

*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,  
14th August, 1888.*

[AS AMENDED BY THE LEGISLATIVE COUNCIL.]

*Hon. Mr. E. Mitchelson.*

NATIVE LAND COURT ACT 1886 AMENDMENT.

ANALYSIS.

<p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Interpretation.</li> <li>3. How certain conveyances by Natives of land not held by Crown grant may be registered.</li> <li>4. Title to be brought under Land Transfer Act.</li> <li>5. How leases may be registered.</li> <li>6. Restrictions on alienation may be cancelled or varied. Proviso.</li> <li>7. Crown claims in respect of acquired shares may be satisfied.</li> <li>8. How rent may be paid in default of direction in lease.</li> <li>9. Shares of rent payable to individual lessors.</li> <li>10. How rent may be paid where rights of lessors disputed among themselves.</li> <li>11. Until relative interests determined, they shall, as to rent, be deemed equal.</li> <li>12. If more than twenty owners, land to be partitioned.</li> <li>13. Court, on making order, empowered to make portions of land inalienable.</li> <li>14. Proceedings not to abate by inability of Judge or Assessor.</li> <li>15. Decisions arrived at in "Rohe-Potae" to have effect of orders.</li> <li>16. Land or shares in land deemed to be transferable.</li> </ol>	<ol style="list-style-type: none"> <li>17. Conveyance of undivided shares.</li> <li>18. Amendment to section 14 of "The Native Committees Act, 1883."</li> <li>19. Application of "The Native Equitable Owners Act, 1886," to <i>cestuis que</i> trusts in North Island.</li> <li>20. In determining succession child of a half-caste deemed a Native.</li> <li>21. Court on making order to decide relative interests.</li> <li>22. Deputy-Registrar may be appointed.</li> <li>23. Repeal of section 43 of said Act.</li> <li>24. Repeal of sections 76 and 77 of said Act.</li> <li>25. Amended provision in lieu of section 86 of "The Native Land Court Act, 1886."</li> <li>26. Amendments of clauses in "The Native Land Court Act, 1886:" Amendment of section 17. Amendment of section 23. Amendment of section 26. Amendment of section 33. Amendment of section 36. Amendment of section 50. Amendment of section 79. Amendment of section 83. Amendment of section 95. Amendment of section 103.</li> <li>27. Assent of Governor to alienation of land deemed to have been given by the Governor in Council.</li> <li>28. Partition.</li> <li>29. Licensed interpreters.</li> </ol>
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A BILL INTITULED

AN ACT to amend "The Native Land Court Act, 1886."

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 Native Land Court Act 1886 Amendment Act, 1888;" and this Act shall be read and construed as part of the "Native Land Court Act, 1886" (hereinafter called "the said Act").

Short Title.

10 2. Section three of the said Act is hereby repealed, and it is hereby enacted that the said Act shall be read as if, in lieu thereof, it had been thereby enacted, In this Act, if not inconsistent with the context,—

Interpretation.

"Court" means the Court created by this Act:

"Chief Judge" and "Judge" mean respectively the Chief Judge and Judge of the Court:

No. 51—5.

“Registrar” means a Registrar of the Native Land Court:

“Crown grant” includes certificate of title under the Land Transfer Act:

“Native” means an aboriginal native of New Zealand, and includes half-castes and their descendants ~~by Natives:~~ 5

“Land” means any land in the colony owned by Natives except Native land:

“Native land” means land in the colony owned by Natives under their customs or usages, but of which the ownership has not been determined by the Court: 10

“Parcel of land” means one of several parcels into which, under this Act, land may be partitioned, or Native land divided:

“Purchasers” mean persons to whom one of such parcels may be awarded on partition: 15

“Person” includes a person, whether Native or otherwise:

“Hereditament” means land granted by the Crown to and held by Natives:

“Sealed” means sealed with the seal of the Court.

How certain conveyances by Natives of land not held by Crown grant may be registered.

3. Any conveyance ~~hereafter to be executed~~ of land held by memorial of ownership or certificate of title issued by the Court may be lodged with a Native Land Court Registrar, together with a true copy of such deed and of any indorsements thereon; and, if such deed have indorsed thereon a Trust Commissioner’s certificate and is duly stamped and executed, it shall be a duty of such Registrar to make a minute of the contents of such deed upon any memorial or certificate of title in his custody, and having relation to the land the subject of such deed. 20 25

Title to be brought under Land Transfer Act.

4. Where one such deed or several such deeds together effect a conveyance of the entire area held under a certificate or memorial, it shall be a duty of the Chief Judge, assisted by an Assessor, after due notice and by inquiry in open Court, to ascertain the *bona fides* of the transaction; and, if it is found to be equitable, and not in contravention of any law in force at the time such deed or deeds were executed, to forward such deed or deeds to the Governor, with a recommendation that a warrant for land-transfer certificate should issue for the land conveyed. 30 35

Thereon a warrant for the issue of a certificate of title under “The Land Transfer Act, 1885,” may, if in the opinion of the Governor the report of the Chief Judge warrants it, issue to the person entitled under such deed or deeds. Such warrant shall be accompanied by the particulars of ~~leases as aforesaid, if any lease or mortgage affecting the land the subject of such warrant which may be registered as hereinafter provided.~~ 40

How leases may be registered.

5. Subject to the provisions of this Act, *mutatis mutandis*, deeds, not being conveyances, relating to land held by memorial of ownership or certificate of title issued by the Court may be registered with a Registrar of the Court by delivering to him a true copy of such deed, and submitting the original for comparison. 45

It shall thereon be a duty of the Registrar to minute the contents of such deed as provided for in relation to conveyances. 50

6. Restrictions on alienation which may hereafter be imposed ~~or recommended by any instrument under which Natives may become entitled to land ordered~~ may be annulled or varied by order of the Court on application by ~~any owner~~ a majority in number of the owners of ~~such~~ the land the subject of such restriction, but such restriction shall only be annulled or varied on public inquiry by the said Court, after notice has been given in the *Gazette* and *Kahiti* :

Restrictions on alienation may be cancelled or varied.

Provided that no restriction shall be annulled or varied as aforesaid unless the Court be satisfied that, apart from the land subject to ~~such~~ be relieved from restriction, the owners of such land have other land, or shares in other land, the title whereto has been determined by the Court, belonging to them in their own right, and sufficient for their maintenance and occupation, and that, as to the land the subject of the restriction to be removed, those appearing as owners, and all others having a beneficial interest, concur in the proposed removal.

Proviso.

7. A Minister of the Crown may at any time cause application to be made to the Court to ascertain the interest, if any, acquired by Her Majesty in any land, and in respect of such an application the Court shall have the powers and authorities it would have in respect of a matter within its ordinary jurisdiction, and may make such order thereon as it may deem fit.

Crown claims in respect of acquired shares may be satisfied.

Land by such order declared to have been acquired by Her Majesty shall, from the date of such order, be deemed to be vested in Her Majesty for such estate as in such order mentioned. As to the residue, if any, of such land the Court may make order declaring such residue to be the property of such of the owners of the land as shall be mentioned in such order, and the owners so mentioned shall thereon be owners of such residue, exclusive of any theretofore co-owners.

30 *Struck out.*

8. When it is made to appear that Her Majesty has made advances to Natives on contract for the sale of land, and that land has not been conveyed in satisfaction of such contract, the Court may, as against the estate, share, or interest of any Native or Natives who has or have received any part of the money advanced in the land the subject of such contract or in any other land, after notice in writing to such Native or Natives, or his or their successors, and after due inquiry, make order that such estate, share, or interest, or such part or so much thereof as it may deem an equivalent for one-half of so much of the money paid on any such contract as shall be shown to have been paid to or come to the hands of such Native or Natives, shall vest in Her Majesty, and such estate, share, or interest shall thereon vest in Her Majesty.

Provided that before any such order shall be made the Court shall be satisfied,—

(a.) That such money has been actually paid in pursuance of such contract and has been actually received as purchase-money in whole or in part for land contracted to be sold ;

(b.) That apart from the land so vested, the owners of such land have other land, the title whereto has been determined by the Court, belonging to them in their own right and sufficient for their maintenance and occupation.

How rent may be paid in default of direction in lease.

9. 8. Where the relative interests of Native lessors of land have been determined, rent accruing to them under a lease may be paid to them in proportion to such relative interests unless otherwise reserved by the lease.

Shares of rent payable to individual lessors.

10. 9. Such payment may be made to each individual lessor of his share as so determined, or to any person or persons appointed and authorised by the lease to receive the rent to accrue thereunder on behalf of the lessors. A receipt signed by such person or persons shall be a good discharge for the money therein expressed to be received.

How rent may be paid where rights of lessors disputed among themselves.

11. 10. Where there is a dispute as to the several rights of Natives claiming as lessors any lessee of land may make summary application to a Judge for an order that any rent to accrue under such lease, or accrued and unpaid, be paid into some public account to be named in such order, or to some official to be nominated by the Governor. Thereon such Judge may order as he may deem fit, and payment of the rent in accordance with an order shall be deemed a payment made in accordance with the terms of the lease.

A Judge may from time to time, by order, direct that the moneys, or any part thereof, so paid in shall be paid out to or among the lessors, or to some person on their behalf, as such Judge may deem fit.

Until relative interests determined they shall, as to rent, be deemed equal.

12. 11. Until the relative interests of Native lessors have been determined, they shall, as to rent accruing to them under the lease, be deemed to be entitled thereto in equal shares, unless otherwise provided in the lease.

If more than twenty owners land to be partitioned.

13. 12. If an order be made under section twenty or twenty-one of the said Act declaring land to be owned by Natives more than twenty in number, the Court shall direct that upon the title to such land becoming first "ascertained," such land shall, if the Court think fit, be forthwith partitioned under the said Act so that each parcel thereof shall be owned by not more than twenty Natives.

Any such direction as aforesaid shall be deemed to be and shall be dealt with as an application for partition made by owners under the said Act: Provided that no person or company shall acquire in freehold by purchase from a Native or Natives more than five thousand acres of land.

Court, on making order, empowered to make portions of land inalienable.

14. 13. The Court, on making an order under sections twenty, twenty-one, thirty-one, or thirty-three of the said Act, is hereby empowered and directed to ascertain as to each owner whether he or she has already a sufficiency of inalienable land for his or her support, and shall, out of the land the subject of any such order, declare to be inalienable so much and such parts as shall be necessary for the support of any owner not shown to be possessed of such sufficiency, and such part or share shall be inalienable accordingly.

And the Court, on heretofore making orders, as aforesaid, as regards orders of inalienability heretofore made, shall be deemed to have had authority to make like declaration of inalienability in respect of land the subject of the such orders.

Proceedings not to abate by inability of Judge or Assessor.

15. 14. An order or finding of the Court made during the hearing of, but before final decision in, a case before it shall not abate by reason of a Judge or an Assessor, or of both a Judge and Assessor, ceasing to hold office or being for a time unable to execute the duties thereof;

but any such case may be continued to final decision with a substitute Judge or Assessor or both.

16-15. In the investigation of the title to "Rohe-Potae" now before the Court, any interlocutory orders or decisions already made or arrived at declaring the ownership of parts of "Rohe-Potae," shall be deemed to be, and as to such respective parts shall have the effect of orders made under clause twenty of the said Act, declaring the ownership of the land the subject of each such order, and which orders shall be deemed to have been made on the day of the passing of this Act.

Decisions arrived at in "Rohe-Potae" to have effect of orders.

And as to interlocutory orders or decisions declaring the ownership of other parts of "Rohe-Potae" aforesaid, which may be hereafter made by the Court during the investigation aforesaid, such orders or decisions shall be deemed to be like orders as aforesaid and to have been made under the said clause twenty, and shall have effect on and from the day of the making thereof respectively.

*New paragraph.*

Notwithstanding any interlocutory order or decision already made or given, or which may hereafter be made or given, in respect of Rohe Potae, or any part thereof, no part of the said land shall in any way be dealt or interfered with before the expiration of three years from the passing of this Act, and, until the expiration of that time, the said land shall be deemed to be Native land within the meaning of the clauses numbered five and seven of "The Native Land Frauds Prevention Act 1881 Amendment Act, 1888," and the said several clauses shall apply and be in force in respect of the said land and every part thereof. But this provision shall not apply to or affect the Crown, or to any person acting for or on behalf of the Crown, under the authority of a Minister of the Crown.

*New clause.*

16. Land or shares in land owned by Natives shall be deemed to have been transferable, and may hereafter be transferred by deed executed and attended with the formalities for the time being prescribed by law as to deeds intended to affect the title of Natives to land.

Land or shares in land deemed to be transferable.

But this provision shall not apply to any deed purporting to alienate land where such alienation was restricted or recommended to be restricted by order of the Court, or where such alienation may hereafter be so restricted.

17. Deeds purporting to convey undivided shares in land held by Natives, and executed under or on the authority of any certificate issued under section twenty-five of "The Native Land Administration Act, 1886," shall, if the land the subject of such deed was not by the instrument under which it is held made or recommended to be made inalienable, be and be deemed to have been as effectual a conveyance of such undivided shares as it would have been had the land the subject of such deed been held by the Native owners under grant from the Crown: Provided that nothing in this section shall validate or give effect to any conveyance, transfer, gift, contract, or promise affecting or relating to any Native land made before a certificate of title or memorial of ownership had been issued by the Native Land Court, or which is void or illegal under any Act of the General Assembly for the time being in force.

Conveyance of undivided shares.

~~18. Until the title to land shall have been completed it shall not be lawful for any purchaser or lessee to occupy the same.~~

Amendment to section 14, "Native Committees Act, 1883."

~~19.~~ 18. Section fourteen of "The Native Committees Act, 1883," shall be read as if the words "Chief Judge" in the last line thereof had been omitted therefrom, and the word "Registrar" inserted in lieu thereof. 5

Application of "Native Equitable Owners Act, 1886," to *cestuis que* trusts in North Island.

~~20.~~ 19. To enable *cestuis que* trusts to become the certificated owners of the lands to which they are entitled, the provisions of clauses two, three, four, and five of "The Native Equitable Owners Act, 1886," shall apply to lands in the ~~Bay of Plenty District~~ North Island which have been recommended to be granted, or which have been granted, to persons who were selected from other known owners to be trustees for themselves and others, but who have been placed by such grants in the position of absolute owners of such lands. 10

In determining succession, child of a half-caste deemed a Native.

~~21.~~ 20. In determining the right to succession in respect of either Native land, hereditaments, or personal estate, the child of a half-caste shall be deemed to be a Native. 15

Court, on making order, to decide relative interests.

~~22.~~ 21. It shall be a duty of the Court on making any order as mentioned in section forty-two of the said Act to forthwith exercise the power of deciding relative interests conferred by the said section, whether such procedure is applied for or not. 20

Deputy-Registrar may be appointed.

~~23.~~ 22. The Governor may from time to time appoint a person to act as Deputy for any Registrar for such period as the appointment may direct.

During the continuance of such appointment a Deputy shall have, exercise, and perform all the powers and duties of a Registrar. 25

Repeal of section 43 of said Act.

~~24.~~ 23. Section forty-three of the said Act is hereby repealed, and it is hereby enacted that the said Act shall be read as if in lieu thereof it had been thereby enacted: In case any Native has died, or shall die entitled to any estate, share, or interest in any land, either in severalty or otherwise, the Court may, on the application of any Native claiming to be interested therein, inquire and ascertain who ought to succeed to such estate, share, or interest. 30

In respect of land held by memorial of ownership or certificate or title issued by the Court, the Court shall be guided by Native custom or usage. 35

In respect of other land the Court shall decide according to the law of New Zealand as nearly as it can be reconciled with Native custom.

Repeal of sections 76 and 77 of said Act.

~~25.~~ 24. Sections seventy-six and seventy-seven of the said Act are hereby repealed, and in lieu thereof it is enacted:—

Every application for a rehearing shall be determined by the Chief a Judge sitting in open Court, assisted by ~~an~~ two Assessors. ~~The Chief Judge~~ A majority of the said Court may dismiss such application, or may order a rehearing as to the whole or any part of the land, or as to any question of title thereto, on such terms as to delivery of possession or otherwise, and as to payment of or the giving of security for costs and expenses or otherwise, as ~~he~~ it shall in ~~his~~ its discretion order. 45

All rehearsings shall, subject to the powers of adjournment in the said Act contained, be had at a time and place to be notified, and shall be determined by a Court of not less than two Judges, of whom 50

the Chief Judge may be one and one Assessor, none of whom shall have adjudicated on the case at any former time.

26-25. Section eighty-six of the said Act is hereby repealed, and in lieu thereof it is hereby enacted: Any order having the effect of a mortgage shall be deemed to be a mortgage under the Land Transfer Act and entitled to registration accordingly, and the money intended to be secured by any such order shall be deemed to be due at the end of twelve months from the making of the order, and not earlier, and shall carry interest on the sum secured by it at the rate of five pounds per centum per annum.

Amended provision in lieu of section 86 of "The Native Land Court Act, 1886."

27-26. Section seventeen of the said Act shall be read as if the words "subject to and in manner directed by any rules for the time being in force" had been omitted therefrom.

Amendments of clauses in "The Native Land Court Act, 1886." Amendment of section 17.

~~Section eighteen of the said Act shall be read as if the following words had been added thereto:—~~

The Registrar of the Court for the any district within which application may be made for investigation of title, partition, or succession, or other business, shall forward to the Chairman of each Committee constituted under 'The Native Committees Act, 1883,' within his district, forthwith upon the same being received, a copy of each application as aforesaid which may be lodged with him.

If any report relating to an application for investigation of title has been lodged with the Registrar by any Committee aforesaid, the Court shall, before proceeding to deal with such application, consider such report, and by consent of the parties to such application and of any counter-claimants may proceed on such consideration to determine the application, or may limit the calling of evidence, or otherwise direct the further conduct of the case.

Section twenty-three of the said Act shall be read as if the last twenty-one words therein had been omitted therefrom.

Amendment of section 23.

Section twenty-six of the said Act shall be read as if the last twelve words had been omitted therefrom.

Amendment of section 26.

Section thirty-three of the said Act shall be read as if to the third line thereof there had been added the words "and each such order shall be prepared in duplicate, and when an approved plan of the parcel of land the subject thereof shall have been placed thereon."

Amendment of section 33.

Section thirty-six of the said Act shall be read as if there had been added thereto the words "each parcel of land in respect of which a lease-order shall be made shall, as between the lessee and the purchaser, be and continue subject to such lease and, except as varied by such lease-order, to the terms thereof."

Amendment of section 36.

Section fifty of the said Act shall be read as if all the words after the word "be" in the fourth line thereof had been omitted therefrom, and the words "delivered to the parties entitled" had been inserted in lieu thereof.

Amendment of section 50.

Section seventy-nine of the said Act shall be read as if the words "as the plan" had been inserted after the word "plan" in the second line thereof.

Amendment of section 79.

Section eighty-three of the said Act shall be read as if after the word "favour" in the second line thereof, the words "of the Surveyor-General or" had been inserted.

Amendment of section 83.

*New paragraphs.*Amendment of  
section 95.

Subsection (a.) of section ninety-five of the said Act shall be read as if the word "fifteen" in the second line of the subsection had been omitted therefrom, and the word "ten" had been inserted in lieu thereof.

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Amendment of  
section 96.

Section ninety-six of the said Act shall be read as if there had been added thereto the following words: "When any road is laid off along the boundary, between land owned by Natives and land owned by Europeans, such roads shall be taken equally from both such lands where practicable."

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Amendment of  
section 103.

Section one hundred and three of the said Act shall be read as if after the word "Judges" there had been inserted the words "or a majority of them," and as if the second paragraph therein had been omitted.

*Struck out.*

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28. In respect of the several lands called Porongahau, Mangamairo, and Waipiro, a further rehearing may be applied for upon any rehearing already had, and may be ordered or refused, and if ordered had in like manner in all respects as if such rehearing already had were the first or original hearing, provided that any application for such further rehearing shall be made within three months from the passing hereof: Provided also that any demise of the said Waipiro Block made by any Natives who have heretofore been declared owners and have demised such land shall be and shall be deemed to have been, from the date of such demise, a good and effectual demise of the estate and interest of any Natives who on any investigation of the title to the said land shall be found to be owners of such land: Provided also that any new Natives who may be declared owners by the Court shall have no claim for back rent against any one.

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The decision of the Chief Judge upon an application for a rehearing in respect of a decision of the Court upon partition of land known as Ngarara is hereby annulled, and such application shall be deemed to be still undealt with:

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Assent of Governor  
to alienation of land  
deemed to have been  
given by the  
Governor in Council.

Provided that such rehearing shall be without prejudice to any *bona fide* dealing by demise of the land affected entered into prior to the fourteenth day of August, one thousand eight hundred and eighty-eight.

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~~29. 27.~~ Whereas in cases where the right of Natives to alienate land was conditional upon the assent of the Governor in Council being obtained to such alienation, the assent of the Governor, but not in Council, has been given and acted on:

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Be it enacted that, where the assent of the Governor purports or can be proved to have been given to the alienation of land by a Native, such assent shall be deemed to have been given by the Governor in Council, and any such assent as aforesaid shall be valid and sufficient whether given before or after the alienation to which it refers.

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*New clauses.*

Partition.

28. Partition under the said Acts shall not be made of land under the control or management of the Public Trustee.

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Licensed inter-  
preters.

29. All existing licenses to interpreters shall terminate on the thirty-first of December next, and new licenses terminable at any time on revocation shall be issued only to persons of approved moral character and proved knowledge of the Maori language.



NATIVE BILLS COMMITTEE.

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REPORT.

THE above-named Committee, to whom was referred the Native Land Court Act 1886 Amendment Bill, have the honour to report that they have carefully gone through this Bill, and recommended that it be allowed to proceed with amendments as shown on the annexed copy.

OLIVER SAMUEL,  
Chairman, Native Bills Committee.

20th July, 1888.