

TRINIDAD AND TOBAGO.

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No. 12—1934.

I ASSENT,

[L.S.]

A. C. HOLLIS,
Governor.

12th May, 1934.

AN ORDINANCE to postpone the payment of the principal sum secured by mortgages and other encumbrances on land situate in the area damaged by the Hurricane of the 27th June, 1933.

WHEREAS it is advisable in the interests of owners of land damaged by the Hurricane of the 27th June, 1933, that the rights of mortgagees and other encumbrancers over land should be temporarily and conditionally restricted:

Be it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows:—

Short title. 1. This Ordinance may be cited as the Mortgages Extension Ordinance, 1934.

Interpretation 2. In this Ordinance:
"Area damaged by the Hurricane" means land situate in the Counties of St. Patrick and Victoria south of the line which is the northern boundary of Cadastral sheets F.17,

F.18, F.19, F.20, G.16, G.17, G.18, G.19, G.20, and H.16, running due east from the sea and terminating on the western boundary of the Trinity Hills Reserve.

“ Encumbrancer ” includes all persons entitled at the commencement of this Ordinance, whether by deed or by memorandum of Mortgage under the Real Property Ordinance, to a mortgage, charge or lien on any land and includes all registered Judgment creditors and also debenture holders of any limited company but shall not include an advance by an Agricultural Credit Society which has made a loan under the Agricultural Credit Societies Ordinance. Cap. 131.

“ Land ” includes all land and the produce thereof and all buildings, factories and machinery standing thereon and all rolling stock belonging to the owner and used and worked in connection with such land.

“ Owner ” means the owner or the duly authorised attorney of such owner, and includes an executor or administrator of a deceased owner, a trustee appointed by deed or will, and also a company or corporation.

3.—(1) There shall be established a Board to be called the “ Mortgages Extension Board ” (in this Ordinance referred to as “ the Board ”) whose duty it shall be to hear and adjudicate on any application by an owner to restrain an encumbrancer of land situate in the area damaged by the Hurricane from doing any of the following acts :— Constitution and functions of the Board.

- (a) Exercising any power of sale over, or entering into possession of or appointing a receiver over any land the subject of any encumbrance ;
- (b) Commencing or continuing an action for the breach of a covenant to pay the principal sum secured by an encumbrance over any land ;
- (c) Commencing or continuing an action for the recovery of any penal rate of interest secured to be paid under any such encumbrance.

(2) The Board shall consist of a Chairman and four other members to be nominated by the Governor.

(3) The Chairman and other members of the Board shall hold office during the Governor's pleasure.

(4) The Board may act by any three of its number and may so act notwithstanding any vacancy in its number.

(5) The Governor may appoint any person to act in the place of any member of the Board in case of the absence or inability to act of such member.

(6) The Chairman and every member of the Board shall, before acting as a member of the Board, take the following oath, namely :

I.....do hereby swear that I will perform the duties of a member of the Mortgages Extension Board without favour or partiality, and to the best of my skill and ability.

(7) The oath of the Chairman shall be administered by the Governor. The oaths of other members shall be administered by the Chairman.

Power to summon and examine witnesses, and privilege of Board from suit.

4. The Board acting under this Ordinance shall have the powers of the Supreme Court to summon witnesses, to call for the production of books, plans, and documents, and to examine witnesses and parties concerned on oath ; and no member of the Board shall be liable to any action or suit for any matter or thing done by him as such member of the Board. All summonses for the attendance of witnesses or other persons, or the production of documents, may be in the Form given in the Schedule to this Ordinance and shall be signed by one of the members of the Board. Oaths may be administered by any one of the members of the Board.

Witnesses

5.—(1) All persons summoned to attend and give evidence, or to produce books, plans, or documents, at any meeting of the Board, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpoenas issued from the Supreme Court, and shall be entitled to like expenses as if they had been summoned to attend at such Court on a criminal trial, if the same shall be allowed by the Board, but the Board may disallow the whole or any

part of such expenses in any case, if they think fit. Orders for the payment of such witnesses shall be made as nearly as may be as orders are made for the payment of witnesses in the Supreme Court, and shall be paid in such manner as the Governor may direct.

(2) Every person refusing or omitting, without Offences. sufficient cause, to attend at the time and place mentioned in the summons served on him, and every person attending, but leaving without the permission of the Board, or refusing without sufficient cause to answer, or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Board, or refusing or omitting without sufficient cause to produce any books, plans, or documents in his possession, or under his control, and mentioned or referred to in the summons served on him, and every person who shall at any sitting of the Board wilfully insult any member of the Board, or wilfully interrupt the proceedings of the Board, shall be liable, on summary conviction before a Magistrate, to a penalty not exceeding fifty pounds.

Provided always, that no person giving evidence before the Board shall be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the Board, be entitled to all privileges to which a witness giving evidence before the Supreme Court is entitled in respect of evidence given by him before such Court.

6. Any expenses incurred by the Board shall be a charge Expenses of Board. upon the General Revenue of the Colony.

7.—(1) From and after the commencement of this Ordinance an owner who desires to restrain an encumbrancer Restriction of power of Encumbrancer from doing any of the acts enumerated in sub-section (1) of section 3 of this Ordinance shall make application to the Board in the prescribed form. Upon receipt of such application the Board shall within 14 days thereof give notice to the encumbrancer of such application together with a copy thereof and as from the date of such notice and pending the hearing of the application by the Board it shall not be lawful for the encumbrancer to do any such acts aforesaid.

(2) Upon the hearing of the application the Board shall, subject to the provisions of the next succeeding section and if satisfied that an encumbrancer is endeavouring to take advantage of an owner and that no undue hardship or loss will be inflicted upon the encumbrancer, make an order restraining the encumbrancer from doing any of the acts enumerated in sub-section (1) of section 3 of this Ordinance during the period (not exceeding the duration of this Ordinance) to be specified in such order. Any such order may upon the application of the encumbrancer or otherwise be cancelled or varied by subsequent order of the Board upon any of the grounds specified in paragraphs (c) to (g) inclusive of the next succeeding section or upon any other grounds which appear to the Board to justify such variation or cancellation.

(3) Any such order by the Board shall have the same force and effect as an order of the Supreme Court, and a copy thereof shall be served on the encumbrancer either personally or by prepaid registered post.

Conditions
under which
an order
cannot be
made.

8. The Board shall not make an order under the preceding section if it is satisfied that :

- (a) The land prior to the Hurricane was in a state of abandonment or gross neglect, or
- (b) The land suffered no damage from the Hurricane, or
- (c) The owner has committed a breach of any covenant or condition contained in the encumbrance, other than the covenant to pay the principal debt or interest thereon, or
- (d) The owner refuses or fails to re-establish his land or to maintain the same in a reasonable state of cultivation from his own resources, or
- (e) Where the owner has no resources of his own, the Committee appointed under the provisions of the Agricultural Industry Hurricane Relief Ordinance has refused to grant an application for advances under the Ordinance, or
- (f) Where the Committee appointed under the provisions of the Agricultural Industry Hurricane Relief Ordinance has authorised advances, the owner refuses or fails to expend the amount so

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authorised in the manner directed by the Committee a certificate to that effect being first had and obtained from the Chairman of the Committee, or

- (g) The owner or an encumbrancer has received an offer for the purchase of the land at a price which would be considered fair if the land had been fully re-established and the owner has declined to accept such offer, or
- (h) The land upon which the encumbrance is held exceeds 50 acres, or
- (i) On the 30th day of June, 1932, any interest upon the encumbrance was in arrear and was unpaid and remains unpaid.

9. Nothing herein contained shall be construed to interfere with the jurisdiction of the Court to order a sale of any land in any proceedings in which a receiver has been appointed by the Court prior to the commencement of this Ordinance. Saving of Supreme Court.

10. The period during which an encumbrancer shall be prevented from exercising his rights under the provisions of this Ordinance shall be deemed to be an interruption within the meaning of the Limitation of Personal Actions Ordinance, and the Prescription Ordinance. Statute of limitations—how affected. Cap. 46. Cap. 48.

11. The application of an owner and the notice thereof and the order of the Board shall be in the forms set out in the Schedule to this Ordinance. Forms.

12. The Governor in Executive Council may make regulations prescribing the practice and procedure to be observed by the Board in the hearing of applications under this Ordinance and generally for carrying any of the purposes or provisions of this Ordinance into effect. Power to make regulations.

13. This Ordinance shall continue in force until the 31st day of March, 1939. Duration of Ordinance.

Sec. 4.

SCHEDULE.

Summons to Witness.

To A.B.....
(name of person summoned and his occupation and residence.)

You are hereby summoned to appear before the Mortgages Extension Board at a meeting to be held at _____ upon the day of _____ 193__ at _____ o'clock and to give evidence respecting an encumbrance affecting the land of _____ situate at _____ and matters incidental thereto.

(If the person summoned is to produce any documents, add), and you are required to bring with you (specify the books, plans and documents required).

Therefore fail not at your peril.

Given under my hand this _____ day of _____ 193__ .

Member of the Board.

Sec. 7 (2).

Form of Order.

In the matter of an application of.....
under Section 7 of the Mortgages Extension Ordinance, 1934.

It is hereby ordered that (encumbrancer)
be and he is hereby restrained from :

- (a) Exercising any power of sale over, or entering into possession of or appointing a receiver over any land the subject of any encumbrance ;
- (b) Commencing or continuing an action for the breach of a covenant to pay the principal sum secured by an encumbrance over any land ;
- (c) Commencing or continuing an action for the recovery of any penal rate of interest secured to be paid under any such encumbrance ;

in respect of land situate at.....
encumbered by deed dated the.....day of.....19...and
made between.....

This Order shall continue in force until the day of....., 193..
unless otherwise varied or cancelled by Order of the Board.

Dated this _____ day of _____ 193__ .

.....
Chairman, Mortgages Extension Board,

Form of Application by an Owner.

Sec. 7 (1).

Name and Address of Owner.....
 Situation, extent and description of land encumbered.....

 Names and addresses of encumbrancers.....
 Date and amount of encumbrances.....
 Rate of Interest payable.....
 Reduction in amount of encumbrances (if any).....
 Interest in arrear.....
 Action taken by encumbrancers to enforce payment of encumbrances
 or interest (if any).....
 Grounds of Application.....

Dated this day of 193 .

.....
Signature of Owner.

To the Mortgages Extension Board.

Form of Notice to Encumbrancers

Sec. 7 (1).

Notice is hereby given to you that an application under the Mortgages
 Extension Ordinance 1934 has been made by.....
 a copy whereof is hereto annexed and that such application will be heard
 by the Board at.....on the.....day
 of....., 193 , at..... in the.....noon
 and that pending the hearing of such application you are restrained from
 doing any of the acts specified in sub-section (1) of section 3 of the said
 Ordinance in regard to the land affected by the encumbrance specified in
 the application.

If you desire to oppose the application you or your representative
appointed in writing must attend the hearing of the application on the date
and at the time above-mentioned.

Dated this.....day of.....193.....

.....
Chairman, Mortgages Extension Board.

To.....
(Encumbrancer.)

Passed in Council this fourth day of May, in
the year of Our Lord one thousand nine hundred and
thirty-four.

J. O'CONNOR,
Clerk of the Council.