

PROPERTY LAW AMENDMENT BILL.

EXPLANATORY MEMORANDUM.

CLAUSES 2 to 5 amend the law as to grants of rights of access over land of light and air. By the present law such a grant cannot effectively be made for a longer period than 21 years.

Clause 6: The object of this clause is the adoption of the rule of law recently enacted in England with respect to persons who may die in the same calamity (known in law as *commorientes*). [See section 184 of the Law of Property Act, 1925 (Imperial).] Prior to the commencement of that Act the rule in England was (as it still is in New Zealand) that where two people perish by the same calamity, then, in the absence of evidence on the point, there is no *presumption* as to the order in which they died or that they died at the same time. In such a case the onus of proof lies on the party who *asserts* the survival, or concurrent decease, or predecease, as the case may be. [*Halsbury's Laws of England*, Vol. 13, p. 503; Vol. 14, p. 170.]

The rule established in England by the Act of 1925, and now proposed to be adopted here, is that, in the absence of evidence establishing the contrary, the younger of two persons losing life in a common disaster shall be deemed to have survived the elder.

Hon. Mr. Rolleston.

PROPERTY LAW AMENDMENT.

ANALYSIS.

- |  |   |
|--|---|
| <p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Conditions precedent to lawful grant of rights of access of light or air.</p> | <p>4. Effect of grants.</p> <p>5. Consequential repeal.</p> <p>6. Presumption of survivorship with respect to claims to property.</p> <p>7. Defining powers of mortgagee in possession.</p> |
|--|---|

A BILL INTITULED

AN ACT to amend the Property Law Act, 1908.

Title.

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

1. This Act may be cited as the Property Law Amendment Act, 1927, and shall be read together with and deemed part of the Property Law Act, 1908 (hereinafter referred to as the principal Act).

Short Title.

2. In this Act—

Interpretation.

“Duly registered” means registered in the manner provided by the Deeds Registration Act, 1908, where the title to the lands affected is not under the Land Transfer Act, 1915, and means registered in the manner provided by the Land Transfer Act, 1915, where the title to the lands affected is under that Act.

3. A grant of the right of access of light or air, made before or at any time after the commencement of this Act, may be enforced if such grant—

Conditions precedent to lawful grant of rights of access of light or air.

(a) Is made by deed, or by an instrument in an appropriate form provided by the Land Transfer Act, 1915, as the case may require:

(b) Is duly registered within twelve months from the date of the execution thereof by the grantor:

(c) Limits and defines accurately the area or parcel of land ~~into~~ on to or over which the uninterrupted access of light or air, or light and air, is intended to be provided for.

4. (1) Every such grant shall, if duly registered within the period defined in the last preceding section, confer upon the owner for the time being of the dominant tenement ~~the right to such rights as may be therein defined in respect of~~ the access of light or air, or light and air, ~~unobstructed~~

Effect of grants.

~~perpendicularly from the sky downwards to ground level, or to such other level or levels as may be defined in the grant; and such rights shall enure, unless otherwise provided, notwithstanding that the *any* buildings erected upon the ~~servient~~ *dominant* tenement may be altered or destroyed and replaced by other buildings.~~

5

*Struck out.*

(2) The erection of buildings (of any height) not encroaching upon the area limited and defined as aforesaid shall not be deemed to be an infringement of the right or a derogation from the grant.

Consequential  
repeal.

5. The preceding sections of this Act are in substitution for the second proviso to section one hundred and thirteen of the principal Act, and that proviso is hereby consequentially repealed, *but shall,*

10

*New.*

notwithstanding its repeal, continue to apply with respect to grants made before the passing of this Act.

15

Presumption of  
survivorship with  
respect to claims to  
property.

15 Geo. V, c. 20,  
s. 184

6. In all cases where, after the passing of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the Court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

20

*New.*

Defining powers  
of mortgagee  
in possession.  
Cf. 15, Geo. V,  
c. 20, s. 99

7. (1) A mortgagee in possession of any land shall as against every subsequent encumbrancer and as against the mortgagor have power from time to time to grant a lease of the whole or any part of the mortgaged land for any term not exceeding seven years.

25

(2) No lease under this section shall be binding upon a prior encumbrancer except so far as he has consented thereto in writing.

(3) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

30

(4) Every such lease shall be made to take effect in possession not later than *six* months after its date.

(5) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

35

(6) Every such lease shall contain a covenant by the lessee for the payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified, not exceeding *thirty* days.

(7) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

40

(8) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage, and has effect subject to the terms of the mortgage and the provisions therein contained.

45

(9) The mortgagor and the mortgagee may, by agreement in writing, whether or not contained in the mortgage, reserve to or confer on the mortgagee any further or other powers of leasing or having reference to leasing, and any further or other powers so reserved or conferred shall be exercisable as far as may be as if they were conferred by this section, and with all the like incidents, effects, and consequences :

50

671

Provided that the power so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement unless the mortgagee joins in or adopts the agreement.

5 (10) Nothing in this section shall be construed to enable a mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the encumbrancers, if this section had not been passed :

10 Provided that in the case of a mortgage of leasehold land a lease granted under this section shall reserve a reversion of not less than *one* day.

(11) This section applies with respect to land subject to the Land Transfer Act, 1915, as well as to other land, and applies to all mortgages executed before or after the passing of this Act.

15 (12) While a mortgagee is in possession of land subject to the Land Transfer Act, 1915, he shall be entitled to sue upon the covenants of every lease affecting the said land or any part thereof, and to exercise all other rights, powers, and remedies of the lessor under the said lease in all  
20 respects as though the reversion of the said land were for the time being vested at law in the mortgagee, whether the said lease shall have been granted by the mortgagor, or by the mortgagee, under this section.

(13) The provisions of this section referring to a lease shall be  
25 construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(14) No District Land Registrar or other person shall be concerned  
30 to inquire whether or not the occasion has arisen authorizing a mortgagee to grant a lease of any land in accordance with this section ; and the Assurance Fund under the Land Transfer Act, 1915, shall not be liable for compensation for any loss, damage, or deprivation occasioned by the improper exercise by the mortgagee of any powers conferred by this section.

(15) A mortgagee in possession of any land shall be entitled to  
35 accept a surrender of any lease thereof granted by him under this section.