

REPRINTED BILL

BILL

No. 19 of 1933.

An Act to amend and consolidate The Debt Adjustment Act.

(Assented to _____, 1933.)

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 Debt Adjustment Act, 1933.*"

PART I

2. In this Act, unless the context requires a contrary meaning—

- (a) "Board" means the Debt Adjustment Board constituted pursuant to this Act;
- (b) "Clerk" includes the deputy clerk in a subjudicial district;
- (c) "Judge" means any Judge designated by Order in Council as a Judge to hear appeals from the Board.
- (d) "Judicial district" includes a subjudicial district;
- (e) "Resident farmer" means a person who is an actual resident of and personally living in the Province of Alberta who—
 - (i) is personally *bona fide* engaged in farming operations in the Province; or
 - (ii) being the owner of a farm property, was personally *bona fide* engaged in farming operations thereon but has retired therefrom, and either leased the said property or sold it under an agreement of sale, or transferred it and taken a mortgage thereon for purchase money on which payments are owing to him;and includes the personal representative or representatives, son, daughter, widow or widower of a deceased resident farmer;
- (f) "Resident home owner" means a person who is an actual resident of and personally living in the Province of Alberta and occupies as his home any land of which he is the owner, or may be entitled to become the owner by virtue of any agreement of sale, any option to purchase, or the terms of any lease,

and includes the personal representative or representatives, son, daughter, widow or widower of a deceased resident home owner;

- (g) "Sheriff" includes the deputy sheriff in a subjudicial district.

3. The Lieutenant Governor in Council may from time to time—

- (a) constitute a Board to be known as the Debt Adjustment Board, to have the general supervision and administration of this Act, consisting of either one, two or three persons as the Lieutenant Governor may from time to time determine and prescribe the remuneration and duties of the persons appointed as the members of the Board;
- (b) appoint such officers, clerks and employees as may be deemed necessary who shall be under the direct control of the Board;
- (c) designate one or more judges of the Supreme Court of Alberta as the judge or judges to hear appeals from the Board under this Act;
- (d) appoint for any designated areas one or more committees consisting of not more than three persons for the purpose of co-operating with the Board in the administration of this Act within the designated area and prescribe the powers and duties thereof;
- (e) prescribe rules and regulations for the due administration of this Act and as to the procedure upon any proceeding under this Act, and prescribe forms, and prescribe and fix a tariff of the fees to be taken or received by any person on account of service performed by him in the course of any such proceeding or in respect of any act or thing done by such person in pursuance of this Act;
- (f) prescribe the method of distribution of the proceeds of sale of property sold pursuant to any of the provisions of this Act;
- (g) protect any property seized under this Act against seizure in any other proceedings or for any other reason.

4.—(1) Upon receipt of an application in writing by or on behalf of a resident farmer or any creditor of a resident farmer, the Board shall confer with and advise the resident or his creditor and shall endeavour to bring about an amicable arrangement for the payment of the resident farmer's indebtedness, and for that purpose the Board shall inquire into the validity of all claims made against the resident farmer and his ability to pay his just debts, either presently or in the future, and shall endeavour to effect an agreement between the resident farmer and his creditors to provide for

the settlement of the resident farmer's debts, either in full or by a composition, and for the purpose of any such inquiry the Board shall have all the powers in that behalf which may be conferred upon a commissioner pursuant to *The Public Inquiries Act*.

(2) An agreement arrived at between the resident farmer and any creditor and made by or through the agency of the Board may be informal or by parole, or partly written and partly by parole, and may be contained wholly or in part in letters written by or to the Board; and it shall be valid and enforceable at law although without consideration, and may alter, modify or rescind in whole or in part the terms of any mortgage, contract or agreement theretofore subsisting between the parties, or by the terms of which the rights of any of the parties are affected.

5. All the powers and authority by this Act conferred upon the Board shall be deemed to be conferred upon and shall be exercisable by every member thereof.

6.—(1) Unless the Board or any person designated by the Lieutenant Governor in Council for the purpose issues a permit in writing in a form prescribed giving consent thereto—

- (a) no action or suit for any debt founded on contract not being indebtedness for rates or taxes payable pursuant to any statute; and
- (b) no action or proceeding for the sale under or foreclosure of a mortgage on land, or for cancellation, rescission or specific performance of an agreement for sale of land or for recovery of possession of land, whether in court or otherwise, except as against over holding tenants or other occupants who have no interest in the title; and
- (c) no action or proceeding to sell land under or in satisfaction of any judgment or mechanic's lien; and
- (d) no seizure or distress under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement or in attornment as tenant under any agreement for sale or mortgage, and no sale or other proceeding thereunder either by virtue of rights of property at common law or under a statute passed prior to this Act—

shall be taken, made or continued by any person whomsoever against a resident farmer in any case, or against a resident home owner in case the same relate to or affect the land occupied by the home owner as his home or are for the purpose of enforcing any claim whatsoever founded on or arising out of any mortgage, charge, lien of any kind affecting the said land, or any agreement of sale, option to pur-

chase or the terms of any lease by virtue whereof the resident may become the owner of the said land.

(2) The consent of the Board under this section whenever given shall relate back to anything done in the action or other proceedings in respect of which the permit is given.

(3) This section shall not apply to any contract made or entered into by a debtor the whole of the original consideration for which arose after the first day of July, 1932.

(4) Nothing in this section shall affect any right or remedy for the enforcement of the payment of any irrigation rates or water rentals payable pursuant to any statute or of any water rentals payable pursuant to any agreement for the supply of water for irrigating any land of a resident farmer.

7. Upon the receipt of any application by or on behalf of a creditor in writing, in such form and containing such particulars as may be prescribed by the regulations for a permit to commence or continue any action or proceedings, against a resident farmer or a resident home owner the Board shall proceed to make such inquiries as it may deem proper into the circumstances, and thereupon may either issue a permit or may refuse the application, and as a condition of the refusal may give such directions to the debtor as to the conduct of his affairs and the disposition of his property as it deems to be in the best interests of the debtor and his creditors, and also may determine a basis upon which the debtor ought to pay the claims of his creditors and direct the debtor to pay the same accordingly but in so doing the Board shall be guided by the method of distribution set out in section 14 of this Act.

8.—(1) Upon the receipt of an application in writing in Form A in the schedule to this Act, signed by a resident farmer or by any person authorized by him for that purpose, the Board may, if from inquiries made by it, it is satisfied that it is in the interests of the resident farmer and his creditors so to do, file in the office of the Clerk of the Court and the office of the sheriff of the judicial district in which the resident farmer resides, and in the office of the Registrar of the Land Registration District in which the resident farmer resides, a certificate in Form B in the schedule to this Act, and shall cause a notice to be published in *The Alberta Gazette* to the effect that a certificate has been filed by it in respect of such resident farmer in pursuance of the provisions of this Act.

(2) Every such application shall be attested and shall be accompanied by a statutory declaration of the attesting witness as to the execution thereof, and in case the application is signed by a person for and on behalf of the resident farmer, by a statutory declaration of the person so signing that he was duly authorized by the resident farmer for that purpose.

(3) Upon the filing of the said certificate, no proceeding in the nature of an execution and no proceedings leading to the sale or foreclosure of real property, and no proceeding of any sort either in court or extra-judicial, which may lead to the seizure or sale of the property of the resident farmer named in the certificate, shall be taken or continued without the consent in writing of the Board.

(4) Upon the receipt by the Registrar of any Land Titles Office of any such certificate, the Registrar shall, with all reasonable expedition, prepare an abstract of title as to the interest of the person named in such certificate in any land of which such person is the registered owner, and forward the same to the Board which shall thereupon send to every other person shown by such abstract to have any interest in such land a notice to the effect that a certificate has been filed pursuant to this Act.

(5) Notwithstanding anything in *The Seizures Act* to the contrary, if at the time of the filing of the said certificate any of the goods and chattels of a resident farmer, not consisting of growing crops, farm produce or live stock, are under seizure by virtue of any writ of execution or distress warrant, the Board may in its sole discretion direct that the goods and chattels so seized be sold at such time and in such manner as the Board deems proper, and that the proceeds of such sale be distributed, having due regard to the rights of any persons having any interest in the goods and chattels so sold, or that the same be again placed in the possession of the resident farmer, and every direction so given shall be binding upon the sheriff or other person who made the seizure.

(6) As soon as conveniently may be after the filing of any certificate, the Board shall take such steps as it deems proper to acquaint the creditors of the financial position of the resident farmer.

(7) From and after the filing of a certificate pursuant to subsection (1) thereof and so long as such certificate remains uncanceled and in force, no sale, conveyance, mortgage or dealing of any description by the resident farmer named in such certificate with any of his personal property or with any land shall have any validity, force or effect unless made or done with the consent in writing of the Board, which consent may be either general or specific.

(8) No registration clerk and no Registrar of Land Titles in whose office a certificate has been filed in respect of a resident farmer shall register any transfer, conveyance, mortgage, encumbrance or other instrument affecting any property of the resident farmer unless the same is accompanied by the consent of the Board or a certified copy thereof.

9. The period during which a certificate is in force as well as any period during which by reason of the refusal by the Board to grant a permit the right to commence any

action is suspended shall be excluded in the computation of the time within which an action must be commenced pursuant to the provisions of any statute in force in the Province which limits the time within which actions may be brought.

10. Every Supreme Court Clerk and District Court Clerk and every sheriff and every Registrar of Land Registration Districts shall, without fee, perform all services required to be rendered by the Board and keep a record of every instrument filed by it in its office pursuant to this Act, and may issue certified copies thereof, and every certified copy shall be evidence of the issue and filing of such instrument without proof of the signature or official character of the officer signing the same.

11. In any case where a certificate in respect of a resident farmer under this Act has been filed, and it is made to appear by any creditor to the Board that the property of the resident farmer therein named is for any reason whatsoever in jeopardy, the Board may by writing under its hand directed to the sheriff of the judicial district in which such property is situated require such sheriff to seize such designated property and to hold and deal with the same for it in such manner as the Board may in writing direct; and thereupon the sheriff shall proceed forthwith to seize such property and to deal with the same in such manner as the Board may from time to time by writing direct, and the proper fees and expenses incurred by the sheriff in respect of such property shall be a charge upon the said property.

12. The Board and any person authorized by the Board in writing may make all such inquiries as may be from time to time deemed advisable with regard to the property of any resident farmer in respect of whom directions have been given, and as to the disposition of any such property, and for that purpose the Board or any person authorized by the Board in writing may examine under oath any such resident farmer and his servants and agents, and any person who appears to the Board or any person authorized by the Board in writing to have any knowledge of the affairs of the resident farmer, and shall have all the powers in that behalf which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act*.

13. Where a permit has been refused or having been issued is cancelled, or where a certificate has been granted, the Board, by order in writing, may from time to time—

- (a) direct a resident farmer to deal with all or any of his property in any manner deemed proper;

- (b) in the case of a resident home owner, having regard to all the circumstances, fix a sum to be paid in respect of his residence and require him to pay it in the manner specified in the direction;
- (c) require that any person deal with and dispose of any money, choses in action or property of a resident farmer in his hands in the manner specified in the direction, and every person having in his possession any money, choses in action or property of a resident farmer shall comply with any such requirement of which he has notice.

14. In any case in which a certificate has been issued in respect of any resident farmer and so long as the same remains uncanceled and in force, the Board may in its discretion, having regard to the circumstances and necessities of the resident farmer, direct the disposal of any crop grown by the resident farmer or of any live stock of the resident farmer, or of both, notwithstanding any provisions of any mortgage, charge or lien, or crop share lease or crop share agreement affecting the crop or any mortgage, charge or lien upon live stock except a mortgage charge or lien for securing the payment of the purchase price thereof, in such manner and at such times as to the Board seems proper, and that the proceeds thereof be paid to him, and the Board may and it is hereby authorized and empowered to appropriate and deal with the proceeds paid to him as follows, viz.:

Firstly: In payment of any sums necessarily borrowed, or debts necessarily incurred by the resident farmer in growing and harvesting the crop, or any sums necessarily borrowed or debts necessarily incurred by the resident farmer during the period of six months before the sale of any live stock for the purpose of feeding and preparing his live stock for the market together with a sufficient amount of money to provide for the necessary subsistence of the resident farmer and his family and for the continuance of his operations for a period of not longer than until the next ensuing harvest.

Secondly: In paying any taxes owing in respect of the resident farmer's property for the year in which the direction is given; and

Thirdly: To distribute the balance which shall then remain amongst the persons lawfully entitled thereto in such priority and in the same manner as if the balance represented the gross proceeds of all the crop sold pursuant to a direction given pursuant to this section, and every person who has any mortgage, charge or lien upon or any claim to, or interest in any crop sold pursuant to any direction shall cease to have any right, title or interest therein of any kind other than except the right to share in the proceeds thereof to the extent prescribed by this section.

15. Any person who deems himself aggrieved by any action of the Board in giving or refusing to give any con-

sent to the taking of any action or other proceedings, or in cancelling any consent previously given, or in giving any directions to a debtor as to the conduct of his affairs or the disposition of his property, or in determining any basis for the payment by a resident farmer of his indebtedness, or the granting of a certificate or its subsequent cancellation, may, upon notice in writing to the Board within fifteen days of the action of the Board then in question, appeal from such action to any judge of the Supreme Court for the time being designated as a judge for the purpose of hearing appeals under this Act.

16. The Judge may at any time after making any order thereafter from time to time upon the application of the Board or any person affected thereby by order, vary, amend or alter the same or may rescind any previous order and make any new order in lieu of the rescinded order which appears to the Judge in the circumstances of the case to be just and convenient having regard to the intents and purposes of this Act.

17. Upon any notice of appeal being given to the Board in the manner and within the time prescribed by this Act, the Board shall, with all reasonable expedition, and in any event within seven days thereafter, transmit to the Judge a copy of the notice and shall apply to the Judge to fix a day and time for the hearing of the appeal and for directions as to the persons to be given notice of the appeal, and upon the day so fixed or any adjourned date the Judge shall proceed to hear and determine the appeal, and for that purpose may make such inquiries and may take evidence in such manner as the Judge in his absolute discretion deems proper, and thereupon the Judge may either make an order confirming the action of the Board or may order the Board to take such other action in the premises as the Board is empowered to take by this Act as to the Judge may seem proper and convenient in the circumstances, and every order so made shall be binding and conclusive and there shall be no appeal therefrom, and no proceedings in relation to any appeal or any order made thereon shall be restrained by injunction, prohibition or any other process or proceedings in any court, nor be removable by *certiorari* or similar proceedings in any court.

18. In any case where any application under this section has been refused by the Judge, the applicant may, at the expiration of six months from the date of such refusal or at any time if such new circumstances arise as in the opinion of the Judge make it proper so to do, renew the application in the same manner as in the case of an original application, and thereupon any order may be made which may have been made upon an original application.

19. A copy of every order made by a Judge upon any appeal and all directions given by a Judge thereon shall be kept on file at the office of the Board.

20. Subject to the provisions of this Act the procedure with respect to appeals shall be governed by the Rules of Court.

21. If any person resident in the Province, not being a resident farmer, satisfies the Board that he has been detrimentally affected to a substantial extent by reason of the operation of this Act, the Board may issue and file a certificate in respect of such person in the same manner as if that person were a resident farmer, and thereupon all the provisions of sections 8 to 13 inclusive and sections 15 to 18 inclusive shall, so far as the same are applicable to a person who is not a farmer, apply to that certificate and the person in respect of whom it is issued as if such person were a resident farmer.

22. The Board shall, immediately on receipt of an order of a Judge made pursuant to this Act to that effect, issue a certificate in the terms of the order, or, if so required, cancel any certificate issued in whole or in part.

23. Every application by way of appeal or otherwise shall be heard at Calgary in the case of residents of the judicial districts of Calgary, Macleod, Lethbridge, Medicine Hat, Hanna, Drumheller, or any subjudicial district thereof, and at Edmonton in the case of residents of any other judicial district or subjudicial district thereof.

24. If any person makes wilful default in complying with any order, direction or condition given by the Board or a Judge, or wilfully takes or continues any action or proceeding or makes or continues any seizure, or sells or disposes of a chattel in violation of the provisions of this Act, or the regulations, or if any resident in respect of whom directions have been given in pursuance of this Act makes any disposition of anything, either real or personal property in contravention of the provisions of this Act, or makes default in complying with any directions given by the Board under the provisions of this Act, or in complying with any order, direction or condition given or imposed by the Board or a Judge, then he shall be liable upon summary conviction to a fine not exceeding two hundred and fifty dollars and in default of payment to a term of imprisonment with hard labour, not exceeding three months, or to both.

25. All documents purporting to be issued in pursuance of this Act, by the Board and signed by the Chairman or any member of the Board, shall be receivable in evidence, and shall, unless the contrary is shown, be deemed to have been so issued and signed, and it shall not be necessary to prove the handwriting or official position of the Chairman or member of the Board.

26.—(1) The Board constituted pursuant to this Act shall be a body politic and corporate.

(2) For the purpose of performing any duty or function or exercising any power which is conferred or imposed upon the Board by this Act, any member of the Board is hereby empowered to act for and on behalf of the Board, and any act or thing so done shall be deemed to have been done by the Board.

27. Proof that any letter or package containing any documents permitted by this Act or the regulations to be served by post was properly addressed and put into the post office, and of the time when it was so put in and of the time requisite for its delivery in the ordinary course of the post shall be evidence of the fact and time of the receipt of the letter or package by the person to whom it was addressed.

28. Neither the Board nor any member thereof, nor anyone acting under the instructions of the Board, or under the authority of this Act or the regulations shall be personally liable for any loss or damage suffered by any person by reason of anything in good faith done, or omitted to be done, pursuant to or in the exercise or supposed exercise of the powers conferred by this Act or *The Debt Adjustment Act, 1931*, or any regulations made pursuant to either of the said Acts.

PART II

29. In this Part—

- (a) “Clerk” means the Clerk of the District Court of the district in which the merchant resides or carries on business;
- (b) “Judge” means a Judge of the Supreme Court sitting in the judicial district in which the merchant resides or carries on business, and the Judge of the District Court of the district in which the merchant resides or carries on business;
- (c) “Merchant” means any person, firm or corporation engaged in the distribution of merchandise by retail in the Province.

30. The Lieutenant Governor in Council may from time to time appoint a suitable person as an Official Referee for the purpose of discharging the duties hereinafter set forth.

31. Upon the receipt of an application by or on behalf of a merchant or any creditor of a merchant, the Referee shall confer with and advise the merchant or his creditor and shall endeavour to bring about an amicable arrangement for the payment of the merchant’s indebtedness, and for that purpose the Referee shall inquire into the validity of all claims made against the merchant and his ability to pay his just debts, either presently or in the future, and shall endeavour to effect an agreement between the mer-

chant and his creditor to provide for the extension of the time for payment of the merchant's debts or for the settlement of the merchant's debts, either in full or by a composition, and for the purposes of such inquiry, the Referee shall have all the powers in that behalf which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act*.

32.—(1) If in any particular case the Referee, having endeavoured as provided by the last preceding section to bring about an amicable arrangement for the payment of the merchant's indebtedness, is of the opinion that it would not be just or reasonable for the creditors of the said merchant or any of them to take or continue proceedings which may lead to the seizure or sale of the real or personal property of the merchant, he shall file his certificate in writing to that effect with the Clerk and in that event no such proceedings shall be taken or continued without leave of a Judge.

(2) The Referee may at any time in his sole discretion cancel any certificate issued by him by filing a notice to that effect in the office of the Clerk with whom the certificate was filed.

(3) Every application by a creditor for leave to commence or continue any such proceedings shall be made by notice of motion upon eight days' notice in writing to the Referee and the merchant.

33. The Referee may from time to time give such directions as he may in his sole discretion deem proper as to the manner in which and the conditions under which a merchant in respect of whom a certificate has been issued pursuant to this Part shall carry on his business, and particularly may require that the merchant's business be carried on under the supervision or subject to the direction of such person or persons as the Referee may from time to time designate in writing.

34. *The Debt Adjustment Act, 1931*, being chapter 57 of the Statutes of Alberta, 1931, is hereby repealed, and all certificates, orders and directions given under that Act which are subsisting and in effect upon the coming into force of this Act shall be deemed to have been issued, made or given pursuant to and subject to the provisions of this Act.

35. This Act shall come into force on the day upon which it is assented to, and shall remain in force only until the first day of May, 1935.

No. 19.

THIRD SESSION
SEVENTH LEGISLATURE
23 GEORGE V
1933

B I L L

An Act to amend and consolidate The
Debt Adjustment Act.

Received and read the

First time.....

Second time

Third time

HON. MR. LYMBURN.

EDMONTON:
W. D. McLEAN, KING'S PRINTER
1933