

PROPERTY LAW AMENDMENT BILL

EXPLANATORY NOTE

Clause 2 of this Bill is intended to deal with cases where an owner of land refuses to allow an adjoining owner to enter on the land for the purpose of repairing or painting a building belonging to the latter and abutting or close to the boundary line. The clause empowers the owner of the building to apply to a Magistrate's Court for leave to enter on his neighbour's land, and authorizes the Court to make an order accordingly, subject to such conditions as it thinks fit.

Clause 3: This clause brings into the principal Act the existing provisions of section 97 of the Judicature Act, 1908, whereby, in an action relating to land encroached on by the defendant's building, the Court may in its discretion allow a defendant to retain possession of the piece of the plaintiff's land so built upon, on payment of a sum of money and on such other conditions as the Court thinks fit. The clause also extends those provisions so as to allow the Court to make an order vesting any estate or interest in that piece of land in the defendant or in any other person having any estate in the land occupied by the defendant, after hearing any person interested in the land. Unless this is done the certificates of title to the adjoining pieces of land affected cannot be adjusted, and the problem of the encroachment arises again when either of those pieces of land is sold or otherwise disposed of. The section as redrafted also contains a new provision making any such vesting order liable to conveyance duty under the Stamp Duties Act, 1923 (as is the case with vesting orders under section 64 of the Trustee Act, 1908).

Clause 4 allows a mortgagee to combine in one document a notice of intention to call up the principal sum (when the mortgage is overdue and he has accepted not less than three months' interest) and a notice requiring the mortgagor to remedy a default in any of the obligations under the mortgage in any case where the facts are such that both notices are required by law to be given.

Clause 5: Where a mortgagor defaults under a mortgage which has been adjusted under the Mortgagors and Lessees Rehabilitation Act, 1936, the mortgagee must give him notice, requiring him to remedy the default, before exercising any powers under the mortgage. Section 3 of the Property Law Amendment Act, 1939, requires the same kind of notice to be given in the case of all mortgages, so that in the case of an adjusted mortgage two notices in the same terms must be given. The repeals contained in this clause will make it necessary to give only one notice (under the 1939 Act).

Clause 6: Applications for directions as to service of notices under the principal Act—for example, where the person to be served is not known or cannot be found—must at present be made to the Supreme Court. This clause gives jurisdiction in such cases to Magistrates' Courts where a sum of money not exceeding £2,000 is involved.

[AS REPORTED FROM THE STATUTES REVISION
COMMITTEE]

House of Representatives, 25th August, 1950

Words struck out by Committee are shown in italics within bold brackets, or in roman enclosed in panel; words inserted are shown in black, or in roman with rule down side.

Hon. Mr. Webb

PROPERTY LAW AMENDMENT

ANALYSIS

Title.		4. Mortgagee may combine notice of default and notice of intention to call up principal sum.
1. Short Title.		5. Repeals.
2. Magistrate's Court may authorize entry on adjoining land for repairs to buildings.		6 Power of Magistrate's Court to give directions as to service of notices in certain cases.
3. Power of Court to grant special relief in cases of encroachment.		
Repeal.		

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

Short Title.

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

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

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

15 “ 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.** [*repairing or painting any part of any building situated*]

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. 5

1947, No. 16

“(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. 10

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

“(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.” 20 25

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

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:—

“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** [*that the defendant or any of his predecessors in title has, in the erection of a building upon any land adjoining the plaintiff's land, encroached*] 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— 30 35 40 45

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

New

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

10 “(b) 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.

15 “(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.

20 “(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.

35 “(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:

45 “ 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 50 by the Magistrate’s Court under this section.

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

Ibid., p. 1162

Ibid., p. 1143

Repeal.

Ibid., Vol. II,
p. 87

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

1939, No. 6

Repeals.

1937, No. 30

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

“(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.

“(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.” 5

(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. 10

4. Section three of the Property Law Amendment Act, 1939, is hereby amended by inserting, after subsection two, the following subsection:— 15

“(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.” 20 25

5. Section seven of the Mortgagors and Lessees Rehabilitation Amendment Act, 1937, and subsection nine of section three of the Property Law Amendment Act, 1939, are hereby repealed. 30

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

“(5A) In this section, the expression ‘the Court’ means— 35

“(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: 40

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