LAWS OF TRINIDAD AND TOBAGO

REMEDIES OF CREDITORS ACT

CHAPTER 8:09

Act
19 of 1845

Amended by
29 of 1908
19 of 1923
25 of 1936
18 of 1939
*21 of 1981
*24 of 1981
9/1983

**See* Note on Amendments at page 2

Current Authorised Pages

Pages (inclusive)	*Authorised by L.R.O.*
1–2	1/1990
3–28	1/1983

Note

on

Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note

on

Amendments

(Sections 7, 9, 10, 38, 46, 49, 55, 65, 66, 67, 68 and 70)

(*a*) Section 46 of this Act has been amended by Act No. 21 of 1981.

(*b*) Sections 7, 9, 10, 38, 49, 55, 65, 66, 67, 68 and 70 have been amended by Act No. 24 of 1981.

However, Act No. 21 of 1981 and Act No. 24 of 1981 had not up to the date of the last revision of this Act (i.e., 31st December, 1985) been brought into operation.

CHAPTER 8:09

REMEDIES OF CREDITORS ACT

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CHAPTER 8:09

REMEDIES OF CREDITORS ACT

1950 Ed. Ch. 6 No. 2.
19 of 1845.

An Act for extending the remedies of creditors against the property of their debtors, and for the better protection of purchasers and mortgagees.

Commencement.

[11TH DECEMBER 1845]

Short title.

1. This Act may be cited as the Remedies of Creditors Act.

PART I

PRELIMINARY

2. In this Act—

Interpretation.

"Court" means the High Court, or a Judge thereof;

"land" includes all tenements and hereditaments and easements appurtenant, and includes undivided shares in land as well as all chattel and equitable interests in land;

"Marshal" includes the Marshal of Trinidad and Tobago and any Assistant or Deputy Marshal, or any assistant of the Marshal;

"Registrar" means the Registrar of the Supreme Court;

"seizure" includes the entry upon and taking in execution of land by the Marshal under process of the Court;

"screen" means to advertise by means of public notice affixed in a conspicuous part of the registry of the Court.

Rules to carry Act into effect. Ch. 4:01.

3. The Rules Committee established by the Supreme Court of Judicature Act may make rules for the purpose of carrying into effect the provisions of this Act, and also tables of fees and charges of the Marshal, and scales or lists of fees, costs, and charges in respect of summonses for sale and the proceedings consequent thereon, and such rules, tables, scales and lists shall be laid before Parliament and be subject to approval in the same manner in all respects as rules made under and by virtue of the Supreme Court of Judicature Act, and shall be read together with and as part of this Act.

Assistant Registrar in Tobago to have authority of a Judge.

4. The Assistant Registrar of the Supreme Court in Tobago shall, when there is no Judge in Tobago, exercise such of the authorities vested in a Judge by virtue of this Act as by rules to be made in pursuance of section 3 shall be provided, but in any case the Assistant Registrar may adjourn any summons for the consideration of a Judge in Tobago.

PART II

REMEDIES OF CREDITORS

Operation of Judgments

Judgment to operate as a charge on real estate.

5. Every judgment or decree to be entered up against any person in the Court shall operate as a charge upon all lands and rents of or to which that person shall at the time of entering up the judgment or decree, or at any time afterwards, be seised, possessed or entitled for any estate or interest whatever, whether in possession, reversion, remainder or expectancy, or over which that person shall at the time of entering up the judgment or

decree, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit, and shall be binding as against the person against whom the judgment or decree shall be entered up, and against all persons claiming under him after the judgment or decree, and shall be also binding as against his next of kin, and all other persons whom he might without the assent of any other person cut off and debar from any remainder, reversion or other interest in or out of any of the said lands and rents.

Decrees, orders, rules, etc., to have effect of judgments.

6. All decrees and orders of the Court made in any suit, and all rules of the Court made in any action, whereby any sum of money, or any costs, charges or expenses are payable to any person, shall have the effect of judgments in the Court, and the persons to whom any such moneys or costs, charges or expenses are payable shall be deemed judgment creditors within the meaning of this Act, and all remedies hereby given to judgment creditors are in like manner given to persons to whom any moneys or costs, charges or expenses are by such decrees, orders or rules respectively directed to be paid.

No judgment, decree, etc., to affect land until registered. [9/1983].

7. No judgment or decree of the Court shall affect any lands as to purchasers, mortgagees or creditors, or have any preference against heirs, executors or administrators, in the administration of their ancestors', testators' or intestates' estates, any notice to any such purchaser, mortgagee or creditor, or to any such heir, executor or administrator notwithstanding, unless and until a memorandum or minute containing the name and the usual or last known place of abode and the trade or profession of the person whose estate is intended to be affected thereby, and the title of the cause or matter in which the judgment, decree, order or rule has been obtained or made, and the date of the judgment, decree, order or rule, and the amount of the debt, damages, costs or moneys thereby recovered or ordered to be paid, shall be left with the Registrar General, who shall forthwith enter the same particulars, together with the year and the day of the month when the memorandum or minute is so left with him, in a book in alphabetical order by the name of the person whose estate is intended to be affected by the judgment, decree, order or rule, and the Registrar General shall be entitled for any such entry to the sum of two dollars and fifty cents, and all persons shall be at liberty to search the same book on payment of the sum of one dollar.

8. Every judgment to be registered in the manner directed by this Act shall entitle the creditor, by virtue of the judgment, decree, order or rule, to the same remedies in equity against the lands charged by virtue of this Act, or any part thereof, as he would be entitled to in case the person against whom the judgment, decree, order or rule has been so entered up had power to charge the same lands, and had by writing under his hand agreed to charge the same with the amount of the judgment debt, or the amount made payable by the decree, order or rule, and interest thereon.

Effect of judgments.

9. (1) All such judgments and decrees as are registered in accordance with this Act shall, after the expiration of three years from the date of the entry thereof, be null and void against lands, as to purchasers, mortgagees and creditors, and shall not have any preference against heirs, executors or administrators in the administration of their ancestors', testators' or intestates' estates, unless a like memorandum or minute, as was required in the first instance, is again left with the Registrar General within three years before the execution of the conveyance, settlement, mortgage, lease or other deed or instrument vesting or transferring the right, title, estate or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors within three years before the right of such creditors accrued, or as to heirs, executors or administrators within three years before the death of the testator or intestate, and so *toties quoties* at the expiration of every three years; and the Registrar General shall forthwith re-enter the same in like manner as the same was originally entered and shall be entitled for any such re-entry to the sum of two dollars and fifty cents.

Judgments, decrees, etc., to be again registered after the expiration of three years. [9/1983].

(2) Where, by this section, re-registration of judgments, decrees, orders or rules is required within the period of three years as is therein mentioned, in order to bind purchasers, mortgagees and creditors, or to secure the preference as is therein mentioned, it shall be deemed sufficient to bind the purchasers, mortgagees and creditors and to secure the preference as aforesaid, if the memorandum or minute as was required in the first instance is again left with the Registrar General within three years before the execution of the conveyance, settlement, mortgage, lease or other deed or instrument vesting or transferring the legal or equitable right, title, estate or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors within three years before the right of such creditors accrued, or as to heirs, executors or administrators within three years before the death of the testator or intestate, although more

Effect of re-registration of judgments.

than three years have expired by effluxion of time since the last previous registration before the last mentioned memorandum or minute was left, and so *toties quoties* upon every re-registration.

Entry of satisfaction on registered judgments.

10. The Registrar General shall, upon production of an office copy of the notice that the plaintiff's claim has been satisfied in any action, write a memorandum of satisfaction on the minute of registration (if any) of the judgment in the action, and across the entry of particulars required to be kept by section 7.

Legal estate vested in purchaser or mortgagee not to be taken in execution.

11. Where any legal or equitable estate or interest, or any disposing power in or over any lands, shall under any conveyance or other instrument become vested in any person as a purchaser or mortgagee for valuable consideration, such lands shall not be taken in execution under any writ of execution to be sued out upon any judgment, decree, order or rule against any mortgagee or mortgagees thereof who have been paid off prior to or at the time of the execution of the conveyance or other instrument, nor shall any such judgment, decree, order or rule or any money thereby secured, be a charge upon the lands so vested in the purchasers or mortgagees.

Revival of judgments.

12. Nothing contained in this Act shall extend to revive or restore any judgment which is extinguished or barred, or to affect or prejudice any such judgment, or any decree, order or rule, as between the parties thereto, or their representatives, or those claiming as volunteers under them.

Judgment debt to carry interest.

13. Every judgment debt entered up carries interest at the rate of six per cent from the time of entering up the judgment until the same is satisfied, and the interest may be levied under a writ of execution on the judgment.

Stock and shares of debtor standing in his name to be charged by order of a Judge.

14. If any person against whom any judgment has been entered up in the Court has any stock or shares of or in any public company carrying on business in Trinidad and Tobago (whether incorporated or not) standing in his name in his own right or in the name of any person in trust for him, it shall be lawful for a Judge on the application of any judgment creditor to order that the stock or shares, or such of them, or such part thereof respectively, as he thinks fit, shall stand charged with the payment of the amount for which judgment has been so recovered, and interest thereon, and the order shall entitle the judgment creditor to all the remedies as he would have been entitled to if the charge had been made in his favour by the judgment debtor.

Order of Judge to be made in the first instance *ex parte*, and on notice to the company to restrain a transfer.

15. In order to prevent any person against whom judgment has been obtained from transferring, receiving or disposing of any stock or shares authorised to be charged for the benefit of the judgment creditor under an order of a Judge, every order of a Judge charging any stock or shares in any public company under this Act shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only; and the order, if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall restrain the public company from permitting a transfer thereof; and if after notice of the order to the person to be restrained or, in case of corporations, to any authorised agent of the corporation, and before the same order is discharged or made absolute, any such corporation or person permits any such transfer to be made, then and in such case the corporation or person so permitting the transfer is liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as is sufficient to satisfy his judgment, and no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, unless the judgment debtor shall, within a time to be mentioned in the order, show to a Judge sufficient cause to the contrary, the order shall, after proof of notice thereof to the judgment debtor be made absolute; but any Judge shall, upon the application of the judgment debtor or any person interested, have full power to discharge or vary such order and to award such costs upon the application as he may think fit.

Interest vested or contingent in stock, interest, or dividends.

16. All the provisions mentioned above with regard to the charging any stock or shares shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder or reversion, and whether vested or contingent, as well in any such stock or shares aforesaid as also in the dividends, interest or annual produce of any such stock or shares.

Liability of the Marshal in respect of movable property taken in execution.

17. The Marshal shall be subject to such and the like actions at the suit of any person claiming any right in or to any personal or movable property, goods, debts, chattels or effects taken in execution or levied upon or sold by the Marshal, or the proceeds or any part of the proceeds of the sale thereof, as the Sheriff would be subject to in the like case by the law of England.

Enforcement of Judgments on Personal Chattels

Judgment for recovery of money enforceable by execution.

18. Every judgment or order of the Court for the recovery from or payment by any person of an ascertained sum of money may be enforced by execution, the order for which shall be issued under the seal of the Court to the Marshal on payment of the prescribed fees.

How order for execution shall issue.

19. No order for execution shall issue unless the party requiring the same files a request for the same; the request shall contain the title of the action, the reference to the record, the date of the judgment and the name of the party against whom the same is to be issued, and shall be signed by the solicitor of the party entitled thereto or, if the party has appeared in person, by himself.

Marshal need not exhibit writ, etc.

20. The Marshal, in executing any writ of execution, shall not be bound to exhibit the writ to the defendant, unless requested by the defendant to do so, nor to demand satisfaction of the writ from the defendant, but it shall be lawful for the Marshal to make execution of any movable property and, in default thereof, of any immovable property of the defendant, in the absence of and without any previous notice to the defendant, any law or custom to the contrary in anywise notwithstanding.

Effect of order for execution.

21. The order for execution shall not specify the mode in which, or the description of the property upon which, execution is to be levied. It shall bear the date of its issue, and be drawn by the party requiring it, and be endorsed with the name and address of the solicitor applying for it together with the name and address of the solicitor, if any, for whom he acts as agent in so applying; or with a memorandum (according to the fact) that the same has been obtained by the party entitled thereto in person, and a sufficient address of the party, and be approved by the Registrar and bear the seal of the Court, and be issued to the party entitled thereto, who shall deliver the same to the Marshal for enforcement.

Marshal in first instance to execute order by seizure of goods.

22. On receipt of an order for execution, the Marshal shall forthwith proceed in the first instance to levy the amount authorised, or so much of it as is capable of being levied together with the prescribed costs of execution, by seizure and sale of the personal goods and chattels and effects of the debtor, other than chattel interests in land.

Marshal may seize money, bank notes, etc.

23. (1) By virtue of any writ of execution to be sued out of the Court, or any precept in pursuance thereof, the Marshal may and shall seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money belonging to the person against whose effects the writ of execution is sued out, and also may and shall levy upon and attach any securities which may be registered whereby any money may be secured to be paid to the person against whose effects the writ of execution is sued out, or to any person in trust for him; and may and shall pay or deliver to the party suing out the execution any money or bank notes which shall be so seized or a sufficient part thereof; and may and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money as a security or securities for the amount by the writ of execution directed to be levied, or so much thereof as has not been otherwise levied and raised.

And pay same to execution creditor.

And sue for amount secured by bills of exchange.

(2) The Marshal may sue in his own name for the recovery of any sum secured on any such cheque, bill of exchange, promissory note, bond, specialty or other security, if and when the time of payment thereof has arrived; and the payment to the Marshal by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty or other security, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of the payment or of the recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, specialty or other security.

(3) The Marshal may and shall pay over to the party suing out the writ the money so to be recovered, or such part of it as is sufficient to discharge the amount by the writ directed to be levied, and if after satisfaction of the amount so to be levied, together with expenses, any surplus remains in the hands of the Marshal, the same shall be paid to the party against whom the writ shall be so issued.

Proviso as to indemnity for Marshal.

(4) The Marshal shall not be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty or other security, unless the party suing out such execution enters into a bond with one sufficient surety for indemnifying him from all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof, the expense of the bond to be deducted out of any money to be recovered in the action.

Marshal not compelled to levy except upon written instructions.

24. The Marshal shall not be compelled to levy unless the execution creditor or his solicitor or agent has given him on demand instructions in writing stating the name, residence and place of business of the party against whom the execution is issued, or to levy on any property real or personal until the same is pointed out or otherwise sufficiently indicated to him by the execution creditor or some person authorised on his behalf.

Goods and chattels to be sold by Marshal for cash.

25. All chattels and other personal property seized by the Marshal under any order of execution shall be sold by the Marshal for ready money, and for the best price which can be obtained for the same, at public sale as soon as conveniently may be after six clear days' notice of sale in some local newspaper circulating in Trinidad and Tobago.

Ten days' notice of sale to be served on landlord where movable house or other tenant's fixture taken in execution.

26. (1) If the personal property or any part thereof taken in execution consists of a movable house or other chattel in the nature of a tenant's fixture on any land, the Marshal shall not complete his levy by sale thereof till after ten days have expired from the service on the owner of the land or the person in actual receipt of the rent, of notice of his levy on the house or chattel.

Service of notice when owner not ascertained.

(2) In the event of the Marshal being unable to ascertain the owner of the land or the person in receipt of rent, the notice as in this section provided may be served by leaving a copy thereof with any person in actual occupation of the land or of any house or tenement thereon.

Claim or objection by owner of land to be determined by way of interpleader.

On expiration of notice without claim or objection, Marshal to sell.

(3) Any claim or objection made by or on behalf of the owner of the land within ten days from service of the notice shall be dealt with by the Marshal by way of interpleader, in the manner provided by the rules of court for the time being in force in respect of interpleader. In the absence of any such claim or objection, the Marshal shall proceed to complete his levy by sale at the expiration of such ten days, and the sale shall be valid and effectual against the owner or any person claiming under him.

Marshal to endorse on order result of levy and to notify execution creditor.

27. The Marshal shall endorse on the order for execution the result of any levy made by him on the personal property of the execution debtor or, if the fact be so, that no goods, of the debtor have been pointed out, or otherwise indicated, or are otherwise known to him, on which a levy can be made, and shall forthwith, before returning the same into Court, give notice of the endorsement to the execution creditor or his solicitor.

Enforcement of Judgments on Lands

28. In respect of any sum recoverable, after giving credit for any sum realised by the sale of chattels under section 22, the creditor shall, at any time after the Marshal has made the return as is mentioned in section 27, be entitled, subject to this Act, to an order for the sale of any beneficial interest of the execution debtor in any lands within Trinidad and Tobago, whether the interest is legal or equitable, or is of a freehold or chattel nature, or is several or joint or in common with others, and whether in possession, reversion or remainder. Such order is in this Act referred to as an "order for sale".

Remedies by sale of debtor's interest in lands where goods insufficient to satisfy order for execution.

"Order for sale."

29. It shall be the duty of the Marshal, when called upon by either the execution creditor or the debtor, at any time before any actual sale of any interest in land under the provisions hereof, to execute the order for execution by levying upon any personal chattels of the debtor that may be pointed out, or otherwise become known to him.

Marshal to levy on goods which before actual sale of land shall become known to him to be the debtor's.

30. An order for sale shall be obtained by the party entitled thereto on a summons to be heard by a Judge in Chambers (in this Act referred to as a "summons for sale") to be entitled in the action or other proceeding in course of which the order for execution has been made.

"Order for sale" obtainable on a "Summons for sale".

31. The rules and orders of the court for the time being in force as to substituted service and notice in lieu of service shall be applicable to the service of a summons for sale and of notice thereof; and it shall be lawful for a Judge, at his discretion, to direct that any one of any class of persons interested jointly or in common for any interest, other than the fee simple in possession, legal or equitable, of and in any lands, may be served with, or having been served may appear to, any summons for sale on behalf of or as representing the other or others of the class, and any trustee shall, for the purpose of the summons, be deemed to represent his *cestuis que trustent*, and any executor or administrator, beneficiaries under a will or intestacy, except in so far as the Judge may otherwise direct, and be served and appear on their behalf.

Substituted service, and service on and appearance for parties represented.

32. If any person alleged or found to be interested in any lands the subject of a summons for sale is resident out of Trinidad and Tobago, service of the summons may be effected in such manner and on such conditions as shall for the time being be in force with

Service of summons for sale on absent person.

Judge may order sale without affecting such interest.

respect to the service of a writ of summons; or the Judge may in his discretion direct the proceedings to continue and make an order for sale without affecting the interest of the absent person.

Parties and costs of parties, other than debtors, attending summons for sale.

33. Parties, other than the judgment debtor, attending a summons for sale or any adjournment thereof, may be ordered to enter an appearance thereto, and shall be entitled to such costs of attending and appearance and subsequent proceedings as the Judge shall order, to be paid by the execution creditor and be charged by him against the interest of the execution debtor, if any.

Marshal on request of creditor to seize lands pending hearing of summons for sale.

Particulars to be endorsed on order for execution.

34. The Marshal shall, at the written request of the creditor or his solicitor and upon receiving the prescribed fee, make execution for the judgment debt and costs by seizure of any lands of which the execution debtor is in actual possession; and in such case his endorsement on the order for execution shall state the fact of his having so seized, and also the nature and extent of the interest of the debtor alleged by the creditor in justification of his requiring the Marshal so to seize. The Marshal shall forthwith return the order for execution into Court so endorsed, together with a statement of the extent and description of the lands so seized, and he shall notify the execution creditor or his solicitor of the return.

Summons for sale to be taken out where return shows that interest of debtor is not in possession, or that entry would affect third parties.

35. On the return of the order for execution so endorsed, or without any seizure or any return thereof in cases in which it is shown that the available interest in any land of the debtor is not in actual possession or cannot be subjected to immediate entry or seizure without prejudicially affecting the rights of other persons not parties to the proceedings, the execution creditor may in the prescribed manner take out a summons for sale, to be served upon the execution debtor or any other person sought to be affected by the order to be made thereon, and the Marshal shall be a party to every such summons and shall attend the same.

Summons to be served in the same way as originating summons, and to be supported by affidavit of particulars of debtor's interest in lands.

36. The summons provided for in section 35 shall be served in the same way as an originating summons in the Court, and shall be returnable on a convenient day not less than six days from the service thereof on the last of the persons to be served; and at the hearing thereof the creditor shall produce an affidavit stating, to the best of the knowledge and belief of the deponent, the title to the lands sought to be affected, and the nature, extent and value of the interest of the debtor and of other material persons therein,

and referring by their registered numbers to the material deeds and assurances affecting the same; and any person served therewith may be heard, and the debtor and such witnesses may be subpœnaed on behalf of the execution creditor and of any persons (other than the debtor) served with the summons, as may be required, and may be examined on oath touching the respective rights, titles, interests and equities in the premises sought to be affected of the debtor and of such persons respectively.

Summons for sale to issue on filing of affidavit by registered judgment creditor.

37. A summons for sale may also issue without the issue of any order for execution by any judgment creditor whose judgment is registered and the registration of which is in force and effective, on the filing of an affidavit showing, to the best of the knowledge of the applicant or other deponent, the lands to which it is alleged the debtor was beneficially entitled at the time of registration of the judgment, or at any time after the registration and before the issue of the summons for sale, and the nature of the beneficial interest, and referring by their registered numbers to the material deeds and assurances affecting the lands, and giving the names and addresses of the persons to be served with the summons.

On return of summons, Judge may order unconditional beneficial interest of debtor in lands to be sold.

38. If at the return of the summons for sale it is proved to the satisfaction of the Judge that the debtor was at the time of the registration of the judgment, or at any time after the registration and before the issue of the summons for sale, entitled to the sole immediate unconditional beneficial interest, legal or equitable, in the lands sought to be affected, or in any several and ascertained portion thereof, there shall be a declaration accordingly, and the same shall be ordered to be sold on such conditions as to advertisement, date, conditions of sale, description, reserved price, if any, and otherwise, as the Judge shall by his order direct, and the Registrar shall, after the sale has been confirmed as hereinafter provided, execute and deliver to the purchaser thereof, without further order, a conveyance thereof in fee, to be prepared by the purchaser and which shall (subject as to land under the Real Property Ordinance to the provisions of that Ordinance) have the same effect as if the execution debtor had conveyed the same to the purchaser for all his estate and interest therein.

Ch. 27 No. 11. (1950 Ed.).

Nature and extent of interest of debtor entitled in severalty to be declared by Judge at hearing of summons.

39. If at the hearing of the summons it appears that the debtor was at the time of the registration of the judgment, or at any time after the registration and before the issue of the summons for sale, entitled to any several beneficial legal or equitable estate or interest in the lands sought to be affected, other than the sole immediate unconditional beneficial interest, legal or equitable, or

is solely entitled to any present chattel interest therein, the Judge shall by his order declare the nature and extent of the beneficial interest, and the declaration shall be binding on all persons duly summoned either in person or by service thereof on some person as representing a class, and all persons claiming under them respectively, and the same may in like manner be sold, and a conveyance thereof given by the Registrar by the description so declared, and the effect of the conveyance shall be the same as if the debtor had executed the same.

Preferential sale to others interested where interests of debtor joint or in common.

40. If it is made to appear that the beneficial interest of the debtor in the lands at the time of the registration of the judgment, or at any time after the registration and before the issue of the summons for sale, whether legal or equitable, is not several but is joint or in common with other persons, the Judge may, if it appears to be for the general benefit of all persons concerned, with the consent of the persons jointly or in common interested, and with the consent of the guardian of any infant in case the Judge considers the same to be for the benefit of the infant, direct the sale to be made in preference to all or any of the parties interested jointly or in common with the debtor, on such conditions as to price and otherwise as may seem fit. And in default of a satisfactory offer of purchase as provided in this section, the Judge may direct the interest of the debtor to be sold by public auction by such description, with such reserve, if any, and subject to such conditions of sale as may seem fit.

In default of purchase by those interested, undivided share of debtor to be sold by auction.

Preferential sale to others interested where interests of debtor in reversion or remainder, for life, or contingent.

41. If it is made to appear that the beneficial interest of the debtor, whether legal or equitable, is in reversion or remainder and not in possession, or that it is for life, or for an estate or term terminable on the happening of any event certain or contingent, then it shall be lawful for the Judge, in his discretion, if it appears to him to be for the interest of all persons concerned, with the consent of all persons interested in priority of time, succession, reversion or remainder, as the case may be, in the lands sought to be affected, to direct a sale to be made in preference to all or any of the parties so interested, on such conditions as to price and otherwise as may seem fit and, in default of a satisfactory offer of purchase as provided in this section, the Judge may direct the limited or reversionary interest of the debtor to be sold by public auction by such description, with such reserve, if any, and subject to such conditions of sale as may seem fit: but, except with the consent of the judgment creditor, no order for sale as provided in this section or in section 40 shall be made for a less sum than the amount due to him.

In default of such purchase, sale of such interest to be by auction.

42. With the consent of any person or persons interested in the lands for any of the interests described in sections 40 and 41, and on such terms as to the application of the purchase money and otherwise as may be just or may be agreed upon, the Judge may order that the beneficial interest of any such person or persons attending the summons or represented thereat shall be included in the sale of the interest of the debtor, and may give such person or persons liberty to bid. And if it is made to appear that it is for the benefit of any infant beneficially interested that his interest should be sold, the Judge shall have power, with the consent of his guardian, to direct accordingly.

Interest of infants or others interested may be included in sale of the interest of any debtor.

43. Any estate of a married woman debtor, legal or equitable, as to which she is under no present restraint on anticipation, may be made available by any creditor who has obtained judgment against her by proceedings under this Act in the same way as if she were a *feme sole* seised in her own right.

Estate of married woman in certain cases to be dealt with as if she were a *feme sole.*

44. The equitable beneficial interest of a mortgagor in possession may, on the return of the summons, be dealt with by ordering a sale of the equity of redemption subject to the mortgage or mortgages affecting the property, or by the appointment of a receiver subject and without prejudice to the rights of the mortgagees or, at the option of the creditor, by ordering the interest of the debtor to be transferred to him, and possession of the property given to him as a puisne encumbrancer for the amount of his debt and costs, and no order shall be made on the return of the summons against or affecting the interest of a *bona fide* mortgagee in possession except an order letting in the judgment creditor to redeem in due course as a puisne encumbrancer, on payment of the costs of the mortgagee in possession, nor shall the order be made unless the mortgagee has been served with the summons for sale.

Mortgagor's interest may be dealt with subject to encumbrances. Interest of mortgagee in possession not to be affected except by order allowing creditor to redeem.

45. (1) Notwithstanding anything contained in this Act, a summons for sale may also issue by any judgment creditor whose judgment is registered and the registration of which is in force and effective, on the filing of an affidavit showing, to the best of the knowledge of the deponent, any lands of which the debtor was in actual or constructive possession at the time of the registration of the judgment, or at any time between the registration and the date of the issue of the summons for sale.

Summons for sale of right, title, and interest of debtor in lands, etc.

(2) On the return of the summons, the Judge may, in his discretion, order the sale of the right, title and interest of the

Order for sale of right, title, and interest of debtor in lands, etc.

debtor in the lands, and the right, title and interest in the lands of any person party to the summons claiming through or under the debtor by any act or assurance happening or executed after the registration of the judgment, on sufficient evidence by affidavit that the debtor was in actual or constructive possession of the lands after the registration of the judgment, and that the applicant's solicitor has failed to trace the debtor's title thereto after making proper and diligent search for that purpose; but any sale so ordered shall only be binding on the defendant or other party to the summons claiming through or under him.

When estate may be vested in new trustee.

46. The Judge may, on the return of the summons, in case it is doubtful in whom the legal estate in the lands was vested at the time of the registration of the judgment, or at any time after the registration and before the issue of the summons for sale, or in case of the absence from Trinidad and Tobago of any bare trustee, make such order vesting the legal estate as is provided by the Trustee Ordinance.

Ch. 8 No. 3. (1950 Ed.).

Title to be referred to a barrister or conveyancer in certain cases.

47. The Judge may, at his discretion, on the return of a summons for sale, or on any adjournment thereof, in any case, and shall in any of the following cases, that is to say—

(a) when it is made to appear that the value of the lands sought to be affected exceeds five hundred dollars;

(b) when required to do so by or on behalf of the execution creditor;

(c) when it is made to appear that the debtor is entitled to any several beneficial legal or equitable estate or interest in the lands other than the sole immediate unconditional beneficial interest therein;

(d) when it is made to appear that the debtor is entitled to an interest, legal or equitable, which is not several but is joint or in common with other persons, or to an interest which is in reversion or remainder and not in possession, or to an estate for life or for an estate or term (other than a term of years certain) terminable on the happening of any event,

direct that a barrister or conveyancer to be named by the Judge, not being concerned as counsel or solicitor on the summons, shall report to him as to the title of the defendant at the time of the registration of the judgment, or at any time after the registration and before the issue of the summons for sale, to the lands in respect of which any order for sale is applied for; and the fact of

the order for the report being so made shall be entered on, and the report itself when made shall be filed with the proceedings in every such case. The fee of the barrister or conveyancer shall be according to the scale of fees to be prescribed under section 3, and shall in each case be paid in the first instance by the execution creditor or other party having the carriage of the proceedings, and shall be a charge on the proceeds of any sale under the order.

Judge may direct issue between judgment creditor and others interested to be tried as in an action.

48. The Judge may, on the return of a summons, direct the trial, in any manner applicable to the trial of any issue in an action, of any question arising between the judgment creditor and the debtor or any person claiming to be entitled to any estate or interest in lands to which the debtor is alleged to have been entitled at the time of the registration of the judgment, or at any time after the registration and before the issue of the summons for sale, either as to the legal ownership of the lands or the validity of any disputed title thereto or interest therein, or as to the *bona fides* or validity of any alleged conveyance, settlement, gift, mortgage or other alienation thereof, or as to any dispute respecting the parcels of any such conveyance, settlement or gift, or as to the extent and nature of any interest therein, and for the purposes of the trial may give such directions as to notices, pleadings, discovery and otherwise, as may by any interlocutory order be given before trial in any action in the Court.

Judge may order sale by any proper description or in lots and on terms and conditions.

49. On every order for sale, the Judge may order the sale of the beneficial interest of the debtor by such proper description as "estate in fee", "for life", or otherwise as appears to him to be accurate, and in such lots or a lot so described, and subject to such conditions of sale and title as may seem fit, and shall give such directions as to advertisements, time and place of sale, the conduct of the sale, conditions, description, reserved biddings and otherwise, as may seem fit and, on confirmation of a sale, a conveyance in accordance with such directions shall without further order (subject as regards land under the Real Property Ordinance to the provisions of that Ordinance) be executed by the Registrar in such form as may be settled between the party having conduct of the sale and the purchaser and, if they shall disagree, by a Judge; and the sale shall, subject as aforesaid, in every case confer valid and effectual title according to the purport of the conveyance against all persons served with the summons for sale, and all parties claiming through and under them respectively: but nothing herein contained shall affect the indefeasibility of the title of a registered proprietor under the said Ordinance.

Ch. 27 No. 11. (1950 Ed.).

Effect of sale.

Part of debtor's lands may be ordered to be sold.

50. The Judge, on the application of the debtor on the hearing of a summons for sale, may direct that such portion of the land as may be made to appear sufficient to satisfy the execution be sold in the first instance; but this section shall not be construed to deprive a creditor of his right to satisfaction of his debt from any other part of the land seized.

Cattle and other stock may be directed to be sold with any plantation.

51. The Judge may direct that any cattle or live or dead stock of the judgment debtor used for the cultivation of any plantation or lands of the debtor shall be sold together with the plantation or lands in one or several lots as may seem fit, and the Marshal shall not in any such case remove the cattle or stock, and the reasonable costs and charges of keeping the cattle or stock until the same is sold shall be allowed to the Marshal, who shall retain the same from the proceeds of the sale.

Private sale may be sanctioned.

52. The Judge may, in the order for sale, authorise a sale by private contract to any purchaser by consent of the parties to the summons for sale and of such purchaser, and by like consent to direct a conveyance to be executed by the Registrar at such time, and for such price, and on such conditions, if any, as the parties may consent to.

Purchase money on sale by Marshal payable by instalments.

53. The Judge may, in his discretion, direct as a condition of sale that the purchase money for any lands sold if exceeding one thousand dollars shall, as to any portion thereof not exceeding one moiety, be payable in such instalments not exceeding four, with interest at the rate of six per cent a year, at such intervals as may seem fit, the last payment in no case to be deferred beyond four years from the date of sale, and the Judge may at any time direct an assurance to be executed by the purchaser to secure the proper payment of the instalments, and may settle the draft or form thereof.

Sale may be stayed and receiver appointed.

54. If it does not appear desirable that the ascertained beneficial interest of the debtor should be sold, the Judge may, at the return of the summons, order further execution by sale of land to be stayed till further order, and may award equitable execution by the appointment of a receiver in respect of the beneficial interest of the execution debtor, or may appoint the creditor, or any person nominated by him, receiver thereof without remuneration, or may, on such terms as may be just, and at the cost of the creditor to be charged by him against the beneficial interest of the execution debtor, appoint a receiver of the entire rents and profits of the said land or of any part thereof, or may order any person in

receipt of the rents or profits to pay into Court the whole or such proportion thereof as shall be directed to the credit of the cause or matter, for such time or to such amount as shall be just.

Result of auction to be returned by auctioneer to Registrar who shall screen same.

55. Forthwith after any sale, the auctioneer or other person conducting the sale shall return to the Registrar, and the Registrar shall screen and, if the Judge so direct, advertise a report of the result of the sale, stating the price obtained and the name and address of the highest bidder. And if the reserve price, if any, fixed by the Judge has been reached, the report, unless in the meantime objected to by or on behalf of any party to the summons, or by or on behalf of the purchaser or some other bidder at the sale, shall, at the expiration of ten days from the date of the same first having been screened, be deemed confirmed without any application for the purpose, and the contract of sale may at any time thereafter be enforced on the application of the party having conduct of the sale, or of the highest bidder, as the case may be, by order of the Judge, either for the payment of the purchase money, or for the execution of a deed of conveyance, or for a transfer under the Real Property Ordinance, as the case may be.

Confirmation of sale.

Ch. 27 No. 11. (1950 Ed.).

Objection to confirmation of report to be filed in Registry.

56. Any objection to the confirmation of the report shall be filed in the Registry within ten days of the screening of the report, and may be made by any party to the summons for sale, or by the purchaser, or by any bidder at the sale, and on the following grounds only: irregularity or improper conduct at the sale; improper admission or rejection of bids; non-compliance with the directions of the order for sale; and, if on behalf of a purchaser, fraud or misconduct relating to the sale on the part of the party having the conduct thereof; *bona fide* mistake; or defective title discovered after the sale, or that the property and estate described in the conditions of sale are not capable of being validly conveyed according to such conditions.

Grounds of objection.

Procedure in case of objection.

57. Any such ground of objection as provided in section 56 shall be taken by affidavit entitled in the action, specifying the ground of objection and stating the facts relied on in support thereof, which shall be laid before a Judge, who may direct the Registrar to summon before him, on adjournment of the summons for sale, such of the parties to the summons for sale as he may deem necessary to hear on the question raised by the affidavit, and shall dispose of the question raised by the affidavit (having obtained and considered such further evidence on affidavit or otherwise as he thinks fit) either by confirming the

sale, or by annulling the same and ordering a re-sale, and in either case unconditionally, or on such conditions as to specific performance with compensation, entire or partial re-sale, or conditional re-opening of sale, additional restriction, or the removal of restrictions, leave to bid, and otherwise, as he may think fit, and may deal with the costs of the adjourned summons, and of all subsequent proceedings, as he may think fit. Any party not a party to the summons for sale whom the Judge deems a proper party to be served with the adjourned summons shall be so served, and shall, if he desires to be heard, enter an appearance to the summons.

Procedure when reserved bid not reached.

58. If the reserved bid fixed on the order for sale is not reached at the sale, the auctioneer or other person conducting the sale shall so inform the highest bidder, and shall return a report of the bid to the Registrar, but the same shall not be screened or advertised. Within five days after the sale it shall be competent for the party having conduct of the sale, or for the highest bidder, as the case may be, but for no other party, to apply on adjournment of the summons for sale, on a four-day's notice to the other of them, to the Judge for a confirmation of the highest bidder as purchaser, notwithstanding that the reserved bid has not been reached. And the Judge, on hearing the summons, may refuse the application, or may grant the same by confirming the sale to such bidder, and either unconditionally or subject to such further increase of bid, if any, as may seem fit, or may adjourn the same for such further information, or for the attendance of such other parties, as he may think fit.

Cost of application for confirmation of sale.

59. The cost of any such application as provided in section 58 shall be borne in the first instance by the applicant, but the Judge may, in his discretion, in the event of his confirming a sale, direct the reimbursement of the same out of the purchase money.

Purchase money to be paid into Court without deduction, and costs to be a first charge.

60. The purchase money, in the case of any sale of land, shall be paid into Court without any deduction, and the proper costs of the party having conduct of the sale, and any costs of any party attending the summons for sale or any adjournment thereof, which have been allowed, whether taxed or settled by the Judge, shall be a first charge thereon.

Registrar to convey lands judicially sold.

61. The Registrar shall have power by deed to convey any lands which may be sold by him, subject always to the payment of any part of the purchase money thereof remaining unpaid with

interest, which shall be a first charge on the estate and interest of the purchaser in the lands so conveyed; and every such conveyance so executed by the Registrar, when registered, shall have the same force and effect as if the same had been executed by the person bound by the decree or against whom the writ shall have issued.

Order of Court for sale of interest in land to be carried out in same way as order under section 28.

62. Where, in any action or other proceeding in the Court, an order is made for the sale of any land the subject of the action or other proceeding, the sale shall proceed in the same manner as if the judgment or order for the sale thereof had been an order for sale within the provisions of section 28; and the judgment or order shall, for the purpose of regulating and providing for the time and manner and conditions of the sale, stand referred to a Judge in Chambers, and shall be dealt with by the Judge in the same manner in all respects as if the same had been an order for sale under section 28 made by the Judge, and all the powers herein contained shall be exercisable by the Judge to whom the judgment or orders have been so referred.

Order for possession against person wrongly retaining possession.

63. If any party to the summons for sale, or any one claiming through or under the party by any act or assurance happening or executed after the registration of the judgment, or, in the case of a sale ordered in an action or other proceeding under section 62, after the date of the judgment or order, retains and refuses to deliver possession of the property sold or any part thereof, the purchaser may issue a summons to the party so retaining possession to show cause why an order to deliver up possession should not be made against the party in favour of the purchaser, and the summons shall be made returnable not less than six days from the date of the issuing thereof, and on the hearing the Judge may, upon proof that the purchaser is entitled to immediate possession, order the party served with the summons to deliver up immediate possession of the lands so sold, and may make such order in respect to the costs of the summons as may be just; and any person failing to obey the order forthwith on being served with the same shall be deemed guilty of contempt of court, and an order of possession may be issued directing the Marshal, with such assistance as in such writ shall be directed, to enter upon the lands and deliver possession thereof to the purchaser, and any person obstructing or resisting the Marshal or any assistant of the Marshal in the execution of the order shall be guilty of contempt of court.

Refusal to obey such order a contempt.