



Native Land Laws Amendment Act 1897

1897

- Citation:** 61 V. No 25
Date of Assent: 22 December, 1897
Commencement: Date of Assent
- Repeal:** Repealed 24 December, 1909 by 1909, No 15
Amendments: 1898, No 11: See separate record.
s2 refers to the scope and meaning of s3.
- Type of Legislation:** Public
Subject: Maori Land Court: Structures & Jurisdiction
Incorporations
Public/Native/Maori Trustee
Validation
Alienation of Maori Land
- Relevant Sections:**
- s2:** Interpretation of s13 of Native Land Laws Amendment Act 1895, confirmation order is conclusive as to whether or not the transaction contravenes s117 Native Land Court Act 1894 but not as to whether the transaction contravenes any other law. Any person misled as to the meaning of s13 given an extended time to apply to the Validation Court under s16 Native Land Laws Amendment Act 1896.
- s3:** Natives, whether incorporated or otherwise, may convey land by way of trust to the Surveyor – General, the Commissioner of Crown lands or some other person for purposes of sale, lease, management, improvement or mortgage. All the owners must sign the conveyance.
- s4:** Powers of a trustee with respect to land conveyed in this manner include,
- (1) the ability to borrow money on the security of the land at the request of the Native owners, the money may be used to discharge survey charges etc, to improve the land, or be used on other land with the same owners,
 - (2) the power to mortgage or charge the land as security for the money borrowed,
 - (3) the Public Trustee has the power to lend money from any funds under his control.
- s5:** Governor in Council may make regulations for ss4 & 5.
- s6:** (1) On application of a Native to mortgage his undivided share in land, the NLCt may certify that the Native has other land sufficient for his maintenance.

Relevant Sections and Commentary continued over page



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- (2) On the granting of such certificate, the Governor may authorise the Native to mortgage the land. Mortgage to operate as if mortgagor was not a Maori and therefore the Native Lands Act 1894 shall not apply.
 - (3) Money may only be borrowed from Government lending departments such as Public Trust Office.
 - (4) Governor in Council to make regulations for this section.
- s7: Return of applications for Orders in Council under this Act shall be laid before Parliament.
- s8: All deeds already made by incorporated bodies of Natives disposing of portions of their estate validated and declared effectual for all purposes when assented to in writing by the Commissioner of Crown Lands who shall inquire whether the deed is equitable.

Commentary: The 1894 Native Land Court Act which prohibited private land dealings gave time for lease or sale transactions to be completed but did not allow time for mortgages to be finalised. This was amended by the Native Land Laws Amendment Act 1895 which provided that the Native Land Court could issue a confirmation order relating to a mortgage entered into prior to 1894. Section 13 of the 1895 Act provided that a confirmation order issued by the Native Land Court shall be conclusive, but in 1897 it was argued that this power was too extensive. It was intended that in investigating transactions the Judges would act as Fraud Prevention Commissioners, but in practice the Judges confirmed transactions so long as they met the requirements of s117 Native Land Court Act 1894, without investigating whether they were fraudulent or otherwise invalid. Section 23 of the Native Land Laws Amendment Act 1896 had the effect of giving mortgages the same status as uncompleted sales or leases prior to 1894. During the 1897 Debates Carroll claimed that "it was never intended that unregistered mortgages should hold the same position as contracts to lease or purchase" and it had been found that this amendment had had an undesirable effect on the Maori owners of Te Kawakawa, Te Kopi and Matakotaki Blocks who had borrowed money from a Mr Pharazyn. A Joint Committee of the House of Representatives and the Legislative Council exonerated Mr Pharazyn and found that, even with the repeal of the 1896 Amendment section, he would still have the right under the 1895 Act to obtain a Supreme Court order to recover the money or sell up the

Commentary and Cross Reference continued next page



land. The solution now arrived at was to allow the Public Trustee to take up the lands as security and borrow on behalf of the owners providing they still retained sufficient land for their maintenance. This was a general power to encourage Maori owners to vest their land in a trustee who could then sell or lease the land or use it as security for a mortgage to develop the land. In 1907 the Native Lands Commission reported that very little land had been conveyed under section 3 and that it was "practically a dead letter". The power of mortgaging is also extended to owners of undivided shares in land provided the owner has other land and the Governor consents.

Cross Reference:

NZPD vol 99 (1897) 550 - 577, 643 - 645

NZPD vol 100 (1897) 797 - 798, 890 - 893, 919 - 921

NZPD vol 104 (1898) 644 - 647

AJHR (1898) G - 6

(Native Land Laws Amendment Acts)

AJHR (1907) G - 1c p.14

(Native Lands Commission)

Brooking T 'Busting Up' *The Greatest Estate of All: Liberal Maori Land Policy, 1891 - 1911* NZJH, 26 (April, 1992) 78 - 98

Reported Court Cases:

Finlayson v. Auckland District Land Registrar (1904) (s.2): 24 N.Z.L.R. 341, 7 G.L.R. 144

In re Mangatu No. 1 Block (1899) (s.3): 17 N.Z.L.R. 816

Raumaewa Te Rango v. Turnbull (1899) (ss.3, 4, 5): 18 N.Z.L.R. 285, 2 G.L.R. 6

In re Foster's caveat (1907) (s.3): 26 N.Z.L.R. 890, 9 G.L.R. 420.