

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on the Sixth Day of June, 1770, in the Tenth Year of the Reign of Our Sovereign Lord George the Third, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. and there continued by several Prorogations until the first day of November 1784, in the Twenty Fifth¹ Year of his said Majesty's Reign, being the Fifth General Assembly convened in the said Province.

25 George III – Chapter 1

An Act for more effectually making Lands and Tenements liable for the Payment of Debts, also to enable the Holders of small Mortgages to sell the Premises mortgaged to them more speedily and at less Expence then heretofore, as also to repeal an Act made in the Thirty Second Year of his late Majesty's Reign, intituled, "An Act for making Lands and Tenements liable to the Payment of Debts."

Whereas great inconveniencies have arose to the creditors as well as owners of real estates within this province from the manner in which lands and tenements have been heretofore made liable to the payment of debts, for remedy whereof.

I. Be it enacted by his excellency the Governor, Council and Assembly, and by the authority of the same, it is hereby enacted, that from and after the publication hereof an act made in the thirty second year of his late Majesty's reign, intituled, "An Act for making Lands and Tenements liable to the payment of debts," shall be no longer in force within this province, but that the same and every part thereof is hereby repealed.

And whereas it will tend to the great benefit of this province to make lands and tenements liable, like goods and chattles to the payment of debts; as thereby the value of lands will be increased and the landholders will more easily obtain credit by which means they will be enabled to extend their cultivation and improvements;

II. Be it therefore enacted by the authority aforesaid, that from and after the publication hereof all lands, tenements and hereditaments within this province, shall and the same are hereby made liable to the payment of all debts contracted by the owners thereof in as full and ample a manner as the goods, chattles or effects of debtors were heretofore made liable for the payment of their just debts, subject only to the rules and regulations herein after mentioned, and expressed, that is to say, when any person or persons after the publication hereof shall recover judgment in any of his Majesty's courts of record within this province for any sum or sums of money or for costs of suit, and the person or persons, against whom judgment shall be so obtained, shall be either unable or unwilling to satisfy such judgment in money, or if he or some person in his behalf shall not produce and shew

¹ While the original version of the acts of 1784 state that the regnal year is 23 Geo III, the acts compiled by Uniacke in 1805 have changed this to the correct regnal year, 25 Geo III. As the 1805 Uniacke compilation is treated as the legal standard for Nova Scotia Legislative history, we are using the corrected Uniacke version of the regnal year.

sufficient personal estate, whereon to levy execution on such judgment, then and in such case, it shall and may be lawful for the sheriff or his deputy to extend such execution on the real estate of such debtor or debtors, and after such real estate or estates shall be so taken in execution, it shall and may be lawful for the said sheriff or his deputy to advertise the said estate so taken in execution or so much thereof, as shall be sufficient to discharge the execution so extended thereon with costs and charges to be sold at the most public place within his county in six calendar months to be computed from the day in which such execution shall be so extended, which advertisement shall be continued in one of the public newspapers in Halifax, during said six months, and shall be posted upon the premises so to be sold, as well as in the settlements most contiguous thereto, and the premises so to be sold shall be put up to fair auction and shall be sold to the highest bidder, who shall be declared by the sheriff or his deputy to be the purchaser, and it shall and may be lawful for the said sheriff or his deputy to execute immediately to such person or persons as shall purchase the premises so sold at auction as aforesaid an absolute deed of sale without any clause of redemption therein contained, specifying therein the consideration paid by the purchasers, as well as the name or names of the former owner or owners of said lands, and the name or names of the person or persons at whose suit such lands have been sold, which deed shall be good and sufficient in law to create to such purchaser or purchasers, their heirs or assigns a good and absolute estate in fee simple for ever, of and in the premises comprehended in such deed, provided, such premises were the absolute estate in fee simple of the person or persons against whom the execution by virtue whereof such sale shall be made, was issued, and it shall and may be lawful for the sheriff or his deputy, after such deed shall be so executed to enter on the premises specified in such deed, and to put such purchaser or purchasers into the quiet and peaceable possession thereof, provided nevertheless, that if the premises so sold, or any part thereof, shall have been leased by lease or instrument in writing to any tenant or tenants before the extending execution thereon, whose lease or leases shall not be expired at the time of such sale, that then it shall and may be lawful for the sheriff or his deputy to notify such tenant or tenants, that they must attorn and become tenants to such purchaser or purchasers, and in case such tenant shall after such notice received as aforesaid, shall refuse to attorn and become tenant to such purchaser or purchasers according to law, that then such tenant or tenants lease shall be deemed null and void, and he or they shall become subject to all the laws of this province against forceable entry and detainer, and it shall and may be lawful for such purchaser or purchasers to prosecute and recover against such tenants as against forceable overholders in the manner specified in said laws against forcible entry and detainer, and in case only part of the premises included in such tenants lease or leases may be necessary to be sold by virtue of such execution or executions, and it may be uncertain how much of the whole rent reserved in such tenants lease or leases he ought to pay to the purchaser or purchasers under such execution or executions, it shall and may be lawful for the sheriff or his deputy to estimate the same by the appraisement of three freeholders of the county where such lands lye, who shall be sworn by the sheriff or his deputy to decide impartially between the parties, one of said appraisers to be appointed by the tenant or his landlord, the other by the purchaser, and the third by the sheriff, and if the said parties or some person lawfully authorized by them, after notice given, shall neglect to attend the sheriff, to appoint

appraisers as aforesaid, it shall and may be lawful for the sheriff or his deputy to nominate for the person so neglecting, and after such appraisers have estimated the portion of rent, such tenant or tenants ought to pay to the person or persons so purchasing a part of the premises leased to him, such tenant after being properly notified, shall attorn and become tenant to such purchaser, and in case of refusal to attorn and become tenant to such purchaser, he or they shall be subject to the laws against forceable entry and detainer, and shall be liable to be prosecuted thereon as aforesaid, and such tenant or tenants shall stand discharged of and from the claims of his or their landlord for so much rent as the said appraisalment shall amount to, and shall perform all such covenants in his lease so far as relate to the premises so sold to the purchaser thereof in as full and ample manner as he was bound, to perform the same to his or their landlord.

III. And be it further enacted by the authority aforesaid, that the sheriff or his deputy fourteen days before he shall proceed to sell real estates taken in execution and advertised as aforesaid, he shall appraise the value thereof by three freeholders, to be appointed as aforesaid, who shall be first sworn by the said sheriff or his deputy, whether they know and are acquainted with the premises so to be appraised and if they do, then such freeholders shall be sworn by the said sheriff or his deputy, justly and truly to appraise, and value such estate, and if the appraised value thereof shall exceed the amount of such execution including the sheriffs fees, then it shall and may be lawful for the said sheriff or his deputy to set up at auction, and sell only so much of said real estate as will be sufficient to discharge the said execution and expense, and in case the owner of such estate so to be sold, or some person on his behalf, shall neglect to attend the sheriff or his deputy, to point out which part of such real estate it will be least inconvenient for such debtor to be deprived off, then it shall be lawful for the said sheriff or his deputy to set up and sell that part of the said estate, which appears at the time of such sale, to be of least immediate advantage to the debtor, and if the proceeds of such sale shall exceed the amount of such execution or executions and charges, such overplus shall be paid over to the debtor or some person lawfully authorized by him, to receive the same, and in case no such person appears, then the sheriff or his deputy shall pay the overplus into the court, out of which execution issued, there to be lodged for the benefit of the right owner, and in case there shall not be sufficient real estate to satisfy such execution upon return thereof, the party shall have an alias execution for the remainder, and the sheriff or his deputy shall annex to all executions when they return the same, the appraisalment herein before directed to be made, and the said sheriff or his deputy shall on no account disturb any person or persons in possession of lands or tenements at the time he shall levy execution thereon, but shall leave such person or persons in the peaceable possession thereof, until final sale shall be made as aforesaid.

IV. Provided, that nothing in this act contained, shall extend to such real estates whereon execution has already been levied, but such estates shall be proceeded on in manner as directed in law heretofore made, to make lands and tenements liable to the payment of debts any thing herein contained to the contrary notwithstanding.

And whereas the manner in which mortgages are now foreclosed within this province is found tedious and very expensive, for remedy whereof;

V. Be it enacted by the authority aforesaid, that from and after the publication hereof it shall and may be lawful for any person or persons whatsoever to whom lands or tenements within this province, shall be mortgaged for any principal sum, not exceeding two hundred pounds to bring action on the case in his Majesty's supreme court, at any of the terms either in town or country for recovery thereof against the mortgager, his executors or administrators, and to set forth in his or their declaration the substance of such mortgage, and in case the mortgagers shall appear and plead thereto, it shall and may be lawful for such mortgager to give in evidence and proof of all such payments as have been made by him on account of such mortgage, provided, he shall have furnished the mortgage with such account fourteen days before trial, and it shall and may be lawful for the jury before whom such issue shall be tried to liquidate such accounts and to find a verdict for the amount of the principal sum and interest, then due on such mortgage, calculating interest thereon for six months after the end of the term in which such trial shall be had, and the said supreme court shall give judgment for the same with costs, and in case the said mortgagers shall neglect to appear and shall suffer judgment to go against him by default, then the said original mortgage shall be produced in open court, and the judges thereof shall cause the amount of principal and interest due thereon, to be made up in their presence allowing interest as aforesaid, and judgment shall be given for the same with costs, and execution shall issue thereon to the sheriff or his deputy who shall sell the mortgaged premises under the restrictions and in manner and form as herein before specified for the sale of lands taken in execution, and in case the mortgaged premises when sold as aforesaid, shall not produce sufficient to discharge the amount of the execution and charges, the party on return thereof may have an alias execution against the mortgagers body or estate for the ballance unsatisfied on such execution.

VI. Provided always, that nothing herein contained shall extend to any mortgages wherein the principal sum shall exceed two hundred pounds, or where suit has already been brought to foreclose the same, but such mortgages shall be proceeded on in the usual form, any thing herein contained to the contrary notwithstanding.

VII. And be it further enacted, that nothing in this act contained shall extend to be construed to extend to the sale of houses on which execution may be levied, and which may sell for more than the amount of such execution, in which case the overplus shall be paid to the debtor or debtors.

VIII. Provided also, that nothing in this act contained shall have any force or effect until his Majesty's pleasure thereon shall be known.