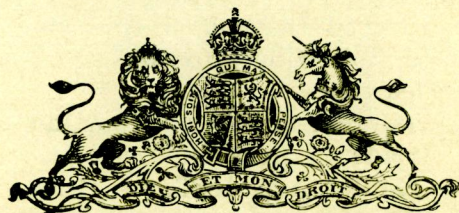


*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

W. L. S. COOPER,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 18th September, 1924.*

## New South Wales



ANNO QUINTO DECIMO

GEORGI II V REGIS

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Act No. , 1924.

An Act to amend the Conveyancing Act, 1919.

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** This Act may be cited as the "Conveyancing (Amendment) Act, 1924." Short title.

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**2.**

*Conveyancing (Amendment).*

2. (1) The Conveyancing Act, 1919, is amended— Amendment  
of Act No. 6,  
1919.
- (a) by inserting the following subsection next Sec. 164.  
after subsection one of section one hundred  
and sixty-four :—

5 (1A) Omission to search in any register or  
list kept or filed pursuant to the Companies  
(Registration of Securities) Act, 1918, or the  
Companies Act, 1899, or any present or future  
10 Act amending those Acts, or either of them,  
shall not of itself affect a purchaser of land  
with notice of any mortgage or charge ;

(b) (i) by inserting in subsection one of section Sec. 173 (1).  
one hundred and seventy-three immedi-  
ately before the word “ concurrence ” the  
15 word “ party ” ;

(ii) by inserting at the end of the same sub-  
section the following proviso :—

Provided that—

20 (a) an order made or purporting to be  
made in pursuance of the Settled  
Estates Act, 1886, or Part IV of  
the Conveyancing and Law of  
Property Act, 1898, shall not by  
25 this section be validated as against  
any estate or interest claimed  
otherwise than under or through  
the settlement in relation to which  
the order was made ; and

30 (b) an order made in a suit for partition  
shall not by this section be validated  
as against any estate or interest  
which is not an undivided share or  
an estate or interest in an undivided  
35 share of the entire estate or interest  
which the order purports to affect ;  
and

(c) an order made in a suit for fore-  
closure or otherwise at the suit of  
40 a mortgagee as such shall not by  
this section be validated as against  
any estate or interest not claimed  
under

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*Conveyancing (Amendment).*

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- 5 under or through the person by  
whose act or default the mortgage  
in relation to which the order was  
made was created, or as against any  
estate or interest having priority to  
such mortgage; and
- 10 (d) an order in any other case shall not  
by this section be validated against  
a person not a party to, and not  
apart from this section, otherwise  
bound by the proceedings in which  
the order was made, if the effect of  
the order or of anything done in  
15 pursuance of the order or the com-  
bined effect of the order and any-  
thing done in pursuance of the  
order, but for this proviso, would be  
to deprive such person of an estate  
or interest and prevent him from  
20 receiving the whole or any part of  
the proceeds of any transaction  
carried out in pursuance of the  
order; and
- 25 (e) in any case an order to the extent  
to which it expressly excludes any  
person from its operation shall not  
by this section be validated against  
that person.
- 30 (2) This Act shall take effect as if it had come into operation on the first day of July, one thousand nine hundred and twenty, except that it shall not affect the rights of any party to any proceeding at law or in equity concluded before or pending at the passing of this Act.

Retrospec-  
tive  
operation.

I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above mentioned matter. I am sorry that I cannot give you a more definite answer at this time, but I am sure that you will understand the necessity of delay. I will endeavor to give you a final answer as soon as possible.

Very respectfully,  
 J. M. [Name]  
 [Address]

1924.

**Legislative Council.**

## Conveyancing (Amendment) Bill, 1924.

### EXPLANATORY NOTE.

THE proposed amendment of section 164 of the Conveyancing Act, 1919, is proposed owing to doubts having arisen as to whether a purchaser of land ought reasonably to search in the register kept by the Registrar of Joint Stock Companies, or by companies under sections 3 (2) and 11 of the Companies (Registration of Securities) Act, 1918. This doubt the amendment is intended to determine. The view is held that the holder of any security over land of the company, if he wishes to protect it from subsequent dealings by the company registered under the Registration of Deeds Act, should register his security under that Act. Usually such securities are effected by the issue of a debenture or debentures. Although a debenture creating a charge is not itself suitable for registration under the Registration of Deeds Act, it may be, and very often is, protected by a covering deed, which can, of course, be registered.

The proposed amendment of section 173 is designed to restore, as far as possible, the usefulness of the section, which the judgment of the High Court in *Templeton v. Leviathan, &c., Company*, 30 C.L.R. 35, has had the effect of practically destroying for conveyancing purposes.

Section 173, if literally construed, might possibly cause hardship, and the judgments of the English courts have placed some limitations upon it. None, however, have gone so far as the *Leviathan* case appears to have done.

The object of the section was to make Orders of Court conclusive in favour of purchasers without notice and to cover any irregularity of procedure. Since the judgment referred to it has been necessary to revert to the practice, obtaining prior to the passing of the Conveyancing Act, of examining the proceedings in which Orders have been made, for the purpose of ascertaining that all necessary persons are bound. Reversion to the old practice in the investigation of titles applied to be brought under the Real Property Act has involved a large amount of work and consequent expense which, apparently, it was the intention of the Legislature to abolish.

The scheme of the suggested amendment is to deal separately with each case which can be separately provided for, thus covering the more common Orders, and to provide generally for the residue. The operation of the section will still be limited to the extent necessary to prevent it resulting in hardship. The amendment proposed would, I think, provide adequate safeguards without destroying the beneficial effect of the section and would, no doubt, render further judicial limitations unnecessary and impossible.

(Conveyancing) Bill, 1924.

EXPLANATORY NOTE.

The proposed amendment of section 164 of the Conveyancing Act, 1919, is proposed owing to double having arisen as to whether a purchaser of land ought reasonably to search in the register kept by the Registrar of Joint Stock Companies or by companies under sections 3 (2) and 11 of the Companies (Registration of Securities) Act, 1918. This doubt the amendment is intended to determine. The view is held that the holder of any security over land of the company, if he wishes to protect it from subsequent dealings by the company registered under the Registration of Deeds Act, should register his security under that Act. Usually such securities are effected by the issue of a debenture or debentures. Although a debenture creating a charge is not itself suitable for registration under the Registration of Deeds Act, it may be and very often is, protected by a covering deed, which can, of course, be registered.

The proposed amendment of section 173 is designed to restore, as far as possible, the usefulness of the section, which the judgment of the High Court in *Templeton v. Lavintan, &c., Company*, 30 C.L.R. 38, has had the effect of practically destroying for conveyancing purposes.

Section 173, if literally construed, might possibly cause hardship, and the judgments of the English courts have placed some limitations upon it. None, however, have gone so far as the *Lavintan* case appears to have done.

The object of the section was to make Orders of Court conclusive in favour of purchasers without notice and to cover any irregularity of procedure. Since the judgment referred to it has been necessary to revert to the practice obtaining prior to the passing of the Conveyancing Act, of examining the proceedings in which Orders have been made, for the purpose of ascertaining that all necessary persons are bound. Reversion to the old practice in the investigation of titles applied to be brought under the Real Property Act has involved a large amount of work and consequent expense which, apparently, it was the intention of the Legislature to abolish.

The scheme of the suggested amendment is to deal separately with each case which can be separately provided for, thus covering the more common Orders and to provide generally for the residue. The operation of the section will still be limited to the extent necessary to prevent it resulting in hardship. The amendment proposed would, I think, provide adequate safeguards without destroying the beneficial effect of the section and would, no doubt, render further judicial limitations unnecessary and impossible.

Legislative Council.

No. , 1924.

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# A BILL

To amend the Conveyancing Act, 1919.

[MR. BOYCE;—11 *September*, 1924.]

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** This Act may be cited as the “Conveyancing Short title (Amendment) Act, 1924.”

46619

C 53—

**2.**

Amendment  
of Act No. 6,  
1919.

Sec. 164.

- 2.** (1) The Conveyancing Act, 1919, is amended—  
(a) by inserting the following subsection next after subsection one of section one hundred and sixty-four :—

(1A) Omission to search in any register or list kept or filed pursuant to the Companies (Registration of Securities) Act, 1918, or the Companies Act, 1899, or any present or future Act amending those Acts, or either of them, shall not of itself affect a purchaser of land with notice of any mortgage or charge;

Sec. 173 (1).

- (b) (i) by inserting in subsection one of section one hundred and seventy-three immediately before the word "concurrence" the word "party";  
(ii) by inserting at the end of the same subsection the following proviso :—

Provided that—

(a) an order made or purporting to be made in pursuance of the Settled Estates Act, 1886, or Part IV of the Conveyancing and Law of Property Act, 1898, shall not by this section be validated as against any estate or interest claimed otherwise than under or through the settlement in relation to which the order was made; and

(b) an order made in a suit for partition shall not by this section be validated as against any estate or interest which is not an individual share or an estate or interest in an undivided share of the entire estate or interest which the order purports to affect; and

(c) an order made in a suit for foreclosure or otherwise at the suit of a mortgagee as such shall not by this section be validated as against any estate or interest not claimed under



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under or through the person by whose act or default the mortgage in relation to which the order was made was created, or as against any estate or interest having priority to such mortgage; and

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(d) an order in any case shall not by this section be validated against a person not a party to, and not apart from this section, otherwise bound by the proceedings in which the order was made, if the effect of the order or of anything done in pursuance of the order or the combined effect of the order, but for this proviso, would be to deprive such person of an estate or interest and prevent him from receiving the whole or any part of the proceeds of any transaction carried out in pursuance of the order; and

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(e) in any case an order to the extent to which it expressly excludes any person from its operation shall not by this section be validated against that person.

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(2) This Act shall take effect as if it had come into operation on the first day of July, one thousand nine hundred and twenty, except that it shall not affect the rights of any party to any proceeding at law or in equity concluded before or pending at the passing of this Act.

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Retrospective operation.

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