

Conveyancing (Amendment) Bill, 1925.

EXPLANATORY NOTE.

THE proposed amendment of section 164 of the Conveyancing Act, 1919, is proposed owing to doubts having arisen as to whether a purchaser of land ought reasonably to search in the register kept by the Registrar of Joint Stock Companies, or by companies under sections 3 (2) and 11 of the Companies (Registration of Securities) Act, 1918. This doubt the amendment is intended to determine. The view is held that the holder of any security over land of the company, if he wishes to protect it from subsequent dealings by the company registered under the Registration of Deeds Act, should register his security under that Act. Usually such securities are effected by the issue of a debenture or debentures. Although a debenture creating a charge is not itself suitable for registration under the Registration of Deeds Act it may be, and very often is, protected by a covering deed, which can, of course, be registered.

The proposed amendment of section 173 is designed to restore, as far as possible, the usefulness of the section, which the judgment of the High Court in *Templeton v. Leviathan, &c., Company*, 30 C.L.R. 35, has had the effect of practically destroying for conveyancing purposes.

Section 173, if literally construed, might possibly cause hardship, and the judgments of the English courts have placed some limitations upon it. None; however, have gone so far as the *Leviathan* case appears to have done.

The object of the section was to make Orders of Court conclusive in favour of purchasers without notice and to cover any irregularity of procedure. Since the judgment referred to it has been necessary to revert to the practice, obtaining prior to the passing of the Conveyancing Act, of examining the proceedings in which Orders have been made, for the purpose of ascertaining that all necessary persons are bound. Reversion to the old practice in the investigation of titles applied to be brought under the Real Property Act has involved a large amount of work and consequent expense which, apparently, it was the intention of the Legislature to abolish.

The scheme of the suggested amendment is to deal separately with each case which can be separately provided for, thus covering the more common Orders, and to provide generally for the residue. The operation of the section will still be limited to the extent necessary to prevent it resulting in hardship. The amendment proposed provides adequate safeguards without destroying the beneficial effect of the section.

The amendments are made retrospective to the commencement of the Conveyancing Act, 1919, with the usual saving as to completed and pending litigation.

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1925.

A BILL

To amend sections one hundred and sixty-four and one hundred and seventy-three of the Conveyancing Act, 1919, in certain respects.

[MR. MCKELL;— *September, 1925.*]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Conveyancing Short title. (Amendment) Act, 1925."

2.

Conveyancing (Amendment).

Amendment of Act No. 6, 1919. Sec. 164.

2. (1) The Conveyancing Act, 1919, is amended—

(a) by inserting the following subsection next after subsection one of section one hundred and sixty-four :—

(1A) Omission to search in any register or list kept or filed pursuant to the Companies (Registration of Securities) Act, 1918, or the Companies Act, 1899, or any present or future Act amending those Acts, or either of them, shall not of itself affect a purchaser of land with notice of any mortgage or charge;

Sec. 173 (1).

(b) (i) by inserting in subsection one of section one hundred and seventy-three immediately before the word " concurrence " the word " party " ;

(ii) by inserting at the end of the same subsection the following proviso :—

Provided that—

(a) an order made or purporting to be made in pursuance of the Settled Estates Act, 1886, or Part IV of the Conveyancing and Law of Property Act, 1898, shall not by this section be validated as against any estate or interest claimed otherwise than under or through the settlement in relation to which the order was made; and

(b) an order made in a suit for partition shall not by this section be validated as against any estate or interest which is not an undivided share or an estate or interest in an undivided share of the entire estate or interest which the order purports to affect; and

(c) an order made in a suit for foreclosure or otherwise at the suit of a mortgagee as such shall not by this section be validated as against any estate or interest not claimed under

5 under or through the person by
 whose act or default the mortgage
 in relation to which the order was
 made was created, or as against any
 estate or interest having priority to
 such mortgage; and

10 (d) an order in any other case shall not
 by this section be validated against
 a person not a party to, and not
 apart from this section, otherwise
 bound by the proceedings in which
 the order was made, if the effect of
 the order or of anything done in
 15 pursuance of the order or the com-
 bined effect of the order and any-
 thing done in pursuance of the
 order, but for this proviso, would be
 to deprive such person of an estate
 or interest and prevent him from
 20 receiving the whole or any part of
 the proceeds of any transaction
 carried out in pursuance of the
 order; and

25 (e) in any case an order to the extent
 to which it expressly excludes any
 person from its operation shall not
 by this section be validated against
 that person.

30 (2) This Act shall take effect as if it had come
 into operation on the first day of July, one thousand
 nine hundred and twenty, except that it shall not affect
 the rights of any party to any proceeding at law or in
 equity concluded before or pending at the passing of
 this Act.

Retrospec-
 tive
 operation.