

Hon. Mr. Downie Stewart.

PROPERTY LAW AMENDMENT.

ANALYSIS.

Title.	2. Defining powers of mortgagee in possession.
1. Short Title.	

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
5 of the same, as follows :—

1. This Act may be cited as the Property Law Amendment Act, 1932, and shall be read together with
and deemed part of the Property Law Act, 1908. Short Title.

2. (1) A mortgagee in possession of any land shall
10 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. Defining powers of mortgagee in possession.
Cf. 15, Geo. V,
c. 20, s. 99

(2) No lease under this section shall be binding upon
15 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.

20 (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.

(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. 5

(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. 10

(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. 15

(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: 20

Provided that the powers 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. 25

(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: 30

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. 35

(11) This section applies with respect to land subject to the Land Transfer Act, 1915, as well as to other land, and applies in respect of all mortgages, whether executed before or after the passing of this Act. 40

(12) While a mortgagee is in possession of any 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 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
5 by the mortgagee or by the mortgagor or any other person.

(13) The provisions of this section referring to a lease shall be construed to extend and apply, as far as
10 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 to inquire whether or not the occasion has arisen authorizing a mortgagee to grant a lease of any
15 land in accordance with this section; and no action shall lie under section one hundred and eighty-six of the Land Transfer Act, 1915, in respect of 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
20 entitled to accept a surrender of any lease thereof granted by him under this section.

(16) For the purposes of this section a first mortgagee of any land shall be deemed to be in possession of such
25 land if he is entitled to enter into possession thereof or to bring an action for possession thereof.