

# Judgment Creditors' Remedies Act 1901 No 8

[1901-8]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by Sch 4 to the [Civil Procedure Act 2005 No 28](#) with effect from 15.8.2005.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Judgment Creditors' Remedies Act 1901 No 8



New South Wales

An Act to consolidate the enactments relating to the remedies of judgment creditors.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Judgment Creditors' Remedies Act 1901*.

### 2 Repeals and saving

- (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.
- (2) All rules of Court and orders made and all writs framed under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made and framed under the authority of this Act.

## Part 2

### 3 (Repealed)

## Part 3 Execution against property

### 4 Money, bank-notes etc may be taken in execution

The sheriff or other officer having the execution of any writ of fieri facias (howsoever described whether as a writ for levy of property or otherwise) sued out of the Supreme Court or any inferior Court, or any precept in pursuance thereof, may and shall seize and take thereunder:

- (a) any money, and
- (b) any bank note of any banking society or company established in New South Wales or elsewhere, and
- (c) any cheque, bill of exchange, promissory note, bond, specialty, or other security for money,

belonging to the person against whom such writ is sued out.

**5 Money or bank-notes may be delivered to judgment creditor**

Such sheriff or officer shall pay or deliver to the person suing out such writ any money or bank-notes so seized or a sufficient part thereof.

**6 Negotiable instruments etc how dealt with**

Such sheriff or officer shall hold any such cheque, bill of exchange, promissory note, bond, specialty, or other security for money as a security for the amount by such writ directed to be levied, or so much thereof as has not been otherwise levied and raised, and may sue in the name of such sheriff or officer for the recovery of the sum secured thereby if and when the time of payment thereof has arrived.

**7 Payment to sheriff etc to be a discharge**

The payment to such sheriff or officer by the person 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 person so liable, shall discharge the person, to the extent of such payment or of such recovery and levy in execution, from such liability.

**8 Sheriff not bound to sue unless indemnified**

No such sheriff or officer shall be bound to sue any person so liable unless the person suing out such writ enters into a bond with two sufficient sureties for indemnifying the sheriff from all costs and expenses to be incurred in the prosecution of such action, or to which the sheriff may become liable in consequence thereof, the expense of such bond to be deducted out of any money to be recovered in such action.

**9 Proceeds of levy how disposed of**

Such sheriff or officer shall pay over to the person suing out such writ the money so recovered or such part thereof as is 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 poundage and expenses any surplus remains in the hands of such sheriff or officer, the same shall be paid to the person against whom such writ has been sued out.

**10 Equities of redemption etc**

The sheriff or other officer having the execution of any writ of execution against property issued out of the Supreme Court may:

- (a) take in execution any equity of redemption or other equitable interest, or any chose in action, of or belonging to the person against whom such writ is sued out, and
- (b) cause to be put up for sale and sold under such writ such equity of redemption or other equitable interest.

### **11 Sale to be by auction**

Such sale shall be by public auction, and in cases of equity of redemption shall be previously advertised in the Gazette and in one newspaper or more at least one month before the same takes place.

### **12 Sale to have effect of assignment**

- (1) Such sale shall be as valid and effectual to pass all such person's right and title to and interest in such equity or equitable interest as if the same had been conveyed or assigned to the purchaser by the person personally.
- (2) Provided that where any such equity or equitable interest relates to real estate, a deed of bargain and sale thereof or of such person's right and title to and interest therein shall be executed by such sheriff to such purchaser.

### **13 Judgment not to bind land**

- (1) No judgment recovered or to be recovered in any action at law shall bind or affect or be deemed to have bound or affected any land in New South Wales.
- (2) Provided that every writ of execution on any such judgment against the land of the person against whom such judgment is obtained, when delivered to the sheriff shall affect and be deemed to have bound such land from the time of such delivery in like manner as a writ of execution against property binds goods and chattels.

### **14 Sales of land by sheriff**

It shall not be necessary for any sheriff to make an actual seizure of land under any writ in order to authorise a sale thereof; but instead of such seizure the sheriff shall cause notice of the writ and of the intended day and place of sale and the particulars of the property to be published in such manner as the rules made by or under the [Supreme Court Act 1970](#) provide; and the publication of such notice shall be equivalent to an actual levy by the sheriff on the land indicated by such notice.

### **15 Deeds of sale by sheriff**

Every deed of sale heretofore or hereafter executed by any sheriff of the land of judgment debtor, or of the right, title, and interest of such debtor to and in any land, shall be evidence of the existence of a valid judgment and writ to support a levy by such sheriff on the land and of the fact of a levy having been duly made on such land if stated in the deed, or of such notice as aforesaid having been duly published if that fact be so stated.

### **16 Goods subject to bill of sale**

- (1) Whenever legal process issues against the goods of a judgment debtor for the execution of a judgment of any Court, and such goods are the subject of a conditional bill of sale, the sheriff, bailiff, or officer charged with the execution of such process

may sell the right, title, and interest of the judgment debtor in such goods without levying thereon.

- (2) Upon notice in writing of the purchase of such right, title, and interest being given to the person in whose favour such bill of sale has been made, or to the person's executors, administrators, or assigns, such person, or the person's executors, administrators, or assigns may take possession of the said goods, and shall be deemed to hold the said goods for the use of the purchaser of such right, title, and interest, subject to the amount due and payable under such bill of sale.
- (3) Upon the said goods being afterwards sold under such bill of sale, and there being any surplus remaining out of the proceeds thereof after paying the said amount, the person in whose favour such bill of sale has been made, or the person's executors, administrators, or assigns, shall upon demand pay over such surplus to such purchaser, and in default thereof shall be liable to an action to the extent of such surplus at the suit of such purchaser for money received for the use of such purchaser.
- (4) Nothing herein shall be deemed to affect the right of any execution creditor to test the validity of any bill of sale by interpleader process.

#### **17 Priority of writs of execution**

- (1) If writs of execution against the lands or goods of a person issue out of more than one Court, the right to the property seized is to be determined in the order of the times of the delivery of the writ to the sheriff to be executed (in the case of a writ issued out of the Supreme Court) or of the application to the registrar of the Court for the issue of the writ (in the case of a writ issued out of the District Court or a Local Court).
- (2) The sheriff must, on demand, inform the registrar of the District Court or the Local Court concerned of the precise time of the delivery of the writ issued out of the Supreme Court and the registrar of the District Court or the Local Court must, on demand, inform the sheriff or a sheriff's officer of the precise time of the application to the registrar for the issue from the District Court or the Local Court of the writ.

#### **17A Entry onto land for purposes of sale by auction**

- (1) The District Court or a Local Court may, in relation to land to be sold by public auction under a writ, make orders:
  - (a) authorising entry onto the land by the sheriff, bailiff or other officer having execution of the writ (including entry by force if necessary) for the purpose of showing the land to prospective purchasers, and
  - (b) authorising entry onto the land by prospective purchasers in the presence of the sheriff, bailiff or other officer.
- (2) For those purposes, such an order may also authorise the sheriff, bailiff or other

officer to do either or both of the following:

- (a) to secure entry onto the land (including by breaking or replacing locks, bars and other devices restricting entry, if necessary),
  - (b) to take such steps as are necessary to prevent persons from entering the land.
- (3) This section does not affect any other power of any court (including the Supreme Court) to make orders in relation to such matters.
- (4) A reference in this section to land includes any premises on land.

#### **18 Protection of officers**

Any writ of execution issued out of the Supreme Court, the District Court or a Local Court, or any associated order, warrant or endorsement, is sufficient justification for any bailiff or sheriff's officer acting in reliance on it.

### **Part 4 Execution against the person**

#### **19-22 (Repealed)**

#### **23 Liability for escape**

If any debtor in execution escapes out of legal custody, the bailiff, or other person having the custody of such debtor shall be liable only to an action upon the case for damages sustained by the person at whose suit such debtor was taken or imprisoned, and shall not be liable to any action of debt in consequence of such escape.

#### **24 (Repealed)**

#### **25 Discharge of judgment debtor on bankruptcy**

- (1) Any person in the custody of any bailiff, gaoler, or officer in execution of a judgment (not being a judgment obtained under the Act Eleventh Victoria number thirteen) under a writ of *capias ad satisfaciendum* issued out of a District Court shall upon the sequestration of the person's estate in pursuance of the law in force for the time being relating to bankruptcy be entitled to be discharged from such custody on the order of the Supreme Court, and shall be forthwith discharged from such custody either absolutely or on such conditions as the Supreme Court may impose.
- (2) Provided that if such person is in custody under any such writ issued to restrain the person from leaving New South Wales under the provisions of any enactment in that behalf, the person shall not be entitled to be discharged unless the person finds security in such manner and to such amount as the Supreme Court may order conditioned that the person will not remove from New South Wales until the person has received a certificate in due course of law under the law relating to bankruptcy or has been otherwise lawfully released from bankruptcy.

- (3) No such bailiff, gaoler, or officer shall incur any liability in respect of such discharge to any judgment creditor or other person for anything done by the bailiff, gaoler or officer under this section.

## **26 (Repealed)**

## **Part 5 Charging orders**

### **27 Order charging stock shares and equities**

- (1) If a judgment debtor under a judgment of the Supreme Court or a District Court:
- (a) has any stock or shares of or in any public company (whether incorporated or not), or any deposit in any bank, building society or credit union in New South Wales, standing in the judgment debtor's name in the judgment debtor's own right, or in the name of any person in trust for the judgment debtor, or
  - (b) has or is entitled to any equity of redemption or other equitable interest,
- the Supreme Court or a Judge of the District Court, as the case may be, on the application of any judgment creditor may order that such stock shares or deposit, or such equity of redemption or equitable interest, or such of them or such part thereof respectively as the Supreme Court or the Judge of the District Court, as the case may be, thinks fit, shall stand charged with the payment of the amount for which judgment has been so recovered and interest thereon.
- (2) Such order shall entitle the judgment creditor to all such remedies as the judgment creditor would have been entitled to if such charge had been made in the judgment creditor's favour by the judgment debtor.
- (3) Provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of three months from the date of such order.

### **28 Order in first instance to show cause**

Every such order charging any such stock shares or deposit:

- (a) may be made in the first instance ex parte and without any notice to the judgment debtor, and
- (b) shall be an order to show cause only, and
- (c) shall restrain such company and the accountant and cashier of such bank, building society or credit union from permitting the transfer or disposal thereof.

### **29 Disobedience of interim order**

If after notice of such order to any person to be restrained thereby or, in case of a corporation, to any authorised agent of such corporation, and before such order is

discharged or made absolute, such person or corporation permits any such transfer or disposal to be made, such person or corporation 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 the judgment creditor's judgment.

### **30 Disposition by judgment debtor invalid**

No disposition by the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor.

### **31 Making order absolute**

Unless the judgment debtor within a time to be mentioned in such order shows to the Supreme Court or a Judge of the District Court, as the case may be sufficient cause to the contrary, such order shall, after proof of notice thereof to the judgment debtor, the judgment debtor's attorney or agent, be made absolute.

### **32 Discharging or varying order**

The Supreme Court or a Judge of the District Court, as the case may be, may upon the application of the judgment debtor or any person interested discharge or vary such order and award such costs upon such application as the Supreme Court or the Judge of the District Court, as the case may be, thinks fit.

### **33 Securities not realised to be relinquished if person taken in execution**

If any judgment creditor, who under the powers of this Part of this Act has obtained any such charge or is entitled to the benefit of any security whatsoever, afterwards and before the property so charged or secured has been converted into money or realised and the produce thereof applied towards payment of the judgment debt, causes the person of the judgment debtor to be taken or charged in execution upon such judgment, then such judgment creditor shall be deemed to have relinquished all right and title to the benefit of such charge or security, and shall forfeit the same accordingly.

## **Schedule**

<b>Reference to Act</b>	<b>Title or short title</b>	<b>Extent of repeal</b>
3 Vic No 18	An Act for extending the remedies of Creditors against the property of Debtors in New South Wales and the Dependencies thereof.	The whole.
5 Vic No 9	An Act for the further amendment of the Law and for the better advancement of Justice.	Sections 31 and 43.
7 Vic No 13	An Act for regulating the appointment and duties of Sheriff in New South Wales.	Section 3.

7 Vic No 16	An Act to consolidate and amend the Laws relating to the Registration of Deeds and other Instruments in that part of the Colony of New South Wales not comprehending the District of Port Phillip.	The unrepealed portion.
10 Vic No 7	An Act to simplify the Law abolishing Imprisonment for Debt.	The whole.
12 Vic No 1	An Act to simplify and alter the Law in some respects.	Section 5.
13 Vic No 12	An Act to prevent the escape from the Colony of Fraudulent Debtors.	The whole, except so much as relates to writs of <i>capias ad respondendum</i> .
17 Vic No 21	The <i>Common Law Procedure Act of 1853</i> .	The unrepealed portion.
20 Vic No 31	The <i>Common Law Procedure Act of 1857</i> .	Section 54.
22 Vic No 1	<i>Titles to Land Act of 1858</i> .	Sections 2 and 3.
22 Vic No 18	<i>District Courts Act of 1858</i> .	The unrepealed portion of section 84.
37 Vic No 11	An Act to amend the Law of Arrest and Imprisonment of Civil Process.	So much of the proviso to section 4 as relates to section 5 and so much of section 5 as relates to writs of <i>capias ad satisfaciendum</i> .
52 Vic No 8	<i>Judgment Creditors' Remedies Extension Act of 1888</i> .	The whole.