

No. 113.

4th Session, 3rd Parliament, 14 Victoria, 1851.

BILL.

An Act to abolish Imprisonment for Debt, except in cases of Fraud, and to render the remedy by Writs of Execution in Upper Canada more effectual.

Received and read a first time, Wednesday, 11th
June, 1851.

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Mr. WILSON.

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B I L L .

An Act to abolish Imprisonment for Debt, except in cases of Fraud, and 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, 5 may and shall seize and take all *choses* in action at Law and in Equity arising *on debt* or contract, all debts, judgments, bonds, specialties, bills, promissory notes, securities for money, writings, deeds, stocks and interest in all kinds of companies and associations, money, bank notes 10 and cheques, 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, 15 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 cheques current as 20 money, which may be seized and paid over to the party suing out such execution, in satisfaction of such execution, without exposing the same for sale: Provided always, that no agreement, deed, or writing in any way relating to lands, other than chattel interests therein, shall be seized 25 or sold so far as they relate to such lands, on an execution against goods and chattels.

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.

II. And be it enacted, That by virtue of any such writ, the Sheriff or other officer having the execution thereof, may and shall seize and take all books of account, vouchers and evidences of debts, or *choses* in action belonging 30 to the party against whose goods and chattels such execution shall issue, and shall hold them for the purposes mentioned in this Act.

Sheriff may seize and hold for the purposes of this Act.—Books of accounts, &c.

III. And be it enacted, That the sale of any *choses* in 35 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 and property in the purchaser thereof, to the same extent as it

Effect of the sale of *choses* in action.

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 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, or file a bill in Equity, as the case may be, in his own name, as the assignee thereof, but subject to all legal 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, and also to any right of set off that may have then existed.

Sheriff to give Bill of sale.

What such Bill of sale shall contain.

Its effect.

IV. And be it enacted, That it shall be the duty of every Sheriff or officer who shall sell any *choses* in action or property under this Act, to execute a bill of sale of such property or *choses* in action, sealed with his seal of office, which said bill of sale shall recite the execution under which writ seizure was made, the judgment upon which the same was granted, the seizure and sale, and shall transfer to the Execution Creditor all the right of the party against whom such execution was issued; and the said bill of sale shall be *prima facie* evidence of the said facts so recited in every Court of Law or Equity in Upper Canada.

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

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

Rights of purchaser of *choses* in actions.

Proviso: he shall sue as assignee of such *choses*.

What the Sheriff shall seize and sell

V. 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, whether the execution debtor himself or any execution creditor, and the said Sheriff shall give all parties interested 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.

VI. And be it enacted, That the purchaser of any *choses* in action sold under this Act, shall have the legal and equitable right as the case may be, to demand, sue for, release and acquit such *choses* 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 *choses* in action; and in case such *choses* in action shall have been sold oftener than once, the claim and suit shall be in the name of the last purchaser.

VII. And be it enacted, That by virtue 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 upon such 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 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.

under any writ of fieri facias against lands.

Effect of the sale.

VIII. And be it enacted, That in all cases in which the title to any such land, 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 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 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 manner as is required in cases in which the sale and assignment is made by one party to another.

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

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

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 execution 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.

Effect of the sale of a right of action created by 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 herein-after 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 con-

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

veyance of such lands or interest therein as is mentioned in such deed.

Return to be made by the Sheriff selling lands.

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 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.

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

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 unsatisfied, the defendant may be examined on interrogatories.

Notices to be endorsed on the interrogatories.

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 Crown or of the County Court of the County 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 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 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 custody until he shall be

discharged from such commitment by order of the Court out of which such writ shall have issued, or of a judge thereof.

5 XV. And be it enacted, That, in case any party liable to be interrogated, shall neglect or refuse to answer such interrogatories, or 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
 10 possess or have the means of possessing or over which he has 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
 15 for the County 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 custody, to be kept without bail until further order
 20 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 goal on ca : sa :

XVI. And be it enacted, That upon a return of "no goods" or "no lands" to any writ of execution, it shall be lawful for the party interested in the judgment upon
 25 which such writs may have issued, to apply to the Court in which such judgment was given or a Judge thereof, 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
 30 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
 35 of the Court out of which the execution issued, or by some Judge thereof.

Upon such return as aforesaid the Plaintiff 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.

XVII. And be it enacted, That every person arrested or charged on any writ of *Capias ad satisfaciendum*, shall be entitled to his discharge upon giving up his property,
 40 and satisfying 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
 45 the means of satisfying the judgment.

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

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 a writ of *Capias ad satisfaciendum* under this Act, to any Judge of a County Court in the
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Such application may be made to a district Judge, and granted by him.

County in which the party sought to be arrested resides, and such Judge may and shall, upon the provision of this Act being complied with, order a writ of *Capias ad satisfaciendum* to issue either out of his own Court or from the office of the Deputy Clerk of the Crown in such County, 5 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 authorised to issue writs of *Capias ad satisfaciendum* agreeably to 10 such order.

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

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 15 law or usage to the contrary notwithstanding.

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

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 20 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 writ was prosecuted, that the party arrested has not the means of satisfying such judgment, or any part thereof, besides the 25 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 dis- 30 charged.

Discharge not to prevent subsequent arrest for good cause.

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. 35

Collusion between party whose chose in action shall be sold and certain other parties, to be a misdemeanor.

XXII. And be it enacted, That if any party whose choses in action, or property shall be 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 40 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 misdemeanor, and after such notice, a release given or made, without the knowledge and consent of the 45 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 party or parties on conviction thereof shall be liable to be sent

Punishment of parties convicted.

to the Penitentiary of this Province for a term of three years, or to be imprisoned, with or without hard labour, in the common Gaol of the County in which the offence may be committed, for any period not exceeding two
5 years.

XXIII. And be it enacted, That this Act shall apply to Act to apply
to U. C. only.
Upper Canada only.