

MORATORIUM (AMENDMENT)
ACT.

Act No. 43, 1931.

An Act to amend in certain respects the Moratorium Act, 1930, and certain other Acts; and for purposes connected therewith. [Assented to, 2nd October, 1931.] George V,
No. 43, 1931.

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, 1931." Short title.

(2) This Act shall be read and construed with the Moratorium Act, 1930, in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Moratorium Act, 1930-1931.

(4) This Act shall be deemed to have commenced on the first day of September, one thousand nine hundred and thirty-one.

2. (1) The Principal Act is amended—

(a) by inserting at the end of the definition of "Mortgage" in section two the words "or by which any provision of the mortgage is varied"; Amendment of
Act No. 48, 1930:
Sec. 2.
(Definition of
mortgage.)

(b) by inserting at the end of subsection one of section twenty-two the following words: "Without limiting the generality of the foregoing provisions of this subsection the regulations may prescribe the manner in which and the district courts and courts of petty sessions to which applications under this Act shall be made." Sec. 22.
(Regula-
tions.)

(2)

No. 43, 1931.

(2) The amendments made by subsection one of this section shall be deemed to have commenced upon the nineteenth day of December, one thousand nine hundred and thirty.

Further amendment of Act No. 43, 1930, s. 20.

3. The Principal Act is further amended by omitting section twenty and by inserting in lieu thereof the following section:—

Hire-purchase agreements.

20. (1) Neither section six nor section sixteen of this Act shall apply to a hire-purchase agreement.

(2) Nothing in this Act shall be construed to preclude the person to whom an instalment is, by the terms of a hire-purchase agreement, due, from taking action to recover the same, but such action shall not be taken except with the leave of the court granted under section four of this Act.

The court may upon an application for such leave grant leave to sue for one or more instalments on or after the dates on which by the agreement the instalments have become or will become due.

(3) The court at any time, on the application of any party to a hire-purchase agreement, may readjust the amount of the instalments, and may at the same or any other time postpone the payment of all or any instalments in such manner and for such time as the court thinks just, due regard being had to the rights and interests of both parties to the agreement, to the conduct of the hirer, and to all the circumstances of the case.

In any such readjustment the court may direct interest upon any postponed instalment at such reasonable rate as it may fix to be paid to the vendor.

In any proceeding to recover an instalment the court may exercise the powers conferred by this subsection.

(4) (a) Section four of this Act shall extend to a hire-purchase agreement made before or after the commencement of the Moratorium (Amendment) Act, 1931, and whether or not any option of purchase expressed in the agreement is subsisting at the date of the application to the court.

(b)

(b) The provisions of subsection two of section four of this Act shall, mutatis mutandis, apply to and in respect of an application under this section; and the provisions of subsections three and four of section four of this Act shall, mutatis mutandis, apply to and in respect of such an application or any proceeding to recover an instalment.

(5) This section extends to all instalments the payment of which is provided for by a hire-purchase agreement, whether such agreement describes such instalments as rent or hire or otherwise, and whether or not the hirer is in default at the date of the application or proceedings.

(6) Where at the date of the commencement of the Moratorium (Amendment) Act, 1931, the vendor under a hire-purchase agreement has in pursuance of the powers contained in the agreement retaken possession of the goods the subject-matter of the agreement, and where such agreement is one to which the provisions of this Act, as amended by the Moratorium (Amendment) Act, 1931, would have applied if such Act as amended had been in operation at the time possession of such goods was retaken, then in any such case, upon the application of the hirer made within three months from the date of the commencement of the Moratorium (Amendment) Act, 1931, the court may, if in all the circumstances it thinks it desirable so to do, order that such goods be returned to the hirer upon the terms that he hold the same subject to the terms and conditions of the hire-purchase agreement to which they relate, and subject also to any further terms or conditions as to the payment of costs or otherwise that the court may impose, or where the goods are not in the possession or within the control of the vendor, the court may make such order as to payment of compensation by the vendor to the hirer as to it seems fit.

(7) The provisions of subsection two of section 21A shall apply, mutatis mutandis, to an order made under subsection six of this section for the return of goods, and the provisions of subsection

six of section nine shall apply, mutatis mutandis, to an order as to the payment of compensation made under subsection six of this section.

(8) In this section—

“Vendor” means a person who has disposed of goods under a hire-purchase agreement whether such person is described as vendor, owner, lessor, or otherwise; and includes any person deriving title under or through a vendor to his interest under such agreement;

“Hirer” means a purchaser or lessee of goods under a hire-purchase agreement, whether such purchaser or lessee is described as hirer, purchaser, lessee, or otherwise; and includes any person deriving title under or through a hirer.

4. The Principal Act is further amended—

- (a) by omitting subsection two of section three;
 - (b) (i) by omitting from subparagraph (ii) of paragraph (c) of subsection one of section four the word “rates”;
 - (ii) by omitting from paragraph (d) of the same subsection the word “or” where lastly occurring;
 - (iii) by inserting at the end of paragraph (e) of the same subsection the word “or”;
 - (iv) by inserting next after the same paragraph the following new paragraph :—
 - (f) appoint a receiver, or take any steps to have a receiver appointed;
 - (v) by omitting from the proviso to the same subsection the words “twelve months” and by inserting in lieu thereof the words “two years or rates on the mortgaged property for not less than two years remain wholly unpaid”;
 - (vi) by omitting from the same proviso the words “or twenty-one days in the case of movable or wasting securities”;
- (c)

Further amendment of Act No. 43, 1930.

Sec. 3.
(Bank overdraft.)

Sec. 4.
(Limitation of rights of mortgagees.)

- (c) by inserting at the end of section six the following new subsection :— No. 43, 1931.
Sec. 6.

(2) An application may be made to the court to assess under this section a rate of interest. (Instal-
ments.)

The provisions of subsection two of section four of this Act shall, mutatis mutandis, apply to and in respect of the application.

- (d) by inserting at the end of subsection one of section eight the words “and the mortgagee shall comply with any such order” ; Sec. 8 (1).
(Mortgagee in
possession.)

- (e) (i) by omitting from subsection four of section nine the word “two” and by inserting in lieu thereof the word “three” ; Sec. 9.
(Correction.)

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

(6) Any such order for costs, whether made by a district court or a court of petty sessions, shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, and be enforceable as such an order under the provisions of that Act. The order for costs may for such purpose be entered in the records of the court exercising jurisdiction under the said Act named in the order or, if no such court is so named, in the records of any court exercising such jurisdiction within the district in which the order was made.

The entry shall be made in accordance with regulations made under this Act.

- (f) by inserting in subsection one of section ten after the words “witnessed by” the words “the officer in charge of the Legal Aid Office or any clerk of petty sessions or other prescribed officer of the Public Service or by” ; and by inserting in the same subsection after the word “and” lastly occurring the words “in the case of such solicitor” ; Sec. 10 (1).
(Consent by
mortgagor.)

- (g) by inserting in subsection four of section eleven after the word “which” the words “and subject to such fulfilment” ; Sec. 11 (4).
(Extension of
Act to hire-
purchase
agreements.)

(h)

No. 43, 1931.

Sec. 12 (1).
(Agreement
for sale.)

(h) by omitting from paragraph (a) of subsection one of section twelve the words "twelve months" and by inserting in lieu thereof the words "two years";

Sec. 13.
(Non-
application of
Act to certain
transactions.)

(i) (i) by inserting in paragraph (a) of section thirteen after the word "Act" where secondly occurring the words "and (in the case of any such mortgage, agreement, or lease which is executed after the commencement of the Moratorium (Amendment) Act, 1931) if such mortgage, agreement, or lease is witnessed and certified in the manner in which a consent by a mortgagor is required by section ten of this Act to be witnessed and certified";

(ii) by omitting from paragraph (b) of the same section the words "the Minister, by notice in writing, declares that he" and by inserting in lieu thereof the words "the court upon application in that behalf";

(iii) by inserting at the end of the same section the following words and subsections:—

or (f) a mortgage, whether executed before or after the commencement of the Moratorium (Amendment) Act, 1931, which is varied by a memorandum executed after such commencement if such memorandum contains a condition or covenant expressly excluding the provisions of this Act in relation to such mortgage and such memorandum is witnessed and certified in the manner in which a consent by a mortgagor is required by section ten of this Act to be witnessed and certified.

(2) To resolve doubts it is declared that any clause in a mortgage executed before the nineteenth day of December, one thousand nine hundred and thirty, which purports to exclude the provisions of any Act imposing a moratorium, shall not avail to exclude the provisions of this Act.

(3)

(3) Upon the application of the mortgagor, made within six months from the date of the commencement of the Moratorium (Amendment) Act, 1931, the court may, if in all the circumstances it thinks it desirable so to do, order that any clause excluding the provisions of this Act from any mortgage, agreement, lease, or memorandum executed on or after the nineteenth day of December, one thousand nine hundred and thirty, and before such commencement, shall be void and of no effect.

(4) The provisions of subsections two and three of section four shall, mutatis mutandis, apply to and in respect of any application made under this section.

- (j) by inserting in subsection two of section four-
 teen after the words "section in respect of"
 the words "orders for"; Sec. 14 (2).
 (Relief against
 judgments.)
 (Correction.)
- (k) (i) by omitting from section fifteen the words
 "a transfer of property on sale by the
 mortgagee thereof" and by inserting in
 lieu thereof the words "any instrument"; Sec. 15.
 (Transfers,
 &c., by
 mortgagees.)
- (ii) by omitting from the same section the
 words "the sale" and by inserting in lieu
 thereof the words "the dealing";
- (iii) by omitting from the same section the
 word "transfer" wherever elsewhere
 occurring and by inserting in lieu thereof
 the word "instrument";
- (iv) by inserting at the end of the same section
 the following new subsection :—

(2) The Registrar-General may rely upon the register book under the Real Property Act, 1900, and shall not be bound to make any inquiry as to any interest not appearing therein unless the same is protected by a caveat.

No. 43, 1931.

New s. 18A.

Saving of
right to pay
off on due
date.

(l) by inserting next after section eighteen the following new section:—

18A. Nothing in this Act shall preclude the payment off of any mortgage upon the date upon which the moneys secured thereby are by the mortgage repayable, without any payment of interest in lieu of notice.

Sec. 19.
(Correction.)

(m) by omitting from subsection three of section nineteen the word "ten" and by inserting in lieu thereof the word "eleven";

Sec. 21.
(Offences.)

(n) (i) by inserting in subsection one of section twenty-one after the words "provision of this Act" the words "or with any order directing a mortgagee to vacate the mortgaged property or with any order made pursuant to section eight or section twelve of this Act";

(ii) by omitting subsection two of the same section;

New s. 21A.

(o) by inserting next after section twenty-one the following new section:—

Order for
possession.

21A. (1) Where a person is convicted of an offence in consequence of which a mortgagor has been deprived of the possession of property, the subject of a mortgage, or the purchaser or lessee of goods under a hire-purchase agreement has been deprived of the goods the subject of the agreement, the court may, in a summary manner, make such order as to the possession of the property or of the goods as to it seems fit.

(2) A copy of such order may be served on the person in possession of the property or of the goods, and, if such person makes default in complying with such order, he shall be liable to a penalty not exceeding five pounds per day for each day he makes default in complying with the order.

Such penalty may be recovered in a summary way under the provisions of the Justices Act, 1902.

Sec. 22.
(Correction.)

(p) by omitting from section twenty-three the word "twenty-five" and by inserting in lieu thereof the word "twenty-four." **5.**

5. The Principal Act is further amended—

No. 43, 1931.

Further amendment of Act No. 43, 1930. (Personal covenants.)

(a) by inserting after section twenty-four the following new Part:—

New Part IV.

PART IV.

LIABILITY OF MORTGAGORS.

25. (1) After the commencement of the Moratorium (Amendment) Act, 1931, no action, suit, or proceeding shall be commenced, nor shall any action or proceeding already commenced be continued for breach of any covenant, agreement, or condition expressed or implied in any mortgage of real property, except as hereinafter provided.

Restriction on rights of mortgagees and vendors of real property.

(2) In the case of the breach of any covenant for the insurance, maintenance or cultivation of the mortgaged real property or the payment of moneys due to the Crown in the case of lands held under the Crown Lands Consolidation Act, 1913, or the doing of any act for the preservation of the security, leave to commence or continue an action or proceeding may be granted if the court is satisfied that the mortgagor is able to comply with the covenant without hardship to himself or his dependants.

(3) This section shall apply to all mortgages of real property whether executed before or after the commencement of this Act, and notwithstanding any stipulation to the contrary.

(4) Nothing contained in this section shall alter or abridge any of the rights or remedies of a mortgagee to sell the mortgaged real property or any easement, right, or privilege of any kind over or in relation thereto, or to obtain foreclosure or possession or to appoint a receiver of the income of the mortgaged real property or of any part thereof, or to sever and sell fixtures, or to cut and sell timber.

(5)

Moratorium (Amendment) Act.

No. 43, 1931.

(5) Paragraphs (c) and (d) of subsection one of section four shall be construed subject to this section, and shall not, after the commencement of the Moratorium (Amendment) Act, 1931, extend to actions or proceedings for breach of any covenant, agreement or condition expressed or implied in any mortgage of real property, or to any action or proceeding for interest at a rate provided in a mortgage of real property.

(6) This section shall extend to a contract of sale of real property.

Agreements
for the sale
and purchase
of land.

26. Where an agreement for the sale and purchase of land (including exchange) was made before the commencement of the Moratorium (Amendment) Act, 1931, the purchaser may at any time within three months after such commencement by notice in writing to the vendor rescind the agreement, and thereupon all moneys paid to the vendor in respect of such agreement whether as deposit, instalments, interest, or otherwise, shall be retained by him, but the purchaser shall not be liable to any claim either for damages for breach of the agreement or for any damages or expenses whatsoever incurred by the vendor in or about the agreement.

Sec. 1.

(b) by inserting at the end of section one the words—

“ PART IV.—LIABILITY OF MORTGAGORS.”

Sec. 12.
(Agreements
for sale of
land)

(c) by inserting in subsection two of section twelve after the word “ may ” the words “ subject to the provisions of sections twenty-five and twenty-six and ”