

MORTGAGES TAXATION BILL.

SCHEDULE of the Amendments referred to in Message of 13th May, 1932, a.m.

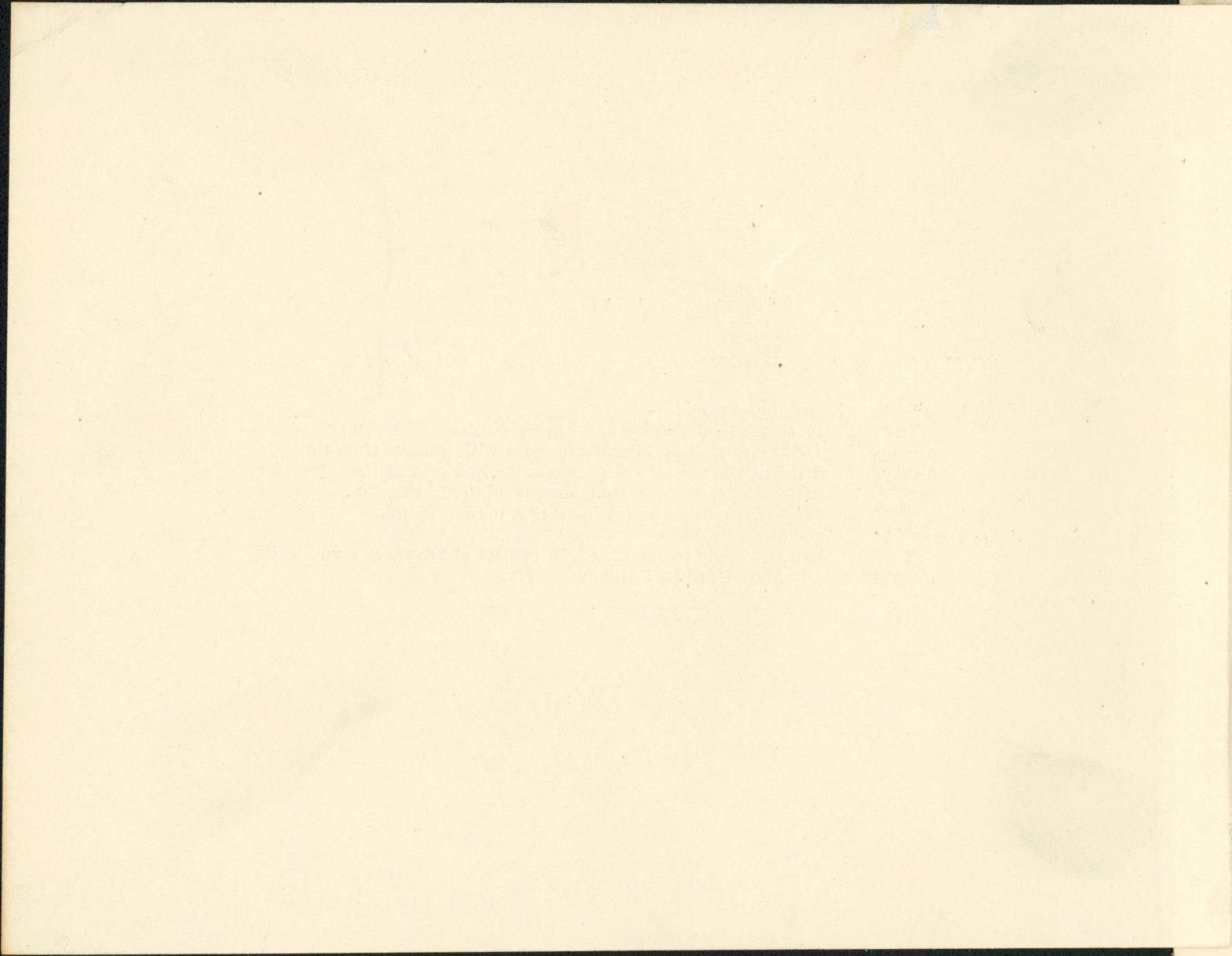
Page 4, clause 8. *At end of clause add:—*

The attorney or agent aforesaid shall have a lien on the mortgage of his principal for the tax so paid by him as aforesaid with interest from the date of payment at the rate secured by such mortgage, and may sell and transfer such mortgage for the purpose of reimbursing himself such tax.

Page 4, clause 9, line 25. *After paragraph (b) insert new paragraph (c).*

Page 5, clause 9. *At end of clause add:—*

This Act shall not apply to mortgages in respect of advances made to its members by any Starr-Bowkett Building Society.



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

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 11 May, 1932.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

W. L. S. COOPER,
Clerk of the Parliaments.
Legislative Council Chamber,
Sydney, 13th May, 1932, A.M.

New South Wales.



ANNO VICESIMO TERTIO

GEORGII V REGIS.

Act No. , 1932.

An Act to impose taxation upon mortgages; to amend the Real Property Act, 1900, and certain other Acts; and for purposes consequent thereon or incidental thereto; and for purposes mentioned therein.

WHEREAS by reason of the Federal Financial Preamble. Agreements Enforcement Act, 1932, the amending Acts, the regulations, certificates, resolutions, proclamations, notices, declarations, and orders there-
5 under it is necessary that the following taxation should be imposed as hereinafter mentioned with a view to the safeguarding of New South Wales which has been committed to the care of the Parliament of New South Wales:

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345---

Be

NOTE.—The words to be inserted are printed in black letter.

Mortgages Taxation.

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 "Mortgages Taxation Act, 1932." Short title.

2. In this Act, unless the contrary intention appears,— Certain definitions.
 "Additional tax" means the additional tax mentioned in section seven of this Act.

"Commissioner of Taxation" means the Commissioner of Taxation appointed under the Income Tax Management Act, 1928, and includes any person authorised by the Colonial Treasurer under section eighteen of this Act.

"Land" includes buildings and structures.

"Person" includes a corporation.

3. Subject to the exemptions hereinafter expressed there shall be charged, levied, collected, and paid for the use of His Majesty and to form part of the Consolidated Revenue Fund upon every mortgage existing at the date of the commencement of this Act a mortgage tax at the rate of ten per centum of the amount secured by the mortgage. Imposition of tax.

4. The said tax shall be paid to the Commissioner of Taxation within fourteen days from the commencement of this Act, or within such further time as he may, with the consent of the Colonial Treasurer, allow in any particular case or in any class of cases, or generally. Time of payment.

5. In this Act the expression "mortgage" shall mean— Definition of "Mortgage."

- (a) any deed, memorandum of mortgage, agreement, or instrument whatever whereby security for payment of money is granted over, or
 - (b) any equitable mortgage by deposit of title deeds or other instruments or papers of, or
 - (c) any charge for the securing of money (howsoever created) upon,
- land or any estate or interest therein or any mortgage of or charge upon land or any estate or interest therein, whether

Mortgages Taxation.

whether land or estate or interest therein or such mortgage or charge forms the whole or part of the security, and notwithstanding the absence from New South Wales at any time of any specialty constituting or
5 relating in any way to any debt.

6. (1) For the purposes of this Act the amount secured by a mortgage shall mean the total amount of all the moneys secured by the mortgage at the date of the commencement of this Act on any account whatever
10 other than interest which at that date has not been or is not liable to be capitalised or to have interest charged upon it in any other way.

Definition of amount secured by a mortgage.

(2) Provided that where a mortgage at the commencement of this Act comprises other property in
15 addition to land or any estate or interest therein or any mortgage of or charge upon land or any estate or interest therein, for the purposes of this Act, the amount secured by the mortgage shall not exceed such sum as in the opinion of the Commissioner of Taxation
20 represents the total value as at the date of the commencement of this Act of all the land and estates and interests in land and mortgages of and charges upon land or estates or interests therein subject to the mortgage.

(3) Provided further that where a mortgage at
25 the commencement of this Act is subject to a mortgage, for the purposes of this Act the amount secured by the mortgage first mentioned in this subsection shall not exceed the sum by which the amount secured by that
30 mortgage ascertained as provided in subsection one of this section exceeds the amount secured by the mortgage that is a mortgage of that mortgage ascertained as provided in that subsection.

7. Every person who at the date of the commence-
35 ment of this Act holds or owns any mortgage not exempted by section nine shall pay to the Commissioner of Taxation within the time provided by section four mortgage tax at the rate of ten per centum of the amount secured by the mortgage, and if such tax
40 is not paid before the expiration of that time such person

Personal obligation to pay tax.

Mortgages Taxation.

person shall pay to the Commissioner of Taxation additional tax at the rate of ten per centum per annum upon the amount of such tax for the time being unpaid.

8. If any person made liable by section seven to pay
 5 the mortgage tax imposed by this Act is absent from
 New South Wales for the period of fourteen days from
 the commencement of this Act the attorney or agent of
 such person shall be personally liable to pay such tax in
 all respects as if he had been the holder or owner of the
 10 mortgage and had been expressly made liable therefor
 by section seven, but this provision shall not relieve any
 holder or owner of his liability to pay such tax or of
 any other liability to which he may be subject by or
 under this Act.

Absence of
holder or
owner of
mortgage.

15 **The attorney or agent aforesaid shall have a lien
 on the mortgage of his principal for the tax so paid by
 him as aforesaid with interest from the date of payment
 at the rate secured by such mortgage, and may sell and
 transfer such mortgage for the purpose of reimbursing
 20 himself such tax.**

9. A mortgage owned by—

Exemption.

- (a) the Crown ; or
 (b) any hospital which is an incorporated hospital
 25 or a separate institution within the meaning
 of the Public Hospitals Act, 1929 ; or
 (c) **any charitable or religious body or any person
 or persons or corporation on behalf of or for
 the benefit of any charitable or religious body
 or organisation ; or**
 30 (e d) any friendly society or branch registered
 under the Friendly Societies Act, 1912, or any
 amendment thereof ; or
 (d e) any trade union registered under the Trades
 Unions Act, 1881, or any amendment thereof ;
 35 or
 (e f) the Workers' Compensation Commission of
 New South Wales as an investment of com-
 pensation money paid or payable on death or
 disability under any Act relating to compen-
 40 sation to workers or workmen,

shall

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shall be exempt from the mortgage tax imposed by this Act: Provided that this exemption shall not extend to a mortgage of any such mortgage unless that submortgage is itself within the exemption.

5 This Act shall not apply to mortgages in respect of advances made to its members by any Starr-Bowkett Building Society.

10. The mortgage tax imposed by this Act and all additional tax shall, notwithstanding the provisions of any other Act and without any registration or act or notice other than this section, be a first charge upon the mortgage and take priority over all other charges and over all liens, dealings, interests, and contracts.

Tax a first charge on the mortgage.

11. If the mortgage tax imposed by this Act is not paid within fourteen days from the commencement of this Act or such further time (if any) allowed by the Commissioner of Taxation, with the consent of the Colonial Treasurer, the mortgage and the full benefit and advantage thereof shall, without any other assurance than this Act, vest in His Majesty The King in right of New South Wales absolutely freed and discharged from all charges, liens, dealings, interests, and contracts other than a submortgage upon which the mortgage tax imposed by this Act has been paid within the time provided by section four.

Vesting of mortgage in His Majesty.

12. Where any mortgage is vested by this Act in His Majesty there shall also be vested in His Majesty—

Further effect of vesting.

(a) the right to demand, recover, and give receipts for the moneys then and thereafter secured by the mortgage, including interest;

(b) the benefit of all securities for the same and the right to exercise all powers and remedies of the mortgagee; and

(c) all the estate, interest, and benefits in or to the property subject to the mortgage that are comprised in the mortgage.

13.

Mortgages Taxation.

13. Nothing in this Act shall impose on His Majesty any liability in respect of any mortgage vested in His Majesty or the property subject thereto in any case where His Majesty would not be subject to the liability if such mortgage or property had not been vested in His Majesty by this Act.

Saving of liability of Crown upon vesting.

14. Without affecting any power, right, or authority of His Majesty by virtue of the vesting of any mortgage in His Majesty or otherwise it is hereby declared that any mortgage vested in His Majesty by this Act and (in pursuance of any power or authority by virtue of the mortgage) any property subject to such mortgage may be assigned, assured, sold, charged or dealt with in any manner by the Attorney-General or the Commissioner of Taxation, and the Attorney-General or the Commissioner of Taxation may exercise, carry out, and enforce all or any of the benefits, advantages, powers, rights, and remedies relating to or in any way appertaining to the mortgage or the property subject thereto, including the execution of any instruments.

Power of Attorney-General or Commissioner of Taxation.

15. Any receipt given by or for His Majesty or the Attorney-General or the Commissioner of Taxation for any money received shall be an effectual discharge to a purchaser or chargee or any other person paying the same, and notwithstanding the provisions of any other Act, no such person nor the Registrar-General, nor any other person shall be concerned to inquire whether the provisions of this Act in respect of any assurance, dealing, or other matter have been complied with, or whether any mortgage tax is payable or otherwise into the regularity or validity of any matter being entered into or entered into by or for His Majesty or the Attorney-General or the Commissioner of Taxation, and notwithstanding any other Act the Registrar-General and all officers and persons recording transfers or dealings shall register, record, and give full effect to any instrument executed by or for His Majesty or the Attorney-General or the Commissioner of Taxation according to the purport thereof, whether or not it is accompanied with any other instrument or document of title.

Receipts to be a discharge.

16.

Mortgages Taxation.

16. Any moneys received by or for His Majesty by virtue of or in connection with any mortgage vested in His Majesty by this Act or the property subject thereto shall be applied to the following purposes and in the following order, that is to say, in or towards payment of—

Application of moneys arising under mortgages vested in the Crown.

- 10 (a) all costs, charges, and expenses whatsoever incurred by or for the Crown (including a commission of five per centum on all moneys received);
- (b) the mortgage tax imposed by this Act, and all additional tax;
- 15 (c) all penalties imposed under this Act or the regulations upon the holder or owner of the mortgage or any agent or attorney of such holder or owner (without prejudice to any other proceeding or remedy for the recovery thereof);
- 20 (d) any other moneys payable by the holder or owner of the mortgage to His Majesty the King in right of New South Wales;
- 25 (e) any balance shall be paid to the persons who in the opinion of the Colonial Treasurer would have been entitled thereto had the mortgage not become vested in His Majesty under this Act, and the receipt by or for any person to whom any payment is so made shall be an absolute discharge to His Majesty and a bar to any claim by any other person: Provided that if the Colonial Treasurer has any doubt as to the title of any person to be paid such balance or any part thereof he may pay the same to the Master in Equity to be disposed of as the Court may direct.

35 **17.** If more than one mortgage vested in His Majesty by this Act affects the same property, whether in whole or in part, the moneys received by the Crown by virtue of or in connection with all or any of such

40 mortgages shall be appropriated in whole or in part to such one or more of the mortgages as the Colonial Treasurer may think proper.

Appropriation of money in case of several mortgages.

18.

Mortgages Taxation.

18. Any person authorised by the Colonial Treasurer shall have and may exercise all or any of the duties, powers, authorities, and functions of the Commissioner of Taxation by or under this Act, and all acts, matters, instruments, and things done, made, and executed or omitted by every such person shall be as valid and effectual as if the same had been done, made, executed, or omitted by the Commissioner of Taxation.

Delegation of powers.

19. Any covenant or stipulation or promise whatsoever which has or purports to have the purpose or effect of imposing on any person entitled to or about to redeem a mortgage the obligation of paying the mortgage tax imposed by this Act or any additional tax or any part of either of them shall be absolutely void.

Tax not to be passed on to mortgagor.

20. Any certificate, document, or paper purporting to be signed by the Colonial Treasurer or the Commissioner of Taxation, or any person authorised under section eighteen shall, on production by or on behalf of His Majesty the King in right of New South Wales or any officer of His Majesty in such right or any member of the police force, be admitted into evidence without proof of the signature, and shall be evidence of any acts, omissions, facts, or matters therein stated.

Certificate to be evidence.

21. The Commissioner of Taxation may at any time and from time to time by a particular notice or by a general notice published in the Gazette require any person or persons to furnish within the time or times and in the manner mentioned in the notice all such returns whether on their own behalf or on the behalf of others as he may think desirable. If any person fails to furnish any return fully completed within the time or in the manner mentioned in any notice or makes any false statement in any return he shall be guilty of an offence and liable upon summary conviction before two justices to a penalty not exceeding five hundred pounds or imprisonment for six months.

Commissioner may call for returns.

22. The Colonial Treasurer or the Commissioner of Taxation, or any person authorised by either of them, may at any time and from time to time by notice in writing served upon any person, or published in the

Persons to produce documents and answer questions.

Gazette

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Gazette, require that person within such period and in such manner or at such time and place as is fixed by the notice, to answer questions and produce documents relevant to any matter arising under or incidental to the carrying out of this Act or the regulations thereunder.

Any person who contravenes or refuses or fails to comply with such notice or any part thereof in any respect or who answers any question untruly shall be guilty of an offence and liable on summary conviction before two justices to a penalty not exceeding one thousand pounds or imprisonment for twelve months.

23. (1) Without prejudice to any other proceeding or remedy the Commissioner of Taxation may sign a certificate stating that an amount therein mentioned is payable by the person therein referred to to His Majesty on account of mortgage tax imposed by this Act and/or additional tax. Such certificate may be of part only of such mortgage tax and/or additional tax payable by such person, and further such certificates may be issued in respect of the said taxes payable by such person.

Certificate of Commissioner as to any tax payable.

(2) Any such certificate may (irrespective of the amount therein mentioned) be filed in any district court and shall operate as a judgment of that court against such person and shall be enforceable by any remedies by law provided.

(3) The provisions of this section shall apply and continue to apply notwithstanding that there may be pending any action, suit, proceeding, or matter in which there is in issue or concerned any questions as to the amount payable to His Majesty by the person referred to in the certificate or any other person for mortgage tax imposed by this Act, or additional tax or any question as to there being no such amount payable.

24. When a mortgage is by this Act vested in His Majesty, every person shall immediately forward to the Commissioner of Taxation or other person appointed by the Colonial Treasurer all title and other documents relating to the mortgage or to any property subject thereto, and all evidences as to the amount secured by the mortgage in his custody, control, or possession, and any person who refuses or fails to comply with this section

Where mortgage is vested title deeds to be forwarded.

Mortgages Taxation.

section in any respect shall be guilty of an offence and liable upon summary conviction before two justices to a penalty not exceeding two thousand pounds or imprisonment for a term not exceeding two years.

- 5 **25.** Any person authorised by the Colonial Treasurer may enter, by force if such person thinks it necessary, and search any place, building, premises, or receptacle which such person may reasonably suspect to contain any title or other documents relating to a mortgage or
10 to any property subject thereto, or any evidences as to the amount secured by a mortgage; and such person may seize, take possession of, and remove all such documents and evidences found in any place, building, premises, or receptacle.
- 15 Any person who in any way obstructs or hinders any person acting or purporting to act under this section shall be guilty of an offence and liable on summary conviction before two justices to a penalty of not less than ten pounds and not more than one thousand pounds
20 and imprisonment for twelve months.

- 26.** Without prejudice to any other liability, remedy, or proceeding mortgage tax imposed by this Act and additional tax shall be a debt due to The King in right of the State of New South Wales, and any such tax
25 and any moneys payable whether to His Majesty or to any person under a mortgage vested in His Majesty by this Act or in connection with any property comprised in any such mortgage may be sued for and recovered in any court of competent jurisdiction by the
30 Attorney-General or the Commissioner of Taxation.

- 27.** Except as expressly otherwise provided by this Act no action, suit, or proceeding (including injunction, prohibition, certiorari or mandamus) shall lie against His Majesty, the Colonial Treasurer, the Attorney-
35 General, or the Commissioner of Taxation, or any officer or person for or by reason of any act, matter, or thing done or omitted or proposed to be done or omitted under this Act or the regulations, or in purported execution of this Act or the regulations, or in the intended carrying
0 out of this Act or the regulations, notwithstanding that the same may be based on or influenced by any mistake as to any matter of fact or law. **28.**

Recovery of title deeds not handed over.

Tax a Crown debt.

Certain legal proceedings not to be brought.

Mortgages Taxation.

28. (1) A person shall not, on and after the commencement of this Act and until the Commissioner of Taxation has certified that all mortgage tax imposed by this Act on a mortgage and all additional tax payable ^{No payments to be made to mortgagee until tax is paid.} in respect thereof have been paid, pay to any person other than His Majesty any of the moneys secured by a mortgage not exempted by section nine (including interest) or (unless the mortgage has no relation to such payment) any money in respect of any property subject to such mortgage.

(2) Any such certificate of the Commissioner of Taxation may be particular or general.

(3) A payment made by any person in contravention of subsection one of this section shall not operate to discharge or reduce any liability of the person by or on whose behalf it was made.

(4) Any person who contravenes this section shall be guilty of an offence and liable upon summary conviction before two justices to a penalty of not less than one pound and not more than five hundred pounds or imprisonment for six months.

29. (1) On and after the commencement of this Act and until the Commissioner of Taxation has certified ^{Payments to be made to Crown.} as mentioned in subsection one of section twenty-eighth, a person liable to pay to any person other than His Majesty any of the moneys secured by a mortgage not exempted by section nine (including interest) or (unless the mortgage has no relation to the liability to pay the money) any money in respect of any property subject to such mortgage, shall pay to the Commissioner of Taxation all the money that the first-mentioned person is liable to pay as aforesaid, and upon such payment the liability of such person to pay such moneys shall, to the extent of the payment, be discharged.

(2) The Commissioner of Taxation shall apply the moneys received under subsection one of this section towards satisfaction of the mortgage tax imposed by this Act upon the mortgage in connection with which the liability to pay such moneys accrued and any additional tax and penalties imposed upon the holder

or

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or owner of the mortgage, and the costs, charges, and expenses incurred by the Crown under this Act or the regulations.

30. Any person who receives directly or indirectly Payments in contravention of Act and discharges.
 5 whether by giving credit or otherwise howsoever any money the payment of which is or would be a contra-
 vention of any of the provisions of this Act, whether the money was received on his own behalf or on behalf
 of any other person, and any person who executes any
 10 discharge or reconveyance in respect of any mortgage not exempted by section nine, or does any act having or
 intended to have such effect, before obtaining a certificate from the Commissioner of Taxation that all mortgage
 tax imposed by this Act and all additional tax have
 15 been paid, shall be guilty of an offence and liable upon summary conviction before two justices to a penalty
 of not less than ten pounds and not more than one thousand pounds or imprisonment for twelve months.

31. Any person who in any respect contravenes or Contravention of Act an offence.
 20 refuses or fails to comply with section seven or any other provision of this Act or any requirement or
 direction made or given in pursuance of this Act shall be guilty of an offence.

32. Any person who is guilty of an offence against Penalties.
 25 this Act for which a penalty or punishment is not expressly otherwise prescribed shall be guilty of a mis-
 demeanour and shall be liable to a penalty not exceeding one thousand pounds or imprisonment for three years or
 both or in the case of a corporation to a penalty not
 30 exceeding two thousand pounds: Provided that in the case of a continuing offence by any person the offender
 shall in addition to the penalty aforesaid be liable for each day during which the offence continues to a
 penalty of an amount not exceeding one-half of such
 35 maximum amount provided by the foregoing provisions of this section as is applicable to the case.

33. If in the case of a person charged with an Summary conviction.
 offence against this Act that is a misdemeanour, the
 prosecutor asks that the case may be disposed of sum-
 40 marily, such person shall upon summary conviction
 before

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before two justices for such offence be liable to the same punishments in all respects as if he had been tried and convicted upon indictment for the misdemeanour.

5 **34.** Whoever aids, abets, counsels, procures, suffers, Aiders and abettors.
or permits, or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Act or the regulations, shall be deemed to have committed that offence, and may be charged, and shall be punishable accordingly.

10 **35.** If any corporation commits any offence against Corporations.
this Act or the regulations, every director or member of the governing body or executive officer or person acting as such shall be deemed to have committed that offence, and may be charged, and shall be punishable accordingly.

15 **36.** If any person directly or indirectly by any act Evasion.
or omission whatsoever evades or attempts to evade payment of or liability for any part of the mortgage tax imposed by this Act or additional tax he shall be guilty of an offence against this Act.

20 **37.** Any offence against this Act or the regulations Anyone may prosecute.
may be prosecuted by any person.

38. Payment of penalties or imprisonment under Penalties not to discharge tax.
this Act shall not relieve any person from the liability to pay the mortgage tax imposed by this Act for which
25 he is made liable by this Act.

39. (1) The Colonial Treasurer may make regula- Regulations.
tions not contradictory to this Act prescribing all matters required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying
30 out or giving effect to this Act, and although the same subject-matter may be dealt with in this Act, and in particular—

35 (a) for conferring on any person powers of requiring returns and production of documents, and any other powers which, in the opinion of the Colonial Treasurer, are necessary or desirable to be conferred for the purposes of carrying out this Act;

40 (b) for imposing for the purposes of this Act duties upon any person;

(c)

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(c) for requiring persons or classes of persons to furnish returns in respect of mortgages or property subject thereto.

(2) The regulations may impose a penalty not exceeding in any case five hundred pounds or imprisonment for six months for any contravention of or failure to comply with any of such regulations, and may prescribe maximum and minimum penalties in any case.

(3) The regulations shall—

- 10 (a) be published in the Gazette ;
(b) take effect from the date of publication or from a later date to be specified in the regulations ;
and
15 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

20 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have
25 effect.

40. This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that
30 power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Construction
of Act.

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

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 11 May, 1932.

New South Wales.



ANNO VICESIMO TERTIO

GEORGIUS V REGIS.

Act No. , 1932.

An Act to impose taxation upon mortgages; to amend the Real Property Act, 1900, and certain other Acts; and for purposes consequent thereon or incidental thereto; and for purposes mentioned therein.

WHEREAS by reason of the Federal Financial Preamble.
Agreements Enforcement Act, 1932, the amending Acts, the regulations, certificates, resolutions, proclamations, notices, declarations, and orders there-
5 under it is necessary that the following taxation should be imposed as hereinafter mentioned with a view to the safeguarding of New South Wales which has been committed to the care of the Parliament of New South Wales:

Mortgages Taxation.

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
5 same, as follows:—

- 1.** This Act may be cited as the "Mortgages Taxation Act, 1932." Short title.
- 2.** In this Act, unless the contrary intention appears,— Certain definitions.
 "Additional tax" means the additional tax mentioned in section seven of this Act.
 "Commissioner of Taxation" means the Commissioner of Taxation appointed under the Income Tax Management Act, 1928, and includes any person authorised by the Colonial Treasurer under section eighteen of this Act.
 "Land" includes buildings and structures.
 "Person" includes a corporation.
- 3.** Subject to the exemptions hereinafter expressed Imposition of tax.
 there shall be charged, levied, collected, and paid for the use of His Majesty and to form part of the Consolidated Revenue Fund upon every mortgage existing at the date of the commencement of this Act a mortgage tax at the rate of ten per centum of the amount secured by the mortgage.
- 4.** The said tax shall be paid to the Commissioner of Taxation within fourteen days from the commencement of this Act, or within such further time as he may, with the consent of the Colonial Treasurer, allow in any particular case or in any class of cases, or generally. Time of payment.
- 5.** In this Act the expression "mortgage" shall Definition of "Mortgage."
 mean—
- (a) any deed, memorandum of mortgage, agreement, or instrument whatever whereby security for payment of money is granted over, or
 (b) any equitable mortgage by deposit of title deeds or other instruments or papers of, or
 (c) any charge for the securing of money (howsoever created) upon,
 40 land or any estate or interest therein or any mortgage of or charge upon land or any estate or interest therein,
 whether

Mortgages Taxation.

whether land or estate or interest therein or such mortgage or charge forms the whole or part of the security, and notwithstanding the absence from New South Wales at any time of any specialty constituting or
5 relating in any way to any debt.

6. (1) For the purposes of this Act the amount secured by a mortgage shall mean the total amount of all the moneys secured by the mortgage at the date of the commencement of this Act on any account whatever
10 other than interest which at that date has not been or is not liable to be capitalised or to have interest charged upon it in any other way.

Definition of amount secured by a mortgage.

(2) Provided that where a mortgage at the commencement of this Act comprises other property in
15 addition to land or any estate or interest therein or any mortgage of or charge upon land or any estate or interest therein, for the purposes of this Act, the amount secured by the mortgage shall not exceed such sum as in the opinion of the Commissioner of Taxation
20 represents the total value as at the date of the commencement of this Act of all the land and estates and interests in land and mortgages of and charges upon land or estates or interests therein subject to the mortgage.

25 (3) Provided further that where a mortgage at the commencement of this Act is subject to a mortgage, for the purposes of this Act the amount secured by the mortgage first mentioned in this subsection shall not exceed the sum by which the amount secured by that
30 mortgage ascertained as provided in subsection one of this section exceeds the amount secured by the mortgage that is a mortgage of that mortgage ascertained as provided in that subsection.

7. Every person who at the date of the commencement of this Act holds or owns any mortgage not
35 exempted by section nine shall pay to the Commissioner of Taxation within the time provided by section four mortgage tax at the rate of ten per centum of the amount secured by the mortgage, and if such tax
40 is not paid before the expiration of that time such person

Personal obligation to pay tax.

Mortgages Taxation.

person shall pay to the Commissioner of Taxation additional tax at the rate of ten per centum per annum upon the amount of such tax for the time being unpaid.

5 **8.** If any person made liable by section seven to pay the mortgage tax imposed by this Act is absent from New South Wales for the period of fourteen days from the commencement of this Act the attorney or agent of such person shall be personally liable to pay such tax in all respects as if he had been the holder or owner of the
10 mortgage and had been expressly made liable therefor by section seven, but this provision shall not relieve any holder or owner of his liability to pay such tax or of any other liability to which he may be subject by or under this Act.

Absence of holder or owner of mortgage.

15 **9.** A mortgage owned by—

Exemption.

- (a) the Crown ; or
- (b) any hospital which is an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act, 1929 ; or
- 20 (c) any friendly society or branch registered under the Friendly Societies Act, 1912, or any amendment thereof ; or
- (d) any trade union registered under the Trades Unions Act, 1881, or any amendment thereof ;
- 25 or
- (e) the Workers' Compensation Commission of New South Wales as an investment of compensation money paid or payable on death or disability under any Act relating to compensation to workers or workmen,
- 30

shall be exempt from the mortgage tax imposed by this Act: Provided that this exemption shall not extend to a mortgage of any such mortgage unless that submortgage is itself within the exemption.

35 **10.** The mortgage tax imposed by this Act and all additional tax shall, notwithstanding the provisions of any other Act and without any registration or act or notice other than this section, be a first charge upon the mortgage and take priority over all other charges and
40 over all liens, dealings, interests, and contracts.

Tax a first charge on the mortgage.

11.

Mortgages Taxation.

11. If the mortgage tax imposed by this Act is not paid within fourteen days from the commencement of this Act or such further time (if any) allowed by the Commissioner of Taxation, with the consent of the Colonial Treasurer, the mortgage and the full benefit and advantage thereof shall, without any other assurance than this Act, vest in His Majesty The King in right of New South Wales absolutely freed and discharged from all charges, liens, dealings, interests, and contracts other than a submortgage upon which the mortgage tax imposed by this Act has been paid within the time provided by section four.

Vesting of mortgage in His Majesty.

12. Where any mortgage is vested by this Act in His Majesty there shall also be vested in His Majesty—

15 (a) the right to demand, recover, and give receipts for the moneys then and thereafter secured by the mortgage, including interest ;

(b) the benefit of all securities for the same and the right to exercise all powers and remedies of the mortgagee ; and

20 (c) all the estate, interest, and benefits in or to the property subject to the mortgage that are comprised in the mortgage.

Further effect of vesting.

13. Nothing in this Act shall impose on His Majesty any liability in respect of any mortgage vested in His Majesty or the property subject thereto in any case where His Majesty would not be subject to the liability if such mortgage or property had not been vested in His Majesty by this Act.

Saving of liability of Crown upon vesting

14. Without affecting any power, right, or authority of His Majesty by virtue of the vesting of any mortgage in His Majesty or otherwise it is hereby declared that any mortgage vested in His Majesty by this Act and (in pursuance of any power or authority by virtue of the mortgage) any property subject to such mortgage may be assigned, assured, sold, charged or dealt with in any manner by the Attorney-General or the Commissioner of Taxation, and the Attorney-General or the Commissioner of Taxation may exercise, carry out, and enforce all or any of the benefits, advantages, powers, rights,

Power of Attorney-General or Commissioner of Taxation.

Mortgages Taxation.

rights, and remedies relating to or in any way appertaining to the mortgage or the property subject thereto, including the execution of any instruments.

5 **15.** Any receipt given by or for His Majesty or the Attorney-General or the Commissioner of Taxation for any money received shall be an effectual discharge to a purchaser or chargee or any other person paying the same, and notwithstanding the provisions of any other Act, no such person nor the Registrar-General, 10 nor any other person shall be concerned to inquire whether the provisions of this Act in respect of any assurance, dealing, or other matter have been complied with, or whether any mortgage tax is payable or otherwise into the regularity or validity of any matter 15 being entered into or entered into by or for His Majesty or the Attorney-General or the Commissioner of Taxation, and notwithstanding any other Act the Registrar-General and all officers and persons recording transfers or dealings shall register, record, and give full 20 effect to any instrument executed by or for His Majesty or the Attorney-General or the Commissioner of Taxation according to the purport thereof, whether or not it is accompanied with any other instrument or document of title.

Receipts to be
a discharge.

25 **16.** Any moneys received by or for His Majesty by virtue of or in connection with any mortgage vested in His Majesty by this Act or the property subject thereto shall be applied to the following purposes and in the following order, that is to say, in or towards payment 30 of—

Application
of moneys
arising under
mortgages
vested in the
Crown.

- 35 (a) all costs, charges, and expenses whatsoever incurred by or for the Crown including a commission of five per centum on all moneys received);
- (b) the mortgage tax imposed by this Act, and all additional tax;
- 40 (c) all penalties imposed under this Act or the regulations upon the holder or owner of the mortgage or any agent or attorney of such holder or owner (without prejudice to any other proceeding or remedy for the recovery thereof);
- (d)

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- (d) any other moneys payable by the holder or owner of the mortgage to His Majesty the King in right of New South Wales ;
- 5 (e) any balance shall be paid to the persons who in the opinion of the Colonial Treasurer would have been entitled thereto had the mortgage not become vested in His Majesty under this Act, and the receipt by or for any person to whom any payment is so made shall be an absolute discharge to His Majesty and a bar to any claim by any other person: Provided that if the Colonial Treasurer has any doubt as to the title of any person to be paid such balance or any part thereof he may pay the same to the Master in Equity to be disposed of as the Court may direct.
- 10
- 15

17. If more than one mortgage vested in His Majesty by this Act affects the same property, whether in whole or in part, the moneys received by the Crown by virtue of or in connection with all or any of such mortgages shall be appropriated in whole or in part to such one or more of the mortgages as the Colonial Treasurer may think proper.

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Appropriation of money in case of several mortgages.

18. Any person authorised by the Colonial Treasurer shall have and may exercise all or any of the duties, powers, authorities, and functions of the Commissioner of Taxation by or under this Act, and all acts, matters, instruments, and things done, made, and executed or omitted by every such person shall be as valid and effectual as if the same had been done, made, executed, or omitted by the Commissioner of Taxation.

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Delegation of powers.

19. Any covenant or stipulation or promise whatsoever which has or purports to have the purpose or effect of imposing on any person entitled to or about to redeem a mortgage the obligation of paying the mortgage tax imposed by this Act or any additional tax or any part of either of them shall be absolutely void.

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Tax not to be passed on to mortgagor.

20. Any certificate, document, or paper purporting to be signed by the Colonial Treasurer or the Commissioner of Taxation, or any person authorised under section eighteen shall, on production by or on behalf of

40

of

Certificate to be evidence.

Mortgages Taxation.

of His Majesty the King in right of New South Wales or any officer of His Majesty in such right or any member of the police force, be admitted into evidence without proof of the signature, and shall be
 5 evidence of any acts, omissions, facts, or matters therein stated.

21. The Commissioner of Taxation may at any time and from time to time by a particular notice or by a
 10 general notice published in the Gazette require any person or persons to furnish within the time or times and in the manner mentioned in the notice all such returns whether on their own behalf or on the behalf of
 15 others as he may think desirable. If any person fails to furnish any return fully completed within the time or in the manner mentioned in any notice or makes any false statement in any return he shall be guilty of an offence and liable upon summary conviction before two justices to a penalty not exceeding five hundred pounds or imprisonment for six months.

Commissioner
may call for
returns.

22. The Colonial Treasurer or the Commissioner
 20 of Taxation, or any person authorised by either of them, may at any time and from time to time by notice in writing served upon any person, or published in the Gazette, require that person within such period and in
 25 such manner or at such time and place as is fixed by the notice, to answer questions and produce documents relevant to any matter arising under or incidental to the carrying out of this Act or the regulations thereunder.

Persons to
produce
documents
and answer
questions.

Any person who contravenes or refuses or fails to
 30 comply with such notice or any part thereof in any respect or who answers any question untruly shall be guilty of an offence and liable on summary conviction before two justices to a penalty not exceeding one thousand pounds or imprisonment for twelve months.

23. (1) Without prejudice to any other proceeding
 35 or remedy the Commissioner of Taxation may sign a certificate stating that an amount therein mentioned is payable by the person therein referred to to His Majesty on account of mortgage tax imposed by this Act and/or
 40 additional tax. Such certificate may be of part only of such

Certificate of
Commissioner
as to any tax
payable.

Mortgages Taxation.

such mortgage tax and/or additional tax payable by such person, and further such certificates may be issued in respect of the said taxes payable by such person.

(2) Any such certificate may (irrespective of the amount therein mentioned) be filed in any district court and shall operate as a judgment of that court against such person and shall be enforceable by any remedies by law provided.

(3) The provisions of this section shall apply and continue to apply notwithstanding that there may be pending any action, suit, proceeding, or matter in which there is in issue or concerned any questions as to the amount payable to His Majesty by the person referred to in the certificate or any other person for mortgage tax imposed by this Act, or additional tax or any question as to there being no such amount payable.

24. When a mortgage is by this Act vested in His Majesty, every person shall immediately forward to the Commissioner of Taxation or other person appointed by the Colonial Treasurer all title and other documents relating to the mortgage or to any property subject thereto, and all evidences as to the amount secured by the mortgage in his custody, control, or possession, and any person who refuses or fails to comply with this section in any respect shall be guilty of an offence and liable upon summary conviction before two justices to a penalty not exceeding two thousand pounds or imprisonment for a term not exceeding two years.

Where mortgage is vested title deeds to be forwarded.

25. Any person authorised by the Colonial Treasurer may enter, by force if such person thinks it necessary, and search any place, building, premises, or receptacle which such person may reasonably suspect to contain any title or other documents relating to a mortgage or to any property subject thereto, or any evidences as to the amount secured by a mortgage; and such person may seize, take possession of, and remove all such documents and evidences found in any place, building, premises, or receptacle.

Recovery of title deeds not handed over.

Any person who in any way obstructs or hinders any person acting or purporting to act under this section shall be guilty of an offence and liable on summary conviction

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conviction before two justices to a penalty of not less than ten pounds and not more than one thousand pounds and imprisonment for twelve months.

26. Without prejudice to any other liability, remedy, Tax a Crown debt. or proceeding mortgage tax imposed by this Act and additional tax shall be a debt due to The King in right of the State of New South Wales, and any such tax and any moneys payable whether to His Majesty or to any person under a mortgage vested in His Majesty 5 by this Act or in connection with any property comprised in any such mortgage may be sued for and 10 recovered in any court of competent jurisdiction by the Attorney-General or the Commissioner of Taxation.

27. Except as expressly otherwise provided by this Certain legal proceedings not to be brought. Act no action, suit, or proceeding (including injunction, prohibition, certiorari or mandamus) shall lie against His Majesty, the Colonial Treasurer, the Attorney-General, or the Commissioner of Taxation, or any officer or person for or by reason of any act, matter, or thing 20 done or omitted or proposed to be done or omitted under this Act or the regulations, or in purported execution of this Act or the regulations, or in the intended carrying out of this Act or the regulations, notwithstanding that the same may be based on or influenced by any mistake 25 as to any matter of fact or law.

28. (1) A person shall not, on and after the commencement of this Act and until the Commissioner of Taxation has certified that all mortgage tax imposed by this Act on a mortgage and all additional tax payable No payments to be made to mortgagee until tax is paid. 30 in respect thereof have been paid, pay to any person other than His Majesty any of the moneys secured by a mortgage not exempted by section nine (including interest) or (unless the mortgage has no relation to such payment) any money in respect of any property subject 35 to such mortgage.

(2) Any such certificate of the Commissioner of Taxation may be particular or general.

(3) A payment made by any person in contravention of subsection one of this section shall not 40 operate to discharge or reduce any liability of the person by or on whose behalf it was made.

(4)

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(4) Any person who contravenes this section shall be guilty of an offence and liable upon summary conviction before two justices to a penalty of not less than one pound and not more than five hundred pounds or imprisonment for six months.

29. (1) On and after the commencement of this Act and until the Commissioner of Taxation has certified as mentioned in subsection one of section twenty-eighth, a person liable to pay to any person other than His Majesty any of the moneys secured by a mortgage not exempted by section nine (including interest) or (unless the mortgage has no relation to the liability to pay the money) any money in respect of any property subject to such mortgage, shall pay to the Commissioner of Taxation all the money that the first-mentioned person is liable to pay as aforesaid, and upon such payment the liability of such person to pay such moneys shall, to the extent of the payment, be discharged.

Payments
to be made
to Crown.

(2) The Commissioner of Taxation shall apply the moneys received under subsection one of this section towards satisfaction of the mortgage tax imposed by this Act upon the mortgage in connection with which the liability to pay such moneys accrued and any additional tax and penalties imposed upon the holder or owner of the mortgage, and the costs, charges, and expenses incurred by the Crown under this Act or the regulations.

30. Any person who receives directly or indirectly whether by giving credit or otherwise howsoever any money the payment of which is or would be a contravention of any of the provisions of this Act, whether the money was received on his own behalf or on behalf of any other person, and any person who executes any discharge or reconveyance in respect of any mortgage not exempted by section nine, or does any act having or intended to have such effect, before obtaining a certificate from the Commissioner of Taxation that all mortgage tax imposed by this Act and all additional tax have been paid, shall be guilty of an offence and liable upon summary conviction before two justices to a penalty of not less than ten pounds and not more than one thousand pounds or imprisonment for twelve months.

Payments in
contravention
of Act and
discharges.

31.

Mortgages Taxation.

31. Any person who in any respect contravenes or Contraven-
tion of Act
an offence. refuses or fails to comply with section seven or any other provision of this Act or any requirement or direction made or given in pursuance of this Act shall
5 be guilty of an offence.

32. Any person who is guilty of an offence against Penalties. this Act for which a penalty or punishment is not expressly otherwise prescribed shall be guilty of a misdemeanour and shall be liable to a penalty not exceeding
10 one thousand pounds or imprisonment for three years or both or in the case of a corporation to a penalty not exceeding two thousand pounds: Provided that in the case of a continuing offence by any person the offender shall in addition to the penalty aforesaid be liable
15 for each day during which the offence continues to a penalty of an amount not exceeding one-half of such maximum amount provided by the foregoing provisions of this section as is applicable to the case.

33. If in the case of a person charged with an Summary
conviction. offence against this Act that is a misdemeanour, the prosecutor asks that the case may be disposed of summarily, such person shall upon summary conviction before two justices for such offence be liable to the same punishments in all respects as if he had been tried
20 and convicted upon indictment for the misdemeanour.

34. Whoever aids, abets, counsels, procures, suffers, Aiders and
abettors. or permits, or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Act or the regulations, shall be deemed to
30 have committed that offence, and may be charged, and shall be punishable accordingly.

35. If any corporation commits any offence against Corporations. this Act or the regulations, every director or member of the governing body or executive officer or person acting
35 as such shall be deemed to have committed that offence, and may be charged, and shall be punishable accordingly.

36. If any person directly or indirectly by any act Evasion. or omission whatsoever evades or attempts to evade payment of or liability for any part of the mortgage tax
40 imposed by this Act or additional tax he shall be guilty of an offence against this Act.

37.

Mortgages Taxation.

37. Any offence against this Act or the regulations may be prosecuted by any person. Anyone may prosecute.

38. Payment of penalties or imprisonment under this Act shall not relieve any person from the liability to pay the mortgage tax imposed by this Act for which he is made liable by this Act. Penalties not to discharge tax.

39. (1) The Colonial Treasurer may make regulations not contradictory to this Act prescribing all matters required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and although the same subject-matter may be dealt with in this Act, and in particular— Regulations.

(a) for conferring on any person powers of requiring returns and production of documents, and any other powers which, in the opinion of the Colonial Treasurer, are necessary or desirable to be conferred for the purposes of carrying out this Act;

(b) for imposing for the purposes of this Act duties upon any person;

(c) for requiring persons or classes of persons to furnish returns in respect of mortgages or property subject thereto.

(2) The regulations may impose a penalty not exceeding in any case five hundred pounds or imprisonment for six months for any contravention of or failure to comply with any of such regulations, and may prescribe maximum and minimum penalties in any case.

(3) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

Mortgages Taxation.

5 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

10 **40.** This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power. Construction of Act.

