

A BILL INTITULED

AN ACT to render more effectual the remedies of Judgment Creditors against the Real Estate of their Judgment Debtors. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

1. The Short Title of this Act shall be “The Execution of Judgments against Real Estate Act 1867.” Short Title.

5 2. From and after the passing of this Act the lands and other hereditaments and real estates situate or being within New Zealand belonging to any person indebted (including an equity of redemption) and all interest to which such person is entitled in any lands and other hereditaments corporeal or incorporeal and real estates in New Zealand
10 and which he might according to the laws of New Zealand dispose of and all powers vested in any such person which such person might legally execute for his own benefit shall be subject to the like remedies proceedings and process in any Court of law or equity in New Zealand
15 for seizing selling or disposing of any such lands and other hereditaments and real estates towards the satisfaction of the debts duties and demands of what nature or kind soever owing by such person and in like manner as personal estates in the said Colony are seized sold or disposed of for the satisfaction of debts.

3. No judgment rule decree or order of the Supreme Court already
20 recovered obtained or made or to be recovered obtained or made shall bind or affect or be deemed to have bound or affected any land or hereditaments or any estate or interest therein until and unless a writ of execution shall be issued thereon and no writ of execution issued

No judgment &c. to bind land unless writ of execution thereon be delivered to Sheriff and memorial thereof be registered.

on any such judgment rule decree or order shall affect at law or equity any such lands or hereditaments or any estate or interest therein as to purchasers mortgagees or execution creditors (any notice of any such execution to any such purchaser mortgagee or creditor in anywise notwithstanding) unless and until the same be delivered to the Sheriff or to such other person as is charged with the execution of the process of the Court for execution and a memorial of such judgment rule decree or order certified by a Registrar or Deputy-Registrar of the Supreme Court shall have been registered in manner hereinafter mentioned that is to say—

(a.) Where the title to the land or hereditaments intended to be charged or affected has been brought under the operation of "The Land Registry Act 1860" such memorial shall be registered in the form and manner prescribed by the rules in force for the time being regulating the procedure under the said Act with the District Registrar of Land for the Land Registry District in which such land and hereditaments shall be situate as a charge against the estate or interest intended to be affected.

(b.) Where the title to any such land or hereditaments shall not have been brought under the operation of "The Land Registry Act 1860" a memorial shall be registered with the Registrar of Deeds for the district in which such land or hereditaments shall be situate according to the law for the time being in force for the registration of deeds.

What the memorial shall contain.

4. Every memorial so to be registered as aforesaid shall specify the names of the plaintiff and defendant the sum recovered by such judgment rule decree or order and the time of signing or entering up the same together with the date of the delivery to the Sheriff (or other officer charged with the execution of the process of the Court) for the execution of the writ of *fiery facias* upon such judgment rule decree or order and shall also refer to the land or hereditaments intended to be affected or charged thereby and shall contain or have indorsed thereon or annexed thereto a plan of such land showing its extent boundaries and relative position.

Until registration of memorial no sale of land under writ of execution to be valid against purchaser for value.

5. Until the registration of such memorial as aforesaid no sale or transfer of land under any such writ of execution shall be valid or have any effect as against a purchaser for valuable consideration notwithstanding such writ may have been actually lodged for execution at the time of the purchase and notwithstanding the purchaser may have had actual or constructive notice of the lodgment of such writ.

Memorial of satisfaction.

6. Upon depositing with the Registrar of Deeds of the district within which the lands are situate a memorial of the satisfaction of any such judgment if the title to such land shall not have been brought under the operation of "The Land Registry Act 1860" or in the case of land the title to which has been brought under "The Land Registry Act 1860" upon producing to the District Registrar of Lands for the Land Registry District within which the lands are sufficient evidence of such satisfaction the appropriate entries in the respective registers shall be made and thereupon such judgment and any writ of *fiery facias* issued thereupon shall be deemed to be satisfied.

Judgment to cease to bind unless a sale within six months after registry of memorial.

7. Every such judgment as aforesaid shall cease to bind charge or affect any such land or hereditaments and any estate or interest therein unless some deed or instrument of transfer upon a sale under a writ issued thereupon shall be left for registration in the registry of deeds for the district in which the land is if the title to such land shall not have been brought under the operation of "The Land Registry Act 1860" or if it shall have been brought under the operation of the said Act in the land registry under the said Act for the district within which the land is within six months from the day of the registry of the memorial as aforesaid.

8. It shall not be necessary for the sheriff or other person having the execution of a writ of *feri facias* to make any seizure of land or of the right title and interest of any person of to or in any land or real estate under any writ of execution before the sale of such land right
5 title and interest.

Seizure of land sold under execution unnecessary.

9. Where the sheriff or other person having the execution of any writ of *feri facias* takes in execution any real estate the mode of proceeding shall be that he shall cause his bailiff to go upon such lands and (if any person shall be in occupation thereof) to exhibit to
10 such person his writ and to affix upon some public part of such land and also in the most public thoroughfare nearest thereto a notice of the intention of the sheriff to cause the same to be sold after the expiration of one calendar month unless the debt be sooner paid and shall also cause to be inserted in the Government *Gazette* of the Province in
15 which such lands shall be situated and in at least one newspaper published in the chief town of such Province not less than one calendar month's notice of such intended sale containing a description of the lands levied upon and of the nature of the estate or interest of the execution debtor therein intended to be sold a statement that such
20 lands or the estate or interest of the execution debtor therein (as the case may be) have or has been taken in execution at the suit of the execution creditor notice of the time and place fixed for such intended sale the name of the sheriff or officer under whose authority such sale is advertised and the name and address of the solicitor
25 (if any) for the execution creditor and shall cause such notice to be continued in each publication of such *Gazette* and once in each week in such local newspaper up to the day fixed for such sale or until satisfaction of the judgment debt whichever shall first happen.

How writ of *feri facias* to be executed against lands.

10. The sheriff or other person as aforesaid may by such notice
30 appoint the place of sale for any such lands and other property taken in execution to be at the place of levy or elsewhere according as he may deem it most advantageous.

Sheriff may appoint place of sale.

11. At the time and place appointed by such notice the sheriff or other person as aforesaid shall (unless the execution be previously
35 satisfied or unless the Supreme Court or a Judge thereof shall otherwise order) proceed to sell the lands levied upon or the estate and interest of the execution debtor therein by public auction to the highest bidder.

How sheriff to sell.

12. The judgment debtor may by notice in writing delivered to the sheriff or other person charged with the execution of the writ at least
40 ten days previously to such sale require that any specified portions of the real estate so advertised be first sold and the sheriff or other person aforesaid shall cause the same to be first put up for sale accordingly and if a sufficient sum shall be realized thereby to satisfy the execution
45 interest poundage officers' fees and expenses no other part of such lands shall be sold otherwise the sheriff or other person aforesaid shall proceed with the sale of the remainder and if both real and personal estate be taken in execution belonging to the same party he shall unless the party otherwise desire cause the personal estate to be sold
50 first and in case the proceeds be not sufficient to satisfy the execution he shall then sell the real estate.

Debtor may specify portions of land taken to be first sold.

13. It shall be lawful for the sheriff or other person as aforesaid by himself or his deputy to sell by auction all lands and property of whatever nature real or personal which may be taken by him in
55 execution without having taken out an auctioneer's license anything in any Law Act or Ordinance to the contrary notwithstanding.

Sheriff may sell by auction without auctioneer's license.

14. In case of any sale by the sheriff or other person as aforesaid of any lands hereditaments or real estate or of any right estate or interest of the execution debtor therein respectively such sheriff or person is
60 hereby empowered and required to execute a proper deed of conveyance

Sheriff to convey lands sold.

assignment or transfer to the purchaser of such lands hereditaments or real estate or of the right estate or interest of the execution debtor therein (as the case may require) and such deed shall be sufficient to convey to the purchaser all the estate and interest of the execution debtor in the property so sold as aforesaid.

Form of *fiery facias*. 15. In lieu of the writ of *fiery facias* hitherto used upon executions of judgments of the Supreme Court every writ of *fiery facias* may be in the form contained in the first Schedule to this Act or to the like effect with such alterations as the nature of the action the character of the parties or the circumstances of the case may render necessary and the execution of such writs shall be enforced in such and the same manner as nearly as the circumstances of the case will admit as the execution of writs of execution is now enforced.

Execution may issue out of the Supreme Court. 16. Whenever any sum of money shall have been recovered by the judgment of any District Court or by the order or judgment of any Resident Magistrate's Court in its extended jurisdiction the clerk of such Court upon the application of the judgment creditor or of any person on his behalf shall grant and deliver to the person making such

Second Schedule. application a certificate in the form contained in the second Schedule to this Act and such clerk shall register in his office a minute or memorandum thereof and it shall be lawful for such person to file the said certificate in the Supreme Court in the judicial district in which the district over which the District Court or Resident Magistrate's Court has jurisdiction is and thereupon without any previous process to sign final judgment in that Court in the form contained in the

Third Schedule. third Schedule to this Act (on which judgment no appeal or proceeding in error shall lie) for the sum mentioned in such certificate to be unpaid together with interest thereon at the rate of eight pounds per centum per annum from the day named in such certificate until the date of the said final judgment and the fee paid for the said certificate to the clerk of the said District Court or Resident Magistrate's Court as the case may be as well as the fees paid in the Supreme Court for ascertaining the amount to be recovered on the said final judgment and for signing such judgment and the sum of one pound eleven shillings and sixpence for the costs and charges of obtaining the said certificate and signing the said judgment and upon such final judgment execution may be forthwith issued in the same manner as on any other judgment of the Supreme Court Provided always that no such certificate shall be granted before the time at which execution could be issued out of the District Court or Resident Magistrate's Court as the case may be and if any execution against the goods and chattels shall have been issued out of such Court no such certificate shall be granted until after the return of the warrant of execution but if any execution against the person shall have been issued out of such Court no such certificate shall be granted at all and after any such certificate shall have been granted no further proceeding shall be had or taken in such action in the District Court or Resident Magistrate's Court as the case may be.

Rules of Court &c. repugnant to this Act repealed. 17. All general rules of the Supreme Court and all provisions of any Act or Ordinance so far as such rules or provisions are repugnant to or inconsistent with this Act shall respectively be cancelled and repealed Provided that this Act shall not apply to any judgment recovered before the passing of this Act and registered against any land under the laws relating to the registration of deeds or under "The Land Registry Act 1860" but every such registered judgment shall give to the judgment creditor and all persons claiming under him all rights and remedies which it would have given if this Act had not been passed.

FIRST SCHEDULE.

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

To the Sheriff of greeting.

WE command you that of the real and personal estate of A. B. [here insert the place of abode or last known place of abode and calling or description of defendant] of in your district you cause to be made the sum of [in words] which C. D. of hath recovered against him in our Supreme Court of New Zealand or District Court of by virtue of a judgment bearing date the day of together with interest upon the said sum at the rate of eight pounds for every one hundred pounds by the year from the said day of and cause that money with such interest as aforesaid immediately after the execution hereof to be rendered to the said C. D. (or in case the defendant has never been personally served or appeared) to be paid into this Court.

Witness &c.

SECOND SCHEDULE.

PLAINT No.

THIS is to certify to the Supreme Court of New Zealand that at the court at on the day of one thousand eight hundred and A. D. and C. D. obtained and had a judgment against E. F. for the recovery of the sum of pounds and that the whole [or pounds part] of the said sum is still due upon the said judgment and I do further certify that the sum of five shillings has been paid into the said court for this my certificate.

Given under my hand this day of

O. P. Clerk of the said District Court [or Resident Magistrate's Court.]

THIRD SCHEDULE.

In the Supreme Court.

No. [of action in the Supreme Court.]

The day of A.D. 186 .

(to wit) A. B. in his own proper person [or by E. F. his attorney] sues C. D. for that on the day of in the court at the plaintiff obtained and had a judgment against the defendant for the sum of as by the certificate of the clerk of the said court now remaining on record in this court appears and the whole [or pounds part] of the said sum still remains unpaid according to such certificate Therefore it is this day considered that the plaintiff do recover against the defendant the said sum of and also for interest and for the costs and charges of the said certificate and of this judgment which said last-mentioned two sums of money amount altogether to the sum of

*Amendments of the LEGISLATIVE COUNCIL in "The Execution of
Judgments against Real Estates Bill."*

In Clause 9 lines 8 and 11 omit "one" and insert "three" instead thereof.

*Legislative Council,
27th September, 1867.*