

*New South Wales Act, 4 Vict., No. 7, Repealed.*

## No. II.

NEW SOUTH WALES  
ACT, 4 VICT., NO. 7,  
REPEALED.

AN ORDINANCE to repeal within the said Colony of New Zealand a certain Act of the Governor and Legislative Council of New South Wales made and passed in the fourth year of the reign of Her present Majesty and adopted under an Ordinance of the Governor and Legislative Council of New Zealand for extending the Laws of New South Wales to the said Colony of New Zealand and which said Act of the Governor and Council of New South Wales is intituled "*An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land in New Zealand, and also to terminate any Commission issued under the same, and to authorize the Governor of the Colony of New Zealand to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land therein, and to declare all other titles except those allowed by the Crown null and void.*" [9th June, 1841.]

Preamble.

4 Vict., No. 7.

WHEREAS by an Act of the Governor and Legislative Council of New South Wales and its dependencies made and passed in the fourth year of the reign of Her present Majesty, intituled "*An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land in New Zealand,*" after reciting that in various parts of the Islands of New Zealand comprehended within the limits of the Territory and Government of New South Wales tracts or portions of land were claimed to be held by various individuals by virtue of purchases or pretended purchases gifts or pretended gifts conveyances or pretended conveyances or other titles, either mediately or immediately from the chiefs or other individuals of the aboriginal tribes inhabiting the same, and reciting that no such individual or individuals could acquire a legal title to or permanent interest in any such tracts or portions of land by virtue of any gift purchase or conveyance by or from the chiefs or other individuals of such aboriginal tribes as aforesaid, and also reciting that Her Majesty had by instructions under the hand of one of Her Majesty's Principal Secretaries of State, dated the fourteenth day of August, one thousand eight hundred and thirty-nine, declared Her Royal will and pleasure not to recognize any titles to land in New Zealand which did not proceed from or were not or should not be allowed by Her Majesty, and after stating that it was expedient and proper to put beyond doubt the invalidity of all titles to land within the said Islands of New Zealand founded upon such purchases or pretended purchases gifts or pretended gifts conveyances or pretended conveyances

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conveyances or other titles from the same uncivilized tribes or aboriginal inhabitants of New Zealand, it was therefore in and by the said now reciting Act declared and enacted that all titles to land in New Zealand which were not or might not thereafter be allowed by Her Majesty were and should be absolutely null and void; and the said now reciting Act then authorizes and empowers the said Governor of New South Wales to issue one or more commission or commissions and thereby to appoint Commissioners who should have full power and authority to hear examine and report on all claims to grants of land in New Zealand, with certain other powers and provisions in the said Act contained: And whereas the said Governor of New South Wales, under and by virtue of the said Act, did issue his commission bearing date under the Seal of the said Colony of New South Wales the thirtieth day of September, in the year of our Lord one thousand eight hundred and forty, thereby appointing certain Commissioners with power to hear examine and report on all claims to grants of land in New Zealand. And the said Commissioners appointed therein did proceed to hear and examine certain of such claims but have not as yet reported thereon, and other of the like claims have lately been referred to the said Commissioners by the said Governor of New South Wales; And whereas, since the appointment of the said Commissioners, the Islands of New Zealand have been separated from the Government of New South Wales and erected into a Colony by Her Majesty's Royal Charter, and it is therefore expedient and necessary that the said Act of the Governor and Legislative Council of New South Wales and its dependencies should be repealed and the said Commission so issued by the said Governor thereof determined: And whereas it is expedient and proper that a local Ordinance for the same general purposes, intended to be provided for by the said in part recited Act of the Governor and Council of New South Wales, together with such other enactments applicable to the altered circumstances of the Colony of New Zealand, should be enacted by the Governor and Legislative Council of the same:

1. Be it therefore enacted and ordained by His Excellency the Governor in and over the said Colony of New Zealand, with the advice and consent of the Legislative Council of the same Colony, That from and immediately after the passing of this Ordinance the said Act of the Governor and Council of New South Wales so adopted as aforesaid, intituled "*An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land in New Zealand,*" be and the same is hereby repealed and of no effect within the said Colony of New Zealand; and the said commission so issued by the said Governor of New South Wales under and by virtue of the powers for that purpose contained in the said Act is hereby determined and declared to be null and void, anything in the said Act to the contrary thereof notwithstanding.

2. And whereas it is expedient to remove certain doubts which have arisen in respect of titles of land in New Zealand, be it therefore declared enacted and ordained, That all unappropriated lands within the said Colony of New Zealand, subject however to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said Colony, are and remain Crown or Domain Lands of Her Majesty, her heirs and successors, and that the sole and absolute right of pre-emption from the said aboriginal inhabitants vests in and can only be exercised by Her said Majesty, her heirs and successors, and that all titles to land in the said Colony of New Zealand which are held or claimed by virtue of purchases or pretended purchases gifts or pretended gifts conveyances or pretended conveyances leases or pretended

The New South  
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Commission  
determined.

All titles to land in  
New Zealand  
absolutely null and  
void except allowed  
by Her Majesty.

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Not to affect land purchased of or held under Her Majesty.

Governor may appoint Commissioners to hear examine and report on claims to grants of land in New Zealand.

All claims to grants of land in New Zealand already made to and directed by the Governor of New South Wales, to be referred to the Commissioners directed to be referred under this Act.

pretended leases agreements or other titles, either mediately or immediately from the chiefs or other individuals or individual of the aboriginal tribes inhabiting the said Colony, and which are not or may not hereafter be allowed by Her Majesty, her heirs and successors, are and the same shall be absolutely null and void: Provided and it is hereby declared that nothing in this Ordinance contained is intended to or shall affect the title to any land in New Zealand already purchased from Her Majesty's Government or which is now held under Her Majesty.

3. And whereas Her Majesty hath, in the said instructions, been pleased to declare Her Majesty's gracious intention to recognize claims to land which may have been obtained on equitable terms from the said chiefs or aboriginal inhabitants or inhabitant of the said Colony of New Zealand, and which may not be prejudicial to the present or prospective interests of such of Her Majesty's subjects who have already resorted or who may hereafter resort to and settle in the said Colony: And whereas it is expedient and necessary that in all cases wherein lands are claimed to be held by virtue of any purchase conveyance lease agreement or any other title whatsoever from the said chiefs or tribes or any aboriginal inhabitants or inhabitant whomsoever of the said Colony of New Zealand, an inquiry be instituted into the mode in which such claims to land have been acquired, the circumstances under which such claims may be and are founded, and also to ascertain the extent and situation of the same: Be it therefore enacted and ordained, That it shall and may be lawful for the Governor of the said Colony of New Zealand and he is hereby authorized and empowered to issue one or more commission or commissions and thereby to appoint Commissioners who shall have full power and authority under the same to hear examine and report on all claims to grants of land in virtue of any of the titles aforesaid in the said Colony of New Zealand; and each of such Commissioners shall, before proceeding to act as such, take and subscribe before a Judge of the Supreme Court of New Zealand, or before such person as the Governor or Chief Justice for the time being shall in writing appoint for that purpose, the oath set forth in the Schedule to this Act annexed marked A, which oath shall be recorded in the office of the Colonial Secretary of the said Colony.

4. And be it further enacted and ordained, That the claims of all persons who may have already made application to the Governor of New South Wales to have grants of land within the said Colony of New Zealand, and whose claims have by the said Governor been referred or directed to be referred to the said Commissioners so appointed by the said Governor of New South Wales, shall be and the same are hereby referred to the Commissioners to be appointed under and by virtue of this Ordinance, to the end that all such claims may be heard examined and reported on for the information and guidance of the said Governor of New Zealand; and the said Commissioners, or any two of them, shall proceed to hear examine and report on such claims in manner hereinafter mentioned: Provided always that in each and every claim already heard and examined or partly heard and examined, it shall and may be lawful for the said Commissioners and they are hereby authorized to receive and act upon the evidence statements and documents or other information taken and recorded by the Commissioners appointed under the said repealed Act of the Governor and Council of New South Wales aforesaid, and shall and may report thereon as if the same had been heard and examined and the said evidence statements documents and other information had been taken and recorded under and by virtue of the provisions

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provisions of this Ordinance: And whereas in and by the said Act of the said Governor and Council of New South Wales it is provided that all claims which should not be preferred in writing to the Colonial Secretary of New South Wales within six months after the passing of that Act should be absolutely null and void, unless it should be made to appear to the satisfaction of the said Governor that any claimant or claimants should not by reason of absence or other sufficient cause have been able to prefer his or their claims within the said term of six months, in which case it should be lawful for the said Governor at any time within a further term of six months to refer such claim or claims to the said Commissioners, who should have power and authority to receive and report upon the same as in other cases: And whereas the first term of six months so fixed has expired, and it is expedient and proper that the said term under which His Excellency the Governor is empowered to receive and refer further claims shall be extended under this Ordinance:

5. Be it therefore enacted and ordained, That it shall and may be lawful for the Governor of New Zealand, if at any time within twelve months next after the passing of this Ordinance it shall be made to appear to the satisfaction of the said Governor that any claimant or claimants shall not, by reason of absence from the Colony or other sufficient reason, have been able to prefer his or their claims within the said term so fixed by the said in part recited Act of the Governor and Council of New South Wales, it shall be lawful for the said Governor at any time within a further term of twelve months from and after the passing of this Ordinance to refer such claim or claims to the said Commissioners, who shall have power and authority to receive and report upon the same as in other cases: Provided always that nothing herein contained shall authorize the said Commissioners to receive or report upon any claims except such as shall be referred to them under and by virtue of the provisions of this Ordinance.

Governor of New Zealand may receive and refer claims under this Ordinance to Commissioners.

6. And be it enacted and ordained, That in hearing and examining all claims to grants as aforesaid and reporting on the same, the said Commissioners shall be guided by the real justice and good conscience of the case without regard to legal forms and solemnities, and shall direct themselves by the best evidence they can procure or that is laid before them, whether the same be such evidence as the law would require in other cases or not; and that the said Commissioners shall in every case inquire into and set forth so far as it shall be possible to ascertain the same the price or valuable consideration, with the sterling value thereof, paid for the lands claimed to any of the said chiefs or tribes or any aboriginal inhabitants or inhabitant of the said Colony of New Zealand, as well as the time and manner of the payment and the circumstances under which such payment was made, without taking into consideration the price or valuable consideration which may have been given for the said lands by any subsequent purchaser or to any other person or persons save such chiefs or tribes or aboriginal inhabitants or inhabitant as aforesaid; and shall also inquire into and set forth the number of acres which such payment would have been equivalent to, or according to the rates fixed in a Schedule marked B annexed to this Ordinance; and if the said Commissioners or any two of them shall be satisfied that the person or persons claiming such lands or any part thereof is or are entitled according to the declaration of Her Gracious Majesty as aforesaid to hold the said lands or any part thereof, and to have a grant or lease thereof made and delivered to such person or persons under the Great Seal of the said Colony, they the said Commissioners shall report the same and the grounds thereof to the said Governor accordingly, and shall state whether the claim or

Commissioners to be guided by the real justice and good conscience of the case.

claims

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claims reported on is or are original or derivative, with the name or names of the party or parties to whom the grant or lease should issue, and shall set forth the situation measurement and boundaries by which the said lands or portions of land shall and may be described in every such grant or lease so far as it shall be possible to and they conveniently can ascertain the same: Provided however that no grant of land shall be recommended by the said Commissioners which shall exceed in extent two thousand five hundred and sixty acres, unless specially authorized thereto by the Governor with the advice of the Executive Council, or which shall comprehend any headland promontory bay or island that may hereafter be required for any purpose of defence or for the site of any town or village reserve or for any other purpose of public utility, nor of any land situate on the sea-shore within one hundred feet of high water-mark: Provided also that nothing herein contained shall be held to oblige the said Governor to make and deliver any such grants as aforesaid unless His Excellency shall deem it proper so to do.

Certain lands not to be recommended by Commissioners for grants.

7. Provided nevertheless and be it enacted and ordained, That the said Commissioners shall not propose to grant to any claimant whatsoever any land which may in the opinion of the majority of the said Commissioners or of the majority of the Commissioners appointed to investigate the demand of such claimant be required for the site of any town or village or for the purposes of defence or for any other purpose of public utility, nor shall they propose to grant to any individual any land of a similar character which they may be directed to reserve by the Governor of New Zealand, but that in every case in which land of such description would otherwise form a portion of the land which the Commissioners would propose to grant to the claimant, they shall in lieu of such land propose to grant to him or her a compensation in such quantity of other land as they the said Commissioners or the majority of them shall deem an equivalent for every acre or part of an acre so required to be reserved either for the site of a village or township or for the purpose of defence or for any other purpose of public utility as aforesaid.

Commissioners' meetings.

8. And be it enacted and ordained, That the meetings of the said Commissioners shall be holden in such manner and at such place or places as the said Governor shall from time to time appoint, and the said Commissioners shall proceed with all due dispatch to investigate and report upon the claims referred to them.

Powers of Commissioners.

9. And be it enacted and ordained, That it shall and may be lawful for the said Commissioners, upon receiving any such claim as aforesaid, to notify in the *New Zealand Government Gazette* or in any Gazette or Newspaper published in New Zealand the day appointed for inquiring into such claim, and that such notification shall be a sufficient warning and summons to any claimant or opponent under this Ordinance: Provided that and the said Commissioners or any one of them are and is hereby authorized to issue summonses requiring all such persons as shall therein be named to appear before the said Commissioners at the day time and place therein appointed, to give evidence as to all matters and things known to any such person respecting such claim, and to produce in evidence all deeds instruments or writings in the possession or control of any such persons which they might by law be required and compelled to give evidence of, or to produce in evidence in any cause respecting the like matters depending in any of Her Majesty's Courts of Law in so far as the evidence of such persons and the production of such deeds instruments and writings shall be requisite for the due investigation of such claim depending before the said Commissioners, and that all such evidence shall be taken

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taken down in writing in presence of and be signed by the witnesses respectively giving the same; but in case any witness shall refuse or shall be unable to sign, the said evidence shall be attested as having being taken and read over by one or more of the said Commissioners, and that all such evidence shall be given on oath, which oath it shall and may be lawful for the said Commissioners or any one of them to administer to every person appearing before them to give evidence, and that any person taking a false oath in any case wherein an oath is required to be taken by this Ordinance shall be deemed guilty of wilful and corrupt perjury, and being thereof duly convicted shall be liable to such pains and penalties as by any law now in force any person convicted of wilful and corrupt perjury is subject and liable to: Provided always that in all cases in which it may be necessary to take the evidence of any aboriginal native who shall not be competent to take an oath, it shall be lawful for the said Commissioners to receive in evidence the statement of such aboriginal native subject to such credit as it may be entitled to from corroborating or other circumstances.

10. And be it enacted and ordained, That whenever any person who, being duly summoned to give evidence before the said Commissioners as aforesaid, his or her reasonable expenses having been paid or tendered by the party requiring such witnesses, and not having any lawful reason or impediment allowed by the said Commissioners, shall fail to appear at the time and place specified in such summons, or after appearing shall refuse to be sworn or to answer any lawful question or to produce any deed instrument or writing which he or she may lawfully be required to produce, or without leave obtained from the said Commissioners shall wilfully withdraw from further examination without a satisfactory excuse being given to the said Commissioners for such default, or appearing shall refuse or decline to be examined or give evidence according to law touching the matter in question, it shall and may be lawful for the said Commissioners and they are hereby authorized and empowered to issue their warrant for the apprehension of such person, in order that he may be brought before them to give evidence touching such matter as shall be in question for which he shall have been summoned as aforesaid; and it shall be further lawful for the said Commissioners, if such person shall not show sufficient cause to the satisfaction of such Commissioners for such default, to commit such person to prison there to remain without bail or mainprize for any term not exceeding twenty-one days, or in lieu of such imprisonment to pay such fine not exceeding one hundred pounds as the said Commissioners shall impose, which fine shall be paid to the Colonial Treasurer of New Zealand and appropriated to the public uses of the Government thereof.

Person summoned not appearing, or refusing to give evidence, may be apprehended under warrant of Commissioners, and punished by fine or imprisonment.

11. And be it enacted and ordained, That the said Commissioners shall and may receive for their own respective use such salaries as the Governor of New Zealand shall direct and appoint, which salaries it shall and may be lawful for the said Governor to order and direct by warrant under his hand to be paid from and out of the revenues of New Zealand, and the same shall be the whole remuneration of the said Commissioners for and in respect of their said office.

Salaries to be paid to Commissioners.

12. And be it enacted and ordained, That there shall be paid to the said Commissioners by every person making a claim to a grant of land, which shall be referred by the Governor to the said Commissioners for examination as hereinbefore is provided, the several fees specified in the annexed Schedule to this Ordinance marked C, and the said Commissioners shall duly account for all fees so paid to them

Fees to be taken by Commissioners on account of the Government.

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or him as aforesaid, and shall pay the same into the hands of the Colonial Treasurer of New Zealand monthly or as nearly so as practicable, to be appropriated to the public uses of the Government thereof.

Saving the right and prerogative.

**13.** Provided always and be it declared and ordained, That nothing in this Ordinance contained shall be deemed in any way to affect any right or prerogative of Her Majesty, her heirs or successors.

## SCHEDULES.

## SCHEDULE A.

## COMMISSIONERS' OATH.

I, \_\_\_\_\_, do solemnly swear that I will faithfully diligently impartially and honestly, to the best of my ability, execute the several powers and trusts reposed in me as a Commissioner appointed under and by virtue of a certain Ordinance of the Governor of New Zealand, with the advice of the Legislative Council of the said Colony, made and passed in the fourth year of the reign of Her Majesty Queen Victoria, intituled "*An Ordinance to repeal within the said Colony of New Zealand a certain Act of the Governor and Legislative Council of New South Wales made and passed in the fourth year of the reign of Her present Majesty, and adopted under an Ordinance of the Governor and Legislative Council of New Zealand, for extending the Laws of New South Wales to the said Colony of New Zealand, and which said Act of the Governor and Council of New South Wales is intituled, 'An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land in New Zealand, and also to terminate any Commission issued under the same, and to authorize the Governor of the Colony of New Zealand to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land therein, and to declare all other titles except those allowed by the Crown null and void ;'*" and that I will not myself directly or indirectly take or receive any fee or reward for anything done or performed under and by virtue of the provisions of the said Ordinance other than and except such as is authorized by the said Ordinance. So help me God.

A. B.

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 184

Judge of the Supreme Court of New Zealand, or  
Commissioner appointed for this purpose.

## SCHEDULE B.

Period when the Purchase was made.	Per Acre.			
	s.	d.	s.	d.
From 1st January, 1815, to 31st December, 1824	0	6	to	0 0
" 1825	0	6	"	0 8
" 1830	0	8	"	1 0
" 1835	1	0	"	2 0
" 1837	2	0	"	4 0
" 1839	4	0	"	8 0

And fifty per cent. above these rates for persons not personally resident in New Zealand, or not having a resident agent on the spot.  
Goods when given to the Natives in barter for land to be estimated at three times their selling price in Sydney at the time.

SCHEDULE C.