

1928.

Legislative Council.

Real Property (Amendment) Bill.

EXPLANATORY MEMORANDUM.

Clause 2. Amendment of Section 20.—

Section 20 requires that notice of an application to bring land under the Act shall be served on the persons stated by the applicant to be in occupation of such land or of land contiguous thereto. The amendment makes the giving of such notices discretionary, and is intended to meet cases in which it appears that notices are unnecessary, *e.g.*, where the subject land comprises or adjoins buildings divided up into numerous offices let to various tenants.

Clause 3. Amendment of Section 32 (2).—

The amendment is designed to bring the law into line with a practice under the Act, of long standing and proved convenience, which a recent judicial decision has called in question. In the case of a lease, for example, while the lease is recorded on the lessor's Certificate of Title, the practice is to record all dealings affecting only the lease on that instrument, and not on the Certificate of Title. According to the decision referred to, it would seem that a transfer of a lease or an under-lease, although recorded on the lease affected, would not be duly registered unless entered on the Certificate of Title. The amendment also validates past transactions, of which there are vast numbers, and permits the continuance of the present practice.

Clause 4.—

- (a) Omission of Section 34.—This section has never been acted upon, and is not necessary under any circumstances.
- (b) Amendment of Section 38 (1).—The words proposed to be omitted referred to words in section forty-two of the Real Property Act of 1862 now omitted. The words proposed to be omitted are now without effect or meaning.
- (c) Amendment of Section 50.—This section requires the Registrar-General to retain a Grant or Certificate of Title which has been partially cancelled. If the registered proprietor desires to have a Certificate of Title for the land remaining in the Certificate of Title which has been partially cancelled he must apply and pay for a new Certificate. Cases frequently arise in which the issuing of a new Certificate is unnecessary and a source of expense to the person concerned without any corresponding advantage. The amendment leaves the matter in the discretion of the Registrar-General.
- (d) Amendment of Section 73.—The addition makes good what was apparently an omission from the original Act.
- (e) The words proposed to be omitted serve no useful purpose and involve unnecessary work.
- (f) Amendment of Section 97 (2).—Under this subsection, an applicant to bring land under the Act or a registered proprietor may summon a caveator to justify his caveat. The addition extends this right to persons claiming under the registered proprietor, and is in similar terms to a provision in the Victorian Transfer of Lands Acts.
- (g) It is not and never has been the practice to issue separate certificates of title to joint tenants. It has been regarded as undesirable to have more than one certificate of title for the same estate. Tenants in common receive separate certificates of title, but each is only for an undivided share.
- (h) New Subsection, 110 (1A).—Certificates of Title may at times become dilapidated or defaced, or the Register Book may be incapable of conveniently containing any further endorsements. While Section 48 provides in this latter case that the Registrar-General may compel a transferee seeking to register his Transfer to receive a new Certificate, there is not at present any provision that will apply to a registered proprietor whose Certificate of Title is affected, and who would usually be the proper person to pay for a new Certificate. The amendment proposed is intended to remedy this anomaly.

Clause 5. Amendment of Act 1921 No. 3, Section 14.—

The section proposed to be amended is defective, inasmuch as it does not contain any provision that the person in whom the land is vested under that section shall be the registered proprietor within the meaning of the Act.

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THE UNIVERSITY OF CHICAGO

THE EAST ASIAN LIBRARY

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Legislative Council.

No. , 1928.

A BILL

To amend the Real Property Act, 1900, and the Real Property (Amendment) Act, 1921; to validate certain registrations made under the said Acts; and for purposes connected therewith.

[MR. BOYCE;—10 *May*, 1928.]

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 "Real Property (Amendment) Act, 1928," and shall be read with the Real Property Act, 1900, as amended by subsequent Acts. Short title.

Amendment
of Act 1900
No. 25, s. 20.

2. The Real Property Act, 1900, is amended by adding at the end of section twenty the following proviso :—

Provided that the Registrar-General may, if he thinks fit, dispense with the service of notice upon all or any of the persons stated by the applicant to be in occupation of the land the subject of the application or of land contiguous thereto. 5

Further
amendment
of Act 1900
No. 25, s. 32
(2).

3. (1) The Real Property Act, 1900, is further amended by inserting at the end of subsection two of section thirty-two the following proviso :—

Provided that so far as any such instrument, dealing, or other matter affects only a mortgage, encumbrance, or lease, it shall be sufficient if particulars of the instrument, dealing, or other matter are recorded on the memorandum of mortgage, encumbrance, or lease affected; and for the purposes of the record of any such particulars whether required or authorised by this or any other Act, the memorandum of mortgage, encumbrance, or lease on which the particulars are recorded shall be deemed to be part of the grant or certificate of title. 15 20

Validation.

(2) Every such record as is mentioned in subsection one of this section, made by the Registrar-General before the passing of this Act, shall be as valid and effectual as if this Act had been passed before the record was made. 25

Further
amendments of
Act 1900 No. 25.

4. The Real Property Act, 1900, is further amended—

Sec. 34.

(a) by omitting section thirty-four; 30

Sec. 38 (1).

(b) by omitting from subsection one of section thirty-eight the words "except in the case of a transfer or other dealing indorsed upon any grant certificate or other instrument as hereinafter provided"; 35

Sec. 50(2).

(c) by adding at the end of subsection two of section fifty the following proviso :—

Provided that the Registrar-General may, at his discretion, instead of retaining a partially cancelled

- cancelled grant or certificate of title, deliver the same to the proprietor of the residue of the land comprised therein or other the person entitled to receive it ;
- 5 (d) by inserting in section seventy-three after the words "such registered proprietor" the words "or some person claiming his estate or interest or an estate or interest derived therefrom" ; Sec. 73.
- 10 (e) by omitting from subsection two of section ninety-three all words after the word "lease" to the end of the subsection ; Sec. 93 (2).
- (f) by inserting in subsection two of section ninety-seven after the words "registered proprietor" the words "or any person claiming under any memorandum of transfer or other instrument registerable under this Act and signed by such registered proprietor or otherwise according to law" ; Sec. 97 (2).
- 15 (g) by omitting from subsection one of section one hundred the words "and shall each receive a separate and distinct certificate of title in respect of such joint estate marked respectively with the name of the owner to whom the same shall be delivered" ; Sec. 100 (1).
- 20 (h) by inserting after subsection one of section one hundred and ten the following new subsection :— Sec. 110.
New subsec.
1A.
- 25 (1A) Where, in the opinion of the Registrar-General, a grant or certificate of title is incapable of conveniently containing any further endorsement, or the condition of the duplicate is such that, in the opinion of the Registrar-General, it should not be delivered to the registered proprietor, the Registrar-General may compel him to receive a new certificate of title.
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5. The Real Property (Amendment) Act, 1921, is amended by adding at the end of section fourteen the following new subsection :— Amendment
of Act 1921
No. 3, s. 14.

- 40 (4) Where the Registrar-General enters in the register book, upon the appropriate grant, certificate of

of title or memorandum of mortgage, encumbrance or lease, a memorandum of any such vesting as is mentioned in this section, the person in the memorandum of vesting expressed to be the proprietor or the person in whom the land is vested shall be deemed to be at the time of entry the registered proprietor of the land. 5

This subsection applies in respect of entries made before as well as after the commencement of this Act. 10

savings.

6. Nothing in this Act shall affect the rights of any party to any proceedings at law or in equity commenced before or pending at the passing of this Act.

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, 22nd May, 1928.*

New South Wales.



ANNO UNDEVICESIMO

GEORGII V REGIS.

Act No. , 1928.

An Act to amend the Real Property Act, 1900, and the Real Property (Amendment) Act, 1921; to validate certain registrations made under the said Acts; and for purposes connected therewith.

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 "Real Property (Amendment) Act, 1928," and shall be read with the Real Property Act, 1900, as amended by subsequent Acts.

Real Property (Amendment).

2. The Real Property Act, 1900, is amended by adding at the end of section twenty the following proviso :—

Amendment
of Act 1900
No. 25, s. 20.

5 Provided that the Registrar-General may, if he thinks fit, dispense with the service of notice upon all or any of the persons stated by the applicant to be in occupation of the land the subject of the application or of land contiguous thereto.

3. (1) The Real Property Act, 1900, is further amended by inserting at the end of subsection two of section thirty-two the following proviso :—

Further
amendment
of Act 1900
No. 25, s. 32
(2).

15 Provided that so far as any such instrument, dealing, or other matter affects only a mortgage, encumbrance, or lease, it shall be sufficient if particulars of the instrument, dealing, or other matter are recorded on the memorandum of mortgage, encumbrance, or lease affected; and for the purposes of the record of any such particulars whether required or authorised by this or any other Act, the memorandum of mortgage, encumbrance, or lease on which the particulars are recorded shall be deemed to be part of the grant or certificate of title.

25 (2) Every such record as is mentioned in subsection one of this section, made by the Registrar-General before the passing of this Act, shall be as valid and effectual as if this Act had been passed before the record was made.

Validation.

4. The Real Property Act, 1900, is further amended—

Further
amendments of
Act 1900 No. 25.

30 (a) by omitting section thirty-four;
 (b) by omitting from subsection one of section thirty-eight the words "except in the case of a transfer or other dealing indorsed upon any grant certificate or other instrument as hereinafter provided";

Sec. 34.

Sec. 38 (1).

35 (c) by adding at the end of subsection two of section fifty the following proviso :—

Sec. 50 (2).

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Real Property (Amendment).

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- 5 (d) by inserting in section seventy-three after the words "such registered proprietor" the words "or some person claiming his estate or interest or an estate or interest derived therefrom" ; Sec. 73.
- 10 (e) by omitting from subsection two of section ninety-three all words after the word "lease" to the end of the subsection ; Sec. 93 (2).
- 15 (f) by inserting in subsection two of section ninety-seven after the words "registered proprietor" the words "or any person claiming under any memorandum of transfer or other instrument registerable under this Act and signed by such registered proprietor or otherwise according to law" ; Sec. 97 (2).
- 20 (g) by omitting from subsection one of section one hundred the words "and shall each receive a separate and distinct certificate of title in respect of such joint estate marked respectively with the name of the owner to whom the same shall be delivered" ; Sec. 100 (1).
- 25 (h) by inserting after subsection one of section one hundred and ten the following new subsection :— Sec. 110. New subsec. 1A.
- 30 (1A) Where, in the opinion of the Registrar-General, a grant or certificate of title is incapable of conveniently containing any further endorsement, or the condition of the duplicate is such that, in the opinion of the Registrar-General, it should not be delivered to the registered proprietor, the Registrar-General
- 35 may compel him to receive a new certificate of title.

5. The Real Property (Amendment) Act, 1921, is amended by adding at the end of section fourteen the following new subsection :— Amendment of Act 1921 No. 3, s. 14.

- 40 (4) Where the Registrar-General enters in the register book, upon the appropriate grant, certificate of

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5 of title or memorandum of mortgage, encumbrance or lease, a memorandum of any such vesting as is mentioned in this section, the person in the memorandum of vesting expressed to be the proprietor or the person in whom the land is vested shall be deemed to be at the time of entry the registered proprietor of the land.

10 This subsection applies in respect of entries made before as well as after the commencement of this Act.

6. Nothing in this Act shall affect the rights of any ^{Savings} party to any proceedings at law or in equity commenced before or pending at the passing of this Act.