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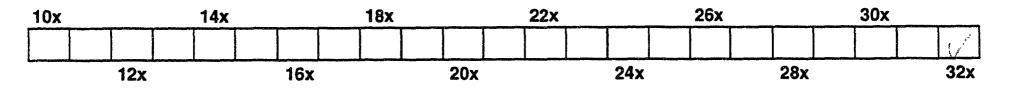
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Commentaires supplémentaires:



## An Act to amend the law relating to executions against the lands of deceased persons, in Upper Canada.

VHEREAS the lands of deceased persons are liable to be sold on Preamble. xec utions recovered against their executors or administrators, without any notice to the heirs or devisees of such deceased persons, and it is desirable that some remedy should be provided therefor; Therefore Her 5 Majesty, &.c., enacts as follows :

I. From and after the passing of this Aci, no execution shall issue from Heirs or deviany Court of Law in Upper Canada against the lands of any testator or sees, or some of them, must intestate, on any judgment recovered against the executors or adminis- be made partrators of such testator or intestate, until the person in whose favor such ties to the 10 judgment has been recovered shall have first issued. from the Court in judgment. which such judgments were recovered, a writ of scire facias in the form in the schedule to this Act, to make the heirs or devisees, or some or one

of them, of such testator or intestate, parties to such judgment.

II. Such writ of scire facias shall issue on rule of either of the Superior How scire 15 Courts of Common Law, or by order of any Judge thereof, or of any Judge facial for that of any County Court in the County in which such judgment was re- be issued. covered, to summon all or such of the heirs or devisees of such testator or intestate as such Court or Judge shall direct, upon affidavits setting forth Affidavit to be to the satisfaction of such Court or Judge, the recovery of such judgment, made.

- 20 the amount then justly due thereon, the particular lands against which such judgment is sought to be enforced, whether the deceased person died with or without a will affecting such lands, if without such will, the name or names of the heir or heirs or some or one of them, if with such will, the name or names of the devisee or devisees or some or one of them, of such 25 land, and also distinguishing such of the heirs or devisees as are of full
- age, infants or femes covert; and such writ shall issue from the office in How directed which the proceedings in the suit have been had, shall be directed to the and served &c. Sheriff of the County or Union of Counties in which such heirs or devisees or some or one of them shall or may reside or be found, shall be tested on
- 30 the day it is issued, be returnable sixteen days after service of a true copy personally on such heir or devisee, and all subsequent proceedings shall be had thereupon in the same manner as in ordinary cases, and judgment and Judgment. execution thereon shall be to recover of the lands of the testator or intestate described in such writ, as against such executor or administrator and such
- 35 heir or devisee, as the case may be, if such recovery shall be in favor of the person sueing out such writ.

III. The defendants in any such writ of scire focias shall be allowed What defence to plead any defence that may avoid or discharge such judgment, or shew may be pleadthat such defendant is not an heir or devisee, or that the lands described in ed.

Aso

Cosis to de fendant succeeding.

the writ are not liable to such judgment, and any judgment thereon in favor of such defendant shall carry costs which may be recovered in the same manner as in ordinary cases of judgments for defendants.

If all the heirs ed as heretofore.

IV. Upon proof to the satisfaction of any such Court or Judge as afore and devisees said, that all such heirs or devisees are resident in any Country or State are out of U. without Hange Canada, such Count on Index shall order a such country to be 5 C. execution, without Upper Canada, such Court or Judge shall order a suggestion to be may be order- entered upon the record of judgment to that effect, and execution against the lands of such testator or intestate shall issue thereupon without any writ of scire facius, in the same manner as before the passing of this Act.

### SCHEDULE.

#### WRIT OF SCIRE FACIAS.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

#### To the Sheriff of the County of

Whereas, A. B., (person by whom judgment is recovered,) lately in our Court. (Queen's Bench, Common Pleas, County Court, as the case may be,) recovered against C. D., as (executor or administrator, as the case may be,) of C. F., deceased, (set out judgment as in writ of execution against goods) and we have been informed that the said judgment still remains unsatisfied, and that the said E. F., deceased, died leaving the following lands (describe them by number, lot, concession, or some other particular description,) in which we are given to understand, G. H., (heir or devisee, as the case may be,) claims an interest as (heir or devisee, as the case may be,) of the said E. F., deceased. Now we hereby command you that you do forthwith summon the said G. H., (heir or devisee) by serving him personally with a true copy of this writ, to be and appear before our said Court of (state the Court.) in sixteen days after the service hereof, to shew cause, if any there be, why the said A. B., should not have execution upon his said judgment against the said lands of the said E. F., deceased.

Witness, &c.