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*Real Property Acts Amendment Act.* 6 GEO. VI. No. 14,

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## REAL PROPERTY.

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No. 14.  
THE REAL  
PROPERTY  
ACTS  
AMENDMENT  
ACT OF 1942

### An Act to Amend "The Real Property Acts, 1861 to 1887" (as amended by subsequent Acts), in certain particulars.

[ASSENTED TO 29TH OCTOBER, 1942.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows :—

Short title.           1. This Act may be cited as "*The Real Property Acts Amendment Act of 1942.*"

#### *Amendments of the Principal Act.*

Construction of Act.       2. (1.) \*"*The Real Property Acts, 1861 to 1887,*" as amended by †"*The Public Curator Act of 1915*" and ‡"*The Justices Acts and Real Property Fees Act of 1932,*" are in this Act collectively referred to as the Principal Act.

Collective title.           (2.) The Principal Act and the amendments made thereto by this Act may collectively be cited as "*The Real Property Acts, 1861 to 1942.*"

Amendment of s. 61 of Principal Act.       3. The proviso to section sixty-one of the Principal Act is repealed and a new proviso is inserted in lieu thereof, namely :—

"Provided that no lessee or tenant or occupier occupying such land, such lessee or tenant or occupier not being the mortgagor or encumbrancer, shall be liable to pay to any mortgagee or encumbrancee of such land a greater sum than the amount of rent or moneys payable in respect of such occupancy which at the time of making such distress may be then due and payable by such lessee or tenant or occupier as aforesaid to the mortgagor or encumbrancer or to the person claiming the said land under the mortgagor or encumbrancer."

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\* 25 V. No. 14 and amending Acts. See v. 8, pp. 163 *et seq.*

† 6 G. 5 No. 14 and amending Acts. See v. 9, pp. 627 *et seq.*

‡ 23 G. 5 No. 7, Part II. See v. 4, p. 474.

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4. After section sixty-one of the Principal Act New s. 61A.  
the following new section is inserted, namely:—

“ [61A.] (1.) Notwithstanding anything contained in this Act, or in any other Act or law or rule of law or practice or process of law to the contrary, where the occupier or tenant referred to in sections sixty and sixty-one of this Act shall be the mortgagor or encumbrancer of the mortgaged or encumbered land, the mortgagee or encumbrancee shall have no power or authority under the said sections to distrain the goods and chattels the property of such occupier or tenant (being the mortgagor or encumbrancer) unless such power or authority so to distrain shall have been expressly given to such mortgagee or encumbrancee by the mortgagor or encumbrancer and evidenced by being set forth in the bill of mortgage or bill of encumbrance concerned, and unless such bill of mortgage or bill of encumbrance shall have been registered within three months of the date of the execution thereof, or if executed prior to the passing of \**“The Real Property Acts Amendment Act of 1942,”* then within the time or extended time provided in subsection two of this section as a bill of sale, stock mortgage, mortgage, or security (as the case may be) in accordance with the provisions of such of the following Acts as shall be applicable to such registration, namely:—†*“The Bills of Sale Acts, 1891 to 1941,”* or ‡*“The Mercantile Acts, 1867 to 1896,”* or §*“The Companies Act of 1931,”* or ¶*“The State Securities Registration Act of 1925,”* or ¶¶*“The Primary Producers’ Co-operative Associations Acts, 1923 to 1934,”* or \*\**“The Industrial and Provident Societies Acts, 1920 to 1935,”* or ††*“The Liens on Crops of Sugar Cane Acts, 1931 to 1933,”* or of any other Act which may be applicable to the registration of securities of a like nature, or of any Act amending or in substitution for the said Acts or any of them.

(2.) Every bill of mortgage or bill of encumbrance executed prior to the passing of \**“The Real Property Acts*

Construction of ss. 60 and 61 when mortgagor or encumbrancer is occupier or tenant of mortgaged or encumbered land.

Registration of mortgages and encumbrances executed prior to the passing of “The Real Property Acts Amendment Act of 1942.”

\* This Act.

† 55 V. No. 23 and amending Acts. See v. 6, pp. 319 *et seq.*

‡ 31 V. No. 36 and amending Acts. See v. 6, pp. 293 *et seq.*

§ 22 G. 5 No. 53. See v. 2, p. 10.

¶ 16 G. 5 No. 19. See v. 3, p. 18.

¶¶ 14 G. 5 No. 45 and amending Acts. See v. 7, pp. 891 *et seq.*

\*\* 10 G. 5 No. 32 and amending Acts. See v. 8, pp. 1078 *et seq.*

†† 22 G. 5 No. 37 and amending Acts. See v. 9, pp. 266 *et seq.*

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*Amendment Act of 1942*” and subsisting at the passing of such last-mentioned Act shall, unless otherwise provided therein, and if registered in the manner and within the time hereinafter next provided, be deemed to include power and authority so to distrain as provided in sections sixty and sixty-one of this Act, and shall be duly registered if registered in accordance with the provisions of the Acts specified in subsection one of this section as shall be applicable to such registration within a period of three months after the passing of \**The Real Property Acts Amendment Act of 1942*,” or within such extended period not exceeding six months after the passing of such last-mentioned Act as a judge of the Supreme Court of Queensland may allow.

Meaning of  
“mortgagor”  
and “encum-  
brancer.”

(3.) For the purposes of subsections one and two of this section the terms “mortgagor” and “encumbrancer” shall include the person or company or corporation for the time being registered as proprietor of such estate or interest in the land as is mortgaged or encumbered.”

Amendment  
of the Act 41  
Vic. No. 18.  
New s. 32A.

5. A new section 32A is inserted after section thirty-two of †*The Real Property Act of 1877*,” as follows:—

Trans-  
mission of  
land in  
intestacy.

“[32A.] (1.) In the case of the death (whether before or after the passing of \**The Real Property Acts Amendment Act of 1942*”) of a registered proprietor of any estate or interest in land under ‡*The Real Property Acts, 1861 to 1942*,” the registrar may, on application made to him in that behalf, and if satisfied that—

- (a) No will has been left by such registered proprietor and no administration of his estate has been taken out within six months after his death; and
- (b) The value of his estate does not exceed three hundred pounds,

cause transmission as administrator of such estate or interest in the land concerned to be entered up in the register book in favour of such one or more as the Master of Titles may determine of the person or persons who would have been entitled upon the grant of such administration to be entered up as administrator.

\* This Act.

† 41 V. No. 18. See v. 8, p. 257.

‡ 25 V. No. 14 and amending Acts. See v. 8, pp. 163 *et seq.*

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Thereupon such person or persons shall have all the rights, powers, and liabilities in respect of the land as if administration of the estate of the deceased person had been granted to him or them :

Provided that the applicant shall surrender the existing grant or certificate or other instrument of title of the land in respect of which such application is made prior to such transmission as mentioned aforesaid being entered up, unless the production of such grant or certificate or other instrument of title be duly dispensed with.

(2.) Notwithstanding anything to the contrary contained in this section, in any case where the court, in the exercise of its powers, authorities, and jurisdiction, shall grant probate or administration in respect of the estate of any such deceased person aforesaid subsequent to the entry up in the register book of such transmission of his estate and interest in the land concerned, all acts, matters, and things done by, and all payments *bona fide* made by and to, the person or persons in whose favour such transmission has been entered up, up to the date of such grant, which if made by and to a person to whom a grant of probate or administration had been made would have been lawfully done and made, shall be and be deemed to have been so lawfully done and made.

Subsequent  
grant of  
probate or  
administra-  
tion.  
Cf. the Act  
31 Vic. No. 9,  
s. 39.

Moreover, on the grant of such probate or administration, the person or persons in whose favour such transmission has been entered up shall take all necessary steps and perform all necessary acts to hand over to and account to the grantee for any property in his or their hands at the date of such grant, and to render an account of all property passing through his or their hands from the entry up of transmission to the date of such grant."

## REGISTRATION OF DEATHS ON WAR SERVICE.

*See* STATISTICS.

## REGISTRATION OF FIRMS.

*See* MERCANTILE LAW.

## RELIEF, MORTGAGORS.

*See* MORTGAGES.