

New Zealand.



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1932, No. 1.

AN ACT to amend the Mortgagors Relief Act, 1931, and to extend the Application thereof so as to provide for the Grant of Relief to Lessees in certain Cases.

[31st March, 1932.]

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

Short Title.

1. This Act may be cited as the Mortgagors and Tenants 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).

Extension of Provisions for Relief of Mortgagors.

Mortgagor may apply for relief notwithstanding that mortgagee may not have given notice of intention to exercise powers of sale, &c.

2. (1) Notwithstanding anything to the contrary in the principal Act, a mortgagor may apply to the Court for relief although the mortgagee has not given notice, in accordance with section five of the principal Act, of an intention to do any act or exercise any power referred to in section four of that Act. The mortgagor shall serve on the mortgagee a copy of any application for relief made under this section in the same manner as if the application were made in accordance with section five of the principal Act, and after such service has been effected the provisions of subsection four of the said section five shall be binding on the mortgagee to the same extent in all respects as if the proceedings were being had and taken under that section. Notice of every application under this section shall be given to all persons who would be entitled, in accordance with section ten of the principal Act, as amended by section fourteen of the Mortgagors Relief Amendment Act, 1931, to receive notice of such application if it were made under the principal Act.

(2) On any such application the Court may make any order that it would have authority to make if application for relief had been made in accordance with the principal Act, or may, if it thinks fit, make an order authorizing the mortgagee forthwith or on or after a future date to be fixed in the order to do any act or exercise any power referred to in section four of the principal Act without complying with the provisions of section five of that Act.

(3) Where in any order under the last preceding subsection the Court does not expressly authorize the mortgagee to do any such act or exercise any such power as aforesaid, the mortgagee shall not thereafter do such act or exercise such power except after compliance with the provisions of section five of the principal Act.

(4) In any case where, before or after the passing of this Act, the mortgagee has given to the mortgagor notice under section five of the principal Act, and the mortgagor within the appropriate time limited by that section has not applied to the Court for relief, application after the expiry of that time may, by leave of the Court but not otherwise, be made by the mortgagor under this section, but the Court shall not grant such leave in any case unless in the circumstances it is of opinion that the delay of the mortgagor was excusable.

(5) Where at the passing of this Act any mortgagee has received from the Court authority to exercise any power or to do any act referred to in section four of the principal Act, but such power has not in fact been exercised or such act done, the mortgagor may, by leave of the Court, at any time after the right of the mortgagee has been unexercised for at least six months, make application for relief under the provisions of this section.

(6) Successive applications for relief may be made to the Court by any mortgagor under the foregoing provisions of this section, but no such application except the first shall be made save by leave of the Court.

(7) Any application for leave to apply to the Court, made under the foregoing provisions of this section, may be combined with a conditional application for relief, to be proceeded with only in the event of the application for leave being granted.

3. Section seven of the Mortgagors Relief Amendment Act, 1931, is hereby amended by omitting from subsection one the words "made in respect of any lands which in the opinion of the Court are mainly or substantially used for farming purposes".

4. (1) Where application for relief is made by a mortgagor under a table mortgage, the Court, in addition to or in lieu of any other relief, may extend the term of that mortgage by any period not exceeding two years, and may postpone for a like period the due date for the payment of every instalment of principal and interest due and unpaid at the date of the order or thereafter becoming due. Any order for the extension of a mortgage under this section may be made subject to such conditions, if any, as the Court thinks proper, including provision for the payment of interest during the period of postponement on any postponed instalment of principal and interest.

Special provisions as to relief of mortgagors in the case of farm lands extended to all classes of mortgages.

Form of relief that may be granted to mortgagors under table mortgages.

(2) For the purposes of this section the term "table mortgage" means a mortgage which is made repayable by instalments at regular intervals throughout the term of the mortgage, each such instalment consisting partly of principal and partly of interest.

(3) Any mortgagee under a table mortgage (including any incorporated Department of State or other instrument of the Executive Government of New Zealand) may, notwithstanding anything to the contrary in any Act, agree on the application of the mortgagor to any extension of such mortgage or postponement of the date of payment of any instalment of principal and interest thereunder that the Court could order if application were made to the Court under the foregoing provisions of this section:

Provided that nothing in this subsection shall be construed to limit any powers possessed by such mortgagee independently of this section.

(4) Any extension or postponement under the last preceding subsection may be made subject to such terms and conditions as may be mutually agreed to by the parties to the mortgage.

5. (1) On application by a mortgagor of any estate or interest in land for relief under the principal Act (whether such application has been made before or after the passing of this Act) or on special application made for the purposes of this section the Court, in addition to any other powers to grant relief, if in its opinion, having regard to all the circumstances of the case, it is equitable so to do, may, subject to such conditions (if any) as it deems proper, postpone for such period as it thinks fit the right conferred on the mortgagee by virtue of any covenant expressed or implied in the mortgage to sue for or recover as a debt from the mortgagor, by action in any Court, the principal moneys or any part of the principal moneys or any interest or other moneys then or thereafter becoming payable under the mortgage.

(2) An order under this section shall not affect the right (if any) of the mortgagee or any other person to prove the debt to which it relates in the event of the bankruptcy of the mortgagor or to recover any moneys from any person other than the mortgagor named in the order of the Court.

Special provisions as to relief of mortgagors of land from obligations under personal covenant.

(3) Any application or order under this section may be made to or by the Court either before or after the mortgagee has exercised any powers of sale or other disposition of the mortgaged property. Notice of special applications made under the authority of this section shall be given and such applications shall be made and heard as if they were applications under the principal Act.

(4) For the purposes of this section the term "mortgagor" includes a former mortgagor, and "mortgagee" includes a former mortgagee, although the relationship of mortgagor and mortgagee may have in fact been terminated either before or after the passing of this Act.

(5) Notwithstanding anything to the contrary in section fourteen of the principal Act no order shall be made under the authority of this section except by the Supreme Court.

Provisions for Relief of Lessees in certain Cases.

6. (1) In this section "lease" means an instrument whereby a leasehold interest in land is created, whether at law or in equity, and "lessor" and "lessee" have corresponding meanings. Nothing in this section shall apply with respect to leases executed after the passing of the principal Act.

Authority to grant relief to lessees by way of remission or reduction of rent.

(2) Any lessee under a lease to which this section applies may apply to the Court for relief under this section.

(3) Every application under this section shall specify the nature of the relief sought, being—

- (a) A reduction of the rent payable under the lease for the remainder of the term thereof, where the unexpired term of such lease is not more than two years, or, where the lease has more than two years to run, a reduction of the rent for a period not exceeding two years; or
- (b) A remission of rent in arrears at the date of the application for relief; or
- (c) Both a reduction of rent and the remission of arrears of rent, in accordance with the foregoing provisions of this subsection.

(4) On any application under this section the Court may make such order for relief, within the limits hereinbefore specified, as it thinks fit.

(5) The procedure in respect of applications under this section shall, as nearly as may be, be the same as if the lease were a mortgage of the land comprised therein, and as if the lessor and lessee respectively were the mortgagee and the mortgagor under such a mortgage.

(6) On service on the lessor of a copy of the lessee's application for relief under this section, and until such application has been disposed of by the Court, the lessor shall not—

(a) Seize or sell any property by way of distress for rent due under the lease; or

(b) Exercise any power of re-entry on the land comprised in the lease or any power of determining the lease:

and thereafter shall exercise any such power only in accordance with the order of the Court.

(7) Where the annual rent reserved by any lease does not exceed two hundred and ten pounds the jurisdiction conferred on the Court by this section may be exercised by a Magistrate, and in any other case may be exercised only by the Supreme Court.

Miscellaneous Amendments of Former Acts.

7. No application to the Registrar or Clerk of any Court shall be made for the issue of a summons under section five of the Imprisonment for Debt Limitation Act, 1908, in respect of any judgment or order referred to in section four of the principal Act.

8. (1) Section five of the principal Act is hereby amended by omitting from subsection three the words "seven days" wherever they occur, and in each case substituting the words "fourteen days".

(2) Nothing in this section shall apply with respect to any notice given before the date of the passing of this Act.

9. An order of the Court reducing the rate of interest payable under any mortgage, made pursuant to paragraph (b) of section seven of the Mortgagors Relief Amendment Act, 1931, may, in the discretion of the Court, be for a period less than the full term of the mortgage, and shall not in any case be for a term exceeding two years.

Mortgagee not entitled to issue of judgment summons.

Extending period within which a mortgagor may apply for relief in respect of chattels.

Order for reduction of rate of interest under section 7 of Amendment Act, 1931, may be for limited period less than the full term of mortgage.

Ug's & Swant's
Act 1932-33 No 34

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10. (1) Every application for relief in accordance with the principal Act or this Act, made in respect of land by any mortgagor or lessee, shall be referred by the Court to an Adjustment Commission appointed under the Mortgagors Relief Amendment Act, 1931, for investigation, unless the parties concerned agree to accept the determination of the Court without reference to an Adjustment Commission :

Applications for relief of mortgagors or lessees to be referred by Court for recommendations of Adjustment Commission, unless parties otherwise agree.

Provided that if in any case the Court is of opinion that the failure of the parties to agree to accept the determination of the Court without reference to an Adjustment Commission is due to a frivolous or unreasonable objection by any one of them, it may determine the application without reference to such Commission.

(2) On such reference being made the Court shall adjourn the proceedings for such time as may be necessary to enable it to obtain from the Commission a report on the circumstances of the case, with such recommendations (if any) as the Commission may make in the matter.

(3) In respect of any application for relief made by a lessee and referred to an Adjustment Commission under this section, the Commission shall have the like powers in all respects as it has, by virtue of sections nine and ten of the Mortgagors Relief Amendment Act, 1931, in the matter of applications by mortgagors.

(4) Section eight of the Mortgagors Relief Amendment Act, 1931, is hereby repealed.

Repeal.

11. Section nine of the Mortgagors Relief Amendment Act, 1931, is hereby amended as follows :—

Amending provisions as to constitution and procedure of Adjustment Commissions.

(a) By repealing subsection two, and substituting the following subsection therefor :—

“(2) Every Adjustment Commission shall consist of three persons, to be appointed by the Governor-General, and to hold office during his pleasure. One such person shall be appointed by the Governor-General to be the Chairman of the Commission” :

(b) By repealing subsection four :

(c) By omitting from subsection five the words “Where there are two or more members, no sitting of an Adjustment Commission shall take place unless all the members thereof are

present”, and substituting the words “At any sitting of the Adjustment Commission, two members shall form a quorum”.

12. Section fifteen of the Mortgagors Relief Amendment Act, 1931, is hereby amended by adding thereto the following words: “unless the Court or Commission, as the case may be, makes an order for the payment by any party of such costs on the ground that in its opinion the conduct of such party has been for the purpose of causing delay or has in any other respect been vexatious”.

13. (1) The principal Act shall not apply to any mortgage which, being executed before the passing of that Act, has been duly varied by the parties thereto since that date, or may hereafter be so varied, in respect of any of the following particulars, namely:—

- (a) The amount of the principal moneys secured thereby; or
- (b) The rate of interest payable thereunder; or
- (c) The due date for the repayment of the principal moneys or of any part thereof.

(2) For the purposes of this section a mortgage shall not be deemed to have been duly varied by the parties unless the variation has been made by a duly executed instrument in writing, and, where registration is essential to the validity or operation of such instrument, unless it has been duly registered.

(3) The Order in Council under the principal Act, dated the fifteenth day of December, nineteen hundred and thirty-one, and published in the *Gazette* of the twenty-fourth day of the same month, is hereby revoked as from the commencement thereof in so far as it relates to the mortgages specified in paragraph (a) thereof, being mortgages that have been varied by the parties since the seventeenth day of April, nineteen hundred and thirty-one.

Costs may be awarded against any party if proceedings vexatious.

Partial revocation of Order in Council under principal Act.