

FARMERS' DEBTS ADJUSTMENT.

24° GEO. V., No. XLV.

No. 45 of 1933.

AN ACT to amend the Farmers' Debts Adjustment Act, 1930.

[Assented to 4th January, 1934.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Farmers' Debts Adjustment Act Amendment Act, 1933*, and shall be read as one with the Farmers' Debts Adjustment Act, 1930, as reprinted in the Appendix to the Sessional Volume of Statutes for 1931, which Act is hereinafter referred to as the principal Act.

Short title

2. Section two of the principal Act is hereby amended by adding after the word "State," in the definition of "Farmer" in that section, "and includes—

Definitions amended, s. 2 principal Act
"Farmer."

- (i) any executor carrying on the farming business of a deceased farmer under the authority of the will of the deceased or by virtue of an order of the Supreme Court;

- (ii) or any trustee within the meaning of the Trustees Act, 1900, who is carrying on a farming business under the terms of any will, deed of trust, or settlement, or under the authority of any order of the Supreme Court.”

Amendment of
s. 4 of principal
Act.
Remuneration of
directors and
receivers.

3. Section four of the principal Act is hereby amended—

- (a) by striking out the whole of the proviso to subsection (4) of that section, and inserting the following proviso in lieu thereof:—

Provided that the receiver shall in each year during which the receivership continues, be entitled to retain by way of emolument out of the proceeds of the farmer's business—

- (a) an amount of ten pounds ten shillings (and in proportion for any part of a year); or
(b) when the receiver has carried on the business of the farmer, three per centum of such proceeds derived in any such year (and in proportion for any part of a year);

whichever shall be the greater, but in no case shall the emoluments retained under this section exceed the sum of thirty pounds for any one year.

And provided further, that if the deputy director or receiver is a public servant in receipt of a salary, such fees and emolument shall be paid into consolidated revenue.

This section shall apply as from the first day of April, 1934, to the proceeds of all produce of a farmer's business produced since that date, and it is hereby declared that, notwithstanding any resolution of creditors or agreement or consent of the farmer, it shall be unlawful for any deputy director or receiver to ask, demand, or receive, or to retain from the proceeds of the produce of any farmer's business produced after the first day of April, 1934, any fees or emoluments in respect of any services rendered in connection with a receivership, other than such as are expressly sanctioned by this Act, and if any fees or emoluments are received or retained in contravention of this provision the same may be recovered from the recipient or person retaining by action at law.

- (b) Subsection (5) of section four of the principal Act is hereby repealed, and the following new subsection inserted in lieu thereof:—

Director may allow certain expenditure.

(5) The director may allow the deputy director or receiver to charge against the estate of a farmer any legitimate out-of-pocket expenses *bona fide* incurred by the deputy director or receiver in connection with some special service rendered for the protection of the assets of the farmer or in connection with the farmer's business and which expense does not in his opinion come within the category of an ordinary office expense.

- (c) by deleting subsection (6) and substituting the following:—

Director's and receiver's remuneration and expenses a first charge.

(6.) All moneys receivable by or payable to directors or receivers, and expenses and liabilities properly chargeable under subsections (4) and (5) of this section, shall by virtue of this Act be a first charge on all the proceeds of the farmer's business.

4. Subsection (3) of section five of the principal Act is hereby deleted and the following substituted therefor:—

Amendment of s. 5, principal Act.

(3.) The receiver shall forthwith, after his appointment, take possession of all the assets of the farmer and retain possession thereof, and receive all the proceeds of the farmer's business as long as the farmer is subject to this Act.

Authority of receiver.

5. Section seven of the principal Act is hereby amended—

Amendment of s. 7, principal Act.

- (a) by deleting subsection (1) of that section and inserting the following in lieu thereof:—

(1.) A stay order shall direct that no action, execution, distress for rent, proceedings on default for breach of covenant under any mortgage or other security for money, or under an agreement for sale and purchase of land, or other process or proceeding, shall be commenced or proceeded with or put in force against the farmer or any of the farmer's assets, whether utilised in connection with or forming portion of the assets comprised in his farming business or not during the operation of such stay order: Provided that, by

Effect of stay order.

leave of a judge, any action may, notwithstanding the stay order, be instituted and/or carried on against the farmer, but not beyond judgment;

- (b) by adding the following at the end of subsection (2):—

In this subsection the term “adjournment,” used in relation to a meeting, includes a review or subsequent meeting held on a specified date pursuant to any resolution of the creditors passed at the time of any resolution for the adjustment or arrangement of the farmer’s affairs under section eleven. This amendment of subsection (2) shall be deemed to have effect as from the commencement of the principal Act;

- (c) by inserting in subsection (3), after the word “agreement,” in line five, the words “the levying of any distress”;

- (d) by adding a new subsection, as follows:—

(4.) In the event of any creditor having taken any such proceedings as are mentioned in this section, and having seized or attached any property of the farmer, the receiver shall, on the making of the stay order, be entitled to possession of or to receive such property, and, subject to this Act and to any resolution of the creditors under this Act, to utilise and dispose of the same in connection with the farmer’s business.

6. Section eight of the principal Act is hereby amended—

- (a) by striking out the words “all property coming to his hands and derived from the business of the farmer,” in lines two and three of subsection 2 (a) and inserting in lieu thereof the following:—“all property or produce derived from the farmer’s business”;

- (b) by inserting after the word “hands,” in line seven thereof, “or moneys derived from the realisation of such property or produce”;

- (c) by striking out the words “any crop proceeds,” in line thirteen, and substituting the words “the proceeds of any such property or produce”;

Amendment of
s. 8, principal
Act.

Powers of re-
ceiver in regard
to moneys de-
rived from carry-
ing on farmer’s
business.

- (d) by adding a proviso as follows at the end of subsection (3) :—

Provided that the director may at any time employ a Government officer as an auditor to make an audit of and make a report to him on all the accounts and transactions of the receiver, and the receiver shall at all times render every assistance and furnish all information required by an auditor in making such audit.

Audit.

- (e) by adding a new subsection after subsection (4) :—

(4a.) Where a stay order lapses through effluxion of time or from any other cause, the receiver's authority shall continue for the purpose of enabling him to carry into effect any resolution of the creditors and to wind up his receivership.

Where stay order lapses, receiver's authority continues for purpose of winding-up.

7. A new section is added after section nine of the principal Act :—

Amendment of s. 9, principal Act.

9A. (1.) Where a farmer dies during the currency of a stay order, the receiver's authority shall continue for the purpose of enabling him to carry into effect any resolution of the creditors and to wind-up his receivership; provided that the director shall—

Provision for continuing receivership.

- (a) as soon as possible after receiving notice of the death, call the creditors together and inform them whether or not in his opinion satisfactory arrangements can be made to carry on the business of the farmer;
- (b) if the creditors pass a resolution authorising the business to be carried on, the same may be carried on accordingly until the expiration of the stay order;
- (c) if the creditors resolve that it is inadvisable that the business should be carried on any further, the stay order shall lapse as from the date of such resolution or such other date either prior or subsequent to the expiration in the ordinary course of the stay order under subsection (2) of section seven, as the creditors may decide.

(2.) The provisions of this section shall apply in any case where a receiver is receiver in respect of a business carried on by two or more farmers in co-partnership

and one of the farmers dies during the currency of the stay order.

Amendment of s. 10, principal Act.

Quorum at meetings.

8. Subsection (1) of section ten of the principal Act is hereby amended by adding the following after the word "pre-
side":—"and a quorum shall consist of three creditors or all the creditors of the farmer, where the creditors are less than three in number. Such creditors may be present and vote at the meeting either personally or by his representative.

Amendment of s. 12, principal Act.

Encumbrances over farmer's property after stay order.

9. Section twelve of the principal Act is hereby amended—

(a) by adding the following at the end of subsection (3):—or which, in the opinion of the director, is warranted in order to render the security more productive for the purpose of the farmer's business, and is calculated to be of benefit to the farmer and his creditors in general;

(b) by adding a further subsection as follows:—

(4) Where any creditor has supplied a farmer who at the time of supply has been granted a stay order under the Act with any wire netting for the purpose of rendering the farmer's farm or holding more productive, then the director may, with the consent of a majority of creditors given in writing, or of a resolution of a meeting of creditors held in accordance with section ten of this Act, declare that such creditor shall have a charge against the proceeds of the farmer's business in each season during which the stay order is in operation to secure repayment of the price of such wire netting by such instalments, and at such rate of interest as may be agreed upon between the farmer and the creditor supplying such wire netting and approved by the director.

Rights of secured creditors.

10. Section thirteen A of the principal Act is hereby repealed and the following inserted in lieu thereof:—

A secured creditor over produce retains fruits of security.

13A. (1) Subject to the powers of the receiver under section eight, every creditor who holds any security at the date of the stay order over the produce of any farmer's

farm shall, notwithstanding any resolution of the creditors, be entitled to the full benefit thereof, subject, however, to the payment thereof of the following:—

- (i) the fees, emoluments, or percentage payable to deputy directors and receivers under subsection (6) of section four; Subject to receivers' fees. etc.
- (ii) any moneys necessary for disbursements for the purposes set out in subsection 2 (a) of section eight. necessary disbursements under s. 8 (2a).

Provided, however, in regard to any such security—

- (a) that if any transaction or document which requires registration as a bill of sale under the provisions of the Bills of Sale Act, 1899, and its amendments does not comply with the formalities prescribed by or is not duly registered within the time limited therefor by the said Acts, the same shall be void as against the receiver and the other creditors of the farmer; Provisos and exceptions: unregistered bills of sale void;
- (b) any bill of sale by way of security within the meaning of the Bills of Sale Act, 1899, and its amendments made within six months prior to the granting of a stay order to a farmer under this Act, shall be void as against the receiver and the creditors as to any sum secured which is other than a contemporaneous advance within the meaning of the said Acts, or a future advance or liability (together with interest thereon, according to the terms of the said bill of sale) made or undertaken by the grantee after the making thereof on the security of the said bill of sale and within the maximum amounts covered thereby; bill of sale for past debts void if given within six months;
- (c) any security given or granted by a farmer within six months prior to the granting to the farmer of a stay order under this Act, shall be void, as against the receiver and the creditors, unless the same was given in the ordinary course of business in good faith and for valuable consideration; or if not given in ordinary course of business and in good faith;
- (d) any order, authority, or writing given at any time by a farmer which assigns or purports to wheat orders.

assign the produce of his business, or the proceeds of the produce of his business shall—

- (i) If the same requires registration under the Bills of Sale Act, 1899, and its amendments, and does not comply with the formalities prescribed, or is not duly registered under the said Acts; or
- (ii) in any case where the same does not require such registration, if the produce or the actual proceeds of the produce the subject thereof have not been received by the creditor in whose favour such order, authority, or writing is given before the date of the stay order

be absolutely void as against the receiver and the other creditors of the farmer.

(2) Nothing in this section shall affect any statutory lien or security.

Statutory liens unaffected: cf. 13A of principal Act.

Amendment of s. 13E, principal Act.
Time for registration of bill of sale extended where director grants order.

11. Section thirteen B of the principal Act is hereby amended by adding the following at the end thereof:—
“Where the director grants any order under this section, the time for registration of the bill of sale as prescribed by the Bills of Sale Act, 1899, and its amendments shall, in respect of such bill of sale, be extended for a further period of seven days from the granting of such order, or seven days from the expiration of the time prescribed by the said Act and its amendments, whichever is the longer.”

Amendment of s. 19, principal Act.
Duration of Act.

12. Section nineteen of the principal Act is hereby amended by striking out the words “thirty-four” and inserting the words “thirty-five.”

Citation of Principal Act as amended.

13. The principal Act as amended by this Act may be cited as the *Farmers' Debts Adjustment Act, 1930-1933.*