

MORATORIUM (AMENDMENT) ACT.

Act No. 39, 1950.

George VI. An Act to amend the Moratorium Act, 1932-
No. 39, 1950. 1947, in certain respects; and for pur-
poses 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 Legis-
lative Council and Legislative Assembly of New South
Wales in Parliament assembled, and by the authority of
the same, as follows:—

Short title
and
citation.

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

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

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 Mora-
torium (Amendment) Act, 1950, the
mortgagee has, with a view to dis-
charging 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

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) 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)

No. 39, 1950.

- (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 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”;

(c)

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

No. 39, 1950.
New sec.
13B.

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.

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)

No. 89, 1950.

(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, 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";

(e)

(e) (i) by omitting from subsection one of section No. 39, 1950.
 nineteen the words "not less than one month"; Sec. 19.

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections:—
 (Power to extend date for payment in cases of hardship.)

(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) Act.**No. 39, 1950.**

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 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

**Electricity Commission (Balmain Electric Light
Company Purchase) Act.**

463

upon the mortgagee had the land the subject of No. 39, 1950.
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 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."
-