

Supplementary Order Paper.

HOUSE OF REPRESENTATIVES.

Friday, the 18th Day of September, 1936.

MORTGAGORS AND LESSEES REHABILITATION BILL.

AMENDMENTS proposed by His Excellency the Governor-General:—

Clause 4, subclause (1): To omit from the definition of the term "Applicant" the word "or" before the word "lessee"; to insert in the same definition, after the word "lessee", the words "or guarantor"; to omit from the definition of the term "Guarantor" the words "other than the mortgagor or lessee" in lines 8 and 9, and substitute the words "(not being the mortgagor or lessee, as hereinafter defined)"; to add to the definition of the term "Lease" the words "and 'sublease' has a corresponding meaning"; to omit the definition of the term "Lessee", and substitute the following definition:—

"Lessee" means the lessee named in a lease or, if the rights of the lessee have been disposed of by way of sublease or assignment, or have been transferred by operation of law, means the person for the time being entitled to those rights:

to omit from the definition of the term "Mortgagor" the words "owner of the equity of redemption in any property subject to a mortgage, or, in relation to land subject to the Land Transfer Act, 1915, means the proprietor of any estate or interest subject to a mortgage", and substitute the words "owner of the property that is subject to a mortgage"; to omit the definition of the term "Property", and substitute the following definition:—

"Property" includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest:

Clause 4, subclause (4): To insert, after the word "notified" in line 20, 1933, the words "or is deemed under section twelve of the Mortgagors and Tenants No. 34 Relief Act, 1933, to have notified".

Clause 4: To insert, after subclause (4), the following new subclauses:—

(4A) For the purposes of this Act every license to occupy land pending the purchase thereof from His Majesty the King on a system of deferred payments shall be deemed to be an agreement for sale and purchase.

(4B) For the purposes of this Act the owner of the equity of redemption in any property that is subject to a mortgage shall be deemed to be the owner of the property.

(4c) For the purposes of this Act every liability under a judgment obtained in any Court in respect of any cause of action arising directly or indirectly out of a mortgage, lease, or guarantee shall be deemed to be a liability under the mortgage, lease, or guarantee.

Clause 6, subclause (3): To omit this subclause, and substitute the following new subclause:—

(3A) This Act shall apply with respect to any mortgage as aforesaid, notwithstanding that, whether before or after the passing of this Act, any power of sale, rescission, or entry into possession conferred by the mortgage may have been exercised.

Clause 8, subclause (2): To omit this subclause, and substitute the following new subclause:—

(2A) The provisions of this Act shall, so far as they are applicable, apply with respect to any lease as aforesaid, notwithstanding that, whether before or after the passing of this Act, the lease may have expired or been determined.

Clause 27, subclause (1): To omit the word “fourteen” in line 28, and substitute the word “twenty-one”.

Clause 29, subclause (1): To omit the word “or” in line 12; to insert, after the word “lessee” in line 12, the words “or guarantor”.

Clause 29, subclause (5): To omit this subclause.

Clause 29, subclause (6): To omit the word “December”, and substitute the word “January”; to omit the word “thirty-six”, and substitute the word “thirty-seven”; to insert in the proviso, after the word “unavoidable” in line 16, the words “or was otherwise for any special reason excusable”; to omit from the proviso the words “thirty-first day of January”, and substitute the words “twenty-eighth day of February”.

Clause 30, subclause (1): To omit the word “December”, and substitute the word “January”; to omit the word “thirty-six”, and substitute the word “thirty-seven”.

Clause 30, subclause (4): To insert, after the words “twenty-one days” in line 9, the words “the Adjustment Commission may order that”.

Clause 37: To insert “(1)” after “37” in line 22; to add the following new subclause:—

(2) In so far as it may be necessary or desirable in the interests of any creditor or guarantor of the applicant, an adjustment of the liabilities of any applicant may be made under this Act, notwithstanding that the whereabouts of the applicant may be unknown or that he may have failed to comply with any of the requirements of this Act.

Clause 38, subclause (1): To omit from paragraph (e) the words “continue in the use and occupation of” in line 41, and substitute the word “retain”; to add the following new paragraph:—

(f) The amount of principal and other moneys secured on any property of the applicant by any adjustable security, after allowing for any remissions made under subsection *two A* of this section.

Clause 38, subclause (2): To add the words “but shall make such increases or reductions in those values as it deems necessary in order to make them fair values to serve as a basis for the adjustment of the liabilities of the applicant in accordance with this Part of this Act”.

Clause 38: To insert, after subclause (2), the following new subclause:—

(2A) In determining the amount secured by any adjustable security the Adjustment Commission shall take into account (in addition to all other amounts properly included therein) all interest that has accrued due before the date of the order and has not been remitted under this subsection or under any other enactment. The Adjustment Commission may remit the whole or any part of any interest accrued due before the date of the order (whether or not it has been capitalized), or the whole or any part of any additional charge of ten per centum added to any rates pursuant to section seventy-six of the Rating Act, 1925. The Adjustment Commission may also remit any amount claimed under any adjustable mortgage for costs incurred by the mortgagee at any time after the twenty-fifth day of August, nineteen hundred and thirty-six.

See Reprint
of Statutes,
Vol. VII,
p. 1007

Clause 38, subclause (3): To add the words “ at any time before the application for adjustment is finally disposed of ”.

Clause 39, subclause (5): To insert, after the word “ include ” in line 8, the words “ (in addition to all other amounts properly included therein) ”.

Clause 41, subclause (1): To omit the words “ continue in the use and occupation of ” in lines 34 and 35, and substitute the word “ retain ”.

Clause 41, subclause (2): To omit the words “ possession of ” in line 7.

Clause 42, subclause (1): To insert, after the word “ securities ” in line 25, the words “ as determined by the Adjustment Commission ”.

Clause 42, subclause (2): To insert, after the word “ securities ” in line 32, the words “ as determined by the Adjustment Commission ”.

Clause 43, subclause (3): To insert, after the word “ mortgages ” in line 12 (page 27), the words “ (as varied in accordance with this section), or of any new mortgage or mortgages given pursuant to this section, ”.

Clause 43, subclause (4): To insert, after the words “ adjustable security ” in line 19, the words “ (or on any new security given pursuant to this section) ”.

Clause 43, subclause (7): To insert, after the words “ adjustable security ” in line 35, the words “ (as varied in accordance with this section), or of any new security given pursuant to this section ”.

Clause 43, subclause (9): To insert, after the words “ adjustable security ” in lines 6 and 7, the words “ (as varied in accordance with this section) ”.

Clause 46, subclause (1): To omit the words “ or without ” in line 5; to omit the words “ continue in the use and occupation thereof ” in lines 13 and 14, and substitute the words “ retain the property ”; to omit the words “ continue in the use and occupation thereof ” in line 15, and substitute the words “ retain the property ”.

Clause 48, subclause (1): To omit the words “ continue in the use and occupation of ” in lines 26 and 27, and substitute the word “ retain ”; to omit the words “ continue in the use and occupation of ” in lines 28 and 29, and substitute the word “ retain ”; to insert, before the word “ and ” in line 30, the words “ whether before or after the passing of this Act ”; to add to the subclause the words “ The discharge, through the operation of this subsection, of the applicant’s liability for the whole or any part of the amount owing under any adjustable security shall not be deemed to release any property from the whole or any part of the amount secured thereon by the adjustable security ”.

Clause 48, subclause (2): To omit the word "is" in line 39, and substitute the words "has, whether before or after the passing of this Act, been".

Clause 49, subclause (4): To add the following new paragraph:—

- (f) Providing for the payment to the mortgagee or lessor, or to such other person as may be specified, of the whole or any part of the amount of the applicant's liability under any guarantee.

Clause 50: To insert "(1)" after "50" in line 26; to insert, after the word "operations" in line 31, the words "or any debts have been incurred by him for any such purpose"; to insert, after the word "advanced" in line 34, the words "or of the debts so incurred"; to add the following new subclause:—

- (2) Where the person by whom any moneys have been so advanced or to whom any debts have been so incurred during any farming season is a creditor of the applicant in respect of any other moneys, the *last preceding* subsection shall apply only with respect to so much of the amount of the moneys so advanced or of the debts so incurred as exceeds the total amount received by the creditor during that farming season in respect of any of the applicant's liabilities to him.

Clause 52: To insert, after the words "productive capacity" in line 28, the words "or the value"; to omit the words "his property" in lines 36 and 37, and substitute the words "the said farm lands".

Clause 54: To omit this clause, and substitute the following new clause:—

54A. (1) The liability or obligation of any applicant under any guarantee in respect of an adjustable mortgage or adjustable lease shall, except to the extent (if any) to which it may be otherwise secured, be deemed to be an adjustable debt, and the provisions of section *forty-nine* of this Act shall apply accordingly with respect thereto.

Adjustment of liability of applicant under guarantee.

(2) Where no application for the adjustment of the liabilities of any guarantor under this Act is filed on or before the *thirty-first* day of *January*, nineteen hundred and *thirty-seven*, his liability under the guarantee shall be deemed to be discharged on that date unless there has been served on him on or before the *thirty-first* day of *December*, nineteen hundred and *thirty-six*, a notice from the mortgagee, lessor, or other person to whom he is liable, specifying the nature and extent of his liability and containing a statement to the effect that an application for the adjustment of his liability under this Act may be filed not later than the *thirty-first* day of *January*, nineteen hundred and *thirty-seven*.

Discharge of liability of guarantor who is not an applicant, unless notice is served on him by mortgagee or lessor.

(3) The discharge, through the operation of this section, of any person's liability for the whole or any part of the amount owing under any mortgage shall not be deemed to release any property from the whole or any part of the amount secured thereon by the mortgage.

(4) Every guarantor in respect of any adjustable mortgage or adjustable lease shall be subrogated to the rights of the mortgagee or lessor in respect of any amount paid by him under the guarantee;

Provided that nothing in this section shall be construed to increase the liabilities of any mortgagor, lessee, or guarantor as adjusted under this Act.

Clause 55, subclause (2): To omit the word “ *December* ”, and substitute the word “ *January* ”; to omit the word “ *thirty-six* ”, and substitute the word “ *thirty-seven* ”.

Clause 55, subclause 3: To insert in paragraph (a), after the word “ commence ”, the words “ or continue ”.

Clause 55: To add the following new subclauses:—

(4) Where any mortgagor, lessee, or guarantor, being the person primarily liable for the payment of any rates, is protected in respect of his liability for the payment of those rates through the operation of the foregoing provisions of this section, then, notwithstanding anything in section seventy of the Rating Act, 1925, every other person from whom the rates could be recovered pursuant to that section shall be protected to the same extent.

See Reprint
of Statutes,
Vol. VII,
p. 1004

(5) The period during which the commencement of proceedings in any Court for the enforcement of any debt or liability is prohibited by the operation of this section shall not be taken into account for the purpose of any enactment limiting the period within which those proceedings may be commenced.

Clause 56: To insert “ (1) ” after “ 56 ” in line 29; to add the following new subclause:—

(2) No application to the Court under this section shall be heard by the Court unless the application is made within one month after the passing of this Act.

Clause 58, subclause (1): To omit this subclause, and substitute the following new subclause:—

(1A) Every mortgagor, lessee, or guarantor who, while any application for the adjustment of his liabilities under this Act is pending,—

Applicants
restrained
from disposing
of property,
or obtaining
credit without
disclosure,
while
application
pending.

(a) Without the consent of the Adjustment Commission, granted upon such terms and conditions as the Commission thinks fit, mortgages, charges, pledges, or creates any lien upon or otherwise encumbers any part of his property, or transfers, assigns, or parts with the possession or control of any part of his property otherwise than in the ordinary course of business; or

(b) Being a farmer applicant, obtains credit to the extent of twenty pounds or upwards from any person without informing that person that he is a farmer applicant in respect of whom an application is pending under this Act,—

shall be liable to the penalties to which he would be liable under section fifty-eight of the Chattels Transfer Act, 1924, if, being the grantor of an instrument by way of security under that Act, he had defrauded or attempted to defraud the grantee under such instrument.

See Reprint
of Statutes,
Vol. I, p. 657

Clause 58, subclause (2): To omit the words “ this section ” in line 23, and substitute the words “ paragraph (a) of the *last preceding* subsection ”.

To insert, after clause 68, the following new clauses:—

68A. Where any person is by virtue of any mortgage, assignment, order, or other instrument, whether executed before or after the passing of this Act, entitled to receive any moneys or property that any applicant would but for that mortgage, assignment, order, or instrument be entitled to receive, the Adjustment Commission may make such orders as it thinks fit to provide for the cancellation or variation of that person's right to receive such moneys or property or for the application or disposal of any moneys or property received by him as aforesaid that are the proceeds of farming operations carried on by the applicant at any time since the commencement of the farming season that is current at the passing of this Act, and of any other moneys or property received by him as aforesaid at any time after the passing of this Act.

Power to vary or cancel assignments or orders given by applicants.

68B. Where any land or premises that are subject to an adjustable mortgage or are comprised in an adjustable lease are for the time being occupied by a tenant, not being the mortgagor or lessee, the Court, subject to the provisions of the Fair Rents Act, 1936, shall have jurisdiction to make orders for the recovery of possession of the land or premises from the tenant.

Recovery of possession from tenants of mortgaged or leasehold property.
1936, No. 14

Clause 73: To insert, after the words "Supreme Court" in line 19, the words "or of a Magistrate's Court, as the Court of Review directs,"; to insert, after the words "Supreme Court" in line 21, the words "or of the Magistrate's Court, as the case may be,".

To insert, after clause 73, the following new clause:—

73A. (1) Where an application for a revaluation of the land comprised in any lease or license has been made under section two hundred and sixteen or section two hundred and forty-six of the Land Act, 1924, and has not been finally disposed of at the passing of this Act, the application shall be deemed to be an application duly filed under section *twenty-nine* of this Act for an adjustment of the liabilities of the lessee or licensee, and shall be dealt with accordingly.

Applications for revaluations of rural Crown lands deemed to be applications for adjustment under this Act.
See Reprint of Statutes, Vol. IV, pp. 723, 742, 828-830

(2) The powers conferred by sections two hundred and sixteen and two hundred and forty-six of the Land Act, 1924, and sections eleven, twelve, and thirteen of the Land Laws Amendment Act, 1927, shall not be exercised between the passing of this Act and the *first* day of *February*, nineteen hundred and *thirty-seven*.

Clause 78, subclause (1): To omit the word "*December*", and substitute the word "*January*"; to omit the word "*thirty-six*", and substitute the word "*thirty-seven*".

To insert, after clause 78, the following new clause:—

78A. (1) Where the amount secured on any land has been reduced by the operation of section *forty-two* of this Act, or where the rent of any land has been reduced by the operation of subsection *one* of section *forty-four* of this Act, or where any arrears of rent have been remitted in whole or in part by the operation of subsection *two* of the said section *forty-four*, 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 owner for the time being of the land or of any part thereof, or of any interest in the land or in any part thereof, to sell or otherwise dispose of the same at any time before the *first* day of *January*, nineteen hundred and *forty-one*.

Restricting sale of land in respect of which adjustments have been made under this Act.

(2) The Court shall not grant leave to make any such sale or other disposition except in exceptional circumstances, and after taking into consideration the general purposes specified in section *two* of this Act.

(3) The conditions imposed by the Court upon granting leave to any owner to make any such sale or other disposition may include a condition that such portion of the price or other consideration as the Court deems equitable, having regard to all the circumstances and in particular to any improvements made to the land since the adjustments were made, shall become payable into Court in such manner and within such time as the Court directs, and shall be applied by the Court for the benefit of all or any of the creditors of the owner whose claims have been discharged in whole or in part by the operation of section *forty-nine* of this Act.

Clause 80: To add the following new subclause:—

(4) The said section five of the Finance Act, 1933, 1933, No. 33 is hereby further amended by omitting from subsection one the words “ to modify the provisions of any deed, will, or settlement, in so far as they provide for payment of any annuity or other periodical payment ”.

Clause 83, subclause (1): To omit the words “ agreement or ” in line 30; to omit the words “ or agreement ” in line 33; to insert, after the words “ still in force ” in line 35, the words “ and all proceedings may be taken and all jurisdiction exercised with respect to that order accordingly ”; to omit the words “ or agreement ” in line 37; to omit from paragraph (a) the word “ *December* ”, and substitute the word “ *January* ”; to omit from the same paragraph the word “ *thirty-six* ”, and substitute the word “ *thirty-seven* ”; to omit the words “ or agreement ” in line 7 (page 46).

Clause 83, subclause (2): To omit the words “ or agreement ” in line 12.

Clause 83: To add the following new subclause:—

(3) The powers conferred on the Court by the *last preceding* subsection may be exercised with respect to any agreement in relation to stock mortgages that was made as mentioned in section eleven of the Mortgagees and Tenants Relief Act, 1933 (whether before or after the passing of that Act), and is subsisting or in force at the passing of this Act. 1933, No. 34

Clause 84, subclause (2): To insert, after the words “ still in force ” in line 35, the words “ and all proceedings may be taken and all jurisdiction exercised with respect to such orders and decisions accordingly ”.

Clause 84: To insert, after subclause (3), the following new subclause:—

(3A) Where a provisional trustee or a trustee of any mortgagor's estate is in office at the passing of this Act under section twenty-five or section thirty-seven of the Rural Mortgagees Final Adjustment Act, 1934–35, the provisional trustee or trustee shall, notwithstanding the repeal of that Act, continue in office as if that Act were still in force, until an order for his discharge is made by the Adjustment Commission. Every such provisional trustee or trustee shall from time to time account to the Adjustment Commission for all moneys or property received or disposed of by him on account of the mortgagor, and shall from time to time dispose of all moneys and property so received by him in accordance with the directions of the Adjustment Commission. 1934–35, No. 50