

Bill No. 34 of 1949.

A BILL TO MAKE UNIFORM THE LAW RESPECTING
FRUSTRATION OF CONTRACTS.

NOTE.

This Bill enacts a new Act.

The law respecting frustration of contracts has been rapidly developed, particularly as a result of cases arising during the war. For instance, an English firm which contracted to make machinery and deliver it to a Polish firm found its contract impossible of performance when the war intervened and Poland was occupied. Difficulties arose as to the right to recovery of money paid on account of the purchase price and as to the ownership of the machinery, etc. Similarly, where a concert hall was hired for a performance and before it could take place the hall was destroyed by fire, questions arose as to who should bear the loss or be entitled to the money payable under the contract which was frustrated and impossible of performance. Contracts to manufacture or sell goods are also frustrated to an increasing degree by the imposition of government controls which prevent such manufacture or sale.

The Uniformity Conference studied the law on this subject for three years and decided it would be advantageous to have a uniform law in Canada on frustrated contracts similar to the English Statute with such modifications as appeared necessary or appropriate. This Bill was accordingly prepared and adopted by the Uniformity Conference and has been recommended for enactment by all of the provinces of Canada.

Section 3 provides that the Act applies to all contracts governed by the law of the Province with certain exceptions which are set out in the section.

Section 4 (1) provides that money paid or payable before a contract is frustrated or becomes impossible of performance shall be recoverable or cease to be payable.

This general rule is subject to qualifications. Subsection (2) of section 4 enables the court to allow a party to retain or recover expenses incurred by him in performance of the contract before its frustration.

Subsection (3) of section 4 imposes a duty on a party to a contract who has received a valuable benefit from the contract before its frustration to pay for the benefit received.

Subsections (4) and (5) of section 4 relate to the application of the above rules in determining what is a

benefit under subsection (3) and in dealing with sums payable under contracts of insurance.

Subsection (6) of section 4 provides that where a contract contains special provisions relating to frustration of that contract the court shall give effect to this Act only to the extent that it is consistent with the special provisions of the contract.

Subsection (7) of section 4 provides that in the case of a contract where a part of the contract has been performed which can be severed, such part may be treated as a complete contract and this Act will apply only to the remainder of the contract which is frustrated.

KENNETH A. MCKENZIE,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 34 of 1949.

An Act to Make Uniform the Law Respecting
Frustration of Contracts.

(Assented to _____, 1949.)

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 Frustrated Contracts Act*".

- 2.** In this Act, unless the context otherwise requires,—
- (a) "contract" includes a contract to which the Crown is a party;
 - (b) "court" means the court or arbitrator by or before whom a matter falls to be determined; and
 - (c) "discharged" means relieved from further performance of the contract.

3.—(1) This Act applies to any contract governed by the law of the Province whether made before or after the coming into force of this Act, that after the coming into force of this Act has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged.

- (2) This Act does not apply,—
- (a) to a charterparty or a contract for the carriage of goods by sea, except a time charterparty or a charterparty by way of demise;
 - (b) to a contract of insurance; or
 - (c) to a contract for the sale of specific goods where the goods, without the knowledge of the seller, have perished at the time when the contract is made, or where the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer.

4.—(1) The sums paid or payable to a party in pursuance of a contract before the parties were discharged,—

- (a) in the case of sums paid, are recoverable from him as money received by him for the use of the party by whom the sums were paid; and
- (b) in the case of sums payable, cease to be payable.

(2) If, before the parties were discharged, the party to whom the sums were paid or payable incurred expenses in connection with the performance of the contract, the court, if it considers it just to do so having regard to all the circumstances, may allow him to retain or to recover, as the case may be, the whole or any part of the sums paid or payable not exceeding the amount of the expenses, and without restricting the generality of the foregoing the court, in estimating the amount of the expenses, may include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the party incurring the expenses.

(3) If, before the parties were discharged, any of them has, by reason of anything done by any other party in connection with the performance of the contract, obtained a valuable benefit other than a payment of money, the court, if it considers it just to do so having regard to all the circumstances, may allow the other party to recover from the party benefited the whole or any part of the value of the benefit.

(4) Where a party has assumed an obligation under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court, if it considers it just to do so having regard to all the circumstances, may for the purposes of subsection (3) treat any benefit so conferred as a benefit obtained by the party who has assumed the obligation.

(5) In considering whether any sum ought to be recovered or retained under this section by a party to the contract, the court shall not take into account any sum that, by reason of the circumstances giving rise to the frustration of the contract, has become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where the contract contains a provision that upon the true construction of the contract is intended to have effect in the event of circumstances that operate, or but for the provision would operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the provision and shall give effect to this section only to such extent, if any, as appears to the court to be consistent with the provision.

(7) Where it appears to the court that a part of the contract can be severed properly from the remainder of the contract, being a part wholly performed before the parties were discharged, or so performed except for the payment in respect of that part of the contract of sums that are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract that had not been frustrated and shall treat this section as applicable only to the remainder of the contract.

5. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it.

6. This Act shall come into force on the day upon which it is assented to.

No. 34

FIRST SESSION
ELEVENTH LEGISLATURE

13 GEORGE VI

1949

BILL

An Act to Make Uniform the Law
Respecting Frustration of
Contracts.

Received and read the

First time

Second time

Third time

HON. MR. MAYNARD.
