

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,  
22nd August, 1889.

Hon. Sir F. Whitaker.

[AS AMENDED BY THE NATIVE AFFAIRS COMMITTEE, 4TH SEPTEMBER, 1889.]

NATIVE LAND COURT ACTS AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Repeal of section 11. Witnesses may be summoned.</p> <p>3. Penalty for failing to give evidence.</p> <p>4. Power of committal for contempt.</p> <p>5. Repeal of section 27. Substituted provision.</p> <p>6. Deed must be certified and stamped before partition order signed.</p> <p>7. Repeal of section 51. Substituted provision.</p> <p>8. Repeal of section 58.</p> <p>9. Court may make order in lieu of letters of administration.</p> <p>10. Repeal of section 81. Amended provisions as to survey charges.</p> <p>11. Survey charges may be apportioned at any time.</p> <p>12. Charging orders may be registered.</p> <p>13. Amendment of orders on suggestion of surveyor.</p>	<p>14. Chief Judge may amend errors and omissions.</p> <p>15. Errors, &amp;c., may be amended after title ascertained.</p> <p>16. Successors to be tenants in common.</p> <p>17. Chief Judge may make rules.</p> <p>18. Rules deemed to have continued in force.</p> <p>19. Amendment of section 16, Act of 1888.</p> <p>20. Procedure on removal of restrictions.</p> <p>21. "Native Equitable Owners Act, 1886." Limit of time.</p> <p>22. Amendment of section 4 of Amendment Act, 1888. Inquiry may be held by a Judge.</p> <p>23. Governor may appoint Commissioners.</p> <p>24. Commissioners to give notice.</p> <p>25. To make rules.</p> <p>26. Payment of expenses.</p> <p>27. Commissioners' powers.</p> <p>28. Recovery of costs.</p> <p>29. Equity and good conscience.</p> <p>30. Technical defects.</p> <p>31. Stay of proceedings.</p>
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A BILL INTITULED

AN ACT to amend "The Native Land Court Act, 1886," and "The Native Land Court Act 1886 Amendment Act, 1888." Title.

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

1. The Short Title of this Act is "The Native Land Court Acts Amendment Act, 1889." This Act shall be read and construed together with "The Native Land Court Act, 1886" (hereinafter called "the said Act"), and "The Native Land Court Act 1886 Amendment Act, 1888" (hereinafter called "the said amending Act"). Short Title.

*Struck out.*

2. It shall be lawful for the Governor to appoint an officer, to be called "the Administrative Officer," whose duty it shall be to fix the time and place of the sittings of the Court subject to the approval of the Chief Judge, to conduct the general administrative business of the Court, and to perform such other duties in relation thereto as the Governor in Council may from time to time direct.

The Governor may from time to time appoint a person to act as Deputy of the Chief Judge or of the Administrative Officer 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 the Chief Judge or of the Administrative Officer as the case may be.

## New clauses.

Repeal of section 11.  
Witnesses may be  
summoned.

2. Section eleven of the said Act is hereby repealed.  
It shall be lawful for the Court, by summons in writing under  
the hand of a Judge, to require any person whose evidence shall,  
in the opinion of such Judge, be material to the subject-matter of  
any proceeding before the Court to attend the Court, at such time 5  
and place as shall be specified in the summons, to give evidence in the  
matter of such proceeding, and such person may be required by such  
summons to produce any books, deeds, papers, and writings relating  
to such proceeding and in his possession or under his control.

Penalty for failing  
to give evidence.

3. Any person on whom any such summons shall have been 10  
served personally, or in such manner as may be prescribed by any rules  
to be made in that behalf, and to whom at the same time payment or  
a tender of his expenses shall have been made on the scale to be fixed  
by such rules, and who shall neglect or fail, without sufficient cause,  
to appear, or to produce any books, deeds, papers, or writings required 15  
by such summons to be produced, and any person, whether summoned  
to attend or not, who, being present in Court and being required to  
give evidence, shall refuse to be sworn or to give evidence, shall be  
liable to a penalty not exceeding *twenty* pounds, and, in default of pay- 20  
ment, to be imprisoned for any term not exceeding *fourteen* days; and  
such penalty shall be set upon such person by the presiding Judge  
after he shall have been afforded opportunity to show cause why he  
should not be so fined, and shall have failed to satisfy the presiding  
Judge, or may be recovered before a Resident Magistrate or two 25  
Justices of the Peace by way of summary proceedings in the manner  
provided by "The Justices of the Peace Act, 1882," and its amend-  
ments; but the payment of any such fine or the undergoing of such  
imprisonment shall not exempt any person from any civil liability he  
may have incurred by disobeying such summons.

Power of committal  
for contempt.

4. If any person shall wilfully insult any Judge or Assessor, 30  
or any clerk, interpreter, or officer of the Court for the time being,  
during his sitting or attendance in Court, or in going to or returning  
from the Court, or shall wilfully interrupt the proceedings of the  
Court, or otherwise misbehave in Court, it shall be lawful for a  
constable or any officer of the Court, with or without the assistance of 35  
any other person, by order of the presiding Judge, to take such  
offender into custody and detain him till the rising of the Court; and  
the presiding Judge may, if he shall think fit, by a warrant under his  
hand and the seal of the Court, commit any such offender to prison  
for any term not exceeding *fourteen* days, or to impose upon such 40  
offender a fine not exceeding *ten* pounds for every such offence, and in  
default of payment thereof to commit the offender to prison for any  
time not exceeding *fourteen* days unless the said fine be sooner paid.

## Struck out.

4. Any person who feels himself aggrieved by any decision or 45  
order of the Court under the said Act or the said amending Act or  
under this Act may apply for a rehearing within the time and in the  
manner prescribed by section seventy-five of the said Act.

Repeal of section 27.

5. Section twenty-seven of the said Act is hereby repealed, and 50  
in lieu thereof it is enacted as follows:—

Substituted pro-  
vision.

The Court may give authority for any valuer or other person to  
enter upon any land the subject of a partition, and any person im-

peding any one acting under such authority shall be guilty of an offence punishable summarily before two Justices of the Peace, and upon conviction shall be liable to a penalty not exceeding *fifty* pounds, or to imprisonment for a term not exceeding one month.

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*New clause.*

6. No order for partition in favour of any applicant other than a Native owner shall be signed and sealed unless and until the deed or instrument upon which the application is based shall have indorsed thereon the certificate of a Trust Commissioner, and shall be

Deed must be certified and stamped before partition order signed.

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~~3.~~ 7. Section fifty-one of the said Act is repealed, and in lieu thereof it is enacted as follows :—

Repeal of section 51.

It shall be and shall be deemed to have been lawful for the Governor in Council, by order, to declare that any matter or question affecting Natives which may arise in relation to the interests of Natives in any land other than Native land, or land within the meaning of the said Act and the said amending Act, or in any personal property, over which no jurisdiction is given by the said Act or the said amending Act, shall be within the jurisdiction of the Court. Such matter or question shall be specified in the said order, and thereupon the Court shall have jurisdiction to inquire into and decide such matter or question, and to make such order in relation thereto as the nature of the case may require, which decision and order shall be valid and binding in law.

Substituted provision.

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~~12.~~ 8. Section fifty-eight of the said Act is hereby repealed.

Repeal of section 58.

~~18.~~ 9. If any Native dies possessed of personal estate not exceeding two hundred pounds, and the Court shall grant a certificate in respect thereto under the forty-seventh or forty-eighth section of the said Act, a Judge may, subject to any rules as to security or otherwise to be made in that behalf, order that some one or more person or persons may administer the estate on behalf of those entitled to succeed, and such order shall have the same force and effect and be subject to the same duties and fees as if a grant of letters of administration had been made by a Court of competent jurisdiction.

Court may make order in lieu of letters of administration.

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Section twenty of the said amending Act is hereby repealed.

~~7.~~ 10. Section eighty-one of the said Act is hereby repealed, and in lieu thereof it is enacted :—

Repeal of section 81.

Upon the production of a certificate, heretofore or hereafter to be signed by the Surveyor-General, or other officer authorised by him either specially or generally for that purpose, that money is owing to a certified surveyor for any plan used or accepted by the Court, or for any survey on which such plan was founded, and upon proof that such money or any part thereof is still owing and unpaid, the Court shall make an order, in favour of such surveyor, that the estate and interest in the land the subject of such survey of the person or persons owing such money shall be charged with the payment to such surveyor of the amount so owing and unpaid.

Amended provisions as to survey charges.

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Such charge shall have the effect of a mortgage of such estate and interest in favour of the surveyor, and shall be final and conclusive as to the amounts due.

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8. 11. The Court may, at any time after having made, in favour of a surveyor or of the Surveyor-General, an order having the effect of a mortgage under the provisions of Part Seven of the said Act, on the application of the person in whose favour such order has

Survey charges may be apportioned at any time.

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been made, or of any person entitled to or who has acquired any estate or interest in the said land or in any part thereof, cancel such order, and by further order direct that the estate and interest of any person in any part of the said land shall be charged with the payment of the whole or any proportional part of the money still owing and unpaid to the surveyor or Surveyor-General. Such further order shall have the effect of a mortgage of the land described therein in favour of the person therein mentioned for the amount specified in such order.

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*Struck out.*

9. If default is made in the payment of the principal sum with interest thereon at the expiration of the twelve months mentioned in section twenty-five of the said amending Act, it shall be lawful for the mortgagee, thereupon or at any time thereafter, to give the notice required by section ninety-eight of "The Land Transfer Act, 1885," and if default be continued for not less than two months from the date of the service of such notice the mortgagee may forthwith, or at any time thereafter, exercise the power of sale given to mortgagees under section ninety-nine of the said Land Transfer Act.

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All the provisions of this Act and of the said Land Transfer Act relating to mortgages shall, so far as applicable, apply to any charge having the effect of a mortgage created under the said Act, the said amending Act, or this Act.

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The term "mortgagee" shall mean a certified surveyor in whose favour such a charge has been created, or the Surveyor-General, or a claimant mentioned in section eighty-two of the said Act, as the case may be, and the term "mortgage" shall mean a charge having the effect of a mortgage created under the said Acts or either of them.

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Every order creating a mortgage may be provisionally registered in like manner and with the same effect as prescribed by the said Land Transfer Act for provisional registration.

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All fees and contributions to the assurance fund, if paid by the mortgagee, may be added to the principal secured by the mortgage.

Charging orders may be registered.

10. 12. It shall be the duty of the Registrar, upon the production to him of any order having the effect of a mortgage, to make a minute of such order upon the memorial of ownership, certificate of title, or order of the Court in his custody having relation to the land charged by such order.

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*New clause.*

Amendment of orders on suggestion of surveyor.

13. If it shall appear to a surveyor, when making a survey in pursuance of any order of the Court, that a deviation from the line laid down by the Court would for any reason be expedient, he shall give immediate notice thereof to the Registrar, and upon receipt of such notice a Judge may make such inquiries in the matter as he may think fit, and amend the order if he shall consider it advisable so to do.

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Chief Judge may amend errors and omissions.

6. 14. It shall be lawful for the Chief Judge, at his discretion, when sitting in open Court for the purpose of determining an application for rehearing, to investigate the matter of any alleged error or omission in the decision of the Court, the subject of such application, and, with the concurrence of the Assessor, to determine the same, and to make such order in relation thereto as the nature of the case may require. An order made under the provisions of this section shall be final and conclusive.

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16. 15. It shall be lawful for any person entitled to or claiming an interest in any land, who shall allege that his interest therein has been prejudicially affected by any error or omission committed or made in any decision or order of the Court at any time after the title of such land has been or shall have hereafter been ascertained, to apply to the Chief Judge to inquire into the matters alleged in such application.

Errors, &c., may be amended after title ascertained.

Such application shall be made in writing and state specifically the grounds upon which it is made, and shall be verified by the statutory declaration of the person applying.

Upon the receipt of any such application the Chief Judge may either—

- (1.) By order under his hand, dismiss the application ;
- (2.) Hold an inquiry in open Court with the assistance of an Assessor ; or
- (3.) Refer any question to a Judge sitting in open Court with an Assessor for his investigation and report.

Public notice of the intention to hold an inquiry shall be given in the *Gazette* and *Kahiti* ; and such further and other notice may be given as the Chief Judge may deem expedient.

If it appear to the Chief Judge that the alleged error or omission has been committed or made, and that the interest in such land or parcel of land of the person applying has been thereby prejudicially affected, the Chief Judge may make such order in the matter for the purpose of remedying such error or omission as the nature of the case may require :

Provided that no such order shall affect or be deemed to affect the validity of any registration under a Land Transfer Act, or of any conveyance, transfer, mortgage, lease, contract, lien, or transaction made, given, or entered into of or in respect of such land or parcel of land, after the title to such land shall be ascertained and before public notice shall be given of the intention to hold an inquiry.

An order so made shall be final and conclusive.

17. 16. Where in any succession order heretofore made or hereafter to be made more persons than one are declared to be successors to the estate, share, or interest of a deceased Native in any land held under Crown grant or Land Transfer certificate, such persons shall be deemed to be tenants in common of such estate, share, or interest : Provided that this section shall not invalidate or affect any conveyance, transfer, lease, or other assurance of such estate, share, or interest heretofore executed or made.

Successors to be tenants in common.

19. 17. Section one hundred and three of the said Act shall be read as if the words "Chief Judge" had been inserted after the words "lawful for the" in lieu of the word "Judges." So much of section twenty-six of the said amending Act as purports to amend section one hundred and three of the said Act is hereby repealed.

Chief Judge may make rules.

20. 18. The rules in existence on the thirtieth day of August, one thousand eight hundred and eighty-eight, shall be deemed to have continued in force until the thirtieth day of October, one thousand eight hundred and eighty-eight.

Rules deemed to have continued in force.

13. 19. Section sixteen of the said amending Act shall be read as if the following words had been added thereto, "unless such restrictions have been or shall hereafter be duly removed. ~~or, being recommended, have not been imposed.~~"

Amendment of section 16, Act of 1888.

*Struck out.*

14. Deeds executed before the first day of July, one thousand eight hundred and eighty-seven, purporting to alienate, whether by way of transfer, lease, or otherwise, undivided shares in land shall, if the certificate of a Trust Commissioner be indorsed thereon, be and be deemed to have been valid and effectual conveyances of such undivided shares, and may, after division or partition under any Act for the time being in force in that behalf has been effected, be registered by the District Land Registrar, notwithstanding that at the time any such deed was executed the alienation of undivided shares in land was prohibited by any Act of the General Assembly, or that part owners of land had not the power to sell or make other disposition of their undivided shares therein, or that the owner purporting to alienate such undivided shares was not registered under any Land Transfer Act as proprietor of such land, or that such deed does not contain a precise statement of the estate and interest intended to be conveyed: Provided that, when the certificate of the Native Land Court or a Judge thereof to the completeness of any sale, or when the approval of the Native Land Court or a Judge thereof was required by law for the completion of the transfer intended to be effected by such deed, it shall be sufficient if the certificate of a Trust Commissioner has been indorsed upon such deed: Provided also that nothing in this section contained shall validate or give effect to any transaction which has been declared invalid by the Supreme Court or the Court of Appeal, or to any deed purporting to convey or transfer any share in land in respect of which there is any restriction on alienation existing at the time of the production of any such deed for registration.

All deeds heretofore registered which would if this provision had been then in force have been deemed to be validly registered are hereby declared to be validly registered. The word "deed" in this section includes in addition to its ordinary significations any memorandum purporting to be made under any Land Transfer Act or any Act relating to Native land.

15. For the purposes of section sixteen of the said amending Act, as amended by this Act, and of section *thirteen* of this Act, restrictions on alienation imposed before the thirtieth day of August, one thousand eight hundred and eighty-eight, shall be deemed to be duly removed in any case where, whether before or after the execution of the deed purporting to effect an alienation, the Governor has,—

- (1.) Before the said thirtieth day of August, (a) given his consent in writing to such alienation; or (b) made an order, whether in Council or otherwise, purporting to remove or avoid such restrictions;
- (2.) Since the said thirtieth day of August, one thousand eight hundred and eighty-eight, removed or declared void, or shall hereafter remove or declare void, such restrictions in accordance with the terms of section five of "The Native Land Act, 1888."

*New Clauses.*

20. Where application is made to the Governor to remove or make void any restrictions on alienation under the provisions of

section five of "The Native Land Act, 1888," or where the consent of the Governor to any alienation of the land comprised in any grant heretofore or hereafter to be issued is required by the terms of such grant, before such power is exercised or consent given, inquiry shall

5 be made by the Court in accordance with the provisions of section six of the said amending Act, and the Court, if satisfied that the provisions of that section, so far as they are applicable to such inquiry, are complied with, shall report accordingly to the Governor.

10 In exercising its jurisdiction under section *six* of the said amending Act, the Court shall consist of one or more Judges and of one Assessor, whose assent shall be necessary to the validity of any decision of the Court.

15 21. No application under the second section of "The Native Equitable Owners Act, 1886," shall be made after the expiration of one year from the date of the passing of this Act.

"Native Equitable Owners Act, 1886." Limit of time.

20 ~~21.~~ 22. The inquiry directed by section four of the said amending Act to be held by the Chief Judge may be held by a Judge, who shall report the result of such inquiry to the Chief Judge, who may act thereon as he shall think fit.

Amendment of section 4 of Amendment Act, 1888. Inquiry may be held by a Judge.

#### 20 *New Clauses.*

25 23. It shall be lawful for the Governor, by Order in Council, to appoint two or more persons to be Commissioners for the purposes hereafter mentioned, and from time to time to remove and appoint substitutes for such Commissioners or any of them, as occasion may require. The said Commissioners shall inquire into all the circumstances attending any alleged alienation or acquisition of land, or of any interest therein, before the first day of July, one thousand eight hundred and eighty-seven, which may be barred or invalidated by any law now or at any time heretofore in force, and report on

Governor may appoint Commissioners.

30 each case that may be brought before them, and generally on all matters connected therewith, and make such recommendations as may appear proper. The Commissioners may report from time to time as they may consider advisable.

35 24. The Commissioners shall forthwith, by notice in the *Gazette* and *Kahiti*, appoint a place where applications for inquiry will be received by them or on their behalf. All such applications must be made within six months after the publication of such notice.

Commissioners to give notice.

40 25. The Commissioners may from time to time make rules prescribing the form and manner in which applications for inquiry may be made, and the particulars to be supplied in support of such applications, and the payment or the securing of the payment of the fees and other charges, and of the costs which may be ordered in respect of the hearing of such claims, and generally to regulate and determine the procedure of the Commission. All fees and other

To make rules.

45 payments made to the Commissioners in respect of the proceedings before them (other than costs directed to be paid as between parties) shall be paid into the Consolidated Fund.

50 26. Out of any sums voted, or to be voted, by Parliament for the purposes of this Commission, there shall be paid such sums as may be ordered by the Commissioners in respect of the payment of witnesses, or other necessary or proper charges and expenses, and also such sums as may be authorised by the Native Minister in payment of the services of the Commissioners.

Payment of expenses.

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Commissioners' powers.

27. The Commissioners shall hold open Courts of inquiry at such times and places as they may from time to time determine. No inquiry shall be commenced until at least thirty days' notice shall have been given in the *Gazette* and *Kahiti*. The Commissioners may exercise all the powers conferred upon Commissioners by "The Commissioners' Powers Act, 1867," and "The Commissioners' Powers Act 1867 Amendment Act, 1872," and exercise in reference to such inquiry all the powers of summoning witnesses, taking evidence on oath, punishing for disobedience or contempt of Court, making order as to payment of costs by or between parties to claims, and generally of conducting the proceedings which a Judge of the Supreme Court could exercise in reference to any proceedings in the Supreme Court. 5 10

Recovery of costs.

28. An order for payment of costs signed by two Commissioners may be registered in the Resident Magistrate's Court of the district in which such order is made, if the amount mentioned therein do not exceed the jurisdiction of such Court, and otherwise in the Supreme Court. An order so registered shall have the effect of a judgment recovered in Court in which the same is registered. 15

Equity and good conscience.

29. The Commissioners shall act as a Court of equity and good conscience, and shall not be bound by any legal rules of evidence or precedents, and may appoint counsel or agent (to be paid from the fund provided for witnesses' expenses) to appear and act for any Native or Natives who, in the opinion of the Commissioners, ought to be allowed such assistance, and would otherwise be unable to obtain it. 20 25

Technical defects.

30. If the Commissioners shall find that any intended alienation of land cannot be registered by reason only of some technical error or defect in the proceedings by which such alienation was intended to be effected, or because such alienation being under memorial of ownership or Native Land Court certificate did not include the whole of the signatures of the Natives owning under such memorial of ownership or Native Land Court certificate, or that the completion of such extended alteration was prevented by a subsequent alteration of the law, and that the transaction was entered into in good faith, and was not in any way contrary to equity and good conscience, they may sign a certificate to that effect, and thereupon such intended alienation shall be deemed to be as validly effected as if such technical error or defect had not existed. 30 35

Stay of proceedings.

31. No action shall be brought or tried in any Court for the purpose of questioning the validity of any alienation of land which might form the subject of inquiry before the Commissioners under this Act. 40