

## New Zealand.



### ANALYSIS.

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### 1919, No. 8.

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| Title.          | AN ACT to limit the Powers and Rights of Mortgagees under existing Mortgages. <span style="float: right;">[24th October, 1919.]</span>  |
|                 | 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. This Act may be cited as the Mortgages Extension Act, 1919.  |
| Interpretation. | 2. In this Act, unless inconsistent with the context,—<br>“Mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of moneys or for the performance of any contract is granted over land or chattels or any interest therein respectively; and includes any instrument of security granted over or in respect of any policy for securing a life insurance, endowment, or annuity:<br>“Mortgagor” means the person liable under the provisions of a mortgage, and includes any person who has guaranteed the performance by the mortgagor of any covenant, condition, or agreement expressed or implied in the mortgage, |

whether such guarantee is expressed in the mortgage or in any other instrument:

“Mortgagee” means the person entitled to the benefit of the security of any mortgage:

“Trade mortgage” means a mortgage securing to any bank, trading company, or merchant the balance of the account current of a customer of such bank, trading company, or merchant, whether such mortgage is granted by the customer or by any surety for the customer.

3. This Act shall apply to all mortgages except—

(a.) Trade mortgages;

(b.) Securities for loans granted under the Repatriation Act, 1918; and

(c.) Mortgages executed after the commencement of this Act.

Application of this Act.

4. It shall not be lawful for a mortgagee under a mortgage to which this Act applies, at any time before the thirty-first day of December, nineteen hundred and twenty,—

Limitation of rights of mortgagees under existing mortgages.

(a.) To call up or demand payment from any mortgagor of the principal sum or any part of the principal sum secured by any such mortgage;

(b.) To exercise any power of sale or entry into possession conferred by any such mortgage or by statute;

(c.) To commence any action or proceeding for breach of any covenant, agreement, or condition expressed or implied in any such mortgage other than a covenant, agreement, or condition for the payment of interest—

otherwise than subject to and in accordance with the provisions of this Act.

5. (1.) A mortgagee before proceeding to do any such act or exercise any such power as is defined in the last preceding section shall give to the mortgagor notice in writing of his intention to do such act or exercise such power.

Procedure to be adopted by mortgagee before proceeding to exercise powers conferred by mortgage.

(2.) Such notice shall contain an address for service, and shall be signed by the mortgagee or by some duly authorized attorney or agent of the mortgagee, and shall be deemed to be duly given if delivered to the mortgagor personally, or if posted by registered letter addressed to the mortgagor at his last known place of abode in New Zealand.

(3.) If the mortgagor does not within two calendar months after the giving of such notice cause to be delivered to the mortgagee, or to the attorney or agent of the mortgagee signing such notice, at the address for service given in the notice, an objection in writing, signed by the mortgagor or by his duly authorized agent, to the doing of such act or the exercise of such power, setting forth specific grounds for such objection, the mortgagee may proceed at any time after the expiration of the said period of two calendar months to do such act or exercise such power.

(4.) If the mortgagor causes to be delivered such objection to the mortgagee or to such agent of the mortgagee within the said period of two calendar months, then the mortgagee shall not do any such act or exercise such power without the leave of the Supreme Court. The mortgagee may at any time after the delivery

of such objection apply to the Supreme Court for an order granting him leave to do any act or to exercise any power, intention to do or exercise which was specified in the notice given to the mortgagor.

6. (1.) In determining whether leave shall be granted as aforesaid the Supreme Court may take into consideration—

- (a.) The effect of the continuance of the mortgage upon the security thereby afforded to the mortgagee :
- (b.) The inability of the mortgagor to redeem the property either from his own moneys or by borrowing at a reasonable rate of interest :
- (c.) The ability of the mortgagor to pay a reasonably increased rate of interest in consideration of the continuance of the mortgage :
- (d.) The conduct of the mortgagor in respect of any breaches by him of the covenants of the mortgage :
- (e.) Any hardship that would be inflicted on the mortgagee by the continuance of the mortgage or upon the mortgagor by the enforcement thereof.

(2.) If having regard to the foregoing and to all other relevant considerations the Court is of opinion that it is just and equitable that leave should be granted, leave shall be granted accordingly.

(3.) Such leave may be granted on such terms and conditions, if any, as the Court thinks fit.

(4.) In any case where after the date fixed by the mortgage for repayment of the principal sum the principal sum or any part thereof remains unpaid, and the Court is of opinion that the interest payable under the mortgage is inadequate, the Court may grant such leave subject to a condition that it shall be suspended so long as interest is paid punctually at a rate fixed by the Court as fair and equitable.

7. (1.) The Supreme Court is hereby empowered upon the application of either the mortgagor or the mortgagee made by motion filed in the Court before the thirty-first day of December, nineteen hundred and twenty, to extend by order of the Court the date appointed for the payment of principal moneys or any part thereof by any mortgage to which this Act applies to any date not later than the thirty-first day of December, nineteen hundred and twenty-one, if the Court, having regard to the several matters specified in subsection one of the last preceding section, and to all other relevant considerations, is of opinion that it is just and equitable to grant such extension.

(2.) The Court may, if it thinks fit, exercise the jurisdiction conferred by this section upon an application by the mortgagee for leave under section five hereof.

(3.) The Court may exercise the jurisdiction conferred by this section notwithstanding that the date appointed for the payment of principal moneys by the mortgage or by any previous extension thereof has passed, and notwithstanding any contract or agreement of the parties that the provisions of the Acts hereby repealed should not apply to such mortgage.

(4.) A mortgage in respect whereof an order is made under this section shall be read and interpreted subject to and in accordance with such order.

Matters to be considered by Supreme Court on applications by mortgagees under this Act.

Supreme Court may on application extend term of mortgage in certain cases.

(5.) Any order under this section may be made subject to such terms and conditions, if any, as the Court thinks fit.

8. (1.) Any application to the Supreme Court under this Act may be made by motion with notice to such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable. Except with the consent of the mortgagor, every such application shall be made and heard in the Supreme Court office nearest to the place where the land or other property to which the application relates is situated. Procedure.

(2.) Any such application may be made to and disposed of by a Judge in Chambers or by a Registrar in Chambers.

(3.) There shall be no appeal from any order under this Act if made by a Judge, but an appeal shall lie to a Judge in Chambers from any such order made by a Registrar.

9. Where by the terms of a mortgage to which this Act applies the payment of both principal and interest is provided by a series of regular instalments upon the completion of which the principal debt becomes extinguished, each such instalment shall for the purposes only of this Act be deemed to consist wholly of interest. Mortgages repayable by instalments.

10. (1.) Except as otherwise provided in subsection four of this section, the provisions of this Act shall extend and apply, with the necessary modifications, to agreements for the sale and purchase of land made before the commencement of this Act, and to leases of land containing an optional or compulsory purchasing clause granted before the commencement of this Act. Extension of Act to agreements for sale and purchase of land and to leases containing a purchasing clause.

(2.) For the purposes of this Act an agreement for sale and purchase of land shall be deemed to be a mortgage of such land to secure payment of the unpaid purchase-money and interest thereon and fulfilment of the conditions set forth in the agreement.

(3.) For the purposes of this Act a lease of land containing a purchasing clause shall be dealt with in all respects as if the lessee had already notified his exercise of an option to purchase under an optional purchasing clause, and as if the lessor were mortgagor and the lessee were mortgagor of the land, and as if the rent reserved by the lease were interest and the agreed purchase-money were principal moneys secured. The term of the lease shall, if necessary, be extended for the purpose of giving effect to this provision.

(4.) The provisions of this Act shall not extend or apply to—

(a.) Any agreement for the sale and purchase of land entered into pursuant to the Workers' Dwellings Act, 1910; or

(b.) Any agreement for the sale and purchase of a leasehold interest in land unless freehold land is comprised with leasehold in the agreement. Act not to apply to certain instruments.

11. In order that full effect may be given to the intent of this Act the Supreme Court shall in every matter arising in respect of a mortgage to which this Act applies, or an agreement for sale and purchase, or a lease containing a purchasing clause, have full power and jurisdiction to deal with and determine such matter as it deems just and equitable under the circumstances of the case, notwithstanding that express provision in respect of such matter is not contained herein. Jurisdiction of Supreme Court with respect to matters arising under this Act.

Act to apply to Crown.  
Jurisdiction under this Act conferred on Magistrates in respect of mortgages where the principal moneys do not exceed £500.

12. All the provisions of this Act shall apply to the Crown.

13. (1.) Where the principal moneys remaining due and unpaid under the provisions of any mortgage do not exceed five hundred pounds a Magistrate shall have in respect of such mortgage and the extension thereof, and the doing of any act or the exercise of any power by the mortgagee, the same jurisdiction, powers, and discretions as are by this Act conferred upon the Supreme Court.

(2.) In the case of any such mortgage all the provisions of this Act shall apply and be read and interpreted as if the words "a Magistrate" were substituted in lieu of the words "the Supreme Court," and the words "the Magistrate" in lieu of the words "the Court."

(3.) No appeal shall lie to the Supreme Court from an order of a Magistrate under this Act.

Regulations.

14. The Governor-General in Council may from time to time make regulations for giving full effect to the provisions of this Act and for the due administration thereof.

Repeals.

15. (1.) The enactments mentioned in the Schedule hereto are hereby repealed.

Saving.

(2.) All proceedings pending at the commencement of this Act under any enactment hereby repealed may be continued and completed as if this Act had not been passed, and all leave heretofore granted by the Supreme Court under any such enactment or hereafter granted by the Supreme Court in any such pending proceedings shall enure for the purposes of this Act as if granted thereunder.

Schedule.

## SCHEDULE.

### ENACTMENTS REPEALED.

- 1914, No. 7.—The Mortgages Extension Act, 1914.  
 1914, No. 17.—The Mortgages Extension Amendment Act, 1914.  
 1914, No. 60.—The Mortgages Extension Amendment Act, 1914 (No. 2).  
 1915, No. 59.—The Mortgages Extension Amendment Act, 1915.  
 1917, No. 21.—The War Legislation Act, 1917: Section 25.  
 1918, No. 2.—The Finance Act, 1918: Section 24.