



CHAPTER 83.

An Act respecting the Remedies of Creditors against their Debtors.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short Title.

1. This Act may be cited as the “Execution Act.” R.S. 1911, Short title. c. 79, s. 1.

Interpretation.

2. In this Act, unless the context otherwise requires:—

Expressions
interpreted.

“Action” includes all actions at law and suits in equity, and all other proceedings, either at law or in equity:

“Charge” includes every encumbrance on lands:

“Defendant” includes every defendant and respondent in any action:

“Execution” includes an order for the sale of land under this Act:

“Execution creditor” includes every person and corporation in whose name or on whose behalf a writ of execution is issued on any judgment, or in whose favour an order for sale of land has been made under this Act:

“Execution debtor” includes every person or corporation against whom or against whose property other than land a writ of execution is issued on any judgment, or against whose land an order for sale has been made under this Act:

“Judgment” includes every judgment, order, and decree in any action and claims established under the “Creditors’ Relief Act”:

“Judgment creditor” means any person, whether plaintiff or defendant, who has recovered judgment against another

person, and also any person entitled to enforce a judgment, and includes a corporation, foreign or domestic:

“Judgment debtor” means any person, whether plaintiff or defendant, against whom a judgment has been recovered, and includes a corporation, foreign or domestic:

“Plaintiff” includes every plaintiff, appellant, and applicant in any action:

“Plaintiff,” “defendant,” “execution creditor,” “execution debtor,” “purchaser,” “mortgagee,” and “mortgagor” include not only such persons, but also their real and personal representatives and their assigns, and their respective representatives and their assigns:

“Purchaser” includes every purchaser at a sale of lands by the Sheriff, and other subsequent owners of the lands purchased:

“Writ of execution” includes writs of fieri facias, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto; and also every warrant or other process of execution sued out of any County or Inferior Court in the Province having jurisdiction to grant and issue such warrant or process of execution. R.S. 1911, c. 79, s. 2 (*redrawn*).

Nothing herein to affect the “Homestead Act.”

3. Nothing in this Act shall in any way be deemed to limit the operation and effect of the “Homestead Act,” and this Act shall not apply to lands registered under the “Homestead Act,” or to pre-emption claims. R.S. 1911, c. 79, s. 4.

How time to be reckoned.

4. In all cases in which any particular number of days is prescribed by this Act, or is mentioned by any Rule or Order of Court, which is at any time made under this Act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day happens to fall on a holiday. R.S. 1911, c. 79, s. 5.

Exemption from Imprisonment.

No imprisonment for debt.

5. No person shall be taken in execution on any judgment whatsoever recovered against him as a debtor at the suit of any other person, except in accordance with and pursuant to the “Arrest and Imprisonment for Debt Act.” R.S. 1911, c. 79, s. 6.

Wages Preference.

Power of Judge to order preference claim to extent of three months' wages.

6. In case of seizure under any writ of execution against goods or order made for sale of lands, or in case of any sale of such goods or lands by a receiver under an order or decree of Court or otherwise, any clerk, servant, labourer, or workman, to whom the execution

debtor or person against whom the process issues is indebted for salary or wages, may apply, or any two or more may join in applying, by summons in Chambers, to a Judge of the Court out of which the process issues, and it shall be lawful for the Judge, upon such application, to order so much as is due or accruing due at the time of the seizure to such clerk, servant, labourer, or workman from the execution debtor for salary or wages, not exceeding three months' arrears, and taxed costs of and incidental to such application, after paying the execution creditor his costs of obtaining judgment and execution, or of the order for sale of lands, to be retained by the Sheriff out of the proceeds (if any) of the execution, or sale, or by the receiver, in preference to the remainder of the claim of the execution creditor, and the Sheriff or other officer having charge of the execution, or the receiver, shall obey such order on pain of attachment. R.S. 1911, c. 79, s. 7.

7. In case after making such payment as aforesaid the amount due to the execution creditor is not realized, the execution creditor shall be at liberty to enforce his claim for any balance that may be due to him, by any subsequent process of execution or of enforcing his judgment. R.S. 1911, c. 79, s. 8.

Right of creditor to enforce his claim for any balance due.

8. In all cases under the last two preceding sections the Sheriff shall return the writ of execution or order for sale of land to the Court out of which the same issues, with a correct account of the appropriation of the proceeds made thereunder. R.S. 1911, c. 79, s. 9.

Return of writ or order by Sheriff.

Execution against Goods.

9. Save as by sections 24 to 32 exempted, or by this Act otherwise provided, all the goods, chattels, and effects of a judgment debtor shall be liable to seizure and sale under a writ of execution against goods and chattels. R.S. 1911, c. 79, s. 10.

Effect of writ of execution against goods.

10. Neither chattels real, nor any other property which for the purposes of this Act is included under the term "lands," as herein-after defined, shall be seized and sold under a writ of execution against goods and chattels. R.S. 1911, c. 79, s. 11.

Lands not to be sold under writ of execution against goods.

11. Any interest which a free miner has in any mineral claim before the issue of a Crown grant therefor, or in any mining property as defined in the "Mineral Act," and any placer claim and mining property as defined in the "Placer-mining Act," may be seized and sold by the Sheriff, under and by virtue of a writ of execution against goods and chattels. R.S. 1911, c. 79, s. 12.

Free miner's interests subject to seizure and sale under writ of execution against goods.

12. Any Sheriff or other officer to whom any writ of execution is directed may and shall seize and take any money or bank-notes, and

Sheriff empowered to seize money and securities for money.

any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, belonging to the execution debtor, and may and shall pay and deliver to the execution creditor any money or bank-notes which shall be so seized, or a sufficient part thereof; and may and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money as a security or securities for the amount by such writ of execution directed to be levied, or so much thereof as shall not have been otherwise levied and raised; and such Sheriff or other officer may sue in his own name for the recovery of the sum or sums secured thereby, if and when the time of payment thereof shall have arrived. [1 & 2 Vict., c. 110, s. 12 (*part*)]; R.S. 1911, c. 79, s. 13.

Payment to or recovery by Sheriff to be a valid discharge.

13. The payment to such Sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty, or other security, with or without suit, or the recovery and levying in 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, bond, specialty, or other security. [1 & 2 Vict., c. 110, s. 12 (*part*)]; R.S. 1911, c. 79, s. 14.

Sheriff to satisfy writ of execution and pay surplus to execution debtor.

14. Such Sheriff or other officer may and shall pay over to the execution creditor the money so recovered, or such part thereof as shall be sufficient to discharge the amount by such writ of execution directed to be levied; and if, after satisfaction of the amount so directed 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 execution debtor. [1 & 2 Vict., c. 110, s. 12 (*part*)]; R.S. 1911, c. 79, s. 15.

Sheriff not bound to sue until indemnified against costs.

15. No Sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty, or other security, unless the execution creditor shall enter into a bond, with two sufficient sureties, for indemnifying him from and against all costs and expenses to be incurred in the prosecution of such action, or to which such Sheriff or other officer may become liable in consequence thereof, the expense of such bond to be deducted out of any money recovered in such action. [1 & 2 Vict., c. 110, s. 12 (*part*)]; R.S. 1911, c. 79, s. 16.

Sale of equity of redemption in goods.

16. Under any writ of execution against goods, the Sheriff, or other officer to whom the same is directed, may seize and sell the interest or equity of redemption in any goods or chattels of the execution debtor, and such sale shall convey whatever interest the execution debtor had in the goods and chattels at the time of the seizure. R.S. 1911, c. 79, s. 17.

Shares in Incorporated Companies.

17. All corporations established for the purpose of trade or profit, or for the construction of any work, or for the acquisition of gain, shall be deemed incorporated companies for the purpose of the next six succeeding sections, although they are not called companies in the Act or charter incorporating them, or in their memorandum or articles of association. R.S. 1911, c. 79, s. 18.

What shall be deemed incorporated companies.

18. All stock, shares, and dividends of shareholders in any incorporated company in the Province, having transferable joint stock or shares, shall be held to be personal property, and shall be liable to bona-fide creditors for debts, and may be attached, seized, and sold under writs of execution in like manner as other personal property. R.S. 1911, c. 79, s. 19.

Shares made liable to seizure.

19. The Sheriff to whom a writ of execution is addressed, on being informed on behalf of the plaintiff that the defendant has such stock or shares, and on being required to seize the same, shall forthwith serve a copy of the writ of execution on the incorporated company with a notice that all the stock or shares which the defendant has in the capital stock of the company are seized accordingly; and from the time of service no transfer of the stock or shares by the defendant shall be valid, unless the seizure has been discharged; and every seizure and sale made under the same shall include all dividends, premiums, bonuses, or other pecuniary profits upon the stock or shares seized, and the same shall not, after notice as aforesaid, be paid by the company to any one except the person to whom the stock or shares have been sold by the Sheriff, unless the seizure is discharged, on pain of paying the same twice. R.S. 1911, c. 79, s. 20.

Procedure for seizure and sale of shares.

20. If the incorporated company has more than one place where service of process may be made upon it, and there is some place where transfers of stock or shares may be notified to and entered by the company so as to be valid as regards the company, or where dividends or profits as aforesaid on the stock or shares may be paid other than the place where service of such notice has been made, the notice shall not affect any transfer or payment of dividends or profits duly made and entered at any such other place, so as to subject the company to pay twice, or to affect the rights of any bona-fide purchaser, until after the expiration of a period from the time of service sufficient for the transmission of notice of service by post from the place where it has been made to such other place, which notice it shall be the duty of the company to transmit by post. R.S. 1911, c. 79, s. 21.

Effect of notice of seizure where company has more than one place for service of process.

21. The stock or shares in the said capital stock shall be held to be personal property, found by the Sheriff in the place where notice of the seizure thereof is served as aforesaid. R.S. 1911, c. 79, s. 22.

Shares to be personal property at place where notice of seizure served.

Mode of proceeding
to complete sale
and transfer.

22. Where any such stock or share is sold under a writ of execution, the Sheriff by whom the writ has been executed shall, within ten days after sale, serve upon the incorporated company, at some place where service of process may be made, an attested copy of the writ of execution, with his certificate endorsed thereon, certifying the name of the purchaser, who shall thereafter be the holder of the stock or share, and shall have the same rights and be under the same obligations as if he had duly purchased the stock or share from the proprietor thereof; and the proper officer of the company shall enter such sale as a transfer in the manner by law provided. R.S. 1911, c. 79, s. 23.

Saving of all other
remedies.

23. Nothing in this Act shall be construed to impair the remedy which the plaintiff might, without this Act, have had against any stock or shares in such capital stock as aforesaid, by charging order, attachment, or otherwise, and the provisions of the last four preceding sections shall apply to such remedy in so far as they can be applied thereto. R.S. 1911, c. 79, s. 24.

Exemption of Personal Property from Seizure.

Interpretation in
ss. 25 to 31.

24. In the following seven sections, being sections 25 to 31, unless the context otherwise requires, "debtor" includes the personal representative of the debtor if the debtor is dead, and shall also, in case of the absence of the debtor, include any member of his household. R.S. 1911, c. 100, s. 2 (*part*).

Exemption of
personal property
to value of \$500.

25. The following personal property shall be exempt from forced seizure or sale by any process at law or in equity; that is to say, the goods and chattels of any debtor at the option of such debtor, or, if dead, of his personal representative, to the value of five hundred dollars: Provided that nothing herein contained shall be construed to exempt any goods or chattels from seizure in satisfaction of a debt contracted for or in respect of such identical goods or chattels: Provided further that this section shall not be construed so as to permit a trader to claim as an exemption any of the goods and merchandise which form a part of the stock-in-trade of his business. R.S. 1911, c. 100, s. 17.

Procedure for
selection of
goods exempt.

26. It shall be the duty of every Sheriff or other officer seizing the personal property of any debtor under a writ of fieri facias, or any process of execution, to allow the debtor to select goods and chattels to the value of five hundred dollars from the personal property so seized; and every debtor whose personal property has been seized as aforesaid may, within two days after the seizure or notice thereof, whichever is the longest time, select goods and chattels to the value of five hundred dollars from the personal property so seized, and thereupon, if a list of the selected articles has not been delivered to the Sheriff or other officer by the debtor, the Sheriff or other officer

shall make a written list thereof, a copy of which he shall give to the debtor; and the Sheriff or other officer shall forthwith, if in his opinion the goods and chattels so selected do not exceed in value the sum of five hundred dollars, withdraw from possession of the same, and the same shall be, and the Sheriff or other officer shall certify in writing that they are, the goods and chattels exempt under the last preceding section. R.S. 1911, c. 100, s. 18.

27. If the Sheriff or other officer is of the opinion that the goods and chattels selected by the debtor exceed in value the sum of five hundred dollars, he shall, within one day after the receipt or making of the list referred to in the last preceding section, notify the debtor to that effect in writing, and shall (unless within one day more the Sheriff or other officer and the debtor agree upon the goods and chattels to be exempt, not to exceed in value the sum of five hundred dollars) without delay call upon a Justice of the Peace resident in the locality, who shall at once name an appraiser, whose duty it shall be to appraise, and who shall, when sworn, without delay, appraise the selected goods and chattels in the presence of the debtor, or after one day's notice to him, to be served either personally or tacked up in some conspicuous place where the seized goods are situate; and where a claim to exemption has been made and has been admitted or agreed upon as aforesaid, or where the goods claimed have been selected and appraised under or at the sum of five hundred dollars, the Sheriff or other officer shall withdraw from possession of the same, and the same shall be, and the Sheriff or other officer shall certify in writing that they are, the goods and chattels exempt under section 25. R.S. 1911, c. 100, s. 19.

Procedure where question arises as to value of goods selected.

28. If the goods claimed by the debtor are appraised at more than five hundred dollars, then the appraiser shall (the debtor still being allowed his option if he claims it) appraise so much of the claimed goods as will not exceed five hundred dollars, and the goods so appraised at five hundred dollars shall constitute and be certified as the exempt goods. R.S. 1911, c. 100, s. 20.

Procedure where goods selected are found to exceed \$500 in value.

29. If the goods claimed are appraised at a sum exceeding five hundred dollars, then the fees of the appraiser, not to exceed five dollars and his expenses of travel for the distance actually and necessarily travelled by him, not to exceed fifty cents a mile one way, shall be levied out of the exempted goods; and if the goods are appraised at five hundred dollars only, or at a sum less than five hundred, then the Sheriff or other officer shall pay the fees and mileage of the appraiser as aforesaid, but in the latter case the Sheriff or other officer may deduct the sum so paid the appraiser from the proceeds of execution (if any) against goods not exempt. R.S. 1911, c. 100, s. 21.

How appraiser's fees to be paid.

Appraiser's oath
of office.

30. Every appraiser shall, before acting as such, take and subscribe the following oath before any person duly authorized to administer an oath, or in the absence of any such person, then before any Sheriff or Sheriff's officer, who is hereby authorized to administer the same:—

I, A. B., having been appointed the appraiser of goods and chattels seized under an execution [*or as the case may be*] in the suit of against [*or as the case may be*], do solemnly swear [*or affirm*] that I will faithfully perform the duties of the said office without partiality, fear, favour, or affection, and that I will appraise the value of the goods and chattels submitted to my appraisement to the best of my ability. So help me God.

Sworn before me at this }
 day of , 19 . } A. B.,
 , J.P. } Appraiser under "Execution Act."
 [*or as the case may be*].

R.S. 1911, c. 100, s. 22.

Debtor's right to
appeal from
appraisal.

31. The debtor may appeal from the decision of the appraiser, or from any act of the Sheriff or other officer, to the nearest County Court Judge, upon giving such security for the appeal as the County Court Judge may order, and the appeal shall be decided summarily by the County Court Judge without delay. R.S. 1911, c. 100, s. 23.

Recovery of taxes
and rent protected.

32. Nothing in the last seven preceding sections shall be construed as exempting any personal property from sale for taxes or from distress for rent. R.S. 1911, c. 100, s. 3 (*part*).

Execution against Lands.

Writs of elegit
or fi. fa. lands
abolished.

33. No writ of elegit or writ of fieri facias de terris shall be issued in this Province. R.S. 1911, c. 79, s. 25 (*part*).

Interpretation in
ss. 35 to 59.

34. In the following twenty-five sections, being sections 35 to 59, unless the context otherwise requires:—

"Judgment" means any judgment, decree, or order of the Court of Appeal, Supreme Court, or any County Court or Small Debts Court, or claim established under the provisions of the "Creditors' Relief Act":

"Land" or "lands" includes every estate, right, title, and interest therein, and all real property, both legal and equitable, and of what nature and kind soever, and any contingent, executory, or future interest therein, and a possibility coupled with an interest in such land or real property, whether the object of the gift or limitation of such interest be ascertained or not, and also the right of entry, whether immediate or future and whether vested or contingent, into and upon any land, but shall not include pre-emption claims. R.S. 1911, c. 79, s. 26; 1921 (2nd Sess.), c. 13, s. 2; 1922, c. 24, s. 2.

35. Immediately upon any judgment being entered or recovered in this Province, the judgment may be registered in any or all of the Land Registry Offices in the Province, and from the time of registering the same the judgment shall form a lien and charge on all the lands of the judgment debtor in the several land registration districts in which the judgment is registered, in the same manner as if charged in writing by the judgment debtor under his hand and seal; and after the registering of the judgment the judgment creditor may, if he wishes to do so, forthwith proceed upon the lien and charge thereby created. R.S. 1911, c. 79, s. 27 (*part*). Registration of judgment.

36. (1.) Every judgment registered under this Act shall, at the expiration of two years after the registration or last renewal of registration thereof, cease to form a lien or charge upon the land of the judgment debtor, or any one claiming under him, unless before the expiration of said two years the registration of the judgment is renewed. Expiration of lien.

(2.) The registration of a judgment may be renewed at any time before the expiration of two years after the registration or last renewal of registration thereof. R.S. 1911, c. 79, s. 38; 1915, c. 24, s. 3 (*part*). Renewal of registration.

37. (1.) The registration or renewal of registration of a judgment shall be effected by the delivery to the Registrar of Titles at the Land Registry Office of a certificate of the judgment under the seal of the Court in which the same has been entered or recovered, if the Court has a seal, and signed by the Court or by an officer empowered to grant certificates in respect of proceedings in that Court, accompanied by a copy of the certificate of judgment certified by such Court or officer and an application of the judgment creditor, his solicitor or agent, in accordance with the requirements of the "Land Registry Act," to register or renew registration of the judgment; and the Registrar of Titles shall write or stamp on the certificate and on the certified copy the day, hour, and minute of the delivery of the certificate at his office, which shall be deemed the time of the registration or renewal of registration of the judgment, as the case may be, and the Registrar of Titles shall thereupon enter the same in the register of judgments under the provisions of the "Land Registry Act." Upon such entry being made, the certificate of judgment shall be returned to the person who delivered it, but the certified copy shall be kept in the Land Registry Office. Method of registering and renewing registration of judgments.

(2.) Registration of a judgment under this Act shall include the reregistration of same, which may be effected in the same way that a judgment is registered or the registration of same is renewed. 1915, c. 24, s. 2 (*part*); 1922, c. 24, s. 3. Reregistration of judgment.

38. Where any judgment creditor in an action has registered a judgment as aforesaid, and alleges that the judgment debtor is Procedure for enforcing charge.

entitled to or has an interest in any land, a motion may be made to the Supreme Court, or to a Judge thereof in Chambers, by the judgment creditor calling upon the judgment debtor, and upon any trustee or other person having the legal estate in the land in question, to show cause why any land in the land registration district in which the judgment is registered, or the interest therein of the judgment debtor, or a competent part of the land, should not be sold to realize the amount payable under the judgment. Where the judgment debtor is dead, such motion to show cause shall call upon the person or persons to whom the interest of the deceased in the land in question has passed, and upon any trustee or other person having the legal estate therein, and any notice of motion or order made thereon under this section may, in any case where in the opinion of the Court or a Judge thereof personal service cannot be reasonably effected, be served in such manner as the Court or Judge may direct, and the Court or Judge may in any case allow service of the notice of motion or order to be made out of the jurisdiction. R.S. 1911, c. 79, s. 28; 1921, c. 20, s. 2.

Determination of
disputed questions.

39. Upon any application under the last preceding section, such proceedings shall be had, either in a summary way or by the trial of an issue, or by inquiry before an officer of the Court, or by an action or otherwise, as the Court or Judge may deem necessary or convenient, for the purpose of ascertaining the truth of the matters in question, and whether the lands, or the interest therein of the judgment debtor, are liable for the satisfaction of the judgment. R.S. 1911, c. 79, s. 29.

Reference to ascer-
tain lands and
settle priorities.

40. Where an order is made upon any application under section 38, there shall be included in the order a reference to a District Registrar of the Supreme Court to find what lands are liable to be sold under the judgment, and what are the nature and particulars of the interest of the judgment debtor in the lands and of his title thereto, and what judgments form a lien and charge against the lands and the priorities between the judgments, and to determine how the proceeds of the sale shall be distributed, and to report all such findings to the Court. The District Registrar shall deal with all judgments registered against the lands whether prior or subsequent to the judgment upon which the proceedings are taken. Unless good reason is found to the contrary, the creditor first taking proceedings shall be entitled to his costs in priority to all claims under judgment whether prior or subsequent to his own. The District Registrar shall cause all persons affected by his inquiries to be served with notice. Such report when made shall require confirmation by a Judge of the Supreme Court, and all persons affected thereby shall have notice of the application for confirmation, and upon such application the Judge may confirm the same in whole or in part, and may

alter the same or may refer the same back to the District Registrar. R.S. 1911, c. 79, s. 30.

41. In case any person has a contested claim pending under the "Creditors' Relief Act," he may give notice thereof to any District Registrar to whom a reference has been made under the last preceding section, and the District Registrar shall provide in his report for the retention of a sufficient sum to give such person the share of the proceeds which he would be entitled to if he had a judgment for the amount he claims, and such sum shall be so retained until the contestation of the claim is disposed of under the "Creditors' Relief Act." R.S. 1911, c. 79, s. 31.

Registrar may retain sufficient sum to satisfy claim being contested under "Creditors' Relief Act."

42. Where in a summary way or upon the trial of an issue, or as the result of any inquiries under the last four preceding sections, or otherwise, any land or the interest of any judgment debtor therein is found liable to be sold, an order shall be made by the Court or Judge declaring what land or what interest therein is liable to be sold, and directing the sale thereof by the Sheriff of the county or jurisdiction within which the land is situate: Provided that if in any case substituted service has been ordered by the Court or a Judge upon the judgment debtor, of the writ of summons or other process in the action in which the judgment is obtained, then the land ordered to be sold as aforesaid shall not be sold by the Sheriff until the same has been advertised as hereinafter mentioned for a period of six months after the order for sale; but, upon application by the judgment creditor to a Judge of the Supreme Court, it shall be lawful for the Judge to shorten the said period of six months, or to make such other order in that behalf as he thinks fit. R.S. 1911, c. 11, s. 32.

Order for sale of land.

43. Where on any application for an order for the sale of land under the foregoing provisions it appears to the Court or Judge, upon affidavit setting forth the fact, that there may be persons interested in the land to be sold whose names are unknown to the judgment creditor, the Court or Judge may, if it or he thinks fit, direct advertisements to be published at such times and in such manner as the Court or Judge thinks fit, calling upon all persons claiming to be interested in the land to come in and establish their respective claims thereto before the Judge in Chambers within a time to be thereby limited. After the expiration of the time so limited all persons who have not so come in and established their claims, whether they are within or without the jurisdiction of the Court (including persons under disability), shall be absolutely debarred from all right, title, and interest in and to the said land. R.S. 1911, c. 79, s. 33.

Court or Judge may direct publication of advertisement notifying claimants not before the Court.

44. Any notice of motion for an order under section 38 may contain a description of the land in question, and upon filing the

Lis pendens.

same with the proper officer, signed by the solicitor of the applicant, a certificate of *lis pendens* may be issued for registration; and in case the motion is refused in whole or in part, a certificate of the order may be issued for registration. R.S. 1911, c. 79, s. 34.

Costs in discretion
of Court.

45. The costs of and incident to all the proceedings authorized by sections 38 to 44 shall be in the discretion of the Court or Judge. R.S. 1911, c. 79, s. 35.

Proceedings respect-
ing judgment may
be had in County
Court in which judg-
ment recovered.

46. All the proceedings which may be had and taken before a Judge of the Supreme Court under this Act, and all the powers which may be exercised by a Judge of the said Court upon or in connection with such proceedings, may, where the judgment has been recovered in a County Court, be had and taken before and be exercised by any Judge of the County Court in which the judgment was recovered, and may, where the judgment has been recovered in a Small Debts Court, be had and taken before and be exercised by any Judge of the County Court within the territorial limits of which the judgment was recovered, and all the foregoing provisions of this Act shall, *mutatis mutandis*, apply to the proceedings. R.S. 1911, c. 79, s. 36 (*altered*).

Sale.

Time of sale
of lands.

47. The Sheriff shall not offer the lands for sale within a less period than one month from the day on which the order for the sale thereof is delivered to him. R.S. 1911, c. 79, s. 37.

Notice of sale in
the Gazette.

48. (1.) Before any lands are offered for sale under any order, the Sheriff shall cause a notice to be advertised in the Gazette, specifying:—

- (a.) The particular property to be sold:
- (b.) The name or names (if more than one) of the plaintiffs and defendants in every action:
- (c.) The charges (if any) appearing on the register against the lands:
- (d.) The date of the registration of encumbrances or charges:
- (e.) The time and place of the intended sale; and
- (f.) The amount of the judgment.

Advertising and
posting of notice.

(2.) For seven days next preceding the sale, unless otherwise ordered by a Judge of the Court, the Sheriff shall cause such notice to be advertised in a newspaper of general circulation published or circulating in the county in which the lands are situate, and shall, before or immediately after the first publication of the advertisement, post a printed or written copy of the notice of sale, in a suitable frame to be by him provided for the purpose, in his own office.

Power of Judge to
dispense with
requirements.

(3.) Any Judge of the Court in which the order for sale is made may dispense with any of the requirements of this section, except as to advertising in the Gazette, or may modify or make other provisions as to advertising. R.S. 1911, c. 79, s. 41 (*altered*).

49. Notices of sale shall be printed or written in a legible manner, and may be in Form A in the Schedule, or to the like effect. R.S. 1911, c. 79, s. 42.

Form of notice
of sale.

50. A plaintiff, or any mortgagee of the lands offered for sale, shall be at liberty to purchase at any sale by the Sheriff, and shall acquire the same estate, interest, and rights as any other purchaser; but in the event of a mortgagee becoming the purchaser of lands sold in respect of his mortgage debt, or any part of it, he shall give the mortgagor a release of such debt, or of a proportionate part thereof, such proportion to be ascertained and certified, in Form B in the Schedule, by the Sheriff; and if the lands purchased by the mortgagee are subject to any mortgage or other pecuniary charge (other than his said mortgage) which has priority over the execution under which the lands have been sold, or if any other person becomes the purchaser at such sale of any lands on which there is a mortgage or other pecuniary charge which has priority over the execution, if the person entitled to the encumbrance enforces payment of the amount thereof, or any part of it, or any interest or costs, then the purchaser shall repay to the mortgagor or other person who has been enforced to make any such payment the amount so paid, or a proportionate part thereof, ascertained or to be ascertained as aforesaid; and in default of repayment thereof within one month after demand, the person who has made the payment, his executors or administrators, may recover from the purchaser the amount so paid, with interest, in an action for money had and received; and until such money has been repaid with interest he or they shall have a charge for the same on the lands so purchased. R.S. 1911, c. 79, s. 43.

Provisions as to
purchase of lands
by plaintiff or a
mortgagee.

51. (1.) If at the time appointed for the sale under any order no bidders appear, or if in the opinion of the Sheriff the biddings are not sufficient to justify a sale, he may adjourn the sale from time to time.

Provision in case no
sale is effected on
day of sale.

(2.) In case of any adjournment a writ of venditioni exponas may be issued, and on the delivery thereof to the Sheriff he shall sell the lands referred to therein for the highest bidding made the next time they are offered for sale; but such lands shall not be offered for sale under a writ of venditioni exponas until after they shall have been advertised for sale, and the notices of sale posted as aforesaid, unless otherwise ordered by a Judge of the Court in which the order for sale is made. R.S. 1911, c. 79, s. 44.

Sale under writ of
venditioni exponas.

52. Upon any sale of lands made in pursuance of this Act, the Sheriff shall execute to the purchaser a conveyance, under his hand and seal, of the lands sold, in Form C in the Schedule, or to the like effect, and shall in such conveyance fully, distinctly, and sufficiently describe the lands and interest therein which have been sold; and

Conveyance of lands
sold, and effect
thereof.

such conveyance, when delivered to the purchaser, and registered in the Land Registry Office for the registration district in which the lands are situate, shall vest in him, according to the nature of the property sold, all the legal and equitable estate and interest of the execution debtor therein at the time of the registration against the said lands of the first judgment, as well as at the time of the sale, or at any intermediate time, discharged from the first judgment and from all judgments and other charges against the execution debtor and his lands, subsequent to the first judgment. R.S. 1911, c. 79, s. 45 (*altered*).

Proceeds of sale to be delivered to the Registrar of the Supreme Court.

53. In case of any sale being effected under any order for sale of lands, or under any writ of venditioni exponas, all moneys made on the sale shall, immediately after the making thereof, and after deducting therefrom the Sheriff's poundage fees and incidental expenses, be delivered to the Registrar of the Court where the order for sale was made, or out of which the said writ was issued, with a statement of the lands sold and the moneys made on the sale. R.S. 1911, c. 79, s. 46.

Purchaser not to be affected by irregularities.

54. A purchaser at any sale by the Sheriff as aforesaid shall not be bound to ascertain whether the requirements of this Act have been performed, and notwithstanding any breach thereof, or any impropriety or irregularity in the sale, or otherwise, of which the purchaser may or may not have notice, provided he is not a party thereto; and notwithstanding any informality in the conveyance of the property sold, the conveyance, when executed by the Sheriff and delivered to the purchaser, shall be deemed to be valid to and for all ends, intents, and purposes. R.S. 1911, c. 79, s. 47.

Action not to abate by reason of marriage, death, or bankruptcy.

55. For the purposes of this Act, an action shall not be deemed to have abated, nor shall any order for the sale of land nor any sale thereunder be in any way affected, by reason of the marriage, death, or bankruptcy of any of the persons named in the judgment; the intent and object of this Act being to pass to a purchaser at a sale, under an order for the sale of lands, or under any writ of venditioni exponas, an absolute title to the estate and interest of the execution debtor in and to the lands purchased at the sale; but nothing in this Act shall be construed so as to affect the right of the execution debtor to receive any rent or interest which is due in respect of the lands previous to the day of the sale thereof. R.S. 1911, c. 79, s. 48.

Subsequent Proceedings.

Power of purchasers to satisfy encumbrances.

56. Any purchaser may remove or satisfy any mortgage or other encumbrance which, at the time of the sale, existed upon lands purchased, in like manner as the execution debtor might have done, and thereupon the purchaser shall acquire the same estate, right,

title, and interest as the execution debtor would have acquired in case the removal or satisfaction had been effected by the execution debtor; and the mortgagee or other encumbrancer shall, if required, give to the purchaser, at the cost of the purchaser, a certificate of the satisfaction of mortgage or other encumbrance, which certificate may be in Form D in the Schedule; and on presentment thereof to the Registrar of Titles, it shall be a sufficient authority for him to cancel the registration of the mortgage or other encumbrance in respect of which it is given. R.S. 1911, c. 79, s. 49.

57. Money realized by the sale of land under the provisions of this Act shall be deemed to be money levied under execution within the meaning of the "Creditors' Relief Act," except that the money shall be paid into Court under the preceding provisions of this Act, subject to the right to costs (if any) of any judgment creditor whose judgment was registered against the land. R.S. 1911, c. 79, s. 50.

Payment into Court
of money realized
by sale of lands.

58. The moneys received by the Registrar of the Court shall be distributed by him to the persons to whom the Sheriff would, pursuant to the "Creditors' Relief Act," distribute moneys levied under a writ of execution. R.S. 1911, c. 79, s. 51.

Distribution of
moneys.

59. The Registrar of Titles shall, on application in the usual form, pursuant to the provisions of the "Land Registry Act," and on the production to him of the Sheriff's conveyance to the purchaser, attested and proved in the manner prescribed by that Act, register the same according to the estate or interest in the land therein stated to have been sold, and shall grant such certificate (if any) as may be provided by the "Land Registry Act" for the estate or interest which may be so sold as aforesaid; and in the case of an indefeasible or absolute fee the Registrar's certificate of title (if any) outstanding in the name of the execution debtor shall be deemed to be cancelled as to the estate or interest therein of the execution debtor, or as to the portion thereof registered in the name of the purchaser. R.S. 1911, c. 79, s. 52 (*redrawn*).

Registration of
conveyance.

Fees and Returns.

60. On the execution of any order for sale of land, charges for poundage at the rate of one and a quarter per cent. and other incidental expenses, except auctioneer's charges, may be made, and shall be recoverable under the same circumstances and to the extent that such recovery would be allowed in case of execution against goods and chattels under a writ of fieri facias; and in case the lands of the execution debtor are advertised pursuant to an order for sale thereof, but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually levied on such execution, the Sheriff shall be reimbursed his actual expenses by the execution creditor, and shall receive fees for his services

Sheriff's fees.

actually rendered; and the Court or any Judge thereof making the order may allow him a reasonable charge for any service rendered in respect thereof, in case no special fee is assigned in any table of costs. Every sale of lands under an order pursuant to this Act shall be conducted by the Sheriff or his deputy in person, and for such services he shall be entitled to receive a fee of ten dollars, and no more. And no auctioneer's licence or tax in respect thereof shall be paid by any Sheriff or his deputy. R.S. 1911, c. 79, s. 53.

Register of Sales.

Register of sales to be kept by Sheriff.

61. The Sheriff of each district shall enter in a register, to be by him especially kept for the purpose, particulars of each sale effected by him. R.S. 1911, c. 79, s. 54.

Register may be inspected on payment of fee.

62. Any person shall be at liberty to inspect the said register, and to take extracts therefrom, on payment of the sum of fifty cents. R.S. 1911, c. 79, s. 55.

Assessors may inspect register free of charge.

63. Every Provincial or Municipal Assessor shall be at liberty to inspect the said register at all reasonable times, free of charge. R.S. 1911, c. 79, s. 56.

SCHEDULE.

FORM A.

(Section 49.)

NOTICE OF SALE BY SHERIFF, PURSUANT TO THE "EXECUTION ACT."

In the Supreme Court of British Columbia [or, *giving the name of the Court*].

PLAINTIFF		against	DEFENDANT.
District, Town, or City.	No. of Lot.	Concise Description of Property.	Estate or Interest.
			[Such as fee-simple, leasehold, as case may be.]
When to be sold.		Where to be sold.	

.....
Sheriff.

FORM B.
(Section 50.)

SHERIFF'S CERTIFICATE OF APPORTIONMENT, PURSUANT TO SECTION 50 OF THE
"EXECUTION ACT."

I, _____, Sheriff for _____, do hereby certify that the sum of \$ _____ is the amount or proportion of the mortgage debt or other encumbrance for \$ _____ charged on lands, to be paid by purchaser (including the interest on \$ _____ proportion to the day of sale) in respect of the property purchased by _____ on the _____ day of _____, 19____, at the sale under the writ of execution against the lands of _____ judgment debtor, on which the said _____ was an encumbrance.

.....
Sheriff.

FORM C.
(Section 52.)

FORM OF CONVEYANCE.

To all to whom these presents shall come.

I, _____, Sheriff for _____, send greeting:

WHEREAS, under and by virtue of an order for the sale of land issued on a judgment of the _____ Court, in an action by _____ against _____, all the estate, right, title, and interest of the defendant in the lands hereinafter described were sold by me at public auction on the _____ day of _____, to _____ (he being the highest bidder therefor), for the sum of _____:

Now KNOW YE that, in consideration of the said sum of _____ in hand, paid by the said _____ to me on the execution of these presents, I do hereby, in pursuance of the powers in me vested by the "Execution Act" and of all other powers me in that behalf enabling, grant and convey in the lands following all the right, title, and interest of _____, defendant, unto the said _____, that is to say: All that [*parcels*].

To hold unto and to the use of the said _____, his heirs and assigns, for ever.

In witness whereof I have hereunto set my hand and seal this _____ day of _____, 19____.

[L.S.]

.....
Sheriff.

Signed, sealed, and delivered in }
the presence of— }
..... }

FORM D.

(Section 56.)

MORTGAGE OR OTHER ENCUMBRANCE. CERTIFICATE OF SATISFACTION OF
ENCUMBRANCE.

Pursuant to section 56 of the "Execution Act," hereby certify that the mortgage or other encumbrance registered in the office of the Registrar-General of Titles on the day of , and numbered , has been paid off and satisfied.

I, , of , make oath and say that I am [in my own right, or as the attorney or agent of , of , or that and myself are] entitled to give the above written certificate.

Sworn before me, , this }
day of , 19 . }

R.S. 1911, c. 79, Sch.

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