

No. XVIII.

CREDITORS' REMEDIES EXTENSION.

An Act for extending the remedies of Creditors against the property of Debtors in New South Wales and the Dependencies thereof.
[15th October, 1839.]

Preamble.

Sheriff empowered to seize monies bank notes &c.

And to pay money or bank notes to execution creditor.

And to sue for amount secured by bills of exchange and other securities.

Stock and shares in public companies belonging to the

WHEREAS the existing Law in the Colony of New South Wales is defective in not providing more effectual means for enabling creditors to obtain satisfaction from the property of their debtors and it is expedient to give more extensive remedies against the personal estate of their debtors than they now possess Be it enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That by virtue of any writ of *fieri facias* to be sued out of the Supreme Court or any inferior Court in the said Colony after the time appointed for the commencement of this Act or any precept in pursuance thereof the Sheriff or other officer having the execution thereof may and shall seize and take any money or bank note or notes of any Banking Society or Company established in New South Wales or elsewhere and any cheques bills of exchange promissory notes bonds specialties or other securities for money belonging to the person against whose effects such writ of *fieri facias* shall be sued out and may and shall pay or deliver to the party suing out such execution 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 *fieri facias* directed to be levied or so much thereof as shall not have been otherwise levied and raised and may sue in the name of such Sheriff or other officer for the recovery of the sum or sums secured thereby if and when the time of payment thereof shall have arrived and that 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 and such Sheriff and other officer may and shall pay over to the party suing out such writ the money so to be recovered or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied and if after satisfaction of the amount so to be levied together with Sheriff's poundage and expenses any surplus shall remain in the hands of such Sheriff or other officer the same shall be paid to the party against whom such writ shall be so issued Provided that no such 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 party suing out such execution shall enter into a bond with two sufficient sureties for indemnifying him from all costs and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof the expense of such bond to be deducted out of any money to be recovered in such action.

2. And be it enacted That if any person against whom any judgment shall have been entered up in the Supreme Court shall have

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have any stock or shares of or in any public company (whether incorporated or not) or any deposit in any bank of New South Wales or its Dependencies standing in his name or in his own right or in the name of any person in trust for him or shall have or be entitled to any equity of redemption or other equitable interest (which at law cannot be taken in execution) it shall be lawful for a Judge of the said Court on the application of any judgment creditor to order that such stock shares or deposits or any such equity of redemption or equitable interest or such of them or such part thereof respectively as he shall think fit shall stand charged with the payment of the amount for which judgment shall have been so recovered and interest thereon and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor. Provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of three calendar months from the date of such order.

debtor and standing in his own name to be charged by order of a Judge.

3. And in order to prevent any person against whom judgment shall have been obtained from transferring receiving or disposing of any stocks shares or deposits hereby authorized to be charged for the benefit of the judgment creditor under an order of a Judge as aforesaid Be it enacted That every order of a Judge charging any stock or shares in any such public company or any deposit in any such bank under this Act may be made in the first instance ex parte and without any notice to the judgment debtor and shall be an order to shew cause only and such order if any stock or shares or deposits standing in the name of the judgment debtor in his own right or in the name of any person in trust for him is to be affected by such order shall restrain such public company and the accountant and cashier of every such bank from permitting the transfer or disposal thereof and if after notice of such order to the person or persons to be restrained thereby or in case of corporations to any authorized agent of such corporation and before the same order shall be discharged or made absolute such corporation or person or persons shall permit any such transfer or disposal to be made then and in such case the corporation or person or persons so permitting such transfer or disposal shall be liable to the judgment creditor for the value or amount of the property so charged or so transferred or disposed of or such part thereof as may be sufficient to satisfy his judgment and that no disposition of the judgment debtor in the mean time shall be valid or effectual as against the judgment creditor and further that unless the judgment debtor shall within a time to be mentioned in such order shew to a Judge of the said Court sufficient cause to the contrary the said order shall after proof of notice thereof to the judgment debtor his attorney or agent be made absolute Provided that any such Judge shall upon application of the judgment debtor or any person interested have full power to discharge or vary such order and to award such costs upon such application as he may think fit.

Order of Judge to be made in the first instance ex parte and on notice to the bank or company &c. to operate as a distringas.

4. And be it enacted That if any judgment creditor who under the powers of this Act shall have obtained any such charge or be entitled to the benefit of any security whatsoever shall afterwards and before the property so charged or secured shall have been converted into money or realized and the produce thereof applied towards payment of the judgment debt cause the person of the judgment debtor to be taken or charged in execution upon such judgment then and in such case such judgment creditor shall be deemed and taken to have relinquished all right and title to the benefit of such charge or security and shall forfeit the same accordingly.

Securities not realized to be relinquished if the person taken in execution.

Markets.

Decrees and orders
of Courts of Equity
&c. to have effect of
judgments.

5. And be it enacted That all remedies hereby given to judgment creditors are likewise given to any persons to whom any monies or costs charges or expenses are by any decree or order in Equity or any rule or order at Common Law by the Supreme Court respectively directed to be paid.

Commencement of
Act.

6. And be it enacted That this Act shall commence and take effect from and after the passing and publication thereof.
