

New Zealand.



ANALYSIS.

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1912, No. 34.

Title. AN ACT to amend the Native Land Act, 1909.
[7th November, 1912.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title. 1. (1.) This Act may be cited as the Native Land Amendment Act, 1912, and shall form part of and be read together with the Native Land Act, 1909 (hereinafter referred to as the principal Act).

Commencement. (2.) This Act shall come into operation on the first day of December, nineteen hundred and twelve.

Repeal. 2. (1.) Section fifty of the principal Act is hereby repealed.
(2.) Where leave to appeal has been granted, or an order for rehearing has been made, or application for a rehearing or for leave to appeal has been made but not determined, under that section before the commencement of this Act, proceedings in such appeal or rehearing or upon such application (including proceedings by way of appeal or rehearing in the event of any such application being successful) may be continued, and shall have the like effect as if that section was still in force.

3. (1.) Section one hundred and thirty-nine of the principal Act is hereby amended by adding to subsection one thereof the following proviso:—

Section 139 of principal Act amended.

“ Provided that any child, whether of the deceased or of any other Native, shall be deemed for the purposes of this subsection to be the legitimate child of any parent from whom he is capable, according to Native custom, of inheriting Native freehold land by way of intestate succession.”

(2.) The foregoing proviso shall be deemed to have been contained in section one hundred and thirty-nine of the principal Act as from the coming of that Act into operation.

4. Section one hundred and thirty-seven of the principal Act is hereby amended by inserting in paragraph (d) of subsection two thereof, after the word “relative,” the words “by blood,” and omitting, after the word “testator,” the words “in any degree not more remote than the fourth.”

Section 137 of principal Act amended.

5. In the will of any Native who died before the commencement of this Act, but whose will is not proved until after the commencement of this Act, and in the will of any Native who dies after the commencement of this Act, the term “child” or any equivalent term shall be construed, unless a contrary intention appears from the will, as including any child capable in accordance with Native custom of inheriting Native freehold land from his parent by way of intestate succession.

Interpretation of wills of Natives.

6. (1.) Nothing in Part XII of the principal Act shall prevent or be deemed to have prevented the assignment or subletting of a leasehold estate in Native land (whatever the area thereof) created before the commencement of that Act to any person who does not already, at the time when he so acquires an interest in that land, hold any other land (whether Native, European, or Crown land) exceeding nine thousand acres (calculated in accordance with that Part of the said Act) as the beneficial owner, lessee, or sublessee thereof, whether at law or in equity, and whether solely or jointly or in common with any other person.

Assignment of leasehold estates in Native land.

(2.) Nothing in Part XII of the principal Act shall prevent or be deemed to have prevented the assignment or subletting of a leasehold estate in Native land (whatever the area thereof) created after the commencement of that Act to any person who does not already, at the time when he so acquires an interest in that land, hold any other land (whether Native, European, or Crown land) exceeding three thousand acres (calculated in accordance with that Part of the said Act) as the beneficial owner, lessee, or sublessee thereof, whether at law or in equity, and whether solely or jointly or in common with any other person.

(3.) This section shall be read together with and be deemed to be incorporated in Part XII of the principal Act.

(4.) Section seventeen of the Native Land Claims Adjustment Act, 1911, is hereby repealed.

Repeal.

7. (1.) If any person knowingly acquires any interest in Native freehold land contrary to the provisions of Part XII of the principal Act, then, notwithstanding the confirmation or registration of any instrument of alienation, and notwithstanding any of the pro-

Forfeiture of land acquired in violation of Part XII of principal Act.

visions of the principal Act, the Supreme Court may in an action by the Attorney-General, in the name and on behalf of His Majesty the King, declare that the interest so acquired is forfeited to His Majesty; and the same shall thereupon vest in the Crown accordingly, subject, however, to all interests lawfully and in good faith and for value acquired by any other person before the commencement of such action.

(2.) Without in any manner limiting the generality of the last preceding subsection, where any interest so acquired as aforesaid contrary to the provisions of Part XII of the principal Act is a leasehold interest, or any other interest less than the fee-simple, the Supreme Court may in such an action as aforesaid declare that the interest so acquired is extinguished, instead of declaring that the same is forfeited to His Majesty, and the same shall thereupon merge in the interest out of which it was derived, without prejudice, however, to any interest lawfully and in good faith and for value acquired by any other person before the commencement of the action.

(3.) Any interest acquired by His Majesty in pursuance of this section may be sold or otherwise disposed of by the Governor in any manner whatsoever as he thinks fit, and if the interest so acquired is a leasehold interest or any other interest less than the fee-simple it may be surrendered by the Governor without the consent of any other person.

(4.) When the fee-simple of any land has been forfeited to His Majesty in pursuance of this section the Governor may proclaim the land to be Crown land subject to the Land Act, 1908, and it shall then be disposed of and administered in accordance with that Act in all respects.

(5.) When the fee-simple of any land has been forfeited to His Majesty in pursuance of this section the provisions of section three hundred and seventy-five of the principal Act (relating to the determination of leases or licenses) shall apply thereto in the same manner as if the land had been purchased under Part XIX of that Act.

8. (1.) Section two hundred and nine of the principal Act is hereby amended—

(a.) By omitting from subsection one thereof all words after the words "alienation is made," and substituting the words "in accordance with Part XVIII of this Act (relating to the powers of assembled owners)";

(b.) By repealing subsections two to eight of that section:

(c.) By repealing subsection ten of that section:

(d.) By adding the following subsection:—

"(13.) In computing the number of the owners of any Native land for the purposes of this section the successors of a deceased Native shall be computed as being one person only, until and unless a succession order has been made in respect of the interest of the deceased Native."

(2.) When the precedent consent of a Maori Land Board has been given in accordance with that section before the commencement of

Section 209 of
principal Act
amended.

this Act any alienation in pursuance of that consent may be lawfully executed, completed, or confirmed in the same manner as if the said section remained in full force and effect.

(3.) The provisions of section two hundred and nine of the principal Act with respect to the precedent consent of a Maori Land Board to alienations of Native land and with respect to alienations made in pursuance of such consent shall be deemed to extend and apply, and at all times to have extended and applied, to alienations of undivided interests in Native land and to alienations of part only of any area of Native land owned by the same owners, and shall be deemed at all times to have authorized the granting of two or more concurrent consents in respect of different alienations of the same land, and the granting of any such consent on the application of any one or more of the owners who are parties to the proposed alienation without the concurrence of the other owners; and the validity and operation of every such precedent consent granted by a Maori Land Board before the commencement of this Act, and of every alienation or confirmation made or granted, whether before or after the commencement of this Act, in pursuance of any such consent shall be determined accordingly.

9. The provisions of section two hundred and thirty-two of the principal Act shall apply and extend to any Native freehold land which is owned at law or in equity by not more than ten owners if there is situated on the land a church, or meeting-house, or other public building which in the opinion of the Court or Board is tribal or communal property.

Section 232 of principal Act to apply.

10. (1.) When any Native freehold land has been partitioned, either before or after the commencement of this Act, in such manner that any subdivision thereof has no access to any public road, the Court may, if it thinks fit, on the application of any person interested, at any time thereafter, by order, lay out any road-line over any portion of the land so partitioned which is necessary to afford to any such subdivision access to a public road.

Laying-out of roads on partitioned land.

(2.) The effect of any such order shall be to empower and authorize the Governor, by Proclamation, at any time thereafter to proclaim as a public road any road-line so laid out by the order; and on the making of any such Proclamation the road-line shall thereupon become a public highway accordingly.

(3.) No road-line shall be so laid out or public road so proclaimed over any land which, at the date of the order or Proclamation, has already ceased to be Native freehold land, nor shall any such order or Proclamation authorize the laying-out of any road-line or the proclamation of any public road over any land the subject at the time of the commencement of this Act of an existing valid lease during the continuance of such lease without the consent in writing of the lessee.

(4.) Before any road-line is so laid out over any land the Court shall take into consideration any claim for compensation which may be made by any person having any estate or interest in that land, and may determine what compensation (if any) shall be paid to that person by the applicant or any other person; and the Court may, if it thinks fit, refuse to lay out any road-line until and unless a contract

for the payment of such compensation has been duly entered into and such security (if any) as the Court thinks necessary for the fulfilment of that contract has been duly given.

(5.) The exercise of the power vested in the Governor under this section shall in no way restrict or affect the power of the Governor to lay out and take roads under Part XX of the principal Act.

Court to inquire and determine the relative interests of Natives.

11. Where any Crown land has been set aside or reserved for the use or benefit of Natives, or where it is proposed to so set aside or reserve any such land, the Court shall have jurisdiction, on the application of the Minister of Lands, to inquire and ascertain what persons shall be included in the certificate of title or other instrument of title of that land, and to determine the relative interests of the persons so ascertained, and the Court shall report its findings to the Governor.

Land exchanged for Native land to become Native land.

12. When European land or any undivided share therein becomes vested in any Native for an estate in fee-simple, whether legal or equitable, by virtue of an order of exchange under Part VII of the principal Act, such land shall thereupon become Native freehold land, notwithstanding anything to the contrary in that Act.

Section 315 of principal Act amended.

13. Section three hundred and fifteen of the principal Act is hereby amended as follows:—

(a.) As to subsection one thereof, by omitting the words “disposition or management,” and substituting therefor the words “or disposition.”

(b.) By adding thereto the following subsection:—

“(3.) Nothing in this Part of this Act shall be construed or shall operate so as to affect the power of the Committee of management to occupy and manage the land or any part thereof as a farm in accordance with the provisions of Part XVII of this Act in that behalf.”

Subsection (1) of section 335 of principal Act amended.

14. Subsection one of section three hundred and thirty-five of the principal Act is hereby amended by omitting the words “but not otherwise,” and substituting therefor the words “or from any person or body corporate”; and by adding thereto the following paragraph:—

“(e.) For any other purpose that the Governor in Council may authorize.”

Section 346 of principal Act amended.

15. Section three hundred and forty-six of the principal Act is hereby amended by adding thereto the following paragraph:—

“(h.) That the Board shall be empowered to sell the land or any part thereof by public auction.”

Powers of Maori Land Board to sell land by public auction.

16. (1.) On the confirmation of any such resolution as is referred to in paragraph (h) of section three hundred and forty-six of the principal Act, as amended by this Act, empowering the Board to sell land by public auction, the Board shall become, without further authority than the resolution, the agent of the owners for the time being to sell the said land or any part thereof accordingly, and to enter into all necessary contracts and to execute in the name of the Board all necessary instruments of alienation accordingly, and to exercise all other powers hereinafter conferred upon the Board in that behalf; and the owners shall not be competent to revoke the authority so conferred upon the Board.

(2.) Every instrument of alienation so executed by the Board for registration under the Land Transfer Act shall contain a statement or recital that the Board is duly authorized to execute the same as the agent of the owners under Part XVIII of the principal Act, and every such statement or recital shall be accepted by the District Land Registrar and by all Courts as sufficient *prima facie* evidence of the facts so stated or recited.

(3.) Except as against a person guilty of fraud, no contract or instrument of alienation so made or executed by the Board as the agent of the owners shall be invalidated by any breach or non-observance of the provisions of Part XVIII of the principal Act prior to the confirmation of the resolution by the Board.

(4.) A contract or instrument of alienation made or executed by the Board as the agent of the Native owners under this section shall not require confirmation under Part XIII of the principal Act, and shall not be subject to the requirements of the principal Act as to formalities of execution.

(5.) All land which the Board is so authorized to sell shall be sold by the Board by public auction after public notification in such manner as the Board thinks sufficient of the intention to offer the same for sale.

(6.) Subject to any restrictions prescribed by the principal Act or by this Act or by regulations, all land so offered for sale shall be sold to the highest qualified bidder.

(7.) The Board in offering the same shall fix an upset price, and no land shall be sold below the price so fixed.

(8.) If any allotment so offered for sale is not sold, the Board may at any time thereafter sell the same by private contract to any qualified purchaser at a price not less than the upset price so fixed.

(9.) If any allotment is not so sold by private contract, the Board may, at any time after the expiry of three months from the day on which the same was offered for sale by auction, again offer the same for sale by public auction in accordance with the foregoing provisions either at the same or at any other upset price which the Board thinks fit, and so on from time to time as may be necessary.

(10.) Any such sale by public auction may be effected by the Board through the agency of any member, servant, officer, or agent thereof, anything to the contrary in the Auctioneers Act, 1908, notwithstanding.

(11.) The purchaser of any such land, whether by public auction or private contract, shall forthwith after the sale pay to the Board a deposit equal to ten per centum of the purchase-money.

(12.) On default in making this deposit the contract may forthwith be cancelled by the Board or its authorized agent, and the land may either be sold to the next highest qualified bidder or may at any time thereafter be again offered for sale by public auction.

(13.) The Board shall prior to the sale cause to be prepared contracts defining the terms and conditions of sale and sufficient copies thereof for execution by every purchaser at the sale, and each purchaser at the time of payment of his deposit shall be required to

sign a contract expressing such terms and conditions and describing the land purchased by him.

(14.) Such terms and conditions shall in every case provide for payment by the purchaser of the balance of ninety per centum of his purchase-money by nine equal annual instalments, and for payment by him to the Board of interest in the meantime at the rate of five per centum half-yearly upon all purchase-money for the time being remaining unpaid, but shall confer the right upon the purchaser to pay to the Board at any time the whole or any part or parts of the unpaid purchase-money.

(15.) Every contract shall contain such other terms and conditions consistent with this Act and the principal Act as the Board thinks fit.

(16.) Every such purchaser shall on, or before, or within fourteen days after, the completion of the contract of sale make and deliver to the Board a statutory declaration that he was on the day of the sale legally qualified under Part XII of the principal Act to become the purchaser of the land, and that he is acquiring the land solely for his own use and benefit, and not directly or indirectly for the use or benefit of any other person.

(17.) If any purchaser makes default in completing the contract of purchase or in making the statutory declaration aforesaid, the Board may cancel the sale, and resell the land in accordance with the foregoing provisions in the same manner as if it had not already been offered for sale.

(18.) On any such cancellation the Board may forfeit all moneys already paid by the purchaser, or such part thereof as the Board thinks fit.

(19.) Every instrument of alienation executed in accordance with the provisions of this section by the Board as the agent of the owners shall have the same force and effect and may be registered in like manner as if it had been lawfully executed by all of the owners or their trustees and as if those owners or trustees had been fully competent in that behalf. The production of any certificate of title issued in respect of the land affected by the instrument of alienation shall not be necessary for the registration of that instrument.

(20.) Subject to the provisions of Part XII of the principal Act (relating to limitation of area), any land which the Board has power to sell under this section may be sold either in one lot or in such subdivisional allotments as the Board thinks fit.

(21.) No such allotment shall be offered for sale unless it has access to a public highway.

(22.) For the purpose of providing such access the Board may lay off all such road-lines as are required over any part of the land which the Board is empowered to sell, and the Governor may proclaim as a road any road-line so laid off, and the same shall thereupon become a public highway accordingly, and no compensation shall be payable to any person in respect of any land so proclaimed as a road.

(23.) Where the Board lays off any such road-line it shall forthwith report to the Native Minister thereon, with a copy of the survey plan showing such road-line.

(24.) The Native Minister may require the Board to construct and complete the roadway of such road-line out of the proceeds of the land subdivided for sale, and the Native Minister may from time to time direct the manner of such construction and completion, and the Board shall comply with every such requirement and direction.

(25.) A resolution under paragraph (h) of section three hundred and forty-six of the principal Act, as amended by this Act, may be passed in respect of land which is vested in a Board under Part XIV or Part XV of the principal Act and which at the date of the resolution is not subject to any alienation made by the Board, and all the provisions of this section shall extend and apply accordingly notwithstanding anything to the contrary in either of those Parts.

(26.) A contract made by the Board as the agent of the owners under this section may be enforced by the Board by action or otherwise in its own name in the same manner as if the land so sold was vested in the Board in trust for the owners, and as if the contract had been made by the Board as trustee accordingly; and no such contract shall be enforceable by the owners on whose behalf it has been so made by the Board.

(27.) All purchase-money or other revenues received in respect of any land by the Board under this section shall be applied by the Board—

- (a.) In defraying the costs and charges incurred by the Board in the execution of its powers and duties under this section :
- (b.) In the discharge of all mortgages, charges, or incumbrances affecting the land :
- (c.) In paying the residue thereof to the owners or other persons having any interest in the land in accordance with their respective interests.

(28.) This section shall be read together with and deemed part of Part XVIII of the principal Act (relating to assembled owners).

17. (1.) The Governor may, by Order in Council, on the recommendation of the Court, declare any Native to be a European.

Governor may declare a Native to be a European.

(2.) Such a recommendation shall be made only on the application of the Native, and notice of any such application shall be given by the Court to the Native Minister.

(3.) Any such application may be opposed by the Native Minister or by any person interested.

(4.) No such recommendation shall be made unless the Court is satisfied—

- (a.) That the Native applying is acquainted with the English language, and is possessed of educational qualifications equal to the Fourth Standard as prescribed by the Education Act, 1908 :
- (b.) That he has at the time of the application sufficient Native freehold land (either as tenant in fee-simple or as tenant for life), or sufficient European land (either as tenant in fee-simple, or as tenant for life, or under a lease the

period of which is not less than twenty-one years), for his adequate maintenance; or that he is, in the opinion of the Court, able to earn an adequate maintenance by reason of some special profession, trade, or calling; or that he has any other income which in the opinion of the Court is sufficient for his adequate maintenance.

(5.) On the making of any such Order in Council the Native so declared to be a European shall to all intents and purposes, except as hereinafter provided, be deemed to be no longer a Native or a Maori within the meaning of the principal Act or of any other Act.

(6.) No such Order in Council shall operate retrospectively so as to affect the validity, legality, or operation of any contract, alienation, disposition, or other act, matter, or thing whatsoever prior to the making of the Order in Council.

(7.) (a.) The status as a Native or Maori of the wife or husband, or child or other issue (whether born before or after the date of the Order in Council), of a Native so declared to be a European shall continue unaffected by the change of status of such last-mentioned Native, unless such wife, husband, child, or other issue shall at any time after the making of the Order in Council make application to the Native Minister to be declared to be a European.

(b.) Upon such application the Governor may, by Order in Council, on the recommendation of the Native Minister, declare such wife, husband, child, or other issue to be a European.

(c.) The provisions of the preceding subsections five and six of this section shall, and the provisions of the preceding subsections one to four inclusive of this section shall not, apply to an Order in Council made under this subsection.

(8.) Every person declared to be a European shall, notwithstanding the change of status, be entitled to succeed to Native land and to property of every kind as if he had continued to be a Native or Maori and as if his status had not been changed, and all right of succession shall accordingly continue in and thereafter may accrue to him, and may be derived through him, as if he had continued to be a Native or Maori and as if his status had not been changed.

(9.) If any person declared to be a European dies intestate, the persons entitled to succeed to his property, real and personal, shall be such as would have been entitled to succeed thereto had he died a Native or Maori, and as if his status had not been changed in his lifetime.

(10.) A copy of any such Order in Council, certified under the hand of the Native Minister, may be registered under the Land Transfer Act, 1908, against the title of any Native freehold land held as a separate area by the Native affected by the Order.

(11.) No such Order in Council shall be at any time revoked.

(12.) An annual statement of all Orders in Council made under the authority of this section shall be laid before Parliament at the commencement of each session.

18. (1.) When any land is subject to Part XIV or Part XV of the principal Act and is vested in a Maori Land Board accordingly the Governor may from time to time declare, by Order in Council, that such land or any part thereof shall no longer be subject to that

Governor may
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Part XIV or Part
XV of principal Act.

Part of the said Act, and every such Order in Council shall take effect according to its tenor on the making thereof.

(2.) No such Order in Council shall be made until and unless the Governor is satisfied—

(a.) That the land comprised in the Order is not subject to any lease, license, or contract of sale or other alienation :

(b.) That no moneys are charged on that land or on the revenues thereof in accordance with the principal Act or under any other authority.

(3.) On the making of any such Order in Council the Maori Land Board shall cease to possess or exercise in respect of the land comprised in the Order any of the powers conferred by Part XIV or Part XV of the principal Act, as the case may be, but the land shall nevertheless remain vested in the Board until a vesting order has been made and registered in accordance with the provisions hereinafter contained in that behalf.

(4.) On the making of any such Order in Council the Native Land Court shall have jurisdiction, on the application of the Minister, or of the Maori Land Board, or of any person claiming to be one of the equitable owners of the land comprised in the Order, to ascertain and determine the equitable owners of that land, and to make an order (hereinafter called a vesting order) vesting the legal fee-simple of the land in the equitable owners so ascertained and determined in accordance with their respective interests.

(5.) Where the equitable ownership of any land so vested in a Maori Land Board is itself held in trust under any testamentary disposition or otherwise, the trustee in whom the equitable ownership is so vested shall be deemed for the purposes of the last preceding subsection to be the equitable owner of the land.

(6.) No such vesting order shall be invalidated or affected by the fact that it is made in favour of any equitable owner who is dead at the date of the order, and every vesting order so made in favour of a deceased person shall operate in favour of his successors in title.

(7.) Every trustee holding office under Part X of the principal Act in respect of any equitable interest in the said land shall continue to hold office in respect of the legal interest substituted therefor by any such vesting order.

(8.) The land included in any vesting order shall, if not already under the Land Transfer Act, 1908, become subject to that Act on the making of the order.

(9.) A duplicate of every such order shall on the sealing thereof be transmitted by the Chief Judge to the District Land Registrar of the district in which the land affected thereby is situated. If the land is situated in two or more districts, duplicates of the order shall be transmitted to the District Land Registrar of each such district, and shall by each such Registrar be dealt with so far as it relates to land in his own district in manner following.

(10.) On the receipt of any vesting order so transmitted the District Land Registrar shall embody the order in the Provisional Register as a folium thereof, and all the provisions of the Land Transfer Act, 1908, as to provisional registration shall apply accordingly.

(11.) When any vesting order has been so registered the legal estate of the Maori Land Board shall be divested, and the persons in whose favour the order has been made shall become the legal owners of the land in accordance with their respective interests as specified in the order.

(12.) The District Land Registrar may, in his discretion, retain any such title on the Provisional Register so long as the number of owners exceeds ten.

Native land
purchased by
Crown may be
reserved for use of
Natives.

19. (1.) At any time after a contract for the purchase of any Native land has been made in accordance with the provisions of Part XIX of the principal Act, and before the issue of a Proclamation declaring the said land to be vested in His Majesty the King, the Governor may, on the recommendation of the Native Minister, by Warrant under his hand, declare that any part of that land shall, as from the date of the Warrant, be a reserve for the exclusive use of any or all of the former Native owners of the said land or of their successors, or of any other Natives referred to in the said Warrant, and may by such Warrant declare the said land to be vested in the Public Trustee, or in the Maori Land Board of the district, in trust for such purposes.

(2.) Upon the issue of any such Warrant the land referred to therein shall thereupon cease to be Native land, and shall be vested in the Public Trustee or Maori Land Board, as the case may be, as a reserve for the purposes aforesaid, free from all right, title, estate, or interest of the former owners, or of their successors in title, or of any trustee for them, in the same manner as if all such persons had executed all necessary transfers and other instruments of assurance and had been fully competent in that behalf, but subject, nevertheless, to all rights or interests, whether legal or equitable, vested at the date of the Warrant in any person other than those owners, successors, or trustees.

(3.) A Proclamation issued in pursuance of subsection four of the said section three hundred and sixty-eight shall not apply to land reserved under this section.

(4.) The Governor may from time to time, by Order in Council, make regulations prescribing the duties, functions, and powers of the Public Trustee or the Maori Land Board, as the case may be, in respect of land vested in them under this section:

Provided that no such regulation shall authorize the sale or other disposition of a reserve under this section.

Miscellaneous
amendments of
principal Act

20. The principal Act is hereby amended in manner set out in the Schedule hereto.

SCHEDULE.

Schedule.

MISCELLANEOUS AMENDMENTS OF THE NATIVE LAND ACT, 1909.

Number of Section affected.	Nature of Amendment.
Section 48, subsection (3) ...	By omitting the words "Subject to the provisions hereinafter contained as to appeals by leave of the Chief Judge."
Section 51	By omitting the words "or rehearings," and the words "or by," and the words "or rehearing," wherever these words occur.
Section 53, subsection (2) ...	By inserting, after the words "Chief Judge," the words "or by the Judge presiding in the Appellate Court."
Section 54, subsection (2) ...	By inserting, after the words "Chief Judge," the words "or of the Judge presiding in the Appellate Court."
Section 54, subsection (3) ...	By omitting the word "proceedings," and substituting the word "provisions."
Section 334, subsection (5) ...	By omitting the words "four hundred and twenty-four," and substituting the words "four hundred and twenty."