

Act No. 8, 1901.

An Act to consolidate the enactments relating to the remedies of judgment creditors. [3rd October, 1901.]

JUDGMENT  
CREDITORS'  
REMEDIES.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

*Preliminary.*

1. This Act may be cited as the "Judgment Creditors' Remedies Act, 1901," and is divided into Parts, as follows:—

Short title and  
division.

PART I.—*Preliminary*—ss. 1–2.

PART II.—*Supreme Court Rules, Decrees, and Orders*—s. 3.

PART III.—*Execution against property*—ss. 4–18.

PART IV.—*Execution against the person*—ss. 19–26.

PART V.—*Charging Orders*—ss. 27–33.

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Repeal.  
Schedule.

Rules of Court, &c.,  
under Acts hereby  
repealed.

2. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All rules of Court and orders made and all writs framed under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made and framed under the authority of this Act.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 II.

*Supreme Court Rules, Decrees, and Orders.*

Rules, decrees, and  
orders to have effect  
of judgments.  
5 Vic. No. 9, s. 43.

3. (1) All rules, decrees, and orders of the Supreme Court in any of its jurisdictions, whereby any sum of money or any costs, charges, or expenses are payable to any person, shall have the effect of judgments at law, and such person may have execution thereon for the moneys so payable.

(2) The Judges of the said Court may cause writs of execution to be framed accordingly and to issue as they think fit.

(3) All such writs shall be enforced in the same manner as writs of execution are in ordinary cases.

3 Vic. No. 18, s. 5.

(4) Such person shall also be entitled to all remedies by this Act given to judgment creditors.

## PART III.

*Execution against property.*

Money, bank-notes,  
&c., may be taken  
in execution.  
*Ibid.* s. 1.

4. The Sheriff or other officer having the execution of any writ of *fieri facias* 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.

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

5. 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.

Negotiable instru-  
ments, &c., how dealt  
with.  
*Ibid.*

6. Such Sheriff or officer shall hold any such cheque, bill of exchange, promissory note, bond, specialty, or other security for money

as

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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. 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 him, to the extent of such payment or of such recovery and levy in execution, from such liability.

Payment to Sheriff, &c., to be a discharge.  
3 Vic. No. 18, s. 1.

8. 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 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.

Sheriff not bound to sue unless indemnified.  
*Ibid.*

9. 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.

Proceeds of levy how disposed of.  
*Ibid.*

10. The Sheriff to whom any writ of *fiery facias* issued out of the Supreme Court is directed 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.

Equities of redemption, &c.  
5 Vic. No. 9, s. 31.  
12 Vic. No. 1, s. 5.

11. 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.

Sale to be by auction.  
5 Vic. No. 9, s. 31.

12. (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 such person himself.

Sale to have effect of assignment.  
*Ibid.*

(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.

Conveyance by Sheriff.  
*Ibid.*  
22 Vic. No. 1, s. 3.

13. (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.

Judgment not to bind land.  
7 Vic. No. 16, s. 21.

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Writ of execution to bind land when delivered.

(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 or to the Sheriff of any district shall affect and be deemed to have bound such land from the time of such delivery in like manner as a writ of *feri facias* binds goods and chattels.

Sales of land by Sheriff.  
22 Vic. No. 1, s. 2.

14. 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 he 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 Judges of the Supreme Court from time to time direct; and the publication of such notice shall be equivalent to an actual levy by him on the land indicated by such notice.

Deeds of sale by Sheriff.  
*Ibid.* s. 3.

15. Every deed of sale heretofore or hereafter executed by any Sheriff of the land of a 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.

Goods subject to bill of sale.  
52 Vic. No. 8, s. 1.

16. (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.

Upon notice of sale grantee of bill of sale may take possession.  
*Ibid.*

(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 his executors, administrators, or assigns, such person, or his 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.

Disposal of proceeds of sale of goods.  
*Ibid.*

(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 his 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.

Saving of interpleader process.  
*Ibid.* s. 2.

(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.

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**17.** (1) When a writ against the lands or goods of a party to any suit issues out of the Supreme Court, and a warrant or writ of execution against the lands or goods of the same party issues out of any District Court, the right to the property seized shall be determined by the priority of the time of the delivery of the writ so issued out of the Supreme Court to the Sheriff to be executed, or of the application to the registrar for the issue from such District Court of the warrant or writ of execution.

Priority of execution issuing out of Supreme and District Courts.  
22 Vic. No. 18, s. 84.

(2) The Sheriff shall on demand inform the registrar of such District Court of the precise time of such delivery of the writ so issued out of the Supreme Court; and such registrar shall on demand inform the Sheriff or any Sheriff's officer of the precise time of the application to such registrar for the issue from such District Court of the warrant or writ of execution.

**18.** Any warrant granted in pursuance of any writ of execution issued out of the Supreme Court and the endorsement thereon shall be sufficient justification to any bailiff or Sheriff's officer acting thereon.

Warrant to justify officer acting thereon.  
*Ibid.*

## PART IV.

*Execution against the person.*

**19.** Except as hereinafter provided no person shall be arrested on any writ of *capias ad satisfaciendum* issuing out of the Supreme Court.

Limitation of arrest under *ca. sa.*  
10 Vic. No. 7, s. 3.

**20.** If a Judge of the said Court is satisfied by affidavit that the defendant—

Fraudulent concealment or intended departure.  
*Ibid.*

- (a) fraudulently conceals money, goods, or valuable securities from his judgment creditor, or
- (b) is about to leave New South Wales without satisfying the judgment,

the said Judge shall order such writ to issue, and the defendant may be arrested on such writ.

**21.** Nothing in this Part hereinbefore contained shall extend to any such writ issued in an action for breach of promise of marriage, libel, slander, seduction, or any malicious injury.

Actions for malicious injuries.  
*Ibid.*  
1899, No. 14, s. 92.

**22.** Where a defendant has been arrested or has given bail upon a writ of *capias ad respondendum*, a writ of *capias ad satisfaciendum* may be issued to fix the bail or charge the defendant in execution as of course.

*Ca. sa.* to fix bail.  
20 Vic. No. 31, s. 54.

**23.** If any debtor in execution escapes out of legal custody, the Sheriff, 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.

Liability for escape.  
7 Vic. No. 13, s. 3.

**24.**

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Discharge of judgment debtor on authority of attorney.

17 Vic. No. 21, s. 100.

**24.** (1) A written order under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* has been issued shall justify the Sheriff, gaoler, or person in whose custody the party may be in discharging such party unless the party for whom such attorney professes to act has given written notice to the contrary to such Sheriff, gaoler, or person.

(2) Such discharge shall not be a satisfaction of the debt unless made by the authority of the creditor.

(3) Nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

Discharge of judgment debtor on bankruptcy.

37 Vic. No. 11, s. 5.  
1898, No. 25, s. 133 (3).

**25.** (1) Any person in the custody of any Sheriff, 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 the Supreme Court or a District Court shall upon the sequestration of his estate in pursuance of the law in force for the time being relating to bankruptcy be entitled to his discharge from such custody on the order of the Judge in Bankruptcy, and shall be forthwith discharged from such custody either absolutely or on such conditions as the said Judge may impose.

(2) Provided that if such person is in custody under any such writ issued to restrain him from leaving New South Wales under the provisions of any enactment in that behalf, he shall not be entitled to his discharge unless he finds security in such manner and to such amount as the said Judge may order conditioned that he will not remove from New South Wales until he has received his certificate in due course of law under the law relating to bankruptcy or has been otherwise lawfully released from his bankruptcy.

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

37 Vic. No. 11, s. 4.

*Ca. sa.* may be executed on Sunday.  
13 Vic. No. 12, s. 1.

**26.** Any writ of *capias ad satisfaciendum* issued out of the Supreme Court may be lawfully executed upon a Sunday.

## PART V.

*Charging Orders.*

Order charging stock, shares, equities, &c.

Vic. No. 18, s. 2.

**27.** (1) If any person against whom any judgment has been entered up in the Supreme Court—

- (a) has any stock or shares of or in any public company (whether incorporated or not), or any deposit in any bank of New South Wales, standing in his name in his own right, or in the name of any person in trust for him; or
- (b) has or is entitled to any equity of redemption or other equitable interest,

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a Judge of the said Court 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 he 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 he would have been entitled to if such charge had been made in his 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.** 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 from permitting the transfer or disposal thereof.

Order in first instance to show cause.  
 3 Vic. No. 18, s. 3.

**29.** 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 his judgment.

Disobedience of interim order.  
*Ibid.*

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

Disposition by judgment debtor invalid.  
*Ibid.*

**31.** Unless the judgment debtor within a time to be mentioned in such order shows to a Judge of the said Court sufficient cause to the contrary, such order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute.

Making order absolute.  
*Ibid.*

**32.** Any such Judge 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 he thinks fit.

Discharging or varying order.  
*Ibid.*

**33.** 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.

Securities not realised to be relinquished if person taken in execution.  
*Ibid.* s. 4.

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## SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
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 Common Law Procedure Act of 1853.	The unrepealed portion
20 Vic. No. 31 ...	The Common Law Procedure Act of 1857.	Section 54.
22 Vic. No. 1 ...	Titles to Land Act of 1858.	Sections 2 and 3.
22 Vic. No. 18 ...	District Courts Act of 1858.	The unrepealed portion of section 84.
37 Vic. No. 11 ..	An Act to amend the Law of Arrest and Imprisonment on 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 ...	Judgment Creditors' Remedies Extension Act of 1888.	The whole.