

*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,  
8th July, 1881.*

*Hon. Mr. Whitaker.*

**NATIVE LANDS FRAUDS PREVENTION.**

**ANALYSIS.**

<p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Trust Commissioner.</p> <p>4. Appointment of, continued.</p> <p>5. Alienations in certain cases invalid.</p> <p>6. Trust Commissioner to inquire into circumstances attending alienation.</p> <p>7. Judgment, &amp;c., to be inquired into by Commissioner.</p> <p>8. Commissioner may summons witnesses and order production of documents, &amp;c.</p> <p>9. Commissioner may examine witnesses on oath.</p> <p>10. Persons not attending or producing documents subject to a penalty of £50.</p>	<p>11. Mode of serving of summons.</p> <p>12. Witnesses entitled to expenses.</p> <p>13. Amount may be recovered.</p> <p>14. If alienation not invalid Commissioner to give certificate.</p> <p>15. Power of appeal.</p> <p>16. Proceedings thereupon.</p> <p>17. If Commissioner satisfied he shall transmit certificate to Native Minister. No judgment, &amp;c., to be registered without Order in Council.</p> <p>18. Application for order may be renewed.</p> <p>19. Saving ordinary jurisdiction of Supreme Court.</p> <p>20. Fees.</p> <p>21. Rules.</p> <p>22. Repeals.</p>
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**A BILL INTITULED**

AN ACT to prevent Improvident Dealings and Frauds upon the Alienation of **Title.**  
Land by Natives.

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 Lands Frauds Prevention **Short Title.**  
Act, 1881."

**2.** The words following have the several meanings in this Act respectively **Interpretation.**  
attached to them:—

10    "Native"—aboriginal natives and half-castes, and their descendants by  
      Natives.

      "Alienation"—sale, lease, or other disposition absolute or limited, charge,  
      lien, or incumbrance.

      "Native land" shall include all land held by Natives under any title except  
      their customs or usages.

15    **3.** The Governor may from time to time, by warrant under his hand, appoint **Trust Commissioner.**  
any person to be a Trust Commissioner, who shall hold office during pleasure.

**4.** Trust Commissioners heretofore appointed shall be deemed to be ap- **Appointment of,**  
pointed under this Act. **continued.**

20    **5.** No alienation of Native land shall be valid,— **Alienations in certain**  
      (1.) If such alienation or the transaction relating thereto is contrary to **cases invalid.**  
      equity and good conscience; or,

      (2.) If the alienation is in contravention of or not in accordance with any  
      trusts to which the land is subject; or,

25    (3.) If the consideration for alienation is either in whole or in part founded  
      directly or indirectly on or arises out of or connected with any sale or  
      gift of any spirituous or fermented liquors, or any arms or other war-  
      like implements or stores, or any contract or promise relating to any  
      such sale or gift.

Commissioner to inquire into circumstances attending alienation.

6. The Trust Commissioner shall, as far as possible, inquire into the circumstances attending every alienation, and especially ascertain whether the same is valid or invalid according to the intent and meaning of the last preceding section.

He shall also inquire as to the nature of the consideration, and shall satisfy himself that the consideration purporting to be paid or given has been paid or given. 5

And shall also satisfy himself that the Natives interested in the lands the subject of alienation have sufficient land left for their occupation and support.

Judgment, &c., to be inquired into by Commissioner.

7. No judgment, order, or decree may be registered in any Deeds Registry Office or in any Land Registry Office, nor shall any land be capable of being seized or sold under any such judgment, order, or decree, or under any writ of *feri facias*, or any other writ, for the purpose of satisfying any such judgment, order, or decree, unless the circumstances attending the same have been investigated by a Trust Commissioner. 10 15

Commissioner may summon witnesses and order production of documents, &c.

8. For the purpose of any such inquiry or investigation as aforesaid every Trust Commissioner appointed under this Act may, by summons under his hand, require any person to attend as a witness at such time and place as shall be specified in the summons.

Such person may in like manner be required to bring and produce any books, papers, writings, deeds, and documents of which a Court of law could compel the production. 20

Commissioner may examine witnesses on oath.

9. The Trust Commissioner may examine upon oath any witness so summoned and attending touching the matter to be inquired into.

Persons not attending or producing documents subject to a penalty of £50.

10. If any person on whom any summons shall have been served shall fail or neglect to appear, or to produce any books, papers, writings, deeds, and documents according to the exigency of the summons, or shall refuse to be sworn or to give evidence, or to answer such questions as shall be put to him by the Commissioner touching the subject-matter of the inquiry, 25

Every such person shall be liable to a penalty not exceeding fifty pounds, to be recoverable in a summary way; and every person wilfully and corruptly giving false evidence on oath shall be guilty of perjury, and punishable accordingly. 30

Mode of serving of summons.

11. A summons may be served by delivering a copy thereof personally, or by leaving a copy at the usual place of abode of the person to be served. 35

No person shall be compelled to attend until a reasonable sum is tendered to him to pay the probable expenses of his travelling and maintenance, or, if the summons is not personally served, such sum is paid on his demand by the person at whose instance the inquiry or investigation is held.

Witnesses entitled to expenses.

12. The amount to which witnesses shall be entitled for such expenses shall be according to the scale allowed to witnesses by the Supreme Court, and the amount thereof shall be fixed by the Trust Commissioner, who shall, as soon as the examination is concluded, give a certificate to the person entitled, setting forth the amount allowed. 40

Amount may be recovered.

13. If the amount so allowed is not paid, the person entitled thereto may forthwith sue for the same in a Court of competent jurisdiction, and the certificate, on proof of the handwriting thereto of the Trust Commissioner, shall be conclusive evidence that the amount there stated is due to the person in whose favour the certificate is given. 45

If alienation not invalid Commissioner to give certificate.

14. If upon such inquiry as aforesaid the Trust Commissioner is satisfied that the alienation is not invalid, according to the true intent and meaning of this Act, he shall indorse on the principal or only instrument a certificate under his hand to that effect. 50

No deed or other instrument of alienation shall be registered in any registry of deeds or land without such indorsement.

Power of appeal.

15. Any person aggrieved by any act of the Trust Commissioner in relation to the giving or withholding of any such certificate as aforesaid may appeal to the Supreme Court against the decision of the Trust Commissioner, and such appeal shall be made within such time, and in such form, and with such provisions as to notice of appeal and as to the effect of such notice, and shall be heard and determined in such manner, as shall be fixed and provided in that behalf in the rules of procedure hereinafter directed to be made.

10 16. If upon the hearing of such appeal the Supreme Court shall be of opinion that the approval of the Trust Commissioner ought to have been withheld or to have been given, as the case may be, the said Court may, by order, prohibit or authorize the proposed alienation, as the case may require, and such order shall have the same force and effect as a refusal or consent, as the case may be, by the Trust Commissioner.

Proceedings thereupon.

15 17. If, on such investigation as aforesaid, the Trust Commissioner is satisfied that the transaction on which any judgment, order, or decree, is founded is not contrary to equity and good conscience, he shall transmit a certificate under his hand to that effect to the Native Minister, to be submitted to the Governor in Council, who thereupon may give such directions or make such orders as he may think fit.

If Commissioner satisfied he shall transmit certificate to Native Minister.

20 No judgment, order, or decree shall be registered in any registry of deeds or land without an Order in Council authorizing the registration thereof; and no alienation of land under any judgment, order, or decree, shall be given any effect to by writ or otherwise without such registration.

No judgment, &c., to be registered without Order in Council.

25 18. When an Order in Council authorizing registration has been refused, it shall be competent for any person at any time, and from time to time, to make an application that the case may be reconsidered, and such an order issued.

Application for order may be renewed.

30 19. Nothing in this Act contained limits or interferes with the power of the Supreme Court in its equitable jurisdiction to avoid or set aside any transaction coming within the provisions of this Act on the ground of fraud, or to make such order therein as the said Court may appear just.

Saving ordinary jurisdiction of Supreme Court.

35 20. The Governor in Council may, by order in that behalf, fix fees to be paid in respect of any proceedings before the Trust Commissioners under the provisions of this Act, and such fees shall be demandable and payable accordingly.

Fees.

21. The Governor in Council may, with the approval of a Judge of the Supreme Court, make and from time to time alter, revoke, or amend such rules of practice and procedure for regulating proceedings under this Act as to him shall seem fit, and such rules, when published in the *New Zealand Gazette*, shall have the force of law.

Rules.

22. The undermentioned Acts are hereby repealed:—

Repeals.

1870, No. 75.—The Native Lands Frauds Prevention Act, 1870.

1873, No. 44.—The Native Lands Frauds Prevention Act Amendment Act, 1873.