



Native Land Court Act 1886 Amendment Act 1888

1888

Citation: 52 V. No 37
Date of Assent: 30 August, 1888
Commencement: Date of Assent

Repeal: Repealed 23 October, 1894 by 1894, No 43
Amendments: 1889, No 32: See separate record.
s9 repeals s20
s15 repeals part s26
s19 amends s4.
1890, No 32: See separate record.
s3 amends s6.

Type of Legislation: Public
Subject: Maori Land Court: Structures & Jurisdiction
Leased Land
Alienation of Maori Land
Equitable Owners
Compulsory Acquis & Transfer of Control
Validation
Public Works

Relevant Sections: s2: Repeals and replaces s3 Native Land Court Act 1886,
"Native" includes half castes and descendants,
"Land" means any land owned by Natives except Native land,
"Native land" means land owned by Natives under their customs
and usages,
"Parcel of land" means parcels resulting from partitioning of land,
"Purchasers" means persons to whom such parcels may be awarded
on partition,
"Person" means any person, Native or otherwise,
"Hereditament" means land granted to Natives by the Crown.
s3: Conveyances of land held by a Memorial of ownership or
Certificate of Title issued by the NLCT, together with indorsement
by the Trust Commissioner, may be registered.
s4: Where the deed/s effect a conveyance of the entire area of land
held under Memorial of ownership or Certificate of Title, the Chief
Judge, assisted by an Assessor, is to ascertain that the purchase is
equitable, and not contrary to any law in force at the time the deeds
were executed, and then to recommend to the Governor that the title
is brought under the Land Transfer system.

Relevant Sections continued over page



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s5: Lease deeds may be registered with the Court and treated in the same manner as conveyances.

s6: On application by a majority of the owners, restrictions on alienation may be annulled or varied at a public inquiry by the NLCt after notice has been given in the Gazette and the Kahiti.

Proviso that no such restriction shall be annulled unless NLCt satisfied that the owners have other land sufficient for their maintenance and occupation, and that all the owners agree with the removal of restrictions.

s7: Crown may apply to the NLCt to have the interests in land acquired by it ascertained, and then partitioned and vested in the Crown.

s8: Rent from the lease of land owned by Natives to be paid in proportion to relative interests.

s10: When the rights of Native lessors are disputed amongst themselves, any lessee may apply to Judge to pay the rent into a public account and the money will be paid out to the lessors as the Judge deems fit.

s11: Until relative interests are determined, the lessors shall be deemed entitled to equal shares of rent being held by the Public Trustee.

s12: If land is declared to have more than 20 Native owners under s20 or s21 of the Native Land Court Act 1886, NLCt shall direct that the land be partitioned so that each parcel is owned by not more than 20 owners. This direction by the Court deemed to be an application by owners for partition. Proviso that no person or Company to acquire more than 5000 acres in freehold.

s13: NLCt empowered to make orders under ss20, 21, 31 and 33 Native Land Court Act 1886 directing a sufficiency of inalienable land for each owner's support. Validates previous orders doing this.

s14: If Judge or Assessor are unable to finish a case a final decision may be made by a substitute Judge or Assessor.

s15: Any decisions arrived at concerning the ownership of parts of the "Rohe-Potae" shall be deemed to have effect as an order under s20 Native Land Court Act 1886. Proviso that no part of the Rohe Potae shall be dealt with until three years after the passing of this Act. (This proviso not to apply to the Crown.)

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s16: Land or shares in land owned by Natives deemed to be and to have been transferable. Not to apply to deeds for land under restrictions on alienation.

s18: Amends s14 Native Committees Act 1883, report by Committee to be given to the Registrar of the Court rather than the Chief Judge.

s19: Native Equitable Owners Act 1886 shall apply to land in the Bay of Plenty district to enable beneficiaries to become certified owners.

s20: Children of half-castes deemed to be Natives in determining succession.

s21: On making an order under s42 Native Land Court Act 1886 (investigation of title or partition) the Court shall determine the relative interests whether such procedure is applied for or not.

s22: Deputy Registrars may be appointed.

s23: Repeals and replaces s43 Native Land Court Act 1886.

When a Native dies intestate the Court shall determine succession according to Native custom and usage in respect of land held under Memorial of ownership or Certificate of Title. In respect of other land (hereditaments in 1886 Act) the Court shall decide according to the law of New Zealand as nearly as it can be reconciled with Native custom.

s24: Repeals and replaces ss76 and 77 Native Land Court Act 1886. Applications for rehearing to be heard before Chief Judge and an Assessor. Rehearings to be before two Judges and one Assessor, none of whom shall have adjudicated in the first hearing.

s25: Repeals and replaces s86 Native Land Court Act 1886.

Any order having the effect of a mortgage (for survey costs) shall be deemed a mortgage and the money secured shall be deemed to be due after 12 months and at 5% interest.

s26: Amendments to Native Land Court Act 1886,

amends s17, Registrar to forward copies of applications to Chairmen of Native Committees, and the Court is to consider the reports of Committees,

amends s23, approval of Commissioner of Native reserves no longer necessary for partition,

amends s26, succession orders made for the purposes of partition may be appealed,

amends s33, partition orders for land under Crown grant orders to be in duplicate with plan of parcel of land attached,

Relevant Sections and Commentary continued over page



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amends s36, when parcel of land is subject to a lease the terms of the lease to continue,

amends s50, succession order to be delivered to parties entitled rather than through Stamps Commissioner,

amends s79, only approved plan may be accepted by the Court as the plan of the land,

amends s83, survey order may be made in favour of the Surveyor-General,

amends s95(a), right to take public roads to cease after 10 years (had been 15 years),

amends s96, when land is taken for roads between land owned by Natives and Europeans the land is to be taken equally,

amends s103, rules may be made by a majority of Judges, repeals provision for rules under the Native Land Court Act 1880 to continue until new rules are approved.

s27: Porangahau, Mangamaire, Waipiro and Ngarara shall be inalienable until termination of the next General Assembly.

s28: Assent of Governor to the alienation of land deemed to have been given by the Governor in Council. Assent to be valid whether given before or after alienation.

s29: New licenses for interpreters to be issued only to persons of approved moral character.

Commentary: The Debates indicate that section 24 of the Native Land Administration Act 1886 (allowing completion of private purchases entered into prior to the passing of that Act) had been held by a court to apply only to Maori-owned lands held under Crown Grant and not to land held under s17 of the 1867 Act (*Seymour v MacDonald*). This Act extends the definition of "land" to land held under Memorials of ownership and NLCt Certificates of Title. Sections 3 to 5 establish a procedure for validating alienations made of such land, and the Court must find that the deed is not contrary to any law in force at the time. The inclusion of "parcels of land" and "purchasers" in the interpretation section point to the fact that one of the purposes of the Act was to further partitioning and alienation. Furthermore, s12 provides that blocks must be partitioned by the Court until there are no more than 20 owners of each parcel of land. Thus, while the Native Lands Frauds Prevention Act 1881 Amendment Act 1888 says that land can only be alienated if there are less than 20 owners,

Commentary and Cross Reference continued next page



section 12 of this Act means that all land will be able to be sold or leased. During the Debates Taiwhanga gives a history of Maori/Pakeha interaction since Cook and concludes that Maori should be left to administer their own lands. Taipua tried to move an amendment that no Maori shall be permitted to alienate his interest unless he has 200 acres for his own use and occupation.

Paora Tuhaere, Wiremu Pomare and Akuhata Hori Tupaea were allowed to speak in the Legislative Council and asked that the Native Bills could be delayed so that Maori may become familiar with them.

Cross Reference: NZPD vol 62 (1888) 17 - 22, 274 - 278

NZPD vol 63 (1888) 25 - 26, 209 - 234, 454 - 460

NZPD vol 68 (1890) 209 - 210, 285

AJHR (1888) G - 7

(Native Views on Native Land Legislation)

AJHR (1891) Sess II G - 1 p.XIV

(Rees Commission)

Reported Court Cases:

Seymour v. Macdonald (1887): N.Z.L.R. 5, C.A. 167

Barker v. Edger (1898) (s.2): [1898] A.C. 748

Robertson v. Wilson (1890) (ss.3, 4, 5, 16, 23): 9 N.Z.L.R. 579

In re Mitchell (1892) (s.12): 11 N.Z.L.R. 535

Ex parte Ninewa Heremaia (1896) (s.13): 14 N.Z.L.R. 510

Apiata v. Seymour (1888) (s.16): 7 N.Z.L.R. 60

Poaka v. Ward & Smith (1889) (ss.16, 17): 8 N.Z.L.R. 338

In re Pukengahu Block (1889) (ss.16, 17): 8 N.Z.L.R. 364

Pohuka Hapuku v. Smith (1892) (s.21): 12 N.Z.L.R. 155

In re Tiratu Block (1893) (s.23): 12 N.Z.L.R. 364

Ani Paki v. Pura Rora (1896) (s.23): 14 N.Z.L.R. 715

Mere Ngareta v. Davy (1894) (s.24): 13 N.Z.L.R. 533

In re Maungatautari No. 4F Block (1894) (s.25): 12 N.Z.L.R. 385,
13 N.Z.L.R. 125

Morrison v. Preece (1890) (s.27): 9 N.Z.L.R. 63.