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No. 27.

2nd Session, 6th Parliament, 22 Victoria, 1859.

BILL.

An Act to prevent arrests for Debt in certain cases by Decrees of the Court of Chancery in Upper Canada.

Received and read, first time, Thursday, 17th Feb., 1859.

Second reading, Wednesday, 23rd Feb., 1859.

MR. GOWAN.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to prevent arrests for Debt in certain cases
under Decrees of the Court of Chancery in Upper
Canada.

WHEREAS the Grand Inquest in and for the City of Toronto, at
the Court held in the said City, on the 12th day of January now
last past, made a Presentment to the Court in the words following, that
is to say: "The Grand Jury found eight persons confined for debt,
5 "one being incarcerated over six months, and another aged man over
"two months, for the costs of a Chancery suit: Surely the new law
"does not contemplate keeping persons imprisoned where they have no
"means of paying the debt—as these persons declare they have not:"
And whereas there is reason to believe that the Court of Chancery in
D that part of this Province called Upper Canada, has made Orders or
Decrees of Court, directing certain sums of money to be paid by certain
parties, on or before certain days named in such Orders or Decrees, and
with which Orders or Decrees of said Court the parties so ordered to pay
were utterly unable to comply; and the said parties, in consequence of
such inability to pay, have been ordered into confinement, under the
plea of contempt of Court for the disobedience of its Orders or Decrees;
And whereas it would be more conducive to the benefit of creditors,
under Decrees or Orders of the said Court, wherein, in certain cases, a
party or parties is, or are, by such Decrees or Orders, directed to pay a
sum or sums of money mentioned or referred to therein, if, instead of the
mode now prescribed of obtaining satisfaction of such Decree or Order,
a Writ or Writs, in the nature of an Execution, were by the said Court
ordered to be issued, directed to the Sheriff of the County, to seize and
take in execution and sell the property, personal as well as real, of
the person or persons so, by such Decree or Orders as aforesaid, directed
to pay a sum or sums of money therein mentioned or referred to; And
whereas such an Act would be more in harmony with the spirit of the
age, and would be less oppressive to the subject; Therefore Her Majesty,
&c., enacts as follows:

I. From and after the passing of this Act, in all cases where any party
is, or are, or may, by any Decree or Order of the said Court of Chancery
for Upper Canada, be ordered to pay a sum of money, no writ of Attach-
ment or any other process of the said Court shall issue, whereby such
person or persons shall be liable to arrest for disobedience of such
Decree; but instead thereof, a Writ or Writs of Execution, in the nature
of, and similar to, Writs which in such cases are by Law directed to
issue in causes in the Courts of Common Law in Upper Canada, shall
issue out of the said Court of Chancery, directed in the same manner
as writs of Execution are in such cases directed in Courts of Common
Law.

Preamble.

*Is not this preamble
throughout quite
unnecessary, rather
absurd?*

Chancery to
enforce its
judgments by
execution; not
by imprison-
ment for
contempt.

Persons obtaining decrees for payment of money may have execution.

II. It shall be lawful to and for the person or persons to whom such sum or sums of money is, or are, by such Decree or Orders as aforesaid, ordered to be paid, to cause to be issued from time to time, and as often as requisite, any such Writ of Execution as aforesaid, to the officer or officers to whom the same may be directed, and to endorse thereon the amount directed by any such Decree or Order of the said Court, or mentioned or referred to therein, to be paid to him or them, and the expenses necessarily incurred by him in obtaining the same, and incidental thereto, and the officer's fees and necessary expenses in executing the same. 5 10

Form of Writs of Execution under this Act:—Chattels to be seized first,

III. Every such Writ or Writs, so to be issued in pursuance of this Act, shall, in the body thereof, command the Sheriff therein directed to execute the same, in the first place to proceed to levy and make, the amount thereby directed to be levied and made, out of the goods and chattels belonging to the person or persons in his County, directed by 15 such Decree or Order as aforesaid to pay the same; and the said Sheriff, to whom such Writ or Writs shall or may be directed, shall, immediately after the delivery thereof to him, seize and take in execution the goods and chattels in his bailiwick, or an adequate portion thereof, to satisfy the said Writ or Writs, and shall execute such Writ or Writs 20 and return the same in the same manner as Sheriffs are directed by Law to sell the goods and chattels of any person or persons against whom any Writs issued out of any Courts of Common Law at Toronto are directed to be executed and returned.

And lands in default of sufficient chattels.

IV. In case the said Sheriff shall not be able to realize sufficient 25 from a sale or sales of the goods and chattels of the person or persons by such decree or orders ordered to pay any such sum or sums of money as aforesaid, or against whose goods and chattels the same may be directed, sufficient to satisfy such execution; or, in case he return the same "no goods," then the person or persons entitled to the money thereby 30 directed to be made, shall be at liberty, and is or are hereby authorised to issue an execution or executions against the lands or tenements of the person or persons, by such Decree or Order directed to pay such sum or sums of money as aforesaid, in the same manner as executions are now 35 by law issued out of any of Her Majesty's Superior Courts of Law at Toronto; and the said Sheriff, to whom the same may be directed, shall seize and enter upon, and take into his possession, such lands and tenements, and the same sell by auction, in the same way as Sheriffs now by Law execute writs against the lands and tenements of any 40 person or persons, by him thereby directed to be sold.

Fees to Sheriff under this Act.

V. For executing all such Writs, the Sheriff shall be entitled to the same remuneration and fees, as Sheriffs are now by Law entitled to, for executing Writs in similar cases issued out of the Courts of Common Law; and it shall be the duty of such Sheriff to execute all and every such Writ or Writs, so to be issued in pursuance of or under the authority 45 of this Act.

Court of Chancery to make rules for carrying out this Act.

VI. The said Court of Chancery for Upper Canada, or any two Judges thereof, shall have power, from time to time, to frame any such Writ or Writs as aforesaid, and to make such Orders or Decrees from time to time as may be necessary for the purpose of carrying out the provisions 50 of this Act.