

Relief on Contracts Relating to Land

Text of So-called Moratorium Act—Moderateness of Proposals—Method of Operation—Dangers of Interrupting the Usual Course and Disadvantage to Investment Class.

The subject of Moratorium, or Debtors' Relief Act, in respect to land, has loomed so large in the public mind, and particularly among those having to do with realty or mortgage transactions, that we have thought it advisable to print in full the text of the measure which it is proposed to enact at the present session of the Legislature:—

An Act to confer certain Powers upon the Lieutenant-Governor in Council respecting Contracts relating to Land.

1. In this Act—

"Instrument" means and includes any mortgage, charge, encumbrance, agreement of sale, or other instrument charging land with the payment of money, in respect of or affecting land situate within the Province, and whether created before or after the coming into force of this Act; but shall not include liens under the "Mechanics' Lien Act" or a certificate of judgment:

"Land" includes all real property, and every estate, right, title, and interest in land or real property, both legal and equitable, and of whatsoever nature and kind, and any contingent, executory, or future interest therein, and a possibility coupled with an interest in such land or real property, whether the object of the gift or limitation of such interest or possibility be ascertained or not, and also a right of entry, whether immediate or future, and whether vested or contingent, into and upon any land.

2.(1) Notwithstanding any Rule of Court or provision of any Statute, the Lieutenant-Governor in Council may, by Proclamation,—

(a) Authorize any Judge of any Court in the Province in which any action or proceeding was pending on the first day of August, 1914, or has since been or may hereafter be taken to secure or enforce any right, remedy, or obligation under any instrument, or in respect of the lands, moneys, covenants, stipulations, or agreements mentioned or contained therein, by order,—

(i.) To postpone the payment of any moneys relating wholly or in part to principal due or accruing due in pursuance of such instrument, and for such purposes to stay any such action or proceeding and the execution of any process already issued in such action, and any proceeding to enforce payment by sale, writ of execution, or other process of the Court, and registration of certificate of judgment in any such action, until after the lapse of a time named in such order;

(ii.) In case of any action or judgment recovered in any action brought upon the covenants or agreements contained in any instrument for the payment of interest, or of taxes, or premiums of insurance, to stay any proceedings to enforce payment of the same by registration of certificate of judgment against or sale of any land charged by such instrument until after the lapse of a time named in such order; and

(iii.) To fix the period to be allowed for redemption of land or any mortgage or charge thereon in any such action or proceeding; and in any such action or proceeding in which the time for redemption has been fixed, to extend the same until after the lapse of a time named in such order:

(b.) Authorize any Judge of the Supreme Court of British Columbia to order that no sale by virtue of any power of sale or by any other extra-judicial process whatsoever under the authority of any clause in any instrument shall be made, executed, or carried into effect until after the lapse of a time named in such order.

(2.) An order may be granted under this section upon an application in a summary manner upon such notice, and founded on such evidence by affidavit or by the examination of witnesses, as the Judge to whom the application is made may approve; but no order shall be granted under this section unless upon cause shown by the person liable to make the payment or standing in the position of a defendant, and after considering all the circumstances of the case and the position of all the parties,—

(a.) The Judge is of opinion that time should be given to such person on the ground that he is unable immediately to make the payment by reason of circumstances attributable, directly or indirectly, to the present war; or

(b.) The Judge is of opinion that justice and right demand that some relief be given.

Subject to the provisions contained in any Proclamation issued under this Act, every order so granted may be upon such terms, conditions, and limitations, including the reservation of leave to apply to vary the same, as such Judge may deem proper. The costs of every such application and order may be fixed by the Judge before whom the application is made, and shall be payable by the applicant. Every order shall have effect according to its terms, and there shall be no appeal from any such order.

(3.) Any sale made or purporting to be made in contravention of any such order shall be absolutely null and void.

(4.) Any such Proclamation may authorize the Judge of any County Court within whose territorial jurisdiction no Judge of the Supreme Court resides to have and possess the same authority and powers in respect of actions or proceedings in the Supreme Court, or of sales by virtue of any power of sale or by any other extra-judicial process whatsoever, relating to land situate within such territorial jurisdiction, as any Judge of the Supreme Court is by such Proclamation authorized to exercise.

(5.) Any such Proclamation may be varied, extended, revoked, or renewed by any subsequent Proclamation, and separate Proclamations may be made dealing with separate subjects.

(6.) Notwithstanding anything contained in this section, action may be brought upon the covenants or agreements contained in any instrument for the payment of interest or of taxes or premiums of insurance, and the judgment recovered in such action may be enforced against the goods and lands of the defendant, but any proceeding to