



Native Land Court Act 1886

1886

Citation: 50 V. No 24
Date of Assent: 9 August, 1886
Commencement: 1 October, 1886

Repeal: Repealed 23 October, 1894 by 1894, No 43
Amendments: 1888, No 37: See separate record.
s2 repeals and replaces s3
s23 repeals and replaces s43
s24 repeals and replaces ss76 and 77
s25 repeals and replaces s86
s26 amends ss17, 23, 26, 33, 36, 50, 79, 83, 95(a), 96 and 103.
1889, No 29: see s9 – Succession order not necessary where Supreme Court has granted probate.
1889, No 32: See separate record.
s2 repeals and replaces s11
s5 repeals and replaces s27
s7 additional powers to s51
s8 repeals s58
s15 amends s103.

Type of Legislation: Public

Subject: Maori Land Court: Structures & Jurisdiction
Validation
Survey Issues
Public Works
Compulsory Acquis & Transfer of Control
Leased Land
Reserved Land
Alienation of Maori Land

Relevant Sections: s3: "Native" includes half castes and descendants by Natives. "Native land" defined as land in the colony owned by Natives under their customs and usages save under 'Succession' where it means land owned by Natives of which title has been determined by the NL Ct. Land held under CT or Memorial of ownership is defined separately as "land".
s4: Title to land shall be deemed to be ascertained after time to apply for rehearing has passed or after rehearings have been dealt with.

Relevant Sections continued over page



Native Land Court Act 1886 *continued*

Part II Creation and Constitution of Court

s5: NLCt constituted for the investigation and determination of titles to Native land.

s6: Court to consist of Judges and Assessors.

s7: Governor may appoint Judges, Assessors and officers of the Court.

s8: Salaries and travelling allowances.

s9: Under Part VI the Court to consist of a least two Judges and one Assessor. Under Part III or Part IX the Court shall consists of one Judge and one Assessor. No decision valid unless Assessor agrees.

s11: NLCt to have general powers of District Court.

s12: Governor in Council to establish districts and appoint Registrars. If block is in more than one district the Chief Judge shall decide in which district the case shall be heard.

s13: Existing districts continued.

s14: Court to kept registers of applications and minutes.

s15: Resident Magistrates may be appointed Recorders of the Court and exercise powers of a Judge.

s16: Governor may stay any NLCt proceedings by notice or telegram to Chief Judge.

Part III Jurisdiction

Investigation of Title

s17: Natives claiming to be owners of land may apply to NLCt to have land investigated.

s18: No investigation without certified map. Provided that Court may make order on sketch map if authorised by Governor.

s19: NLCt to ascertain and decide which Natives are, according to Native custom and usage, entitled to such Native land.

s20: Court to make order declaring the owners of the land.

s21: Land may be divided into parts and orders made for each.

s22: Upon title being ascertained, Court orders to be forwarded to Minister of Lands and a Certificate of Title under the Land Transfer Act 1885 is to be issued.

Partition

s23: Any Native owner of land, or any person claiming to have purchased an undivided share, may apply to NLCt for partition. Land subject to mortgage may only be partitioned with the consent of the mortgagee.

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s24: Minister of Lands may apply when Crown has acquired an interest.

s25: Court may order partition.

s26: If an owner of the land to be partitioned has died the Court may immediately appoint a successor. No rehearing in respect of appointment.

s27: Valuers may enter land. Impeding valuer punishable as a contempt of court.

s29: Partition order to name the persons entitled and describe the land.

s30: NLCt may direct persons entitled to partition to have a survey made of the parcel of land.

ss31 - 32: Procedure for issue of new title and Crown Grant where land to be partitioned is held under a Certificate of Title or Memorial of ownership.

s33: Procedure when land is held under Crown Grant.

s34: Trustees to continue.

s35: Crown Grants of partitioned land to vest from date of Certificate or Memorial.

s36: If the land to be partitioned is subject to a lease, the Judge may make a lease order apportioning rents and varying any covenants.

s37: Lessee liable to pay rent to purchasers in accordance with lease order.

s38: Original lease obligations cease.

s39: Copy of lease order to lessor and lessee.

s40: For this Act, the persons named in the body of the Certificate under s17 Native Lands Act 1867 and the registered owners shall be deemed to be owners.

s41: Where land granted to tribe/hapu by name, each member deemed to be owner for the purposes of partition under this Act.

Determination of Individual Interests

s42: NLCt may decide, on the application of any person interested in the land, the relative individual interests of the owners.

Succession

s43: NLCt to ascertain successors on intestacy – for Native land, NLCt to be guided by Native custom; for hereditaments, NLCt to decide according to law of New Zealand as nearly as it can be reconciled with Native custom.

s44: Succession to land in accordance with informal will.

Relevant Sections continued over page



Native Land Court Act 1886 *continued*

ss45 - 46: Succession order, contents and effect.

s47: Succession to personal property according to Native usage or custom.

s48: Succession to personal property in accordance with informal will.

s49: Certificate to named administrators of the estate.

s50: Succession order to be in duplicate and delivered through a Stamp Commissioner to the persons entitled.

s51: Governor in Council may declare NLCt to have jurisdiction in incidental matters.

Part IV Practice

s52: Court not bound by legal formalities.

s53: Court to sit when and where Chief Judge appoints. Chief Judge or presiding Judge may order adjournment.

s54: Applications and sittings to be notified.

s55: Commissioner of Crown lands to receive schedule of sittings.

s56: Orders to take effect from day of decision.

s57: Age of minor to be recorded on order.

s58: Details of Native owners under disability to be notified to the Governor.

s59: NLCt may give effect to any arrangement voluntarily come to by the Natives, or by Natives and Europeans concerned, and such decision shall be as binding as if evidence had been taken.

s60: Court may use evidence heard in prior proceedings provided the parties involved are substantially the same.

s61: Court may make interlocutory or final orders.

s62: Judge may amend any defects in proceedings.

s63: Amendments necessary for recording the intended decision of the Court may be made by a Judge, whether applied for or not.

s64: Decision of the Court, subject to rehearing, shall be final and conclusive.

s65: Lawyers or agents may only appear with consent of the Judge.

s66: Deeds made with the Crown shall be given effect to notwithstanding any law in force to the contrary.

s67: Chief Judge may sign for deceased or retired Judge.

Part V Costs

s68: Court may award costs.

s69: Costs to be recovered as a debt.



ss70 - 71: Costs may be awarded to or paid by the Crown.

s74: Court may order a deposit to be made as security for costs.

Part VI Rehearing

s75: Lawful for any Native or, in the case of partition, any person, who feels aggrieved by any decision of NLCt to apply for rehearing within three months of original decision.

s76: Chief Judge to deal with rehearings, unless his decision appealed against, in that case by 2 other Judges.

s77: Rehearing to be before two Judges and one or two Assessors.

s78: Decision on rehearing to be final. If new orders are issued they shall be back dated to the date of the original order.

Part VII Surveys

s79: NLCt shall not accept any plan of land unless plan certified by Surveyor-General.

s80: Survey must be prepared by approved surveyor and after gaining authority from the Surveyor-General.

s81: Where money is owing to surveyor for survey of Native land, NLCt may make charging order over the land in favour of surveyor.

s82: Costs of survey carried out for unsuccessful Native claimants and used by the Court shall be paid by Natives to whom Certificate ordered. NLCt may order such survey costs to be mortgage of the land in favour of unsuccessful claimants.

s83: NLCt may make order in favour of surveyor to whom Natives are indebted for cost of an "approved" plan.

s84: Governor may, at request of Natives, cause surveys to be made and cost defrayed out of moneys appropriated by Parliament.

s85: If such costs not paid, mortgage order may be made in favour of Surveyor-General.

s86: Mortgage order to be registered and incur 5% interest.

s87: Old survey liens may be discharged by payment to the Public Trustee.

s88: Arranging for surveying, taking part in or obstructing a survey, not to be evidence a right to the title.

s89: NLCt may authorise any surveyor to enter upon Native land.

s90: Obstructing such a survey a criminal offence.

Part VIII Roads

s91: Private roads may be set out on land for the purpose of access to other parts of the land. Such order may be made within 5 years of division of land.

Relevant Sections continued over page



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s92: Land which has been divided under any previous Act shall be subject to the rights of roading for access if applied for within two years of the passing of this Act. Not to affect the rights of the Crown to take sites for roads.

s93: Governor may lay off Public roads out of land granted under any Act repealed by this Act or the Native Land Act 1873 or granted under this Act or owned by Natives under NLCT Certificate of Title or Memorial of ownership. Lines of road not to exceed one-twentieth part of the whole.

s94: Land occupied by any pa, village, cultivations, burial ground, etc not to be taken for roading unless taken under the Public Works Act 1882.

s95: Power to make public roads shall cease

(a) fifteen years after a Certificate is issued under this Act,

(b) for land held under grants issued under repealed Acts at the time the power would have ceased under those Acts.

s96: Roads surveyed by direction of Surveyor-General deemed public roads vested in Her Majesty.

Part IX Reference from Supreme Court

s97: Supreme Court may refer any question of Maori fact, custom or usage to the NLCT.

s100: NLCT to use provisions of this Act to hear and determine cases.

s101: Final opinion of NLCT to be binding.

s102: Questions of law may be referred by the NLCT to the Supreme Court.

Part X Rules

s103: Judges to make rules for the form and procedure of the Court and fix the fees to be paid.

Part XI Miscellaneous

Interpreters

s104: Governor to grant licenses to interpreters.

s105: Governor or Judge may suspend an interpreter.

s106: Penalty for acting without a license.

Closing Hotels

ss107 - 108: Hotels may be ordered to be closed if Judge finds it to be interfering with business of the NLCT. Penalties to apply.

Relevant Sections continued next page



Moneys of Natives under Disability

s109: Moneys of Natives under disability to be paid as the Court directs.

s110: Court may order the money be paid out for the maintenance, education or advancement of the Native entitled.

Crown Grants

s111: Grantees of Crown grants to hold as tenants in common in unequal shares unless stated to be equal. Provisos protecting various grants and alienations under earlier Acts.

s112: Certificate of Title deemed to be a Crown Grant for certain purposes.

s113: For the purposes of *s15* Native Lands Act 1869 a deed executed by a majority in number shall be deemed to have been executed by a majority in value.

s114: Validation of certain orders for division of lands made by Judges Halse, O'Brien and Williams. Provided that this section shall not affect cases before the Supreme Court.

Part XII Repeal

s115: Acts in schedule repealed from 1 October, 1886. Except *ss7 - 13* Native Land Laws Amendment Act 1883 repealed from the passing of this Act, and repeal of Maori Real Estate Management Act 1867 and Maori Real Estate Management Act Amendment Act 1877 shall not take effect until 1 July, 1887. However, incomplete procedures may be completed under this Act or the repealed Act at the discretion of a Judge.

s116: NLCt under earlier Acts deemed one continuous Court.

s117: Court under this Act deemed to have full powers to complete proceedings commenced under one of the repealed Acts.

s118: References to repealed Acts to refer to this Act.

s119: The Native Land Division Act 1882, repealed by this Act, is deemed to have been amended so that that Act applied to Native reserves even though *s2* had stated it did not apply to them.

s120: A conveyance or lease of land not held under Crown Grant shall be effectual.

Commentary continued over page



Native Land Court Act 1886 *continued*

- Commentary:** Described by the Government as largely a Consolidation Act, the new provisions being:
1. Rehearings to be in front of 2 Judges if Chief Judge was involved in the original hearing. This was because numerous petitions had made it clear that it was unlikely that the Chief Judge would grant a rehearing or appeal in cases where he had made the original decision.
 2. Partitions: wider powers for NLCT to make partition orders on application by any individual Maori, and European purchasers can also apply to the Court for a partition.
 3. Section 114 validates subdivisions made under the Native Land Act 1873 and 1882 Act, which the Supreme Court had said the NLCT did not have the power to make.
- Section 120 is to allow titles to be given pending the bringing into operation of the Native Land Administration Act 1886. Mackay points out that under section 26 a successor may be appointed without notice being given, so that a rightful heir may not know of the decision and would not be permitted to appeal. Te Ao, Hakuene and Parata all wanted the clause permitting lawyers in the Court to be struck out, which had been the recommendation of the Native Affairs Committee. According to Ballance a technical error in the Legislative Council had re-instated the clause and Ballance recommended that it should be allowed to stay because the Native Land Administration Act would mean that Europeans would have less influence on the Court anyhow.
- This Act also provides that, instead of issuing a Certificate of title or Memorial of ownership, the Native Land Court shall simply make an order determining the title, and on this order being sent to the Minister of Lands a Certificate of Title under the Land Transfer Act is to be issued to those declared to be entitled.
- In the Waitangi Tribunal Report on the Ngati Rangiteaorere Claim this Act was referred to in relation to the provisions allowing that up to 5% of any block of Maori land could be taken for roading without any compensation being payable.

Cross Reference continued next page



- Cross Reference:** NZPD vol 52 (1885) 559 - 561
NZPD vol 54 (1886) 331
NZPD vol 56 (1886) 362 - 367
AJHR (1886) I - 2 p.5
(*Native Affairs Committee*)
AJHR (1891) Sess II G - 1a pp.16 - 17
(*Mackay's Unfinished Report Relating to Native Land Laws*)
Ward A A *Show of Justice*
(AUP, Canberra, 1974) 289
Waitangi Tribunal *The Ngati Rangiteaorere Claim Report* Wai 32
(Brooker & Friend, Wellington, 1990) 2 - 3, 47 - 48
Mackay J *Our Dealings with Maori Lands; or, Comments on European Dealings for the Purchase and Lease of Native Land and Legislation thereon* (Kidd & Wildman, Auckland, 1887) 17 - 23
- Reported Court Cases:
There are numerous cases that refer to this Act, see Butterworths Annotations of New Zealand Statutes (Cases).