



## CHAPTER 37

### An Act respecting moratorium and safeguarding small property

*[Assented to, the 12th of November, 1936]*

**HIS MAJESTY**, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows :

**1.** The Act to suspend the exigibility of hypothecary 23 Geo. V, and other claims (23 George V, chapter 99), as amended c. 99, replaced by the acts 24 George V, chapter 73; 25-26 George V, chapter 86, and 1 Edward VIII, chapter 6, is replaced by the following :

#### " AN ACT RESPECTING MORATORIUM AND SAFEGUARDING SMALL PROPERTY

**"1.** From the date of the coming into force of this act, no action in recovery, in whole or in part, of the capital of a hypothecary claim even when the act creating it constituted a giving in payment, or of the price of sale of an immoveable even when acknowledged by note or otherwise, may be instituted or continued unless thirty days' notice, served by a bailiff, by the secretary-treasurer of the municipal corporation of the residence of the debtor, or by registered letter to his last known address, has been previously given to the debtor. Such notice shall avail against any subsequent acquirer of the immoveable for a period of sixty days from the service or from the mailing of such notice.

The above provision shall apply to the execution of every judgment rendered before the coming into force of this act, in any action of the nature of those provided for in the preceding paragraph, except if the seizure

Provisions applicable to instituting, etc., of certain action in recovery.

Application.

Restriction.

of the immoveable has been effected by the sheriff entrusted with the writ of execution and at least the first insertion of the notice provided for in Article 716 of the Code of Civil Procedure has been published in the *Quebec Official Gazette*.

Assimilated to sales. Any sale in the form of a conditional lease, or with a resolatory clause, shall be assimilated to the sale above mentioned.

Determining of service by judge in certain case. "2. When the service provided for in section 1 cannot be made, upon a return by the bailiff or the secretary-treasurer certifying the same, a judge of the Superior Court of the district in which the immoveable affected is situated, or the prothonotary, may determine the manner of service.

Filing of receipts, etc. "3. During such delay of thirty days, the hypothecary debtor or the purchaser of an immoveable, who wishes to avail himself of the provisions of this act, must file with the prothonotary of the Superior Court of the district in which the immoveable affected is situated:

Municipal, etc., taxes, etc. 1. The receipts showing that the municipal, school or other taxes and charges imposed on the immoveable and which are exigible, except those however of the current year and of the two years preceding it, have been paid;

Affidavit. 2. An affidavit setting forth:

Fire insurance premiums. a. That all fire insurance premiums due under the terms of the deed of hypothec or of sale have been paid;

Interest. b. That the interest due and accrued on the capital of the claim forming the object of the notice contemplated by section 1 has been fully paid, or that a tender and deposit of such interest has been made according to law;

Inability to pay. c. That the debtor is unable to repay.

Fixed rate of interest. When the deed of hypothec or sale or any other subsequent deed stipulates payment of a higher rate of yearly interest than five per cent, the debtor satisfies the obligation provided in sub-paragraph b of paragraph 2 of this section, if he has paid the interest at an annual rate of five per cent or has tendered and deposited same according to law.

Rendering of judgment. "4. The prothonotary shall inscribe the date of receipt of the documents contemplated by section 3

on the back of such documents, and judgment shall *ipso facto* be rendered and be entered in favour of the debtor granting him the delay provided by section 9 to pay, in whole or in part, the principal of the debt owing by him.

Subject to the provisions of section 6, such judgment shall be final and without appeal. Judgment final.

“5. The vendor of an immoveable with right of redemption may, by following the formalities prescribed by sections 3 and 4, obtain an extension of the period fixed for the exercise of his right of redemption, and this even in the case where it is stipulated that the right of redemption may be exercised without legal proceedings, notwithstanding the provisions of Article 1548 of the Civil Code. Vendor with right of redemption.

The provisions of the last paragraph of section 3 shall apply to the vendor of an immoveable with right of redemption. Provisions applicable.

“6. The judgment rendered in the carrying out of sections 3, 4 and 18 may be withdrawn on a petition, presented by the creditor or the purchaser subject to a right of redemption, to a judge of the Superior Court of the district in which the immoveable concerned is situated, or, in the absence of such judge, to the chief justice or the judge acting as such, in Quebec or Montreal, and duly served. Withdrawal of judgment upon petition.

Such judgment may be withdrawn, on such petition, only when a fact or facts contrary to those set forth in the receipts or the affidavit contemplated by section 3 are established to the satisfaction of the judge. Conditions essential therefor.

“7. The petition must be served by a bailiff or by the secretary-treasurer of the municipal corporation upon the debtor or, as the case may be, upon the vendor with right of redemption, and must be accompanied with a notice of the date, hour and place of its presentation. The delay for such notice is that of ordinary actions. Service, etc., of petition.

“8. The judge to whom a petition is presented under sections 6 and 7 may require such information as he may deem necessary, by witnesses, affidavits or otherwise. If a hearing is held it must be so held in the district wherein is situated the immoveable hypothecated or sold. His judgment shall be final and without appeal. Requiring of information by judge. Judgment.

Delay. "9. The delay granted by the judgment contemplated by section 4 shall extend to the 1st of May, 1938.

Ceasing of prescription as to: "10. From the date entered by the prothonotary on the documents received by him under section 4, until the expiration of the delay or until the date of the judgment revoking the judgment granting a delay, prescription shall cease to run in so far as concerns:

Principal; 1. The principal of any claim for the payment whereof a delay has been obtained under this act;

Municipal, etc., taxes, etc.; 2. The municipal, school or other charges and taxes, the payment whereof is not exacted under section 3;

Difference in rate of interest. 3. The difference between the rate of interest stipulated in the deed of hypothec, deed of sale or in any other subsequent deed and the rate of five per cent fixed in the last paragraph of section 3.

Obligation suspended during delay. "11. When a hypothecary debtor has obtained under this act a delay for the payment of his debt and when it concerns a debt the payment whereof has been guaranteed by any person, firm or corporation, such person, firm or corporation having guaranteed such payment shall not be held to the execution of his or its obligation during the period of the duration of the delay so accorded to the principal debtor.

Reimbursement by certain loan companies. "12. Loan companies which are by law authorized to issue certificates or bonds on the credit of their operations and assets or upon hypothec shall not be obliged to reimburse their said certificates or bonds from the 13th of April, 1933, to the 1st of May, 1938, provided that the interest upon such certificates or bonds be paid regularly.

Prohibition of certain claim for interest during certain period. "13. When the rate of interest stipulated in a deed of hypothec or in a deed of sale with or without right of redemption, or in any subsequent deed, exceeds five per cent per annum, the difference between such rate of five per cent and the rate stipulated in such deed cannot, from the date of the coming into force of this act until the first of May, 1938, be claimed before the courts, except in the case when the debtor or the vendor with right of redemption, as the case may be, has not availed himself of the provisions of sections 3 and 4 or of section 5, after receiving from the

creditor the notice mentioned in section 1, and except also in the case when a judgment has been withdrawn in the carrying out of section 6.

“14. This act shall not apply to:

Restric-  
tions.

a. Hypothecary or privileged claims constituted, nor to sales of immoveables with right of redemption entered into, on or after the 1st of November, 1936;

b. Hypothecs, mortgages or pledges entered into by a joint-stock company to guarantee the payment of bonds, debentures or debenture-stock;—and the holders of such bonds, debentures or debenture-stock, or any trustee for them, may exercise, according to the terms of the trust deed, the rights conferred upon them by law or by the deed, as if this act had never been in force;

c. Hypothecs constituted according to a coöperative plan and repayable, including interest, by monthly instalments not exceeding six dollars per month per one thousand dollars subscribed to the *caisse coopérative*;

d. Hypothecary claims resulting from loans entered into under The Dominion Housing Act, 1935 (25-26 George V, chapter 58), and its amendments;

e. Hypothecs entered into in favour of the coöperative credit syndicates commonly called “*Caisses Populaires Desjardins*”.

“15. The provisions of the above sections 1 and 5 shall cease to be in force from the 1st of May, 1938. Duration of certain provisions.

“16. No duty, charge or fee shall be collected by the prothonotary in connection with the carrying out of the provisions of sections 3, 4 and 5. Prothonotary's fees, etc.

“17. The fees of advocates on the proceedings contemplated by sections 6, 7 and 8 shall be limited to the sum of five dollars. Advocates' fees.

“18. Any person, firm or corporation who or which has obtained a delay under the act 23 George V, chapter 99, and the amendments thereto, or through the application of section 7 of the act 24 George V, chapter 73, may obtain an additional delay extending to the 1st of May, 1938, upon accomplishing the formalities prescribed by sections 3 and 4, provided that such formalities be fulfilled before the expiration of the delay previously obtained. Obtaining of additional delay.

Provisions                      The provisions of the above sections shall apply  
applicable.                      whenever a judgment granting a delay under this  
   section is rendered.”

24 Geo. V,  
c. 73, s. 7, re-                      **2.** Section 7 of the act 24 George V, chapter 73,  
pealed.                      as amended by the acts 25-26 George V, chapter 96,  
   section 4, and 1 Edward VIII, chapter 6, section 4,  
   is repealed.

Coming into                      **3.** This act shall come into force on the day of its  
force.                      sanction.