

council for an inquiry, and for the appointment of commissioners to enquire into such insolvency, and to examine and settle the claims of all creditors, and the amount of the estate of such insolvent, and to authorize such executor or administrator to sell all the lands and tenements of such insolvent, and to divide the produce of the whole of such estate, in due proportion to and among the creditors.

*And be it further enacted,* That every executor or administrator, who may be authorized and empowered to make sale of any real estate, shall, before such sale made give bond by himself, or his lawful Attorney with two sureties, at the office of the register of the court of probates, in the county where such real estate shall lie, for the just and legal distribution of the monies arising from such sale, in the full value which, by the report of the commissioners for that purpose appointed, shall be certified to be necessary to be raised by such sale.

Executors, &c. to give bond before the sale of real estate.

### Cap: XII.

An ACT subjecting REAL estates in the Province of NEW-BRUNSWICK to the payment of DEBTS, and directing the SHERIFF in his proceedings thereon.

**W**HEREAS it is highly reasonable and just that the real estate of every person or persons in this province should be subject to the payment of his, her or their debts due to all and every of his, her or their creditors, wheresoever resident.

Preamble.

*Be it enacted by the Governor, Council and Assembly,* That from and after the publication hereof, the houses, lands, real estate and hereditaments, situate or being in any part of this province, belonging to any person or persons whatsoever, indebted shall be liable to, and chargeable with all just debts and demands, of what nature or kind soever, owing by or due from any such person to his Majesty, or any of his subjects, and shall be and are hereby made chattels for the satisfaction thereof in like manner as personal estates within this province are seized, sold or disposed of, for satisfaction of debts.

Lands, &c. liable to be seized &c. for debts.

*Provided always,* That every sheriff, or other officer, to whom any writ of *ferri facias*, or other writ, shall be directed, shall first seize and take so much of the personal estate of the defendant or defendants as may be sufficient to satisfy the sum justly

Sheriffs or other officers to seize and sell houses, lands, &c. on *ferri facias* or other writ where

personal estate  
cannot be found.

due to the plaintiff, with cost of suit, which shall be indorsed on the said execution before the sealing thereof, if so much within his bailiwick he can find, and if so much he cannot so find, then, and in that case the sheriff, or other officer shall seize, sell and dispose of so much and no more, as near as may be of the houses, lands, real estate and hereditaments of the defendant or defendants as will be sufficient to satisfy the whole, or the residue, as the case may require, of the monies so as aforesaid from him or them due, and on such writs payable.

Houses, lands  
&c. to be advertised  
six months  
before sale.

*And be it further enacted,* That before any sale shall be made by any sheriff, or other officer of the houses, lands, real estate or hereditaments of any person or persons, he shall first advertise the time and place of such intended sale at least six months before he shall make the same, in the city, town or parish where the premises are or shall be, in three or more of the most public places of the county wherein such estate doth lay, and then and there between the hours of twelve and five in the afternoon shall sell the same to the highest bidder.

Sale to be between the hours  
of 12 and 5, P.  
M.

Owners of houses,  
lands, &c. to have their  
election which  
part to be sold.

*And be it further enacted,* That every defendant and defendants whose houses, lands, real estate or hereditaments shall or may hereafter be taken into execution, shall and may have free election by himself, his attorney, his heirs or executors, at any time *twenty* days before sale thereof is as aforesaid to be made and signify in writing to the officer who is to make the same sale what part or portion of the same houses, lands real estate or hereditaments shall be sold, if a part or dividend thereof may be sufficient to satisfy the monies on such execution due and payable as aforesaid; which part, if that shall be sufficient and no other, the sheriff or other officer shall on such writ of execution sell or dispose of.

Sheriff or other  
officer to make  
conveyance of  
houses, lands &c.  
sold on execution.

*And be it further enacted,* That when any houses, lands, real estate or hereditaments shall be sold in manner aforesaid, the sheriff or other officer that sold the same, shall in his own name make unto the purchaser thereof, as good and sufficient a conveyance for the houses, land, real estate or hereditaments purchased as aforesaid, as the owner of such houses, land, real estate or hereditaments might or could have thereof made at or before the time of the judgment therein reciting the execution or executions, or other process requiring such sale to be made, by virtue whereof the premises were sold as aforesaid, by which deed the purchaser or purchasers shall be and are hereby declared to be vested in as good and perfect an estate as the owner of such houses, lands, real estate or hereditaments was seized of or entitled unto, at or before the said judgment; and as fully to all intents and purposes, as if the person against whom such writ of execution

on shall be granted had sold such lands and premises to such purchaser or purchasers, and signed, sealed and delivered a good deed for the same, and received the consideration money himself.

*And be it further enacted,* That the purchaser his heirs and assigns shall hold the premises purchased as aforesaid, free and clear of all other judgments, recognizances, statutes merchant and statutes stable whatsoever, by virtue whereof no execution has been executed upon the real estate so purchased, any law, usage or custom to the contrary notwithstanding.

Purchaser shall hold the premises free of judgments, &c.

*And be it enacted,* That no process against real estates shall issue until one of the Judges of the supreme court shall have inspected the record of the judgment, and thereon certified that he has inspected the same, and no error is therein apparent to him; and in like manner one of the said Judges shall inspect the process to be issued, and certify thereon as aforesaid; and the said judgment and process, with such certificates, shall be recorded in a book by the clerk of the supreme court to be kept for that purpose, before sending such process to any sheriff or other officer or officers.

Judge to certify &c. before process against real estate shall issue.

Judgment and certificate recorded by clerk of supreme court.

*And be it enacted,* That if any judgment or process by virtue of which such sale shall be made as aforesaid, and certified and recorded as aforesaid, shall happen to be reversed for error, yet the same reversal shall not be given in evidence, or be of force against any *bona fide* purchaser under the said judgment or process so certified and recorded as aforesaid: but the purchaser his heirs, executors, administrators or assigns, shall hold the land or other thing so *bona fide* purchased, notwithstanding a reversal of the judgment or process after his purchase, and such reversal shall only operate against the plaintiff, his heirs executors and administrators to compel him or them to restore in value to the defendant for what he lost.

Reversal of judgment not to operate against bona fide purchaser; but plaintiff shall restore in value to defendant.

*And be it enacted,* That the record made in the said book as aforesaid, of the judgment, process and certificates, shall be as good evidence of either of them at all times as if the originals were produced.

Record in clerk's book good evidence.

And in the case where fundry executions or other processes have issued, requiring the sale of real estate and sufficient cannot be levied of the personal and real estate, to satisfy all the sums commanded to be levied. *Be it enacted,* That such priority and preference as the law gives in the case of executions against personal estate only shall be given in the case aforesaid, and all disputes on that head shall thereby be regulated, adjudged and determined.

The same priority on executions against real as personal estates.

*And*

Damages and double costs of suit against sheriff or other officer for neglect of duty.

*And be it enacted*, That if any sheriff or other officer, shall, in any matter or thing, act or do contrary to his duty hereby required and directed, or contrary to the liberty and election hereby given to the defendant, or shall refuse to return the overplus money arising from such sale, if any shall remain in his hands, such defendant or person injured thereby, shall and may maintain his, her or their action on the case, against such sheriff or other officer in any court of record within this province, which shall or may have cognizance of the same, wherein he, she or they shall recover the damage by him, her or them sustained, with double costs of suit.

### CAP. XIII

## An ACT for RELIEF against ABSCONDING DEBTORS.

*Be it enacted by the Governor, Council and Assembly,*

Debtors absconding, creditors may make oath before the judges of the supreme court.

**T**HAT from and after the passing of this act, whensoever it shall happen, that any person or persons whatsoever, being indebted within this province, shall either secretly depart the province, or keep concealed within the same, any one creditor or joint company whose debt or demand is due to them jointly to whom such absconding or concealed person or persons is or are indebted in the sum of *Twenty Pounds* or upwards, or any *Two* to whom he, she or they is or are indebted in the sum of *Thirty Pounds* or upwards or any *Three* to whom he, she or they is or are indebted in the sum of *Forty Pounds* or upwards over and above all discounts may make application to the judges of the supreme court of this province for the time being or any of them and there make affidavit or affirmation in writing in cases where by law an affirmation is allowed, that the said absconding or concealed person or persons is or are indebted to him, her or them in the sum of \_\_\_\_\_ over and above all discounts, and that he, she or they do verily believe that the said absconding or concealed person or persons is or are either departed the province or concealed within it with intent and design to defraud him, her or them and other creditors (if any such there be) of their just dues or to avoid being arrested by the ordinary process of law which departure or concealment shall also be proved to the satisfaction of such judge or judges by *Two* witnesses: And on such affidavit or affirmation and such other proof made the said judge or judges or any one of them hereby is and are fully empowered authorized and required forthwith to issue his or their warrant or warrants to the sheriff of the city or county which contains the last usual place of residence of such absconding or concealed

Warrant for the attachment of the estate of such debtors.