

WESTERN AUSTRALIA

ANNO SEXTO

VICTORIÆ REGINÆ

No. 15

An Act to extend the Remedies of Creditors against the Property of Debtors.

[Assented to 10th November, 1842.]

WHEREAS it is expedient to give judgment creditors more effectual remedies against the real and personal estate of their debtors than they possess under the existing law: Be it therefore enacted by the advice of the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that by virtue of any writ of execution to be sued out of the Civil Court of this Colony or any precept in pursuance thereof, the Sheriff or other officer having execution thereof shall or may seize and take money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialities or other securities for money belonging to the party against whose effects such writ shall have been sued out, and shall or may seize and retain for any period not exceeding forty-eight hours the books of accounts of such party relating to the trade, business, calling or occupation of such party, and shall pay or deliver to the party suing out such execution any money or bank notes which shall be so seized or a sufficient part thereof, and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialities or other securities for money as a security or securities for the amount by such writ directed to be levied, or so much thereof as shall not have been otherwise levied and raised, and may sue in the name of such Sheriff or other officer for the recovery of the sum or sums secured thereby and for the recovery

Preamble

Sheriff may
seize, &c., nego-
tiable securities
sue for debts, &c.

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of any debt due to the party against whom such writ shall have issued as may in the reasonable discretion of such Sheriff be requisite (over and above the value or estimated value of any other property seized under such writ) to satisfy the amount by such writ directed to be levied if and when the time of payment of the sums secured by such securities and of such debts respectively shall have arrived, and that the payment to such Sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, speciality or other security, with or without suit, or the recovering and levying execution against the party so liable, shall discharge him or her to the extent of such payment or of such recovery and levy in execution, as the case may be, from his or her liability on any such cheque, bill of exchange, promissory note, bond, speciality or other security, and such Sheriff or other officer shall pay over to the party suing out such writ the money so to be recovered or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied, and if after satisfaction of the amount so to be levied, together with Sheriff's poundage and expenses, any surplus shall remain in the hands of such Sheriff or other officer, the same shall be paid to the party against whom such writ shall have been issued : Provided always that no such Sheriff or other officer shall be bound to sue any party so liable as aforesaid, unless the party suing out execution shall enter into a bond, with two sufficient sureties, for indemnifying him from all costs and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof, and the Sheriff shall be entitled to a fee upon such of twenty shillings, to be deducted out of any money to be recovered in such action.

Sheriff not
obliged to sue
unless
indemnified

2. And be it enacted that a written notice signed by the said Sheriff, addressed to any person who shall appear by any such books of account as aforesaid to be indebted to any person against whom any such writ of execution shall have issued and warning the person to be served with such notice not to pay such debt to any other person than the said Sheriff, shall, after service thereof, have the effect of restraining the party served therewith from paying such debt otherwise than to the said Sheriff until a written countermand of such notice be signed and served by such Sheriff ; and if any person served with such notice shall, after service thereof, and before service of such countermand, pay such debt otherwise than to the said Sheriff, such person shall be liable to the execution creditor for the amount so paid.

Parties indebted
to any person
against whom
writ of execution
has issued, not to
pay such debt to
any other person
than the Sheriff

3. And be it enacted that if any person against whom any judgment shall have been entered up in the said Civil Court shall have any stock or share or shares of or in any public company in this Colony (whether incorporated or not) standing in his name in his own right or in the name of any person in trust for him, it shall be lawful for the Commissioner of the said Court, on the application of any judgment creditor, to order that such stock or shares or such of them or such part thereof respectively as he shall think fit shall stand charged with the payment of the amount for which judgment shall have been so recovered and interest thereon ; and if such judgment and interest be not paid or satisfied within the period of six calendar months from the date of such order, it shall be further lawful for the said Commissioner on the application of such judgment creditor or his or her lawful representative,

Shares in public
companies may
be charged and
sold

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supported by affidavit, that such judgment and interest or some portion thereof respectively are or is still unsatisfied, to order and direct that the stock or shares so charged as aforesaid shall be sold by the Sheriff in like manner as any personal property of a defendant may be sold under the process of execution of the said Court, but subject nevertheless to any right of pre-emption and to the rules, regulations and agreements, if any, which in and by the deed of settlement or partnership or other instrument of association of such company may be contained or provided for or concerning the sale of such stock or shares.

4. And be it further enacted that every order of the said Commissioner charging any stock or share in any public company under this Act shall be made in the first instance *ex parte* and without any notice to the judgment debtor, and shall be an order to show cause only, and such order shall restrain such company from permitting a transfer of such stock or shares, and if after notice of such order to the person or persons to be restrained thereby or in case of corporation to any authorised agent thereof, and before the same order shall be discharged, such corporation or other company shall permit any such transfer to be made, then and in such case such corporation or other company shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred or such part thereof as may be sufficient to satisfy his judgment, and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and unless the judgment debtor shall, within a time to be mentioned in such order, show to the said Commissioner cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor or his attorney, be made absolute: Provided that the said Commissioner shall, upon the application of the judgment debtor or any other person interested, have full power to discharge or vary such order and to award such costs upon such application as he may think fit.

Order of Court
to restrain
transfer of
shares, &c

5. And be it enacted that every judgment debt shall carry interest at the rate of ten pounds for every hundred pounds by the year from the time of entering up the judgment until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment.

Judgment to
carry interest

6. And be it enacted that all decrees and orders of the said Civil Court, on the Equity side thereof, and all rules and orders of the said Court, interlocutory or other, whereby any sum of money or any costs, charges or expenses, shall be payable to any person, shall have the effect of judgments on the Common Law side of the said Court; and the persons to whom any such moneys, costs, charges or expenses shall be payable shall be deemed judgment creditors within the meaning of this Act, and all remedies hereby given to judgment creditors are in like manner given to persons to whom any moneys, costs, charges or expenses are by such orders or rules respectively directed to be paid; and all such decrees and orders of the said Court on the Equity side thereof, and all such rules and other orders of the said Court as aforesaid, shall or may be enforced in like manner and by the like process of execution (or as near thereto as the circumstances of the case will admit) as the judgments of the said Court, on the Common Law side thereof, may be enforced.

Decrees and
orders of Court
of Equity, &c.,
to have effect
of judgments

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Sheriff may sell
by private
contract

7. And be it enacted that it shall be lawful for the Sheriff of the said Colony to sell by private contract any goods and chattels by him seized under process of execution as soon after the seizure thereof as he may think fit, if it shall appear to him that such a course of sale is likely to realise the fair market value of the said goods and chattels, and to procure, if he shall deem the same expedient, two competent persons to make an appraisement in writing, under their hands, of such goods and chattels, and to pay a fee of two shillings and sixpence to each of such appraisers, and to charge and include such fees in the expenses of the execution.

Act may be
amended

8. And be it enacted that this Act may be amended or repealed by any Act to be passed during the present session.

JOHN HUTT,
GOVERNOR.
