PROOF.

Conveyancing (Amendment) Bill, 1927.

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 provides adequate safeguards without destroying the beneficial effect of the section.

The amendments are made retrospective to the commencement of the Conveyancing Act, 1919, with the usual saving as to completed and pending litigation.

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PROOF.

No. , 1927.

A BILL

To amend sections one hundred and sixty-four and one hundred and seventy-three of the Conveyancing Act, 1919, in certain respects.

[MR. MCTIERNAN;-1 March, 1927.]

BE 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, 1927."

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2	Conveyancing (Amendment).
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
Sec. 173 (1).	 and sixty-four :— (1A) Omission to search in any register or 5 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 10 with notice of any mortgage or charge; (b) (i) by inserting in subsection one of section one hundred and seventy-three immedi-
	ately before the word "concurrence" the word "party"; 15 (ii) by inserting at the end of the same sub- section the following proviso : Provided that
	 (a) an order made or purporting to be made in pursuance of the Settled 20 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 25 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 30 as against any estate or interest which is not an undivided share or an estate or interest in an undivided share of the entire estate or interest which the order purports to affect; 35 and
e-starter a	 (c) an order made in a suit for fore- closure or otherwise at the suit of a mortgagee as such shall not by this section be validated as against 40 any estate or interest not claimed under

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

- (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 pursuance of the order or the combined effect of the order and anything 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 receiving the whole or any part of the proceeds of any transaction carried out in pursuance of the order; and
 - (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.

(2) This Act shall take effect as if it had come Retrospec-30 into operation on the first day of July, one thousand dive operation. 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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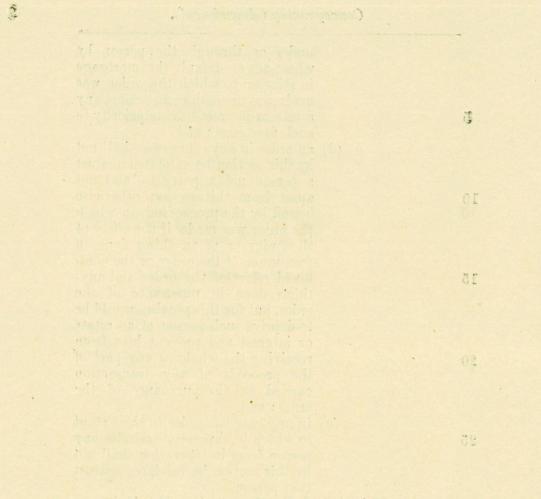
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