



Debtors (Scotland) Act 1838

1838 CHAPTER 114

An Act to amend the Law of Scotland in Matters relating to Personal Diligence, Arrestments, and Poidings. [16th August 1838]

WHEREAS it is expedient to improve the Form and to diminish the Expence of the Diligence of the Law in Scotland against the Persons of Debtors, and to amend the Law as to the Diligence of Arrestment and Poiding: Be it therefore enacted by the Queen'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 from and after the Thirty-first Day of December One thousand eight hundred and thirty-eight, where an Extract shall be issued of a Decree or Act pronounced or to be pronounced by the Court of Session, or by the Court of Commission for Teinds, or by the Court of Justiciary, or of a Decree proceeding upon any Deed, Decree Arbitral, Bond, Protest of a Bill, Promissory Note, or Banker's Note, or upon any other Obligation or Document on which Execution may competently proceed, recorded in the Books of Council and Session or of the Court of Justiciary, the Extractor shall, in Terms of the Schedule (Number 1.) hereunto annexed (or as near to the Form thereof as Circumstances will permit), insert a Warrant to charge the Debtor or Obligant to pay the Debt or perform the Obligation within the Days of Charge, under the Pain of Poiding and Imprisonment, and to arrest and poid, and for that Purpose to open, shut, and lockfast Places; which Extract shall be subscribed and prepared in other respects as Extracts are at present subscribed and prepared, and for which Extract no higher Fees shall be exigible than those which are payable as by Law established.

II Competent to arrest.

And be it enacted, That it shall be lawful by virtue of such Extract to arrest in like Manner as if Letters of Arrestment on liquid Grounds of Debt or Letters of Horning containing Warrant to arrest had been issued under the Signet.

III Competent to charge.

And be it enacted, That it shall be lawful by virtue of such Extract to charge the Debtor or Obligant therein mentioned to pay the Sums of Money or to perform the Obligation

therein specified within the Days of Charge, from and after the Date of Charge, under the Pain of Poining and Imprisonment; and the Officer executing the same shall return an Execution in Terms of the Schedule (Number 2.) hereunto annexed, or as near to the Form thereof as Circumstances will permit.

IV Competent to poind.

And be It enacted, That on the Expiration of the Days of Charge it shall be lawful by virtue of such Extract to poind the moveable Effects of the Debtor in payment of the Sums of Money therein mentioned, as if Letters of Poining or Letters of Horning containing Warrant to poind had been issued, and for that Purpose to open shut and lockfast Places.

V Execution to be registered; and to have the Effect of Denunciation, and to accumulate Interest.

And be it enacted, That it shall be competent at any Time within Year and Day after a Charge has expired to present such Extract and Execution of Charge to the Keeper of the General Register of Mornings at Edinburgh, and the Keeper shall thereupon record the Execution in that Register, and state therein the Name and Designation of the Person by whom the Extract and Execution were presented, and also the Date of Presentation ; which Registration shall have the same Effect as if the Debtor or Obligant had been denounced Rebel in virtue of Letters of Horning, and the said Letters, with the Executions of Charge and Denunciation, had been recorded according to the Forms now in use, and shall have the Effect to accumulate the Debt and Interest into a Capital Sum, whereon Interest shall thereafter become due.

VI . Extract and Execution with Certificate of Registration to be presented in the Bill Chamber for Warrant to imprison.

And be it enacted, That on the Execution being so recorded the Keeper of the Register shall write upon the Extract and upon the Execution (if it be written on Paper apart) a Certificate of the Registration thereof in Terms or to the Effect of the Schedule (Number 3.) hereunto annexed, which he shall date and subscribe; and if Warrant to imprison be required, a Writer to the Signet shall indorse and subscribe on the Extract a Minute to the Effect of the Schedule (Number 4.) hereunto annexed (or as near to that Form as Circumstances will permit); and the Extract, with the Execution and Certificate of Registration and endorsed Minute, shall be presented in the Bill Chamber of the Court of Session, and the Clerk thereof shall, if there be no lawful Cause to the contrary, write on the Extract this Deliverance, " Fiat ut petitur" and shall date and subscribe the same ; and it shall be lawful by virtue of the said Extract and Deliverance to search for, take, apprehend, and imprison the Debtor or Obligant, and, if necessary for that Purpose, to open shut and lockfast Places -, and Magistrates and Keepers of Prisons are hereby authorized and required to receive into and detain in Prison the Person of the Debtor or Obligant till liberated in due Course of Law, in like Manner as if Letters of Caption had been issued under the Signet.

VII Execution at the Instance of a Person acquiring Right to extract.

And be it enacted, That where any Person shall acquire Right to an Extract of a Decree or Act issued as aforesaid it shall be competent to him to present in the Bill Chamber the Extract, with the Execution of Charge (if a Charge shall have been given), and

Certificate of Registration (if the same shall have been registered), and a Minute endorsed thereon, in the Form of the Schedule (Number 5.) hereunto annexed (or as near thereto as Circumstances will permit), subscribed by a Writer to the Signet, with the Assignment, Confirmation, or other legal Evidence of such acquired Right, praying for Authority (as the Case may be) to arrest, charge, poind the Effects of, or (as the Case may be) to imprison, the said Debtor or Obligant, and open shut and lockfast Places; and the Clerk shall, if there be no lawful Cause to the contrary, write on the Extract this Deliverance, "Fiat ut petitur," and he shall date and subscribe the same, and endorse the same Date on the Documents produced, and subscribe with his Initials the Date so endorsed ; and the Extract with such Deliverance shall be a Warrant to arrest, charge, poind, and open shut and lockfast Places, or (as the Case may be) to search for, take, apprehend, and imprison as aforesaid, at the Instance of such Person.

VIII Letters of Horning may be issued as formerly, but no Expences exigible.

And be it enacted, That nothing herein contained shall prevent any Person from obtaining Extracts, and also Letters of Horning, Poinding, and Arrestment, or Letters of Arrestment and Letters of Caption, according to the former Law and Practice, if he shall see fit to proceed in that Way, in place of in the Manner hereby provided ; but it is hereby declared, that in such Case no Part of the Expences thereof, except the Expences of the Extract, shall be exigible from the Debtor or Obligant, or his Estate, unless it be shown that it is incompetent to proceed in the Way herein provided ; and where an Extract has been issued before the Commencement of this Act, it shall be competent for the Person in whose Favour such Extract has been issued, or the Person having Right thereto, to obtain an Extract in Terms of this Act, or a Warrant subjoined to the former Extract in Terms of the said Schedule (Number 1.), and to prosecute Diligence thereon agreeably to the Provisions hereof.

IX Extracts of Sheriffs Decrees, &c to contain Warrant to arrest, charge, poind, and open shut and lockfast Places.

And be it enacted, That from and after the said Thirty-first Day of December, where an Extract shall be issued of any Decree or Act pronounced or to be pronounced by any Sheriff, or of a Decree proceeding upon any Deed, Decree Arbitral, Bond, Protest of a Bill, Promissory Note, or Banker's Note, or upon any other Obligation or Document on which Execution may competently proceed, recorded in the Sheriff Court Books, the Extractor shall, in Terms of the Schedule (Number 6.) hereunto annexed (or as near thereto as Circumstances will permit), insert therein a Warrant to charge the Debtor or Obligant to pay the Debt or perform the Obligation within the Days of Charge, under the Pain of Poinding and Imprisonment, and to arrest and poind according to the present Practice, and, if Need be for the. Purpose of Poinding, to open shut and lockfast Places; which Extract shall be subscribed and prepared in other respects as Extracts are at present subscribed and prepared, and for which Extracts no higher Fees shall be exigible than those which are payable as by Law established; and where an Extract has been issued from the Books of the Sheriff before the Commencement of this Act it shall be competent for the Person in whose Favour such Extract has been issued, or the Person having Right thereto, to obtain an Extract in Terms of this Act, or a Warrant subjoined to the former Extract in Terms of the said Schedule (Number 6.), and to prosecute Diligence thereon agreeably to the Provisions hereof.

X Execution to be registered, and to accumulate Interest.

And be it enacted, That it shall be lawful by virtue of such Extract to charge the Debtor or Obligant therein mentioned to pay the Sums of Money or to perform the Obligation therein specified within the Days of Charge, under Pain of Poining and Imprisonment, and the Officer executing the same shall return an Execution in Terms of the said Schedule (Number 2.), or as near to the Form thereof as Circumstances will permit; and it shall be competent at any Time within Year and Day after a Charge has expired to present the Extract and Execution of Charge to the Clerk of the Sheriff Court from which the Extract has been issued, who shall thereupon record the Execution in the Register of Hornings kept by him, and state therein the Name and Designation of the Person by whom the Extract and Execution were presented and the Date of Presentation ; which Registration shall have the same Effect as if the Debtor or Obligant had been denounced Rebel in virtue of Letters of Horning, and the said Letters with the Executions of Charge and Denunciation had been recorded according to the Forms now in use, and shall have the Effect to accumulate the Debt and Interest into a Capital Sum whereon Interest shall thereafter become due.

XI Extract and Execution with Certificate of Registration to be presented in Sheriff Court for Warrant to imprison.

And be it enacted, That on the Execution being so recorded the Sheriff Clerk shall write upon the Extract and upon the Execution (if it be written on Paper apart) a Certificate of the Registration thereof, which he shall date and subscribe, in Terms of the Schedule (Number 7.) hereunto annexed (or as near thereto as Circumstances will permit) ; and if Warrant to imprison be desired, the Creditor or a Procurator of Court shall endorse and subscribe on the said Extract a Minute in the Terms of the Schedule (Number 8.) hereunto annexed (or as near to that Form as Circumstances will permit) ; and the said Clerk shall, if there be no lawful Cause to the contrary, write on the Extract this Deliverance, " Fiat ut petitur," and shall date and subscribe the same; and it shall be lawful by virtue of the said Extract and Deliverance to search for, take, apprehend, imprison, and, if necessary for that Purpose, to open shut and lockfast Places as aforesaid: and Magistrates and Keepers of Prisons are hereby authorized and required to receive into and detain in Prison the Person of the Debtor or Obligant till liberated in due Course of Law, in like Manner as if Letters of Caption had been issued under the Signet.

XII Execution at the Instance of a Person acquiring Right to the Extract.

And be it enacted, That where any Person has acquired Right to an Extract of a Decree or Act of the Sheriff he may present to the Sheriff Clerk the Extract, with the Execution of Charge (if a Charge shall have been given), and Certificate of Registration (if the same shall have been registered), and a Minute endorsed on the Extract in the Form of the Schedule (Number 9-) hereunto annexed (or as near thereto as Circumstances will permit), subscribed by him or a Procurator of Court, with the Assigment, Confirmation, or other legal Evidence of the acquired Right, praying for Authority (as the Case may be) to arrest, charge, poind the Effects of, or (as the Case may be) to imprison, the said Debtor or Obligant, and open shut and lockfast Places ; and the Clerk shall, if there be no lawful Cause to the contrary, write on the Extract this Deliverance, " Fiat ut petiitur," and he shall date and subscribe the same, and endorse the same Date on the Documents produced, and subscribe with his Initials the Date so endorsed; and the Extract, with such Deliverance, shall be a Warrant to arrest, charge,

poind, and open shut and lockfast Places, or (as the Case may be) to search for, take, apprehend, and imprison as aforesaid, at the Instance of such Person.

XIII Warrant of Concurrence to charge, arrest, and poind.

And be it enacted, That where a Debtor or Obligant is or his Moveables are within the Territory of any other Sheriff than the Sheriff from whose Books such Extract shall be lawfully issued, it shall be competent to present the Extract in the Bill Chamber of the Court of Session, or in the Court of the Sheriff within whose Jurisdiction the Debtor or Obligant is or his Moveables are, with a subscribed Minute endorsed thereon in Terms of the Schedule (Number 10.) hereunto annexed (or as near thereto as Circumstances will permit), praying for the Authority and Concurrence of the Lords of Council and Session, or of the said Sheriff (as the Case may be), to arrest, charge, and poind the Moveables of the said Debtor or Obligant, and to open shut and lockfast Places, all in Terms of the Warrant in the said Extract; and if there be no lawful Cause to the contrary the Clerk in the Bill Chamber or the Sheriff Clerk (as the Case may be) shall grant Authority accordingly by writing this Deliverance, " Fiat ut petitur," and dating and subscribing the same ; and it shall thereupon be lawful to arrest, charge, poind, and open shut and lockfast Places, in the same Manner as if the said Extract had been originally issued from the Books of the Court of Session or concurring Sheriff.

XIV Warrant by concurring Sheriff Clerk to imprison.

And be it enacted, That where the Debtor or Obligant shall have been charged on a Warrant of Concurrence and the Execution recorded in the Books of the concurring Court, the Extract and Execution, with the Certificate of Registration, and a Minute in Terms of the said Schedule (Number 4.) hereunto annexed (or as near thereto as Circumstances will permit) endorsed thereon, may be presented either in the Bill Chamber subscribed by a Writer to the Signet, or in the Court of the concurring Sheriff subscribed by a Procurator of Court, praying for Authority to imprison as aforesaid ; and if there be no lawful Cause to the contrary, the Bill Chamber Clerk or Sheriff Clerk (as the Case may be) shall grant Authority accordingly by writing thereon this Deliverance, " Fiat ut petitur," dating and subscribing the same ; and it shall thereupon be lawful to open shut and lockfast Places, search for, take, apprehend, and imprison, in manner herein-before provided.

XV Concurrence to Warrant of Imprisonment granted in another Sheriff Court.

And be it enacted, That where a Warrant to imprison has been granted by any Sheriff in manner herein-before provided, and where the Debtor or Obligant is within the Territory of another Sheriff, such Warrant may be presented, along with the Extract, Execution of Charge, and Certificate of Registration, either in the Bill Chamber or in such other Sheriff Court, and a Minute in Terms or to the Effect of the said Schedule (Number 10.) praying for the Authority and Concurrence of the Lords of Council and Session or of the said Sheriff Court for executing the said Warrant; and if there be no lawful Cause to the contrary the Clerk in the Bill Chamber or the Sheriff Clerk (as the Case may be) shall grant Authority accordingly by writing this Deliverance, "Fiat ut petitur," and dating and subscribing the same ; and it shall thereupon be lawful to open shut and lockfast Places, search for, take, apprehend, and imprison, in the same Manner as if the said Warrant had been originally granted by the Court of Session or the concurring Sheriff.

XVI Warrant to arrest may be introduced into Summonses before the Court of Session.

And be it enacted, That from and after the said Thirty-first Day of December it shall be lawful to insert in Summonses raised before the Lords of Council and Sessions concluding for Payment of Money a Warrant (or Will) to arrest the Moveables, Debts, and Money belonging or owing to the Defender until Caution be found, acted, in the Books of Council and Session, that the same shall be made forthcoming as accords of Law ; and it shall be lawful to Writers to the Signet to subscribe and to the Keeper thereof and his Deputes to affix the Signet to such Summonses without any other Authority than this Act.

XVII Arrestment may be executed before executing the Summons, but the Summons must be executed and called within a limited Period.

And be it enacted, That by virtue of such Warrant of Arrestment, and also by virtue of Letters of Arrestment raised upon any libelled Summons according to the present Practice, it shall be competent before executing the Warrant of Citation to arrest the Moveables, Debts, and Money belonging or owing to the Defender until Caution be found as aforesaid ; and such Arrestment shall be effectual, provided the Warrant of Citation shall be executed against the Defender within Twenty Days after the Date of the Execution of the Arrestment," and the Summons called in Court within Twenty Days after the Diet of Compearance, or where the Expiry of the Said Period of Twenty Days after the Diet of Compearance falls within the Vacation, or previous to the first calling Day in the Session next ensuing, provided the Summons be called on the first calling Day next thereafter; and if the Warrant of Citation shall not be executed and the Summons called in manner above directed, the Arrestment shall be null, without Prejudice to the Validity of any subsequent Arrestment duly executed in virtue of the said Warrant.

XVIII Arrestments against Persons furth of the Kingdom to be executed at the Record Office.

And be it enacted, That from and after the said Thirty-first Day of December it shall not be competent to execute any Arrestment as in the Hands of a Person furth of Scotland by Service at the Market Cross of Edinburgh, and Pier and Shore of Leith, but such Arrestment shall be executed by Delivery of a Schedule of Arrestment at the Record Office of Citations in the Court of Session, which Delivery shall be made and the Schedule registered and published in the same Manner as Charges are directed to be registered and published by an Act passed in the Sixth Year of the Reign of His late Majesty King George the Fourth, intituled An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland.

XIX Sheriffs Precepts of Arrestment may be executed within Jurisdiction of another Sheriffs.

And be it enacted, That from and after the said Thirty-first Day of December a Warrant or Precept of Arrestment granted by any Sheriff in Scotland, whether contained in a libelled Summons or proceeding upon a depending Action or liquid Document of Debt, may lawfully be executed within the Territory of any other Sheriff, the same being first endorsed by the Sheriff Clerk of such Sherifffdom, who is hereby required to make and date such Indorsation.

XX Lord Ordinary in the Outer House may recall or restrict Arrestments, subject to Review.

And be it enacted, That from and after the said Thirty-first Day of December it shall be competent to the Lord Ordinary in the Court of Session before whom any Summons containing Warrant of Arrestment shall be enrolled as Judge therein, or before whom any Action on the Dependence whereof Letters of Arrestment have been executed has been or shall be enrolled as Judge therein, and to the Lord Ordinary on the Bills in Time of Vacation, on the Application of the Debtor or Defender by Petition duly intimated to the Creditor or Pursuer, to which Answers may be ordered, to recall or to restrict such Arrestment, on Caution or without Caution, and dispose of the Question of Expences, as shall appear just; provided that his Judgment shall be subject to the Review of the Inner House by a Reclaiming Note duly lodged within Ten Days from the Date thereof.

XXI Sheriff may recall or restrict Arrestments, subject to Review.

And be it enacted, That from and after the said Thirty-first Day of December it shall be competent for any Sheriff from whose Books a Warrant of Arrestment has been issued, on the Petition of the Debtor or Defender duly intimated to the Creditor or Pursuer, to recall or to restrict such Arrestment, on Caution or without Caution, as to the Sheriff shall appear just; provided that the Sheriff shall allow Answers to be given in to the said Petition, and shall proceed with the further Disposal of the Cause in the same Manner as in summary Causes, and his Judgment shall be subject to Review in the Court of Session.

XXII Arrestments to prescribe in Three Years.

And be it enacted, That an Act of the Parliament of Scotland-passed in the Year One thousand six hundred and sixty-nine, concerning Prescriptions, shall be and is hereby repealed in so far as regards the Period of Prescription of Arrestments ; and all Arrestments shall hereafter prescribe in Three Years instead of Five ; and Arrestments which shall be used upon a future or contingent Debt shall prescribe in Three Years from the Time when the Debt shall become due and the Contingency be purified; but saving and reserving from the Operation hereof all Arrestments already used where the Ground of Arrestment is not an Action in Dependence at the Date of passing this Act.

XXIII Compearing Creditors to be conjoined, and pointed Effects to be valued.

And be it enacted, That from and after the said Thirty-first Day of December, where an Officer of the Law shall proceed to point Moveable Effects, he shall, if required, before the Poining is completed, conjoin in the Poining any Creditor of the Debtor who shall exhibit and deliver to him a Warrant to point; and on the Effects being pointed the Officer shall cause them to be valued by Two Valuators, and One Valuation by them shall be sufficient.

XXIV Effects to be left with and Schedule given to the Possessor.

And be it enacted, That the Officer shall leave the pointed Effects with the Person in whose Possession they were when pointed ; and he shall deliver to the Possessor a Schedule specifying the pointed Effects, and at whose Instance they were pointed, and the Value thereof.

XXV Officer to report Poining within Eight Days.

And be it enacted, That the Officer shall, within Eight Days after the Day on which the Poining was executed (unless Cause shall be shown why the same could not be done within the Period of Eight Days), report the Execution thereof to the Sheriff, in which Execution he shall specify the Diligence under which the Poining is executed, the Amount of the Debt, the Names and Designations of the Debtor and of the Creditor at whose Instance the Effects were poinied, the Effects poinied, the Value thereof, the Names and Designations of the Valuators, the Person in whose Hands they were left, and the Delivery of the Schedule as aforesaid ; which Execution shall be subscribed by him and by the Two Valuators, who shall also be Witnesses to the Poining, without the Necessity of other Witnesses.

XXVI Sale to be advertised and Notice to the Debtor.

And be it enacted, That on the Execution being reported the Sheriff shall, if necessary, give Orders for the Security of the Moveables, and if they be of a perishable Nature for the immediate Disposal thereof, under such Precautions as to him shall seem fit ; and if not so disposed of, and if no lawful Cause be shown to the contrary, he shall, if required, grant Warrant to sell them by public Roup, at such Time and at such Place, with such public Notice of the Sale, as may appear to the Sheriff most expedient for all concerned, and at the Sight of a Judge of the Roup to be named by the Sheriff; provided that the Sale shall not take place sooner than Eight Days nor at a longer Period than Twenty Days after the Date of the Publication of the said Notice of Sale; and the Sheriff shall order a Copy of the Warrant of Sale to be served on the Debtor, and on the Possessor of the poinied Effects, if he be a different Person from the Debtor, at least Six Days before the Date of the Sale, excepting in the Case of perishable Effects.

XXVII Effects to be sold, or delivered to poining Creditors.

And be it enacted, That the poinied Moveables shall be offered for Sale as ordered at upset Prices not less than the appraised Values thereof; but if no Offerer appear, the Effects, or such Part thereof as, according to their appraised Value, may satisfy the Debt, Interest, and Expences due to the poining Creditor and conjoined Creditor, shall be delivered by the Judge of the Roup to the said poining Creditor and conjoined Creditor, or to his or their authorized Agent, subject to the Claims of other Creditors, to be ranked as by Law competent.

XXVIII Report and Price to be lodged.

And be it enacted, That on the Moveables being sold or delivered as aforesaid, the Judge of the Roup shall within Eight Days after the Date of the Sale make a Report to the Sheriff of the said Sale or Delivery ; and if the Effects shall have been sold, he shall also within the said Space of Eight Days lodge with the Sheriff Clerk the Roup Rolls, or certified Copies thereof, and an Account of the Sum arising from and of the Expences of the Sale, which Sum the Sheriff may, if he shall see Cause, order to be lodged in the Hands of the Sheriff Clerk; and the said Sum, after Deduction of lawful Charges, shall, if no Cause be shown to the contrary, be ordered by the Sheriff to be paid to the poining Creditor and conjoined Creditor (provided the Amount does not exceed the Amount of the Debt, Interest, and Expences), but subject to the Claims of other Creditors, to be ranked as by Law competent; and the Report and relative Documents, when lodged, shall be patent to all concerned on Payment of a Fee of One Shilling only.

XXIX Creditors entitled to purchase.

And be it enacted, That where any Effects are exposed to Sale as aforesaid it shall be lawful for the Poinder or any other Creditor to purchase the same.

XXX Unlawful Intromitter liable to Imprisonment or double the appraised Value.

And be it enacted, That if any Person shall unlawfully intromit with or carry off the pointed Effects, he shall be liable, on summary Complaint to the Sheriff of the County where the Effects were pointed or where he is domiciled, to be imprisoned until he restore the Effects or pay Double the appraised Value.

XXXI Act not to affect Landlord's Hypothec.

And be it enacted, That nothing herein contained shall affect the Landlord's Hypothec for Rents, or any Hypothec known in Law.

XXXII Citations, &c.

And be it enacted, That Extracts, Citations, Deliverances, Schedules, and Executions may be either printed or in Writing, or partly both, and that, excepting in the Case of Poidings, more than One Witness shall not be required for Service or Execution thereof.

XXXIII Compensation.

And be it enacted, That it shall be lawful for any Person entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act to make Application to the Lord High Treasurer, or to the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the Time being, claiming such Compensation, giving at the same Time Notice of such Application to Her Majesty's Advocate; and it shall be lawful for the said Lord High Treasurer, or Commissioners of the Treasury, to investigate such Claim, and call for such Evidence in relation thereto as he or they may think necessary ; and upon such Claim being established to his or their Satisfaction, the said Lord High Treasurer, or Commissioners of Her Majesty's Treasury, or any Three of them, is and are hereby authorized and empowered to award to such Person such Compensation as he or they shall think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper : Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Two Calendar Months after the Commencement of the Session next ensuing after making the same; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament: Provided also, that if any Person to whom Compensation shall be so awarded by way of Annuity shall be afterwards appointed to any other Public Office, such Compensation shall be accounted pro tanto of the Salary payable to such Person in respect of such other Office while he shall continue to hold the same.

XXXIV Compensation how to be paid.

And be it enacted, That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen Anne were made

Status: This is the original version (as it was originally enacted).

chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in Scotland.

XXXV Diligence under this Act.

Provided always, and be it enacted, That Diligence executed under the Provisions of this Act shall have the same Effect as if such Diligence had been executed by virtue of Letters of Horning or Letters of Caption, or if Arrestments and Poidings had been executed under the Forms heretofore in use.

XXXVI Act may be repealed, &c.

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

Status: This is the original version (as it was originally enacted).

SCHEDULE
REFERRED TO IN THE
FOREGOING ACT. NO. 1.

Warrant to be subjoined to Extracts in the Court of Session, &c

And the said Lords grant Warrant to Messengers at Arms in Her Majesty's Name and Authority to charge the said A. personally, or at his Dwelling Place, if within Scotland, and if furth thereof by delivering a Copy of Charge at the Record Office of the Keeper of the Records of the Court of Session, [state what the Party is decerned to do ; if to pay Money, specify the Sum, Interest, and Expences ; or if to fulfil an Obligation, specify it as in the Decree or other Document,] and that to the said B. [specify the Name of the Person in whose Favour the Decree is pronounced] within [insert the appropriate Days] next after he is charged to that Effect, under the Pain of Poining and Imprisonment, [if the Sum or any Part thereof be payable at a future Time, add here,

“the Terms of Payment being always first come and bygone ;”] and also grant Warrant to arrest the said A.'s readiest Goods, Gear, Debts, and Sums of Money in Payment and Satisfaction of the said Sum, Interest, and Expences; and if the said A. fail to obey the said Charge, then to poind the said A's. readiest Goods, Gear, and other Effects, and, if needful for effecting the said Poining, grant Warrant to open all shut and lockfast Places in form as effeirs. Extracted [specify Place and Date]. [Extractor's Signature.] No. 2.

Execution of Charge

Upon the _____ Day of _____ I _____ Messenger at Arms [or Officer of Court], by virtue of [state Nature and Date of Extract and Decree, or Document whereupon it proceeds,] at the Instance of B. [specify Name and Designation of Creditor] against A. [specify Name and Designation of Debtor or Obligant] passed and in Her Majesty's Name and Authority lawfully charged the said A. to [state what the Party has been charged to do ; if to pay Money, specify the Sum, Interest, and Expences ; or if to fulfil an Obligation, specify it as in the Extract], and that to the said B. within _____ Days next after the Date of my said Charge, under the Pain of Poining and Imprisonment. This I did by [state Mode of Execution, whether personally or otherwise,] before and in Presence of C, Witness to the Premises. [Officer's Signature.] [Witness's Signature.] No. 3.

Certificate of Registration of Execution of Charge

Presented by A. B. [state Name and Designation], and registered in the General Register of Hornings on the _____ Day of _____. [Keeper's Signature.] No. 4.

Minute in Bill Chamber for Warrant to imprison

[Place and Date.] The Charge being expired and registered as per Execution and Certificate produced, Warrant is craved to search for, take, and apprehend the Person of the said A. [specify Name of Debtor or Obligant], and being so apprehended to imprison him within a Tolbooth or other warding Place, therein to remain until he fulfil the said Charge, and, if necessary for that Purpose, to open shut and lockfast Places ; and Warrant also to Magistrates and Keepers of Prisons to receive and detain the said A. accordingly. (Signed) A.B., W.S. [The Clerk will subjoin] Fiat ut petitur. [Dated and signed by the Clerk.] No. 5.

Status: This is the original version (as it was originally enacted).

Minute by Assignee, &c

[Place and Date.] Warrant is craved [state what is prayed for] at the Instance of [specify Name and Designation of the Applicant] as [Assignee or otherwise, as the Case may be], of [specify Name and Designation of the Person at whose Instance the Extract was issued]. Produced herewith [Assignment or Confirmation, or other legal Evidence of the acquired Right, as the Case may be]. Dated the _____ Day of _____ [and if for Imprisonment, Execution of expired Charge and Certificate of Registration shall be produced and Warrant craved as in No. 4.] (Signed) A. B. [The Clerk will subjoin] Fiat ut petitur. [Dated and signed by the Clerk.] No. 6.

Warrant to be subjoined to Sheriff Court Extracts

And I the said Sheriff grant Warrant to Messengers at Arms and Officers of Court to charge the said A. personally, or at his Dwelling Place [state what the Party is decerned to do ; if to pay Money, specify the Sum, Interest, and Expences ; or if to fulfil an Obligation, state the Nature of it, as in the Decree or other Document], and that to the said B. [Name of the Person in whose Favour the Decree is pronounced], within [insert the appropriate Days] next after he is charged to that Effect, under the Pain of Poinding and Imprisonment, [if the Sum or Document or any Part be payable at a future Time add here,

“the Terms of Payment being first come and bygone ;”] and also grant Warrant in Satisfaction of the said Sum, Interest, and Expences to arrest the said A.'s readiest Goods, Debts, and Sums of Money; and if the said A. fail to obey the said Charge, then to apprise, poind, and distrain all the said A.'s readiest Goods, Gear, and other Effects; and, if needful for effecting the said Poinding, grant Warrant to open all shut and lockfast Places in form as effeirs. Extracted, &c. [Extractor s Signature.] No. 7

Certificate of Registration of Execution of Charge in Sheriff Court

Presented by A.B. [Name and Designation], and registered in the particular Register of Hornings for the Shire of _____ on the _____ Day of _____. [Keeper or Clerk's Signature.] No. 8.

Minute in Sheriff' Court for Warrant to imprison

[Place and Date.] The Charge being expired and registered as per Execution and Certificate produced, Warrant is craved to search for, take, and apprehend the Person of the said A. [Name of Debtor or Obligant], and being so apprehended to imprison him within a Tolbooth or other warding Place, therein to remain until he fulfil the said Charge, and, if necessary for that Purpose, to open shut and lockfast Places ; and Warrant also to Magistrates and Keepers of Prisons to receive and detain the said A. accordingly. (Signed) A.B. [The Clerk will subjoin] Fiat ut petitur. [Dated and signed by the Clerk.] No. 9.

Minute in Sheriff Court by Assignee, &c

[Place and Date.] Warrant is craved [state what is prayed for] at the Instance of [specify Name and Designation of the Applicant], as [Assignee or otherwise, as the Case may be], of [specify Name and Designation of the Person at whose Instance the Extract was issued and in whose Right the Applicant is,] produced herewith, [say Assignment or Confirmation, or other legal Evidence of the acquired Right, as the Case may be.] Dated the _____ Day of _____ , [and if for Imprisonment, Execution of expired Charge and Certificate of Resignation shall be produced and Warrant craved to imprison as in No. 8.] (Signed) A.B. [The Clerk will subjoin] Fiat ut petitur. [Dated and signed by the Clerk.] No. 10.

Status: This is the original version (as it was originally enacted).

Minute for Warrant of Concurrence

[Place and Date.] Warrant of Concurrence by the Lords of Council and Session is craved at the Instance of [specify Name and Designation of Applicant] for executing the within Warrant against the within-designed [specify Name of Debtor or Obligant].
_____ A.B. [If the Application is to a Sheriff, leave out " Lords of Council and Session," and say Sheriff of (inserting the Shire).] [The Clerk of the Bills or the Sheriff Clerk, as the Case may be, will subjoin] Fiat ut petitur. [Dated and signed by the Clerk of the Bills or Sheriff Clerk, as the Case may be.]