

Sub-Enclosure to Enclosure in No. 35.

MEMORANDUM by ATTORNEY-GENERAL of NEW ZEALAND on the operation of the Land Registry Acts on Lands granted by the Crown under certain Acts of the Imperial Legislature relating to the New Zealand Company and their Contracts.

IN consequence of doubts in the Colony as to the true construction of certain words in the fifty-first section of the 9th and 10th Vict., c. 382 (The New Zealand Company's Act), and the incompetency of the Colonial Legislature to deal with cases falling within that section, if the generally received construction of such words be the true construction, lands to which New Zealand Company's Land Orders related have not been allowed to be registered under "The Land Registry Act, 1860."

As to lands in the principal towns and suburban districts, these doubts and difficulties render "The Land Registry Act, 1860," almost wholly inoperative; and it is very much to be desired that the Imperial Legislature should, if such be the case, declare that the meaning of the words in the section above referred to is such that the supposed difficulty does not in fact exist, or that if the words truly construed do create the difficulty, it should settle the doubt by a declaratory Act, and also either by direct legislation remove the difficulty or authorize the General Assembly by legislation to remove the difficulty.

I proceed now to draw attention to the provisions in the Imperial Acts which have created the difficulty above referred to, and as to the construction of which doubts exist in the Colony. The effect which these provisions have hitherto had in impeding the bringing into operation "The Land Registry Act, 1860," will also be pointed out.

August 18, 1846.

The 9th and 10th Vict., c. 382 (The New Zealand Company's Act) in the fifty-first section, after reciting that divers land orders or contracts for the sale of land in New Zealand had been issued by the Company, but as to which no conveyances had then been required, and that from deaths of and dealings by purchasers conflicting claims to conveyances might arise, enacts: That a conveyance by the Company of the lands to which any such land order shall relate to the purchaser named in such order, on his request, or to any person deriving title from, through, or under such purchaser, on the request of such person and on proof of his title to the satisfaction of the persons therein mentioned, shall be deemed both at law and in equity, as well in the Colony as elsewhere, a complete performance by the Company of the contract contained in such order to convey the land, and shall exonerate the Company from all responsibility as to the disposition of such land or any other matter consequent on or resulting from such conveyance; "but notwithstanding any rule of law and equity to the contrary prevailing in the Colony of New Zealand or elsewhere, the land, tenements, and hereditaments comprised in any such conveyance, shall continue and be subject to such equitable estates, charges, and liens, if any, created by the purchaser or purchasers named in the land order or contract to which the same shall relate, or any person deriving title from, through, or under him, her, or them, as as at the date of such conveyance shall be subsisting, or be then or thereafter capable of taking effect, and the rights and interests of the parties interested as or through the purchaser or purchasers named in such land order or contract (*inter se*) shall remain unaffected thereby."

July 23, 1847.

The 10th and 11th Vict., c. 112 (the New Zealand Company's Colonization Act) in the nineteenth section, after reciting that it is expedient to provide for the contingency of the Company finding themselves unable to continue their proceedings with profit to themselves and benefit to the Colony, enacts, amongst other things, that if the Directors shall give the notice therein mentioned within three months after 5th April, 1850, that they are to surrender the charters of the Company to Her Majesty and all their lands in the Colony, the powers of the Company shall cease, and all their lands revert and become vested in Her Majesty, subject to any contracts which shall then be subsisting in regard to any of the lands.

August 7, 1851.

The 14th and 15th Vict., c. 84 (the New Zealand Company's Settlements Act), recites in the preamble that the notice provided for in section nineteenth of 10th and 11th Vict., c. 112, had been delivered on 4th July, 1850, and that thereupon all the Company's lands in New Zealand had reverted and become vested in Her Majesty as part of the demesne lands of the Crown in New Zealand, subject as by the said Act (10th and 11th Vict., c. 112) is provided. In the tenth section of this Act (14th and 15th Vict., c. 84) it is provided that in all cases falling within the provisions of the fifty-first section of the 9th and 10th Vict., c. 382 (that is, in cases of conveyances of land as to which land orders had been issued by the Company), a grant from the Crown shall have the like force and effect in all respects as a conveyance by the Company would have had by virtue of the said Act if the aforesaid notice had not been given, and the Company continued to exercise its powers. The force and effect which a conveyance by the Company would have had is defined by the said fifty-first section. It would have been deemed a complete performance by the Company of the contract contained in the order, and would have exonerated the Company from all responsibility as to the disposition of the land; but the lands comprised in such conveyance would have continued, and would be subject "to any equitable estate charges and liens created by the purchaser named in the land order, or by any person deriving title from such purchaser, and then (at date of conveyance) subsisting, or then or thereafter capable of taking effect, and the rights and interests of parties interested either as or through the purchasers named in the land order, would have remained unaffected by such conveyance. The result is, that in cases of Crown Grants of lands to which any New Zealand Company's land order relates, the Crown is exonerated from all responsibility, but the land continues to be and is subject to any such equitable estate charges or liens as may have been or may be subsisting at the time of the issue of the grant, and the rights and interests of the parties interested as or through purchasers named in the land order remain unaffected by the grant made by the Crown, and "this notwithstanding any rule of law or equity to the contrary prevailing in the Colony or elsewhere." Whether any rule of law or equity in particular are here referred to, and whether rules of the statute law as well as common law, there is nothing in the Act to show. A grant from the Crown, executed by the Governor by virtue of his commission under the public Seal of the Colony, is generally assumed to have the same effect as a grant from the Crown executed under the Great Seal, and enrolled, and though not made a record of any