

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Monday, the Second Day of October, 1758, and in the 32nd year of His Majesty's Reign.

32 George II – Chapter 15

An Act for making Lands and Tenements liable to the Payment of Debts.

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, when any person or persons 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 recovered, shall be either unwilling or unable to satisfy such judgment, by money or otherwise, or sufficient personal estate, whereon to levy execution on such judgment, shall not be found, then and in such case execution shall and may be extended on the real estate of such debtor or debtors; and the Provost Marshal or his deputy, upon request to either of them made by the creditor or creditors, his or their attorney or agent, shall give notice in writing to the debtor or debtors, or in their absence to their attorney or agent, to nominate an appraizer, and the Creditor or Creditors shall have like notice to nominate another on their behalf, and the said Provost Marshal or his deputy shall name a third, being all discreet indifferent men and freeholders; and in case such debtor or creditor or either of their agents or attorneys shall, for the space of three days after such notice, refute or neglect to nominate an appraizer on their respective behalfs, or in case such debtor or debtors, shall be absent from the Province, and have no known attorney or agent, then and in such case the Provost Marshal or his deputy shall and may nominate an appraizer for such debtor or creditor respectively; And the Provost Marshal or his deputy shall cause the said appraisers, so nominated, to be sworn before some of His Majesty's Justices of the Peace, faithfully and impartially to the best of their skill and knowledge, to appraise such real estate as shall be shewn to them. And the, said appraisers with the Provost Marshal or his deputy shall forthwith repair to the lands or tenements of such debtor, and view and examine the state and condition thereof, and if upon such view and examination, the said appraisers, or any two of them, shall judge that the annual rent of such lands or tenements, will be sufficient to pay such debt, costs, and lawful interest for the same, together with the necessary repairs, within two years, then the Provost Marshal or his deputy shall extend the said execution on the rents only, and cause the person or persons in possession, whether debtor or debtors, or their tenant or tenants, to attorn and become tenant to such creditor or creditors, and shall pay rent quarterly to such creditor or creditors, who may distrain for the same, it in arrear, according to the laws of Great Britain; and the person in possession, refusing or neglecting to pay such rent, when due, may be removed from such lands or tenements, by the Provost Marshal or his deputy. And the creditor or creditors shall and may hold over and receive the rents of such lands or tenements, until such judgment, cost and interest, shall be fully satisfied and paid.

And be it further enacted, that if upon such view and examination as aforesaid, the said appraisers or the major part of them, shall be of opinion that the yearly rents of the lands or

tenements of such debtor or debtors are not sufficient to satisfy such debt with cost and interest, together with the charge of needful repairs, within the space of two years, then the said execution shall and may be levied on part of such estate, if in the judgment of the said three appraisers it can conveniently be done; but if not, then on the whole of the lands or tenements of the said debtor or debtors. And the Provost Marshall or his deputy shall immediately deliver seizen and possession thereof to such creditor or creditors, and cause the person or persons in possession or improvement thereof, to attorn and become tenants to such creditor or creditors in manner aforesaid, and pay their rent to him or them accordingly. And such person or persons, so in possession, shall be subject to be removed, and be under such rules and regulations as are herein before prescribed.

And be it further enacted, that in all cases where an appraisement, as herein before directed, shall be made, whether the same be of lands or tenements in part or in whole, or of the rents thereof only; the appraisers shall make and subscribe a true and impartial appraisement thereof which said appraisement being annexed to the execution, and duly returned by the Provost Marshal or his deputy, and filed and recorded therewith by the clerk of the court from whence the same issued, in a book to be kept by him for that purpose, and the Provost Marshal or other Officer serving such Execution, shall immediately execute a deed of sale of such lands or tenements, to such creditor or creditors, in consideration of the value found by such appraisers, to be therein mentioned, who by virtue thereof or of said return, shall make a good title to such creditor or creditors, his or their heirs or assigns in fee. Subject nevertheless to an equity of redemption, as is herein after prescribed; and any clerk refusing or neglecting his duty herein, shall forfeit the sum of five pounds, to be recovered by action of debt by the party grieved.

Provided always, and it is hereby further enacted, that it shall and may be lawful for any debtor or debtors, whose estate is taken in execution, of their heirs, executors, administrators, or assigns, at any time, within the space of two years next following the levying such execution thereon, to redeem his or their lands or tenements so extended, and may have his action of account against the creditor or creditors or their assigns, in manner as is provided by law: And upon paying the original debt with the cost and interest, and the charges of such necessary repairs, as the creditor or creditors or their assigns have been obliged to expend; Provided that they do not exceed one half of the rents, which the creditor or assigns, if he or they see cause, are hereby allowed to expend and lay out, and as much more as the debtor shall consent to, (who is hereby obliged to accept the same,) such creditor or creditors or their assigns shall immediately surrender all such estate to the debtor or debtors, their heirs, executors, administrators, or assigns, and deliver up and quiet peaceable possession thereof,

And be it further enacted, that when any estate shall be found by the appraisers, to be of greater value than the debt and cost, the creditor or creditors shall be obliged, at the expiration of thirty days next after the end of the said two years, (if not sooner redeemed) to give publick notice by advertisement, that the lands or tenements, so extended, are to be sold at publick auction by the Provost Marshal or his deputy, who are hereby empowered to

sell the same, and to execute to the person or persons purchasing the same, a deed thereof as of a fee simple, which deed being registered as by law required, shall be good and valid in the law; but in the mean time and until such sale shall be made, the equity of redemption of such lands or tenements, shall be open in favour of such debtor or debtors, their heirs, executors, administrators, or assigns, to recover the same, and if, upon such sale, the said lands or tenements do sell for more than the original debt, cost, charges, and interest, the creditor or creditors, or their attorney or agent or assigns, shall pay the overplus into the hands of the debtor or debtors or their heirs, executors, administrators, or assigns, the said creditor or creditors accounting to such debtor or debtors, for all rents and profits, first deducting for all necessary repairs. But if the said lands or tenements do sell for less than the debt, cost, charges, and interest, then the creditor or creditors, or their heirs or assigns, in such case, shall and may have an alias execution against the debtor for the residue.

And be it further enacted, that when the real estate of the debtor upon appraisement, or when the yearly rent of the lands or tenements extended upon, at the end of the said two years, shall be found insufficient to satisfy the judgment, with cost, charges, interest, and needful repairs; That in either case, an alias execution may issue on the said judgment for the remainder, and be levied on such other effects or estate as can be found of the debtor, or his body may be taken and detained until satisfaction be made of such judgment, with cost, charges, and interest: any law, usage, or custom to the contrary notwithstanding.

Provided that nothing herein contained shall extend or be construed to extend to the detaining in prison any poor insolvent debtor, contrary to the law of this Province in that case made and provided.