

1880, No. 31.

AN ACT to render effectual the Remedies of Judgment Creditors against the
Real Estate of their Judgment Debtors. EXECUTION AGAINST
REAL ESTATE.

[27th August, 1880.]

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 is “The Execution against Real Estate Act, Short Title
1880.”

Repeal of Act of 1867.

2. "The Execution of Judgments against Real Estate Act, 1867," is hereby repealed, but this repeal shall not affect proceedings pending or incomplete under such Act, which may be carried on and completed as if this Act had not been passed.

Lands, &c., liable to satisfy debts.

3. After the passing of this Act the lands (which word "lands" in this Act shall extend to and include an equity of redemption, and any estate or interest in hereditaments, whether corporeal or incorporeal, and all powers and rights vested in or exercisable by any person for his own benefit) in the Colony of New Zealand, belonging to any person, may be applied and sold in or towards payment of the debts or demands owing by such person in like manner as personal estate in the said colony may be seized and sold for the satisfaction of debts.

No judgment, &c., to affect lands until writ delivered to Sheriff and a memorial registered.

4. No judgment, rule, decree, or order of the Supreme Court already recovered, obtained, or made, or to be recovered, obtained, or made, shall bind or affect, or be deemed to have bound or affected, any lands, until a writ of execution shall be issued thereon; and no writ of execution issued on any such judgment, rule, decree, or order shall affect at law or equity any such lands in any manner whatsoever, unless the same execution 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 is under "The Land Transfer Act, 1870," or any Act amending the same, such memorial shall be lodged with a District Land Registrar for the district in which such land is situated, and shall be entered as a charge against the land intended to be affected.
- (b.) Where the title to the land 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 shall be situated, as a charge against land intended to be affected.
- (c.) Where the title to the land shall not have been brought under "The Land Transfer Act, 1870," or any Act amending the same, or "The Land Registry Act, 1860," a memorial shall be registered with the Registrar of Deeds for the district in which such land shall be situate, according to the law for the time being in force for the registration of deeds.

What memorial shall contain.

5. Every memorial so to be lodged and 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 *feri facias* upon such judgment, rule, decree, or order, and shall also refer to the land 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, or refer to an existing grant, certificate, receipt, or other instrument for description of parcels: Provided that any person who or whose land may be prejudicially affected by anything done under the foregoing provisions of this Act may apply to a Judge at Chambers to have the registration of such memorial removed or the effect thereof modified, and such Judge

may make such order in the premises as may be just, and allow such costs to either party as he may consider reasonable.

6. 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.

Until registration of memorial, no sale to be valid against purchaser.

7. Upon depositing with the District Land Registrar, or the District Registrar of Lands, or the Registrar of Deeds, as the case may be, of the district within which the lands are situate, a memorial of the satisfaction of any such judgment, or other sufficient evidence of such satisfaction, or an order of a Judge of the Supreme Court, the appropriate entries in the respective registers shall be made, and thereupon such judgment and any writ of *feri facias* issued thereupon shall be deemed to be satisfied as regards such lands.

Upon deposit of memorial of satisfaction, or Judge's order, entries in registers to be made.

8. Every such judgment as aforesaid shall cease to bind, charge, or affect any such land, unless some deed or instrument of transfer upon a sale under a writ issued thereupon shall be left for registration within four months from the day of the lodging or registry of the memorial as aforesaid.

Judgment to cease to bind land unless sale within four months.

9. 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 of any person under any writ of execution before the sale of such land.

Seizure of land unnecessary.

10. The Sheriff or other person having the execution of any writ of *feri facias* shall give notice of the intention of the Sheriff to cause the land to be sold after the expiration of at least one calendar month after the first publication of such notice, unless the debt and costs be sooner paid, by causing the said notice to be inserted in the General Government *Gazette* and in at least one newspaper usually circulating in the county or borough in which such land shall be situated, and shall cause a copy of such notice, properly stamped and addressed, to be sent by post to the execution debtor, or to his last known place of abode in the colony; such notice shall contain a description of the said lands, or of the nature of the estate or interest of the execution debtor therein intended to be sold, a statement that such 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 (if any) for the execution creditor; and such notice shall be published at least twice in such *Gazette*, and at least once in each week in such newspaper up to the day fixed for such sale, or until satisfaction of the judgment debt and costs, whichever shall first happen.

How writ to be executed.

11. The Sheriff or other person as aforesaid may by such notice appoint the place of sale for any such lands taken in execution, to be at such convenient place or places according as he may deem it most advantageous.

Place of sale may be appointed.

12. At the time and place appointed by such notice, the Sheriff or other person as aforesaid shall, unless the execution be previously satisfied, or unless the Supreme Court or a Judge thereof shall otherwise order, proceed to sell the said lands of the execution debtor by public auction to the highest bidder.

How Sheriff to sell.

13. The judgment debtor may, by notice in writing delivered to the Sheriff or other person charged with the execution of the writ, at least seven days previously to such sale, require that any specified portions of the land so advertised be first sold, and the Sheriff or other person aforesaid shall cause the same to

Debtor may specify portions of land to be first sold.

be first put up for sale accordingly, and if a sufficient sum shall be realized thereby to satisfy the amount of the execution, 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 lands and personal property be taken in execution belonging to the same party, he shall, unless the party otherwise desire, cause the personal property to be sold first, and, in case the proceeds be not sufficient to satisfy the execution, he shall then sell the lands.

Auctioneer's license not required.

14. It shall be lawful for the Sheriff or other person as aforesaid, by himself or his bailiff or deputy, to sell by auction all lands and property, real or personal, which may be taken by him in execution, without having taken out an auctioneer's license, anything in any law, Act, or Ordinance to the contrary notwithstanding.

Sheriff to convey lands.

15. In case of any sale by the Sheriff or other person as aforesaid of any lands of the execution debtor, such Sheriff or person is hereby empowered and required to execute a proper deed of conveyance, assignment, or transfer to the purchaser of such lands, or of the right, estate, or interest of the execution debtor therein, 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.

Deed to be *prima facie* evidence.

16. Every conveyance, assignment, and transfer heretofore or hereafter executed by any Sheriff or other person as aforesaid of the land of a judgment debtor, or of the right, title, or interest of such debtor to and in any land or of his personal property, shall be *prima facie* evidence of the existence of a valid judgment and writ to support a levy by such Sheriff, and of the fact of all necessary notices having been given and published, and of a levy having been duly made and of a sale having taken place according to law.

Form of *feri facias*.

17. Every writ of *feri 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.

Certificate of judgment of inferior Court may be obtained.

18. 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 application a certificate in the form or to the effect contained in the Second Schedule to this Act.

Certificate may be filed in Supreme Court.

19. 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.

Final judgment.

20. Thereupon such person, without any previous process, may sign final judgment in that Court in the form contained in the 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, and all other remedies had thereon in the same manner as on any other judgment of the Supreme Court.

21. No such certificate shall be granted before the time at which execution Saving. 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: Provided that any judgment signed under the provisions of this Act may be set aside or amended by a Judge of the Supreme Court, upon such terms as to costs or otherwise as to him may seem just.

22. All general rules of the Supreme Court, and all provisions of any Act Provisions repugnant to this Act cancelled. or Ordinance, so far as such rules or provisions are repugnant to or inconsistent with this Act, shall be respectively cancelled and repealed.

SCHEDULES.

Schedules.

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.

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. 18 .

(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 .
