

Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940.

3 & 4 GEO. 6. CH. 42.



ARRANGEMENT OF SECTIONS.

Section.

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CHAPTER 42.

An Act to amend the law of Scotland relating to enforcement of decrees ad factum praestandum, to solatium and damages, to contribution among joint wrongdoers, and to prorogation of the jurisdiction of the Sheriff Court; to amend and extend the Intestate Husband's Estate (Scotland) Acts, 1911 and 1919; to make provision regarding the powers of the King's and Lord Treasurer's Remembrancer; to enable effect to be given to International Conventions affecting Scottish Courts; and to amend the law of Scotland relating to criminal procedure.

[17th July 1940.]

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 :—

1.—(1) No person shall be apprehended or imprisoned on account of his failure to comply with a decree ad factum praestandum except in accordance with the following provisions—

Amendment of the law as to enforcement of decrees ad factum praestandum.

- (i) On an application by the person in right of such a decree (hereinafter referred to as the applicant) to the court by which the decree was granted, the court may, if it is satisfied

- that the person against whom such decree was granted (hereinafter referred to as the respondent) is wilfully refusing to comply with the decree, grant warrant for his imprisonment for any period not exceeding six months ;
- (ii) Where the court is satisfied that a person undergoing imprisonment in pursuance of a warrant granted under this section has complied, or is no longer wilfully refusing to comply, with the decree, the court shall, notwithstanding any period specified in the warrant, order the immediate liberation of such person, and it shall be the duty of the applicant, as soon as he is satisfied that the decree has been complied with, forthwith to inform the clerk of the court of such compliance ;
 - (iii) Imprisonment under a warrant granted under this subsection shall not operate to extinguish the obligation imposed by the decree on which the application proceeds ;
 - (iv) The person on whose application a warrant for imprisonment has been granted under this subsection shall not be liable to aliment, or to contribute to the aliment of, the respondent while in prison.

(2) On any application in pursuance of the foregoing subsection, the court may, in lieu of granting warrant for imprisonment, recall the decree on which the application proceeds and make an order for the payment by the respondent to the applicant of a specified sum or make such other order as appears to the court to be just and equitable in the circumstances, including, in the case where the decree on which the application proceeds is a decree for delivery of corporeal moveables, a warrant to officers of court to search any premises in the occupation of the respondent or of such other person as may be named in the warrant, and to take possession of, and deliver to the applicant, any such moveables which may be found in such premises.

(3) Any warrant granted under the last foregoing subsection shall be deemed to include authority to open shut and lockfast places for the purpose of carrying the warrant into lawful execution.

(4) This section shall not apply as regards a decree granted by a court held in pursuance of the Small Debt (Scotland) Act, 1837, as amended by any subsequent enactment. 7 Will. 4. & 1 Vict. c. 41.

2.—(1) In any question as to the right to recover damages or solatium in respect of the death of a person caused by the fault of another person, an adopted child shall be deemed, Amendment of the law as to damages or solatium for death of relative.

(a) if adopted by two spouses jointly, to be the legitimate child of those spouses ; and

(b) if adopted by one person, to be the legitimate child of that person, and of a spouse who died immediately after the adoption,

and, in either case, not to be the child of any other person.

(2) An illegitimate person shall have the like right to recover damages or solatium in respect of the death of either of his parents as if he were legitimate.

(3) In this section the expression " adopted child " means a person, whether or not still under the age of twenty-one, who has been adopted, whether before or after the commencement of this Act, in pursuance of an adoption order made under the Adoption of Children (Scotland) Act, 1930, or the Adoption of Children Act, 1926, or the Adoption of Children Act (Northern Ireland) 1929, and for the purpose of any proceedings in relation to a claim for damages or solatium a certified copy of any entry in an Adopted Children Register which under subsection (5) of section eleven of the Adoption of Children Act, 1926, or under subsection (5) of section eleven of the Adoption of Children Act (Northern Ireland), 1929, would, in England or Northern Ireland, as the case may be, be receivable as evidence of any fact, shall be receivable as evidence of that fact in Scotland.

20 & 21
Geo. 5. c. 37.
16 & 17
Geo. 5. c. 29.

(4) Nothing in this section shall apply to a claim of damages or solatium in respect of the death of a person which occurred before the commencement of this Act.

3.—(1) Where in any action of damages in respect of loss or damage arising from any wrongful acts or negligent acts or omissions two or more persons are, in pursuance of the verdict of a jury or the judgment of a court found jointly and severally liable in damages or Contribution among joint wrong-doers.

expenses, they shall be liable *inter se* to contribute to such damages or expenses in such proportions as the jury or the court, as the case may be, may deem just: Provided that nothing in this subsection shall affect the right of the person to whom such damages or expenses have been awarded to obtain a joint and several decree therefor against the persons so found liable.

(2) Where any person has paid any damages or expenses in which he has been found liable in any such action as aforesaid, he shall be entitled to recover from any other person who, if sued, might also have been held liable in respect of the loss or damage on which the action was founded, such contribution, if any, as the court may deem just.

(3) Nothing in this section shall—

- (a) apply to any action in respect of loss or damage suffered before the commencement of this Act; or
- (b) affect any contractual or other right of relief or indemnity or render enforceable any agreement for indemnity which could not have been enforced if this section had not been enacted.

Agreements to prorogate the jurisdiction of the sheriff court.

4.—(1) Any provision or agreement in or in relation to a contract to which this section applies, whereby any party to such contract prorogates, or agrees to submit to, the jurisdiction of a particular sheriff court, shall be void.

(2) This section applies to—

- (a) any contract for the sale of an article whether the purchase price is payable in one sum or in instalments and whether or not the contract contains a condition that the property shall not pass to the purchaser until payment of the last instalment of the price or of a specified number of such instalments or of a specified sum;
- (b) any contract whereby one person lets on hire to another person any article in consideration of periodical payments to be made by that other person to the first mentioned person with an option to that other person to become the purchaser of the article.

(3) In this section the expression "instalment" includes any periodical payment and any sum payable under a contract to which this section applies by way of deposit or premium, or on, or in respect of, the exercise of an option to purchase, and payments stipulated for under such a contract shall be deemed to be periodical notwithstanding that they may not be payable at regular intervals.

5.—(1) The surviving husband of any woman domiciled in Scotland who, after the commencement of this Act, dies wholly or partially intestate leaving no lawful issue shall have the like rights to or in her estate as a widow has to or in her deceased husband's estate under the Intestate Husband's Estate (Scotland) Acts, 1911 and 1919, as extended by the immediately succeeding subsection, and those Acts shall have effect accordingly.

Extension of Intestate Husband's Estate (Scotland) Acts.

(2) Where, after the commencement of this Act, any person domiciled in Scotland dies intestate as regards part only of his estate and is survived by a husband or wife but by no lawful issue, the Intestate Husband's Estate (Scotland) Acts, 1911 and 1919, as extended by the foregoing subsection, shall apply to the part of the estate which has fallen into intestacy in like manner as those Acts apply to the whole estate of a person dying wholly intestate, subject however to the following and any other necessary modifications, namely—

- (a) where the surviving husband or wife receives a legacy out of the estate of the deceased, he or she shall be entitled under this subsection only to such sum, if any, as remains after deducting from five hundred pounds the amount or value of such legacy; and
- (b) any provision with regard to the deduction of debts, expenses, liabilities or charges shall be construed as if it were a provision with regard to the deduction of such proportion thereof as is properly chargeable against the said part of the estate.

(3) References in any enactment to a widow entitled by virtue of the Intestate Husband's Estate (Scotland) Act, 1911, to the whole or part of the estate of her deceased husband, and to the sum to which a widow is so entitled, shall respectively include references to a surviving

1 & 2 Geo. 5. c. 10.

husband or wife entitled by virtue of this section to the whole or part of the estate of the predeceasing spouse, and to the sum to which a surviving husband or wife is so entitled.

Provisions
as to estate
falling to
Crown as
ultimus
haeres.

15 & 16
Geo. 5. c. 49.

6.—(1) For removal of doubts it is hereby declared that when any estate shall have fallen to the Crown as *ultimus haeres*, the King's and Lord Treasurer's Remembrancer has the like right to uplift and ingather such estate in England as well as in Scotland as an executor of whose appointment confirmation has been granted and sealed in pursuance of section one hundred and sixty-eight of the Supreme Court of Judicature (Consolidation) Act, 1925.

58 & 59 Vict.
c. 19.
56 & 57 Vict.
c. 44.

(2) Where the King's and Lord Treasurer's Remembrancer is satisfied that any person has a legal right to any sum not exceeding twenty pounds (exclusive of interest) which has been paid over to the said Remembrancer in pursuance of section sixteen of the Court of Session Consignations (Scotland) Act, 1895, or of section ten of the Sheriff Courts Consignations (Scotland) Act, 1893, it shall be lawful for the said Remembrancer to pay such sum to that person, without any order of the court :

Provided that nothing in this subsection shall authorise the said Remembrancer to pay any sum to which competing claims have been made.

Inter-
national
Conven-
tions
affecting
jurisdiction
of Scottish
Courts.

7.—(1) The provisions of this section shall apply for the purpose of giving effect as respects Scotland to any Convention for the time being in force, by virtue of which the High Contracting Parties to the Convention, or their property, are rendered liable to legal proceedings in the courts of the other High Contracting Parties.

(2) As from such day as His Majesty may by Order in Council certify to be the day on which any such Convention comes into force as respects Scotland, every High Contracting Party to the Convention shall, for the purposes of any proceedings brought in the Court of Session against that party or in respect of property of that party in accordance with the provisions of the Convention, be deemed to have submitted to the jurisdiction of the Court; and the Court shall, in determining whether or to what extent any such proceedings are

within its jurisdiction, give effect to any provision of the Convention (including any Protocol thereto) prescribing the mode of proof of any material circumstance.

(3) His Majesty may by Order in Council from time to time certify who are the High Contracting Parties to any such Convention, in respect of what territories they are respectively parties, and to what extent they have availed themselves of any provision of the Convention for suspending or modifying the operation of the Convention, and any such Order shall, except in so far as it has been superseded by a subsequent Order, be conclusive evidence of the matters so certified.

8. If a person charged on indictment with any crime or offence tenders a plea of guilty of any other crime or offence of which he could competently, by virtue of any enactment, be found guilty on the trial of such indictment, and if the plea is accepted by the prosecutor, it shall be competent to convict such person of the crime or offence to which he has so pled guilty and to sentence him accordingly.

Power to convict on plea of guilty to offence other than that charged in indictment.

9.—(1) Where in any proceedings under the Summary Jurisdiction (Scotland) Acts either—

Plea of guilty in absence of accused.

(a) the prosecutor produces to the court written intimation that the accused pleads guilty to the charge and the court is satisfied that such written intimation has been made or authorised by the accused, or

(b) a solicitor, or a person not being a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of guilty,

the court may, if the prosecutor accepts such plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty :

Provided that—

(i) the court may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence, and

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(ii) no sentence of imprisonment or of detention in a Borstal institution, or in an approved school or in a remand home shall be imposed in the absence of the accused.

(2) In this section—

(a) the expressions “ approved school,” “ Borstal institution,” and “ remand home ” have the like meanings as in the Children and Young Persons (Scotland) Act, 1937;

(b) any reference to a plea of guilty to a charge shall include a reference to a plea of guilty to a part only of the charge.

1 Edw. 8. &
1 Geo. 6.
c. 37.

Amendment
of 8 Edw. 7.
c. 65, s. 29.

10. Section twenty-nine of the Summary Jurisdiction (Scotland) Act, 1908, in so far as it requires the complaint or the substance thereof to be read to the accused if he is present at the first calling of the case, shall not apply if either the complaint has been served on the accused or he has legal assistance in his defence, and in either of those events the accused may be asked to plead in common form, without the complaint or the substance thereof being so read.

Short title,
extent
and repeal.

11.—(1) This Act may be cited as the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940.

(2) Save as otherwise expressly provided, this Act shall extend to Scotland only.

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

SCHEDULE.

Section 11.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
1 & 2 Vict. c. 114.	The Debtors (Scotland) Act, 1838.	Sections six, seven, nine, and eleven so far as relating to decrees <i>ad factum praestandum</i> .
55 & 56 Vict. c. 17.	The Sheriff Courts (Scotland) Extracts Act, 1892.	Section seven so far as relating to decrees <i>ad factum praestandum</i> .
8 Edw. 7. c. 65.	The Summary Jurisdiction (Scotland) Act, 1908.	In section thirty-three, paragraph (2) from the words "and may also" to the end of the paragraph.
22 & 23 Geo. 5. c. 38.	The Hire Purchase and Small Debt (Scotland) Act, 1932.	In section four, paragraph (a).

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