

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives.

28th March, 1935.

Right Hon. Mr. Coates.

RURAL MORTGAGORS FINAL ADJUSTMENT.

ANALYSIS.

Title.

1. Short Title and commencement.
2. Interpretation.
3. Application and purposes of this Act.
4. Act divided into Parts.

PART I.

THE COURT OF REVIEW OF MORTGAGORS' LIABILITIES.

5. Court of Review.
6. Constitution of Court.
7. Appointment of Judge of Court.
8. Appointment of other members.
9. Appointment of acting members of Court.
10. Judge of Court to take judicial oath.
11. Oath to be taken by other members.
12. Registrars and other officers of Court.
13. Rules of Court.
14. Evidence in proceedings before Court.
15. Quorum of Court.
16. Seal of Court.
17. Court may make order as to costs.

PART II.

VOLUNTARY ADJUSTMENTS OF THE LIABILITIES OF FARMER MORTGAGORS.

18. Any mortgagor to whom this Act applies may take steps to obtain an adjustment of his liabilities.

19. Mortgagee may take steps to have mortgagor's liabilities adjusted.
20. Amendment of mortgagor's statement of his assets and liabilities.
21. Verification of mortgagor's statements.
22. Right to inspect filed statements.
23. Effect of the giving of a notice by mortgagor or mortgagee under foregoing provisions.
24. Application for adjustment of mortgagor's liabilities to be referred to an Adjustment Commission.
25. Appointment of provisional trustee.
26. Functions of provisional trustee.
27. Adjustment Commission to call meeting of creditors.
28. Agreement for voluntary adjustment.
29. Court may require execution of instruments to give effect to memorandum of adjustment.
30. Memorial of adjustment to be noted on instruments affected by securities.

PART III.

PROVISIONS APPLICABLE IN CASES WHERE VOLUNTARY ADJUSTMENTS OF LIABILITIES ARE NOT MADE.

31. Application of this Part.
32. Procedure subsequent to failure of negotiations for voluntary adjustment.
33. Effect on mortgages where a stay order is not made.

PART IV.

STAY ORDERS AND THEIR
CONSEQUENCES.*Issue of Stay Orders.*

34. Stay orders to be issued by Registrar of Court.

Effect of Stay Order.

35. Effect of stay order.
36. Stay order not discharged by death of mortgagor.

Appointment and Powers of Trustees.

37. Adjustment Commission to appoint a trustee of mortgagor's estate.
38. Trustee to receive for mortgagor all moneys or other property.
39. Saving of bona fide payments.
40. Bank account.
41. Accounts to be kept by trustee.
42. Remuneration of trustee.

Distribution of Income during Operation of Stay Order.

43. Budget of mortgagor's estimated income and expenditure.
44. Distribution of income received in respect of any budgetary period.

Provisions applicable during Operation of Stay Order.

45. Stay order may be discharged by voluntary adjustment.
46. Mortgagor restrained from disposing of property during continuance of stay order.
47. Restriction of rights of vendor under customary hire-purchase agreement.
48. Capital assets in hands of trustee, if not connected with farming operations, may be realized for benefit of creditors.

Discharge of Stay Order before Final Adjustment of Liabilities.

49. In certain cases, stay order may be discharged before a final adjustment of mortgagor's liabilities has been effected.

PART V.

FINAL ADJUSTMENT OF THE LIABILITIES OF MORTGAGORS.

50. Liabilities of mortgagor to be adjusted after stay order has been in force for five years.
51. In certain cases the period of operation of stay order may be regarded as including prior period.

52. Adjustment Commission to proceed to ascertain productive value of mortgagor's farm lands. Interpretation.
53. Adjustment Commission to determine basic value to be used for computation of mortgagor's equity in farm property.
54. Appeals from valuations made by Adjustment Commission.
55. Assessors may be appointed to sit with Court for determination of appeals.
56. Liabilities of mortgagor, secured by mortgage of land, to be adjusted in accordance with basic value.
57. Liabilities of mortgagor, secured by mortgage of stock and chattels, to be adjusted in accordance with value of security.
58. Date when reductions in mortgages to be become operative.
59. Provisions as to repayment of reduced amounts of mortgages.
60. Conditions attached to disposition of mortgaged property at profit.
61. Foregoing provisions to be read subject to certain qualifying provisions.
62. Court to determine whether mortgagor to be entitled to continue in occupation.
63. Mortgagor may elect not to continue in occupation.
64. Conditions on which, by leave of Court, mortgagee may take over farm lands of mortgagor.
65. Provisions applicable if mortgagor elects not to continue in occupation of farm lands.
66. Provision for realization of free assets for benefit of unsecured creditors.
67. Formal discharge of stay orders.

PART VI.

MISCELLANEOUS PROVISIONS.

68. Adjustment of liability of guarantor during stay order.
69. Assessment of guarantor's liability at expiration of stay order.
70. Relief of mortgagor not to relieve guarantor.
71. Jurisdiction and powers of Adjustment Commission.
72. Basic rates of interest.
73. Trustee may be party to any arrangement.
74. No fee payable for making memorial.
75. Regulations.
76. Act to bind the Crown.

Repeal.

77. Extending duration of principal Act.
Schedule.

A BILL INTITULED

AN ACT to provide for a Final Adjustment of the Liabilities of Rural Mortgagors and to remove Rural Mortgages from the Operation of the Mortgagors and Tenants Relief Act, 1933.

Title.

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

1. (1) This Act may be cited as the Rural Mortgagors Final Adjustment Act, 1934-35, and shall be read together with and deemed part of the Mortgagors and Tenants Relief Act, 1933 (hereinafter referred to as the principal Act).

Short Title and commencement.

(2) This Act shall commence on the first day of May, nineteen hundred and thirty-five.

2. (1) In this Act, if not inconsistent with the context,—

Interpretation.

“Adjustment Commission” means an Adjustment Commission appointed under the principal Act, and the expression “the Adjustment Commission”, when used in relation to the affairs of any mortgagor, means the particular Adjustment Commission to which any application or other matter arising under this Act and relating to that mortgagor has been referred:

“Agricultural purposes” has a meaning corresponding to the term “agriculture”, which for the purposes of this definition means the cultivation of the soil for the production of food-products or other useful products of the soil, and includes the use of land for horticultural or pastoral purposes, or for the keeping of pigs, bees, or poultry:

“Court” means the Court of Review constituted under this Act:

“Creditor”, in relation to a mortgagor, includes every person to whom the mortgagor is under any legal liability, whether secured, unsecured, or contingent, and includes a guarantor:

“Farmer mortgagor” means a mortgagor, as hereinafter defined, under a mortgage to which the principal Act applies, granted over any land that at the passing of this Act is used by or on account of the mortgagor exclusively or principally for agricultural purposes:

“Guarantor” means a person who has guaranteed the performance by the mortgagor or by any other person of any covenant, condition, or agreement expressed or implied in a mortgage, whether the guarantee is expressed in the mortgage or in any other instrument; and includes any person other than the mortgagor who is liable under the provisions of the mortgage, or against whom any person has a legal or equitable right of indemnity in respect of any liabilities under the mortgage: 5

“Mortgagor” means the 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 such a mortgage: 15

“Property” includes land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situate in New Zealand or elsewhere; and also includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as herein defined: 20

“Registrar” means a Registrar of the Court of Review, and includes a Deputy Registrar of that Court: 25

“Stay order” means a stay order made under the authority of this Act: 30

“Trustee”, in relation to a mortgagor, means the trustee appointed in respect of that mortgagor under the authority of this Act.

(2) Except as otherwise provided in the *last preceding* subsection or as the context may otherwise require, any terms or expressions used in the principal Act and in this Act shall in this Act have the same meaning as in the principal Act. 35

(3) In the application of this Act to agreements for the sale and purchase of land, as provided for in subsection two of section two of the principal Act, the term “mortgagee” shall mean the vendor named in the agreement, and the term “mortgagor” shall mean the purchaser named in the agreement or, if the rights of the purchaser have been assigned or have been transferred by operation of law or otherwise, shall mean the person entitled on the 45

passing of this Act to purchase the land in accordance with the terms of the agreement. In any case where the right to purchase the land has been assigned or transferred as aforesaid the original purchaser and any
5 purchaser intermediate between him and the purchaser at the time of the commencement of this Act shall be included in the term "guarantor" as hereinbefore defined.

3. (1) This Act applies to those farmer mortgagors whose normal income is derived wholly or principally from
10 the use of lands for agricultural purposes, whether or not all of such lands are comprised in a mortgage to which the principal Act applies, and the general purpose of this Act is to retain efficient farmers in the use and occupation of their farms, and to make provision, in
15 manner hereinafter provided, for the adjustment of all their liabilities (whether secured or unsecured). Where a farmer mortgagor, as defined in section *two* hereof, is a trustee, he shall be deemed to be a farmer mortgagor to whom this Act applies if the income derived from the
20 trust estate is derived wholly or principally from the use of lands for agricultural purposes.

Application and purposes of this Act.

(2) If any question arises under this Act as to whether any lands are used exclusively or principally for agricultural purposes, or as to whether the normal income
25 of any mortgagor is derived wholly or principally from the use of any lands for such purposes, it shall, subject to an appeal to the Court of Review established under Part I of this Act, be determined by the Adjustment Commission, on the application of the mortgagor or of
30 a mortgagee.

(3) The Governor-General may by Order in Council apply the provisions of this Act so as to permit of the adjustment in accordance therewith of the liabilities
35 of the lessee of any lands used by him exclusively or principally for agricultural purposes and held under a lease containing an optional or compulsory purchasing clause, to which the principal Act has been applied in accordance with section twelve thereof or to which the principal Act could be lawfully applied pursuant to that
40 section :

Provided that an Order in Council under this subsection shall not take effect in respect of a lease containing an optional purchasing clause at any time before notice
45 of his lease of his intention to purchase the lands comprised in the lease.

Act divided into
Parts.

4. The following provisions of this Act are divided into Parts as follows:—

PART I.—The Court of Review of Mortgagors' Liabilities. (Sections 5 to 17.)

PART II.—Voluntary Adjustments of the Liabilities of Farmer Mortgagors. (Sections 18 to 30.) 5

PART III.—Provisions applicable in Cases where Voluntary Adjustments of Liabilities are not made. (Sections 31 to 33.) 10

PART IV.—Stay Orders and their Consequences. (Sections 34 to 49.)

PART V.—Final Adjustment of the Liabilities of Mortgagors. (Sections 50 to 67.)

PART VI.—Miscellaneous Provisions. (Sections 68 to 77.) 15

PART I.

THE COURT OF REVIEW OF MORTGAGORS' LIABILITIES.

Court of Review.

5. (1) There shall be established in accordance with this Act a Court of record, to be called the Court of Review of Mortgagors' Liabilities, which, in addition to the jurisdiction and powers specially conferred on it by this Act, shall have all the powers inherent in a Court of record. 20

(2) The Governor-General may from time to time, by Order in Council, transfer to the Court all or any of the functions of the Supreme Court or of a Stipendiary Magistrate under the principal Act. Every such Order in Council shall have effect according to its tenor, and shall come into force on a date to be fixed in that behalf in the Order in Council. 25 30

(3) In order that full effect may be given to the intent and purpose of this Act the Court shall, in every matter coming before it, have full power and jurisdiction to deal with and determine the matter in such manner and to make such order, not inconsistent with this Act, as it deems just and equitable in the circumstances of the case, notwithstanding that express provision in respect of such matter is not contained herein. No order of the Court shall be removed by certiorari or otherwise into the Supreme Court. 35 40

(4) It shall not only be the duty of the Court to sit as a judicial body for the determination of appeals and other matters formally submitted to it, but it may also of its own motion lay down principles for the guidance of the Adjustment Commissions and may issue general directions to be observed by them in the exercise of their powers and functions under the principal Act or this Act.

6. The Court shall consist of three members who shall be appointed by the Governor-General. Of the three members of the Court, one shall be the Judge of the Court and shall be so appointed, and the other two members shall be appointed as hereinafter provided.

Constitution of Court.

7. (1) No person shall be eligible for appointment as the Judge of the Court unless he is eligible for appointment as a Judge of the Supreme Court.

Appointment of Judge of Court.

(2) So long as the Court continues in existence, the Judge so appointed shall, as to tenure of office, salary, emoluments, and privileges, have the same rights and be subject to the same provisions as a Judge of the Supreme Court.

(3) This Act shall be deemed to be a permanent appropriation of the salary of the Judge of the Court.

(4) Notwithstanding anything to the contrary in the foregoing provisions of this section, the Governor-General may appoint a Judge of the Supreme Court or the Judge of the Court of Arbitration to be the Judge of the Court, and in such case the Judge so appointed shall hold both such offices concurrently.

(5) If and so long as a Judge of the Supreme Court holds office as the Judge of the Court of Review he shall be deemed to be absent from his office as a Judge of the Supreme Court, and a Judge may be appointed in his stead, pursuant to section eleven of the Judicature Act, 1908, to hold office during the pleasure of the Governor-General:

Provided that nothing herein shall be construed to deprive the Judge of the Court of Review, in any such case, of power to exercise any jurisdiction as a Judge of the Supreme Court.

8. (1) The members of the Court (other than the Judge) shall be appointed to hold office for a term not exceeding three years and shall be eligible for reappointment.

Appointment of other members.

(2) The remuneration and travelling-allowances of such members shall be fixed from time to time by the Governor-General in Council, and shall be paid out of moneys to be appropriated by Parliament for the purpose.

Appointment of acting members of Court.

9. (1) The Governor-General may from time to time, during the incapacity, illness, or absence of the Judge or of any other member of the Court, or during any vacancy in the membership of the Court, appoint any qualified person to act as the Judge of the Court or as such other member, as the case may be. Every person so appointed as an acting member of the Court shall hold office as such during the pleasure of the Governor-General.

(2) During the continuance of any such appointment the person so appointed shall have and may exercise and perform all the powers and duties of the Judge or other member for whom he has been appointed to act.

(3) The fact of any person appointed by the Governor-General in that behalf acting for the Judge or other member of the Court, as the case may be, shall be conclusive evidence of the validity of the appointment and of his authority so to act.

Judge of Court to take judicial oath.

10. The Judge of the Court (not being a Judge of the Supreme Court or the Judge of the Court of Arbitration), as soon as may be after his acceptance of office, shall take the Oath of Allegiance and the Judicial Oath, in accordance with section seven of the Promissory Oaths Act, 1908, as if he had been appointed a Judge of the Supreme Court.

See Reprint of Statutes, Vol. I, p. 1017

Oath to be taken by other members.

11. Before entering on the exercise of the duties of their office, the members of the Court other than the Judge shall make oath or affirmation before the Judge that they will faithfully and impartially perform the duties of their office.

Registrars and other officers of Court.

12. (1) There shall from time to time be appointed such Registrars and Deputy Registrars of the Court as may be required.

(2) There may also from time to time be appointed such clerks and other officers of the Court as may be necessary.

(3) The office of Registrar or Deputy Registrar or any other office may be held either separately or in conjunction with any other office in the Public Service.

13. (1) The Governor-General may from time to time by Order in Council make rules for regulating the practice and procedure of the Court in all matters within its jurisdiction, and prescribing the fees payable in respect of the proceedings of the Court.

Rules of Court.

(2) Until rules have been made under the authority of this section, or so far as any such rules do not extend, the practice and procedure of the Court shall be determined by the Court as it thinks proper.

14. (1) The Court may receive as evidence any statement, document, information, or matter which in the opinion of the Court may assist it to deal effectually with the matters before it, whether or not the same would be otherwise admissible in a Court of law.

Evidence in proceedings before Court.

(2) Subject to the foregoing provisions of this section, the Evidence Act, 1908, shall apply to the Court and to the members thereof, and to all proceedings therein, in the same manner as if that Court was a Court within the meaning of that Act.

See Reprint of Statutes, Vol. III, p. 106

15. (1) The presence of the Judge and of at least one other member shall be necessary to constitute a sitting of the Court.

Quorum of Court.

(2) The decision of a majority of the members present at a sitting of the Court shall be the decision of the Court.

If the members present are equally divided in opinion the decision of the Judge shall be the decision of the Court.

16. The Court shall have in the custody of each Registrar and Deputy Registrar a seal of the Court for the sealing of all orders of the Court and other documents that require to be sealed.

Seal of Court.

17. In any proceedings the Court may make such order as it thinks just as to the payment of the costs thereof, or of any proceedings or matters incidental or preliminary thereto, by or to any person who is a party to those proceedings.

Court may make order as to costs.

PART II.

VOLUNTARY ADJUSTMENTS OF THE LIABILITIES OF FARMER MORTGAGORS.

18. (1) Subject to the provisions of subsection *five* hereof, any mortgagor to whom this Act applies may, in accordance with this section, give notice in the Form No. 1 in the Schedule hereto or to the like effect that he desires to have his liabilities adjusted in accordance with

Any mortgagor to whom this Act applies may take steps to obtain an adjustment of his liabilities.

the provisions of this Act. Such notice shall relate specially to a mortgage of farm property to which the principal Act applies.

(2) Every notice under this section shall be filed by the mortgagor in the office of the Court nearest to the place where the mortgaged property is situated. If any such notice is filed in the wrong office it shall be sent by the Registrar to the proper office and shall be deemed to have been duly filed therein. 5

(3) Every notice filed under this section shall be accompanied by a complete list of all the creditors and debtors of the mortgagor, together with a statement containing particulars of his assets and liabilities, and of the securities held by any secured creditors. 10

(4) A copy of the notice filed under this section shall be given by the mortgagor to the mortgagee named in the notice. 15

(5) No notice shall be given under this section in respect of any mortgage if the mortgagee thereunder is immediately entitled to exercise, in respect of the mortgaged property, any power of sale, rescission, or entry into possession. 20

(6) Except by leave of the Adjustment Commission, no notice shall be given under this section at any time after the expiration of *twelve* months from the commencement of this Act. 25

Mortgagee may take steps to have mortgagor's liabilities adjusted.

19. (1) Where a mortgagor to whom this Act applies has not given notice under the *last preceding* section that he desires to have his liabilities adjusted, any mortgagee under a mortgage to which the principal Act applies may give notice in the Form No. 2 in the Schedule hereto or to the like effect that he desires that the liabilities of the mortgagor (being a farmer mortgagor to whom this Act applies) be adjusted in accordance with this Act. Except by leave of the Adjustment Commission, no notice shall be given under this section at any time after the expiration of *twelve* months from the commencement of this Act. 30 35

(2) Every notice given under the *last preceding* subsection shall be filed by the mortgagee in the office of the Court nearest to the place where the mortgaged property is situated, and a copy of such notice shall be given by the mortgagee to the mortgagor. If any such 40

notice is filed in the wrong office it shall be sent by the Registrar to the proper office and shall be deemed to have been duly filed therein.

5 (3) Within *twenty-one* days after the receipt by him of a notice under this section the mortgagor shall forward to the Registrar of the Court in whose office the notice has been filed a complete list of all his creditors and debtors, together with a statement showing particulars of his assets and liabilities, and of the securities held
10 by any secured creditors.

(4) If any mortgagor to whom a notice has been given under this section fails without sufficient cause, the proof whereof shall be on him, to comply with the requirements of the *last preceding* subsection, within the time therein
15 specified or within such extended time as the Adjustment Commission, subject to appeal to the Court, may in any case allow, on application in that behalf made either before or after the expiration of the said period of *twenty-one* days, the mortgage to which the notice relates shall cease
20 to be subject to this Act, and the mortgagee may thereupon exercise any powers conferred on him by the mortgage or by statute as if the principal Act and this Act had not been passed.

20 20. The mortgagor may from time to time file in the Court an amended list of creditors or debtors, or an amended statement of his assets and liabilities.

21. (1) Every list of creditors or debtors and every statement of assets and liabilities, and every amendment of any such list or statement, filed by a mortgagor
30 pursuant to the foregoing provisions of this Act shall be verified by the statutory declaration of the mortgagor.

(2) Every such statutory declaration shall be exempt from stamp duty.

35 22. (1) Any person whose name appears on any list of creditors or debtors filed by the mortgagor pursuant to the foregoing provisions of this Act, and any other person who claims, in writing addressed to the Registrar, that he is a creditor of the mortgagor, may at any time during the office hours of the Court inspect the filed list of
40 creditors or debtors or the filed statement of the mortgagor's assets and liabilities, and any amendment of such list or statement. If any person, not being a creditor of the mortgagor, knowingly makes to the Registrar for

Amendment of mortgagor's statement of his assets and liabilities.

Verification of mortgagor's statements.

Right to inspect filed statements.

the purposes of this section a false representation to the effect that he is a creditor of the mortgagor, he shall be guilty of an offence, and shall be liable on summary conviction to a fine of *fifty* pounds.

(2) Any inspection under this section may be made 5 personally by the creditor or debtor or person claiming to be a creditor, as aforesaid, or may be made by any other person acting as the authorized agent of a creditor or debtor.

(3) Any person inspecting the list of creditors or 10 debtors or statement of assets and liabilities pursuant to the foregoing provisions of this section may take any copy thereof or extract therefrom.

(4) Every person commits an offence and shall be 15 liable on summary conviction to a fine of *fifty* pounds who, without the authority of the Court, publishes in any newspaper or other document a statement to the effect that a notice under the foregoing provisions of this Act has been filed by or in respect of any mortgagor, or who, without the like authority, publishes any 20 particulars contained in any statement or list filed by the mortgagor pursuant to this Act as to his assets and liabilities or as to his debtors and creditors.

Effect of the giving of a notice by mortgagor or mortgagee under foregoing provisions.

23. Forthwith on the filing in the Court of a notice pursuant to the foregoing provisions of this Part of this 25 Act, whether such notice is filed by the mortgagor or by a mortgagee, the following provisions shall apply:—

(a) The principal Act and any order in force there- 30 under shall cease to apply to the mortgage to which the notice relates, and shall also cease to apply to every other mortgage over the same or any other property used by or on account of the mortgagor for agricultural purposes, if the mortgagor under the first- 35 mentioned mortgage is also the mortgagor under such other mortgage:

(b) Except as provided in subsection *four* of section *nineteen* hereof, the mortgagor and his property shall become protected and the mortgagor shall become subject to the same restrictions 40 upon his right to receive or deal with money or other property as if a stay order in respect of his estate had been made under the authority of Part IV of this Act.

24. (1) As soon as conveniently may be after the filing of any notice under the foregoing provisions of this Part of this Act, the Registrar in whose office the notice has been filed shall refer the matter to an Adjustment Commission to be dealt with by that Commission in accordance with the following provisions of this Part of this Act.

Application for adjustment of mortgagor's liabilities to be referred to an Adjustment Commission.

(2) Unless the Court, on the application of the mortgagor or mortgagee, otherwise directs, the Adjustment Commission to which any matter is referred as aforesaid shall be the Commission usually exercising its functions under the principal Act in the locality in which the property, the subject-matter of the mortgage to which the notice relates, is situated.

25. (1) The Registrar shall at the same time, or as soon as practicable thereafter, appoint a provisional trustee of the mortgagor's estate, and shall give notice of such appointment in such manner as he deems proper to every debtor and every creditor whose name appears in the statements filed by the mortgagor of his assets and liabilities and also to every other person known or believed by the Registrar to be a debtor or a creditor of the mortgagor.

Appointment of provisional trustee.

(2) If it appears from the filed statement of the mortgagor's assets and liabilities that any creditor of the mortgagor is entitled to receive the whole or the greater portion of the proceeds of the sale of the stock or other produce derived by the mortgagor from his farming operations, that person or a person nominated by him in that behalf shall be entitled to be appointed the provisional trustee of the mortgagor's estate.

(3) If there is no such person, or if any such person does not desire to act, the provisional trustee shall be a person nominated by the Adjustment Commission, either generally in respect of mortgaged properties in the locality in which the property of the mortgagor is situated or specially in respect of the particular mortgagor.

(4) The Adjustment Commission, on the application of the mortgagor or of any mortgagee or other creditor of the mortgagor, may at any time remove from office any provisional trustee appointed as aforesaid and may appoint a new provisional trustee in his stead.

Functions of
provisional
trustee.

26. (1) While a provisional trustee remains in office in respect of the estate of any mortgagor he shall, to the extent to which they are applicable, have the same powers and duties in all respects as if he were the trustee appointed by the Adjustment Commission on the making of a stay order under Part IV hereof. The provisional trustee shall out of moneys received by him on account of the mortgagor pay to the mortgagor from time to time such reasonable allowances as he thinks proper on account of the living-expenses of the mortgagor and his family and the working-expenses connected with his farming operations. 5 10

(2) The provisional trustee shall, on the termination of his appointment as provisional trustee, be entitled out of moneys received by him on account of the mortgagor to such remuneration in respect of his services as the Adjustment Commission may approve. 15

Adjustment
Commission to
call meeting of
creditors.

27. (1) The Adjustment Commission to which any matter has been referred pursuant to section *twenty-four* hereof shall as soon as practicable call a meeting of the mortgagor and all his creditors, to be held before the Adjustment Commission at a convenient time and place. 20

(2) Any person whose name does not appear on the list of creditors filed by the mortgagor shall be entitled to attend such meeting and to vote thereat, either personally or by proxy, if he satisfies the Adjustment Commission that he is a creditor of the mortgagor. 25

(3) The Chairman of the Adjustment Commission or, in the event of his absence, some other member of the Adjustment Commission shall preside at such meeting. 30

(4) Any meeting held pursuant to this section may be adjourned from time to time and from place to place.

Agreement for
voluntary
adjustment.

28. (1) If at any meeting held pursuant to the *last preceding* section not less than *three-fourths* in value of the creditors whose names appear in the mortgagor's list of creditors or who are otherwise known to the Adjustment Commission are present in person or by proxy and agree to such an adjustment of the mortgagor's liabilities as will enable him to carry on farming operations, the Adjustment Commission shall consider the proposed adjustment, and may either approve the same, with or without modification, or decline to approve the same. The proposed adjustment shall not be approved by 35 40

the Commission unless, after taking into consideration all the circumstances, it is of opinion that the proposed adjustment is equitable. From every decision of the Adjustment Commission given for the purposes of this section there shall be a right of appeal to the Court, to be exercised by any creditor within *fourteen* days after the notification of the decision.

(2) The proposed adjustment, as finally approved by the Adjustment Commission or by the Court, as the case may be, shall be embodied in a memorandum in the Form No. 3 in the Schedule hereto or to the effect thereof. The memorandum shall be signed by all the creditors who concur therein (being not less in any case than three-fourths in value of the known creditors of the mortgagor), and shall thereupon be filed in the Court and sealed with the seal of the Court.

(3) On the filing of the memorandum in the Court it shall be deemed to be an order of the Court and shall become binding upon the mortgagor and upon all his creditors.

(4) When the memorandum of adjustment has become binding as aforesaid on the mortgagor and his creditors, the mutual rights and obligations of the mortgagor and of any mortgagee shall cease to be further affected by this Act.

29. (1) The Court may, on the application of the mortgagor or of any of his creditors, direct the mortgagor or any such creditor to execute any instrument that may be required to give effect to the memorandum of adjustment.

Court may require execution of instruments to give effect to memorandum of adjustment.

(2) If any person required to execute any such instrument fails or refuses to execute the same the Court may authorize the Registrar to execute such instrument in the name and on behalf of the mortgagor or creditor, as the case may be.

30. (1) Forthwith after an adjustment of the mortgagor's liabilities has been effected in accordance with the foregoing provisions, the Registrar in whose office the memorandum of adjustment has been filed shall forward a certificate in the Form No. 4 in the Schedule hereto to every District Land Registrar, Registrar of Deeds, Registrar of the Supreme Court, or other person charged with the duty of keeping any register in which is registered any instrument of title or other instrument affecting any property the subject-matter of the memorandum of adjustment.

Memorial of adjustment to be noted on instruments affected by securities.

(2) It shall be the duty of every Registrar or other person to whom a certificate is sent as aforesaid, without payment of any fee, to enter in the appropriate register or registers and to note on the registered instruments a memorial of such certificate.

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PART III.

PROVISIONS APPLICABLE IN CASES WHERE VOLUNTARY ADJUSTMENTS OF LIABILITIES ARE NOT MADE.

Application of
this Part.

31. This Part of this Act applies in any case where negotiations to secure a voluntary adjustment of the liabilities of a farmer mortgagor in accordance with the provisions of Part II of this Act have not been successful. 10

Procedure
subsequent to
failure of
negotiations
for voluntary
adjustment.

32. (1) Where negotiations under Part II of this Act to secure a voluntary adjustment of the liabilities of any farmer mortgagor have not been successful, the Adjustment Commission, subject to an appeal to the Court of Review as hereinafter provided, shall direct either— 15

(a) That a stay order be issued in accordance with the provisions of Part IV of this Act in respect of the liabilities of the mortgagor; or 20

(b) That a stay order as aforesaid be not issued.

(2) In considering whether or not a stay order should in any case be issued, the Adjustment Commission shall have regard to the fact that the paramount object of this Act is to provide a means of giving to farmer mortgagors such relief from their financial obligations as will enable them to be retained in the use and occupation of their farms as efficient producers, except in cases where the giving of such relief would involve the imposition of undue hardship on mortgagees or other creditors. 25 30

(3) Having regard to the object of this Act as herein expressed, the Adjustment Commission shall proceed to take into consideration the following matters, namely:—

(a) Whether or not in its opinion the financial position of the mortgagor is such as to enable him to continue to carry on his farming operations satisfactorily without the protection of a stay order; 35

- 5 (b) Whether or not in its opinion the financial position of the mortgagor is such that, without the protection afforded by the principal Act, he could not have continued to carry on his farming operations even if the special economic conditions that now affect and during recent years have affected the farming industry had not arisen :
- 10 (c) Whether or not in its opinion the mortgagor, by reason of the manner in which he has carried on his farming operations, is not deserving of further protection :
- 15 (d) The conduct of the mortgagor in respect of any breaches by him of the covenants of the mortgage :
- (e) Any other matters that it may consider relevant.
- (4) If the Adjustment Commission is of opinion that a stay order should not be issued it may make an order postponing for such period, as it thinks fit, not exceeding
- 20 *twelve* months,—
- (a) The interest or principal payable by the mortgagor under any mortgage ; or
- (b) The date for the payment of any other moneys payable by the mortgagor.
- 25 (5) Every direction or order given or made by the Commission under this section shall be signed by the Chairman of the Commission and shall be filed in the Court together with the other records relating to the mortgagor. The Adjustment Commission shall cause notice of the filing
- 30 of any direction or order under this section to be given, in such manner as it deems sufficient, to all the known creditors of the mortgagor, or, in the case of an order under subsection *four* hereof, to the creditor or creditors concerned.
- 35 (6) Every direction or order given or made by the Commission under this section shall be subject to an appeal to the Court of Review by the mortgagor or by any mortgagee or other creditor affected by the direction or order.
- 40 (7) If an appeal is not lodged within *fourteen* days after the filing of the direction or order such direction or order shall take effect according to its tenor.

(8) If within *fourteen* days after the filing of the direction or order of the Commission an appeal is lodged the direction or order (except an order under subsection *four* hereof) shall be suspended until the appeal is disposed of. 5

Effect on mortgages where a stay order is not made.

33. (1) If the Commission directs that a stay order be not made, and an appeal from such direction is not lodged within the prescribed time or an appeal from such direction is dismissed by the Court of Review, or if the Court, on appeal from a decision of the Adjustment Commission 10 that a stay order be granted, determines that a stay order be not granted, every mortgage of the mortgagor shall cease to be subject to this Act on the expiration of such prescribed time or on the date of the order of the Court, as the case may be, and, subject to the 15 provisions of subsection *four* of the *last preceding* section, the mortgagee or any other creditor may at any time thereafter exercise in respect of the mortgagor any powers or rights conferred on him by statute or otherwise as if the principal Act or this Act had not been 20 passed.

(2) As soon as a decision that a stay order be not made becomes effective the provisional trustee appointed pursuant to section *twenty-five* hereof shall account to the Adjustment Commission for all moneys received or paid 25 by him on account of the mortgagor, and shall dispose of any moneys remaining in his hands in accordance with the directions of the Adjustment Commission. He shall then be deemed to have vacated his office as provisional trustee. 30

PART IV.

STAY ORDERS AND THEIR CONSEQUENCES.

Issue of Stay Orders.

Stay orders to be issued by Registrar of Court.

34. Where the issue of a stay order is directed by an Adjustment Commission or the Court pursuant to Part III 35 of this Act, such stay order shall be issued by the Registrar of the Court in the Form No. 5 in the Schedule hereto or to the effect thereof.

Effect of Stay Order.

35. (1) On the issue of a stay order in respect of the liabilities of any mortgagor, and while such stay order remains in force, it shall not be lawful, except in cases to which subsection *three* hereof relates or, in any other case, except with the leave of the Court of Review, granted upon such terms and conditions as the Court thinks fit, for the mortgagee or for any other person to do in respect of the mortgagor or of any property of the mortgagor any of the acts referred to in the *next succeeding* subsection, or to continue or complete the doing of any such act.

Effect of stay order.

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

- 15 (a) To issue or proceed with any process of execution in pursuance of any judgment, decree, or order of any Court, or to apply for a charging order or an attachment order in respect of any moneys payable to the mortgagor by any other person :
- 20 (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 :
- 25 (d) To sell or lease any property under the powers conferred by the Rating Act, 1925, in respect of judgments for unpaid rates :
- (e) To exercise in respect of any land or stock or other property any power of sale, rescission, realization, or entry into possession conferred by any mortgage or other security :
- 30 (f) To exercise any power of re-entry conferred by any lease or any power of determining any lease :
- 35 (g) To file or proceed with a bankruptcy petition or a winding-up petition against the mortgagor.

(3) Nothing in the foregoing provisions of this section shall prevent a mortgagee of any property that is not used by the mortgagor for agricultural purposes from exercising in respect of that property any power of sale, rescission, realization, or entry into possession, provided that in the case of any mortgage to which the principal Act applies the provisions of that Act are complied with. Any notice

that is required by or for the purposes of the principal Act to be served upon the mortgagor shall also be served upon the trustee who may, on behalf of the mortgagor, do any act or take any proceedings that the mortgagor could personally do or take.

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(4) Where any mortgagor, being the person primarily liable for the payment of any rates, is protected in respect of his liability for the payment of such 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.

10

Stay order not discharged by death of mortgagor.

36. In the event of the death of the mortgagor at any time while a stay order is in force in respect of his liabilities the stay order shall, unless and until discharged by the Court pursuant to section *forty-nine* hereof, enure for the protection of his estate and of his personal representatives and for the protection of any person becoming entitled under his will or by operation of law to his farm lands or any portion thereof.

20

Appointment and Powers of Trustees.

Adjustment Commission to appoint a trustee of mortgagor's estate.

37. (1) As soon as practicable after the making of a stay order, the Adjustment Commission shall, except as provided in subsection *seven* hereof, appoint the provisional trustee or some other suitable person to be the trustee of the mortgagor's estate.

25

(2) The trustee so appointed shall be the agent of the mortgagor, with power to do in respect of the property of the mortgagor whatever (but for any restrictions imposed on him by this Act) the mortgagor could lawfully do in person, and with such other powers and functions as are expressly conferred on him by this Act or are incidental to or necessary for the proper exercise of the powers and functions expressly conferred by this Act or are otherwise necessary for the purpose of giving effect to this Act.

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(3) If the mortgagor refuses or fails to execute any instrument that may require to be executed by him for the purpose of enabling effect to be given to the provisions of this Act, the trustee, with the authority of the Court but not otherwise, may execute such instrument in the name and on behalf of the mortgagor.

40

(4) No property of the mortgagor shall be or become vested in the trustee by virtue of his appointment under this Act.

5 (5) Any trustee appointed pursuant to this section may be removed from office by the Adjustment Commission and another trustee may be appointed in his stead.

10 (6) Notice of his appointment shall be given to the trustee under the hand of the Chairman of the Adjustment Commission or of any person purporting to be the Secretary to the Commission, and in the absence of knowledge that the appointment has been revoked, such notice shall be sufficient evidence to all persons concerned of the authority of the trustee to act as such.

15 (7) Notwithstanding anything contained in the foregoing provisions of this section, the Adjustment Commission may, subject to appeal as provided for in the *next succeeding* subsection, dispense with the appointment of a trustee in any case where it is of opinion that the appointment of a trustee is not required in protection of the interests of the creditors of the mortgagor. In any such case the mortgagor shall be deemed to be a trustee on behalf of his creditors, and references in this Act to trustees shall, unless the context otherwise requires, be deemed to include a reference to the mortgagor in his capacity as trustee for his creditors.

20 (8) Any creditor of the mortgagor may appeal to the Court of Review from a decision of the Adjustment Commission to dispense with the appointment of a trustee as provided for in the *last preceding* subsection.

30 **38.** (1) The trustee shall have the sole right to receive any moneys payable to the mortgagor, or any moveable property transferred to or otherwise becoming vested in the mortgagor, or to give a valid discharge on account of the mortgagor for any such moneys or other property.

Trustee to receive for mortgagor all moneys or other property.

35 (2) The trustee may also sue for and recover any debts due or other moneys payable to the mortgagor.

40 **39.** (1) Notwithstanding anything to the contrary in the *last preceding* section or elsewhere in this Act, any payment of money or delivery of property to any mortgagor for whose estate a trustee has been appointed shall be a good discharge to the person paying the money or delivering the property if the payment or delivery is made without notice of the issue of a stay order or

Saving of bona fide payments.

the appointment of a trustee and is either pursuant to the ordinary course of business or is otherwise in good faith :

Provided that nothing herein shall affect any rights conferred on any person by any instrument duly registered under the Chattels Transfer Act, 1924. 5

See Reprint
of Statutes,
Vol. I, p. 632

(2) If while a trustee is in office the mortgagor receives payment of any money due to him or accepts delivery of any property, whether such payment or delivery is made pursuant to the *last preceding* subsection or otherwise, and fails to account to the trustee for the same within a reasonable time after the receipt by him of such money or property, the Court may, in its discretion, on the application of the trustee, discharge the stay order. 10

Bank account.

40. (1) Subject to the provisions of the *next succeeding* subsection, the trustee shall open a bank account into which shall be paid all moneys received by him on account of the mortgagor, and out of which shall be paid all disbursements on behalf of the mortgagor : 15

Provided that if the trustee is trustee for more than one mortgagor pursuant to this Act he may keep one bank account for all or any number of the mortgagors for whom he is trustee. 20

(2) The Adjustment Commission may in any case dispense with the obligation imposed on the trustee by the *last preceding* subsection if it is satisfied that the trustee will make other satisfactory arrangements with respect to the moneys received by him on account of the mortgagor. 25

Accounts to
be kept by
trustee.

41. (1) The trustee shall keep proper books of account in which shall be recorded all financial transactions of or on account of the mortgagor, and shall from time to time as required by the Adjustment Commission, at intervals not longer than *six* months in any case, forward to the Commission copies of such accounts, certified by him to be correct. 30 35

(2) The mortgagor and any creditor of the mortgagor shall in accordance with the express authority of the Commission have the right to inspect the accounts and records of the trustee, and to make copies thereof or any extracts therefrom. 40

Remuneration
of trustee.

42. The trustee shall from time to time be entitled to retain out of moneys received by him on behalf of the mortgagor such sum or sums as remuneration in respect of his services as may be approved by the Adjustment Commission. 45

Distribution of Income during Operation of Stay Order.

43. (1) As soon as possible after the issue of a stay order in respect of any farmer mortgagor, and from time to time during the currency of the stay order, 5 the trustee, in conjunction with the Adjustment Commission, shall prepare a budget for the ensuing year or other appropriate period (hereinafter in this Act referred to as the budgetary period) of the estimated income of the mortgagor from his farming operations, and of the 10 estimated disbursements therefrom to be made in accordance with the *next succeeding* section.

Budget of mortgagor's estimated income and expenditure.

(2) The budget shall be submitted by the trustee to the mortgagor, who shall be given an opportunity to make such representations to the Adjustment Commission 15 as he thinks proper with respect to the amount proposed to be allowed him in respect of his living-expenses and working-expenses.

44. (1) The income received by the trustee from any source whatever on behalf of the mortgagor for any 20 budgetary period shall be disbursed in accordance with such general or special directions as the Adjustment Commission in its discretion may give to the trustee. Disbursements may be made in accordance with this subsection on account of any indebtedness incurred by 25 the mortgagor before the commencement of the budgetary period.

Distribution of income received in respect of any budgetary period.

(2) Without limiting the discretionary powers of the Adjustment Commission, it shall, in giving any directions for the distribution of income as aforesaid, have regard 30 to the following rules:—

(a) Provision should be made for payment in cash of the reasonable living-expenses of the mortgagor and his family, and for adequate 35 working-expenses, before any payment is made in respect of rates, taxes, rent, or other statutory charges on the farm lands of the mortgagor:

(b) Before any payment of interest is made to the mortgagees of land or chattels provision should 40 be made for payment, for the budgetary period, of rates and taxes, and (in so far as they have priority over mortgages) of other statutory charges payable on the farm lands of the mortgagor:

(c) Where the land or any part of the land used by the mortgagor for agricultural purposes is held under lease, provision should be made for the payment of rent, at a rate to be fixed by the Adjustment Commission for the purpose (not exceeding in any case the rent reserved by the lease), before any payment of interest is made to any mortgagee of the mortgagor's interest in the leased lands: 5

(d) As between mortgagees, provision should be made for payment to them of interest in respect of the budgetary period in the order of their respective priorities. 10

(3) If pursuant to the authority conferred on it by the foregoing provisions of this section the Adjustment Commission directs that any payments be made otherwise than in accordance with the ordinary rules of priority as between creditors, any mortgagee who is aggrieved by the operation of the direction of the Adjustment Commission may appeal to the Court of Review, and the Court may make such order as in the circumstances it deems equitable. The decision of the Court on any such appeal shall be final. 15 20

(4) Except as provided in the *last preceding* subsection, the decision of the Adjustment Commission as to the distribution of income shall be final. 25

(5) Payments under this section may be made from time to time throughout the budgetary period out of moneys in the hands of the trustee on account of the mortgagor, but it shall be the duty of the trustee to retain in his hands a sufficient amount to enable him to pay the living-expenses and working-expenses of the mortgagor from time to time, as they become payable. 30

Provisions applicable during Operation of Stay Order.

Stay order may be discharged by voluntary adjustment.

45. (1) At any time while a stay order is in force the Adjustment Commission may call a meeting of the mortgagor and of all his creditors with a view to obtaining a voluntary adjustment of the liabilities of the mortgagor in accordance with the provisions of Part II hereof, and if a voluntary adjustment is arrived at the stay order shall be discharged. 35 40

(2) The provisions of sections *twenty-eight, twenty-nine, and thirty* hereof shall apply with respect to any voluntary adjustment made pursuant to this section.

46. (1) Any mortgagor who, while a stay order in respect of his property is in force, mortgages, charges, pledges, or creates any lien upon or otherwise encumbers any part of his property, or transfers, assigns, or parts
 5 with the possession or control of any part of his property, without the consent of the Adjustment Commission, 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
 10 way of security under that Act, he had defrauded or attempted to defraud the grantee under such instrument. In any such case the Court, on the application of the trustee or of any creditor, may discharge the stay order.

Mortgagor restrained from disposing of property during continuance of stay order.

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

(2) Any mortgage, charge, pledge, lien, encumbrance, transfer, assignment, or delivery in contravention of this section shall be void, except so far as it may be protected by section *thirty-nine* hereof.

47. (1) If when a stay order is made under this Act in respect of any mortgagor he has in his possession any
 20 chattel which is the subject-matter of a customary hire-purchase agreement within the meaning of section fifty-seven of the Chattels Transfer Act, 1924, the owner of that chattel shall not, except with the consent of the Adjustment Commission or of the trustee acting with the
 25 authority of the Adjustment Commission, terminate the agreement or remove the chattel from the possession of the mortgagor.

Restriction of rights of vendor under customary hire-purchase agreement.

See Reprint of Statutes, Vol. I, p. 655

(2) The owner of any such chattel may at any time apply to the Adjustment Commission for authority to
 30 terminate the agreement or to remove the chattel from the possession of the mortgagor, and the Adjustment Commission shall give such authority except in cases where in its opinion the chattel is required by the mortgagor for the purposes of his farming operations.

35 (3) If in the opinion of the Adjustment Commission the chattel is required by the mortgagor for the purposes of his farming operations it may refuse to consent to the termination of the agreement or the removal of the chattel, and in any such case the owner shall be entitled
 40 to receive for every year or part of a year during which the stay order is in force such amount as may be fixed by the Commission.

(4) Notwithstanding anything in the foregoing provisions of this section, the Adjustment Commission may at any time direct that the agreement be terminated and that the chattel be returned to the owner, and in any such case no payment shall be made to the owner pursuant to the *last preceding* subsection in respect of any period subsequent to the return of the chattel. 5

(5) For the purposes of this section the term "owner" in relation to any chattel means the vendor or bailor of that chattel within the meaning of section fifty-seven of the Chattels Transfer Act, 1924. 10

Capital assets in hands of trustee, if not connected with farming operations, may be realized for benefit of creditors.

48. (1) If at any time while a stay order is in force the trustee receives on account of the mortgagor any capital assets that are not connected with his farming operations, the Court may, if it thinks fit, direct the trustee to realize such assets in such manner as the Court may direct or approve. 15

(2) The proceeds of any such realization and any other capital moneys that may be in the hands of the trustee on account of the mortgagor (not being moneys derived from the mortgagor's farming operations) shall, if the Court so directs, be paid by the trustee, in manner directed by the Court, to the creditors or to any of the creditors of the mortgagor, in satisfaction, to the extent of such payment, of their debts. 25

Discharge of Stay Order before Final Adjustment of Liabilities.

In certain cases, stay order may be discharged before a final adjustment of mortgagor's liabilities has been effected.

49. (1) Notwithstanding that a final adjustment of the liabilities of any mortgagor has not been made pursuant to the provisions in that behalf of Part V of this Act, a stay order in respect of that mortgagor may be discharged by the Court in any of the following cases:— 30

- (a) In any case where express provision for the discharge of the stay order is made by the foregoing provisions of this Act: 35
- (b) On the application of any mortgagor on the ground that his debts have been paid in full, or that for any other reason he is no longer in need of the protection of a stay order:
- (c) On the application of any mortgagee or other creditor of the mortgagor, on the ground that the conduct of the mortgagor during the operation of the stay order or a change in the circumstances of the mortgagor has rendered the discharge of the stay order equitable and desirable. 45

(2) On the discharge of a stay order in manner referred to in the *last preceding* subsection, the following provisions shall have effect:—

- 5 (a) The mortgage or all the mortgages (if more than one) of the mortgagor shall cease to be subject to this Act; and
- 10 (b) Any action, execution, or proceedings pending or in progress against the mortgagor or against any property of the mortgagor when the stay order came into force may be commenced, continued, or completed as if this Act had not been passed, and in computing the time for taking any step or any further step in connection therewith no account shall be taken
- 15 of any period while the stay order was in force.
- (3) The period during which a stay order has been in force under this Act shall not be taken into account for the purpose of any Statute of Limitation, in connection with any debt or claim affected by the order.
- 20 (4) Forthwith after the discharge of a stay order in manner referred to in the foregoing provisions of this section the trustee shall give notice in writing of such discharge to every known creditor of the mortgagor.

PART V.

25 FINAL ADJUSTMENT OF THE LIABILITIES OF MORTGAGORS.

50. (1) As soon as practicable after the expiration of five years from the coming into force of a stay order in respect of any farmer mortgagor, the Court shall, unless the stay order has been discharged in accordance

30 with the foregoing provisions of this Act, proceed to make an adjustment of all the liabilities of the mortgagor, whether secured or unsecured, in accordance with the provisions of this Part of this Act.

Liabilities of mortgagor to be adjusted after stay order has been in force for five years.

(2) Notwithstanding anything in the *last preceding*

35 subsection, the Court, on the joint application of the mortgagor and of the mortgagee or of all mortgagees interested in the farm property of the mortgagor, may proceed at any time before the expiration of the aforesaid period of five years to make an adjustment in accordance

40 with the provisions of this Part of this Act of the liabilities of the mortgagor.

In certain cases the period of operation of stay order may be regarded as including prior period.

51. (1) Where at the time of the making of a stay order under the foregoing provisions of this Act an agreement of the kind referred to in section eleven of the principal Act or an order made under the authority of that section is in force with respect to the farming operations of the mortgagor, the Court of Review may, for the purposes of this Part of this Act, determine that the stay order shall relate back and be deemed to have come into force on a date to be fixed by the Court in that behalf (being a date when the agreement or order aforesaid was in operation, and being not earlier in any case than two years before the making of the stay order). 5

(2) Nothing in this section shall be construed to limit the power conferred on the Court by subsection *two* of the *last preceding* section. 10 15

Adjustment Commission to proceed to ascertain productive value of mortgagor's farm lands.

52. (1) For the purpose of enabling the Court to make an order for the adjustment of the liabilities of any mortgagor, pursuant to this Part of this Act, the Adjustment Commission, as soon as practicable after the expiration of five years from the coming into force of a stay order in respect of any mortgagor, or after the expiration of any shorter period agreed to by the mortgagor and the mortgagee or mortgagees in accordance with the provisions of subsection *two* of section *fifty* hereof, shall proceed to ascertain the productive value of the mortgagor's farm lands in manner provided in the following provisions of this section. 20 25

Interpretation.

(2) For the purposes of this Part of this Act the productive value of any farm lands shall be deemed and taken to be an amount equal to the net average annual income derived from such lands during the operation of the stay order, capitalized at a rate to be fixed by the Court for the purpose pursuant to the provisions in that behalf of section *seventy-two* hereof. 30

(3) In order to ascertain the net average annual income referred to in the *last preceding* subsection, there shall be deducted from the gross income derived from the farming operations of the mortgagor all expenses, other than capital expenditure, incurred or deemed by the Adjustment Commission to have been incurred in the production of such income. In determining the amount of the gross income aforesaid regard shall be had by the Adjustment Commission to any variation during the operation of the stay order in the quality or quantity of the stock or other chattels used by the mortgagor for the purposes of his farming operations. 35 40 45

(4) For the purposes of the *last preceding* subsection the expenses incurred by the mortgagor in the production of his income shall not include the expenses incidental to the administration of his property under a stay order, 5 but shall be deemed to include all rates and taxes levied in respect of any budgetary period, and shall also be deemed to include interest on the average annual value of the stock and chattels used by the mortgagor in his farming operations computed at a rate to be fixed by 10 the Court for the purpose.

53. (1) When the productive value of the mortgagor's farm lands has been ascertained in manner prescribed by the *last preceding* section, the Adjustment Commission shall determine whether or not in its opinion the value so 15 ascertained is a fair value to serve as a basis for the adjustment of the mortgagor's liabilities in accordance with this Part of this Act.

Adjustment
Commission to
determine basic
value to be used
for computation
of mortgagor's
equity in farm
property.

(2) For the purpose of determining the said question the Adjustment Commission shall consider the relative 20 efficiency or inefficiency of the mortgagor as a farmer, the extent (if any) to which the farm has not been used to its full productive capacity during the operation of the stay order, and such other matters (if any) affecting the farm property as it considers relevant.

25 (3) Having considered the matters aforesaid, the Adjustment Commission, if it thinks proper so to do, may add to or deduct from the productive value such amount as it thinks fit.

(4) The expression "provisional basic value" as used 30 in the following provisions of this Part of this Act, means the productive value (if no amount is added to or deducted therefrom under the *last preceding* subsection), or, if any amount is so added or deducted, means the result of such addition or deduction.

35 (5) As soon as possible after the provisional basic value of any farm lands has been fixed by the Adjustment Commission, notice in writing shall be served by the Adjustment Commission on the mortgagor and on every mortgagee of those lands, with particulars as to—

40 (a) The average annual value placed upon the stock and chattels, for the purpose of determining the net average annual income derived from those lands:

(b) The productive value of those lands:

(c) The provisional basic value of those lands.

Appeals from
valuations made
by Adjustment
Commission.

54. (1) Within *twenty-eight* days after service on him of notice under the *last preceding* section, the mortgagor or any mortgagee shall have a right of appeal to the Court, in accordance with rules of Court, from every decision of the Adjustment Commission made for the purposes of this Part of this Act as to the value of any stock or chattels or as to the productive value or the provisional basic value of any land.

(2) If no appeal is lodged within the time limited by the *last preceding* subsection, or within such extended time as the Court in its discretion thinks fit, the provisional basic value as fixed by the Adjustment Commission shall be the basic value for the purposes of the following provisions of this Part of this Act.

(3) In the event of an appeal from the provisional basic value as fixed by the Adjustment Commission, the basic value shall be fixed by the Court in accordance with the *next succeeding* section.

Assessors may
be appointed to
sit with Court for
determination
of appeals.

55. (1) Notices of every appeal under the *last preceding* section shall be served, in accordance with rules of Court, as follows:—

(a) Where the mortgagor is the appellant, notice shall be served on every mortgagee of the mortgagor's farm lands:

(b) Where a mortgagee is the appellant, notice shall be served on the mortgagor, and on every mortgagee other than the appellant.

(2) The mortgagor or any mortgagee, within *twenty-one* days after the lodging of the appeal or within such extended time as the Court may in its discretion allow, may file in the Court a notice that he requires that assessors shall be appointed to sit with the Court for the purposes of the appeal.

(3) Where any mortgagor or mortgagee requires the appointment of an assessor as aforesaid, an assessor shall be appointed in accordance with this section to represent the interests of the mortgagor and an assessor shall be appointed to represent the interests of the mortgagee or of all the mortgagees, if more than one.

(4) The mortgagor and any mortgagee may nominate a fit person or fit persons to be appointed as assessors to represent their respective interests, and in such case the

Court shall appoint the person or one of the persons so nominated. If no person is nominated as assessor to represent the interests of the mortgagor, or of the mortgagee or of all the mortgagees, as the case may be, the appointment of a fit person or of fit persons shall be made by the Governor-General in Council.

(5) The assessors appointed as aforesaid shall sit with the Court and for the purposes of the appeal shall be deemed to be members of the Court.

(6) On the hearing of any such appeal the mortgagor or any mortgagee may appear personally or may be represented by counsel and shall be entitled to call such evidence as to the value of the mortgagor's farm property as they think fit. The Court may also, if it thinks fit, obtain the opinion of such expert valuers or other persons as in the circumstances it may require.

(7) On the hearing of any such appeal, the decision of a majority of the members of the Court shall be deemed to be the decision of the Court.

56. (1) If the basic value of the mortgagor's farm lands, ascertained in accordance with the foregoing provisions of this Part of this Act, is less than the total amount secured by mortgage of those lands, the amount so secured shall be deemed to be reduced to an amount equal to the basic value.

Liabilities of mortgagor, secured by mortgage of land, to be adjusted in accordance with basic value.

(2) If the farm lands of the mortgagor comprise two or more areas subject to different mortgages, the basic value of the farm lands shall be apportioned among the several areas in such proportions as the Court deems equitable, and the amount secured on any such area (to the exclusion of other areas) shall be separately adjusted in accordance with such apportionment.

(3) If there is more than one mortgage of the same land, the total amount deemed to be secured thereby shall be appropriated to the several mortgages in the order of their priority.

57. (1) If the value of the mortgagor's stock and chattels, as ascertained by the Court for the purposes of this section, is less than the total amount secured by mortgage of such stock and chattels, the amount so secured shall be deemed to be reduced to an amount equal to the value of such stock and chattels, ascertained as aforesaid.

Liabilities of mortgagor, secured by mortgage of stock and chattels, to be adjusted in accordance with value of security.

(2) If there is more than one mortgage of the same stock and chattels, the total amount deemed to be secured thereby shall be appropriated to the several mortgages in the order of their priority.

Date when
reductions in
mortgages to
become
operative.

58. (1) The reduction effected by the operation of section *fifty-six* or section *fifty-seven* hereof in the amount secured by any mortgage shall take effect on a date to be specified in that behalf by an order of the Court. The date so specified may be earlier or later than 5 the date of the order of the Court.

(2) A copy of every such order shall be served in such manner as the Court may direct upon the mortgagor and upon every mortgagee affected thereby.

(3) The amount by which any mortgage is reduced in 10 accordance with the foregoing provisions of this Part of this Act shall, on the taking effect of the reduction in accordance with this section, be deemed to be a debt due by the mortgagor to the mortgagee, who in respect thereof shall be deemed to be an unsecured creditor, and the 15 provisions of section *sixty-six* hereof shall apply accordingly with respect to such amount.

Provisions as to
repayment of
reduced amounts
of mortgages.

59. (1) When the amount secured by any mortgage of land has been reduced in accordance with the provisions of section *fifty-six* hereof, the following provisions of 20 this section shall apply.

(2) If the mortgage is overdue or has less than *five* years to run, the reduced amount of the mortgage shall, unless sooner paid off by the mortgagor, become repayable on the expiration of *five* years from the date on which the 25 reduction in the amount of the mortgage became effective.

(3) For the said period of *five* years, interest on the mortgage (whether the mortgage is overdue or falls due within the said period of *five* years, or falls due after the expiration of that period) shall not exceed the basic rate 30 of interest prescribed by the Court in respect of mortgages of land pursuant to the provisions in that behalf of section *seventy-two* hereof.

(4) Interest in accordance with the *last preceding* subsection shall be payable at half-yearly intervals, on dates 35 to be fixed by the Adjustment Commission :

Provided that the first half-yearly payment of interest may be postponed for such period, not exceeding *six* months, as the Commission thinks fit, having regard to the time or times when the mortgagor in ordinary 40 course receives the income or any part of the income derived from his farming operations.

(5) Any variation of the terms and conditions of a mortgage incidental to or consequential upon the variations effected in the mortgage by the foregoing provisions

of this Part of this Act may be effected by a memorial of variation signed by the mortgagor and the mortgagee. If the mortgagor or mortgagee refuses or fails to sign any such memorial of variation it may be signed in his name and on his behalf by the Registrar, acting by direction of the Court.

(6) A certificate of the variation of any mortgage made for the purposes of this section, in the Form No. 6 in the Schedule hereto, shall be registered without payment of any fee.

60. (1) If any farm lands in respect of which any mortgage liabilities of the mortgagor have been reduced pursuant to the foregoing provisions of this Part of this Act are sold or otherwise disposed of by the mortgagor at any time within five years after the date on which the reduction became effective, the moneys then secured by the mortgage may, at the option of the mortgagee, be called up and immediately become payable.

(2) If on any such sale or other disposition the price or other consideration exceeds the basic value as fixed in accordance with the foregoing provisions of this Part of this Act, an amount to be fixed by the Court as equitable, having regard to all the circumstances, not exceeding one-half of such excess, 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 the mortgagees whose mortgages were reduced on the adjustment of the mortgagor's liabilities.

(3) If any farm lands, sold or otherwise disposed of as aforesaid, are not identical with the lands on which the basic value was computed as aforesaid, the Court may for the purposes of this section apportion to the lands so sold or disposed of such portion as it thinks fit of the basic value.

61. The foregoing provisions of this Part of this Act shall be read subject to the qualifying provisions of the three next succeeding sections.

62. (1) On the ascertainment of the basic value of the farm lands of any mortgagor the Court shall determine whether or not the mortgagor is to be entitled to continue in the use and occupation of the farm lands, and for that purpose shall take into consideration the conduct of

Conditions attached to disposition of mortgaged property at profit.

Foregoing provisions to be read subject to certain qualifying provisions.

Court to determine whether mortgagor to be entitled to continue in occupation.

the mortgagor during the operation of the stay order, the claim of any mortgagee to be allowed to take over the farm lands in accordance with the provisions of section *sixty-four* hereof, and any other considerations that it thinks proper.

(2) If the Court decides that the mortgagor shall be entitled to continue in the use and occupation of his farm lands, it shall embody a statement to that effect in the order made by it pursuant to section *fifty-eight* hereof, and in such case the foregoing provisions of this Act shall apply without modification, unless the mortgagor elects, in accordance with the *next succeeding* section, not to continue in the use and occupation of the lands.

Mortgagor may elect not to continue in occupation.

63. Within *twenty-eight* days after service on him of a copy of the order of the Court, the mortgagor may elect not to continue in the use and occupation of the farm lands, and shall file a notice of such election in the office of the Court.

Conditions on which, by leave of Court, mortgagee may take over farm lands of mortgagor.

64. (1) If the Court determines that the mortgagor shall not be entitled to continue in the use and occupation of the farm lands it may, on the application of any mortgagee, give to that mortgagee the right to take over the farm lands of the mortgagor, subject to all prior encumbrances (exclusive of any arrears of rates, taxes, interest, or other charges), and subject to the condition that he shall pay to the mortgagor in cash an amount of compensation to be fixed by the Court as remuneration for his services during the operation of the stay order.

(2) In ascertaining the amount of compensation to be paid to the mortgagor as aforesaid the Court shall take into consideration the amount allowed to the mortgagor for living-expenses during the operation of the stay order, and the amount (if any) by which the amount so allowed as living-expenses, together with the value of the accommodation and farm-produce used by the mortgagor and his family, falls short of a reasonable remuneration for his work during the operation of the stay order.

65. (1) If the mortgagor, in accordance with the provisions of section *sixty-three* hereof, elects not to continue in the use and occupation of his farm lands, the following provisions shall apply:—

Provisions applicable if mortgagor elects not to continue in occupation of farm lands.

5 (a) The mortgagor shall thereupon be released from his obligations under any mortgage of the farm lands (including any obligation under any personal covenant):

10 (b) Any mortgagee may, with the leave of the Court, take over the farm lands of the mortgagor on the terms and conditions prescribed by the *last preceding* section.

(2) If the lands of the mortgagor are not taken over by a mortgagee as aforesaid, the Court shall direct that 15 the said lands shall be offered for sale by auction, in accordance with such conditions as the Court may fix in that behalf.

(3) It shall be a condition of such sale that the mortgagor shall be entitled to receive out of the purchase- 20 money an amount of compensation equal to the amount to which he would have been entitled if the lands had been taken over by a mortgagee in accordance with the *last preceding* section. The purchaser shall be required to pay in cash an amount not less than the amount so 25 payable as compensation to the mortgagor, and out of the amount so paid in cash compensation shall be paid to the mortgagor in such manner as the Court directs.

(4) Except as provided in the *last preceding* subsection, the proceeds derived from the sale of any land shall be 30 disposed of as if the land had been sold by the Registrar of the Supreme Court, on the application of a mortgagee, pursuant to the provisions in that behalf of the Land Transfer Act, 1915, or the Property Law Act, 1908, as the case may require.

35 66. (1) For the purposes of this section the term "unsecured creditors" in relation to any farmer mortgagor whose secured liabilities on his farm property have been adjusted in accordance with the foregoing provisions of this Part of this Act includes:—

Provision for realization of free assets for benefit of unsecured creditors.

40 (a) Every person who at the date of the commencement of the stay order was an unsecured creditor of the farmer mortgagor in respect of any unsecured debts owing by the mortgagor at that date:

45 (b) Any secured creditor of the mortgagor, in respect of any amount by which his mortgage has been reduced pursuant to the foregoing provisions of this Part of this Act:

- (c) Any guarantor of the mortgagor in respect of any amount paid by the guarantor under the guarantee:
- (d) Any local authority in respect of unpaid rates:
- (e) Any other person whom the Court in its discretion admits as an unsecured creditor in respect of any moneys payable to him by the mortgagor. 5

(2) As soon as practicable after an adjustment of the secured liabilities of a farmer mortgagor has been made in manner provided by the foregoing provisions of this Part of this Act, the Court shall proceed to ascertain, in such manner as it thinks fit, what property (if any) of the mortgagor is available in satisfaction of the claims of unsecured creditors. 10

(3) Having ascertained what property (if any) of the mortgagor is available for the unsecured creditors, the Court may make such orders in relation thereto as it thinks proper for the benefit of the unsecured creditors, and may appoint a trustee with power to sell or mortgage the whole or any part of such property and to distribute the proceeds in satisfaction of the claims of the unsecured creditors in proportion to the amount of such claims. 20

(4) To the extent to which the claims of any unsecured creditors are not satisfied, they shall be deemed to be discharged on a date to be fixed in that behalf by order of the Court. 25

Formal discharge of stay orders.

67. As soon as a final adjustment of the secured and unsecured liabilities of any mortgagor has been made in accordance with the foregoing provisions of this Part of this Act, the Court shall formally discharge the stay order in respect of that mortgagor. 30

PART VI.

MISCELLANEOUS PROVISIONS.

Adjustment of liability of guarantor during stay order.

68. (1) On the issue of a stay order in respect of any farmer mortgagor, in accordance with the provisions of Part IV of this Act, every guarantor of the mortgagor and the property of the guarantor shall, in respect of his liabilities under the guarantee, be protected against any of the acts mentioned in subsection *two* of section *thirty-five* hereof, to the same extent as the mortgagor and the property of the mortgagor are protected by that section. 35 40

(2) Any such guarantor or any mortgagee having a claim against the guarantor may at any time while a stay order is in force as aforesaid make application to the Court to assess the amount for which he shall be liable
5 under the guarantee.

(3) The application shall be referred to the Adjustment Commission, which shall consider the financial position of the guarantor and the mortgagee, any hardship that would be inflicted on the mortgagee by any
10 reduction of the amount for which the guarantor is liable, and any hardship that would be inflicted on the guarantor by payment of the amount, the circumstances under which the guarantor became liable, and all other relevant circumstances, whether of a like nature or not,
15 and shall report thereon to the Court.

(4) The Court shall consider the report of the Adjustment Commission, and shall assess the amount which the guarantor shall be liable to contribute toward the mortgage debt, and the time and manner in which
20 such amount shall be payable.

(5) When such amount has been assessed, the mortgagee shall, within *thirty* days after receiving notification thereof, elect whether he will accept the liability of the guarantor or the liability of the mortgagor, or partly
25 the one and partly the other, and, if so, the amount which will be charged against each.

(6) On such election being filed in the Court the mortgagee shall not be deemed to be a creditor of the mortgagor in respect of the amount for which he
30 accepts the liability of the guarantor.

(7) The guarantor shall be subrogated to the rights of the mortgagee in respect of any amount paid by him under the guarantee.

(8) For the purpose of carrying into effect the foregoing
35 provisions of this section, if a guarantor within the meaning of this Act is one liable under an express or implied covenant with the person who conveyed or transferred property to him subject to a mortgage that such guarantor will pay the moneys or perform
40 the obligations secured by the mortgage, or perform and observe the covenants and provisions of the mortgage, or keep harmless and indemnified such person making the conveyance or transfer in respect of such moneys, obligations, covenants, and provisions, he shall, on the

assessment of the amount of his liability under the guarantee, cease to be liable on such covenant with the person making such conveyance or transfer, and shall by virtue of this Act be liable to the mortgagee only, for the amount in respect of which the mortgagee has elected to accept the liability of the guarantor. 5

Assessment of guarantor's liability at expiration of stay order.

69. (1) If the liability of any guarantor of a farmer mortgagor has not during the operation of a stay order in respect of such mortgagor been assessed pursuant to the provisions of the *last preceding* section, then, on the expiration of the budgetary period, the Adjustment Commission shall investigate the position of the guarantor and the mortgagee and shall report thereon to the Court. 10

(2) The Court shall take into consideration the financial position of the guarantor and the mortgagee, any hardship that would be inflicted on the guarantor by the enforcement of his obligations or on the mortgagee by the non-enforcement thereof, the circumstances under which the guarantor became liable, and any other relevant circumstances, whether of a like nature or not. 15 20

(3) The Court, after having regard to the matters mentioned in the *last preceding* subsection, shall assess the amount which the guarantor shall be liable to contribute towards the repayment of the mortgage, and the time and manner in which such amount shall be payable. 25

Relief of mortgagor not to relieve guarantor.

70. No concessions granted to a mortgagor pursuant to this Act shall *ipso facto* operate to relieve any guarantor of the mortgagor from any of his liabilities under the guarantee. 30

Jurisdiction and powers of Adjustment Commission.

71. (1) In all matters arising under this Act the Adjustment Commission shall have such rights and powers, including the power of investigation, as are conferred on it by the principal Act, but shall be subject to the general jurisdiction of the Court. 35

(2) Except as is provided in this Act, there shall be no appeal against a decision of the Adjustment Commission in any matter in which it has jurisdiction, nor shall such decision be subject to review before any tribunal whatsoever. 40

(3) No direction or order shall be given or made by an Adjustment Commission in the exercise of its functions under this Act unless at least *two* members of the Commission concur therein.

72. The Court shall when necessary determine a basic rate or basic rates of interest for the purposes of sections fifty-two and fifty-nine of this Act. Different rates may be fixed under this section in respect of mortgages of land and mortgages of stock and other chattels.

Basic rates of interest.

73. (1) It shall be lawful for any trustee to agree to an adjustment of the liabilities of any farmer mortgagor in accordance with the provisions of this Act.

Trustee may be party to any arrangement.

(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.

74. No fees shall be payable to any District Land Registrar, Registrar of Deeds, Registrar of the Supreme Court, or other person for entering in any register any memorial in respect of any matter done under this Act.

No fee payable for making memorial.

75. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as in his opinion may be necessary or expedient for avoiding any doubt or difficulty which may appear to him to arise in the administration of this Act, or which may be otherwise necessary for the purpose of giving effect to this Act. Any such regulations may be made to take effect retrospectively. All regulations made under the authority of this section shall have the force of law as if enacted in this Act.

Regulations.

(2) All such regulations shall be laid before Parliament within twenty-eight days after the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the commencement of the next ensuing session.

76. This Act shall bind the Crown.

Act to bind the Crown.

Repeal.

77. Section thirty-four of the principal Act is hereby repealed.

Extending duration of principal Act.

Schedule.

SCHEDULE.

FORM No. 1.

Notice by Mortgagor requiring Adjustment of his Liabilities.

In the matter of the Rural Mortgages Final Adjustment Act,
1934-35,

and

In the matter of [*Here describe mortgage (being a mortgage of farm property, to which the principal Act applies) with registered number so that it may be clearly identified*] from [*Name, address, and occupation of mortgagor*] to [*Name, address, and occupation of mortgagee*].

TAKE notice that I desire to have my liabilities under the above-described mortgage and all my other liabilities adjusted in accordance with the provisions of the above-mentioned Act.

I have, pursuant to the said Act, filed this notice in the office of the Court of Review of Mortgages' Liabilities at [*Place of filing*], and have filed therewith a complete list of my debtors and creditors, and a verified statement showing particulars of my assets and liabilities, and of the securities held by my secured creditors.

Mortgagor.

FORM No. 2.

Notice by Mortgagee requiring Adjustment of Mortgagor's Liabilities.

In the matter of the Rural Mortgages Final Adjustment Act,
1934-35,

and

In the matter of [*Here describe mortgage (being a mortgage of farm property, to which the principal Act applies) with registered number so that it may be clearly identified*] from [*Name, address, and occupation of mortgagor*] to [*Name, address, and occupation of mortgagee*].

TAKE notice that I desire that the liabilities of the above-named mortgagor (being a farmer mortgagor within the meaning of the above-mentioned Act) be finally adjusted in accordance with the provisions of that Act.

Take notice also that the said mortgagor is required pursuant to the said Act to forward to the Registrar of the Court of Review of Mortgages' Liabilities nearest the place where the security is situated, within twenty-one days after the receipt of this notice, a complete list of his debtors and creditors, together with a verified statement showing particulars of his assets and liabilities, and of the securities held by his secured creditors.

Mortgagee.

FORM No. 3.

Memorandum of Voluntary Adjustment of Mortgagor's Liabilities.

In the Court of Review of Mortgagors' Liabilities at

At a meeting of creditors of [*Mortgagor's name, address, and occupation*] held under the provisions of the Rural Mortgages Final Adjustment Act, 1934-35, the mortgagor and his creditors have agreed pursuant to the provisions of the said Act that the mortgagor's liabilities should be adjusted in manner shown below :—

| Creditor's Name. | Amount of Debt. | Whether secured or unsecured, and when payable. | Terms of Payment under Agreement. | Signature of Creditor. |
|------------------|-----------------|-------------------------------------------------|-----------------------------------|------------------------|
| | | | | |

Registrar of the Court of Review.

FORM No. 4.

Certificate of Voluntary Adjustment.

In the Court of Review of Mortgagors' Liabilities at

At a meeting of creditors of [*Mortgagor's name, address, and occupation*] held under the provisions of the Rural Mortgages Final Adjustment Act, 1934-35, the mortgagor and his creditors agreed to an adjustment of the mortgagor's liabilities, and the Adjustment Commission has approved the proposed adjustment.

Pursuant to the provisions of the said Act, you are required to annex this certificate to [*Here describe mortgage to which it relates*] and to endorse a memorial thereof on the said instrument of mortgage.

Registrar of the Court of Review.

To the District Land Registrar, Registrar of Deeds, Mining Registrar, or Registrar of the Supreme Court, as the case may be [*Place*].

FORM No. 5.

Stay Order.

In the Court of Review of Mortgagors' Liabilities,
at .

In the matter of the liabilities of [*Mortgagor's name, address,
and occupation*].

PURSUANT to the provisions of the Rural Mortgagors Final Adjustment Act, 1934-35, it is ordered that the above-named mortgagor be subject to this stay order as from the . . . day of . . . , 19 . . .

Registrar of the Court of Review.

FORM No. 6.

Certificate of Variation of Registered Mortgage.

In the Court of Review of Mortgagors' Liabilities,
at .

PURSUANT to the provisions of the Rural Mortgagors Final Adjustment Act, 1934-35, the amount secured by [*Here describe mortgage or instrument by way of security with registered number*] has been reduced to £ . . .

You are required to file this memorial in your office and to make a note thereof in writing on the above-described mortgage (*or instrument by way of security*).

Registrar of the Court of Review.

To the District Land Registrar, Registrar of Deeds, Mining Registrar,
or Registrar of the Supreme Court, as the case may be [*Place*].