



Diligence Act 1661

1661 CHAPTER 344

Our Soverane Lord Considering how necessarie and essentiall it is to the verie being and flourishing of Kingdomes and Nations That ther should be a nationall confidence among the people themselffs and with those of other Nations with whom they have correspondence and traffique abroad And that the most effectuall and propper way to beget cement and mantaine the same is That promises pactions obleidgements and debts be faithfullie performed and satisfied without which ther can be no trust and consequentlie no societie intercourse and commerce at home and all trade and traffique with other Nations will certanlie decay and cease to the irreparable losse rwine and discredite of the Nation . . . ^{F1} Thairfor his Maiestie with advice and consent of the Estates of Parliament . . . ^{F2} wheras the legall reversion of compriseings wes formerlie limited for seven yeers . . . ^{F2} is graciouslie pleased to extend the same to ten yeers in all tyme comeing . . . ^{F2} And incaice the lands and others comprised exceed in yeerly rent and value the annuellrent of the sums contained in the saids compriseings and of the expence disbursed in obtaining infestments thervpon and the debtor shall desire the Creditor to possesse the lands and others comprised It shall be lawfull to the Lords of Session Lykas the saids Lords are heirby impowered and authorized vpon a supplication to be made to them by the debtor and citation of the comprisers To appoint the apprisers to possesse such of the saids lands and others dureing the legall reversion as the saids Lords of Session shall think iust and reasonable The saids debtors alwayes giving possession to those who have right to the saids compriseings and ratifieing their possession alreadie apprehended by them (if any such possession they have) of such of the lands and others as the saids Lords of the Session shall appoint not being beneath in yeerly rent and value of the annuellrents abovementioned Or otherwayes giving to the Creditors (whither they have possession or not) sufficient security at the sight of the saids Lords for payment of the saids annuellrents dureing the tyme forsaid The saids Lords of the Session haveing alwayes power to determine whither in the caces forsaid the debtor shall give surety to the Creditor for his annuellrents Or the debtor not being able to give surety The creditor shall be obleidged to take possession of the debtors lands And if the Lords of Session shall appoint in the cace forsaid the Creditor to be possesst for his annuellrent Then and in that cace the debtor shall be holden to deliver the evidents of the saids lands to the Creditor or transumptis therof Provydeing alwayes that the Creditors right be vertew of the saids compriseings be nowayes preiudged after expiring of the same And that the whole lands and others both such as shall be contained in the saids compriseings shall pertain to the Creditor irredeemably And because oftentimes Creditors inregaird they live at distance or vpon other occasions are preiudged and

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preveened by the more tymeous diligence of other creditors So that befor they can know the condition of the common debtor his estate is comprised and the posterior comprisers have only right to the legall reversion Which may and doth often prove ineffectuall to them Not being able to satisfie and redeem the prior compriseings (thair means and money being in the hands of the common debtor) Thairfor it is Statute and Ordained That all compriseings deduced since the first day of January one thousand sex hundreth fiftie two yeers befor the first effectuall compriseing or after but within yeer and day of the same Shall come in pari passu together as if one compriseing had been deduced and obtained for the whole respective summs contained in the forsaid compriseings And it is declared that such compriseings as are preferable to all others inrespect of the first reall right and infetment following thervpon or the first exact diligence for obtaineing the same Are and shall be holden the first effectuall compriseing though ther be others in date befor and anterior to the same And the forsaid benefite given and introduced heirby in favours of these whose compriseings are led within the tyme and in maner forsaid Is only granted and competent in the cace of compriseings led since the first day of January 1652 yeers and to be led after the date of thir presents and for personall debt only without preiudice alwayes of ground annuells annuellrents due vpon infetment and other reall debts and debita fundi and of compriseings therfore of lands and others affected therwith which shall be effectuall and preferable according to the lawes and practick of this Kingdome now standing And it is also provydit that the Creditors haveing right to the first compriseing (Except as is above excepted) shall be satisfied by the posterior comprisers clameing the benefite forsaid of the whole expence disbursed by them in deduceing and expeding the said first compriseing and infetments thervpon . . . ^{F2} And his Maiestie with consent forsaid Doth Declare that the benefite forsaid introduced heirby anent compriseings shall be extendit to adjudications for debt So that the Creditors at whose instance the same are obtained and those who have right to redeem the same Shall be in the same cace as to the benefite forsaid as if the said Adjudications for debts wer compriseings . . . ^{F2} And further his Maiestie with consent forsaid Doth Declare That incaice any debtors have by volunter agreement betuixt them and their Creditors or any of them Renuned the benefite of any acts of this nature concerning debtor and creditor made or to be made the said agreement shall be of force and effectuall and shall not be preiudged heirby Without preiudice alwayes to the said debtor of the prorogation forsaid of the legall reversions of compriseings led and deduced against them and not as yet expyred Notwithstanding of the agreement and renunciation forsaid . . . ^{F2}

Textual Amendments

- F1** Words omitted under authority of [Statute Law Revision \(Scotland\) Act 1906 \(c. 38\)](#)
F2 Words repealed by [Statute Law Revision \(Scotland\) Act 1906 \(c. 38\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act repealed by [2007 asp 3 Sch. 6 Pt. 1](#)