



ANNO QUINTO

GEORGII V REGIS.

A.D. 1914.

No. 1155.

An Act to Postpone the Obligation to make certain
Payments.

[Assented to, September 24th, 1914.]

WHEREAS it is expedient, in view of the state of war at the present time existing in Europe, to make provision for postponing the obligation to make the payments hereinafter mentioned—Be it therefore Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Preamble.

1. This Act may be cited as “The Mortgages and Purchases Postponement Act, 1914.”

Short title.

2. In this Act, unless inconsistent with the context or some other meaning is clearly intended,—

Interpretation.

“Judge” means Judge of the Supreme Court:

“Land” includes messuages, tenements, and hereditaments, and houses and buildings, and also includes any estate or interest (legal or equitable) in land, and any easement, right, or privilege in, under, over, affecting, or in connection with land:

“Period of postponement effected by this Act,” or “postponement effected by this Act,” includes not only the period of postponement provided by section 4 or 5 (as the case may be), but also any prolongation thereof by proclamation:

“Postponed sum” means a sum the time for the payment of which is postponed by this Act:

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“Proclamation” means proclamation by the Governor under this Act, published in the *Government Gazette*.

The Act not to apply to certain transactions.

3. (1) This Act shall not apply to—

- (a) any mortgage contracted or agreement entered into after the passing of this Act:
- (b) any sum payable or recoverable under any judgment, decree, or order of any Court delivered, signed, or made on or before the nineteenth day of August, nineteen hundred and fourteen:
- (c) any sum which has been actually paid, whether before or after the passing of this Act.

(2) This Act shall not be held to prevent, or to alter the effect of,—

- (a) any contract, made after the passing of this Act, concerning any mortgage or agreement to which this Act applies, or
- (b) any instrument made or thing done in pursuance of any such contract.

Postponement of due date of principal secured by mortgage.

4. Subject to section 3, the time for any payment of principal money secured by a mortgage (legal or equitable) of land, is hereby postponed so that such payment shall fall due upon the thirty-first day of December, nineteen hundred and fourteen, and not earlier, or upon the expiration of such (if any) further period or periods of postponement as is or are specified by proclamation, and not earlier.

Postponement of due date of purchase-money.

5. (1) Subject to section 3, the time for any payment of purchase-money (whether the whole or an instalment thereof) under an agreement for the purchase of land, which payment has fallen due since the thirtieth day of June, nineteen hundred and fourteen, or hereafter falls due, is hereby postponed so as to fall due upon the expiration of the period of six months next after the day whereon it fell due or would fall due if this Act had not been passed, and not earlier, or upon the expiration of such (if any) further period or periods of postponement as is or are specified by proclamation, and not earlier.

(2) This section shall not apply to any amount payable as interest and when an instalment includes interest as well as principal, and the agreement neither states the rate of interest nor indicates what parts of the instalment are principal and interest respectively, then, for the purposes of this section, the rate of interest shall be deemed to be five per centum per annum.

Period of postponement may be prolonged.

6. The Governor may, by proclamation published in the *Government Gazette*, from time to time, prolong or further prolong the periods of postponement provided by sections 4 and 5 for the periods of time specified in such proclamation.

7. (1) When

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7. (1) When a mortgagor or purchaser avails himself of the right conferred by this Act to postpone the payment of any sum, interest shall be payable on such sum in respect of the period of postponement; and such interest shall be payable at the close of the same intervals of time as are provided by the mortgage or agreement with respect to the interest thereby secured, or if no provision is so made, then quarterly.

Interest to be payable in respect of period of postponement.

(2) The rate of the interest payable at any time by virtue of this section shall, unless the rate thereof is hereafter agreed upon by the parties before such interest falls due, be—

(a) five and a half per centum per annum, or

(b) the rate accruing on the postponed sum on the date when such sum would have been payable if this Act had not been passed,

whichever is the higher rate: Provided that, if the rate of interest payable under any mortgage or agreement is thereby fixed by reference to rates current, in the case of some specified class of transactions, at the times when the sums of interest respectively fall due or are paid (as the case may be), the rates payable by virtue of this section shall, at the option of the mortgagee or vendor, be as so fixed or as fixed by this section.

(3) In the case of a payment which fell due on or before the day of the passing of this Act, the period of postponement shall, for the purposes of this section, be deemed to have commenced on the day immediately following the passing of this Act.

8. When, under any mortgage or agreement to which this Act applies, the principal or purchase money is to be repaid or paid by instalments, and the mortgagor or purchaser avails himself of the right conferred by this Act to postpone the payment of any of such instalments, then, notwithstanding that in other respects this Act may have ceased to operate, the times when the subsequent instalments respectively fall due shall each be postponed for a period equal to the period of postponement effected by this Act with respect to the first-mentioned instalment; but the interest to be paid with such subsequent instalments shall, if this Act has so ceased to operate, be at the rate fixed by the mortgage or agreement.

When one instalment postponed, subsequent instalments to be postponed for like periods.

9. (1) Subject to section 3, this Act shall operate as a stay of all proceedings, whether by action or any other means and whether in any Court or otherwise, heretofore commenced to enforce the payment of any principal or purchase-money to which section 4 or 5 applies, and of all remedies for the recovery thereof; but shall not otherwise prejudice or affect any such proceeding or remedy, or alter or affect the rights or obligations of any party, except so far as may be necessary to give effect to the provisions of this Act.

Proceedings stayed, but rights not otherwise prejudiced.

(2) Upon

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(2) Upon the termination of the postponement effected by this Act, all proceedings so stayed may be continued, and all such remedies may be pursued, as if the period of postponement had not intervened.

(3) In particular, but without limiting the effect of this section, it is hereby provided that the period of postponement effected by this Act shall not be taken into account in calculating the time, as fixed by any Statute of Limitations or other Act, within which any action for the recovery of any postponed sum is to be commenced, or any other remedy for that purpose is to be pursued.

Provision for cases of great hardship.

10. (1) Notwithstanding anything contained in this Act, any Judge of the Supreme Court shall have power, with respect to any mortgage or agreement, to order that this Act shall not apply thereto, if he is of opinion that, in the special circumstances of the case, the postponement effected by this Act is not necessary in the interest of the mortgagor or purchaser, or would cause hardship or loss to the mortgagee or vendor (as the case may be), or to any person towards whom, with respect to such mortgage or agreement, he stands in the position of trustee.

(2) The application for an order under this section shall be by originating summons, which, unless otherwise directed by a Judge, shall be heard in Chambers.

(3) The proceedings on and incidental to such summons shall be as prescribed by the Rules of the Supreme Court for the time being in force: Provided that, with respect to any such summons, a Judge may give such (if any) directions as he thinks proper, notwithstanding that they are contrary to any Rule of Court or any law or practice, as to—

- i. the mode of service thereof, the persons to be served therewith, and the time for appearance thereto or for the return thereof:
- ii. the time for the hearing thereof, notice of the hearing, and the length of such notice:
- iii. any other notice:
- iv. the manner in which evidence is to be given at the hearing:
- v. any other matter or thing,

to the end that such summons shall be heard and determined as expeditiously and inexpensively as is practicable.

(4) A Judge may make all such interlocutory and final orders in the matter of any such summons, including any orders as to costs, as, having regard to the objects of this Act and the circumstances of the case, he deems proper: Provided that the costs of the application shall be borne by the applicant unless, from the circumstances of the case, the Judge thinks fit to order otherwise.

(5) The

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(5) The order of a Judge determining any such summons shall be final; and no order or direction, whether interlocutory or final, in the matter of any such summons, and no other proceeding under this section, shall be appealed against, questioned, or reviewed in any manner whatsoever, or be restrained or removed by prohibition, injunction, *certiorari*, or otherwise howsoever.

11. This Act shall cease to operate at the expiration of the period of six months immediately following the notification by the Governor in the *Government Gazette* of the signing, on behalf of the United Kingdom, of a treaty of peace terminating the war now existing in Europe: Provided that, with regard to any postponed sum, the period of postponement effected by this Act shall, if it has commenced before such notification, continue until the expiration of such period of postponement.

Provision for
terminating operation
of Act.

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

H L. GALWAY, Governor.