

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

*Legislative Council,  
27th August, 1889.*

*Hon. Sir F. Whitaker.*

**LAND TRANSFER ACT 1885 AMENDMENT.**

ANALYSIS.

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**A BILL INTITULED**

**AN ACT to amend "The Land Transfer Act, 1885."**

Title.

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

5     **1.** The Short Title of this Act is "The Land Transfer Act 1885 Amendment Act, 1889." Short Title.

**2.** In this Act "the said Act" means "The Land Transfer Act, 1885." Interpretation.

10    **3.** The Registrar may, at his discretion, dispense with the requirements of section seventy-six of the said Act, as to the mode of description in any instrument of the land, estate, or interest intended to be dealt with, if such Registrar shall be satisfied that the description given is sufficient to identify such land, estate, or interest. Discretionary power of Registrar.

15    **4.** Every instrument purporting to deal with any land, estate, or interest under the said Act shall, for the purposes of the said Act, take effect, and as to all such instruments already registered shall be deemed to have taken effect, on registration thereof as if such instrument had been executed immediately at the date of such registration, notwithstanding that the same may purport to have been executed at  
20    an earlier date, and at a time when the person executing the same was not actually registered as the proprietor of such land, estate, or interest. Instrument to take effect as from date of registration.

Warrant for issue of certificate in lieu of grant to fix antevesting date.

5. The land comprised in any certificate of title issued or hereafter to be issued in lieu of a Crown grant shall be deemed to have been subject to the provisions of the said Act as from the date fixed by the Governor's warrant as the date of acquisition of title thereto; and such date shall, for all purposes whatsoever, be deemed the antevesting date, in the same manner as if such antevesting date had been inserted in a Crown grant of the said land. 5

Land to be under Act from such date.

The reference to such antevesting date in any certificate of title purporting to be issued in pursuance of such warrant shall be conclusive evidence of such date, and that the same was fixed by the Governor's warrant, as in such certificate is set forth and stated: 10

Provided always that this and the *next preceding* section shall not be construed to enable the registration under the said Act of any unregistered instruments heretofore executed by any aboriginal native owner, so far as such instruments were not capable of registration prior to the passing of this Act. 15

No unauthorised right to public reserve acquired by registration.

6. No right to any public road or reserve shall be acquired, or be deemed to have been acquired, by the unauthorised inclusion thereof in any certificate of title or by the registration of any instrument purporting to deal therewith otherwise than as authorised by law. 20

Person actually registered to be deemed lawfully registered.

7. Subject to section sixty-seven of the said Act, and to section *six* of this Act, every person appearing on the register to be actually registered under the said Act as the proprietor of any land or of any charge on land or any estate or interest therein, whether such land was or was not at the time of such registration lawfully subject to the provisions of the said Act, shall be deemed to be the lawful registered proprietor of such land, estate, or interest within the meaning of the said Act. 25

Registration not to be invalidated except in certain specified cases.

Such registration may be set aside and made void upon any one or more of the grounds hereinafter specified, but for no other cause whatsoever, that is to say,— 30

That such registration—

- (1.) Was obtained by fraud on the part of the person registered, or of the person through whom he claims, or of the agent of any such person; or 35
- (2.) Was obtained by means of a forged instrument; or
- (3.) Is inconsistent with the rights of a prior registered proprietor; or
- (4.) Is void or voidable under section fifty-five of the said Act in respect of the omission or misdescription of any right-of-way or other easement created or existing upon any land, or so far as regards any portion of land that may be erroneously included in the grant, certificate of title, lease, or other instrument evidencing the title of such registered proprietor, by wrong description of parcels or of boundaries: 40 45

Provided that nothing in this Act contained shall take away or in anywise lessen the protection given by the said Act in the case of a *bona fide* purchaser for valuable consideration from a registered proprietor, except so far as the same is taken away by section *six* or by subsection *two* of section *seven* of this Act, in either of which 50

cases such purchaser shall acquire no title to the specific land, estate, or interest, but shall be entitled to claim upon the Assurance Fund for compensation for any loss or damage by reason of the deprivation thereof.

5 8. And whereas there are many outstanding dealings with Native land which for various reasons cannot be registered under the provisions of the said Act, and it is believed that in some such cases equitable claims are, by reason thereof, unable to obtain due legal recognition. Be it enacted that the Supreme Court, or a Judge thereof, may order  
10 the registration of any instrument heretofore executed for the purpose of giving effect to any such dealing, notwithstanding that such instrument does not comply with the requirements of the said Act, if such Court or Judge shall be satisfied that effect ought in justice and equity to be given to such instrument by registration as aforesaid.

Supreme Court or Judge may order registration in certain cases, and refer to Native Land Court for inquiry.

15 The said Court or Judge shall have power to refer any such instrument to the Native Land Court, or to a Judge thereof, to inquire and report as to the circumstances under which such instrument was executed, and generally as to all matters in relation thereto upon which such Court or Judge may require to be informed; also to order the cancellation, either wholly or in part, of any existing Crown grant or  
20 certificate of title and the issue of such other certificates of title as may be necessary for giving effect to any order of such Court or Judge in the matters aforesaid.

9. There shall be no valid claim for compensation out of the assurance fund for loss or damage occasioned by the registration of  
25 any instrument which shall, after such registration, be set aside or made void on the ground of fraud or otherwise if such instrument shall appear on the face thereof to have been duly executed by the person having the legal power for the time being to deal with the land, estate, or interest in such manner as the same is in such instrument  
30 expressed to have been dealt with, and if the Registrar shall, at the time of such registration, have had no notice or knowledge of any matter affecting the validity thereof.

No claim upon assurance fund if instrument appears to have been duly executed by proper parties, although subsequently held void.

10. Section two hundred and nineteen of the said Act is hereby repealed, and in lieu thereof it is enacted that no Registrar of Deeds  
35 or District Land Registrar shall be bound to produce in any Court of law or elsewhere than in the Land or Deeds Registry for the district any register or other document in his custody as such Registrar, or to attend before any Court or elsewhere to give evidence as such Registrar, except by order of a Judge of the Supreme Court, which order  
40 shall not be made unless such Judge is satisfied that such attendance or production is necessary, and that the required evidence cannot be given by certified copy of such register or instrument.

Registrar not bound to attend Court or produce register without Judge's order.

11. Every probate of will or administration of the estate of a deceased person granted in any part of Her Majesty's dominions outside of New Zealand since the coming into operation of "The Administration Act, 1879," shall, when resealed by the Supreme Court in  
45 New Zealand, have the same effect as regards the real as well as the personal estate of such deceased person as if such probate or administration had been originally granted in the colony.

Probate granted out of colony to have same effect as if granted in New Zealand.

50 12. Every probate heretofore granted or hereafter to be granted by the Supreme Court or by a District Court of the will of any deceased

Succession order not necessary where Supreme

Court has granted probate.

aboriginal native shall have the same effect as regards the real estate of such Native as a probate granted by the same Court of the will of a person not of the Native race; and no order or certificate of the Native Land Court shall be necessary to ascertain or confirm the title of any person claiming under such will or probate, anything in "The Native Land Court Act, 1886," to the contrary notwithstanding. 5

Registrar may issue certificate of title to purchaser under "The Rating Act, 1882."

13. When a transfer shall have been registered without production of the outstanding certificate of title, under section forty-five of "The Rating Act, 1882," it shall be lawful for the Registrar, if he shall be satisfied that such outstanding certificate cannot be got in and cancelled, to issue a new certificate in the name of the purchaser without such cancellation, and for that purpose to cancel the existing folium of the register. 10

Repeal.

Mortgagee, annuitant, and transferees liable to lessor for rent and performance of covenants.

14. Section one hundred and thirteen of the said Act is hereby repealed, and in lieu thereof it is enacted that a mortgagee of, or annuitant upon, land leased under this Act, and his transferees after entering into possession of the land or the receipt of the rents and profits thereof, shall, during such possession or receipt, and to the extent of any benefit, rents, and profits which may be received, become and be subject and liable to the lessor of the said land or his transferees, or the person for the time being entitled to the reversion expectant on the term of the lease for the payment of the rent reserved by the lease, and for the performance and observance of the covenants therein contained, or by the said Act declared to be implied therein on the part of the lessee or his transferees. 15  
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