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

WHEREAS the lands of deceased persons are liable to be sold on Preamble.
 executions recovered against their executors or administrators, with-
 out 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 Act, no execution shall issue from Heirs or devi-
 any Court of Law in Upper Canada against the lands of any testator or sees, or some
 intestate, on any judgment recovered against the executors or adminis- of them, must
 trators of such testator or intestate, until the person in whose favor such be made parties 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 *facias* for that
 of any County Court in the County in which such judgment was re- purpose shall
 covered, to summon all or such of the heirs or devisees of such testator or be issued.
 intestate as such Court or Judge shall direct, upon affidavits setting forth Affidavit to be
 20 the amount then justly due thereon, the recovery of such judgment, made.
 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 suing out such writ.

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

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

If all the heirs and devisees are out of U. C. execution, may be ordered as heretofore. IV. Upon proof to the satisfaction of any such Court or Judge as afore-
 said, that all such heirs or devisees are resident in any Country or State
 without Upper Canada, such Court or Judge shall order a suggestion to be
 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 facias*, in the same manner as before the passing of this Act. 5

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*,) recov-
 ered 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.