



Conveyancing Amendment (Scotland) Act 1938

1938 CHAPTER 24

An Act to amend the law of conveyancing in Scotland.

[17th May 1938.]

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 Provision in regard to judicial factors, and c

For the purposes of sections three and four of the Act of 1924, a judicial factor appointed by the Court to administer a trust estate comprising any land or any heritable security or part of any heritable security or any lease or security over a lease, or a trustee appointed by the Court on such a trust estate shall be deemed to be a person having a right within the meaning of the said sections to such land or heritable security or part of a heritable security or lease or security over a lease respectively, and shall with respect to any lease or security over a lease comprised in the trust estate be entitled to the benefit of all enabling powers and rights under section twenty-four of the Act of 1924; and an extract of the act and warrant appointing such judicial factor or trustee shall, for the purposes of deductions of title in terms of the said Act, be a valid midcouple or link of title.

2 Amendment of Act of 1924, s. 8 and Schedule D

- (1) Section eight of the Act of 1924 shall be amended as follows, that is to say:—
- (a) in subsection (4) thereof after the word " is " where this first occurs there shall be inserted the words " for any purpose " ; and
 - (b) after the said subsection (4) the following subsection shall be inserted:—

“(5) Note 1 to Schedule D to this Act shall apply to a reference competently made to any deed for reservations, real burdens, conditions, provisions, limitations, obligations and stipulations

affecting lands and to the form of such reference given in Schedule H of the Conveyancing (Scotland) Act. 1874.”

- (2) In Note 1 to Schedule D to the Act of 1924 after the words " a particular description " there shall be inserted the words " or to a Deed containing reservations, " real burdens, conditions, provisions, limitations, obligations and stipulations affecting lands " .
- (3) This section shall be deemed to have had effect as from the commencement of the Act of 1924.

3 Amendment of Act of 1924, s. 14

Subsection (2) of section fourteen of the Act of 1924 is hereby repealed.

4 Amendment of Act of 1924, s. 17

In subsection (1) of section seventeen of the Act of 1924, after the words " forty years " there shall be inserted the words " in the Act of the Parliament of " Scotland, 1469, cap. 4 (' anent the prescriptioun of " obligations ') in the Act of the Parliament of Scotland, " 1474, cap. 9 (' anent the Act of prescripcione of obli- " gacionis '), and " .

5 Amendment of Act of 1924, s. 21

Subsection (4) of section twenty-one of the Act of 1924 shall have effect as if for paragraph (a) thereof there were substituted the following paragraph:—

“(a) The right to courtesy of any widower whose wife has died after the commencement of this Act, and the right to terce of any widow whose husband has died after the commencement of this Act, shall not be measured by the infeftment of such wife or husband, or depend on the completion of the title of such wife or husband by the recording thereof in the appropriate Register of Sasines, but the widower's right to courtesy shall extend to all estate (being estate to which his right to courtesy would have extended if his deceased wife's title thereto had been completed by infeftment) to which his deceased wife had a personal title capable of being completed by infeftment, or by being recorded in the appropriate Register of Sasines (including estate to which her title might be completed as aforesaid held in trust for her behoof), or to which she had a personal right capable of enforcement by adjudication in implement or otherwise; and the widow's right of terce shall extend to all estate (being estate to which her right of terce would have extended if her deceased husband's title thereto had been completed by infeftment) to which her deceased husband had a personal title capable of being completed by infeftment, or by being recorded in the appropriate Register of Sasines (including estate to which his title might be completed as aforesaid held in trust for his behoof), or to which he had a personal right capable of enforcement by adjudication in implement or otherwise.”

6 Provisions as to actions of declarator of irritancy

- (1) Where an action of declarator of irritancy *ob non solutum canonem* is raised in the Court of Session by a superior against a vassal, the pursuer shall, in addition to serving the same on the last entered vassal, give such intimation thereof as the Court may direct

or require to sub-feuars, heritable creditors and others who at the date of the raising of the action appear to have some real right in or security over the vassal's estate or any part thereof and who from a search in the Register of Sasines made against the vassal's estate for a period of twenty years immediately prior to the date of the raising of the action are disclosed as having such interest.

- (2) The expense of such search shall form part of the pursuer's expenses of process.
- (3) After decree has been granted in any such action, it shall not be competent to any person to question in any legal proceedings whatsoever the validity or sufficiency of the intimation given to him under and in pursuance of subsection (1) of this section.
- (4) Notwithstanding the provisions of section twenty-four of the Court of Session Act, 1868, or of Rule 25 of the First Schedule to the Sheriff Courts (Scotland) Act, 1907, a decree granted in any such action shall, as in a question with third parties who have acted onerously and in *bona fide* in reliance on the Records, be final and not subject to challenge when an extract thereof shall have been recorded in the appropriate Register of Sasines.

7 Amendment of Act of 1924, s. 44

- (1) Subsection (4) of section forty-four of the Act of 1924 shall be amended as follows, that is to say:—
 - (a) in paragraph (b) thereof the words " section one " hundred and three of the Bankruptcy (Scotl- " and) Act, 1856, or of and the proviso shall be omitted, and for the words " a memorandum " in the form provided by the said section " forty-four of the said Act of 1913, as amended " by this Act, which memorandum being so " recorded shall have the effect of a memo- " randum recorded in terms of the said section " forty-four as amended as aforesaid " there shall be substituted the words " a memorandum " in the form provided by Schedule O to this " Act " ; and
 - (b) in paragraph (c) thereof there shall be inserted after the words " in such register " the words " or have recorded a memorandum in such " register in terms of paragraph (b) of this sub-" section.
- (2) The Act of 1924 shall be amended by the addition after Schedule N thereto of a Schedule in the form contained in the Schedule to this Act.

8 Prohibition of subinfeudation annulled

From and after the commencement of this Act all conditions of whatever date to the effect that it shall not be lawful for the proprietor of lands to sub-feu the same or any part thereof shall, with all irritant clauses applicable thereto, be null and void and not capable of being enforced.

9 Limitation of effect of conditions as to pre-emption

- (1) Any condition or provision whether made before or after the commencement of this Act to the effect that the superior of any feu shall be entitled to a right of pre-emption in the event of a sale thereof or of any part thereof by the proprietor of the feu shall, with all irritant clauses applicable thereto, be in all time coming null and void, and not capable of being enforced as regards such feu or part thereof, as the case may be, unless the person in right of the superiority (whether or not his title thereto is complete) shall

within forty days or such shorter period as may be specified in the charter stipulating for such right of pre-emption after an offer has been made to him by the proprietor for the time being intimate his intention to exercise such right of pre-emption.

- (2) Any such offer may be made by delivering it to such person or to the agent or factor of such person in use to receive and discharge the feu-duty in respect of the feu, or by sending it by registered letter to such person or to such agent or factor at his usual or last known address, or, if such person is unknown or cannot be found, to the Extractor of the Court of Session. An acknowledgment endorsed on such offer, or a copy thereof, by such person or by his agent or factor, or, where the offer is sent by registered letter, a certificate subscribed by the proprietor of the feu or his solicitor that such offer was duly posted and having the Post Office receipt for the registered letter attached shall be sufficient evidence that such offer was duly made on the date stated in the acknowledgment or Post Office receipt. Any such acknowledgment and certificate may be in the form of Form No. 2 and Form No. 3, respectively, of Schedule L to the Act of 1924, the word "Offer " being substituted for the word " Premonition ".

10 Provisions as to persons deriving right from widow who has rights under the Intestate Husband's Estate (Scotland) Acts

- (1) Any person deriving right, whether immediately or otherwise, from a widow who is or has been entitled to the whole or part of the estate of her deceased husband in terms of the Intestate Husband's Estate (Scotland) Act, 1911, may present an application to the Court in like manner as such a widow as aforesaid may present an application to the Court, under the Intestate Husband's Estate (Scotland) Act, 1919, and such application shall be as nearly as may be in the form of the Schedule to the last mentioned Act.
- (2) The procedure in such an application shall be as nearly as may be in accordance with the provisions of section two of the last mentioned Act, and the effect of the decree of the Court shall with the necessary modifications be as provided in section three of the said Act with reference to a decree of court thereunder.

11 Certain testamentary writings to be deemed to be probative

Any writing of a testamentary character on which confirmation of executors nominate has prior to the commencement of this Act been issued by the Commissary Court or by any sheriff court shall be deemed to be probative.

12 Interpretation, short title, construction, commencement and extent

- (1) In this Act the expression " the Act of 1924 " means the Conveyancing (Scotland) Act, 1924.
- (2) This Act may be cited as the Conveyancing Amendment (Scotland) Act, 1938, and shall be construed as one with the Act of 1924.
- (3) This Act shall come into operation on the first day of July nineteen hundred and thirty-eight.
- (4) This Act shall apply to Scotland only.

SCHEDULE

Section 7.

“SCHEDULE O

Section 44.

FORM OF MEMORANDUM TO BE RECORDED IN THE REGISTER OF SASINES.

Memorandum with regard to the subjects after described :

With reference to the subjects (*describe particularly or by reference*) T. the trustee in the sequestration of B. has obtained a vesting order under section 98 of the Bankruptcy (Scotland) Act 1913 dated (*insert date of order*).

The memorandum should be signed by the trustee or his law agent, dated, and recorded with a warrant of registration in the appropriate division or divisions of the Register of Sasines.

The form may be adapted in the case of a lease thus :—

Memorandum with regard to the lease after-mentioned :

With reference to the lease granted by C in favour of D of the subjects therein described lying in the county of K, dated (*insert date*), and recorded in [*specify Register of Sasines and date of recording*], T. the trustee &c. and in the case of a heritable security thus:—

Memorandum with regard to the bond and disposition in security after-mentioned:

With reference to the bond and disposition in security for the sum of (*insert sum*) granted by E in favour of F dated (*insert date*) and recorded in (*specify Register of Sasines and date of recording*), T. the trustee &c.”