

## EXECUTIONS.

AN ACT subjecting real and personal estate to execution.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the personal and real estate of every individual, company, body politic or corporate, including his, her, or their goods, chattels, lands, tenements and hereditaments, and any title or equitable right to lands whether under a certificate from any land office, or a title bond from any person for a warranty deed, or any right whatever to the possession of lands be and the same are hereby made subject to execution to be taken and sold according to the provisions of this act, excepting that necessary wearing apparel shall not be considered as any part of the estate of any defendant, or defendants, in execution.

What property or interest in lands, &c., may be taken in execution.

Exception.

SEC. 2. That when hereafter any writ of execution may issue against the goods, chattels, lands, tenements and hereditaments of any defendant, or defendants, it shall be the duty of the sheriff, or other officer, to levy such execution upon such part of the estate of such defendant, or defendants as he, she, or they may direct, but if no such direction shall be given, the message, lands or tenements on which such defendant or defendants may be chiefly situated, shall not be levied upon unless a sufficiency of other property, to satisfy the execution or executions, in the hands of the officers cannot be found; and in all cases the real estate of execution defendants shall be exempt from levy and sale until the personal estate of such defendant shall be first levied upon and sold, unless such defendants voluntarily authorize the sale upon execution of their real estate: *Provided*, That nothing herein enacted shall be so construed as to make it the duty of any sheriff, or other officer, to levy upon and sell on execution property selected for that purpose by any execution defendant or defendants, if there exist any reasonable doubt whether such defendant or defendants is or are the bona fide owners of such property so selected.

Duty of officer, in making a levy.

Defendant may direct. Residence of defendant regarded.

Real estate exempt from levy until after the sale of personal property.

Proviso, as to the direction of defendant, and doubts concerning title.

SEC. 3. That real and personal estate taken in execution shall sell for the best price the same will bring at public out-cry, and a deed in fee simple conveying the real estate shall be made to the purchasers, executed by the officer selling the same: *Provided*, that the owner of any real estate sold under the provisions of this act may redeem the same at any time

The best price.

Deeds for real estate, by whom and to whom made. Redemption within one year.

within one year from such day of sale, by paying the purchase money, together with twenty-five per centum interest on the same.

**What articles shall be exempt from execution and sale.** SEC. 4. That, hereafter, when any execution shall issue to any sheriff, or other officer, against the goods and chattels, lands and tenements of any defendant, or defendants, if he, she, or they, have families, it shall be lawful for such defendant, or defendants, to claim, as exempt from execution, the following property, to wit: one bible, one cow and calf, one horse or yoke of cattle, five sheep, five head of hogs, household and kitchen furniture, not to exceed in value thirty dollars, one stove fixed up in the house, one bed, and the necessary bedding therefor for every two in family, farming utensils not exceeding in value fifty dollars, one month's provisions for the support of the family, and all mechanics' necessary tools, all private libraries: *Provided*, None of said libraries shall contain more than one hundred dollars worth of books, and it shall be the duty of the said officer not to execute any of the above exempt property.

**Notice of the sale of real estate.** SEC. 5. That any sheriff, or other officer, levying an execution upon any real estate, shall, previous to offering the same for sale, give at least six weeks notice of the time and place of such sale, by posting up written advertisements thereof, in three of the most public places in the county in which such real estate may be situated, and also by advertising the same for three weeks successively in the newspaper printed nearest such real estate: And, previous to selling any personal estate on execution, the sheriff or other officer levying thereon shall give at least fifteen days notice of the time and place of such sale, by posting up written notices of the same at three of the most public places in the township, in which such sale may be made.

**Of personal estate.** SEC. 6. That if the estate of any execution defendant or defendants taken and sold on execution, by virtue of the provisions of this act, should fail to sell for a sum sufficient to satisfy the debt, damages and costs due and accruing upon such execution, the officer returning such execution shall make return of his doings thereon accordingly, and another writ of execution shall issue to be credited by endorsement made by the clerk, or justice, with the sum or sums previously paid or made on any previous execution, upon which writ of execution the proper officer shall

**When the estate sold does not fully satisfy the execution.**

**Return, and new execution, and credits thereon.**

proceed to levy and sell in the manner herein before prescribed, making return of his doings thereon as Return.  
in other cases.

SEC. 7. That when any sheriff or other officer, who Death, or removal of sheriff, or other officer.  
may have sold any real estate under the provisions of this act shall previous to making a deed therefor to the purchaser go out of office by death, resignation, removal, or otherwise, it shall be the duty of Duties of his successor, as to deeds. Proviso.  
the successor in office of such officers to make the necessary deeds to such purchaser: *Provided*, The purchase money has been duly paid.

SEC. 8. That, if it shall appear upon the face of Duty of sheriff, as regards the property of principal defendants, and their securities.  
any writ of execution, or by endorsement thereon, made by the officer issuing the same, that any one of the persons against whom the same may be issued is or are only security, for any one or more of the persons against whom such execution may have been issued, the officer executing the same shall first sell so much of the estate of the principal defendant or defendants named in such execution, as he may be able to find, before he shall sell any of the estate of such security or securities, unless such officer may be Exception.  
otherwise directed by such security or securities.

SEC. 9. When any person or persons, other than Proceedings when property is claimed by a person, or persons, not named in the execution.  
the defendant or defendants, by himself, herself, or themselves, his, her, or their agent or attorney, shall file a claim, in writing, with the officer holding such execution, setting forth that such person or persons is or are the owner, or owners, of and have just claim to any personal property levied upon by such officer, by virtue of such execution, specifying the article, or articles, item, or items, of property so alleged to be owned and claimed, it shall be the duty of such officer, having levied on such property as aforesaid, forthwith to summon six disinterested householders to determine the question raised by such claim, and the trial of the right of such property shall be held How, and before whom, the right of property to be determined.  
before some justice of the peace of the proper county, in which such property may be found, which justice shall attend upon the summons of the officer executing such execution and shall preside at such trial swearing the said householders summoned to try the right to the property aforesaid and witnesses introduced by the parties, and if any person or persons parties to such proceeding should consider himself, herself, or themselves aggrieved by the determination of such trial before such justice, it shall be the duty of such justice, upon the application of such Appeal to the district court.

- person or persons to certify to the district court a true transcript of the proceedings had before him in the premises under such limitations and restrictions as are prescribed in regard to other cases of appeals from judgments of justices of the peace; and furthermore to take from the person or persons retaining the possession of the property in controversy a bond with sufficient security conditioned for the delivery of the same to whomsoever it may be determined to belong by the judgment of the court on said appeal, and if the claimant should fail to establish his or her right to such property on the trial of such appeal in the district court, it shall be the duty of such court trying the appeal to assess in favor of such execution plaintiff six per centum on the amount of such execution if the amount of such execution shall be less than the value of the property claimed, or in case the sum due on such execution shall be more than the property claimed, then six per centum on the value of the said property claimed, in case the court trying the case shall be of the opinion that the appeal was taken for delay, or vexation, and in all cases where a trial of the right of property has been had the decision thereon shall be conclusive between the parties to such trial, so long as the same remains unreversed: *Provided*, That no officer shall be liable to any prosecution for taking any goods in execution in the possession of the defendant or defendants, unless notified or informed of the ownership therein, previous to his sale of such goods under execution.
- Bond and security.** **Condition.** **Proviso.** **When, by whom, to whom and under what regulations, executions may be directed into any county of this Territory.** **May be returned by mail.**
- SEC. 10.** That the clerks of the district court may upon request issue executions directed to the proper officer of any county within this Territory, whose duty it shall be to obey and execute the same and make due return thereof to the officer who issued the same, according to the provisions of this act, and whenever an execution shall be issued, in any county in this Territory, or from the supreme court directed to the sheriff or coroner of any other county, it shall be lawful for such sheriff or coroner, having received such execution and discharged all the duties required therein by law to enclose such execution and forward the same by mail to the clerk of the court who issued the same and on proof being made by such sheriff or coroner that such execution was mailed a reasonable and sufficient time to reach the office from whence it issued, within the time prescribed by law, such sheriff shall not be liable to any amercement

or penalty for any failure of the safe arrival of such execution, anything in this act to the contrary notwithstanding: *Provided*, That no sheriff or coroner shall send by mail any money made on such execution unless he be especially instructed so to do, by the plaintiff or his agent. Proviso.

SEC. 11. That, when any personal estate may be taken on execution by virtue of the provisions of this act, the officer taking the same may release such property by the defendant or defendants entering into bond with sufficient security, in double the amount of the value of such property, conditioned for the delivery of the same at such time and place as may be named in such bond to such officer, to be sold according to law, which bond shall be by such officer returned into the office from whence the execution, by virtue of which such property may have been taken issued, and such bond shall be valid in law, and an action may be had thereon whenever the conditions thereof may have been violated, and on recovery being had thereon the amount due on such execution shall be assessed in favor of the plaintiff: *Provided*, That property so taken be of sufficient value to satisfy the same, and if not then the value of the property so taken together with twelve per centum thereon: And on the judgment obtained on such bond there shall be no stay of execution and no delivery bond shall be taken by the officer executing the same. Release of personal property how to be effected. Bond and security. Bond to be returned, and action maintained thereon. Proviso.

SEC. 12. That any person, against whom any judgment may be obtained in any of the district courts of this Territory, may have a stay of execution thereon as follows: on all sums over one hundred dollars, a stay of six months; on all sums less than one hundred dollars and over fifty dollars, a stay of four months; and on all sums less than fifty dollars the same stay that would have been allowed had such judgment been obtained before a justice of the peace, by procuring one or more sufficient securities to enter on the record of the court rendering such judgment acknowledging himself or themselves bail for the payment of such judgment together with the interest and costs of suit which recognizance may be entered in open court or before the clerk of such court and the same shall be taken as judgment confessed against the person or persons acknowledging the same, and execution shall issue as well against the principal as security or securities. Stay of execution on judgments in district courts. Kind of security required, and liability thereby incurred.

**Execution, when issued, may be stayed.** **SEC. 13.** That when execution of any kind may issue upon any judgment, upon which no stay of execution may have been taken under the provisions of the twelfth section of this act, the officer issuing the same shall endorse thereon that the same is repleviable, and also the date of the rendition of such judgment, and the person or persons against whom such execution may have been issued, may replevy the same for the space of time specified in the said twelfth section of this act, from and after the date of the rendition of such judgment, as the same may be endorsed on such execution as aforesaid, by tendering to the officer having such execution in his hands, a bond with one or more good securities made payable to the plaintiff in a penalty in at least double the amount demanded by such execution, and conditioned for the full payment of the amount demanded by such execution, together with interest and costs of suit, to the end of such stay, which bond shall be returned by the officer returning the execution as a part of his doing thereon to the officer who issued such execution, and such bond shall be taken, as a judgment confessed against the person or persons who executed the same, and against their estates, and execution may issue thereon accordingly.

**By giving bond.**

**Condition, and effect of said bond.**

**Judgments against certain officers, as such.** **SEC. 14.** That upon judgments obtained against any justice of the peace, clerk, sheriff, coroner, county treasurer, county agent, trustee of the county academy, or seminary fund, collector of the revenue, or attorney at law, or their securities for moneys by them collected or received, in trust for others by virtue of their office, against any individual, or individuals, company, or corporation, for money deposited with him, or them, no stay or replevy of execution shall be allowed; and on executions issuing on such judgments the court rendering the same shall order an endorsement to be made that such judgment is not repleviable, and such court shall also order that no stay of execution shall be allowed, and executions issuing on such judgment, shall be returnable in thirty days from the date thereof.

**No stay of execution allowed thereon. When returnable.**

**Replevy bonds, &c., to be entered on docket.** **SEC. 15.** That replevy bonds, and bonds for the delivery of property taken on execution shall, when returned to the officer who issued such execution, be entered on the judgment docket of such officer, but the entering of security by recognizance of record for the payment of any judgment, and the replevy-

ing of an execution in the hands of an officer, and the giving of a bond for the delivery of property on execution, shall neither nor all operate as a satisfaction of the original judgment, upon which such proceedings shall or may be had, so as to extinguish the lien created by such original judgment upon the estate of any defendant.

But not to satisfy judgment, or extinguish lien.

SEC. 16. That no real estate, of any testator or intestate, shall be subject to execution upon any judgment against the executor or administrator of such testator or intestate until the devisees of such testator and the terretenants of such real estate be first made parties to such judgment in the following manner, to wit: where any judgment shall be obtained against any executor or administrator to be levied of the goods and chattels of the deceased and execution issued thereon, shall remain unsatisfied in whole or part, for want of personal estate and there is real estate in this Territory, it shall be lawful for the plaintiff in such judgment to file in the proper court where such judgment is obtained, a petition against the executors or administrators and heirs and devisees if any of the deceased, setting forth the facts of the judgments, and the want of personal property, and that there is real estate in the Territory of Iowa, describing the same, and setting forth in what county or counties the same is situated, and praying said court to award the proper writ, or writs, of execution against the same, and the clerk of said court shall upon filing such petition notify the persons against whom it is filed of the pendency thereof, requiring them to appear, on the first day of the next term of said court, and shew cause, if any they can, why the proper writ or writs of execution shall not be awarded; which said notice shall be given to residents by summons served by the proper officer, and to non-residents by publishing the same in the nearest newspaper for four weeks successively, and if a summons it shall be served on residents ten days before the sitting of the court and be published to non-residents as aforesaid, the court shall at the first term award the proper writ or writs of execution directed to the proper officer of the proper county, unless good cause to the contrary be shown, and the nonage of heirs, or devisees, shall not in any case be good cause to suspend execution.

Proceedings in executions against the estate of testators and intestates.

Notice to heirs and devisees.

Residents and non-residents.

SEC. 17. That when default or defaults shall be made or suffered by any mortgager or mortgagers

Proceedings on the sale of

mortgaged estates.

of land, tenements, or hereditaments, or by his, her or their heirs, devisees, executors, administrators or assigns, of, or in the payment of the mortgage money, or performance of the condition, or conditions, which they, or any of them should have paid, or performed, or ought to pay or perform, in such manner and form and according to the tenor, purport and effect of the respective provisions, conditions, or covenants, comprised in the deeds of mortgage, or defeasance, and at the days, times and places in the same deeds respectively mentioned and contained, in any purchase it shall and may be lawful for the mortgagee, or mortgagees who may hold the said deed or defeasance, his, her, or their heirs, administrators or assigns, at any time after the expiration of the last day whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid, to file his, her, or their bill in the proper district court, according to the course of the common law, praying such court to foreclose the equity of redemption, of the mortgager, or mortgagers to such mortgaged premises, and the said court having jurisdiction thereof shall make such equitable decree in the premises between the parties as may be right and just, and the said mortgaged premises if ordered to be sold by such court shall be sold, as other lands are sold, on other execution to the highest bidder at public vendue, and the sheriff selling the same shall make a proper deed of conveyance to the purchaser or purchasers thereof, as in case of other land sold on execution, and when such lands, tenements and hereditaments shall be sold as aforesaid, the person or persons to whom the same may be sold shall and may hold and enjoy the same with their appurtenances, and such estate or estates shall be discharged from all equity and benefit of redemption, and all other incumbrances made and suffered by the mortgager or mortgagers, his, her or their heirs and assigns, and such sales shall be available in law and the respective vendees, mortgagees and creditors, their heirs and assigns, shall hold and enjoy the same; but before such sale be made notice thereof shall be given in manner and form hereinbefore prescribed, concerning the sale of lands upon execution.

Equity of redemption foreclosed by decree of district court.

Notice of sale.

Overplus to be returned to defendant.

SEC. 18. That whenever any goods, chattels, lands, tenements or hereditaments shall be sold on execution by virtue of any of the provisions of this act, and the same will sell for more than will satisfy such



execution the interest and costs accruing thereon, the sheriff or other officer making sale of the same shall render the overplus to the defendant or defendants, and then, and not till then, shall such officer be discharged thereof upon the records of the same court to which he shall make return of his proceedings concerning such sales.

SEC. 19. That no sale of property on execution by virtue of the seventeenth section of this act shall be construed to create any further term or estate in the vendees, mortgagees or creditors to whom the same may be sold, or delivered, than the estate so sold and delivered shall appear to have been sold or mortgaged for, by the said respective mortgagees or defeasible deeds.

Sales under sec. 17, and what interest passes thereby.

SEC. 20. That if any estate shall be sold upon execution, issued under and in accordance with the provisions of this act, upon any judgment or decree rendered by a court having jurisdiction of the matter of controversy, which may have resulted in such judgment and such judgment or decree shall be afterwards reversed for error or errors none of such estate so sold on execution shall be restored in consequence of such reversal.

Judgments reversed for error, not to affect the sale of estate.

SEC. 21. That when mutual judgments are existing in any county of this Territory that it shall be the duty of the officer or officers in whose hands the execution may be to set off one execution or judgment against the other, so far as the same shall extend and executions may be certified from one county to another for the purpose of allowing such set offs; and it shall be the duty of the officers when any such executions shall come to their hands to allow the same.

Mutual judgments may be set off against each other.

SEC. 22. The innocent purchaser shall be entitled to his suit against the judgment creditor either in law or equity for the recovery of the money paid for such estate.

Remedy of innocent purchaser.

SEC. 23. This act to be in force from and after the first day of May next.

This act, when to take effect.

APPROVED, January 25, 1839.