

Hon. Mr. Mason

FRUSTRATED CONTRACTS

ANALYSIS

Title.	3. Adjustment of rights and liabilities of parties to frustrated contracts.
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A BILL INTITULED

AN ACT to amend the Law relating to the Frustration of Contracts. Title.

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

1. This Act may be cited as the Frustrated Contracts Act, 1944. Short Title.

2. In this Act the expression " Court " means, in relation to any matter, the Court or arbitrator by or before whom the matter falls to be determined. Interpretation.

3. (1) Where a contract governed by the law of New Zealand has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of section four of this Act, have effect in relation thereto. Adjustment of rights and liabilities of parties to frustrated contracts. Cf. 6 & 7, Geo. VI, c. 40, s. 1 (Imp.)

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as the

time of discharge) shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which the *last preceding* subsection applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the Court considers just, having regard to all the circumstances of the case and, in particular,—

(a) The amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under the *last preceding* subsection; and

(b) The effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the Court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the party.

5 (5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract, the Court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustra-
10 tion of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

10 (6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the Court may, if in all the circumstances of the case
15 it considers it just to do so, treat for the purposes of subsection *three* of this section any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

20 4. (1) This Act shall apply to contracts, whether made before or after the commencement of this Act, as respects which the time of discharge is on or after the *first* day of *November*, nineteen hundred and forty-
four, but not to contracts as respects which the time of discharge is before the said date.

Provision as to application of this Act.

Cf. 6 & 7, Geo. VI, c. 40, s. 2 (Imp.)

25 (2) This Act shall apply to contracts to which the Crown is a party in like manner as to contracts between subjects.

30 (3) Where any contract to which this Act applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the Court shall give effect to the said
35 provision and shall only give effect to the *last preceding* section of this Act to such extent (if any) as appears to the Court to be consistent with the said provision.

40 (4) Where it appears to the Court that a part of any contract to which this Act applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that

part of the contract of sums which are or can be ascertained under the contract, the Court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat the *last preceding* section of this Act as only applicable 5 to the remainder of that contract.

(5) This Act shall not apply—

- (a) To any charter-party, except a time charter-party or a charter-party by way of demise, or to any contract (other than a charter-party) 10 for the carriage of goods by sea; or
- (b) To any contract of insurance, save as is provided by subsection *five* of the *last preceding* section; or
- (c) To any contract to which section nine of the 15 Sale of Goods Act, 1908 (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer), applies, or to any other contract for the sale, or for the sale and delivery, of specific 20 goods, where the contract is frustrated by reason of the fact that the goods have perished.

See Reprint
of Statutes,
Vol. VIII, p. 99