

AUSTRALIAN CAPITAL TERRITORY

New South Wales Acts Application Ordinance 1984

No. 41 of 1984

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 2 August 1984.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARETH EVANS
Attorney-General

An Ordinance relating to the application in the Territory of certain Acts of the State of New South Wales

Short title

1. This Ordinance may be cited as the *New South Wales Acts Application Ordinance 1984*.¹

Interpretation

2. In this Ordinance, other than a schedule to this Ordinance—

- (a) a reference to a continued State Act shall be read as a reference to an Act of the State of New South Wales that—
 - (i) was continued in force in the Territory by section 6 of the *Seat of Government Acceptance Act 1909*; and

- (ii) had effect, immediately before the date of commencement of this Ordinance, in the Territory as a law of the Territory as provided by section 4 of the *Seat of Government (Administration) Act 1910*,

being the Act as amended and in force in that State immediately before the commencement of the *Seat of Government Acceptance Act 1909* and, in a case where the Act had been amended by an Ordinance of the Territory before the date of commencement of this Ordinance, as so amended;

- (b) a reference to the amendment of a continued State Act shall be read as a reference to the modification of the Act by—
 - (a) the repeal or omission of any provision or other part of the Act, either with or without the substitution of a new provision or part in its place; or
 - (b) the insertion in, or addition to, the Act of a new provision.

Amendment of certain continued State Acts

3. (1) Subject to sub-section (2), a continued State Act specified in column 1 of Schedule 1 shall be deemed to be amended by this Ordinance to the extent necessary for it to have effect in the Territory as a law of the Territory in the terms set out in Schedule 2.

(2) Where —

- (a) a provision (in this sub-section referred to as the relevant provision) of a continued State Act so specified amends another continued State Act so specified; and
- (b) the relevant provision has been omitted from the text of that first-mentioned continued State Act as set out in Schedule 2 (the amendment made by the relevant provision having been incorporated in the text of that other continued State Act as set out in Schedule 2),

sub-section (1) shall not be taken to effect the repeal of the relevant provision.

Application of certain continued State Acts

4. Nothing in section 3 shall be taken to prevent the continued State Acts specified in column 1 of Schedule 1, being those Acts as amended by this Ordinance, from continuing in force in the Territory, after the commencement of this Ordinance, under, and in accordance with, the provisions of section 6 of

the *Seat of Government Acceptance Act 1909* and section 4 of the *Seat of Government (Administration) Act 1910*.

Inconsistencies between continued State Acts and other laws

5. (1) Where, upon the commencement of this Ordinance, a provision of a continued State Act as amended by this Ordinance (being a continued State Act specified in column 1 of Schedule 1) is inconsistent with a provision of another law in force in the Territory (not being a prescribed law), the provision of that other law prevails and the provision of that continued State Act, to the extent of the inconsistency, has no force or effect in the Territory.

(2) In this section, a reference to a prescribed law shall be read as a reference to—

- (a) a continued State Act specified in column 1 of Schedule 1, as amended by this Ordinance;
- (b) any other continued State Act; or
- (c) any Imperial Act that—
 - (i) was in force in the State of New South Wales immediately before the commencement of the *Seat of Government Acceptance Act 1909*;
 - (ii) was continued in force in the Territory by section 6 of that Act; and
 - (iii) had effect, immediately before the commencement of this Ordinance, in the Territory as a law of the Territory as provided by section 4 of the *Seat of Government (Administration) Act 1910*,

being that Act as amended and in force in the Territory immediately before the commencement of this Ordinance.

Footnotes to continued State Acts

6. The footnotes appearing at the end of a Part of Schedule 2 do not form part—

- (a) of the continued State Act the text of which is set out in that Part of that Schedule; or
- (b) of this Ordinance.

Interpretation of Acts set out in Schedule 2

7. In an Act of New South Wales set out in Schedule 2, in its application in the Territory, unless the contrary intention appears—

- (a) a reference in the Act to the Supreme Court shall be read as a reference to the Supreme Court of the Australian Capital Territory;
- (b) a reference in the Act to the Court of Petty Sessions shall be read as a reference to the Court of Petty Sessions for the Territory;
- (c) a reference in the Act to the Minister shall be read as a reference to the Minister for the time being administering the Act in its application in the Territory and as including a reference to a Minister or Member of the Executive Council for the time being acting for and on behalf of that Minister;
- (d) a reference in the Act to a Magistrate shall be read as a reference to a person holding, or acting in, the office of Chief Magistrate for the Territory, or an office of Stipendiary Magistrate for the Territory, under the *Court of Petty Sessions Ordinance 1930*;
- (e) a reference in the Act to the Commissioner of Police or to a Deputy Commissioner of Police shall be read as a reference to the person holding, or performing the duties of, the office of Commissioner of Police or Deputy Commissioner of Police, as the case may be, under the *Australian Federal Police Act 1979*;
- (f) a reference in the Act to an officer of police or member of a police force shall be read as a reference to a member, or a special member, of the Australian Federal Police;
- (g) a reference in the Act to a member of a police force holding a particular rank shall be read as a reference to a member, or special member, of the Australian Federal Police holding that rank but, if that rank does not exist as a rank in the Australian Federal Police, as a reference to a member, or special member, of the Australian Federal Police holding the rank that is declared by regulations in force under the *Australian Federal Police Act 1979* to be the equivalent of that particular rank; and
- (h) a reference in the Act to the Registrar of Titles shall be read as a reference to the person holding, or performing the duties of, the office of Registrar of Titles under the *Real Property Ordinance 1925*, and exercising powers under that Ordinance and under the *Registration of Deeds Ordinance 1952*.

Further Amendment of continued State Act

8. Section 3 of the Gaming and Betting (Amendment) Act, 1906, in its application in the Territory, is repealed.

Administration of continued State Acts

9. A continued State Act the short title of which is specified in column 1 of Schedule 1 shall be administered by the Minister of State of the Commonwealth set out in column 2 of that Schedule opposite to the short title of that Act in column 1.

SCHEDULE 1

Sections 3 and 9

**ADMINISTRATION OF CONTINUED STATE ACTS THAT ARE
AMENDED BY THIS ORDINANCE**

Short title of Act Column 1	Minister by whom administered Column 2
Ancient Lights Declaratory Act 1904.....	Minister for Territories and Local Government
Apportionment Act 1905.....	Minister for Territories and Local Government
Arbitration Act 1902	Attorney-General
Arrest on Mesne Process Act 1902	Attorney-General
Common Carriers Act 1902.....	Minister for Territories and Local Government
Contractors' Debts Act 1897.....	Attorney-General
Conveyancing and Law of Property Act 1898	Minister for Territories and Local Government
Conveyancing and Law of Property (Supplemental) Act 1901	Minister for Territories and Local Government
Crown Lands Act 1884.....	Minister for Territories and Local Government
Dedication by User Limitation Act 1902	Minister for Territories and Local Government
Defamation Act 1901	Attorney-General
Defamation (Amendment) Act 1909.....	Attorney-General
Fertilizers Act 1904.....	Minister for Territories and Local Government
Forfeiture of Leases Act 1901	Minister for Territories and Local Government

SCHEDULE 1—continued

Short title of Act Column 1	Minister by whom administered Column 2
Forfeiture and Validation of Leases Act 1905.	Minister for Territories and Local Government
Free Education Act 1906.....	Minister for Education and Youth Affairs
Games Wagers and Betting-houses Act 1901 .	Minister for Territories and Local Government
Gaming and Betting Act 1906.....	Minister for Territories and Local Government
Innkeepers' Liability Act 1902.....	Minister for Territories and Local Government
Judgment Creditors' Remedies Act 1901	Attorney-General
Landlord and Tenant Act 1899.....	Minister for Territories and Local Government
Life, fire and Marine Insurance Act 1902	Treasurer
Limitation of Actions for Trespass Act 1884	Attorney-General

SCHEDULE 2

Section 3

PART 1

ANCIENT LIGHTS DECLARATORY ACT 1904

No. 16, 1904

An Act to declare the law with respect to ancient lights

Right not acquired by use or presumption of lost grant

1. From and after the commencement of this Act, no right to the access or use of light to or for any building shall be deemed to exist, or to be capable of coming into existence, by reason only of the enjoyment of such access or use for any period or any presumption of a lost grant based upon such enjoyment.

Short title

3. This Act may be cited as the Ancient Lights Declaratory Act 1904.

Notes

- (a) The Ancient Lights Declaratory Act 1904, in its application in the Territory, comprises the Ancient Lights Declaratory Act 1904 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Ancient Lights Declaratory Act 1904 in Part 1 of this Schedule
- (b) Section 2 was repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 2

APPORTIONMENT ACT 1905

No. 2, 1905

An Act for the better apportionment of rents and other periodical payments

Short title

1. This Act may be cited as the Apportionment Act 1905

SCHEDULE 2—continued**Definitions**

2. In this Act—

“Annuities” includes salaries and pensions.

“Dividends” includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments are usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue is declared or expressed to be made; but the said word “dividend” does not include payments in the nature of a return or reimbursement of capital.

“Rents” includes rent service, rent charge, and rent seck, and all periodical payments or renderings in lieu of or in the nature of rent.

Apportionment of rents in respect of time

4. All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing, or otherwise reserved or made payable) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

When apportioned part payable or recoverable

5. The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment when the entire portion of which such apportioned part forms part becomes due and payable, and not before; and in the case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before.

Right of recovering apportioned parts

6. All persons and their respective executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies at law and in equity for recovering such apportioned parts as aforesaid when payable (allowing proportionate parts of all just allowances) as they

SCHEDULE 2—continued

respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively:

Provided that persons liable to pay rents reserved out of or charged on lands or other hereditaments of any tenure, and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically; but the entire or continuing rent, including such apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent; and such apportioned part shall be recoverable from such person by the executors or other parties entitled under this Act to the same by action at law or suit in equity.

Policies of assurance

7. Nothing in this Act shall render apportionable any annual sums made payable in policies of assurance of any description.

Contracting out

8. This Act shall not extend to any case in which it has been expressly stipulated that no apportionment shall take place.

Notes

- (a) The Apportionment Act 1905, in its application in the Territory, comprises the Apportionment Act 1905 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Apportionment Act 1905 in Part 2 of this Schedule
 - (b) Section 3 was repealed by the *New South Wales Acts Application Ordinance 1984*.
-

SCHEDULE 2—continued**PART 3**

ARBITRATION ACT 1902

No. 29, 1902

An Act to consolidate the enactments relating to arbitration

PART I—PRELIMINARY**Short title**

1. This Act may be cited as the Arbitration Act 1902.

Interpretation

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

“Court” means the Supreme Court or a Judge thereof.

“Judge” means a Judge of the Supreme Court.

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

PART II—REFERENCES BY CONSENT OUT OF COURT**Effect of submission**

4. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court, and shall have the same effect in all respects as if it had been made an order of Court.

Provisions to be implied in submissions

5. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the Second Schedule, so far as they are applicable to the reference under the submission.

Stay of proceedings where there is a submission

6. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a Judge, if satisfied that there is no sufficient reason why the matter

SCHEDULE 2—continued

should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Appointment of arbitrator, umpire, &c.

7. In any of the following cases—

- (a) where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy;
- (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him;
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within 7 clear days after the service of the notice, the Court may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Power of parties to fill vacancy

8. Where a submission provides that the reference shall be to 2 arbitrators, 1 to be appointed by each party, then, unless the submission expresses a contrary intention—

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place; and

SCHEDULE 2—continued

- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for 7 clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court may set aside any appointment made in pursuance of this section.

Powers of arbitrator

9. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

- (a) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and
- (b) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Summoning of witnesses

10. Any party to a submission may sue out a writ of subpoena ad testificandum, or a writ of subpoena duces tecum; but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action: Provided that every person whose attendance is so required shall be entitled to the like conduct money and payment for expenses as upon a trial in the Court.

Enlargement of time for making award

11. The time for making an award may from time to time be enlarged by order of the Court, whether the time for making the award has expired or not.

Power to remit award to arbitrators

12. (1) In all cases of reference to arbitration, the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within 3 months after the date of the order.

SCHEDULE 2—continued

Power to set aside award

13. (1) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

Enforcement of award

14. An award on a submission may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.

No writ of attachment shall be issued to enforce payment of any money, costs, or expenses under such award; but writs of fieri facias or capias ad satisfaciendum, and such other writs as may be necessary, shall be issued by order of the Court, or in vacation by order of a Judge, and every such order shall have the force and effect of a judgment at law or decree in equity.

PART III—REFERENCES UNDER ORDER OF COURT

Power to refer in certain cases

15. In any cause or matter (other than a criminal proceeding by the Crown)—

- (a) if all the parties interested who are not under disability consent;
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be made before a jury or conducted by the Court through its other ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account,

the Court may at any time order the whole cause or matter or any question or issue of fact arising therein, to be tried before an arbitrator agreed on by the parties, or before a referee appointed by the Court for the purpose.

Powers and remuneration of referees and arbitrators

16. (1) In all cases of reference under an order of the Court in any cause or matter, the referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner,

SCHEDULE 2—continued

as may be prescribed by rules of Court, and subject thereto as the Court may direct.

(2) The report or award of any referee or arbitrator on any such reference shall, unless set aside by the Court, be equivalent to the verdict of a jury.

(3) The remuneration to be paid to any referee or arbitrator to whom any matter is referred under order of the Court shall be determined by the Court.

Court to have powers as in references by consent

17. The Court shall, as to references under order of the Court, have all the powers which are by this Act conferred on the Court as to references by consent out of Court.

PART IV—GENERAL**Compelling attendance of witnesses**

18. (1) The Court may order that a writ of subpoena and testificandum or subpoena duces tecum shall issue to compel the attendance before a referee, or before any arbitrator or umpire, of a witness wherever he may be within the jurisdiction.

(2) The Court may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before a referee, or before any arbitrator or umpire.

Statement of case pending arbitration

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Orders for obtaining evidence

21. In all cases of reference to arbitration under any authority whatsoever, it shall be lawful for the Court to make an order or issue a commission for the examination of any party to such reference, or any witness whose evidence by reason of absence or intention to depart from the Territory, or illness, age, distance of residence, or other cause, would otherwise be liable to be lost, and to give all such directions as to the time, place and manner of examination and other matters connected therewith as such court shall think fit. And every such order or commission may be made or issued in like manner as orders are made

SCHEDULE 2—continued

or commissions issued for the examination of witnesses in any proceedings in the said court or as near thereto as may be. Any person authorized to take the evidence of witnesses under any such order or commission shall take such evidence upon oath.

Protection of witnesses

22. No person shall be compelled under any such order or by any arbitrator to answer any question he would not be compelled to answer at a trial.

Evidence taken under orders to be received

23. All evidence taken under any such order or commission shall be received by the arbitrators, saving all just exceptions, in like manner as evidence taken under any order or commission made or issued by the Court in proceedings pending therein is received at the trial of such proceedings.

Costs

24. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Penalty for giving false evidence

25. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Commonwealth to be bound

26. This Act shall apply to any arbitration under a contract to which the Commonwealth is a party, being a contract that is governed by a law of the Territory.

Application of Act to references under statutory powers

27. This Act shall apply to every arbitration under a law of the Territory as if the arbitration were in pursuance of a submission, except in so far as this Act is inconsistent with the law regulating the arbitration or with any rules or procedure authorized or recognised by that law.

SCHEDULE 2—continued**SECOND SCHEDULE**

Section 5

Provisions to be implied in submissions

- (a) If no other mode of reference is provided, the reference shall be to a single arbitrator.
- (b) If the reference is to 2 arbitrators, the 2 arbitrators may appoint an umpire at any time within the period during which they have power to make an award.
- (c) The arbitrators shall make their award in writing within 3 months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.
- (d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
- (e) The umpire shall make his award within 1 month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.
- (f) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.
- (g) The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath.
- (h) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

SCHEDULE 2—continued

- (i) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

Notes

- (a) The Arbitration Act 1902, in its application in the Territory, comprises the *Arbitration Act 1902* as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Arbitration Act 1902 in Part 3 of this Schedule.
- (b) Sections 2 and 20 and the First Schedule were repealed by the *New South Wales Acts Application Ordinance 1984*.
- (c) Section 27 was substituted by the *New South Wales Acts Application Ordinance 1984*.

PART 4

ARREST ON MESNE PROCESS ACT 1902

No. 24, 1902

An Act to consolidate the enactments relating to arrest on mesne process

Part I—Preliminary

Short title

1. This Act may be cited as the Arrest on Mesne Process Act 1902.

Interpretation

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

“Capias” means *capias ad respondendum*.

“Court” means the Supreme Court.

“Judge” means a Judge of the Court.

Part II—Arrest and Bail

SCHEDULE 2—continued**No arrest on mesne process except under this Act**

4. No person shall be arrested upon mesne process in any civil action in any court except in the cases and in the manner hereinafter provided.

Order to hold to bail

5. In any action in the Court, if a Judge is satisfied by affidavit disclosing the facts constituting the ground of the plaintiff's claim, or by evidence on oath before such Judge, that the plaintiff has prima facie a good cause of action in respect of his claim against the defendant and is also satisfied by the affidavit of the plaintiff or some other person—

- (a) that such cause of action is to the amount of \$40 or upwards, or that the plaintiff has sustained damage to that amount;
- (b) that any defendant is about to remove or is making preparations to remove out of the jurisdiction of the Court;
- (c) that such action will be defeated unless such defendant is forthwith apprehended; and
- (d) that the application is made within a reasonable time after the fact of the defendant's intention so to remove came to the knowledge of the plaintiff or might have become known to him by reasonable diligence on his part,

such Judge may by a special order direct that such defendant shall be held to bail for such sum as such Judge thinks fit, not exceeding the amount of the debt or damages.

Issue of writ of capias

6. (1) Thereupon the plaintiff, within the time expressed in such order but not afterwards, may sue out one or more writ or writs of capias against such defendant.

(2) Every such writ shall be in the form prescribed by the Rules of Court.

Execution of writ

7. (1) The sheriff of the Territory or other officer to whom any such writ is directed shall, before the return of the said writ but not afterwards, proceed to arrest such defendant thereupon.

(2) Such writ may be lawfully executed upon a Sunday.

SCHEDULE 2—continued

Order and arrest to be during pendency of action

8. Such order may be made and the defendant arrested in pursuance thereof at any time after the commencement of the action and before final judgment is obtained therein.

Defendant to remain in custody until bail bond given or deposit made

9. The defendant when arrested shall remain in custody until he has given a bail bond to the sheriff or other officer, or has made deposit of the sum endorsed on such writ of *capias*, together with \$20 costs.

Subsequent proceedings subject to Rules of Court

10. All subsequent proceedings as to putting in and perfecting special bail shall be subject to, and in accordance with, the practice and procedure of the Court.

Part III—Discharge

Application for order nisi for discharge

11. Any person arrested upon a writ of *capias* may apply to a Judge at any time after such arrest for an order on the plaintiff to show cause why such person should not be discharged out of custody.

Proceedings upon order nisi

12. Any Judge may make absolute or discharge such order, and may direct the costs of the application to be paid by either party, and may make such other order therein as he thinks fit.

Appeal

13. Upon the application of either party dissatisfied with any such order, the Court may discharge or vary the same.

Discharge on bankruptcy

14. (1) Any person in the custody of any sheriff, gaoler, or officer under any such writ shall upon the sequestration of his estate in pursuance of the law in force for the time being relating to bankruptcy, be entitled to his discharge from such custody on the order of a Judge of a court exercising jurisdiction in bankruptcy, and shall be forthwith discharged from such custody either absolutely or on such conditions as the said Judge may impose.

SCHEDULE 2—continued

(2) No such sheriff, gaoler, or officer shall incur any liability in respect of such discharge to any person for anything done by him under this section.

Notes

- (a) The Arrest on Mesne Process Act 1902, in its application in the Territory, comprises the Arrest on Mesne Process Act 1902 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Arrest on Mesne Process Act 1902 in Part 4 of this Schedule.
- (b) Section 2 and the Schedule and Part IV (comprising sections 15 to 35) were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 5**COMMON CARRIERS ACT 1902**

No. 48, 1902

An Act to consolidate the enactments regulating the rights and liabilities of common carries by land

Short title

1. This Act may be cited as the Common Carriers Act 1902.

Interpretation

3. In this Act, unless the context or subject-matter otherwise indicates or requires, “common carrier” means a common carrier by land.

Common carrier not liable for loss of certain goods above \$20

4. No common carrier for hire shall be liable for the loss of or injury to any articles or property of the descriptions specified in the Second Schedule contained in any parcel or package which has been delivered either to be carried for hire or to accompany the person of any passenger in any conveyance by land when the value of such articles or property contained in such parcel or package exceeds the sum of \$20 unless, at the time of delivery thereof at the office, warehouse or receiving-house of such common carrier or to his book-keeper or other servant for the purpose of being carried or of accompanying the person of any passenger as aforesaid, the value and nature of such articles or property are declared by the person sending or delivering the same and such

SCHEDULE 2—continued

increased charge, if any, as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

Increased charge may be demanded

5. (1) When any parcel or package containing any of the articles specified in the Second Schedule is delivered and its value and contents declared as aforesaid and such value exceeds the sum of \$20, such common carrier may demand an increased rate of charge.

(2) Such increased rate shall be notified by a notice affixed in legible characters in some public and conspicuous part of the office warehouse or other receiving-house where such parcels or packages are received by such common carrier for the purpose of conveyance stating the increased rates of charge required to be paid over and above the ordinary rate of carriage as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles.

(3) All persons sending or delivering parcels or packages containing such valuable articles as aforesaid at such office warehouse or other receiving-house shall be bound by such notice without further proof of the same having come to their knowledge.

Receipt to be given for increased charge

6. (1) When the value has been so declared and the increased rate of charge paid or an engagement to pay the same has been accepted, the person receiving such increased rate of charge or accepting such engagement shall, if thereto required, sign a receipt for the parcel or package acknowledging the same to have been insured.

(2) If such receipt is not given when required, or such notice as aforesaid has not been affixed, the common carrier shall not have or be entitled to any benefit or advantage under this Act but shall be liable and responsible as at the common law and be liable to refund the increased rate of charge if paid.

Public notices by carrier not to affect liability

7. (1) No public notice or declaration heretofore or hereafter made shall be deemed or construed to limit or in anywise affect the liability at common law of any common carrier in respect of any articles or goods to be carried and conveyed by him.

(2) All common carriers shall be liable as at the common law to answer for the loss or any injury to any articles and goods in respect whereof they are not

SCHEDULE 2—continued

entitled to the benefit of this Act any public notice or declaration by them made and given contrary thereto or in anywise limiting such liability notwithstanding.

Office, &c., deemed to be receiving-house

8. (1) For the purposes of this Act, every office, warehouse or receiving-house used or appointed by any common carrier for the receiving of parcels to be conveyed as aforesaid shall be deemed and taken to be the receiving-house, warehouse or office of such common carrier.

(2) Any one or more of such common carriers shall be liable to be sued by his or their name or names only.

(3) No action or suit commenced to recover damages for loss or injury to any parcel, package or person shall abate for the want of joining any co-proprietor or co-partner in such public conveyance by land for hire as aforesaid.

Carrier liable for neglect or default

9. Every such carrier shall be liable for the loss of, or for any injury done to, any horses, cattle or other animals or to any articles, goods or things in the receiving, forwarding or delivering thereof occasioned by the neglect or default of such carrier or his servants notwithstanding any notice, condition or declaration made and given by such carrier contrary thereto or in anywise limiting such liability every such notice, condition or declaration being hereby declared to be null and void but the provisions in this section contained shall be subject to the following qualifications and conditions:—

- (a) Every such carrier may make such conditions with respect to the necessary forwarding and delivering of any of the said animals, articles, goods or things as the Court or Judge before whom any question relating thereto is tried adjudges to be just and reasonable.
- (b) No greater damages shall be recovered for the loss of, or for any injury done to, any of such animals beyond the sums mentioned in the Third Schedule unless the person sending or delivering the same to such carrier has at the time of such delivery declared them to be respectively of higher value, in which case such carrier may demand and receive by way of compensation for the increased risk and care thereby occasioned a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid and which shall be paid in addition to the ordinary rate of charge and such percentage or increased rate of charge shall be notified in the manner prescribed in section 5 in the manner therein mentioned.

SCHEDULE 2—continued

- (c) No special contract between such carrier and any other parties respecting the receiving, forwarding or delivering of any animals, articles, goods or things as aforesaid shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods or things respectively for carriage.
- (d) Nothing in this section shall affect the rights, privileges or liabilities of any such carrier with respect to articles of the description mentioned in the Second Schedule.

Felonious acts not protected

10. Nothing in this Act shall be deemed to protect any such carrier for hire from liability to answer for loss of or injury to any animals, goods or articles whatsoever arising from the felonious or fraudulent act of any servant in his employ nor to protect any such servant from liability for any loss or injury occasioned by his personal neglect or misconduct.

Carrier liable only for proved damage

11. No such carrier shall be concluded as to the value of any animal, parcel or package by the value so declared as aforesaid but he shall in all cases be entitled to require from the party suing in respect of any loss or injury proof of the actual value of any animal, parcel or package by the ordinary legal evidence and shall be liable to such damage only as is so proved as aforesaid not exceeding the declared value.

SECOND SCHEDULE

Goods for loss of which carrier not liable above \$20 unless declared

Gold or silver coin of the Commonwealth or of any other country; any gold or silver in a manufactured or unmanufactured state; any precious stones, jewellery, watches, clocks or time-pieces of any description; trinkets, gold or silver ores, bills, notes of any bank, orders, notes or securities for the payment of money; Australian stamps or stamps of a country other than Australia, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials, furs or lace or any of them.

SCHEDULE 2—continued**THIRD SCHEDULE**

Scale of damages for loss of or injury to animals

	\$
For a horse	100
For cattle, per head.....	30
For a sheep or a pig	4

Notes

- (a) The Common Carriers Act 1902, in its application in the Territory, comprises the Common Carriers Act 1902 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Common Carriers Act 1902 in Part 5 of this Schedule.
- (b) Section 2 and the First Schedule were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 6**CONTRACTORS' DEBTS ACT 1897** No. 29, 1897

An Act to consolidate the Acts for better securing the payment of debts due to workmen, tradesmen, and others

Short title

1. This Act may be cited as the Contractors' Debts Act 1897.

Certificate of cause of debt

3. If in any proceeding at law in any court of competent jurisdiction in the Territory, any sum is found due and payable by the defendant for work and labour, or for material, or for material and work and labour, done, supplied, or provided by the plaintiff, and the character of the work, or material, and the locality in which the same has been done, supplied, or provided appears from the evidence, a Judge or magistrate of the court shall, upon the plaintiff's application, sign and deliver to him a certificate of the cause of debts in the

SCHEDULE 2—continued

form in the Second Schedule, which, for the purposes of this Act, shall be conclusive.

Certificate not to be given if workman could have had a lien

4. No such certificate shall be given for any sum due and payable for work and labour if the work appears to have been done upon a movable chattel of such a description that it would be practicable for a workman to have a lien thereon by retaining the same in his actual possession.

Certificate to be for no more than sixty days' wages

5. If the sum so found due for work and labour is in respect of daily, weekly, or monthly wages, and exceeds the amount of 60 days' wages, such certificate shall be given for the amount of 60 days' wages and no more.

Limitation of action by tradesman

6. All proceedings under this Act in respect of debts due for material, or for material and work and labour, shall be instituted within 3 months after any such debt accrues due.

Payment of debt out of moneys due to contractor

7. If the work done or material supplied be work or material, or part of or incidental to work or material, for the doing or supplying of which any moneys may be due or accruing due to the defendant in such proceeding (hereinafter referred to as the contractor) under any express or implied contract with any third person, the plaintiff in such proceeding (hereinafter referred to as the workman if the sum sued for and found to be due is on account of work done, or as the tradesman if the said sum is on account of material or material and work and labour) may obtain payment of the sum mentioned in the certificate out of such moneys by serving on such third person (hereinafter referred to as the contractee) a notice in the form in the Third Schedule, together with a copy of the certificate issued to him as aforesaid.

Service of notice to operate as assignment of moneys due to contractor

8. Upon service as aforesaid, all moneys due or to accrue due as aforesaid from the contractee to the contractor to the amount of the workman's or tradesman's debt specified in the certificate shall be deemed to be effectually assigned by the contractor to such workman or tradesman, but subject to any prior assignment thereof under this Act binding upon the contractor and contractee at the time of service being effected on the contractee as aforesaid.

SCHEDULE 2—continued**Contractee to satisfy debt to workman or tradesman out of moneys due to contractor**

9. After such service, and until a discharge for the workman's or tradesman's said debt in the form in the Fourth Schedule has been produced to, and a copy thereof left with, the contractee, he shall satisfy such debt out of the moneys assigned as aforesaid by paying to the workman or tradesman upon his application the said moneys as they become due and payable.

Priority of assignments

10. The priority of assignments as aforesaid shall be determined by the order of services of notice on the contractee, but all notices served within 7 days of the first notice served in respect of the same contractor shall be deemed to have been served at the same time for the purpose of securing the equal distribution of moneys due and accruing due to the contractor amongst all workmen and tradesmen serving notice within such period of 7 days ratably in proportion to the amounts of their respective debts until payment of all in full, and until such period of 7 days has expired the contractee shall not pay any such debt out of the moneys due and accruing due as aforesaid.

Recovery of moneys assigned

11. If the contractee fails to pay as aforesaid, the workman or tradesman may sue for and recover in his own name the moneys assigned as aforesaid as if the assignment of the debt due to the contractor were valid at law, and, by any proceeding which the contractor might have taken had there been no assignment under this Act, but subject to any defence which would have been available against the contractor in such proceeding, except a defence founded on the act of the contractee after service upon him of the notice and the copy of the certificate aforesaid.

Assignment ceases to operate on satisfaction of debt

12. Upon satisfaction by any other means than as aforesaid of the whole or part of the debt mentioned in any certificate under this Act, or on the setting aside of the judgment or order in respect of which any such certificate was given, any assignment effected under this Act in respect of such debt shall in the whole or in part cease to be operative, but without prejudice to any bona fide payment or other dealing by the contractee on the footing of such assignment prior to notice and sufficient evidence of such satisfaction or setting aside having been given to him, and so far as may be necessary to such payment or dealing such assignment shall continue in force.

SCHEDULE 2—continued

Workman or tradesman to sign discharge on payment

13. The workman or tradesman shall, upon the request of the contractor or contractee paying to him the debt specified in the certificate, sign a discharge therefore in the form in the Fourth Schedule, and any workman or tradesman refusing to sign a discharge as aforesaid if tendered for signature at the time of payment shall forfeit and pay to the contractor or contractee so tendering a sum equal to the amount of the payment, such penalty to be recoverable in the Court of Petty Sessions.

Attachment of moneys after notice of action

14. The workman or tradesman, when, or at any time after, he takes out a summons or plaint against the defendant, may, by leave of the court in which the summons or plaint is taken out, or of the Judge or magistrate thereof, serve a notice of the action upon the contractee specifying the sum sued for. Such notice shall be in the form contained in the Fifth Schedule or to the effect thereof, and thereupon any moneys due or accruing due by the contractee to the defendant, or so much thereof as the court, Judge, or magistrate shall order, shall be attached and shall remain in the hands of the contractee until judgment is given in the action, unless the said court, Judge, or magistrate shall otherwise order on the application of the contractee, or of the defendant.

Application for leave to serve notice

15. Leave to serve such notice may be obtained on the ex-parte application of the workman or tradesman, and he shall, in such application prove on oath to the satisfaction of the court, or Judge or magistrate thereof, that the sum sued for is due and owing by the contractor.

Proceedings after judgment

16. The plaintiff, in the event of his obtaining judgment against the defendant, shall then proceed by further notice in the form in the Third Schedule as hereinbefore provided.

Contractor to furnish information

17. Every contractor against whom a certificate is granted shall on demand furnish to every workman employed by him, and to every tradesman to whom he is indebted for any material, or material and work and labour, a certificate in the form in the Sixth Schedule, and setting forth the name and address of his contractee. And every contractor refusing or neglecting to furnish, or making any untrue statement in such certificate, shall be liable to a penalty not exceeding \$100, recoverable in the Court of Petty Sessions.

SCHEDULE 2—continued**Contractor liable for certain debts of sub-contractor**

18. A contractor who sublets any part of the work shall be responsible to the extent provided for by this Act for the wages of the workmen employed by, and for material, or material and work and labour, supplied for the sub-contractor, and a workman employed by, or a tradesman supplying material, or material and work and labour for, a sub-contractor, may proceed against the contractor, as in this Act provided, as if he had been directly employed by, or had directly contracted with, him.

Saving

19. Nothing in this Act shall be construed to prejudice any remedy which the workmen or tradesman may have against the contractor in respect of the debt due to him, or, save as expressly provided, to affect any right subsisting under any contract as aforesaid, or otherwise, between the contractor and contractee.

SECOND SCHEDULE

Section 3

In pursuance of the Contractors' Debts Act 1897 I hereby certify that on the _____ day of _____ the sum of \$ _____ was on a proceeding before me ascertained to be due and payable by (a) _____ to (b) _____ for work and labour done by him as (c) _____, (or for material provided by him for, or for material and work and labour provided and done by him for an upon) (d) _____

As witness my hand

this _____ day of _____ 19 _____ .

(e)

Judge or Magistrate

(a) Name of defendant.

(b) Name of plaintiff.

(c) State generally the actual employment of plaintiff, e.g. bricklayer, labourer, shipwright.

SCHEDULE 2—continued

(d) Describe generally the thing upon or in respect of which the plaintiff has been employed or for which he has provided material.

(e) Signature.

THIRD SCHEDULE

Section 7

To (a)

Take notice that the work (or material, or material and work and labour) specified in the certificate, a copy of which is served herewith, having been done (or provided, or provided and done) in performance of an agreement entered into with you by (b) _____, who has failed to pay me for such work (or material, or material and work and labour), you are hereby required under the Contractors' Debts Act 1897 to pay me on demand the amount specified in the certificate out of any moneys now due or from time to time becoming due from you to the said (c) _____ under the said agreement, and on your failings so to do, you will under the said Act be liable to legal proceedings at my suit to obtain payment.

As witness my hand

this _____ day of _____ 19 ____ .

(d)

- (a) Name and address of contractee.
- (b) Name and address of contractor.
- (c) Name of contractor.
- (d) Signature of workman or tradesman.

FOURTH SCHEDULE

Sections 9 and 13

I hereby acknowledge that the debt \$ _____ certified to be due to me by (a) _____ in a certificate issued under the Contractors' Debts Act 1897 and dated the _____ day of _____ 19 ____, has been fully discharged.

SCHEDULE 2—continued

As witness my hand

this day of 19 .

(b)

(a) Name of contractor.(b) Signature of workman or tradesman.
_____**FIFTH SCHEDULE**

Section 13

In the Court

Between A.B., plaintiff and C.D., defendant.

To E.F., of

By leave of this Court (or of G.H. a judge of this Court, or J.K. a magistrate of this Court) and on the application of A.B., the plaintiff, you are hereby required to retain in your hands until judgment herein or as this Court otherwise orders all moneys due or accruing due from you to the said C.D., or if the same shall exceed \$ then \$ thereof.

Dated this day of 19 .

Judge (or Magistrate) of the Court.

SCHEDULE 2—continued

SIXTH SCHEDULE

Section 17

I hereby certify that (a) _____ is the contractee of the work (b) _____ upon which you (c) are now employed (or: for which you (d) _____ have provided material, or material and labour).

As witness my hand this _____ day of _____ 19 _____ .

(e)

-
- (a) Name and address of contractee.
 - (b) State generally the kind of work as in the Second Schedule.
 - (c) Name of workman.
 - (d) Name of tradesman.
 - (e) Signature of contractor.

Notes

- (a) The Contractors' Debts Act 1897, in its application in the Territory, comprises the Contractors' Debts Act 1897 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Contractors' Debts Act 1897 in Part 6 of this Schedule.
- (b) Section 2 and the First Schedule were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 7

CONVEYANCING AND LAW OF PROPERTY ACT 1898

No. 17, 1898

An Act to consolidate the statutes relating to conveyances, assignments and titles to lands

SCHEDULE 2—continued**Short title**

1. (1) This Act may be cited as the Conveyancing and Law of Property Act 1898.

(2) Nothing in this Act contained shall be taken in any way to alter or modify the provisions of the Married Women's Property Act 1901, in its application in the Territory, but this Act shall have effect only so far as it is not inconsistent with the said Married Women's Property Act 1901, in its application in the Territory.

Voluntary settlement of land not to be deemed fraudulent

29. (1) Notwithstanding anything in the Act 27 Elizabeth Chapter 4, in its application in the Territory, no settlement of land duly registered—

- (a) before the commencement of the *Registration of Deeds Ordinance 1957*—under the Registration of Deeds Act 1897 in its application in the Territory;
- (b) after the commencement of that Ordinance—under that Ordinance; or
- (c) under the *Real Property Ordinance 1925*,

shall, in favour of a purchaser taking under a contract, deed or other instrument made subsequently to that registration, be deemed fraudulent by reason only that the settlement was not made for valuable consideration.

(2) The word “settlement” in this section shall include conveyance, assignment, lease, mortgage, charge, limitation of uses, declaration of trusts, transfer, and other instruments creating or transferring any estate or interest in land, whether under the provisions of the *Real Property Ordinance 1925*, or otherwise.

***Bona fide* purchase of reversionary interest not to be set aside for under value only**

30. (1) No purchase made *bona fide* and without fraud or unfair dealing of any reversionary interest in real or personal estate shall hereafter be opened or set aside merely on the ground of under value.

(2) The word “purchase” in this section shall include every kind of contract, conveyance, or assignment under or by which any beneficial interest in any kind of property may be acquired, and the words “reversionary interest” shall include any estate or interest in remainder or expectancy.

SCHEDULE 2—continued**Registration of deed of feoffment equivalent to livery of seisin**

31. The due registration in the office of the Registrar of Titles of any deed of feoffment shall operate as and be for all purposes equivalent to livery of seisin as to the lands and hereditaments comprised in and intended to be conveyed by such deed of feoffment, the same in all respects as if there had been livery of seisin actually made and given of the same lands and hereditaments in the most valid and effectual form and manner.

Release equivalent to lease and release

32. Every deed or instrument of release executed after the passing of this Act shall be as effectual as if the releasing parties who have executed the same had also executed a lease or bargain and sale for a year for giving effect to such release, although no such lease or bargain and sale had been executed, and the recital or mention of a lease or bargain and sale in a release executed before 1 January 1844, shall be conclusive evidence of the execution of such lease or bargain and sale.

Provision for cases of future and contingent uses

33. Where by any instrument, whether executed before or after the passing of this Act, any hereditaments are limited to uses, all uses thereunder whether expressed or implied by law, and whether immediate or future or contingent or executory or to be declared under any power therein contained, shall take effect when and as they arise by force of an by relation to the estate and seisin originally vested in the person seised to the uses, and the continued existence in him or elsewhere of any seisin to uses or *scintilla juris* shall not be deemed necessary for the support of or to give effect to future or contingent or executory uses, nor shall any such seisin to uses or *scintilla juris* be deemed to be suspended or to remain or to subsist in him or elsewhere.

Assignment of personalty to self and another

34. Any person may assign personal property now by law assignable, including chattels real, directly to himself and another person by the like means as he might assign the same to another.

Sale under power not to be avoided for mistaken payment to tenant for life

36. (1) Where, under a power of sale, a *bona fide* sale is made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life, or any other party to the transaction, is by mistake allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, the Supreme Court, upon any claim or application in a summary

SCHEDULE 2—continued

way as the case may require or permit may declare that, upon payment by the purchaser or the claimant under him of the full value of the timber and articles at the time of sale, with such interest thereon as the said Court directs, and the settlement of the said principal, moneys, and interest under the direction of the said Court upon such parties as in the opinion of the said Court are entitled thereto, the said sale ought to be established.

(2) Upon such payment and settlement being made accordingly the said Court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed.

(3) The costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

Part IV—Leases and Sales of Settled Estates and Estates of Infants**Interpretation**

37. (1) The word “settlement” as used in this Part shall signify any Act of the Commonwealth, deed, agreement, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments or any estate or interest in land stand for the time being limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

(2) The term “settled estates” as used in this Part shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments which are the subject of a settlement.

(3) For the purposes of this Part a tenant in tail after possibility of issue extinct shall be deemed to be a tenant for life.

(4) All estates or interests in remainder or reversion not disposed of by the settlement and reverting to the settlor or descending to the heir of a testator or passing to his personal representatives or next of kin under the law relating to the descent and distribution of the real estate of intestates shall be deemed to be estates coming to such settlor, heir, personal representative, or next of kin under and by virtue of the settlement.

(5) Land and any estate or interest therein which is the subject of a settlement is for the purposes of this Part settled land.

(6) In determining what are settled estates within the meaning of this Part, the Court shall be governed by the state of facts and by the trusts or limitations of the settlement at the time of the said settlement taking effect.

SCHEDULE 2—continued

(7) Where a person in his own right seised or beneficially entitled to land for an estate in fee simple or for any leasehold interest at a rent is an infant, such land or leasehold interest shall be deemed to be settled estate within the meaning of this Part.

(8) The expression “The Court” in this Part of this Act shall mean the Supreme Court.

(9) For the purposes of this Part, a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of settled land, although his estate may be charged or encumbered either by himself or by the settlor or otherwise howsoever to any extent, but the estates or interests of the parties entitled to any such charge or encumbrance shall not be affected by the acts of the persons entitled to the possession or to the receipt of the rents and profits as aforesaid unless they concur therein.

Power of the Court to authorize leases

38. The Court may, if it deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this Part contained, authorize leases of any settled estates or of any rights or privileges over or affecting any settled estates for any purpose whatsoever whether involving waste or not, provided the following conditions be observed:—

- (1) Every such lease shall be made to take effect in possession at or within 1 year next after the making thereof, and shall be for a term of years not exceeding for an agricultural or occupation lease 10 years, and for a mining lease 40 years, and for a repairing lease 15 years, and for a building lease 30 years.
- (2)
 - (a) On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener, without taking any fine or other benefit in the nature of a fine.
 - (b) In the case of a mining lease a nominal rent, or any smaller rent than the rent to be ultimately made payable, may, if the Court thinks fit so to direct, be made payable during all or any part of the first 5 years of the lease.

SCHEDULE 2—continued

- (c) In case of a mining lease, the rent reserved may be in part by way of royalty on the minerals raised, or on the gross or net produce thereof.
- (3) (a) Where the lease is of any earth, coal, stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned, namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who, by reason of his estate or by virtue of any declaration in the settlement, is entitled to work such earth, coal, stone, or mineral for his own benefit one-fourth part of such rent and otherwise three-fourth parts thereof.
- (b) In every such lease, sufficient provision shall be made to ensure such application of the aforesaid portion of the rent by the appointment of trustees, or otherwise as the Court deems expedient.
- (4) Every such lease shall be by deed, and the lessee shall execute a counterpart thereof.
- (5) Every such lease shall contain a condition for re-entry on non-payment of the rent for a period of 28 days after it becomes due, or for some less period to be specified in that behalf.

Special covenants

39. Subject and in addition to the conditions hereinbefore mentioned, every such lease shall contain such covenants, conditions, and stipulations as the Court deems expedient with reference to the special circumstances of the demise.

Leases of settled land

40. The power to authorize leases conferred by this Part shall extend to authorize leases either of the whole or any parts of the settled land, and may be exercised from time to time.

Surrender and renewal of leases

41. Any leases, whether granted in pursuance of this Part or otherwise, may be surrendered, either for the purpose of obtaining a renewal of the same or not: and the power to authorize leases conferred by this Part shall extend to authorize new leases of the whole or any part of the hereditaments comprised in any surrendered lease.

SCHEDULE 2—continued

Authorization of preliminary contracts

42. The power to authorize leases conferred by this Part shall extend to authorize preliminary contracts to grant any such leases, and any of the terms of such contracts may be varied in the leases.

Modes of authorization

43. The power to authorize leases conferred by this Part may be exercised by the Court, either by approving of particular leases or by ordering that powers of leasing in conformity with the provisions of this Part shall be vested in trustees in manner hereinafter mentioned.

Evidence

44. Where application is made to the Court either to approve of a particular lease or to vest any powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it deems sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorized.

Court to direct who shall be lessor

45. When a particular lease or contract for a lease has been approved by the Court, the Court shall direct who shall execute the same as lessor, and the lease or contract executed by such person shall take effect in all respects as if he was at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the Court directs.

Powers of leasing may be vested in trustees

46. (1) Where the Court deems it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement or in any other persons, and such powers when exercised by such trustees shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the Court directs.

(2) In every such case the Court may impose any conditions as to consents or otherwise on the exercise of such power, and may also authorize the

SCHEDULE 2—continued

insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

Exception of minerals

47. On any lease of land any earth, coal, stone or mineral may be excepted, and any rights or privileges may be reserved, and the lessee may be required to enter into any covenants and submit to any restrictions which the Court may deem advisable.

Sale of settled estates

48. (1) The Court may, if it deems it proper and consistent with a due regard for the interest of all parties entitled under the settlement and subject to the provisions and restrictions in this Part contained, from time to time authorize a sale of the whole or any parts of any settled estates.

(2) Every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court.

(3) The Court may authorize any such sale to be conducted out of Court upon such terms and conditions and subject to such restrictions as to the Court may seem fit.

Consideration for sale of land for building

49. When any land is sold for building purposes, the Court may allow the whole or any part of the consideration to be a rent issuing out of such land which may be secured and settled in such manner as the Court approves.

Minerals to be excepted

50. On any sale of land, any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions which the Court may deem advisable.

Dedication of land for streets, &c.

51. The Court may, if it deems it proper and consistent with a due regard for the interests of all parties entitled under the settlement and subject to the provisions and restrictions in this Part contained, from time to time direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses either to be dedicated to the public or not, and the Court may direct that the parts so laid out

SCHEDULE 2—continued

shall remain vested in the trustees of the settlement or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required as by the Court are deemed advisable.

Laying out and maintenance of streets, &c.

52. (1) Where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the Court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto, respectively, be made and executed, and that all or any part of the expenses in relation to such laying out, and making and execution, be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates, or any part thereof, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income.

(2) The Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works out of any such rents, profits, income, or accumulations during such periods of time as to the Court seems advisable.

Sales and dedications to be effected under direction of Court

53. On every sale or dedication to be effected as hereinbefore mentioned, the Court may direct who shall execute the deed of conveyance, and the deed executed by such person shall take effect as if the settlement had contained a power enabling such person to effect such sale or dedication, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the Court directs.

Petition for exercise of powers

54. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death or for an estate for life or any greater estate, and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who, but for such assignment, would be entitled to such settled estate for a term of years determinable with any life, or for an estate for

SCHEDULE 2—continued

any life, or any greater estate may apply to the Court by petition in a summary way to exercise the powers conferred by this Part.

Consents required

55. Subject to the exceptions hereinafter contained, every application to the Court must be made with the concurrence or consent of the following parties, namely:—

- (1) Where there is a tenant in tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail, then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenants or tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail.
- (2) And in every other case, the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

Dispensing with certain consents

56. Where an infant is tenant in tail under the settlement, the Court may dispense with the concurrence or consent of all or any of the persons entitled, whether beneficially or otherwise, to any estate or interest subsequent to the estate tail of such infant.

Notice of application

57. (1) Where, on an application under this Part, the concurrence or consent of any such person as aforesaid has not been obtained, notice shall be given to such person in such manner as the Court directs requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application, or submits his rights or interests so far as they may be affected by such application to be dealt with by the Court.

(2) Every such notice shall specify to whom and in what manner such notification is to be delivered or left.

(3) In case no notification is delivered or left in accordance with the notice, and within the time thereby limited, the person to or for whom such notice has

SCHEDULE 2—continued

been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Dispensing with notice

58. (1) Where, on an application under this Part, the concurrence or consent of any such person as aforesaid has not been obtained, and in case such person cannot be found, or in case it is uncertain whether he be living or dead, or in case it appears to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject matter of the application, then and in any such case the Court may, either on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interests of any other person, or on any other ground, by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

(2) In order to ascertain who are the persons having right to assent or dissent, or submit as herein provided, the Court may direct the Registrar of the Supreme Court to make inquiry in that behalf as in the case of suits for partition, and the Registrar's report shall, if approved by the Court, be conclusive for the purposes of such application, and any person having any interest who is not mentioned in the report, and does not make claim to the Court before the order on such application has been made shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Dispensing with consent in view of number of parties, &c.

59. An order may be made upon any application notwithstanding that the concurrence or consent of any such person as aforesaid has not been obtained or has been refused, but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom, or who submit or are to be deemed to submit their rights or interests to be dealt with by the Court, and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made, and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

Petition may be granted without consent

60. The Court may nevertheless give effect to any petition subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have

SCHEDULE 2—continued

submitted his rights or interests to be dealt with by the Court, or whose rights, estate, or interest ought in the opinion of the Court to be excepted.

Notice of application to be served on trustees

61. Notice of any application to the Court under this Part shall be served on all trustees who are seized or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required, and on any other parties who in the opinion of the Court ought to be so served unless the Court thinks fit to dispense with such notice.

Publication of notice of application

62. Notice of any application to the Court under this Part shall, if the Court so directs but not otherwise, be inserted in such newspapers as the Court directs, and any person, whether interested in the estate or not, may apply to the Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Part, and the Court is hereby authorized to permit such person to appear and be heard in opposition to or in support of any such application on such terms as to costs or otherwise and in such manner as it thinks fit.

Application of moneys arising from sales

63. All money to be received on any sale effected under the authority of this Part, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid may, if the Court thinks fit, be paid to any trustees of whom it shall approve, or otherwise the same shall be paid into Court *ex parte* the applicant in the matter of this Part, and such money shall be invested, deposited, or otherwise applied as the Court shall from time to time direct in some one or more of the following modes, namely—

- (a) In investment in Government securities, or on other securities on which trustees are by law authorized to invest trust moneys, or on which the trustees of the settlement are by the settlement authorized so to invest:

Provided that in case of investment in terminable securities provision shall be made by way of sinking fund or otherwise in respect of any premiums or discount so as to secure the full capital for persons having remoter interests.

- (b) By deposit at interest in any bank as authorized by the present or any future rules of Court.

SCHEDULE 2—continued

- (c) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land or other the whole estate the subject of the settlement, or affecting any other hereditaments subject to the same uses or trusts.
- (d) In purchase of the reversion in fee of any part of the settled land being leasehold land for years or life or years determinable on life.
- (e) In purchase of land in fee simple, of leasehold land held for 60 years or more unexpired a the time of purchase or of land held under the provisions of the *Leases Ordinance 1918* or the *City Area Leases Ordinance 1936*, to be settled in the same manner as the hereditaments in respect of which the money was paid, or as near thereto as the different nature of the property purchased may admit.
- (f) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge.
- (g) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of this Part.
- (h) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Transmission and devolution of capital

64. Capital money arising under this Part while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made shall, for all purposes of disposition, transmission, and devolution be considered as land, and the same shall be held for and go to the same persons successively in the same manner and for and on the same estates, interests, and trusts as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement, and the income of such capital money and such securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

Application of certain moneys without order of Court

65. The application of the money in manner aforesaid may, if the Court so directs, be made by the trustees (if any) without any application to the Court, or otherwise upon an order of the Court upon the petition of the person who would have been entitled to the possession or the receipt of the rents and profits of the settled estates.

SCHEDULE 2—continued**Interim investment of moneys**

66. Until the money can be applied as aforesaid, the same shall be invested as the Court directs in some or one of the investments in which cash under the control of the Court is for the time being authorized to be invested, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

Court may direct application of moneys in respect of leases, &c.

67. Where any purchase money paid into Court under the provisions of this Part shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, the Court on the petition of any party interested in such money may order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money has been paid, or as near thereto as may be.

Leases by tenants for life of settled estates

68. (1) Any of the following persons, that is to say—

- (a) A person entitled to the possession or to the receipt of the rents and profits of any settled estates—
 - (i) for an estate for any life; or
 - (ii) for a term of years determinable with any life or lives; or
 - (iii) for any greater estate,(unless the settlement expressly declares that any such person may not make such demise); and
- (b) A person entitled to the possession or to the receipt of the rents and profits of any unsettled estates—
 - (i) as tenant in tail after possibility of issue extinct; or
 - (ii) as tenant by the courtesy,

may, without any application to the Court, demise the same or any part thereof from time to time for any term not exceeding 10 years, to take effect in possession at or within 1 year next after the making thereof.

SCHEDULE 2—continued

(2) Every such demise shall be made by deed, and the best rent that can reasonably be obtained shall be thereby reserved without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion.

(3) Such demise shall not be made without impeachment of waste, and shall contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor thinks fit, and also a condition of re-entry on non-payment of the rent for a period of 28 days after it becomes due, or for some less period to be specified in that behalf.

(4) A counterpart of every deed of lease shall be executed by the lessee.

Effect of leases

69. Every demise authorized by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement if the estates be settled.

Provisions as to persons under disability

70. (1) All powers given by this Part and all applications to the Court under this Part, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this Part may be given to guardians on behalf of infants, and by or to committees or other persons entrusted with the care, control, and management of their estates on behalf of lunatics, insane or incapable persons or insane patients, and by or to trustees or assignees of the property of bankrupts or insolvents.

(2) In the case of any tenant in tail who is an infant, or lunatic, or an insane or incapable person, or insane patient, no application or consent to, or notification respecting any application may be made or given by any guardian or committee, or other such persons as aforesaid, without the special direction of the Court.

No person obliged to apply or consent

74. Nothing in this Part shall be construed to create any obligation on any person to make or consent to any application to the Court, or to exercise any power.

SCHEDULE 2—continued**Evidence of execution of counterpart lease by lessee**

75. The execution of any lease by the lessor shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this Act.

Record of exercise of powers

76. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Part shall be placed on the settlement, or on any copies thereof, or otherwise recorded in any way it may think proper in all cases where it appears to the Court to be practicable and expedient for preventing fraud or mistake.

Court may exercise powers repeatedly

77. (1) The Court may exercise any of the powers conferred on it by this Part whether the Court has already exercised any of such powers in respect of the same property or not.

(2) The powers conferred on the Court by this Part may be exercised if the Court thinks fit, notwithstanding any express declaration is contained in the settlement that they shall not be exercised.

(3) If in any settlement a provision is inserted purporting or attempting by way of direction, declaration, or otherwise to prevent or forbid the exercise by the Court of any of such powers, or attempting or tending, or intended by a limitation gift, or disposition over of settled land, or by a limitation gift or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever to prohibit or prevent any person entitled under this Part to apply to the Court to exercise such powers from so applying, or to induce such persons to abstain from so applying that provision, so far as it purports or attempts, or tends, or is intended to have, or would or might have the operation aforesaid, shall be deemed to be void.

(4) An estate or interest limited to continue so long only as a person abstains from applying to the Court to exercise any of such powers, or so long only as any such powers shall remain unexercised, shall be, and take effect as an estate, or interest to continue for the period for which it would continue if that person were to abstain from so applying, or if any such power were not exercised discharged from liability to determination or cesser by or on such person applying, or by or on any such power being exercised.

SCHEDULE 2—continued

Court not to authorize act beyond power of settlor to authorize

78. Nothing in this Part shall be construed to empower the Court to authorize any lease, sale, or other act beyond the extent to which, in the opinion of the Court, the same might have been authorized in and by the settlement by the settlor or settlors.

Acts of Court not to be called in question

79. After the completion of any lease or sale or other act under the authority of the Court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not hereby empowered to authorize the same, except that no such lease, sale, or other act shall have any effect against such person as herein mentioned whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained and such service has not been made or dispensed with.

Costs

80. (1) The Court may order that all or any costs or expenses of all or any parties of and incident to any application under this Part shall be a charge on the hereditaments which is the subject of the application, or on any other hereditaments included in the same settlement and subject to the same limitations, or on any capital money arising under this Part, or on any securities on which an investment of any such money is made.

(2) The Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of any such hereditaments, or paid out of the rents and profits thereof, or out of any securities taken under this Part or the income thereof, such costs and expenses to be taxed as the Court directs.

Part V—Renewable Leaseholds of persons Under Disability

Surrender and renewal of infants' leaseholds

82. Where an infant is entitled to a lease made or granted for a life or for any term of years, either absolute or determinable on a death or otherwise, such infant, or the guardian of such infant, or some other person on behalf of such infant, may apply to the Supreme Court by motion or summons, and by the order and direction of the said Court such infant or guardian, or any person appointed in the place of such infant by the said Court, may be enabled from time to time by deed to surrender such lease, and accept and take in the place and for the benefit of such infant a new lease of the premises in such lease

SCHEDULE 2—continued

surrendered as aforesaid for and during such number of lives, or for such term of years either absolute or determinable as aforesaid as was mentioned in the surrendered lease, or otherwise as the said Court directs.

Charges for renewal to be charged on estates

83. Every sum of money and other consideration paid by any guardian, trustee, or other person as or in the nature of a fine, premium or income, for the renewal of any such lease, and all reasonable charges incident thereto shall be paid out of the estate or effects of the infant for whose benefit the lease is renewed, or shall be a charge upon the leasehold premises, together with interest for the same as the said Court directs.

New leases to be to the same uses

84. Every lease so renewed shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devices, and conditions, as the lease surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

Grant of renewals by infants

85. Where any infant might, in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life of any person or for any term of years absolute or determinable on a death, such infant, or his guardian in the name of such infant, may by the direction of the Supreme Court, to be signified by an order to be made in a summary way upon the petition of such infant, or his guardian, or of any person entitled to such renewal, from time to time accept a surrender of such lease, and make and execute a new lease of the premises comprised in such lease for and during such number of lives, or for such term of years determinable upon such number of lives, or for such term of years absolute, as was mentioned in the lease so surrendered or otherwise as the said Court by such order directs.

Persons out of the jurisdiction

86. (1) Where any person who, in pursuance of any covenant or agreement in writing, might, if within the jurisdiction and amenable to the process of the Supreme Court, be compelled to execute any lease by way of renewal, is not within the jurisdiction or not amenable to the process of the said Court, the said Court may, by an order to be made upon the petition of any of the persons entitled to such renewal (whether such person be or be not under any disability), direct such person as the said Court thinks proper to appoint for that

SCHEDULE 2—continued

purpose, to accept a surrender of the subsisting lease, and make and execute a new lease in the name of the person who ought to have renewed the same.

(2) Such deed, executed by the person appointed as aforesaid, shall be as valid as if the person in whose name the same is made had executed the same, and had been alive and not under any disability.

(3) In every such case the said Court may, if under the circumstances it seems requisite, direct a suit to be instituted to establish the right of the party seeking the renewal, and not make the order for such new lease unless by the decree made in such cause, or until after such decree has been made.

Fines to be paid before renewal

87. (1) No renewed lease shall be executed by virtue of this Part, in pursuance of any covenant or agreement, unless the fine (if any) or such other sum (if any) as ought to be paid on such renewal, and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid and performed.

(2) Counterparts of every renewed lease to be executed by virtue of this Act shall be duly executed by the lessee.

Manner of payment of premiums

88. All fines, premiums, and sums of money had, received, or paid for, or on account of, the renewal of any lease, after deduction of all necessary incidental charges and expenses, shall be paid in the manner following:—

- (a) If the renewal is made by, or in the name of, an infant, to his guardian, to be applied and disposed of for the benefit of the infant as the said Court directs.
- (c) If the renewal is made in the name of a person out of the jurisdiction or not amenable as aforesaid, to such person, and in such manner, or to such account in court as the said Court directs.

Surrenders and leases deemed valid

89. Every surrender, lease, or other disposition granted, accepted, executed, or made by virtue of this Part shall be as valid to all intents and purposes as if the person by whom, or in whose place, or on whose behalf the same respectively is granted, accepted, executed, or made had been of full age, and had granted, accepted, executed, and made the same.

SCHEDULE 2—continued**Costs**

90. The said Court may order the costs and expenses of and relating to the applications, orders, directions, and transfers made in pursuance of this Part, or any of them, to be paid and raised out of or from the lands or the rents in respect of which the same respectively are made, in such manner as the said Court thinks proper.

Part VI—Mortgages**Powers incident to mortgages**

91. Where any principal money is secured or charged by deed on any hereditaments of any tenure or on any interest therein, the person to whom such money is for the time being payable, his executors, administrators, and assigns, shall at any time after the expiration of 1 year from the time when such principal money has become payable according to the terms of the deed, or after any interest on such principal money has been in arrear for 6 months, or after any omission to pay any premium on any insurance, which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely:

- (a) A power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re-sell the property from time to time in like manner.
- (b) A power to insure and keep insured from loss or damage by fire, the whole or any part of the property (whether affixed to the freehold or not) which is in its nature insurable, and to add the premiums paid for any such insurance to the principal money secured at the same rate of interest.
- (c) A power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.

Receipt for purchase money a sufficient discharge

92. Receipts for purchase money given by the person exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see the application of such purchase money.

SCHEDULE 2—continued

Notice of sale

93. (1) No such sale as aforesaid shall be made until after 6 months notice in writing given to the person or one of the persons entitled to the property subject to the charge by serving such notice personally upon such person, or by leaving the same at his usual or last known place of abode or business.

(2) When a sale has been effected in professed exercise of the powers hereby conferred the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given, but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person selling.

Application of purchase money

94. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows:

- (a) First, in payment of all the expenses incident to the sale or incurred in any attempted sale.
- (b) Secondly, in discharge of all interest and costs then due in respect of the charge in the consequence whereof the sale was made.
- (c) Thirdly, in discharge of all the principal moneys then due in respect of such charge.
- (d) Fourthly, in payment of the residue of such money to the person entitled to the property, subject to the charge, his heirs, executors, administrators, or assigns, as the case may be.

Conveyance

95. The person exercising any power of sale hereby conferred shall have power to convey or assign by deed to and vest in the purchaser the property sold for all the estate and interest therein which the person who created the charge had power to dispose of.

Owner of charge may call for deeds, &c.

96. (1) At any time after the power of sale hereby conferred has become exercisable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge all the deeds and documents in his possession or power relating to the same property or to the title thereto which he would have been entitled to demand and recover

SCHEDULE 2—continued

if the same property had been conveyed, appointed, surrendered, or assigned to and were then vested in him for all the estate and interest which the person creating the charge had the power to dispose of.

(2) Where the legal estate is outstanding in a trustee, the person entitled to a charge created by a person equitably entitled or any purchaser from such person shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such conveyance if the charge had not been made.

Appointment of receiver

97. Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may from time to time, if any person has been named in the deed of charge for that purpose, appoint any such person to be receiver, or if no person be so named then may by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person to appoint a fit and proper person as receiver, and if no such appointment be made within 10 days after such requisition then may in writing appoint as receiver any person he may think fit.

Receiver deemed agent of mortgagor

98. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for the acts or defaults of such receiver unless otherwise provided for in the charge.

Powers of receiver

99. Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver, by action, suit, distress, or otherwise in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

Removal of receiver

100. Every receiver appointed as aforesaid may be removed by the like authority or on the like requisition as hereinbefore provided with respect to the original appointment of a receiver, and a new receiver may be appointed from time to time.

SCHEDULE 2—continued

Commission to receiver

101. Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding 8 per centum on the gross amount of all money received, as is specified in his appointment, and if no amount is so specified then 4 per centum on such gross amount.

Receiver to insure if required

102. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire, out of money received by him the whole or any part of the property included in the charge (whether affixed to the freehold or not) which is in its nature insurable.

Application of moneys

103. Every receiver appointed as aforesaid shall pay and apply all the money received by him:

- (a) First, in discharge of all taxes, rates, and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any.
- (b) Secondly, in payment of all the interest accruing due in respect of any principal money then charged on the property over which he is receiver, or on any part thereof.
- (c) Thirdly, in payment of all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators, or assigns.

Interpretation

104. (1) The foregoing powers and provisions in this Part relate only to mortgages or charges made as well before as after the passing of this Act to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

(2) None of the powers conferred by the preceding sections of this Part shall be exercisable if it is declared in the mortgage that they shall not be exercisable, and where there is no such declaration but the mortgage contains any variation or limitation of the said powers or any of them, then such power shall only be exercisable subject to such variation or limitation.

SCHEDULE 2—continued

(3) The powers conferred by the preceding sections of this Part shall have the same force and effect as express powers to the same effect in the mortgage would have had and no more.

Effect of acknowledgment endorsed on mortgage

105. (1) Whenever a person entitled to recover or receive payment of money secured by mortgage of real or leasehold property (not subject to the provisions of the *Real Property Ordinance 1925*) signs personally, or by attorney, any acknowledgement endorsed on such mortgage to the effect that the mortgage has been satisfied, such acknowledgment shall upon registration in the office of the Registrar of Titles but as from the date of such acknowledgment, operate as a discharge of the mortgage, and without any further instrument or assurance vest the estate in the property under such mortgage in the person for the time being entitled to the equity of redemption to the uses and for the estates and interests, and subject to the powers and trusts to, for, and subject to which the equity of redemption at the date of such acknowledgment stood limited or subject:

Provided that in case there is any subsequent subsisting mortgage on the property at the date of such acknowledgment, the legal estate in the property under the discharged mortgage shall vest in the person in whom that subsequent mortgage is vested, or in the event of there being more than one such mortgage then in the person who has the prior right to call for an assurance of such legal estate.

(2) This section shall apply to acknowledgments signed as aforesaid before, as well as to those signed after, the passing of this Act: Provided that in the case of acknowledgments signed previously to 13 December 1893 nothing contained in this section shall invalidate or affect any estate, right, or interest which has been acquired subsequent to such signing, or any other act or thing that would have been valid if this section had not been passed.

Effect of repayment on ejectment by mortgagee

106. Where an action of ejectment is brought by any mortgagee, his heirs, executors, administrators, or assignees for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit is then depending for or touching the foreclosing or redeeming of such mortgaged premises if the person having right to redeem, and who appears and becomes defendant in such action, pays to such mortgagee at any time pending such action, or in case of his refusal brings into Court all the principal moneys, and interest due on such mortgage, and also all such costs as have been expended in any suit upon such

SCHEDULE 2—continued

mortgage (such money for principal, interest, and costs to be ascertained and computed by the court or the proper officer in that behalf), the moneys so paid to such mortgagee or brought into court shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the Court shall discharge every such mortgagor or defendant of and from the same accordingly, and shall, by rule of the same Court, compel such mortgagee at the costs and charges of such mortgagor to assign, surrender, or reconvey such mortgaged premises and such estate and interest as such mortgagee has therein, and deliver up all deeds, evidences, and writings in his custody relating to the title of such mortgaged premises unto such mortgagor who has paid or brought such moneys into Court, his heirs, executors, or administrators, or to such other person or persons as he or they shall for that purpose nominate or appoint.

Section 106 not to apply to certain cases

107. (1) Nothing in the preceding section contained shall extend to any case where:

- (a) the person against whom the redemption is prayed shall (by writing under his hand, or the hand of his agent or solicitor, to be delivered before the money is brought into Court to the solicitor for the other side) insist either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or are admitted on the other side; or
- (b) the right of redemption to the mortgaged lands and premises in question in any cause or suit is controverted or questioned by or between different defendants in the same cause or suit.

(2) Nothing in the preceding section contained shall prejudice any subsequent mortgage or subsequent incumbrance.

Redemption where mortgagee absent or unknown

108. (1) When any person entitled to receive payment of the whole or part of any debt secured by mortgage is out of the jurisdiction, cannot be found, or is unknown, or it is uncertain who is so entitled, the Supreme Court upon petition by the person entitled to redeem the mortgaged premises, may order the amount of such debt or of such part thereof to be ascertained in such manner as the said Court thinks fit, and direct the amount so ascertained to be paid into court.

(2) A certificate of the Registrar of the Supreme Court that such payment was allowed and has been made may be registered in the office of the Registrar

SCHEDULE 2—continued

of Titles, and thereupon the amount so paid into court shall be a discharge of the mortgage debt, or such part thereof, to the extent of the money paid in, but any amount which is eventually shown by the person entitled to the mortgage debt, or such part thereof, to have been in fact due or payable over and above the amount so paid into court shall continue to be a debt due upon the mortgage.

(3) The said Court shall order the amount so paid into court to be paid to the person entitled, upon the petition of such person, but no such amount shall be so paid until the Registrar of the Supreme Court is satisfied that the deed or instrument of mortgage, and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same, or in connection therewith, have been delivered up to the person by whom the amount was so paid into court, or his executors, administrators, or assigns.

(4) Where the amount of principal and interest due on any mortgage is paid into court under the foregoing provisions, and is afterwards paid under the order of the said Court to the person mentioned in such order, such payment shall operate as a reconveyance of the land comprised in such mortgage to the person who at the time of such payment is entitled to the equity of redemption thereof:

Provided that such order be registered in the office of the Registrar of Titles before such payment shall take effect.

Mortgaged land primarily liable for mortgage debts of deceased person

109. (1) Where any person hereafter dies seised of or entitled to any estate or interest in any land or other hereditaments which, at the time of his death, are charged with the payment of any sum of money by way of mortgage, and such person has not by his will or deed or other document signified any contrary or other intention, the devisee to whom such land or hereditaments are devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of the mortgage debts with which the same are charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) Nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full payment or satisfaction

SCHEDULE 2—continued

of his mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise.

(3) Nothing herein contained shall affect the right of any person claiming under or by virtue of any will, deed, or document made before 1 January 1856.

Part VII—Covenants to insure

Relief against forfeiture for breach of covenant to insure

111. The Supreme Court may, upon such terms as may seem fit, relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire where no loss or damage by fire has happened, and the breach has in the opinion of the Court been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the Court in conformity with the covenant to insure.

Record of relief granted

112. The said Court, where relief is so granted, shall direct a record of such relief having been granted to be made by endorsement on the lease or otherwise.

Limit on relief

113. The said Court shall not have power under this Act so to relieve the same person more than once in respect of the same covenant or condition, nor shall it have power to grant any relief under this Act where a forfeiture under the covenant in respect of which relief is sought has been already waived out of Court in favour of the person seeking the relief.

Lessor to have benefit of informal insurance

114. The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance, relating to the building or other property covenanted to be insured, effected by the lessee or mortgagor in respect of his interest under the lease or in the property, or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.

SCHEDULE 2—continued**Protection of purchase against forfeiture**

115. (1) Where, on the *bona fide* purchase after the passing of this Act of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser, or any person claiming under him, shall not be subject to any liability by way of forfeiture or damages or otherwise in respect of any breach of the covenant committed at any time before the completion of the purchase of which the purchaser had not notice before the completion of the purchase.

(2) This provision is not to take away any remedy which the lessor or his legal representative may have against the lessee or his legal representatives for breach of covenant.

Application of Part to lease for term

116. The provisions contained in this Part are applicable to leases for a term of years absolute or determinable on a life or otherwise, and also to a lease for the life of the lessee or the life of any other person.

Part VIII—Miscellaneous Provisions**Liability of vendor for fraudulent concealment**

117. (1) Any seller or mortgagor of land or of any chattels, real or personal, or chases in action, conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such seller or mortgagor who, after the passing of this Act, conceals any settlement, deed, will, or other instrument material to the title or any incumbrance from the purchaser or mortgagee, or falsifies any pedigree upon which the title does or may depend in order to induce him to accept the title offered or produced to him with intent in any of such cases to defraud, shall be guilty of a misdemeanour, and being found guilty shall be liable, at the discretion of the Supreme Court, to suffer such punishment by fine or imprisonment for any time not exceeding 2 years with or without hard labour, or by both as the said Court awards, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee or those claiming under the purchaser or mortgagee for any loss sustained by them or either or any of them in consequence of the settlement, deed, will, or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed, or of any claim made by

SCHEDULE 2—continued

any person under such pedigree, but whose right was concealed by the falsification of such pedigree.

(2) In estimating such damages where the estate is recovered from such purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land.

(3) No prosecution for any offence included in this section against any seller or mortgagor, or any solicitor or agent, shall be commenced without the sanction of the Attorney-General of the Commonwealth.

(4) No such sanction shall be given without previous notice of the application for leave to prosecute to the person intended to be prosecuted in such form as the Attorney-General of the Commonwealth directs.

Covenant to produce deeds

118. A covenant or undertaking, whether now or hereafter entered into, to produce to any purchaser, lessee, or mortgagee of land, or his assigns, any deed of or relating to such land, shall be satisfied by a deposit of the deed permanently in the office of the Registrar of Titles, who shall give a receipt for and keep in his office a list of all deeds so deposited, and shall permit any person, on payment of the proper fees, to inspect and obtain copies of every such deed.

Presumption of survivorship

119. In all cases where 2 or more persons have died, under circumstances rendering it uncertain which of them survived, the deaths shall for all purposes affecting the title to land be presumed to have taken place in order of seniority, and the younger be deemed to have survived the elder.

Release of part of land not to extinguish whole rent charge

120. The release from a rent charge of part of the hereditaments charged therewith shall not extinguish the whole rent charge, but shall operate only to bar the right to recover any part of the rent charge out of the hereditaments released without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release.

SCHEDULE 2—continued

Notes

- (a) The Conveyancing and Law of Property Act 1898, in its application in the Territory, comprises the Conveyancing and Law of Property Act 1898 as amended before 1 January 1911 by the Conveyancing and Law of Property (Supplemental) Act 1901 and as further amended after that date by the *Law of Property (Miscellaneous Provisions) Ordinance 1958* and the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Conveyancing and Law of Property Act 1898 in Part 7 of this Schedule.
 - (b) Section 2, Part (comprising sections 3 to 15), Part II (comprising sections 16 to 25), sections 26, 27, 28, 71, 72, 73 and 81, sub-section 83 (2), paragraph 88 (b) and Schedules I to VI were repealed by the *New South Wales Acts Application Ordinance 1984*.
 - (c) Sub-section 29 (1) was substituted, and sub-section 29 (3) was omitted, by the *New South Wales Acts Application Ordinance 1984*.
 - (d) Section 35 was repealed by the *New South Wales Application Ordinance 1984*. See now section 38 of the Conveyancing Act 1919 in its application in the Territory by virtue of the *Conveyancing Ordinance 1951*.
 - (e) Section 110 was repealed by the *Law of Property (Miscellaneous Provisions) Ordinance 1958*.
-

SCHEDULE 2—continued

PART 8

**CONVEYANCING AND LAW OF PROPERTY (SUPPLEMENTAL) ACT
1901**

No. 37, 1901

An Act to consolidate certain enactments relating to conveyances, assignments,
and titles to lands

Part I—Preliminary

Short title

1. This Act may be cited as the Conveyancing and Law of Property (Supplemental) Act 1901, and shall be read with the Conveyancing and Law of Property Act 1898.

Part IV—Illusory Appointments

Illusory appointment valid in equity

11. No appointment hereafter made in exercise of any power or authority to appoint any property, real or personal, amongst several objects, shall be invalid or impeached in equity on the ground that an unsubstantial illusory or nominal share only is thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power, but every such appointment shall be valid and effectual in equity, as well as at law, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial illusory or nominal share of the property subjected to such power.

Deed declaring amount of share

12. Nothing in this Part shall prejudice or affect any provision in any deed, will, or other instrument creating any such power as aforesaid, which declares the amount of the share or shares from which no object of the power shall be excluded.

Saving

13. Nothing in this Part shall be deemed at law or in equity to give any other validity, force, or effect to any appointment than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of the power.

SCHEDULE 2—continued

Notes

- (a) The Conveyancing and Law of Property (Supplemental) Act 1901, in its application in the Territory, comprises the Conveyancing and Law of Property (Supplemental) Act 1901, as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Conveyancing and Law of Property (Supplemental) Act 1901 in Part 8 of this Schedule.
- (b) Section 2 and the First and Second Schedules, Part II (comprising sections 6 to 9), Part III (comprising section 10) and Part V (comprising section 14) were repealed by the *New South Wales Acts Application Ordinance 1984*.
- (c) Sections 3, 4 and 5 have not been included in the text of the Conveyancing and Law of Property (Supplemental) Act 1901, as they amended the Conveyancing and Law of Property Act 1898, and the amendments so made have been incorporated in the text of the latter Act in Part 7 of this Schedule.

PART 9

CROWN LANDS ACT 1884

48 Vic. No. 18

An Act to regulate the alienation occupation and management of crown lands
and for other purposes

Part I—Preliminary and General Provisions**Short title**

1. This Act may be cited as the “Crown Lands Act 1884”.

Interpretation

4. In this Act, unless the context necessarily requires a different meaning, the expression—

“Lease” means a lease of land vested in the Commonwealth.

“Licence” means a licence to occupy or use any land vested in the Commonwealth.

SCHEDULE 2—continued

Road of access through leased land

111. Every holder of a lease or license shall be entitled to a road of access and also to free ingress and egress thereby to and from the lands held by him to the nearest public road through and over any land vested in the Commonwealth whether subject to a lease or not if no access to the lands held by him by means of a public road or track shall be provided, and such road shall not interfere with any buildings garden stock or drafting yards belonging to such lessee or licensee and shall in every case follow such a direction and be so marked as to occasion as little damage or inconvenience to the lessee as may be possible, and the Minister shall have power to close any such road upon giving three months notice to that effect in the *Commonwealth of Australia Gazette*.

Notes

- (a) The Crown Lands Act 1884, in its application in the Territory, comprises the Crown Lands Act 1884 as amended before 1 January 1911 by the following Acts—

Crown Lands Act of 1889

Crown Lands Act of 1895

Public Roads Act of 1897

Sydney Harbour Trust Act, 1900

Timber Licenses Act, 1902

Crown Lands Amendment Act of 1905

Mining Act, 1906

Mining (Amendment) Act, 1907

Crown Lands (Amendment) Act, 1908

Forestry Act, 1909

Crown Lands (Amendment) Act, 1910,

and as further amended after that date by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Crown Lands Act 1884 in Part 9 of this Schedule.

SCHEDULE 2—continued

- (b) Sections 2 and 3, sections 5 to 110 (inclusive), sections 112 to 145 (inclusive) and the Schedule were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 10**DEDICATION BY USER LIMITATION ACT 1902** No. 46, 1902

An Act to consolidate enactments relating to dedication by user

Short title

1. This Act may be cited as the Dedication by User Limitation Act 1902.

No dedication of right-of-way against Commonwealth

3. No dedication or grant of a right-of-way shall be presumed or allowed to be asserted or established as against—

- (a) the Commonwealth; or
(b) persons holding lands in trust for any public purpose,

by reason only of user, and this whether in proceedings instituted by or on behalf of the Commonwealth or not, and whether the user commenced before or after the commencement of this Act.

Notes:

- (a) The Dedication by User Limitation Act 1902, in its application in the Territory, comprises the Dedication by User Limitation Act 1902 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Dedication by User Limitation Act 1902 in Part 10 of this Schedule.
- (b) Section 2 was repealed by the *New South Wales Acts Application Ordinance 1984*.

SCHEDULE 2—continued

PART 11

DEFAMATION ACT 1901

No. 22, 1901

An Act to consolidate the statutes relating to defamation

Part I—Preliminary

Short title

1. This Act may be cited as the Defamation Act 1901.

Part II—Civil Proceedings

Right of action for oral slander

3. (1) The right of action for oral slander shall extend to all defamatory words for which an action might have been maintained before 24 August 1847, being the date of the passing of the Act 11 Victoria No. 13, if such words had been reduced into writing.

(2) Subject to the provisions of this Act, all the rules in force relating to actions for written slander, so far as they are applicable, shall be deemed to apply to actions for such defamatory words.

Proviso where plaintiff's character not likely to be injured

4. (1) On the trial of any action for defamatory words not imputing an indictable offence, the court or jury may, if the defendant has pleaded that the words set forth in the statement of claim were spoken on an occasion when the plaintiff's character was likely not to be injured thereby, consider whether the words were spoken on such an occasion.

(2) If the court or jury are of opinion that the said words were spoken on an occasion when the plaintiff's character was not likely to be injured thereby, they may find a verdict for the defendant.

Evidence of apology admissible in mitigation

5. In any action for defamation, the defendant may (after notice in writing of his intention so to do duly given to the plaintiff at the time of filing or delivering the defence in such action) give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so in case the action has been commenced before there was opportunity of making or offering such apology.

SCHEDULE 2—continued**Truth no defence unless public benefit**

6. (1) In any action for defamation, whether oral or otherwise, the truth of the matters charged shall not amount to a defence to such action unless it was for the public benefit that the said matters should be published.

(2) Where the truth of the said matters is relied upon as a defence to such action, it shall be necessary for the defendant in his defence to allege that it was for the public benefit that the said matters should be published, and the particular fact or facts by reason whereof it was for the public benefit that they should be published.

(3) Unless the said allegation is made out to the satisfaction of the court or jury as well as the truth of the said matters, the plaintiff shall be entitled to recover a verdict with such damages as the court or jury thinks proper.

Payment into Court

7. In any action for defamation, the defendant or one or more of several defendants, may pay into Court a sum of money by way of compensation, satisfaction, and amends.

Defence of apology and payment into Court

8. (1) In an action for a libel contained in any public newspaper or other periodical publication, the defendant may plead that such libel was inserted in such newspaper or publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or publication a full apology for the said libel, or (if such newspaper or publication is ordinarily published at intervals exceeding one week) had offered to publish the said apology) in any newspaper or periodical publication to be selected by the plaintiff.

(2) The defendant, upon filing a defence under sub-section (1), may pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel.

Costs on verdict for less than \$4

9. If, in any action for defamation, a verdict is returned in favour of the plaintiff for damages in any sum less than \$4, the plaintiff shall have judgment to recover such sum only, and shall not have judgment to recover any costs, unless the Judge in any case of libel certifies that the words charged as defamatory were published without reasonable grounds or excuse.

SCHEDULE 2—continued

Part III—Criminal Proceedings

Libel with intent to extort money

10. (1) Whosoever—

- (a) publishes or threatens to publish any libel upon any other person; or
- (b) directly or indirectly threatens to print or publish, or directly or indirectly proposes to abstain from printing or publishing, or directly or indirectly offers to prevent the printing or publishing of any matter or thing touching any other person,

with intent—

- (c) to extort any money or security for money, or any valuable thing from such or any other person; or
- (d) to induce any person to confer upon or procure for any person any appointment or office of profit or trust,

shall be liable to imprisonment for any term not exceeding 3 years.

(2) Nothing herein contained shall in any manner alter or affect any law now in force in respect to the sending or delivery of threatening letters or writings.

Malicious publication of false defamatory libel

11. Whosoever maliciously publishes any defamatory libel, knowing the same to be false, shall be liable to imprisonment for any term not exceeding 2 years, and to pay such fine as the Court may award.

Malicious publication of defamatory libel

12. Whosoever maliciously publishes any defamatory libel shall be liable to fine or imprisonment or both, as the Court may award, such imprisonment not to exceed the term of 1 year.

Plea of truth and public benefit

13. (1) On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as is hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters should be published.

SCHEDULE 2—continued

(2) To entitle the defendant to give evidence of the truth of the said matters as a defence to such indictment or information, it shall be necessary for the defendant in pleading to the said indictment or information to allege—

- (a) the truth of the said matters in the manner now required in pleading the truth of matters under section 6 in an action for defamation;
- (b) that it was for the public benefit that the said matters should be published; and
- (c) the particular fact or facts by reason whereof it was for the public benefit that the said matter should be published.

(3) To such plea, the prosecutor may reply generally denying the whole thereof.

Court may consider whether guilt aggravated by plea

14. If after such plea, the defendant is convicted on such indictment or information, the Court in pronouncing sentence may consider whether the guilt of the defendant is aggravated or mitigated by the said plea and by the evidence given to prove or to disprove the same.

Truth not a defence except under plea of justification

15. The truth of the matters charged in the alleged libel shall in no case be inquired into unless the defendant has pleaded to the indictment or information as provided in section 13.

Plea of not guilty available

16. In addition to such plea, the defendant may plead a plea of not guilty.

Defence of absence of authority, knowledge, &c.

17. Where, upon the trial of any indictment or information for the publication of a libel, evidence has been given under the plea of not guilty which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and did not arise from want of due care or caution on his part.

SCHEDULE 2—continued

Costs on private prosecution for libel

18. In case of any indictment or information by a private prosecutor for the publication of any defamatory libel—

- (a) if judgment is given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information; or
- (b) if, upon a special plea to such indictment or information of the truth of the matters charged, the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea,

such costs to be taxed by the proper officer of the Court before which the said indictment or information is tried.

Part V—Remedies of judgment creditors

Execution against presses, &c.

23. When any person is convicted either in a civil or a criminal proceeding of printing or publishing a defamatory article, the plaintiff or prosecutor in whose favour judgment is given may, under his writ of execution, levy the costs, damages, penalty, and expenses named therein, out of the whole of the types, presses or printing materials whatsoever belonging to the person whose types, presses or printing materials, or any part thereof, have been used in printing such defamatory article, as well as out of the property of the defendant on the record.

Part VI—Miscellaneous

Certain defences not available if this Act not complied with

26. (1) No defendant in any proceeding, civil or criminal, shall be able to avail himself of any of the benefits or advantages of this Act unless at the time of the publication of the article complained of if it be a printed article, all of the provisions made by law for regulating the printing and publication of newspapers and papers of a like nature or of the trade of printing generally, applicable to such a work as that in which such article is printed have been complied with.

(2) Any specified non-compliance with any such provision shall be a good answer to any pleading under this Act.

SCHEDULE 2—continued

(3) Such defendant shall nevertheless be bound by the other part of this Act.

Notes

- (a) The Defamation Act 1901, in its application in the Territory, comprises the Defamation Act 1901 as amended before 1 January 1911 by the Defamation (Amendment) Act 1909 and as further amended after that date by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Defamation Act 1901 in Part 11 of this Schedule.
- (b) Section 19 was repealed by the Defamation (Amendment) Act 1909.
- (c) Sections 2, 24 and 25 and the Schedule, and Part IV (comprising sections 20 to 22), were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 12**DEFAMATION (AMENDMENT) ACT 1909** No. 22, 1909

An Act to amend the law of defamation

*Preliminary***Short title**

1. This Act may be cited as the Defamation (Amendment) Act 1909, and shall be construed with the Defamation Act 1901.

Interpretation

2. In this Act, unless the context otherwise requires—

“Newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale, and published, periodically, or in parts or numbers, at intervals not exceeding 1 month between the publication of any 2 such papers, parts, or numbers.

SCHEDULE 2—continued

Also any paper printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding 1 month, containing only or principally advertisements.

“Proprietor” means and includes as well the sole proprietor of any newspaper, as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

Declarations, indictments, and criminal prosecutions

Obscene or blasphemous matter need not be set out in information, &c.

3. It shall not be necessary to set out in any information, indictment, or criminal proceeding instituted against the publisher of any obscene or blasphemous libel the obscene or blasphemous passages, but it shall be sufficient to deposit the book, newspaper, or other document containing the alleged libel with the information, indictment, or criminal proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document, the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the information, indictment, or proceeding.

No prosecution without order of Judge

4. No criminal prosecution shall be commenced against any person for the publication of any libel without the order of a Judge of the Supreme Court first had and obtained.

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

Civil and criminal defences

Publication in newspaper of matters of public interest

5. No criminal proceeding or civil action shall be maintainable against any person or corporation in respect of the printing or publishing in good faith for the information of the public in any newspaper any of the following matters, provided they are not blasphemous, seditious, or obscene—

SCHEDULE 2—continued

- (a) a fair and accurate report of the proceedings of either House of Parliament of the Commonwealth, or of the Parliament of any State of the Commonwealth;
- (b) a fair and accurate report of the proceedings of any Committee of any such House;
- (c) a copy of, or an extract from or abstract of, any report, paper, votes, or proceedings published by order or under the authority of either House of any such Parliament as aforesaid;
- (d) a fair and accurate report of the public proceedings of any court of justice, whether such proceedings are preliminary or interlocutory or final, unless, in the case of proceedings which are not final, the publication has been prohibited by the court: Provided that matter of a defamatory nature ruled to be inadmissible by the court shall not be deemed to be part of the public proceedings of such court as aforesaid;
- (e) a copy or an abstract of any judgment, or of the entries relative to any judgment, which are recorded in any books kept in the office of any court of justice;
- (f) a fair and accurate report of the proceedings of any inquiry under the authority of an Act of the Commonwealth or under the authority of the Crown in right of the Commonwealth or of the Governor-General in Council, or an extract from or abstract of any such proceedings, or a copy, or an extract from, or abstract of, any official report made by the person by whom the inquiry was held;
- (g) a notice or report issued by a Department of State of the Commonwealth, a Department of the Australian Public Service, an officer holding office under a law in force in the Territory, an authority or instrumentality established by or under such a law or a member of the Australian Federal Police, being a notice or report issued for the information of the public and published with the consent of the department, officer, authority, instrumentality or member, as the case may be;
- (h) a fair and accurate report of the proceedings of any local authority, board, or body of trustees, or other persons, duly constituted under the provisions of any law in force in the Territory for the discharge of public functions so far as the matter published relates to matters of public concern, except where neither the public nor any newspaper reporter is admitted.

SCHEDULE 2—continued

A publication is said to be made in good faith for the information of the public if the person by whom it is made is not actuated in making it by ill-will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of the publication of news.

In the case of the publication of a report of proceedings referred to in paragraphs (b) (f) (g) and (h), it is evidence of a want of good faith if the proprietor, publisher, or editor has been requested by the person defamed to publish in the newspaper a reasonable letter or statement, by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish the same.

Privilege not affected by publication under contract

6. In any criminal proceedings or civil action against any person or corporation in respect of the publication of any matter, the publication may be deemed to be privileged, notwithstanding that such publication is made in pursuance of a contract whereby such person or corporation undertakes for valuable consideration to supply information to the person to whom such publications is made, if—

- (a) the publication is in answer to an inquiry made in pursuance of such contract;
- (b) the matter published is relevant to the subject of the inquiry;
- (c) the manner and extent of the publication do not exceed what is reasonably sufficient for the occasion;
- (d) the person making the publication is not actuated by ill-will to the person defamed, or by any other improper motive; and
- (e) the person making the publication has reasonable ground to believe the matter published to be true.

Mitigation of damages

Compensation in other actions provable in mitigation

7. At the trial of an action for a libel, the defendant may give in evidence, in mitigation of damages, that the plaintiff has already recovered, or has brought actions for damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

SCHEDULE 2—continued*Summary proceedings***Evidence before court of summary jurisdiction**

8. Where the criminal proceedings are commenced against any person in respect of the printing or publishing of a libel, the court may receive evidence as to any matter which under this or any other law in force in the Territory, or otherwise might be given in evidence by way of defence by the person charged on his trial on information or indictment, and such court if of opinion after hearing such evidence, that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

Summary conviction for libel

9. (1) If the court is, upon the hearing of a criminal proceeding against any person for the publication of a libel, of opinion that though the person charged is shown to have been guilty, the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, such court shall cause the charge to be reduced into writing and read to the person charged, and shall then address a question to him to the following effect, “Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?” and if such person assents to the case being dealt with summarily, such court may summarily convict him and adjudge him to pay a fine not exceeding \$100.

(2) In this and the last preceding section, “court” means the Court of Petty Sessions.

*Trial, costs, and execution***Consolidation of actions**

10. It shall be competent for the court or a judge, upon an application by or on behalf of 2 or more defendants in actions in respect of the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together, and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel may be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

In a consolidated action under this section, the court or jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions

SCHEDULE 2—continued

consolidated had been tried separately; and if the court or jury find a verdict against the defendant or defendants in more than one of the actions so consolidated, the court or jury shall proceed to apportion the amount of damages so found between and against the said last-mentioned defendants; and the judge at the trial, if the plaintiff is entitled to the costs of the action, shall make such order as he may deem just for the apportionment of such costs between and against such defendants.

Supplemental

Name of writer of article, &c., to be disclosed

11. The proprietor of any newspaper may upon the written request of any person who has commenced an action in respect of any defamatory article, letter, report, or writing in any newspaper supply to such person affected thereby the name and address of the person who supplied such article, letter, report, or writing to such newspaper, and in default of compliance with such request any person affected thereby may apply to a Judge of the Supreme Court who may if he sees fit, after hearing such proprietor, direct that such name and address be so supplied.

Notes

- (a) The Defamation (Amendment) Act 1909, in its application in the Territory, comprises the Defamation (Amendment) Act 1909 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Defamation (Amendment) Act 1909 in Part 12 of this Schedule.
 - (b) Section 12 has not been included in the text of the Defamation (Amendment) Act 1909 as it amended the Defamation Act 1901, and the amendment so made has been incorporated in the text of the latter Act in Part 11 of this Schedule.
-

SCHEDULE 2—continued**PART 13****FERTILIZERS ACT 1904**

No. 33, 1904

An Act to regulate the sale and prevent the adulteration of fertilizers

Short title

1. This Act may be cited as the Fertilizers Act 1904.

Interpretation

2. In this Act, unless the context otherwise indicates—

“Fertilizer” means any manure used or intended to be used as a fertilizer, not being stable manure, lime, refuse from fellmongeries, or other similar articles in their natural state.

“Prescribed” means prescribed by regulations made by the Minister in pursuance of this Act.

Vendor to furnish statement

3. (1) The vendor of any fertilizer shall, on or before the delivery of the fertilizer, furnish to the purchaser a statement as to the nature and quantities of the chemical constituents of such fertilizer in the form set out in the Schedule, or, if another form is prescribed, in the form so prescribed, and any person neglecting to so furnish such statement, or furnishing an incorrect or false statement, shall be deemed guilty of an offence against this Act, and shall be liable for the first offence to a penalty not exceeding \$20, and for any subsequent offence to a penalty not exceeding \$50, and in addition shall be liable to pay such costs and expenses as the court trying the offence may award.

- (2) The statement required by sub-section (1) shall include—

- (a) the name and address of the vendor;
- (b) the proportions, per centum, of nitrogen, phosphoric acid and potash, respectively, that the fertilizer is certified to contain;
- (c) if the fertilizer is certified to contain readily available phosphoric acid, the proportions, per centum, of water-soluble phosphoric acid or citrate-soluble phosphoric acid and of phosphoric acid of all kinds, respectively, that the fertilizer is certified to contain; and
- (d) if the fertilizer contains leather, horn, hair or any other substance containing nitrogen in an inert form, a statement of that fact.

SCHEDULE 2—continued

- (3) In proceedings for an offence against sub-section (1)—
- (a) evidence that a bag, barrel or other package containing fertilizer was branded with a statement of a kind referred to in that sub-section is *prima facie* evidence that the statement relates to the contents of the bag, barrel or other package; and
 - (b) evidence that a statement of a kind referred to in sub-section (1) was delivered to a purchaser of a bag, barrel or other package containing fertilizer and that the statement and the bag, barrel or other package containing fertilizer were each marked with the same name, letter or other mark is *prima facie* evidence that the statement relates to the contents of the bag, barrel, or other package.

Regulations

4. The Minister may make regulations for carrying out the purposes of this Act.

SCHEDULE

Statement as to contents of package

I (*or we*) of trading as hereby certify that the package marked [If attached to the package insert “this package contains,” &c.] contains ^(a) containing the following ingredients in the proportions of the whole set opposite thereto in the form hereunder:—

Nitrogen, in the form of ^(b) per centum.

Phosphoric acid (total) in the form of ^(c) “

Water-soluble phosphoric acid per centum.

Citrate-soluble phosphoric acid “

Potash, in the form of ^(d) “

- (a) Here insert name or brand of fertilizer.
- (b) Here insert organic nitrogen (if the fertilizer contains blood, bone, flesh, fish, &c.), or ammonium salts or nitrates.
- (c) Here insert tricalcic phosphate, or superphosphate, or basic slag, &c.

SCHEDULE 2—continued

- (d) Here insert potassium sulphate, or potassium chloride, or kainit, &c.

Notes

- (a) The Fertilizers Act 1904, in its application in the Territory, comprises the Fertilizers Act 1904 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Fertilizers Act 1904 in Part 13 of this Schedule.
- (b) Sub-section 3 (2) was inserted and the Schedule was added by the *New South Wales Acts Application Ordinance 1984*.

PART 14**FORFEITURE OF LEASES ACT 1901** No. 66, 1901

An Act for granting relief against forfeiture of leases and for otherwise amending the law as to property

Restrictions on forfeiture

1. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

(2) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, the lessee may in any suit brought by himself in the Supreme Court apply to that court for relief; and that court may grant or refuse relief as that court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the court in the circumstances of each case thinks fit.

SCHEDULE 2—continued

(3) For the purpose of this section, a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of the lessor, also a grantor as aforesaid, and his heirs and assigns.

(4) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of a provision of another law in force in the Territory.

(5) For the purposes of this section, a lease limited to continue as long only as the lessee abstains from committing a breach of covenant, shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6) This section does not extend—

- (a) to any Crown lease or to any lease or tenancy for a term of one year or less; or
- (b) to a covenant or condition against the assigning, under-letting, parting with the possession or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest.

(7) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(8) In this section, in its application in the Territory, a reference to the Crown shall be read as a reference to the Crown in right of the Commonwealth.

Regulations regarding notice

2. (1) The notice mentioned in section 1 shall be in writing, and in the form set out in the Schedule or to a similar effect.

(2) Such notice shall be sufficient, although only addressed to the lessee by that designation, without his name, or generally to the persons interested without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) Such notice shall be sufficiently served if it is left at the last-known place of abode or business in the Territory of the lessee, or affixed or left for

SCHEDULE 2—continued

him on the land or any house or building comprised in the lease or, in the case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4) Such notice shall also be sufficiently served if it is sent by post in a registered letter addressed to the lessee by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) Such notice shall also be sufficiently served on any person who is absent from the Territory if it is served personally on his attorney or agent within the Territory.

Application of Act

4. This Act applies to leases made either before or after the commencement of this Act, and to any merger by operation of law only arising before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Short title

6. This Act may be cited as the Forfeiture of Leases Act 1901.

SCHEDULE

Section 2 (1)

To

The lessee of [*here describe premises with reasonable certainty*].

Having reference to the lease of the abovementioned premises, dated the _____ day of _____, 198____, from A.B. to C.D., and the covenant by the lessee therein contained [*here state concisely the nature of the covenant or covenants breach of which is complained of, as for instance, "to repair,"*] and the breach by you of that covenant I hereby give you notice and require you to remedy that breach by [*here set out the remedy as, for instance, "by forthwith putting the said premises in repair by doing and executing the repairs in and upon the said premises which are specified in the Schedule hereto annexed"*] And I further require you to make reasonable compensation to my satisfaction for the breach already committed, which compensation I assess at the sum of \$ _____

SCHEDULE 2—continued

Dated the _____ day of _____, 19____.

Lessor.

Notes

- (a) The Forfeiture of Leases Act 1901, in its application in the Territory, comprises the Forfeiture of Leases Act 1901 as amended by the *Law of Property (Miscellaneous Provisions) Ordinance 1958* and the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Forfeiture of Leases Act 1901 in Part 14 of this Schedule.
- (b) Sections 3 and 5 were repealed by the *Law of Property (Miscellaneous Provisions) Ordinance 1958*.
- (c) The operation of section 1 of the Forfeiture of Leases Act 1901 is also affected by section 4 of the Forfeiture and Validation of Leases Act 1905 in its application in the Territory (printed in Part 15 of this Schedule).

PART 15

FORFEITURE AND VALIDATION OF LEASES ACT 1905 No. 8, 1905

An Act to grant relief against the exercise of rights of re-entry and forfeiture under leases, and against defects invalidating certain leases; to amend the Forfeiture of Leases Act 1901; and for other purposes

Part I—Preliminary

Short title

1. This Act may be cited as the Forfeiture and Validation of Leases Act 1905.

Part II—Forfeiture of Leases

Incorporation of 1901 Act

3. This Part of this Act shall be construed with the Forfeiture of Leases Act 1901.

SCHEDULE 2—continued**Interpretation**

4. In this Part of this Act and in section 1 of the Forfeiture of Leases Act 1901, “lease” also includes an agreement for a lease where the lessee has become entitled to have his lease granted; “under-lease” also includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted; and in the said Part “under-lessee” includes any person deriving title under or from an under-lessee.

Protection of under-lessees

5. (1) Where a lessor is proceeding by suit, action, or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Supreme Court may, on application by any person claiming, as under-lessee, any estate or interest in the property comprised in the lease or any part thereof, make an order staying any such suit, action, or other proceeding on such terms as to the Court may seem just, and vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of proper and reasonable rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case, and having regard to the consent or otherwise of the lessor to the creation of the estate or interest claimed by the under-lessee, may think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for a larger area of land or for any longer term than he had under his original under-lease.

(2) Any such order may be made in a suit brought for the purpose by the person claiming as under-lessee or in the proceeding brought by the lessor.

Part III—Invalid Leases under Powers**Lease deemed granted in intended exercise of power**

6. When a valid power of leasing is vested in or may be exercised by a person granting a lease, and such lease (by reason of the determination of the estate or interest of such person or otherwise) cannot have effect and continuance according to the terms thereof independently of such power, such lease shall, for the purposes of this Part, be deemed to be granted in the intended exercise of such power, although such power be not referred to in such lease.

SCHEDULE 2—continued**Certain invalid leases to be construed as agreements to lease**

7. (1) Where in the intended exercise of any power of leasing, whether derived under a law in force in the Territory or under any instrument lawfully creating such power, a lease has been or may hereafter be granted which is, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of such power, invalid as against the person entitled after the determination of the interest of the person granting such lease to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled for any estate to the hereditaments comprised in such lease, such lease, in case the same have been made *bona fide*, and the lessee named therein, his executors, administrators, or assigns (as the case may require) have entered thereunder, shall be considered in equity as a contract for a grant at the request of the lessee, his executors, administrators, or assigns (as the case may require), of a valid lease under such power, to the like purport and effect as such invalid lease as aforesaid, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound in equity by such contract.

(2) Provided that no lessee under any such invalid lease as aforesaid, his executors, administrators, or assigns shall be entitled by virtue of any such equitable contract as aforesaid to obtain any variation of such lease where the persons who would have been bound by such contract are willing to confirm such lease without variation.

(3) Land the subject of any such equitable contract shall, for the purposes of sub-section 18 (2) of the *Real Property Ordinance* 1925, be deemed to be a leasehold.

Certain leases validated

8. Where a lease granted in the intended exercise of any such power of leasing as aforesaid is invalid by reason that at the time of the granting thereof the person granting the same could not lawfully grant such lease, but the estate of such person in the hereditaments comprised in such lease has continued after the time when such or the like lease might have been granted by him in the lawful exercise of such power, then and in every such case such lease shall take effect, and be as valid as if the same had been granted at such last-mentioned time, and all the provisions contained in this Part shall apply to every such lease:

SCHEDULE 2—continued

Provided that this section shall not apply where at the time of the granting of the lease the person granting the same was under the age of 18 years.

Acceptance of rent deemed confirmation of lease

9. Where, upon or before the acceptance of rent under any such invalid lease as abovementioned, any receipt, memorandum, or note in writing, confirming such lease, is signed by the person accepting such rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease.

Lessee bound to accept confirmation

10. Where, during the continuance of the possession taken under any such invalid lease as abovementioned, the person for the time being entitled (subject to such possession as aforesaid) to the hereditaments comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation, the lessee, his executors, or administrators (as the case may require), or any person who would have been bound by the lease if the same had been valid, shall, upon the request of the person so able to confirm the same, be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing, signed by the persons confirming and accepting respectively, or by some other persons by them respectively thereunto lawfully authorized; and after confirmation and acceptance of confirmation such lease shall be valid, and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid.

Saving

11. Nothing in this Part shall extend or be construed to prejudice or take away any right of action or other right or remedy to which, but for the enacting of this Part, the lessee named in any such lease as aforesaid, his executors, administrators, or assigns would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or to prejudice or take away any right of re-entry or other right or remedy to which, but for the enacting of this Part, the person granting such lease, his executors, administrators, or assigns, or other the person for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled, for or by reason of any breach of the covenants, conditions, or provisoes contained in such

SCHEDULE 2—continued

lease, and on the part of the lessee, his executors, administrators, or assigns, to be observed and performed.

Certain leases excluded

12. This Part shall not extend to any lease where, before the commencement of this Act, the hereditaments comprised in such lease have been surrendered or relinquished, or recovered adversely by reason of the invalidity thereof, or there has been any judgment or decree in any action or suit concerning the validity of such lease, and shall not prejudice or affect any action or suit already commenced and now pending in any Court; but every such action and suit may be proceeded with and such relief had therein as if this Part had not been enacted.

Note:

The Forfeiture and Validation of Leases Act 1905, in its application in the Territory, comprises the Forfeiture and Validation of Leases Act 1905 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Forfeiture and Validation of Leases Act 1905 in Part 15 of this Schedule.

PART 16

FREE EDUCATION ACT 1906

No. 12, 1906

An Act to abolish fees in primary and superior public schools

Short title

1. This Act may be cited as the Free Education Act 1906 and shall be construed with the Public Instruction Act 1880.

Education in primary and superior public schools to be free

2. Education in primary and superior public schools shall be free, and no fees shall be chargeable for the same.

SCHEDULE 2—continued

Notes

- (a) The Free Education Act 1906, in its application in the Territory, comprises the Free Education Act 1906 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Free Education Act 1906 in Part 16 of this Schedule.
- (b) Section 2 contained a provision amending the Public Instruction Act 1880. The amendments so made have been incorporated in the text of Public Instruction Act 1880, in its application in the Territory, which is printed in the Second Schedule to the *New South Wales Acts Application Ordinance (No. 2) 1984*.

PART 17**GAMES WAGERS AND BETTING-HOUSES ACT 1901** No. 18, 1902

An Act to consolidate the Acts concerning games and wagers and for the suppression of betting-houses

Part I—Preliminary**Short title**

1. This Act may be cited as the Games Wagers and Betting-houses Act 1901.

Part II—Gaming and Wagering**Search under special warrant**

4. (1) Any magistrate upon complaint made on oath that there is reason to suspect any house room premises or place to be kept or used as a common gaming-house and that it is commonly reported and believed by the deponent so to be may by special warrant under his had and seal authorize any officer of police to enter into such house room premises or place and arrest search and bring before the Court of Petty Sessions all persons found therein and seize all tables instruments of gaming moneys and securities for money found therein.

(2) Every officer of police so authorized may if necessary obtain assistance and use force whether by breaking open doors or otherwise for making such entry and may search all parts of such house room premises or place where he

SCHEDULE 2—continued

suspects that tables instruments of gaming moneys or securities for money are concealed.

(3) Every special warrant shall be in the form contained in the Second Schedule hereto or to the like effect.

Liability of owner, &c., of gaming-house

6. (1) The owner or keeper of any such gaming-house or other person having the care or management thereof and every banker croupier and other person who acts in any manner in conducting such gaming-house room premises or place shall be liable to a penalty not exceeding \$200 or to imprisonment with or without hard labour for a term not exceeding 6 months.

(2) Every person found in such house room premises or place without lawful excuse shall be liable to a penalty not exceeding \$10.

(3) Upon the conviction of any such offender all the moneys and securities for moneys seized as aforesaid shall be forfeited.

(4) The Court of Petty Sessions may direct that all tables and instruments of gaming seized under a special warrant be destroyed.

Proceedings by indictment not affected

7. Nothing herein contained shall prevent any proceeding by indictment against the owner or keeper or other person having the care or management of any gaming-house or any room premises or place for gaming but no person shall be proceeded against by indictment and also under this Act for the same offence.

Evidence that premises a gaming-house

8. (1) Upon an indictment or information alleging that any house room premises or place is a common gaming-house or place for gaming it shall be sufficient to prove—

- (a) that such house room premises or place is kept or used for playing therein at any unlawful game and that a bank is kept there by one or more of the players exclusively of the others; or
- (b) that the chances of any game played therein are not alike favourable to all the players including among the players the banker or other person by whom the game is managed or against whom the other players stake play or bet.

SCHEDULE 2—continued

(2) Every such house room premises or place shall even if open for the use of subscribers only or not open to all persons desirous of using the same be deemed a common gaming-house or place for gaming within the meaning of this Act and all Acts containing any provision against unlawful games or gaming-houses.

Not necessary to prove person playing for money

9. It shall not be necessary in support of any information or indictment for gaming in or suffering any games or gaming in or for keeping or using or being concerned in the management or conduct of a common gaming-house or place for gaming to prove that any person found playing at any game was playing for any money wager or stake.

Discovery of instruments of gaming evidence that premises a gaming-house

10. Whenever any house room premises or place suspected to be used as a common gaming-house or place for gaming is entered under a warrant under the provisions of this Act the discovery therein or about the person of any of those found therein of cards dice balls counters tables or other instruments of gaming used in playing any unlawful games shall be evidence—

- (a) that such house room premises or place is used as a common gaming-house; and
- (b) that the persons found in the room or place where such tables or instruments were discovered were playing therein although no play was actually going on in the presence of the officer of police entering under such warrant or his assistants.

Protection of witnesses

11. Every person concerned in any unlawful gaming who is examined as a witness before the Court of Petty Sessions or on the trial of any indictment or information against the owner or keeper or other person having the care or management of any common gaming-house or place for gaming touching such unlawful gaming shall if he received from the magistrate or Judge before whom he is examined a certificate in writing to the effect that he has made true and faithful discovery to the best of his knowledge of all things as to which he has been examined be freed from all criminal prosecutions forfeitures punishments and disabilities to which he may have become liable for anything done before that time in respect of such unlawful gaming.

SCHEDULE 2—continued

Gaming contracts not enforceable

13. Subject to section 13A, all contracts or agreements whether by parol or in writing by way of gaming or wagering shall be null and void and no suit shall be brought or maintained in any court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.

Application

13A. This Act does not apply to, or in relation to—

- (a) a subscription or contribution, or a contract or agreement to subscribe or contribute, for or toward any plate, prize or sum of money to be awarded to the winner of any lawful game, sport, pastime or exercise;
- (b) a bet or wager lawfully made with a bookmaker, in the course of carrying on his business as a bookmaker, on a racecourse in respect of which a licence is issued and in force under the *Racecourses Ordinance 1935*; or
- (c) any other bet or wager lawfully made in relation to any lawful game, sport, pastime or exercise.

Part III—Betting-houses Suppression

Interpretation

14. In this Part, “valuable thing” includes any promise verbal or in writing conditional or absolute to pay or give any valuable thing.

Search of premises under special warrant

15. (1) Any magistrate upon complaint made on oath that there is reason to suspect any house office room or place to be kept or used as a betting-house or office contrary to this Part may by special warrant under his hand authorize any officer of police to enter into such house office room or place and arrest search and bring before the Court of Petty Sessions all persons found therein and seize all moneys coin notes cheques I.O.U.s or other writings for securing the payment of money and all lists cards or other documents relating to racing or betting found in such house room office or place.

(2) Every officer of police so authorized may if necessary obtain assistance and use force by breaking open doors or otherwise for making such entry.

SCHEDULE 2—continued

(3) Every special warrant shall be in the form contained in the Second Schedule hereto or to the like effect.

Deputy Commissioner of Police may authorize entry of premises

16. The Deputy Commissioner of Police may upon receiving a report in writing from any Superintendent or Inspector of Police that there are good grounds for believing and that he does believe any house office room or place to be kept or used as a betting-house contrary to this Part authorize by order in writing such Superintendent or Inspector with such officers of police as he directs to enter such house office room or place and to take into custody all persons and seize all lists cards or documents relating to racing or betting found in such house or premises.

The Deputy Commissioner of Police may by such order authorize such Superintendent or Inspector if necessary to use force for the purpose of effecting an entry whether by breaking open doors or otherwise.

Prohibition of betting-houses

17. (1) No house office room or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management, or in any manner conducting the business thereof, betting with persons resorting thereto.

In this sub-section “resorting thereto” includes applying by the agency of another person by letter, by telegram or telephone, or by any other means of correspondence or communication.

(2) Every house office room or other place opened kept or used for any of the purposes mentioned in this section is hereby declared to be a common nuisance.

(3) A house, office, room, or other place shall be deemed not to be opened, kept or used for a purpose mentioned in section 17 if it is opened, kept or used for the purpose of determining, negotiating, accepting, distributing or settling bets made through the Australian Capital Territory Totalizator Agency Board under the *Betting (Off-course Totalizator Agency) Ordinance 1964* or for determining, negotiating, receiving, paying or settling entries or stakes in a pool betting competition or transaction within a pool betting scheme approved under the *Pool Betting Ordinance 1964*.

SCHEDULE 2—continued

Penalties

17A. (1) A person who is guilty of an offence against this Part is liable upon conviction—

- (a) for a first offence—to a fine of not less than \$200 or more than \$400, or to imprisonment for not more than 3 months;
- (b) for a second offence—to a fine of not less than \$400 or more than \$1,000, or to imprisonment for not more than 3 months; and
- (c) for a subsequent offence—to imprisonment for not less than 3 months or more than 6 months.

(2) For the purposes of the application of paragraphs (a), (b) and (c) of the last preceding sub-section, all offences committed by a person on the one day shall be deemed to be the one offence, but separate penalties may be imposed in respect of each of those offences in accordance with whichever of those paragraphs is applicable.

Betting-houses deemed gaming-houses under Part II

18. Every house room office or place opened kept or used for any of the purposes mentioned in section 17 shall be deemed and taken to be a common gaming-house within the meaning of Part II and the owner and keeper thereof and all persons found therein shall be liable to all the provisions of the said Part.

Penalty for keeping betting-house

19. (1) Whosoever opens keeps or use any house office room or other place for any of the purposes mentioned in section 17 or knowingly and wilfully permits the same to be opened kept or used by any other person for any such purposes, or has the care or management of, or in any manner assists in conducting the business of, any such house, office, room or place opened kept or used for any of such purposes, shall be guilty of an offence against this Part.

(2) Every person found in such house office room or place without lawful excuse shall be guilty of an offence against this Part.

(3) All moneys coin notes cheques I.O.U.s or other writings for securing the payment of money and all lists cards or other documents relating to racing or betting found in such house room office or place may on conviction of any offender under the provisions of this section be adjudged to be forfeited or destroyed.

SCHEDULE 2—continued**Penalty for receiving money as deposit for a bet**

20. Whosoever being the owner or occupier of any house office room or place opened kept or used for any of the purposes mentioned in section 17 or a person acting for him or on his behalf or as his manager or assistant—

- (a) receives directly or indirectly any money or valuable thing—
 - (i) as a deposit on any bet on condition of paying any sum of money or valuable thing on the happening of any event or contingency of or relating to a horse-race or other race or fight game sport or exercise; or
 - (ii) as or for the consideration for any assurance undertaking promise or agreement express or implied to pay or give thereafter any money or valuable thing on any such event or contingency; or
- (b) gives any acknowledgment note security or draft on the receipt of any money or valuable thing paid or given as aforesaid purporting or intended to entitle the bearer or any other person to receive any money or valuable thing on the happening of any such event or contingency,

shall be guilty of an offence against this Part.

Penalty for exhibiting placards as to betting

21. Whosoever—

- (a) exhibits or publishes or causes to be exhibited or published any placard handbill card writing sign or advertisement—
 - (i) whereby it is made to appear that any house office room or place is opened kept or used for the purpose of making bets or wagers in manner aforesaid or exhibiting lists for betting; or
 - (ii) with intent to induce any persons to resort to such house office room or place for the purpose of making bets or wagers in manner aforesaid; or
- (b) on behalf of the owner or occupier of or person using any such house office room or place invites other persons to resort thereto for the purpose of making bets or wagers in manner aforesaid,

shall be guilty of an offence against this Part.

SCHEDULE 2—continued

Penalty for advertising as to betting

22. Whosoever sends exhibits or publishes or causes to be sent exhibited or published any letter circular telegram placard handbill or advertisement—

- (a) whereby it is made to appear that any person in the Territory or elsewhere will on application give information or advice for the purpose of or with respect to any such bet or wager or any such event or contingency as hereinbefore mentioned or will make on behalf of any other person any such bet or wager as is hereinbefore mentioned;
- (b) with intent to induce any person to apply to any house office room or place or person with a view of obtaining information or advice for the purpose of any such bet or wager or with respect to any such event or contingency as is hereinbefore mentioned; or
- (c) inviting any person to make or take a share in or in connection with any such bet or water,

shall be guilty of an offence against this Part.

Recovery of deposit on bet

23. (1) Any money or valuable thing received by any person mentioned in section 20 as a deposit on any bet as or for the consideration for any such assurance undertaking promise or agreement as is in the said section referred to shall be deemed to have been received to the use of the person from whom it was received.

(2) Such money or valuable thing or the value thereof may be recovered accordingly with costs in any court of competent jurisdiction.

(3) Nothing in this Part contained shall extend to any person receiving or holding any money or valuable thing by way of stakes or deposit to be paid to the winner of any race or lawful sport game or exercise or to the owner of any horse engaged in any race.

Arrest of offender about to abscond

25. Any magistrate may upon its being made to appear to his satisfaction by the oath of the complainant or other credible person that any person charged with the commission of any offence under this Part is about to depart immediately from the Territory and will thereby probably evade punishment issue his warrant for the apprehension of the person so charged for the purpose of his being brought before the Court of Petty Sessions to be dealt with according to law.

SCHEDULE 2—continued**Part IV—General Provisions****Tender of amends**

26. (1) No plaintiff shall recover in an action suit or other proceeding for any irregularity trespass or other wrongful proceeding made or committed in the execution of this Act or in under or by virtue of any authority thereby given if before action or suit brought tender of sufficient amends has been made by or on behalf of the party who committed the irregularity trespass or other wrongful proceeding.

(2) In case no tender has been made the defendant may by leave of the court in which the action suit or proceeding is pending pay into court at any time before issue joined such sum of money as he thinks fit and all proceedings orders and adjudications shall be had and made in and by the court as in other actions where defendants are allowed to pay money into court.

Limitation of actions

27. No action suit information or other proceeding shall be brought against any person for anything done or omitted to be done in pursuance of this Act or in the execution of the authorities thereunder unless—

- (a) notice in writing is given by the party intending to prosecute such action suit information or proceeding to the intended defendant 1 month at least before prosecuting the same; and
- (b) the action suit information or other proceeding is brought or commenced within 3 months next after the act or omission complained of or if there be a continuation of damage then within 3 months next after the doing such damage has ceased.

SCHEDULE 2—continued

SECOND SCHEDULE

SPECIAL WARRANT

In the Court of Petty Sessions at Canberra

To _____, an officer of police

WHEREAS a complaint on oath has this day been made before the undersigned, a magistrate, that there is reason to suspect that (*here describe the house, office, room, premises or place*) is kept or used as a common gaming-house contrary to Part II (*or as a betting-house or office contrary to Part III*) of the Games Wagers and Betting-houses Act 1901 of the State of New South Wales in its application in the Australian Capital Territory:

These are therefore to command you, in Her Majesty's name, to enter the said house (*or as appropriate*) and arrest, search and bring before the Court of Petty Sessions all persons found therein and to seize all tables, instruments of gaming, moneys and securities for money (*or all moneys, coin, notes, cheques, I.O.U.s or other writings for securing the payment of money, and all lists, cards or other documents relating to racing or betting*) found therein.

Given under my hand at Canberra in the said Territory, this _____ day
of _____ 19 _____.

J.S.

Magistrate

Notes

- (a) The Games Wagers and Betting-houses Act 1901, in its application in the Territory, comprises the Games Wagers and Betting-houses Act 1901 as amended before 1 January 1911 by the Gaming and Betting Act 1906, the Gaming and Betting (Amendment) Act 1906 and the Gaming and Betting (Amendment) Act 1907 and as further amended after that date by the following Ordinances:

Gaming and Betting Ordinance 1945

Games, Wagers and Betting-houses Ordinance 1964

Ordinances Revision (Decimal Currency) Ordinance 1966

Games, Wagers and Betting-houses Ordinance 1967

SCHEDULE 2—continued*Games, Wagers and Betting-houses Ordinance 1982**New South Wales Acts Application Ordinance 1984*

The amendments so made have been incorporated in the text of the Games Wagers and Betting-houses Act 1901 in Part 17 of this Schedule.

- (b) Sections 2, 3, 12 and 24 and the First Schedule were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 18
GAMING AND BETTING ACT 1906 No. 13, 1906

An Act for the regulation and suppression of gaming, betting, and wagering; to amend the Games Wagers and Betting-houses Act 1901; to restrict the holdings of race-meetings; for the licensing of racecourses; and for purposes consequent thereon or incidental thereto

Short title

1. This Act may be cited as the Gaming and Betting Act 1906.

Interpretation

2. In this Act, unless the context otherwise requires:

“Bookmaker” includes any person who carries on the business of, or acts as, a bookmaker or turf commission agent or gains, or endeavours to gain, his livelihood wholly or partly by betting or making wagers;

“Ground” means land, including any buildings thereon, and any room to which persons are admitted, either at all times or only at certain times, whether on payment of an entrance fee or charge or otherwise, for the purpose of taking part in or of witnessing any sports;

“Loiter” means to idle or linger about;

“Occupier” of a house, office, room, or other place, or of any land, or building, includes the lessee or sublessee who is not the owner as hereinafter in this section defined.

“Owner” of a house, office, room or other place, or of any land or building, includes every person, company, or corporation who is, whether at law or in equity—

SCHEDULE 2—continued

- (a) entitled to the same for any estate of freehold in possession;
- (b) the lessee of the same under a lease granted under the *Leases Ordinance 1918*, the *City Area Leases Ordinance 1936*, the *Leases (Special Purposes) Ordinance 1925* or the *Church Lands Leases Ordinance 1924*; or
- (c) in actual receipt of, or entitled to receive, or if the house, office, room, place, land, or building were let to a tenant, would be entitled to receive, the rents and profits of the same.

In the case of a house, office, room, place, or building subleased, “owner” includes any lessee or sublessee from whom a sublessee holds.

“Place,” in the expression “house, office, room, or other place,” includes a tent, ship, boat, building, erection, road, street, thoroughfare, alley, right of way (whether public or private), and all land (whether public or private) enclosed or otherwise.

“Principal Act” means Games Wagers and Betting-houses Act 1901.

“Public place” includes—

- (a) every place to which the public are permitted to have access tacitly or otherwise and whether upon payment of money or not;
- (b) any premises in respect of which a licence granted under the *Liquor Ordinance 1975* is in force;
- (c) any shop, any part of a building occupied in connection with, or for the purposes of, a shop;
- (d) any factory and the appurtenances of any factory;
- (e) any building occupied by any club and the appurtenances thereof; and
- (f) any place commonly used by the public, whether as trespassers or otherwise,

but does not include a racecourse at any time during which a race meeting is in progress or would, but for its cancellation or postponement, be in progress, being a race meeting in respect of

SCHEDULE 2—continued

which the Australian Capital Territory Totalizator Agency Board established under the *Betting (Totalizator Agency) Ordinance 1964* is providing, or would, but for such a cancellation or postponement, be providing, off-course totalizator betting facilities, an office or agency of that Board or an office from which a pool betting scheme approved under the *Pool Betting Ordinance 1964* is being carried on;

“Sports” means bicycle races, footraces, horse races, pony races, trotting races, cricket or football matches, swimming carnivals, or any other game, exercise, pastime, or any fight or contest;

“Street” means every public street, thoroughfare, private street or road commonly used by or to which the public are permitted to have access.

When house, &c., taken to be used in contravention of this Act

3. In this Act a house, office, room, or other place is used in contravention of this Act if it or any part of it is used—

- (a) as a common gaming-house, or for playing any unlawful game therein; or
- (b) in any manner prohibited by section 17 of the Principal Act as amended by this Act.

Penalties for offences against the Gaming and Betting Act 1906

3A. (1) A person who is guilty of an offence against this Act for which no other penalty is expressly provided is liable upon conviction—

- (a) for a first offence—to a fine of not less than \$200 or more than \$400, or to imprisonment for not more than 3 months;
- (b) for a second offence—to a fine of not less than \$400 or more than \$1,000, or to imprisonment for not more than 3 months; and
- (c) for a subsequent offence—to imprisonment for not less than 3 months or more than 6 months.

(2) For the purposes of the application of paragraphs (a), (b) and (c) of the last preceding sub-section, all offences committed by a person on the one day shall be deemed to be the one offence, but separate penalties may be imposed in respect of each of those offences in accordance with whichever of those paragraphs is applicable.

SCHEDULE 2—continued

Penalty for use of house in contravention of this Act

4. Every owner and every occupier of any house, office, room, or other place who knowingly allows the same to be used in contravention of this Act shall be guilty of an offence against this Act.

Penalty for use of land for access to house

5. Every owner and every occupier of any land or building who knowingly allows the same to be used as a means of access to or of exit or escape from any house, office, room, or other place used in contravention of this Act shall be guilty of an offence against this Act.

Eviction of occupier of house

6. (1) If—

- (a) any owner of a house, office, room, or other place has reasonable grounds to suspect that the same is used in contravention of this Act; or
- (b) any owner of any land or building has reasonable ground to suspect that the same is used as a means of access to, or of exit or escape from, any house, office, room, or other place used in contravention of this Act,

he may serve on the occupier a notice to quit.

The serving of such notice shall determine as from the tenth day after the date of such service any tenancy under which the occupier may hold as if the same had expired by effluxion of time. The owner may thereupon, without any authority other than this Act, take legal proceedings to evict, and may evict, such occupier.

(2) Such notice shall be served personally on the occupier, but, if he cannot be found, service may be effected by posting a copy of the notice on some conspicuous part of the said house, office, room, place, land, or building.

Cancellation of notice to quit

7. Any such notice to quit may be cancelled by a judge of the Supreme Court subject to such terms as he thinks fit, on summons taken out by the occupier, on proof that the occupier has not at any time:

- (a) knowingly allowed the house, office, room, or place to be used in contravention of this Act; or

SCHEDULE 2—continued

- (b) knowingly allowed the land or building to be used as a means of access to or of exit or escape from any house, office, room, or other place used in contravention of this Act.

Such summons shall be served on the owner 2 days at least before the hearing of such summons, and on being so served shall operate until the determination of the summons as a stay of any proceedings under the last preceding section to evict the occupier.

Declaration of common gaming-house

8. On the affidavit of a superintendent, inspector, or sub-inspector of police, showing reasonable grounds for suspecting that any house, office, room, or other place is used in contravention of this Act, any judge of the Supreme Court may declare such house, office, room, or place to be a common gaming-house. Such declaration shall be in force until rescinded.

Rescission of declaration

9. Any such declaration may be rescinded by a judge of the Supreme Court, subject to such terms as he thinks fit, on application being made to him:

- (a) by the owner or occupier of the house, office, room, or place, the subject of the declaration, on proof that he has not at any time allowed the house, office, room, or place to be used in contravention of this Act; or
- (b) by a superintendent, inspector, or sub-inspector of police, on proof that the house, office, room, or place is not used in contravention of this Act.

Where the application is made by the owner or occupier as aforesaid, notice in writing of intention to make the same shall be served on a superintendent, inspector, or sub-inspector of police 2 days at least before the hearing of such application.

Publication of notice of declaration or rescission

10. Notice of any such declaration and of any rescission of the same shall be published in the *Commonwealth of Australian Gazette*.

In any proceedings under this Act, the production of a copy of the *Commonwealth of Australia Gazette* containing such notice shall be evidence that the declaration or rescission therein notified was duly made.

SCHEDULE 2—continued

Service of notice of declaration

11. (1) The Deputy Commissioner of Police or a superintendent, inspector, or sub-inspector of police, on such declaration being made with respect to any house, office, room, or place:

- (a) shall cause to be published on 2 days in a newspaper circulating in the neighbourhood of the house, office, room, or place, a notice of the making of such declaration; and
- (b) shall cause such notice to be served on the owner and occupier of the house, office, room, or place. Such service shall be personal, except when it cannot be promptly effected, in which case the notice may be served on the owner and occupier aforesaid by causing a copy thereof to be affixed at or near the entrance to the house, office, room, or place.

(2) In any proceedings under this Act, the production of a copy of a newspaper containing any such notice shall be evidence that such notice was duly published in such newspaper on the date appearing thereon.

Arrest of person found in common gaming-house

12. If, after publication, in pursuance of paragraph (a) of the last preceding section, of notice of the making of such declaration with respect to a house, office, room, or place, and during the time that such declaration is in force, any person is found:

- (a) in, or on, or entering, or leaving such house, office, room, or place; or
- (b) in, or on, or entering, or leaving any land or building used as a means of access to or of exit or escape from the same,

any member of the police force may, without warrant, arrest such person and take him before the Court of Petty Sessions.

Such person, unless he proves that he was in , or on, or entering, or leaving as aforesaid for a lawful purpose, shall be guilty of an offence under this Act.

The form of information for such offence may be in the Form A or B in the Schedule, or to a like effect.

Owner of declared premises to take steps to evict occupier

13. If after service on an owner in pursuance of paragraph (b) of section 11 of notice of the making of such declaration with respect to a house, office, room, or place, and during the time that such declaration is in force, such house,

SCHEDULE 2—continued

office, room, or place is used in contravention of this Act, such owner shall, unless he proves that he has taken all reasonable steps to evict the occupier from the same, be guilty of an offence against this Act.

Penalty on occupier of declared premises

14. If after service on an occupier in pursuance of paragraph (b) of section 11 of notice of the making of a declaration with respect to a house, office, room, or place, and during the time that such declaration is in force such house, office, room, or place is used in contravention of this Act, the said occupier shall be guilty of an offence against this Act unless he proves that he has taken reasonable steps to prevent such use.

Power of police to enter declared premises

15. While any such declaration is in force with respect to any house, office, room, or place, any member of the police force may, without warrant:

- (a) enter the said house, office, room, or place;
- (b) enter any land or building which he has reasonable grounds to suspect is used as a means of access to or of exit or escape from the same;
- (c) pass through, from, over, and along any other land or building for the purpose of entering in pursuance of paragraph (a) or paragraph (b) aforesaid;
- (d) for any of the purposes aforesaid, break open doors, windows, and partitions, and do such other acts as may be necessary;
- (e) seize any instruments of gaming and any instruments of betting and documents relating to betting, and any money and securities for money in any such house, office, room, or place.

Obstruction of police

16. Any person who wilfully obstructs or aids in obstructing, or solicits any other person to obstruct or aid in obstructing a member of the police force in the exercise of any power conferred on him by any preceding section of this Act shall be liable to a penalty not exceeding \$50.

Evidence of use of premises as common gaming-house

17. Where—

- (a) any member of the police force authorized under the Principal Act or this Act to enter any house, office, room, or place is wilfully

SCHEDULE 2—continued

prevented from or is obstructed or delayed in entering the same or any part thereof;

- (b) any external or internal door or means of access to any such house, office, room, or place so authorized to be entered is found to be fitted or provided with any bolt, bar, chain, or any means or contrivance for the purposes of preventing, delaying, or obstructing the entry into the same or any part, of any member of the police force authorized as aforesaid, or for giving an alarm in case of such entry; or
- (c) such house, office, room, or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means or contrivance for concealing, removing, or destroying any instruments of gaming,

it shall be evidence, until the contrary is made to appear, that such house, office, room, or place is used as a common gaming-house, and that the persons found therein were playing an unlawful game therein.

Street betting

18. (1) Every person who frequents, uses, or is in any street or public place for the purpose of any money or valuable thing being received by or promised to such person or on his behalf—

- (a) as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any sports; or
- (b) as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and

every bookmaker who, either by himself or by means of any agent, clerk, or servant makes any bet in or on any street or public place, and every such agent, clerk, or servant who so makes any bet shall be guilty of an offence against this Act.

The form of information for an offence against this section shall be in the Form C or D in the Schedule, or to the like effect.

- (2) A person who:
 - (a) is in or upon a street or public place for the purpose of betting;

SCHEDULE 2—continued

- (b) bets or offers to bet, by way of wagering or gaming, in a street or public place; or
- (c) gets up or takes part in a sweepstake in a street or public place,

is guilty of an offence against this Act.

(4) For the purposes of this section, but without limiting the generality of the term, “betting” includes the negotiation of bets, the receipt or payment of moneys in connection with bets and the settling of bets, other than bets lawfully made on a licensed racecourse.

Recovery of money received illegally

19. Any money or valuable thing received by any bookmaker, or any such agent, clerk, or servant, or any person as aforesaid:

- (a) as or for the consideration for any such assurance, undertaking, promise, or agreement, made in any street; or
- (b) as a deposit on any bet made in any street,

shall be deemed to have been received to or for the use of the person from whom the same was received; and such money or valuable thing, or the value thereof, may be recovered accordingly, with costs, in any court of competent jurisdiction.

Prohibition of loitering

19A. (1) A person standing in any street shall not refuse or neglect to move on when requested by a member of the Police Force so to do.

(2) A person loitering in any street or public place shall, on request by a member of the Police Force to cease loitering, cease so to loiter.

Penalty: \$40.

Betting information

19B. (1) A person shall not print, exhibit, publish, sell, circulate, distribute, give away or post up or cause to be printed, exhibited, published, sold, circulated, distributed, given away or posted up, any newspaper or printed card or written document, list or card (whether published, written or printed in the Territory or elsewhere), which contains or purports to contain any advertisement or notification by or on behalf of any person, club or association, as to betting on any intended horse, pony, trotting race or races, coursing event

SCHEDULE 2—continued

or other sport or exercise whatever, or as to betting odds on any such race or races.

- (2) The last preceding sub-section does not apply in relation to:
- (a) an advertisement or notification as to betting in a pool betting competition or transaction within a pool betting scheme approved under the *Pool Betting Ordinance 1964*;
 - (b) a determination of the Australian Capital Territory Totalizator Agency Board under the *Betting (Totalizator Agency) Ordinance 1964*; or
 - (c) a newspaper that contains an advertisement or notification as to the betting or betting odds on any intended race or contest to be held at a race-meeting if the advertisement or notification:
 - (i) is contained in an edition of the newspaper that is printed or in respect of which printing has commenced before 11 o'clock in the morning of the day of the race-meeting or not less than 2 hours before the advertised starting time of the first race or contest to be held at the race-meeting, whichever is the later; and
 - (ii) is identical in all copies of that edition of the newspaper.

(3) In this section:

“betting” and “betting odds” include totalizator dividends and probable totalizator dividends; and

“race-meeting” means horse, pony, trotting race or races, coursing event or other sport or exercise.

Averment as to races, &c.

19C. The allegations in any information laid in respect of any alleged offence against this Act that any horse race, cycle race or foot race or coursing event (as the case may be) mentioned in the information was run at a place and on a date therein specified and that any horse or horses, dog or dogs, or person or persons named in the information took part in any race or coursing event therein mentioned shall be accepted by the court hearing the information as evidence of the truth of the allegations unless the contrary is proved.

SCHEDULE 2—continued**Prohibition of betting on sports grounds**

20. Betting or wagering on any ground, not being a racecourse licenced under the *Racecourses Ordinance 1935* or coursing ground approved by the Minister on which any sports are being held is prohibited. Any person acting in contravention of this section may be dealt with under section 21, and in lieu thereof, or in addition thereto, shall be guilty of an offence against this Act.

Removal of offender

21. Any person who acts in contravention of the last preceding section, and who, after being warned by any officer or servant of the person or persons who have control of the ground, or by any member of the police force, to desist from so acting, does not so desist, may be forthwith removed from such ground or its proximity by any such officer or servant, or by any member of the police force.

Person removed from land not to re-enter

22. Any person so removed shall not on the day of such removal re-enter such ground, and if he does so re-enter, he may be again removed as aforesaid, or he may, without warrant, be arrested by any such officer, servant, or member and taken before the Court of Petty Sessions and shall be liable to a penalty not exceeding \$100.

Prohibition of betting with infants

23. Any person who:

- (a) makes or offers to make any bet or wager with any person whom he knows to be under the age of 18 years, or with any person on his behalf; or
- (b) for the purpose of earning any commission, reward, profit, benefit, or advantage, sends or causes to be sent to any person whom he knows to be under such age any circular, notice, advertisement, letter, telegram, or other document which invites or may reasonably be implied to invite the person receiving it to make any bet or wager, or to enter into or take any share or interest in any betting or wagering transactions, or to apply to any person or at any place with a view to obtaining information or advice for the purpose of any bet or wager, or for information as to any race, game, sport, or other contingency upon which betting or wagering is generally carried on,

shall be guilty of an offence against this Act.

SCHEDULE 2—continued

FORM B

THAT on the _____ day of _____, at _____

A.B. was found in (*or on or entering or leaving*) land (*or a building*) used as a means of access to (*or of exit or escape from*) a house (*or office or room or place*) which had been duly declared to be a common gaming house.

FORM C

THAT on the _____ day of _____, at _____

A.B. frequented, used, or was in a street for the purpose of betting.

FORM D

THAT on the _____ day of _____, at _____

A.B. being [a bookmaker, *or the agent, clerk, or servant of a bookmaker*] made a bet in a street.

Notes

- (a) The Gaming and Betting Act 1906, in its application in the Territory, comprises the Gaming and Betting Act 1906 as amended before 1 January 1911 by the Gaming and Betting (Amendment) Act, 1906 and the Gaming and Betting (Amendment) Act, 1907 and as amended after that date by the following ordinances of the Territory:

Racecourses Ordinance 1935

Gaming and Betting Ordinance 1945

Racecourses Ordinance 1946

Gaming and Betting Ordinance 1964

Gaming and Betting Ordinance 1967

Gaming and Betting Ordinance 1968

Gaming and Betting (Amendment) Ordinance 1982

New South Wales Acts Application Ordinance 1984

The amendments so made have been incorporated in the text of the Gaming and Betting Act 1906 in Part 18 of this Schedule.

SCHEDULE 2—continued

- (b) The text of the Gaming and Betting (Amendment) Act, 1906 and the Gaming and Betting Amendment) Act, 1907 are not printed in this Ordinance as the only provisions operating in the Territory are the provisions which amend the Gaming and Betting Act 1906 and these amendments have been incorporated in the text of that Act in Part 18 of this Schedule.
- (c) Sub-section 18 (3) was repealed by the *Gaming and Betting Ordinance 1964*.
- (d) Sections 28, 29 and 30 are repealed by the *Racecourses Ordinance 1935*.
- (e) Sections 31 and 32 amend the Games Wagers and Betting-houses Act 1901 and, as the amendments have been incorporated in the text of that Act in Part 17 of this Schedule, the sections have been omitted from the text of the Gaming and Betting Act 1906 in Part 18 of this Schedule.
- (f) Sections 33 and 34 were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 19

INNKEEPERS' LIABILITY ACT 1902 No. 64, 1902

An Act to consolidate enactments respecting the liability of innkeepers

Short title

1. This Act may be cited as the Innkeepers' Liability Act 1902.

Interpretation

3. In the interpretation of this Act, the word “inn” means any hotel, inn, tavern, public-house, or other place of refreshment the keeper of which is now by law responsible for the goods and property of his guest or lodger; and the word “innkeeper” means the keeper of any such place.

No innkeeper liable for loss exceeding \$40

4. No innkeeper shall be liable to make good to any guest or lodger of such innkeeper any loss of or injury to goods or property brought to his inn, not being a horse or other live animal or any gear appertaining thereto or any carriage, to a greater amount than the sum of \$40, except in the following cases:

SCHEDULE 2—continued

- (a) where such goods or property have been stolen, lost, or injured through the act, default, or neglect of such innkeeper or any servant in his employ; or
- (b) when such goods or property have been deposited expressly for safe custody with such innkeeper:

Provided always that in the case of such deposit such innkeeper if he thinks fit may require as a condition to his liability that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same.

Receipt of property for safe custody

5. If any innkeeper refuses to receive for safe custody, as before mentioned, any goods or property of his guests or lodger, or if any such guest or lodger, through any default of such innkeeper, is unable to deposit such goods or property as aforesaid, such innkeeper shall not be entitled to the benefit of this Act in respect of such goods or property.

Notice to be exhibited

6. Every innkeeper shall cause at least one copy of the fourth section of this Act, printed in plain type, to be exhibited in a conspicuous part of the hall or entrance to his inn, and also in each bedroom therein, and he shall be entitled to the benefit of this Act in respect of such goods or property only as shall be brought to his inn while such copy is so exhibited.

Notes

- (a) The Innkeepers' Liability Act 1902, in its application in the Territory, comprises the Innkeepers' Liability Act 1902, as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Innkeepers' Liability Act 1902 in Part 19 of this Schedule.
- (b) Section 2 was repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 20
JUDGMENT CREDITORS' REMEDIES ACT 1901 No. 8, 1901

SCHEDULE 2—continued

An Act to consolidate the enactments relating to the remedies of judgment creditors

Part I—Preliminary

Short title

1. This Act may be cited as the Judgment Creditors' Remedies Act 1901.

Part IV—Execution Against the Person

Limitation of arrest under *ca. sa.*

19. Except as hereinafter provided, no person shall be arrested on any writ of *Capias ad satisfaciendum* issuing out of the Supreme Court.

Fraudulent concealment or intended departure

20. If the Judge of the Supreme Court is satisfied by affidavit that the defendant—

- (a) has fraudulently concealed money, goods or valuable securities from his judgment creditor; or
- (b) is about to leave the Territory either permanently or for an indefinite period, without satisfying the judgment,

the Judge may order a writ of *capias ad satisfaciendum* to issue, and the defendant may be arrested on the writ.

Actions for malicious injuries

21. Nothing in this Part hereinbefore contained shall extend to any such writ issued in an action for breach of promise of marriage, libel, slander, seduction, or any malicious injury.

***Ca. sa.* to fix bail**

22. Where a defendant has been arrested or has given bail upon a writ of *capias ad respondendum*, a writ of *capias ad satisfaciendum* may be issued to fix the bail or charge the defendant in execution as of course.

Liability for escape

23. If any debtor in execution escapes out of legal custody, the sheriff, bailiff, or other person having the custody of such debtor shall be liable only to an action upon the case for damages sustained by the person at whose suit such

SCHEDULE 2—continued

debtor was taken or imprisoned, and shall not be liable to any action of debt in consequence of such escape.

Discharge of judgment debtor on authority of attorney

24. (1) A written order under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* has been issued shall justify the sheriff, gaoler, or person in whose custody the party may be in discharging such party unless the party for whom such attorney professes to act has given written notice to the contrary to such sheriff, gaoler, or person.

(2) Such discharge shall not be a satisfaction of the debt unless made by the authority of the creditor.

(3) Nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

Ca. sa. may be executed on Sunday

26. Any writ of *capias ad satisfaciendum* issued out of the Supreme Court may be lawfully executed upon Sunday.

Notes

- (a) The Judgment Creditor's Remedies Act 1901, in its application in the Territory, comprises the Judgment Creditors' Remedies Act 1901 as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Judgment Creditors' Remedies Act 1901 in Part 20 of this Schedule.
- (b) Section 2 and the Schedule, Part II (comprising section 3), Part III (comprising sections 4 to 18), section 25 and Part V (comprising sections 27 to 33) were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 21**LANDLORD AND TENANT ACT 1899** No. 18, 1899

An Act to consolidate the Statutes relating to the law of landlord and tenant

SCHEDULE 2—continued

Short title

1. This Act shall be called the Landlord and Tenant Act 1899.

Part I—Facilitation of Leases

Short forms

3. Whenever any party to any deed made according to the tenor and effect of the form set forth in Schedule B, or whenever any party to any other deed which is expressed to be made in pursuance of this Act, employs in such deed respectively any of the forms of words contained in column 1 of Schedule C, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same Schedule, and distinguished by the same number as is annexed to the form of words employed by such party, but it shall not be necessary in any such deed to insert any such number.

Deed to include buildings, &c.

4. Every such deed, unless exception be specially made therein, shall be held and construed to include all outhouses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, watercourses, liberties, privileges, easements, profits, commodities emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised, belonging, or in anywise appertaining.

Fee for preparing deed not to be fixed by length only

5. In taxing any bill for preparing and executing any deed under this Part, or which might be prepared under this Part, the taxing officer of the Supreme Court, in estimating the proper sum to be charged for such transaction, shall consider not the length of such deed, but only the skill and labour employed and responsibility incurred in the preparation thereof.

Saving of certain deeds

6. Any deed, or part of a deed, which fails to take effect by virtue of this Part shall nevertheless be as valid and effectual, and shall bind the parties thereto so far as the rules of law and equity permit, as if this Act had not been made.

Part II—Tenements recovery by ejectment in Supreme Court

SCHEDULE 2—continued**Tenants to give notice of ejectment to landlord**

7. Every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of 3 year's improved or rack rent of the premises demised or held in the possession of the tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Part IV—Tenements recovery in Court of Petty Sessions**Interpretation**

22. In the construction of this Part—

- (a) the word “land” means land, houses, or other corporeal hereditaments;
- (b) the word “agent” means any person usually employed by the landlord in the letting of the land or in the collection of the rents thereof, or specially authorized to act in the particular matter by writing under the hand of such landlord.

Recovery of possession in Court of Petty Sessions

23. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him who is actually occupying such land or any part thereof neglects to quit and deliver up possession of such land or of such part thereof respectively, the landlord of such land or his agent may institute proceedings in the Court of Petty Sessions against the person so neglecting to recover possession of the land.

(2) Where the Court of Petty Sessions makes an order for the recovery of possession of any land, the court may—

- (a) issue a warrant authorizing an officer of police or other person to enter (by force if necessary) into the land and give possession thereof to the landlord or his agent; and
- (b) postpone the issue of such a warrant, or suspend the execution of such a warrant, for such period as it deems fit.

SCHEDULE 2—continued

Part VI—Restriction of Effect of Waiver and Licence by Lessor

Restriction on effect of licence to alien

57. Where any licence to do any act which without such licence would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease is given to any lessee or his assigns, every such licence shall, unless otherwise expressed, extend only to the permission actually given or to any specific breach of any proviso or covenant made, or to be made, or to the actual assignment under lease or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence), and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition assignment under lease or other matter not specifically authorized or made punishable by such licence in the same manner as if no such licence had been given and the condition or right of re-entry shall be and remain in all respects as if such licence had not been given except in respect of the particular matter authorized to be done.

Operation of partial licences

58. Where in any lease there is a power or condition of re-entry on assigning, or under-letting, or doing any other specified act without licence, and a licence is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or is given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property or to do any other such act as aforesaid in respect of part only of such property, such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property, as the case may be, over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such licence.

Apportionment of benefit of conditions of entry

59. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as

SCHEDULE 2—continued

if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Waiver

60. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor of his heirs, executors, administrators, or assigns is proved to have taken place after the passing of this Act in any one particular instance, such actual waiver shall not be assumed, or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

Application of Part

61. The provisions contained in this Part shall be applicable to leases for a term of years absolute or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons, whether such leases be made before or after the passing of this Act.

SCHEDULE B

Section 3

This indenture made the _____ day of _____ one thousand nine hundred and eighty _____ (*or other year*), in pursuance of the Landlord and Tenant Act 1899, between [*here insert the names of the parties and recitals if any*], witnesseth that the said lessor (*or lessors*) doth (*or do*) demise unto the said lessee (*or lessees*), his (*or their*) heirs or executors, administrators, and assigns, as the case may be, all, &c. (*parcels*) from the _____ day of _____ for the term of _____ thence ensuing, yielding and paying therefor during the said term the rent of [*state the rent and mode of payment*].

In witness whereof the said parties hereto have hereunto set their hands and seals.

SCHEDULE C

Section 3

Directions as to the forms in this Schedule

1. Parties who use any of the forms in the first column in this Schedule may substitute for the words “lessee” or “lessor” any name or names, and in

SCHEDULE 2—continued

every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in the first column in this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may fill up the blank spaces left in the forms 4 and 5 in the first column of this Schedule so employed by them with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.

4. Such parties may introduce into or annex to any of the forms in the first column any express addition to, exceptions from, or express qualifications thereof, respectively, and the like additions, exceptions, or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised are of freehold tenure the covenants 1 to 10 shall be taken to be made with, and the proviso 11 to apply to, the heirs, executors, administrators, and assigns of the lessor, and where the premises demised are of leasehold tenure the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns, unless otherwise stated.

Column 1	Column 2
1. That the said (<i>lessee</i>) covenants with the said (<i>lessor</i>) to pay rent	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he the said lessee, his executors, administrators, and assigns will, during the said term, pay unto the said lessor the rent hereby reserved in manner hereinbefore mentioned without any deduction whatsoever.
2. And to pay taxes	2. And also will pay all taxes, rates, duties, and assessments whatsoever now charged or hereafter to be charged upon the said demised premises or upon the said lessor on account thereof.
3. And to repair	3. And also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises with the appurtenances in good and substantial repair,

SCHEDULE 2—continued

Column 1	Column 2
	together with all chimney-pieces, windows, doors, fastenings, water closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things which, at any time during the said term, shall be erected and made when, where, and so often as need shall be.
4. And to paint outside every [] year	4. And also that the said lessee, his executors, administrators, and assigns will, in every year in the said term, paint all the outside woodwork and ironwork belonging to the said premises with 2 coats of proper oil colours, in a workmanlike manner.
5. And to paint and paper inside every [] year	5. And also that the said lessee, his executors, administrators, and assigns will, in every year, paint the inside wood, iron, and other works now or usually painted with 2 coats of proper oil colours, in a workmanlike manner, and also will repaper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.
6. And to insure from fire in the joint names of the said (<i>lessor</i>) and the said (<i>lessee</i>)	6. And also that the said lessee, his executors, administrators, and assigns will forthwith insure the said premises hereby demised to the full value thereof in some respectable insurance office in the joint names of the said lessor, his executors, administrators, and assigns, and the lessee, his executors, administrators, and assigns, and keep the same so insured during the said term, and will upon the request of the said lessor or his agent show the receipt for the last premium paid for such insurance for every current year, and as often as the said premises hereby demised shall be burnt down or damaged by fire all and every the sum or sums of money which shall be recovered or received by the said lessee, his executors, administrators, or assigns for or in respect of such

SCHEDULE 2—continued

Column 1	Column 2
	insurance, shall be laid out and expended by him in building or repairing the said demised premises or such parts thereof as shall be burnt down or damaged by fire as aforesaid.
7. And the said (<i>lessor</i>) may enter and view state of repair, and that the said (<i>lessee</i>) will repair according to notice	7. And it is hereby agreed that it shall be lawful for the said lessor and his agents at all reasonable times during the said term to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises, and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.
8. That the said (<i>lessee</i>) will not use premises as a shop	8. And also that the said lessee, his executors, administrators, and assigns will not convert, use, or occupy the said premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.
9. And will not assign without leave	9. And also that the said lessee shall not nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises or any of them, to be assigned, transferred, or set over unto any person or persons whomsoever, without the consent in writing of the said lessor his executors, administrators, or assigns first had and obtained.
10. And that he will leave premises in good repair	10. And further that the said lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto

SCHEDULE 2—continued

Column 1	Column 2
	the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects reasonable wear and tear and damage by fire only excepted.
11. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants	11. Provided always and it is expressly agreed that if the rent hereby reserved or any part thereof shall be unpaid for 15 days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to re-enter, and the same to have again repossess and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
12. The said (<i>lessor</i>) covenants with the said (<i>lessee</i>) for quiet enjoyment	12. And the lessor doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

SCHEDULE 2—continued

Notes

- (a) The Landlord and Tenant Act 1899, in its application in the Territory, comprises the Landlord and Tenant Act 1899 as amended by the *Landlord and Tenant Ordinance 1972* and the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Landlord and Tenant Act 1899 in Part 21 of this Schedule.
- (b) Section 2 and Schedule A, Part II (comprising sections 7 to 15), Part III (comprising sections 16 to 21) and sections 24 to 33 and Schedules D to M (inclusive) were repealed by the *New South Wales Acts Application Ordinance 1984*.
- (c) Section 23 was substituted by the *New South Wales Acts Application Ordinance 1984*.
- (d) Part V (comprising sections 34 to 56) was repealed by the *Landlord and Tenant Ordinance 1972*.

PART 22

LIFE, FIRE, AND MARINE INSURANCE ACT 1902 No. 49, 1902

An Act to consolidate the enactments relating to life, fire, and marine insurance

Part I—Preliminary

Short title

1. This Act may be cited as the Life, Fire, and Marine Insurance Act 1902.

Part IV—Fire Insurance Policies Assignment

Assignment of fire policy

14. (1) It shall be lawful to make an assignment of a fire policy by endorsement on such policy with the consent in writing of the company or person issuing the same endorsed on such policy.

(2) Such assignment shall be in the words or to the effect following, namely, “I, A.B., of &c., do hereby assign to C.D. the within policy of insurance on (*here describe property insured, &c.*) In witness whereof, &c.”

SCHEDULE 2—continued**Assignee may sue in own name**

15. Whenever a fire policy has been assigned in such manner and with such consent as aforesaid so as to pass the beneficial interest in such policy to any person entitled to the property thereby insured the assignee of such policy shall be entitled to sue thereon in his own name. The defendant in any action shall be entitled to make any defence which he would have been entitled to make if the said action had been brought before such assignment in the name of the person by whom or on whose account the policy sued upon was effected.

Interpretation

16. For the purposes and in the construction of sections 14 and 15, the expression “fire policy” means any instrument by which the payment of money is assured or secured on the happening of any of the contingencies in the nature of loss or damage to property by fire named in such instrument.

Notes

- (a) The Life, Fire, and Marine Insurance Act 1902, in its application in the Territory, comprises the Life, Fire, and Marine Insurance Act 1902 as affected by section 5 of, and the First Schedule to, the *Marine Insurance Act 1909* of the Commonwealth and as amended by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Life, Fire, and Marine Insurance Act 1902 in Part 22 of this Schedule.
- (b) Section 2 and the Schedule, Part II (comprising sections 3 to 10), Part III (comprising sections 11 to 13) and Part V (comprising section 17) were repealed by the *New South Wales Acts Application Ordinance 1984*.

PART 23**LIMITATION OF ACTIONS FOR TRESPASS ACT 1884** No. 7, 1884

An Act to alter the law respecting remedies for trespass to land

WHEREAS it is desirable to discourage actions between neighbours for trifling and long past trespasses on land the title to which is not in dispute: Be it therefore enacted, as follows:—

SCHEDULE 2—continued

Short title

1. This Act may be cited as the Limitation of Actions for Trespass Act 1884.

Limitation of time for actions if title undisputed

2. In any action to be brought in respect of any trespass to land the plaintiff's title to or possession of which the defendant shall not by his defence have disputed the plaintiff shall not recover any damages for any act of trespass committed more than 12 months before the action shall have been begun. Provided always that nothing hereinbefore contained shall apply to any plaintiff who at the time when such act of trespass was committed was under any legal disability.

Notes

- (a) The Limitation of Actions for Trespass Act 1884, in its application in the Territory, comprises the Limitation of Actions for Trespass Act 1884 as amended before 1 January 1911 by the Common Law Procedure Act, 1899 and as further amended after that date by the *New South Wales Acts Application Ordinance 1984*. The amendments so made have been incorporated in the text of the Limitations of Actions for Trespass Act 1884 in Part 23 of this Schedule.
- (b) Section 4 was repealed by the *New South Wales Acts Application Ordinance 1984*.
- (c) Section 3 was repealed by the Common Law Procedure Act 1899.

NOTE

- 1. Notified in the *Commonwealth of Australia Gazette* on 10 August 1984.