PROPERTY LAW AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Property Law Act 1952. The main body of the amendments relates to leases of dwellinghouses. Provision is made for the granting of reasonable access to landlocked land, and miscellaneous changes are made in other fields of property law.

Clause 1 relates to the Short Title.

Clause 2 amends section 80A of the principal Act by adding two new subsections. Under the present section, if the amount of the principal sum to be secured by a mortgage is specified in the mortgage document the mortgagee may, at any time during the currency of the mortgage, advance to the mortgagor any sum up to the amount so specified, and is entitled to have that sum rank in priority to any subsequent mortgage, notwithstanding that the sum is advanced after the execution or registration of that subsequent mortgage.

However, by virtue of the first proviso to this section, this provision does not extend to money repaid by the mortgagor to the mortgagee and then readvanced by him to the mortgagor. Accordingly, the section does not cover current account mortgages used for such purposes as stock-in-trade financing. The Contracts and Commercial Law Reform Committee in its report on Chattels Securities recommended that provision should be made for such mortgages and the proposed *subsection (2)* would give effect to that recommendation. It would also also allow the maximum principal sum specified in such a mortgage to be varied from time to time, but no increase in that amount would be binding on the mortgagee under an existing subsequent mortgage unless consented to by him.

The proposed *subsection (3)* would make similar provision in respect of mortgages given to secure the repayment to the mortgagee of any money which he may be called upon to pay under a guarantee given by him in respect of an obligation entered into by the mortgagor. If the nature and extent of the mortgagor's obligation, and the circumstances in which the mortgagee may be called upon to honour his guarantee, are set out in the mortgage, any amount paid by the mortgagee in performance of the guarantee shall rank in priority to any subsequent mortgage, notwithstanding that it was paid after the execution or registration of that subsequent mortgage.

However, this provision would not apply in respect of any subsequent registered mortgage if the mortgage given in respect of the guarantee were unregistered.

No. 106—1

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Clause 3 amends section 99 of the principal Act by inserting a new subsection (1A), and repealing subsection (2) and substituting a new subsection. Section 99 empowers a mortgagee who has become entitled, upon default by the mortgagor, to sell the mortgaged land to apply to the Registrar of the Supreme Court to conduct the sale. On making the application he must state the value at which he estimates the land to be sold. The significance of this estimate is that by virtue of section 100 of the Act the mortgagor is entitled to redeem the land by tendering the amount of the estimate, notwithstanding that it is less than the amount actually owing under the mortgage.

The Registrar is required to fix a suitable time and place for the sale, and to advertise the sale in such newspaper as he thinks fit. However, he is not presently required to give actual notice of the time and place of the sale, or of the mortgagee's estimate of value, to the mortgagor, or to any person entitled as mortgagee under any other mortgage secured over the land. It is now intended that, so far as practicable, he should give such notice.

To this end the proposed *subsection* (1A) would require the mortgagee to advise the Registrar in writing of the name and address of the mortgagor and, where the land is subject to any other mortgage and the mortgagee has actual notice of the name and address of any person entitled as mortgagee under that other mortgage, the name and address of that other person.

The proposed new *subsection* (2) would repeat the requirements of the present subsection, but, in addition, would require the Registrar to give notice in writing to each person (including the mortgagor) whose name and address is given to him under the proposed *subsection (1A)* of the time and place at which the sale is to be conducted, and the value at which the mortgagee has estimated the land.

Clause 4 inserts three new sections in Part VIII of the principal Act which relates to leases of land.

The proposed *section 104A* is an interpretation provision. *Subsection (1)* would, for the purposes of the succeeding provisions of Part VIII, except sections 117 to 121, define "lease", in relation to any dwellinghouse, to include any lease, underlease, agreement to lease, periodic tenancy, any other agreement or arrangement under which for valuable consideration any person is given the right to occupy the dwellinghouse, and any tenancy arising by operation or implication of law except a tenancy at sufferance. It would also assign corresponding meanings to "lessor" and "lessee", but extend each term to include the respective executors, administrators, and assigns. This extension would facilitate the drafting of a number of succeeding provisions.

The proposed *subsection* (2) would, for the purposes of this proposed section and the succeeding provisions of Part VIII, except sections 117 to 121, define "dwellinghouse" to mean any building or part of a building let as a separate dwelling. The term would include furniture and chattels, and any land and outbuildings, included in the tenancy, but would not include any licensed premises within the meaning of the Sale of Liquor Act 1962, any premises of more than 1.25 hectares if the lessee derives a substantial part of his income from the use of the land for agricultural purposes within the meaning of the Rent Appeal Act 1973, or any camp site within the meaning of the Camping Ground Regulations 1936.

The proposed *section 104B* would provide that the provisions of Part VIII of the principal Act shall, in relation to leases of dwellinghouses, bind the Crown.

The proposed *section 104G* would prevent any lessor or lessee of a dwellinghouse from contracting out of any right, power, privilege, or other benefit provided for by Part VIII of the principal Act, except where the dwellinghouse is let for a rent not exceeding 50 percent of the equitable rent. Where it is alleged that the rent does not exceed that figure it shall be for the person making that allegation to prove it by reference to a current assessment of the equitable rent made by a Rent Appeal Board under the Rent Appeal Act 1973.

Clause 5 makes a number of unrelated amendments to section 106 of the principal Act.

Subclauses (1) and (2) make drafting amendments consequent upon the definitions of "lessor" and "lessee" in the proposed section 104A, set out in clause 4 of the Bill.

Subclause (3) amends paragraph (b) of section 106. Paragraph (b) implies in every lease of land a covenant by the lessee to keep, and, at the termination of the lease, to yield up the demised premises in good and tenantable repair. Consequent upon the proposed *section 116D*, set out in clause 9 of this Bill, this subclause adds a proviso to paragraph (b) to the effect that the covenant set out in that paragraph is not to be implied in any lease of a dwellinghouse.

Clause 6 repeals section 107 of the principal Act, and substitutes a new section. The present section implies in every lease of land the following powers in the lessor:

(a) To enter upon the demised premises, at all reasonable times, to view their state of repair, and to serve upon the lessee a notice in writing specifying any defect discovered, and requiring him to repair the same within a reasonable period of time;

(b) Whenever the rent reserved is in arrear, to levy the same by distress; and

(c) Whenever the rent is in arrear for a period of 1 month, or the lessee is in breach of any term of the lease, to re-enter the demised premises and thereby determine the tenancy.

The proposed new section, while largely following the present provision, would differ from it in three respects. First, certain drafting amendments are proposed consequent upon the definitions of "lessor" and "lessee" in the proposed *section 104A* set out in clause 4 of the Bill. Second, consequent upon the proposed *section 107A* set out in clause 7 of this Bill, paragraph (b) has been omitted. Third, consequent upon the proposed *sections 116E and 116G*, set out in clause 10 of the Bill, it is proposed to add a proviso to the effect that the power set out in paragraph (a) shall not be implied in any lease of a dwellinghouse.

Clause 7 abolishes the right of a lessor to distrain the lessee's goods in respect of rent due.

Clause 8 makes two amendments to section 109 of the principal Act.

Subclause (1) prevents a lessee from contracting out of the protection given to him by subsection (1), which provides that where the lessor's consent is required to an assignment of the lessee's interest no fine or premium is to be payable in respect of that consent.

Subclause (2) makes a drafting amendment to subsection (3) consequent upon the definition of "lease", in relation to any dwellinghouse, in the proposed section 104A, set out in clause 4 of this Bill.

Clause 9 makes two amendments to section 110 of the principal Act.

Subclause (1) amends subsection (1A) by omitting the word "only". At present, subsection (1) of this section provides that where, in any lease, there is a provision to the effect that the lessee is not to assign or part with possession of the demised premises without the consent of the lessor, that provision is to be read subject to a proviso that the lessor shall not unreasonably withhold his consent. Subsection (1A) provides that if, in any such case, the lessor withholds his consent by reason only of the colour, race, or ethnic or national origins of any person he shall be deemed to have unreasonably withheld his consent. The use of the word "only" in this subsection means that this provision does not apply where the person's colour, race, or ethnic or national origins are only one of the reasons for the lessor withholding his consent.

The effect of omitting the word "only" is to apply subsection (1A) to any case where a person's colour, race, or ethnic or national origins are a reason for the lessor withholding his consent, whether or not they are the only reason. This is consistent with the approach adopted in the Race Relations Act 1971.

Subclause (2) makes a drafting amendment consequent upon the definition of "lease", in relation to any dwellinghouse, in the proposed section 104A, set out in clause 4 of the Bill.

Clause 10 inserts eleven new sections, relating to leases of dwellinghouses, in Part VIII of the principal Act.

The proposed *section 116A* is an interpretation provision. For the purposes of the proposed sections 116E, 116F, 116I, and 116J it would define "Court" to mean a Magistrate's Court, and any Magistrate's Court would have jurisdiction to hear and determine an application made under any of those sections.

The proposed *section 116B* would specify which of the proposed sections 116C to 116K would apply to leases entered into before the passing of this Bill.

Subsection (1) would provide that the proposed section 116H (1) (a) (implying a warranty by the lessor that the dwellinghouse is, at the commencement of the lease, in a fit and habitable condition) shall not apply to leases entered into before the passing of this Bill.

Subsection (2) would provide that the proposed section 116H (1) (b), 116H (2), and the proposed sections 116I to 116K shall not apply to leases entered into before the passing of this Bill for a period of 12 months. The effect would be to give lessors 12 months' grace in which to meet the new requirement to keep the dwellinghouse in a fit and habitable condition.

Subsection (3) would provide that the proposed sections 116C to 116K, except those referred to in subsection (1) or subsection (2), shall apply to all leases of dwellinghouses whether entered into before or after the passing of this Bill.

The proposed *sections 116C to 116J* would form a code prescribing the respective rights and obligations of the lessor and the lessee in respect of the maintenance of the dwellinghouse.

Section 116C would abolish the lessee's liability for waste.

Section 116D would imply in every lease of a dwellinghouse covenants by the lessee to keep the dwellinghouse in a clean and tidy condition, and to make good any damage caused to the dwellinghouse by himself, or by any person he permits to enter the dwellinghouse.

Section 116E would provide a remedy for the lessor where the lessee was in breach of either of the covenants implied by section 116D. The first step would be for the lessor to serve a notice on the lessee, under *subsection (3)*, specifying the nature of the breach complained of and requiring the lessee to remedy it within such period (being not less than 1 month) as the lessor may specify in the notice. If the lessee did not, within the specified period, or within such further period as the Court may allow, carry out the required work or serve a notice on the lessor denying the breach, the lessor would be entitled to do the necessary work himself and recover the cost from the lessee. If the lessee served a notice denying the breach, or if the lessor preferred not to do the work himself, the lessor could apply to the Court under *subsection (1)* for an order requiring the lessee to remedy the breach. On such an application the Court could order the lessee to carry out any work necessary to remedy the breach, and could also order him to pay to the lessor compensation for the breach.

Section 116F would provide a speedier remedy where, as a result of the lessess's breach, urgent work was required to avoid the risk of further damage to the dwellinghouse. In such a case the lessor would be entitled, without following the procedure set out in *section 116E*, to do the necessary work himself and to apply to the Court for an order requiring the lessee to reimburse him.

Section 116G would entitle a lessor to enter the dwellinghouse at all reasonable times to inspect its state of repair, cleanliness, and tidiness or to carry out any work required to be done by him.

Section 116H would imply in every lease of a dwellinghouse—

(a) A warranty by the lessor that the dwellinghouse was, at the commence- of the lease, in a fit and habitable condition for residential purposes; and

(b) A covenant by the lessor that he would throughout the term of the lease, keep the dwellinghouse in a fit and habitable condition for residential purposes.

The covenant in paragraph (b) would not limit or affect the lessee's obligations under the proposed *section 116D*, or oblige the lessor to rebuild or reinstate the dwellinghouse in the event of fire, earthquake or other disaster.

Section 116I would provide remedies for the lessee where the lessor was in breach of the warranty or covenant implied by *section 116H*. It follows in form the proposed *section 116E*, and the same procedure would be prescribed.

Subsection (4) would set out the matters to be taken into account by the Court in determining whether the dwellinghouse was in a fit and habitable condition for residential purposes.

Section 116J would provide a speedier remedy where, as a result of the lessor's breach, urgent work was required to avoid the risk of further damage to the dwellinghouse. It follows in form the proposed *section 116F*, and the same procedure would be prescribed.

Section 116K would render of no effect a notice purporting to terminate a lease given by the lessor in retaliation for the lessee exercising or commencing to exercise any of his remedies under the proposed *sections 116I and 116J*, or any other remedy to which the lessee may be entitled in the event of a breach

by the lessor of the warranty or the covenant implied by the proposed *section 116H*. Where the notice was given within 6 months of the lessee exercising, or commencing to exercise any such remedy, it would be for the lessor to show that his notice was not of no effect by virtue of this section.

Clause 11 inserts two new sections in Part IX of the principal Act, which relates to easements, restrictive stipulations and encroachments.

The proposed *section 129B* would make provision for relief in cases of landlocked land. The owner would be entitled to apply to the Court for an order granting reasonable access to the landlocked land. The terms "landlocked land", "owner", and "reasonable access" are defined in *subsection (1)*.

On an application under the proposed section the owner of each piece of land adjoining the landlocked land would be required to be joined as a defendant, and any person having an interest in the landlocked land, or in any other piece of land (whether or not adjoining the landlocked land) that may be affected if the application is granted, would be entitled to be heard.

If, after taking into account the matters specified in the proposed *subsection (5)*, the Court were of the opinion that the applicant should be granted reasonable access to the landlocked land, it could make an order under the proposed *subsection (6)*, on such terms and subject to such conditions as it thought fit in respect of any of the matters specified in the proposed *subsection (7)*. The Court would also be given power to make all necessary consequential orders.

Where the application was granted, the applicant would usually be required to bear the whole of the cost of the work necessary to create the access. However, the Court could require any other person to pay the whole or any part of that cost, if, having regard to the circumstances in which the landlocked land became landlocked, and to the conduct of the parties, it were of the opinion that it should do so.

Under *subsection (13)* the Court would have power to decline an application if it were of the opinion that the applicant was entitled and should be required to seek relief under section 124 of the Public Works Act 1928 (providing relief where the landlocked land was acquired from the Crown), or under section 418 or section 419 of the Maori Affairs Act 1953 (empowering the Maori Land Court to grant relief in certain cases of landlocked land). Subject to that provision, the new section would apply to all land, including Crown land and Maori land. However, the Court will not have power to grant access over any land comprised in a National Park or a public reserve, or over any railway line.

The proposed *section 129C* broadly embodies section 26A of the Fencing Act 1908, which provides that the occupier of any land on which is erected a building used for residential purposes may apply to a Magistrate's Court for an order requiring the occupier of any other piece of land to remove or trim any tree growing or standing on that other land which is unduly interfering with the reasonable enjoyment of the applicant's land for residential purposes. However, the new provision would differ from section 26A (which would be consequentially repealed) in three respects:

(a) Section 26A applies only in respect of trees. The new provision would enable an order to be made in respect of any tree or any structure. "Structure" is defined in *subsection (1)*:

(b) It has been held by the Supreme Court that an order cannot be made under section 26A on the ground of obstruction of a view. The new provision would allow an order to be made on that ground:

(c) Where an order is made under section 26A for the removal or trimming of any tree the cost of the work must be borne by the applicant for the order. Under the new provision the Court would have discretion to make whatever order it thought fit in respect of the cost of the work.

Clause 12 amends section 135 of the principal Act by repealing subsections (3) and (4), and substituting three new subsections. Section 135 provides that a power of attorney shall, notwithstanding its revocation by the donor's death or otherwise, continue in force in respect of anything done by the donee of the power in good faith until the donee has notice of the revocation. Subsections (2) and (3) provide that, if the donee of the power makes a statutory declaration to the effect that he has not, at that time, received notice of the revocation of the power, any person dealing with the donee may rely on that declaration.

It is now proposed to drop the requirement of a statutory declaration and substitute a certificate in one or other of the prescribed forms set out in the First Schedule to this Bill. Any person who wilfully or negligently gave a certificate which was false in a material respect would commit an offence and be liable to a fine not exceeding $100.

Clause 13 relates to repeals and savings.

The Imperial enactments set out in the Second Schedule, relating to waste, distress, and attornment, will cease to have effect in New Zealand on the passing of this Bill.

The *First Schedule* prescribes forms of certificate of non-revocation of a power of attorney required by clause 12.

The *Second Schedule* lists the Imperial enactments ceasing, by virtue of clause 13, to have effect in New Zealand on the passing of this Bill.

Hon. Dr Finlay

PROPERTY LAW AMENDMENT

ANALYSIS

A BILL INTITULED

An Act to amend the Property Law Act 1952

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

1. Short Title—This Act may be cited as the Property Law Amendment Act 1974, and shall be read together with and deemed part of the Property Law Act 1952* (hereinafter referred to as the principal Act).

2. Security for further advances—Section 80A of the principal Act (as inserted by section 2 of the Property Law Amendment Act 1959) is hereby amended by adding, as subsections (2) and (3), the following subsections:

"(2) Where a mortgage granted after the commencement of this subsection purports to secure advances to be made from time to time, whether upon current account or otherwise, it shall be lawful to specify in the mortgage a maximum amount up to which the sum for the time being owing under the mortgage shall rank in priority to any subsequent mortgage; and, where a maximum amount is so specified, the mortgage shall take effect accordingly notwithstanding any rule of law to the contrary, and notwithstanding that the sum for the time being owing under the mortgage may include money that has been repaid to the mortgagee and readvanced to or otherwise applied for the benefit of the mortgagor. Where a maximum amount is so specified, that amount may from time to time be varied, but no increase of that amount shall be binding on the mortgagee under any subsequent mortgage existing at the time of such variation unless consented to by him.

"(3) Where a mortgage granted after the commencement of this subsection secures the payment to the mortgagee of any money which he may be required to pay under any guarantee given by him to answer for an obligation entered into by the mortgagor with a third party, and the nature and extent of that obligation and the circumstances under which the mortgagee may be liable to honour his guarantee are set out in the mortgage, all money which the

*Reprinted 1970, Vol. 3, p. 2287
Amendment 1971, No. 121

mortgagee may subsequently be required to pay pursuant to that obligation shall, together with interest thereon, rank in priority to any subsequent mortgage:

"Provided that nothing in this subsection shall destroy or adversely affect in any way the priority or protection which is conferred by virtue of registration under the provisions of any Act on a subsequent mortgage in relation to a prior mortgage then unregistered."

3. Sale of mortgaged land by Registrar—(1) Section 99 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

"(1A) The applicant shall advise the Registrar in writing of the name and address of the mortgagor, and, if the land in respect of which the application is made is subject to a prior or subsequent mortgage and the applicant has actual notice of the name and address of any person who is entitled as mortgagee under that mortgage, of the name and address of that person."

(2) Section 99 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

"(2) As soon as practicable after receiving an application under this section the Registrar shall—

"(a) Fix a convenient time (being not more than 3 months and not less than 1 month from the date of the application) and a convenient place for the conduct of the sale;

"(b) Give written notice to any person (including the mortgagor) whose name and address has been supplied to him by the applicant under subsection (1A) of this section of the time and place at which the sale is to be conducted, and of the value at which the applicant has estimated the land to be sold;

"(c) Give such notice of the sale by advertisement in a newspaper circulating in the neighbourhood as he considers sufficient; and

"(d) Approve of proper conditions of sale, employ an auctioneer, and do all other things necessary for the proper conduct of the sale."

4. New sections inserted in principal Act—The principal Act is hereby amended by inserting in Part VIII, under the heading "General Provisions", the following sections:

"104A. **Interpretation**—(1) For the purposes of the succeeding sections of this Part of this Act, except sections 117 to 121,—

" 'Lease', in relation to any dwellinghouse, includes—

"(a) An original or derivative underlease, and an agreement for an underlease (whether or not the underlessee has become entitled to have his underlease granted);

"(b) A grant securing a rent by condition;

"(c) An agreement for a lease (whether or not the lessee has become entitled to have his lease granted);

"(d) A periodic tenancy;

"(e) Any other agreement or arrangement (whether oral or in writing) under which for valuable consideration in money or money's worth any person is given the right to occupy the dwellinghouse, whether or not the agreement or arrangement is expressed in the form of a licence or a grant of leave and licence for the use or occupation thereof; and

"(f) Any tenancy of the dwellinghouse arising by operation or implication of law, other than a tenancy at sufferance;—

but does not include a lease of any land on which a dwellinghouse is erected if the lessee is entitled (whether beneficially or as trustee), on or before the termination of the tenancy, to remove the dwellinghouse or to receive compensation in respect of it:

" 'Lessor' and 'lessee', in relation to a lease of a dwellinghouse, have corresponding meanings, but also, in relation to a lease of any land, include the respective executors, administrators, and assigns of the lessor and lessee.

"(2) For the purposes of this section and the succeeding sections of this Part of this Act, except sections 117 to 121, 'dwellinghouse', means any building or part of a building let as a separate dwelling; and includes any furniture or other chattels that may be let therewith; and also includes any land, outbuildings, or parts of buildings included in the tenancy; but does not include—

"(a) Any licensed premises within the meaning of the Sale of Liquor Act 1962; or

"(b) Any premises that include more than 1.25 hectares of land where the lessee's income or a substantial part thereof is derived from the use of that land for agricultural purposes within the meaning of the Rent Appeal Act 1973; or

"(c) Any camp site within the meaning of the Camping Ground Regulations 1936.

"104B. **Crown to be bound**—The provisions of this Part of this Act shall, in relation to leases of dwellinghouses, bind the Crown.

"104C. **Restrictions on contracting out**—(1) Subject to the provisions of subsection (2) of this section and of subsection (2) of section 109 of this Act, no covenant or agreement, whether entered into before or after the commencement of the Property Law Amendment Act 1974, shall, as from the commencement of that Act, have any force or effect to deprive the lessor or lessee of any dwellinghouse of any right, power, privilege, or other benefit provided for by this Part of this Act.

"(2) Nothing in subsection (1) of this section shall apply in respect of any lease of a dwellinghouse if the rent thereby reserved does not exceed 50 percent of the equitable rent of the dwellinghouse.

"(3) Where, in any proceeding under this Part of this Act, it is asserted by any person that the rent reserved by the lease of a dwellinghouse does not exceed 50 percent of the equitable rent of that dwellinghouse, it shall be for the person making that assertion to prove it by showing that the rent does not exceed 50 percent of the equitable rent of the dwellinghouse as determined within the preceding period of 12 months by a Rent Appeal Board acting under the provisions of the Rent Appeal Act 1973."

5. Covenants implied in leases—(1) Section 106 of the principal Act is hereby amended by omitting the words ", for himself, his executors, administrators, and assigns".

(2) Section 106 of the principal Act is hereby further amended by omitting, from paragraph (a) and from paragraph (b), the words "or they".

(3) Section 106 of the principal Act is hereby further amended by adding to paragraph (b) the following proviso:

"Provided that this covenant shall not be implied in any lease of a dwellinghouse."

6. Powers in lessor—The principal Act is hereby amended by repealing section 107, and substituting the following section:

"107. In every lease of land there shall be implied the following powers in the lessor:

"(a) That he may, by himself or his agents, at all reasonable times, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee a notice in writing of any defect, requiring him, within such reasonable period as may be specified in the notice, to repair the same in accordance with the covenant in that behalf contained or implied in the lease:

"Provided that this power shall not be implied in any lease of a dwellinghouse:

"(b) That whenever the rent or any part thereof, whether legally demanded or not, is in arrear for a period of 1 month, or whenever the lessee has failed to perform or observe any of the covenants, conditions, or stipulations contained or implied in the lease, and on the part of the lessee to be performed or observed, the lessor may re-enter upon the demised premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee therein, but without releasing him from liability in respect of the breach or non-observance of any such covenant, condition, or stipulation."

7. Abolition of lessor's right to distrain—(1) The principal Act is hereby amended by inserting, after section 107 (as substituted by section 6 of this Act), the following new section:

"107A. (1) No person shall be entitled to distrain for any rent due under any lease of land.

"(2) For the purposes of this section, 'lease', in relation to any land, shall have the meaning which would be assigned to it by section 104A of this Act if the land were a dwellinghouse.

"(3) Nothing in this section shall affect the manner in which any judgment debt may be enforced by any person."

(2) The following enactments are hereby consequentially repealed:

(a) The Distress and Replevin Act 1908:

(b) Section 31 of the Tenancy Act 1955.

8. No fine for licence to assign—(1) Section 109 of the principal Act is hereby amended by omitting from subsection (1) the words ", unless the lease contains an express provision to the contrary", and substituting the words "notwithstanding any express provision to the contrary".

(2) Section 109 of the principal Act is hereby further amended by omitting from subsection (3) the words "For the purposes of this section,", and substituting the words "Except in relation to any dwellinghouse, the".

9. Licence or consent not to be unreasonably withheld—(1) Section 110 of the principal Act is hereby amended by omitting from subsection (1A) (as inserted by section 3 of the Property Law Amendment Act 1965) the word "only".

(2) Section 110 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

"(2) Except in relation to any dwellinghouse, the term 'lease' has the meaning assigned to it by section 117 of this Act."

10. New heading and sections inserted in principal Act—The principal Act is hereby amended by inserting, after section 116, the following new heading and sections:

"Leases of Dwellinghouses

"116A. **Interpretation**—For the purposes of sections 116E, 116F, 116I, and 116J of this Act, 'Court' means a Magistrate's Court, and any Magistrate's Court shall have jurisdiction to hear and determine an application made under any of those sections accordingly.

"116B. **Leases to which sections 116C to 116K apply**—(1) Nothing in paragraph (a) of subsection (1) of section 116H of this Act shall apply to any lease entered into before the commencement of the Property Law Amendment Act 1974.

"(2) Nothing in paragraph (b) of subsection (1) or subsection (2) of section 116H, or sections 116I to 116K of this Act shall apply to any lease entered into before the commencement of the Property Law Amendment Act 1974 until the day 12 months after the commencement of that Act.

"(3) The provisions of sections 116C to 116G, of this Act shall apply to any lease of a dwellinghouse entered into before or after the commencement of the Property Law Amendment Act 1974.

"116C. **Lessee not to be liable for waste**—(1) A lessee of a dwellinghouse shall not be liable for waste, whether voluntary, permissive, or equitable.

"(2) Nothing in subsection (1) of this section shall—

"(a) Limit or affect the lessee's obligations under either of the convenants implied in the lease by section 116D of this Act; or

"(b) Entitle the lessee to make any additions, alterations, or improvements to the dwellinghouse without the prior consent of the lessor.

"116D. **Covenants implied on part of lessees of dwellinghouses**—In every lease of a dwellinghouse there shall be implied the following covenants by the lessee:

"(a) That he will, at all times during the continuance of the tenancy, keep, and, at the termination of the lease, yield up the dwellinghouse (including any grounds leased with the dwellinghouse) in a clean and tidy condition and free from any accumulation of tins, bottles, paper, or other rubbish or refuse of any kind, having regard to the condition of the dwellinghouse at the commencement of the lease; and

"(b) That he will as soon as practicable make good any damage to the dwellinghouse (including damage to any drains, fences, paths, lawns, gardens, or grounds, or to any clotheslines or other facilities provided in the grounds, or to any conduits serving the dwellinghouse, or to any fixtures, fittings, appliances, furniture, drapes, blinds, or other chattels or facilities, leased with the dwellinghouse) caused by him or by any person permitted by him to enter the dwellinghouse.

"116E. **Lessor's remedies where dwellinghouse not kept in clean and tidy condition, etc.**—(1) Where the lessee of any dwellinghouse is in breach of either of the covenants implied in the lease by section 116D of this Act, the lessor may, without prejudice to any other remedy or right to which he may be entitled otherwise than under this section, apply to the Court for an order in accordance with this section.

"(2) On an application made under subsection (1) of this section, the Court may, if it is satisfied that the lessee is in breach of either of the covenants referred to in that subsection, make an order—

"(a) Requiring the lessee, within such period as the Court may specify in the order, to carry out all such work as the Court considers necessary or desirable to put the dwellinghouse in a clean and tidy condition having regard to its condition at the commencement of the lease, or (as the case may require) to make good any damage to the dwellinghouse caused by the lessee, or by any person permitted by him to enter the dwellinghouse:

"(b) Requiring the lessee to pay to the lessor such sum as the Court considers reasonable by way of compensation for the breach.

"(3) Notwithstanding anything in subsection (1) of this section, no application may be made under that subsection unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and requiring the lessee, within such period (being not less than 1 month) as may be specified in the notice, to put the dwellinghouse in a clean and tidy condition having regard to its condition at the commencement of the lease, or (as the case may require) to make good any damage to the dwellinghouse caused by the lessee, or by any person permitted by him to enter the dwellinghouse.

"(4) Notwithstanding any of the foregoing provisions of this section, if, within the period specified in any notice served on the lessee under subsection (3) of this section, or within such further period as the Court on application made to it in that behalf may allow, the lessee has not either—

"(a) Put the dwellinghouse in a clean and tidy condition having regard to its condition at the commencement of the lease, or (as the case may require) made good any damage to the dwellinghouse caused by the lessee, or by any person permitted by him to enter the dwellinghouse; or

"(b) Served on the lessor a notice in writing denying the breach,—

the lessor may forthwith carry out any work necessary or desirable to put the dwellinghouse in such condition, or (as the case may require) to make good any such damage, and

recover the reasonable cost of so doing from the lessee, whether by way of deduction from money paid on account of rent or otherwise.

"(5) If, on an application made under this section, the Court is satisfied that the dwellinghouse has been damaged by any person after the commencement of the lease, it shall be for the lessee to prove that the damage was not caused by the lessee or by any person permitted by him to enter the dwellinghouse.

"116F. **Lessor's remedies where urgent work required**—(1) Notwithstanding anything in section 116E of this Act, in any case where the lessee is in breach of either of the covenants referred to in subsection (1) of that section and, as a result of that breach, urgent work on the dwellinghouse is necessary to avoid the risk of further damage, the lessor may enter the dwellinghouse and carry out that work, and apply to the Court for an order requiring the lessee to pay to the lessor the reasonable cost of so doing.

"(2) On an application made under subsection (1) of this section, the Court shall, if it is satisfied—

"(a) That the work in respect of which the application is made has been carried out by the lessor;

"(b) That at the time when the work was carried out by the lessor it was urgently required to avoid the risk of further damage to the dwellinghouse;

"(c) That the work was made necessary as a result of the breach by the lessee of either of the covenants implied in the lease by section 116D of this Act; and

"(d) That in all the circumstances the lessor acted reasonably in carrying out the work,—

make an order requiring the lessee to pay to the lessor the reasonable cost of carrying out the work.

"116G. **Lessor may enter dwellinghouse to view condition or carry out work**—In every lease of a dwellinghouse there shall be implied in the lessor the power to enter the dwellinghouse at all reasonable times, by himself or his agent,—

"(a) To view the state of repair, cleanliness, and tidiness thereof; or

"(b) To carry out any work on the dwellinghouse required by or under this Act to be carried out by him.

"116H. **Warranty of habitability and covenant to repair implied**—(1) In every lease of a dwellinghouse there shall be implied on the part of the lessor,—

"(a) A warranty that the dwellinghouse is at the commencement of the tenancy in a fit and habitable condition for residential purposes:

"(b) A covenant that he will, at all times during the continuance of the tenancy, keep the dwellinghouse in a fit and habitable condition for residential purposes.

"(2) Notwithstanding anything in subsection (1) of this section, the covenant implied in a lease by paragraph (b) of that subsection shall not be construed—

"(a) As limiting or affecting the lessee's obligations under either of the covenants implied in the lease by section 116D of this Act:

"(b) As requiring the lessor to rebuild or reinstate the dwellinghouse in the event of damage or destruction by fire, flood, lightning, storm, tempest, earthquake, or other inevitable accident.

"116I. **Lessee's remedies where dwellinghouse not in a fit and habitable condition**—(1) Where the lessor of any dwellinghouse is in breach of the warranty implied in the lease by paragraph (a) of subsection (1) of section 116H of this Act, or of the covenant implied into the lease by paragraph (b) of that subsection, the lessee may, without prejudice to any other remedy or right to which he may be entitled otherwise than under this section, apply to the Court for an order in accordance with this section.

"(2) It shall not be a defence to an application made under this section in respect of a breach of the warranty implied in the lease by paragraph (a) of subsection (1) of section 116H of this Act to show that the lessee inspected or was invited to inspect the dwellinghouse before the commencement of the lease.

"(3) On an application made under subsection (1) of this section, the Court may, if it is satisfied that the lessor is in breach of the warranty or covenant referred to in that subsection, make an order—

"(a) Requiring the lessor, within such period as the Court may specify in the order, to carry out all such work as the Court considers necessary to put the dwellinghouse in a fit and habitable condition for residential purposes:

"(b) Requiring the lessor to pay to the lessee such sum as the Court considers reasonable by way of compensation for the breach:

"(c) Reducing the rent that would otherwise be payable under the lease by such amount as the Court may consider reasonable for the period during which the work required under paragraph (a) of this subsection is being carried out.

"(4) In determining for the purposes of this section whether a dwellinghouse is in a fit and habitable condition for residential purposes the Court shall have regard to the following matters, namely:

"(a) The general state of repair and decoration of the dwellinghouse;

"(b) The stability of the dwellinghouse;

"(c) Whether the dwellinghouse is damp;

"(d) Whether the dwellinghouse is well-ventilated;

"(e) The degree (if any) to which the dwellinghouse admits natural light;

"(f) The bathroom and laundry facilities provided in the dwellinghouse, and the quality and quantity of the water supply to the dwellinghouse;

"(g) The drainage and other facilities for the disposal of waste-water from the dwellinghouse;

"(h) The sanitary appliances provided in the dwellinghouse, and the facilities for the disposal of sewage from the dwellinghouse;

"(i) The facilities provided in the dwellinghouse for the storage, preparation, and cooking of food; and

"(j) Such other matters as the Court considers relevant.

"(5) Notwithstanding anything in subsection (1) of this section, no application may be made under that subsection unless and until the lessee serves on the lessor a notice specifying the particular breach complained of, and requiring the lessor, within such period (being not less than 1 month) as may be specified in the notice, to put the dwellinghouse in a fit and habitable condition for residential purposes.

"(6) Notwithstanding any of the foregoing provisions of this section, if, within the period specified in any notice served on the lessor under subsection (5) of this section, or within such further period as the Court on application made to it in that behalf may allow, the lessor has not either—

"(a) Put the dwellinghouse in a fit and habitable condition for residential purposes; or

"(b) Served on the lessee a notice in writing denying the breach;—

the lessee may forthwith carry out any work necessary to put the dwellinghouse in a fit and habitable condition for residential purposes, and recover the reasonable cost of so doing from the lessor, whether by way of set-off against rent thereafter accruing due, or otherwise.

"116J. **Lessee's remedies where urgent work required**—(1) Notwithstanding anything in section 116I of this Act, in any case where the lessor is in breach of the warranty implied in the lease by paragraph (a) of subsection (1) of section 116H of this Act, or of the covenant implied in the lease by paragraph (b) of that subsection, and, as a result of that breach, urgent work on the dwellinghouse is necessary to avoid the risk of further damage, the lessee may carry out that work and apply to the Court for an order requiring the lessor to pay to the lessee the reasonable cost of so doing.

"(2) On an application made under subsection (1) of this section, the Court shall, if it is satisfied—

"(a) That the work in respect of which the application is made has been carried out by the lessee;

"(b) That at the time when the work was carried out by the lessee it was urgently required to avoid the risk of further damage to the dwellinghouse;

"(c) That the work was made necessary as a result of the breach by the lessor of the warranty or the covenant referred to in subsection (1) of this section; and

"(d) That in all the circumstances the lessee acted reasonably in carrying out the work,—

make an order requiring the lessor to pay to the lessee the reasonable cost of carrying out the work.

"116K. **Notice terminating lease void in certain cases**—(1) Where a lessee under a lease of a dwellinghouse serves on the lessor a notice under subsection (5) of section 116I of this Act, or applies to the Court for an order under that section, or applies to the Court for an order under section 116J of this Act, or exercises or commences to exercise any other remedy to which he may be entitled in the event of a breach by the lessor of the warranty or the covenant implied in the lease by subsection (1) of section 116H of this Act, and by reason of the lessee so doing the lessor serves on the lessee a notice purporting to determine the lease, the lessor's notice shall be of no effect.

"(2) In any case where it is alleged that a notice purporting to determine a lease of a dwellinghouse is, by virtue of subsection (1) of this section, of no effect and it is shown that the notice was served within 6 months of the lessee exercising or commencing to exercise any of the remedies referred to in that subsection, it shall be for the lessor to prove that his notice is not of no effect by virtue of that subsection."

11. New headings and sections inserted in principal Act—(1) The principal Act is hereby amended by omitting from Part IX the heading "Easements, Restrictive Stipulations, and Encroachments", and substituting the heading "Easements, Restrictive Stipulations, and Matters Affecting Neighbouring Land".

(2) The principal Act is hereby further amended by inserting in Part IX, after section 129A (as inserted by section 3 of the Property Law Amendment Act 1963), the following new headings and sections:

"Landlocked Land

"129B. **Reasonable access may be granted in cases of landlocked land**—(1) For the purposes of this section,—

"(a) A piece of land shall be deemed to be landlocked, if—

"(i) The piece of land has no frontage to an existing road or street; and

"(ii) The piece of land does not abut upon any public navigable river or lake, or upon the seashore, within the meaning of section 126 of the Public Works Act 1928, or (in a case where the piece of land does so abut) the Court is not satisfied that reasonable access is afforded to the land by the river, lake, or sea; and

"(iii) There is not appurtenant to the piece of land any easement affording reasonable access to the piece of land from any existing road, street, public navigable river, or lake, or from the seashore:

"(b) 'Owner', in relation to any landlocked land, means the owner of the legal estate in fee simple, except where the landlocked land is leased to any person for a term of not less than 21 years, in which case the term 'owner' means that other person:

"(c) 'Reasonable access' means access of such nature and quality as may be reasonably necessary to enable the occupier for the time being of the landlocked land to use and enjoy that land for any purpose for which the land may be used in accordance with the provisions of any right, permission, authority, consent, approval, or dispensation enjoyed or granted under the provisions of the Town and Country Planning Act 1953.

"(2) The owner of any piece of land that is landlocked (in this section referred to as the landlocked land) may apply at any time to the Court for an order in accordance with this section.

"(3) On an application made under this section—

"(a) The owner of each piece of land adjoining the landlocked land shall be joined as a defendant to the application:

"(b) Every person having any estate or interest in the landlocked land, or in any other piece of land (whether or not that piece of land adjoins the landlocked land) that may be affected if the application is granted, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, easement, contract, or other instrument affecting or relating to any such land, and the local authority concerned, shall be entitled to be heard in relation to any application for or proposal to make any order under this section.

"(4) For the purposes of subsection (3) of this section the Court may, if in its opinion notice of the application or proposal should be given to any person mentioned in that subsection, direct that such notice as it thinks fit shall be given to that person by the applicant or by any other person.

"(5) In considering an application under this section the Court shall have regard to—

"(a) The nature and quality of the access (if any) to the landlocked land that existed when the applicant purchased or otherwise acquired the land;

"(b) The circumstances in which the landlocked land became landlocked;

"(c) The conduct of the applicant and the other parties, including any attempts that they may have made to negotiate reasonable access to the landlocked land;

"(d) The hardship that would be caused to the applicant by the refusal to make an order in relation to the hardship that would be caused to any other person by the making of the order; and

"(e) Such other matters as the Court considers relevant.

"(6) If, after taking into consideration the matters specified in subsection (5) of this section, and all other matters that the Court considers relevant, the Court is of the opinion that the applicant should be granted reasonable access to the landlocked land, it may make an order for that purpose—

"(a) Vesting in the owner of the legal estate in fee simple in the landlocked land the legal estate in fee simple in any other piece of land (whether or not that piece of land adjoins the landlocked land):

"(b) Attaching and making appurtenant to the landlocked land an easement over any other piece of land (whether or not that piece of land adjoins the landlocked land).

"(7) Any order under this section may be made upon such terms and subject to such conditions as the Court thinks fit in respect of—

"(a) The payment of compensation by the applicant to any other person;

"(b) The exchange of any land by the applicant and any other person;

"(c) The fencing of any land, and the upkeep and maintenance of any fence;

"(d) The upkeep and maintenance of any land over which an easement is to be granted;

"(e) The carrying out of any survey that may be required by the District Land Registrar before he will issue, in respect of any piece of land affected by the order, a certificate of title free of any limitations as to title or parcels within the meaning of Part XII of the Land Transfer Act 1952;

"(f) The time in which any work necessary to give effect to the order is to be carried out;

"(g) The execution, stamping, and delivery of any instrument; and

"(h) Such other matters as the Court considers relevant.

"(8) Every order made under subsection (6) of this section shall provide that the reasonable cost of carrying out any work necessary to give effect to the order shall be borne by the applicant for the order, unless the Court is satisfied, having regard to the matters specified in paragraphs (b) and (c) of subsection (5) of this section, that it is just and equitable to require any other person to pay the whole or any specified share of the cost of such work.

"(9) Where the Court makes an order under this section, the Court may, in the order—

"(a) Declare any estate or interest in any piece of land affected by the order to be free of any mortgage, lease, easement, or other encumbrance affecting that piece of land, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, easement, contract, or other instrument affecting or relating to that piece of land:

"(b) Declare that the legal estate in fee simple in any piece of land to be vested in the owner of the legal estate in fee simple in the landlocked land shall so vest subject to the same terms, conditions, liabilities, and encumbrances as those on and subject to which the owner holds the estate in the landlocked land, and shall be subject in all respects to any instrument of mortgage, charge, lease, sublease, or other encumbrance affecting that estate in the landlocked land as if the piece of land to be vested had been expressly included in the instrument.

"(10) Where the Court makes an order (in this subsection referred to as the principal order) under subsection (6) of this section, it may, at the same time or at any other time on an application made to it in that behalf, make—

"(a) An order authorising any person named in the order, his agents, employees, and contractors, with or without animals, vehicles, aircraft, hovercraft, and any mode of conveyance and any equipment, to enter upon any piece of land specified in the order for the purpose of carrying out any work necessary to give effect to the principal order:

"(b) Such other consequential order as the Court may think necessary or desirable to give full effect to the principal order.

"(11) Any order made under subsection (5) of this section may be registered as an instrument under the Land Transfer Act 1952, the Deeds Registration Act 1908, or the Mining Act 1971, as the case may require.

"(12) This section shall bind the Crown, and shall apply to all land, including Maori land and Crown land:

"Provided that the Court shall not have power under this section to grant reasonable access to any land over—

"(a) Any land that is comprised in any National Park within the meaning of the National Parks Act 1952; or

"(b) Any land that is comprised in any public reserve within the meaning of the Reserves and Domains Act 1953; or

"(c) Any railway line within the meaning of the Government Railways Act 1949.

"(13) Notwithstanding any of the foregoing provisions of this section, on an application made under this section the Court may decline to make an order if it is of the opinion, having regard to all the circumstances of the case, that the applicant is entitled and should be required to seek relief under section 124 of the Public Works Act 1928, or under section 418 or section 419 of the Maori Affairs Act 1953.

"(14) Nothing in Part XXV of the Municipal Corporations Act 1954 or Part II of the Counties Amendment Act 1961 shall apply to any transfer, exchange, or other disposition of any land made in pursuance of an order of the Court made under this section.

"Trees and Structures on Neighbouring Land

"129c. Magistrate's Court may order removal or trimming of trees, or removal or alteration of structures injuriously affecting neighbour's land—(1) For the purposes of this section,—

" 'Structure', in relation to any land, means—

"(a) Any building, wall, fence, or other improvement erected on the land by any person (not being the Crown) otherwise than pursuant to a building permit issued by the local authority concerned; or

"(b) Any building, wall, fence, or other improvement erected on the land by the Crown, not being a building, wall, fence, or other improvement for which a building permit from the local authority

concerned would have been necessary if that building, wall, fence, or other improvement had been erected on the land by any other person:

"'Tree' includes any shrub or plant.

"(2) The occupier of any land on which is erected any building used for residential purposes may at any time apply to a Magistrate's Court for an order requiring the occupier of any other land to remove or trim any trees growing or standing on that other land, or to remove, repair, or alter any structure erected on that land.

"(3) Where the occupier of that other land is not the owner thereof both the occupier and the owner shall be joined as defendants to any such application.

"(4) On any such application the Court may make such order as it thinks fit, upon and subject to such conditions as it thinks fit, if, having regard to all the circumstances of the case, the Court considers the order to be fair and reasonable, and to be necessary to remove or prevent, or to prevent the recurrence of,—

"(a) Any undue interference with the reasonable enjoyment of the applicant's land for residential purposes; or

"(b) Any undue obstruction of any view that an occupier would otherwise be able to enjoy from the applicant's land or from any building used for residential purposes erected on that land.

"(5) The conditions of any such order may, if the Court thinks fit, include conditions requiring the applicant to give security or indemnity in respect of any costs, expenses, or damage.

"(6) The Court shall not make an order under this section unless it is satisfied—

"(a) That the interference or obstruction involves injury or annoyance to the applicant or to some other person on the applicant's land, or actual or potential danger to life or health or property; and

"(b) That the hardship that would be caused to the applicant or to any other person by the refusal to make the order is greater than the hardship that would be caused to the defendant or to any other person by the making of the order.

"(7) An order may be made under this section whether or not the interference or obstruction amounts to a legal

nuisance, and whether or not it could be the subject of any proceedings otherwise than under this section.

"(8) In determining whether or not to make an order under this section the Court shall have regard to the time when the applicant became the occupier of his land in relation to the time when the interference or obstruction commenced, but if the Court thinks fit, having regard to all the circumstances of the case, an order may be made notwithstanding that the applicant became the occupier of his land after the interference or obstruction commenced.

"(9) Where the Court makes an order under this section for the removal or trimming of any tree, or for the removal, repair, or alteration of any structure, it may make such further order as it thinks just between the parties in respect of the payment of the reasonable cost of that removal, trimming, repair, or alteration, and of any necessary work incidental thereto.

"(10) If an order made under this section in respect of the removal or trimming of any tree, or of the removal, repair, or alteration of any structure, is not duly complied with within 1 month after the date of the order, or within such longer period as may be specified in the order or allowed by the Court, the applicant for the order may at any time thereafter cause the land in respect of which the order was made to be entered upon and the work necessary to give effect to the order to be carried out; and, unless the Court otherwise orders, any order of the Court made under subsection (9) of this section (not being an order requiring the defendant to meet the whole of the cost referred to in that subsection) shall be vacated, and the applicant shall be entitled to recover from the defendant the whole of the reasonable cost of the work necessary to give effect to the Court's order:

"Provided that, unless the parties otherwise agree, the applicant shall not exercise the rights conferred by this subsection except with the leave of the Court, which may be granted upon or subject to such conditions as the Court thinks fit, whether as to security or indemnity against any costs, expenses, or damage, the avoidance of or making good of any injury or damage, the disposal of the trees or structure or any part thereof, or otherwise.

"(11) This section shall bind the Crown, and shall apply to all land, including Maori land, Crown land, and public reserves.

12. Certificate of non-revocation of power of attorney—(1) Section 135 of the principal Act is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

"(3) A certificate in the form numbered 1 in the Eighth Schedule to this Act, or to the like effect, shall, if given by any such attorney (not being a corporation aggregate) immediately before or at any time after any act done or thing suffered by the attorney, be taken to be conclusive proof of the non-revocation of the power of attorney at the time when the act was done or the thing suffered in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of the death of the donor of the power or other revocation.

"(4) Where the donee of the power is a corporation aggregate, a certificate in the form numbered 2 in the Eighth Schedule to this Act, or to the like effect, if given by a director, manager, secretary, or other officer duly authorised in that behalf by the corporation, immediately before or at any time after any act done or thing suffered by the attorney, shall be taken to be conclusive proof of the non-revocation of the power of attorney at the time when the act was done or the thing suffered in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of the death of the donor of the power or other revocation.

"(4A) Every person commits an offence and is liable on summary conviction to a fine not exceeding $100 who wilfully or negligently signs any certificate for the purposes of this section if the certificate is false in a material respect."

(2) The principal Act is hereby further amended by adding the Eighth Schedule set out in the First Schedule to this Act.

13. Repeals and savings—(1) As from the passing of this Act the enactments specified in the Second Schedule to this Act shall, to the extent shown in that Schedule, cease to have effect as part of the law of New Zealand.

(2) The provisions of the Acts Interpretation Act 1924 relating to the repeal of Acts shall apply to the enactments specified in the Second Schedule to this Act, so far as they were in force in New Zealand immediately before the commencement of this Act, as if they were Acts of the General Assembly of New Zealand.

(3) The following enactments are hereby repealed:

(a) Section 26A of the Fencing Act 1908 (as inserted by section 2 of the Fencing Amendment Act 1955):

(b) Section 2 of the Fencing Amendment Act 1955.

SCHEDULES

FIRST SCHEDULE

Section 12

NEW EIGHTH SCHEDULE TO PRINCIPAL ACT

"EIGHTH SCHEDULE

Section 135

*Form 1

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, [*Full name*], of [*Place of residence*] in New Zealand, [*Occupation*], *hereby certify*:

1. That by deed dated [*Date of instrument creating the power of attorney*] [*Full name of donor of power of attorney*], of [*Place of residence of donor*], in New Zealand, [*Occupation of donor*] appointed me his attorney on the terms and subject to the conditions set out in the said deed.

2. That at the date hereof I have not received any notice or information of the revocation of that appointment by the death of the said [*Full name of the donor*] or otherwise.

Signed at ..... this ..... day of ..... 19.....

*NOTE—This form should not be used if the person holding the power of attorney is a corporation aggregate.

*Form 2

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, [*Full name*], of [*Place of residence*] in New Zealand, [*Occupation*], hereby certify:

1. That I am a[n] director [*or* manager *or* secretary *or* officer] of the [*Full name of corporation holding power of attorney*], a duly incorporated company [*or* society *or* association] having its registered office [*or* principal place of business] at [*Address of registered office or principal place of business*], and as such am authorised to give this certificate.

2. That by deed dated [*Date of instrument creating the power of attorney*], [*Full name of donor of power of attorney*], of [*Place of residence of donor*], in New Zealand, [*Occupation of donor*] appointed the said [*Full name of corporation*] his attorney on the terms and subject to the conditions set out in the said deed.

3. That to the best of my knowledge and belief neither the said [*Full name of corporation*] nor any servant or agent of the corporation has received any notice or information of the revocation of that appointment by the death of the said [*Full name of donor*] or otherwise.

Signed at ..... this ..... day of ..... 19.....

*NOTE—This form should be used only if the person holding the power of attorney is a corporation aggregate.

Section 13

SECOND SCHEDULE

ENACTMENTS OF THE PARLIAMENTS OF ENGLAND AND GREAT BRITAIN CEASING TO HAVE EFFECT IN NEW ZEALAND

Session and Chapter	Title or Short Title	Extent to Which Ceasing to Have Effect
52. Hen. 3 (Stat. Marl.) c. 1	Of wrongful distresses, or defiances of the King's Courts	The whole chapter
52. Hen. 3 (Stat. Marl.) c. 23	Remedy against accountants. Farmers shall do no waste. Remedy thereon	So much of the chapter as relates to the commission of waste by farmers
6. Edw. 1 (Stat. Glouc.) c. 5	Action of waste extended	The whole chapter
13. Edw. 1 (Stat. Westm. sec) c. 14	The process in an action of waste. A writ of inquiry of waste	The whole chapter
13. Edw. 1 (Stat. Westm. sec.) c. 22	Waste between jointenants, and tenants in common	The whole chapter
32. Henry 8 c. 34	Graunties of Reversions	The whole chapter
2. Will. & Mar. (Sess 1) c. 5.	An Act for enabling the sale of goods distrained for rent in case the rent be not paid in a reasonable time	The whole Act
4 & 5 Anne c. 3	An Act for the amendment of the law and the better advancement of justice	Sections 9, and 10
8. Anne c. 18	The Landlord and Tenant Act 1709	The whole Act
4. Geo. 2 c. 28	The Landlord and Tenant Act 1730	The whole Act
11. Geo. 2 c. 19	The Distress for Rent Act 1737	The whole Act

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