

New Zealand.



ANALYSIS.

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1933, No. 34.

AN ACT to consolidate and amend the Law relating to the Relief of Mortgagors and Lessees.

Title.

[22nd December, 1933.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Mortgagors and Tenants Relief Act, 1933.

Short Title.

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

Interpretation.

“Adjustment Commission” means an Adjustment Commission appointed under this Act :

1931, No. 3,
 ss. 2, 4 (2)
 1932, No. 1,
 ss. 4 (2), 6 (1)
 1932, No. 17,
 ss. 3, 12

“The Court” means the Supreme Court or, in relation to an application made to a Magistrate or to any specified Magistrate having jurisdiction in accordance with this Act, means any Magistrate or the Magistrate so specified, as the case may be :

“Lease” means an instrument whereby a leasehold interest in land is created, whether at law or in equity :

“Lessee” means a person liable to pay rent under the provisions of a lease ; and includes any person who has guaranteed the performance by the lessee of any covenant, condition, or agreement expressed or implied in the lease, whether such guarantee is expressed in the lease or in any other instrument ; and also includes any person against whom a lessee has a legal or equitable right of indemnity in respect of any liabilities under the lease :

“Lessor” means the person entitled to the rent reserved by a lease :

“Mortgage” means a deed, memorandum of mortgage, instrument, or agreement whereby security

for the payment of any moneys or for the performance of any contract is granted over land or chattels or any interest therein respectively; and includes any instrument of security granted over or in respect of any policy for securing a life insurance, endowment, or annuity; and also includes any agreement for the sale and purchase of land:

“Mortgagee” means the person entitled to the benefit of the security of a mortgage:

“Mortgagor” means a person liable under the provisions of a mortgage; and includes any person who has guaranteed the performance by the mortgagor of any covenant, condition, or agreement expressed or implied in the mortgage, whether such guarantee is expressed in the mortgage or in any other instrument; and also includes any person against whom a mortgagor has a legal or equitable right of indemnity in respect of any liabilities under the mortgage:

“Table mortgage” means a mortgage which is made repayable by instalments at regular intervals throughout the term of the mortgage, each such instalment consisting partly of principal and partly of interest.

(2) For the purposes of this Act an agreement for the sale and purchase of land shall be deemed to be a mortgage of such land to secure payment of the unpaid purchase-money and interest thereon and fulfilment of the conditions set forth in the agreement.

(3) For the purposes of this Act a person shall be deemed to have guaranteed the performance by a mortgagor of a covenant, condition, or agreement expressed or implied in a mortgage if he has guaranteed the performance by the mortgagor of any obligation which is the same or is substantially the same as an obligation expressed or implied in the mortgage, notwithstanding that the instrument of guarantee may have been executed before the execution of the mortgage, and whether in contemplation thereof or not, or notwithstanding that, whether the guarantee was executed before or after the execution of the mortgage, the existence of the mortgage or the terms

thereof, or the proposal that a mortgage be executed, may not have been adverted to in the guarantee.

(4) For the purposes of this Act the exercise of a power of sale shall be deemed to be completed when the vendor becomes bound by an agreement or contract of sale.

3. This Act shall bind the Crown.

Act to bind the
Crown.

1931, No. 3, s. 13

PART I.

RELIEF OF MORTGAGORS.

4. (1) Subject to the provisions of this section, this Part of this Act shall apply to mortgages of any of the following classes :—

Application of
this Part.

1931, No. 3,

s. 3 (b)

1931, No. 47, s. 3

1932, No. 17, s. 2

1932-33, No. 45,
s. 39

See Reprint

of Statutes,

Vol. VI, p. 18

(a) Mortgages which were executed before the seventeenth day of April, nineteen hundred and thirty-one (being the date of the passing of the Mortgagors Relief Act, 1931) :

(b) Mortgages which were in fact operative or designed to take effect before the date referred to in the last preceding paragraph, though not executed before that date :

(c) Mortgages to which the Mortgagors Relief Act, 1931, or this Part of this Act, has at any time applied and which have been varied by the parties thereto, whether before or after the passing of this Act :

(d) Mortgages which at any time since the passing of the Mortgagors Relief Act, 1931, and whether before or after the passing of this Act, have been executed in replacement or substantial replacement of mortgages to which the Mortgagors Relief Act, 1931, or this Part of this Act, has at any time applied.

(2) If any question arises under this section as to whether any mortgage is in replacement or in substantial replacement of another mortgage it shall be determined as a matter of fact by the Court. For the purposes of this section a mortgage may be held by the Court to be in substantial replacement of a former mortgage notwithstanding any variation of the amount secured, or of the rate of interest, or of the property over which security is given, or of the parties, if the Court is satisfied that the new mortgage is intended to secure

(whether exclusively or not) the whole or a part of the original mortgage debt.

Mortgages of insurance policies.
1931, No. 47, s. 4

(3) Nothing in this Part of this Act, or in any order made thereunder, shall apply with respect to any instrument of security granted over or in respect of any policy for securing a life insurance, endowment, or annuity at any time after the maturity of the policy or the death of the assured.

Exemptions.
1931, No. 3, s. 3 (a), (c)
1932, No. 17, s. 4

(4) This Part of this Act shall not apply to—

(a) Securities for loans granted under the Repatriation Act, 1918 :

(b) Mortgages exempted from the operation of the Mortgagors Relief Act, 1931, by the Governor-General by Order in Council issued pursuant to section three of that Act, or mortgages exempted from the operation of this Part of this Act by the Governor-General by Order in Council issued pursuant to the next succeeding subsection.

See Reprint of Statutes, Vol. VIII, p. 1080

(5) The Governor-General may from time to time, by Order in Council, exempt from the operation of this Part of this Act any specified mortgages or any specified class of mortgages, and may in like manner vary or revoke any such Order in Council, or any Order in Council heretofore issued under section three of the Mortgagors Relief Act, 1931.

Limitation of rights of mortgagees.
1931, No. 3, s. 4 (1)
1931, No. 47, s. 5 (1)
1932, No. 17, s. 5 (1)

5. (1) It shall not be lawful for a mortgagee under a mortgage to which this Part of this Act applies or any other person to do any of the acts or exercise any of the powers referred to in the next succeeding subsection otherwise than subject to and in accordance with the provisions of this Act.

(2) The acts and powers to which the last preceding subsection relates are the following :—

(a) To exercise (except in respect of property which the mortgagor has abandoned) any power of sale, rescission, or entry into possession conferred by any such mortgage or by statute ; or

(b) To issue or to be concerned in the issue of any process of execution in pursuance of any judgment, decree, or order of any Court in its civil jurisdiction obtained against the mortgagor

in respect of any covenant, condition, or agreement expressed or implied in the mortgage, or in any instrument of guarantee in respect of the mortgage, whether so obtained before or after the passing of this Act, or to continue or to be concerned in the continuance of any such process of execution, whether commenced before or after the passing of this Act; or

(c) To file a bankruptcy petition or a winding-up petition against the mortgagor in respect of any debt arising out of any covenant, condition, or agreement expressed or implied in the mortgage, or in any instrument of guarantee in respect of the mortgage, or to proceed with any such petition, whether filed before or after the passing of this Act.

(3) For the purposes of paragraph (a) of subsection two of this section the burden of proving that any property has been abandoned by a mortgagor shall be upon the mortgagee.

6. (1) Except as may be otherwise expressly provided in this Act, a mortgagee under a mortgage to which this Part of this Act applies, before proceeding to do any act or exercise any power referred to in the last preceding section, shall give to the mortgagor notice in writing of his intention to do such act or exercise such power.

(2) Such notice shall contain an address for service, and shall be signed by the mortgagee or by some duly authorized attorney or agent of the mortgagee, and shall be deemed to be duly given if delivered to the mortgagor personally, or if posted by registered letter addressed to the mortgagor at his last known place of abode in New Zealand. A notice so posted shall be deemed to have been given at the time when the registered letter would in the ordinary course be delivered.

(3) If the mortgagor does not, within one calendar month after the giving of any such notice of intention to exercise any power or issue any process of execution in respect of land or an insurance policy, or to file a bankruptcy petition or a winding-up petition, or within fourteen days after the giving of any such notice of intention to exercise any power or issue any process of execution in respect of chattels, make an application to

Notice to be given by mortgagee of intention to exercise powers, to enable mortgagor to apply for relief.

1931, No. 3,
s. 5 (1)-(3)
1932, No. 1, s. 8
1932, No. 17,
s. 5 (2)

the Court for relief as hereinafter provided, the mortgagee may, subject to the following provisions of this Act, proceed on the expiration of the said calendar month or fourteen days, as the case may be, to do such act or exercise such power as aforesaid.

Application for relief where mortgagee has not given notice, and by leave of Court in other cases.

1932, No. 1,
s. 2 (1)-(6)
1932-33, No. 34.
s. 2

7. (1) A mortgagor under a mortgage to which this Part of this Act applies may apply to the Court for relief although the mortgagee has not given to the mortgagor any notice under the last preceding section.

(2) On any such application the Court may, if it thinks fit, make an order authorizing the mortgagee, forthwith or on or after a future date to be fixed in the order, to do any act or exercise any power referred to in section five hereof without giving any notice under section six hereof.

(3) Where, on any application referred to in the last preceding subsection, the Court does not expressly authorize the mortgagee to do any such act or exercise any such power as aforesaid, the mortgagee shall not thereafter do such act or exercise such power except after compliance with the provisions of section six hereof.

(4) In any case where, whether before or after the passing of this Act, the mortgagee has given to the mortgagor a notice under section five of the *Mortgagors Relief Act, 1931*, or under section six of this Act, as the case may be, and the mortgagor has not within the appropriate time limited in that behalf applied to the Court for relief, application after the expiry of that time may, by leave of the Court but not otherwise, be made by the mortgagor under this section, but the Court shall not grant such leave in any case unless in the circumstances it is of opinion that the delay of the mortgagor was excusable.

(5) Where, whether before or after the passing of this Act, any mortgagee has received from the Court authority to exercise any power or to do any act referred to in section five hereof, but such power has not in fact been exercised or has not been fully exercised, or such act has not been done, the mortgagor may, by leave of the Court, at any time after the expiration of six months from the date of the order of the Court conferring such authority, make application for relief under the provisions of this section.

(6) For the purposes of the last preceding subsection a mortgagee shall be deemed to have received from the Court authority to exercise any power or to do any act notwithstanding that the order may not in terms have conferred such authority if such order, by refusing, whether absolutely or conditionally, to grant the mortgagor's application for relief, has in effect conferred on the mortgagee authority to exercise any such power or to do any such act.

(7) Successive applications for relief may be made to the Court by any mortgagor under the foregoing provisions of this section, but no such application except the first application under subsection one hereof shall be made save by leave of the Court.

8. Where, whether before or after the passing of this Act, any relief under this Act, or under any enactment repealed by this Act, has been granted to a mortgagor by order of the Court or by mutual agreement, the mortgagor may from time to time apply to the Court for further relief (whether of the same nature as the relief previously granted or not), but no such application shall be made after the expiry of the period for which relief has previously been granted save by leave of the Court.

Application for further relief.
Cf. 1931, No. 3, s. 8 (2)

9. In determining whether relief shall be granted to the mortgagor upon any application under this Part of this Act, the Court may take into consideration—

Matters to be considered by Court on application for relief.
1931, No. 3, s. 7
1931, No. 47, s. 6

- (a) The effect of the continuance of the mortgage upon the security thereby afforded to the mortgagee :
- (b) The inability of the mortgagor to redeem the property either from his own moneys or by borrowing at a reasonable rate of interest :
- (c) The conduct of the mortgagor in respect of any breaches by him of the covenants of the mortgage :
- (d) Any hardship that would be inflicted on the mortgagee by the continuance of the mortgage or upon the mortgagor by the enforcement thereof :
- (e) The extent to which any default of the mortgagor has been caused by any economic or financial conditions affecting trade or industry in New Zealand.

Nature of relief that may be granted by Court.

1931, No. 3,

s. 8 (1)

1931, No. 47, s. 7

1932, No. 1, ss. 3,

4 (1), 5 (1)-(4), 9

1932, No. 17, s. 6

10. (1) If, having regard to the considerations mentioned in the last preceding section and to all other relevant considerations, the Court, upon any application for relief under this Part of this Act, is of opinion that it is equitable so to do, it may, in its discretion, subject to such terms and conditions (if any) as it thinks fit to impose, do all or any of the following things, namely :—

- (a) It may order that the mortgagor shall not, before a date to be specified in the order (being not later than two years after the date of the order), do any act or exercise any power referred to in section five hereof, save by leave of the Court upon application by the mortgagor in that behalf, on account of a breach by the mortgagor of any such terms and conditions as aforesaid.
- (b) It may postpone for such period as it thinks fit, not exceeding two years from the date of the order, the due date for the payment of any interest or principal, whether such due date has arrived or not.
- (c) It may reduce to such rate as it thinks fit the rate of interest payable under any mortgage. Any reduction of interest under this paragraph shall be made in respect of such period, not exceeding two years, as the Court thinks fit, commencing from such date, whether before or after the date of the order, as may be specified therein in that behalf.
- (d) It may remit the whole or any part of any arrears of interest accrued due before the date of the order.
- (e) Where application for relief is made by a mortgagor under a table mortgage, the Court, in addition to or in lieu of any other relief, may extend the term of that mortgage by any period not exceeding two years, and may postpone for a like period the due date for the payment of every instalment of principal and interest due and unpaid at the date of the order or thereafter becoming due. Any terms and conditions imposed by the Court in making an order under this paragraph may include

provision for the payment of interest during the period of postponement on any postponed instalment of principal and interest.

(f) Where application for relief is made by a mortgagor under a mortgage of any estate or interest in land, the Court, in addition to or in lieu of any other relief, may postpone for such period as it thinks fit the right conferred on the mortgagee by virtue of any covenant expressed or implied in the mortgage, or in any instrument of guarantee in respect of the mortgage, to sue for or recover as a debt from the mortgagor, by action in any Court, the principal moneys or any part of the principal moneys or any interest or other moneys then or thereafter becoming payable under the mortgage.

(2) An order under paragraph (f) of the last preceding subsection shall not affect the right (if any) of the mortgagee or any other person to prove the debt to which it relates in the event of the bankruptcy or winding-up of the mortgagor, or to recover any moneys from any person other than the mortgagor named in the order of the Court.

(3) Any application or order under the said paragraph (f) may be made to or by the Court either before or after the mortgagee has exercised any powers of sale or other disposition of the mortgaged property.

(4) For the purposes of the said paragraph (f) the term "mortgagor" includes a former mortgagor, and "mortgagee" includes a former mortgagee, although the relationship of mortgagor and mortgagee may have in fact been terminated either before or after the passing of this Act.

(5) Any mortgagee under a table mortgage to which this Part of this Act applies (including any incorporated Department of State or other instrument of the Executive Government of New Zealand) may, notwithstanding anything to the contrary in any Act, agree on the application of the mortgagor to any extension of such mortgage or postponement of the date of payment of any instalment of principal and interest thereunder that the Court could order if application were made to the Court under the foregoing provisions of this Act:

Provided that nothing in this subsection shall be construed to limit any powers possessed by such mortgagee independently of this section.

(6) Any extension or postponement under the last preceding subsection may be made subject to such terms and conditions as may be mutually agreed to by the parties to the mortgage.

Special
provisions as to
stock mortgages.

11. Whereas for the effective operation of this Part of this Act in its application to lands used for farming purposes it is essential that mortgagees entitled under stock mortgages as hereinafter defined should co-operate with mortgagees entitled under mortgages of the lands so used and, in the case of leased lands, with the lessors of such lands: And whereas agreements have hitherto been made and are now in force between a majority of the persons, firms, and companies engaged in carrying on in New Zealand the business of financing farmers on the security of stock mortgages and persons interested, as lessors or as mortgagees, in the lands on which farming operations are being carried on, with the result that the operation of the existing law in relief of mortgagors and lessees has been rendered more effective than it could be in the absence of such agreements: And whereas certain stock mortgagees have hitherto refrained from entering into such agreements with the result that the operation of the law has been prejudicially affected: And whereas it is deemed necessary in order to secure the effective operation of the law that the Court should be empowered to make orders binding on such stock mortgagees as refuse or fail to enter into agreements with the mortgagees and lessors of land as aforesaid: Be it therefore enacted as follows:—

(1) For the purposes of this section the expression “stock mortgage” means a mortgage, assignment, or other instrument, whether executed before or after the passing of this Act, by virtue of which any person (hereinafter in this section referred to as the stock mortgagee) is entitled to receive delivery of the whole or any portion of the stock for the time being depastured on any land, or of the produce of any land or stock, or of the proceeds of the sale of any such stock or produce.

(2) Where an application for relief has been made to the Court, whether before or after the passing of this Act, by a mortgagor or lessee in respect of any land

used mainly or substantially for agricultural or pastoral or other farming purposes, and any stock on the land or any produce of such land or stock is subject to a stock mortgage, the mortgagor or lessee, or the mortgagee or lessor, or any other person having any interest in the land, may at any time before the application is disposed of serve notice of the application on the stock mortgagee, and thereupon, except in cases where an agreement with the stock mortgagee is in force, the application shall be deemed to be an application for relief in respect of the stock mortgage as well as in respect of the mortgage or lease of the land.

(3) In any case where application is deemed to be made as aforesaid for relief in respect of a stock mortgage, the Court may make such order as it thinks fit with respect to the following matters :—

- (a) The keeping of accounts of all moneys received and expended by the stock mortgagee on account of the mortgagor, after the service on the stock mortgagee of the notice of application for relief :
- (b) The application of moneys received as aforesaid as between the mortgagor, the stock mortgagee, the mortgagee of the land, the lessor (if any), and any other persons having a secured interest in the land or in the proceeds derived from the use of such land :
- (c) Such other matters as the Court in its discretion thinks necessary or desirable for the purposes aforesaid.

(4) Every order made by the Court pursuant to this section shall be binding on the stock mortgagee, the mortgagee of the land, the lessor of the land (if any) and such other persons as may be specified in that behalf in such order.

(5) The several forms set out in the First Schedule hereto (containing the terms of agreements or arrangements which have in fact been executed and are in force on the passing of this Act, as between stock mortgagees, and the mortgagees and lessors of land) are so set out for the guidance of the Court, but not in limitation of the powers conferred on the Court by the foregoing provisions of this section.

(6) Any order made by the Court pursuant to the foregoing provisions of this section may, according to its tenor, operate retrospectively from the first day of July immediately preceding the date of the order or from such later date as may be fixed by the Court in that behalf, and in any such case the stock mortgagee shall bring into account all items of receipt and expenditure strictly identified with or incidental to the seasonal period commencing on the date fixed by the Court.

Power to apply
this Part to
leases
containing a
purchasing
clause.
1931, No. 3, s. 11

12. (1) The Governor-General may from time to time, by Order in Council, apply the provisions of this Part of this Act, with the necessary modifications, to leases of land containing an optional or compulsory purchasing clause granted before the seventeenth day of April, nineteen hundred and thirty-one (being the date of the passing of the Mortgagors Relief Act, 1931), and to leases granted on or after the said date (whether before or after the passing of this Act) in renewal of such first-mentioned leases, or to any such lease or leases or to any class or classes thereof.

(2) For the purposes of this Act every such lease to which this Part of this Act applies shall be dealt with in all respects as if the lessee had already notified his exercise of an option to purchase under an optional purchasing clause, and as if the lessor were mortgagee and the lessee were mortgagor of the land, and as if the rent reserved by the lease were interest and the agreed purchase-money were principal moneys secured by the lease. The term of the lease shall, if necessary, be extended for the purpose of giving effect to this provision.

(3) Nothing in this section shall be construed to affect the operation of any Order in Council under section eleven of the Mortgagors Relief Act, 1931, in so far as such Order in Council is in force on the passing of this Act.

PART II.

RELIEF OF LESSEES.

Application of
this Part.
1932, No. 17, s. 9

13. This Part of this Act shall apply to all leases executed before the thirty-first day of March, nineteen hundred and thirty-two (being the date of the passing of the Mortgagors and Tenants Relief Act, 1932).

14. (1) Any lessee under a lease to which this Part of this Act applies may apply to the Court for relief under this section.

(2) Successive applications for relief may be made to the Court by any lessee under this section, but no such application, except the first application or an application made during the period for which any relief has previously been granted to the lessee, shall be made save by leave of the Court.

(3) Every application under this section shall specify the nature of the relief sought, being—

- (a) A reduction of the rent payable under the lease for the remainder of the term thereof, where the unexpired term of such lease is not more than two years, or, where the lease has more than two years to run, a reduction of the rent for a period not exceeding two years; or
- (b) A remission of rent in arrears at the date of the application for relief; or
- (c) Both a reduction of rent and the remission of arrears of rent, in accordance with the foregoing provisions of this subsection.

(4) On any application under this section the Court may make such order for relief, within the limits hereinbefore specified, as it thinks fit.

(5) On service on the lessor of a copy of the lessee's application for relief under this section, and until such application has been disposed of by the Court, the lessor shall not be entitled to obtain judgment for any rent due and payable under the lease, and thereafter shall be so entitled only in accordance with the order of the Court.

15. (1) The Governor-General may from time to time, by Order in Council, extend the provisions of this Part of this Act to apply to any of the licenses and other instruments referred to in the next succeeding subsection as if such license or other instrument were a lease, and as if the royalties or other moneys payable thereunder were rent.

(2) The licenses and other instruments to which the last preceding subsection relates are the following:—

- (a) Any license or other instrument for the cutting and removal of timber or flax, or for the extraction of coal or fire-clay:

Authority to grant relief to lessees.

1932, No. 1, s. 6
(2), (3), (4), (6)
1932-33, No. 34,
s. 4

Power to apply this Part to licenses and other instruments providing for payment of royalties.

1932, No. 17,
s. 11 (1), (2)
1932-33, No. 30,
s. 36

- (b) Any way-leave or other easement granted in relation to the rights conferred by any such license or instrument as aforesaid :
- (c) Any contract or instrument by virtue of which any person entitled under any license or other instrument to cut flax or timber or extract coal or fire-clay from any land is under an obligation to pay, whether periodically or otherwise, to any other person any moneys calculated wholly or partially by reference to the quantity of timber or flax cut or to be cut, or to the quantity of coal or fire-clay extracted or to be extracted, or fixed as minimum payments, whether or not the person entitled to receive payment under such contract or instrument has any right, title, estate, or interest in such timber, flax, coal, or fire-clay, as the case may be, or in the land containing the same.
- (3) Any Order in Council under this section may relate to any specified license or other instrument, or to any specified class or classes thereof, and may further relate to any assignment or other disposition of the rights or of any of the rights conferred by any such license or other instrument.
- (4) Nothing in this section shall be construed to affect the operation of any Order in Council under section eleven of the *Mortgagors and Tenants Further Relief Act, 1932*, in so far as such Order in Council is in force on the passing of this Act.

PART III.

MISCELLANEOUS.

Limitation of rights of creditors while an application for relief is pending, or an order for relief or a pooling scheme is in force.

Cf. 1931, No. 3, s. 5 (4)
Cf. 1932, No. 1, ss. 6 (6), 7

16. (1) While any application for relief under Part I or Part II of this Act is pending, or any order in relief of a mortgagor or lessee is in force, or any agreement or order in relation to stock mortgages is in force under section eleven hereof, it shall not be lawful, except with the leave of the Court granted upon such terms and conditions as the Court thinks fit, for the mortgagee or lessor, or for any creditor or other person whomsoever on whom notice of the application, or agreement, or order, as the case may be, has been served, to do in respect of the mortgagor or lessee or any property

of the mortgagor or lessee any of the acts referred to in the next succeeding subsection, or to continue or complete the doing of any such act, whether commenced before or after the passing of this Act or before or after the making of the application or order for relief or the coming into force of an agreement or order under section eleven hereof, as the case may be :

Provided that this subsection shall not affect the powers conferred on a local authority by the Rating Act, 1925, to recover rates owing in respect of any property.

(2) The acts to which the last preceding subsection relates are the following :—

(a) To issue or proceed with any process of execution in pursuance of any judgment, decree, or order of any Court in favour of the mortgagee or lessor, or in pursuance of any such judgment, decree, or order for an amount exceeding twenty pounds in favour of any other person :

(b) To issue or proceed with a summons under section five of the Imprisonment for Debt Limitation Act, 1908, except in cases in which fraud is alleged against the judgment debtor :

(c) To seize or sell any property by way of distress for rent :

(d) To exercise in respect of any land or stock, the security over which is the subject of an application, agreement, or order for relief under the provisions of this Act, any power of sale, rescission, or entry into possession conferred by any mortgage or other security executed either before or after the passing of this Act :

(e) To exercise any power of re-entry conferred by any lease or any power of determining any lease :

(f) To file or proceed with a bankruptcy petition or a winding-up petition against the mortgagor or lessee.

17. Where pursuant to this Act or to any enactment hereby repealed the Court has, whether before or after the passing of this Act, made any order in relief of a mortgagor or lessee, any person who was a party to the proceedings or who is interested in the property affected may from time to time, with the leave of the Court, apply to the Court for the discharge or variation of the order, and upon any such application the Court may,

See Reprint
of Statutes,
Vol. VII, p. 977

See Reprint
of Statutes,
Vol. IV, p. 388

Power of Court
to discharge or
vary orders for
relief.

subject to such terms and conditions (if any) as it thinks fit to impose, either discharge the order in whole or in part or vary it in such manner as it deems just and equitable under the circumstances of the case.

**Jurisdiction of
Supreme Court
and Magistrates
respectively.**

1931, No. 3,
s. 14 (1), (2)
1931, No. 47,
s. 18
1932, No. 1,
ss. 5 (5), 6 (7)
1932, No. 17,
ss. 7, 10, 11 (3)

18. (1) The jurisdiction conferred on the Court by this Act may in every case be exercised by the Supreme Court, and, subject to the provisions of this section, may also be exercised by a Magistrate in the following cases:—

- (a) Where application for relief is made in respect of a mortgage, and the principal moneys remaining due and unpaid under the mortgage do not exceed two thousand pounds:
- (b) Where application for relief is made in respect of a lease, and the annual rent reserved by the lease does not exceed two hundred and ten pounds:
- (c) Where application for relief is made in respect of a mortgage or a lease in any other case, and the parties agree in writing that a Magistrate or any specified Magistrate shall have jurisdiction to hear and determine the application.

(2) Notwithstanding anything to the contrary in the foregoing provisions of this section, the Supreme Court only shall have jurisdiction in respect of applications—

- (a) For an order under paragraph (f) of subsection one of section ten hereof, postponing the mortgagee's right to sue:
- (b) For relief from the conditions of any license or other instrument to which section fifteen hereof relates.

(3) The Governor-General may from time to time, by Order in Council, declare that the Supreme Court only shall have jurisdiction in respect of any specified class or specified classes of the applications in respect of which a Magistrate has jurisdiction under the foregoing provisions of this section. Every Order in Council issued under this section may in like manner be from time to time varied or at any time revoked.

Procedure.

1931, No. 3, ss. 10
14 (3)
1931, No. 47,
s. 14
1932, No. 1,
ss. 2 (7), 6 (5)

19. (1) Any application to the Court for relief under this Act may be made by motion, supported by affidavit, with notice to all persons in New Zealand having any registered interest in the property affected, and to such other persons as the Court considers entitled thereto.

Unless the parties otherwise agree, every such application shall be made and heard in the office of the Court nearest to the place where the land or other property to which the application relates is situated :

Provided that during the absence of a Judge or Magistrate, or during the inability of a Judge or Magistrate to act from any cause whatever, the Registrar or Clerk of the Court shall have authority and jurisdiction to order that any such application shall be heard at some other place.

(2) Any application for leave to apply for relief, made under the provisions of this Act, may be combined with a conditional application for relief, to be proceeded with only in the event of the application for leave being granted.

(3) The mortgagor or lessee making the application shall use due diligence in effecting the required services, and if he fails so to do the mortgagee or lessor may move to dismiss the application, and the Court may on that ground dismiss the application accordingly.

(4) Any application under this Act may be disposed of in Chambers.

(5) There shall be no appeal from any order under this Act, whether made by the Supreme Court or by a Magistrate.

Adjustment Commissions.

20. (1) For the purpose of assisting the Court in the exercise of its jurisdiction under this Act, and generally for the purpose of encouraging voluntary settlements between mortgagees and mortgagors and between lessors and lessees, there shall be established such number of Adjustment Commissions as the Governor-General thinks necessary. Every Adjustment Commission shall be given such distinctive name as the Governor-General determines, and any such name may from time to time be changed by the Governor-General.

(2) Every Adjustment Commission shall consist of three persons, to be appointed by the Governor-General, and to hold office during his pleasure. One such person shall be appointed by the Governor-General to be the Chairman of the Commission.

(3) Any person may be appointed to hold office concurrently as a member of two or more Adjustment Commissions.

Power to
establish
Adjustment
Commissions to
assist Court.
1931, No. 47, s. 9
1932, No. 1,
ss. 10 (3), 11

(4) Every Adjustment Commission shall sit at such times and places as, subject to the direction of the Minister of Justice, it may determine. At any sitting of an Adjustment Commission two members shall form a quorum.

(5) In the event of the sickness or other incapacity of any member of an Adjustment Commission, the Governor-General may appoint any person to act in the place of such member during his incapacity.

(6) Every Adjustment Commission shall, within the scope of its jurisdiction, be deemed to be a Commission under the Commissions of Inquiry Act, 1908, and all the provisions of that Act shall apply thereto accordingly.

(7) The procedure of an Adjustment Commission shall subject to this Act and to any regulations thereunder be such as that Adjustment Commission thinks fit :

Provided that the meetings of an Adjustment Commission shall not be open to the public, nor shall any report of any such meeting or of the findings or recommendations of any such Commission be published in any newspaper.

21. (1) Every application for relief under this Act made in respect of land by any mortgagor or lessee shall be referred by the Court to an Adjustment Commission for investigation, unless the parties concerned agree to accept the determination of the Court without reference to an Adjustment Commission :

Provided that if in any case the Court is of opinion that the failure of the parties to agree to accept the determination of the Court without reference to an Adjustment Commission is due to a frivolous or unreasonable objection by any one of them, it may determine the application without reference to such Commission :

Provided also that it shall not be necessary for the Court to refer to an Adjustment Commission any application to which section fifteen hereof relates.

(2) On such reference being made the Court shall adjourn the proceedings for such time as may be necessary to enable it to obtain from the Adjustment Commission a report on the circumstances of the case, with such recommendations (if any) as the Commission may make in the matter.

See Reprint
of Statutes,
Vol. I, p. 1036

Applications for
relief to be
referred by
Court for
recommendations
of Adjustment
Commission,
unless parties
otherwise
agree.

1932, No. 1,
s. 10 (1), (2)
1932, No. 17,
s. 11 (3)

22. (1) On reference to an Adjustment Commission, in accordance with this Act, of any application for relief made to the Court by any mortgagor or lessee, it shall be the duty of that Commission, subject to any directions of the Court in that behalf, to investigate the financial position of the mortgagor or lessee. and, to such extent as may be necessary for that purpose, to investigate also the financial position of any other person. The Commission shall also have regard to all other relevant considerations, including any matters which the Court is expressly required or authorized to take into consideration, and shall as soon as practicable furnish to the Court its report on the application with such recommendations, if any, as it thinks fit to make.

Adjustment
Commission to
consider
applications and
report to Court.
1931, No. 47,
s. 10
1931, No. 1,
s. 10 (3)

(2) If as the result of the investigation by an Adjustment Commission the parties agree to enter into a voluntary arrangement for a modification of their respective rights and obligations, the Commission shall report the fact to the Court, with a statement of the nature of the proposed arrangement, and thereupon the Court may, if it thinks fit, dismiss the application for relief or adjourn it to allow effect to be given to the terms of the arrangement by the execution of all necessary instruments.

23. In addition to the powers conferred on an Adjustment Commission by the last preceding section, any such Commission may, on application in that behalf made by a mortgagor or mortgagee, or by a lessee or lessor, endeavour to promote a voluntary modification by the parties to any mortgage or lease of their mutual rights and obligations, and for that purpose the Adjustment Commission shall have and may exercise the powers of investigation conferred on it by the last preceding section.

Further powers
of Adjustment
Commission.
1931, No. 47,
s. 11

General.

24. No party to any proceedings under this Act before the Court or an Adjustment Commission shall be liable to pay the costs of any other party to any such proceedings unless the Court or Commission, as the case may be, makes an order for the payment by any party of such costs on the ground that in its opinion the conduct of such party has been for the purpose of causing delay or has in any other respect been vexatious.

Costs in
proceedings
before Court or
Adjustment
Commission.
1931, No. 47,
s. 15
1932, No. 1, s. 12

Power to fix solicitors' fees in respect of proceedings under this Act or National Expenditure Adjustment Act. 1932, No. 11, s. 51

General jurisdiction of Court. 1931, No. 3, s. 12

Powers of mortgagee or lessor not revived on expiry of Court's order. 1931, No. 47, s. 13

Application of Act to exercise by guarantor or indemnified person of rights against mortgagor or lessee.

25. The Governor-General may from time to time, on the recommendation of any three Judges of the Supreme Court, of whom the Chief Justice shall be one, by Order in Council fix the maximum fees that may be charged by any solicitor to any client in respect of proceedings in the Supreme Court or before a Magistrate or any Adjustment Commission under this Act, or in respect of any proceedings under Part III of the National Expenditure Adjustment Act, 1932.

26. In order that full effect may be given to the intent of this Act, the Court shall, in every matter arising in respect of a mortgage or a lease to which Part I or Part II of this Act applies, have full power and jurisdiction to deal with and determine such matter in such manner and to make such order, not inconsistent with the provisions of this Act, as it deems just and equitable under the circumstances of the case, notwithstanding that express provision in respect of such matter is not contained herein.

27. Where pursuant to this Act or to any enactment hereby repealed the Court has, whether before or after the passing of this Act, made any order in relief of a mortgagor or lessee, the expiry of such order, or the repeal or expiry of this Act, shall not revive any rights or powers of the mortgagee or lessor in respect of any default made by the mortgagor or lessee before the date of the order of the Court granting such relief as aforesaid, unless, in the case of a continuing default, such default has continued after the date of such expiry or repeal.

28. Where any person has guaranteed the performance by a mortgagor or lessee of any covenant, condition, or agreement expressed or implied in a mortgage or lease to which Part I or Part II of this Act applies, or, being otherwise liable for the performance of any such covenant, condition, or agreement, has a legal or equitable right of indemnity against any mortgagor or lessee, the provisions of this Act shall apply with respect to the legal or equitable rights of such person against the mortgagor or lessee, or against any other guarantor, as if such person were a mortgagee or lessor and as if such rights were conferred by a covenant, condition, or agreement expressed or implied in the mortgage or lease.

29. Where the date appointed by any mortgage to which Part I of this Act applies, or by any renewal or extension thereof, for the repayment of any principal moneys secured by the mortgage has passed (whether before or after the passing of this Act) and no agreement in writing has been made between the mortgagor and the mortgagee for a renewal or extension of the term thereof, the mortgagor shall be entitled to repay to the mortgagee such principal moneys upon giving to the mortgagee not less than three months' previous notice in writing of his intention so to repay.

Right of mortgagor to repay principal on three months' notice. 1931, No. 47, s. 16

30. (1) It shall be lawful for any trustee mortgagee under a mortgage to which Part I of this Act applies to arrange with the mortgagor for a renewal of such mortgage for a term not exceeding five years, at such rate of interest as such trustee may think fit, notwithstanding that a higher rate of interest might be obtainable for a new loan.

Trustee may arrange renewal of mortgage. *Ibid.*, s. 17

(2) Nothing in this section shall be construed to limit the powers conferred on a trustee by section two of the Trustee Amendment Act, 1924, or otherwise howsoever.

See Reprint of Statutes, Vol. VIII, p. 917

(3) The powers conferred by the said section two shall be deemed to include power to reduce the rate of interest payable under any mortgage.

31. No covenant or condition contained in any mortgage or lease, or in any deed or other instrument, whether executed before or after the passing of this Act, shall have or be deemed heretofore to have had any force or effect to deprive any mortgagor or lessee of any right, power, privilege, or other benefit provided for by this Act.

Mortgagor or lessee debarred from contracting out of benefits provided by Act. 1932-33, No. 34, s. 3

32. The Governor-General may from time to time, by Order in Council, make regulations for giving full effect to the provisions of this Act and for the due administration thereof.

Regulations. 1931, No. 3, s. 15

33. (1) The enactments mentioned in the Second Schedule hereto are hereby repealed.

Repeals and savings.

(2) All Orders in Council, regulations, offices, appointments, notices, applications, orders, and generally all acts of authority which originated under any of the enactments hereby repealed and are subsisting or in force at the passing of this Act shall enure for the purposes of this Act as fully and effectually as if they had originated

under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(3) All matters and proceedings commenced under any such enactment and pending or in progress at the passing of this Act may be continued, completed, and enforced under this Act.

Duration of Act,
1931, No. 3, s. 1
(2)-(4)
1931, No. 47, s. 2

34. (1) This Act shall continue in force until the thirty-first day of December, nineteen hundred and thirty-five, and shall then be deemed to be repealed.

(2) Notwithstanding the expiry of this Act, all proceedings pending under this Act may be continued and completed as if this Act were still in force, and all orders under this Act theretofore made and then subsisting, or thereafter made in any such pending proceedings, shall enure as if this Act were still in force, and all proceedings may be taken and all jurisdiction exercised with respect to such orders accordingly :

Provided that no application for relief shall be made after the expiry of this Act.

(3) For the purposes of the last preceding subsection all Orders in Council and regulations under this Act which are in force at the expiry of this Act shall continue in force as if this Act were still in force.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

FORMS OF AGREEMENT OR ARRANGEMENT IN FORCE ON THE PASSING OF THIS ACT, AND AFFECTING RIGHTS UNDER STOCK MORTGAGES.

(a) *Agreement with Public Trustee.*

BASIS OF AGREEMENT BETWEEN FIRST MORTGAGEES OF LAND AND STOCK MORTGAGEES FOR CARRYING ON MORTGAGORS ENGAGED IN FARMING OPERATIONS.

1. The agreement shall cover a period of twelve months commencing on the _____, and ending on the _____. If the parties are satisfied with the working of the agreement and desire it to be continued for a further period, such period shall extend from the _____ to the _____.

2. The agreement shall take no account of second or subsequent mortgages or charges on the land or stock, otherwise than subsequent chattel securities and crop liens taken as collateral security by the stock mortgagee if found necessary.

3. The first mortgagees of the land and the stock mortgagee shall define the amounts owing to them at the commencement of the agreement. Such amounts shall include all arrears of interest and all disbursements made by the first mortgagees of the land for rent, rates, insurance premiums, land-tax, or other outgoings on the property.

4. Where the whole or part of the farming property is leasehold the lessor shall be permitted to join in the agreement, and the amount in respect of which he is entitled to participate in the distribution of any surplus revenue shall be ascertained by capitalizing the annual rental at a rate of interest agreed upon by the parties: Provided that an adjustment shall be agreed upon by the parties in those cases where it is established that the rental is excessive on present-day values.

5. Should the whole or part of the farming property be leasehold and the lessor not be prepared to join in the agreement the other parties may—

(a) Agree to the rent, if it is small, being paid as it falls due as a farm expense; or

(b) Proceed as if the lessor had concurred in the agreement.

6. The account of the mortgagor with the stock mortgagee as at the commencement of the agreement shall be ruled off and be called the "No. 1 Account". During the currency of the agreement, including any term for which it is extended, interest accruing due shall be debited to the account, and there shall be credited thereto any amounts becoming available for that purpose in terms of this agreement.

7. To provide the requisite finance for the carrying-on of the farming operations the stock mortgagee will make further advances up to a total agreed upon by the Public Trustee and other first mortgagees and based upon a statement of estimated receipts and expenditure prepared by the mortgagor and accepted by the stock mortgagee, giving particulars of all farming and living expenses, including provision for fertilizer where necessary, which will reasonably and properly be incurred during the term of the agreement. It is agreed that in the event of conditions arising during the period of the agreement rendering additional expenditure necessary for the proper farming and maintenance of the property the stock mortgagee shall be at liberty to make the necessary further advances.

8. As from the commencement of the agreement a "No. 2 Account" shall be opened by the stock mortgagee to which shall be debited the payments made on account of the living and working expenses referred to in paragraph 7 hereof.

9. The sums received during and pertaining to the period from the sale of the mortgagor's wool, lambs, sheep, cattle, crops, or other farm produce, and the amounts received by way of milk cheques (if any) during the period covered by and pertaining to the agreement, or received after that period in respect of the farming operations properly attributable to such period, shall be credited to the No. 2 Account.

(NOTE.—All cases where sums are received by the mortgagor as income from other sources shall be the subject of special arrangement.)

10. The advances made by the stock mortgagee in the No. 2 Account for living and working expenses during the period of the agreement, together with interest thereon at the current rate, shall be a first charge on the amounts credited to the No. 2 Account.

11. The surplus remaining in the No. 2 Account shall be applied as follows:—

- (a) In payment of rates and land-tax falling due within the period of the agreement.
- (b) The balance shall be divided between the first mortgagees of the land and the stock mortgagee in proportion to the sums owing to them respectively as at the commencement of the agreement as determined in paragraph 3 hereof.
- (c) In the event of the divisible surplus being sufficient to meet a full year's interest at 5 per cent. on the Public Trustee's mortgage and the stock mortgagee's mortgage any surplus then remaining shall be applied firstly in payment to the stock mortgagee of the amount necessary to increase the interest received for the year to the rate normally charged by the stock mortgagee on similar accounts, and secondly the balance shall be distributed to the Public Trustee and the stock mortgagee in the proportions referred to in clause (b) above.

12. (a) If the live and dead stock under security to the stock mortgagee at the conclusion of the agreement shows a diminution in number and/or quality as compared with the number and/or quality at the commencement of the agreement, such diminution shall be treated as having arisen from a realization of part of the stock security and the stock mortgagee shall be paid an equivalent amount at current market values from the No. 2 Account before any of the payments referred to in paragraph 11 hereof are made. Any excess in number and/or quality of the stock at the conclusion of the agreement as compared with that in existence at the commencement of the agreement shall be treated as a profit when the stock is realized and the requisite credit made to the No. 2 Account for distribution in terms of this agreement, or the surplus may be brought into the No. 2 Account at current market values.

(N.B.—This means that the Public Trustee would only be concerned with the number and quality of stock on hand at the commencement and the end of the period: the only portion to be valued being the deficiency or surplus.)

(b) An allowance of 15 per cent. shall be made to cover depreciation on the value of implements and plant used by the mortgagor and under security to the stock mortgagee.

13. Any amount set aside to meet the claim of the lessor (if any) in terms of paragraph 5, clause (b), and not used for that purpose shall be distributed in accordance with the provisions of paragraph 11.

14. If, at the conclusion of the period covered by the agreement, the No. 2 Account is in debit after making any allowance necessary in terms of paragraph 12, the following provisions shall apply:—

- (a) If the parties agree to an extension of the agreement for a further year the debit balance shall be carried forward to the following year and rank equally with that year's expenditure as a first charge against that year's revenue; the rates and taxes for the two years to be a second charge.
- (b) If a distribution in terms of paragraph 11 is made and if the agreement is extended for another year and if in that year the receipts in the No. 2 Account are not sufficient (after

making any necessary adjustment in terms of paragraph 12) to meet the outgoings in such account, the net loss shall be a charge *pro rata* on the surplus revenue distributed to the land and stock mortgagees in the previous year and the rates and taxes for the second year of the agreement shall be a second charge on such surplus: Provided that the amount of loss recoverable shall not in any case exceed the surplus distributed in the preceding year.

- (c) If the agreement is not renewed or extended the debit shall remain the responsibility of the stock mortgagee.

(b) *Agreement with State Advances Office.*

MEMORANDUM OF AGREEMENT BETWEEN _____ AND THE
STATE ADVANCES OFFICE FOR CARRYING ON A MORTGAGOR AND
DETERMINING A DIVISION OF A SURPLUS INCOME BETWEEN THE
FIRM AND THE DEPARTMENT.

1. Unless otherwise agreed upon in writing, all arrangements between the company and the State Advances Office and/or landlords are for a specific term—viz., twelve months.

2. The terms and conditions herein set out shall apply to all *pro rata* arrangements to be concluded after _____, 1933, between the company and the Department.

3. Formal agreements in respect of each account are not required. An agreement in writing between the representatives of the company and the Department to treat a particular account on a *pro rata* basis will be deemed to bring that particular account within the terms of and subject to the conditions of this agreement.

4. Renewals or extensions of *pro rata* agreements between the parties hereto and concluded after _____, 1933, shall similarly be subject to the terms and conditions herein set out.

5. The agreement shall take no account of second or subsequent mortgages or charges on the land or stock.

6. The first mortgagees of the land and stock shall define the amounts owing to them at the commencement of the agreement. Such amounts shall include all arrears of interest and all disbursements made for rent, rates, insurance premiums, land-tax, or other outgoings on the property.

7. Where the whole or part of the farming property is leasehold the lessor shall be permitted to join in the agreement, and the amount in respect of which he is entitled to participate in the distribution of any surplus revenue shall be ascertained by capitalizing the annual rental at a rate of interest agreed upon by the parties.

8. Should the whole or part of the farming property be leasehold and the lessor not be prepared to join in the agreement the other parties may (a) agree to the rent, if it is small, being paid as it falls due as a farm expense, or (b) proceed as if the lessor had concurred in the agreement.

9. The account of the mortgagor with the company as at the commencement of the agreement shall be ruled off and be called the "No. 1 Account". During the currency of the agreement, including any term for which it is extended, interest accruing due shall be debited

to the account, and there shall be credited thereto any amounts becoming available for that purpose in terms of this agreement.

10. As from the commencement of the agreement a "No. 2 Account" shall be opened by the company to which shall be debited the payments made on account of the living and working expenses referred to in paragraph 11 hereof.

11. To provide the requisite finance for the carrying-on of the farming operations the company will make during the term of the agreement such further advances as will provide the mortgagor with sufficient money for—

(a) Reasonable living-expenses for the mortgagor and his household.

(b) Reasonable working-expenses of and incidental to the carrying-on of the mortgagor's usual farming operations.

12. All sums received from the sale of the mortgagor's wool, lambs, sheep, crops, or other farm-produce, and the amounts received by way of milk cheques (if any) during the period covered by the agreement or received after that period in respect of the farming operations properly attributable to such period, shall be credited by the company to the No. 2 Account.

13. The advances made by the company in the No. 2 Account for living and working expenses during the period of the agreement, together with interest thereon at the current rate, shall be a first charge on the amounts credited to the No. 2 Account.

14. The excess (if any) of receipts over expenditure in No. 2 Account, shall be applied as follows:—

(a) In payment of rates and land-tax (if any) accruing due within the period of the agreement.

(b) The balance shall be divided between the company and the Department in proportion to the sums owing to them respectively as at the date of commencement of the agreement as determined in paragraph 6 hereof, and shall be applied by them in payment of the interest or on account of the interest due to them for the period of the agreement: Provided that if there remains any surplus after one year's interest shall have been paid in full to both the company and the Department, such surplus shall be applied by the company in the reduction of its No. 1 Account.

15. If the live and dead stock under security to the company at the conclusion of the agreement shows a diminution in number and/or quality as compared with the number and quality at the commencement of the agreement such diminution shall be treated as having arisen from a realization of part of the stock security and the company shall be paid an equivalent amount from the No. 2 Account before any of the payments referred to in paragraph 14 hereof are made. Any excess in number and/or quality of the stock at the conclusion of the agreement as compared with that in existence at the commencement of the agreement shall be treated as a profit when the stock is realized and the requisite credit made to the No. 2 Account for distribution in terms of this agreement. A reasonable allowance shall be made to cover depreciation on the value of implements and plant used by the mortgagor and under security to the company.

16. Any amount set aside to meet the claim of the lessor (if any) in terms of paragraph 8 (b) hereof and not used for that purpose shall be distributed in accordance with the provisions of paragraph 14 (b) hereof.

17. If at the conclusion of the period covered by the agreement the No. 2 Account is in debit after making any allowance necessary in terms of paragraph 15 hereof, the following provisions shall apply:—

(a) If the parties agree to an extension of the agreement for a further year the debit balance shall be carried forward to the following year and rank equally with that year's expenditure as a first charge against that year's revenue: rates as hereinbefore defined and taxes for the two years to be a second charge.

(b) If the agreement is not renewed or extended the debit shall remain the responsibility of the company.

18. This agreement between the company and the Department is operative till _____, when the position is open for review by either of the contracting parties: Provided always that all arrangements in any individual account in pursuance of this agreement made by the company and the Department during its currency shall continue to remain subject to the terms and conditions hereinbefore set forth until the expiry by effluxion of time of the period appointed in such particular account.

(c) *Agreement with Commissioners of Crown Lands on behalf of His Majesty.*

GENERAL TERMS AND CONDITIONS FORMING THE BASIS ON WHICH AGREEMENTS MAY BE CONCLUDED BETWEEN STOCK AND STATION COMPANIES AND THE COMMISSIONER OF CROWN LANDS WITH RESPECT TO THE CONTROL OF CURRENT ACCOUNTS AND DISTRIBUTION OF SURPLUS REVENUE OR PROFITS.

Recognizing that the position of clients and circumstances in particular cases vary considerably, it is only possible to set out general terms governing profit-sharing agreements.

It may be necessary while still preserving the basic principles set out herein, to introduce special conditions in certain cases.

It is not necessary to have formal agreements executed, but upon agreement being reached between the parties to merely exchange letters agreeing to the general scheme in so far as it applies and detailing any special feature or conditions agreed to.

General Scheme.

(1) All agreements hereunder shall cover a period of twelve months' operations, terminating on 1st July unless another date is particularly specified:—

(2) By arrangement agreements may be renewed or extended either on the former terms or varied as may be specially agreed.

(3) The terms and conditions set out herein shall apply except where the same are expressly modified or varied.

(4) The financial position of the mortgagor or tenant to be disclosed for examination by the parties to an agreement.

(5) The basis of participation in the surplus revenue will be decided by observance of the following factors :—

- (a) Crown Lands Department: The amount of the annual rent reserved in the lease or license capitalized at 5 per cent.
- (b) Stock Agents: On the account at commencement plus one-third. Accounts agreed between the parties as being distinctly over-capitalized to have the capital amount determined on the security.

Assessment of the latter is a matter for agreement between the parties. The breed, quality, and general composition of sheep flocks and cattle vary in different districts and individual instances. Generally the principle to be observed in arriving at the value of any particular security is contained in a recognition of pre-slump standard values as applied to the particular class of stock under consideration.

It is agreed that where the security for current account includes a collateral mortgage over Crown leaseholds, the equity in the latter shall be confined to the value of the lessee's improvements. Outside mortgagees unless by arrangement associated with this agreement are not hereby prejudiced should they apply to the Commission or the Court to determine the capital basis on which they are to participate as provided in clause (c) following :—

- (c) Mortgagees: In the case of mortgage securities over Crown leaseholds and/or on freehold or other leasehold lands worked in conjunction with the former it shall be arranged by agreement whether the whole or only a part of the mortgage principal debt shall share in the *pro rata* distribution of profits. Failing agreement, mortgagees are to be invited to obtain a decision from the Adjustment Commission or Court (Mortgagors and Tenants Relief Act) as to the capital basis on which they will participate.

If a mortgagee fails to agree and neglects to apply to the Court within thirty days, it will be competent for the other parties hereto to proceed to agreement as to their particular interests :

- (d) Lessors: Where other leaseholds are worked in conjunction with Crown lands the capital interests shall be arrived at as provided in clause (c) :
- (e) Local Body or Irrigation Water Rates: Where it has been or is specifically agreed that these charges share *pro rata* in profits, the levy or charge struck for the immediate period of twelve months shall rank for its share :

In other event the question of making payments on account of current levies is left to the discretion of the stock company, and in the event of disbursements being deemed necessary, the amounts to be a charge on No. 2 Account unless it is agreed that the payment is essentially in protection of the mortgagee's interests, in which case the disbursement will be a first charge on the latter's share of profits.

- (6) The account of the mortgagor or lessees with the stock company as at the commencement of the agreement shall be ruled off and be called the "No. 1 Account". During the currency of the agreement, including any term for which it is extended, interest

accruing due shall be debited to the account, and there shall be credited thereto any amounts becoming available for that purpose in terms of this agreement.

(7) As from the commencement of the agreement a "No. 2 Account" shall be opened by the stock company to which shall be debited the payment made on account of the living and working expenses referred to in paragraph (8) hereof.

(8) To provide the requisite finance for the carrying-on of the farming operations, the stock company will at its discretion make during the term of the agreement such further advances as will provide the tenants with sufficient money for what in their judgment are—

- (a) Reasonable living-expenses for the tenant and his household:
- (b) Reasonable working-expenses of and incidental to the carrying-on of the tenant's usual farming operations and account.

(9) All sums received from the sale of the tenant's wool, stock, crops, or other farm-produce, and the amounts received by way of milk cheques (if any) during the period covered by the agreement, or received after that period in respect of the farming operations properly attributable to such period, shall be credited by the stock company to the No. 2 Account.

(10) The advances made by the stock company in the No. 2 Account for living and working expenses during the period of the agreement, together with interest thereon at the current rate, shall be a first charge on the amounts credited to the No. 2 Account.

(11) If the live and dead stock under security to the stock company at the conclusion of the agreement shows a diminution in number and/or quality as compared with the number and quality at the commencement of the agreement such diminution shall be treated as having arisen from a realization of part of the stock security, and shall be replaced or No. 1 Account credited and No. 2 Account debited with a sum equivalent to the cost of replacement. Any excess in number and/or quality of the stock at the conclusion of the agreement as compared with that in existence at the commencement of the agreement shall be treated as a profit when the stock is realized and the requisite credit made to the No. 2 Account for distribution in terms of this agreement. Similarly with respect to any portion of the year's produce.

Fair depreciation shall be allowed on plant, machinery (excluding motor-cars), and horses used by the lessee on the property and forming part of the security held by the stock company. The percentage of depreciation allowed to be mutually arranged and shall not in any case exceed the following allowances:—

20 per cent. on tractors, lorries, and reapers and binders:

10 per cent. on all other plant and machinery (motor-cars excluded):

10 per cent. on horses.

Any depreciation allowance to be less amounts expended for maintenance or replacements.

(12) If at the conclusion of the period covered by the agreement the No. 2 Account is in debt after making any allowance necessary in terms of paragraph (11) hereof, the following provisions shall apply:—

- (a) If the parties agree to an extension of the agreement for a further year the debit balance shall be carried forward to

the following year and rank equally with that year's expenditure as a first charge against that year's revenue.

(b) If the agreement is not renewed or extended the debit shall remain the responsibility of the stock company.

(13) In cases where profit sharing proposals are under consideration, the stock company will submit a statement showing the full financial position of the client's estimated value of assets in detail and schedule of stock and chattels on hand at a date corresponding with the proposed closing of No. 1 Account. The stock company will also disclose the net results of the previous two years' farm operations, showing specifically charges for or payments made within each period for rent or interest.

(14) When it has been agreed between the parties to enter into an agreement it shall remain operative for the period ending on the 1st day of July following, and in the meantime and until thirty days after that date the Department will not seek to recover any arrears of rent other than such amount thereof specially reserved for payment prior or subsequent to any agreement being concluded.

(15) The stock company will, as soon as possible after the 1st day of July (following any period covered by agreement) and not later than thirty days thereafter, supply to the Department complete statements relating to the operations under No. 2 Account, and shall pay to the Department forthwith its share of the ascertained profit. No payment to be made on account of mortgagees interest until the accounts have been approved by the Department.

The terms and conditions set out herein are hereby approved by the Commissioner of Crown Lands, and the representatives of the respective stock and station companies, who, in witness whereof, have subscribed their signatures hereto this day of

, 19 .

..... Commissioner of Crown Lands.
..... } Representing
..... }
..... }

(d) *Agreement between Dunedin Stock-agent Companies and the Commissioner of Crown Lands with respect to the Control of Current Accounts and Distribution of Surplus Revenue or Profits.*

Recognizing that the position of clients and circumstances in particular cases vary considerably, it is only possible to set out general terms governing profit-sharing agreements.

It may be necessary while still preserving the basic principles set out herein, to introduce special conditions in certain cases.

It is not necessary to have formal agreements executed, but upon agreement being reached between the parties to merely exchange letters agreeing to the general scheme in so far as it applies and detailing any special feature or condition agreed to.

General Scheme.

(1) All agreements hereunder shall cover a period of twelve months' operations, terminating on 1st July unless another date is particularly specified.

(2) By arrangement agreements may be renewed or extended either on the former terms or varied as may be specially agreed.

(3) The terms and conditions set out herein shall apply except where the same are expressly modified or varied.

(4) The financial position of the mortgagor or tenant to be disclosed for examination by the parties to an agreement.

(5) The basis of participation in the surplus revenue will be decided by observance of the following factors :—

(a) Crown Lands Department : The amount of the annual rent reserved in the lease or license capitalized at 5 per cent.

(b) Stock Agents : On the account at commencement plus one-third. Accounts agreed between the parties as being distinctly over-capitalized to have the capital amount determined on the basis of the assessed value of the security.

The standard value of half-bred or threequarter-bred flocks is agreed to be taken at 25s., and crossbred flocks at 20s., these values to be shaded in cases where breeding-ewes represent less than 40 per cent. of the flock.

It is agreed that where the security for current accounts includes a collateral mortgage over Crown leaseholds the equity in the latter shall be confined to the value of the lessee's improvements. Outside mortgagees are not bound by this agreement, and are not hereby prejudiced should they apply to the Commissioner or the Court to determine the capital basis on which they are to participate as provided in clause (c) following :—

(c) Mortgagees : In the case of mortgage securities over Crown leaseholds and/or on freehold or other leasehold lands worked in conjunction with the former it shall be arranged by agreement whether the whole or only a part of the mortgage principal debt shall share in the *pro rata* distribution of profits. Failing agreement, mortgagees are to be invited to obtain a decision from the Adjustment Commission or Court (Mortgagors and Tenants Relief Acts) as to the capital basis on which they will participate.

If a mortgagee fails to agree, and neglects to apply to the Court within thirty days, it will be competent for the other parties hereto to proceed to agreement as to their particular interests.

(d) Lessors : Where other leaseholds are worked in conjunction with Crown lands the capital interests shall be arrived at as provided in clause (c) :

(e) Local Body or Irrigation Water Rates : Where it has been or is specifically agreed that these charges share *pro rata* in profits, the levy or charge struck for the immediate period of twelve months shall rank for its share :

In other event the question of making payments on account of current levies is left to the discretion of the stock firm, and in the event of disbursements being deemed necessary, the amounts to be a charge on No. 2 Account unless it is agreed that the payment is essentially in protection of the mortgagee's interests, in which case the

disbursement will be a first charge on the latter's share of profits :

(6) The account of the mortgagor or lessees with the stock company as at the commencement of the agreement shall be ruled off and be called the "No. 1 Account". During the currency of the agreement, including any term for which it is extended, interest accruing due shall be debited to the account, and there shall be credited thereto any amounts becoming available for that purpose in terms of this agreement.

(7) As from the commencement of the agreement a "No. 2 Account" shall be opened by the stock company to which shall be debited the payment made on account of the living and working expenses referred to in paragraph (8) hereof.

(8) To provide the requisite finance for the carrying-on of the farming operations, the stock company will at its discretion make during the term of the agreement such further advances as will provide the tenants with sufficient money for what in their judgment are—

- (a) Reasonable living-expenses for the tenant and his household :
- (b) Reasonable working-expenses of and incidental to the carrying-on of the tenant's usual farming operations and account.

(9) All sums received from the sale of the tenant's wool, stock, crops, or other farm-produce, and the amounts received by way of milk cheques (if any) during the period covered by the agreement, or received after that period in respect of the farming operations properly attributable to such period, shall be credited by the stock company to the No. 2 Account.

(10) The advances made by the stock company in the No. 2 Account for living and working expenses during the period of the agreement, together with interest thereon at the current rate, shall be a first charge on the amount credited to the No. 2 Account.

(11) If the live and dead stock under security to the stock company at the conclusion of the agreement show a diminution in number and/or quality as compared with the number and quality at the commencement of the agreement such diminution shall be treated as having arisen from a realization of part of the stock security and shall be replaced or No. 1 Account credited and No. 2 Account debited with a sum equivalent to the cost of replacement, any excess in number and/or quality of the stock at the conclusion of the agreement as compared with that in existence at the commencement of the agreement shall be treated as a profit when the stock is realized and the requisite credit made to the No. 2 Account for distribution in terms of this agreement. Similarly with respect to any portion of the year's produce.

An allowance as noted hereunder shall be made to cover depreciation on the value of implements and plant, and horses used by the mortgagor and under security to the company :—

25 per cent. on fast depreciating implements such as tractors, reapers and binders, and milking machines :

20 per cent. on horses :

10 per cent. on all other plant.

All less amounts expended for maintenance or replacement.

(12) If at the conclusion of the period covered by the agreement the No. 2 Account is in debt, after making any allowance necessary in terms of paragraph (11) hereof, the following provisions shall apply :—

- (a) If the parties agree to an extension of the agreement for a further year the debit balance shall be carried forward to the following year and rank equally with that year's expenditure as a first charge against that year's revenue.
- (b) If the agreement is not renewed or extended the debit shall remain the responsibility of the company.

(13) In cases where profit-sharing proposals are under consideration, the stock firm will submit a statement showing the full financial position of the client's estimated value of assets in detail and schedule of stock and chattels on hand at a date corresponding with the proposed closing of No. 1 Account. The firm will also disclose the net results of the previous two years' farm operations, showing specifically charges for or payments made within each period for rent or interest.

(14) When it has been agreed between the parties to enter into an agreement it shall remain operative for the period ending on 1st July, 1934, and in the meantime and until thirty days after that date the Department will not seek to recover any arrears of rent other than such amount thereof specially reserved for payment prior or subsequent to any agreement being concluded.

(15) The stock firm will, as soon as possible after the 1st day of July (following any period covered by agreement), and not later than thirty days thereafter, supply to the Department complete statements relating to the operations under No. 2 Account, and shall pay to the Department forthwith its share of the ascertained profit. No payment to be made on account of mortgagee's interest until the accounts have been approved by the Department.

The terms and conditions set out herein are hereby approved by the Commissioner of Crown Lands, and the representatives of the respective stock and station firms, who, in witness whereof, have subscribed their signatures hereto, this day of , 19

....., Commissioner of Crown Lands.
 } Representing
 }

(e) Form of Agreement submitted by the Associated Banks.

AGREEMENT BETWEEN FIRST MORTGAGEE OF LAND, BANKS, STOCK MORTGAGEE, AND LESSOR.

(1) The mortgagee, the bank, and the lessor to capitalize their respective debts as at , 19 , and for the purpose of this agreement the respective debts as at , 19 , are set out as :—

Land mortgage	£	:	:
Stock mortgagee	£	:	:
Lessor	£	:	:

(2) All debit and credit entries in respect of farming operations appearing in the bank's books as from , 19 , to be transferred

to a new No. 2 Account (subject to paragraph (7) hereof). Thereafter, during the continuance of this arrangement, the bank, at its discretion, to make all farming payments, &c. (including manures), as estimated and approved by it to the debit of this account—all revenue to be credited thereto.

(3) Advances made under the last preceding paragraph will, with interest at minimum bank rate, be a first charge on the income. The maintenance of the live-stock to be included in the first charge on income, together with an agreed allowance to cover depreciation on farm machinery.

(4) Current rates, taxes, insurance premiums, &c., in respect of farming securities to be paid as due and debited to the No. 2 Account.

(5) The balance of the two years' income (if any) then to be available for division between the bank, mortgagee, and lessor proportionately in terms of paragraph (1), unless it is agreed to continue for a further period, in which case any surplus is to be carried forward. The payments to the mortgagee to be limited to the interest due under his mortgage for the period of the agreement, and payments to the lessor to the amount of rent due under the lease for that period. Mortgage interest to be at ordinary not penal rates and, where applicable, the National Expenditure Adjustment Act shall be observed in regard to interest and rent reduction.

In the case of the mortgagee and lessor, any amounts so received from the pool shall be accepted by the mortgagee and lessor in full satisfaction of the interest and rent payable for the pooling period under the mortgage and lease.

Should the surplus exceed the sum required to provide interest to the mortgagee and the bank and rent to the lessor, as above, such excess shall be applied in reduction of the bank's old advance.

Before it can be said that there is a surplus in the No. 2 Account the stock must at least be made to equal the number and quality of those on hand at the commencement of the period in terms of paragraphs (3) and (6).

(6) Regarding maintenance of stock referred to in paragraph (3), the number and classes of stock shall be the stock upon the property at the date of the commencement of agreement—viz., , thereafter such numbers and classes shall be fully maintained, but the decision as to what is necessary in this respect to rest entirely with the bank. In the event of a disaster such as earthquake, landslide, drought, or epidemic amongst the stock, &c., involving a total or heavy loss of stock, the replacing of the stock shall be at the sole option of the bank.

(7) The proceeds of all produce or stock sold before , 19 , to be applied by the bank in reduction of the old advance.

(8) The arrangement between the parties to be for a period of months, ending on the day of , 19 , or at a later date should the parties so mutually agree.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

- 1931, No. 3.—The Mortgagors Relief Act, 1931.
1931, No. 47.—The Mortgagors Relief Amendment Act, 1931.
1932, No. 1.—The Mortgagors and Tenants Relief Act, 1932.
1932, No. 11.—The Finance Act, 1932 : Section 51.
1932, No. 17.—The Mortgagors and Tenants Further Relief Act, 1932.
1932, No. 30.—The Finance Act, 1932 (No. 2) : Section 36.
1932-33, No. 34.—The Mortgagors and Tenants Relief Amendment Act,
1932-33.
1932-33, No. 45.—The Finance Act, 1932-33 (No. 2) : Section 39.

See Reprint
of Statutes,
Vol. VI, p. 18,
Vol. VI, p. 24.