

# The Pouakani Report 1993

## Appendices

### 10 (a) List of Acts 1862-1899

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1862 The Native Lands Act

1863 The New Zealand Settlements Act

1864 The New Zealand Settlements Amendment Act

The Public Works Lands Act

The Native Lands Act Amendment Act

1865 The New Zealand Settlements Amendment and Continuance Act

The Native Lands Act

The Native Rights Act

1866 The East Coast Land Titles Investigation Act

The Native Lands Act

1867 The Native Lands Act

The Maori Real Estate Management Act

1868 The Native Lands Act Amendment Act

The East Coast Act

1869 The Native Lands Act

1870 The Native Lands Frauds Prevention Act

The Native Lands Acts Amendment Act

1873 The Native Lands Frauds Prevention Act Amendment Act

The Native Land Act

1874 The Native Land Act Amendment Act

1877 The Native Land Act Amendment Act

The Maori Real Estate Management Act Amendment Act

The Government Native Land Purchases Act

1878 The Native Land Act 1873 Amendment Act

The Government Native Land Purchases Act Amendment Act

The Native Land Act Amendment Act (No. 2)

1880 The Native Land Court Act

1881 The Native Lands Frauds Prevention Act

The Native Land Acts Amendment Act

1882 The Native Land Acts Amendment Act

The Native Land Division Act

1883 The Native Land Laws Amendment Act

The Native Committees Act

1884 The Native Land Alienation Restriction Act

1886 The Native Land Administration Act

The Native Equitable Owners Act

The Native Land Court Act

1888 The Native Land Act

The Native Land Court Act 1886 Amendment Act

The Maori Real Estate Management Act

The Native Lands Frauds Prevention Act, 1881 Amendment Act

1889 The Native Lands Frauds Prevention Acts Amendment Act  
The Native Land Court Acts Amendment Act  
1890 The Native Land Laws Amendment Act  
1891 The Native Land Court Acts Amendment Act  
1892 The Native Land Purchases Act  
The Native Land (Validation of Titles) Act  
1893 The Maori Real Estate Management Act 1888 Amendment Act  
The Native Land Purchase and Acquisition Act  
The Native Land (Validation of Titles) Act  
1894 The Native Land Court Act  
The Native Land (Validation of Titles) Act Amendment Act  
1895 The Native Land Laws Amendment Act  
The Native Townships Act  
1896 The Native Land Laws Amendment Act  
1897 The Native Land Laws Amendment Act  
1898 The Native Land Laws Amendment Act  
The Native Townships Act Amendment Act  
1899 The Native Land Laws Amendment Act  
The Native Township Acts Amendment Act  
Note: This list is not comprehensive but includes the principal legislation affecting the Native Land Court and alienation of Maori land.

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# The Pouakani Report 1993

## Appendices

### **10 (b) Thomas Mackay's "Synopsis of Legislation Affecting the Alienation and Disposition of Interests in Native Lands from 1862 to 1890 Inclusive"**

(AJHR 1891, G-IA)

#### **"The Native Land Act, 1862."**

This Act was the first to provide a Court for the investigation into, and the determination of, Native-land titles. It also waived in favour of the Natives so much of the Treaty of Waitangi as reserved to the Crown the right of pre-emption of their lands, except in those cases where agreements were pending between the Crown and the Native owners for the cession of territory, or the acquisition of land by purchase and cession. By this abrogation of the treaty Europeans were enabled to deal directly with the Natives for their lands so soon as a certificate of title thereto was issued. This was the first step towards complicating the titles of European to Native lands. The certificates referred to were merely deductions of ownership, with but limited rights of transfer. A purchaser could only acquire a good title, such as might be exchanged for a Crown grant, when all the Natives named in the certificate, if that instrument was in favour of individuals, and not of tribes or communities, joined in the transfer. Should, however, only a proportion of these Natives execute a transfer, the purchaser had to trust to their applying to the Court to partition their interests, which application the Court could, in its discretion, either approve of and effectuate, or refuse to do so. The Act did not, however, provide for the purchaser himself applying to the Court to ascertain, and allot to him, the interests which he had acquired.

The Act was seldom, if ever, brought into operation. Perhaps this was owing to so many of the Native tribes in the northern and western divisions of the North Island being in rebellion. There was also an Amendment Act passed in 1864, which merely gave the Governor power to increase the number of members forming a Court.

#### **"The New Zealand Settlements Act, 1863."**

This Act was passed in consequences of the many outrages upon life and spoliations of property which had been perpetrated by rebel Natives. Its object was to provide for the defence of the European settlers and loyal Natives in disturbed districts, by promoting further settlement of Europeans. Eligible sites for such settlements were to be taken by Proclamation, and compensation therefore determined by Compensation Courts, except that no compensation was to be granted to any person engaged since January, 1863, in making war against Her Majesty, or who had aided any such persons, or been concerned in any outrage against persons or property, or who had refused or neglected to deliver up his or their arms on being required to do so after a certain day to be proclaimed. A return was made to the House of Representatives in

August, 1866, of all lands proclaimed or taken from rebel Native tribes under this Act. The total was 3,255,787 acres, which included the confiscated lands in Auckland, Taranaki, and Wanganui. Of these confiscated lands, however, over 1,000,000 acres have since been restored, as reserves for friendly Natives and returned rebels. An Amendment Act was passed in 1864 giving extended powers to the governor in Council in awarding compensation. The duration of both Acts was limited to the 3rd December, 1865.

"The Native Lands Act Amendment Act, 1864", contained only one clause, which gave the Governor power to increase the number of members forming a Court.

#### **"The Public Works Lands Act, 1864."**

This provided for Native lands required for public purposes being dealt with in the same manner as prescribed in "The New Zealand Settlements Act, 1863".

#### **"The New Zealand Settlements Amendment and Continuance Act, 1865."**

This made perpetual the Act of 1863, as amended by the Act of 1861, but provided that no proclamation of districts and reservation of land for settlement should be exercised after the 3rd December, 1868; otherwise it only provided more enlarged machinery for the Compensation Courts in dealing with claims for land taken but not confiscated. This Act was repealed in 1878.

#### **"The Native Lands Act, 1865."**

This amended and consolidated the laws relating to Native lands in the colony. It constituted a Court, the Judges of which held their office during good behaviour, and the Assessors their office during pleasure; for the ascertainment of the persons who according to Native custom were the owners of such lands; for the extinction of proprietary customs, and the conversion of such modes of ownership into titles derived from the Crown. The discretion was reserved to the Court of recommending that the Crown grant should contain such restrictions on alienability, limitations, or conditions as it deemed desirable. The Act also provided for the regulation of the descent of lands when the title thereto was converted as aforesaid, and made further provision in reference to the aforesaid matters. The most important of these are contained in Part III., "Jurisdiction and Duties of the Courts", sections 21 to 29, and particularly as affecting subsequent alienation of any lands which had passed the Court; in the provisoes [sic] to section 23, "that no certificate of title shall be ordered to more than ten persons, and, further, that if the piece of land adjudicated upon shall not exceed five thousand acres, such certificate may not be made in favour of a tribe by name;" and also in the provisions of section 24, "that two or more certificates may be ordered under one claim, if on investigation there is more than one owner or set of owners who desire that their respective estates or interests shall be divided, or that the land shall be apportioned".

Section 42 prescribed that any Native claiming to be interested in a piece of Native land may give notice to the Court, specifying such piece of land by its name, and giving the names of the persons whom he admitted to be interested with him, and that he desired that his claim should be investigated by the Court.

Section 43 prescribed that, if, upon the publication by the Court of such claim, the claimant and his opponents (if any) should agree to submit to the decision of the Court, it might proceed to determine the same, provided that the certificate or certificates to be issued should be delivered to the person named therein as entitled. It also enacted that if the Court recommended that any conditions or limitations should be attached to such certificate it should not issue it until the Governor should have approved or disapproved of such conditions or limitations, and should have caused as much as he should think fit to be indorsed thereon.

Section 44 provided that such certificates should, in all Courts of law in the colony, be conclusive as to the persons who owned the land described therein, and that they might be registered in the proper registry of deeds.

Section 45 enacted that any Native having a claim by right of Native custom to succeed to the ownership of any land whereof a Native may die possessed, might apply to the Court to have his right in the premises decided, and the Court might hear and determine such claim, and issue a certificate setting forth the decision of the Court, and such decisions should be final in all Courts of law.

Section 46 prescribed that on receipt by the Governor of the certificate it should be lawful for him to cause a Crown grant to be issued in favour of the person or persons named in such certificate, and, if recommended by the Court, it should also be lawful for him to insert in the grant any restrictions on alienability, limitations, or conditions, as might be expressed in such recommendation.

Section 47 prescribed that if the purchaser of part of a piece of land comprised in a certificate applied for a Crown grant for the same, it should be lawful for the Governor to issue one, provided the certificate contained no restrictions, limitations or conditions; but it also enacted that the deed should be surrendered as hereinafter provided with respect to Crown grants on subdivision of hereditaments.

Section 48 prescribed that such grants should be valid and effectual as grants made by the Governor of waste lands of the Crown, and as if the lands comprised had been ceded by the Native proprietors to Her Majesty, and should bar all estates, rights, titles, or interests of all persons except the grantees named therein. It should be conclusive as to the limits and extent of such land, and in all other respects have the legal effect and consequence of an ordinary grant from the Crown.

Section 74 prescribed that every conveyance or other disposition of hereditaments of Native land granted under this Act made by a Native to a person of European race or to another Native should be interpreted to the conveyor or other disposer, and should be executed by him in the presence of and be attested by a Judge or a Justice of the Peace, and should have written thereon or annexed thereto a statutory declaration by the person so interpreting that his translation was correct, and was understood by such Native; and such declaration should be made before the said Judge or Justice of the Peace, and should have the legal effect of a declaration made under the Imperial statute 5 and 6 Will. IV., cap. 62.

By the 75th section, however, "every conveyance, transfer, gift, contract, or promise affecting or relating to any Native land in respect of which a certificate of title shall not have been issued by the Court shall be absolutely void."

This Act was so successful that in a return of the proceedings of the Court, embodied in a Report on the working of "The Native Lands Act, 1865", by Chief Judge Fenton (Parliamentary Paper A No. 10, 1867) it is stated that from the 1st November, 1865, to the 30th June, 1867, a period of twenty months, there were 1,220,477 acres, of which 957,774 acres were in Auckland Province, to which title was ordered by the Court. The late Judge Maning, the quaint and humorous author of "Old New Zealand," in a letter to Chief Judge Fenton, dated Hokianga, 24th June, 1867, on the working of the Court, states "that 'The Native Lands Act, 1865,' satisfies a great want and vital necessity of the Maori people, by offering them a means of extricating themselves from the Maori tenure, and obtaining individual and exclusive titles of land;" and Chief Judge Fenton winds up his report with the following words: "Nothing that has yet been tried has so largely tended to produce in the minds of the Maoris peaceful desires and a grateful confidence in the Legislature as 'The Native Lands Act, 1865.'"

An Amendment Act, to be read and construed as part of the Act of 1865, was passed in 1866. Its principal features in respect of the alienation of Native lands were as follows: Section 5 provided that in every Crown grant of any Native reserves the land therein comprised shall be inalienable by sale or mortgage, or by lease for a longer period than twenty-one years from the making of such lease, except with the consent of the Governor in Council: provided that, if any grant of Native land shall have been made to a Native under limitations or restrictions on the alienation of such land greater or other than above provided, the Governor in Council may release the land from such limitations or restrictions, or any of them, so that such land shall be thenceforward subject only to the restrictions in this section contained, and to the other provisions of this Act relating to Native reserves. Section 6 gave the Governor in Council power to endorse any proposed conveyance, lease, or other disposition of such land, and thereby make it alienable to the extent expressed in the instrument. Section 11 removed the discretionary power of the Court, conferred on it by section 28 of the Act of 1865, as to whether or not in every case of investigation of title the Court when issuing the certificate should prescribe in that document any restrictions or limitations, and made it imperative that the Court should do so.

### **"The Native Rights Act, 1865."**

This Act declared that the Maoris should be deemed to be natural-born subjects of the Queen, and that the jurisdiction of the Queen's Courts of law extended over the persons and properties of all Her Majesty's subjects within the colony.

Section 4 provided that the Native title to land be determined according to the ancient custom and usage of the Maori people.

Section 5 enacted that in any action in which the title to any interest in such land is involved, the Judge should order that any issues of fact or of Maori usage should be tried in the Native Land Court, and the Judge of that Court should return the

judgement into the Supreme Court; and such judgement should be taken as conclusive, and should have the effect as the verdict of a jury in the Supreme Court.

### **"The East Coast Investigation Act, 1866."**

This was passed to enable the Native Land Court to inquire into and determine titles to land in the East Coast (Poverty Bay) District.

By section 3 it conferred upon the Native Land Court the following power and jurisdiction: (a) To inquire into and determine the title to all and any land or lands, whether claimed by or belonging to aboriginal natives or other British subjects, and whether or not such investigation shall be required on the part of any person or persons claiming title thereto; (b) to award, by certificate issued under the direction of the Court, that grants of land may be made to such Natives, or other persons respectively who shall be found to be entitled thereto, as shall not have been engaged in the rebellion; (c) in those cases in which it shall be found that Natives who have been engaged in the rebellion are, or but for such participation in rebellion, would have been entitled to land jointly with other Natives who shall not have been so engaged, to make an equitable partition of such land, to assign to the Natives so entitled, who shall not have been so engaged, their just portion of such land; (d) and to ascertain and certify what lands are, or, but for participation in the rebellion would have been, the property of persons who have been engaged in the rebellion.

Section 4 enacted that lands which the Court certified to be the property of persons who had been engaged in the rebellion should be declared to be land of the Crown.

Section 6 prescribed that provision might be made for persons who had been engaged in the rebellion by setting apart lands for them, subject to conditions as to how such lands should be held or disposed of for the benefit of such persons.

### **"The Native Lands Act, 1866."**

This Act was to be read and construed with "The Native Lands Act, 1865". Sections 4 to 10 principally affected alienations of Native reserves. Section 11 provided that the Court should append a report on every certificate, whether it was proper or not to place any restrictions on the alienability of the land comprised in such certificate.

Section 12: If report adopted in the affirmative, restriction to be indorsed on certificate.

### **"The Native Lands Act, 1867."**

This repealed the Act of 1866, except in so far as was necessary to the support of any act, matter, or thing done or completed thereunder, and except also as to any penalty or forfeiture incurred under the Act of 1866: provided that any investigation of title commenced under the repealed Act, and pending at the time of the passing of this Act of 1867, should be continued and conducted under this Act as if originally commenced thereunder.

The principal object, however, in introducing the Act was to insure the ascertainment of the whole of the owners so as to cure the defect in the Act of 1865 which enabled the land to be vested in ten persons, thereby ignoring the interests of the majority. No sale of land under this form of title could be effectuated until after subdivision. Although the Act was passed with the object of protecting the whole of the owners, the fact of its being only requisite that no more than ten should be inserted in the body of the certificate perpetuated the evil effects of the Act of 1865, as these ten individuals could lease the land and appropriate the proceeds.

Section 17, which was enacted for the above object, was but a clumsy attempt to amend section 28 of the Act of 1865. The verbiage of the former is so infelicitous and obscure that it can hardly be "understood of any man." Nevertheless titles have been determined by it, but whether satisfactory is doubtful.

Section 32 weakened section 74 of the Act of 1865, in regard to the interpretation and execution of deeds of Native lands, so that, instead of such instruments being interpreted to the conveyor or disposer of the land, and executed by him in the presence of, and attested by, a Judge or Justice of the Peace, it should be sufficient if the execution of such deeds were made in the presence of, and attested by, the interpreter and any other person being a male adult. The removal of a safeguard to the bona fides of such transactions, by the substitution of the latter mode, enabled many illegal and doubtful titles to land to be obtained by Europeans from Natives.

#### **"The Maori Real Estate Management Act, 1867," and "The Maori Real Estate Management Act Amendment Act, 1877"**

These Acts provided for the management of land owned by Native minors and others under disability, otherwise than under their customs and usages, and for the appointment of trustees, and defining their powers.

They were repealed by "The Native Land Court Act, 1886".

#### **"The Native Lands Act Amendment Act, 1868."**

This was simply a machinery Act dealing with a few questions outside of investigation of titles, or the alienation and disposition of interests in Native lands.

#### **"The East Coast Act, 1868."**

This Act repealed "The East Coast Land Titles Investigation Act, 1866," and the Amendment Act of 1867, but this repeal was not to affect the past operations of these Acts, or the validity of anything done, or of any right, title, or interest which had accrued thereunder.

Section 3 directed the Native Land Court to refuse to order certificate of title to issue in favour of persons guilty of offences mentioned in the 5th section of "The New Zealand Settlements Act, 1863."

Section 4 gave to the Court a discretionary power either (1) to order a certificate of title in respect of the whole of such claim to issue in favour of the owners who had not

committed any of the offences mentioned in the 5th section of the said Act; or (2) to order that such claim should be divided in a manner to be specified by the Court, and that in respect of each of the several divisions either a certificate of title should issue a favour of owners who had not committed any of the offences so mentioned in the said 5th section of the said Act, or a certificate stating that the land comprised therein belonged according to Native custom to persons who had committed some of the offences mentioned in the said 5th section of the said Act; or (3) to order that a certificate in respect of the whole of the claim should issue stating that the land comprised therein belonged according to Native custom to persons who had committed some of the offences mentioned in the said 5th section of the said Act.

Section 5 directed that any land comprised within any such certificate which stated it to belong to persons guilty of such acts aforesaid, should be deemed Crown lands.

Section 6 empowered the Government to make reserves for the use and maintenance of specified aboriginal Natives.

### **"The Native Lands Act, 1869."**

Section 2 directed that every certificate of title should be dated on the day of signature, and that such day should be the date of issue.

Section 3 empowered the Court to fix in such certificate a day on which the legal estate in the lands described therein should be vested under any Crown grant of the same to be thereafter issued.

Section 4 provided that no deeds, transfers, gifts, contracts, or promises affecting the land of which such certificate was granted, made or entered into after the day fixed on therein should be void under or affected by section 75 of "The Native Lands Act, 1865."

Section 12 declared that in any grant theretofore or thereafter to be made under the Native Lands Acts of 1865 and 1867, when there was more than one grantee, such grantees should be deemed to be tenants in common, and not joint tenants. This provision, however, was not to apply to cases in which grantees or their survivors should have previously alienated the lands comprised in their grant or any part thereof by absolute conveyance in fee - simple.

Section 14 directed that undefined shares of tenants in common should not be deemed to be equal unless it was so stated in their grant. This provision was not, however, to apply to shares, estates, or interests already purchased from any such grantees, which for the purpose of such transactions were to be considered equal.

Section 15 declared it should not be lawful for less than a majority in value of the grantees of any land under the said Acts (1865 and 1867) to alienate or dispose of their shares in such land, or any part thereof; but, if any dispute should arise as to such value, either or any of the parties could apply to the Court to have such value ascertained, and order made accordingly, as provided in section 50 of the Act of 1865. The Court, however, might, if it thought fit, refuse to make any order.

Section 20 limited the time for ordering a rehearing under section 81 of the Act of 1865 to three months, instead of six months. This was repealed by a short Act for the purpose, "The Native Lands Act Amendment Act, 1870," section 3, in which the original limit of six months was reinstated.

### **"The Native Lands Frauds Prevention Act, 1870," and Amendment Act of 1873.**

The object of these Acts was to prevent the maladministration of lands vested in trustees for the Natives in cases where trusts had been created in the names of individual proprietors, but really for the benefit of Native communities; to take care that these trusts were fulfilled, and that the lands were not alienated so as to defeat the true objects of the trust. The same precautions were also to be exercised in respect of the alienation of lands that were not the subject of any trust. The machinery employed under them to secure these ends was as follows: Districts were to be constituted, and Commissioners appointed to each district. The Commissioner was to examine directly into all land-transactions between Europeans and Natives. He would have to satisfy himself that the transaction was fair and equitable; that it was in accordance with the trusts affecting the land; that no part of the consideration, either directly or indirectly, was payable in liquor or arms; and, lastly, that the parties understood the nature of the transaction. If he was satisfied that all these conditions had been fulfilled he would grant a certificate to that effect, and no instrument without this certificate indorsed would be allowed to be registered, or admitted as evidence in any Court of law. For the purpose of enabling the Commissioner to discharge his duty all the powers under the Commissioners' Powers Act were vested in him. Persons feeling themselves aggrieved by the decision of the Commissioner could appeal direct to the Supreme Court in a simple and inexpensive manner, and the Court had the power to confirm or annul the transaction, as seemed fit. But, lest the Court might chance to be overburdened by this work, power was taken in the Act, with the approval of a Judge of the Supreme Court, to appoint a barrister to exercise the function of the Court. Power was also given to the Governor in Council to regulate the manner in which the Commissioners should discharge their duties.

### **"The Native Land Act, 1873."**

This Act was originated by the late Sir Donald McLean to amend and consolidate the laws relating to the Native Land Court and to Native land. Its intention was to establish a system by which the Natives should be enabled, at a reduced cost, to have their surplus land surveyed, their titles thereto ascertained and recorded, and the transfer and dealings relating thereto facilitated; to have a roll or "Domesday Book" prepared of the Native land throughout the colony, with a view of assuring to the Natives, without any doubt whether, a sufficiency of land for their support and maintenance, besides establishing endowments for their permanent general benefit out of such lands.

This Act repealed the Native Lands Acts, 1865, 1867, 1868, 1869, and 1870, and section 73 of "The Constitution Act, 1852," which latter enactment had concerned the Crown's right of pre-emption over Native lands. In addition to amended powers for the investigation and determination of titles to Native lands, it gave power to set apart land out of Native blocks as reserves for the benefit of Natives; and the land so reserved was to be equal to an aggregate amount of not less than 50 acres per head for

every Native-man, woman, or child-resident in any district. It likewise reconstituted the Native Land Court on lines somewhat different from those laid down in earlier Acts, and it introduced certain changes in the procedure of the Court. For instance, in settling the titles of Native reserves and other Native lands it substituted for a certificate of title a memorial of ownership, in which the names of all the individual owners of the lands reserved for the benefit of Natives, or lands otherwise adjudicated upon, should be enrolled. Moreover, Native reserves lands were to be inalienable by sale, lease, or mortgage, except with the consent of the Governor in Council.

In the case of other lands, the amount of the proportionate share of each owner was to be declared in the memorial when the majority of owners so required; and to every memorial there was the condition "that the owners of the land referred to therein had not power to sell or otherwise dispose of the said land, except that they might lease the same for any time not exceeding twenty-one years, without covenant for renewal or for purchase at a future time." In spite of this condition, however, nothing was to preclude any sale of the land comprised in such memorial when all the owners agreed to the sale, nor was it to prevent any partition of such land.

#### Sales under Memorial of Ownership.

By section 59 any sole owner, or any number of collective owners, could sell their land held under memorial, subject to inquiry by the Court into the particulars of the transaction, and to its being satisfied of the justice and fairness thereof, of the assent of all the owners to such sale, and the payment of all costs and charges whatsoever, and advances as earnest-money to the Native owners. When so satisfied, the Court was to endorse the memorial to the effect that the transaction appeared to be bona fide, and that no difficulty existed to the alienation of the land comprised in the memorial.

By section 62 no lease of any land held under memorial was to be valid unless all the owners of the land comprised in such lease should assent thereto; and the Court was required to satisfy itself in every case of the fairness of the transaction, of the rent to be paid, and of the assent of all the owners to the lease. All such leases were to be signed by all the owners in the manner provided in section 85.

By section 63 receivers of rent might be appointed by the Judge, with the consent of all the owners; and on their application he might appoint any persons selected by them, not being fewer than four persons, either out of their number or not, Europeans or Natives, to be receivers on behalf of all the lessors of the rents under such lease. Moreover, the lessee was not bound to see to the proper application thereof, nor in any way be accountable for any loss or misapplication thereof.

Section 79 declared that, in any grant made under any of the Acts repealed by this Act, where there was more than one grantee, such grantees should be deemed to be tenants in common and not joint tenants, but the estate or interest of each of such several grantees should not be deemed to be of an equal value unless it had been so stated in the grant: Provided that nothing contained in this section should be deemed to apply to any former grantee who had already alienated the land comprised in any such grant.

Section 85. This imposed a fresh provision for the signing and attestation of instruments of alienation or disposition even more stringent than the similar clause (section 74) of the Act of 1865. In addition to the terms of the latter it required that before the execution of any such instrument it should be properly explained to each Native before the execution thereof, by a duly-appointed interpreter, and a clear statement of the contents thereof, written in Maori and certified by the signature of such interpreter, should be indorsed on the instrument, and it further required that its execution should be attested by a Judge of the Court or a Resident Magistrate, and at least one other male adult credible witness.

Section 87 declared that every instrument of disposition affecting any Native land before it should become vested in freehold tenure by order of the Court should be absolutely void, except that contracts by parole, might be made affecting flax, timber, or actual productions growing on such land, extending over a period of not more than two years.

Section 89. This affected past transactions. It permitted a grantee under any of the repealed Acts who was desirous that subdivision should be made of the land included in the grant, or any part thereof, for the purpose of having his share in severalty allotted to him, or affecting a partition among the owners thereof, and should no disposition of the said land or any part thereof have been made before the passing of this Act, such person might apply to the Court to make such subdivision, and the Court might order a Crown grant for a defined portion of the land to the applicant; and on surrender of the original grant to the Crown, the Court might, in its discretion, order such subdivision as it should deem just, and might order Crown grants to be issued according to the award in partition.

Section 92 provided that, where lands had been in part alienated, undivided shares of former grantees might be ascertained.

Section 97 provided that after the passing of this Act no land comprised in any certificate of title heretofore issued under section 17 of the Act of 1867 should, until it was subdivided and awarded, be alienated in any way except in accordance with provisions of this Act: Provided that owners under former certificates might apply for subdivision, and such subdivision might be ordered, notwithstanding that any lease of such land might have theretofore been made; but no award of partition in any such case should take effect during the subsistence of any lease of the land comprised in such award.

Section 98 declared that all lands comprised in any certificate as aforesaid not alienated in any way might be dealt with same as land held under memorial of ownership under this Act: Provided that such land respecting which any dealings may have theretofore been had might be dealt with same as land held under memorial of ownership under this Act; but that in every dealing with such land the parties interested should satisfy the Court that they had the assent of all the persons whose names were indorsed on the certificate, as well as those on the face thereof, to any such transaction.

This Act was intended to simplify and methodise the Native-land laws, and although prepared with great care to give effect to such intention, yet it turned out a failure. It

was found to be unworkable through being hampered with too many conditions relative to the investigation and determination of title to Native lands on the one hand, and the alienation or disposition of them on the other.

### **"The Native Land Act Amendment Act, 1874."**

This Act was to be construed and read with "The Native Land Act, 1873." Section 3 repealed the proviso to section 4 of the Act of 1873, and in lieu thereof it provided that the repealed Acts recited in the Act of 1873 should, notwithstanding the repeal thereof, thereby continue and be in force for the purpose of continuing and perfecting under any of the said repealed Acts any proceedings commenced or in progress thereunder, and under the said repealed Acts all such proceedings should be continued and perfected.

### **"The Native Land Amendment Act, 1877," and "The Native Land Act 1873 Amendment Act, 1878."**

These Acts did not contain any special provisions affecting disposition of Native lands.

### **"The Government Native Land-purchase Act, 1877."**

It was deemed expedient to pass this Act in order to make better provision for the protection of the interests of the Crown in the acquisition of Native lands.

Agents had been employed to purchase such lands on commission, and there were a number of such purchases under negotiation; and it was also deemed expedient that that mode of purchasing Native lands should be forthwith discontinued and other arrangements made for the completion of any such purchase than under negotiation.

Section 2 provided for the protection of the interests and rights of the Crown in all cases of incomplete purchases or negotiations whether the same land passed through the Native Land Court or not.

### **"The Government Native Land-purchase Act Amendment Act, 1878."**

Section 2 gave the Crown the right to expel intruders on lands under negotiation.

Section 3 provided that the relinquishment of any rights of the Crown should not operate for two months after the intention of such relinquishment had been notified in the Gazette.

Section 4 authorised the Governor to issue Crown grants for any lands agreed to be reserved for Natives out of any blocks to which the title of the Crown had been determined by the Court, vesting such reserves in the persons interested with such restrictions as the Governor should deem fit.

### **"The Native Land Act Amendment Act, 1878 (No. 2)."**

Section 10 fixed three months as the time for making application for rehearing.

Section 11 prescribed that, notwithstanding anything to the contrary thereto in "The Native Land Act, 1873," or any amendments thereof, if should be lawful for the Court in its discretion, on the application of any Native owner or other person interested therein, to hear and determine the value or extent of any estate or interest, in any land held by such applicant under memorial of ownership, or Crown grant, or award, or conveyance; and, if it should deem fit, to make an order vesting any part or portion of such land in such applicant.

Section 12 made a fresh rule, relative to the execution of instruments of disposition, as follows: That any instrument might be signed by any Native interested in the same before any Justice of the Peace, Clerk of any Resident Magistrate's Court, or any Inspector of Armed Constabulary, or a Solicitor of the Supreme Court, not professionally concerned or engaged for any of the parties to such transfer, lease, or other instrument, who should have the same powers as are conferred on Judges of the Native Land Court, or Resident Magistrates, under the provisions of section 86 of "The Native Land Act, 1873." Provided that any such officer holding a license as an interpreter under "The Native Land Act, 1873," should not attest the execution of any deed which had been interpreted by himself: Provided, further, that the attestation by an adult witness, as required by the said Act, should still in all cases be necessary.

#### **"The Native Land Court Act, 1880."**

Section 70 repealed the Act of 1873, in so far as was repugnant to this Act, and provided that a certificate of title issued under this Act should have the same force and effect and might be dealt with as a memorial of ownership under the Act of 1873. The rest of the Act principally related to the procedure of the Native Land Court, but contained no provisions respecting the alienation or disposition of lands.

#### **"The Native Lands Frauds Prevention Act, 1881."**

This repealed and consolidated the Acts of 1870 and 1873 and provided additional machinery for effecting the purposes for which such legislation was necessary.

#### **"The Native Land Acts Amendment Act, 1882."**

Section 7 enacted that, whereas claims to land had been heard and decided, or partly decided, and proceedings had been taken by the Native Land Court under "The Native Land Act, 1873," and its amendments, in which sundry provisions of the said Act had not been technically complied with, it should be lawful, on the application of any person interested either originally or derivatively in any such land, for the Court to inquire into the matter, and make such order respecting the same as should appear to the Court justly to remedy any mistake or error in the proceedings; an indorsement made by the Court in pursuance of any such order, on any instrument of disposition, should be valid and effectual for effecting the objects specified in such order, and an entry should be made in the Registry of the Land Transfer and Registry of Deeds offices to the effect that such order had been made.

#### **"The Native Land Division Act, 1882."**

The object of this Act was principally to remedy defects in the division of shares of Native lands purchased by Europeans, and particularly with the view of clearing away the complications of the general Native Land Acts with "The Poverty Bay Grants Act, 1869."

The latter Act was passed to enable the Governor to carry out certain engagements for grants of land in the Poverty Bay district, as follows: Whereas by deed dated the 18th of December, 1868, certain lands therein described at Poverty Bay were ceded to the Governor, on behalf of the Crown, by the Native owners thereof, upon the terms that certain engagements to grant land to members of the Colonial Defence Force, and to certain friendly Natives, theretofore made should be performed by granting part of the said lands so ceded, and the residue should be granted to those loyal persons whose claims should be ascertained as in the deed mentioned.

Power was therefore given for grants to be issued of any part of the said lands to such persons as were entitled thereto under the said deed, or under any engagement by the Government with respect to the said lands or any part thereof, whether there was evidence in writing or not of such engagement, on the Governor in Council being satisfied with the evidence produced in proof thereof.

#### **"The Native Land Laws Amendment Act, 1883".**

Section 7 debarred private persons from negotiating for the purchase or occupation of any Native land until forty days after the title thereto should have been ascertained. Any person so doing was, by section 8, subject to a summary penalty not exceeding £500, and the transaction, except thereafter provided (section 11), was declared null and void.

Section 9 required the Trust Commissioner, in addition to the other inquiries directed by "The Native Lands Frauds Prevention Act, 1881," to ascertain if any such negotiation was commenced or carried on after the passing of this Act, and before the day fixed by the Gazette notice, under section 7, that dealings with such land would cease to be prohibited under the provisions of this Act.

Section 10 directed the Trust Commissioner to endorse invalid instruments to that effect, and no instrument so indorsed should be registered in any Registry of Deeds of Land Transfer unless the decision of the Commissioner should be removed or altered on appeal to the Supreme Court, and the indorsement ordered to be expunged by the Court.

Section 11 rendered such instruments valid after registration, but did not abate the liability of any person to any pecuniary penalty.

#### **"The Native Committees Act, 1883."**

This Act, which was passed to enable the constitution of Native Committees, or Courts of Arbitration, in case of dispute between Natives where the cause of same did not exceed £20, by section 14 enacted that, in respect of questions of the Native title to land, a Committee might make inquiries and report their decision thereon to the Native Land Court in the following cases: (1) Where it is desired to ascertain the

names of the owners of any block of land being or to be passed through the Native Land Court; or (2) where it is desired to ascertain the successors of any deceased Native owner; or (3) where disputes have arisen as to the location of the boundaries between lands claimed by Natives.

There is no record of any operations having been initiated under this section, but if it was acted on properly the time of the Court would be much saved.

#### **"The Native Land Alienation Restriction Act, 1884."**

This Act prohibited dealings by Europeans in certain Native lands in the Provincial Districts of Auckland, Taranaki, and Wellington, known as "the King-country," to prevent complications which might arise through negotiations for such purchases within the boundaries of that territory, it being desirable to lock it up for a time until necessary land through which the northern main trunk line of railway was to be constructed was definitely arranged for.

Section 7 saved the right of the Crown to acquire any of the land within the territory aforesaid which the Native owners thereof might wish to dispose of.

In connection with this Act it may be stated that "The Government Native Land Purchases Act, 1877," and the relative Amendment Act of 1878, which were passed to protect the interests of the Crown in the purchase of Native lands, are unrepealed.

#### **"The Native Equitable Owners Act, 1886."**

This Act was passed to confirm to Natives certain equitable rights. Under "The Native Lands Act, 1865," certificates of title to and Crown grants of certain lands were made to Natives nominally as absolute owners, whereas in many cases such Natives were only entitled and were only intended to be clothed with titles as trustees for themselves and others, members of their tribe, or hapu, or otherwise. It was therefore enacted by sections 2 and 3 that, upon the application of any Native claiming to be beneficially interested in any such lands, the Native Land Court might inquire into the nature of the title to such land, and into the existence of any intended trust affecting the title thereto. And, according to the result of the inquiry, the Court might declare that no such trust exists, or, if it found that any such did or was intended to exist, who were the persons beneficially entitled. Section 4 empowered the Court, therefore, to order that the persons entitled to beneficial ownership should be owners as tenants in common of the land in question, and should be deemed to be such owners as if their names had been inserted in the certificate grant affecting such land.

Section 5 protected prior conveyances, also leases.

Section 8 restricted alienation, except by lease for no longer period than twenty-one years, unless with the permission of the Governor.

#### **"The Native Land Administration Act, 1886."**

This Act was enacted to control dealings by Europeans in Native lands. In fact, it was a resumption by the Crown of the pre-emptive right; but no transactions were effected under it, and it was repealed by the 3rd section of "The Native Land Act, 1888."

### **"The Native Land Court Act, 1886."**

This Act was passed to amend and consolidate the laws relating to the Native Land Court. It repealed the following Acts: "The Maori Funds Investment Act, 1865," "The Maori Real Estate Management Act, 1867," "The Maori Real Estate Management Act Amendment Act, 1877," "The Native Land Act, 1873," "The Native Grantees Act, 1873," "The Native Land Act Amendment Act, 1874," "The Native Land Act Amendment Act, 1877," "The Native Land Act 1873 Amendment Act, 1878," "The Native Land Act Amendment Act, 1878 (No. 2)," "The Native Land Court Act, 1880," "The Taonui-Ahuaturanga Land Act, 1880," "The Native Land Act Amendment Act, 1881," (except the last three clauses,) "The Native Succession Act, 1881," "The Native Land Acts Amendment Act, 1882," "The Native Land Division Act, 1882," "The Native Land Laws Amendment Act, 1883," and was simply a machinery Act for the future administration of the Native Land Court.

### **"The Native Land Act, 1888."**

Section 3 repealed "The Native Land Administration Act, 1886;" but it, and also section 7, saved the rights of renewal of leases under the repealed Act.

By section 4, subject to the provisions of the Native Lands Frauds Prevention Acts of 1881 and 1888, Natives were permitted to alienate or dispose of their land as they thought fit.

Section 5 enacted that existing restrictions on alienation might be removed by the Governor in Council on the application of a majority in number of the Native owners.

### **"The Native Land Court Act 1886 Amendment Act, 1888" (to be read and construed as part of "The Native Lands Court Act, 1886").**

Section 6 permitted restrictions on alienation which might thereafter be ordered under section 13 to be annulled or varied by order of the Court on application by a majority in number of owners of the land the subject of such restriction; but such restriction should only be annulled or varied on public inquiry by the said Court after notice had been given in the Gazette and Kahiti: Provided that the Court had to be satisfied that the owners of such lands had other land under a Court title in their own right, and sufficient for their maintenance and occupation, and that the owner of the land the subject of the application for removal of restrictions concurred in such removal.

Section 16 enacted that land or shares in land owned by Natives deemed to be transferable, but not to apply to land where alienation was restricted, or to be thereafter restricted.

Section 17 prescribed that in the removal of restrictions on alienation under the provisions of section 5 of "The Native Land Act, 1888," the assent of one or more Judges and one Assessor were necessary.

### **"The Maori Real Estate Management Act, 1888."**

The Acts under this head of 1867 and 1877 having been repealed by "The Native Land Court Act, 1886," without any incorporation of their provisions, it was found necessary to re-enact a fresh measure, on similar lines to those repealed Acts, for the management of the real estate of infants and others of the Maori race under disability, otherwise than under their customs and usages, and for appointing trustees and defining their powers.

**"The Native Lands Frauds Prevention Act 1887 Amendment Act, 1888" (to be read and construed with the Act of 1881).**

Section 5 prohibited dealings with Native land unless such land was owned under Crown grant or Native Land Court title issued to not more than twenty Natives, or unless such land should thereafter become and have been so owned for forty days.

Section 7 prescribed a penalty not exceeding £500, to be recovered in a summary way, against any person entering upon such prohibited dealings, and every such dealing was to be declared illegal and void.

**"The Native Lands Frauds Prevention Acts Amendment Act, 1889."**

Section 3 enacted that in section 5 of the Act of 1888 the words "to not more than twenty Natives" should not apply to Native land held under a Native Land Court or Land Transfer Act title before the passing of that Act: (1) If such land did not exceed 5,000 acres in area; or (2) if a contract in writing for the alienation of such lands as though the said words "to not more than twenty Natives" had been omitted therefrom: Provided that nothing in the said 5th section should be deemed to prevent a lease of land so owned or the subject of such order aforesaid not exceeding 10,000 acres.

**"The Native Land Court Acts Amendment Act, 1889" (to be read and construed together with the Native Land Court Acts of 1886 and 1888).**

Sections 2 to 19 inclusive were additions and amendments to the machinery clauses of these Acts.

Section 20 empowered the Governor in Council to appoint two or more Commissioners, of whom one should be a Native, to inquire into all the circumstances attending any alleged alienation or acquisition of land or of any interest therein before the 1st of July, 1887, which might be barred or invalidated by any law then or at that time in force, and report on each case that might be brought before them, and generally on all matters connected therewith, and make such recommendations as might appear proper.

Sections 21 to 26 inclusive were machinery clauses for carrying out the above objects.

Section 27 declared that the Commissioners if they should find any intended alienation of land could not be registered, or was liable to impeachment, because such alienation being of land under memorial of ownership or Native Land Court certificate did not include the whole of the signatures of the Natives owning under such title, or that completion was prevented by alteration of the law; that where the transaction was entered into in good faith and was not contrary to equity, and that the

purchase-money had been paid, they might sign a certificate, and such alienation should be valid from the date of the instrument, or from such date as the Commissioners might determine, and such instrument might be registered under "The Land Transfer Act, 1885." This attempt to settle defective titles in certain dispositions of Native lands to Europeans proved abortive, as the powers which were conferred by section 20 on the Commissioners who were appointed thereunder were insufficient to deal practically and absolutely with the cases which were submitted to them, and in consequence thereof the Commission came to an end on the 31st March, 1891. '

### **"The Native Land Laws Amendment Act, 1890."**

Section 4 declared that a voluntary arrangement by the Natives or by the Natives and Europeans concerned in any proceeding before the Native Land Court should be reduced to writing and signed by all the parties thereto; and the Court should be satisfied of the authenticity of the signatures and the bona fides of such arrangement before giving effect thereto.

The condition that the agreement should be signed by all the parties thereto rendered the section inoperative, as it is alleged that it had been found impossible to procure all the signatures in such cases.

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*Waitangi Tribunal, Department of Justice, Wellington.*