

PART IV.—EXECUTION

WRITS OF EXECUTION GENERALLY.

187 Judgments may be enforced by any one or more of the following writs as hereinafter provided: viz., a writ of sale, a writ of possession, a writ of attachment.

188. When, by any judgment or order of the Court, any party is entitled to relief subject to or upon the fulfilment of any condition or contingency, the party so entitled shall satisfy the Court by affidavit, or by such other evidence as the Court may require, that such condition has been performed, or such contingency has happened, before he shall be entitled to issue any of the before-mentioned writs.

189. Any person applying for a writ of execution shall lodge with the proper officer a memorandum in the form No. in the Schedule hereto.

190. Every writ of execution shall be dated as of the day and hour on and at which it was issued. The forms in the Schedule hereto may be used.

191. In every case of execution the party issuing the same shall be at liberty to levy from the person against whom it is issued the fees and expenses to which he may be entitled in respect of and incidental to the issue and execution of such writ.

192. A writ of execution (if unexecuted) shall remain in force for one year only from its issue; but, thereafter, a fresh writ of execution may at any time be issued by leave of the Court.

193. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of judgment.

194. When six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court thereof for leave to issue execution accordingly.

195. The Court may, if satisfied that the party applying under the last rule is entitled to issue execution, make a rule or order to that effect, or may order that any issue or question necessary to determine the rights of the parties may be tried in any way in which an action may be tried. And in either case the Court or Judge may impose such terms as to costs or otherwise as shall seem just.

196. Every order of the Court may be enforced in the same manner as a judgment to the same effect.

197. Where a judgment is against partners, in the name of the firm, execution may issue in manner following:—

- (1.) Against any property of the partners as such.
- (2.) Against any person who has admitted on the pleadings that he is or has been adjudged to be a partner.
- (3.) Against any person who has been served as a partner with the summons and has failed to appear.

If the party who has obtained judgment claims to be entitled to issue execution against any person as a member of a firm, he may apply to a Court or a Judge for leave to do so, and the Court or a Judge may give such leave if the liability be not disputed, or, if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any question or issue may be tried or determined.

198. Any party against whom a judgment has been given may apply to the Court or a Judge for a stay of execution, or other relief against such judgment, upon the ground of facts which have happened or come to his knowledge since the trial of the action, and the Court may give such relief and upon such terms as may appear just.

199. When a witness who gave material evidence at the trial of an action has since been indicted for perjury in respect of that evidence, the Court may stay execution until the indictment has been tried, or may order the proceeds of the execution to be paid into Court, there to remain until further order.

200. If execution be sued out contrary to any order of the Court or a Judge, or to the agreement of the party suing it out, or otherwise contrary to good faith, it may be set aside by the Court or a Judge.

201. A writ of execution must strictly pursue the judgment or order in pursuance of which it has been issued, or show on the face of it why it does not.

202. Two or more concurrent writs of execution of the same kind may be issued by leave of the Court, and, if necessary, addressed to different officers.

203. Writs of execution shall be prepared by the proper officer and sealed with the seal of the Court and signed by the Judge thereof, and when sealed and signed shall be delivered to the officer for the time being appointed to execute writs of execution, and when so delivered shall be deemed to be issued. A writ of execution may be executed in any part of the colony.

204. The officer of the Court to whom a writ has been delivered for execution, immediately after execution if he succeed in executing the writ, or after reasonable attempts to execute the writ have been made but without success, shall return the same into the office of the Court out of which it has been issued, with a memorandum indorsed thereon, stating the mode in which the writ has been executed or the reason for not executing the writ.

205. If any writ be returned unexecuted, the Court or a Judge may order that such writ be redelivered to the proper officer for execution if it be made to appear that there are grounds for believing that the writ can be successfully executed.

206. Writs of execution shall be in the form given in the Schedule hereto.