

ACT NO. VI 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 extend the operation of, and regulate the mode of executing Writs of Execution in Her Majesty's Supreme Courts of Judicature.

Preamble. WHEREAS it is desirable to extend the operation of, and regulate the conduct of writs of execution out of Her Majesty's Supreme Courts in certain cases; It is enacted as follows :—

I. *Clause 1.* Under any writ of *feri facias* issued out of any of Her Majesty's Supreme Courts, on any side of the Court, may be seized and sold any lands, houses, or other immoveable property of the party against whose effects such writ issues, whether his estate or interest therein be legal or equitable.

Sheriff empowered under any writ of *feri facias* issued on any side of Supreme Court to seize and sell immoveable property.

Clause 2. The Sheriff under any such writ may put the purchaser in possession of such of the lands, houses, or other immoveable property sold under such writ, of which the judgment debtor is in the actual possession, and of which an actual delivery can be made.

When property is in possession of judgment debtor, sheriff to put purchaser in possession.

Clause 3. If the lands, houses, or other immoveable property liable to be sold under such writ be in the possession of any person other than the judgment debtor, the Sheriff shall not seize such property, but shall sell and convey all the right, title, and interest of the debtor; and such conveyance shall pass the same interest to the purchaser as if the same had been executed by the debtor.

When property is not in possession of judgment debtor, sheriff not to seize but to sell debtor's interest.

Effect of conveyance.

Clause 4. In such last mentioned case if the property shall be situate beyond the local limits of the jurisdiction of such Court, the Sheriff shall notify such sale to the Judge of the District, who shall cause notice of the same to be officially proclaimed,

Sale when to be notified to Judge of District.

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Proclamation of same. proclaimed, in like manner as if the sale had been effected under a decree of his own Court.

Clause 5. In any case of intended sale of immoveable property beyond the local limits of the jurisdiction of such Supreme Court, the Sheriff shall cause a notice, specifying the time and place of the intended sale, to be stuck up in some conspicuous place in the office of the Collector of the district within which such property is situate and also at the Mal Cutcherry of the estate, if any, otherwise on some conspicuous part of the property to be sold. The number of days between the publication of such notice and the sale shall not be less than fourteen days, if the property be not distant more than 100 miles from the Supreme Court; if the distance shall exceed 100 miles, the number of days shall be increased by an additional day for every 50 miles of such excess of distance. Provided that the want of such notice or any irregularity in respect thereof, shall not vitiate the sale in the hands of a *bonâ fide* purchaser.

Notice of sale when to be published in the office of Collector, &c.

Length of time for publication of notice.

Proviso.

II. If any lands, houses, or other immoveable property be seized or liable to be sold under any such writ, it shall be lawful for the Court, on application to it on behalf of the execution debtor or of any one of several execution debtors, if the Court shall be satisfied that there is reasonable ground to believe that the amount of the judgment may be raised by mortgage of the estate, to postpone the sale for a term not exceeding one month to enable the defendant to raise the amount, and to direct that the money ordered to be levied by such execution shall be raised by mortgage instead of sale of such lands, houses, or other immoveable property, upon such terms as to the payment of interest upon the judgment or otherwise as the Court may think fit, and in such case to give all necessary directions for the execution of such mortgage.

In what case judgment debt may be raised by mortgage instead of sale.

III. Under any such writ of *fieri facias* may also be seized money, bank-notes, cheques, bills of exchange, promissory notes, hoondees, Government securities, bonds, or other securities for money, and also debts belonging to the said person; and the Sheriff or other officer having the execution of the writ shall be at liberty to pay or deliver over to the party suing out such execution, any money or bank-notes which shall so be seized, or a sufficient part thereof, and shall with

Sheriff empowered under any such writ of *fieri facias* to seize money, bank-notes, &c.

And to pay money or bank-notes, to execution creditor.

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with the order of the Court, endorse over or transfer, and without such order, shall hold any such cheques, bills of exchange, promissory notes, hoondees, bonds, or other securities for money as a security or securities for the amount by such writ of *feri facias* directed to be levied,

And with the order of the Court to endorse over, and without such order to hold cheques, bills of exchange, & c.

or so much thereof as shall not have been otherwise levied and raised, and may, where he retains the same, sue in his own name as

And to sue in his own name for amount secured by bills of exchange, &c.

Or for debts.

such Sheriff or officer, for the recovery of the sum or sums secured thereby, or for any debt seized as aforesaid when the time of payment thereof shall have arrived; and the payment to such Sheriff or other officer, or to the party entitled under such endorsement or transfer, by the party liable, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, hoondee, bond, security, and debt; 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 may 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 all lawful charges 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 be so issued, unless the same is duly attached in the hands of such Sheriff or

Proviso as to indemnity for Sheriff.

other officer. Provided that no Sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, hoondee, bond, security, or debt, unless the party suing out such execution shall give security to the Sheriff 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; the nature and amount of such security to be determined, in case they cannot agree, by the proper officer of the Court in which such action shall be brought, or, if the Court shall so order, by some other person to be appointed by the Court for such purpose; and the expense of preparing and executing such security shall be deducted out of any money to be recovered in such action, and the net proceeds only in this and other cases provided for by this Act shall be considered as received in satisfaction of the debt due to the execution creditor.

IV. If

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IV. If the Sheriff or other officer under any writ of *feri facias* shall seize any Government security standing in the name of, or belonging to the party against whose property such writ shall be issued, he shall have power to receive the interest due on such Government security whether specially endorsed or otherwise, and to sign a receipt for the same ; and also to sell and dispose of such Government security through a broker at the market rate of the day ; and if the endorsement of such party shall be required to transfer such Government security, the Sheriff or other public officer shall endorse the same thus, " A. B. by C. D., Sheriff ;" and such endorsement shall be as effectual to pass the said Government security and to give a good title to the holder thereof as if the same had been endorsed by the party himself or his duly constituted attorney.

Sheriff empowered to receive interest on Government security seized by him.

And to sell and where endorsement necessary to endorse such security.

V. No debt shall be sold by the Sheriff under the process of the said Court, any Charter of any of the said Supreme Courts to the contrary notwithstanding ; but the same shall be realized in the mode hereinbefore directed.

No debt to be sold by Sheriff.

VI. If any person against whom any writ of execution shall have issued, shall have any interest in any stock or shares in any public Company, whether incorporated or not, carrying on business in India and within the reach of the process of the Court out of which such writ of execution has issued, it shall be lawful for the said Court or for any Judge thereof, on the application of the party who has sued out such writ of execution, to make an order *ex parte* that such interest in such stock or shares, or such of them or such part thereof respectively as the said Court or Judge shall think fit, shall stand charged with the payment of the amount due in respect of such writ of execution ; and such order shall have the like effect and entitle the person in whose favor the same is made to the same remedies and priorities as a charge executed in favor of such person by the person against whom execution shall have been issued ; and service or notice of such order upon or to the public Company whose stock or shares are the subject of such order, or upon or to any person claiming an interest in such stock or shares, shall have the like effect and shall entitle the person in whose favor such order is made to the same

Shares in public Company may be charged in execution.

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same remedies against such public Company or such last mentioned person as notice of a charge executed of even date with such order by the person against whom execution shall have been issued in favor of the person at whose suit the same shall have been issued. Provided
Proviso. that nothing herein contained shall prevent the person against whom such order shall have been made or any other person affected thereby, from applying to the Court or Judge by whom such order has been made for its discharge on such grounds as may be just.

VII. If such debtor shall have any interest in any property which shall be standing in the name of the Accountant-General of the Court or of any other Officer of the Court, or in the dividends, interest, or annual produce thereof, it shall be lawful for the Court or a Judge to make an order that the interest of the defendant in such property shall be applied in payment of such debt, and the Court or Judge shall have power to make such order as may be necessary to give full effect to the above provision.

Property standing in name of any officer of Court.

VIII. A plaintiff or defendant arrested under any writ of *capias ad satisfaciendum* issued upon any judgment, order, decree, or sentence of any of the said Courts whereby money is ordered to be paid to any party, shall be entitled to his discharge from such arrest on payment or tender to such party or his attorney in the cause, or to the Sheriff or Gaoler in whose custody such person may be under such writ, of the amount directed to be levied by such writ.

Party arrested under a *ca. sa.* entitled to discharge on payment or tender of the amount of levy to opposite party or his attorney or to Sheriff or Gaoler.

IX. A written order under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* shall have been issued, shall justify the Sheriff, Gaoler, or person in whose custody the party may be under such writ in discharging such party, unless the party for whom such attorney professes to act shall have given written notice to the contrary to such Sheriff, Gaoler, or person in whose custody the opposite party may be; but such discharge shall not be a satisfaction of the debt, unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

Written order of attorney issuing *ca. sa.* sufficient for the discharge of a party by Sheriff or Gaoler, unless the client shall give written notice to the contrary.

Attorney not justified in giving order for discharge without the consent of his client.

X. A

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Sheriff not to be liable for escape, &c., beyond the amount of the loss really occasioned.

X. A Sheriff shall not be liable in an action for escape or other breach of duty, to pay damages beyond the amount of the loss which his breach of duty has really occasioned.

XI. A writ of execution sued out after the commencement of this

Writ of execution, if unexecuted, not to remain in force more than one year unless renewed.

But may be renewed from time to time.

Act, if unexecuted, shall not remain in force for more than one year from the date of such writ, unless renewed in the manner hereinafter provided; but a writ of execution, whether sued out before or after the passing of this Act, may, at any time before its expiration, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ by being marked with the seal of the Court and with a memorandum, signed by the officer, of the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the Sheriff signed by the party or his attorney and bearing the like seal of the Court and memorandum signed by the officer as aforesaid; and

Renewed writ entitled to same priority as its original.

Proviso as to writ of *Habere*.

a writ of execution so renewed shall have effect and be entitled to the same priority as the original writ would have had. Provided, however, that no writ of *habere facias possessionem* shall be renewed without the special leave of the Court or a Judge.

XII. The production of a writ of execution or of the notice renewing

Production of writ or of notice of renewal sufficient evidence of renewal.

its having been so renewed.

the same, purporting to be marked with such seal and signed as aforesaid, showing the same to have been renewed according to this Act, shall be sufficient evidence of

XIII. * All property of every kind that may be seized under a writ of

Under a writ of sequestration all property may be seized in like manner as under a *feri facias*.

cases be made in the mode directed by this Act as to seizures under writs of

Sum ordered to be realized may be levied as under a *feri facias*.

of *feri facias*.

feri facias issued from the said Supreme Courts respectively, may be seized also under a writ of sequestration duly issued from the same, and the seizure must in all cases be made in the mode directed by this Act as to seizures under writs of *feri facias*, and any sum ordered by the Court to be realized by a sequestration, shall be realized in the same mode, and not otherwise, as if directed to be levied under a writ

XIV. The

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XIV. The words "person" and "party" as used in this Act shall be
Interpretation clause. 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 con-
text 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.