



ANNO TERTIO

GEORGII VI REGIS.

A.D. 1939.

No. 36 of 1939.

An Act to amend The Real Property Act, 1886-1936.

[Assented to 14th December, 1939.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the "Real Property Act Amendment Act, 1939". Short title.

(2) The Real Property Act, 1886-1936, as amended by this Act, may be cited as "The Real Property Act, 1886-1939".

(3) The Real Property Act, 1886-1936, is hereinafter called "the principal Act".

2. This Act shall come into operation on a day to be fixed by the Governor by proclamation. Commencement.

3. This Act is incorporated with The Real Property Act, 1886-1936, and that Act and this Act shall be read as one Act. Incorporation.

4. This Act shall take effect notwithstanding the provisions of The Real Property Act, 1886. Act to operate notwithstanding The Real Property Act.

5. The following section is hereby enacted and inserted in the principal Act after section 142 thereof :— Enactment of s. 142a of the principal Act—

142a. (1) Where two or more persons are registered as mortgagees or encumbrancees under the same mortgage or encumbrance, and such default has been made in payment of any money due under the mortgage or encumbrance or in the performance of any covenant in the said mortgage or encumbrance expressed or implied as entitles the mortgagees or encumbrancees to exercise any of their

Provision for case where mortgagee or encumbrancee refuses to join in proceedings on default.

rights or remedies under this Act or under the mortgage or encumbrance, and any such mortgagee or encumbrancee fails or refuses to join in giving any notice, making any application or doing any other act or thing for the purpose of enforcing any of the said rights or remedies, the Court may, on the application by originating summons of any other mortgagee or encumbrancee and on any terms and conditions which it thinks just—

(a) appoint any one of such mortgagees or encumbrancees or any other person to exercise on behalf of the mortgagees or encumbrancees such of the said rights or remedies as the Court thinks proper :

(b) give any directions as to the mode of exercising the said rights or remedies and as to any other matters incidental thereto.

(2) Any document executed by any person so appointed shall for the purposes of this Act, but subject to the terms of the order, have the like effect as if executed by the mortgagees or encumbrancees.

Enactment of s. 96a of the principal Act—

6. The following section is hereby enacted and inserted in the principal Act after section 96 thereof :—

Acceptance of transfer.

96a. Every transfer shall contain a statement signed by the transferee indicating that he accepts the transfer or grant of the land, right of way or easement: Provided that—

(a) the Registrar-General may accept and register a transfer without such a statement if he is satisfied that it is difficult or impossible to procure the signature of the transferee ;

(b) where the transferee is an infant or mentally defective person, the said statement shall be signed by his guardian or the committee of his estate or by a person appointed as such guardian or committee under section 245 of this Act ; and the acceptance under this section of a transfer on behalf of an infant shall not affect any right of that infant or of any person on his behalf to avoid or disclaim the transfer.

Repeal and re-enactment of s. 169 of principal Act—

7. Section 169 of the principal Act is repealed and the following section is enacted and inserted in lieu thereof :—

Disclaimers.

169. (1) Any person (in this section called " the disclaimant "), whether a trustee or not, who claims that he

has been registered, without his consent, as proprietor of any estate or interest in land, may execute and lodge with the Registrar-General a deed or other instrument of disclaimer of that estate or interest.

(2) If the disclaimant has been registered as proprietor of any estate or interest, the Registrar-General shall give notice by post of the lodging of the instrument of disclaimer, to all other persons whose names appear on the Register Book, and who, in the Registrar-General's opinion, may be affected by the disclaimer.

In the notice the Registrar-General shall specify a day, not earlier than twenty-one days after the day on which the notice would be delivered to the addressee in the ordinary course of post, on or before which the person to whom it is given may lodge with the Registrar-General a notice of objection to the registration of the instrument of disclaimer.

(3) If no notice of objection is so lodged and the Registrar-General is satisfied that the disclaimant was registered without his consent, the Registrar-General shall give effect to the disclaimer by making such entries, alterations and corrections in the Register Book and on any certificate or other instrument of title as are necessary for that purpose, and by cancelling any certificate or other instrument of title which it is necessary to cancel.

(4) If no notice of objection is lodged but the Registrar-General is not satisfied that the disclaimant was registered without his consent—

(a) the Registrar-General shall not take any steps to give effect to the instrument of disclaimer except pursuant to an order of the Supreme Court obtained as hereinafter provided :

(b) the Registrar-General shall give notice by post to the disclaimant of the fact that he does not intend to give effect to the instrument of disclaimer except pursuant to such an order.

(5) If any notice of objection is lodged on or before the day specified by the Registrar-General—

(a) the Registrar-General shall not take any steps to give effect to the instrument of disclaimer except pursuant to an order of the Supreme Court obtained as hereinafter provided :

(b) the Registrar-General shall give notice by post to the disclaimant of the fact that an objection to the disclaimer has been lodged.

Real Property Act Amendment Act, 1939.

(6) A disclaimant who has received a notice under paragraph (b) of subsection (4) of this section, or a notice of objection under subsection (5) of this section, may apply to the Supreme Court by originating summons for an order that the Registrar-General take such action as is necessary to give effect to the instrument of disclaimer and upon such an application the Court may make any order which it deems just.

(7) Nothing done under this section shall release any person from any trust or other liability, if he has acted in the trust, or by his own act incurred the liability.

Repeal of ss. 255 and 256 of principal Act.

8. Sections 255 and 256 of the principal Act are repealed.

Amendment of s. 268 of the principal Act—
Proof of attestation.

9. Section 268 of the principal Act is amended by inserting after the word "same" in the tenth line thereof the words "in the presence of the witness".

Amendment of 6th, 7th, and 11th schedule of the principal Act—
Acceptance of transfers.

10. (1) The forms in the sixth and seventh schedules to the principal Act are respectively amended by adding at the end of each one of them the words:—

Accepted

[Signature of transferee] Transferee.

[Signature of witness] Witness to signature of Transferee.

(2) The form in the eleventh schedule to the principal Act is amended by striking out at the end thereof the following words:—

[If transfer of lease add Accepted, C.D., transferee]

and inserting in lieu thereof the words:—

Accepted

[Signature of transferee] Transferee.

[Signature of witness] Witness to signature of Transferee.

Amendment of nineteenth schedule of the principal Act—
Certificate as to attestation.

11. The nineteenth schedule of the principal Act is amended by inserting therein after the word "same" in the ninth line thereof the words "in the presence of him the said C.D."

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.