

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 6 June 1975.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

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House of Representatives, 3 September 1975.

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Hon. Dr Finlay

PROPERTY LAW AMENDMENT

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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:

5

1. Short Title—This Act may be cited as the Property Law Amendment Act (1974) 1975 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 anything in section 8 of the Moneylenders Amendment Act 1933 or 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

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

5 "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
10 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
15 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
20 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—

25 "(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;

30 "(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;

35 "(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."

40 **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,—

Struck Out

- “‘Lease’, in relation to any dwellinghouse, includes— 5
- “(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; 10
- “(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 15
(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 20
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;— 25
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 30
of it:

New

- “‘Lease’, in relation to any dwellinghouse, includes an underlease, an agreement for lease or underlease, a 35
periodic tenancy, a tenancy arising by operation or implication of law (other than a tenancy at sufferance), and any other agreement or arrangement (whether oral or in writing) under which for valuable consideration in money or money’s worth 40
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 of the dwellinghouse; but does not include—
- “(a) A lease of any land on which a dwellinghouse 45
is erected if the lessee is entitled (whether beneficially or as trustee), on or before the termination of the

New

tenancy, to remove the dwellinghouse or to receive compensation in respect of it:

5 “(b) A licence to occupy within the meaning of section 2 of the Companies Amendment Act 1964:

“(c) A lease under which the lessor, or, where more persons than one are entitled as lessor, any of those persons is also entitled as lessee:

10 “(d) A lease to which Part II of the Unit Titles Act 1972 for the time being applies.

“‘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, successors in title and assigns of the lessor and lessee.

15 “(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
20 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

25 “(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

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

New

35 “(3) For the purposes of sections 104D and 104E 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 either of those sections accordingly.

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

40 “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) 1975 shall, as from
45 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 granted in accordance with an order made under section 104D or section 104E of this Act, or 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. 5

“(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. 15

New

“104D. Leases of dwellinghouses intended to be demolished for public works, etc.—(1) This section applies to— 20

“(a) Any dwellinghouse on land owned by the Crown and held for future public works; and

“(b) Any dwellinghouse on land owned by a local authority and held for future urban renewal or redevelopment; and 25

“(c) Any dwellinghouse on land, owned by any person other than the Crown or any local authority, that is—

“(i) Designated for a public work in an operative or proposed district scheme under the Town and Country Planning Act 1953; or 30

“(ii) Made subject to a notice of intention to take the land under the Public Works Act 1928; or

“(iii) Made subject to the powers conferred by a middle-line proclamation issued under that Act; or 35

“(iv) Included in a reclamation or a comprehensive urban renewal area under Part II or Part IIA of the Urban Renewal and Housing Improvement Act 1945. 40

“(2) Any person entitled and proposing to grant a lease of any dwellinghouse to which this section applies may, at

New

any time before granting the lease, apply to the Court for an order authorising the leasing of the dwellinghouse in accordance with this section.

5 “(3) On any application made to it under subsection (2) of this section the Court may make an order authorising the leasing of the dwellinghouse for any period not exceeding 6 months, subject to such conditions as to the payment of rent, the carrying out of repairs, and other matters as the Court
10 thinks fit.

“(4) The Court shall not make an order under subsection (3) of this section unless it is satisfied—

15 “(a) That the dwellinghouse complies with all statutory and local body requirements relating to public health, and to the provision of safeguards against and means of warning and escape in case of fire,
so far as they apply to the dwellinghouse; and

20 “(b) That because of the prospective demolition, re-development, or renovation of the dwellinghouse it would be unreasonable to require a lessor of the dwellinghouse to put it in a fit and habitable condition for residential purposes or to keep it in that condition while it is leased.

25 “(5) Neither the warranty set out in paragraph (a) of subsection (1) of section 116H of this Act nor the covenant set out in paragraph (b) of that subsection shall be implied in any lease granted in accordance with an order made under this section.

30 “(6) Notwithstanding anything in subsection (3) of this section, the Court may from time to time make a further order in accordance with this section authorising the leasing of the dwellinghouse for a further period not exceeding 6 months.”

35 **“104E. Leases of dwellinghouses where lessor intends to redevelop, etc.—**(1) Any person entitled and proposing to grant a lease of any dwellinghouse pending its demolition, removal, rebuilding, or renovation may, at any time before granting the lease, apply to the Court for an order authorising the leasing of the dwellinghouse in accordance with this
40 section.

“(2) On any application made to it under subsection (1) of this section the Court may make an order authorising the leasing of the dwellinghouse for any period not exceeding”

New

6 months, subject to such conditions as to the payment of rent, the carrying out of repairs, and other matters as the Court thinks fit.

“(3) The Court shall not make an order under subsection (2) of this section unless it is satisfied—

“(a) That the applicant intends to demolish, remove, rebuild, or renovate the dwellinghouse within a reasonable period; and

“(b) That the dwellinghouse complies with all statutory and local body requirements relating to public health, and to the provision of safeguards against and means of warning and escape in case of fire, so far as they apply to the dwellinghouse; and

“(c) That because of the prospective demolition, removal, rebuilding, or renovation of the dwellinghouse it would be unreasonable to require a lessor of the dwellinghouse to put it in a fit and habitable condition for residential purposes or to keep it in that condition while it is leased.

“(4) For the purposes of paragraph (a) of subsection (3) of this section the Court may require the applicant to produce any plans, specifications, contracts, or other evidence of his intention to demolish, remove, rebuild, or renovate the dwellinghouse as it may specify.

“(5) Neither the warranty set out in paragraph (a) of subsection (1) of section 116H of this Act nor the covenant set out in paragraph (b) of that subsection shall be implied in any lease granted in accordance with an order made under this section.

“(6) Notwithstanding anything in subsection (2) of this section, the Court may from time to time make a further order in accordance with this section authorising the leasing of the dwellinghouse for a further period not exceeding 6 months:

“Provided that the total period during which the leasing of a dwellinghouse is authorised under this section shall not exceed 2 years.

“104F. **Rent Appeal Act 1973 amended**—(1) Section 6 (1) of the Rent Appeal Act 1973 is hereby amended by adding the following proviso:

“Provided that no application may be made under this subsection in respect of a dwellinghouse that is leased in accordance with an order of the Court made under section 104D or section 104E of the Property Law Act 1952.”

New

“(2) Section 9 of the Rent Appeal Act 1973 is hereby amended by inserting, after subsection (1), the following subsection:

5 “(1A) An assessment made under this Act fixing the equitable rent of a dwellinghouse shall be deemed to be cancelled if a Magistrate’s Court makes an order under section 104D or section 104E of the Property Law Act 1952 authorising the leasing of the dwellinghouse.”

10 **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”.

15 (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.”

20 **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:

25 “(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:

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

35 “(b) That whenever the rent or any part thereof, whether legally demanded or not, is in arrear for a period of (1 month) 21 days, 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

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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: 5

New

“(c) That whenever the rent or any part thereof is in arrear he may levy the same by distress: 10
 “Provided that this power shall not be implied in any lease of a dwellinghouse.”

7. Abolition of lessor’s right to distrain for rent of a dwellinghouse—(1) The principal Act is hereby amended by inserting, after section 107 (as substituted by section 6 of this Act), the following (*new section*) sections: 15

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

Struck Out

“(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. 20

“(3) Nothing in this section shall affect the manner in which any judgment debt may be enforced by any person. 25

New

“107B. **Lessor may sell lessee’s personal property following abandonment**—(1) For the purposes of this section, the lessee of any dwellinghouse shall be deemed to have vacated it if— 30

“(a) He has not tendered to the lessor any sum by way of rent during the preceding period of 2 months, or any sum by way of rent in respect of (*the whole or any part of*) that period; and

“(b) He has not communicated with the lessor in any way during that period of 2 months; and 35

“(c) The lessor has no knowledge of the lessee having been in the dwellinghouse at any time during that period.

“(2) If the lessee of any dwellinghouse vacates it— 40

“(a) Leaving in the dwellinghouse any personal property; and

“(b) Owing to the lessor any debt by way of rent in arrear or damages for breach of covenant—

New

the lessor may, in satisfaction of the debt, sell and dispose of any of the personal property in accordance with the provisions of this section.

5 “(3) If the lessee’s present whereabouts are known to the lessor, the lessor shall give to the lessee at least 7 days’ notice of his intention to sell the personal property under this section.

“(4) The lessor shall ((also)) in every case give notice of
 10 the sale by advertisement in a newspaper published in the locality in which the dwellinghouse is situated. The advertisement shall state that the sale will be held on or after a specified date (being not sooner than 7 days after the publication of the advertisement), and shall give a brief description of the
 15 property to be sold, together with the name of the lessee.

“(5) The lessor may apply the proceeds of the sale in or
 towards payment of the debt and of the costs and expenses of the advertising and sale, and shall, on demand by the lessee, pay the surplus (if any) to the lessee. If any such
 20 surplus is unclaimed for a period of 3 months the lessor shall pay it to the Commissioner of Inland Revenue as unclaimed money and section 11 of the Unclaimed Money Act 1971 shall apply accordingly.

“(6) Notwithstanding any of the foregoing provisions of
 25 this section, the lessor shall, on demand by the lessee or any other person entitled to possession of the property at any time before the property is sold, surrender the property to the lessee or that other person without charge of any kind.

“(7) The lessor shall not be liable to any other person in
 30 respect of the sale of any property under this section unless it is shown that at the time of the sale he had reason to believe that the property was not owned by the lessee.

“(8) No property sold under this section shall be recover-
 35 the property otherwise than in good faith.”

Struck Out

(2) The following enactments are hereby consequentially repealed:

- 40 (a) The Distress and Replevin Act 1908:
 (b) Section 31 of the Tenancy Act 1955.

New

(2) Section 31 of the Tenancy Act 1955 is hereby consequentially repealed.

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”.

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Struck Out

(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”.

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New

(2) Section 109 of the principal Act is hereby further amended by inserting in subsection (3), after the word “have”, the words “, except in relation to any dwellinghouse,”.

9. Licence or consent not to be unreasonably withheld— 15

(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”.

Struck Out

(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.”

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New

(2) Section 110 of the principal Act is hereby further amended by inserting in subsection (2), after the word “has”, the words “, except in relation to any dwellinghouse,”.

10. New heading and sections inserted in principal Act— 30

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.

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“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
 5 (1974) 1975.

“(2) Nothing in paragraph (b) of subsection (1) or sub-
section (2) of section 116H, or sections 116I to 116K or sub-
section (2) of section 116L of this Act shall apply to any
 lease entered into before the commencement of the Property
 10 Law Amendment Act (1974) 1975 until the day 12
 months after the commencement of that Act.

“(3) The provisions of sections 116C to 116G and subsection
(1) of section 116L of this Act shall apply to any lease of a
 dwellinghouse entered into before or after the commencement
 15 of the Property Law Amendment Act (1974) 1975.

“116c. Lessee not to be liable for waste—(1) A lessee of a
 dwellinghouse shall not be liable for waste, whether volun-
 tary, permissive, or equitable.

“(2) Nothing in subsection (1) of this section shall—
 20 “(a) Limit or affect the lessee’s obligations under (either)
 any of the covenants 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
 25 prior consent of the lessor.

“116d. Covenants implied on part of lessees of dwelling-
 houses—In every lease of a dwellinghouse there shall be
 implied the following covenants by the lessee:

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30 “(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
 35 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

40 “(b) That he will as soon as practicable make good any
 damage to the dwellinghouse (including damage

Struck Out

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.

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New

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“(a) That he will, at all times during the continuance of the tenancy,—

“(i) Keep the dwellinghouse in a clean condition; and

“(ii) Keep any grounds forming part of the dwellinghouse free from any accumulation of tins, bottles, paper, or other refuse or rubbish of any kind—

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having regard to the condition of the dwellinghouse (including any grounds) at the commencement of the tenancy and to any subsequent improvements effected by the lessor:

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“(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 windows, doors, fixtures, fittings, appliances, furniture, drapes, blinds, or other chattels or facilities leased with the dwellinghouse) caused by or arising from the wilful or negligent act or omission of the lessee or of any person permitted by him to enter or to remain in the dwellinghouse, not being damage caused by fair wear and tear:

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“(c) That he will, at the termination of the tenancy, yield up the dwellinghouse (including any grounds) in a clean and tidy condition and free from any accumulation of tins, bottles, paper, or other refuse or rubbish of any kind, having regard to the condition of the dwellinghouse (including the grounds) at the commencement of the tenancy and to any subsequent improvements effected by the lessor.

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“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 paragraphs (a) and (b) of section 116D of this

- 5 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.

Struck Out

10 “(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—

15 “(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:

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

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New

30 “(2) If, on an application made under subsection (1) of this section, the Court is satisfied that the lessee is in breach of either of the covenants referred to in paragraphs (a) and (b) of that subsection, the Court—

35 “(a) Shall make an order requiring the lessee, within such period as the Court may specify in the order, to carry out in a proper and workmanlike manner all such work as the Court considers necessary or desirable to remedy the breach; and

“(b) May make an order requiring the lessee to pay to the lessor such sum as the Court considers reasonable by way of compensation for the breach.

40 “(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 in writing

specifying the particular breach complained of, and requiring the lessee, within such period (being not less than (1 month) 7 days), as may be specified in the notice, to (put the dwelling-house 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) remedy the breach. 5

“(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— 10

Struck Out

“(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 15 20

New

“(a) Carried out in a proper and workmanlike manner all work necessary or desirable to remedy the breach; or

“(b) Served on the lessor a notice in writing denying the breach,— 25

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) remedy the lessee's default, 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. 30

“(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 35

Struck Out

the lessee or by any person permitted by him to enter the dwellinghouse.

New

and did not arise from the wilful or negligent act or omission of the lessee or of any person permitted by him to enter or to remain in the dwellinghouse.

- 5 “(6) For the purposes of an application under this section, or under section 116F of this Act, if any person (other than the lessor or any agent or servant of the lessor) wilfully or negligently damages the dwellinghouse while the lessee is in the dwellinghouse, the lessee shall be deemed to have
- 10 permitted that person to enter and remain in the dwellinghouse unless the lessee satisfies the Court that he took all reasonable steps to prevent that person from entering the dwellinghouse or, as the case may require, to eject that person from the dwellinghouse.”
- 15 **“116F. Lessor’s remedies where urgent work required—**
 (1) Notwithstanding anything in section (116E) 116D of this Act, in any case where the lessee is in breach of either of the covenants referred to in paragraphs (a) and (b) of sub-
 20 section (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.
- 25 “(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 in a proper and workmanlike manner;
- 30 “(b) That at the time when the work was carried out by the lessor he believed on reasonable grounds that it was urgently required to avoid the risk of further damage to the dwellinghouse;
- 35 “(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 paragraphs (a) and (b) of section 116D of this Act; and
 “(d) That in all the circumstances the lessor acted reasonably in carrying out the work,—
- 40 make an order requiring the lessee to pay to the lessor the reasonable cost of carrying out the work.

Struck Out

“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.

New

“116G. Lessor may enter dwellinghouse to view condition or carry out work—(1) The lessor of a dwellinghouse may, after giving to the lessee not less than 24 hours' notice, enter the dwellinghouse at any reasonable time, personally or by his agent,—

“(a) To inspect the state of repair of the dwellinghouse; or

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

“(2) Notwithstanding anything in subsection (1) of this section, the lessor may enter the dwellinghouse without prior notice to the lessee—

“(a) With the consent of the lessee:

“(b) Whenever he believes on reasonable grounds that the dwellinghouse is being damaged at that time, whether by any person or otherwise:

“(c) Where the lessee has vacated the premises.

“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 paragraphs (a) and (b) of section 116D of this Act:

New

- “(a) Shall make an order requiring the lessor, within such period as the Court may specify in the order, to carry out in a proper and workmanlike manner all such work as the Court considers necessary or desirable to remedy the breach; and 5
- “(b) May make an order requiring the lessor to pay to the lessee such sum as the Court considers reasonable by way of compensation for the breach; and 10
- “(c) May make an order reducing the rent that would otherwise be payable under the lease by such amount as the Court considers reasonable for the period during which the work required under paragraph (a) of this subsection is being carried out. 15
-
- “(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: 20
- “(a) The general state of repair and decoration of the dwellinghouse;
- “(b) The stability of the dwellinghouse;
- “(c) *Whether* The degree (if any) to which the dwelling- house is damp; 25
- “(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; 30
- “(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; 35
- “(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 in writing specifying the particular breach complained of, and requiring the lessor, within such period (being not less than 1 month) 40

as may be specified in the notice, to put the dwellinghouse in a fit and habitable condition for residential purposes.

5 “(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

10 “(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—

15 (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) protect the safety or health of the lessee or any other person residing with the lessee or to avoid the risk of further damage to the dwellinghouse, 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.

20 “(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 in a proper and workmanlike manner;

35 “(b) That at the time when the work was carried out by the lessee, (it was urgently required to avoid the) the lessee believed on reasonable grounds that it was urgently required to protect the safety or health of the lessee or any other person residing with the lessee or to avoid the risk of further damage to the dwellinghouse;

40

“(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. 5

“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 or makes known to the lessor his intention 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*)— 10 15 20

New

“(a) Serves on the lessee a notice purporting to terminate the tenancy, the notice shall be void; or

“(b) Evicts the lessee, the eviction shall be deemed wrongful and the lessor shall be liable in damages to the lessee accordingly. 25

Struck Out

“(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.” 30 35

New

“(2) In any proceedings brought by the lessor for the recovery of possession of a dwellinghouse or for the ejection of the lessee it shall be a good defence to show that the lessor commenced the proceedings by reason of the lessee exercising or commencing to exercise or making known to the lessor his intention to exercise any of the remedies specified or referred to in subsection (1) of this section. 40

“(3) In any case where it is alleged—

“(a) That by virtue of paragraph (a) of subsection (1) of this section a notice purporting to terminate the tenancy of a dwellinghouse is void; or 45

New

- “(b) That by virtue of paragraph (b) of that subsection the eviction of the lessee from a dwellinghouse was wrongful; or
- 5 “(c) That the proceedings for the recovery of possession of a dwellinghouse or the ejection of the lessee were commenced by the lessor by reason of the lessee having exercised or commenced to exercise or made known to the lessor his intention to
- 10 exercise any of the remedies specified or referred to in subsection (1) of this section—
- and it is shown that the notice was served or the lessee was evicted or the proceedings were commenced (as the case may require) within 6 months after the lessee exercised or
- 15 commenced to exercise or made known to the lessor his intention to exercise any of those remedies, it shall be for the lessor to prove that he did not serve the notice or evict the lessee or commence the proceedings (as the case may require) by reason of the lessee exercising or commencing to exercise
- 20 or making known to the lessor his intention to exercise any of those remedies.

“116L. Tenancy Act 1955 consequentially amended—

- (1) Section 47 (1) of the Tenancy Act 1955 is hereby amended by repealing paragraphs (b) and (e).
- 25 “(2) Section 47 (1) of the Tenancy Act 1955 is hereby further amended by repealing paragraphs (c) and (d).

New

- “116M. Notices may be given in prescribed form—(1) Any notice required to be given by a lessor of a dwellinghouse to
- 30 the lessee or by the lessee of a dwellinghouse to the lessor under any of the provisions of sections 116A to 116L of this Act may be given in the prescribed form.

- “(2) For the purposes of subsection (1) of this section the Governor-General may from time to time by Order in
- 35 Council prescribe forms of notices to be given by lessors of dwellinghouses to lessees and by lessees of dwellinghouses to lessors under any of the said provisions of this Act.”

10A. Relief against refusal to grant renewal, etc.—

- (1) Section 120 of the principal Act is hereby amended by
- 40 omitting from paragraph (b) of subsection (3) the words “on the ground that the lessee has failed to perform or fulfil the said covenants, conditions, and agreements, or any of them.”.

- (2) Section 120 of the principal Act is hereby further
- 45 amended by inserting, after subsection (7), the following subsection:

New

“(7A) Notwithstanding any of the foregoing provisions of this section, it shall be a good defence to an application under this section if the lessor proves that he did not refuse to grant a renewal of the lease or a new lease or to assure his reversion expectant on the lease, as the case may be, by reason of the lessee failing to perform or fulfil any covenant, condition, or agreement referred to in paragraph (a) of subsection (3) of this section.”

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,—

Struck Out

“(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 sea-shore, 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 sea-shore:

New

“(a) A piece of land is landlocked if there is no reasonable access to it:

“(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:

5 “(c) ‘Reasonable access’ means physical 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.

10 “(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
15 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:

20 “(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.

New

 “(3A) The applicant shall, as soon as practicable after filing his application in Court, serve a copy of it on the local authority concerned.

35 “(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.

40 “(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; 5
- “(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 10
- “(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— 15
- “(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): 20
- “(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). 25
- “(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— 30
- “(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; 35
- “(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; 40

“(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

5 “(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, 10 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, 15 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 20 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. 25 30

“(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: 35 40 45

“(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. 5

“(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— 10

“(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 15

“(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 or under any of the provisions of the Municipal Corporations Act 1954 or the Counties Act 1956 or any other enactment. 20 25

“(14) Nothing in subsection (4) of section 33 of the Town and Country Planning Act 1953 or 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. 30

“Trees and Structures on Neighbouring Land 35

“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,—

New

5 “‘Occupier’, in relation to any land to which this section applies means a person who is entitled to occupy the land and who satisfies the Court that he is residing or intends within a reasonable time to reside in a building erected or to be erected on the land:

10 “‘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
 15 “(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:

20 “‘Tree’ includes any shrub or plant.

Struck Out

25 “(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.

New

30 “(2) This section applies to—
 “(a) Any land that is zoned for residential purposes under the relevant proposed or operative district scheme; and
 “(b) Any land on which is erected any building used for residential purposes.
 35 “(2A) The occupier of any land to which this section applies may at any time apply to a Magistrate’s Court for an order requiring the occupier of any other land (whether or not that land is land to which this section applies) 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.

Struck Out

“(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.

New

“(4) On any such application the Court may make such order as it thinks fit, if, having regard to all the circumstances of the case, and, where required, to the matters specified in subsection (4A) of this section, 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 actual or potential danger to the applicant’s life or health or property, or to the life or health of any person residing with the applicant; or

“(b) Any undue obstruction of a 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; or

“(c) Any other undue interference with the reasonable enjoyment of the applicant’s land for residential purposes:

New

“Provided that, except for the purpose referred to in paragraph (a) of this subsection, the Court shall not make an order under this section relating to any tree the preservation of which is the subject of a requirement lawfully made by a local authority under any of the provisions of the Town and Country Planning Act 1953, the Municipal Corporations Act 1954, or the Counties Act 1956.

“(4A) In any case where the applicant alleges that a tree is obstructing his view or is otherwise causing injury or loss to him the Court, in considering whether to make an order under this section, shall have regard to the following matters:

New

- “ (a) The interests of the public in the maintenance of an aesthetically pleasing environment:
- 5 “ (b) The desirability of protecting public reserves containing trees:
- “ (c) The value of the tree as a public amenity:
- “ (d) The historical, cultural, or scientific significance (if any) of the tree:
- 10 “ (e) The likely effect (if any) of the removal or trimming of the tree on ground stability, the water table, or run-off.

“ (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, 15 or damage.

Struck Out

- “ (6) The Court shall not make an order under this section unless it is satisfied—
- 20 “ (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
- 25 “ (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.

New

- 30 “ (6) The Court shall not make an order under this section unless it is satisfied—
- “ (a) That the tree or structure is causing or is likely to cause loss of or injury or damage to the applicant’s life or health or property, or the life or health of any other person residing with the applicant; or
- 35 “ (b) That the tree or structure is obstructing any view that an occupier of the applicant’s land would otherwise be able to enjoy, or is otherwise causing injury or loss to the applicant by diminishing the value of the property or reducing the enjoyment of it for residential purposes—
- 40 and that the hardship that would be caused to the applicant or to any other person residing with the applicant by the refusal to make the order is greater than the hardship that
- 45 would be caused to the defendant or to any other person by the making of the order.

New

“(6A) Where the application relates to any land on which a building intended for residential purposes has not been erected, the Court shall not make an order under this section unless it is satisfied that such a building will be erected on the land within a reasonable time. Unless the Court, having regard to all the circumstances of the case, otherwise determines an order made in such a case shall not become operative unless and until the building is erected, and, if no such building is erected within a reasonable time, the order may be vacated on the application of any interested person.”

“(7) An order may be made under this section whether or not (the interference or obstruction amounts to) the wrong being caused by the tree or structure constitutes 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) wrong 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) wrong commenced.

Struck Out

“(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.”

New

“(9) Every order made under 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 conduct of the defendant, that it is just and equitable to require the defendant to pay the whole or any specified share of the cost of such work.”

5 “(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
10 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 there-
after cause the land in respect of which the order was
made to be entered upon and the work necessary to give
15 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:

20 “Provided that, unless the parties otherwise agree, the
applicant shall not exercise the rights conferred by this sub-
section 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
25 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.

30 **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:

35 “(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
40 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.

New

“(4A) Where any such certificate relates to the execution of any instrument it shall be sufficient if the certificate is endorsed on the instrument and signed by the attorney or by any of the persons specified in subsection (4) of this section, as the case may require.

“(4A) ~~(4B)~~ 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—*Struck Out*

(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-REVOGATION 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-REVOGATION 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.

Struck Out

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 account- ants. Farmers shall do no waste. Remedy thereon	So much of the chapter as relates to the com- mission 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 jointe- nants, 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 dis- trained 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 amend- ment of the law and the better advance- ment 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