

THE NATIVE LAND AND TITLES PROTECTION
ORDINANCE, 1934.

Western Samoa

No. 2, 1934



*Amended
by No 6 1937*

*See Amendt. Ord. 1937 (No 1)
for change of name of
L. & T. Commission to L. & T.
Court.*

AN ORDINANCE

made by the Administrator of the Territory of Western Samoa with the advice and consent of the Legislative Council of that Territory, and in pursuance of the Samoa Act, 1921.

Short Title

1. This Ordinance may be cited as "The Native Land and Titles Protection Ordinance, 1934," and shall come into operation on the first day of April, 1935.

Interpretation

Interpreta-
tion

2. In this Ordinance, where not inconsistent with the context, "Administrator" means the Administrator of Western Samoa;

"Alienation" includes any alienation or disposition *inter vivos* of land or of any interest in land whether by way of sale lease license mortgage or otherwise howsoever other than an alienation or disposition in favour of the Crown: and "alienate" has a meaning corresponding with that of "alienation;"

"Chief Surveyor" means Chief Surveyor of Western Samoa or any person acting with his authority;

"The Court" means the Native Land and Titles ~~Com-~~
~~mission;~~ *Court.*

"Crown Land," "European Land" and "Native Land" have the respective meanings assigned to them by Section 268 of the Samoa Act 1921; namely

- "Crown land" means land vested in the Crown free from Native title and from any estate in fee-simple;
- "European land" means land held from the Crown for an estate in fee-simple;
- "Native land" means land vested in the Crown but held by Samoans by Native title, and not by grant from the Crown.
- "Gazette" means The Western Samoa Gazette;
- "High Court" means the High Court of Western Samoa;
- "Individual Property" means property of any kind in Samoa owned by a Samoan in his own right and not held by him in accordance with the customs and usages of the Samoan people;
- "Land Register" and "Land Registrar" mean respectively the Land Register and the Land Registrar referred to in "The Samoa Land Registration Order, 1920;"
- "Minister" means the Minister of External Affairs;
- "Native Land and Titles Commission" means the Court constituted and established under Part VII of this Ordinance;
- "President" means the President of the Court;
- "Registrar" means the Registrar of the Court and includes a deputy registrar;
- "Savali" means the Official Gazette relative to the government of Samoa published in the Samoan language;
- "Solicitor" includes any barrister, solicitor, or legal agent lawfully entitled to practise as such in Samoa;
- "Town Area of Apia" means the town area of Apia for the time being within the meaning of "The Building Alignment Ordinance, 1932."

(Town Area
of Apia)

Application
of Samoans
to Alienate

PART I. (Town Area of Apia)

Applications by Samoans to Alienate.

3. Any Samoan claiming to be the beneficial owner of native land situated in the Town Area of Apia and desiring to make an alienation thereof may apply in writing to the Secretary of Native Affairs for the authority of the Administrator to make the proposed alienation.

Form of Application.

4. Every application under the last preceding clause hereof shall be in such form and contain such particulars as the Secretary of Native Affairs shall prescribe.

Applications to be Published in Savali.

5. The Secretary upon being authorised so to do by the Adminis-

trator shall publish in the Savali such particulars as the Administrator may direct of each application made to him under clause 3 hereof.

Notice to be Given for Lodging Objections.

6. Every publication as aforesaid shall contain a notice fixing a time or period not being less than three months from the date of the publication not later than or within which and a place at which objections to the proposed alienation may be lodged by any Samoan who claims to be affected thereby.

Disposal of Objections.

7. (a) All objections (other than those touching or affecting the ownership of the land proposed to be alienated) shall be determined in such way as the Administrator shall direct.

(b) The Secretary of Native Affairs shall as soon as conveniently may be after receiving any objection touching or affecting the ownership of the land proposed to be alienated prepare sign and file a petition to the Native Land and Titles Commission for the purpose of determining such objection.

Authority to Alienate.

8. When all objections to the application to alienate have been disposed of as aforesaid, the Administrator upon being satisfied that the proposed alienation is in the interest of the owners and is in the public interest may by warrant under his hand authorise the said alienation subject however to such terms conditions and modifications as he may think fit to impose and thereupon it shall be lawful at any time within one year of the date of the warrant to make such alienation but subject to any terms and conditions so imposed and in any modified form required by the warrant.

or if no such objections have been lodged within the time or period fixed in that behalf

PART II. (Sale of Native Land to Samoans).

Applications to Alienate.

(Sale of Native Land to Samoans) Applications to Alienate

9. Any Samoan claiming to be beneficial owner of native land situate whether in the town area of Apia or elsewhere and desiring to make an alienation thereof to another Samoan may apply in writing to the Secretary of Native Affairs for the authority of the Administrator to make the proposed alienation.

Procedure on Application being made.

10. The provisions of clauses 4 to 8 hereof (inclusive) shall apply to every application under the last preceding clause hereof.

Alienated Land to Remain Native Land.

11. Any land alienated under the provisions of this part of this Ordinance shall remain native land.

(Alienations
by Way of
Lease.)
Leases by
the Adminis-
tration.

PART III. (Alienations by Way of Lease).

Leases by the Administrator.

12. Whenever any Samoan claiming to be the beneficial owner of native land is desirous that the Administrator should grant a lease thereof or any part thereof under the powers vested in him by subsection (4) of section 280 of the Samoa Act, 1921, such Samoan shall make application in that behalf to the Secretary of Native Affairs and the provisions of Part I hereof shall apply (*mutatis mutandis*) to every such application.

Provided that - - (see above)

(Crown Land
and Euro-
pean Land.)
Definition.

PART IV.—(Crown Land and European Land).

Definitions.

13. In this part of this Ordinance

“Samoan Freehold Land” means any Crown or European land acquired either before or after the commencement of this Ordinance by a Samoan and held by him or any Samoan successor in title for an estate in fee simple and whether or not such estate in fee simple be subject to any lesser estate or interest or any encumbrance;

“Samoan Interest in Freehold Land” means

- (a) an estate or interest in Crown or European land less than an estate in fee simple acquired either before or after the commencement of this Ordinance by a Samoan and held by him or any Samoan successor in title for such or any lesser estate or interest;
- (b) any estate or interest in Samoan freehold land acquired by a Samoan otherwise than by absolute assurance thereof and held by him or any Samoan successor in title for such or any lesser estate or interest;
- (c) any leasehold interest in Native land held by a Samoan under a lease executed by the Administrator either before or after the commencement of this Ordinance under the powers vested in him by Subsection (4) of Section 280 of the Samoa Act, 1921.

Exemption.

14. The provisions of this part of this Ordinance shall not apply to any estate or interest in land held by a Samoan as Trustee for a European.

Individual Property.

15. All Samoan freehold land and every Samoan interest in freehold land shall be deemed to be the individual property of the owner thereof

Date from which
effective.

unless it shall be declared in manner hereinafter appearing to be property held in accordance with the usages and customs of the Samoan people.

Powers of Land and Titles Commission, Court

16. The Land and Titles Commission shall have jurisdiction to hear and determine any dispute between Samoans affecting Samoan freehold land and Samoan interests in freehold land and may declare that any such land or interests shall be held in accordance with the usages or customs of the Samoan people.

Declaration in Deed Conclusive.

17. Wherever the Crown Grant will conveyance lease grant assurance or other deed or document whereunder a Samoan has acquired any Samoan freehold land or a Samoan interest in freehold land contains a recital or declaration to the effect that the said land or interest shall be held in accordance with the usages and customs of the Samoan people such recital or declaration shall except in the case of fraud be accepted by all Courts as conclusive evidence that the said land or interest is so held.

Restrictions on Certain Land.

18. The restrictions protection and control imposed upon native land by section 280 of The Samoa Act, 1921, shall extend to Samoan freehold land and to Samoan interests in freehold land held in accordance with the usages and customs of the Samoan people, and not as individual property.

Restrictions on Land held as Individual Property.

19. Save with the consent in writing of the Administrator first had and obtained and subject to such terms and conditions as he may impose, it shall not be lawful or competent for a Samoan to make (except by will) any alienation of Samoan freehold land or a Samoan interest in freehold land which is his individual property.

Protection of Individual Property.

20. Samoan freehold land and Samoan interests in freehold land being the individual property of a Samoan shall not be capable of being taken in execution or be assets for the payment of debts upon the decease insolvency or default of such Samoan Provided that nothing in this clause shall affect the enforcement of a security in accordance with the provisions of Section 367 of The Samoa Act, 1921, or the powers of a vendor lessor grantor or licensor to enforce any right of rescission re-entry forfeiture or cancellation expressly or by implication contained in any agreement for sale, or in any lease grant or license.

(Pulefaamau)
Pulefaamau
Claims.

PART V.—(Pulefaamau).

Pulefaamau Claims.

21. Any Samoan who claims the ownership of any native land or the control of any Samoan name or title either in his sole right or on behalf of any Samoan title family village or district, may give notice of such claim (hereinafter called a "Pulefaamau") to the Secretary of Native Affairs or to the Resident Commissioner of Savai'i.

Publication of Claim in Savali.

22. The Secretary of Native Affairs, on being satisfied that the claim has been *bona fide* made, and upon receiving the prescribed fees shall publish particulars thereof in the Savali in two consecutive issues thereof.

Form of Notice.

23. Every publication as aforesaid shall be in such form as the said Secretary shall prescribe, and shall contain a notice fixing a time or period (not being less than three months from the date of the first publication) not later than or within which and a place at which objections to the Pulefaamau may be lodged by any Samoan who may be affected thereby.

Procedure on Objection being Lodged.

24. The said Secretary on receiving any such objection together with the prescribed fees shall as soon as conveniently may be, prepare sign and file a petition to the Native Land and Titles Commission for the purpose of determining such objection.

Procedure if no Objection Lodged.

25. If no objection to a Pulefaamau shall be duly lodged, the said Secretary shall as soon as conveniently may be after the expiration of the time fixed for lodging objections, prepare sign and file a petition to the Native Land and Titles Commission to confirm such Pulefaamau.

Jurisdiction of Land and Titles Commission.

26. The Native Land and Titles Commission, sitting without Samoan Commissioners shall have jurisdiction, *exparte*, to confirm wholly or in part and with or without modification, any Pulefaamau against which an objection has not been duly lodged and every such decision shall enure for all purposes as a final decision of the said Commission.

(Titles Protection)
Rightful
Holder Defined.

PART VI.—(Titles Protection).

Rightful Holder defined.

27. In this part of this Ordinance where not inconsistent with the context, "Rightful Holder" means a person appointed the holder of a Samoan name or title by and in accordance with the customs and usages

of the Samoan people and includes a person who has been appointed thereto in pursuance of a judgement of the Native Land and Titles Commission or of an interim order made under the provisions of this Ordinance.

Wrongful User an Offence.

28. Any person other than the rightful holder who uses a Samoan name or title or permits himself to be addressed by a Samoan name or title or otherwise acts as the holder of a Samoan name or title shall be guilty of an offence and liable to imprisonment for twelve months.

Exemptions.

29. No person shall be liable to a penalty under the last preceding clause hereof who proves that he did for a period exceeding twelve months immediately prior to the twenty-seventh day of September 1928 (the date on which the Samoan Native Titles Protection Order, 1928, came into force) use such name or title openly and without interruption and either as the sole user thereof or with the consent of any rightful holder.

Notice of Appointment.

30. Every Samoan who shall after the coming into force of this Part of this Order be appointed the holder of a Samoan name or title, shall within seven days of the holding of the ceremony of appointment (Saofa'i) give notice thereof to the Pulenu'u of the village in which such ceremony was held.

Penalty for Failure to give Notice.

31. Every Samoan who fails to give notice in accordance with the provisions of the last preceding clause hereof shall be guilty of an offence and liable to a fine of ten pounds or to imprisonment for three months.

Duty of Pulenu'u.

32. Whenever a Pulenu'u has knowledge (whether by receipt of notice as aforesaid or otherwise) that a ceremony of appointment to a Samoan name or title has been held in his village, he shall forthwith forward to the Secretary of Native Affairs (or to the Resident Commissioner of Savai'i if his village is in Savai'i) particulars thereof in such form as the said Secretary shall prescribe.

Default by Pulenu'u an Offence.

33. Every Pulenu'u who shall without lawful excuse make default in the performance of his duty as prescribed in the last preceding clause hereof shall be guilty of an offence and liable to a fine of ten pounds or to imprisonment for three months.

PART VII. — The Land and Titles Commission *Court**Establishment of the Court.*

Court
Land and
Titles Commission,
Establishment of the
Court.

34. There is hereby constituted and established in and for Samoa a Court of record to be called "The Native Land and Titles Commission *Court*" which shall have all the jurisdiction and powers specially conferred by this Ordinance and all the powers inherent in a Court of record.

Seal of the Court.

35. The Court shall have in custody of the Registrar and each Deputy Registrar a seal of the Court for the sealing of all documents requiring to be sealed.

Constitution of the Court.

36. The Court shall consist of a President who shall be the Chief Judge for the time being of the High Court and Assessors and ~~Samoan Commissioners~~ *Samoan* to be appointed in manner hereinafter provided.

Jurisdiction of the Court.

37. The Court shall have exclusive jurisdiction
- (a) in all matters relating to Samoan names and titles,
 - (b) to make such orders or declarations in respect of Samoan names and titles as may be necessary to preserve or define the same or the rights or obligations attaching thereto in accordance with the customs of the Samoan race and all laws in force in Samoa with reference thereto,
 - (c) in all claims and disputes between Samoans relating to Native land and the right of succession to property held in accordance with the usages and customs of the Samoan race,
 - (d) in such matters as may be specified in this Ordinance or in any Act, Regulation or other Ordinance.

Assessors and Samoan Commissioners, Native Judge

38. Save as otherwise specifically provided by this Ordinance or by any Act, Regulation, or other Ordinance the Court shall not exercise any jurisdiction conferred upon it unless there be present

- (a) the President
- (b) at least two European Assessors
- (c) at least four Samoan Commissioners, *two Native Judges*

Provided that where by reason of the absence of any of the said persons it is necessary to adjourn the sitting of the Court or the hearing of any case the President or in his absence the Registrar may adjourn or further adjourn such sitting or the hearing of such case to such future day as the President or the Registrar shall think fit.

*Amended by
No. 2, 1937.*

Administrator to Appoint Assessors and Commissioners. Native Judge.

39. The Assessors and Samoan Commissioners for each sitting of the Court shall be such qualified persons as the Administrator thinks fit to appoint from amongst the respective qualified persons nominated for the time being in that behalf by the Administrator as hereinafter provided, not being

(a) more than two European Assessors other than the Secretary of Native Affairs who shall *ex officio* be an Assessor

(b) more than fourteen Samoan Commissioners.

(2) *Section 39 of Ordinance 1937.*
Qualification of Assessors and Commissioners.

40. No person shall be appointed an Assessor or a Samoan Commissioner unless he has first been nominated by the Administrator by warrant published in the Savahi as a person qualified for such appointment.

Administrator to Nominate Assessors and Commissioners.

41. The Administrator may accordingly from time to time nominate in this behalf such and so many persons as he thinks qualified (by reason of their character ability and reputation and in the case of Samoan Commissioners their chiefly rank) to hold such offices and may at any time in like manner revoke such nomination.

Remuneration of Assessors and Commissioners. Native Judge.

42. Assessors and Samoan Commissioners may receive in respect of each sitting of the Court at which they are present such fees and allowances as the Administrator may from time to time prescribe.

Functions of Samoan Commissioners. Native Judge.

43. The Samoan Commissioners shall be entitled to be heard on all questions before the Court and to examine any party or witness in the proceedings and shall also advise the Court on such questions as the Court may refer to them.

Appointment of Registrar.

44. There shall be a Registrar of the Court to be appointed as a member of the Samoan Public Service.

Duties of the Registrar.

45. The Registrar shall keep the records of the Court and shall perform all such administrative duties in respect of the Court as the President may from time to time direct.

Appointment of Deputy Registrars.

46. There may also be appointed Deputy Registrars of the Court who shall subject to the control of the Registrar possess exercise and

Amended by
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1937.

perform the same powers functions and duties as the Registrar and every reference in this Ordinance to the Registrar of the Court shall so far as applicable extend and apply to a Deputy Registrar accordingly.

The Office of the Registrar.

47. (1) The Office of the Registrar shall be at the head office for the time being of the Department of Native Affairs.

(2) The Administrator may by proclamation published in the gazette establish registries of the Court at such places in Samoa as he shall think fit.

(3) A Deputy Registrar shall be appointed for each registry of the Court who shall perform such administrative duties in respect of the Court as the President may from time to time prescribe.

Institution of Proceedings.

48. (1) All proceedings may be instituted in the Court by verbal or written notice of the matter in dispute given by any interested Samoan to the Secretary of Native Affairs or to the Registrar or Deputy Registrar of the Court.

(2) Upon receiving the said notice of particulars the Secretary of Native Affairs Registrar or Deputy Registrar as the case may be shall prepare a petition in the form numbered 2 in the first schedule hereto showing

- (a) the nature and particulars of the claim or dispute
- (b) The relief sought
- (c) The names of the petitioners and the respondents and the villages to which they respectively belong.

(3) Every petition shall be signed by the petitioners or by the Secretary of Native Affairs Registrar or Deputy Registrar.

(4) The petition when signed shall be filed in the office of the Registrar or in a registry of the Court. If the petition is filed in a registry of the Court the Deputy Registrar at such registry shall forthwith transmit the same to the Registrar.

(5) Upon the filing of a petition in the office of the Registrar or upon the receipt thereof from a registry of the Court the Registrar shall set the same down for hearing at the next available sitting of the Court.

(6) Nothing in this clause shall prevent any Samoan from preparing or having prepared on his behalf a petition under this Ordinance and filing the same in the office of the Registrar or in a registry of the Court.

(7) Proceedings shall be deemed to be commenced on the filing of the petition.

Service.

49. (1) The petition shall be served on such persons and in such manner as the Registrar shall direct.

(2) There shall be attached to every copy of the petition for service a summons to the respondent in the form numbered 3 in the first schedule hereto requiring the respondent to appear at the hearing of the petition.

Sittings of the Court.

50. Sittings of the Court shall be held at such times and at such places as the Administrator shall by warrant under his hand appoint. Provided that the Court may itself from time to time adjourn any sitting or the hearing of any case to any other time or place.

Notice of Sitting to be Published.

51. Notice of every sitting of the Court shall be published in the "Savali" at least twenty-one days before the commencement of each sitting.

Form of Notice.

52. Every such notice shall be in the form numbered 4 in the first schedule hereto and shall state,

- (a) The time and place of the sitting
- (b) the names of the assessors appointed for the sitting
- (c) the names of the ^{Native Judge} ~~Samoa~~ Commissioners appointed for the sitting
- (d) the names of the parties to each petition to be heard at the sitting and the nature of the relief sought thereby.

Petitions to be Published.

53. A petition which has not been published in manner provided by the last preceding clause shall not be heard at such sitting of the Court except with the leave of the President and subject to such terms and conditions as he may think fit to impose.

The Final Decision.

54. The final decision of the Court on any petition filed under the provisions of this Ordinance, shall be the decision of the majority of the assessors or if they are equally divided the decision of the President.

President Controls Procedure.

55. The concurrence of the assessors shall not be necessary for any act of the Court other than its final decision on a petition filed as aforesaid and in all other respects the jurisdiction of the Court shall be exercised in the same manner as if the President was sitting without Assessors.

Drawing up Final Decision.

56. The final decision of the Court on a petition filed as aforesaid

shall be drawn up under the Seal of the Court and the hand of the President and such of the assessors as concur therein and shall be in the form numbered 5 in the first schedule hereto.

Publication of Final Decision.

57. The Registrar shall publish in the "Savali" particulars of every final decision of the Court on a petition filed as aforesaid, whereupon such decision shall be deemed to be complete.

Effect of Final Decision.

58. Every final decision of the Court on a petition filed as aforesaid shall be deemed to be a judgment in rem and shall bind all Samoans who are interested therein whether parties to the proceedings or not.

Application for Re-hearing.

59. Any party or any other Samoan affected by the final decision of the Court on any petition filed as aforesaid other than a final decision given after an order for hearing made pursuant to the provisions of this clause may apply to the Court to set aside such decision and to re-hear the petition and upon being satisfied that notice of the application has been given to all other parties to the petition except those the giving of notice to whom the Court may excuse the Court may make such order in the premises as to it may seem just. The application for re-hearing notice to other parties and order of the Court may be in the forms numbered respectively 6, 7 and 8 in the first Schedule hereto.

Time for Making Application.

60. Every application for a re-hearing shall be made within two months after the publication of the particulars of the decision in the "Savali" and shall be heard and determined by the President sitting alone.

Finality of Decisions.

61. Neither the Supreme Court of New Zealand nor the High Court shall exercise control over the Native Land and Titles Commission (whether in respect of want of jurisdiction or otherwise) by way of appeal *certiorari mandamus* prohibition or otherwise howsoever.

President may make Interim Orders.

62. Upon the commencement of any proceedings and pending the final determination of the matter by the Court the President sitting alone may make either *ex parte* or otherwise such interim orders as he thinks fit as to the possession of the land or the using of the title or the exercise of the right to which the petition relates.

Secretary and Resident Commissioner may make Interim Orders.

63. If the Secretary of Native Affairs or Resident Commissioner of Savai'i is satisfied that a dispute has arisen between Samoans which is

within the jurisdiction of the Court and is likely to be the subject matter of proceedings under this Ordinance he may at any time before the commencement of proceedings make such order as to him may seem meet to restrain any Samoan from

- (a) remaining in possession of or entering upon any native land
- (b) holding or using any Samoan name or title
- (c) exercising any right or doing any act matter or thing concerning or affecting any native land or any Samoan name or title, *of Samoan freehold land or Samoan interest in freehold land within the meaning assigned to the last two expressions by section 13 of the principal Ordinance.*

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64. Any order under the last preceding clause may be made *ex parte* or otherwise and shall remain in full force and effect until the final judgement of the Court Provided

- (a) the President may at any time after the commencement of proceedings upon the application of any party affected by such Order modify, vary or rescind the same,
- (b) the Secretary of Native Affairs or Resident Commissioner of Savai'i may at any time before the commencement of proceedings upon the application of any person affected by such Order modify, vary or rescind the same.

Enforcement of Interim Order.

65. Every Order made under clauses 62 or 63 hereof shall be deemed to be an order of the Court and shall be enforceable accordingly.

Privilege of Secretary.

66. The Secretary of Native Affairs shall not be disqualified from acting as an assessor in any proceedings under this Order by reason of any act matter or thing done by him in connection with or relating to the subject matter of the proceedings or the parties thereto while acting in the performance of the duties of his office, or in any matter authorised by this Ordinance.

High Court May Enforce Judgments.

67. A sealed copy of any decision of the Court whereunder a sum of money is payable by one Samoan to another (whether by way of costs or otherwise) may be filed in the High Court and the same proceedings may be taken to enforce payment as if the sum of money had been awarded to the Samoan entitled thereto by a Judgement of the High Court. The provisions of this clause shall *mutatis mutandis* extend and apply to any other decision of the Court which for the better enforcement thereof the President directs should be so filed in the High Court.

Practice and Procedure.

68. (1) Save so far as the Rules of the High Court are inconsistent with or inapplicable to the provisions of this Ordinance, such rules shall determine the practice, procedure and powers of the Native Land and Titles Commission ^{Court}.

(2) In any matter of practice or procedure unprovided for where the strict compliance with any rule of practice or procedure may be inequitable or inconvenient the Court may act in each case in such manner as it considers to be most consistent with natural justice and convenience.

Contempt of Court.

69. Every person commits an offence and is liable to a fine of Fifty pounds or to imprisonment for six months who

- (a) disobeys any judgment or order of the Court or any order of the Registrar or Deputy Registrar or of the Secretary of Native Affairs or Resident Commissioner of Savai'i made in pursuance of this Ordinance;
- (b) uses any abusive, insulting offensive or threatening words or behaviour in the presence of the Court or writes any such words to a member or officer of the Court;
- (c) assaults, resists or obstructs or incites any other person to assault, resist or obstruct any constable, surveyor or officer of the Court in serving any process of the Court or executing any judgment or order of the Court or any order of the Registrar or Deputy Registrar or of the Secretary of Native Affairs made in pursuance of this Ordinance;
- (d) by any words or behaviour obstructs in any manner the proper and orderly administration of justice in the Court;
- (e) fails to appear on a summons relating to the hearing of a petition;
- (f) being a party to a petition fails to be present at the time and place appointed for a survey under clause 75 hereof.

Contempt Proceedings to be commenced in High Court.

70. Proceedings in respect of every offence under the last preceding clause shall be taken in the High Court.

Fees of Court.

71. The Registrar shall receive and take such fees as are specified in the second schedule hereto Provided that where it appears to the satisfaction of the President that any party is unable or ought not to be called upon to pay any of the fees mentioned in such schedule the President may dispense with the payment or order a refund thereof or any part thereof subject to such terms as he thinks fit.

Court Fees to be Prepaid.

72. Unless otherwise ordered by the President or by the Secretary of Native Affairs all fees of Court shall be prepaid in cash.

President may Remit Fees.

73. Wherever by reason of an order of the President any fees of Court are to be refunded to any party the same shall be repaid out of the Samoan Treasury upon the authority of a warrant under the hand of the President.

Costs.

74. The costs of and incidental to any petition under this Ordinance shall be in the discretion of the Court and the Court may make such orders as to the payment of the costs of any party by any other party as to it may seem just.

Surveys.

75. (1) Whenever the Secretary of Native Affairs is of opinion that a survey is necessary to define any land, the subject matter of a petition under this Ordinance or in respect of an application for a "Pule Fa'amau" under part V of this Ordinance he may direct the Chief Surveyor to cause such survey to be made on a day to be appointed by the Chief Surveyor.

(2) Notice of the time appointed for the making of the survey shall be served upon the parties to the petition and shall be in the form numbered 9 in the first schedule hereto.

(3) It shall be the duty of the person making the survey to define the boundaries of the Native land in dispute in accordance with the direction of such parties to the dispute as shall be present or represented when the survey is being made.

(4) Every plan under the hand of the Chief Surveyor shall be accepted in evidence without further proof.

(5) Nothing in this clause shall limit the power of the Court to order a survey to be made at any time.

Solicitors.

76. Any party may be represented by a Solicitor for the purpose of preparing and filing a petition under this Ordinance; but no Solicitor shall have or be entitled to audience before the Court.

Revocation and Savings

77. (1) The Ordinances set out in the Fourth Schedule hereof shall be revoked to the extent specified in the said schedule on the coming into operation of this Ordinance.

(2) All proceedings pending under the Ordinances hereby revoked at the coming into operation of this Ordinance may be continued and completed under the corresponding provisions of this Ordinance.

(3) All records instruments nominations appointments warrants judgments orders and generally all acts of authority originating under the Ordinances hereby revoked and subsisting and in force on the coming into operation of this Ordinance shall enure for the purposes of this Ordinance as fully and effectually as if they had originated under the corresponding provisions of this Ordinance and accordingly shall where necessary be deemed to have so originated.

PART VIII.—Wills of Samoans and Intestate Succession.

Wills of
Samoans and
Intestate
Succession.

Samoans may will Individual Property.

78. Any Samoan who if he were a European would be capable of making a will may dispose by will of his personal property and his interests in land being individual property and exercise powers of appointment exercisable by will and the law in force in Samoa relating to wills and to the estates of deceased persons shall apply to every such will and to the Estate of a deceased Samoan but subject to the modifications hereinafter appearing.

Attestation of Samoan Wills.

79. One of the witnesses attesting the execution of a will by a Samoan testator shall be either

- (a) A European member of the Samoan Public Service;
- (b) A notary public solicitor or legal agent;
- (c) A European Minister of religion;
- (d) A European Medical Officer or European medical practitioner.

Probate to be Obtained in two Years.

80. Unless the High Court in its discretion shall in any case otherwise direct every will made by a Samoan shall on the expiration of two years from the death of the testator become absolutely null and void unless before the expiration of that period application shall have been made to the High Court for a grant of probate of the Will or of letters of Administration with will annexed.

High Court may Appoint Administrator.

81. The High Court may in its discretion grant to the Samoan Public Trustee letters of administration with will annexed of the will of any deceased Samoan whether or not an executor has been appointed by the will or has renounced or has applied for probate.

Bequest or Devise to European may be set Aside.

82. The High Court may in its discretion on the application of any interested person or of the Secretary of Native Affairs set aside in whole or in part any bequest or devise made in favour of a European.

Succession on Intestacy.

83. The persons entitled on the complete or partial intestacy of a Samoan to succeed to his personal property and his interests in land being individual property shall be determined in the same manner as if the deceased had been a European. Provided that for the purpose of succession all persons who are the issue of marriages recognised by the customs of the Samoan people shall be deemed to have been legitimately born.

PART IX.—(Miscellaneous)

Secretary may Act as Trustee.

Miscellaneous.

84. The Secretary of Native Affairs may receive and hold any money property or thing on behalf of any Samoan and may exercise in respect thereof all powers conferred by law upon the Samoan Public Trustee in respect of trust property vested in him.

Secretary may Divest.

85. The Secretary of Native Affairs may with the leave of the High Court but subject to such directions or conditions as the said Court may give or impose divest himself of any property held by him which is onerous.

Payments to Samoans Prohibited.

86. It shall be unlawful to pay any purchase money rent or other consideration to a Samoan in person in respect of the sale lease or other alienation of land, but every such payment shall be made to the Secretary of Native Affairs as trustee for the Samoan entitled thereto.

Fees Payable to Secretary.

87. The Secretary of Native Affairs shall receive and take on behalf of the Samoan Treasury such fees and commission for or in respect of any act matter or thing done by him under this Ordinance as are specified in the third schedule hereto.

Fees to be Prepaid in Cash.

88. Unless otherwise ordered by the Secretary of Native Affairs all fees and commissions payable under this Ordinance and specified in the third Schedule hereto shall be prepaid in cash and the said Secretary may refuse to take any action or accept any objection or other document unless the said fees have first been paid.

Power of Secretary to remit Fees.

89. Where it appears to the Secretary of Native Affairs that any person is unable or ought not to be called upon to pay any fee or commission specified in the Third Schedule hereto he may dispense with its payment or any part thereof, or may authorise a refund thereof or of any part thereof subject to such terms as he thinks fit.

Land Register to be Endorsed.

90. Where any Samoan freehold land or a Samoan interest in freehold land has been or shall hereafter be included in the Land Register it shall be the duty of the Registrar to enter on the folium of the Land Register relating to such land or interest a memorial showing that the said land or interest is subject to Part IV. of this Ordinance and that it is individual property or property to be held in accordance with the usages and customs of the Samoan people as the case may be.

Registration of Judgments.

91. It shall be the duty of the Registrar of the Native Land and Titles Commission to transmit to the Land Registrar every judgment of the Commission by which it is declared that any Samoan freehold land or a Samoan interest in freehold land shall be held subject to the usages and customs of the Samoan people, and the Land Registrar shall thereupon register such judgment.

Trust Deeds may be Registered.

92. Notwithstanding the provisions of Clause 14 of the Samoa Land Registration Order, 1920, it shall be lawful for the Registrar of Land to register an instrument operating merely by way of trust in respect of Samoan freehold land or a Samoan interest in freehold land.

Restrictions on Registration.

93. The Registrar of Land shall not accept for registration nor shall he register any instrument of title affecting Samoan freehold land or any Samoan interest in freehold land unless every warrant order or consent as the case may be required by the provisions of this Ordinance shall be annexed thereto or endorsed thereon.

FIRST SCHEDULE.

Form No. 1.

GENERAL HEADING ON ALL DOCUMENTS.

In the Native Land and Titles Court
In the matter of the land called 'Z' or the
title 'Y'

Between (A. B.) Petitioner
And (C. D.) Respondent

The Native Land and Titles Protection Ordinance, 1934 482

Form No. 2.

THE PETITION.

The Petition of (name of Petitioner) informs this Court that (here state in paragraphs nature of the claim or dispute) And the Petitioner prays that this Court will Order (here state relief sought) so that right will be done in this matter according to the laws and customs of Samoa.

Dated this day of 19 .

Petitioner

WITNESS TO SIGNATURE OF PETITIONER:—

Name
Address
Occupation

Form No. 3.

SUMMONS TO RESPONDENT

You are hereby summoned to appear before this Court at the Fono House at Mulinu'u on the day of 19 at o'clock in the forenoon when the Court will hear and determine the matters referred to in the annexed petition.

TAKE NOTICE.

- 1. Disobedience of this summons by you is a contempt of the Court and is punishable by fine or imprisonment.
2. If you do not appear the Court will hear and determine the petition in your absence, and you will be bound by the decision of the Court.
3. You will be entitled to call such witnesses at the hearing as you consider necessary for the purpose of opposing the petition.
4. If you are in doubt as to any matter concerning this summons or the petition or any matter connected with these proceedings you should visit without delay the Secretary of Native Affairs at Mulinu'u or the Resident Commissioner at Savai'i or a District Officer any of whom will advise you fully on any point which you may submit to them.

Form No. 4.

NOTICE OF SITTING OF COURT.

Notice is given as follows:
1. The next sitting of the Native Land and Titles Commission will commence at the Fono House at Mulinu'u on Monday the day of 19 at 9 o'clock in the forenoon.

Form No. 6.

APPLICATION FOR A REHEARING.

I (here state name of party making application) do hereby apply to the Court to set aside its final decision given on the day of 19 and to order that the Petition be reheard. The grounds upon which I make this application are as follows: (here set out grounds)

Dated this day of 19
Signature of party applying.
To the Registrar.

Form No. 7.

NOTICE TO PARTIES ON APPLICATION FOR RE-HEARING.

1. Take notice that (here state name of party applying for a rehearing) has applied to the Court to set aside its final decision given on the day of 19 and to order that the Petition be reheard.

2. Take further notice that this application will be heard before His Honour the President at the Fono House at Mulinu'u on the day of 19 at o'clock in the noon and that you are entitled to appear to oppose the granting of such application.

Dated this day of 19
Registrar.
(This notice to be served on all parties affected thereby).

Form No. 8.

ORDER GRANTING REHEARING.

An application for rehearing having been made to me I do order that the final decision of this Court given on the day of 19 be and the same is hereby set aside. I do order further that the petition be reheard on the day of 19 at o'clock in the noon at the Fono House at Mulinu'u.

Dated this day of 19
President.

Form No. 9.

NOTICE OF INTENTION TO SURVEY.

Take notice that a survey of the land in dispute in these proceedings has been ordered by the Court and that a surveyor will commence such survey on the _____ day of _____ 19 ____ at _____ o'clock in the _____ noon:

Take further notice that if you fail to be present at the said land on the arrival of the surveyor and to point out to him the boundaries thereof as known to you, you will be guilty of contempt of Court and so be liable to a fine or to imprisonment.

Dated this _____ day of _____ 19 ____

Secretary of Native Affairs.

Seal.

(This notice is to be served on all parties.)

SECOND SCHEDULE.

| Fee No. | Nature of fee | Amount. | | |
|---------|--|---------|----|----|
| | | £. | s. | d. |
| 1. | Filing Petition to include issue of Summons and Service | 2 | 10 | 0 |
| 2. | Hearing Fee to include sealed copy of judgment for each party | 2 | 10 | 0 |
| 3. | Application for a rehearing to include Order thereon and service of notice to parties | 2 | 10 | 0 |
| 4. | Survey fee unless certified by President for a lesser or greater amount (to include copy of plan for successful party) | 5 | 0 | 0 |

THIRD SCHEDULE

| Item. | Nature of Fee or Commission. | Amount. |
|-------|--|------------|
| 1. | Application for Administrator's consent to alienation including advertisement in Savali and Final consent | £1. 10. 0. |
| 2. | Objection to application to alienate (to include costs of determining same or where it is referred to Land and Titles Commission to be applied toward costs payable thereto) | £2. 10. 0. |

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| Item. | Nature of Fee or Commission. | Amount. |
|-------|---|------------|
| 3. | Application for Pulefaamau to include publication in Savali and petition to confirm | £1. 10. 0. |
| 4. | Hearing fee on confirmation of Pulefaamau (no objections having been lodged) | £1. 0. 0. |
| 5. | Survey fee (if survey required before Pulefaamau is confirmed) unless certified for a lesser or greater amount by the President | £5. 0. 0. |
| 6. | Commission on rent or other payments of an annual or periodical nature received by the Secretary of Native Affairs on behalf of a Samoan <i>(see above)</i> | £5% |
| 7. | Commission on purchase money or any money not being payments of an annual or periodical nature received by the Secretary of Native Affairs on behalf of a Samoan. But the maximum commission in respect of any one transaction shall not exceed £2. <i>(see above)</i> | £1% |
| 8. | All matters coming before the Land and Titles Commission (except items 3 and 4 above) shall be charged for at the rates and in the amounts set forth in the second schedule hereto. | |
| 9. | Objection fee to accompany any objection to a Pulefaamau—to be applied in payment of filing the petition referred to in Clause 24 (If more than one objection shall be lodged the fee shall be divided proportionately among all objectors and the necessary refunds (if any) shall be made accordingly). | £2. 10. 0. |

To 6 1937

(not being due by the Admin. or the Crown - other than the N.R.L.)

To 6 1937

Amended Ord. 1937

(not being due by the Admin. or the Crown - other than the N.R.L.)

Short Title.
Section 8 amended.

FOURTH SCHEDULE.

- "Sale of Apia Native Land Ordinance, 1923."—Whole Ordinance.
- "Samoan Individual Property Ordinance, 1925" Whole Ordinance.
- "Samoan Women's Property Ordinance, 1923."— Whole Ordinance.
- "Fees and costs of the High Court Ordinance, 1921"—the First schedule thereof in respect of Fees payable in proceedings under the "Samoa Native Land and Titles Commission Order, 1924."

Assented to this sixth day of December 1934.

H. HART,
Administrator.

L.S.

By Authority
GEORGE WILLIAM GRIFFITH, at the Herald Office
Apia, Western Samoa