



Native Land Court Acts Amendment Act 1889

- Citation:** 53 V. No 32
- Date of Assent:** 16 September, 1889
- Commencement:** Date of Assent
- Repeal:** Repealed 23 October, 1894 by 1894, No 43
- Amendments:** 1890, No 32: See separate record.
 s5 amends ss21, 22, 28.
 1891, No 49: See separate record.
 s2 repeals s28.
 1892, No 40: See separate record.
 s3 repeals ss20 - 28.
- Type of Legislation:** Public
- Subject:** Maori Land Court: Structures & Jurisdiction
 Survey Issues
 Equitable Owners
 Validation
 Alienation of Maori Land
- Relevant Sections:** s2: Repeals and replaces s11 Native Land Court Act 1886, Court may summons witnesses.
 s3: Penalty for failing to give evidence.
 s4: Power of NLCT to detain, to fine and to commit to prison any person guilty of contempt of Court.
 s5: Repeals and replaces s27 Native Land Court Act 1886, Court may authorise valuer to enter land subject to partition. Fine or imprisonment for obstruction of valuer.
 s6: Deed must be certified and stamped by Trust Commissioner before partition order signed.
 s7: In addition to powers under s51 Native Land Court Act 1886, Governor in Council deemed to have had the authority to refer to NLCT any question of Native interests in land other than Native land and in personal property and s51 deemed to have applied to any orders made.
 s8: Repeals s58 Native Land Court Act 1886 (Governor to be notified of cases of Native "under disability").
 s9: NLCT may make order in place of letters of administration for cases involving a personal estate of less than £200.
 Repeals s20 Native Land Court Act 1886 Amendment Act 1888 (In determining succession, child of a half-caste deemed a Native).

Relevant Sections continued next page



s10: Survey charges having the effect of a mortgage of the land may be apportioned by NLCT orders.

s11: Surveyor may recommend deviations in survey lines and Court may amend orders.

s12: When the Chief Judge is hearing an application for rehearing he may, with the agreement of the Assessor, amend any errors or omissions in the case under application. Decision to be final and conclusive.

s13: After title has been ascertained any person claiming his interest in the land to be prejudicially affected by an error or omission may apply to the Chief Judge who may dismiss the application, or hold an inquiry in open Court with the assistance of an Assessor. Notice of such inquiry to be published. If it appears that any error or omission has been made, it may be corrected provided the land has not already been alienated.

s14: If more than one successor to Native land, shares to be held as tenants in common, but this is not to invalidate any alienations already made.

s15: Amends s103 Native Land Court Act 1886 (and repeals part of s26 Native Land Court Act 1886 Amendment Act 1888 which amends s103), Chief Judge may make rules.

s16: Rules in force 30 August, 1888 to continue to 30 October, 1888.

s17: Applications for the removal of restrictions under s5 Native Land Act 1888 shall be dealt with by the NLCT as provided by s6 Native Land Court Act 1886 Amendment Act 1888. When the Court is holding the public inquiry the assent of the Assessor shall be necessary to the validity of any decision.

s18: Applications under s2 Native Equitable Owners Act 1886 to cease 2 years after the passing of this Act.

s19: Amends s4 Native Land Court Act 1886 Amendment Act 1888 so that inquiry into conveyances may be made by a Judge who shall report to the Chief Judge.

s20: Commissioners to be appointed under this Act, one of whom to be a Native. On cases being brought before them, the Commissioners shall inquire into all circumstances of alleged alienations or acquisitions of land made before 1 July, 1887 which would otherwise be barred or invalidated by any law now or previously in force. Commissioners to report from time to time.

Relevant Sections continued over page



Native Land Court Acts Amendment Act 1889 *continued*

s21: Commissioners to publish notice in *Gazette* and *Kahiti*.

s22: Commissioners to make rules.

s23: Payment of expenses.

s24: Commissioners to have the powers of conducting proceedings as a Judge of the Supreme Court.

s25: Order for costs to be registered in Resident's Magistrates Court or Supreme Court.

s26: Commissioners not bound by legal rules of evidence or precedent and may appoint counsel to act for Natives.

s27: Commissioners may validate alienation which did not include signatures of all Native owners or a change in the law prevented the completion of the alienation, if the transaction was entered into in good faith and not contrary to equity and good conscience.

s28: No action questioning the validity of alienations may be brought before any Court until after the expiry of the time for registering an application with the Commissioners. Where application is made to the Commissioners a caveat against the land shall be registered by the District Land Registrar.

s29: Implementation of Royal Commission report regarding boundaries of Tauponuiatia Block, Maraeroa Block and Horaaruhe-Pouakani Block; declaring Pouakani, Pouakani No 2, Kaiwha and Hapotea lands to be Native land; and empowering NLCt to charge survey costs to the owners of Maraeroa Block. Section not to affect Crown interests.

s30: Deeds made by Natives may only be registered under the Chattels Transfer Act 1889 if in accordance with formalities required by s3 Native Lands Frauds Prevention Act 1881 Amendment Act 1888.

s31: Amends s5 Native Equitable Owners Act 1886, by providing for rent to be paid to Native owners in proportion to their interests specified on CT, or, if not specified, equally. Payment is no longer paid through the Public Trustee.

s32: The restriction of 5000 acres in the proviso to s12 Native Land Court Act 1886 Amendment Act 1888 and in s3 Native Lands Frauds Prevention Act Amendment Act 1889 shall not apply to lands under the operation of the Thermal Springs Districts Act 1881.

Commentary and Cross Reference continued next page



Commentary: Section 20 gives power to specially appointed Commissioners to validate intended purchases from Maori of undivided interests in land entered into before 1 July, 1887. The Native Land Court Act 1886 had stopped the completion of purchases by not allowing sufficient time to obtain the necessary signatures. Whitaker says the intention of the 1886 Act had been that all those with uncompleted purchases would be able to have their interests partitioned, however the Court of Appeal in *Matthews v. Paraone* had said otherwise in relation to intended purchases of land subject to alienation restrictions. Section 20 overrides this decision, although it does not affect cases that have already been to the Supreme Court. Taipua says that the Act is for the benefit of Pakeha by increasing the powers for removing alienation restrictions and validating past sales, and that Maori are not able to get redress for the way the law has affected them. He also objects to survey charges becoming mortgages under s10 saying that there are sufficient powers under existing laws for a surveyor to get redress, and Carroll attempted to have the section deleted.

The Commission, carried out by W.B. Edwards, was largely ineffective and failed to met the hopes of the Government in settling the titles under question. In 1892 the Debates record that the Commission had received 48 applications, 14 of which were heard and the result was "nil". The sections establishing the Commission were repealed in 1892 when the Validation Court was set up instead (Native Land (Validation of Titles) Act 1892).

Cross Reference: NZPD vol 65 (1889) 382 - 385
NZPD vol 66 (1889) 126 - 138
NZPD vol 78 (1892) 504
Gazette (1890) vol 1, pp. 323 - 325, 256, 428, 701
AJHR (1889) G - 7 (*Royal Commission of the Tauponuiatia Block*)
AJHR (1891) Sess II G - 1 pp. 4 - 16 (*Rees Commission*), G - 1a pp.17 - 18 (*Mackay's Unfinished Report Relating to Native Land Laws*),
H - 13 pp.48 - 67 (*Papers relating to the Appointment of W.B. Edwards*),
J - 1 (*Petition of W.B. Edwards*)
Waitangi Tribunal *The Pouakani Report* Wai 33
(Brooker & Friend, Wellington, 1993) 130 - 131

Cross Reference continued over page



Native Land Court Acts Amendment Act 1889 *continued*

Butterworth G & Young H *Maori Affairs*

(GP Books, Wellington, 1990) 50 - 51

Reported Court Cases:

Matthews v. Paraone (1889): 7 N.Z.L.R. 528

In re Te Waha-O-Te Marangai Block (1896) (s.11): 15 N.Z.L.R. 171

In re Mangaohane Block (1891) (s.13): 9 N.Z.L.R. 731

In re Ngarara Block; Ex parte Werahiko te Hau (1890) (s.13): 9 N.Z.L.R. 763

Ex parte Arapata Karena (1894) (s.13): 12 N.Z.L.R. 695

Winiata Te Wharo v. Airini Tonore (1895) (s.13): 14 N.Z.L.R. 209

Taitumu Marangataua v. Patena Kerehi (1911) (s.13): 31 N.Z.L.R. 513,
13 G.L.R. 457, 14 G.L.R. 583

Hanita Te Maero v. Titihuia Whakarongo (1893)

(s.14): 12 N.Z.L.R. 288

In re Aotea Block No. 5 (1891) (s.17): 10 N.Z.L.R. 129.

Ropiha Tamararo v. N.Z. Native Land Settlement Co. Ltd. (1891) (ss.20,
27): 9 N.Z.L.R. 573.