

CHAPTER 19.

An Act to consolidate the Courts (Emergency Powers) Acts, 1939 to 1942, and certain enactments relating to the possession of mortgaged land.

[22nd April 1943.]

BE it 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, as follows :—

Restriction on execution and other remedies.

1.—(1) Subject to the provisions of this Act, a person shall not be entitled, except with the leave of the appropriate court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any court (whether given or made before or after the commencement of this Act) for the payment or recovery of a sum of money :

Provided that nothing in this subsection shall apply to—

(*a*) any judgment for the recovery of damages for tort ;

(*b*) any judgment or order under which no sum of money is recoverable otherwise than in respect of costs ;

(*c*) any order in a matter of bastardy, or any order enforceable as an affiliation order ; or

(*d*) any order made either in criminal proceedings or in proceedings for the recovery of a penalty in respect of any contravention of, or failure to comply with, any provisions of an Act.

(2) Subject to the provisions of this Act, a person shall not be entitled, except with the leave of the appropriate court,—

(*a*) to proceed to exercise any remedy which is available to him by way of—

(i) the levying of distress ;

(ii) the taking of possession of any property;

(iii) the appointment of a receiver of any property;

(iv) re-entry upon any land;

(v) the realisation of any security;

(vi) the forfeiture of any deposit; or

19 & 20 Geo. 5. c. 23.

(vii) the serving of a demand under paragraph (1) of section one hundred and sixty-nine of the Companies Act, 1929; or

(*b*) to institute any proceedings for foreclosure or for sale in lieu of foreclosure, or take any step in any such proceedings instituted before the commencement of the Courts (Emergency Powers) Act, 1939, or institute any proceedings for the recovery of possession of mortgaged property:

2 & 3 Geo. 6. c. 67.

Provided that nothing in this subsection shall affect—

(*a*) any right or power of pawnbrokers to deal with pledges; or

(*b*) the institution or prosecution of any proceedings for the appointment by the court of a receiver of any property.

(3) Subject to the provisions of this Act, a person shall not be entitled, except with the leave of the appropriate court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any court (whether given or made before or after the commencement of this Act) for the recovery of possession of land in default of payment of rent or for the delivery of any property other than mortgaged property by reason of a default in the payment of money.

(4) If, on any application for such leave as is required under this section for the exercise of any of the rights and remedies mentioned in subsections (1), (2) and (3) of this section, the appropriate court is of opinion that the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is unable immediately to do so by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged, the court may, subject to the provisions of this Act, refuse leave for the exercise of that right or remedy, or give leave therefor subject to such restrictions and conditions as the court thinks proper.

(5) Where a bankruptcy petition has been presented against any debtor, or a winding-up petition has been presented against any company on the ground that it is unable to pay its debts, and the debtor or company proves to the satisfaction of the court having jurisdiction in the bankruptcy or winding-up that his or its inability to pay his or its debts is due to circumstances directly

or indirectly attributable to any war in which His Majesty is engaged, the court may at any time stay the proceedings under the petition for such time and subject to such conditions as the court thinks fit.

(6) His Majesty may by Order in Council direct that, in relation to the exercise of any right or power of any person or class of persons having any goods in their custody as bailees to sell the goods by reason of any default in payment of a debt, the restriction imposed by subsection (2) of this section either shall not apply or shall apply subject to such limitations as may be specified in the Order; and any such Order in Council shall have effect notwithstanding anything inconsistent therewith contained in any Act other than this Act.

(7) An Order in Council under this section may be varied or revoked by a subsequent Order of His Majesty in Council.

Modified application of Act to contracts made after commencement of war.

2.—(1) In the case of any judgment or order—

(*a*) for the recovery of a debt which has become due by virtue of a contract made after the commencement of the Courts (Emergency Powers) Act, 1939; or

(*b*) for the recovery of possession of land in default of payment of rent, being land held on a lease or tenancy entered into after the commencement of the said Act; or

(*c*) for the delivery of any property other than mortgaged property by reason of a default under any contract made after the commencement of the said Act in the payment of money;

the foregoing section shall only apply if the appropriate court so directs, on being satisfied by the defendant that he is unable immediately to satisfy the judgment or order, or to pay the rent or money, by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged, being circumstances which arose after the contract, lease or tenancy was made or entered into.

(2) Where a direction is given under the last foregoing subsection, the powers of the court shall thereupon be exercisable as if an application for leave to execute the judgment or order had been made under the foregoing section.

(3) Where an application is made by any person under the foregoing section for leave to exercise or take any of the remedies or proceedings mentioned in subsection (2) of that section (other than those mentioned in the proviso to that subsection) which are available to him in consequence of any default in the payment of a debt or the performance of an obligation, being a debt or obligation arising by virtue of a contract made after the commencement

of the Courts (Emergency Powers) Act, 1939, the appropriate court shall not, subject to the provisions of this Act relating to mortgaged dwelling-houses, exercise its powers under subsection (4) of that section unless it is satisfied that the circumstances referred to in that subsection arose after the contract was made.

Special provisions as to leases.

3.—(1) Where an application is made by the lessor of any premises, other than a dwelling-house to which the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, apply, for leave to exercise any of the rights and remedies mentioned in subsections (1), (2) and (3) of section one of this Act, being a right or remedy arising in consequence of a default in the payment of rent or mesne profits, the appropriate court, if it gives leave subject to restrictions and conditions, shall not make the leave conditional on any default in the payment of rent or mesne profits falling due after the date of the hearing of the application; but nothing herein shall be taken as prejudicing the power of the court, on any subsequent application for leave to exercise the same right or remedy, to vary the conditions or give unconditional leave, having regard to any such default occurring after the first application but before the subsequent application.

(2) Where the appropriate court refuses leave under section one of this Act to enforce a judgment or order for the recovery of possession of any such premises as aforesaid in default of payment of rent, or gives such leave subject to restrictions and conditions, the lease shall be deemed not to have been forfeited and shall continue in force so long as the judgment or order remains unenforceable, but no longer.

(3) In relation to any application under this Act for leave to enforce a judgment or order for the recovery of possession of land in default of payment of rent, the references in subsection (4) of that section and subsection (1) of section six of this Act to the person liable to satisfy the judgment or order or to pay the rent or other debt or to perform the obligation in question shall be construed as referring only to the person against whom the judgment or order was made and who is or would be, but for any forfeiture incurred in consequence of the default, entitled to the benefit of the lease under which the rent was reserved.

(4) On any application under this Act for leave to enforce a judgment or order for the recovery in default of payment of rent of possession of land held in distinct parcels under one lease by two or more lessees, the court may (notwithstanding that a single rent was reserved by the lease and the proviso for re-entry in default of payment of the rent was not severable) order that the application shall be dealt with as if those parcels had been held under distinct leases and applications were being made for leave to enforce separate judgments or orders in relation thereto,

and may make such consequential provision as seems just for the apportionment of the arrears of rent, for the relief of any lessee from forfeiture of the parcel held by him and for the adjustment of the rights and obligations under the lease of the parties to the application.

Special provisions as to mortgages.

4.—(1) Where an application is made by the mortgagee of any premises, other than a dwelling-house to which the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, apply, for leave to exercise any of the rights and remedies mentioned in subsections (1) and (2) of section one of this Act, being a right or remedy arising in consequence of a default in the payment of any mortgage money, the appropriate court, if it gives leave subject to restrictions and conditions, shall not make the leave conditional on any default in the payment of any mortgage money falling due after the date of the hearing of the application ; but nothing herein shall be taken as prejudicing the power of the court, on any subsequent application for leave to exercise the same right or remedy, to vary the conditions or give unconditional leave, having regard to any such default occurring after the first application, but before the subsequent application.

(2) Where an application is made by the mortgagee of a dwelling-house for leave to exercise in relation to the mortgage or the dwelling-house any of the rights or remedies mentioned in subsection (2) of section one of this Act, and the mortgagor is a person serving in the armed forces of His Majesty or mainly dependent on a person so serving, the appropriate court, unless it is satisfied that the mortgagor is able immediately to pay the debt or to perform the obligation in question or that his inability to do so does not arise by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged, being circumstances which, if the mortgage was entered into after the commencement of the Courts (Emergency Powers) Act, 1939, arose after it was entered into, may in its absolute discretion refuse leave for the exercise of that right or remedy or give leave therefor subject to such restrictions and conditions as the court thinks proper.

Where at the hearing of any such application as aforesaid the mortgagor is not present or is not represented, he shall, unless the contrary is proved by the applicant, be deemed for the purposes of this subsection to be a person serving in the armed forces of His Majesty or mainly dependent on a person so serving.

(3) Where an application is made by the mortgagee of any property for leave to exercise against the property any of the rights or remedies mentioned in subsection (2) of section one of this Act, being a right or remedy arising by virtue of a default in the payment of any mortgage money or a breach of any

mortgage obligation, the appropriate court may, for the purposes of this Act, treat any person appearing to the court to be affected by the exercise of the right or remedy as if he were the person liable to pay the mortgage money or to perform the mortgage obligation or, as the context may require, as if he were the mortgagor, and may grant relief accordingly.

(4) The last foregoing subsection shall not be taken as requiring all the persons so affected to be made parties to the application, and rules made under this Act shall make provision for the persons who are to be made parties to any such application, and may provide that, in such cases as may be prescribed by the rules, and in particular in cases where the mortgagor has died and no person has taken out representation in respect of the property, the application may be made ex parte.

(5) Where any land is the subject of a mortgage, the mortgagee shall not be entitled to obtain possession of the land, whether by virtue of his estate or interest as mortgagee or of any attornment or other provision contained in the mortgage or in any agreement collateral thereto, unless default has been made in payment of any mortgage money, or there has been a breach on the part of the mortgagor, or of some person concurring in the making of the mortgage, of any mortgage obligation.

(6) For the purposes of the last foregoing subsection, default shall not be deemed to have been made in payment of any mortgage money, unless a written demand for payment has been served on the person liable, and a period of three months has elapsed since the service of the demand:

Provided that this subsection shall not apply where the mortgage money is repayable by instalments.

Title of goods let under hire purchase agreement.

5. Where the appropriate court refuses leave under subsection (4) of section one of this Act to take possession of goods let under a hire-purchase agreement or to execute any judgment or order for the delivery of such goods, or gives such leave subject to restrictions and conditions, and the hirer, before possession is taken or the judgment or order is executed, pays the hire-purchase price, the owner's title to the goods, shall, notwithstanding any failure to pay the hire-purchase price at the times required by the agreement, vest in the hirer.

Power of court to take account of other liabilities.

6.—(1) On any application for leave to exercise any of the rights or remedies mentioned in subsections (1), (2) and (3) of section one of this Act, the appropriate court—

(*a*) in determining whether the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is unable immediately to do so by reason of circumstances directly or

indirectly attributable to any war in which His Majesty may be engaged; or

(*b*) in determining the restrictions and conditions (if any) subject to which the leave is to be given;

may take account of other liabilities, whether present or future, of that person:

Provided that nothing in this subsection shall be construed as affecting the provisions of subsection (1) of section three or subsection (1) of section four of this Act or as enabling the court to make the leave conditional on a failure to satisfy any such other liability.

(2) Rules made under this Act may provide for the service of notice of any such application upon persons, other than the applicant, having claims against the person liable as aforesaid, and for enabling such persons to be heard at the hearing of the application.

Procedure.

7.—(1) The appropriate court for the purposes of any of the provisions of this Act shall be such court as may be designated by rules made by the Lord Chancellor under this Act, and such rules may designate different courts in relation to different classes of proceedings.

(2) The Lord Chancellor may also make rules prescribing the manner in which applications under this Act are to be made, prescribing any matter which under any provision of this Act is to be prescribed by rules, and generally for regulating the conduct of proceedings under this Act.

(3) When the Great Seal is in commission, any power vested in the Lord Chancellor by this section may be exercised by any Lord Commissioner.

Transitional provisions.

8. This Act shall have effect subject to the transitional provisions set out in the First Schedule to this Act.

Interpretation.

9.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"armed forces of His Majesty" does not include the Home Guard;

"costs" includes all charges and possession money payable to a sheriff in respect of interpleader proceedings taken by him;

"hire-purchase agreement", "hire-purchase price", "owner" and "hirer" have the meanings respectively assigned to them by section twenty-one of the Hire-Purchase Act, 1938; 1 & 2 Geo. 6. c. 53.

"lease" includes an under-lease and any contract of tenancy, and the expressions "lessee" and "lessor" shall be construed accordingly;

"mortgage" includes any charge, and the expressions "mortgagor" and "mortgagee" shall be construed accordingly;

"mortgage money" includes any part thereof and any interest thereon;

"mortgage obligation" means any obligation arising under or by virtue of the mortgage, other than an obligation to pay the mortgage money.

(2) For the purposes of this Act—

(*a*) a contract shall be deemed to have been made before the commencement of the Courts (Emergency Powers) Act, 1939, if an offer made before the day of the commencement thereof so as to be binding on a contracting party if accepted within a specified period expiring on or after that day, is accepted by the contracting party at any time within that period; and

(*b*) a person entitled to the benefit of a judgment or order, who issues a bankruptcy notice or presents a bankruptcy petition or a winding up petition founded on the non-payment of money due under that judgment or order shall be deemed to be proceeding to the enforcement of that judgment or order.

(3) References in this Act to judgments or orders for the recovery of possession of land include references to any judgment or order the effect of which is to enable a person to obtain possession of land, and in particular includes, in relation to a mortgagee, a judgment or order for the delivery of possession of land.

Act not to extend to Scotland.

10. This Act shall not extend to Scotland.

Application to Northern Ireland.

11. This Act shall apply to Northern Ireland subject to the following modifications:—

(*a*) for the reference to paragraph (1) of section one hundred and sixty-nine of the Companies Act, 1929, there shall be substituted a reference to paragraph (1) of section one hundred and sixty of the Companies Act (Northern Ireland), 1932;

(*b*) for references to the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, there shall be substituted references to the Rent and Mortgage Interest (Restrictions) Acts (Northern Ireland), 1920 to 1940, and to Part II of the Rent and Mortgage Interest (Restrictions) Act (Northern Ireland), 1940;

(*c*) for references to the Lord Chancellor there shall be substituted references to the Lord Chief Justice of Northern Ireland, and subsection (3) of section seven shall not apply;

(*d*) for the reference to subsection (4) of section one hundred and forty-six of the Law of Property Act, 1925, there shall be substituted a reference to section four of the Conveyancing and Law of Property Act, 1892; 15 & 16 Geo. 5. c. 20. 55 & 56 Vict. c. 13.

(*e*) for the reference to a sheriff there shall be substituted a reference to an under-sheriff.

Extension of Act to Isle of Man.

12.—(1) His Majesty may by Order in Council direct that this Act shall extend to the Isle of Man with such exceptions, adaptations and modifications as may be specified in the Order.

(2) Any Order in Council under this section may be varied or revoked by a subsequent Order of His Majesty in Council.

Savings.

13.—(1) Nothing in this Act shall affect any Order in Council, order, or rule made, instrument issued or thing done under any enactment repealed by this Act, but any such Order in Council, rule, instrument or thing shall, if in force at the commencement of this Act, continue in force, and so far as it could have been made, issued or done under this Act shall have effect as if made, issued or done under this Act.

(2) References in any document to any enactment repealed by this Act shall be construed as referring to the corresponding provision of this Act.

(3) Nothing in this section shall be taken to prejudice the provisions of section thirty-eight of the Interpretation Act, 1889. 52 & 53 Vict. c. 63.

Short title, repeal and duration of Act.

14.—(1) This Act may be cited as the Courts (Emergency Powers) Act, 1943.

(2) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) This Act shall continue in force until such date as His Majesty may by Order in Council declare to be the date on which the emergency that was the occasion of the passing of the Courts (Emergency Powers) Act, 1939, came to an end.

Section 8.

SCHEDULES.

FIRST SCHEDULE.

TRANSITIONAL PROVISIONS.

1. Nothing in subsection (2) of section one of this Act shall affect—

(*a*) any power of sale of a mortgagee of land or an interest in land who was in possession of the mortgaged property at the commencement of the Courts (Emergency Powers) Act, 1939, or who before the commencement of that Act appointed a receiver who at the commencement of that Act was in possession, or in receipt of the rents and profits, of the mortgaged property; or

(*b*) any power of sale of a mortgagee in possession of property other than land or some interest in land, where the power of sale arose and notice of the intended sale was given before the commencement of the said Act.

3 & 4 Geo. 6. c. 37.

2. Subsection (2) of section three of this Act shall not apply in any case where the appropriate court, before the passing of the Courts (Emergency Powers) Amendment Act, 1940, refused leave under section one of the Courts (Emergency Powers) Act, 1939, to enforce a judgment or order for the recovery of possession of any premises, other than a dwelling house to which the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, applied, in default of payment of rent, or gave such leave subject to restrictions and conditions, and if in any such case the judgment or order remains unenforceable, the person who, if the lease had not been forfeited, would be entitled to the benefit thereof, may apply to the court for relief from forfeiture, and the court may grant such relief and direct that it shall have effect so long as the judgment or order remains unenforceable, but no longer.

Where relief is granted under this paragraph from forfeiture of a lease, any order made under subsection (4) of section one hundred and forty-six of the Law of Property Act, 1925, vesting the premises or any part thereof in an under-lessee shall have effect subject to the relief so given.

3.—(1) Subsection (5) of section four of this Act shall not apply where—

2 & 3 Geo. 6. c. 108.

(*a*) the mortgagee obtained possession of the mortgaged land before the passing of the Possession of Mortgaged Land (Emergency Provisions) Act, 1939;

SCH. I. —*cont.*

(*b*) the mortgage was entered into on or after the third day of September, nineteen hundred and thirty-nine, and the mortgagee obtained possession of the land before the passing of the Liabilities (War-Time Adjustment) Act, 1941; 4 & 5 Geo. 6. c. 24.

but save as aforesaid shall apply in relation to proceedings commenced before the passing of the said respective Acts.

(2) Where an order or judgment for the recovery of possession of land by a mortgagee thereof was made or given before the passing of the Possession of Mortgaged Land (Emergency Provisions) Act, 1939, then, unless the contrary appears, there shall be deemed to have been a default in the payment of money and the order or judgment shall be deemed to have been made or given by reason of that default.

(3) Where, in the case of a mortgage entered into on or after the third day of September, nineteen hundred and thirty-nine, an order or judgment for the recovery of possession of the land by the mortgagee was made or given before the passing of the Liabilities (War-Time Adjustment) Act, 1941, and the defendant satisfies the court that at the date of the order or judgment there was a default in the payment of any mortgage money, the order or judgment shall be deemed to have been made or given by reason of that default.

(4) The court by which any such order or judgment as is referred to in either of the last two foregoing sub-paragraphs was made or given may, on the application of any party to the proceedings, rescind or vary it in such manner as appears to be just in view of the provisions of this Act.

4.—(1) Subsection (3) of section four of this Act shall not apply to any application where the leave of the court was given unconditionally before the passing of the Courts (Emergency Powers) Amendment Act, 1942. 5 & 6 Geo. c. 36.

(2) Subsection (2) of section one of this Act shall not apply to any proceedings for the recovery of possession of mortgaged land by a mortgagee thereof instituted before the passing of the Courts (Emergency Powers) Amendment Act, 1942, and subsection (3) of that section shall apply to the enforcement of any judgment or order for the recovery of possession of mortgaged land made in such proceedings, and section four of this Act shall apply to any application for leave to enforce such a judgment or order.

Section 14.

SECOND SCHEDULE

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
2 & 3 Geo. 6. c. 67.	The Courts (Emergency Powers) Act, 1939.	The whole Act.
2 & 3 Geo. 6. c. 108.	The Possession of Mortgaged Land (Emergency Provisions) Act, 1939.	The whole Act.
3 & 4 Geo. 6. c. 37.	The Courts (Emergency Powers) Amendment Act, 1940.	The whole Act.
4 & 5 Geo. 6. c. 24.	The Liabilities (War-Time Adjustment) Act, 1941.	Part II.
5 & 6 Geo. 6. c. 36.	The Courts (Emergency Powers) Amendment Act, 1942.	The whole Act.

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(P. 1334)