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# CHAPTER 113.

An Act to confer on courts in Scotland certain powers in relation to remedies in respect of the non-payment of money and the non-performance of obligations (including powers in relation to bankruptcy and winding-up proceedings) and to make provision for purposes connected with the matters aforesaid. [12th October 1939.]

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 enforcement of decrees and other rights.

**1.**—(1) Subject to the provisions of this section, a person shall not be entitled, except with the leave of the appropriate court, to enforce any decree of any court (whether pronounced before or after the passing of this Act) for the payment of a sum of money or for the recovery of possession of land :

Provided that nothing in this subsection shall apply to—

(*a*) any decree for damages in respect of loss or damage arising from any wrongful or negligent act or omission;

(*b*) any decree based upon a contract made after the second day of September nineteen hundred and thirty-nine;

(*c*) any decree for expenses;

(*d*) any decree for aliment, or any decree or order enforceable by virtue of any enactment in like manner as a decree for aliment; or

(*e*) any order made in criminal proceedings or for the recovery of a penalty due in respect of contravention or non-compliance with any Act.

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

(*a*) to do any diligence (not being diligence used only on the dependence of an action or *ad fundandam jurisdictionem*);

(*b*) to enforce any irritancy, legal or conventional;

(*c*) to realise any security or forfeit any deposit;

(*d*) to serve a demand under paragraph (1) of section one hundred and sixty-nine of the Companies Act, 1929;

19 & 20 Geo. 5. c. 23.

(*e*) to exercise any power of sale conferred by a heritable security;

(*f*) to institute an action of maills and duties; or

(*g*) to take or resume possession of any property by reason of any default by any person in the payment of money or the performance of any obligation:

Provided that nothing in this subsection shall apply to any remedy or proceedings available 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 second day of September nineteen hundred and thirty-nine:

Provided further that nothing in this subsection shall affect (*a*) any remedy competent to a heritable creditor in possession of the security subjects on the second day of September nineteen hundred and thirty-nine, or (*b*) any right or power of pawnbrokers to deal with pledges.

(3) If on any application under subsection (1) or subsection (2) of this section for leave to enforce any decree, or exercise any right or remedy, the appropriate court is of opinion that the person liable to implement such decree, or to perform the obligation in respect of

which such right or remedy arises, 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 appropriate court may refuse leave to enforce the decree or to exercise the right or remedy, or give leave therefor subject to such restrictions and conditions as the court thinks proper, and any order pronounced under this subsection may be suspended, rescinded or varied by a subsequent order.

(4) Where a petition for sequestration 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 before which such petition depends 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 sist the proceedings in the petition for such time and subject to such conditions as the court thinks fit.

(5) 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 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.

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

Procedure

**2.**—(1) The appropriate court for the purposes of any of the provisions of this Act shall be such court as may be designated by Act of Sederunt, and different courts may be so designated in relation to different classes of proceedings.

(2) The Court of Session may, by Act of Sederunt, make rules prescribing the manner in which applications under this Act are to be made, and generally for regulating the conduct of proceedings under this Act.

Interpretation.

**3.** For the purposes of this Act—

(*a*) a contract shall be deemed to have been made before the second day of September nineteen hundred and thirty-nine if an offer made before that day so as to be binding on a contracting party, if accepted within a specified period expiring on or after that day, is accepted at any time within that period;

(*b*) a person in right of a decree, who presents a petition for sequestration or a winding-up petition founded on the non-payment of money due under the decree, shall be deemed to be enforcing the decree; and

(*c*) the expression "heritable security" includes a security constituted by *ex facie* absolute disposition.

Short title, extent, duration and repeal.

**4.**—(1) This Act may be cited as the Courts (Emergency Powers) (Scotland) Act, 1939, and shall extend to Scotland only.

(2) 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 this Act came to an end.

2 & 3 Geo. 6. c. 67.
2 & 3 Geo. 6. c. 108.

(3) The Courts (Emergency Powers) Act, 1939, and the Possession of Mortgaged Land (Emergency Provisions) Act, 1939, shall cease to apply to Scotland, and any applications made under the said Acts shall be deemed to have been made under this Act.

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