

Forfeiture and Validation of Leases.

Act No. 8, 1905.

FORFEITURE AND
VALIDATION
OF LEASES.

An Act to grant relief against the exercise of rights of re-entry and forfeiture under leases, and against defects invalidating certain leases; to amend the Forfeiture of Leases Act of 1901; and for other purposes. [21st August, 1905.]

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 :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Forfeiture and Validation of Leases Act, 1905."

Division of Act.

2. This Act is divided into Parts, as follows :—

PART I.—PRELIMINARY—*ss.* 1, 2.

PART II.—FORFEITURE OF LEASES—*ss.* 3–5.

PART III.—INVALID LEASES UNDER POWERS—*ss.* 6–12.

PART II.

FORFEITURE OF LEASES.

Incorporation of
Act of 1901.

3. This Part of this Act shall be construed with the Forfeiture of Leases Act of 1901.

Definitions.

55 & 56 Vic., c. 13,
s. 5.

4. In this Part of this Act, and in section one of the Forfeiture of Leases Act of 1901, "lease" also includes an agreement for a lease where the lessee has become entitled to have his lease granted; "under-lease" also includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted; and in the said Part "under-lessee" includes any person deriving title under or from an under-lessee.

Power of Court to
protect under-lessees
on forfeiture of
superior leases.
55 & 56 Vic., c. 13,
s. 4.

5. (1) Where a lessor is proceeding by suit, action, or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, made either before or after the commencement of this Act, the Supreme Court in its equitable jurisdiction may,

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on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, make an order staying any such suit, action, or other proceeding on such terms as to the Court may seem just, and vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of proper and reasonable rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case, and having regard to the consent or otherwise of the lessor to the creation of the estate or interest claimed by the under-lessee, may think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for a larger area of land or for any longer term than he had under his original under-lease.

(2) Any such order may be made in a suit brought for the purpose by the person claiming as under-lessee, or, where the proceeding by the lessor is in the equitable jurisdiction of the Supreme Court, may be made in such proceeding.

PART III.

INVALID LEASES UNDER POWERS.

6. When a valid power of leasing is vested in or may be exercised by a person granting a lease, and such lease (by reason of the determination of the estate or interest of such person or otherwise) cannot have effect and continuance according to the terms thereof, independently of such power, such lease shall, for the purposes of this Part of this Act, be deemed to be granted in the intended exercise of such power, although such power be not referred to in such lease.

7. (1) Where in the intended exercise of any power of leasing, whether derived under an Act of Parliament or under any instrument lawfully creating such power, a lease has been or may hereafter be granted which is, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of such power, invalid as against the person entitled after the determination of the interest of the person granting such lease to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled for any estate to the hereditaments comprised in such lease, such lease, in case the same have been made bona fide, and the lessee named therein, his executors, administrators, or assigns (as the case may require) have entered thereunder, shall be considered in equity as a contract for a grant

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at the request of the lessee, his executors, administrators, or assigns (as the case may require), of a valid lease under such power, to the like purport and effect as such invalid lease as aforesaid, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound in equity by such contract:

Proviso where parties interested agree.

(2) Provided that no lessee under any such invalid lease as aforesaid, his executors, administrators, or assigns shall be entitled by virtue of any such equitable contract as aforesaid to obtain any variation of such lease where the persons who would have been bound by such contract are willing to confirm such lease without variation.

Land subject of equitable contract deemed a leasehold.

(3) Land the subject of any such equitable contract shall, for the purposes of subsection two of section fourteen of the Real Property Act, 1900, be deemed to be a leasehold.

Certain leases validated where grantor could not grant them.
12 & 13 Vic., c. 26, s. 4.

8. Where a lease granted in the intended exercise of any such power of leasing as aforesaid is invalid by reason that at the time of the granting thereof the person granting the same could not lawfully grant such lease, but the estate of such person in the hereditaments comprised in such lease has continued after the time when such or the like lease might have been granted by him in the lawful exercise of such power, then and in every such case such lease shall take effect, and be as valid as if the same had been granted at such last-mentioned time, and all the provisions contained in this Part of this Act shall apply to every such lease:

Proviso.

Provided that this section shall not apply where at the time of the granting of the lease the person granting the same was under the age of twenty-one years.

Acceptance of rent deemed confirmation of lease.
13 & 14 Vic., c. 17, s. 2.

9. Where, upon or before the acceptance of rent under any such invalid lease as above mentioned, any receipt, memorandum, or note in writing, confirming such lease, is signed by the person accepting such rent, or some other person by him thereunto lawfully authorised, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease.

Lessee bound to accept confirmation of lease.
Ibid., s.

10. Where, during the continuance of the possession taken under any such invalid lease as above mentioned, the person for the time being entitled (subject to such possession as aforesaid) to the hereditaments comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation, the lessee, his executors, or administrators (as the case may require), or any person who would have been bound by the lease if the same had been valid, shall, upon the request of the person so able to confirm the same, be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing, signed by the persons confirming and accepting respectively, or by
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some other persons by them respectively thereunto lawfully authorised; and after confirmation and acceptance of confirmation such lease shall be valid, and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid.

11. Nothing in this Part of this Act shall extend or be construed to prejudice or take away any right of action or other right or remedy to which, but for the enacting of this Part of this Act, the lessee named in any such lease as aforesaid, his executors, administrators, or assigns would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or to prejudice or take away any right of re-entry or other right or remedy to which, but for the enacting of this Part of this Act, the person granting such lease, his executors, administrators, or assigns, or other the person for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled, for or by reason of any breach of the covenants, conditions, or provisos contained in such lease, and on the part of the lessee, his executors, administrators, or assigns, to be observed and performed.

12. This Part of this Act shall not extend to any lease where, before the commencement of this Act, the hereditaments comprised in such lease have been surrendered or relinquished, or recovered adversely by reason of the invalidity thereof, or there has been any judgment or decree in any action or suit concerning the validity of such lease, and shall not prejudice or affect any action or suit already commenced and now pending in any Court of law or equity; but every such action and suit may be proceeded with and such relief had therein as if this Part of this Act had not been enacted.