

ANNO SEXTO & SEPTIMO

GULIELMI IV. REGIS.

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CAP. LVI.

An Act for regulating the Process of Cessio bonorum in the Court of Session, and for extending the Jurisdiction of Sheriffs in *Scotland* to such Cases. [13th *August* 1836.]

WHEREAS it is expedient to regulate the Process of Cessio bonorum in the Court of Session in *Scotland*, and to extend the Jurisdiction of the Sheriff to such Processes; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That after the First Day of *October* One thousand eight hundred and thirty-six every Sheriff within *Scotland* shall possess Jurisdiction in Processes of Cessio bonorum brought before him in manner herein-after provided as fully as in any other Action presently by Law competent before him, and the Sheriff Clerk and Messengers at Arms and all Sheriff Officers in the several Sheriffdoms in *Scotland* shall have Power to act in their respective Offices in relation to such Processes.

Sheriffs to have Jurisdiction as to Cessio bonorum, and Sheriff Clerks and Officers to act therein.

II. And be it enacted, That if a Debtor has been or shall be charged to pay a Civil Debt, and a Warrant to imprison him has been issued, or if he be liable to Imprisonment under a Decree of a Small Debt Court, or be in Prison or imprisoned and afterwards liberated in respect in these several Cases of a Civil Debt, it shall be competent to

A Debtor against whom a Warrant to imprison is issued, or who is in Prison, &c.

may apply for Decree of Cessio.

to such Debtor, on or after the said Thirty-first Day of *October*, to apply for interim Protection and for Decree of Cessio bonorum in the Manner herein-after provided.

Debtor may present to the Sheriff of the County in which he lives a Petition praying for Decree of Cessio.

III. And be it enacted, That after the said First Day of *October* such Debtor may present to the Sheriff of the County in which he has his ordinary Domicile a Petition, setting forth that he has been charged, and that a Warrant to imprison has been issued against him, or that he is liable to Imprisonment under a Small Debt Decree, or that he is in Prison, or has been imprisoned and afterwards liberated, in respect of a Civil Debt; that he is unable to pay his Debts, and is ready to surrender his Estates for Behoof of his Creditors, and praying for interim Protection against the Execution of Diligence, and for Decree of Cessio bonorum; in which Petition he shall insert a List of all his Creditors, specifying their Names and Designations and Places of Residence, so far as known to him; and with such Petition he shall produce (as the Case may be) the Schedule of an expired Charge, or a Copy certified by the Clerk of the Small Debt Court, of the Warrant on which he is liable to Imprisonment, or if he be in Prison, or imprisoned and thereafter liberated, a Certificate from the Keeper of the Prison of such Imprisonment and the Date thereof, and of the Liberation.

Proceedings upon such Petition.

IV. And be it enacted, That on such Petition being presented the Sheriff shall issue a Warrant appointing the Debtor to publish a Notice in the *Edinburgh Gazette*, intimating that such Petition has been presented, and requiring all his Creditors to appear in Court on a certain Day, being not less than Thirty Days from the Date of the Gazette Notice, and within Five Days after the Date of such Notice to send Letters to all the Creditors specified in the Petition, containing a Copy of the said Notice (paying the Postage thereof), or, in his Option, to cite them in Terms of Law, and which the Debtor shall do accordingly, and the Sheriff shall farther ordain him to appear on the Day so appointed for the Compearance of the Creditors in Presence of the Sheriff or his Substitute for public Examination; and the Debtor shall, on or before the Sixth lawful Day prior to the Day so appointed, lodge, to be patent to all concerned, a State of his Affairs subscribed by himself, and all his Books, Papers, and Documents relating to his Affairs, in the Hands of the Sheriff Clerk, together with a Copy of the said Gazette, and if the Letters have been sent through the Post Office a Certificate subscribed by his Agent, or by a Messenger or Sheriff Officer and a Witness, stating the Date and the Place where the Letters were put into the Post Office, that the Postage was paid, and that they were severally addressed as specified in the Petition, or an Execution subscribed by a Messenger or Sheriff Officer and One Witness, of Citation of the Creditors to whom such Letters have not been so sent.

Debtor to undergo Examination before Sheriff.

V. And be it enacted, That on the said Day appointed for the Compearance of the Creditors the Debtor shall appear in Public Court in Presence of the Sheriff for Examination as to his Affairs, and the Sheriff shall have Power to put him on Oath or Affirmation (as the Case may be), and the Debtor shall be bound to answer all

pertinent

pertinent Questions put to him by the Sheriff, or by any Creditor with the Approbation of the Sheriff, under Certification that if, without lawful Cause, he refuse to be put on Oath or Affirmation, or to answer any such Question, or to subscribe his Examination, Decree of Cessio shall be refused *in hoc statu;* and it shall be competent to the Sheriff to adjourn the Examination for such Time as to him shall appear fit and reasonable.

Sheriff, after Examination, to decide in Cases originating befo. him.

VI. And be it enacted, That the Sheriff shall, on such Examination being taken, allow a Proof to the Parties if it shall appear necessary, and hear Parties *vivâ voce*, and shall make a Note of any Objections that may be stated on the Part of the Creditors, and either grant Decree or refuse the same *in hoc statu*, or grant it, subject to a Declaration that it shall not be extractable or available as a Protection to the Debtor, for such Time as shall appear proper, or make such other Orders as may be necessary for the due Administration of Justice; provided that where the Sheriff shall grant Decree under such Limitation, or refuse Decree *in hoc statu*, he shall state the Grounds of his Decision, and the most summary Despatch consistent with the Forms of Court shall be given, and the Sheriff's Note of the Objections shall form Part of the Process.

Reclaiming Petition.

VII. And be it enacted, That if such Decree be pronounced by the Sheriff Substitute it shall be competent to any Person aggrieved to present a reclaiming Petition against the same, provided that the Petition be lodged within Six Days from the Date of the Judgment, and the Sheriff Substitute shall do therewith as shall be just; and in case the Complainer shall intimate his Desire in the Petition that if the Sheriff Substitute be disposed to refuse the Petition it may be laid before the Sheriff, it shall be transmitted to the Sheriff, who shall do therein as shall be just.

Review of Sheriff's Judgments by Court of Session.

VIII. And be it enacted, That it shall be lawful, either after such reclaiming Petition has been disposed of or without presenting such Petition, for any Person aggrieved to bring the Judgments under the Review of the Court of Session by lodging with any One of the Clerks of that Division of the Court under whose Review he wishes to bring the Cause a reclaiming Note, having such Division marked thereon, reciting the Judgment or Judgments complained of: Provided always, that the said Note shall be lodged within Ten Days from the Date of the Judgment or the last of the Judgments complained of, unless the Judgment be pronounced by the Sheriff of *Orkney*, in which Case the reclaiming Note shall be lodged within Twenty Days from the Date of the Judgment or the last of the Judgments as aforesaid; and a Copy of the said Note shall in all Cases be delivered within the said respective Periods to the Respondent or his known Agent, which shall be held to be due Service, and a Copy thereof, certified by the said Clerk of Session, shall be a sufficient Warrant to the Sheriff Clerk to transmit to the said Clerk the Proceedings in the Process.

Reclaiming Note to be enrolled, and Court to

IX. And be it enacted, That if the Court of Session be sitting the reclaiming Note shall be enrolled as soon as conveniently can be, and the

pnrocunce Judgment, &c.

the Court shall pronounce Judgment, or remit the Cause to the Sheriff with such Instructions as to them shall seem fit, or to the Lord Ordinary on the Bills during Vacation or during the *Christmas* Recess.

Lord Ordinary on Bills may judge during Vacation or Christmas Recess, subject to Review.

X. And be it enacted, That if the Court of Session be not sitting when the reclaiming Note has been lodged, the Cause shall, as soon as thereafter may be convenient, be transmitted to the Bill Chamber Clerk, and enrolled in a Roll to be kept for that Purpose in the Bill Chamber; and the Lord Ordinary on the Bills shall, on a Day to be specified in that Roll, hear Parties *vivâ voce*, and pronounce Judgment as herein-before provided; and for the Purposes of this Act he shall possess during the Vacation and the *Christmas* Recess the Powers competent to the Inner House during Session, but his Judgment shall be subject to Review in manner herein-after mentioned; and if the Proceedings have not been brought to a Termination before the Lord Ordinary on the Bills at the Commencement of the ensuing Session, the Cause shall be re-transmitted and enrolled before the Inner House, which may give Judgment therein as if it had been enrolled or had continued without Interruption before the Inner House.

Proceedings in Cases originating in the Court of Session.

XI. And be it enacted, That where a Summons of Cessio bonorum is raised before the Court of Session the Debtor shall publish a Notice in the *Edinburgh Gazette*, intimating that the said Summons has been raised, specifying in which Division of the Court it is to be enrolled, and requiring all his Creditors to appear within Thirty Days from the Date of the said Gazette Notice; and he shall also send Letters through the Post Office (paying the Postage thereof) to each of the Creditors specified in the Summons to the same Effect, or, in his Option, cite them in Terms of Law; and on or before the Sixth lawful Day prior to the Expiration of the said Thirty Days he shall lodge, to be patent to all concerned, a State of his Affairs subscribed by himself, and all his Books, Papers, and Documents relating to his Affairs, in the Hands of the Clerk to the Process, together with a Copy of the said Gazette; and if the Letters have been sent through the Post Office he shall produce a Certificate subscribed by his Agent, or by a Messenger or Sheriff Officer and a Witness, stating the Date and the Place where the Letters were put into the Post Office, that the Postage was paid, and that they were severally addressed as specified in the Summons, or an Execution subscribed by a Messenger and One Witness of Citation of the Creditors to whom such Letters have not been so sent.

Court of Session may remit to the Sheriff, who shall take Proceedings thereupon, and report.

XII. And be it enacted, That on Expiration of the said Thirty Days the Process shall forthwith be enrolled in the Rolls of the Division of the Inner House, specified in the said Notice, without the Necessity of being called or enrolled in the Outer House; and it shall be competent to the Inner House to remit to the Sheriff of the County in which the Debtor's Domicile is, to take his Examination in Presence of his Creditors, and for that Purpose on a Day appointed the Debtor shall appear in Presence of the Sheriff, who shall have Power to put him on Oath or Affirmation (as the Case may be), and the Debtor shall be bound to answer all pertinent Questions

Questions put to him, under Certification that if, without lawful Cause, he refuse to be put on Oath or Affirmation, or to answer any such Question, or to subscribe his Examination, Decree of Cessio shall be refused *in hoc statu;* and the Sheriff shall thereupon report to the said Inner House, who may either grant Decree or refuse the same *in hoc statu*, or grant it subject to a Declaration that it shall not be extractable or available as a Protection to the Debtor for such Time as shall appear proper, or issue such other Orders as may be necessary for the due Administration of Justice.

Lord Ordinary on the Bills may judge on the Report during Vacation or Christmas Recess.

XIII. And be it enacted, That if the Court of Session be not sitting at the Time when the said Report has been made by the Sheriff, the Cause may be enrolled in a Roll to be kept for that Purpose in the Bill Chamber, and the Lord Ordinary on the Bills shall, on a Day to be specified in that Roll, hear Parties *vivâ voce* and pronounce Judgment; and if the Court of Session be sitting when the Report of the said Examination is made, but the Proceedings cannot be brought to a Termination before the Expiration of the Session, or before the Commencement of the *Christmas* Recess, the Inner House may remit the Cause to the said Lord Ordinary to proceed therein during Vacation or the *Christmas* Recess, in the same Way as if the Cause had been enrolled in the Bill Chamber in manner above provided; and if the Proceedings have in any Case not been brought to a Termination before the Lord Ordinary on the Bills at the Commencement of the ensuing Session, the Cause shall be enrolled before the Inner House, which may give Judgment therein as if it had been enrolled, or had continued without Interruption before the Inner House; and for the Purposes of this Act the Lord Ordinary on the Bills shall possess, during the Vacation and the *Christmas* Recess, the Powers competent to the Inner House during Session; but his Judgment shall be subject to Review in manner herein-after mentioned.

Judgment of the Lord Ordinary on the Bills subject to Review.

XIV. And be it enacted, That it shall be competent for any Person aggrieved by any Judgment pronounced by the Lord Ordinary on the Bills to bring the same under the Review of the Inner House by a reclaiming Note, provided the Note be lodged within Ten Days after the Date of the Judgment, and duly intimated to the Agent of the Respondent, and the Inner House shall proceed with all Despatch to hear Parties *vivâ voce* thereon, and may give Judgment as aforesaid, or issue such other Orders as may be necessary for the Purposes of Justice.

Power to grant interim Protection or Liberation.

XV. And be it enacted, That if the Debtor be in Prison it shall be competent for the Inner House during Session, and for the Lord Ordinary on the Bills during the Vacation or the *Christmas* Recess, whether the Case has been originally instituted in the Court of Session or before the Sheriff (provided that it be under Review of the said Court), and for the Sheriff, where the Petition has been presented to and is depending before him on Production of a Copy of the said Gazette containing the Notice aforesaid, and of the Certificate of Transmission of the Letters or Execution of Citation, to grant Warrant to liberate the Debtor, and if the Debtor is not in Prison to grant

Warrant for his personal Protection against the Execution of Diligence for such Space of Time as shall be proper; provided that before any such Warrant be issued the Debtor shall lodge with the Clerk of Court a Bond with a sufficient Cautioner, binding themselves that he shall attend all Diets of Court whenever required under such Penalty as may be reasonable, and which, if forfeited, shall be divided among the Creditors; and it shall be competent for the Inner House, or the said Lord Ordinary, or the Sheriff respectively, in all Cases to grant Warrant to bring the Debtor before them for Examination, and also to carry him back to Prison; and such Warrant, as well as the Warrant of Liberation and the Warrant of personal Protection, shall be good and lawful Warrants in all Parts of *Scotland* to the Effect therein specified; and it shall not be competent, where the Warrant of Liberation or Protection is granted by the Lord Ordinary on the Bills or the Sheriff, to suspend the Effect thereof by lodging a reclaiming Note or Petition complaining of the same: Provided nevertheless, that a reclaiming Note or Petition may be lodged as herein-before provided, and it shall be competent to the Inner House or the Sheriff (as the Case may be), on hearing Parties, to recall the Warrant of Liberation and Protection.

Decree to operate as an Assignation to Creditors, or Disposition omnium bonorum to be granted.

XVI. And be it enacted, That the Decree pronounced by the Inner House, or by the Lord Ordinary on the Bills, or by the Sheriff, granting the Benefit of Cessio bonorum, shall operate as an Assignation of the Debtor's Moveables in favour of any Trustee mentioned in the Decree for Behoof of the Creditors: Provided always, that it shall be optional to the Creditors to require the Debtor to execute a Disposition omnium bonorum, as has been hitherto granted in Processes of Cessio before the Court of Session, in favour of the Trustee, the Expence of which Deed shall be paid out of the readiest of the Funds thereby conveyed.

Provision where Decree refused in hoc statu.

XVII. And be it enacted, That if the Decree of Cessio be refused *in hoc statu* either by the Court of Session or the Sheriff, the Debtor may at any Time thereafter, without the Necessity of raising any new Summons or presenting any new Petition, apply to have Decree of Cessio pronounced in his Favour; and if the Decree has, on Review by the Court of Session, been refused *in hoc statu*, the Debtor may either apply to that Court for Decree, or present a new Petition to the Sheriff, in which latter Case Proceedings shall take place as if no former Petition had been presented, and the Debtor shall in all Cases of a renewed Application give Notice thereof in such Manner as shall be appointed either by the Court of Session or Sheriff respectively.

Dyvours Habit abolished.

Oath to be taken, and Insolvency proved if denied.

XVIII. And be it enacted, That it shall not be lawful to ordain the Debtor to wear the Dyvours Habit; and he shall be required to prove his Insolvency (if the same shall be denied) as by Law presently established; and he shall be bound to make Oath or Affirmation, in Cases before the Sheriff as well as in those before the Court of Session, in the same Terms as the Oath hitherto administered in Processes of Cessio in the Court of Session; and an Act of the Parliament of *Scotland*, passed in the Year Sixteen hundred and ninety-six,

intituled *An Act for declaring notour Bankrupts*, shall be and is hereby repealed in so far as the said Act bears that "the Lords of Session are hereby discharged to dispense any Bankrupt as to the Habit, unless in the Summons and Process of Cessio the Bankrupt's failing through Misfortune be libelled, sustained, and proven." Act of 1696. c. 5. in part repealed.

XIX. And be it enacted, That nothing herein contained shall exclude an Appeal to the House of Lords against the Judgment of the said Inner House, either granting or refusing Decree of Cessio: Provided always, that the Petition of Appeal be lodged within Ten Days from the Date of the Judgment during the Sitting of Parliament, if it shall continue to sit for so many Days, and if Parliament be not sitting, or, if sitting, there be not so many Days, then the Petition of Appeal shall be presented within Six Days after the next Session of Parliament shall have met. Regulation of Appeals to the House of Lords.

XX. And be it enacted, That no Fee Fund Dues shall be exigible in respect of any of the Proceedings mentioned in this Act, nor shall any Stamp Duty or other Government Duty be eligible in respect of any Notices or Advertisements authorized by this Act to be inserted in the *Edinburgh Gazette*, nor in respect of any Disposition which the Debtor shall be ordained to execute in Terms of this Act; any Law or Statute to the contrary notwithstanding. No Fee Fund Dues or Government Duties exigible.

XXI. And be it enacted, That it shall be lawful for all Agents duly qualified to practise before the Court of Session to practise as Agents in all Sheriff Courts in so far as relates to any of the Proceedings which are authorized by this Act to be carried on before the Sheriff; provided that they shall not be entitled to Payment of any other or higher Fees than those legally exigible by other Agents before such Courts. Court of Session Agents may practise in Sheriff Courts.

XXII. And be it enacted, That this Act may be repealed, altered, or amended by any Act or Acts passed during the present Session of Parliament. Act may be repealed this Session.

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