

BILL NO. 22 OF 1925.

A BILL TO AMEND THE LAND TITLES ACT.

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NOTE.

Many Acts, both of the Dominion and of the Province, provide that when certain things happen, *e.g.*, bankruptcy and expropriation, certain lands shall vest in some person, but no express authority is contained in The Land Titles Act enabling the Registrar to give effect to such vesting by making the proper changes in the Register. Section 2 of the Bill is intended to remedy this defect.

When the owner of mortgaged land transfers it to another, the new owner is deemed to covenant with both the mortgagee and the old owner that he will pay the mortgage debt.

In cases where the new owner buys the land for a less price owing to the existence of a mortgage, it is clearly equitable that he should be the person to discharge the mortgage debt, but there are many circumstances under which the old law, taken in its literal meaning, would impose a great hardship. Accordingly, decisions of the Court are to the effect that the covenant is not implied when the transfer was taken as security for a contemplated advance, no part of which was actually made; nor where the new owner was merely a trustee of the land without any real interest in it; nor where there is an express agreement between the old owner and the new that the latter was not to assume the mortgage debt.

Sections 3 and 4 of the Bill seek to embody the principle that covenants are not to be implied where the circumstances show that it was not intended that they should be implied.

Section 3 of the Bill extends this principle to the case of implied covenants other than implied covenants on the part of a new owner of mortgaged land, such as implied covenants in leases, etc.

Leases, etc., are often made by persons who are ignorant of the effect of these implied covenants, and under circumstances under which it is certain that they would have negatived such covenants had they only known of their existence.

WALTER S. SCOTT,  
*Legislative Counsel.*

*(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)*

# BILL

No. 22 of 1925.

An Act to amend The Land Titles Act.

(Assented to \_\_\_\_\_, 1925.)

**HIS MAJESTY**, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

**1.** This Act may be cited as "*The Land Titles Act Amendment Act, 1925.*"

**2.** *The Land Titles Act*, being chapter 133 of the Revised Statutes of Alberta, 1922, is amended by adding as section 32a immediately after section 32 thereof, the following:

"**32a.** Whenever by virtue of any statutory proceedings, any land or interest therein, belonging to any person, has become vested in any other person, and no other express authority exists for making the necessary entries, cancellations, or issues of new instruments, the Registrar shall make such entries, cancellations and issues of new instruments as he would have made if there had been a transfer of such land or interest from such first mentioned person to such other person."

**3.** Section 54 of the said Act is amended by adding at the end of subsection (1) thereof the following words: "but the covenant hereinbefore implied on the part of the transferee with the mortgagee shall operate only as if the benefit of the implied covenant with the mortgagor had been expressly assigned to him with the object of preventing circuity of action."

**4.** Section 55 of the said Act is amended by adding after the word "instrument" where it occurs at the end of the third line thereof the words "or by evidence of an express agreement to that effect, or of facts or circumstances from which it is to be inferred that such implied covenant was not intended to be created."

**5.** This Act shall come into force on the.....day of.....19....

No. 22.

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FIFTH SESSION  
FIFTH LEGISLATURE  
15 GEORGE V  
1925

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**BILL**

An Act to amend The Land Titles Act.

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Received and read the

First time.....

Second time.....

Third time.....

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EDMONTON:  
J. W. JEFFERY, KING'S PRINTER  
A.D. 1925