to prosecute the inquiries. The commission shall without fee or other charge have access to the records and registers relating to land in any public office or in the office of any divisional council or other local authority.

4. (1) For the purposes of establishing any such area as is described in section *two*, the Governor-General may, out of moneys which Parliament may vote for the purpose, acquire any land or interest in land.

(2) In default of agreement with the owners of the land or the holders of interests therein the provisions of the law in force in the Province in which such land or interest in land is situate relating to the expropriation of land for public purposes shall apply and, if in any Province there be no such law, the provisions of Proclamation No. 5 of 1902 of the Transvaal and any amendment thereof shall *mutatis mutandis* apply.

5. (1) Any person who is a party to any attempted purchase, sale, hire or lease, or to any agreement or transaction which is in contravention of this Act or any regulation made thereunder shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding six months, and if the act constituting the offence be a continuing one, the offender shall be liable to a further fine not exceeding five pounds for every day which that act continues.

(2) In the event of such an offence being committed by a company, corporation, or other body of persons (not being a firm or partnership), every director, secretary, or manager of such company, corporation, or body who is within the Union shall be liable to prosecution and punishment and, in the event of any such offence being committed by a firm or partnership, every member of the firm or partnership who is within the Union shall be liable to prosecution and punishment.

6. In so far as the occupation by natives of land outside the scheduled native areas may be affected by this Act, the provisions thereof shall be construed as being in addition to and not in substitution for any law in force at the commencement thereof relating to such occupation; but in the event of a conflict between the provisions of this Act and the provisions of any such law, the provisions of this Act shall, save as is specially provided therein, prevail:

Provided that --

- a. nothing in any such law or in this Act shall be construed as restricting the number of natives who, as farm labourers, may reside on any farm in the Transvaal;

- b. in any proceedings for a contravention of this Act the burden of proving that a native is a farm labourer shall be upon the accused;
- c. until Parliament, acting upon the report of the said commission, has made other provision, no native resident on any farm in the Transvaal or Natal shall be liable to penalties or to be removed from such farm under any law, if at the commencement of this Act he or the head of his family is registered for taxation or other purposes in the department of Native Affairs as being resident on such farm, nor shall the owner of any such farm be liable to the penalties imposed by section *five* in respect of the occupation of the land by such native; but nothing herein contained shall affect any right possessed by law by an owner or lessee of a farm to remove any native therefrom.

7. (1) Chapter XXXIV of the Orange Free State Law Book and Law No. 4 of 1895 of the Orange Free State shall remain of full force and effect, subject to the modifications and interpretations in this section provided, and sub-section (1) (a) of the next succeeding section shall not apply to the Orange Free State.

(2) Those heads of families, with their families, who are described in article *twenty* of Law No. 4 of 1895 of the Orange Free State shall in the circumstances described in that article be deemed to fall under the provisions of Ordinance No. 7 of 1904 of that Province or of any other law hereafter enacted amending or substituted for that Ordinance.

(3) Whenever in Chapter XXXIV of the Orange Free State Law Book the expressions "lease" and "leasing" are used, those expressions shall be construed as including or referring to an agreement or arrangement whereby a person, in consideration of his being permitted to occupy land, renders or promises to render to any person a share of the produce thereof, or any valuable consideration of any kind whatever other than his own labour or services or the labour or services of any of his family.

8. (1) Nothing in this Act contained shall be construed as, --

- a. preventing the continuation or renewal (until Parliament acting upon the report of the said commission has made other provision) of any agreement or arrangement lawfully entered into and in existence at the commencement of this Act which is a hiring or leasing of land as defined in this Act; or
- b. invalidating or affecting in any manner whatever any agreement or any other transaction for the purchase of land lawfully entered into prior to the commencement of this Act, or as prohibiting any person from purchasing at any sale held by order of a competent court any land which was hypothecated by a mortgage bond passed before the commencement of this Act; or
- c. prohibiting the acquisition at any time of land or interests in land by devolution or succession on death, whether under a will or on intestacy; or
- d. preventing the due registration in the proper deeds office (whenever registration is necessary) of documents giving effect to any such agreement, transaction, devolution or succession as is in this section mentioned; or
- e. prohibiting any person from claiming, acquiring, or holding any such servitude as under Chapter VII, of the Irrigation and Conservation of Waters Act, 1912, he is specially entitled to claim, acquire, or hold; or
- f. in any way altering the law in force at the commencement of this Act relating to the acquisition of rights to minerals, precious or base metals or precious stones; or
- g. applying to land within the limits in which a municipal council, town council, town board, village management board, or health committee or other local authority exercises jurisdiction; or

- h. applying to land held at the commencement of the Act by any society carrying on, with the approval of the Governor-General, educational or missionary work amongst natives; or
- i. prohibiting the acquisition by natives from any person whatever of land or interests in land in any township lawfully established prior to the commencement of this Act, provided it is a condition of the acquisition that no land or interest in land in such township has at any time been or shall in future be, transferred except to a native or coloured person; or
- j. permitting the alienation of land or its diversion from the purposes for which it was set apart if, under section *one hundred and forty-seven* of the South African Act, 1909, or any other law, such land could not be alienated or so diverted except under the authority of an Act of Parliament; or
- k. in any way modifying the provisions of any law whereby mortgages of or charges over land may be created to secure advances out of public moneys for specific purposes mentioned in such law and the interest of such advances, or whereunder the mortgagee or person having the charge may enter and take possession of the land so mortgaged or charged except that in any sale of such land in accordance with such law the provisions of this Act shall be observed.

(2) Nothing in this Act contained which imposes restrictions upon the acquisition by any person of land or right thereto, interests therein, or servitudes thereover, shall be in force in the Province of the Cape of Good Hope, if and for so long as such person would, by such restrictions, be prevented from acquiring or holding a qualification whereunder he is or may become entitled to be registered as a voter at parliamentary elections in any electoral division in the said Province.

9. The Governor-General may make regulations for preventing the overcrowding of huts and other dwellings in the stadts, native villages and settlements and other places in which natives are congregated in areas not under the jurisdiction of any local authority, the sanitation of such places and for the maintenance of the health of the inhabitants thereof.

10. In this Act, unless inconsistent with the context, --

"scheduled native area" shall mean any area described in the Schedule to this Act;

"native" shall mean any person, male or female, who is a member of an aboriginal race or tribe of Africa; and shall further include any company or other body of persons, corporate or unincorporate, if the persons who have a controlling interest therein are natives;

"interest in land" shall include, in addition to other interest in land, the interest which a mortgagee of, or person having charge over, land acquires under a mortgage bond or charge;

"Minister" shall mean the Minister of Native Affairs;

"farm labourer" shall mean a native who resides on a farm and is *bona fide*, but not necessarily continuously employed by the owner or lessee thereof in domestic service or in farming operations:

Provided that --

- a. if such native reside on one farm and is employed on another farm of the same owner or lessee he shall be deemed to have resided, and to have been employed, on one and the same farm;
- b. such native shall not be deemed to be *bona fide* employed unless he renders ninety days' service at least in one calendar year on the farm occupied by the owner or lessee or on another farm of the owner or lessee and no rent is paid or valuable consideration of

any kind, other than service, is given by him to the owner or lessee in respect of residence on such farm or farms.

A person shall be deemed for the purposes of this Act to hire land if, in consideration of his being permitted to occupy that land or any portion thereof --

- a. he pays or promises to pay to any person a rent in money; or
- b. he renders or promises to render to any person a share of the produce of that land, or any valuable consideration of any kind whatever other than his own labour or services or the labour or services of his family.

11. This Act may be cited for all purposes as the Natives' Land Act, 1913.