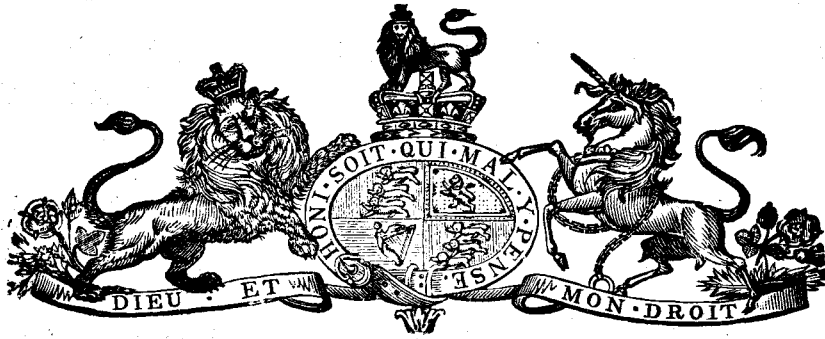


TASMANIA.



1931.

ANNO VICESIMO SECUNDO
 GEORGII V. REGIS.
 No. 8.

ANALYSIS.

1. Short title and commencement.
2. Interpretation.
3. Application of Act.
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AN ACT to provide for the Reduction of the Rates of Interest Payable in respect of certain Fixed Liabilities, and to enable Tribunals to make Exemptions and Modifications in certain cases. [3 August, 1931.]

A.D.
 1931.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as "The Mortgage Interest Reduction Act, 1931," and shall come into operation on a date to be fixed by proclamation.

Short title and commencement.

Mortgage Interest Reduction.

A.D. 1931.

Interpretation.
11 Geo. V.
No. 66.

2 In this Act, unless the contrary intention appears—

“Company” means a company registered under the Companies Act, 1920:

“Court” means a judge of the Supreme Court, and, where the amount secured by the mortgage does not exceed One thousand Pounds, includes a commissioner of a court of requests under the Local Courts Act, 1896:

“Interest payable under the mortgage” means interest at the rate which the mortgage provides shall be payable, and includes interest payable at any reduced rate which is substituted therefor in case of punctual payment:

“Local body” means any local body as defined by the State Loans to Local Bodies Act, 1929:

“Mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of money is created over real or personal property or any interest therein, and includes an agreement for sale and purchase of real or personal property where payment of the unpaid purchase money and interest thereon is secured on such property, and also includes a charge created by deposit of documents of title and a debenture issued by a company or local body, but does not include any security given in respect of a bank overdraft payable on demand:

“Mortgagee” means the person entitled to receive payment of any moneys payable under a mortgage:

“Mortgagor” means a person liable to payment of moneys secured by the mortgage, and includes any person having the right to redeem the mortgage or who is a guarantor for the moneys thereby secured.

Application of
Act.

3—(1) This Act shall apply only to mortgages existing at the commencement of this Act.

(2) This Act shall not apply to any mortgage given to secure any moneys payable to the State or any officer or body acting for or on behalf of the State.

(3) This Act shall apply to moneys placed on deposit with any person, other than a person carrying on the business of banking, in the same manner as if the same were secured by mortgage, and the depositor shall be deemed to be the mortgagee, and such person as aforesaid the mortgagor, in respect of such moneys.

Mortgage Interest Reduction.

(4) For the purposes of this Act money paid to a building society registered under the Building Societies Act, 1876, in respect of subscribing or paid-up shares in such society, shall be deemed to be money placed on deposit with such society.

A.D. 1931.

4—(1) Except as hereinafter provided, every mortgage shall be construed and take effect as if it were a term of the mortgage that, on and from the commencement of this Act, the interest payable under the mortgage, and accruing after the commencement of this Act, should be reduced at the rate of Four Shillings and Six Pence for every pound of such interest.

Reduction of mortgage interest.

(2) The provisions of this section shall not have the effect of reducing the interest payable under any mortgage to a rate less than Five Pounds per centum per annum.

(3) In any case where the mortgagee satisfies the court—

- I. That he has already reduced the interest payable under the mortgage:
- II. That the mortgage was effected after the first day of July, one thousand nine hundred and thirty-one, and that the interest payable thereunder was fixed in anticipation of the provisions of this section and in conformity with the object thereof: or
- III. There are good and sufficient reasons applying to the transaction for modifying such provisions in relation thereto—

the court may make an order modifying or excluding the operation of the provisions of this section in relation to such mortgage.

5—(1) Where there are several persons having the same interest in any mortgage or having or claiming, whether jointly or severally, any right to relief under this Act in respect of the same mortgage or series of mortgages, one or more of such persons may be authorised by the court, subject to such conditions as may be prescribed or as the court may order, to apply for relief under Section Four of this Act on behalf or for the benefit of all persons so interested or claiming such right to relief.

Special provision in certain cases of joint interest, &c.

(2) Where any mortgagee, being the holder of several mortgages from separate mortgagors, claims any right to relief under this Act in respect of all such mortgages, he may, upon taking out a summons against any one of such mortgagors for such relief, apply to the court for special directions as to service.

(3) The court may make an order for service of the summons on such persons as it may think fit to represent all the

Mortgage Interest Reduction.

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(4) Upon compliance with an order under Subsection (3) of this section, the summons shall be deemed to have been served on every mortgagor affected thereby and every such mortgagor shall be bound by any order made thereon modifying or excluding the provisions of Section Four of this Act.

Procedure. **6**—(1) Any mortgagee affected by the provisions of Section Four may apply to a court, within three months after the commencement of this Act, on summons, calling upon the mortgagor to show cause why the operation of such provisions should not be modified or excluded in relation to the mortgage.

(2) Every such summons shall be in the prescribed form and shall be served as prescribed.

(3) Upon the hearing of the summons the court may make such order as it may think the circumstances require, and may make such order, if any, as to costs as it may think fit, and the amount of any costs so ordered shall be specified in such order.

(4) Every order made under this section by a judge of the Supreme Court shall be final and conclusive, and no appeal shall lie in respect thereof, and in any other case an appeal shall lie to the Supreme Court as may be prescribed.

Effect of reduction. **7**—(1) Every payment of interest made in pursuance of the provisions of Section Four hereof or, where an order has been made under this Act, in pursuance of such order, shall be a full discharge of the mortgagor's liability to payment of interest under the mortgage in respect of the period to which such payment relates.

(2) Every order made under this Act shall apply only in respect of interest accruing after the commencement of this Act.

(3) Every such order shall continue in force during the continuance of the mortgage in respect of which it is made.

(4) Where no order is made under this Act or where an order has been so made during the continuance of such order, it shall not be lawful for the mortgagee to demand, sue for, or enforce payment of interest in respect of any period to which such order relates at a rate greater than the rate payable in pursuance of Section Four hereof or than that allowed by such order, as the case may be.

(5) Every reduction of interest made as provided by this Act shall have the effect of relieving, to the extent of such reduction, every guarantor who is liable for the payment of such interest.

Mortgage Interest Reduction.

8—(1) Where all interest accrued due and payable under the mortgage has been paid and the mortgagor's covenants, other than for payment of principal moneys, have been performed, no mortgagee shall, within a period of twelve months after the commencement of this Act, exercise, in respect of the property comprised in the mortgage, any power of sale or foreclosure or other remedy for enforcing payment of the principal moneys thereby secured, except with the consent of the mortgagor or under the order of a court.

A.D. 1931.

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Restriction of
mortgagee's
right of
enforcement.

(2) Any such order as aforesaid may be made upon summons, to be served as prescribed upon the mortgagor.

(3) If, upon the hearing of any such summons, the mortgagee satisfies the court that—

- I. The mortgagor is able to redeem the property or to repay a portion of the principal moneys secured, as the case may be, either from his own moneys or by borrowing at a rate of interest which the court considers reasonable: or
- II. The value of such property is seriously diminishing or that the mortgagee's security is otherwise in jeopardy and for that reason it is reasonable that the mortgage should be enforced—

the court may make an order permitting the mortgagee to exercise any of his rights under the mortgage forthwith, or, after such shorter period than is hereinbefore prescribed, as the court may think fit.

(4) An order under the provisions of Subsection (3) hereof may be made, subject to the condition that it shall not take effect if the mortgagor, within a period specified in the order, pays to the mortgagee such portion of the principal moneys secured as appears to the court to correspond with the diminution of the security or to be reasonable in the circumstances.

(5) The provisions of this section shall not affect any power of sale possessed by a mortgagee in possession where possession was taken by the mortgagee before the commencement of this Act.

9 The Governor may make regulations prescribing the forms to be used and the procedure to be followed under this Act, and providing for the enforcement of orders made under this Act, and all such other matters and things as may be necessary or convenient for giving effect to the provisions of this Act.

Regulations.

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