
CIVIL PROCEDURE LAW
CAP. 6

This is a consolidated version of this legislation i.e. it incorporates all amendments made since the legislation was enacted as set out in the table below. It has been produced by the SBAA as an aid to transparency and easier access to SBA law. However, it is not the official version of SBA legislation and, although every effort has been made to check the document, its accuracy cannot be guaranteed. The official version of legislation is published in the SBA Gazette.

Legislation incorporated in this Consolidation	Ordinance	Date in Force
Civil Procedure Law	CAP.6	
Civil Procedure (Amendment) Ordinance 1966	18/66	29/12/1966
Civil Procedure (Amendment) Ordinance 1970	9/70	24/07/1970
Civil Procedure (Amendment) Ordinance 1973	3/83	28/06/1983
Civil Procedure (Amendment) Ordinance 1989	22/89	12/12/1989
Civil Procedure (Amendment) Ordinance 2007	10/07	18/05/2001

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Power to make rules of Court

CIVIL PROCEDURE LAW
CAP. 6

Relating to the Powers of the Courts in Civil Actions and to the Execution of Judgments in such
Actions

PART 1
Preliminary

Short Title

1. This Law may be cited as the Civil Procedure Law.

Interpretation

2. In this Law—

“the Court” means the Court before which the action in which any application or order is made, or any writ is issued, has been instituted, or the Supreme Court, or any judge thereof respectively;

“judgment creditor” means a person in whose favour a judgment ordering the payment of money is made;

“judgment debt” means money ordered by a judgment to be paid;

“judgment debtor” means a person against whom a judgment ordering the payment of money is made.

PART 2
Powers of the Court

Final determination of matter (a)

2A. A Court shall, in every cause or matter, grant either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatsoever as any of the parties to the cause or matter may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter so that, as far as possible, all matters in dispute between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters avoided.

Power of Court to make declaratory judgements

2B. A Court has power to make binding declarations of right whether any consequential relief is or could be claimed or not.

(a) Section 2A to 2D inserted by Ordinance 10/2007 – came into force on 18 May 2007

Notes of Evidence

2C.—(1) In all civil proceedings the Court shall take down in writing the notes of evidence, or if the Court so directs, such evidence may be recorded by means of shorthand notes, by mechanical means or otherwise.

(2) The whole or part of the evidence may, if the Court thinks fit, be taken down in the form of questions and answers.

(3) No person shall be entitled as of right to an inspection or a copy of the Judge's notes, the transcript of shorthand notes or of a recording made by mechanical means or otherwise, save as may be provided for by any Rules of Court.

Minutes of proceedings

2D.—(1) In all civil proceedings before the Court, minutes of the proceedings shall be drawn up and signed by the Senior Judge or Judge before whom the proceedings are taken.

(2) The minutes drawn up in accordance with subsection (1) together with the notes of evidence taken at the hearing of the action shall be preserved as records of the Court.

(3) The minutes and notes of evidence, or a copy certified as a true copy of the same by the Senior Court Registrar shall, without further proof, be admitted as evidence of such proceedings and of the statements made by any witnesses.

Service of writ out of jurisdiction

3. The Court may order that a writ of summons may be served out of Cyprus whenever it appears to the court that the cause of action has arisen on any breach or alleged breach in Cyprus of any contract wherever made, or in respect of any property subject to the Laws of Cyprus, or that the cause of action has arisen in Cyprus, and that, in any of the cases aforesaid, the action is one which cannot be tried elsewhere than in Cyprus or can be more conveniently tried in Cyprus than elsewhere.

Interim order for sequestration etc.

4.—(1) The Court may at any time during the pendency of any action therein make in the action an order for the sequestration, preservation, custody, sale, detention, or inspection of any property, being the subject of the action, or an order for preventing any loss, damage, or prejudice which but for the making of the order might be occasioned to any person or property, pending a final judgment on some question affecting such person or property or pending the execution of the judgment.

(2) The order for sequestration referred to means an order appointing some person or persons to enter upon any immovable property, specified in the order, which is in the occupation of the person against whom the order is made, and to collect, take, and get into his or their hands the rents and profits thereof, and also the goods and movable property of such person, and to keep them for a time specified in the order or until the further order of the Court.

(3) The order confers upon the person or persons thereby appointed full power to do everything which by the order is directed to be done, and all acts and things subsidiary thereto; and, from the time when notice of the order is given to the person against whom it is made, it deprives him of every such power, subject only to his right to occupy the immovable property sequestered and to carry on his business thereon and to use the movable property which may be thereon for the purposes of such occupation and the carrying on of his business.

Interim order restraining dealing with land

5.—(1) Any Court in which an action for debt or damages is pending, may, at any time after the institution of the action, by its order direct that the defendant be restrained from parting with so much of the immovable property standing registered in his name or of which he has by law a right

to be registered as the owner, as in the opinion of the Court shall be sufficient to satisfy the plaintiff's claim together with his costs of action.

(2) No such order shall be made unless it appears to the Court that the plaintiff has a good cause of action, and that by the sale or transfer of the property to any third person it is probable that the plaintiff may be hindered in obtaining satisfaction of the judgment of the Court if given in his favour.

(3) Every order made under this section shall specify so far as practicable the situation, boundaries, extent and nature of the property affected by it.

(4) Where an order has been made under this section, the person on whose application it is made may deposit at the District Lands Office of the district within which any property affected by the order is situate an office copy of the order, together with a memorandum in writing addressed to the District Lands Officer, requesting that the property may not be transferred into the name of any person other than the person against whom the order is made.

(5) The order and memorandum shall be open to inspection in the office where they are deposited, and any subsequent transfer of the property made while the order continues in effect shall be null and void, and the remedy of any person into whose name the property may be so transferred shall be in damages only against the by person whom the property was granted or assigned to him, whether be way of sale, gift, mortgage or otherwise. And the District Lands Officer shall make an entry in a book kept for the purpose showing that the documents have been duly deposited, and shall communicate in writing the number of the entry to the person depositing the document.

Power to arrest defendant

6.—(1) Where the plaintiff in an action in any Court proves at any time before final judgment by evidence on oath to the satisfaction of such Court, that he has good cause of action against the defendant to an amount exceeding fifty pounds, and that there is probable cause for believing that the defendant is about to quit Cyprus unless he be apprehended, and that the absence of the defendant from Cyprus will materially prejudice the plaintiff in the prosecution of his action, such Court may order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the security directed by the Court, not exceeding the amount claimed in the action, that he will not go out of Cyprus without the leave of the Court.

(2) The expenses incurred for the subsistence of the defendant while under arrest shall be paid by the plaintiff in advance, at such rate and in such manner as is directed by Prison Regulations in respect of judgment debtors committed under Part VIII of this Law.

(3) The Court may at any time, on reasonable cause shown, discharge or vary the order, or grant such other relief as may be just.

(4) The security to be given by the defendant may be a deposit in Court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or, with the leave of the Court either one surety or more than two), or, with the plaintiff's consent, any other form of security. The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objections. In such case the sufficiency of the security shall be determined by the Court, which shall have power to award costs to either party. The plaintiff shall file an application in Court for the purpose, and unless he do so within four days after giving notice of objection, the security shall be deemed sufficient.

(5) Unless otherwise ordered, the costs of and incidental to an order of arrest, shall be costs in the cause.

Interim orders made on insufficient grounds

7. If it appears to any Court that any order made by such Court under the last three preceding sections was applied for on insufficient grounds, or if the plaintiff's action fails, or judgment is given against him, by default or otherwise, and it appears to the Court that there was no probable ground for his bringing the action, the Court may, if it thinks fit, on the application of the

defendant, order the plaintiff to pay to the defendant such amount as appears to the Court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.

Payment of compensation under this section shall be a bar to any action for damages in respect of anything done in pursuance of the order; and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks just.

Commission to take evidence

8.—(1) On the application of any party to an action the Court may, where it appears necessary for the purposes of justice, and subject to such terms, if any, as the Court may direct, make any order for the examination upon oath before any person, and at any place within or without the jurisdiction of the Court, of any witness or person, and may give directions as to any matters connected with the examination as may appear reasonable and just, and may empower any party to the action to give the deposition in evidence therein.

(2) Any person so directed to take any examination may administer the prescribed oath and may make a special report to the Court touching the examination and the conduct or absence of any witness or person thereon; and the Court may direct such proceedings and make such order as may seem just.

(3) On the application of any party to an action the Court may, if it thinks fit, issue a request to a Court in a foreign country to examine a witness resident within the jurisdiction of such Court and may empower any party to the action to give in evidence therein the deposition of such witness taken before the Court in the foreign country or before a person to whom the examination may be deputed by such Court.

Orders without notice

9.—(1) Any order which the Court has power to make may, upon proof of urgency or other peculiar circumstances, be made on the application of any party to the action without notice to the other party.

(2) Before making any such order without notice the Court shall require the person applying for it to enter into a recognizance, with or without a surety or sureties as the Court thinks fit, as security for his being answerable in damages to the person against whom the order is sought.

(3) No such order made without notice shall remain in force for a longer period than is necessary for service of notice of it on all persons affected by it and enabling them to appear before the Court and object to it; and every such order shall at the end of that period cease to be in force, unless the Court, upon hearing the parties or any of them, shall otherwise direct; and every such order shall be dealt with in the action as the Court thinks just.

(4) Nothing in this section shall be construed to affect or apply to the powers of the Court to issue writs of execution.

Injunctions and receivers (a)

9A.—(1) *Subject to Rules of Court, a Court may, by Order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted in addition.*

(2) *An interlocutory injunction shall not be granted unless the Court is satisfied that—*

(a) there is a serious question to be tried at the hearing;

(b) there is a probability that the plaintiff is entitled to relief; and

(a) Section 9A to 9E inserted by Ordinance 10/2007 – came into force on 18 May 2007

(c) *unless an interlocutory injunction is granted it may be difficult or impossible to do justice at a later stage.*

(3) *Subsection (4) applies where—*

(a) *it appears to a court that an interlocutory order made under subsection (1) was applied for on insufficient ground; or*

(b) *the plaintiff's action fails or judgement is given against the plaintiff by default or otherwise and it appears to the Court that there was no probable ground for his bringing the action.*

(4) *Where the Court is satisfied of a matter set out in subsection (3) it may, on application by the defendant, order the plaintiff to pay to the defendant such amount as appears to the Court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.*

(5) *Where the defendant has received compensation in accordance with subsection (4) then this shall operate as a bar to an action for damages in respect of anything done pursuant to the order; and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks just.*

Reference for report

9B.—(1) *Subject to Rules of Court, a Court may refer to an official or special referee for inquiry or report any question arising in any civil proceedings.*

(2) *The report of an official or special referee may be adopted wholly or partially by the Court and, to the extent to which it is so adopted, shall be entered as a judgement of the Court.*

(3) *An order made under subsection (1) may be made on such terms as to costs or otherwise as the Court thinks fit.*

Reference for trial

9C.—(1) *This section applies in any civil proceedings where—*

(a) *all the parties interested who are not under a disability consent; or*

(b) *the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court conveniently be made before or conducted by the Court through its other ordinary officers; or*

(c) *the questions in dispute consists wholly or in part of matters of account.*

(2) *The Court may at any time order the whole cause or matter, or any question or issue of fact arising in the cause or matter, to be tried before a special referee or arbitrator agreed on by the parties, or before an official referee or officer of the Court.*

(3) *Where a special referee or arbitrator is guilty of misconduct in the proceedings, the Court may remove him and the Court further may set aside any award made in any such proceedings or procured improperly in any other way.*

Powers and remuneration of referees and arbitrators

9D.—(1) *Where a cause or matter or any question or issue of fact arising in the cause or matter has been referred to an official or special referee or an arbitrator, that person shall be deemed an officer of the Court and, subject to Rules of Court, shall have such authority and conduct the reference in such manner as the Court may direct.*

(2) *The report or award of an official or special referee or of an arbitrator shall be filed in Court and the Court, on the application of the parties or of its own motion, may direct that the report or award is set aside or entered as a judgement of the Court.*

(3) *The remuneration to be paid to an official or special referee or arbitrator shall be determined by the Court.*

Statement of case

9E. *A referee or arbitrator may at any stage of the proceedings under a reference and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court, any question of law arising in the course of the reference.*

PART 2A (a)

Witness and Evidence

Power to summon witness

9F. *In any civil proceedings before a Court and at any stage of such proceedings the Court may, either of its own motion or on the application of any party, summon a person to attend to give evidence or to produce any document in his possession, and may examine such person as a witness or expert and require him to produce any document in his possession or control, subject to all just exceptions.*

Failure of witness to attend

9G.—(1) *This section applies where a person summoned, having reasonable notice of the time and place at which he is required to attend, fails to attend the Court and does not excuse his failure to the satisfaction of the Court.*

(2) *The Court may—*

- (a) *issue a warrant to secure the attendance before the Court of the witness; and*
- (b) *order the witness to pay all costs which may have been occasioned in compelling his attendance or by reason of his refusal to obey the summons.*

(3) *A person to whom this section applies is, in addition to any costs payable in accordance with subsection (2), liable to imprisonment not exceeding 2 months or to a fine not exceeding £150 or to both penalties.*

Witness to be sworn or make declaration

9H.—(1) *In any civil proceedings, a person called upon to give evidence in a Court shall, before being examined, be required to take such oath as is customarily administered to persons of his creed or faith on testifying before a Court of Justice.*

(2) *An oath may be administered by the Judge, Registrar or by any person required by the Judge to administer the oath.*

(3) *If a witness objects to taking an oath or is objected to as incompetent to take it, or if the Court is of the opinion that the taking of it will have no binding effect on his conscience, the witness shall be required to make the following promise and declaration—*

“I solemnly promise and declare that the evidence given by me to the Court shall be the truth, the whole truth, and nothing but the truth.”.

(4) *The Court may, if it thinks just and expedient (for reasons to be recorded in the minutes of the proceedings) take without oath or promise and declaration, the evidence of any person who, by reason of immature age ought not in the opinion of the Court to be admitted to give evidence on oath.*

Witness refusing to be examined

- 9J.**—(1) *This section applies where a witness on being required to give evidence—*
- (a) *refuses, without reasonable excuse, to take an oath or to make a promise and declaration;*
 - (b) *refuses, without reasonable excuse, to answer any question lawfully put to him;*
 - (c) *refuses, without reasonable excuse, to produce any document in his possession.*
- (2) *The witness, in addition to any other liability he may face—*
- (a) *may be ordered to pay all costs which may have been occasioned by reason of his refusal; and*
 - (b) *shall be liable to be committed to prison under warrant of the Court and to remain there for a period not exceeding 1 month unless in the meantime he consents to the action required; and*
 - (c) *shall be liable to a fine not exceeding £100.*

Court may call on persons present in Court to give evidence

9K. *Any person present in the Court, whether a party or not to the proceeding, may be compelled by the Court to give evidence and produce any document in his possession or in his power in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document and may be liable for any costs and to be punished for any refusal to obey the order of the Court as if he had been so summoned.*

Summoning prisoner as witness

9L.—(1) *The Court may issue a warrant for bringing up any person confined as a prisoner, whether under any sentence or order of commitment for trial or under any civil process or otherwise, to be examined as a witness in any civil proceeding pending before the Court.*

(2) *The Court shall not issue a warrant in accordance with subsection (1) unless it has probable grounds for believing that the evidence of the prisoner is likely to prove material.*

(3) *The gaoler or person in whose custody the prisoner is shall forthwith obey the warrant by bringing the prisoner to Court in his custody or by delivering him to an officer of the Court as the warrant may order.*

(4) *Where, in accordance with the terms of a warrant the prisoner is to be delivered to an officer of the Court, the gaoler is not liable for any subsequent escape of the prisoner.*

Witness to attend though expenses not paid

9M. *It is not lawful in any civil proceedings for a person to refuse to attend as a witness or to refuse to give evidence when required to do so by the Court, on the ground that his expenses have not been paid or provided for.*

Inspection of property

9N.—(1) *In any civil proceedings the Court may, on the application of either party or of its own motion, make an order for the inspection of any movable or immovable property which appears to be material to the proper determination of the question in dispute and to give such direction regarding that inspection as the Court may think fit.*

(2) *An inspection ordered in accordance with subsection (1) may be carried out by the Court, the parties or any witness as the Court may direct.*

PART 3

Execution Generally

Execution of instruments by order of Court (a)

9P.—(1) This section applies where a person neglects or refuses to comply with a judgment or order directing him to execute a transfer, contract or other document, or to indorse any negotiable instrument.

(2) The Court may, on such terms and conditions as it considers just, order that the transfer, contract or other document shall be executed, or that the negotiable instrument shall be indorsed by such person as the Court may nominate for that purpose.

(3) Where the Court has made an order under subsection (2), the execution or indorsement shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

Enforcing obedience to orders

9Q. Every Court has power to enforce obedience to any order issued by it directing any act to be done or prohibiting the doing of any act, by fine or imprisonment or sequestration of goods and such powers shall be exercised subject to Rules of Court.

Execution against joint property

10. Where a judgment is against any persons jointly, execution may issue either against any property belonging to them jointly or against any property belonging to any of them separately.

~~**Judgment debts to carry interest at four per centum (b)**~~

~~**11.** Every judgment debt shall carry interest at the rate of four six (c) per centum per annum from the date on which the judgment is pronounced until the same shall be satisfied and such interest may be levied under a writ of execution on such judgment:~~

~~Provided that nothing in this section contained shall apply to any judgment pronounced before the 16th day of November, 1944, and every such judgment shall carry such interest as may be specified therein and in accordance with the terms thereof;~~

~~Provided also that where any judgment relates to a debt carrying interest, no interest shall be paid under the provisions of this section except on the principal debt or any balance thereof remaining due and unpaid.~~

Interest on debts etc., and on judgments

11.—(1) In any proceedings tried in the Judges' Court for the recovery of any debt upon which interest is payable whether by virtue of any agreement or otherwise as by law provided the Court shall award interest at the rate agreed upon or otherwise as by law provided, for the period commencing on the date when such interest became payable until final payment:

Provided that such rate or interest shall not exceed the maximum rate of interest allowed by any Ordinance in force for the time being.

(a) Sections 9P & 9Q inserted by Ordinance 10/2007 – came into force on 18 May 2007
(b) Section 11 repealed and replaced by Ordinance 9/2007 – came into force on 24 July 2007
(c) Amended by Ordinance 3/1983 – came into force on 28 June 1983

(2) Every judgment shall, unless other provision is made in the judgment under subsection (1) of this section, carry interest at the rate of ~~four~~ six (a) per centum per annum from the date on which the judgment is pronounced until the same shall be satisfied, and in either case such interest may be levied under a writ of execution on such judgment.

(3) Nothing in this section contained shall authorise the giving of interest upon interest.

Cost of Execution

12. The party enforcing a judgment shall be entitled to recover his costs of execution unless the Court shall otherwise order; and the Sheriff or other officer executing any writ shall be entitled to retain in his hands the expenses incurred by him or any agent on his behalf in executing it.

Disposal of proceeds of execution

13. All money payable under a judgment and raised by execution or otherwise, under the process of the Court, shall be paid into Court, unless the Court shall otherwise direct.

Payment into court shall be payment into the Department of the Accountant-General, or into any bank, or to some person or persons, as may be directed by Rules of Court, the moneys so paid in being placed to the credit of and subject to the order of the Court

Methods of execution

14.—(1) Any judgment or order of a Court directing payment of money may, subject to the provisions of this Law, be carried into execution by all or any of the following means:

- (a) by seizure and sale of moveable property;
- (b) by sale of or making the judgment a charge on immovable property;
- (c) by sequestration of immovable property;
- (d) by attachment of property under Part VII of this Law; or
- (e) by imprisonment of the debtor under Part VIII of this Law.

(2) Any judgment or order of a Court for the recovery or delivery of possession of any immovable property may be enforced by a writ of possession directing the Sheriff or other officer to put the judgment creditor in possession of that property.

(3) Any judgment or order of a court for the recovery or delivery of any movable property may be enforced by a writ of delivery directing the Sheriff or other officer to take such movable property and deliver it to the judgment creditor.

(4) Rules of Court, made by the Governor with the advice and assistance of the Chief Justice, may prescribe the form of a writ of possession and of a writ of delivery and the fees to be paid in connection therewith and regulate the procedure for the issue and execution of such writs.

Orders for payment of money to be executed only under this Law

15. No judgment or order for the payment of money shall be executed except under the provisions of this Law.

(a) Amended by Ordinance 3/1983 – came into force on 28 June 1983

PART 4

Execution by sale of movables

What goods of the debtor are not liable to execution

16. The following goods shall not be liable to be taken in execution:—

- (a) the necessary wearing apparel of the debtor and his family, the necessary box or wardrobe for preserving the same and the necessary beds and bedding of the debtor and his family;
- (b) the necessary baking and cooking utensils of the debtor and his family;
- (c) the books, tools, implements, vessels and receptacles absolutely necessary for the profession, art industry, trade or occupation of the debtor, not exceeding in the whole the value of fifty pounds;
- (d) one pair of neat cattle, or two camels, or one mule and one ass, or two asses, at the option of the debtor, and where the debtor is a farmer alternatively to the foregoing provision two horses or one horse or mule and any one of the aforesaid animals at the option of such debtor;
- (e) every article which is indispensable to the use of the exempted animals;
- (f) the fodder required to feed the exempted animals for three months;
- (g) provisions for three months for the debtor and his family;
- (h) where the debtor is a farmer, seed grains sufficient for sowing in respect of one year the extent of land normally cultivated by such debtor.

Mode of executing writ

17. Subject to the provisions of the last preceding section, every writ of seizure and sale of movable property shall be executed after sunrise and before sunset, and the officer executing it shall, if practicable, seize and take so much of the movable property of the judgment debtor as he may consider necessary for the satisfaction of the judgment debt.

Sale not to take place for three days

18. The property taken in execution (except money or securities for money), shall be sold, but not until the expiration of three days at least next following the day on which it was taken, unless it is of a perishable nature or upon the request in writing of the party whose property it is; and until sale it shall be deposited in some fit place or may remain in the custody of some fit person.

Sale to be generally by auction

19. Every sale of movable property in execution of a judgment shall, unless the Court otherwise orders, be made by public auction, subject to such directions, if any, as the Court may make on the application of any parties concerned; but the Court may direct the sale to be made in such other manner as it may deem advisable

Securities, how to be dealt with

20.—(1) Any securities for money taken in execution shall be held by the officer executing the writ as a security for the amount directed to be raised and shall be dealt with in such manner as the Court on the application of any party shall direct.

(2) The money secured by any of such securities may, when the time of payment thereof has arrived, be recovered in an action instituted by the judgment creditor in the name of the judgment debtor or in the name of any person in whose name the debtor might have instituted an action for its recovery.

Proceedings where claim by third party

21. Where any movable property seized in execution under any judgment or order is claimed by any person other than the judgment debtor, the claimant or the person to whom the writ of execution is addressed may apply to a Court to determine the right to the property. The Court, after notice to all necessary parties to appear before it, shall either summarily determine the rights to the parties or make such order for the trial and determination of their rights as it shall think expedient, and for the custody in the meanwhile of the property in dispute; and in either case the Court shall direct by whom the costs incurred by reason of the claim shall be paid.

Where some third person claims to be entitled to any property so seized by way of security for a debt, the Court may order a sale of the whole or part thereof upon such terms as to payment of the whole or part of the secured debt or otherwise as it thinks fit, and may direct the proceeds of sale to be applied in such manner and upon such terms as may seem just.

PART 5

Execution against Immovables

Execution by Sale

Writ for sale of land not to issue unless debtor has no movables

22. No writ of execution by sale of immovable property shall issue, except by the consent of the judgment debtor, unless a writ of sale of the movable property of the debtor, issued out of the Court and addressed to the Sheriff of the district within which the Court is situate, has been returned into the Court unsatisfied, or unless it appears that the debtor has no movable property actually in his possession.

What land is liable to execution

23. The immovable property of a judgment debtor which may be sold in execution shall include only property standing registered in his name in the books of the District Lands Office:

Provided that where the property consists in whole or in part of a house or houses there shall be left to or provided for the debtor such house accommodation as shall in the opinion of the Court be absolutely necessary for him and his family:

Provided also that when the debtor is a farmer there shall be exempted from the sale so much land as shall in the opinion of the Court be absolutely necessary for the support of himself and his family. This last proviso shall not be applicable in respect of debts incurred before the 2nd of May, 1919, or in respect of debts due to any Co-operative ~~Credit~~(a) Society, duly registered as such under the provisions of the Co-operative ~~Credit~~ Societies [Ordinance – Cap. 114], 1914, or any amendment thereof by any member or past member thereof.

Issue of writ

24. No writ of sale of immovable property shall be issued except on an application to the Court, notice of the application having been first given to the debtor; and every such writ shall be signed by the Judge, or one of the Judges, directing its issue.

Duration of writ

25. Subject to the provisions of the next section, where a writ of sale of immovable property has remained unexecuted for one year from the date of its issue by reason only of the non-payment of

(a) "Credit" deleted by Ordinance 18/1966 – came into force on 29 December 1966

the expenses to be incurred in carrying out the sale, the District Lands Officer may endorse on the writ that it has not been executed by reason of the non-payment of the expenses; and the writ shall then be returned to the Court by which it was issued and shall cease to have any legal force and effect.

The Court may at any time before the expiration of one year from the date of the issuing of the writ, order that it shall remain in force for such further period as the Court thinks fit.

Order for sale of part of land first

26. If a judgment debtor whose immovable property is sought to be sold claims that it will be to his interest or to the interest of his creditors that any part of it should be sold before any other part, he shall bring the claim to the notice of the Court before the auction is concluded; and if the Court thinks that any part of the property should be sold before any other part, it may so order accordingly.

Writs directing sale of land generally

27. A writ of sale of immovable property, directing the sale of the debtor's immovable property generally, without other or further directions, shall be sufficient authority to the Sheriff and to the officers of the District Lands Office to sell so much of the immovable property registered in the name of the debtor as may be deemed sufficient to raise the amount due under the judgment, with all expenses of execution.

Land subject to mortgage

28. Where the property is subject to a mortgage:—

- (a) the judgment creditor may at any time after the mortgage debt has become payable, pay to the mortgagee on behalf of the judgment debtor all money secured by the mortgage, and may add the money so paid to the amount of his judgment debt; and the Court, upon being satisfied that the money secured by the mortgage has been paid, may direct a sale of the property;
- (b) if upon tender by the judgment creditor to the mortgagee of the money secured by the mortgage, the mortgagee refuses to accept it, the Court may, on the application of the judgment creditor, direct the property to be sold upon such terms as to the payment into Court by the judgment creditor, or as to his otherwise securing the payment of the mortgage debt as the Court thinks fit;
- (c) the judgment creditor may, instead of paying or tendering to the mortgagee the money secured by the mortgage, give notice to the mortgagee of his intention to apply to the Court for a writ of sale; and upon such application, and upon the judgment creditor furnishing security to the satisfaction of the Court for the expenses to be incurred in and in connection with the sale, a writ may be issued directing the property to be sold, subject to a reserved bidding to be fixed by the Court, for securing the money due and to become due under the mortgage; and if there is no bidding of as high a value as the amount fixed by the reserved bidding, the property shall not be sold;
- (d) the money realised by any sale under paragraph (c) shall, so far as it extends, be applied; first, in payment of the money due under the mortgage; secondly, in payment of the expenses of the sale; thirdly, in payment of the judgment debt; and the balance, if any, shall belong to the judgment debtor;
- (e) if the money so realised is not sufficient for the payment in full of the money due under the mortgage and the expenses of the sale, the judgment creditor shall be answerable for the deficiency, but may, where the Court thinks fit so to order, add the amount of the deficiency to the amount of his judgment debt as costs of execution;

Provided that where the property is subject to two or more mortgages:— (a)

- (a) the provisions of paragraphs (a), (c), (d) and (e) shall be applicable in respect of all such mortgages, all monies secured thereby and all respective mortgagees;*
- (b) should the mortgagee of any such mortgages refuse to accept payment of the money secured by such mortgage upon tender by the judgment creditor as in paragraph (a) provided, the provisions of paragraph (b) of this section shall be applicable in respect of such mortgagee, the respective mortgage and the money secured thereby.*

Land registered in deceased debtor's name need not be registered in name of heirs

29. Where a writ has been issued for the sale of immovable property in satisfaction of a judgment debt owing by a deceased person, and the property stands registered in the books of the District Lands Office, in the name of the deceased, the Lands Department shall sell the property in satisfaction of the debt without first requiring its registration to be effected in the name of the heirs.

Sale under subsequent writ of land ordered to be sold by prior writ

30. Where a writ has been issued for the sale of immovable property, the Court may, on the application of any other judgment creditor, issue a writ for the sale of so much of the property as has not been sold under the first writ; and may, upon the like application, order that the balance, if any, after payment of what is due under the first writ, shall be applied in satisfaction of the debt of the creditor by whom application is made.

Directions

31. The Sheriff or any person executing a writ of sale of immovable property may apply to the Court for directions for disposing of any question arising or likely to arise in the course of the sale, and the Court may thereupon give such directions as it thinks advisable.

Application by third party for stay of sale

32. Any person who claims to be interested in any immovable property for the sale of which a writ has been issued, may apply to the Court to stay the sale, and the Court may, after hearing all the necessary parties, make such order thereon as seems just.

Sale to be by auction

33. Every sale of immovable property in satisfaction of a judgment shall be made by public auction at a time and place of which public notice has been given.

Notice of sale

34.—(1) The notice shall be posted at the town or village within which the property is situate; at the town or village at which the sale is to be held; at the court-house of the Court out of which the writ of sale is issued; and at such other place or places as may be directed by the Court or by Rules of Sale made under this Law.

(2) The notice shall specify the name and place of business of the person appointed to conduct the sale and of the person, if any, to whom biddings may be made pending the time appointed for the sale.

(3) The notice shall be a notice of at least fifteen days, but need not in any case exceed ninety days; and shall be issued for such time prior to the sale and shall be given in such manner as shall

(a) Proviso inserted by Ordinance 18/1966 – came into force on 29 December 1966

be provided by any Rules of Sale made under this Law or, in default of any such rules, in such manner as the Court may direct.

Written bids

35. After the publication of the notice and until the time appointed for the sale, biddings in writing may be made to any person named in that behalf in the notice of sale, provided that they are made in conformity with the Rules of Sale or, in default thereof, that they are signed by the person bidding in the presence of some person named to receive written biddings.

Close of sale

36. At the time and place appointed for the sale the person appointed to conduct it, or his substitute, shall receive all biddings then made orally to him, and shall close the sale in conformity with the provisions of the Rules of Sale or, in default thereof, when he considers, from the time which has elapsed since the last previous bidding, that no further biddings are forthcoming.

Highest bidder to be declared

37. After the close of the sale the person having the conduct of it shall declare the name of the highest bidder.

Liability of bidder

38.—(1) Every person who makes a bidding, whether in writing or orally, shall, unless or until a higher bidding is made, thereby render himself responsible for the amount bid by him and that he will complete the purchase and pay all fees necessary for duly transferring the property into his name in the books of the District Lands Office; and if the highest bidder shall, on the demand of the person having the conduct of the sale, neglect or refuse to pay the money bid by him, or such portion thereof as may be prescribed by Rules of Sale, and also the above mentioned fees, the biddings shall be reopened and the property shall again be put up for sale. And the highest bidder at the former sale shall be responsible for all losses, if any, occasioned by his neglect or refusal to pay the said sums.

(2) If the amount realised at the subsequent sale is not sufficient to satisfy the amount due under the judgment in execution of which the sale is made, the amount, if any, for which the highest bidder at the former sale rendered himself responsible shall be recoverable in an action instituted by the judgment creditor, or, by leave of the Court, by the judgment debtor. In the contrary case the amount shall be recoverable in an action instituted by the judgment debtor.

Penalty for failure to pay amount of bid

39. When the person declared to be the highest bidder is not required by the person having the conduct of the sale immediately after the close of the sale to pay the whole of the money bid by him, then if he fails to complete the payment of the money bid by him within the time fixed by the conditions of sale, the judgment creditor may serve on him a notice in writing calling upon him to complete the payment within ten days after service of the notice; and if he neglects or refuses without reasonable cause, proof whereof shall lie upon him, to complete the payment within the said ten days he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds.

Court may fix reserve price

40. The Court on issuing the writ may direct that the property shall not be sold unless the amount bid for it is equal to or exceeds a reserve price fixed by the Court. Any such direction may be given by the Court on the application of the person whose property is ordered to be sold and on his securing, in such manner as the Court may approve of, the payment of any additional expenses which may be occasioned by the giving of the direction; and if any such direction is given, the

reserve price shall in all cases be specified in the writ of sale, and no bidding or offer for the property shall be accepted unless it is equal to or exceeds the reserve price:

Provided that this section shall not apply to property legally mortgaged or hypothecated for the payment of a debt.

Resale when reserve not reached

41. When the property is not sold owing to the amount bid not having been equal to the reserve price, if, after the expiration of six months from the conclusion of the biddings, the property still remains unsold and the creditor applies to the Court to order it to be again put up for sale, the Court shall, unless it is shown that the debt is satisfied, make the order accordingly, and the property shall then be sold for the best price that can be obtained.

Sale with closed doors

42. The doors of any room in which the sale takes place may, in the discretion of the person appointed to conduct the sale, or his substitute, be closed so that any person present at the commencement of the sale may not leave until the person conducting the sale has closed the sale and called upon the highest bidder to pay the purchase money or so much thereof as may then be payable.

Irregularity in sale

43. If it is made to appear to any court that there has been any omission or irregularity at the sale whereby any person has been actually damaged or prejudiced, the Court may set aside the sale and order a new sale upon such terms as it thinks just.

Sale may be suspended or writ set aside if highest bid inadequate

44.—(1) Where the highest amount bid is inadequate, then, if the debtor applies to the Court within seven days from the time when the bidding was made for a stay of proceedings, and proves to the satisfaction of the Court that the highest amount bid is inadequate as aforesaid, and if, when the application is made to the Court and when the Court is prepared to deal with it, it is possible to make an order on it without affecting the rights of or in any way prejudicing any person other than the debtor and his creditor, the Court may by its order direct that the proceedings under the writ be suspended or that the writ be set aside, as far as regards the property for which the highest bid is inadequate, either unconditionally or subject to such terms as the Court may think fit to impose.

(2) The Court shall not make the order if it appears that the debtor or any person with his knowledge and on his behalf, or in furtherance of any common purpose formed by him and others to prejudice, hinder or prevent the sale of immovable property, has in any manner acted so as to prejudice the sale of the property or hinder or prevent biddings being made for it.

(3) If, after the expiration of six months from the time when the Court orders the proceedings under the writ to be suspended or the writ to be set aside, the property comprised in the writ still remains unsold, and the creditor applies to the Court to order it to be again put up for sale, the Court shall, unless it is shown that the debt is satisfied, make the order accordingly, without charging any further Court fees; and the property shall then be sold for the best price that can be obtained.

(4) This section and sections 45 to 50 inclusive shall not apply to any property legally mortgaged or hypothecated for the payment of a debt.

Meaning of “inadequate”

45. A bid shall ordinarily be deemed to be inadequate within the meaning of this Law if it is less than one-third of the value of the property as shown in the immovable property tax registers. But the creditor may submit evidence to the Court that the value so shown exceeds the true actual value of the property, and the Court may, on leaving the evidence and any evidence submitted by

the debtor in opposition, and after hearing the parties or such of them as attend the Court, determine what is the true value of the property; and in that case the bid shall be deemed to be inadequate within the meaning of this Law, if it is less than one third of the value determined by the Court.

Time for application to suspend or set aside

46. Any debtor desiring to obtain an order of a Court suspending proceedings under or setting aside a writ for the sale of any of his immovable property, shall make application to the Court for that purpose within seven days from the date when the bidding has closed; and no such application shall in any case be received after the expiration of seven days.

Resale after suspension or setting aside of writ

47. When the proceedings under a writ have been suspended or a writ has been set aside under the provisions of this Law, any property which was ordered to be sold may, on the application of any person interested therein at any time afterwards, be sold, if the Court thinks fit so to direct.

Suspension or setting aside not to prejudice creditor

48. The suspension of proceedings under a writ or the setting aside of a writ shall not postpone the claim of the creditor on whose application the writ was issued to the claim of any other creditor, but all rights as against the debtor and all other persons claiming through or against the debtor which on the issuing of the writ accrued to the creditor in respect of the property therein mentioned shall remain in full force until his debt is satisfied with interest and costs.

When creditor may be put in possession

49. When the Court suspends the proceedings under or sets aside a writ, or if the highest bid is less than the reserve price fixed by the Court, the creditor may, if he so requires and if the Court thinks fit, be put into possession of the property for any period not being more than three years, at a yearly rent fixed by the Court:

Provided that if any person other than the creditor offers to rent the property and to enter into security for the payment of the rent, the creditor shall not be entitled to be put into possession at a smaller rent than that so offered.

Court may order sale although creditor in possession

50. Notwithstanding that a creditor has been put into possession under the last preceding section the property may at any time, by leave of the Court, be sold to any person who will give an adequate price for it.

Except as hereinbefore provided the Court shall not necessarily direct the property to be sold, but shall direct it either to be sold or to continue in the possession of the creditor, as may in the opinion of the Court be most conducive to the interests of all parties concerned.

Directions on failure of sale

51. If for any reason any of the property is not sold on the day fixed for the sale, the Court may give such directions as it thinks right for the sale thereof and for advertisements and notices.

Transfer not to be registered until fifteen days after sale

52. No transfer of immovable property sold in execution shall be made at the District Lands Office until the expiration of fifteen days after the date when the biddings closed.

Making Judgment a Charge on Land

Registration of judgment

53. A judgment creditor may, for the time and to the extent hereinafter specified, render any immovable property in which his judgment debtor is beneficially interested, and which is registered in the books of the District Lands Office in the debtor's name, a security for the payment of his judgment debt by registering his judgment at the District Lands Office.

How effected

54. The registration shall be effected by depositing at the District Lands Office of the district in which the property sought to be charged is situated, an office copy of the judgment, together with a memorandum, dated and signed by the judgment creditor or his agent appointed for that purpose, describing the property and claiming that the debtor's interest in it may remain answerable for the payment of the money due under the judgment.

The memorandum shall state the name, place of residence and occupation of the judgment debtor, the nature of the property, the town or village within the lands of which the property is situate, and a reference to the place in the registers where the registration of the property is to be found.

Duration of registration

55. Registration of a judgment shall ordinarily remain in force for ~~two~~ *six* (a) years only from the date when the judgment was first registered.

Extension of period

56.—(1) The registration may, from time to time, be prolonged by an order of the Court for any further period or periods not exceeding ~~one year~~ *two years* (b) at any one time.

(2) No order shall be made prolonging the registration unless—

- (a) the application for it is made at least one month before the expiration of the existing period for which it is registered; and
- (b) the Court is able, after hearing and considering the application and all evidence adduced in support of it, to make its order before the expiration of the existing period; and
- (c) notice of the application and of the time fixed for its hearing has been given to the District Lands Officer of the district within which the property is situate; and
- (d) the court is satisfied that the judgment was not a collusive judgment, or obtained with a view to defeat other creditors, and also that a prolongation of the period of registration will not prejudicially affect the judgment debtor or any other judgment creditor or creditors.

(3) Notice of the order shall be given to the District Lands Office by or on behalf of the judgment creditor and at his expense, by leaving at the office where the judgment is registered a notice in writing of the making of the order, or an office copy thereof, not later than the day on which, but for the making of the order, the registration of the judgment would cease to have effect, and, where notice only is left, by further leaving an office copy of the order at the District Lands Office within fourteen days from the day last aforesaid; and if the office copy or notice and office copy as aforesaid be not so left at the office, the creditor shall forfeit the benefit conferred on him by the order.

(a) Amended by Ordinance 22/1989 – came into force on 12 December 1989

(b) Amended by Ordinance 22/1989 – came into force on 12 December 1989

Effect of registration

57. During the time that the registration remains in force, the interest of the debtor in the property shall be charged with the payment of the debt due under the judgment in priority to all debts or obligations of the debtor not specifically charged upon the property before the deposit of the memorandum; and notwithstanding any transfer or mortgage made after the registration of the judgment, the property, or so much of it as shall be necessary to be sold to satisfy the judgment, shall, at any time while the registration remains in force, be ordered by the Court to be sold in execution of the judgment. The remedy of any person into whose name it may have been transferred, or to whom it may have been mortgaged, shall be in damages only against the person by whom the property was transferred or mortgaged to him.

~~Where there is a previous declaration for sale or mortgage (a)~~

~~58. Where a declaration for sale or for mortgage has been made, no memorandum deposited after the date of the declaration shall have any effect upon the property affected by the declaration until the expiration of twenty days from the date of the declaration.~~

Effect where there is a previous declaration of transfer or mortgage

58. Where a declaration of transfer or mortgage has been made, no registration of a judgment made after the time of such declaration shall have any effect:—

- (a) upon the interest of the transferor; or*
- (b) upon the interest of the mortgagor in priority of the mortgage declared, as the case may be, in the property so declared to be transferred or mortgaged:*

Provided that where a registration of judgment is made after such transfer or mortgage has been declared but before the fees and charges leviable, under the provisions of any Ordinance in force for the time being, on the registration of such transfer or mortgage have been paid, the provisions of this section shall not apply unless such fees and charges are paid on the day on which the transfer or mortgage, as the case may be, has been declared.

Notice to be given when judgment satisfied

59. Whenever any judgment that has been registered is satisfied while the registration remains in force it shall be the duty of the creditor to give notice in writing thereof at the office where the judgment is registered.

The creditor shall be answerable to his debtor, and to any creditor of the debtor, for any damages they or either of them may incur by reason of a judgment remaining registered after it has been satisfied, unless he proves that the damage has been incurred in consequence of the judgment remaining registered after he has given notice at the District Lands Office of its satisfaction.

Entries to be made at District Lands Office

60. The proper officer of the District Lands Office shall enter in a book to be kept for that purpose a note of the date of the registration at the District Lands Office of every judgment, and of the names, places of residence and ordinary occupations of all persons against whose immovable property or any part thereof, any judgment has been registered, and of the date of any order prolonging the registration, and of the period for which the registration is thereby prolonged.

The book shall also show the name of the village where the properties are situate.

The book, together with the office copies of judgments and memoranda deposited at the District Lands Office under this Law, shall be open to inspection.

(a) Section 58 repealed and replaced by Ordinance 18/1966 – came into force on 29 December 1966

Creditor who has registered his judgment may be postponed if he does not proceed with execution

61. Where there are two or more judgments against the same debtor in favour of separate creditors, and two or more of the creditors give notice to the same District Lands Office of their judgments, the Court may direct that any creditor whose notice is prior in date to that of any other creditor shall be postponed to all or any creditors whose notices are subsequent in date to his and who may seek to execute their judgments, unless he proceeds to execute his judgment within a time to be named by the Court.

Application of balance where land sold under first registered judgment

62. Where two or more creditors, by registering their judgments, have charged the same immovable property with the payment of their debts, and one of them has sold the property in satisfaction of his debt, if upon the sale there remains a balance after satisfaction of the debt and costs of execution, it shall be applied, in priority to the claims of any other creditor, in satisfaction of the debt of any other creditor who has registered his judgment, or, if there be more than one such creditor, in satisfaction of their debts in the order of priority of the registration of their judgments.

Registration in Debtor's Name with a view to Execution

Judgment creditor may apply for registration of land in debtor's name

63. A judgment creditor who wishes to enforce his judgment debt by sale of the interest of his debtor in immovable property not registered in the name of the debtor or to render any immovable property not registered in the name of the debtor a security for his judgment debt, may apply to the District Lands Office for the registration of the property in the name of his debtor; and whether the debtor is living or dead, registration may be effected in his name in the manner hereinafter provided.

Application to be filed and open to inspection

64. The application shall be filed in the District Lands Office, and the proper officer shall enter a note of it in a book to be kept for the purpose and also in the book directed to be kept by section 60. the books, together with the application, shall be open to inspection by any person during office hours.

Effect of application

65. Where such application has been made, the interest of the debtor in the property shall, during the period hereinafter appointed, be charged with the payment of the debt due under the judgment in priority to all debts or obligations of the debtor not specifically charged upon the property before the making of the application.

The property shall so remain charged until the expiration of six months from the date when notice is received by the judgment creditor, under section 67 of this Law, that the District Lands Officer has effected or has refused to effect registration in the name of the judgment debtor.

District Lands Officer may register the land accordingly

66.—(1) Upon the application being made, and subject to the following conditions:—

- (a) that a local inspection of the property be made;
- (b) that sufficient evidence to adduced of the right of the judgment debtor to be so registered; and
- (c) that all fees and charges (including the payment in advance of the cost of the local inspection) which would have been payable by the judgment debtor, if the application had been made by him, be paid by the judgment creditor,

the District Lands Officer of the district in which the property is situate may cause it to be registered in the name of the judgment debtor:

~~Provided always that where the property is registered in the name of some other person it shall also be necessary either: (a)~~

~~(a) that the written consent duly authenticated of the person or persons in whose name or names the property is registered, or, if dead, of his or their heirs, be produced, or~~

~~(b) that the following procedure be completed:~~

~~(i) where the District Lands Officer is satisfied that the person making the application has acquired a title to the said immovable property by prescription and that it would, in the opinion of the District Lands Officer, be impossible or out of reasonable proportion to the value of the said immovable property to require the written consent of the person or persons in whose name or names the said immovable property is registered or, if dead, of his or their heirs, to be produced; and~~

~~(ii) the District Lands Officer or some other Lands Officer on his behalf has posted a notice at the place where public notices are usually posted in the village within the boundaries of which the said immovable property is situate; such notice shall contain a description of the property, its extent, boundaries, situation, a statement of the registration as it exists in the books of the District Lands Office, the name of the person in whose name the property is proposed to be registered, and a statement of the grounds on which the proposed registration is intended to be made, and the notice shall call upon any person interested in the said immovable property to show cause within sixty days from the date of the posting of the notice why the proposed registration should not be made; and~~

~~(iii) no objection to the proposed registration has been made within the said period of sixty days; and~~

~~(iv) the approval of the Director of Lands and Surveys to the proposed registration is obtained.~~

Provided that where such property is registered in the name of some other person, it shall also be necessary:—

(a) if such person be living, that his consent in writing duly authenticated, be produced;

(b) if such person be dead, that the provisions of section 49 of the Immovable Property (Tenure, Registration and Valuation) Ordinance be mutatis mutandis, applied.

Notice of grant or refusal of application to be given to creditor

67. The officer shall forthwith give notice to the judgment creditor that he has effected or refused to effect the registration.

Application to Court on refusal

68. If the officer refuses to cause the registration to be effected, the judgment creditor may apply to the District Court of the district within which the property is situate, or to a Judge thereof, for an order directing the registration, and shall in every such case give the District Lands Officer reasonable notice of the date fixed for the hearing of the application.

At the hearing of the application, the District Lands Officer may attend and adduce any evidence which he may consider material or proper to be known by the Court.

(a) Proviso repealed and replaced by Ordinance 18/1996 – came into force on 29 December 1966

Order on application

69.—(1) If on the hearing of the application, the court is of opinion that the property in question ought to be registered in the name of the judgment debtor, it shall order it to be registered accordingly.

(2) Except where the District Lands Officer declares that a local inspection is unnecessary, no order shall be made for the registration of any property under the provisions of this Part of this Law, until a local inspection has been made.

Expenses of registration to be costs of execution

70. All fees and charges (including the cost of local inspection) paid by the creditor for obtaining registration of the property in the name of his debtor, shall be deemed to be costs of execution.

Application to set aside registration

71. Any interested party may apply to the Court to set aside any registration effected under this Part of this Law.

PART 6

Execution by Sequestration of land

Writ of sequestration on debtor's application

72. When a writ of sale of immovable property has been issued, the Court, on the application of the debtor, and on his proving to the satisfaction of the Court that he is possessed of immovable property, and that the amount due under the judgment with all interest and costs payable and to become payable thereunder can be satisfied by sequestration of the property for a period not exceeding three years, may direct a sequestration of the property, and may thereupon stay execution by way of sale.

PART 7

Execution by Attachment of Property

Writ of attachment of movables or debts in hands of third person

73. Where the judgment debtor is beneficially interested in any money, securities for money, goods or other movable property in the custody or under the control of any other person in Cyprus, or where such other person is indebted to the judgment debtor, a writ of attachment calling on such other person to appear before the Court and be examined touching the property in his hands which is mentioned in the writ, and directing him not to part with the custody thereof in the meantime, may be issued at any time after judgment on the application of the judgment creditor. The writ shall render the property of the judgment debtor which is in the hands of such other person answerable as hereinafter mentioned for the satisfaction of the judgment debt.

Service and effect of writ

74. The writ shall be served on the person thereby directed to appear before the Court; and from the time of the service thereof upon him, all money, securities for money, goods and movable property to which the judgment debtor is beneficially entitled whether solely or jointly with others, and which at the time of the service of the writ, or at any time before it is dissolved, are or shall be in the custody or under the control of the person directed to appear, and all debts due or accruing

due by him to the judgment debtor at or during that time shall, to the extent of the judgment debtor's interest therein and subject to any bona fide prior title thereto or lien or charge thereon, become securities in his hands for the satisfaction of the claim of the judgement creditor.

Disobedience to writ

75. Any person served with such a writ of attachment who shall, without leave or order of the Court, at any time after the service of the writ and before the attachment is dissolved, knowingly and wilfully part with the custody or control of any property attached in his hands, or remove it out of Cyprus, or sell or dispose of it or pay over any debt due by him to the judgment debtor, except only to or to the use of the judgement creditor, shall be deemed to have disobeyed, and shall be liable to the same process as though he has disobeyed an order of the Court.

Securing the property

76. At any time after service of the writ the Court may make any order for the safe custody of any property mentioned in the writ.

Property under control of public officer or Court

77. Property in the hands or under the control of any public officer in his official capacity shall be liable to attachment in execution of a judgment with the consent of the Attorney General; and property under the control of any Court shall be liable to attachment by order of the Court.

Disposal of property attached

78. The Court may, after hearing all persons whom it may consider to be interested, or after notice to them to attend, order that any part of the property attached which shall consist of money and bank notes, or a sufficient part thereof, shall be paid over to the judgment creditor, or that any part not consisting of money or bank notes, so far as may be necessary for the satisfaction of the judgment, shall be sold, and that the money realized by the sale, or a sufficient part thereof, shall be applied in satisfaction of the judgment, and that the writ be dissolved; or it may order that the writ be dissolved, or may make such other order as may seem just; and shall make such order as to the costs occasioned by the issue of the writ as it thinks proper.

Execution against third party

79. If any person served with such writ of attachment fails to comply with any order the Court may make under the writ, the Court may order execution to issue against him for the amount of the property attached in his hands, or for such part thereof as shall be sufficient to satisfy the judgement and all costs of the proceedings, and execution may issue accordingly.

Indemnity to third party

80. Satisfaction of the order by the person served shall be a valid discharge to him as against all claimants of the debts or property which he may have applied or disposed of in accordance with the order, although the attachment may have been set aside or the judgment reserved.

Stay of proceedings against third party

81. The Court may stay proceedings in any action commenced against the person served in respect of property attached in his hands, upon such terms as it thinks fit.

PART 8

Execution by Imprisonment

When the debtor may be imprisoned

82. Where upon any investigation by the Court respecting the ability of a judgment debtor to pay the amount due under a judgment or order it appears to the Court that the creditor has been unable to obtain satisfaction of his judgment by the sale of the debtor's property or by attachment of property in the hands of some third party; and

- (a) that the debtor then has or since the making of the judgment or order has had sufficient means to pay the money directed to be paid by him or some part thereof which still remains unpaid, and that he refuses or neglects to pay it according to the judgment or order; or
- (b) that he has made or suffered to be made any gift, delivery, or transfer of any property, or charged, removed or concealed any property and has thereby prevented the creditor from obtaining payment of the judgment debt or any part thereof,

the Court may on the application of the creditor commit the debtor to prison for any term not exceeding twelve months, or until the payment of the sum due, subject to the provisions hereinafter contained; but may at any subsequent time order his release on the request of the creditor.

Subsistence of debtor

83. The creditor shall pay in advance for the subsistence of the debtor such sum to such person and in such manner as is or may be directed by Prison Regulations, and in default thereof the debtor shall be released.

Expenses of debtor's subsistence to added to debt

84. Sums disbursed by a creditor for the subsistence of the debtor in prison shall be added to the costs of the judgment and shall be recovered by execution against the property of the debtor; but the debtor shall not be detained in custody or arrested on account of any sums so disbursed.

Effect of imprisonment

85. A debtor once discharged shall not again be imprisoned on account of the same judgment or order, but his property shall continue liable to execution until the judgment or order is fully satisfied.

PART 9

Examination of Judgment Debtor

Application for debtor's examination

86. Where a judgment for the payment of money remains wholly or in part unsatisfied (whether a writ of execution has issued or not), the judgment creditor may apply that the debtor be examined respecting his ability to make the payment.

Compelling attendance for examination

87. The Court shall have the same powers to compel the attendance of a judgment debtor for examination as it has to compel the attendance of a witness in a civil action.

Examination

88. On the appearance of the debtor before the Court, he may be examined on oath by or on behalf of the creditor, and by the Court, respecting his ability to pay the money, and for the discovery of property applicable to the payment, and as to the disposal which he may have made of any property; and he shall be bound to produce an oath, or otherwise all books, papers and documents in his possession or power relating to property applicable to the payment.

Other evidence

89. Whether the debtor appears or not, the creditor and all other witnesses whom the Court thinks requisite, may be examined on oath or otherwise respecting the matters aforesaid.

Adjournment

90. The Court may, if it thinks fit, adjourn the examination from time to time, and require from the debtor such security for his appearance at the adjourned hearing as seems fit, and, in default of his finding security, may order him to be detained in custody.

Order for payment by instalments

91. The Court may, if it thinks fit, upon or at any time after any such investigation, direct that the sum due under the judgment shall be paid by instalments at such times and in such amounts as it may think proper.

PART 10

Miscellaneous

Costs

91A.—(1) *The costs of, and incidental to all civil proceedings before any Court shall, unless otherwise provided by an Ordinance or Public Instrument, be in the discretion of the Court and the Court shall have full power to determine by whom and to what extent such costs are to be paid.*

(2) *Any costs payable in accordance with this section may include interest as the Court in the exercise of its discretion may consider just.*

Compelling payment of fees and other money penalties

91B.—(1) *A Court may issue the same process as may be issued to compel payment of a judgment debt for the purpose of compelling payment of any—*

- (a) costs, charges and expenses of a witness in any civil proceedings;*
- (b) other charges and expenses; and*
- (c) fees, forfeitures or money penalties.*

Officers of District Lands Office may act upon judgments

92. Where a judgment settles any question of title to immovable property, service of a copy of the judgment at the District Lands Office shall be sufficient authority for the proper office of that Office to make all necessary registrations consequent on the judgment.

Writ of partition

93. Where a judgment directs partition of immovable property, a writ of partition may issue directing that a partition of the property may be made by a Land Registry Officer or any other person whom the Court may think fit to appoint for the purpose.

The Court before issuing the writ, may require the person applying for it to deposit such sum as the Court considers necessary for the costs of making the partition.

The writ shall be sufficient authority for the officer or person to whom it is addressed to make the partition ordered at any time after the receipt thereof by him, whether the persons amongst whom the property is to be partitioned are present at the time of making the partition or not.

Execution of judgments of Turkish Family Courts

94. For the purpose of executing the judgment of a Judge of a Turkish Family Court ordering the payment of money or the performance of any other act or thing, a District Court may, on the application of any person in whose favour the judgement is made, issue the same writs and orders as though the judgment had been actually given by the District Court; and may stay execution in the same manner as it may stay execution of its own judgment, and shall have all such powers in relation to the judgment as are specified in Part 9 of this Law.

Saving

95. Nothing in this Law shall be held to annul or abridge the right of any Court to enforce obedience to any order issued by it under the provisions of the Courts of Justice Law (a).

Powers to make Rules of Sale

96.—(1) The Governor, with the advice and assistance of the Chief Justice and of the Director of Lands and Surveys may from time to time make rules (hereinbefore referred to as Rules of Sale), for regulating—

- (a) the conduct of sales of immovable property under this Law;
- (b) the appointment of persons to conduct the sales;
- (c) the fees to be paid to the District Lands Office or to any person on such sales;
- (d) the conditions under which the property is to be sold; and
- (e) the form of notice authorized by section 39, and manner of serving it.

(2) The rules shall be consistent with this Law, and may empower the District Lands Officer to give any special directions as to the manner and conditions of sale where he thinks it advisable, but so that he shall not be authorized to direct any sale to be carried out in a manner inconsistent with this Law.

(3) The rules may repeal or alter any previous rules.

(4) The rules shall be published in the Gazette, and shall come into force at any time specified in the rules or by order of the Governor published in the Gazette.

Power of judgment creditor to protect immovable property charged (b)

96A. *Any judgment creditor who has, under the provisions of Part 5, levied execution on immovable property shall, during the period for which such immovable property is the subject of such execution, have concurrent and equal powers with the registered owner of such immovable property for the purpose of taking any action, whether by civil or criminal*

(a) Cap. 8

(b) Section 96A and 96B inserted by Ordinance 18/1966 – came into force on 29 December 1966

process, against any person for the protection of such immovable property against destruction or damage.

Destroying or damaging immovable property charged

96B. Any person having an interest, whether as owner or heir, in immovable property on which execution has been levied under the provisions of Part 5, who, during the period for which such immovable property is the subject of such execution, shall do any act, or shall order or wilfully permit any act to be done, whereby such immovable property is destroyed or materially damaged shall, unless he establishes to the satisfaction of the Court that he acted without any fraudulent intent, be guilty of an offence under this Ordinance and shall be liable on conviction to a fine not exceeding one thousand pounds or to imprisonment for any term not exceeding two years or to both such fine and such imprisonment.

Rules of Court (a)

96A. The Administrator may, with the advice and assistance of the Presiding Judge, make Rules of Court to be published in the Gazette for the better carrying of this Ordinance into effect, and in particular for all or any of the following matters—

- (a) for regulating the pleading, practice and procedure of the Courts;
- (b) for prescribing the forms to be used in connection with any matter or cause to be heard by a Court;
- (c) for prescribing the fees to be taken in respect of any civil matter or civil proceeding in any Court or by an officer of a Court.

PART 11

Writs against immovable property. Sale of land when judgment charged

Issue of writ against immovables

97. Notwithstanding anything contained in section 22, writs for sale of immovables may be issued at any time by the order of a Judge of a District Court.

Sale one year after registration

98. Notwithstanding anything contained in this Law, immovable property may be sold in execution without the consent of the debtor or an order of the Judge after one year has elapsed from the time when the judgment has been made a charge on the land by registration.

Procedure on expiration of year

99. On expiration of the year in the last section mentioned the judgment creditor may, on notice being given to the judgement debtor, apply to the proper officer of the District Lands Office for sale of the property in execution of the amount remaining due on the judgment debt, and such officer shall thereupon proceed with the sale unless the debtor disputes the amount of the debt owing, in which case the matter shall be referred to a Judge of the District Court.

Charges

100. The proper officer of the District Lands Office may also sell so much property as in necessary to recover the charges incurred in such office and pay them to the judgment creditor:

(a) Section 96A inserted by Ordinance 10/2007 – came into force on 18 May 2007 Note: 96A and 96B already exists inserted by Ordinance 18/66

Provided that when the debt does not exceed ten pounds the creditor shall not recover a great amount of costs than the amount of his debt.

Rules

101. The Governor, with the advice and assistance of the Chief Justice, may make Rules for the carrying out of the objects of this Part of Law and of the second proviso to section 23 of the Law.

PART 12

Sureties

A surety who discharges the liability shall be entitled to an assignment of all securities held by the creditor and to stand in the place of the creditor, and use his name, if necessary, in order to obtain indemnification.

102.—(1) Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, speciality or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be deemed entitled to stand in the place of the creditor, and to use all the remedies, and if need be, and upon a proper indemnity, to use the name of the creditor, in any action or other proceeding at law in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances and loss sustained by the person who shall have so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be raised in bar of any such action or other proceeding by him:

Provided always, that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than just proportion to which, as between those parties themselves, such last mentioned person shall be justly liable.

Power to make rules of Court

(2) The Governor, with the advice and assistance of the Chief Justice, may from time to time by writing under the hand and official seal of the Governor and the hand of the Chief Justice makes Rules of Court for the better execution of the provisions of this Part.