

ACT No. V OF 1855.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 17th of February 1855.)

An Act to assimilate the process of Execution on all sides of Her Majesty's Supreme Courts, and to extend and amend the provisions of Act XXV of 1841.

WHEREAS it is expedient to make the process of execution on all sides of Her Majesty's Supreme Courts as near as may be the same; and also to extend and amend the provisions for giving effect to the decrees and orders of Her Majesty's Supreme Courts in certain cases which are contained in Act No. XXV of 1841: It is enacted as follows:—

I. \*No process of contempt shall issue to compel the performance of so much of any judgment, decree, sentence, or order, either decretal or interlocutory, made by any of Her Majesty's Supreme Courts, as directs any person to pay any money or costs, or to execute any conveyance or other deed or instrument, or to make any transfer or surrender, or to do any act which a constituted attorney of such person, if ordered by the Court to do the same for his principal, would have the means of performing.

Process of contempt not to issue to compel performance of decree, &c., to pay money or to execute a deed, &c.

II. Where any person is liable to pay any money or costs upon a judgment recovered against him in any of the said Courts, or has made default in the payment of any money or costs which by any order, decree, or sentence made in any proceeding by any of the said Courts on any side thereof, he has been ordered to pay, execution may be issued either against his person by a writ in the nature of the ordinary writ of *Capias ad Satisfaciendum*, or to levy such money or costs out of his property by a writ of *Fieri Facias* or *Venditioni*

Party in default, after judgment or order to pay money or costs, to be proceeded against by *Ca. Sa. or Fi. Fa. &c.*

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*Venditioni Exponas*, according to the course and practice of the Court as the same shall be settled by the rules and orders to be made for giving effect to the provisions of this Act. Provided that nothing herein contained shall extend to a fine unpaid for a criminal offence, or alter the mode of compelling the payment of such fine.

Proviso.

III. The Sheriff shall pay the money which he may levy under any execution, either to the party named in the writ in satisfaction of his demand, or into Court according to the exigency of the writ which shall be in conformity with the order under which the money is payable.

Sheriff how to deal with money levied.

IV. Whenever any person has been directed by any judgment, decree, sentence, or order of any of the said Courts to execute any conveyance, deed, or instrument, or to make any transfer or surrender, or to do any act which a constituted attorney of such person, if directed by the Court to do the same for his principal, would have the means of performing; and such person has refused or neglected to obey such direction or has evaded compliance therewith, either by absenting himself in order to avoid service of the judgment, decree, sentence, or order, wherein such direction is contained, or by any other means; it shall be lawful for the Court by which such direction has been given, whether the person disobeying or evading compliance with such direction is in custody or not, upon application made to the said Court for that purpose, and upon proof to its satisfaction of such default or evasion as aforesaid, to order or appoint the Registrar, Master, or other Officer of the said Court to execute such conveyance, deed, or instrument, or to make such transfer or surrender, or to do such other act as aforesaid, for and in the name of the person by whom the same ought to have been executed, made, or done: and every conveyance, deed, and instrument which shall have been executed, and every transfer and surrender which shall have been made, and every other act which shall have been done by an Officer of Court under the authority of this Act, shall in all respects have the same force and validity as it would have if it had been duly executed, made, or done by the persons for and in whose name it shall have been so executed, made, or done.

Power to the Court to appoint an Officer to execute instrument, or to do any act for the person who has been ordered but has failed to execute or do the same.

V. If

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V. If it shall appear to any of the said Courts, upon an application made to it under this Act, that it can safely dispense with the formal execution of any conveyance, deed, or instrument which the person directed to execute the same has failed to execute, or with the signature of any writing required for the formal performance of any act required to be done but omitted to be done by the person directed to do the same, it shall be lawful for the said Court, in lieu of ordering its Officer to execute the said conveyance, deed, or instrument, or to sign the said writing, by its order to declare that such conveyance, deed, instrument, or writing, shall be as valid and effectual to all intents and purposes without the execution or signature of the person directed to execute or sign the same, as it would have been if he had duly executed or signed the same.

Or in certain cases to dispense with the execution of an instrument or the signature of a writing.

VI. When any person has been directed, by any judgment, decree, sentence, or order of any of the said Courts, to deliver up possession of any immoveable property or of any specific chattel or security, or to deliver to any person or persons, or to deposit in Court or elsewhere any books, papers, writings, or other articles or things, and has refused or neglected to obey such direction, or has evaded compliance therewith, either by absenting himself to avoid service of the said judgment, decree, sentence, order, or by any other means, it shall be lawful for the Court by which such direction has been given, whether such person is in custody or not, on proof of such default or evasion as aforesaid, to issue a writ or writs to the Sheriff, directing him either to put the party therein named into possession, or to seize and take such chattel, security, books, papers, writings, or other articles or things, and to deal with the same according to the exigency of the writ, which in all cases shall be conformable to the order, to compel the performance whereof the same is issued. But nothing herein contained shall authorize the Sheriff to disturb the *bonâ fide* possession of any person other than the person against whom such order is made.

Proviso.

VII. The first and second Sections of Act No. XXV of 1841, except as to all proceedings which shall have been had or commenced thereunder before this Act comes into operation, are hereby repealed.

Repeal of 1st and 2nd Sections of Act XXV of 1841

VIII. Nothing

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VIII. Nothing in this Act contained shall prevent any of the said Courts from issuing process of contempt, according to its present course of practice, on its Equity side against the person of any party who has been ordered to do any act other than the payment of money or costs, or the execution of any conveyance, deed, or other instrument, if obedience to such order cannot otherwise be enforced, or against the person of any party who has committed a breach of any injunction; and the Court may issue such process of contempt on any of its sides, and in such cases shall have and may exercise all powers which it now has touching the commitment, detention, or discharge of any person taken under process of contempt issued on its Equity side.

Power reserved to issue process of contempt to compel obedience to orders which cannot be otherwise enforced.

IX. It shall be lawful for Her Majesty's Supreme Courts to frame such new or altered writs of execution as they shall deem necessary or expedient for giving effect to the provisions hereinbefore contained, and by the Rules or orders to be made under this Act, to regulate the mode of issuing and executing such writs of execution.

Court may frame writs of execution.

X. The words "person" and "party" as used in this Act shall be understood to include any body corporate, and though used so as to import the singular number or the masculine gender only, shall be understood to include several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such construction; and the term "Her Majesty's Supreme Courts" shall be understood to include the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca.

Interpretation Clause.

XI. This Act shall take effect from the first day of May next.

Commencement of the Act.