



## NEW ZEALAND

### Title.

1. Short Title.
2. Magistrate's Court may authorize entry on adjoining land for erecting or repairing buildings, &c.
3. Power of Court to grant special relief in cases of encroachment. Repeal.

### ANALYSIS

4. Mortgagee may combine notice of default and notice of intention to call up principal sum.
5. Repeals.
6. Power of Magistrate's Court to give directions as to service of notices in certain cases.

1950, No. 27

Title.

AN ACT to Amend the Property Law Act, 1908.

[18th September, 1950

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 Property Law Amendment Act, 1950, and shall be read together with and deemed part of the Property Law Act, 1908 (hereinafter referred to as the principal Act).

See Reprint of Statutes, Vol. VII, p. 1077

Magistrate's Court may authorize entry on adjoining land for erecting or repairing buildings, &c.

2. The principal Act is hereby amended by inserting, after section sixteen, the following section:—

“ 16A. (1) The owner of any land may at any time apply to a Magistrate's Court for an order authorizing him, or any person authorized by him in writing in that behalf, to enter upon any adjoining land for the purpose of erecting, repairing, adding to, or painting the whole or any part of any building, wall, fence, or other structure on the applicant's land, and to do on the land so entered upon such things as may reasonably be considered necessary for any such purpose as aforesaid.

“ (2) On any such application the Court may make such order as it thinks fit. Any such order, or any

provision thereof, may be made upon and subject to such terms and conditions as the Court thinks fit.

“(3) Every application under this section shall be made by originating application in accordance with the rules of procedure for the time being in force under the Magistrates’ Courts Act, 1947. The Court, for the purposes of hearing and determining the application, shall have all the powers vested in it in its ordinary civil jurisdiction.

1947, No. 16

“(4) For the purposes of this section, the term ‘owner’, in relation to any land, means any person registered under the Land Transfer Act, 1915, as the proprietor of an estate in fee simple in the land or as lessee or mortgagee of the land, or any person who is for the time being entitled to receive the rent of the land, whether on his own account or as agent or trustee for or mortgagee of any other person, or who would be entitled so to receive the rent if the land were let, or any tenant of the land bound by any express or implied covenant to keep any building thereon in repair.”

See Reprint  
of Statutes,  
Vol. VII,  
p. 1162

3. (1) The principal Act is hereby further amended by inserting, after section sixteen A (as inserted by the last preceding section), the following section:—

Power of Court  
to grant  
special relief  
in cases of  
encroachment.

“16B. (1) Where in any action or other proceeding in the Supreme Court relating to land it appears to the Court that any building, whether erected by the defendant or by any of his predecessors in title, upon any land adjoining the plaintiff’s land encroaches upon any part of the plaintiff’s land (that part being referred to in this section as the piece of land encroached upon) and it is proved to the satisfaction of the Court by or on behalf of the defendant that the encroachment was not intentional and did not arise from gross negligence, or, in any case where the building was not erected by the defendant, it is, in the opinion of the Court, just and equitable in the circumstances that relief should be granted to the defendant, the Court, instead of ordering the defendant to give up possession of the piece of land encroached upon, or to pay damages, or instead of granting an injunction, may in its discretion make an order—

“(a) Vesting in the defendant or any other person any estate or interest in the piece of land encroached upon; or

“(b) Creating in favour of any person any easement over the piece of land encroached upon; or

“(c) Giving the defendant the right to retain possession of the piece of land encroached upon.

“(2) Where the Court makes any order under this section, the Court may, in the order, declare any estate or interest so vested to be free from any mortgage or other encumbrance affecting the piece of land encroached upon, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, or contract affecting or relating to that piece of land.

“(3) Any order under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit, whether as to the payment by the defendant or any other person of any sum or sums of money, or the execution by the defendant or any other person of any mortgage, lease, easement, contract, or other instrument, or otherwise.

“(4) Every person having any estate or interest in the plaintiff's land or in such adjoining land as aforesaid, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, or contract affecting or relating to any such land, shall be entitled to be heard in relation to any application for or proposal to make any order under this section. For the purposes of this subsection the Court may, if in its opinion notice of the application or proposal should be given to any such person as aforesaid, direct that such notice as it thinks fit shall be given to that person by the defendant.

“(5) Any Magistrate's Court shall have jurisdiction to exercise the powers conferred upon the Supreme Court by this section in any case where the value of the land to which the action or proceeding relates, without the buildings thereon, does not exceed the amount to which the jurisdiction of the Magistrate's Court is limited in civil cases:

“Provided that a defendant intending to invoke the powers given to a Magistrate's Court by this subsection shall give notice of his intention to the other party before the hearing, and the other party shall thereupon be entitled as of right to have the action or proceeding

transferred to the Supreme Court, or to appeal to the Supreme Court against any order purporting to be made by the Magistrate's Court under this section.

“(6) Every order vesting any estate or interest in any person under this section shall, for the purposes of the Stamp Duties Act, 1923, be deemed to be a conveyance, and shall be liable to stamp duty accordingly.

See Reprint  
of Statutes,  
Vol. VII, p. 402

“(7) Any order under this section may be registered as an instrument under the Land Transfer Act, 1915, or, as the case may require, the Deeds Registration Act, 1908.”

Ibid., p. 1162

Ibid., p. 1143

(2) Section sixteen B of the principal Act, as inserted by this section, is in substitution for section ninety-seven of the Judicature Act, 1908, and the said section ninety-seven is hereby repealed.

Repeal.

Ibid., Vol. II,  
p. 87

4. Section three of the Property Law Amendment Act, 1939, is hereby amended by inserting, after subsection two, the following subsection:—

Mortgagee may  
combine notice  
of default and  
notice of  
intention to call  
up principal  
sum.

1939, No. 6

“(2A) In any case to which the provisions of this section and of section sixty-eight of the principal Act apply, the three clear months' notice of intention to call up and compel payment of the principal sum required by the said section sixty-eight and the notice required by this section may be combined in one document. Where those notices are so combined, the notice required by the said section sixty-eight shall be deemed to have been given to the mortgagor at the time when the document containing the combined notices has been served on him in accordance with section eight of this Act.”

5. Section seven of the Mortgagees and Lessees Rehabilitation Amendment Act, 1937, and subsection nine of section three of the Property Law Amendment Act, 1939, are hereby repealed.

Repeals.

1937, No. 30

6. Section eight of the Property Law Amendment Act, 1939, is hereby amended by inserting, after subsection five, the following subsection:—

Power of  
Magistrate's  
Court to give  
directions as to  
service of  
notices in  
certain cases.

“(5A) In this section, the expression ‘the Court’ means—

“(a) In any case where any notice relates to any sum of money, being a sum not exceeding two thousand pounds, due or alleged to be due to any person, or required or proposed to be paid to any person, a Magistrate's Court:

“(b) In any other case, the Supreme Court.”