

Hon. Mr. MacGregor.

COMPANIES.

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A BILL INTITULED

AN ACT to amend "The Companies Act, 1882."

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Companies Act, 1899;" and it shall be read and construed as part of "The Companies Act, 1882."

Short Title.

16. 1A. In this Act,—

Interpretation.

10 "Mortgage" includes assignment, mortgage, charge, lien, or encumbrance;

"Mortgaged" includes assigned, mortgaged, or charged, or made subject to any lien or encumbrance; and

15 "Mortgagee" includes assignee, mortgagee, lienee, and the person entitled to the benefit of any charge or encumbrance.

CONTRACTS RELATING TO PAID-UP SHARES.

20 2. (1.) Whenever before or after the commencement of this Act any shares in the capital of any company under "The Companies Act, 1882," credited as fully or partly paid-up, shall have been or may be issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar of Joint-stock Companies, in compliance with section thirty-four of "The Companies Act, 1882," the company or any person interested in such shares, or any of them, may apply to

Court empowered to grant relief for non-compliance with "The Companies Act, 1882," section 34.

the Court for relief, and the Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period, it shall, in relation to such shares, operate as if it had been duly filed with the Registrar aforesaid before the issue of such shares. 5

New Sub-clause.

(1A.) Where before or after this Act comes into operation there was or shall be a contract to issue shares in the capital of any company under "The Companies Act, 1882," as fully or partly paid up for a consideration other than cash, but such contract is not in writing, then the company or person interested in such shares, or any of them may, either before or after such shares shall have been issued, apply to the Court for leave to file with the Registrar, instead of a contract, a memorandum in writing in such form as the Court shall approve, setting forth the terms of such contract and the consideration therefor; and the Court may, if satisfied that it is just and equitable to grant relief, make an order allowing such memorandum to be filed, and directing that on the filing of the same within a specified time such memorandum shall in relation to such shares operate as a binding contract, and as if a contract in writing had been duly filed with the Registrar at or before the issue of such shares. The same stamp duty shall be payable on the memorandum as would be payable on the contract if in writing. 10 15 20 25

(2.) Any such application may be made in the manner in which an application to rectify the register of members may be made under section forty-five of "The Companies Act, 1882," and either before or after an order has been made or an effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent upon the omission aforesaid, and any such application shall, if not made by the company, be served on the company. 30 35

(3.) Any such order may be made on such terms and conditions as the Court may think fit, and the Court may make such order as to the rectification of the register of members and otherwise and as to costs as it may deem proper, and may direct that an office copy of the order shall be filed with the Registrar of Joint-stock Companies, and the order shall in all respects have full effect. 40

(4.) When the Court in any case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may, in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that, on such memorandum being filed within a specified period, it shall, in relation to such shares, operate as if it were a sufficient contract in writing within the meaning of section thirty-four of "The Companies Act, 1882," and had been duly filed with the Registrar of Joint-stock Companies before the issue of such shares. The memorandum shall, before the filing thereof, be stamped with the 45 50

same amount of stamp-duty as would be chargeable upon the requisite contract, unless the contract has been produced to the Registrar duly stamped, or unless the Registrar is otherwise satisfied that the contract was duly stamped.

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New Sub-clause.

(5.) Upon any such application as is mentioned in this section, and without the necessity of instituting an action or taking any other proceeding, the Court may, if it think fit, ascertain and determine whether a contract was intended to be effected whereby fully or partly paid-up shares were to be issued; and may, if it thinks it just and equitable so to do, give effect to such intended contract under the provisions of this section as if such contract had actually been entered into in writing.

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3. The jurisdiction by this Act given to the Court is *shall* not by implication to curtail or derogate from the jurisdiction to grant relief in any such case under section forty-five of "The Companies Act, 1882," or otherwise.

Jurisdiction cumulative.

MORTGAGES BY COMPANIES.

4. Every mortgage created by a company after the passing of this Act, and being—

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Registration of mortgages and charges.

(1.) A mortgage of uncalled or unpaid capital of the company; or

(2.) A mortgage for the purpose of securing any issue of debentures; or

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(3.) A floating mortgage on the undertaking or property of the company, not being a mortgage subject to any other part of this subsection, and not being a lien by law or by a mortgage created in the ordinary course of business,

shall be subject to the following provisions of this Act:—

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5. No such mortgage shall be operative or have any validity at law or in equity unless the same be in writing, and unless the same be registered in the office of the Registrar by lodging in such office the mortgage, or a copy thereof, *such copy to be accompanied by an affidavit of the execution of the mortgage, and, in the case of a copy, also verifying it as a true copy of such mortgage.* Such mortgage or copy shall be lodged within twenty-one days after the date of the creation of such mortgage. For such registration there shall be paid to the Registrar a fee of five shillings.

Mortgages to be registered within twenty-one days.

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Struck out.

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6. No mortgage created by a company of its uncalled or unpaid capital shall be operative or have any validity at law or in equity, unless previously authorised by a special resolution of such company.

Mortgages to be created only pursuant to a special resolution.

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7. 6. It shall be the duty of the manager and secretary of a company to cause to be registered every mortgage created by such company and ~~requiring~~ *required* to be registered under this section ~~Act~~, and for that purpose to supply the Registrar with the required particulars; but any such mortgage may be registered on the application of any person interested therein.

Duty of manager and secretary to register mortgages.

Register to be kept, and to be open to inspection, &c.

8. 7. The Registrar shall cause a register-book to be kept, wherein every *such* mortgage created by a company shall be entered, and such register and the documents therein entered shall be open to the inspection of all persons, on payment of a fee of one shilling. The Registrar shall keep an index of such register in such manner and form as may be prescribed. 5

Mode of registering certain debenture charges.

9. 8. Where a series of debentures containing or constituting any mortgage, to the benefit of which the debenture-holders of that series are entitled *pari passu*, is created by a company, it shall be sufficient to enter on the register— 10

- (1.) The total amount secured by the whole series ; and
- (2.) The dates of the resolutions creating the series and of the covering deed (if any) by which the security is created or defined ; and
- (3.) A general description of the property mortgaged : 15
- (4.) The names of the trustees (if any) for the debenture-holders.

Where more than one series of debentures.

10. 9. Where more than one issue is made of debentures in the same series, the company may require the Registrar to enter on the register the date and amount of any particular issue, but an omission to do this shall not affect the validity of the debentures issued. 20

Registration not rendered invalid by unimportant accidental omissions.

11. 10. The registration of a mortgage, in pursuance of this section *Act*, shall not be invalid merely by reason of any accidental or inadvertent omission or misstatement in the copy lodged as aforesaid, provided that the same substantially discloses the nature of the security, and that such omissions or misstatements are not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage. 25

Rectification of accidental omission or misstatement.

12. 11. A Judge of the Supreme Court, on being satisfied that the omission to register any mortgage, or the omission or misstatement of any particular with respect to any such mortgage, was accidental or due to inadvertence, and that such omission was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, may, on the application of any person interested, and on such terms and conditions as seem to him just and expedient, order that such omission or misstatement be rectified. 30 35

Penalties.

13. 12. If any director, manager, or secretary of a company makes default in complying with the requirements of this Act as to the registration of any mortgage created by such company, he shall, without prejudice to any other liability, be liable on summary conviction to a penalty not exceeding *fifty* pounds. 40

Entry of satisfaction.

14. 13. A Judge of the Supreme Court may, on evidence being given to his satisfaction that the debt, demand, claim, or liability for which any registered mortgage was given, has been paid or satisfied, order that a memorandum of satisfaction be entered on the register. 45

Struck out.

Effect of subsequent mortgages in certain cases.

15. Where a mortgage requiring registration under this section is created within or on the expiration of thirty days after the creation of a prior registered mortgage, and comprises all, or any part, of the property comprised in the prior mortgage, and the sub- 50

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sequent mortgage is given as a security for the same debt as is secured by the prior mortgage, or for any part of such debt, then to the extent to which such subsequent mortgage is a security for the same debt or part thereof, and so far as respects the property comprised in the prior mortgage, such subsequent mortgage shall not be operative, or have any validity in law or in equity, unless it is proved to the satisfaction of the Court having cognisance of the matter, that the subsequent mortgage was given in good faith for the purpose of correcting some error in the prior mortgage and not for the purpose of evading this section.

By Authority : JOHN MACKAY, Government Printer, Wellington.—1899.