

BILL

No. 87 of 1937.

An Act to Provide for the Reduction of Certain
Indebtedness.

(Assented to _____, 1937.)

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 Reduction Act.*"

2. In this Act, unless the context otherwise requires,—

- (a) "Debt" means any obligation to pay any money which is in the nature of a liquidated demand credited by or founded on or arising out of any contract, agreement, covenant or stipulation, whether express or implied, to which the legislative power of the Province extends, but does not include,—
- (i) any debt owing by or to the Crown in the right of Canada or the Crown in the right of the Province;
 - (ii) any debt owing to the Canadian Farm Loan Board or the Soldier Settlement Board;
 - (iii) any indebtedness for assessments, rates or taxes payable pursuant to any statute or pursuant to the terms of any agreement providing for the consolidation and payment of taxes, rates or assessments;
 - (iv) any debt owing by or to any city, town, village, municipal district, improvement district, irrigation district, drainage district or municipal hospital district;
 - (v) any indebtedness the payment of which is guaranteed by the Crown in the right of the Province;
 - (vi) any indebtedness by a Company other than a family corporation;
 - (vii) any debt owing by or to any society within the meaning of *The Alberta Rural Co-operative Credit Act*;
 - (viii) any debt due or payable pursuant to any judgment or order made in an action for divorce, judicial separation, alimony or in any proceedings under *The Domestic Relations Act*.

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- (ix) any debt which is a premium in respect of any policy of insurance payable to the person liable under the policy;
- (x) any debt payable under the provisions of any policy of insurance.
- (b) "Debt Adjustment Board" means the Debt Adjustment Board constituted pursuant to *The Debt Adjustment Act, 1936*;
- (c) "Old Debt" means any debt which is for the time being owing in respect of or on account of any debt which existed prior to the first day of July, 1932, notwithstanding any agreement, contract, stipulation, covenant or arrangement made since that date which purports to substitute a new indebtedness in the place of the prior indebtedness, or has the effect of extinguishing the prior indebtedness and substituting therefor a new indebtedness or constitutes a novation of the agreement under which the prior indebtedness was payable; and includes any debt of any person under any guarantee for the payment of any old debt whether the guarantee was given prior to the first day of July, 1932, or at any time thereafter;
- (d) "Family Corporation" means a corporation, seventy-five per centum of the stock of which is owned by the members of one family, one or more of which members take an active part in the business operations of the corporation, or a corporation, eighty per centum of the stock of which is owned by persons actively employed in the business of the corporation or by such persons and their families.

PART I

3. The amount of any old debt which may be recovered by any person entitled to recover the same shall be fifty per centum (50%) of the amount of the old debt as at the first day of July, 1932, together with any interest payable in respect of the debt under any agreement for the payment of interest thereon which was subsisting on the first day of July, 1932, at the rate stipulated therein, together with any advances made under and by virtue of any agreement relating to the old debt whensoever made, and interest on such advances at the stipulated rate, after deducting all sums paid on account of the old debt and interest.

4. Every contract, agreement, covenant or stipulation, and every judgment, under which any old debt is payable whether made or entered before or after the first day of July, 1932, shall be unenforceable to the extent that it provides for the payment on account of any old debt of any amount in excess of the amount of the old debt which is by this Act declared to be recoverable in respect thereof.

5. In case any judgment has been given or entered by or in any court in any action or other proceedings for the payment of any old debt and the judgment remains unsatisfied at the time this Act comes into force, the amount payable in respect of such judgment shall be the amount of the old debt to the extent that the same may be recovered pursuant to section 3 hereof, together with the taxed costs of judgment or execution and any interest payable thereon.

6.—(1) Unless it is otherwise ordered pursuant to subsection (3) or subsection (4) hereof, the amount recoverable in respect of any old debt shall be payable in ten equal annual instalments the first instalment with interest to be paid on November 15th, 1937.

(2) Notwithstanding subsection (1) hereof the person liable for the payment of any such old debt shall be entitled to pay the same either wholly or in part at any time before the days prescribed by this Act as the days upon which the instalments thereof are to become due and payable and the person entitled to payment shall accept any such payment.

(3) Notwithstanding the provisions of this Act, if on the application of any creditor it is made to appear to the satisfaction of the Debt Adjustment Board that

(a) the provisions of this Act may cause undue hardship on any deserving creditor;

(b) any chattel constituting security for the payment of a debt has been abandoned or is deteriorating or depreciating, or may deteriorate or depreciate to such a degree to affect its value as security for the amount of the debt;

the Board may upon notice to the debtor direct that the creditor may forthwith realize upon his security, or may declare the whole of the balance of the debt, or such portion of it as it deems advisable due and payable forthwith, or may make such order as may be necessary in its opinion to protect the interest of the creditor.

(4) In case default is made in the payment of any instalment or the part of any instalment directed to be paid pursuant to section 10, the Board may in its discretion, after due inquiry into the circumstances, make an order declaring that any instalment or instalments not then due are due and payable forthwith and issue a permit authorizing the creditor to take such proceedings in respect thereof as may be specified in the order.

7.—(1) Every person who is the holder of any security whatsoever for the payment of any old debt, shall upon being paid the amount declared by section 3 of this Act to be recoverable in respect thereof, give a valid and effectual discharge of such security or instruments as may be necessary to effectually vest any property charged with the payment of the debt to the person for the time being entitled to the property.

(2) Every person who is under an obligation to perform any act or to abstain from performing any act upon the payment to him of any old debt shall, upon being paid the amount declared by section 3 of this Act to be recoverable in respect thereof, carry out such obligations in the same manner as if the old debt had been paid in full.

(3) In case any person entitled to receive any old debt refuses to accept in satisfaction thereof the amount declared by section 3 of this Act to be recoverable in respect thereof, or upon being paid the last mentioned amount in respect of an old debt, neglects or refuses or omits to perform any of the acts or things which he is required to perform by this section, the person liable for the old debt may pay into court the amount declared by section 3 of this Act to be recoverable in respect of the old debt, and may apply by originating motion to the court for an order for the performance by the person entitled to the debt of the acts or things which he is required to perform by this section.

(4) If upon the hearing of the application the judge is satisfied that the debt in respect of which the application is made is an old debt and that the amount paid into court is the amount recoverable in respect thereof pursuant to section 3 of this Act, he shall make an order requiring the person entitled to the payment of the old debt to perform the acts and things which he is required by this section to perform and that in default of compliance with the order within such period not in excess of thirty days as may be specified in the order, any right, title, estate or interest of the person entitled to receive the debt in any property which is the security for or is charged with the payment of the debt, be discharged, and if the person entitled to receive the old debt is under any obligation to convey or transfer any property to any person upon the payment of that debt, he shall order that such property do forthwith vest in the person entitled to the conveyance or transfer without any further conveyance or transfer.

(5) If the judge is satisfied that the person entitled to receive the payment of the debt has acted unreasonably in refusing to perform any of the acts and things which he is required to perform by this section, he shall order the costs of the application to be paid by such person; otherwise he may make such order as to costs as he deems proper.

(6) The procedure upon any application under this section shall be such as is prescribed by the Rules of Court.

8.—(1) From and after the coming into force of this Act no action of any kind shall be maintainable and no proceeding by way of distress or seizure for the recovery of any old debt shall be taken nor shall any such action or proceeding be continued unless the person liable for the payment thereof has made default in the payment of any of the instalments prescribed by section 6, and a permit has been

issued pursuant to this Act authorizing the taking of such action or proceeding.

(2) For the purposes of this section "proceeding" includes the exercise of any right to seize or take possession of any crop created by any crop lease given in respect of any old debt or by virtue of any attornment by a debtor to a creditor in respect of any old debt.

9. In any case where land which was subject to an old debt and occupied by the debtor, and which at any time after September 1st, 1935, has been transferred to the creditor by the debtor by way of Quit Claim, Release, Transfer or other Instrument and which has since the date of such Quit Claim, Release, Transfer or other Instrument been in continuous occupation of the Debtor or his personal representative, whether under lease or otherwise, up until the 1st of March, 1937, then the Debtor or his personal representative shall be entitled to a cancellation by the Creditor or the then registered owner of such land of such Quit Claim, Release, Transfer or other Instrument and to have the said land re-transferred to him and to a settlement made of such debt as between himself and such Creditor in terms of the provisions of this Act.

10.—(1) In case any instalment of an old debt is not paid on the day fixed by this Act for the payment thereof the person entitled to enforce payment of the old debt may apply to The Debt Adjustment Board for a permit to take such action or other proceedings as he may be entitled to take.

(2) If after due inquiry the Board is satisfied that the non-payment of the instalment was due to circumstances over which the debtor had no control such as drought, hail, frost or any other act of nature or due to the fact that the debtor was unable to make the payment because of his inability to obtain payment of debts due to him from others by reason of the existence of any similar circumstances, the Board shall not issue the permit applied for.

(3) If after such inquiry it appears to the Board that the debtor is in a position so to do, the Board may by order direct the payment of so much of the instalment as the Board deems fit and proper, and the Board may make the failure to comply with any such direction a condition of the refusal of a permit and shall distribute the balance of that instalment among the subsequent instalments and make additions thereto accordingly.

(4) Upon the refusal of any application for a permit pursuant to subsection (2), the time for payment of the instalment in respect of which the application is made shall be the fifteenth day of November following the application if the application is made before the first day of July and, if the application is made after the first day of July, on the fifteenth day of November of the following year; the time of payment for every subsequent instalment shall be post-

poned by the same number of years as the number of years of the postponement for the time for payment of the instalment in respect of which the application is made; and in case an application is made for a permit in respect of more than one instalment the earliest of such instalments shall, for the purpose of this subsection, be deemed to be the instalment in respect of which the application is made.

11. The provisions of sections 8 and 10 shall not apply when the debtor is a person against whom a Writ of Attachment may be issued, pursuant to the Rules of Court relating to absconding debtors.

12.—(1) The period during which proceedings by a creditor are prohibited under this Act shall not be included in the time within which an action or other proceeding is to be commenced under *The Limitation of Actions Act, 1935*, or under any other statute or law for the time being in force in the Province limiting or prescribing the time within which actions or proceedings are to be commenced; and any party to an action or other proceeding which has been prohibited by this Act shall have the same time for continuing such action or proceeding after the expiry of the said period as he would have had if the action or proceeding had not been prohibited, and shall not be prejudiced by reason of the delay.

(2) For the purpose of this section the proceedings mentioned and described in sections 8 and 10 of this Act shall, whether or not such creditor has applied or hereafter applies to the Board for the issue of a permit pursuant to the said section, be deemed to have been prohibited so long as this Act remains in force, subject to the provisions contained in subsection (3).

(3) Upon the issue of the permit or written authority of the Board, the period subsequent to the issue thereof shall be included in the time within which the action or other proceeding affected thereby is to be commenced under *The Limitation of Actions Act, 1935*, or under any other statute or law for the time being in force in the Province limiting or prescribing the time within which actions or proceedings are to be commenced.

13.—The provisions of this Act shall not apply to any debt or old debt, which by any contract, agreement or settlement between the parties has been reduced to an amount which is less than the amount of the indebtedness which would otherwise be recoverable under this Act, nor to any old debt which may be settled after the coming into force of this Act.

14. The provision of *The Debt Adjustment Act, 1936*, as to any matters of procedure in relation to the issuance of permits shall, *mutatis mutandis*, apply to the issuance of permits under this Act.

15. This Act and *The Debt Adjustment Act, 1936*, shall be read and construed together, and in the case of any conflict between any of the provisions of this Act and any of the provisions of *The Debt Adjustment Act, 1936*, the provisions of this Act shall prevail.

16. The provisions of this Act shall not be so construed as to authorize the doing of any act or thing which is not within the legislative competence of the Legislative Assembly.

17. Upon the entry of any judgment in respect of an old debt all the rights of any person for the enforcement of the payment thereof from the judgment debtor shall be merged in the judgment.

18. *The Reduction and Settlement of Debts Act*, being chapter 2 of the Statutes of Alberta, 1936, (Second Session) is hereby repealed.

PART II

19. Notwithstanding the provisions of Part I herein, any creditor may, upon giving notice in writing to his debtor, collect from his debtor the balance of the old debt outstanding and payable as at the first day of July, 1932, including any advances made under and by virtue of any agreement or other instrument, creating or securing the debt, together with any further advances made since that date, reduced by any payments, made since that date, whether on account of principal, interest or otherwise; and as and from the first day of July, 1932, no interest shall be payable on any part of the said amount.

20. Unless it is otherwise ordered pursuant to subsection (3) or subsection (4) of section 6 herein, the amount recoverable under Section 19 of this Part, shall be payable by ten equal annual instalments the first instalment to be made on November the 15th, 1937.

21. The notice referred to in Section 18 above shall be valid only if received by the debtor on or before the 1st day of September, 1937, and if said notice contains a detailed statement setting out fully the amount of the old debt due under this part, together with dates of payment and amount of payment.

22.—(a) Nothing contained in this part shall be construed as compulsory on the creditor; provided however, that if the creditor does take advantage of the provisions of this Part the notice referred to in Section 19 above shall be construed as a new contract binding on both the debtor and the creditor.

(b) In the event of a debtor refusing to be bound by the said notice, the debtor shall have waived all benefits under the provisions of this Act and the debtor shall be responsible under the terms of the original debt.

(c) In the event of the creditor not taking advantage of the provisions of this Part, he shall be bound by the provisions set out in Part I.

23. The provisions of Part I herein as to any matters of procedure shall apply to this Part; provided that in the case of any conflict between any of the provisions of this Part and Part I, the provisions of this Part shall prevail.

24. The Lieutenant Governor in Council is authorized to repeal any section or sections of this Act.

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

No. 87.

THIRD SESSION
EIGHTH LEGISLATURE
1 GEORGE VI
1937

BILL
An Act to Provide for the Reduction
of Certain Indebtedness.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MAYNARD.

EDMONTON:
A. Shnitka, King's Printer
1937