

Hon. Mr. Mason.

PROPERTY LAW AMENDMENT.

ANALYSIS.

Title.	4. Power to authorize land and minerals to be dealt with separately by mortgagee.
1. Short Title.	5. Power of sale in mortgage includes certain powers incident thereto.
2. Application of Act.	6. Mortgagee in possession may cut and sell certain trees.
3. Restriction on exercise by mortgagee of his rights.	7. Application of last two sections.

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, 1939, and shall be read together with and deemed part of the Property Law Act, 1908. Short Title.
2. The provisions of this Act shall apply with respect to mortgages of land subject to the Land Transfer Act, 1915, as well as to mortgages of other land. See Reprint of Statutes, Vol. VII, p. 1077. Application of Act. Ibid., p. 1162.
3. (1) No power of sale or entry into possession conferred by any mortgage of land shall become or be deemed to have become exercisable, and no moneys secured by any such mortgage shall become or be deemed to have become payable, by reason of any default (whether made before or after the passing of Restriction on exercise by mortgagee of his rights.

this Act) in the payment of any moneys so secured or in the performance or observance of any other covenant expressed or implied in the mortgage unless and until the mortgagee serves on the owner for the time being of the land subject to the mortgage a notice specifying the default complained of and a date on which the power will become exercisable or the moneys will become payable, as the case may be, and requiring the owner to remedy the default, and the owner fails to remedy the default before the date so specified. 5 10

(2) The date to be specified in the notice as aforesaid shall not be earlier than *one* month from the service of the notice nor earlier than the date on which the power would have become exercisable or the moneys would have become payable if this section had not been passed. A notice under this section may be served before the last-mentioned date. 15

(3) Where any land that is subject to the mortgage is also subject to any subsequent mortgage, and the mortgagee has actual notice of the name and address of the subsequent mortgagee, he shall forthwith after serving the notice on the owner serve a copy of the notice on the subsequent mortgagee. 20

(4) If at any time after the *first* day of *January*, nineteen hundred and *forty*, the mortgagee exercises the power of sale conferred by any mortgage of land and the amount realized is less than the amount owing under the covenant to repay expressed or implied in the mortgage, no action to recover the amount of the deficiency or any part thereof shall be commenced by the mortgagee against any person (not being the owner of the land subject to the mortgage at the time of the exercise of the power of sale) unless the mortgagee, at least *one* month before the exercise of the power of sale, serves on that person notice of his intention to exercise the power of sale and to commence action against that person to recover the amount of the deficiency in the event of the amount realized being less than the amount owing under the covenant to repay. 25 30 35 40

(5) The provisions of this section shall apply to mortgages executed either before or after the passing of this Act and shall have effect notwithstanding any stipulation to the contrary:

Provided that subsections *one, two, and three* of this section shall not apply to any mortgage where the owner for the time being of the land that is subject thereto is a corporation.

5 (6) Nothing in this section shall be construed to affect any sale or entry into possession made before the passing of this Act or any proceedings commenced before the passing of this Act.

10 (7) The provisions of this section shall be in addition to and not in derogation of the provisions of section seven of the Mortgagees and Lessees Rehabilitation Amendment Act, 1937.

1937, No. 30

15 4. (1) Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the Court may, on his application, authorize him and the persons deriving title under him to dispose—

Power to authorize land and minerals to be dealt with separately by mortgagee.
Cf. 15 Geo. V, c. 20, s. 92 (Imp.)

20 (a) Of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting, or carrying-away of minerals; or

25 (b) Of all or any mines and minerals, with or without the said rights or powers, separately from the land,—

and thenceforth the powers so conferred shall have effect as if they were contained in the mortgage.

30 (2) The provisions of this section shall apply to mortgages of land whether executed before or after the passing of this Act.

5. Subject to the provisions of section *seven* of this Act, every power of sale expressed or implied in a mortgage of land shall include the following powers as incident thereto, namely:—

Power of sale in mortgage includes certain powers incident thereto.

35 (a) A power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged land or any part thereof, or on the purchaser and any land sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing:

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Cf. *ibid.*, s. 101 (2)

(b) A power to sell the mortgaged land, or any part thereof, or all or any mines and minerals apart from the surface,—

(i) With or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the land remaining subject to the mortgage or any part thereof, or to any land sold; and 5
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(ii) With or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged land, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the land remaining unsold, or any part thereof, or to any land sold; and 15
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(iii) With or without covenants by the purchaser to expend money on the land sold.

Mortgagee in possession may cut and sell certain trees.
Cf. 15 Geo. V, c. 20, s. 101 (1) (Imp.)

6. Subject to the provisions of section *seven* of this Act, a mortgagee in possession of any land as mortgagee shall have power to cut and sell timber and other trees on the land ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale to be completed within any time not exceeding twelve months from the making of the contract. 25
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Application of last two sections.

7. (1) Subject to the provisions of this section, the *last two preceding* sections shall apply to mortgages of land executed after the passing of this Act.

(2) The said sections shall apply only if and as far as a contrary intention is not expressed in the mortgage, and shall have effect subject to the terms of the mortgage and to the provisions therein contained. 35

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

(3) Nothing in those sections shall authorize the registration under the provisions of the Land Transfer Act, 1915, of any instrument that would otherwise not be registrable. 40