

ANNO DUODECIMO & DECIMO TERTIO

VICTORIÆ REGINÆ.

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CAP. XCV.

An Act to amend the Law concerning Judgments in *Ireland*. [1st *August* 1849.]

WHEREAS an Act of the Parliament of *Ireland* was passed in the Ninth Year of King *George* the Second, intituled *An Act for the more effectual assigning of Judgments, and for the more speedy Recovery of Rents by Distress;* and an Act of the Parliament of *Ireland* was passed in the Twenty-fifth Year of King *George* the Second, intituled *An Act to explain and amend an Act passed in the Ninth Year of the Reign of His present Majesty, intituled 'An Act for the more effectual Assignment of Judgments, 'and for the more speedy Recovery of Rents by Distress,' so far as the said Act relates to the Assignment of Judgments and Statutes, and to prevent great Inconveniences that frequently happen to the Suitors of the Court of Chancery by the Death or Removal of a Six Clerk or Six Clerks of the said Court, and to enable Grand Juries to make Presentments for the Clerks of the Crown and Peace:* And whereas by an Act passed in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for facilitating the Appointment of Sheriffs in* Ireland, *and the more effectual Audit and passing of their Accounts; and for the more speedy Return and Recovery of Fines, Fees, Forfeitures, Recognizances, Penalties, and Deodands; and to abolish certain*

9 G. 2. (I.)

25 G. 2. (I.)

5 & 6 W. 4. c. 55.

Offices in the Court of Exchequer in Ireland; *and to amend the Laws relating to Grants in custodiam and Recovery of Debts in* Ireland; *and to amend an Act of the Second and Third Years of His present Majesty, for transferring the Powers and Duties of the Commissioners of Public Accounts in* Ireland *to the Commissioners for auditing the Public Accounts of* Great Britain, it was enacted, that it should be lawful for any Person entitled to sue out or who had already sued out a Writ of Elegit upon any Judgment recovered in any of His Majesty's Courts at *Dublin*, or to issue or who had issued Execution in any Suit or Proceeding on any Recognizance there, to apply by Petition to the Court of Chancery, or to the Court of Exchequer at the Equity Side thereof, for an Order that a Receiver might be appointed of the Rents and Profits of the entire, and not of a Moiety only, of all Lands, Tenements, or Hereditaments which he would be entitled to have extended or appraised under a Writ of Elegit, or extended, seized, or taken under a Writ of Levari facias, or other Proceeding on such Recognizance, or to have a Receiver thereof appointed by that Court extended to that Matter, and it should be lawful for the Court to appoint or extend a Receiver accordingly over the whole thereof, or over so much thereof as should appear to it sufficient for the Purposes of paying the Sum due on such Judgment or Recognizance: And whereas by an Act passed in the Fourth Year of Her Majesty's Reign, intituled *An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for the further Amendment of the Law and the better Advancement of Justice in* Ireland, it was enacted, that it should be lawful for the Sheriff or other Officer to whom any Writ of Elegit, or any Precept in pursuance thereof, should be directed at the Suit of any Person upon any Judgment which at the Time appointed for the Commencement of that Act should have been recovered, or should be thereafter recovered in any Action in any of Her Majesty's Superior Courts at *Dublin*, to make and deliver Execution unto the Party in that Behalf suing of all such Lands, Tenements, Rectories, Tithes, Rents, and Hereditaments, including Lands and Hereditaments which might be of Copyhold Tenure, as the Person against whom Execution was so sued, or any Person in trust for him, should have been seised or possessed of at the Time of entering up the said Judgment, or at any Time afterwards, or over which such Person should at the Time of entering up such Judgment, or at any Time afterwards, have any disposing Power which he might without the Assent of any other Person exercise for his own Benefit, in like Manner as the Sheriff or other Officer might then make and deliver Execution of One Moiety of the Lands and Tenements of any Person against whom a Writ of Elegit was sued out, which Lands, Tenements, Rectories, Tithes,

3 & 4 Vict. c. 105.

Rents, and Hereditaments by force and virtue of such Execution should accordingly be held and enjoyed by the Party to whom such Execution should be so made and delivered, subject to such Account in the Court out of which such Execution should have been sued out as a Tenant by Elegit was then subject to in a Court of Equity; and it was enacted, that it should be lawful for any Person entitled to sue out or who had already sued out a Writ of Elegit upon any Judgment recovered in any of Her Majesty's Courts at *Dublin*, or to issue or who had issued Execution in any Suit or Proceeding on any Recognizance there, to apply by Petition to the Court of Chancery, or to the Court of Exchequer at the Equity Side thereof, for an Order that a Receiver might be appointed over any Lands, Tenements, Rectories, Tithes, Annuities, Rents, or Hereditaments by that Act made liable to be seized, extended, appraised, or taken in Execution on any such Judgment, or to order that any Receiver appointed before the passing of that Act over the Property of any Judgment Debtor might be extended to the Matter of such new Petition, and that in proceeding under the said Act of the Sixth Year of King *William* the Fourth and the Act now in recital the said Court of Chancery and Court of Exchequer at the Equity Side thereof should have Power to appoint or extend a Receiver in a summary Way, on a Petition at the Instance of such Person, over any Property of such Judgment Debtor which such Creditor would or could make available for the Payment of his Judgment Debt by filing (after a Writ of Execution had been issued and returned at Law upon such Judgment) a Bill in a Court of Equity, or by any Writ of Execution at Law, or (subject to the Proviso therein-after contained) by Petition under the Provisions of the Act now in recital, and it should be lawful for the said Courts respectively to appoint or extend a Receiver accordingly over the whole thereof, or over so much thereof as should appear to be sufficient for the Purposes of paying the Sum due on such Judgment or Recognizance; and it was enacted, that a Judgment already entered up or to be thereafter entered up against any Person in any of Her Majesty's Superior Courts at *Dublin* should operate as a Charge upon all Lands, Tenements, Rectories, Advowsons, Tithes, Rents, and Hereditaments, including Lands and Hereditaments of Copyhold Tenure, of or to which such Person should at the Time of entering up such Judgment, or at any Time afterwards, be seised, possessed, or entitled for any Estate or Interest whatever at Law or in Equity, whether in possession, reversion, remainder, or expectancy, or over which such Person should at the Time of entering up such Judgment, or at any Time afterwards, have any disposing Power which he might without the Assent of any other Person exercise for his own Benefit, and should be binding as against the Person against whom Judgment should be so entered up, and against all Persons claiming under him after such

such Judgment, and should also be binding as against the Issue of his Body, and all other Persons whom he might without the Assent of any other Person cut off and debar from any Remainder, Reversion, or other Interest in or out of any of the said Lands, Tenements, Rectories, Advowsons, Tithes, Rents, and Hereditaments, and that every Judgment Creditor should have such and the same Remedies in a Court of Equity against the Hereditaments so charged by virtue of that Act or any Part thereof as he would be entitled to in case the Person against whom such Judgment should have been so entered up had Power to charge the same Hereditaments, and had by Writing under his Hand agreed to charge the same with the Amount of such Judgment Debt and Interest thereon, subject to the Provisoes in such Act contained; and by the lastly-recited Act the Effect of Judgments in the Superior Courts of Common Law was given to certain Decrees, Orders, and Rules for Payment of Monies, Costs, Charges, and Expenses: And whereas it is expedient to amend the Law concerning Judgments in *Ireland*: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act all the Provisions of the said Acts of the Ninth and Twenty-fifth Years of King *George* the Second relating to Judgments, Statutes Staple, and Statutes Merchant, shall be repealed, save so far as respects Judgments entered up before the passing of this Act.

Repeal (in part) of recited Acts of 9 G. 2. (I.) and 25 G. 2. (I.), save as to certain Judgments.

II. And be it enacted, That from and after the passing of this Act the Provisions herein-before recited of the said Acts of the Sixth Year of King *William* the Fourth and the Fourth Year of Her Majesty shall not in anywise extend or be applicable to any Judgment entered up after the passing of this Act in respect of any Sum then actually due for Principal and Interest (exclusively of Costs, and over and above all just and fair Allowances), not exceeding the Sum of One hundred and fifty Pounds, save only such Judgments as shall be entered up before the Thirty-first Day of *December* One thousand eight hundred and forty-nine upon any Warrant of Attorney or Cognovit actionem given before the passing of this Act, nor to any Decree, Order, or Rule made after the passing of this Act where the whole Amount therein ordered to be paid shall not exceed One hundred and fifty Pounds; and the Judgments, Decrees, Orders, and Rules respectively to which under this Act the Provisions of the said Acts of the Sixth Year of King *William* the Fourth and the Fourth Year of Her Majesty shall not extend or be applicable are herein-after respectively referred to as Judgments, Decrees, Orders, and Rules subject to the Provisions of this Act.

Recited Provisions of 5 & 6 W. 4. c. 55. and 3 & 4 Vict. c. 105. not to extend to Judgments, Decrees, Orders, or Rules for Sums not exceeding 150*l*.

III. And

What Lands may be delivered in Execution on Judgments subject to the Provisions of the Act.

III. And be it enacted, That the Sheriff or other Officer to whom any Writ of Elegit, or any Precept in pursuance thereof, is directed at the Suit of any Person upon any Judgment subject to the Provisions of this Act recovered in any Action in any of Her Majesty's Superior Courts at *Dublin*, shall make and deliver Execution unto the Party in that Behalf suing of all such Lands, Tenements, Rectories, Tithes, Rents, and Hereditaments only (including Lands and Hereditaments which may be of Copyhold Tenure) as the Person against whom Execution is so sued, or any Person in trust for him, is seised or possessed of at the Time when such Writ of Elegit is delivered to the Sheriff or other Officer to be executed, or over which the Person against whom Execution is so sued has at the Time when such Writ of Elegit is delivered as aforesaid any disposing Power which he might without the Assent of any other Person exercise for his own Benefit, which Lands, Tenements, Rectories, Tithes, Rents, and Hereditaments by force and virtue of such Execution shall accordingly be held and enjoyed by the Party to whom such Execution shall be so made and delivered, subject to such Account in the Court out of which such Execution shall have been sued out as a Party to whom Execution is made and delivered under the recited Provision of the said Act of the Fourth Year of Her Majesty is made subject to under such Provision.

Rights of Judgment Creditor in Equity.

IV. And be it enacted, That any Creditor under a Judgment subject to the Provisions of this Act on which a Writ of Elegit has been sued out shall have the same Rights and Remedies in Equity, upon and in respect of such Lands, Tenements, and Hereditaments as might under this Act be delivered in Execution under such Elegit, as such Creditor might have had in respect of the Lands, Tenements, and Hereditaments, or Moiety of Lands, Tenements, and Hereditaments, which might have been delivered in Execution under a Writ of Elegit in case the recited Provisions of the said Acts of the Sixth Year of King *William* the Fourth and of the Fourth Year of Her Majesty had not been enacted.

Rights of Judgment Creditor in Administration of Assets.

V. And be it enacted, That in the Administration in Courts of Equity of the Assets of any Person against whom any Judgment subject to the Provisions of this Act may be recovered who shall die seised of or entitled to any Estate or Interest in Lands, Tenements, or Hereditaments, the Judgment Creditor shall under such Judgment have the same Rights upon and in respect of such Lands, Tenements, or Hereditaments as if this Act had not been passed.

Voluntary Conveyances after Judgment entered

VI. Provided always, and be it enacted, That every Conveyance and other Act whatsoever of and concerning Lands, Tenements, or Hereditaments

up void as against the Creditor. 10 Car. 1. st. 2. c. 3. (I.)

Hereditaments which under an Act of the Parliament of *Ireland* passed in the Tenth Year of King *Charles* the First, intituled *An Act against covenous and fraudulent Conveyances*, would be deemed void against Purchasers for Money or other good Consideration, shall be void as against any Judgment Creditor whose Judgment shall have been entered up before such Conveyance or other Act, and the like Execution and other Remedies may be had under such Judgment in respect of such Lands, Tenements, and Hereditaments as if such Conveyance or other Act had not been made or done: Provided also, that nothing herein contained shall in anywise affect the Provisions of the same Act concerning Conveyances and other Acts had or made to the Intent to delay, hinder, or defraud Creditors.

Decrees, Orders, and Rules to have the same Effect as Judgments.

VII. And be it enacted, That all Decrees and Orders of the Court of Chancery, and of the Court of Exchequer at the Equity Side thereof, and all Rules of any of the Superior Courts of Common Law, and all Orders of the Lord Chancellor or Master of the Rolls or of the Court of Commissioners of Bankruptcy, and all Orders of the Lord Chancellor in Matters of Lunacy, to which the Effect of Judgments in the Superior Courts of Common Law was given by the said Act of the Fourth Year of Her Majesty, shall, where the same respectively shall be Decrees, Orders, and Rules subject to the Provisions of this Act, have the Effect of Judgments subject to the Provisions of this Act recovered in the Superior Courts of Common Law, and the Persons to whom any Monies, Costs, Charges, and Expenses are by such Decrees, Orders, and Rules respectively directed to be paid shall have the Remedies to which Judgment Creditors under such Judgments will have and be entitled to.

Judgments of Inferior Courts removed to have no further Force than Judgments of Superior Courts.

VIII. And be it enacted, That any Judgment, Rule, or Order subject to the Provisions of this Act (or which would be so subject if the same were a Judgment, Rule, or Order of one of the Superior Courts of Common Law,) obtained in or made by any Inferior Court of Record which shall, under the Provisions of the said Act of the Fourth Year of Her Majesty, be removed into any of Her Majesty's Superior Courts of Record at *Dublin*, shall have no further Force or Effect than a Judgment, Rule, or Order subject to the Provisions of this Act recovered in or made by such Superior Court; but, save as aforesaid, any Judgment, Rule, or Order so removed shall be subject to the Provisions of the said Act of the Fourth Year of Her Majesty in relation to Judgments, Rules, or Orders removed into any of such Superior Courts.

New Writs to be framed.

IX. And be it enacted, That such new or altered Writs shall be sued out of the Courts of Law and Equity and Court of Commissioners

of Bankrupt as may by such Courts respectively be deemed necessary or expedient for giving Effect to the Provisions herein-before contained, and in such Forms as the Judges of such Courts respectively shall from Time to Time think fit to order, and the Execution of such Writs shall be enforced in such and the same Manner as the Execution of Writs of Execution is now enforced, or as near thereto as the Circumstances of the Cases will admit, and that any existing Writ the Form of which shall be in any Manner altered in pursuance of this Act shall nevertheless be of the same Force and Virtue as if no Alteration had been made therein, except so far as the Effect thereof may be varied by this Act.

A Receiver not to be appointed or extended until after the Expiration of a Year.

X. And be it enacted, That no Person shall be entitled, in respect of any Judgment, Recognizance, Decree, Order, or Rule whatever, entered up, enrolled, or made after the passing of this Act, to apply, under the Provisions of the said Acts of the Sixth Year of King *William* the Fourth and the Fourth Year of Her Majesty, or either of such Acts, to the Court of Chancery or to the Court of Exchequer at the Equity Side thereof, for an Order that a Receiver may be appointed over any Lands, Tenements, Rectories, Tithes, Annuities, Rents, or Hereditaments, or to have a Receiver thereof previously appointed extended to the Matter of such Application, until after the Expiration of One Year from the Time of the entering up of such Judgment, the Enrolment of such Recognizance, or the making of such Decree, Order, or Rule; and that where any Receiver is appointed or extended in respect of any Judgment, Recognizance, Decree, Order, or Rule entered up, enrolled, or made after the passing of this Act, the Costs incurred by the Person at whose Instance such Receiver is appointed or extended in procuring such Appointment or Extension shall, notwithstanding the Provisions of the said Act of the Sixth Year of King *William* the Fourth, be in every Case paid in the same Priority only as the Debt or Sum secured by the Judgment, Recognizance, Decree, Order, or Rule in respect of which such Appointment or Extension was made.

Costs of Appointment of Receiver to be paid in same Priority as the Debt.

Court may direct substituted Service under Scire facias.

XI. And be it enacted, That where any Writ of Scire facias is issued to revive any Judgment entered up after the passing of this Act, or for obtaining Execution on any such Judgment, if any Person required to be summoned under such Writ be out of the Jurisdiction of the Court in which such Judgment has been recovered, it shall be lawful for such Court, on the Application of the Party prosecuting such Writ, to direct Service of Notice of such Writ on any Agent of the Person required to be summoned as aforesaid, or Notice of such Writ to be otherwise served or given

as

as the Court may think fit, instead of actual Summons of such Person under such Writ; and after such substituted Notice shall have been so served or given, and after the Expiration of such Time as the Court may limit in this Behalf, the like Proceedings may be had as if the Person required to be summoned had been duly summoned, and the Return of such Writ had been made accordingly.

Act may be amended, &c.

XII. And be it enacted, That this Act may be amended or repealed in this present Session of Parliament.

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