

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,
10th August, 1904.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE.]
House of Representatives, 23rd August, 1904.

Hon. Mr. Pitt.

LAW AMENDMENT.

ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Discharge of debt by acceptance of part in satisfaction. 3. Judgment against one of several persons jointly liable not a bar to action against others. 4. Executor not personally liable for covenants in lease. 5. Limitation of time within which wills may be impeached. | <ol style="list-style-type: none"> 6. Jurisdiction as to costs in administration suits. 7. Court empowered to grant special relief in cases of encroachment. Jurisdiction of inferior Courts. 8. Voluntary conveyances, if <i>bond fide</i>, not to be voided under 27 Elizabeth, c. 4. 9. Court may relieve against forfeiture in certain cases. 10. Power to trustees to spend and borrow. |
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A BILL INTITLED

AN ACT to make certain Amendments in the Law.

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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| <p>5</p> <p>10</p> <p>15</p> <p>20</p> | <p>1. The Short Title of this Act is "The Law Amendment Act, 1904."</p> <p>2. An acknowledgment in writing by a creditor, or by any person authorised by him in writing in that behalf, of the receipt of a part of his debt in satisfaction of the whole debt shall operate as a discharge of the debt, any rule of law notwithstanding.</p> <p>3. A judgment against one or more of several persons jointly liable shall not operate as a bar or defence to an action or other proceeding against any of such persons against whom judgment has not been recovered, except to the extent to which the judgment has been satisfied, any rule of law notwithstanding.</p> <p>4. An executor or administrator shall not be personally liable on any covenant entered into by a testator or intestate as a lessee of land, any rule of law notwithstanding.</p> <p>5. No will of which probate has been granted, or in respect of which letters of administration, with will annexed, have been granted, shall be declared or adjudicated to be invalid on the ground of the want of testamentary capacity in the testator, or undue influence, in</p> | <p>hort Title.</p> <p>Discharge of debt by acceptance of part in satisfaction.</p> <p>Judgment against one of several persons jointly liable not a bar to action against others.</p> <p>Executor not personally liable for covenants in lease.</p> <p>Limitation of time within which wills may be impeached.</p> |
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any action or other legal proceeding commenced after the expiration of twelve years from the date of the granting of such probate or letters of administration: *Provided that this section shall not come into force until twelve months after the passing of this Act.*

Jurisdiction as to costs in administration suits.

6. In any action or other proceeding for the administration of any estate, commenced after the passing of this Act, no Court or Judge shall have jurisdiction to order or allow payment of costs out of the estate to the party responsible for the commencement or continuance of such action, unless the Court or Judge first certifies that there were reasonable grounds for the action being commenced or continued, and then only to the extent to which such continuance was necessary. 5 10

Court empowered to grant special relief in cases of encroachment.

7. (1.) Where in any action or other proceeding in the Supreme Court relating to land it appears to the Court that the defendant or any of his predecessors in title has, in the erection of a building upon any land adjoining the land in question, encroached upon such last-mentioned land, and ~~it does not appear to the Court that such encroachment was intentional or arose~~ *it shall be proved to the satisfaction of the Court by the defendant that such encroachment was not intentional or did not arise from gross negligence*, then the Court, instead of ordering the defendant to give up possession of the piece of land so encroached upon, or to pay damages, or instead of granting an injunction, may give the defendant the right of retaining possession of the piece of land so built upon, subject to the payment of such sum or sums of money, and to such other conditions, as the Court thinks just. 15 20 25

Jurisdiction of inferior Courts.

(2.) Any District Court or Magistrate's Court shall have jurisdiction to exercise the power conferred upon the Supreme Court by this section in any case where the value of the land, without the buildings thereon, does not exceed the amount to which the jurisdiction of such District Court or Magistrate's Court is limited in civil cases: *Provided that a defendant intending to invoke the powers hereby given to any such Court shall give notice of such intention to the other party before the hearing, and the plaintiff shall thereupon be entitled, as of right, to have the action removed into the Supreme Court, or to appeal to the Supreme Court against any order purporting to be made by the District or Magistrate's Court under this section.* 30 35

(3.) Any order made under this section shall thereupon be transmitted by the Court to the District Land Registrar, or Registrar of Deeds, as the case may be, for registration. 40

Voluntary conveyances, if *bona fide*, not to be voided under 27 Elizabeth, c. 4.

8. (1.) Subject as hereinafter mentioned, no voluntary conveyance of any lands, tenements, or hereditaments, whether made before or after the passing of this Act, if in fact made *bona fide* and without any fraudulent intent, shall hereafter be deemed fraudulent or covinous within the meaning of the Act passed in the twenty-seventh year of the reign of Elizabeth, intituled "An Act against Covinous and Fraudulent Conveyances," by reason of any subsequent purchase for value, or be defeated under any of the provisions of the said Act of Elizabeth by a conveyance made upon any such purchase, any rule of law notwithstanding. 45 50

(2.) This section shall not apply in any case in which the author of a voluntary conveyance of any lands, tenements, or

hereditaments has subsequently, but before the passing of this Act, disposed of or dealt with the same lands, tenements, or hereditaments to or in favour of a purchaser for value.

5 (3.) The expression "conveyance" includes every mode of disposition mentioned or referred to in the said Act of Elizabeth.

9. The power of the Supreme Court under section twenty-five of "The Supreme Court Act, 1882," to grant relief against forfeiture in certain cases shall extend to and may be exercised in the case of—

Court may relieve against forfeiture in certain cases.

- 10 (a.) A sublease or agreement for a tenancy of land; or
- (b.) An agreement for a renewal or extension of a tenancy of land where the person claiming relief is in possession of the land, or the rents and profits thereof, under any deed or writing containing any absolute or conditional right to such renewal or extension.

15 10. (1.) With the leave of the Supreme Court, the trustees under any deed or will may from time to time expend a portion of the capital of the trust property on the improvement or development thereof, and may, with the like leave and for the like purpose, borrow moneys on the security of the trust property or any part thereof.

Power to trustees to spend and borrow.

20 (2.) In this section "trustees" includes executors and administrators :

New.

Provided always that the total amount so borrowed shall not exceed in any case one-half of the value of the said trust property.