

1942
 *Oct. 27.
 1943
 *April 2.

FRANK ROY AND ATTORNEY-GEN-
 ERAL OF THE PROVINCE OF } APPELLANTS;
 ALBERTA (DEFENDANTS)..... }

AND

FLAVIUS PLOURDE (PLAINTIFF)..... RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA,
 APPELLATE DIVISION

Constitutional law—Order fixing period for redemption in action for specific performance of agreement for sale of land—Constitutional validity of The Judicature Act Amendment Act, 1942 (Alta., c. 37), s. 2.

There was in question the constitutional validity of s. 2 of *The Judicature Act Amendment Act, 1942* (c. 37), adding to s. 35 of *The Judicature Act, Alberta*, paragraph (ddd), which extended the time for redemption, under any order *nisi* or order for specific performance theretofore granted in an action for foreclosure of mortgage or in respect of an agreement for sale of land, respectively, in any case where no final vesting order or cancellation order had been granted, for one year from the coming into force of the enactment; and also specified the time to be fixed for redemption by the order *nisi* or the order for specific performance in any such action commenced before or after the passing of the enactment, at one year from the date of the order; provided however that in any action coming under above provisions the judge might on application decrease or extend said period of redemption having regard to circumstances in respect of certain matters specified; and, by clause (iii), provided that nothing contained in the enactment should apply to "(a) any action in which a permit is not or was not required pursuant to the provisions of *The Debt Adjustment Act, 1937*; or (b) any action authorized by a permit granted by the Debt Adjustment Board; or (c) any action in which the consent of the debtor has been obtained."

The objection to the enactment was that as a whole it was colourable and its real purpose was to give indirectly some effect to *The Debt Adjustment Act, 1937*, which had been held *ultra vires*.

Held (reversing the judgment of the Supreme Court of Alberta, Appellate Division, [1942] 2 W.W.R. 607): The enactment was not *ultra vires*. Standing by itself (excluding clause iii), it was a normal exercise of provincial legislative power; it concerned property and civil rights within the province and procedure in civil courts relating thereto. As to clause (iii), it gave creditors the benefit of provisions of an Act which would shorten the prescribed time for redemption, and, in any event, clause (iii) was severable and, as *The Debt Adjustment Act, 1937*, had finally been held *ultra vires*, could have no effect whatever.

PRESENT:—Duff C.J. and Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.

APPEAL from the judgment of the Supreme Court of Alberta, Appellate Division (1), dismissing (Ford and Ewing J.J.A. dissenting) an appeal from an order in which (having regard to and partly in furtherance of a previous order in the action) a certain period of redemption was fixed, a sale confirmed and delivery of possession ordered, in an action for specific performance (with other relief) of an agreement for sale of land from plaintiff to defendant. (A stay of execution of the order for possession was granted by the Appellate Division). There was raised the question as to the validity of s. 2 of *The Judicature Act Amendment Act, 1942* (Statutes of Alberta, 1942, c. 37), which section is set out in full in the judgment of this Court now reported. The majority of the Appellate Division held that the enactment was *ultra vires*. By an order in the Supreme Court of Alberta, Appellate Division, the Attorney-General of Alberta (who had previously intervened and been heard on the application for the said order appealed from and on the appeal to the Appellate Division) was added as a party defendant; and he joined in the appeal to this Court.

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—

H. J. Wilson K.C., *W. S. Gray K.C.* with him, for the appellants.

S. H. McCuaig K.C. for the respondent.

The judgment of the Court was delivered by

HUDSON J.—The question which we are asked to decide here is whether or not an amendment to *The Judicature Act* of Alberta is within the powers of the Legislature. The Act in question provides:

2. *The Judicature Act*, being chapter 72 of the Revised Statutes of Alberta, 1922, is hereby amended as to section 35 by adding immediately after paragraph (dd) the following new paragraph:

(ddd) (i) Notwithstanding the terms of any order *nisi* heretofore granted in an action for foreclosure of a mortgage or of any order for specific performance heretofore granted in an action in respect of any agreement for sale of land in any case where no final vesting order or cancellation order has been granted the time for redemption under any such order shall be extended for a period of one year from the date of the coming into force of this Act;

(ii) In any action for foreclosure of a mortgage or for specific performance of an agreement for sale commenced before or after the pass-

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ing of this Act, the time to be fixed for redemption by the order *nisi* in the case of a mortgage or by the order for specific performance in the case of an agreement for sale shall be one year from the date of the granting of the order;

Provided, however, that in any action coming under the provisions of clauses (i) or (ii) of this paragraph the judge may on application decrease or extend the said period of redemption having regard to the following circumstances:

(a) in case the action is in respect of a security on farm lands, the ability of the debtor to pay, the value of the land including the improvements made thereon, the nature, extent and value of the security held by the creditor, and whether the failure to pay was due to hail, frost, drought, agricultural pests or other conditions beyond the control of the debtor;

(b) in case the action is in respect of a security on urban lands, the ability of the debtor to pay, the value of the land including the improvements made thereon, the nature, extent and value of the security held by the creditor, the earning capacity of the debtor, and whether the debtor's failure to pay was due to temporary or permanent unemployment, or other conditions beyond the control of the debtor.

(iii) Nothing contained in this paragraph shall apply to,—

(a) any action in which a permit is not or was not required pursuant to the provisions of *The Debt Adjustment Act, 1937*; or

(b) any action authorized by a permit granted by the Debt Adjustment Board; or

(c) any action in which the consent of the debtor has been obtained.

Section 2, standing by itself (excluding clause iii), is a normal exercise of provincial legislative power. It concerns property and civil rights within the province and procedure in civil courts relating thereto.

The objection is that the Act as a whole is colourable and its real purpose is to give indirectly some effect to the *Debt Adjustment Act*, which has been held *ultra vires*. This objection was sustained by a majority of the Court of Appeal.

With respect, I cannot say that this objection can be sustained. Clause (iii), which is the objectionable clause, gives creditors the benefit of provisions of an Act which would *shorten* the prescribed time for redemption and, in any event, this clause is severable and, as the *Debt Adjustment Act* has finally been held *ultra vires*, can have no effect whatever.

Having arrived at this conclusion, the appeal must be allowed and, in order to enable the courts in Alberta to work out the consequences of this view, the order of the court below should be so amended so as to provide a new

date for performance. The time consumed in the various court proceedings might well be considered in fixing this time.

There should be no costs of the appeal.

Appeal allowed.

Solicitor for the appellants: *H. J. Wilson.*

Solicitor for the respondent: *S. H. McCuaig.*

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