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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,
7th July, 1886.

[AS AMENDED BY THE LEGISLATIVE COUNCIL.]

Hon. Mr. Ballance.

NATIVE LAND COURT.

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A BILL INTITULED

AN ACT to amend and consolidate the Laws relating to the Native Land Court of New Zealand. Title.

BE IT ENACTED by the General Assembly of New Zealand in 5 Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. The Short Title of this Act is "The Native Land Court Act, 1886." Short Title.
- 10 2. This Act shall come into operation on the *first* day of January, *October*, one thousand eight hundred and eighty-seven *six*. Commenceme of Act.
3. In this Act, if not inconsistent with the context,— Interpretation
- 15 "Court" means the Court created by this Act :
 "Chief Judge" and "Judge" mean respectively the Chief Judge and a Judge of the 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 :
 20 "Land" means land held under—
 A Crown grant, or the subject of an order therefor under this Act or under any Act hereby repealed ;
 A memorial of ownership ;
 A certificate of title under Land Transfer Act or under
 25 any Act relating to Native land ;
 But only where such instruments were made or issued in favour of Natives :
 "Native land" means land in the colony owned by Natives under their customs or usages, save under the title
 30 "Succession," where it means land so owned of which the title has been determined by the Court, and includes Native reserves :
~~"Land Court title" means title to land under memorial of ownership or certificate of title issued under any Act relating to Native land.~~
 35 "Parcel of land" means one of several parcels into which under this Act land may be partitioned or Native land divided :
 "Purchasers" mean the persons to whom one of such parcels may be awarded on partition :
 40 "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.
4. Title to land or to a parcel of land shall be deemed to "be
 45 ascertained" when—
 (a.) After the adjudication whereon it ceased to be Native land, or whereby it was partitioned, the time within which a rehearing might have been applied for in respect of such decision shall have elapsed without any application having
 50 been made ; or
 (b.) All applications for rehearing have been refused ; or
 (c.) Decision is made on a rehearing had.

Interpretation.
1883, No. 20, s. 7.

PART II.

CREATION AND CONSTITUTION OF COURT.

- Creation and style of Court.
1880, No. 38, s. 4. **5.** There shall be within the Colony of New Zealand a Court of Record, to be called "The Native Land Court," for the investigation and determination of titles to Native land and for the several other purposes hereinafter set forth. 5
- To consist of Judge and Assessors.
Ib., s. 5. **6.** The Court shall consist of one Chief Judge and such other Judges, together with such Assessors, as the Governor may from time to time determine.
- Governor may appoint Judges.
Ib., s. 6. **7.** It shall be lawful for the Governor from time to time to appoint a Chief Judge, Judges, and Assessors, and also such Registrars, Clerks, Interpreters, and other officers as may be required for the conduct of the business of the Court throughout the colony. 10
- Tenure of office.
Ib. Every person appointed or holding office under this Act shall hold office during the Governor's pleasure. 15
- Present Judges, &c., to continue in office.
Ib. The Chief Judge, Judges, and Assessors, Registrars, Clerks, and other officers holding office at the time of the coming into operation of this Act shall hold office and be deemed to have been appointed hereunder.
- Salaries.
Travelling allowance.
Ib., ss. 7, 8. **8.** Such salaries shall be paid to the several persons appointed under this Act as shall from time to time be appropriated for the purpose by the General Assembly, and out of money appropriated for the purpose there shall be paid such travelling allowances as the Governor shall from time to time determine. 20
- Quorum to exercise jurisdiction.
Ib., s. 47.
Ib., ss. 5, 11. **9.** In exercising its jurisdiction under Part VII. VI. (rehearing), the Court shall consist of two or more Judges and one or more Assessors, as the Chief Judge may direct. Under Part III. or Part X. IX. of one or more Judges and one or more Assessors, as the Chief Judge may direct, and in each such case the assent of one Assessor shall be necessary to the validity of a decision of the Court. 25
- Ib., s. 9. In all other respects the jurisdiction, powers, and authorities vested in the Court may be exercised by a Judge. 30
- Seal.
Ib., s. 10. **10.** The Court shall have in the custody of each Judge a seal which shall be a seal of the Court, and shall be used for sealing documents which require to be sealed. 35
- General powers of Court.
Ib., s. 15. **11.** The Court shall have the same power of summoning and compelling the attendance of witnesses and the production of documents, and of punishing persons duly summoned for non-attendance, or for refusing to give evidence or to produce documents, and the same means of enforcing the observance of order and of its rules during its sittings, and of punishment for contempt, as is now possessed by the District Court or by a Judge thereof. 40
- Districts.
1882, No. 27, s. 5. **12.** It shall be lawful for the Governor-in-Council, for the purposes of this Act, from time to time to divide the colony into Registrar's districts, and to annul, alter, or vary such divisions. 45
- Registrars to be appointed
To have charge of records, &c. For each district the Governor may appoint a Registrar and such other officers as may be necessary.
The records, maps, and documents relating to land within each district shall be deposited, and the official or administrative work of each district carried on, at such place in each district as the Governor shall from time to time appoint. 50

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If a block of land extends into more than one district, the application may, if any question arises thereon, be recorded, and the papers deposited, and the work about the same conducted in either of the districts, as may be decided by the Chief Judge.

- 5 13. Until the powers of division hereby authorized are exercised, Registrar's districts as now existing under "The Native Lands Act Amendment Act, 1882," shall be Registrar's districts under this Act. Existing districts continued.
- 10 14. Registers shall be kept by the Court, in which shall be recorded minutes of all applications made to the Court, and orders and proceedings made and had thereon. Registers to be kept by Court. 1882, No. 27, s. 12.
- 15 15. The Governor may appoint any Resident Magistrate to be a Recorder of the Court for such district as he may prescribe. Recorders may be appointed. Their powers. Such Recorder shall possess, but only exercise within such district, the jurisdiction, powers, and authorities of a Judge, and shall be furnished with a seal.
- 20 16. It shall be lawful for the Governor before the commencement or at any stage of a proceeding under this Act, by notice in writing or by telegram to the Chief Judge or a presiding Judge, to declare that such proceeding shall not be proceeded with; and upon the receipt of such notice the jurisdiction of the Court in respect of such proceeding shall cease. Governor may stay proceedings by notice. *Ib.*, s. 23.
- Any such notice may be revoked by the Governor by writing, and thereon the jurisdiction of the Court shall revive. And such notice may revoke.

PART III.

25

JURISDICTION.

(1.) *Investigation of Title.*

- 30 17. Natives claiming to be owners of, or interested in, Native land may, subject to and in manner directed by any rules for the time being in force, make application to the Court to have the title thereto investigated. Application for investigation of title. *Ib.*, ss. 16, 17.
- Such application shall contain a description of the land by name or otherwise sufficient to identify it.
- 35 18. On the investigation of title to Native land, the Court shall in the first place require to be satisfied that it has before it a certified map of such land. No investigation without certified map.
- If such map be not produced, the Court may adjourn such investigation as it may think fit, or may dismiss the application.
- 40 19. ~~Provided that it shall be lawful for the Court, the Court may,~~ on the application in writing of the Governor, to investigate the title to Native land ~~which has not been surveyed~~ upon any sketch map which it may consider sufficient, and may make such order as it may think fit.
- 45 19. ~~Being satisfied as aforesaid,~~ The Court may *thereon* proceed by such evidence as it shall think fit (whether admissible in a Court of ordinary jurisdiction or not) to ascertain and decide what Natives are, according to Native custom or usage, entitled to such Native land or to any part or parts thereof. How application be dealt with. *Ib.*, ss. 23, 24.
- Or the Court may refuse to decide on such application, or may make such order or give such direction as it may think fit.
- 50 20. The Court, having ascertained and decided who are the Natives entitled, shall make order declaring such Natives to be the owners of Order to Native owners. *Ib.*, s. 25.

the land, or of the parts thereof the title whereto shall have been ascertained.

Such order shall be prepared in duplicate, and authenticated by the signature of a Judge and by the seal of the Court.

Such order shall give the name by which the land is known and the number of the certified map thereof. **5**

Land may be divided into several parts, and orders made for each, 1882, No. 27, s. 34.

21. The Court may, if it think fit, in the course of or at the close of an investigation into the title to Native land, order one or more divisions to be made of such land, and in such case ascertain and decide who are the Natives entitled to each part and as to each such part make its order in duplicate as hereinbefore provided. **10**

On certified plan being produced.

Such order shall not be signed and sealed until a certified plan of the part the subject thereof shall have been furnished to and approved by a Judge.

Orders to be forwarded to Minister for Lands,

22. It shall be a duty of the Chief Judge forthwith, upon the title to the land the subject of each such order becoming "ascertained," to forward to the Minister of Lands one of the duplicate orders aforesaid, either as originally made, if not varied or altered, or as varied or altered on rehearing, and thereon the Natives named in such order as owners shall be entitled to have issued to them a warrant under "The Land Transfer Act, 1885," for the issue of a certificate of title for the land the subject of such order. **15**

Thereon persons entitled to have warrant for Land Transfer certificate issued.

(2.) *Partition.*

Application for Partition.

Application for partition.

23. Any Native owner of land held otherwise than in severalty, or any person who has *may claim to have* purchased or acquired an undivided share therein, may apply to the Court to make partition thereof, and thereon the Court may proceed to partition, as hereinafter provided. **25**

Consent of mortgagee necessary.

Land subject to a mortgage shall be partitioned only with the consent of the first mortgagee, and upon such terms as may be agreed to by the parties interested and be approved by the Court, and which terms the Court is hereby empowered to give effect to. Partition of a Native reserve shall not be had ~~without~~ *unless* the Commissioner of Native Reserves ~~consents in and~~ approves of such partition being had. **30**

Minister of Lands may make application. 1877, No. 31, s. 6.

24. The Minister of Lands, when he considers that Her Majesty has acquired an interest in land, may make like application on behalf of Her Majesty. **35**

Partition may be made.

Procedure on Application.

25. The Court may order such partition as it may deem just, and either to each in severalty or as to some in severalty and to others in common. **40**

Successors may be appointed.

26. If during any hearing it appear that a Native has died entitled to an interest in the land to be partitioned, but that no succession order has been made in respect of such interest, the Court may, if it deem fit, summarily appoint a successor to such interest, in like manner and with like effect as if the matter of such succession were then properly before it on an application under this Act for succession, but no rehearing shall be had in respect of any such appointment. **45**

Valuers, &c., may enter on land.

27. The Court may give authority for any valuer or other person to enter upon any land the subject of partition; and any person **50**

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impeding any one acting under such authority shall be deemed guilty of a contempt of Court, and may be punished accordingly.

28. If during a hearing on partition it appear to the Court that the title to the land is involved in any question not within the jurisdiction of the Court to dispose of, the Court may, if of opinion that partition cannot be had without prejudice to the interests of parties, dismiss the case or adjourn the further hearing until such question has been disposed of by a Court of competent jurisdiction.

Questions may be referred to Supreme Court.

29. The Court, having decided what would be a just partition, shall make its order in partition accordingly in respect of each parcel of land.

Order on partition.

A partition order shall name the persons to become entitled under it, and shall state the name or description of the parcel of land the subject thereof.

What to state.

30. The Court may direct the persons entitled under a partition order to have made a survey of the parcel of land, and to furnish to the Court an approved plan thereof, a copy whereof shall be placed or indorsed on the order, or the Court may procure the Surveyor-General to make and furnish such survey and plan.

Survey to be directed.

31. Where the title to land the subject of partition is memorial of ownership or certificate of title under any Act relating to Native land each partition order shall be prepared in duplicate, and, when the approved plan of the parcel of land shall be placed or indorsed thereon, and when the title to the parcel of land the subject of such order shall have become ascertained, such duplicate orders shall be signed by a Judge, and sealed. A Judge shall thereon mark the muniment of original title as cancelled, and it shall thereby be cancelled.

Partition order of land not held by Crown grant.

32. It shall thereon be a duty of the Chief Judge to forward to the Minister of Lands one of such duplicate partition orders either as originally made, if not varied or altered, or as varied or altered on rehearing, and thereon the Natives or persons named in such order as entitled under it shall be entitled to have issued to them a warrant under "~~The Land Transfer Act, 1885,~~" *Crown grant* for the issue of a certificate of title to the parcel of land the subject of such order.

Order to be forwarded to the Minister of Lands.

33. Where land the subject of partition is held under Crown grant ~~or under certificate of title under Land Transfer Act,~~ the partition order shall declare the persons named therein *in such order* to be the owners of the parcel of land the subject ~~of such order~~ thereof.

Thereon certificate to issue.

Partition order of land held by Crown grant or Land Transfer title.

Such an order, or such order as varied or altered on rehearing, shall, on the title thereunder becoming ascertained, *be signed by a Judge and sealed, and shall thereon* have the effect of vesting in fee-simple the parcel of land the subject thereof (subject as hereinafter provided) in the persons named therein: Provided that as to land subject to the Land Transfer Act, such vesting shall *not* take effect ~~as from the date of~~ *until* registration of the order.

Effect of order.

34. Persons being trustees for Natives under disability in respect of an interest in land partitioned shall continue to be trustees for their *cestui que* trust in respect of any parcel of land of which such *cestui que* trust may become owner *on partition*, in the same manner as if such trustees had been appointed in respect of the interest of such *cestui que* trust. ~~as such owner.~~

Trustees continued in office.

35. Where deeds intended to affect land ~~heretofore~~ divided under any Act hereby repealed *or partitioned under this Act*, have been by any Natives becoming ~~grantees~~ *taking* under any such partition or

Ante-vesting of Crown grants 1883, No. 31, s. 22, 123.

division *as aforesaid*, been executed ~~heretofore~~ but since the day when, as to the land divided or partitioned, the certificate of Native Land Court title or memorial of ownership first *therefor* took or had effect ~~any~~ a Crown grant issued or to be issued for any parcel of such land shall, for the purpose of completing the title of parties ~~to the land or estate therein purporting to be assured by~~ *under* such deeds to them, be deemed to have had effect as such grants on and from the day when the certificate or memorial ~~aforesaid made and issued in respect of the land partitioned or divided first had effect.~~ *took effect as aforesaid.*

When the Land is subject to a Lease.

Partition of land subject to a lease.

36. If land to be partitioned is subject to a lease the Judge at the hearing, or a Judge at any time before the sealing of the order in partition, may by "lease order," briefly referring to such lease by registered number or otherwise sufficiently to identify it, and also referring to such partition order,—

Apportionment of rent and covenants.

- (1.) Apportion what sum shall, in lieu of the rent reserved by such lease, be paid to the purchasers of each parcel of land ;
- (2.) Negative, modify, or apportion any covenant expressed or implied in such lease as he may deem would be just under the circumstances of such partition.

By lease order.

Such lease order shall be signed by a Judge and sealed, and shall be dated on the day of the date of the partition order, and shall take effect from the day when title under the partition order shall become ascertained: Provided that if as to such partition a rehearing be ordered, any such lease order and any dealing by the Court with such lease may be affirmed, varied, or altered as to the Court may seem fit.

Lessee liable on obligations as apportioned.

37. From the date of such lease order taking effect the lessee shall be liable to the purchasers of each parcel of land for the payment of the rent so apportioned to such purchasers as if such rent had been severally reserved by the lease to them in respect of such parcel of land; but the lessee shall cease to be liable to further payment of the rent reserved by such lease.

Original obligations determined.

38. From the date aforesaid the lessor and lessee shall cease to be liable on any covenant negatived as aforesaid, and, as to any apportioned or modified covenant, shall be liable on it only in its apportioned or modified form.

Copy of lease order to be delivered to lessee and lessor.

39. A duplicate of a lease order shall be delivered to the lessee, and one to the owner of each parcel of land who may require it, and any such duplicate shall be entitled to like registration as the lease.

Exceptional Titles.

Land subject to section 17 of "The Native Lands Act, 1867."

40. As to land held by Natives subject to section seventeen of "The Native Lands Act, 1867,"

For the purpose of this Act the persons named in the body of the certificate, or the survivor of them, and the successors and persons entitled to succeed to such of them as may be deceased, and the persons registered as owners, interested in such land, or the survivors of them, and the successors and persons entitled to succeed to such of them as may be deceased, shall be deemed to be the owners.

41. As to land granted to a tribe or hapu by name, or to any person or persons on behalf of a tribe or hapu, or where land is held in trust for a tribe or hapu, ~~the persons beneficially entitled~~ *each member of such tribe or hapu* shall, for the purposes of *partition* under this Act, be deemed to be an owner.

Land granted to tribe.

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(3.) *Determination of Individual Interests.*

42. The Court may, on making an order on an original investigation of title to Native land, or on making an order on partition where the persons taking under such respective orders are several in number, either at the time of making such order or at any time afterwards, on the request *application* of any person interested in the land the subject of such order, inquire and decide what as among the several owners are their relative shares or interests in such land, and the Court shall make order accordingly.

Individual interests may be determined

15 The Court may in like manner, at any time, on the application of any person *claiming to be* entitled to any share or interest in land not held in severalty, inquire and decide what as among the several owners of such land are their relative shares or interests therein, and shall make order accordingly.

20 Apart from and without prejudice to any partition of the land among such owners, their relative shares and interests therein shall be deemed and taken to be as defined and set out in and by any such order.

(4.) *Succession.**Realty.*

25 43. In case any Native has died, or shall die, entitled to any estate, share, or interest in any Native land or hereditaments, whether in severalty or as tenant in common, without having made a disposition thereof by will, the Court may, on the application of any Native claiming to be interested therein, inquire and ascertain who 30 ought to succeed to such estate, share, or interest in such land or hereditaments.

Successors may be appointed. 1881, No. 88.

In respect of Native land the Court shall be guided by Native custom or usage.

Native land.

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

Hereditaments.

44. If the deceased made a will or left any writing bearing his signature or mark which, though not legally executed as a will, the Court shall be of opinion was intended to be a testamentary disposition 40 of any such estate, share, or interest, it shall make the order as nearly as may be in accordance therewith.

Where deceased left a will.

45 The Court, having determined who in its judgment ought to succeed, shall grant a certificate accordingly.

Succession order.

Such certificate shall be in duplicate, and shall be signed by a Judge and sealed, and shall set forth the death and, if proved, the date of the death of the owner, a description of the land, and the name and place of abode of the person entitled to succeed.

What to contain.

Effect of.

46. The certificate shall have the same force and effect in favour of the successor as the instrument under which the deceased Native owner was entitled had in his favour at the time of his decease, and, as regards hereditaments, shall be entitled to registration under the Land Transfer Acts or the Deeds Registration Act, in like manner as a valid will. 5

Personally.

Succession to personal estate.

47. Where a Native dies intestate possessed of personal estate within New Zealand, any person claiming to be interested in or entitled to such personal estate may apply to the Court for a certificate setting forth the name of the person who ought to succeed to such personal estate. The Court thereon may, if it think fit, grant a certificate setting forth the names and places of abode of the persons entitled to succeed according to Native usage or custom. 10

Where deceased left a will.

48. If the deceased left any writing which, though not legally executed as a will, the Court shall be of opinion was intended to be a testamentary disposition of any personal estate therein mentioned, it shall, as to such part of the personal estate, grant the certificate as nearly as may be in accordance with the terms of such writing. 15

Persons to be named for administration.

49. The certificate shall designate one or more person or persons to whom letters of administration may be granted to administer the estate on behalf of those entitled to succeed thereto. Such person or persons shall be entitled to the grant of such letters by a Court of competent jurisdiction, such grant being chargeable with all duties and fees ordinarily chargeable on grants of letters of administration. 20

Orders in duplicate.

50. One duplicate of any succession order either as to realty or personally shall be retained by the Registrar in whose district the subject-matter thereof may be situate, or in whose district the order is made; the other shall be forwarded by him to a Deputy Commissioner of Stamps immediately upon the title under such order becoming ascertained. 25

One copy to Stamp officer.

Such Deputy Commissioner shall deliver such duplicate to the parties entitled on receiving all duties and fees aforesaid. 30

(5.) Incidental Matters.

Jurisdiction in incidental matters.

51. As to any matter or question which may arise in relation to land and to Native land or title thereto, or in relation to the ownership of any improvements thereon, over which no jurisdiction is given heretofore, but as to which it may be convenient that such jurisdiction should be possessed by the Court, the Governor in Council may, by order, declare that any such matter or question which shall be specified in such order shall be within the jurisdiction of the Court, and thereon the Court and each Judge thereof shall have full jurisdiction and power to decide and make order as it may deem fit, and which decision or order shall be valid and binding in law. 35 40

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PART IV.

PRACTICE.

52. It shall be the duty of the Court, by what it may deem the best ways and means, and without reference to or being bound by legal formalities, to decide the various matters submitted to its jurisdiction.
53. The Court shall sit at such times and places as the Chief Judge shall appoint.
54. Before the time appointed for the opening of a sitting the Chief Judge may order such opening to be adjourned to a future time or to another place; after the opening of a sitting the presiding Judge or the Chief Judge may order such sitting to be adjourned to such time and place as may be thought fit, or may order any part or parts of the business notified to be transacted at any such sitting to be so adjourned.
55. After the receipt of an application for the investigation of title to Native land, or for partition, or order for succession, or for other business within the jurisdiction of the Court, notice thereof shall be given by the Chief Judge in such manner as may appear to him to be best calculated to give proper publicity to the same.
56. By the same or some subsequent notice the day and place when and where the Court will sit for hearing the matter of such application shall be notified in manner aforesaid.
57. Copies of notices of sittings, and a schedule of the cases to be heard thereat, shall be forwarded forthwith to the Commissioner of Crown Lands in whose district any land the subject of any such notice may be situate.
58. Except on rehearing an order made for a grant or Land Transfer Certificate, an order made on partition, and a succession order shall respectively bear date on the day on which the Court decided that such order should be made, and shall be deemed to have been made and shall take effect from the day of such date.
59. When it shall appear to the Court that a Native entitled under an order to any estate or interest in property is a minor, the Court shall ascertain as nearly as possible the age of such minor, and shall minute the age so determined in or on such order.
- In respect of the subject-matter of such order, the time at which such minor shall be deemed to attain his majority shall be computed in accordance with the age so minuted. Unless, upon application at any time made to a Judge, he shall be satisfied that such minute did not correctly note the age of such minor, in which case such Judge shall give his certificate of what he considers the then real age of such person, and he shall be deemed to be of that age in relation to the subject-matter of such order.
60. When a Native declared entitled as aforesaid is under any disability, an intimation of the case, with full particulars, shall be furnished to the Governor.
61. It shall be lawful for the Court, in any proceeding under this Act, to give effect to any arrangement voluntarily come to by the Natives or by the Natives and Europeans concerned therein, and to decide such proceedings in accordance with such arrangement.

Court not bound by legal formalities. 1883, No. 20, s. 6.

Sittings of Court. *Ib.*, s. 18.

Adjournment. *Ib.*, s. 6.

Any applications to be notified. *Ib.*, ss. 20, 21.

Sittings to be notified.

Copies of all notices, &c., to Commissioner of Crown Lands. *Ib.*, s. 19.

Orders to take effect from day of decision. *Ib.*, s. 35.

Provision as to infants found to be owners. *Ib.*, s. 37.

Governor to be notified. 1873, No. 56, s. 55.

Voluntary arrangements may be given effect to. *Ib.*, s. 56.

Such decision shall be as effectual and binding as if arrived at on evidence taken.

Prior evidence may be used.
Ib., s. 58.

60. The Court may receive and use as evidence in any proceeding before it for the time being any evidence which may have been given in any previous proceeding before it, provided that the parties are in the opinion of the Court substantially the same. 5

As the evidence so to be received, the Court may accept and use any notes or minutes thereof which it may think reliably sets out the matter thereof.

Orders, interlocutory or final.
Ib., s. 57.

61. The Court may, in any proceeding before it, make any order, interlocutory or final, which it may deem necessary or just, and the Court or a Judge may from time to time extend any time limited or fixed by any such order. 10

Powers of amendment.
Ib., s. 59.

62. The Court or any Judge may at all times amend at discretion all defects and errors in any proceeding or document, whether there is anything in writing to amend by or not. 15

Amendments may be made by Court or Judge.
Ib.

63. All amendments necessary for the purpose of determining the real question in controversy between the parties, or for giving effect to and recording the intended decision of the Court in any proceeding or document, may be made at any time by the Court or a Judge. 20

Amendments may be made whether applied for or not, and may be made with or without costs, and upon such terms as the Court or a Judge may think fit.

Struck out.

64. No person shall in any case be permitted to appear in Court by, or to have the assistance therein of, any counsel, solicitor, agent, or other representative: 25

Provided that if it be shown to the Court that any party to the proceeding is through age, sickness, or infirmity, or through unavoidable absence unable to appear, or, if appearing, is incompetent to conduct his case, such person may, in the discretion of the Court, be allowed to appear by a Native. 30

Decision final, except as provided.
Ib., s. 50.

~~65.~~ **64.** The decision of the Court shall, subject to any such amendment and to any dealing therewith on rehearing, be final and conclusive. 35

Appearance by counsel may be sanctioned.
Ib., s. 63.

~~66.~~ **65.** It shall not be lawful for any person to appear or be assisted in Court by counsel or agent without the assent of the presiding Judge first obtained, and which assent may be at any time withdrawn. 40

Deeds in favour of Crown admissible. 1881, No. 18, s. 3.

With and during the continuance of such assent such appearance and assistance may be had.

~~67.~~ **66.** Where the Crown claims to be interested under any deed, contract, or other document, the same shall, on production, be admitted in evidence in any case in the Court, and have due effect given thereto, notwithstanding any law to the contrary. 45

Signatures for retired, &c., Judges.
Ib., s. 4.

~~68.~~ **67.** The Chief Judge may sign any order, instrument, or paper which ought to have been signed by a deceased or retired Judge. 45

Such signature of the Chief Judge shall have the same effect as the signature of the Judge for whom he signs would have had if made while such Judge, provided that the Chief Judge shall add to his signature "on behalf of A. B., Judge, deceased or retired," or words to that effect.

PART V.

COSTS.

- 5 69. 68. The Court may, in any proceeding, award costs, to be paid by or to any person before it, and may fix the amount and time of payment by order. Costs may be ordered. 1880, No. 38, s. 49-55.
70. 69. If costs are not paid as ordered, the amount thereof shall be and may be recovered as a debt by the person entitled to receive from the person liable to pay the same. Costs, how recovered.
- 10 71. 70. Costs may be ordered to be paid by or to the Crown. Crown liable or entitled to costs.
72. 71. The Colonial Treasurer shall pay costs ordered to be paid by the Crown, and costs payable to the Crown may be recovered as a debt due to Her Majesty. To be paid or recovered by Colonial Treasurer.
- 15 73. 72. An order for payment of costs, until rescinded, or as varied or altered, signed by a Judge and sealed, shall be conclusive evidence that the amount specified therein was due and payable at the time, and in manner specified in the order. Order for payment conclusive.
74. 73. An order for payment of costs may, at the discretion of the Court, be rescinded, varied, or altered. Except varied, &c.
- 20 75. 74. The Court may order any party to a case to deposit such sum as the Court shall fix as security for costs, and may refuse to proceed with the case, or to hear any person until such order is complied with. Security for costs may be ordered.

PART VI.

REHEARING.

- 25 76. 75. As to partition it shall be lawful for any person, and as to other business it shall be lawful for any Native, who feels himself aggrieved by the decision of the Court, or for the Governor, to apply for a rehearing, provided the application be made within three months after such decision is given. Who may apply for. 1880, No. 38, s. 47.
- 30 Such application shall be made to the Chief Judge in writing.
77. 76. The application shall be determined by the Chief Judge (except as hereinafter provided), who shall have power to dismiss the application, or to order a rehearing of the case, or he may order that part of the case or question of title to part of the land, should be re- By whom and how application to be dealt with. Ib.
- 35 heard. Such rehearing or partial rehearing shall, subject to the powers of adjournment herein contained, be heard at a time and place to be named by the Chief Judge either on making the order therefor or at some subsequent time, which time and place shall be duly notified as aforesaid.
- 40 If the Chief Judge were a party to a decision appealed against, the application for rehearing shall, instead of being dealt with by the Chief Judge, be dealt with as aforesaid by two other Judges to be named by him.
- 45 78. 77. If a rehearing be ordered it shall take place before two Judges, to be named by the Chief Judge, of which two he may be one (except when a party as aforesaid), and before one or two Assessors, as the Chief Judge may think fit. Before whom rehearsings to be had. Ib.

Judgment on a
rehearing.
1880, No. 33, s. 47.

79. 78. On a rehearing the Court may affirm the original decision, in which event any order made in accordance therewith shall be as effectual as if no application for rehearing had been made; or the Court may reverse, alter, or vary such decision, and any order made thereunder, in which case new orders shall be prepared, and, being authenticated as aforesaid, shall take the place of any reversed, altered, or varied order.

5

To date back.
Ib., s. 48.

Save that such new order shall bear the same date as the original order, and shall be deemed to have been made on and shall take effect from such date.

10

To be final.
Ib., s. 47.

A decision on a rehearing shall be final and conclusive.

PART VII.

SURVEYS.

Plan not to be
used by Court
unless "approved."
Ib., ss. 39, 40, 41, 42.

80. 79. The Court shall not, *except on the application of the Governor as aforesaid*, receive in evidence or use or accept any plan of land the subject of any proceeding or order, unless such plan be certified by the Surveyor-General, or some officer authorized by him for the purpose, to be "approved."

15

By Surveyor-
General. His
approval may be
refused.
1873, No. 56, ss. 69-
74.

81. 80. The Surveyor-General or other such officer as aforesaid may refuse to certify a plan to be "approved" if—

20

(a.) Such plan, and any survey on which it is based, be not the work of a surveyor who holds a certificate of competency from the Surveyor-General;

(b.) If such surveyor before entering upon such survey had not the authority of the Surveyor-General in writing for making such survey.

25

Security for
surveyors' charges.

82. 81. If at any time it be made to appear to the Court that it has been certified by the Surveyor-General, or other officer authorized by him for the purpose, that money was owing to any certified surveyor by Natives for any plan used or accepted as aforesaid, or for the survey on which such plan was founded, and that such sum or any part thereof is still owing and unpaid, the Court may make an order in favour of such surveyor, that the estate and interest in the land the subject of such survey of the Natives owing such money shall be charged with the payment to such surveyor of the amount so owing.

35

Such charge shall have the effect of a mortgage of such estate and interest in favour of the surveyor.

Costs of survey by
unsuccessful
Natives.

83. 82. If any claimant or counter claimant to Native land shall have had the same surveyed at his own cost, and on the investigation of the title to such land it shall be found that other Natives are entitled to the whole or any part thereof, it shall be lawful for the Court, in case it shall order a certificate of title to any other than the Natives who made such survey, to order also that the whole or a proportionate part of the cost of such survey and of the plan used by the Court the result of such survey, shall be paid to the Natives who made such survey by the Natives in whose favour the order for a certificate is made.

45

Such order shall have the effect of a mortgage of the land the subject of such certificate in favour of the claimant for the amount mentioned in such order.

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84. **83.** Instead of making such order in favour of the Natives aforesaid, the Court may make it in favour of any certificated surveyor to whom it may appear that such Natives are indebted for the cost of such survey and plan, provided that such plan be "approved" as
- 5 aforesaid. Court may make order in favour of surveyor.
85. **84.** The Governor may, at the request of any Natives, cause surveys and plans to be made, and may defray the cost thereof out of any moneys appropriated by the General Assembly for the purpose. Governor may cause surveys to be made.
- 10 **86. 85.** If the amount of such cost be not repaid when required the Court may make an order in favour of the Surveyor-General for the payment by the Natives at whose request such survey was made of such amount, or of any lesser sum where the amount is disputed. Security for costs of.
- Such order shall have the effect of a mortgage in favour of the Surveyor-General of the estate and interest of such Natives in the land
- 15 surveyed. Order may be registered as a deed.
87. **86.** Any order as aforesaid having the effect of a mortgage may be registered, and shall have like priority as such, and shall carry interest on the sum secured by it at the rate of five pounds per centum per annum.
- 20 **88. 87.** The payment by any person into the office of the Public Trustee of a sum of money protected or secured by a surveyor's lien or mortgage to the account of the Native Land Court in the matter of the block named, and *ex parte* the person who originally obtained the lien or order, shall be a discharge of such lien or mortgage. Discharge of old survey liens.
- 25 The money so paid to the Public Trustee shall be held in trust for the person entitled to the same.
89. **88.** The fact of any Native having caused any survey of land or of Native land to be made, or the fact of his having pointed out for the purpose of any survey the boundaries of any such land or Native land,
- 30 or of having in any way taken part in or obstructed the making of a survey shall not be accepted by the Court as evidence of title to any land. Surveying no evidence of title.
90. **89.** The Court may by order give authority to any surveyor to enter upon any land or Native land for the purpose of making any survey thereof, and such order, being approved by the Surveyor-General or the Assistant Surveyor-General and indorsed by him as being so approved, shall be authority for such surveyor and such persons as he may employ in or about such survey, to enter upon the land to be surveyed, and to do all things necessary for effecting such survey. Court may order survey with sanction of Surveyor-General.
- 40 **91. 90.** Any person obstructing such survey or any person employed by him in or about such survey (such order having been made and indorsed as aforesaid, and inspection thereof tendered to any person threatening or engaged in such obstruction or theretofore), shall be guilty of an offence, and being convicted thereof shall be
- 45 liable to a penalty not exceeding *fifty* pounds or to imprisonment for any term not exceeding one month. Obstructing survey an offence.

PART VIII.

ROADS.

Private.

Private roads may
be set out.

~~92.~~ 91. When upon an investigation of title to Native land, or upon partition, land is ordered to be divided into several parts or parcels, each of such parts or parcels shall be subject to such rights of private road for the purpose of access to other or others of such parts or parcels as may be ordered. 5

Such order may be made by the Court at the time when division or partition is ordered, or it may, on the application of any person interested therein, be made by the Court or a Judge at any time within five years from the date of such division or partition. 10

Land already
divided subject to
rights of road.

~~93.~~ 92. Each part or parcel into which land has heretofore been divided under any Act relating to Native land, shall be subject to like rights of private road, for the purpose of access to the other or others of such parts or parcels, as the Court or Judge may order, provided such order be applied for within two years from the passing of this Act. 15

Rights of Crown
not to be prejudiced.

The provisions as to private roads herein contained shall not affect the rights of the Crown to reserve or take sites for roads, nor any reservation for roads provided for by law, or the right to take the sites for and to construct and maintain roads by law, given to any person or corporate body. 20

Public.

Governor's right to
lay off public roads.
1873, No. 56, s. 106.
1878, No. 40, s. 15.

94. 93. From and out of land which has or may be granted under the provisions of any Act hereby repealed or repealed by "The Native Lands Act, 1873," or which shall be granted or become the subject of land transfer certificate under the provisions of this Act, or which is owned by Natives under Native Land Court certificate of title, or under memorial of ownership, it shall be lawful for the Governor, at any time hereafter, to take and lay off for public purposes one or more line or lines of road through the said lands, provided that the total quantity of land which may be taken, inclusive of any already taken, for such line or lines of road shall not exceed one-twentieth part of the whole. 25 30

Right may be
released.
1883, No. 31, s. 43.

The Governor may, at any time by indorsment on the Crown grant or on a subsequent or other instrument of title or by deed, release the land the subject of such right therefrom, or from any part thereof. 35

When compensation
payable.

95. 94. But there shall not be taken under the authority of the *pre-*ceding section any land occupied by any pa, village, or cultivation, or any buildings, gardens, orchards, plantations, or any burial or ornamental grounds, except subject to the provisions of "The Public Works Act, 1882," and "The Public Works Act 1882 Amendment Act, 1884." 40

Determination of
right.

96. 95. The powers hereby given as to public roads shall cease— 45

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(a.) As to land the subject of a grant or certificate issued under this Act, at the end of fifteen years from the date of such grant or certificate ;

5 (b.) As to grants issued under any Act hereby repealed at the time when such power would have ceased under such repealed Act.

New clause.

10 97. 96. Whenever any lines of road are surveyed and laid off on or over any Native lands, under the direction of the Surveyor-General, the site of such road shall be deemed to be a road dedicated to the public, and shall vest in Her Majesty.

Roads surveyed by direction of Surveyor-General deemed public roads.

PART IX.

REFERENCE FROM SUPREME COURT.

15 98. 97. If any question of Maori fact, custom, or usage shall arise in the Supreme Court, it shall be competent for any Judge of the Supreme Court to cause a case to be stated, and to refer the same to the Court for its opinion thereon.

Reference from Supreme Court. 1883, No. 31, ss. 65, 69.

20 99. 98. The Court shall forthwith proceed to determine the question so referred, and shall transmit a certificate stating its opinion to a Registrar of the Supreme Court.

Procedure on.

100. 99. It shall be competent for any Judge of the Supreme Court, if he shall think fit, to refer back any question so determined to the Court for reconsideration.

Judge may refer question back.

25 101. 100. The provisions of this Act in reference to hearing and determining cases brought before the Court shall, so far as applicable, be available for the hearing and determining any case so referred as aforesaid.

Provisions of Act available for hearing.

30 102. 101. The opinion or final opinion on a case referred back to the Court shall be received and acted on by the Supreme Court as an authoritative and binding determination of the question referred.

Final opinion of Court authoritative.

REFERENCE TO SUPREME COURT.

35 103. 102. On the application of either of the parties, or on its own motion, the Court may order that any question of law arising in, or necessary to have decided for the purpose of, any matter judicially before it shall be sent to the Supreme Court for decision, and thereupon all proceedings in such matter may be *ad interim* stayed in the Court, and a case stating the facts and the question of law arising shall be drawn up by the Court or be drawn up by the parties, and settled and approved by a Judge. The Supreme Court shall make its decision on such case, and a certificate of such decision shall be returned into the Court and be accepted by it as authoritative and final on the question submitted.

Reference to Supreme Court. 1873, No. 56, s. 103.

PART X.

RULES.

45 104. 103. It shall be lawful for the Judges, subject to the approval of the Governor in Council, from time to time to make rules for regulating the sittings, practice, forms, and procedure of the Court, and for the government of all persons acting under this Act, and also for fixing the fees to be paid under this Act, the time and mode of payment, and for enforcing the payment thereof, and such rules from time to time by other rules to alter or revoke.

Rules may be made. *Ib.*, s. 13.

Existing rules preserved.

Until such rules are approved, the rules as amended existing under "The Native Land Court Act, 1880," shall be approved rules under this Act.

Fees payable under this Act should be paid into the Colonial Treasury.

5

PART XI.

MISCELLANEOUS.

Interpreters.

Interpreters may be licensed.
1873, No. 56 s. 60.

~~105.~~ 104. The Governor may grant under his hand licenses to such persons as he may think fit, authorizing them to act as interpreters under this Act, and may revoke the same: Provided that licenses granted to interpreters before the passing of this Act and unrevoked shall authorize the licensees to act as interpreters under this Act until the Governor shall otherwise direct. 10

Licenses may be suspended, &c.
Ib., s. 61.

~~106.~~ 105. The Governor may, at his discretion, suspend or remove any interpreter appointed or acting under this Act. A Judge may suspend any such interpreter, but shall forthwith report such suspension to the Governor, with the reasons therefor. 15

Penalty for acting without license.
Ib., s. 62.

~~107.~~ 106. Any person acting as or pretending to be a licensed interpreter under this Act who is not so licensed, or whose license is suspended, shall be liable to a penalty not exceeding fifty pounds, to be recovered in a summary way. 20

Closing Hotels.

Hotels may be ordered to be closed.
Ib., s. 64.

~~108.~~ 107. When a Judge shall find that the selling of spirituous or fermented liquors to Natives by any person holding a publican's license is interfering with the business of the Court then being held, such Judge may issue an order, under his hand, directing that such person shall not sell any such liquors, or permit the same to be sold in his licensed house during the then sittings of the Court, or during a specified period, to any Native. Any such order may be revoked and given again from time to time. 25 30

Penalty for not closing.

~~109.~~ 108. Any person disobeying such order after the same shall have been served on him, or delivered at his licensed house, may be summoned before the Court, and, on conviction, fined in any sum not less than ten pounds nor more than fifty pounds for each offence, and the said conviction shall be endorsed on his license. 35

Moneys of Natives under disability.

Moneys of Natives under disability to be paid as Court directs.

~~110.~~ 109. Moneys now being, or to come, to the credit of the account mentioned in section fourteen of "The Native Land Laws Amendment Act, 1883," and moneys which may be retained by the Commissioner under "The Native Land Administration Act, 1886," as having accrued to persons under disability, shall be paid over by the Public Trustee or Commissioner respectively to such persons and in such sums as the Court may from time to time direct. 40

For maintenance, &c.

~~111.~~ 110. The Court may, from time to time, order any such moneys, or any part thereof, to be from time to time paid out to such persons, and in such sums, as it may think necessary and proper for the maintenance, education, or advancement of any native under disability entitled to such moneys. 45

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Crown grants.

112. 111. In any grant hereafter to be made, and, except as herein excepted, in any grant heretofore made to several Natives, such grantees shall be deemed to have been from the date of the grant, or

5 the antevesting date thereunder, whichever may be earliest, tenants in common; but the estate or interest of the grantees shall not be deemed to be or to have been equal, or of equal value, unless so stated in the grant:

Grantees to hold as tenants in common but not equally. 1873, No. 56, s. 79.

10 Provided, that as to any grant issued under the provisions of "The Native Lands Act, 1865," or "The Native Land Acts, 1873," or under any Act amending either of such Acts, or as to any Crown grant heretofore made or hereafter to be made to more Natives than

15 one in fulfilment of any contract, engagement, or promise made by or on behalf of Her Majesty or of the Government of the colony, or in confirmation or satisfaction of any order or award made by any Court of compensation or arbitration, or by any agent of the Crown or Commissioners appointed by the Governor or by the Governor in Council, the foregoing part of this section shall not apply to cases in which

20 the grantees or survivors of them shall, before the third day of September, one thousand eight hundred and sixty-nine, have alienated, by sale, lease, or mortgage, or otherwise, the land comprised in their grant, or to such part of the land as they may have so alienated:

Exceptions thereto. 1873, No. 58, s. 4.

25 Provided further that, as to any grant issued otherwise than as mentioned in the previous proviso, the first part of this section shall not apply to cases in which the grantees or survivors of them shall, before the first day of January, one thousand eight hundred and

30 seventy-four, have alienated, by sale, lease, or mortgage, or otherwise, the land comprised in their grant, or to such part of the land as they may have so alienated; nor to any case where any of the joint tenants have died before the second day of October, one thousand eight hundred and seventy-three; nor wherein the grant is made expressly to the grantees as joint tenants; nor where the grant is upon expressed trust.

1869 No 26, s. 12.

New clause.

35 113. 112. A certificate of title issued under the Land Transfer Act for giving effect to any of the provisions of this Act or of any Act hereby repealed shall, for the purpose of enabling the registration of and giving effect to instruments executed prior to the date of such certificate, but not further or otherwise, be deemed a Crown grant within the meaning of "The Crown Grants Act, 1883," and of section

40 thirty-five of this Act.

When certificate of title deemed a Crown grant.

45 114. 113. For the purpose of the requirements of section fifteen of "The Native Lands Act, 1869," a deed heretofore executed by a majority in number of grantees and of the successors of deceased grantees (successors to the same grantee together counting as one only) shall be deemed to have been executed by a majority in value of such grantees.

Majority of tenant in common.

New clause.

50 115. 114. The several orders for division of lands granted under "The Poverty Bay Grants Act, 1869," made by Judge Halse without opposition at the time of hearing by the Native Land Court, under the provisions of "The Native Land Act, 1873," and amendments thereto,

Orders for division of lands validated.

and by Judges O'Brien and Williams when acting under section eight of "The Native Land Act Amendment Act, 1882," shall be and be deemed to have been from the date of such orders as valid and effectual as if the Native Land Court had at the time of the making of such orders full jurisdiction to divide or award land so granted as aforesaid: 5

Proviso.

Provided, however, that nothing in this section contained shall apply to or affect any land or hereditaments, or any estate, title, or interest therein or thereto of any Native or other person where such land or hereditaments, or such estate, title, or interest were, at the opening of the present session of Parliament, the subject of any suit or proceeding in the Supreme Court of New Zealand. 10

PART XII.

REPEAL.

Acts scheduled repealed.

116. 115. The Acts named in the Schedule hereto are hereby repealed, and such repeal shall take effect on the first day of *October*, one thousand eight hundred and eighty-six, but sections seven to thirteen, both inclusive, of "The Native Land Laws Amendment Act, 1883," shall be deemed to have been repealed from the passing of this Act; and the repeal of "The Maori Real Estate Management Act, 1867," and of "The Maori Real Estate Management Act Amendment Act, 1877," shall not take effect until the first day of *July*, one thousand eight hundred and eighty-seven. 15 20

Provided that any incompleated procedure thereunder shall from its stage, when this Act comes into operation, be at the discretion of a Judge, either continued and completed under this Act in like manner as if such procedure had been commenced hereunder, or, at like discretion, shall be continued and completed under the Act under which such procedure was initiated. 25

Applications for investigation of title, division, or succession heretofore made, if not dealt with beyond gazetting, shall have the effect of applications for investigation, partition, or succession made under this Act. 30

Courts to be one and continuous.

117. 116. The several Courts constituted under "The Native Lands Act, 1865," "The Native Lands Act, 1873," "The Native Land Court Act, 1880," and under this Act, shall, notwithstanding the repeal of any Act, be deemed and taken to have been, and to be and continue to be, one continuous Court. 35

Proceedings under repealed Acts, how completed.

118. 117. Any proceeding commenced in, and any right or duty given to or imposed on or accrued to any one of such Courts, shall be deemed to have continued to any or all of such subsequently created Courts, which subsequent Courts respectively shall be deemed to have had, and the Court under this Act shall be deemed to have, full jurisdiction to complete such proceeding, to exercise such right, and to perform such duty. 40

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New clause.

119. 118. Where in any unrepealed Act, enactment, document, or instrument, reference is made to any Act, or to any provisions of any Act repealed by this Act, such reference shall be construed and shall operate as if it had been made to this Act, or to the provisions thereof corresponding to the provisions referred to.

References to repealed Acts to operate as if made to this Act.

120. 119. The second section of "The Native Land Division Act, 1882," hereby repealed, shall be retrospectively read and construed as if the word "not" had not been inserted omitted therefrom in the fourth line of section two at the passing thereof.

Repeal of certain sections to be retrospective.

New clause.

121. 120. A conveyance or lease of land not held under Crown grant, or of any estate or interest therein (except and until prohibited by law), shall be as effectual to vest in a grantee or lessee the estate purporting to be as assured as it would if such land were held by Crown grant.

Conveyance or lease of land not held under Crown grant effectual.

SCHEDULE.

Schedule.

ACTS REPEALED.

- (1.) The Maori Funds Investment Act, 1865.
- (2.) The Maori Real Estate Management Act, 1867.
- (3.) The Maori Real Estate Management Act Amendment Act, 1877.
- (4.) The Native Land Act, 1873.
- (5.) The Native Grantees Act, 1873.
- (6.) The Native Land Act Amendment Act, 1874.
- (7.) The Native Land Act Amendment Act, 1877.
- (8.) The Native Land Act 1873 Amendment Act, 1878.
- (9.) The Native Land Act Amendment Act, 1878 (No. 2).
- (10.) The Native Land Court Act, 1880.
- (11.) The Taonui-Ahuaturanga Land Act, 1880.
- (12.) The Native Land Acts Amendment Act, 1881, except the last three clauses.
The Native Succession Act, 1881.
- (13.) The Native Land Acts Amendment Act, 1882.
- (14.) The Native Land Division Act, 1882.
- (15.) The Native Land Laws Amendment Act, 1883.