

Hon. Mr. Mason

PROPERTY LAW AMENDMENT

ANALYSIS

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A BILL INTITULED

Title.

AN ACT to amend the Property Law Act 1908.

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

Short Title and commencement.
See Reprint of Statutes, Vol. VII, p. 1077

1. (1) This Act may be cited as the Property Law Amendment Act 1951, and shall be read together with and deemed part of the Property Law Act 1908 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the thirty-first day of December, nineteen hundred and fifty-two.

Existing rights saved.

2. Any alteration made in the law by this Act, whether by the repeal of an enactment or otherwise, shall not, unless otherwise expressly provided by this Act, affect—

(a) Any right accrued, or obligation incurred, before the commencement of this Act under the law so altered; or

(b) The validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered before the commencement of this Act,—

and, unless as aforesaid, the law existing before such commencement shall remain in full force and effect for the purpose of governing and construing all instruments executed before such commencement and such instruments shall be read and construed and have only the effect and consequences given to them under that Law.

Section 1 amended.

3. Section one of the principal Act is hereby amended by adding the following subsection:—

“(5) Wherever any provision of this Act is expressed to apply to land under the provisions of or instruments under the Land Transfer Act 1915 such provisions shall not be deemed to apply exclusively to such land or instruments unless the contrary appears.”

4. (1) Section two of the principal Act is hereby amended— Definitions.

5 (a) By inserting the words “ by deed ” after the word “ assurance ” in the definition of “ conveyance ”:

(b) By adding to the definition of “ executors ” and “ administrators ” the words “ and ‘ executors ’ includes executors by right of representation ”:

10 (c) By inserting the following definitions in places appropriate to alphabetical order—

15 “ ‘ Deed ’, in relation to land under the provisions of the Land Transfer Act 1915, includes an instrument having the effect of a deed under that Act:

“ ‘ Land under the provisions of the Land Transfer Act 1915 ’, or any equivalent expression, means estates or interests registered under that Act:

20 “ ‘ Mortgage ’, ‘ mortgagee ’, and ‘ mortgagor ’, in relation to land under the provisions of the Land Transfer Act 1915, have the same meaning as in that Act:

25 “ ‘ Registered ’ or ‘ duly registered ’ means registered in the manner provided by the Land Transfer Act 1915 where the land affected is under the provisions of that Act, and otherwise means registered in the manner provided by the Deeds Registration Act 1908; and

30 ‘ registration ’ has a corresponding meaning.”

(2) Section two of the Property Law Amendment Act 1927 is hereby repealed.

35 5. (1) To prevent doubt being made as to the effect of sections seven and eight of the principal Act, it is hereby declared that— Sections 7 and 8 interpreted.

(a) Where by any instrument an interest in any property is expressed to be given to the heir or heirs or to any particular heir or any class of the heirs or issue of any person in words which but for this section or section

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forty-two of this Act would under the rule of law known as Shelley's case have operated to give to that person an interest in fee simple or an entailed interest, such words shall operate as words of purchase and not of limitation and shall be construed and have effect accordingly; and 5

(b) The said section seven in its true meaning and effect extends and always has extended to establish the law as expressed in the preceding paragraph and to abolish every rule or exception which such expression of the law extends to abrogate or abolish; and 10

(c) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is abolished, but without prejudice to any other rule relating to perpetuities; and 15

(d) The said section eight in its true meaning and effect extends and always has extended to establish the law as expressed in the preceding paragraph and to abolish the rule thereby expressed to be abolished. 20

Sundry
repeals.

(2) The said sections seven and eight and also sections twenty-one, twenty-two, twenty-three and fifty of the principal Act are hereby repealed. 25

(3) Section thirty-five of the principal Act is amended by repealing the proviso therein.

(4) The foregoing repeals shall not revive anything not in force or existing when the repeals take effect. 30

New sections
inserted.

Intermediate
income of
contingent or
executory gifts.

15 and 16
Geo. 5, c. 20,
s. 175

N.S.W. 1919
No. 6, s. 36B

6. The principal Act is hereby amended by inserting, after section twenty-five, the following new sections:—

“25A. (1) A contingent or future pecuniary or demonstrative legacy, a contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property upon trust for a person whose interest is contingent or executory, shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that 40

property from the death of the testator except so far as such income, or any part thereof, may be otherwise expressly disposed of.

“(2) Where under an instrument other than a will property stands limited to a person for a contingent or future interest, or stands limited to trustees upon trust for a person whose interest is contingent or executory, such interest shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the time when the instrument comes into operation, except so far as such income or any part thereof may be otherwise expressly disposed of.

“(3) This section applies only to wills and instruments coming into operation on or after the first day of January, nineteen hundred and fifty-three.

“25B. (1) A married infant shall have power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

Receipts for income by married infants. 15 and 16 Geo. 5, c. 20, s. 21

“(2) This section applies only to receipts given on or after the first day of January, nineteen hundred and fifty-three.

“25c. (1) Where under the terms of any instrument coming into operation on or after the first day of January, nineteen hundred and fifty-three, any property vests in—

“Heirs” and other words interpreted. N.S.W. 1919 No. 6, s. 33

“(a) The heir or heirs of any person; or

“(b) The next-of-kin of any person; or

“(c) The next-of-kin of any person to be determined in accordance with the Administration Act 1908,—

the property shall vest in the persons who on the death of such person intestate would be beneficially entitled to his real and personal estate under the said last-mentioned Act, and in the same shares.

“(2) This section applies only if and so far as a contrary or other intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument and to the provisions therein contained.

“Heirs of the body” and other words interpreted.
N.S.W. 1919
No. 6, s. 33

“25D. (1) Where under the terms of any instrument coming into operation on or after the first day of January, nineteen hundred and fifty-three any property vests in—

“(a) The heir or heirs of the body of any person; or 5

“(b) The heir or heirs male, or the heir or heirs male of the body of any person; or

“(c) The heir or heirs female, or the heir or heirs female of the body of any person,—

the property shall vest as follows— 10

“In case (a) in the issue of such person as tenants in common *per stirpes*; and

“In case (b) in the sons and issue of sons of such person as tenants in common *per stirpes*; and 15

“In case (c) in the daughters and the issue of daughters of such person as tenants in common *per stirpes*.

“(2) This section applies only if and so far as a contrary or other intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument and to the provisions therein contained.” 20

Repeal.

7. (1) The principal Act is hereby amended by repealing section thirty-two, and substituting the following sections:— 25

Restrictions on accumulations.
15 and 16
Geo. 5, c. 20,
ss. 164, 166

“32. (1) No person (in this section called a settlor) shall settle or dispose of any property so that the income thereof shall be wholly or partially accumulated—

“(a) For any longer period than—

“(i) The life of the settlor; or 30

“(ii) Twenty-one years from the death of the settlor; or

“(iii) The minority of any person who shall be living at the death of the settlor; or

“(iv) The minority of any person who 35

under the trusts of the instrument directing the accumulation, would for the time being, if of full age, be entitled to receive the income so directed to be accumulated:

“(b) For the purchase of land only, for any longer period than that mentioned in subparagraph (iv) of paragraph (a) hereof. 40

“(2) In every case where any accumulation is directed otherwise than as aforesaid, such direction shall be void, and the income so directed to be accumulated shall, so long as the same is directed to be accumulated
5 contrary to the provisions of this section, go to such person as would have been entitled thereto if such accumulation had not been directed.

“(3) Nothing in this section contained shall extend to—

10 “(a) Any provision for payment of debts of the settlor or any other person; or

“(b) Any provision for raising portions for any child of the settlor, or any child of any person taking interest under the instrument
15 directing the accumulation; or

“(c) Any direction touching the production of timber or wood upon any lands;

but all such provisions and directions may be made and given as if this section had not been passed.

20 “(4) In this section ‘purchase’ means only a purchase properly so called.

“32A. Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which such accumulations are made is not (whether the trust was created
25 or the accumulations were made before or after the commencement of this Act) to be taken into account in determining the periods for which accumulations are permitted to be made by the last preceding section, and accordingly an express trust for accumulation for any
30 other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.”

Qualification of restrictions. 15 and 16 Geo. 5, c. 20, s. 165

35 (2) The Act of the Parliament of Great Britain known as the Accumulations Act 1800 is hereby repealed so far as the same applies to New Zealand.

Repeal. 39 and 40, Geo. III, c. 98

8. Section thirty-four of the principal Act is hereby amended by adding the following subsection as sub-
40 section two thereof:—

Section 34 amended.

“(2) This section does not apply to land under the provisions of the Land Transfer Act 1915.”

Repeal.

9. The principal Act is hereby amended by repealing section forty-seven, and substituting the following sections:—

“47. This Part applies to land under the provisions of the Land Transfer Act 1915. 5

Benefits of covenants relating to land. 15 and 16 Geo. 5, c. 20, s. 78

“47A. (1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed. 10

“(2) For the purposes of this section in connection with covenants restrictive of the user of land, ‘successors in title’ shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited. 15

Burden of covenants relating to land. Ibid., s. 79

“47B. (1) A covenant relating to any land of a covenantor or capable of being bound by him by covenant shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself and his successors in title, and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed. 20

“(2) This section extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made. 25

“(3) For the purposes of this section in connection with covenants restrictive of the user of land ‘successors in title’ shall be deemed to include the owners and occupiers for the time being of such land.” 30

Section 48 amended. N.S.W. 1919 No. 6, s. 71

10. Section forty-eight of the principal Act is hereby amended—

(a) By inserting “whether express, or implied under this or any other Act” after the word “covenant”; and 35

(b) By repealing subsection two thereof.

New sections inserted.

11. (1) The principal Act is hereby amended by inserting, after section forty-eight, the following sections:— 40

- “ 48A. (1) A covenant, whether express or implied under this or any other Act, or an agreement made by a person with himself and another or others, shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been made with the other or others.
- 5 “ (2) This section applies to covenants or agreements made or implied before or after the commencement of this Act.
- 10 “ 48B. Where a covenant is implied under this or any other Act, and more persons than one are covenantors, such covenant shall be deemed to bind the covenantors and any two or greater number of them jointly and each of them severally.”
- 15 (2) Section sixty-six of the principal Act and section one hundred and sixty-six of the Land Transfer Act 1915 are hereby repealed.
- 20 12. Sections forty-nine, fifty-one, and fifty-two of the principal Act are hereby amended by inserting the words “ or any other ” after the words “ implied under this ” and after the words “ by virtue of this ” wherever those words occur.
- 25 13. Section fifty-five of the principal Act is hereby amended by adding the following subsection:—
- “ (4) This section does not apply to land under the provisions of the Land Transfer Act 1915.”
- 30 14. The principal Act is hereby amended by inserting, after the heading “ VII. Covenants Implied in Conveyances Generally ” and before section fifty-six, the following section:—
- “ 55A. This Part, with the exception of sections fifty-nine and *sixty A*, applies only to land other than land under the provisions of the Land Transfer Act 1915.”
- 35 15. (1) Section fifty-six of the principal Act is hereby amended by adding the following subsections:—
- “ (3) The cost of any further assurance or production of title deeds required by a mortgagee under the implied covenants in that behalf shall during the continuance of the mortgage be borne by the mortgagor.
- 40 “ (4) The covenant for quiet enjoyment shall not be implied against any mortgagor until default in payment of the principal moneys secured by the mortgage at the

Covenants and agreements made by a person with himself and others.

15 and 16
Geo. 5, c. 20,
s. 82

N.S.W. 1919
No. 6, s. 72

Implied covenants to be joint and several.

N.S.W. 1919
No. 6, s. 73

Sections 49, 51, and 52 amended.

Section 55 amended.

Application of Part VII

Section 56 amended.

time fixed for the repayment thereof, or in payment of interest thereon, or until breach of any covenant by the mortgagor contained or implied in the mortgage; and until such default or breach it shall not be lawful for a mortgagee to enter into possession of the mortgaged land." 5

Repeal.

(2) Subsections two and three of section sixty-four are hereby repealed.

Root of Title.
N.S.W. 1919
No. 6, s. 53

16. Section sixty of the principal Act is hereby amended by inserting, after the word "contract" where it secondly appears therein, the following words: "Thirty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless, earlier title than thirty years may be required in cases similar to those in which earlier title than sixty years might have heretofore been required; and "

New section inserted.

Contracts where certificate of title is limited.

17. The principal Act is hereby amended by inserting, after section sixty, the following new section:— 20

"60A. (1) In the completion of any contract for the sale of any property, and subject to any stipulation to the contrary in the contract, where the land sold is comprised in a limited certificate of title under the Land Transfer (Compulsory Registration of Titles) Act 1924, issued prior to the making of the contract, the vendor shall at his own expense do such acts, prove such matters, and comply with such requisitions by the District Land Registrar as shall be necessary to cause such certificate to cease to be limited as to title, and the vendor shall pay the statutory fee payable on the issue of the first such limited certificate. 25

"(2) Nothing herein shall alter the law between vendor and purchaser relating to survey and plan of survey of the land." 30 35

Application of Part VIII.
Ibid., s. 90

18. (1) The principal Act is hereby amended by inserting, after the heading "VIII. Mortgages: General Provisions", and before section sixty-two, the following new section:—

"61A. This Part shall apply to mortgages of land under the Land Transfer Act 1915 effected by memorandum of mortgage under that Act to the extent and subject as in the several sections of such Part provided." 40

(2) Section eight of the Land Transfer Amendment Act 1939 is hereby repealed.

19. (1) Section sixty-four of the principal Act is hereby amended— Section 64 amended.

5 (a) By adding the words “ and except also that the last three paragraphs thereof, being those paragraphs under the heading ‘ Covenants, Conditions, and Powers implied in Mortgages that are subject to a prior Mortgage ’, shall be implied only in mortgages subject to a prior mortgage or mortgages ”; and

(b) By adding a new subsection as follows:—
“ (2) This section applies to mortgages under the Land Transfer Act 1915.”

15 (2) The Land Transfer Act 1915 is hereby amended—

(a) By repealing subsection one of section one hundred and three:

(b) By repealing the Fourth Schedule.

20. (1) Section sixty-seven of the principal Act is hereby amended— Section 67 amended.

(a) By inserting in subsection two the words “ for the purposes of paragraphs (a) and (e) of the preceding subsection ” after the word “ memorandum ”; and

25 (b) By inserting, after subsection two, the following new subsection:—

“ (2A) Such memorandum for the purposes of paragraphs (b), (c), and (d) of subsection one hereof shall be in the corresponding form prescribed by section one hundred and four of the Land Transfer Act 1915, and all the provisions of the last mentioned section shall apply to the said paragraphs (b), (c), and (d) as if set out at length herein.”

35 (2) The Fifth Schedule to the principal Act is hereby amended by omitting forms (2), (3), and (4).

21. Section sixty-eight of the principal Act is hereby amended by adding the following subsection as subsection two thereof:— Section 68 amended.

40 “ (2) This section applies to land under the provisions of the Land Transfer Act 1915.”

Section 70
amended.

22. Section seventy of the principal Act is hereby amended by adding the following subsection:—

“(7) This section applies to land under the provisions of the Land Transfer Act 1915.”

Section 71
amended.
N.S.W. 1919
No. 6, s. 94

23. Section seventy-one of the principal Act is hereby amended by— 5

(a) Omitting subsection one, and substituting the following subsection:—

“(1) Where a mortgagor is entitled to redeem he shall by virtue of this Act have power to require the mortgagee, instead of discharging, and on the terms on which he would be bound to discharge, to transfer the mortgage to any third person as the mortgagor directs; and the mortgagee shall by virtue of this Act be bound to transfer accordingly”; and 10 15

(b) Adding a subsection as follows:—

“(3) This section and the next succeeding section apply to mortgages under the Land Transfer Act 1915.” 20

Section 73
amended.

24. Section seventy-three of the principal Act is hereby amended by adding the following subsection as subsection two thereof:—

“(2) This section applies to mortgages under the Land Transfer Act 1915.” 25

Section 74
amended.

25. Section seventy-four of the principal Act is hereby amended by adding the following subsection:—

“(3) This section applies to mortgages under the Land Transfer Act 1915.” 30

Section 75
repealed.

26. The principal Act is hereby amended by repealing section seventy-five, and substituting the following section:—

Repayment
when mortgagee
cannot be
found, &c.
Ibid., s. 98

“75. (1) Where any person entitled to receive payment of any money secured by mortgage is out of the jurisdiction, cannot be found, or is unknown or is dead, or it is uncertain who is entitled, the Court, upon the application of the person entitled to redeem the mortgaged premises, may order the amount of such debt to be ascertained in such manner as the Court thinks fit, and direct the amount so ascertained to be paid into Court. 35 40

“(2) A certificate by the Registrar that such payment was directed and has been made shall, in favour of a purchaser of the land, upon registration, operate as a discharge of the land from the mortgage debt and as a deed of re-conveyance in the same manner as a memorandum of discharge operates under subsection three of section sixty-seven:

“ Provided that as between the mortgagor and the person so entitled to receive payment as aforesaid any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due or payable over and above the amount so paid shall continue to be a specialty debt due under the mortgage.

“(3) The Court shall order the amount so paid into Court to be paid to the person entitled, upon the application of such person, and on proof that the deed or instrument of mortgage, and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same, or in connection therewith, have been delivered up to the person by whom the amount was so paid into Court, or his executors, administrators, or assigns, or have been otherwise satisfactorily accounted for.

“(4) Subsections one and three of this section shall apply to mortgages under the Land Transfer Act 1915, and in the case of any such mortgage upon production to the District Land Registrar of the certificate of the Registrar of the Supreme Court as hereinbefore mentioned—

“(a) He shall on payment of the prescribed fee make an entry in the register book discharging the mortgage, stating the day and hour on which such entry is made:

“(b) Such entry shall be a discharge of the land from the mortgage:

“ Provided that as between the mortgagor and the person so entitled to receive payment as aforesaid, any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due and payable over and above the amount so paid shall continue to be a specialty debt due under the mortgage:

“(c) The District Land Registrar shall endorse on the relevant certificate of title or other document of title, and also on the memorandum of mortgage, whenever those instruments are brought to him for the purpose, particulars of such entry.” 5

Repeal.

(2) Section one hundred and seventeen of the Land Transfer Act 1915 is hereby repealed.

Section 76 amended.

N.S.W. 1919
No. 6, s. 99 (2)

27. Section seventy-six of the principal Act is hereby amended by adding to subsection two the words “subject, as to the lands under the provisions of the Land Transfer Act 1915, to compliance with the provisions of that Act” 10

Section 80 amended.

28. Section eighty of the principal Act is hereby amended— 15

(a) By inserting in subsection two the words “or, where the land is under the Land Transfer Act 1915, a memorandum of transfer” after the words “conveyance of the land purchased”:

(b) By inserting in subsections three and four the words “or memorandum” after the word “deed” where it occurs in those subsections: 20

(c) By inserting in subsection four the words “and subject, as to lands under the provisions of the Land Transfer Act 1915, to compliance with the provisions of that Act as to registration” after the word “Registrar”: 25

(d) By inserting in subsection five the words “or transfer” after the word “conveyance”:

(e) By inserting, after subsection five, the following new subsection:— 30

“(5A) Every such memorandum of transfer may be registered under the Land Transfer Act 1915, and thereupon the estate or interest of the mortgagor therein expressed to be transferred shall vest in the transferee freed and discharged from the liability on account of the mortgage under which such power of sale has been exercised, or any estate or interest except an estate or interest which has priority over the mortgage or which by reason of the consent of the mortgagee is binding on him; and the 35 40

District Land Registrar may make in the register book any entry necessary to show that such liability, estate, or interest has been so determined."

5 **29.** Section eighty-one of the principal Act is hereby amended by inserting the words "or memorandum of transfer" after the word "conveyance" wherever that word appears therein. Section 81 amended.

10 **30.** Sections one hundred and ten, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen of the Land Transfer Act 1915 are hereby repealed. Repeals.

15 **31.** Section eighty-three of the principal Act is hereby amended by adding the following subsection:— Section 83 amended.

 “(6) This section applies to mortgages under the Land Transfer Act 1915.”

20 **32.** (1) The principal Act is hereby amended by inserting, after section eighty-three, the following sections:— New sections inserted.

 “83A. (1) In the exercise by the mortgagee of a power of sale or lease contained or implied in any mortgage— Mortgaged property may be sold or leased together at one price or rent.

25 “(a) The mortgaged premises, or any part thereof, may be sold or leased, together with any other land or property of whatsoever nature or tenure which is the subject of the mortgage or of any collateral security from the mortgagor to the mortgagee by one sale or N.S.W. 1919 No. 6, s. 104

30 “(b) The mortgagee shall fairly and equitably apportion all costs, expenses, purchase moneys, and rents between the properties sold or leased.

35 “(2) A failure by the mortgagee to make such apportionment shall not affect the purchaser or lessee, nor the title to the property in his hands.

40 “(3) This section extends to any case in which the whole or any part of any land the subject of the sale or lease is under the provisions of the Land Transfer Act 1915.

Mortgagee's receipts, discharges, &c. 15 and 16 Geo. 5, c. 20, s. 107 N.S.W. 1919 No. 6, s. 113

Purchaser personally liable to mortgagee.

“(4) This section applies to all mortgages, whether made before or after the commencement of this Act.

“ 83B. (1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage or arising thereunder, and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage or to see to the application of the money or securities so paid or transferred. 5 10

“(2) Money received by a mortgagee under his mortgage, or from the proceeds of securities comprised in his mortgage, shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act, but with this variation: that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money instead of those incident to sale. 15 20

“(3) This section applies to mortgages and encumbrances under the Land Transfer Act 1915.

“ 83c. (1) Where a person acquires any land by conveyance or transfer subject to any mortgage, the person acquiring the land shall, unless a contrary intention appears in the mortgage, and irrespective of whether he has signed the conveyance or transfer, become personally liable to the mortgagee for the payment of all principal money and interest secured by such mortgage, and shall also become personally liable to the mortgagee for the fulfilment and observance of any other covenant or agreement contained or implied in the mortgage as if he were an original mortgagor of the land and had covenanted with the mortgagee for such payment and for the fulfilment and observance of such covenants and agreements, and the mortgagee shall have remedy directly against such person accordingly, but nothing herein shall extinguish the liability of any original mortgagor under the mortgage or the liability of any intermediate transferee of the land acquired by him subject to the mortgage aforesaid. 25 30 35 40

“(2) Nothing in this section shall render an executor or administrator personally liable in respect of the estate of a deceased person except to the extent of the assets of the deceased under his control as executor or
5 administrator.

“(3) Notwithstanding anything to the contrary in any mortgage, it shall not be obligatory on any mortgagor or any person acquiring land as aforesaid to procure or execute any covenant or contract by such person for
10 the payment of principal, interest, or other moneys secured by or the observance or performance of the covenants, conditions, or agreements contained or implied in the mortgage, and no covenant, contract, or
15 condition by a mortgagor or by any such person acquiring the land as aforesaid (whether expressed in a mortgage or in any instrument collateral to such mortgage) to procure the execution of or to execute any such covenant, condition, or agreement shall have any effect whatever.

“(4) This section applies to all mortgages where
20 land subject to the mortgage is acquired as aforesaid on or after the first day of January, nineteen hundred and fifty-three.”

(2) Section one hundred and seven of the Land Transfer Act 1915 is hereby repealed. Repeal.

25 **33.** The principal Act is hereby amended by inserting after the heading “IX. Leases: General Provisions” and before section eighty-four, the following section:— Application of Part IX.

“83b. This Part shall apply to land under the Land Transfer Act 1915.”

30 **34.** (1) The principal Act is hereby amended by repealing section eighty-four, and substituting the following section:— Repeal.

35 “84. (1) In every lease of land there shall be implied the following covenants by the lessee, for himself, his executors, administrators, and assigns:— Covenants implied in leases. N.S.W. 1919 No. 6, s. 84

“(a) That he will pay the rent thereby reserved at the time therein mentioned;

40 “Provided, however, that in case the demised premises or any part thereof shall at any time during the continuance of the lease, without neglect or default of the

lessee, be destroyed or damaged by fire, flood, lightning, storm, tempest, or earthquake so as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved, or a proportionate part thereof, according to the nature and extent of the damage, shall abate, and all or any remedies for the recovery of the rent or such proportionate part thereof shall be suspended until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee, and in case of any dispute arising under this proviso the same shall be referred to arbitration under the provisions of the Arbitration Act 1908:

“(b) That he or they will at all times during the continuance of the said lease, keep, and at the termination thereof yield up, the demised premises in good and tenantable repair, having regard to their condition at the commencement of the said lease, accidents and damage from fire, flood, lightning, storm, tempest, earthquake, and fair wear and tear (all without neglect or default of the lessee) excepted.

“(2) This section applies to every memorandum of lease under the Land Transfer Act 1915.”

(2) Section ninety-seven of the Land Transfer Act 1915 is hereby repealed.

Section 85 amended.

35. (1) Section eighty-five of the principal Act is hereby amended by inserting the words “in New Zealand” after the word “abode”.

Repeal.

(2) Section ninety-eight of the Land Transfer Act 1915 is hereby repealed.

Section 88 amended.

36. (1) Section eighty-eight of the principal Act is amended by—

(a) The addition thereto of the following paragraph:—

“This subsection extends to a covenant to do some act relating to the land, notwithstanding that the subject matter may not be in existence when the covenant is made”; and by

15 and 16
Geo. 5, c. 20,
s. 141
N.S.W. 1919
No. 6, s. 117

(b) The addition thereto of the following sub-sections:—

5 “(2) The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease shall be capable of being enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable.

10 “(3) This section shall not render enforceable any condition of re-entry or other condition waived or released before that person became entitled as aforesaid.”

15 (2) The amendments made by this section shall apply to leases whether made before or after the commencement of this Act, but with respect only to rent accruing due after the first day of January, nineteen hundred and fifty-three, and to the benefit of a condition of re-entry or forfeiture for a breach committed after that date of any covenant, condition, or provision contained in the lease.

20 **37.** (1) The principal Act is hereby amended by inserting, after section ninety-six, the following sections:—

30 “96A. (1) An easement expressed to be created by an instrument coming into operation on or after the first day of January, nineteen hundred and fifty-three, and a restriction arising under covenant or otherwise as to the user of any land the benefit of which is intended to be annexed to other land, contained in an instrument coming into operation on or after the date aforesaid, shall not be enforceable against a person interested in the land claimed to be subject to the easement or restriction, and not being a party to its creation unless the instrument clearly indicates—

35 “(a) The land (if any) to which the benefit of the easement or restriction is appurtenant;

40 “(b) The land which is subject to the burden of the easement or restriction;

New sections inserted.

Limitation of enforceability of easements and restrictions of user of land. N.S.W. 1919 No. 6, s. 88

- “(c) The persons (if any) having the right to release, vary, or modify the easement or restriction, other than the persons having, in the absence of agreement to the contrary, the right by law to release, vary or modify the easement or restriction; and 5
- “(d) The persons (if any) whose consent to a release, variation, or modification of the easement or restriction is stipulated for.
- “(2) This section shall not prevent the enforcement 10
by a person entitled to a reversion or remainder or other future estate or interest in any land of any contract against a person entitled to the estate or interest on which the reversion, remainder, or other future estate or interest is expectant. 15
- “(3) This section applies to land under the provisions of the Land Transfer Act, 1915, and in respect thereof— 15
- “(a) The District Land Registrar shall have power to enter in the appropriate folium of the 20
register book relating to the land subject to the burden of a restriction a notification of the restriction, and a notification of any instrument purporting to affect the operation 25
of the restriction of which a note has been so entered, and when the restriction is released, varied, or modified to cancel or alter the notification thereof:
- “(b) A notification in the register book of any such restriction shall not give the restriction any 30
greater operation than it has under the instrument creating it:
- “(c) Every such restriction notified on the appropriate folium of the register book shall be 35
an interest within the meaning of section fifty-eight of the Land Transfer Act 1915.
- “(4) Subsection one of this section shall not apply to an easement acquired by or for the Crown, or by or for any public or local authority constituted by Act of Parliament, nor to any restriction affecting the user of 40
land in relation to any such easement.

5 “ 96B. (1) Where land is subject to an easement or to a restriction arising under covenant or otherwise as to the user thereof, the Court may from time to time, on the application of any person interested in the land, by order modify or wholly or partially extinguish the easement or restriction upon being satisfied—

Power for Court to modify or extinguish easements and restrictive covenants.

N.S.W. 1919 No. 6, s. 89; and 1930, No. 4, s. 19 15 and 16 Geo. 5, c. 20, s. 84

10 “ (a) That by reason of change in the user of any land having the benefit of the easement or restriction, or in the character of the neighbourhood or other circumstances of the case which the Court may deem material, the easement or restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land subject to the easement or restriction without securing practical benefit to the persons entitled to the easement or to the benefit of the restriction, or would, unless modified, so impede such user; or

15
20 “ (b) That the persons of full age and capacity for the time being or from time to time entitled to the easement or to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the land to which the easement or the benefit of the restriction is annexed, have agreed to the easement or restriction being modified or wholly or partially extinguished, or by their acts or omissions may reasonably be considered to have abandoned the easement wholly or in part; or

25
30 “ (c) That the proposed modification or extinguishment will not substantially injure the persons entitled to the benefit of the restriction.

35 “ (2) Where any proceedings by action or otherwise are instituted to enforce an easement or restriction, or to enforce any rights arising out of a breach of any restriction, any person against whom the proceedings are instituted may in such proceedings apply to the Court
40 for an order under this section.

“ (3) The Court may on the application of any person interested make an order declaring whether or not in any particular case any land is affected by an easement or restriction and the nature and extent thereof, and whether the same is enforceable, and, if so, by whom. 5

“ (4) Notice of any application made under this section shall, if the Court so directs, be given to the Council of the borough or county or to the Town Board of the town district in which the land is situated and to such other persons and in such manner whether by advertisement or otherwise, as the Court, either generally or in a particular instance, may order. 10

“ (5) An order under this section shall, when registered as in this section provided, be binding on all persons, whether of full age or capacity or not, then entitled or thereafter becoming entitled to the easement, or interested in enforcing the restriction, and whether such persons are parties to the proceedings or have been served with notice or not. 15

“ (6) This section applies to easements and restrictions existing at the commencement of this Act or coming into existence after such commencement. 20

“ (7) This section applies to land under the provisions of the Land Transfer Act 1915, and in such case the District Land Registrar may, of his own motion, and on the application of any person interested in the land shall make all necessary amendments and entries in the register book for giving effect to such order in respect of all grants, certificates of titles and other instruments affected thereby and the duplicates thereof, if and when available. 25 30

“ (8) In the case of other land a memorandum of such order shall be endorsed on such of the instruments of title as the Court directs.”

Repeal.

(2) Section seven of The Property Law Amendment Act 1939 is hereby amended by repealing subsection three thereof. 35

Application of Part XI.

38. (1) The principal Act is hereby amended by inserting, after the heading “ XI. Powers of Attorney ”, and before section one hundred, the following new section:— 40

“ 99A. This Part shall extend to powers of attorney authorizing, whether expressly or in general terms, the execution of instruments under the Land Transfer Act 1915.” 45

(2) Section one hundred of the principal Act is hereby amended by adding the following subsection:—

Where attorney is a corporation.

5 “(4) Where the attorney is a corporation the statutory declaration provided for in subsection three of this section shall be sufficient if made by any director, manager, or secretary of the corporation or any officer thereof discharging the functions usually appertaining to any of those offices and shall be to the effect that to the best of the declarant’s knowledge and belief neither
10 the attorney nor any servant or agent of the attorney has received any such notice or information as is mentioned in that subsection.”

(3) The principal Act is hereby further amended by inserting, after section one hundred and three, the
15 following new section:—

Application to corporations.

“103A. (1) The provisions of this Part of this Act apply with the necessary modifications with respect to any power of attorney executed by any corporation to the same extent as if the corporation were a person and
20 the dissolution of the corporation (however occurring) were the death of a person within the meaning of this Part of this Act.

“(2) The provisions of subsection one of this section are in addition to and not in derogation of the provisions
25 of sections forty-three and three hundred and thirty-three of the Companies Act 1933.

“(3) The said provisions of subsection one of this section do not apply to a corporation which is dissolved before the commencement of this Act, but do apply to
30 powers of attorney whether executed before or after the said commencement.”

(4) Section one hundred and sixty-three of the Land Transfer Act 1915 is hereby repealed.

Repeal.

39. The principal Act is hereby amended by
35 inserting, after section one hundred and seven, the following new section:—

New section inserted.

40 “107A. (1) Where any chattels belong to persons jointly or in undivided shares, the persons interested to the extent of a moiety or upwards may apply to the Court or a Judge thereof for an order for division of the chattels or of any of them, according to a valuation

Division of chattels.
15 and 16
Geo. 5, c. 20,
s. 188
N.S.W. 1919
No. 6, s. 36A

or otherwise, and the Court or Judge may make such order and give any consequential directions as the Court or Judge thinks fit.

“(2) Where the value of the chattels concerned does not exceed one thousand pounds the foregoing application may be made to the Magistrate’s Court or to a Magistrate, and that Court or the Magistrate may make such order and give such consequential directions as the Court or Magistrate thinks fit.” 5

Section 108 amended.

40. Section one hundred and eight of the principal Act is hereby amended by omitting the word “ public ” in the definition of “ dividends.” 10

Section 110 amended.

15 and 16 Geo. 5, c. 20, s. 121 (6)

N.S.W. 1919 No. 6, s. 146 (5) and (7)

41. Section one hundred and ten of the principal Act is hereby amended by adding the following subsections:—

“(6) The rule of law relating to perpetuities shall not apply to any powers or remedies conferred by this section, nor to the same or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section. 15 20

“(7) This section shall not apply to land under the provisions of the Land Transfer Act 1915.”

Repeal.

42. The principal Act is hereby amended by repealing section one hundred and fourteen, and substituting the following section:— 25

Estates tail abolished. Ibid., s. 19

“ 114. (1) In any instrument coming into operation on or after the first day of January, nineteen hundred and fifty-three, a limitation which, if this section had not been passed, would have created an estate tail (legal or equitable) in any land in favour of any person shall be deemed to create an estate in fee simple (legal or equitable, as the case may be) in such land in favour of such person to the exclusion of all estates limited to take effect after the determination or in defeasance of any such estate tail. 30 35

“(2) (a) Where before the first day of January, nineteen hundred and fifty-three, any person is entitled to an estate tail (legal or equitable) and whether in possession, reversion, or remainder, in any land, such person, save as hereinafter mentioned, shall be deemed to be entitled to an estate in fee simple (legal or equitable, as the case may be) in such land, to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail. 40 45

“(b) Where any such person is an infant and such land for any estate or interest would pass to any other person in the event of the death of the infant under the age of twenty-one years and without issue, then in such
5 case the infant shall be deemed to take an estate in fee simple with an executory limitation over of such estate or interest on the happening of such event in favour of such other person.

“(c) This subsection shall not apply where such
10 person is a mentally defective person within the meaning of the Mental Defectives Act 1911.

“(d) In this subsection the expression ‘estate tail’ includes that estate in fee into which an estate tail is converted where the issue in tail is barred, but the
15 persons claiming estates by way of remainder are not barred; also an estate in fee voidable or determinable by the entry of the issue in tail; but does not include the estate of a tenant in tail after possibility of issue extinct.

“(3) This section applies to land under the
20 provisions of the Land Transfer Act 1915, and every District Land Registrar is hereby authorized to make all such entries in the register book as may be necessary to give effect thereto.”

43. (1) The principal Act is hereby amended by
25 repealing section one hundred and twenty-three, and substituting the following section:—

“123. (1) Save as provided by this section, every
alienation of property with intent to defraud creditors shall be voidable at the instance of the person thereby
30 prejudiced.

“(2) This section does not affect the law of bankruptcy for the time being in force.

“(3) This section does not extend to any estate or
35 interest in property alienated to a purchaser in good faith not having, at the time of the alienation, notice of the intention to defraud creditors.

“123A. (1) Every instrument (other than a will)
which operates, or on registration would operate, as a
voluntary alienation of land shall, if made with intent
40 to defraud a subsequent purchaser, be voidable at the instance of that subsequent purchaser.

Voluntary alienation of land, when voidable.

15 and 16 Geo. 5, c. 20, s. 172

N.S.W. 1919 No. 6, s. 37A

Geo. 5, c. 20, s. 173
Ibid., s. 37B

“(2) For the purposes of this section no such instrument shall, if registered before a subsequent purchase, be deemed to have been made with intent to defraud by reason only of that purchase, or that the instrument was not made for valuable consideration.” 5

(2) The Acts of the Parliament of England of Thirteen Elizabeth, Chapter five, intituled “An Act against fraudulent deeds, giftes, alienations, &c.” and of Twenty-seven Elizabeth, Chapter four, intituled “An Act against covenous and fraudulent conveyances” are 10 repealed so far as those Acts apply to New Zealand.

Repeal.

(3) Subsection two of section forty of the Deeds Registration Act 1908 is hereby repealed.

Fourth Schedule amended.

44. The Fourth Schedule to the principal Act is amended as appears in the Schedule hereto. 15

Schedule.

SCHEDULE

THE following amendments are made in the Fourth Schedule to the principal Act:—

(a) After paragraph (2) a new paragraph is inserted, as follows:—

“(2A) The mortgagor will during the continuance of the mortgage punctually pay all rates, taxes, and charges as and when the same become due in respect of the said land.”:

(b) In paragraph (4) thereof the words “or to pay the said rates, taxes, and charges” are inserted after the words “any premium receipt as aforesaid”, and also after the words “or to pay such premium”:

(c) In paragraph (6) thereof the words “or in paying any of the said rates, taxes, and charges” are inserted after the words “or any insurance as aforesaid”:

(d) In paragraph (7) thereof the words “the mortgagee may sell the said land” are omitted, and the words “the mortgagee may sell the mortgaged property” are substituted; and the words “to buy in the said land” are omitted, and the words “to buy in the mortgaged property” are substituted; and the words “and also that the mortgagee may exercise such other incidental powers in that behalf as are conferred upon mortgagees by law” are inserted after the words “as he may think proper”; and in the same paragraph the words “and in the third place in payment of the moneys owing under the subsequent registered mortgages (if any) in the order of their priority” are inserted immediately before the words “and will pay the surplus (if any) to the mortgagor”:

(e) The following heading and paragraphs are added:—

“ COVENANTS, CONDITIONS, AND POWERS IMPLIED IN
MORTGAGES SUBJECT TO PRIOR MORTGAGES

“(14) That the mortgagor will duly and punctually pay all principal, interest, and other moneys secured by, and will perform and observe, all the covenants and conditions contained or implied in any mortgage having priority to this present mortgage.

“(15) That if the mortgagor makes default in the payment of any moneys secured by or in the performance or observance of any of the covenants and conditions contained or implied in any mortgage having priority to this present mortgage it shall be lawful for but not obligatory upon this present mortgagee to pay those moneys and perform and observe those covenants or conditions, and the provisions of the above paragraph (6) shall, with the necessary modifications, apply with respect to all moneys so paid and all expenses incurred in performing or observing the covenants or conditions of the prior mortgage.

“(16) That compliance with the provisions of any mortgage having priority to this present mortgage which relate to insurance against loss or damage by fire shall be deemed, so far as it extends, to be compliance with any provisions as to such insurance contained or implied in this present mortgage.”