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No. 51.

2nd Session, 3rd Parliament, 12 Victoria, 1849.

BILL.

An Act to extend the remedy by Writs
of Execution.

Received and Read a first time, Thursday, 1st
February, 1849.

Second Reading, Tuesday, 20th February, 1849.

MR. WILSON.

PRINTED BY LOVELL AND GIBSON.

J

BILL.

An Act to render the remedy by Writs of Execution in Upper Canada, more effectual.

BE it enacted, &c ,

That by virtue of any Writ of *feri facias* against goods and chattels, to be sued out of any Court in Upper Canada, the Sheriff or other Officer having the execution thereof, may and shall seize and take all choses in action at Law and in Equity arising on debt or contract, books of account, evidence of debts, debts, judgments, bonds, specialties, bills, promissory notes, securities for money, writings, deeds, stocks and interests in all kinds of companies and associations, money, bank notes and checks, interests of mortgagor and mortgagee in a chattel or chattel security, and every other kind of personal property or right and interest therein; of the party against whose goods and chattels such execution shall issue, excepting the beds and bedding, wearing apparel, and cooking utensils of himself and his family in actual use,—and may and shall expose the same to public sale, and sell them in the manner in which goods and chattels now are sold, in satisfaction of such execution, save in the case of money and bank notes or checks current as money, which may be seized and paid over to the party suing out such execution, in satisfaction of such execution, without exposing the same to sale: Provided always, that no agreement, deed or writing in any way relating to lands; other than chattel interests therein, shall be seized or sold so far as they relate to such lands, on an execution against goods and chattels; And provided also, that the Sheriff or other Officer have

What the Sheriff may seize and sell under a writ of *feri facias* against goods and chattels.

Goods exempted.

Proviso: as to any interest in lands.

Proviso: goods now liable to be sold first.

ing the execution of such Writ, shall first sell the goods and chattels which he could have sold before the passing of this Act, before he proceeds to sell any kind of property made liable to seizure and sale by this Act ; 5
 Exception. except only, that in case the ownership of such goods and chattels be disputed, he may and shall sell the property made liable to sale by this Act, without first selling such 10
 disputed goods and chattels.

Effect of the sale of *choses* in action.

II. And be it enacted, That the sale of any *choses* in action or property, made liable to seizure and sale under this Act, by any Sheriff or Officer having the execution of any such Writ, shall vest such *choses* in action 15
 and property in the purchaser thereof, to the same extent as it was vested in the party against whose goods and chattels such execution issued ; and such purchaser shall for all purposes stand in the place of the party 20
 whose *choses* in action and property have been sold ; and such purchaser may claim and demand such *choses* in action and property, and maintain an action in his own name, as the assignee thereof, but subject to all legal 25
 and equitable defences to which they were subject at the time the party against whom such *choses* in action existed, had notice of such seizure or sale.

Sheriff to deliver *choses* in action sold by him, if he can do so, and a memorandum of the sale.

III. And be it enacted, That it shall be 30
 the duty of every Sheriff or Officer, who shall sell any *choses* in action or property under this Act, to deliver such *choses* in action or property, so far as circumstances shall enable him so to do, together with a memorandum in 35
 writing of such sale, to the effect that he, (the Sheriff or Officer,) by virtue of the Writ of execution under which the sale was made, for such a sum, did sell to the purchaser, such a *chose* in action, bill, bond, note, ac- 40
 count, debt or claim, (as the case may be,) and shall sign such memorandum in writing ; and the production of such memorandum shall be taken and received in all Courts of

Law and Equity as *prima facie* evidence of the judgment upon which the execution issued, the execution, seizure, sale, and of the right of the purchaser to sue for, have and claim the *choses* in action or property mentioned or referred to in such memorandum, as the assignee thereof, and shall give the purchaser the right to acquit such *choses* in action, and to hold such property as his own.

Effect of the memorandum of sales as evidence.

IV. And be it enacted, That in selling book debts, or other debts, bills, bonds, promissory notes, warehouse receipts, or other *choses* in action, it shall be the duty of the Sheriff or Officer, where such *choses* in action severally exceed in amount the sum of five pounds, to expose them severally as distinct chattels, but in cases in which the *choses* in action are under five pounds, he may include in one offer any number not exceeding in amount five pounds; and in case any book or paper shall contain entries or evidences of several debts or *choses* in action it shall be his duty to keep such book or paper for the benefit of all concerned, giving them reasonable access thereto, on payment of such a fee as the Court out of which the execution issued, or a Judge thereof, shall direct or appoint.

Book debts, &c. to be sold in lots of about £5 each.

Sheriff to retain certain books, &c. for the use of all parties.

V. And be it enacted, That after the sale of any *chase* in action under this Act, the party against whose goods and chattels the execution issued, and whose *choses* in action may have been sold, shall be a competent witness to be examined in any action touching such *choses* in action or property.

The party seized to be a competent witness as to *choses* in action sold.

VI. And be it enacted, That the purchaser of any *chase* in action sold under this Act, shall have the legal right to demand, sue for, release and acquit such *chase* in action as fully as the original party: Provided always, that the claim and suit shall be in the name of the purchaser as the assignee of the original party to such *chase* in action; and in case such *chase* in action shall have been sold

Rights of purchaser of *choses* in action. Proviso he shall sue as assignee of such *choses*.

oftener than once, the claim and suit shall be in the name of the purchaser as assignee of the party or parties down to the original party to such cause of action.

What the Sheriff shall seize and sell under any writ of *feri facias* against lands.

Effect of the sale.

VII. And be it enacted, That by virtue of 5
of any writ of *Fieri Facias* against lands, to be
sued out of any Court in Upper Canada, the
Sheriff or other officer having the execution
thereof, may and shall seize and take, sell and
convey every kind of interest in, and security 10
upon lands or hereditaments belonging to the
party against whose lands such execution
issued; and the sale and conveyance of such
interest in, or security upon such lands, made
in pursuance of this Act, shall vest in the 15
purchaser all the estate, right, title, possession,
claim and demand, both at law and in
equity, in possession and expectancy of the
party against whose lands such execution
issued. 20

Sale to be sufficient authority for the Commissioner of Crown Lands to act upon.

Proviso: affidavit of the sale, &c. to be produced.

VIII. And be it enacted, That in all cases
in which the title to any such lands, shall at
the time of such sale be in the Crown, the
conveyance of the party's interest therein by
the Sheriff or officer, to any purchaser, shall 25
be a sufficient authority for the Commissioner
of Crown Lands to transfer the right of the
person against whose lands such execution
issued, to the purchaser thereof, and to deal
with him as the party entitled to the grant 30
thereof: Provided always, that an affidavit of
the due execution of the sale and assignment
by the Sheriff, shall be made by a witness
to the Deed, and produced in the same man-
ner as is required in cases in which the sale 35
and assignment is made by one party to
another.

Effect of the sale of a right of action created by deed.

IX. And be it enacted, That in all cases
in which the interest in any lands shall, at
the time of the delivery of the writ of exe- 40
cution against lands to the Sheriff or officer
charged with its execution, consist in a right
of action created by writing or deed, such

sale and conveyance shall operate as an assignment of such writing or deed, so as to vest in the purchaser the cause of action at law and in equity, in his own right and for his own use, as the assignee of such writing or deed.

X. And be it enacted, That in every case in which the party against whose lands an execution has issued, is in the actual possession of such lands at the time of the sale, the sale and conveyance thereof by the Sheriff or officer charged with such sale, shall entitle the purchaser to maintain an action of ejectment or to proceed for the recovery of the possession thereof, in the manner hereinafter provided, against the party so in possession, so as to recover such possession from him, but the recovery of such possession shall not operate to prejudice the interests of any other party otherwise entitled to the land.

In what cases possession may be recovered immediately upon the sale.

XI. And be it enacted, That in every action of ejectment or proceeding for the recovery of the possession of any lands or of any interest therein, sold by any Sheriff or officer under a writ of execution against lands, the production of the deed executed by such Sheriff or officer, shall be taken in all Courts of Law and Equity as *prima facie* evidence of the judgment, execution, sale and conveyance of such lands or interest therein as is mentioned in such deed.

Deed of sale from Sheriff to be *prima facie* evidence of the judgement, &c.

XII. And be it enacted, That as soon as any Sheriff or officer shall have made and completed any sale of lands under the provisions of the law before the passing of this Act, or of any interest whatever in lands under this Act, it shall be his duty to return to the Court of Queen's Bench a Schedule containing a memorandum of the Court whether Superior or Inferior, and the style of the cause in which such execution shall have issued, the description of the lands he shall have sold, the name of the purchaser, and of the party in

Return to be made by the Sheriff selling lands.

Writ of *habere facias possessionem* may be obtained in certain cases.

possession, which return shall be certified under his hand and seal of office: And in case it shall appear by such Schedule that the party against whose lands such execution issued, is in the actual possession thereof it shall and may be lawful for the Court of Queen's Bench or any Judge thereof in vacation, forthwith to order a writ or warrant in the nature of a writ of *Habere facias possessionem* to issue, commanding the Sheriff or officer charged therewith to put the purchaser in possession of the lands mentioned in such Schedule: Provided always, that any transfer of the possession of any land, as between the party against whose lands such execution issued and any other party claiming such possession by or through him, after the delivery to the Sheriff of the writ under which such lands were sold, shall be held fraudulent, and as the actual possession of the party against whose lands the execution issued.

Proviso: as to any transfer of possession after the sale.

Sales and assignments under this Act, not to affect the rights of third parties.

XIII. And be it enacted, That the sale and assignment of any *chose* in action or other personal property, or of any interest in; or security upon lands or hereditaments, or the transfer of the possession of any lands under this Act, shall not be held to prejudice the rights of any party, other than the party against whose goods and chattels, or lands and tenements such writs of execution shall have issued; and the purchaser of any *chose* in action, or personal property, or interest in, or security upon lands or hereditaments, shall hold the same subject to the same legal rights, and to the same equities, as they were held respectively by the original party; and the transfer of the possession of any lands under this Act shall not prejudice any person otherwise interested in the lands.

When the return is "no goods," or "no lands," and the judgment remains unsatis-

XIV. And be it enacted, That in all cases in which any execution against goods or lands shall be returned "no goods" or "no lands" respectively, and the judgment shall

remain unsatisfied, it shall be lawful for the party whose judgment shall so remain unsatisfied to file such Interrogatories as he shall see fit in the office of the Clerk of the
 5 Crown or of the District Court of the District in which such party resides, and to serve a copy of such interrogatories on the party against whom such judgment remains unsatisfied, touching his property of every
 10 description and means of satisfying such judgment, endorsed upon or attached to which interrogatories, shall be a notice to the effect that in case the party to be interrogated shall neglect or refuse to answer such
 15 interrogatories within ten days after the service thereof, or shall answer them falsely or evasively, then, that a writ will issue to commit him to close contody until he shall be discharged from such commitment by
 20 order of the Court out of which such writ shall have issued or of a Judge thereof.

And the defendant may be examined on interrogatories.

Notice to be endorsed on the Interrogatories.

XV. And be it enacted, That, in case any party liable to be interrogated, shall neglect or refuse to answer such interrogatories, or
 25 shall answer them falsely or evasively, or if it shall appear that the party interrogated shall refuse to give up to his judgment creditor any property he may possess or have the means of possessing or over which he has
 30 any control, or if it shall appear that he has fraudulently deprived himself of the means of paying such debt; then and in any of these cases it shall and may be lawful for the Court of Queen's Bench or a Judge thereof and for
 35 the District Court or a Judge thereof to order a writ of *Capias ad satisfaciendum* to be issued against the party against whom such judgment shall remain unsatisfied, upon which writ he shall be arrested and committed to close
 40 contody to be kept without bail until further order from the Court out of which such writ issued, or from some Judge thereof.

Party refusing, or neglecting to answer or answering untruly may be committed to gaol on ca : sa :

XVI. And be it enacted, That upon a return of "no goods" or "no lands" to any
 Upon such return as aforesaid the Plain-

tiff may apply for a writ of *ca : sa* : which shall issue if it shall appear that the defendant has means of satisfying the judgment, or part thereof.

writ of execution, it shall be lawful for the party interested in the judgment upon which such writs may have issued, to apply to the Court in which such judgment was given, or a Judge thereof, or to any of the Judges of the District Court of the District in which the party sought to be arrested shall reside, for an order to issue a writ of *Capias ad satisfaciendum* ; and if it shall be made to appear to such Court or Judge that the party against whom such judgment remains unsatisfied has the means of satisfying the judgment or any part thereof, beyond the value of such articles of clothing and utensils as are exempted by this Act, it shall be lawful for such Court or Judge to order a writ of *Capias ad satisfaciendum* to be issued, upon which the party shall be committed to close custody, until discharged by an order of the Court out of which the execution issued or of some Judge thereof, or by an order of the Judge of the District Court of the District in which the party may have committed.

Defendant may obtain his discharge on proving that he has no such means.

XVII. And be it enacted, That every person arrested or charged on any of *capias ad satisfaciendum*, shall be entitled to his discharge upon giving up his property and satisfy the Court out of which the writ issued or a Judge thereof, that he has no means of satisfying such judgment or any part thereof, save as to such property as by this Act is exempted, and that he has not acted fraudulently in contracting the debt or in depriving himself of the means of satisfying the judgment.

Such application may be made to a district Judge, and granted by him.

XVIII. And be it enacted, That any party having a judgment in any Court of Law in Upper Canada, may apply for an order for writ of *Capias ad satisfaciendum* under this Act, to any Judge of a District Court in the District in which the party sought to be arrested resides, and such Judge may and shall, upon the provisions of this Act being complied with, order a writ of *Capias ad sa-*

tisfaciendum to issue either out of his own Court or from the office of the Deputy Clerk of the Crown in such District, subject to the revision of the Court of Queen's Bench or a Judge thereof, in case the party shall think himself aggrieved by such order, and upon any such order the several Deputy Clerks of the Crown are hereby authorized to issue writs of *Capias ad satisfaciendum* agreeably to such order.

XIX. And be it enacted, That no writ of *Capias ad satisfaciendum* shall hereafter be issued except under the provisions of this Act, save only in cases in which the party shall have been held to bail on mesne process; any law or usage to the contrary notwithstanding.

In what cases only writs of *ca: sa:* may hereafter issue

XX. And be it enacted, That it shall be lawful in all cases in which a party who may have been held to bail on mesne process shall be arrested on a writ of *Capias ad satisfaciendum*, or shall be surrendered by his bail, for the party so arrested or surrendered to apply for his discharge; and in case it shall appear to the Court out of which such writ issued, or in which the suit was prosecuted, that the party arrested has not the means of satisfying such judgment, or any part thereof, besides the wearing apparel, beds, bedding and cooking utensils of himself and family in actual use, and that he has not acted fraudulently in contracting the debt or in depriving himself of the means of satisfying the judgment, it shall be lawful for the Court or Judge to order him to be discharged.

Party held to bail on mesne process and taken on *ca: sa:* may apply for discharge under this Act.

XXI. And be it enacted, That no arrest or discharge made under this Act shall operate to prevent an application for a second or subsequent arrest, upon such causes as are provided for, by this Act.

Discharge not to prevent subsequent arrest for good cause.

XXII. And be it enacted, That if any party whose *choses* in action, or property shall be

Collusion between party whose *choses* in

action shall be sold and certain other parties to be a misdemeanor.

Punishment of parties convicted.

Interpretation clause.

sold under the provisions of this Act, and the party against whom any such cause of action existed, or who shall be in possession of any property sold, shall after notice of such sale collude together or attempt to collude, to delay, hinder or prevent the purchaser in the recovery of the property or rights vested in him by any sale under this Act, such collusion shall be a misdemeanour, and after such notice, a release given or made, without the knowledge and consent of the purchaser of the *chose* in action or property affected by such release or settlement, or in fraud of such sale, shall be *prima facie* evidence of such collusion; and the parties on conviction thereof, shall be liable to be sent to the Penitentiary of this Province for a term of three years, or to be imprisoned, with or without hard labor, in the common Gaol of the District in which the offence may be committed, for any period not exceeding two years.

XXIII. And be it enacted, That words in this Act importing the singular number or the masculine gender only, shall be construed to include more than one person or thing of the same kind, and females as well as males, unless there be something in the context inconsistent with or repugnant to such constructions; and that this Act shall apply to Upper Canada only.