

FARMERS' DEBTS ADJUSTMENT.

22° GEO. V., No. IV.

No. 4 of 1931.

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

[Assented to 10th July, 1931.]

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*, 1931, and shall have effect as from the commencement of the Farmers' Debts Adjustment Act, 1930 (hereinafter called the "principal Act"). Short title and commencement.

2. Section two of the principal Act is hereby amended by the insertion, after "includes," in the second line, of the words "(except in section four)." Amendment of s. 2

3. Section four of the principal Act is hereby amended— Amendment of s. 4.

(a) by the excision from subsection (3) of the words "(which word does not in this subclause include Deputy Director)," and by the insertion of the words "(except deputy directors)" after the word "officers";

(b) by the addition to subsection (4) of provisos, as follows:—

"Provided that in addition to such fees the receiver shall be entitled, with the sanction of a resolution of the creditors, to retain by way of emolument out of the proceeds of the farmer's business received by him an amount of ten pounds

ten shillings, and any such percentage (not exceeding three per centum) of such proceeds as may be allowed by resolution of the creditors and approved by the director; 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”;

(c) by the insertion in subsection (5), between the words “farmer” and “shall,” of the words “or incurred in connection with the calling or holding of any meeting of his creditors or the arrangement of his affairs under this Act”;

(d) by the addition of subsections, as follows:—

(6.) Such fees or emolument and percentage as aforesaid shall be deemed to be expenses within the meaning of subsection (5), and the amount thereof shall by virtue of this Act be charged on the proceeds of the farmer’s business in priority to any other charge, lien or claim thereon.

(7.) No deputy director shall exercise any power or perform any act which the director has by general or special order forbidden him to exercise or perform.

Amendment of s. 5.

4. (1.) Subsection (1) of section five of the principal Act is hereby amended by the addition of a proviso, as follows:—

“Provided that before acceding to a creditor’s application the director may require him to pay the prescribed application fee; but such fee shall be repayable to the creditor out of the estate and property of the farmer in accordance with the provisions of section four.”

(2.) Subsection (2) of the said section five is amended by the addition of a proviso, as follows:—

“Provided that the director may, in his discretion, reject an application made by any creditor under this section.”

(3.) The said section five is hereby further amended by the addition of the following subsections, that is to say:—

(4.) If in the books of any bank or branch of a bank, or of any firm, person, or company, any sum of money is standing to the credit of the farmer, then the receiver may, by notice in writing, require the manager of such bank or branch, or such firm, person, or company, to transfer such sum to the credit of the receiver, and the

manager, firm, person or company shall forthwith so transfer it accordingly.

(5.) Notwithstanding the appointment of a receiver under this section, any payment of money or delivery of any security or negotiable instrument, made to or by the order or direction of the farmer by his banker (whether at the principal or any branch establishment of the banker), in good faith and without negligence on the part of the banker, or notice of the appointment of the receiver on the part of the manager of the establishment concerned, shall be as valid and effectual as if no such appointment had been made.

(6.) On a stay order being granted to a farmer under this section he shall be deemed to become subject to this Act.

5. Section six of the principal Act is hereby amended by the addition of a subsection, as follows:— Amendment of s. 6

(3.) If at any time before the holding of the meeting it shall appear to the director that no good purpose will be served by the holding of such meeting he may, by notice published or given as prescribed, cancel the notice calling the meeting and discharge the stay order and the appointment of the receiver, and the farmer shall thereupon cease to be subject to this Act.

6. (1.) Section seven of the principal Act is hereby amended by the addition to subsection (1) of a proviso, as follows:—"Provided that by leave of a judge any action may, notwithstanding the stay order, be instituted and/or carried on against the farmer, but not beyond judgment," and by the insertion after the word "order," in the first line of subsection (2), of the words "or short particulars thereof." Amendment of s. 7.

(2.) The said section seven is further amended by the addition of a subsection, as follows:—

(3.) In this section the expression "proceedings" shall, in relation to any mortgage, and agreement for sale and purchase of land, be deemed to extend to the exercise of any power of sale, the obtaining or keeping of possession of the property comprised in the mortgage or agreement, the taking of any measures to obtain foreclosure, and the exercise of any power to cancel or terminate any rights of the farmer in respect of such property; provided that a stay order shall not affect the right of any person to

continue in possession of any such property if he has taken possession thereof at least one month before the date of the stay order, or if the Director consents to him continuing in possession.

Amendment of s. 8.

7. (1.) Section eight of the principal Act is hereby amended by the addition to subsection (2) of the words: "But so that the farmer shall have no power to revoke or abrogate the receiver's authority."

(2.) The said section eight is further amended by the insertion, after subsection (2), of a subsection, as follows:—

(2a.) The receiver may realise and convert into money all property coming to his hands and derived from the business of the farmer, and he shall have power (between the date of the stay order and the date fixed for the meeting of the farmer's creditors), with the approval of the director, to make such disbursements (not exceeding altogether thirty pounds) out of the moneys of the farmer in his hands as may be necessary to provide and pay for stores needed by the farmer or his family, or to enable the business of the farmer to be carried on and continued, or to pay the farmer's personal expenses in connection with attending the meeting of his creditors, and any disbursement authorised by this subsection may be made out of any crop proceeds notwithstanding that such proceeds may be subject to any lien or charge in favour of any person.

(3.) The said section eight is also amended by the insertion, after the word "accounts" in subsection (3), of the words "verified by his statutory declaration."

Amendment of
s. 10.

8. Section ten of the principal Act is hereby amended—

(1) by deleting in subsection (1) the words "some person chosen by a majority in value and number of the creditors present in person or by proxy," and substituting the words "the director";

(2) by inserting after the words "majority of creditors," in subsection (2), the words "for the purposes of any provision of this Act";

(3) by deleting the words "or, if the chairman has not been elected, by the director who convened the meeting";

(4) by the addition of a subsection, as follows:—

(4.) For the purposes of any provision of this Act, every question at a meeting of creditors shall,

subject to this section, be decided by the majority in value and number of those present or represented and voting at the meeting, and every resolution carried by such majority shall be deemed to be a resolution of the creditors.

9. (1.) Section eleven of the principal Act is hereby amended by the insertion after the word "represented" of the words "and voting." Amendment of s. 11.

(2.) The said section eleven is further amended by the addition of subsections, as follows:—

(2.) Subject to this Act, a resolution so passed shall be binding on the farmer and his creditors and may be given effect to, provided that its provisions are such as the farmer and his creditors might lawfully have embodied in an agreement made between themselves, and provided further, that the Supreme Court or a judge thereof may, on application being made, within four weeks after the passing of the resolution, by the director or any other person concerned, rescind the resolution on the grounds that it is manifestly unjust to the farmer or any creditor and order another meeting of the farmer's creditors to be convened by the Director and held at such time and place as the Director shall determine.

(3.) Sections three to thirteen (both inclusive) of Act No. 13 of 1906 shall not apply to any security given pursuant to any such resolution as aforesaid.

(4) Notwithstanding anything in section seven or eight, the creditors may, from time to time, by resolution, extend the operation of the stay order and the order appointing the receiver.

(5.) If for any reason it shall appear to the director that it is expedient for the creditors to meet at a date earlier than that to which the meeting stands adjourned, he may, by circulars delivered as set out in section six, summon the creditors to meet at the earlier date, and that date shall then be deemed to be the date to which the meeting was adjourned.

10. Section twelve of the principal Act is hereby amended by the addition of a subsection, as follows:— Amendment of s. 12.

(3.) Nothing in this section or in any resolution of the creditors shall prevent the holder of any mortgage or other security from making to or on account of a farmer

any advance or payment which it is necessary to make for the preservation of the security or any property comprised therein.

Policies of
insurance } protected.

11. There is hereby inserted in the principal Act, after section twelve thereof, a new section, as follows:—

12A. The property and interest of any farmer in any policy effected on his own life shall, to the extent to which it is protected against legal process under section two of the Life Assurance Companies Amendment Act, 1905, be unaffected by any stay order or resolution of creditors under this Act.

Amendment of
s. 13.

12. Section thirteen of the principal Act is hereby amended by the insertion, after the word "order," in the third line, of the words "except with the consent of the director, and by the addition of the following subsections:—

(2.) The owner of the machinery may, subject as hereinafter provided, at any time and from time to time, make application to the Director for such consent, and the Director shall accede to the application unless in his opinion it will be necessary to use the machinery for the purpose of taking off or putting in a crop on the farm during the current or next ensuing season, in which case he may refuse the application and the owner shall thereupon become entitled to the rights hereinafter defined.

(3.) The said owner shall, in such case as aforesaid, have the right to prove against the proceeds of the said crop when received for an amount equal to the whole balance unpaid and due or to become due under the hire-purchase agreement (including interest accrued due under the agreement on any overdue instalment at the date of the application) if such amount does not exceed the sum of fifteen pounds, but if it does exceed that sum, he shall be entitled to prove for fifteen pounds or a sum equal to one quarter of the said balance (including interest as aforesaid) whichever is the greater sum; provided that in no case shall the said owner be entitled to prove for more than seventy-five pounds.

(4.) No claim (not being a claim for fertilisers or bags or twine supplied or for money advanced to pay the price thereof or to pay for the insurance of the farmer's crops or advanced pursuant to any resolution of the creditors with or without interest on any sum so advanced at a rate not exceeding current bank rate) shall be payable out of the said crop proceeds in priority to the claim of the owner of the said machinery.

(5.) In case an application is so refused as aforesaid no further similar application shall be made, except at the instance of the Director or pursuant to a resolution of the creditors, until the relative crop has been taken off or put in, as the case may be.

13. There are hereby inserted after section thirteen of the principal Act new sections, as follows:—

Insertion of new section after s. 13.

13A. (1.) Subject to subsection (6) of section four, to section seven, to subsection (2A) of section eight, to section thirteen and to this section, any creditor who holds any mortgage, lien, pledge, charge, or other security on or over any property of a farmer shall, notwithstanding any resolution of the creditors, be entitled to take the full benefit thereof:

Certain bills of sale and orders invalidated.

Provided that—

- (a) except in so far as it was given in consideration of the supply of fertilisers or cornsacks, or bags or twine, or to secure the price thereof, or in consideration of or to secure money advanced to pay such price, or to pay for the insurance of the farmer's crops with or without interest on any money so advanced at a rate not exceeding the current bank rate, every bill of sale given by a farmer who subsequently has a stay order granted to him shall, to the extent that it would be void as against his trustee in bankruptcy, if he had been made bankrupt on a petition presented on the date of the stay order, be void as against the farmer and his creditors; and
- (b) except as aforesaid, no order, authority, or writing given at any time by a farmer, which purports or is claimed or asserted to assign to any person the proceeds of any wheat, or of any other product of the farmer's business, not then delivered to such person or to the person to whom it is addressed, or to be communicated, or to entitle any person to receive or be paid any such proceeds, or to give him any charge thereover, shall, if the farmer subsequently becomes subject to this Act, operate as a valid assignment of such proceeds or entitle the person in whose favour it was given to any charge or security on or over such proceeds, unless it was given before the date of the commencement of this

Act and for a valuable consideration executed more than six months before such date; but so that no person shall be hereby compelled to refund any part of such proceeds which he has actually received before the end of the month of March, 1931, or before the farmer became subject to this Act: Provided that nothing in this paragraph (b) shall prejudice the rights of the grantee of any duly registered bill of sale.

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

Sections 3 to 13 of Act 13 of 1906 not to apply to certain bills of sale.

13B. If by reason of any creditor of a farmer (whether such farmer be under the operation of this Act or not) lodging any *caveat* against the registration of a bill of sale, given to any person for the purpose of securing advances agreed to be made to such farmer for the purpose of sowing or harvesting a crop on such farmer's land or for the maintenance of the farmer and his family or the purchase of necessaries in connection with the working of the farm, the person proposing to advance such money be unable to register such bill of sale, such person may apply to the director for an order directing that the provisions of sections three to thirteen (both inclusive) of Act 13 of 1906 shall not apply to any such security. The director shall thereupon have discretionary power either to grant such order or refuse the same. If the director shall grant any such order he shall cause the same to be served upon the Registrar of the Supreme Court, and the Registrar shall thereupon register the bill of sale in respect whereof such order has been granted, and the said provisions of the said Act shall be deemed not to have been applicable to such bill of sale.

Exemption from stamp duty.

14. There is hereby inserted in the principal Act, after section fourteen thereof, a new section, as follows:—

14A. Any power of attorney given by a farmer to a receiver or any other person for the purposes of this Act or to facilitate the carrying into effect of any resolution of creditors, shall be exempt from stamp duty.

Amendment of s. 19.

15. Section nineteen of the principal Act is hereby amended by striking out "thirty-two" and inserting "thirty-three" in lieu thereof.