

Bill No. 88 of 1937.

A BILL TO AMEND AND CONSOLIDATE THE
DEBT ADJUSTMENT ACT, 1936.

NOTE.

This Bill amends and consolidates *The Debt Adjustment Act, 1936*.

The chief changes are as follows:

Section 8, which makes a permit by the Board a condition precedent to commencing or carrying on the actions and other proceedings mentioned therein, is extended so as to apply to actions and proceedings against all resident debtors as defined in section 2, paragraph (e).

Sections 9, 10 and 11 are new and provide a right of appeal from the decisions of the Board to a Judge of the Supreme Court.

Section 34 of the existing Act relating to the postponement of payment of debts by order in council is not repeated.

The remaining provisions of the Bill are similar in substance to the provisions of the existing Act.

R. ANDREW SMITH,
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. 88 of 1937.

An Act to amend and consolidate The Debt Adjustment Act, 1936.

(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 Adjustment Act, 1937.*"

PRELIMINARY.

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" means the clerk in a judicial district and the deputy clerk in a sub-judicial district;
- (c) "Family corporation" means a corporation, seventy-five per cent 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 cent of the stock of which is owned by persons actively employed in the business of the corporation and by such business and their families;
- (d) "Judicial district" includes a sub-judicial district;
- (e) "Resident debtor" means a person who is a debtor and who is an actual resident of and personally living in the Province, and includes the personal representative or representatives, son, daughter, widow or widower, of a deceased resident debtor, and includes a family corporation which is a debtor and has its head office or principal place of business in the Province;
- (f) "Sheriff" includes the deputy sheriff in a sub-judicial 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) 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;
- (d) 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;
- (e) protect any property seized under this Act against seizure in any other proceedings or for any other reason.

4. The Debt Adjustment Board may appoint such person or persons to act on its behalf as it deems advisable for the purpose of facilitating the administration of this Act and may, subject to the approval of the Lieutenant Governor in Council, confer upon any person or persons so appointed such powers as it may deem expedient including power to grant or refuse permits; to make compromises between creditors and debtors and to make orders or issue directions which the Board is authorized to make or issue under the provisions of this Act.

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. 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 or any resident home owner and as to the disposition of the property of any such person, and for that purpose the Board or any person authorized by the Board in writing may examine under oath any such resident farmer or resident home owner 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 or resident home owner, and shall have all the powers in that behalf which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act*.

7.—(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.

PART I.

8.—(1) Unless the Board or any person designated by the Board under the provisions of this Act, issues a permit in writing giving consent thereto,—

- (a) no action or suit for the recovery of any money which is recoverable as a liquidated demand or debt in respect of any claim enforceable by virtue of any rule of law or equity or by virtue of any statute, except money payable in respect of rates and taxes payable pursuant to any statute, and debts owing to a hospital for hospital services; and
- (b) no proceedings by way of execution, attachment or garnishment; and
- (c) 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; and
- (d) no action or proceeding to sell land under or in satisfaction of any judgment or mechanic's lien; and
- (e) no seizure or distress under an execution or under any lease or any tenancy howsoever created, 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;
- (f) no proceedings by a lessor, mortgagee, vendor or other person claiming possession of a share of crop in any case where the provisions of *The Crop Payments Act* apply; and
- (g) no action respecting such other class of legal or other proceedings as may be brought within the provisions of this section by order of the Lieutenant Governor in Council,—

shall be taken, made or continued by any person whomsoever against a resident debtor in any case.

(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, 1936.

(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.

(5) The Board may at any time in its discretion cancel or suspend any permit which has been previously issued under this section by the Board.

9. Any person who deems himself aggrieved by any action of the Board in giving or refusing to give any consent 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, 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.

10. 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.

11. 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.

12. No permit shall be granted in respect of any proceedings founded on any mortgage or agreement for sale of lands which are being farmed, if those proceedings lead to foreclosure merely by reason of the fact that because of the depreciation in values caused by abnormal economic conditions the security cannot for the time being be sold to realize a price which is commensurate with its fair ordinary value under normal conditions.

13.—(1) 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 debtor, 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 or adjourn the application, and as a condition of the refusal or adjournment may give such directions to the resident 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.

(2) The Board may require that any person deal with and dispose of any money, choses in action or property of a resident debtor 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 debtor shall comply with any such requirement of which he has notice.

(3) Any direction given under this section in respect of a resident debtor who is a farmer shall be applicable only to so much of the money, crop, live stock and implements of the debtor as is not required for the following purposes:

- (a) The 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 and the provision of a sufficient amount of money 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;
- (b) The payment of any current taxes and any instalment of consolidated arrears payable in respect of the resident farmer's property for the year in which the direction is given; and

- (c) Such other purposes as may be designated by the Lieutenant Governor in Council.

14.—(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 subsection (1) of section 8 of this Act shall, in so far as a resident and a creditor of a resident are concerned, and whether or not such creditor has applied or hereafter applies to the Board for the issue of a permit pursuant to the said subsection (1) be deemed to have been prohibited so long as this Act remains in force, subject to the provision 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.

PART II.

15. Upon receipt of an application in writing by or on behalf of a resident debtor or any creditor of a resident debtor, the Board shall confer with and advise the resident debtor 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 debtor and his creditors to provide for the settlement of the resident debtor'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 conferred by this Act.

16. 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 such agreement 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.

17. The Board shall endeavour to bring about an agreement between the resident debtor and his creditors whereby the secured or unsecured debts of the resident farmer are reduced to an amount which, in the opinion of the Board, is in accordance with the ability of the resident debtor to pay either presently or in the future, having regard to the productive capacity of the farm and equipment which the resident debtor is operating.

18. If an agreement is arrived at between the resident debtor and his creditors whereby the creditors agree to a reduction, compromise or composition of their claims, the Board may determine from time to time the amount and manner of payment of the indebtedness of the resident debtor to his creditors under the said agreement and may give directions accordingly and if, at the expiration of a period of time prescribed by the Board, on a further hearing, it appears that the resident debtor has not complied with the directions given, the Board may, unless in its opinion, conditions justify the default, issue a permit under Part I of this Act, at any time it deems necessary to prevent the resident debtor from defeating the claims of his creditor.

19. Any agreement made by a resident debtor and his creditor or creditors under the provisions of this part shall be valid and binding upon the parties thereto and shall be enforceable in law although made without consideration.

PART III.

PROVISIONS AS TO FARMERS.

20. "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 has 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; and includes a company incorporated under any Act of the Province whose sole or main business is farming within the Province.

21. In any case where a proposal has been formulated for a resident farmer pursuant to the provisions of *The Farmers' Creditors Arrangement Act*, and has been confirmed by the Board of Review under the provisions of the said Act, and the said resident farmer has failed, due to causes beyond his control, to carry out the terms of the said proposal, no creditor of the said resident farmer shall commence or continue any of the proceedings set out in section 8 hereof, unless the Board or any person designated by the Board issues a permit in writing giving consent thereto:

Provided that this section shall not apply in any case where proceedings have been taken or continued against the debtor under the provisions of *The Farmers' Creditors Arrangement Act*, or *The Bankruptcy Act*, or in any case where the debtor has made a voluntary assignment under *The Bankruptcy Act*.

22. No chattel mortgage given by a resident farmer from and after the first day of May, 1934, to secure any past indebtedness, shall have any force or effect whatsoever unless the same has been approved in writing by the Debt Adjustment Board within sixty days next after the date of the execution thereof.

23. Upon the application of any person who is,—

- (a) a resident farmer;
- (b) the owner of any goods or chattels subject to a chattel mortgage given by him; and
- (c) unable to provide himself with the necessities of life and/or feed for his live stock and/or seed grain otherwise than by the sale of goods and chattels or some part thereof,—

the Board may make an order authorizing the applicant to sell so much of such goods and chattels as the Board deems sufficient to provide him with such necessities, feed and seed as aforesaid, which goods and chattels shall be described in the order, and upon the making of any such order the right, title and interest of the mortgagee under such chattel mortgage in the goods and chattels thereby authorized to be sold shall utterly cease and determine.

PART IV.

GENERAL.

24.—(1) Notwithstanding anything contained in *The Crop Payments Act*, being chapter 138 of the Revised Statutes of Alberta, 1922, or in any agreement for sale or mortgage to which that Act applies or in any share crop lease collateral to such an agreement or mortgage the right of a vendor or a mortgagee or his assignee shall not in respect of a crop grown in any year subsequent to the year 1935 operate so as to make deliverable to the mortgagee or

vendor more than one-third of the crop grown in any such year, less the cost of threshing attributable to one-third of the crop.

(2) Any purchaser or mortgagor may in any year subsequent to the year 1935 out of the share of crop deliverable to a vendor or mortgagee pay one year's taxes upon the land on which the crop is grown and in such case upon production of the receipt by the proper officer for such payment the vendor or mortgagee shall be entitled only to one-third share of the crop less the amount shown upon such receipt, and less the cost of threshing as aforesaid.

25. 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.

26. If any person makes wilful default in complying with any order, direction or condition given by the Board, 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, 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.

27. All documents purporting to be issued in pursuance of this Act by the Board or by any officer or agent of the Board and to be signed by the Chairman or any member of the Board or any such officer or agent, 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 person signing the same.

28. 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.

29. Neither the Board nor any member thereof nor any officer or agent of the Board, nor anyone acting on the instructions of the Board, or under the authority of this Act or the regulations under this Act 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, 1933*, or *The Debt Adjustment Act, 1936*, or any regulations made pursuant to any of the said Acts.

30. Every action, order or decision of the Board as to any matter or thing, in respect of which any power, authority or discretion is conferred on the Board under this Act shall be final and shall not be questioned, reviewed or restrained by injunction, prohibition or mandamus or other process or proceeding in any Court, or be removed by *certiorari* or otherwise in any Court.

31.—(1) In case any seizure under execution is made in pursuance of any permit given under the provisions of this Act, the creditors entitled to share in the proceeds of such execution shall be such persons as may be prescribed by the Debt Adjustment Board in any particular case.

(2) In case any property is seized or attached by virtue of any execution against a debtor who is a resident farmer issued,—

(a) by a creditor to whom he is indebted under a contract made or entered into by the debtor, where the whole of the original consideration for the debt arose after the first day of July, 1936; or

(b) by a creditor in an action brought to recover taxes or hospital accounts,—

the execution shall be levied on behalf of the creditor issuing the same and all other creditors to whom the debtor is similarly indebted, and for the purposes of *The Execution Creditors Act* those creditors and no other creditors shall be entitled to share in money received by the sheriff by reason of the execution.

(3) For the purposes of this section “execution” includes every writ of execution, writ of attachment, garnishee proceedings and proceedings in the nature of equitable execution.

32.—(1) In case the Parliament of Canada enacts legislation as to the adjustment of debts, the Lieutenant Governor in Council may for the purpose of preventing conflict between that legislation and this Act, from time to time by Proclamation published in *The Alberta Gazette*,—

- (a) suspend the operation of this Act or any specified part or provision or provisions thereof for a specified period or until further Proclamation; and
- (b) declare that this Act or any specified part, provision or provisions thereof shall be no longer applicable to any specified class or classes of persons for a specified period or until further Proclamation; and
- (c) cancel or vary any previous suspension or declaration.

(2) Every Proclamation shall take effect upon the publication thereof in *The Alberta Gazette* or upon such later date as may be named in the Proclamation for that purpose.

33. 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.

34. *The Debt Adjustment Act, 1936*, being chapter 3 of the Statutes of Alberta, 1936 (Second Session), is hereby repealed.

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

No. 88.

THIRD SESSION
EIGHTH LEGISLATURE
1 GEORGE VI
1937

BILL

An Act to amend and consolidate The
Debt Adjustment Act, 1936.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. HUGILL.

EDMONTON:
A. Shnitka, King's Printer
1937