

Hon. Mr. Cobbe.

MORTGAGORS AND TENANTS FURTHER RELIEF.

ANALYSIS.

- | Title. | |
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| 1. Short Title.
<i>Further Provisions for Relief of Mortgagors.</i> | 6. Authority for Court to extend period for which relief may be granted. |
| 2. Principal Act extended to cover mortgages that have been varied, and also new mortgages executed in replacement of former mortgages. Consequential repeal. | 7. Parties may agree in writing to extension of jurisdiction of Magistrates under principal Act. |
| 3. Extension of protection of guarantors of mortgagors. | 8. On application for relief by mortgagor of farm lands, Court may join mortgagee of stock as party. |
| 4. Orders in Council under section 4 of principal Act may be varied or revoked. | <i>Further Provisions as to Relief of Lessees.</i> |
| 5. Where mortgagor is a registered company, mortgagee not to file petition for winding-up except after notice. | 9. Parties may agree in writing to extend jurisdiction of Magistrates in respect of applications for relief by lessees. |

A BILL INTITULED

AN ACT to make further Provision in Relief of Mortgagors and Lessees. 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 Mortgagors and Tenants Further Relief Act, 1932, and shall be read together with and deemed part of the Mortgagors Relief Act, 1931 (hereinafter referred to as the principal Act). Short Title.

No. 53—1.

Further Provisions for Relief of Mortgagors.

Principal Act extended to cover mortgages that have been varied, and also new mortgages executed in replacement of former mortgages.

2. (1) The application of the principal Act is hereby extended so that it shall hereafter apply to mortgages of either of the following classes, namely :—

(a) Mortgages which, being at any time subject to the principal Act, have been varied by the parties thereto, either before or after the passing of this Act : 5

(b) Mortgages which at any time since the passing of the principal Act, and whether before or after the passing of this Act, have been executed in replacement or substantial replacement of mortgages that have been at any time within the application of the principal Act. 10

(2) If any question arises under this section as to whether any mortgage is in replacement or in substantial replacement of another mortgage it shall be determined as a matter of fact by the Court. For the purposes of this section a mortgage may be held by the Court to be in substantial replacement of a former mortgage notwithstanding any variation of the amount secured, or of the rate of interest, or of the property over which security is given, or of the parties, if the Court is satisfied that the new mortgage is intended to secure (whether exclusively or not) the whole or a part of the original mortgage debt. 15 20 25

(3) Section three of the principal Act shall be read subject to the foregoing provisions of this section.

(4) Section thirteen of the Mortgagors and Tenants Relief Act, 1932, is hereby consequentially repealed. 30

Consequential repeal.

Extension of protection of guarantors of mortgagors.

3. For the purposes of the principal Act a person shall be deemed to have guaranteed the performance by a mortgagor of a covenant, condition, or agreement expressed or implied in a mortgage if he has guaranteed the performance by the mortgagor of any obligation which is the same or is substantially the same as an obligation expressed or implied in the mortgage, notwithstanding that the instrument of guarantee may have been executed before the execution of the mortgage, and whether in contemplation thereof or not, or notwithstanding that, whether the guarantee was executed before or after the execution of the mortgage, the existence of the mortgage or the terms thereof, or the proposal that a mortgage be executed, may not have been adverted to in the guarantee. 35 40

4. Any Order in Council heretofore made or that may hereafter be made under the authority of paragraph (c) of section three of the principal Act, exempting from the operation of that Act any mortgages or any class or classes of mortgages, may be at any time in like manner varied or revoked.

Orders in Council under section 4 of principal Act may be varied or revoked.

5. (1) Section four of the principal Act is hereby amended by inserting, after paragraph (c) of subsection one, as amended by section five of the Mortgagors Relief Amendment Act, 1931, the following words: "or (d) Where the mortgagor is a company registered under the Companies Act, 1908, to file a petition under section one hundred and seventy-nine of that Act that the company be wound up by the Court".

Where mortgagor is a registered company, mortgagee not to file petition for winding-up except after notice.

15 (2) Section five of the principal Act is hereby amended by inserting, after the words "to file a bankruptcy petition" in subsection three, the words "or a petition for the winding-up of a company".

20 6. Section eight of the principal Act is hereby amended by omitting from subsection one the words "twelve months after the date of the mortgagor's application for relief", and substituting the words "two years after the date of the order of the Court".

Authority for Court to extend period for which relief may be granted.

25 7. Where, in respect of any application by a mortgagor for relief under the principal Act, the principal moneys remaining due and unpaid under the mortgage exceed two thousand pounds the parties may agree in writing that a Magistrate or any specified Magistrate shall have jurisdiction to hear and determine the application, and in such case any Magistrate or the Magistrate so specified, as the case may be, shall have the same jurisdiction in respect of such application as if the principal moneys did not exceed two thousand pounds, and the provisions of section fourteen of the principal Act shall thereupon apply in respect of such application accordingly in the same manner as they apply with respect to applications within that section.

Parties may agree in writing to extension of jurisdiction of Magistrates under principal Act.

30 35 40 8. (1) In addition to any powers expressly conferred on it by the principal Act, the Court, on any application for relief made by a mortgagor in respect of any lands which are used mainly or substantially for agricultural or pastoral or other farming purposes, may join as party to the proceedings any person who, by virtue of any mortgage, assignment, or other instrument,

On application for relief by mortgagor of farm lands, Court may join mortgagee of stock as party.

is entitled to receive delivery of the whole or any portion of the stock for the time being depastured on such lands, or of the produce of such lands or stock, or of the proceeds of the sale thereof.

(2) In any proceedings to which this section relates the Court shall consider any representations that may be made to the effect that any person entitled as aforesaid in respect of the stock and produce has, by virtue of any such mortgage, assignment, or other instrument as aforesaid, power to exercise an unfair advantage over the mortgagor or mortgagee of the land or other party to the proceedings and has in fact exercised such an unfair advantage. 5 10

(3) When any person is bound as a party to any proceedings under this section before the reference of the application for relief to an Adjustment Commission, the Court shall direct the Commission to make special inquiries and to report whether or not, in its opinion, any power or right conferred by any such mortgage, assignment, or other instrument has been exercised in a harsh or unconscionable manner to the disadvantage of the mortgagor or mortgagee of the land, or other party to the proceedings. 15 20

Further Provisions as to Relief of Lessees.

Parties may agree in writing to extend jurisdiction of Magistrates in respect of applications for relief by lessees.

9. Section six of the Mortgagors and Tenants Relief Act, 1932, is hereby amended by adding to subsection seven thereof the following proviso:— 25

“ Provided that the parties may in any case agree in writing that a Magistrate or any specified Magistrate shall have jurisdiction to hear and determine an application for relief under this section notwithstanding that the annual rent reserved by the lease exceeds two hundred and ten pounds, and in such case any Magistrate or the Magistrate so specified, as the case may be, shall have the same jurisdiction in respect of such application as if the annual rent did not exceed the said sum.” 30 35