

Hon. Mr. J. McKenzie.

FAMILY HOMES PROTECTION.

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A BILL INTITULED

AN ACT to make provision for securing Homes for the People. Title.

WHEREAS it is desirable to make provision for securing homes for the people, and for preventing such homes from being mortgaged or sold for debt or otherwise : Preamble.

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

1. The Short Title of this Act is "The Family Homes Protection Act, 1895." Short Title.

2. In this Act, if not inconsistent with the context,— Interpretation. "Family" includes the wife and children, or the husband and children, of the settlor :

"Family home" means a family home registered under this Act :

"Registrar" means the District Land Registrar of the land registration district in which is situate the land to be settled under this Act, and includes Deputy Registrar :

"Settlor" means any person applying to register a family home.

3. Any owner of land, whether freehold or leasehold, on which he resides and has his home may settle such land, not exceeding, with all improvements, one thousand five hundred pounds in value, as a family home subject to the provisions of this Act. Who may settle land as a family home.

- Restrictions. 4. No person shall settle any land as a family home unless the land is unencumbered, and he is able to pay all his debts without the aid of the land proposed to be so settled.
- Application. 5. Any person desirous of settling any land as a family home shall make application in the prescribed manner to the Registrar to register the same under this Act. 5
- Notice of application. 6. On receipt of the application, the Registrar shall give notice thereof in the prescribed manner.
- Creditor may lodge caveat. 7. Any person claiming to be a creditor of the applicant, or claiming any estate or interest in the land, may, within ~~six~~ *twelve* months 10 after the date of the first publication of such notice, lodge with the Registrar a caveat, in the prescribed manner and form, forbidding the granting of the application.
- Notice of caveat to applicant. 8. On the receipt of any caveat within the time limited therefore the Registrar shall cause notice thereof in the prescribed manner and 15 form to be served on the applicant, and shall not proceed further with the application until the caveat is withdrawn or removed.
- Caveat may be withdrawn. 9. Any caveat may be withdrawn by the caveator by notice in the prescribed form.
- Applicant to summon caveator before Court. 10. When any caveat has been lodged, the applicant may with- 20 draw his application by notice in the prescribed form, or may summon the caveator to attend before the Supreme Court or a Judge thereof to show cause why the caveat should not be removed.
- Hearing of summons. 11. Upon the hearing of such summons, and upon proof of the service thereof, the Court or Judge may make such order in the pre- 25 mises, either *ex parte* or otherwise, as to the Court or Judge seems meet.
- Caveat may be removed as to part of land. 12. In and by such order the Court or Judge may direct the caveat to be removed as to part of the land comprised in the applica- 30 tion, and the applicant may thereupon amend his application in terms of the order.
- Caveator must be summoned within one month. 13. If for the space of one month after receipt of notice of the lodging of a caveat, or such extended time as the Judge on summary application may direct, the applicant fails or neglects to summon the caveator as hereinbefore provided, the application shall be deemed to 35 have lapsed, and the Registrar shall proceed no further therewith.
- Condition for removal of caveat. 14. No order shall be made for the removal of a caveat unless the applicant satisfies the Court or Judge that he can pay and discharge his debts and liabilities without recourse to the land proposed to be settled. 40
- Registrar to issue Family Home Certificate. 15. If no caveat is lodged within the time limited therefor, or if all caveats so lodged have been withdrawn or removed, then, on the expiration of such time, and on such withdrawal or removal being duly made, the Registrar shall issue a Family Home Certificate in the prescribed form under his hand and official seal, to the effect that 45 the land comprised in such application or amended application is entitled to be registered as a family home under this Act, and shall forthwith proceed to register the same in manner following, that is to say:—
- Registration thereof. (1.) As to such part of the land as is subject to the provisions of 50 "The Deeds Registration Act, 1868," by registering the certificate in like manner as deeds affecting the land are registrable;

(2.) As to such part of the land as is subject to the provisions of "The Land Transfer Act, 1885," by recording in the register, and on the certificate of title or Crown grant of the land, the following memorandum: "Settled as a family home under 'The Family Homes Protection Act, 1895,' by _____, of _____, as settlor," in like manner as the registration of instruments is effected.

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16. The Registrar shall deposit, under "The Land Transfer Act, 1885," every certificate as soon as it is registered. Deposit of certificate.

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17. The effect of such registration shall be to settle the land in manner following:— Effect of registration.

(1.) For the personal use and occupation of the settlor and his family until the hereinafter-mentioned period for distribution:

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(2.) For distribution at the period for distribution amongst the family of the settlor then living, or, if he has no family, then amongst those who would be entitled in case of his intestacy if the land were not subject to this Act:

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(3.) So that no alienation or dealing, or attempted alienation or dealing, by the settlor or his family shall have any force or effect, except as provided in sections *nineteen* and *twenty* of this Act:

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(4.) So that the estate and interest of the settlor and his family shall continue personal, absolute, indefeasible, and unaffected, notwithstanding any bankruptcy, assignment, judgment, order, charge, execution, dealing, matter, or thing which but for this Act could directly or indirectly have affected any estate or interest in the land: *Provided always that nothing in this Act contained shall bar any claim made under "The Contractors' and Workmen's Lien Act, 1892."*

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18. The period for distribution of a family home shall be the date of the death of the settlor, or the time when all the children of the settlor shall have attained the age of twenty-one years, or died under that age, whichever event shall last happen. Period for distribution.

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19. (1.) The settlor during his lifetime may regulate the occupation of the family home by himself and his family as he thinks fit. Regulation of occupation.

(2.) After his death such occupation shall be regulated pursuant to any direction contained in his will.

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(3.) So far as no such direction extends, or in case of the intestacy of the settlor, the widow or husband of the deceased settlor shall whilst living regulate such occupation, and after the death of such widow or husband all the children of the settlor shall, subject to any direction given pursuant to this section, be equally entitled to occupation of the family home.

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20. (1.) The settlor, by direction contained in his will, may regulate the distribution of the family home pursuant to subsection *two* of section *seventeen* of this Act, in such manner as he thinks fit, and may include in the benefit of such distribution the children of any child of his who dies prior to the date of the period of distribution; but, subject to any such direction, the widow or surviving husband of a deceased settlor shall take one-third, and the children then living shall equally

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between them take the residue, or if there is no widow or surviving husband, the whole family home.

(2.) If at the period for distribution no child or grandchild of the settlor takes any share or interest in the family home, then the widow or surviving husband shall take the whole.

Exclusion from participation.

21. Any regulation of occupation or distribution provided for by either of the *two last* preceding sections may exclude from participation any person who, but for such regulation, would be entitled to share therein :

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Provided that no regulation shall give any right, estate, or interest to any person not included in either of those sections.

Rescission of registration.

22. The registration of a family home shall be rescinded by operation of law,—

(1.) If within ~~six~~ *twelve* months after the date of the registration the settlor becomes bankrupt, or makes any assignment for the benefit of his creditors ; or

(2.) If the settlor dies within ~~six~~ *twelve* months of the date of the registration, and his estate is insufficient for the payment and discharge of his debts and liabilities without recourse to the family home.

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Cesser of registration.

23. The registration of a family home shall cease to operate after the period for distribution, except for the purpose of giving effect to estates or interests acquired by virtue of the regulation of occupation or distribution or otherwise according to law.

Memorial of rescission or cesser to be registered.

24. On the registration of a family home being rescinded by operation of law, or on such registration ceasing to operate, the Registrar shall, in the prescribed manner and form, duly register a memorial of such rescission or cesser.

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Family homes may be continued.

25. (1.) By the consent in the prescribed manner of all the parties entitled in distribution, the land may be continued as a family home, provided notice thereof in the prescribed manner and form is duly given to the Registrar, who shall in the prescribed manner and form duly register a memorial of such continuance.

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(2.) Such registration shall have the effect of continuing the land as a family home under this Act, and the persons consenting thereto shall be deemed settlors.

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Fees.

26. There shall be payable in respect of the various matters provided for in this Act such fees as the Governor in Council from time to time prescribes.

Governor to make regulations.

27. The Governor in Council may make regulations for carrying into effect the provisions of this Act, and prescribing the forms, modes, and times of applications, notices, certificates, memorials, entries, and all other proceedings required for carrying out the intention of this Act.

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Family homes may be disposed of in certain cases.

New clauses.

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28. Notwithstanding anything hereinbefore contained, it is hereby declared that if at any time, prior to the period of distribution,—

(1.) The settlor and his family desire to leave the colony, or

(2.) Any other exceptional circumstances arise which, in the opinion of the Public Trustee, render it expedient, in the

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interests of the family, that the family home should be disposed of otherwise than as hereinbefore prescribed, the Public Trustee, upon being fully satisfied as to the facts, may sell, lease, or otherwise dispose of the family home upon such terms in all things as he thinks fit.

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If he sells the family home he shall stand possessed of the net proceeds, either to invest the same upon such securities as he thinks fit or to apply the same in the purchase of a new family home, which shall thereupon be subject to this Act, or partly in one of such methods and partly in the other.

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He shall apportion the income derived from any such securities, and also all moneys derived from rents, between the settlor and his family until the period of distribution in such proportions as he thinks fit, with power to pay to one or more exclusively of others.

How sale of proceeds of family home to be dealt with.

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No income payable by the Public Trustee under this Act shall be attached or attachable by any creditor, or be taken in execution or charged under any judgment, or pass to the Assignee in bankruptcy, and no settlor or member of his family shall have power to charge or to deprive himself by anticipation of the benefit of such income.

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The execution by the Public Trustee of any conveyance, lease, or other deed or instrument affecting the family home, or for the purposes of this Act, shall be effectual to transfer the estate or interest expressed to be conveyed, demised, or otherwise dealt with, according to the tenor of such instrument.

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The Public Trustee, acting under this Act, shall be entitled to charge his usual and customary charges, and to deduct the same from any moneys coming to his hands under this Act and available for the purpose.

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29. No duty under "The Stamp Act, 1882," or any amendment thereof, or under "The Deceased Persons Estates' Duties Act, 1881," or any amendment thereof, shall be payable in respect of any settlement under this Act, or in respect of the transmission of any share or interest in such land to any member of the family, so long as the family home shall continue to be registered.

Stamp duty not payable on transmission of share in family home.