

Hon. Mr. Herdman.

MORTGAGES EXTENSION AMENDMENT.

ANALYSIS.

Title.	
1. Short Title.	3. Repeal.
2. Repeal.	4. Repeal. Duration of Acts.

A BILL INTITULED

AN ACT to amend the Mortgages Extension Act, 1914.

Title.

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

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1. This Act may be cited as the Mortgages Extension Amendment Act, 1915, and shall be read together with and deemed part of the Mortgages Extension Act, 1914 (hereinafter referred to as the principal Act).

Short Title.

*New.*

1A. Section three of the principal Act is hereby amended by repealing paragraph (d) of section one thereof, and also by repealing subsection two thereof.

Repeal.

2. Sections four and five of the principal Act and section three of the Mortgages Extension Amendment Act, 1914 (No. 2), are hereby repealed.

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Repeal.

3. Subsection four of section seven of the principal Act is hereby repealed.

Repeal.

*New.*

3A. (1.) In determining whether leave shall be granted under section three of the principal Act the Supreme Court shall take into consideration—

Grant of leave by Supreme Court.

(a.) The effect of the continuance of the mortgage upon the security thereby afforded to the mortgagee :

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(b.) The inability of the mortgagor to redeem the property either from his own moneys or by borrowing at a reasonable rate of interest :

(c.) The willingness of the mortgagor to pay an increased rate of interest in consideration of the continuance of the mortgage :

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(d.) The conduct of the mortgagor in respect of any breaches by him of the covenants of the mortgage :

(e.) Any hardship that would be inflicted on the mortgagee by the continuance of the mortgage or upon the mortgagor by the enforcement thereof.

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(2.) If, having regard to these and to all other relevant considerations, the Court is of opinion that it is just and equitable and consistent with the public interest that leave should be granted, leave shall be granted accordingly.

(3.) Such leave may be granted on such terms and conditions (if any) as the Court thinks fit. 5

Procedure.

3B. (1.) Application for leave of the Supreme Court under the principal Act may be made by motion, with notice to such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable. 10

(2.) Any such application may be made to and disposed of by a Judge in Chambers.

(3.) Proceedings pending at the commencement of this Act may be continued as if this Act had not been passed. 15

(4.) There shall be no appeal from any order granting such leave.

Consent by mortgagor to exercise of powers of mortgagee.

3c. (1.) When a mortgagor is entitled to the protection of the principal Act, his consent to the exercise by the mortgagee of any power shall not take away the necessity of the leave of the Supreme Court unless such consent is in writing and witnessed by a solicitor of the Supreme Court, who certifies in writing that such consent is given by his advice. 20

(2.) If consent is so given and certified, the leave of the Supreme Court shall, so far as such consent extends, be unnecessary. 25

Application of principal Act to extension of the term of a mortgage.

3d. Nothing in the principal Act shall apply to any mortgage the term of which has been extended for a period not less than one year by the agreement of the parties thereto, if it is expressly declared in such agreement that the provisions of the principal Act are excluded. 30

Repeal.

4. (1.) Section twelve of the principal Act is hereby repealed.

Duration of Acts.

(2.) The principal Act and all amendments thereof shall continue in force until the thirty-first day of December, nineteen hundred and *sixteen*, and no longer.