

NEW ZEALAND.



ANNO VICESIMO PRIMO ET VICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. 42.

ANALYSIS:

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Title.

**AN ACT to make better provision for the  
Administration of Justice in Native  
Districts. [4th August, 1858.]**

Preamble.

**W**HEREAS it is expedient that more effectual provision be made for the keeping of the Queen's Peace, and for the Administration of Justice within Districts over which the Native Title has not been extinguished :

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

## I.—INSTITUTION OF NATIVE CIRCUIT COURTS.

Governor in Council  
may appoint Districts.

I. It shall be lawful for the Governor in Council from time to time to appoint Districts for the purposes of this Act, being Districts over which the Native Title shall not for the time being have been extinguished ; and any such appointment to vary or revoke.

Circuit Courts to be  
held.

II. Within every such District a Resident Magistrate to be specially appointed for the purpose by the Governor, assisted by at least one Native Assessor, shall hold periodically at convenient times and places, a Court to be styled " The Native Circuit Court" of such District.

Lands over which Na-  
tive Title extinguished  
to cease to be part of  
Districts.

III. On the notification in the *New Zealand Gazette* of the extinction of Native Title over Lands within any such District, such Lands shall cease to be part of such District ; nevertheless without prejudice to the enforcement of any penalty incurred, or to the completion of any proceeding commenced prior to such notification.

What Lands to be  
deemed subject to  
Native Title.

IV. Provided that Lands granted by the Crown to any person of the Native Race, or to any person or Body Politic in trust for religious, educational, or charitable purposes, or in respect of any purchase made prior to the proclamation of the Queen's Sovereignty, or specially granted as Homesteads to persons of European Race domiciled in Native districts, shall, where the same respectively abut upon lands over which the Native title has not been extinguished, be deemed for the purposes of this Act to be lands over which the Native title has not been extinguished, and may accordingly be included within any such District as aforesaid.

## II.—CRIMINAL JURISDICTION AND PROCEDURE.

Jurisdiction.

V. The Court shall have power and jurisdiction, subject to the provisions of this Act, to hear, determine, and punish, according to law, all Crimes, Misdemeanours, and other Offences whatever, cognisable in a summary way by Justices of the Peace, or

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by a Resident Magistrate, and also all Offences against any Regulation made under "The Native Districts Regulation Act, 1858;" and shall have the same powers to make inquiry concerning alleged Crimes, Misdemeanours, and other Offences, and for that purpose to summon to appear before the Court, or cause to be apprehended and brought before it for examination, persons reasonably suspected of offences, to take evidence on oath, to commit for trial or hold to bail suspected Offenders, to bind over in Recognizances to appear and prosecute, or give evidence on the trial of suspected Offenders, to take Sureties of the Peace, or for Good Behaviour, and all such other powers and jurisdiction in relation to the investigation and punishment of Offences, and the conservation of the Peace, as Justices of the Peace have or may exercise in New Zealand; and shall further have power and jurisdiction to cause to be abated any Common Nuisance.

VI. Juries for the purposes of the Criminal jurisdiction of the Court shall be formed as follows; the Assessor or Assessors, shall from persons resident within twenty-five miles of the place at which the Court shall be sitting, form a List of Thirty-six men, from whom the Resident Magistrate shall select Twelve, who, or such of them as may attend and be willing to serve, shall be impaneled as a Jury to act during the then sitting of the Court, and at all adjournments thereof: Provided that if less than eight out of the persons so selected shall attend and be willing to serve, or if any Juror shall absent himself and the number of the Jury be thereby, or by challenge, or otherwise, reduced to less than eight, the Resident Magistrate may from time to time as occasion may be, postpone the trial or complete the number of eight Jurymen from the bystanders.

Formation of Jury.

VII. Every person tried for, or charged with any Offence before such Court, shall be entitled to challenge peremptorily six persons selected as Jurors.

Challenges.

VIII. Every Jury impaneled as aforesaid, shall make a declaration before the Resident Magistrate, according to the form No. 1 set forth in the Schedule of this Act, or according to a translation thereof into the Maori tongue; and every such Jury shall be required to give an unanimous verdict.

Jurors' Declaration and Verdict.

IX. The duties of such Juries shall be: First, the trial of all Offences cognizable by the Court, for which a Fine exceeding Five Pounds may be inflicted: Secondly, the presentment of persons who may have committed, or be reasonably suspected of having committed, within the District or its neighbourhood, any Crime, Misdemeanour, or other Offence, to be inquired of, but not cognizable by the Court: Thirdly, the presentment of all Common Nuisances within the District: Lastly, the presentment of any other matter of fact which may by the Court be referred to the Jury, or which the Jury may think fit to present.

Functions of Jury.

X. It shall be in the discretion of the Court to convict, discharge, commit for trial, or remand, or otherwise, as the case

Functions of Court in Jury cases.

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may require, take order concerning any person against whom a verdict of Guilty shall have been found, or presentment made ; but no penalty or punishment for any offence, triable by a Jury under this Act, shall be awarded or inflicted by the Court, except on a verdict of Guilty ; nor shall any person be committed by the Court to take his trial for any Offence before the Supreme Court or any other Court, nor be held to bail so to take his trial, except on the presentment of a Jury, that there is reasonable ground for such committal ; nor shall any Warrant be issued by the Court for the abatement of a Common Nuisance, except on the presentment thereof by a Jury : Provided that where, upon the trial of any Offence, the Jury shall be unable to agree upon a Verdict within four hours, the Court may convict or discharge the Defendant without a Verdict.

Questions of fact,  
when determinable by  
Court.

XI. Except as hereinbefore provided, the Court shall determine all questions of fact as well as of law.

Appeals.

XII. No appeal shall lie against any conviction by the Native Circuit Court, nor shall any proceeding of such Court in its Criminal jurisdiction be removed into any Superior Court by Certiorari or otherwise nor shall any such proceedings be quashed or set aside, or be adjudged void or insufficient for want of form.

### III.—CIVIL JURISDICTION AND PROCEDURE.

Jurisdiction.

XIII. The Court shall have jurisdiction to hear and determine all complaints of a Civil nature, where both parties are of the Native Race, and the party sought to be charged resides or carries on business or is served with the process of the Court within the District in which the Action is brought, or where both parties are of the Native Race, and the cause of Action has arisen either wholly or in some material point, within such District : Provided that the Governor in Council may from time to time, limit the Civil jurisdiction under this Act of any such Court to cases in which the debt or damage claimed, or other matter in dispute, does not exceed in amount or value such sum as may be in that behalf fixed by the Governor in Council, and may vary or revoke any such limitation.

Trial by Jury may be  
granted.

XIV. In any Civil Action brought under this Act, it shall be in the discretion of the Court, on the request of either party, made at any time before the commencement of the hearing, to order that the cause shall be tried by a Jury ; and the cause shall, if necessary, be adjourned until a Jury can be formed.

Formation of Jury.

XV. Juries for the trial of Civil Actions under this Act, shall be formed as follows : the Assessor or Assessors shall from the bystanders, or from persons residing within ten miles of the place at which the Court shall be sitting, form a List of eighteen men, from which six persons shall be selected by Lot ; and the persons so selected, or so many of them as may attend and be willing to serve, shall be impaneled as a Jury to try the cause : Provided that if less than four out of the persons so

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selected shall attend and be willing to serve, or if any Juror shall absent himself, and the number of the Jury be thereby, or by challenge or otherwise, reduced to less than four, the Resident Magistrate shall complete the number of four Jurymen from the bystanders: Provided also, that by consent of the parties, Jury of any greater or less number than six (to be selected as aforesaid) may be impaneled for the trial of a Civil Action under this Act.

XVI. Each party shall be entitled to challenge peremptorily three persons selected as Jurors. Challenges.

XVII. Every Jury impaneled as aforesaid, shall make a declaration before the Resident Magistrate according to the Form numbered 2, set forth in the Schedule to this Act, or according to a translation thereof into the Maori tongue, and shall be required to give an unanimous Verdict: Provided that if the Jury shall be unable to agree upon a Verdict within four hours, the Jurors shall be discharged, and the cause shall stand over until the next sittings of the Court. Juror's Declaration and Verdict.

XVIII. All questions whether for the Court or the Jury shall be determined according to Equity and good conscience; and the Court may prescribe such terms and conditions as to the time and mode of satisfying its Judgments, as it may deem just and reasonable; and shall be at liberty to receive or require any such evidence as to it shall appear fit, whether the same be strictly legal evidence or not. Judgment to be according to real Equity.

XIX. The Judgment of the said Court in Civil Actions shall be final and conclusive between the parties, without power of Appeal; and no such cause shall be removable into any Superior Court; Provided that it shall be in the discretion of the Native Circuit Court to order a new trial or a re-hearing, to be had upon such terms as may seem fit. Judgment to be final subject to the grant of a New Trial or Re-hearing.

XX. Whenever in any Civil Action the Court shall have given Judgment or made an Order for the payment of money, the Resident Magistrate shall, at the request of the party prosecuting such Judgment or Order, issue his Warrant to any constable, to be appointed for the purposes of this Act requiring him to levy, and such constable shall accordingly levy, or cause to be levied, by distress and sale of the goods and chattels of the party against whom such Judgment or Order shall be made, the money so adjudged or ordered to be paid, with the costs of execution, and the surplus, if any, of the money raised by such sale, shall be paid to the Resident Magistrate, and returned on demand of the party distrained upon; and all Constables and Peace Officers within their several Districts shall aid in the execution of every such Warrant: Provided that it shall be in the discretion of the Resident Magistrate to delay the issue of a Distress Warrant during such time as he shall think fit. Execution against Chattels.

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Execution against person of Defendant.

XXI. If upon the return of such Warrant, it shall appear that no goods and chattels can be found, or not sufficient for payment of the sum to be levied, or it shall be made to appear to the satisfaction of the Resident Magistrate that if a Warrant were issued, no sufficient distress could be had, it shall in either of the said cases, be lawful for, but not obligatory upon the Resident Magistrate, by Warrant under his hand, to commit the party against whom such Judgment or Order shall be made, to some common Gaol, there to remain for any time not exceeding one month for every five pounds or fractional part of five pounds so to be paid: Provided that the time of imprisonment shall in no case exceed four months, and that the party at any time may be discharged upon application to the Resident Magistrate, and upon payment of the sum of money adjudged or ordered to be paid, together with such costs as the Resident Magistrate shall deem reasonable.

Court may summon Witnesses and compel production of documents.

XXII. In any Civil Action it shall be lawful for the said Court to summon witnesses and take evidence upon oath, and to require the production of all books, writings, and documents, of which any Court of Law might compel the production; and every person so summoned to attend as a Witness, who shall refuse or neglect without sufficient cause to appear according to the exigency of the Summons, or duly to produce any books, writings, or documents in his possession or power, duly required by such Summons to be produced, and also every person present at any sitting of such Court, who being required to give evidence, shall refuse to be sworn, or to give evidence, shall for every such default forfeit any sum not exceeding twenty pounds, to be recovered in the said Court, or in a summary way, by any Resident Magistrate specially authorised by the Governor to hear the case.

Special jurisdiction in European cases arising under "The Native Districts Regulation Act, 1858."

XXIII. The said Court shall have cognizance, according to the course of procedure prescribed by this Act, of all claims and demands of a Civil nature, arising under any regulation made by virtue of the "Native Districts Regulation Act, 1853," between parties who are not, or one of whom is not, of the Native race, as well as between parties both of whom are of the Native race; but subject to such limit of jurisdiction as may be fixed by the Governor in Council by virtue of the power in that behalf conferred by this Act.

## IV.—JURISDICTION AND PROCEDURE GENERALLY.

What members of Court must concur in Judgment.

XXIV. All questions not triable by a Jury shall be determined according to the opinion of the presiding Resident Magistrate, concurred in by the Assessor or Assessors sitting with him, or concurred in by a majority of such Assessors, and not otherwise.

Court may deliberate with Jurors.

XXV. The presiding Resident Magistrate, and the Assessors, or any of them, may with the consent of the Jury in any action or proceeding, whether Civil or Criminal, be present at, and take a part in the deliberations of the Jury.

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XXVI. Every person wilfully and corruptly giving false evidence upon Oath before any such Court shall be deemed guilty of perjury, and may on conviction be sentenced to penal servitude for a term not exceeding four years.

False Evidence,  
Perjury.

XXVII. Distress Warrants issued by any such Court may be executed in any District appointed for the purposes of this Act, or in any part of the Colony over which the Native Title shall have been extinguished, but not elsewhere; and no such Warrant shall be executed in any District appointed for the purposes of this Act, other than that in which it shall have been issued, unless the same shall have been endorsed by at least one Native Assessor, resident within the District, in which the same is to be executed.

Distress Warrants  
where to run.

XXVIII. All Warrants of Apprehension and Commitment, all Convictions, and all Distress Warrants shall be signed by the Resident Magistrate, with or without the signature of an Assessor or Assessors; and every Summons to Parties or Witnesses, or to persons charged with an Offence, shall be signed in like manner, or by two or more Assessors.

Warrants, Convic-  
tions, and Summonses,  
by whom to be signed.

XXIX. If any person shall wilfully insult the presiding Resident Magistrate, or any Native Assessor, Juror, or Officer of any such Court during his sitting or attendance in Court, or in going to, or returning from the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any Constable with or without the assistance of any other person, by order of the Court, to take such offender into custody and detain him until the rising of the Court, and the Court may by Warrant commit such offender to prison for any time not exceeding seven days, or impose upon any such offender a fine not exceeding five pounds (£5) for every such offence, and in default of payment thereof, commit such offender to prison, for any time not exceeding seven days unless the fine be sooner paid.

Contempt of Court.

XXX. Subject to the provisions of this Act, the Governor in Council from time to time, may make general rules for regulating the practice of the said Courts, whether Civil or Criminal, and may prescribe forms for all proceedings therein, which forms may be either in the English or in the Maori tongue, or in both, and may fix the Fees to be demanded and taken upon any such proceeding; and subject to any such general rules, the practice of the said Court in its Criminal Jurisdiction shall be the same (as nearly as may be) as that of Justices of the Peace in similar cases.

Governor in Council  
may regulate practice  
of Court.

V.—APPOINTMENT AND JURISDICTION OF NATIVE ASSESSORS.

XXXI. It shall be lawful for the Governor from time to time to appoint Aboriginal Natives, of the greatest authority and best repute in their respective Tribes, to be Assessors of the Resident Magistrate for the purposes of this Act, and of an

Appointment of As-  
sessors.

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Ordinance of the Lieutenant-Governor and Legislative Council of New Zealand, intituled "An Ordinance to provide for the Establishment of Resident Magistrates' Courts, and to make special provision for the Administration of Justice in certain cases;" and such Assessors from time to time to remove; and every such appointment may either confer a general or a local jurisdiction.

Assessors' Court.

XXXII. It shall be lawful for the Governor to select certain Assessors to hold a Court, to be styled "The Assessors' Court," and such Assessors shall hold Assessors' Courts within such Districts appointed under this Act, as the Governor may assign to them respectively for that purpose.

Powers of Assessors' Court.

XXXIII. Within every District appointed for the purposes of this Act, any two or more of the Assessors so selected for the District, shall, under the style of The Assessors' Court, have and exercise all the powers and functions hereby vested in the Native Circuit Court, or in the presiding Resident Magistrate thereof; and such Assessors' Court shall be subject to the like rules of practice, and shall use the like forms, and take the like fees as the Native Circuit Court, subject to any modifications which the Governor in Council may from time to time direct: Provided that such Assessors' Court shall have no power to award or inflict any other or greater punishment than a fine of not exceeding twenty shillings (20s.) and shall have no Jurisdiction in Civil cases where the debt or damage claimed or other matter in dispute exceeds in amount or value the sum of five pounds (£5), and shall have no Jurisdiction either Civil or Criminal, except over persons of the Native Race: Provided also that an appeal shall lie from every Conviction, Order, or Judgment of the Assessors' Court to the Native Circuit Court of the District.

Distress Warrants, where to run.

XXXVI. No Distress Warrant issued by the Assessors' Court shall be executed elsewhere than within the District in which it shall have been issued, unless the same shall be endorsed by a Resident Magistrate.

## VI.—CONSTABULARY.

Governor may appoint Constables.

XXXV. The Governor may from time to time appoint Constables who within any District appointed for the purposes of this Act, shall have all the powers, privileges, duties, and liabilities, which a Constable hath, or is subject to, in New Zealand, and elsewhere within the Colony, shall have the like powers, privileges, duties, and liabilities, so far as may be necessary for the carrying into effect the provisions of this Act; and who shall be removable at the Governor's pleasure.

Governor may appoint Lock-up Houses.

XXXVI. The Governor may from time to time appoint Lock-up Houses within any District appointed for the purposes of this Act, with proper accommodation for the temporary confinement of persons taken into custody by any Constable or committed for trial, and may from time to time abolish any such Lock-up House.



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XXXVII. Where the said Native Circuit Court or any Resident Magistrate might commit any person to a Common Gaol, such Court or Magistrate, may in lieu thereof direct such person to be confined at any such Lock-up House: Provided that the term of such confinement do not exceed one week.

Confinement at a Lock-up House may be ordered in lieu of committal to Gaol.

XXXVIII. The Governor may from time to time appoint Keepers, to take charge of such Lock-up Houses, and of the persons there detained or confined; and such Keepers shall be removable at the Governor's pleasure.

Governor may appoint keepers of Lock-up Houses.

XXXIX. The Governor in Council may from time to time make and revoke Regulations prescribing the duties of such Keepers, and the treatment of persons detained or confined at any such Lock-up House, and otherwise respecting the management of such Houses; and by any such Regulations may impose Penalties not exceeding five pounds for any breach thereof; all which Penalties shall be recoverable in any Native Circuit Court, or in a summary way by any Resident Magistrate specially authorised by the Governor to hear the case.

Governor in Council may regulate Lock-up Houses.

## VII.—APPROPRIATION OF FEES AND FINES.

XL. All Fees and Fines received or levied upon any proceeding in any Native Circuit Court or Assessors Court held within a District appointed under this Act shall be accounted for quarterly to the Colonial Treasurer, by the persons duly charged with the receipt and custody thereof under the authority of the Governor, and shall be appropriated and disposed of from time to time by the Governor in Council, for or towards any of the purposes of Government, within such District, or otherwise for the common benefit of the Inhabitants thereof.

Governor in Council may appropriate Fees and Fines for benefit of District.

## VIII.—CONSTRUCTION OF TERMS AND SHORT TITLE.

XLI. For the purposes of this Act, Half-castes, and other persons of Mixed Race, living as members of any Native Tribe, and all Aboriginal Natives of any of the Islands of the Pacific Ocean, shall be deemed to be persons of the Native Race.

Half-castes defined.

XLII. The Short Title of this Act shall be "The Native Circuit Courts Act, 1858."

Short Title.

## SCHEDULE.

## No. 1.

I, A. B., do solemnly declare that I will well and truly try all issues joined upon such informations as have been, or shall be laid or taken before the Native Circuit Court of the District of \_\_\_\_\_ at this present sitting of the said Court, or at any adjournment thereof; and further that I will truly inquire and true presentment make of all matters to be referred to me; I will present no man for envy, hatred, or malice, nor spare any man for fear, favour, or affection, or any hope of reward; but according to the best of my knowledge and the information I shall receive, will present the truth and nothing but the truth.

## No. 2.

I, A. B., do solemnly declare that I will well and truly try the issue joined between the parties, and a true verdict give, according to the evidence, without fear, favour, or affection.