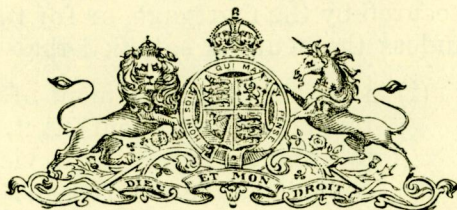


New South Wales.



ANNO QUARTO DECIMO

GEORGII VI REGIS.

Act No. 39, 1950.

An Act to amend the Moratorium Act, 1932-1947, in certain respects; and for purposes connected therewith. [Assented to, 23rd November, 1950.]

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. (1) This Act may be cited as the "Moratorium (Amendment) Act, 1950." Short title and citation.

(2) The Moratorium Act, 1932, as amended by subsequent Acts and by this Act, may be cited as the Moratorium Act, 1932-1950.

Moratorium (Amendment).

Amendment
of Act No.
57, 1932.

Sec. 9.
(Limitation
of
rights of
mortgagee.)

2. The Moratorium Act, 1932-1947, is amended—

(a) (i) by omitting subsection three of section nine and by inserting in lieu thereof the following subsection:—

(3) (a) The court shall not grant any application for leave to commence or continue proceedings for the recovery of the whole or any part of the principal sum secured by the mortgage, or for foreclosure, unless the court is satisfied that—

(i) after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagee has, with a view to discharging the mortgage (being a mortgage of land), offered to take from the mortgagor or to arrange with some other person to take from the mortgagor a new mortgage (being a mortgage of land) over the mortgaged property on terms and conditions not less favourable to the mortgagor than the terms and conditions contained in the existing mortgage or where those terms and conditions have been affected by any of the provisions of subsection seven of section twenty-five of the Moratorium Act, 1930, as amended by subsequent Acts, section thirty-four of this Act and the Interest Reduction Act, 1931, as amended by subsequent Acts, not less favourable to the mortgagor than those terms and conditions as so affected, and the mortgagor has unreasonably refused to accept such offer; or

(ii) it would, having regard to all relevant circumstances, be unjust and inequitable not to grant the application.

(b)

Moratorium (Amendment).

(b) Any term or condition of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection which would operate to exclude the provisions of this Part of this Act shall be disregarded in determining whether the terms and conditions of such new mortgage are not less favourable than those contained in the existing mortgage.

(c) The terms and conditions of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection shall be deemed to be less favourable than the terms and conditions of the existing mortgage—

(i) if under such new mortgage an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the new mortgage or interest thereon would lie at the instance of the mortgagee;

(ii) if such new mortgage fixes a date for payment of the principal sum secured by such mortgage or any part thereof earlier than five years from the date of execution of such mortgage.

For the purposes of this paragraph a mortgage shall be deemed to be one under which an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee if—

(a) in any agreement supplementary to or collateral with such mortgage
the

Moratorium (Amendment).

the mortgagor is under an obligation to the mortgagee for the payment of any such moneys or interest as aforesaid; or

(b) any bill of exchange or promissory note is to be given by the mortgagor to the mortgagee in connection with the mortgage transaction.

(ii) by inserting at the end of subsection four of the same section the following new paragraph:—

A mortgagor shall not be deemed unable to redeem the property, or to repay a portion of the principal sum, as the case may be, where the mortgagor has unreasonably refused to accept an offer by the mortgagee of the nature referred to in subsection three of this section.

Sec. 13A.
(Further provisions as to mortgagee in possession.)

(b) (i) by omitting from subsection two of section 13A, the words "the mortgagor or";

(ii) by omitting from the same subsection the words "mortgagor or";

New sec.
13B.

(c) by inserting next after section 13A the following new section:—

Mortgagor's
right to
accounts.

13B. (1) Any mortgagee shall, on request in writing made by the mortgagor and on tender of a sum of one pound one shilling for the expenses of preparing the account, give to such mortgagor in writing a full and itemised account as between the mortgagor and the mortgagee in respect of the mortgage. Such account shall be verified by statutory declaration and show the total balance claimed to be outstanding in respect of the mortgage.

The

Moratorium (Amendment).

The court may, on the application of the person who requested the account,—

- (a) order the person who made the statutory declaration to attend before the court for cross-examination thereon;
- (b) order the mortgagee to give a further and more detailed account.

(2) If such mortgagee without reasonable cause, proof whereof shall lie upon him, neglects or refuses within twenty-one days of receipt of such request and of such tender to give such account he shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding one hundred pounds.

(3) Where a mortgagee is convicted of an offence under subsection two of this section, interest on the mortgage debt shall not accrue in respect of the period commencing on the expiration of twenty-one days after the receipt of such request and terminating upon the date the account is given.

(4) No conviction under subsection two of this section shall affect any remedy to which a mortgagor may be entitled at law or in equity under this Act or otherwise against the mortgagee.

(5) Where an account has been given pursuant to the provisions of this section, the mortgagor may cause a copy thereof to be filed in the office of the Master in Equity, and upon such copy being filed the Master shall fix an appointment for the taking thereof. Upon proof of service of notice of such appointment upon the mortgagee the Master shall proceed, at the time fixed by the appointment, to take such
account

Moratorium (Amendment).

account, and shall certify the respective items and amounts allowed. Any such certificate, as between the mortgagor and the mortgagee, shall be final and conclusive as to the amount of the mortgagor's indebtedness under the mortgage:

Provided that where the amount of total indebtedness so certified by the Master exceeds three thousand pounds, an appeal shall lie to the Supreme Court.

(6) Where the amount of total indebtedness so certified is less than ninety-eight per centum of the amount of the total balance claimed to be outstanding by the mortgagee in his statement of account, the costs of all proceedings under subsection five of this section shall be paid by the mortgagee, and the mortgagee shall not be entitled to recover any such costs from the mortgagor or to add the amount thereof to the mortgage debt, notwithstanding any law or anything contained in any covenant or agreement in the mortgage to the contrary.

(7) In this section "mortgagor" means the person entitled to the equity of redemption in the mortgaged land or if the land comprised in the mortgage is under the provisions of the Real Property Act, 1900, has the same meaning as in that Act.

Sec. 18.
(Prescribed
date for
repayment.)

(d) by omitting from section eighteen the word "fifty-one" wherever occurring and by inserting in lieu thereof the word "fifty-two";

Sec. 19.
(Power to
extend
date for
payment
in cases of
hardship.)

(e) (i) by omitting from subsection one of section nineteen the words "not less than one month";

(ii)

Moratorium (Amendment).

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections:—

(2) Upon any application under subsection one of this section the court shall take into consideration in addition to all other relevant matters—

- (a) any hardship which would be caused to the mortgagor by being obliged to pay the principal sum by the prescribed date for repayment;
- (b) the conduct of the mortgagor in respect of dealings with the mortgagee;
- (c) any hardship which would be caused to the mortgagee by the making of an order.

(2A) Notwithstanding anything contained in subsection two of this section, an application made by a mortgagor under subsection one of this section for an order extending the date for payment to a date not later than the thirty-first day of December, one thousand nine hundred and fifty-three, shall not be refused if the court is satisfied—

- (a) that the mortgagor, by reason of floods during the years one thousand nine hundred and forty-nine and one thousand nine hundred and fifty, sustained losses which, by reference to the amount of the principal sum of the mortgage, were substantial; and
- (b) that the conduct of the mortgagor in respect of dealings with the mortgagee has not been such as to render him undeserving of the benefit and protection of this section.

(f)

Moratorium (Amendment).

Sec. 30.
(Jurisdiction of court—how exercised.)

- (f) by omitting subsection nine of section thirty and by inserting in lieu thereof the following subsection:—

(9) The costs of any party to an application under this Part of this Act to the court shall, unless the court otherwise orders, be borne by such party.

Where the court makes any order as to costs, the costs covered by such order shall be borne by the party by whom such costs are ordered to be paid.

Where the court makes any order allowing any costs to any party the court may if it thinks fit assess the amount thereof.

re Shahan.
(1941) 58
W.N. 132.

The provisions of this subsection shall have effect notwithstanding any law, or any covenant or agreement in the mortgage, to the contrary.

New secs.
34A, 34B.

- (g) by inserting next after section thirty-four the following new sections:—

Mortgage of land excluding personal covenant to be trustee investment.

34A. A mortgage of land in New South Wales shall be deemed an investment authorised by the Trustee Act, 1925-1942, notwithstanding the fact that no action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee upon any covenant or agreement for such payment contained in the mortgage.

Covenants or agreements as to payment by mortgagor of Commonwealth Land Tax.

34B. Where under any covenant or agreement in any mortgage executed before or after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagor is under a liability to pay or indemnify the mortgagee against the payment of any tax levied upon the mortgagee in respect of the mortgaged property under the
Land

Moratorium (Amendment).

Land Tax Assessment Act 1910-1947 of the Parliament of the Commonwealth of Australia, such covenant or agreement shall, except as to the amount of tax which would have been levied upon the mortgagee had the land the subject of the mortgage been the only land in respect of which the mortgagee was liable for any such tax, be absolutely void.

This section shall apply only to any such tax as is levied in respect of any period subsequent to the thirtieth day of June, one thousand nine hundred and fifty.

- (h) by inserting in section forty-three after the symbols "13A" the words and symbols "or section 13B"; Sec. 43. (Offences.)
- (i) by omitting from section forty-nine the word "fifty-one" wherever occurring and by inserting in lieu thereof the word "fifty-two." Sec. 49. (Duration of Part II.)

By Authority:

A. H. PETTIFER, Government Printer, Sydney, 1950.

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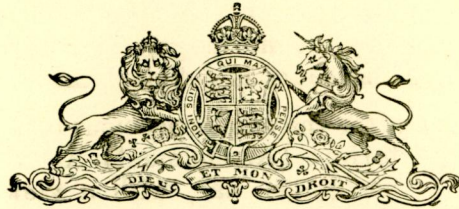
THE UNIVERSITY OF CHICAGO

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

H. ROBBINS,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 15 November, 1950.*

New South Wales.



ANNO QUARTO DECIMO

GEORGII VI REGIS.

Act No. 39, 1950.

An Act to amend the Moratorium Act, 1932-1947, in certain respects; and for purposes connected therewith. [Assented to, 23rd November, 1950.]

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. (1) This Act may be cited as the "Moratorium (Amendment) Act, 1950." Short title and citation.

(2) The Moratorium Act, 1932, as amended by subsequent Acts and by this Act, may be cited as the Moratorium Act, 1932-1950.

2.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

Moratorium (Amendment).

Amendment
of Act No.
57, 1932.
Sec. 9.
(Limitation
of
rights of
mortgagee.)

2. The Moratorium Act, 1932-1947, is amended—

(a) (i) by omitting subsection three of section nine and by inserting in lieu thereof the following subsection:—

(3) (a) The court shall not grant any application for leave to commence or continue proceedings for the recovery of the whole or any part of the principal sum secured by the mortgage, or for foreclosure, unless the court is satisfied that—

(i) after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagee has, with a view to discharging the mortgage (being a mortgage of land), offered to take from the mortgagor or to arrange with some other person to take from the mortgagor a new mortgage (being a mortgage of land) over the mortgaged property on terms and conditions not less favourable to the mortgagor than the terms and conditions contained in the existing mortgage or where those terms and conditions have been affected by any of the provisions of subsection seven of section twenty-five of the Moratorium Act, 1930, as amended by subsequent Acts, section thirty-four of this Act and the Interest Reduction Act, 1931, as amended by subsequent Acts, not less favourable to the mortgagor than those terms and conditions as so affected, and the mortgagor has unreasonably refused to accept such offer; or

(ii) it would, having regard to all relevant circumstances, be unjust and inequitable not to grant the application.

(b)

Moratorium (Amendment).

(b) Any term or condition of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection which would operate to exclude the provisions of this Part of this Act shall be disregarded in determining whether the terms and conditions of such new mortgage are not less favourable than those contained in the existing mortgage.

(c) The terms and conditions of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection shall be deemed to be less favourable than the terms and conditions of the existing mortgage—

- (i) if under such new mortgage an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the new mortgage or interest thereon would lie at the instance of the mortgagee;
- (ii) if such new mortgage fixes a date for payment of the principal sum secured by such mortgage or any part thereof earlier than five years from the date of execution of such mortgage.

For the purposes of this paragraph a mortgage shall be deemed to be one under which an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee if—

- (a) in any agreement supplementary to or collateral with such mortgage
the

Moratorium (Amendment).

the mortgagor is under an obligation to the mortgagee for the payment of any such moneys or interest as aforesaid; or

- (b) any bill of exchange or promissory note is to be given by the mortgagor to the mortgagee in connection with the mortgage transaction.
- (ii) by inserting at the end of subsection four of the same section the following new paragraph:—

A mortgagor shall not be deemed unable to redeem the property, or to repay a portion of the principal sum, as the case may be, where the mortgagor has unreasonably refused to accept an offer by the mortgagee of the nature referred to in subsection three of this section.

Sec. 13A.
(Further provisions as to mortgagee in possession.)

- (b) (i) by omitting from subsection two of section 13A, the words "the mortgagor or";
- (ii) by omitting from the same subsection the words "mortgagor or";

New sec.
13B.

- (c) by inserting next after section 13A the following new section:—

Mortgagor's
right to
accounts.

13B. (1) Any mortgagee shall, on request in writing made by the mortgagor and on tender of a sum of one pound one shilling for the expenses of preparing the account, give to such mortgagor in writing a full and itemised account as between the mortgagor and the mortgagee in respect of the mortgage. Such account shall be verified by statutory declaration and show the total balance claimed to be outstanding in respect of the mortgage.

The

Moratorium (Amendment).

The court may, on the application of the person who requested the account,—

- (a) order the person who made the statutory declaration to attend before the court for cross-examination thereon;
- (b) order the mortgagee to give a further and more detailed account.

(2) If such mortgagee without reasonable cause, proof whereof shall lie upon him, neglects or refuses within twenty-one days of receipt of such request and of such tender to give such account he shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding one hundred pounds.

(3) Where a mortgagee is convicted of an offence under subsection two of this section, interest on the mortgage debt shall not accrue in respect of the period commencing on the expiration of twenty-one days after the receipt of such request and terminating upon the date the account is given.

(4) No conviction under subsection two of this section shall affect any remedy to which a mortgagor may be entitled at law or in equity under this Act or otherwise against the mortgagee.

(5) Where an account has been given pursuant to the provisions of this section, the mortgagor may cause a copy thereof to be filed in the office of the Master in Equity, and upon such copy being filed the Master shall fix an appointment for the taking thereof. Upon proof of service of notice of such appointment upon the mortgagee the Master shall proceed, at the time fixed by the appointment, to take such
account

Moratorium (Amendment).

account, and shall certify the respective items and amounts allowed. Any such certificate, as between the mortgagor and the mortgagee, shall be final and conclusive as to the amount of the mortgagor's indebtedness under the mortgage:

Provided that where the amount of total indebtedness so certified by the Master exceeds three thousand pounds, an appeal shall lie to the Supreme Court.

(6) Where the amount of total indebtedness so certified is less than ninety-eight per centum of the amount of the total balance claimed to be outstanding by the mortgagee in his statement of account, the costs of all proceedings under subsection five of this section shall be paid by the mortgagee, and the mortgagee shall not be entitled to recover any such costs from the mortgagor or to add the amount thereof to the mortgage debt, notwithstanding any law or anything contained in any covenant or agreement in the mortgage to the contrary.

(7) In this section "mortgagor" means the person entitled to the equity of redemption in the mortgaged land or if the land comprised in the mortgage is under the provisions of the Real Property Act, 1900, has the same meaning as in that Act.

Sec. 18.
(Prescribed
date for
repayment.)

(d) by omitting from section eighteen the word "fifty-one" wherever occurring and by inserting in lieu thereof the word "fifty-two";

Sec. 19.
(Power to
extend
date for
payment
in cases of
hardship.)

(e) (i) by omitting from subsection one of section nineteen the words "not less than one month";

(ii)

Moratorium (Amendment).

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections:—

(2) Upon any application under subsection one of this section the court shall take into consideration in addition to all other relevant matters—

- (a) any hardship which would be caused to the mortgagor by being obliged to pay the principal sum by the prescribed date for repayment;
- (b) the conduct of the mortgagor in respect of dealings with the mortgagee;
- (c) any hardship which would be caused to the mortgagee by the making of an order.

(2A) Notwithstanding anything contained in subsection two of this section, an application made by a mortgagor under subsection one of this section for an order extending the date for payment to a date not later than the thirty-first day of December, one thousand nine hundred and fifty-three, shall not be refused if the court is satisfied—

- (a) that the mortgagor, by reason of floods during the years one thousand nine hundred and forty-nine and one thousand nine hundred and fifty, sustained losses which, by reference to the amount of the principal sum of the mortgage, were substantial; and
- (b) that the conduct of the mortgagor in respect of dealings with the mortgagee has not been such as to render him undeserving of the benefit and protection of this section.

(f)

Moratorium (Amendment).

Sec. 30.
(Jurisdiction of court—how exercised.)

- (f) by omitting subsection nine of section thirty and by inserting in lieu thereof the following subsection:—

(9) The costs of any party to an application under this Part of this Act to the court shall, unless the court otherwise orders, be borne by such party.

Where the court makes any order as to costs, the costs covered by such order shall be borne by the party by whom such costs are ordered to be paid.

Where the court makes any order allowing any costs to any party the court may if it thinks fit assess the amount thereof.

re Shahan.
(1941) 58
W.N. 132.

The provisions of this subsection shall have effect notwithstanding any law, or any covenant or agreement in the mortgage, to the contrary.

New secs.
34A, 34B.

- (g) by inserting next after section thirty-four the following new sections:—

Mortgage of land excluding personal covenant to be trustee investment.

34A. A mortgage of land in New South Wales shall be deemed an investment authorised by the Trustee Act, 1925-1942, notwithstanding the fact that no action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee upon any covenant or agreement for such payment contained in the mortgage.

Covenants or agreements as to payment by mortgagor of Commonwealth Land Tax.

34B. Where under any covenant or agreement in any mortgage executed before or after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagor is under a liability to pay or indemnify the mortgagee against the payment of any tax levied upon the mortgagee in respect of the mortgaged property under the
Land

Moratorium (Amendment).

Land Tax Assessment Act 1910-1947 of the Parliament of the Commonwealth of Australia, such covenant or agreement shall, except as to the amount of tax which would have been levied upon the mortgagee had the land the subject of the mortgage been the only land in respect of which the mortgagee was liable for any such tax, be absolutely void.

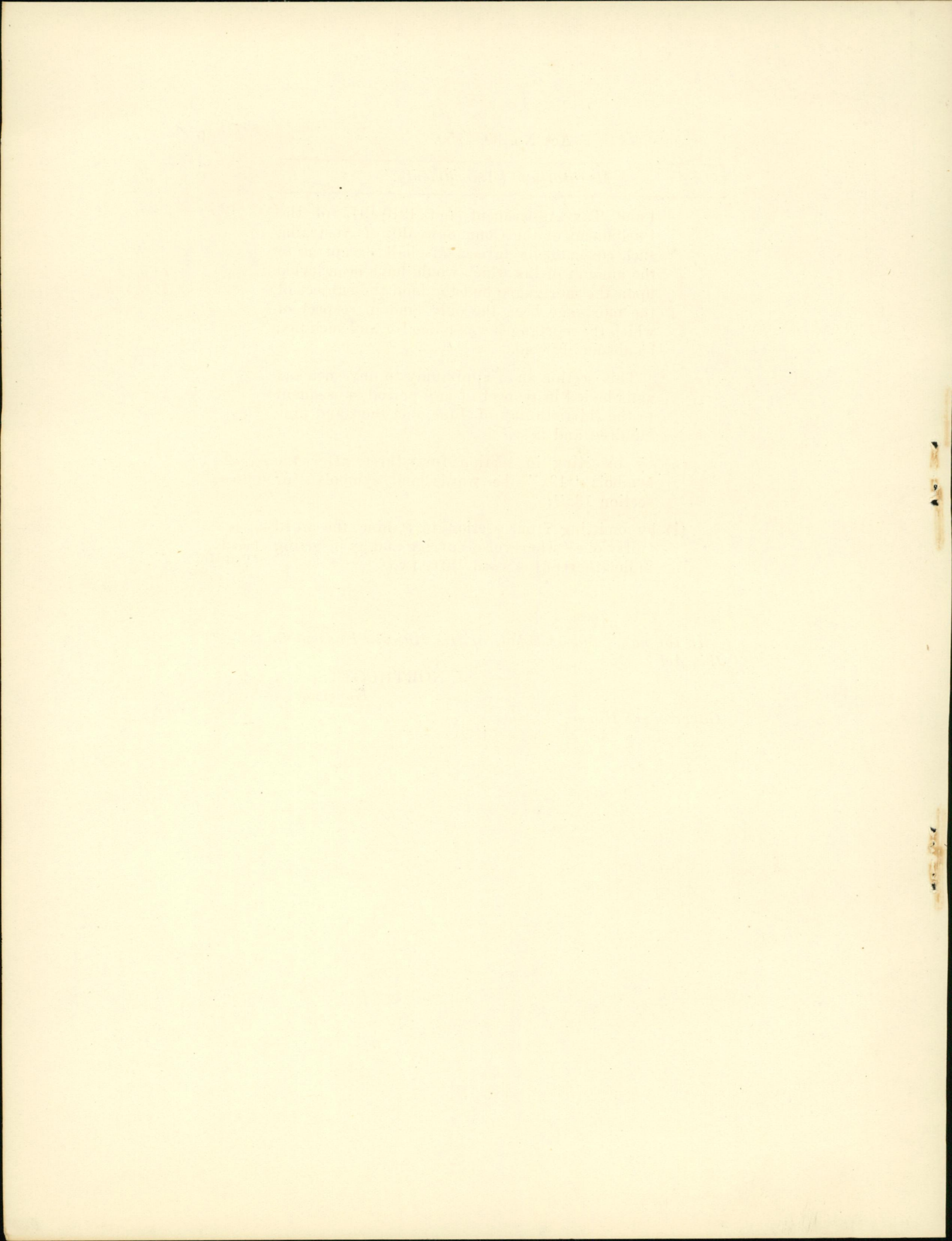
This section shall apply only to any such tax as is levied in respect of any period subsequent to the thirtieth day of June, one thousand nine hundred and fifty.

- (h) by inserting in section forty-three after the symbols "13A" the words and symbols "or section 13B"; Sec. 43. (Offences.)
- (i) by omitting from section forty-nine the word "fifty-one" wherever occurring and by inserting in lieu thereof the word "fifty-two." Sec. 49. (Duration of Part II.)

In the name and on behalf of His Majesty I assent to this Act.

J. NORTHCOTT,
Governor.

*Government House,
Sydney, 23rd November, 1950.*

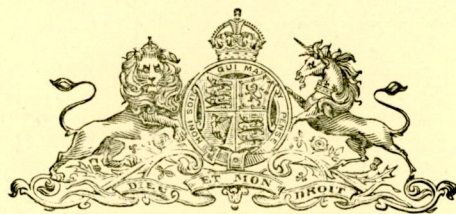


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

H. ROBBINS,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 9 November, 1950.*

New South Wales.



ANNO QUARTO DECIMO

GEORGII VI REGIS.

Act No. , 1950.

An Act to amend the Moratorium Act, 1932-1947, in certain respects; 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
5 the same, as follows:—

1. (1) This Act may be cited as the "Moratorium (Amendment) Act, 1950." Short title and citation.

(2) The Moratorium Act, 1932, as amended by subsequent Acts and by this Act, may be cited as the
10 Moratorium Act, 1932-1950.

Moratorium (Amendment).

2. The Moratorium Act, 1932-1947, is amended—

Amendment
of Act No.
57, 1932.
Sec. 9.
(Limitation
of
rights of
mortgagee.)

(a) (i) by omitting subsection three of section nine and by inserting in lieu thereof the following subsection:—

5 (3) (a) The court shall not grant any application for leave to commence or continue proceedings for the recovery of the whole or any part of the principal sum secured by the mortgage, or for foreclosure, unless the court is satisfied that—

10 (i) after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagee has, with a view to discharging the mortgage (being a mortgage of land), offered to take from the mortgagor or to arrange with some other person to take from the mortgagor a new mortgage (being a mortgage of land) over the mortgaged property on terms and conditions not less favourable to the mortgagor than the terms and conditions contained in the existing mortgage or where those terms and conditions have been affected by any of the provisions of subsection seven of section twenty-five of the Moratorium Act, 1930, as amended by subsequent Acts, section thirty-four of this Act and the Interest Reduction Act, 1931, as amended by subsequent Acts, not less favourable to the mortgagor than those terms and conditions as so affected, and the mortgagor has unreasonably refused to accept such offer; or

(ii) it would, having regard to all relevant circumstances, be unjust and inequitable not to grant the application.

(b)

Moratorium (Amendment).

5 (b) Any term or condition of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection which would operate to exclude the provisions of this Part of this Act shall be disregarded in determining whether the terms and conditions of such new mortgage are not less favourable than those contained in the existing mortgage.

10 (c) The terms and conditions of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection shall be deemed to be less favourable than the terms and conditions of the existing mortgage—

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(i) if under such new mortgage an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the new mortgage or interest thereon would lie at the instance of the mortgagee;

20

(ii) if such new mortgage fixes a date for payment of the principal sum secured by such mortgage or any part thereof earlier than five years from the date of execution of such mortgage.

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For the purposes of this paragraph a mortgage shall be deemed to be one under which an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee if—

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(a) in any agreement supplementary to or collateral with such mortgage

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the

Moratorium (Amendment).

the mortgagor is under an obligation to the mortgagee for the payment of any such moneys or interest as aforesaid; or

5 (b) any bill of exchange or promissory note is to be given by the mortgagor to the mortgagee in connection with the mortgage transaction.

10 (ii) by inserting at the end of subsection four of the same section the following new paragraph:—

15 A mortgagor shall not be deemed unable to redeem the property, or to repay a portion of the principal sum, as the case may be, where the mortgagor has unreasonably refused to accept an offer by the mortgagee of the nature referred to in subsection three of this section.

20 (b) (i) by omitting from subsection two of section 13A, the words "the mortgagor or"; Sec. 13A. (Further provisions as to mortgagee in possession.)
(ii) by omitting from the same subsection the words "mortgagor or";

25 (c) by inserting next after section 13A the following new section:— New sec. 13B.

30 13B. (1) Any mortgagee shall, on request in writing made by the mortgagor and on tender of a sum of one pound one shilling for the expenses of preparing the account, give to such mortgagor in writing a full and itemised account as between the mortgagor and the mortgagee in respect of the mortgage. Such account shall be verified by statutory declaration and show the total balance claimed to be outstanding in respect of the mortgage. Mortgagor's right to accounts.

35

The

Moratorium (Amendment).

The court may, on the application of the person who requested the account,—

- 5
- (a) order the person who made the statutory declaration to attend before the court for cross-examination thereon;
 - (b) order the mortgagee to give a further and more detailed account.

10

(2) If such mortgagee without reasonable cause, proof whereof shall lie upon him, neglects or refuses within twenty-one days of receipt of such request and of such tender to give such account he shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding one hundred pounds.

15

(3) Where a mortgagee is convicted of an offence under subsection two of this section, interest on the mortgage debt shall not accrue in respect of the period commencing on the expiration of twenty-one days after the receipt of such request and terminating upon the date the account is given.

20

(4) No conviction under subsection two of this section shall affect any remedy to which a mortgagor may be entitled at law or in equity under this Act or otherwise against the mortgagee.

25

(5) Where an account has been given pursuant to the provisions of this section, the mortgagor may cause a copy thereof to be filed in the office of the Master in Equity, and upon such copy being filed the Master shall fix an appointment for the taking thereof. Upon proof of service of notice of such appointment upon the mortgagee the Master shall proceed, at the time fixed by the appointment, to take such account

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Moratorium (Amendment).

5 account, and shall certify the respective items and amounts allowed. Any such certificate, as between the mortgagor and the mortgagee, shall be final and conclusive as to the amount of the mortgagor's indebtedness under the mortgage:

Provided that where the amount of total indebtedness so certified by the Master exceeds three thousand pounds, an appeal shall lie to the Supreme Court.

10 (6) Where the amount of total indebtedness so certified is less than ninety-eight per centum of the amount of the total balance claimed to be outstanding by the mortgagee in his statement of account, the costs of all proceedings under subsection five of this section shall be paid by the mortgagee, and the mortgagee shall not be entitled to recover any such costs from the mortgagor or to add the amount thereof to the mortgage debt, notwithstanding any law or anything contained in any covenant or agreement in the mortgage to the contrary.

25 (7) In this section "mortgagor" means the person entitled to the equity of redemption in the mortgaged land or if the land comprised in the mortgage is under the provisions of the Real Property Act, 1900, has the same meaning as in that Act.

30 (d) by omitting from section eighteen the word "fifty-one" wherever occurring and by inserting in lieu thereof the word "fifty-two";

Sec. 18.
(Prescribed date for repayment.)

(e) (i) by omitting from subsection one of section nineteen the words "not less than one month";

Sec. 19.
(Power to extend date for payment in cases of hardship.)

(ii)

Moratorium (Amendment).

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections:—

5

(2) Upon any application under subsection one of this section the court shall take into consideration in addition to all other relevant matters—

10

(a) any hardship which would be caused to the mortgagor by being obliged to pay the principal sum by the prescribed date for repayment;

(b) the conduct of the mortgagor in respect of dealings with the mortgagee;

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(c) any hardship which would be caused to the mortgagee by the making of an order.

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(2A) Notwithstanding anything contained in subsection two of this section, an application made by a mortgagor under subsection one of this section for an order extending the date for payment to a date not later than the thirty-first day of December, one thousand nine hundred and fifty-three, shall not be refused if the court is satisfied—

25

(a) that the mortgagor, by reason of floods during the years one thousand nine hundred and forty-nine and one thousand nine hundred and fifty, sustained losses which, by reference to the amount of the principal sum of the mortgage, were substantial; and

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(b) that the conduct of the mortgagor in respect of dealings with the mortgagee has not been such as to render him undeserving of the benefit and protection of this section.

(f).

Moratorium (Amendment).

(f) by omitting subsection nine of section thirty and by inserting in lieu thereof the following subsection:—

Sec. 30.
(Jurisdiction of court—how exercised.)

5 (9) The costs of any party to an application under this Part of this Act to the court shall, unless the court otherwise orders, be borne by such party.

10 Where the court makes any order as to costs, the costs covered by such order shall be borne by the party by whom such costs are ordered to be paid.

Where the court makes any order allowing any costs to any party the court may if it thinks fit assess the amount thereof.

15 The provisions of this subsection shall have effect notwithstanding any law, or any covenant or agreement in the mortgage, to the contrary.

re Shanahan.
(1941) 58 W.N. 132.

(g) by inserting next after section thirty-four the following new sections:—

New secs. 34A, 34B.

20 34A. A mortgage of land in New South Wales shall be deemed an investment authorised by the Trustee Act, 1925-1942, notwithstanding the fact that no action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee upon any covenant or agreement for such payment contained in the mortgage.

Mortgage of land excluding personal covenant to be trustee investment.

30 34B. Where under any covenant or agreement in any mortgage executed before or after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagor is under a liability to pay or indemnify the mortgagee against the payment of any tax levied upon the mortgagee in respect of the mortgaged property under the

Covenants or agreements as to payment by mortgagor of Commonwealth Land Tax.

Land

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Moratorium (Amendment).

5 Land Tax Assessment Act 1910-1947 of the Parliament of the Commonwealth of Australia, such covenant or agreement shall, except as to the amount of tax which would have been levied upon the mortgagee had the land the subject of the mortgage been the only land in respect of which the mortgagee was liable for any such tax, be absolutely void.

10 This section shall apply only to any such tax as is levied in respect of any period subsequent to the thirtieth day of June, one thousand nine hundred and fifty.

15 (h) by inserting in section forty-three after the symbols "13A" the words and symbols "or (Offences.) section 13B";

(i) by omitting from section forty-nine the word "fifty-one" wherever occurring and by inserting in lieu thereof the word "fifty-two."

Sec. 43.
(Duration of Part II.)

Sydney: A. H. Pettifer, Government Printer—1950.

[10d.]

Journal of the Proceedings of the

General Assembly of the
Church of Scotland, 1881

At a General Assembly of the
Church of Scotland, held at
Edinburgh, on the 1st day of
September, 1881.

Present, the Moderator,
Messrs. [Names], and
[Names].

Read and approved the
Minutes of the last
Assembly.

Act No. , 1950.

A BILL

To amend the Moratorium Act, 1932-1947, in certain respects; and for purposes connected therewith.

[MR. C. E. MARTIN;—7 November, 1950.]

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
5 the same, as follows:—

1. (1) This Act may be cited as the "Moratorium Short title and citation.
(Amendment) Act, 1950."

(2) The Moratorium Act, 1932, as amended by subsequent Acts and by this Act, may be cited as the
10 Moratorium Act, 1932-1950.

Moratorium (Amendment).

2. The Moratorium Act, 1932-1947, is amended—

Amendment
of Act No.
57, 1932.
Sec. 9.
(Limitation
of
rights of
mortgagee.)

(a) (i) by omitting subsection three of section nine and by inserting in lieu thereof the following subsection:—

5 (3) (a) The court shall not grant any application for leave to commence or continue proceedings for the recovery of the whole or any part of the principal sum secured by the mortgage, or for foreclosure, unless the court is satisfied that—

10 (i) after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagee has, with a view to discharging the mortgage (being a mortgage of land), offered to take from the mortgagor or to arrange with some other person to take from the mortgagor a new mortgage (being a mortgage of land) over the mortgaged property on terms and conditions not less favourable to the mortgagor than the terms and conditions contained in the existing mortgage or where those terms and conditions have been affected by any of the provisions of subsection seven of section twenty-five of the Moratorium Act, 1930, as amended by subsequent Acts, section thirty-four of this Act and the Interest Reduction Act, 1931, as amended by subsequent Acts, not less favourable to the mortgagor than those terms and conditions as so affected, and the mortgagor has unreasonably refused to accept such offer; or

15 20 25 30 35 (ii) it would, having regard to all relevant circumstances, be unjust and inequitable not to grant the application.

(b)

Moratorium (Amendment).

5 (b) Any term or condition of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection which would operate to exclude the provisions of this Part of this Act shall be disregarded in determining whether the terms and conditions of such new mortgage are not less favourable than those contained in the existing mortgage.

10 (c) The terms and conditions of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection shall be deemed to be less favourable than the terms and conditions of the existing mortgage—

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(i) if under such new mortgage an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the new mortgage or interest thereon would lie at the instance of the mortgagee;

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(ii) if such new mortgage fixes a date for payment of the principal sum secured by such mortgage or any part thereof earlier than five years from the date of execution of such mortgage.

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For the purposes of this paragraph a mortgage shall be deemed to be one under which an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee if—

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(a) in any agreement supplementary to or collateral with such mortgage

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the

Moratorium (Amendment).

the mortgagor is under an obligation to the mortgagee for the payment of any such moneys or interest as aforesaid; or

5 (b) any bill of exchange or promissory note is to be given by the mortgagor to the mortgagee in connection with the mortgage transaction.

10 (ii) by inserting at the end of subsection four of the same section the following new paragraph:—

15 A mortgagor shall not be deemed unable to redeem the property, or to repay a portion of the principal sum, as the case may be, where the mortgagor has unreasonably refused to accept an offer by the mortgagee of the nature referred to in subsection three of this section.

20 (b) (i) by omitting from subsection two of section 13A, the words "the mortgagor or"; Sec. 13A.
(Further provisions as to mortgagee in possession.)

(ii) by omitting from the same subsection the words "mortgagor or";

25 (c) by inserting next after section 13A the following new section:— New sec. 13B.

30 13B. (1) Any mortgagee shall, on request in writing made by the mortgagor and on tender of a sum of one pound one shilling for the expenses of preparing the account, give to such mortgagor in writing a full and itemised account as between the mortgagor and the mortgagee in respect of the mortgage. Such account shall be verified by statutory declaration and show the total balance claimed to be outstanding in respect of the mortgage. Mortgagor's right to accounts.

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The

Moratorium (Amendment).

The court may, on the application of the person who requested the account,—

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- (a) order the person who made the statutory declaration to attend before the court for cross-examination thereon;
 - (b) order the mortgagee to give a further and more detailed account.

10

(2) If such mortgagee without reasonable cause, proof whereof shall lie upon him, neglects or refuses within twenty-one days of receipt of such request and of such tender to give such account he shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding one hundred pounds.

15

(3) Where a mortgagee is convicted of an offence under subsection two of this section, interest on the mortgage debt shall not accrue in respect of the period commencing on the expiration of twenty-one days after the receipt of such request and terminating upon the date the account is given.

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(4) No conviction under subsection two of this section shall affect any remedy to which a mortgagor may be entitled at law or in equity under this Act or otherwise against the mortgagee.

25

(5) Where an account has been given pursuant to the provisions of this section, the mortgagor may cause a copy thereof to be filed in the office of the Master in Equity, and upon such copy being filed the Master shall fix an appointment for the taking thereof. Upon proof of service of notice of such appointment upon the mortgagee the Master shall proceed, at the time fixed by the appointment, to take such account

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Moratorium (Amendment).

5 account, and shall certify the respective items and amounts allowed. Any such certificate, as between the mortgagor and the mortgagee, shall be final and conclusive as to the amount of the mortgagor's indebtedness under the mortgage:

Provided that where the amount of total indebtedness so certified by the Master exceeds three thousand pounds, an appeal shall lie to the Supreme Court.

10 (6) Where the amount of total indebtedness so certified is less than ninety-eight per centum of the amount of the total balance claimed to be outstanding by the mortgagee in his statement of account, the costs of all proceedings under subsection five of this section shall be paid by the mortgagee, and the mortgagee shall not be entitled to recover any such costs from the mortgagor or to add the amount thereof to the mortgage debt, notwithstanding any law or anything contained in any covenant or agreement in the mortgage to the contrary.

25 (7) In this section "mortgagor" means the person entitled to the equity of redemption in the mortgaged land or if the land comprised in the mortgage is under the provisions of the Real Property Act, 1900, has the same meaning as in that Act.

30 (d) by omitting from section eighteen the word "fifty-one" wherever occurring and by inserting in lieu thereof the word "fifty-two"; Sec. 18. (Prescribed date for repayment.)

(e) (i) by omitting from subsection one of section nineteen the words "not less than one month"; Sec. 19. (Power to extend date for payment in cases of hardship.)
(ii)

Moratorium (Amendment).

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections:—

5

(2) Upon any application under subsection one of this section the court shall take into consideration in addition to all other relevant matters—

10

(a) any hardship which would be caused to the mortgagor by being obliged to pay the principal sum by the prescribed date for repayment;

(b) the conduct of the mortgagor in respect of dealings with the mortgagee;

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(c) any hardship which would be caused to the mortgagee by the making of an order.

20

(2A) Notwithstanding anything contained in subsection two of this section, an application made by a mortgagor under subsection one of this section for an order extending the date for payment to a date not later than the thirty-first day of December, one thousand nine hundred and fifty-three, shall not be refused if the court is satisfied—

25

(a) that the mortgagor, by reason of floods during the years one thousand nine hundred and forty-nine and one thousand nine hundred and fifty, sustained losses which, by reference to the amount of the principal sum of the mortgage, were substantial; and

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(b) that the conduct of the mortgagor in respect of dealings with the mortgagee has not been such as to render him undeserving of the benefit and protection of this section.

(f)

Moratorium (Amendment).

(f) by omitting subsection nine of section thirty and by inserting in lieu thereof the following subsection:—

Sec. 30.
(Jurisdiction of court—how exercised.)

5 (9) The costs of any party to an application under this Part of this Act to the court shall, unless the court otherwise orders, be borne by such party.

10 Where the court makes any order as to costs, the costs covered by such order shall be borne by the party by whom such costs are ordered to be paid.

Where the court makes any order allowing any costs to any party the court may if it thinks fit assess the amount thereof.

15 The provisions of this subsection shall have effect notwithstanding any law, or any covenant or agreement in the mortgage, to the contrary.

re Shanahan. (1941) 58 W.N. 132.

(g) by inserting next after section thirty-four the following new sections:—

New secs. 34A, 34B.

20 34A. A mortgage of land in New South Wales shall be deemed an investment authorised by the Trustee Act, 1925-1942, notwithstanding the fact that no action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee upon any covenant or agreement for such payment contained in the mortgage.

Mortgage of land excluding personal covenant to be trustee investment.

30 34B. Where under any covenant or agreement in any mortgage executed before or after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagor is under a liability to pay or indemnify the mortgagee against the payment of any tax levied upon the mortgagee in respect of the mortgaged property under the

Covenants or agreements as to payment by mortgagor of Commonwealth Land Tax.

Land

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Moratorium (Amendment).

5 Land Tax Assessment Act 1910-1947 of the
Parliament of the Commonwealth of Australia,
such covenant or agreement shall, except as to
the amount of tax which would have been levied
upon the mortgagee had the land the subject of
the mortgage been the only land in respect of
which the mortgagee was liable for any such tax,
be absolutely void.

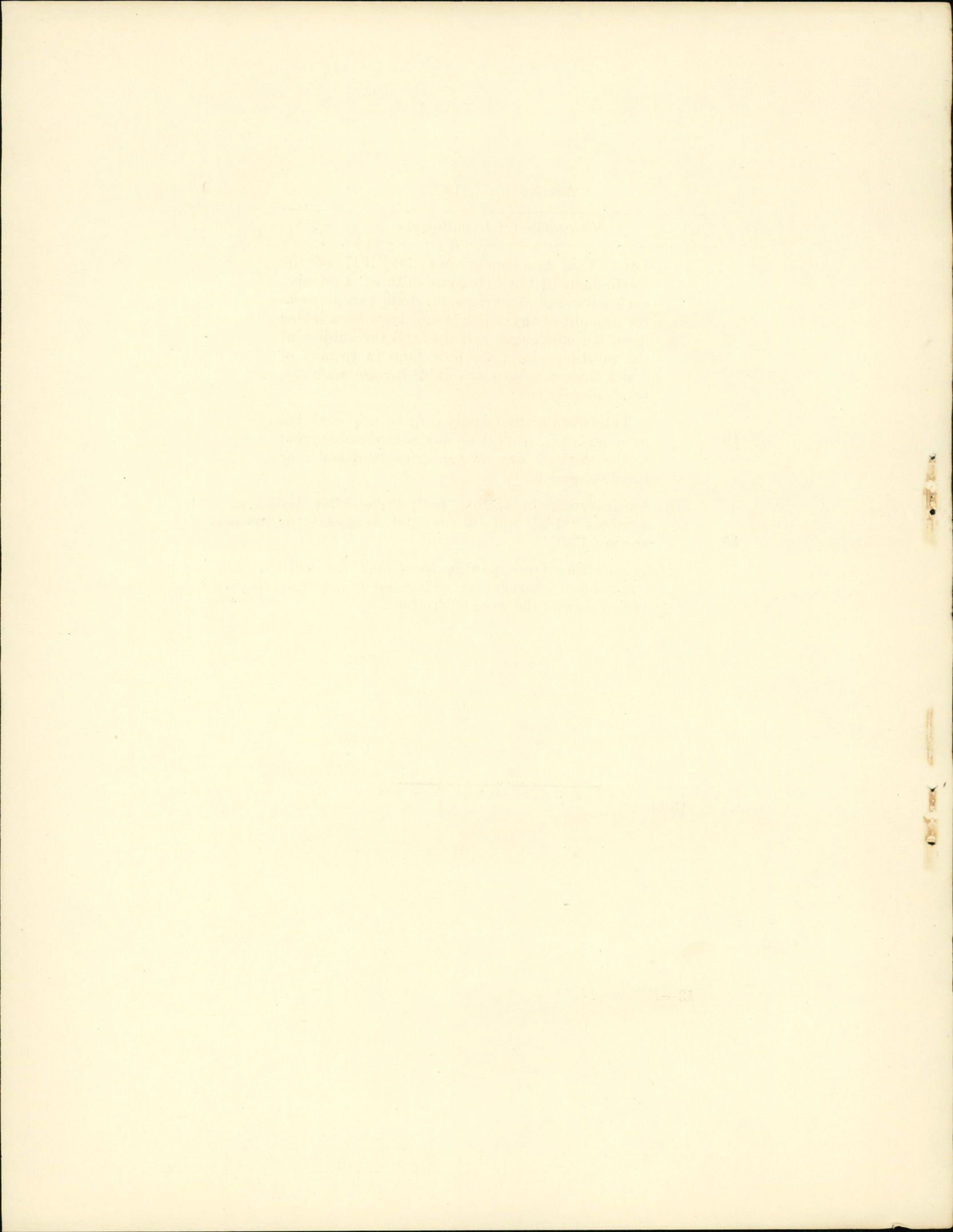
10 This section shall apply only to any such tax
as is levied in respect of any period subsequent
to the thirtieth day of June, one thousand nine
hundred and fifty.

15 (h) by inserting in section forty-three after the Sec. 43.
symbols "13A" the words and symbols "or (Offences.)
section 13B";

(i) by omitting from section forty-nine the word Sec. 49.
"fifty-one" wherever occurring and by inserting (Duration
of Part II.)
in lieu thereof the word "fifty-two."

[10d.]

Sydney: A. H. Pettifer, Government Printer—1950.



MORATORIUM (AMENDMENT) BILL, 1950.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to postpone, for a further period of one year, the maturity date of mortgages subject to the provisions of the Moratorium Act, 1932-1947;
- (b) to provide that a mortgagee under such a mortgage may be granted leave to exercise his powers thereunder before the maturity date of that mortgage upon his offering to the mortgagor other financial accommodation by way of mortgage (not including any “personal covenant”) on terms not less favourable than those of the existing mortgage;
- (c) to confer additional rights on mortgagors in respect of mortgage accounts;
- (d) to provide that a mortgage of land may be an authorised trustee investment notwithstanding that it does not include any “personal covenant”;
- (e) to limit the liability of mortgagors of land for Federal land tax where a mortgagee is in possession of the mortgaged land.

The Bill includes certain other minor provisions incidental to the above objects.

Act No. , 1950.

A BILL

To amend the Moratorium Act, 1932-1947, in certain respects; and for purposes connected therewith.

[MR. C. E. MARTIN;—7 November, 1950.]

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
5 the same, as follows:—

1. (1) This Act may be cited as the "Moratorium (Amendment) Act, 1950." Short title and citation.

(2) The Moratorium Act, 1932, as amended by subsequent Acts and by this Act, may be cited as the
10 Moratorium Act, 1932-1950.

Moratorium (Amendment).

2. The Moratorium Act, 1932-1947, is amended—

Amendment
of Act No.
57, 1932.
Sec. 9.
(Limitation
of
rights of
mortgagee.)

(a) (i) by omitting subsection three of section nine and by inserting in lieu thereof the following subsection:—

5 (3) (a) The court shall not grant any application for leave to commence or continue proceedings for the recovery of the whole or any part of the principal sum secured by the mortgage, or for foreclosure, unless the court is satisfied that—

10 (i) after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagee has, with a view to discharging the mortgage (being a mortgage of land), offered to take from the mortgagor or to arrange with some other person to take from the mortgagor a new mortgage (being a mortgage of land) over the mortgaged property on terms and conditions not less favourable to the mortgagor than the terms and conditions contained in the existing mortgage or where those terms and conditions have been affected by any of the provisions of subsection seven of section twenty-five of the Moratorium Act, 1930, as amended by subsequent Acts, section thirty-four of this Act and the Interest Reduction Act, 1931, as amended by subsequent Acts, not less favourable to the mortgagor than those terms and conditions as so affected, and the mortgagor has unreasonably refused to accept such offer; or

(ii) it would, having regard to all relevant circumstances, be unjust and inequitable not to grant the application.

(b)

Moratorium (Amendment).

5 (b) Any term or condition of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection which would operate to exclude the provisions of this Part of this Act shall be disregarded in determining whether the terms and conditions of such new mortgage are not less favourable than those contained in the existing mortgage.

10 (c) The terms and conditions of a new mortgage referred to in subparagraph (i) of paragraph (a) of this subsection shall be deemed to be less favourable than the terms and conditions of the existing mortgage—

15 (i) if under such new mortgage an action, suit or proceedings for the payment by the mortgagor of any principal moneys secured by the new mortgage or interest thereon would lie at the instance of the mortgagee;

20 (ii) if such new mortgage fixes a date for payment of the principal sum secured by such mortgage or any part thereof earlier than five years from the date of execution of such mortgage.

25 For the purposes of this paragraph a mortgage shall be deemed to be one under which an action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee if—

30 (a) in any agreement supplementary to or collateral with such mortgage
35 the

Moratorium (Amendment).

the mortgagor is under an obligation to the mortgagee for the payment of any such moneys or interest as aforesaid; or

5 (b) any bill of exchange or promissory note is to be given by the mortgagor to the mortgagee in connection with the mortgage transaction.

10 (ii) by inserting at the end of subsection four of the same section the following new paragraph:—

15 A mortgagor shall not be deemed unable to redeem the property, or to repay a portion of the principal sum, as the case may be, where the mortgagor has unreasonably refused to accept an offer by the mortgagee of the nature referred to in subsection three of this section.

20 (b) (i) by omitting from subsection two of section 13A, the words "the mortgagor or"; Sec. 13A. (Further provisions as to mortgagee in possession.)
(ii) by omitting from the same subsection the words "mortgagor";

25 (c) by inserting next after section 13A the following new section:— New sec. 13B.

30 13B. (1) Any mortgagee shall, on request in writing made by the mortgagor and on tender of a sum of one pound one shilling for the expenses of preparing the account, give to such mortgagor in writing a full and itemised account as between the mortgagor and the mortgagee in respect of the mortgage. Such account shall be verified by statutory declaration and show the total balance claimed to be outstanding in respect of the mortgage. Mortgagor's right to accounts.

35 The

Moratorium (Amendment).

The court may, on the application of the person who requested the account,—

- 5
- (a) order the person who made the statutory declaration to attend before the court for cross-examination thereon;
 - (b) order the mortgagee to give a further and more detailed account.

10

(2) If such mortgagee without reasonable cause, proof whereof shall lie upon him, neglects or refuses within twenty-one days of receipt of such request and of such tender to give such account he shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding one hundred pounds.

15

(3) Where a mortgagee is convicted of an offence under subsection two of this section, interest on the mortgage debt shall not accrue in respect of the period commencing on the expiration of twenty-one days after the receipt of such request and terminating upon the date the account is given.

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(4) No conviction under subsection two of this section shall affect any remedy to which a mortgagor may be entitled at law or in equity under this Act or otherwise against the mortgagee.

25

(5) Where an account has been given pursuant to the provisions of this section, the mortgagor may cause a copy thereof to be filed in the office of the Master in Equity, and upon such copy being filed the Master shall fix an appointment for the taking thereof. Upon proof of service of notice of such appointment upon the mortgagee the Master shall proceed, at the time fixed by the appointment, to take such account

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Moratorium (Amendment).

5 account, and shall certify the respective items and amounts allowed. Any such certificate, as between the mortgagor and the mortgagee, shall be final and conclusive as to the amount of the mortgagor's indebtedness under the mortgage:

Provided that where the amount of total indebtedness so certified by the Master exceeds three thousand pounds, an appeal shall lie to the Supreme Court.

10 (6) Where the amount of total indebtedness so certified is less than ninety-eight per centum of the amount of total balance claimed to be outstanding by the mortgagee in his statement of account, the costs of all proceedings under subsection five of this section shall be paid by the mortgagee, and the mortgagee shall not be entitled to recover any such costs from the mortgagor or to add the amount thereof to the mortgage debt, notwithstanding any law or anything contained in any covenant or agreement in the mortgage to the contrary.

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(7) In this section "mortgagor" means the person entitled to the equity of redemption in the mortgaged land or if the land comprised in the mortgage is under the provisions of the Real Property Act, 1900, has the same meaning as in that Act.

25

(d) by omitting from section eighteen the word "fifty-one" wherever occurring and by inserting in lieu thereof the word "fifty-two";

30

Sec. 18.
(Prescribed date for repayment.)

(e) (i) by omitting from subsection one of section nineteen the words "not less than one month";

Sec. 19.
(Power to extend date for payment in cases of hardship.)

(ii)

Moratorium (Amendment).

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections:—

5 (2) Upon any application under subsection one of this section the court shall take into consideration in addition to all other relevant matters—

10 (a) any hardship which would be caused to the mortgagor by being obliged to pay the principal sum by the prescribed date for repayment;

(b) the conduct of the mortgagor in respect of dealings with the mortgagee;

15 (c) any hardship which would be caused to the mortgagee by the making of an order.

20 (2A) Notwithstanding anything contained in subsection two of this section, an application made by a mortgagor under subsection one of this section for an order extending the date for payment to a date not later than the thirty-first day of December, one thousand nine hundred and fifty-three, shall not be

25 refused if the court is satisfied—

30 (a) that the mortgagor, by reason of floods during the years one thousand nine hundred and forty-nine and one thousand nine hundred and fifty, sustained losses which, by reference to the amount of the principal sum of the mortgage, were substantial; and

35 (b) that the conduct of the mortgagor in respect of dealings with the mortgagee has not been such as to render him undeserving of the benefit and protection of this section.

(f)

Moratorium (Amendment).

(f) by omitting subsection nine of section thirty and by inserting in lieu thereof the following subsection:—

Sec. 30.
(Jurisdiction of court—how exercised.)

5 (9) The costs of any party to an application under this Part of this Act to the court shall, unless the court otherwise orders, be borne by such party.

10 Where the court makes any order as to costs, the costs covered by such order shall be borne by the party by whom such costs are ordered to be paid.

Where the court makes any order allowing any costs to any party the court may if it thinks fit assess the amount thereof.

15 The provisions of this subsection shall have effect notwithstanding any law, or any covenant or agreement in the mortgage, to the contrary.

re Shanahan.
(1941) 58 W.N. 132.

(g) by inserting next after section thirty-four the following new sections:—

New secs. 34A, 34B.

20 34A. A mortgage of land in New South Wales shall be deemed an investment authorised by the Trustee Act, 1925-1942, notwithstanding the fact that no action, suit or proceeding for the payment by the mortgagor of any principal moneys secured by the mortgage or interest thereon will lie at the instance of the mortgagee upon any covenant or agreement for such payment contained in the mortgage.

Mortgage of land excluding personal covenant to be trustee investment.

30 34B. Where under any covenant or agreement in any mortgage executed before or after the commencement of the Moratorium (Amendment) Act, 1950, the mortgagor is under a liability to pay or indemnify the mortgagee against the payment of any tax levied upon the mortgagee in respect of the mortgaged property under the

Covenants or agreements as to payment by mortgagor of Commonwealth Land Tax.

Land

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Moratorium (Amendment).

5 Land Tax Assessment Act 1910-1940 of the
Parliament of the Commonwealth of Australia,
such covenant or agreement shall, except as to
the amount of tax which would have been levied
upon the mortgagee had the land the subject of
the mortgage been the only land in respect of
which the mortgagee was liable for any such tax,
be absolutely void.

10 This section shall apply only to any such tax
as is levied in respect of any period subsequent
to the thirtieth day of June, one thousand nine
hundred and fifty.

15 (h) by inserting in section forty-three after the
symbols "13A" the words and symbols "or
section 13B";

(i) by omitting from section forty-nine the word
"fifty-one" wherever occurring and by inserting
in lieu thereof the word "fifty-two."

Sec. 43.

(Offences.)

Sec. 49.

(Duration
of Part II.)

