

MORTGAGEES' RIGHTS RESTRICTION.

8° and 9° GEO. VI., No. XXII.

No. 22 of 1944.

AN ACT to amend section seven of the Mortgagees' Rights Restriction Act, 1931.

[Assented to 23rd December, 1944.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Mortgagees' Rights Restriction Act Amendment Act, 1944*, and shall be read as one with the Mortgagees' Rights Restriction Act, 1931 (No. 19 of 1931), hereinafter referred to as the principal Act. Short title.

Amendment
of s. 7 of the
principal Act.

2. Section seven of the principal Act is hereby amended by adding a new subsection at the end thereof as follows:—

(5) Notwithstanding anything in this Act elsewhere contained, and in particular notwithstanding any of the preceding provisions of this section, any mortgagee, upon satisfying the Commissioner of Titles, Perth, by affidavit, to be sworn by such mortgagee (or if the mortgagee is incapable of acting, by any person appointed by the Commissioner for such purpose), setting forth—

- (a) that the mortgagee is not in receipt of a net weekly income from all sources exceeding five pounds per week; and
- (b) that the amount of moneys secured by the mortgage the subject of the application does not exceed one thousand pounds and the total real and personal property of which the mortgagee stands possessed as beneficial owner (inclusive of the amount of moneys secured by the mortgage the subject of the application) does not exceed in all the sum of two thousand five hundred pounds; and
- (c) that under the terms of the mortgage the subject of the application the date fixed therein for repayment of the principal moneys secured by such mortgage has passed, or the principal moneys are payable on demand; and
- (d) that where the mortgagee is a transferee from the original mortgagee such transfer is *bona fide* and has not been entered into or arranged solely or mainly for the purpose of enabling the transferee to take advantage of the provisions of this subsection,

shall be entitled to an order which the said Commissioner is hereby authorised to issue, granting leave to exercise all or any of the powers in this section hereinbefore mentioned, at any time after seven days' notice of such order has been served personally on the mortgagor or his executor or adminis-

trator. If the Commissioner is satisfied that personal service cannot be effected, he may make such order for substituted service as he may deem fit.

If in respect of any mortgage there are two or more mortgagees and any one of them is able to satisfy the Commissioner in the manner and as to the matters aforesaid the Commissioner shall, provided the other mortgagee or mortgagees consent thereto, make an order as hereinbefore mentioned which order shall enure for the benefit of both or all of the mortgagees.

Before issuing an order the Commissioner may cause a copy of the affidavit filed by or on behalf of the mortgagee to be served on the mortgagor or mortgagors together with a notice giving the mortgagor seven days within which to reply by affidavit to all or any of the statements made by or on behalf of the mortgagee.

An application may be made to the Commissioner under the provisions of this subsection, notwithstanding the fact that the mortgagee may have made an application previously to the Supreme Court under this Act which application was refused.

No fees shall be chargeable on the filing of any affidavit or making any application for an order or on the issue of the said order.