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No. 78.

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

BILL.

An Act to prevent the unnecessary sacrifice of property sold under execution in Upper Canada.

Received and read a first time, Thursday, 5th
June, 1851.

Second Reading, Wednesday, 11th June, 1851.

Mr. SMITH (of Durham).

BILL.

An Act to prevent the unnecessary sacrifice of property sold under execution in Upper Canada.

WHEREAS it is expedient to protect the interests Preamble.
both of the creditor and of the debtor, against any exorbitant sacrifice of property taken in execution, at the sale thereof by any Sheriff or Bailiff:—Be it therefore
5 enacted, &c.

That whenever any Sheriff or Bailiff shall after the Sheriff or Bailiff seizing goods to cause them to be appraised.
estate, and the amount to be levied thereon shall exceed the sum of *ten* pounds, it shall be his duty forthwith to
10 cause the same to be appraised by two disinterested freeholders of the County (or of one of the United Counties) in which the seizure shall be made, which appraisers
shall after making such appraisement take and subscribe Appraisement to be made on oath.
before such Sheriff or Bailiff, or any Justice of the Peace
15 or Commissioner for the receiving affidavits to be used in the Court of Queen's Bench for Upper Canada, an oath in the form of the Schedule to this Act, which oath shall be written at the foot of a schedule or list of the property appraised; and such Sheriff or Bailiff shall on the request
20 of the plaintiff or of the defendant furnish him with a copy of such list or schedule, and of the oath thereunto subjoined, on payment at the rate of *threepence* for every hundred words in such copy.

II. And be it enacted, That the said appraisers shall Allowance to the appraisers.
25 for the services aforesaid, be paid by the Sheriff or Bailiff the sum of *two shillings and sixpence* each; if the schedule or list of the property appraised and the oath aforesaid do not exceed one hundred words, and a further sum at the rate of *threepence* for every hundred words over and above
30 the first hundred; and the amount so paid to the appraisers shall be levied by the Sheriff or Bailiff as part of the costs of execution.

III. And be it enacted, That after due notice given in Goods not to be sold in the first instance for less than three-fourths of their appraised value.
the manner and for the time now by law required, the
35 Sheriff or Bailiff shall offer the property so appraised for sale in the usual manner, but shall not sell the same or any part or parcel thereof separately appraised, for less than *three-fourths* of the sum at which it shall have been appraised; and if no person shall be willing to give *three-*
40 *fourths* of the appraised value or more, then such Sheriff New notice to be given: and second sale.
or Bailiff shall again give notice of the sale thereof in the

manner now by law required, but during *three-fourths* only of the time for which the first notice of sale is required to be given, and on the day appointed by such second notice it shall be lawful for the Sheriff or Bailiff to sell the property, or so much thereof as was not sold at the first sale, (to any person not entitled to the money to be levied under the execution,) for whatever it will fetch, or to the party entitled thereto for any sum exceeding *three-fourths* of the appraised value; Provided that if at the time thus appointed for the sale, the officers shall deem it expedient and for the interest of all persons concerned therein to return goods on hand, in whole or in part, for want of purchasers, he may so return the execution, and a *venditioni exponas* may issue, and the Sheriff shall and may proceed thereon as before the passing of this Act.

Proviso: goods may be returned as unsold.

Notice of sale to be always given to the plaintiff.

IV. And be it enacted, That it shall be the duty of the Sheriff in every case immediately upon putting up notice of any intended sale under execution, to give notice to the plaintiff or party entitled to the money to be levied, his attorney or agent, of the day and place of such sale.

Return of sale to be accompanied by a schedule containing certain particulars: penalty for default, &c.

V. And be it enacted, That any Sheriff or Bailiff who may hereafter sell goods and chattels on execution, shall accompany his return of the execution with a schedule particularly describing the goods sold, the sum for which each article was sold, and the manner in which the proceeds of the sale were disposed of, with the particulars of the Sheriffs' fees or charges thereon in detail, and if he shall be guilty of any fraud in the sale, return or schedule, he shall be liable in an action on the case, at the suit of the party injured, for five times the amount of the actual damage sustained by reason of such fraud.

Sheriff may sell real property in one lot or in portions, at the request of the owner.

VI. And whereas doubts exist as to the right of Sheriffs in selling lands under execution to offer the same in separate quantities, and it is expedient to remove such doubts, Be it therefore enacted, that it shall be lawful for any Sheriff or Bailiff hereafter upon any sale of lands under execution, and they are hereby required to offer the same either in one lot or in such portions as may be desired by the party owning the lands; Provided always, that if a purchaser or purchasers cannot be obtained upon the lots or parcels of land when offered in this manner, then the Sheriff or Bailiff may offer and sell the same in one entire lot or otherwise as he may deem advisable, subject however in such case to the same liabilities as existed before the passing of this Act.

Proviso.

SCHEDULE.

FORM OF OATH.

I swear (or affirm, as the case may be) that the several sums set down in the foregoing list or Schedule are, to the best of my knowledge and belief, the true values of the goods and chattels opposite to which such sums are respectively set, and that I have appraised the same conscientiously, and without favor or affection to any person. So help me God.

Sworn before me, this day of 18

A. B. { Appraisers.
C. D. }

E. F.
J. P.