

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

House of Representatives,
19th December, 1921.

Hon. Mr. Downie Stewart.

MORTGAGES AND DEPOSITS EXTENSION.

ANALYSIS.

Title.		PART II.
1. Short Title.		DEPOSITS.
	PART I.	
	MORTGAGES.	
2. This Part to form part of Mortgages Extension Act, 1919.		11. Interpretation.
3. Section 2 of principal Act amended.		12. Due date of money lent on contract of deposit extended. Extension to be in relief of the borrower.
4. Section 4 of principal Act amended.		13. Conditions of extension.
5. Repeal.		14. If conditions complied with, lender not entitled to demand deposit before extended date.
6. Repeal.		15. Right of borrower to repay in accordance with terms of contract not affected.
7. Power of trustee mortgagee to grant renewal of mortgage without application to Court.		16. Application of moneys hereafter received on contract of deposit.
8. When date for repayment has passed, mortgagor may, in absence of agreement for renewal or extension of mortgage, repay principal.		17. Regulations.
9. Rates of interest in respect of renewed or extended mortgage. When interest payable.		PART III.
10. Service of notice on mortgagor or mortgagee.		REPEALS.
		18. Repeals.

A BILL INTITULED

AN ACT to limit the Powers and Rights of Mortgagees and of
Persons holding Moneys on Deposit. Title.

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

1. This Act may be cited as the Mortgages and Deposits Extension Short Title.
Act, 1921, and shall come into operation on the first day of January,
nineteen hundred and *twenty-two*.

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PART I.

MORTGAGES.

2. This Part of this Act is an amendment of, and shall be read
together with and deemed part of, the Mortgages Extension Act,
1919 (hereinafter in this Part of this Act referred to as the principal
15 Act). This Part to form
part of Mortgages
Extension Act, 1919.

3. Section two of the principal Act is hereby amended by
omitting from the definition of "mortgagor" the words "means the
person," and substituting the words "means a person"; and by
adding to the same definition the words "and also includes any
Section 2 of
principal Act
amended.

person against whom a mortgagor has a legal or equitable right of indemnity in respect of any liabilities under the mortgage."

Section 4 of principal Act amended.

4. Section four of the principal Act as amended by subsection one of section two of the Mortgages Extension Amendment Act, 1921, is hereby further amended by omitting the words "thirty-first day of December, nineteen hundred and twenty-one," and substituting the words "thirty-first day of December, nineteen hundred and twenty-four."

Repeal.

5. Subsection four of section six of the principal Act is hereby repealed.

Repeal.

6. Section seven of the principal Act is hereby repealed.

Power of trustee mortgagee to grant renewal of mortgage without application to Court.

7. It shall be lawful for any trustee mortgagee to arrange with his mortgagor for a renewal of any mortgage for any term not exceeding five years, without any application to the Court, under the provisions of the principal Act or otherwise, at such rate of interest (not being less than six per centum per annum) as such trustee may think fit, notwithstanding that a higher rate of interest might be obtainable for a new loan.

When date for repayment has passed, mortgagor may, in absence of agreement for renewal or extension of mortgage, repay principal.

8. Where the date appointed by any mortgage or by any renewal or extension thereof for the payment of any principal moneys secured by any mortgage has passed (whether before or after the commencement of this Act) and no agreement in writing has been made between the mortgagor and the mortgagee for a renewal or extension of the term thereof, the mortgagor shall be entitled, notwithstanding the provisions of the principal Act or of this Act, to repay to the mortgagee such principal moneys upon giving to the mortgagee three months' previous notice in writing of his intention so to repay.

Rates of interest in respect of renewed or extended mortgages.

9. (1.) Where the rate of interest provided by a mortgage or by an agreement in writing or other document executed subsequent to such mortgage is a rate exceeding six and a half per centum per annum, interest shall continue to be payable by the mortgagor at such greater rate until repayment of the principal sum secured by the mortgage.

(2.) Where the rate of interest provided by a mortgage or by an agreement in writing or other document executed subsequent to such mortgage is six and a half per centum per annum or a rate less than six and a half per centum per annum, interest shall be payable by the mortgagor at the rate of six and a half per centum per annum until repayment of the principal sum secured by the mortgage:

Provided that, if the date appointed by the mortgage or by such subsequent agreement or document for repayment of the principal sum is a date prior to the commencement of this Act, interest shall be payable from the commencement of this Act at the rate of six and a half per centum per annum aforesaid, and in any other case interest shall be payable at the rate provided by the mortgage or by such agreement or document until the date therein appointed for repayment of the principal sum, and thereafter at the rate of six and a half per centum per annum.

When interest payable.

(3.) Interest shall be payable on the days appointed by the mortgage or by any agreement in writing or other document subsequent to the mortgage. If no such days are so appointed,

interest shall be payable half-yearly on the last days of April and October in each year.

10. Where a notice or other proceeding under the principal Act or this Act is required to be served upon a mortgagor or a mortgagee, and the person upon whom such service is required is dead or is absent from New Zealand or his address is unknown, and no sufficient provision is made by the principal Act or this Act for such service, the Court may, upon application of a person desiring to effect such service, direct such substituted or alternative service by advertisement or otherwise as the Court thinks fit.

Service of notice on mortgagor or mortgagee.

PART II.

DEPOSITS.

11. In this Part of this Act, unless inconsistent with the context,—

Interpretation.
1921, No. 1, sec. 3.

15 “Bank” means and includes the Post Office Savings-bank, and any savings-bank established by statute in New Zealand, and any bank carrying on business in New Zealand and authorized by law to issue bank-notes :

20 “Borrower” means and includes any firm of partners, company, or association, whether corporate or unincorporate (other than a bank) who or which at the commencement of this Act holds moneys upon contract of deposit, and also includes any public body authorized expressly or impliedly by law to receive moneys on deposit where such public body, on the
25 twenty-first day of March, nineteen hundred and *twenty-one* (being the date of the commencement of the Mortgages Extension Amendment Act, 1921), held moneys upon contract of deposit :

30 “Contract of deposit” means any contract or agreement, written or verbal, express or implied, relating to the receipt of money by a borrower made prior to the said twenty-first day of March, nineteen hundred and *twenty-one*, upon the terms that the same shall be repaid either at a fixed date or by instalments or at call, and bearing interest until repayment at an agreed rate, except that no contract or agreement shall be a
35 contract of deposit for the purposes of this Part of this Act if—

- (a.) Such contract or agreement is expressed in a mortgage ; or
- (b.) Such contract or agreement is expressed in debentures issued in series by an incorporated company or by a public body ; or
- (c.) The borrower has, as part of the contract of deposit or as collateral thereto, made and delivered to the lender any negotiable bill of exchange or promissory note for further evidencing or securing the repayment of such money or any part thereof ; or
- (d.) If the money was received in the course of a mercantile current account :

50 In cases where the agreed term of a contract of deposit had expired at any time prior to the said twenty-first day of March, nineteen hundred and *twenty-one*, but the moneys

originally deposited continued to be held by the borrower up to the said date, with or without an agreed rate of interest, such moneys are deemed to be held by the borrower upon contract of deposit for all the purposes of this Part of this Act:

“Due date” means the date (if any) fixed by a contract of deposit for the repayment of the principal sum deposited or any part thereof. Where the principal sum is repayable by instalments the due date, in respect of any instalment, means the date for repayment of that instalment. Where the principal sum is repayable at call the due date means the date of the commencement of this Act:

“Lender” means any person, firm, company, or association who or which has lent money to a borrower on a contract of deposit.

Due date of money lent on contract of deposit extended.

12. (1.) Subject to the conditions herein defined,—

(a.) Where the principal sum or the aggregate of all the principal sums due by any one borrower to any one lender upon contract or contracts of deposit does not exceed one thousand pounds, the due date of such contract or contracts of deposit is hereby extended to the thirty-first day of December, nineteen hundred and *twenty-two*.

(b.) Where the principal sum or the aggregate of all the principal sums due by any one borrower to any one lender upon contract or contracts of deposit exceeds one thousand pounds, the due date of such contract or contracts of deposit is hereby extended to the thirtieth day of June, nineteen hundred and *twenty-three*.

Extension to be in relief of the borrower.

(2.) Every such extension is hereby declared to be a provision in relief of the borrower upon the conditions herein defined, and no borrower shall be entitled to plead this Part of this Act or claim the benefits thereof unless he duly and punctually complies with such conditions.

Conditions of extension.

13. The conditions of extension to be observed by the borrower are that—

(a.) The borrower shall, from the commencement of this Act, pay to the lender upon the sum or sums held by the borrower upon contract or contracts of deposit, or upon such part or parts thereof as remain so held, interest at the rate of *six and a half* per centum per annum on or within seven days after each day on which interest is payable under the contract:

Provided that where the borrower is a building society constituted under the Building Societies Act, 1908, or an incorporated company whose principal object and business is the lending of money on mortgage of lands for fixed terms of years, or on conditions providing for the repayment of principal and the payment of interest by fixed periodical payments, the rate of interest payable by such borrower shall for the purposes of this condition be five and a half per centum per annum;

and that

(b.) Unless the lender has notified in writing to the borrower that the lender does not desire repayment by instalments, the borrower shall repay to the lender instalments of the principal sum held upon contract or contracts of deposit as follows:—

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Where the total sum held upon contract or contracts of deposit does not exceed one thousand pounds *ten* per centum thereof on or within seven days after the first day of each of the months of January and July, nineteen hundred and *twenty-two*:

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Where such total sum exceeds one thousand pounds, *seven and a half* per centum thereof on or within seven days after the first day of each of the months of July and October, nineteen hundred and *twenty-two*, and of each of the months of January and April, nineteen hundred and *twenty-three*.

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14. Unless a borrower fails to duly and punctually comply with the said conditions the lender shall not be entitled to demand or sue for the principal sum named in a contract of deposit until the expiration of the period to which the due date is extended by this Act.

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If conditions complied with, lender not entitled to demand deposit before extended date.

15. Nothing in this Part of this Act shall be so construed as to take away or restrict the right of the borrower to repay to the lender any sum held by the borrower upon a contract of deposit, or any part or parts thereof, pursuant to the expressed or implied terms of the contract of deposit.

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Right of borrower to repay in accordance with terms of contract not affected.

16. (1.) Every borrower who holds moneys upon a contract or contracts of deposit affected by this Part of this Act and who receives any moneys upon deposit after the commencement of this Act shall apply all moneys so received in repayment of moneys payable under the terms of such first-mentioned contract or contracts, and not otherwise, until all moneys so payable have been repaid.

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Application of moneys hereafter received on contract of deposit.

(2.) Every incorporated company which is a borrower and holds moneys upon a contract or contracts of deposit under this Part of this Act and which issues debentures after the commencement of this Act (other than mortgage debentures to secure its current account with its bankers) shall apply all moneys received upon such debenture-issue in repayment of moneys payable under the terms of such contract or contracts of deposit, and not otherwise, until all moneys so payable have been repaid.

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(3.) Every borrower who applies any moneys in contravention of this section commits an offence, and is liable on summary conviction to a fine of *one hundred* pounds for each such application of money.

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17. The Governor-General may from time to time, by Order in Council, make all such regulations as may be necessary or convenient for giving effect to the provisions of this Part of this Act.

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Regulations.

PART III.

REPEALS.

18. Sections two and three of the Mortgages Extension Amendment Act, 1921, are hereby repealed.

Repeal.