

Serial Number 1939/176.



THE COURTS EMERGENCY POWERS REGULATIONS 1939.

GALWAY, Governor-General.

ORDER IN COUNCIL.

At the Government House at Wellington, this 20th day of
September, 1939.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

PURSUANT to the Emergency Regulations Act, 1939, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS.

1. (1) These regulations may be cited as the Courts Emergency Powers Regulations 1939.

(2) These regulations shall come into force on the day following the day on which notification of the making thereof is published in the *Gazette*.

2. (1) In these regulations, unless the context otherwise requires,—

“Judgment” means any judgment or order of any Court (whether given or made before or after the commencement of these regulations) for the payment or recovery of a sum of money or for the recovery of possession of land in default of payment of rent; but does not include—

(a) Any judgment for the recovery of damages for tort;

(b) Any order made under the Destitute Persons Act, 1910;

(c) Any order made either in criminal proceedings or in proceedings for the recovery of a penalty in respect of any contravention of or failure to comply with any provisions of an Act;

“Legal remedy” means any remedy by way of—

(a) The levying of distress;

(b) The taking of possession of any property or the appointment of a receiver of any property;

(c) Re-entry upon any land;

(d) The realization of any security or the forfeiture of any deposit;

(e) The rescission of any agreement for the sale and purchase of land;

(f) The serving of a demand under paragraph (a) of section 170 of the Companies Act, 1933.

(2) For the purposes of these regulations a person entitled to the benefit of a judgment who issues a bankruptcy notice or presents a petition in bankruptcy or a winding-up petition founded on the non-payment of money due under that judgment shall be deemed to be proceeding to the enforcement of that judgment.

3. (1) Except in cases to which the next succeeding subclause applies, these regulations shall not apply to any judgment for the recovery of a debt that has become due by virtue of a contract made after the commencement of these regulations, or to any judgment given in proceedings for the enforcement of any such contract, or to any legal remedy or power available in consequence of any default in the payment of a debt or in the performance of an obligation, being a debt or obligation arising by virtue of any such contract.

(2) Where at any time after the commencement of these regulations any person who is not at that time a member of any of His Majesty's permanent forces is called up for naval, military, or air service, whether within New Zealand or elsewhere, these regulations shall not apply to any judgment for the recovery of a debt that becomes due by that person by virtue of a contract made after the date on which he is so called up, or to any judgment given in proceedings against that person for the enforcement of any such contract, or to any legal remedy or power available in consequence of any default by that person in the payment of a debt or in the performance of an obligation, being a debt or obligation arising by virtue of any such contract.

(3) For the purposes of these regulations a contract shall be deemed to have been made before any date if an offer made before that date so as to be binding on a contracting party if accepted within a specified period expiring on or after that date is accepted by the contracting party at any time within that period.

4. (1) Subject to the provisions of this regulation, no person shall be entitled, without the leave of the appropriate Court, to do or to continue or complete the doing of any of the following acts:—

- (a) To proceed to execution on or otherwise to the enforcement of any judgment :
- (b) To exercise any legal remedy :
- (c) To call up or demand payment of the principal sum or any part of the principal sum secured by any mortgage :
- (d) To exercise any power of sale conferred by any mortgage :
- (e) To commence or to continue proceedings in any Court for breach of any covenant expressed or implied in any mortgage, other than a covenant for the payment of interest.

(2) Nothing in this regulation shall affect—

- (a) Any power of sale of a mortgagee of land or an interest in land who was in possession of the mortgaged property at the commencement of these regulations, or who has appointed a receiver who at the commencement of these regulations was in possession of the mortgaged property or in receipt of the rents and profits thereof :
- (b) Any power of sale of a mortgagee in possession of property other than land or some interest in land, where the power of sale has arisen and notice of the intended sale has been given before the commencement of these regulations :

(c) Any right or power of pawnbrokers to deal with pledges :

(d) The institution or prosecution of any proceedings for the appointment by any Court of a receiver of any property, or for the recovery of possession of land otherwise than in default of payment of rent.

(3) For the purposes of this regulation the appropriate Court in relation to any act specified in paragraph (a) or paragraph (e) of clause (1) of this regulation shall be the Court by which the judgment concerned was given or the Court in which the proceedings concerned are intended to be commenced or continued, as the case may be. Subject to the foregoing provisions of this clause, the appropriate Court for the purposes of this regulation shall be the Supreme Court in any case where either the amount claimed or the value of the property concerned exceeds £2,000, and in every other case shall be either the Supreme Court or a Magistrate.

5. (1) If on any application for the leave of the appropriate Court to do or to continue or complete the doing of any act affected by the last preceding regulation the Court is of opinion that the person liable to satisfy the judgment or to pay the debt or to perform the obligation in question 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 Court may, in its absolute discretion, after considering all the circumstances of the case and the position of all the parties, refuse the application for leave or grant it either unconditionally or upon or subject to such conditions as the Court thinks fit.

(2) No appeal shall lie from any decision of the Supreme Court or of a Magistrate under this regulation.

6. Where a bankruptcy petition 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 having jurisdiction in the bankruptcy or winding-up 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 may be engaged, the Court may, in its absolute discretion, after considering all the circumstances of the case and the position of all the parties, at any time stay the proceedings under the petition for such time and subject to such conditions as the Court thinks fit.

C. A. JEFFERY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

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These regulations are administered by the Department of Justice.