



## CHAPTER 79.

### An Act to facilitate and explain the Remedies of Creditors against their Debtors.

**H**IS 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. 1897, Short title. c. 72, s. 1.

#### *Interpretation.*

2. The following words shall in this Act, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such definition or explanation, have the meanings hereby assigned to them, that is to say:—

"Actions" shall include all actions at law and suits in equity, and all other proceedings, either at law or in equity: Interpretation clause.

"Plaintiff" shall include every plaintiff, appellant, and applicant in any action: "Plaintiff."

"Defendant" shall include every defendant and respondent in any action: "Defendant."

"Judgment" shall include every judgment, order, and decree in any action and claims established under the "Creditors' Relief Act": "Judgment."

"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 creditor."

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

" Execution creditor."

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

" Execution debtor."

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

" Purchaser."

" Purchaser " shall include every purchaser at a sale of lands by the Sheriff, and other subsequent owners of the lands purchased:

" Representatives and assigns."

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

" Charge."

" Charge " shall include every incumbrance on lands:

" Writ of execution."

" Writ of execution " means and shall include writs of fieri facias, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto; and also, for the purposes of this Act, means and shall include 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:

" Execution."

" Execution " shall include an order for the sale of land under this Act. R. S. 1897, c. 72, s. 2 (*part*); 1908, c. 26, s. 2 (*part*).

#### *Application of Act.*

Retrospective action.

3. The provisions of this Act shall apply to judgments obtained and proceedings pending antecedent as well as subsequent to this Act. R. S. 1897, c. 72, s. 3.

Nothing herein to affect the " Homestead Act."

4. 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. 1897, c. 72, s. 4.

#### *Time.*

How time to be reckoned.

5. In all cases in which any particular number of days is prescribed by this Act, or shall be mentioned by any Rule or Order of Court, which shall at any time be 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 shall happen to fall on a holiday. R. S. 1897, c. 72, s. 5 (*part*).

*Exemption from Imprisonment.*

6. 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. 1897, c. 72, s. 6.

Imprisonment for debt shall cease.

*Wages Preference.*

7. 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 clerks, servants, labourers, or workmen, 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 such Judge, upon such application, to order so much as shall be 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 such 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 such Sheriff or other officer having charge of the execution, or such receiver, shall obey such order on pain of attachment. R. S. 1897, c. 72, s. 7.

Judge may order wages to be a preference claim.

Limited to three months' wages.

Sheriff to obey Judge's order.

8. 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. 1897, c. 72, s. 8.

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

9. In all cases under the last two preceding sections of this Act 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. 1897, c. 72, s. 9.

Return of writ or order by Sheriff under this Act.

*Execution against Goods.*

10. Save as by the "Homestead Act" 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. 1897, c. 72, s. 10.

Effect of writ of execution against goods.

11. Neither chattels real, nor any other property, which for the purposes of this Act are included under the term "lands," as herein-after defined, shall be seized and sold under an execution against goods and chattels. R. S. 1897, c. 72, s. 11.

Chattels real not to be sold under execution against goods and chattels.

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

**12.** 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 an execution issued against goods and chattels. R. S. 1897, c. 72, s. 12.

Sheriff empowered to seize money and securities for money.

**13.** 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 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. 1897, c. 72, s. 13.

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

**14.** 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 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. 1897, c. 72, s. 14.

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

**15.** Such Sheriff or other officer may and shall pay over to the execution creditor the money so to be 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. 1897, c. 72, s. 15.

Sheriff not bound to sue until indemnified against costs.

**16.** 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. 1897, c. 72, s. 16.

*Interest of a Mortgagor in Goods.*

17. 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. 1897, c. 72, s. 24.

May be sold under writ of execution.

*Shares in Incorporated Companies.*

18. 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 of this Act, although they are not called companies in the Act or charter incorporating them, or in their memorandum or articles of association. R. S. 1897, c. 72, s. 17.

What shall be deemed incorporated companies.

19. 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 bonâ-fide creditors for debts, and may be attached, seized, and sold under writs of execution in like manner as other personal property. R. S. 1897, c. 72, s. 18.

Shares and dividends made liable to seizure.

20. 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 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 and until 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 and until the seizure is discharged, on pain of paying the same twice. R. S. 1897, c. 72, s. 19.

Sheriff to serve a copy of the writ on the company with notice of seizure.

Shares not to be transferred while under seizure.

Sale under seizure to include all dividends.

21. If the company has more than one place where service of process may be made upon them, 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 said stock or shares may be paid other than the place where service of such notice has been

Effect of service on company having more than one office for service, transfer of stock, etc.

Company to transmit by post notice of seizure to other officers, from office where served.

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. 1897, c. 72, s. 20.

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

22. 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. 1897, c. 72, s. 21.

Mode of proceeding to complete sale and transfer.

23. Where 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 company, at some place where service of process may be made, an attested copy of the writ of execution, with his certificate indorsed 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. 1897, c. 72, s. 22.

Saving of all other remedies.

24. 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. 1897, c. 72, s. 23.

Writs of elegit or fi. fa. lands abolished.

25. No writ of elegit or writ of fieri facias de terris shall be issued in this Province, but the writs of fieri facias de terris now in the hands of the Sheriff for any county shall remain in full force, virtue, and effect. R. S. 1897, c. 72, s. 25 (*part*); 1899, c. 27, s. 2.

#### *Execution against Lands.*

Interpretation.

26. In this and the following sections to and including section 52, unless the context otherwise requires,—

“Judgment.”

“Judgment” means any judgment, decree, or order of the Supreme Court or County Court, or claim established under the provisions of the “Creditors’ Relief Act,” whereby the sum of one hundred dollars or more is payable to any person:

The expression "land" or "lands" includes every estate, "Land," "lands." 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. 1908, c. 26, s. 2, (*part*).

27. (1.) Immediately upon any judgment being entered or recovered in this Province, such 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 said judgment shall form a lien and charge on all the lands of the judgment debtor in the several land registry districts in which such 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 such judgment the judgment creditor may, if he wish to do so, forthwith proceed upon the lien and charge thereby created.

Registration of judgment.

Lien.

(2.) Registration of a judgment under this Act shall be effected by depositing in such Land Registry Office a certificate of such judgment under the seal of the Court in which the same has been entered or recovered, signed by the officer of the Court empowered to grant certificates respecting proceedings in such Court, and by the Registrar-General or District Registrar of Titles entering all names appearing in the certificate of the judgment as judgment creditor and judgment debtor alphabetically in a book to be called the "register of judgments," together with the particulars of the judgment, and also the date, hour, and minute of the delivery of the said certificate, which shall be the time of registering the judgment.

Method of registering judgments.

(3.) After the registration of a judgment and an indorsement of same has been made by the proper officer on the certificate of such judgment, the certificate may be returned to the applicant, provided he supply a copy, which shall be made an office copy and be kept in the Land Registry Office.

Certificates of judgment may be returned to applicant after registration.

(4.) The registration of a judgment may be renewed, and such renewal shall date from and be entered in the register of judgments in red ink, on the receipt of an application in writing from or on behalf of the judgment creditor. 1908, c. 26, s. 3. (*Redrawn*.)

Renewal of registration.

28. Where any judgment creditor in an action has registered a judgment as aforesaid, and alleges that the debtor or person to pay is entitled to or has an interest in any land, a motion may be made to the Supreme Court, or to a Judge thereof

Procedure for enforcing charge.

*See 3rd vol. am. 1914, registered 1916*

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 registry district in which such judgment is registered, or the interest therein of the judgment debtor, or a competent part of the said land, should not be sold to realize the amount payable under the judgment. When the judgment debtor or person to pay 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 said Court or a Judge thereof may direct. 1908, c. 26, s. 10.

Determination of  
disputed questions.

29. 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 such 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 or other person, are liable for the satisfaction of the judgment. 1908, c. 26, s. 11.

Settling priorities,  
etc.

30. Where an order is made upon any application under section 28 hereof, there shall be included in such order a reference to a District Registrar of the Supreme Court to find what lands and property are liable to be sold under the judgment, and what are the nature and particulars of the interest of the judgment debtor in such lands and property and of his title thereto, and what judgments form a lien and charge against such lands and the priorities between such judgments, and to determine how the proceeds of such sale shall be distributed, and to report all such findings to the Court. Such Registrar shall deal with all judgments registered against such 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 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 such Judge may confirm the same in whole or in part, and may alter the same or may refer the same back to such Registrar: 1908, c. 26, s. 13, subsec. (1).



**31.** In case any person has a contested claim pending under the "Creditors' Relief Act," he may give notice thereof to any such Registrar to whom a reference has been made under the last preceding section, and such 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 such person had a judgment for the amount he claims, and such sum shall be so retained until the contestation of such claim is disposed of under said "Creditors' Relief Act." 1908, c. 26, s. 13, subsec. (2).

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

**32.** 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 or other person 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 such land is situate: Provided always that if in any case substituted service shall have been ordered by a Judge of the said Courts upon the judgment debtor, of the writ of summons or other process in the action in which the judgment is obtained, then the lands ordered to be sold as aforesaid shall not be sold by the Sheriff until the same shall have been advertised as hereinafter mentioned for a period of six months after such order for sale: Provided always that upon application by the judgment creditor to any such Judge, it shall be lawful for the said Judge to shorten the said period of six months, or to make such other order in that behalf as he shall think fit. R. S. 1897, c. 72, s. 25 (*part*); 1908, c. 26, s. 12.

Sale of land.

In case of substituted service of writ of summons, sale not to take place for six months after seizure.

**33.** 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 lands and property to be sold whose names are unknown to the judgment creditor, the Court or Judge may, if it or he think fit, direct advertisements to be published at such times and in such manner as the Court or Judge shall think fit, calling upon all persons claiming to be interested in such lands and property 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 shall not have so come in and established such 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 lands and property. 1908, c. 26, s. 14.

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

**34.** Any notice of motion for an order under section 28 hereof may contain a description of the land in question, and upon filing the same with the proper officer, signed by the solicitor of the applicant,

Lis pendens.

a certificate of *lis pendens* may be issued for registration; and in case the said motion is refused in whole or in part, a certificate of the order may be issued for registration. 1908, c. 26, s. 15.

Costs in discretion  
of Court.

**35.** The costs of and incident to all the proceedings authorised by sections 28 to 34, both inclusive, of this Act shall be in the discretion of the Court or Judge. 1908, c. 26, s. 16.

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

**36.** 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 the Judge or Junior Judge of the County Court in which the judgment was recovered, and all the foregoing provisions of this Act shall, *mutatis mutandis*, apply to such proceedings. 1908, c. 26, s. 18.

Time of sale of  
lands.

**37.** 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. 1897, c. 72, s. 26 (*part*).

Expiration of lien.

**38.** Every judgment registered under this Act shall, in 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 such judgment shall be renewed. 1908, c. 26, s. 5.

Registration fees.

**39.** The fee for registration of a certificate of judgment under this Act shall be the sum of two dollars; for renewal of such registration, one dollar; and for any cancellation of registration, which shall be effected on satisfactory proof of the judgment having been satisfied, fifty cents. 1908, c. 26, s. 6.

Exemptions.

**40.** No proceedings shall be taken under any registered judgment against any lands exempt from forced seizure and sale under the provisions of the "Homestead Act" or against pre-emption claims. 1908, c. 26, s. 7.

#### *Sale.*

Notice of sale in the  
Gazette and in a  
public newspaper,  
and in other  
manners.

**41.** Before any lands shall be 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 such lands:
- (d.) The date of the registration of incumbrances or charges:

(e.) The time and place of the intended sale; and

(f.) The amount of the judgment.

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 one of the daily papers published in the City of Victoria, or in a newspaper published nearest to the land to be sold; and shall, before or immediately after the first publication of the advertisement, post printed or written copies of the notices of sale, in suitable frames to be by him provided for the purpose, in the vestibule of the Court-house of the Court making the order for sale, and in the offices of the District Registrar of the said Court and of the Registrar-General or District Registrar of Titles for the district in which the lands are situate, and also at a conspicuous place at the Police Court, and in his own office. 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. 1897, c. 72, s. 31.

**42.** Notices of sale shall be printed or written in a legible manner, Form thereof. and may be in the Form A in the Schedule hereto, or to the like effect. R. S. 1897, c. 72, s. 32.

**43.** A plaintiff, or any mortgagee, of the lands offered for sale Who may purchase. 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 the Form B in the Schedule hereto, by the Sheriff; and if the lands purchased by such mortgagee be 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 aforesaid, if the person entitled to the incumbrance 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 shall have 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 shall have 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 shall have been repaid with interest he or they shall have a charge for the same on the lands so purchased. Lands purchased subject to prior incumbrances. Moneys paid by a mortgagor to be a charge on lands. R. S. 1897, c. 72, s. 33.

Provision in case no sale should be effected on day of sale.

Ven. ex.

Conveyance of lands sold, and effect thereof.

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

Purchaser not to be affected by irregularities, etc.

Action not to abate by reason of marriage, death, etc.

**44.** 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. 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. 1897, c. 72, s. 34.

**45.** 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 the Form C in the Schedule hereto, 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 such conveyance, when delivered to the purchaser, 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 land of the first judgment, as well as at the time of such sale, or at any intermediate time, discharged from such judgment and from all judgments and other charges against the execution debtor and his lands, subsequent to such first judgment. R. S. 1897, c. 72, s. 35.

**46.** 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 any such sale shall, immediately after the making thereof, and after deducting therefrom the Sheriff's poundage fees and incidental expenses, be delivered to the District Registrar of the Supreme 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 each sale. R. S. 1897, c. 72, s. 36.

**47.** 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 said sale, or otherwise, of which he 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. 1897, c. 72, s. 37.

**48.** 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 such 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 shall be due in respect of the lands previous to the day of the sale thereof. R. S. 1897, c. 72, s. 30.

*Subsequent Proceedings.*

**49.** Any purchaser may remove or satisfy any mortgage or other incumbrance which, at the time of such 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 incumbrancer shall, if required, give to the purchaser, at the cost of the purchaser, a certificate of the satisfaction of mortgage or other incumbrance, which certificate may be in the Form D in the Schedule hereto; and on presentment thereof to the Registrar-General or District Registrar of Titles, it shall be a sufficient authority for him to cancel the registration of the mortgage or other incumbrance in respect of which it is given. R. S. 1897, c. 72, s. 38.

Purchasers may satisfy incumbrances.

Certificate of satisfaction, and registration thereof.

**50.** 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 such land. 1908, c. 26, s. 17.

Money realized by sale of lands.

**51.** The moneys received by the District Registrar of the Supreme 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. 1897, c. 72, s. 39.

Disposal of such proceeds.

**52.** The Registrar-General or District Registrar of Titles shall, on application in the usual form, and on the production to him of the Sheriff's conveyance to the purchaser, 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 which may be so sold as aforesaid, provided every such conveyance shall be first proved in the manner prescribed by the "Land Registry Act," and in the case of an indefeasible or absolute fee the Registrar's

Registration of conveyance.

certificate of title (if any) outstanding in the name of the judgment debtor shall be deemed to be cancelled as to the estate or interest therein of the debtor, or as to the portion thereof registered in the name of the purchaser. R. S. 1897, c. 72, s. 42.

*Fees and Returns.*

Sheriff's fees.

**53.** 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 be 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 be actually levied on such execution, the Sheriff shall be reimbursed his actual expenses by the execution creditor, and shall receive fees for his services actually rendered; and the Court or any Judge thereof making the said order may allow him a reasonable charge for any service rendered in respect thereof, in case no special fee be 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. 1897, c. 72, s. 43.

*Register of Sales.*

Register of sales to be kept by Sheriff.

**54.** 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. 1897, c. 72, s. 46.

Register may be inspected on payment of fee.

**55.** Any person shall be at liberty to inspect the said registers, and to take extracts therefrom, on payment of the sum of fifty cents. R. S. 1897, c. 72, s. 47.

Assessors may inspect register free of charge.

**56.** Every Government or Municipal Assessor shall be at liberty to inspect the said registers at all reasonable times, free of charge. R. S. 1897, c. 72, s. 48.

SCHEDULE.

FORM A.

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.

SHERIFF'S CERTIFICATE OF APPORTIONMENT, PURSUANT TO SECTION 43 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 incumbrance 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 incumbrance.

.....  
Sheriff.

## FORM C.

## 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.

MORTGAGE OR OTHER INCUMBRANCE. CERTIFICATE OF SATISFACTION OF INCUMBRANCE.

Pursuant to section 49 of the "Execution Act," \_\_\_\_\_ hereby certify that the mortgage or other incumbrance 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. 1897, c. 72, Sch.

VICTORIA, B. C.:

Printed by RICHARD WOLFENDEN, I.S.O., V.D., Printer to the King's Most Excellent Majesty.  
1911.