

No. 69

1st Session, 15th Legislature, Alberta
12 Elizabeth II

BILL 69

A Bill to amend The Judicature Act

HON. MR. MANNING

Explanatory Note

1. This Bill amends The Judicature Act, which is chapter 164 of the Revised Statutes.

2. The number of judges authorized for the Appellate Division of the Supreme Court is increased from 6 to 7. Section 6, subsection (2) presently reads:

- “(2) The Appellate Division shall consist
- (a) of the Chief Justice of the Court, and
 - (b) of five other judges of the Court to be assigned to it by His Excellency the Governor General in Council and to be called justices of appeal.”.

3. The effect of subsections (17) and (18) of section 34, as they presently read, is to provide that where a mortgagor or purchaser of land is in default under a mortgage or agreement for sale, the only remedy of the mortgagee or vendor is to have the land put up for sale. If the proceeds of the sale are not enough to meet the debt, the mortgagor or vendor cannot recover the balance owing. The amendment provides that any provision in a mortgage or agreement for sale purporting to waive this benefit is invalid. There are exceptions to this in section 35 of The Judicature Act and in The National Housing Loans Act (Alberta). Subsection (17) presently reads:

- “(17) In an action brought upon a mortgage of land whether legal or equitable, or upon an agreement for the sale of land, the right of the mortgagee or vendor thereunder is restricted to the land to which the mortgage or agreement relates and to foreclosure of the mortgage or cancellation of the agreement for sale, as the case may be, and no action lies
- (a) on a covenant for payment contained in any such mortgage or agreement for sale,
 - (b) upon any covenant, whether express or implied by or on the part of a person to whom the land comprised in the mortgage or agreement for sale has been transferred or assigned subject to such mortgage or agreement for the payment of the principal money or purchase money payable under any such mortgage or agreement or part thereof, as the case may be, or
 - (c) for damages based upon the sale or forfeiture for taxes of land included in the mortgage or agreement for sale, whether or not the sale or forfeiture was due to, or the result of, the default of the mortgagor or purchaser of the land or the transferee or assignee from the mortgagor or purchaser.”.

4. Section 35 is amended in connection with the amendment to section 34(17). Section 35 presently reads:

BILL

No. 69 of 1964

An Act to amend The Judicature Act

(Assented to _____, 1964)

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

1. *The Judicature Act* is hereby amended.

2. Section 6, subsection (2), clause (b) is amended by striking out the word "five" and by substituting the word "six".

3. Section 34 is amended by adding the following subsection:

(21) Any waiver or release hereafter given of the rights, benefits or protection given by subsections (17) and (18) is against public policy and void.

4. Section 35 is struck out and the following is substituted:

"35. Clauses (h) and (i) of section 32, and subsections (17) to (20) of section 34 do not apply to an action, cause, matter or proceeding for the enforcement of any provision of

- (a) a mortgage or charge, whether specific or floating,
 - (i) created by a corporation, and
 - (ii) contained in
 - (A) any bonds, debentures or debenture stock of the corporation, or
 - (B) a trust deed or other like instrument securing the same,
- or
- (b) a mortgage on land
 - (i) executed by a corporation, and
 - (ii) in favour of The Industrial Development Bank incorporated by chapter 44 of the Statutes of Canada, 1944-1945."

5. Section 36, subsections (1) and (8) read:

"36. (1) Notwithstanding subsections (17) to (20) of section 34, after the commencement of an action upon any mortgage of urban land or upon any agreement for sale of urban land, a court or judge, upon application by a mortgagee or vendor or an assignee thereof, may appoint, with or without security, a receiver to collect the rents and profits arising from the urban land.

(8) When an order appointing a receiver is made under this section, proceedings in the action upon the mortgage or upon the agreement for sale shall be stayed until such time as the order appointing a receiver is discharged."

6. Commencement of Act.

No. 69

FIRST SESSION

FIFTEENTH LEGISLATURE

12 ELIZABETH II

1964

BILL

An Act to amend The Judicature
Act

Received and read the

First time

Second time

Third time

HON. MR. MANNING
