

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.

No. 3—3.

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,
8th November, 1927.

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. Mortgages Final Extension Act, 1924, repealed.</p> <p>8. Section 75 of principal Act amended.</p>
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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 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 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 such rights as may be therein defined in respect of the access of light or air, or light and air ; and such rights shall enure, unless otherwise provided, notwithstanding that any buildings

Effect of grants.

erected upon the dominant tenement may be altered or destroyed and replaced by other buildings.

(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. 5

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, notwithstanding its repeal, continue to apply with respect to grants made before the passing of this Act. 10

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 15
the younger shall be deemed to have survived the elder.

Mortgages Final
Extension Act,
1924, repealed.

7. Whereas by the Mortgages Final Extension Act, 1924, provision was made whereby the term of any mortgage to which that Act applied could, by means of an extension order made by the Supreme Court, or, in certain cases, by a Stipendiary Magistrate, be extended to a date not 20
later than the thirty-first day of March, nineteen hundred and twenty-seven: And whereas all extension orders made under the authority of the said Act have now expired, and it is desirable that the said Act should be repealed: Be it therefore enacted as follows:—

The Mortgages Final Extension Act, 1924, is hereby repealed. 25

Section 75 of
principal Act
amended.

8. Section seventy-five of the principal Act is hereby amended by adding, after the words "is absent from New Zealand" in subsection one, the words "or is dead."