

TRINIDAD AND TOBAGO.

No. 26.—1898.

15th August.

AN ORDINANCE for amending the Law relating to the Remedies of Creditors against the property of their Debtors in certain respects, and for regulating the mode of procedure to be adopted in respect of the sale of lands taken in Execution under process of the Supreme Court and of other lands ordered to be sold by judgment or order of the said Court.

[L.S.]

C. C. KNOLLYS,

ACTING GOVERNOR.

14th September, 1898.

WHEREAS it is expedient to amend the Law relating to the Remedies of Creditors against the property of their Debtors and to regulate the mode of procedure to be adopted in respect of the sale of lands taken in execution under process of the Supreme Court and of other lands ordered to be sold by judgment or order of the said Court: Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council as follows:—

1. This Ordinance shall be construed as one with the Title. Ordinance No. 19 of 1845 and cited as the Remedies of Creditors Ordinance 1898 together with that Ordinance

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No. 26.

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as "The Remedies of Creditors Ordinances 1845 and 1898."

Interpretation.

2. In this Ordinance the expression :

"Court" means the Supreme Court of Trinidad and Tobago ;

"Judge" means a Judge of the Court ;

"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 the Island of Trinidad the Deputy Marshal of San Fernando and the Deputy Marshal of Tobago ;

"Prescribed" means prescribed by this Ordinance or by rules to be framed thereunder ;

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

"Screen" means to advertize by means of public notice affixed in a conspicuous part of the Registry of the Court.

Repeals.

3. The following enactments are repealed from the commencement of this Ordinance :—Ordinance No. 19 of 1845, Section 18 ; and Ordinance No. 4 of 1848, Sections 43, 44, 45, 46.

Judgment for recovery of money enforceable by execution.

4. Every judgment or order of the Supreme 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.

5. No order for execution shall issue unless the party requiring the same shall file a request for the same : such request shall contain the title of the action, the reference to the record, the date of the judgment, and

898.

No. 26.

1898.

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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 such party has appeared in person, by himself.

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6. 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 such party, and be approved by the Registrar of the Supreme Court and bear the seal of such Court and be issued to the party entitled thereto, who shall deliver the same to the Marshal for enforcement.

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7. On receipt of an order for execution the Marshal shall forthwith proceed in the first instance to levy the amount authorized or so much thereof 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 in
first instance
to execute
order by
seizure of
goods.

8. The Marshal shall not be compelled to levy unless the execution creditor or his Solicitor or agent shall have 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 authorized on his behalf.

Marshal not
compelled to
levy except
upon written
instructions.

No. 26.

1898.

Ter. day's
notice of sale
to be served on
landlord where
moveable
house or other
tenants fixture
taken in
execution.

9. If the personal property or any part thereof taken in execution shall consist of a moveable 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 10 days shall 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 such house or chattel.

Service of
notice when
owner not
ascertained.

10. In the event of the Marshal being unable to ascertain the owner of the land or the person in receipt of rent, such notice as in the last 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 deter-
mined by way
of Inter-
pleader.

11. Any claim or objection made by or on behalf of the owner of the land within ten days from service of such notice shall be dealt with by the Marshal by way of interpleader, in manner provided by Ordinance No. 2 of 1845 and the orders in force in respect of interpleader under the Judicature Ordinance, or any orders that may be hereafter substituted for the same. And 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 such sale shall be valid and effectual against such owner or any person claiming under him.

On expiration
of notice with-
out any claim
or objection,
Marshal to
sell.

Saving of
power of
Marshal and
procedure in
certain cases.

12. Nothing herein contained shall be construed to affect any power conferred on the Marshal by virtue of Section 13 of Ordinance No. 19 of 1845, or the right of any creditor created by such Section or by Section 15 of the same Ordinance, or to deprive any creditor of any right to attach the interest of a debtor by attachment of debts, stop order, or distringas, or of the right to compel the payment of any sum under the provisions of the Debtors' Ordinance, 1880.

No. 26.

1898.

1898.
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13. 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 such 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 such endorsement to the execution creditor or his solicitor. And in respect of any sum recoverable after giving credit for any sum realized by sale of chattels under Section 6 hereof, the creditor shall at any time thereafter, subject to the provisions hereinafter contained, be entitled to an order for the sale of any beneficial interest of the execution debtor in any lands, tenements and hereditaments within the Colony, whether such interest be legal or equitable, or be of a freehold or chattel nature, or be several or joint or in common with others, and whether in possession reversion or remainder.

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

Remedies by sale of debtors interests in lands where goods insufficient to satisfy order for execution.

"Order for Sale."

14. Provided always that 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.

15. Such order as in section 13 hereof mentioned is hereinafter called an "order for sale" and shall be obtained by the party entitled thereto on a summons to be heard by a Judge of the Supreme Court in Chambers hereinafter 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."

Marshal, upon request in writing of Creditor, to enter upon lands and remain in possession thereof, pending the hearing of a Summons for Sale.

Particulars to be endorsed on Order for execution by Marshal upon his entering into possession of lands

Summons for Sale to be taken out by Creditor where return of order shews that available interest of debtor in any land is not in possession, or that entry would affect third parties.

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

16. 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 and hereditaments so seized, and he shall notify the execution creditor or his solicitor of such return.

17. On the return of the order for execution so endorsed, or without any seizure or any return thereof in case 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 or persons 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.

18. The summons in the last section provided for shall be served in the same way as an originating summons in the Supreme Court, and be returnable on a convenient day not less than 6 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

1898.

No. 26.

1898.

deponent, the title to the hereditaments 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 persons served therewith may be heard, and the debtor and such witnesses may be subpoenaed 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.

19. A summons for sale may also issue without the issue of any order for execution by any judgment creditor who has registered his judgment against the debtor and whose registration is for the time being 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 tenements and hereditaments to which it is alleged the debtor is beneficially entitled, and the nature of such beneficial interest, and referring by their registered numbers to the material deeds and assurances affecting the premises, and giving the names and addresses of the persons to be served.

Summons for Sale to issue on the filing of affidavit, by registered judgment creditor.

20. If at the return of the summons for sale it shall be proved to the satisfaction of the Judge that the debtor is 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 and

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

conditions of sale and description, reserved price, if any, and otherwise as the Judge shall by his order direct, and the Registrar shall after such sale has been confirmed as hereinafter is 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 1895, to the provisions of that Ordinance,) have the same effect as if the execution debtor had conveyed the same to the purchaser in for all his estate and interest therein.

Title to be referred to a Barrister or Conveyancer in certain cases.

21. 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 premises sought to be affected exceeds £100;
- (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 premises 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 such Judge not being concerned as counsel or solicitor on the summons shall report to him as to the title of the defendant to the premises in respect of which any order for sale is applied for. And the fact of the order for such 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 such Barrister or Conveyancer shall be according to the scale of fees to be prescribed under the provisions of Section 49 hereof; and shall in each case be paid in the first instance by the execution creditor or other the party having the carriage of the proceedings, and shall be a charge on the proceeds of any sale under the order.

22. 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 be entitled, either as to the legal ownership of such 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 such 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 Supreme Court.

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

Substituted
service and
service on and
appearance for
parties
represented.

23. The rules and orders of the Supreme Court for the time being 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 such class, and any trustee shall for the purpose of such 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.

Nature and
extent of in-
terest of debtor
entitled in
severalty to be
described by
Judge at the
hearing of the
summons and
the same to be
sold by such
description.

24. If at the hearing of the summons it shall appear that the debtor is entitled to any several beneficial legal, or equitable estate, or interest in the premises 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 such beneficial interest, and such 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 such conveyance shall be the same as if the debtor had executed the same.

898.

No. 26.

1898.

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

Service of summons for sale on absent person to be effected in same manner as service of writ of summons. Otherwise Judge may order sale without affecting such interest.

26. 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 shall appear to him to be accurate and in such lots or a lot so described and subject to such conditions of sale and title as shall seem fit, and shall give such directions as to advertisements, time and place of sale, the conduct of the sale conditions description, reserved bid-dings and otherwise as may seem fit, and on confir-mation of a sale a conveyance in accordance with such directions shall without further order, (subject as regards land under the Real Property Ordinance 1895 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 such sale shall, subject as aforesaid, in every case confer valid and effectual title according to the purport of such conveyance against all persons served with the summons for sale, and all parties claiming through and under them respectively: Provided that nothing herein contained shall affect the indefeasibility of the title of a registered proprietor under the said Ordinance.

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

Saving of Real Property Ordinance, 1895.

Effect of sale.

No. 26.

1898.

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

27. If it is made to appear that the beneficial interest of the debtor, whether legal or equitable, is not several but is joint, or in common with other persons, the Judge may if it appear to be for the general benefit of all persons concerned, with the consent of the persons jointly or in common interested (ascertained if any of them are married women, as is provided by law with respect to the acknowledgment of deeds by married women) and with the consent of the guardian of any infant in case the Judge deems the same to be for the benefit of such 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 shall seem fit. And in default of a satisfactory offer of purchase as in this section provided, 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, un-
divided share
of debtor to
be sold by
public auction.

Preferential
sale to others
interested
where interests
of debtor in
reversion or
remainder, for
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28. 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 appear 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, ascertained as in the last section hereinbefore provided, to direct a sale to be made, in preference, to all or any of the parties so interested on such conditions as to

1898.

No. 26.

1898.

price and otherwise as shall seem fit, and in default of a satisfactory offer of purchase as in this section provided the Judge may direct the limited or reversionary interest of the debtor to be sold by public auction by such description and with such reserve, if any, and subject to such conditions of sale as may seem fit. Provided that except with the consent of the judgment creditor, no order for sale as provided in this or the last section shall be made for a less sum than the amount due to him.

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

29. With the consent of any person or persons interested in such lands for any of the interests described in the last two preceding sections, who are not under any disability other than coverture, and in the case of a married woman with her consent ascertained as is provided by law with respect to the acknowledgment of deeds, 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 shall be 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 in any land taken in execution.

30. It shall be lawful for the Judge on the application of the debtor on the hearing of a summons for sale, to 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

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

No. 26.

1898.

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.

31. It shall be lawful for the Judge to direct that any cattle, 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 such plantation, or lands in one or several lots as shall seem fit, and the Marshal shall not in any such case remove such cattle or stock, and the reasonable costs and charges of keeping such cattle or stock until the same shall be sold, shall be allowed to the Marshal, who shall retain the same from the proceeds of such sale.

Purchase money on sale by Marshal payable by instalments.

32. It shall be lawful for the Judge in his discretion to direct as a condition of sale that the purchase money for any lands sold, if exceeding £200 shall, as to any portion thereof not exceeding one moiety be payable in such instalments not exceeding four with interest at the rate of 6 per centum per annum at such intervals as shall seem fit, the last payment in no case to be deferred beyond four years from 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 such instalments and may settle the draft or form thereof.

Private sale may be sanctioned.

33. It shall be lawful for the Judge in the order for sale to authorize 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 such parties may consent to.

Sale may be stayed and Receiver appointed.

34. If it shall not appear desirable that the ascertained beneficial interest of the debtor should be sold, the Judge may at the return of the summons order fur-

ther 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 shall 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 such 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.

35. The Judge may on the return of the summons, in case it is doubtful in whom the legal estate in the lands is vested, or in case of the absence from the Colony of any bare trustee, make such order vesting the legal estate as is provided by Ordinance No. 22 of 1884.

In the absence of bare trustee legal estate may by order of Judge be vested in new trustee.

36. Any separate 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 separate estate by proceedings under this Ordinance in the same way as if she were a *feme sole* seised in her own right.

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

37. 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

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

No. 26.

1898.

of the debtor to be transferred to him, and possession of the property given to him as a puisne incumbrancer 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 incumbrancer, on payment of the costs of the mortgagee in possession, nor shall such order be made without the mortgagee has been served with the summons for sale.

Order for Sale not to be valid against subsequent incumbrancers unless registered.

38. No order made on a summons for sale affecting or charging lands, other than an unconditional order for the sale thereof shall be valid against a subsequent purchaser or incumbrancer until registered. Provided that no judgment or order shall affect land under the Real Property Ordinance until the same shall have been noted on the proper page of the Register Book.

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

39. 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.

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

40. 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, such report,

No. 26.

1898.

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 such 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.

41. 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 such sale, and on the following grounds only, viz.: 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.

Objection to
confirmation of
report to be
filed in
Registry.(Grounds of
objection.

42. Any such ground of objection as in the last preceding section provided shall be taken by affidavit entitled in the action, specifying the grounds of objection and stating the facts relied on in support thereof, and which shall be laid before a Judge who may direct the Registrar to summon before him

Procedure in
case of objec-
tion.

No. 26.

1898.

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 such affidavit (having obtained and considered such further evidence on affidavit or otherwise as he shall think fit), either by confirming the sale or by annulling the same and ordering a re-sale, and in either case either 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 such 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 such summons.

Procedure in
the event of
any reserved
bid not being
reached.

43. 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 such 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 such reserved bid has not been reached. And the Judge on hearing such summons may refuse such application, or may grant the same by

No. 26.

1898.

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.

44. The cost of any such application as in the last Section provided 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.

Cost of application for new Sale where reserved bid not reached.

45. 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 shall have been allowed whether taxed or settled by the Judge, shall be a first charge thereon.

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

46. Where in any action or other proceeding in the Supreme Court an order is made for the sale of any land the subject of such 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 13 hereof; and such judgment or order shall, for the purpose of regulating and providing for the time and manner and conditions of such sale, stand referred to a Judge in Chambers, and shall be dealt with by such Judge in the same manner in all respects as if the same had been an order for sale under the provisions of Section 13 hereof made by such Judge, and all the powers herein contained shall be exerciseable by the Judge to whom such judgment or order shall have been so referred.

Order of the Supreme Court for Sale of interest in land to be carried out in same way as order under Section 13.

Purchaser may
obtain order
for possession
against person
contu-
miciously
retaining
possession.

Refusal to obey
such order a
contempt.

Appeal lies
against orders
made on a
summons for
sale.

47. If any party to the summons for sale, or any one claiming through or under such party by any act or assurance happening or executed after the day of the service of the summons for sale, or, in the case of a sale ordered in an action or other proceeding under the provisions of the last foregoing Section hereof, 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 such party in favour of such purchaser, and such 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 such purchaser is entitled to immediate possession, order the party served with such summons to deliver up immediate possession of the lands so sold, and may make such order in respect to the costs of such summons as shall be just, and any person failing to obey such 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 such lands and deliver possession thereof to such purchaser, and any person obstructing or resisting the Marshal or any Assistant of the Marshal in the execution of such order shall be guilty of Contempt of Court.

48. Every order made by a Judge on a summons for sale or on any adjournment thereof shall be subject to appeal to the Full Court, and such appeal shall be had and determined in manner appointed by law or

Rule in force for the time being with respect to appeals from interlocutory orders.

49. It shall be lawful for the Chief Justice with the concurrence of one of the Puisne Judges of the Supreme Court so far as may be necessary from time to time to make rules and regulations not inconsistent with the provisions hereof for the purpose of carrying into effect such provisions, and also such tables of fees and charges of the Marshal and such scales or lists of costs and charges in respect of summonses for sale and the proceedings consequent thereon; and such rules orders regulations tables scales and lists shall be laid before the Legislative Council and be subject to approval by such Council in the same manner in all respects as rules orders and regulations made under and by virtue of the Judicature Ordinance, 1879, and shall be read together with and as part of the rules orders and regulations made under the provisions of such Ordinance.

Rules and Regulations may be made to carry the Ordinance into effect.

R.G. 98
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50. The Sub-Registrar of the Supreme Court in Tobago shall in the absence of a Judge from Tobago exercise such of the authorities vested in a Judge of the Supreme Court by virtue of this Ordinance as by rules to be made in pursuance of the last Section hereof shall be from time to time provided, but it shall in any case be competent for such Sub-Registrar to adjourn any summons for the consideration of a Judge so soon as a Judge shall be in Tobago.

Sub-Registrar of the Supreme Court in Tobago to have the authority of a judge.

PROVISIONS FOR OBTAINING INDEFEASIBLE TITLE TO LAND PURCHASED UNDER THIS ORDINANCE.

51. Whenever a Barrister or Conveyancer has reported on the title of the defendant as in Section 21 hereof provided it shall be lawful for the purchaser or any person claiming through or under him to apply at

Purchaser may apply to bring land purchased under Real Property Ordinance.

No. 26.

1898.

any time after the confirmation of the report of a sale of land under the provisions hereof, and if such confirmation is conditional then on satisfactory proof by affidavit of the due performance of the conditions thereof, under Sections 14 and 15 of the Real Property Ordinance, 1895, for such land to be brought under the provisions of the said Ordinance, and the application shall in such case in addition to the matters required to be therein set out as in form A of the second Schedule to such Ordinance prescribed, cite the order for sale and set out the order or report by virtue whereof it is alleged that the sale has been confirmed and also all mesne assurances matters and things by which the title to the said land has been transferred encumbered or otherwise affected subsequently to such confirmation, and such application shall be accompanied by an affidavit that to the knowledge of the applicant no such mesne assurance matter or thing has been effected or exists other than as in such affidavit set forth; and office copies of the writ in the action in the course of which the order for sale was made, of the order for sale and of the order confirming the sale and of the report of the Barrister or Conveyancer shall in each such case be deposited by the applicant under Section 16 of the said Ordinance.

Proceedings under summons for sale and order for sale not to be questioned by the Registrar-General, except as to omission of parties.

52. Every such application shall be subject according to the nature of the interest claimed by the applicant to Sub-sections *a* and *b* of Section 14 of the said Real Property Ordinance respectively; but in dealing therewith as in the last Section provided the Registrar-General and the Examiner of Titles respectively shall not exercise any of the powers in Section 12 (Sub-sections *a* and *b*) and Section 18 of the said Ordinance contained,

except in respect of assurances that have been made or omitted or things that have happened or failed to happen subsequent to the confirmation of the sale, nor shall the Registrar-General enter a caveat under the provisions of Sub-section (e) of the said Section 12 in respect of any matter or omission affecting the regularity of the order for sale except the omission to serve any necessary party with the summons for sale or in respect of any proceedings in the Supreme Court upon which the order for sale was founded, or of any proceedings in such Court subsequent to such order and antecedent to the confirmation.

Provided always that in the event of its being made to appear that the Judge on the order for sale or in the case of a sale under Section 46 hereof a Judge in the action has directed service on one of several parties having the same interest on behalf or for the benefit of all parties so interested or has appointed some person or persons to represent any heirs at law next of kin or class, no person entitled (whether *sui juris* or not) shall be deemed a necessary party omitted to be served within the provisions of this Section, on the ground that he was not served with the summons for sale or in the action, as the case may be, if any party has been authorized to defend or appear on his behalf or to be served as representing him or his class, and has appeared or been so served accordingly.

53. In applications under this part of this Ordinance the time appointed under Sections 20 and 21 of the Real Property Ordinance, 1895, for bringing the land under the Real Property Ordinance in the absence of caveat shall be twelve months unless a Judge of the

Parties represented on summons not to be deemed omitted.

Twelve months to elapse before property comes under Ordinance in any case.

Supreme Court shall on the application of the purchaser or other person applying for good cause order any other time ; and any mesne purchaser acquiring title to such land from the applicant during such twelve months or other time may at his discretion proceed with such application in his own name without thereby incurring any fee or charge other than such as the original applicant would have incurred ; and such amendments of the application shall in such event be made free of charge as may be necessary at such time and in such manner as the Registrar-General shall in each such case direct.

Provisions as to Regulation of Possessory titles not to apply.

54. Section 24 of the Real Property Ordinance shall not be deemed to apply to any application under this part of this Ordinance.

Caveats to be entertained only if lodged by strangers to the order for sale.

55. If any caveat shall be entered as in the 28th Section of the said Real Property Ordinance prescribed by any person who was a party to the summons for sale or a party to the action in the course of which the order for sale was made, or who was represented as a member of a class on the making of such order or in such action, or by any person claiming through or under any such person, any action or proceeding under Section 30 of the said Ordinance by such caveator, on its being so made to appear, shall be dismissed with costs either on motion by any other party thereto or at the hearing thereof, as the case may be, and the land shall be brought under the said Ordinance without regard to such caveat. But no person other than aforesaid shall in any such action or proceeding as in the 28th Section of the said Real Property Ordinance prescribed be in any way estopped from impeaching the validity of the

Who may impeach the order for sale and take exception to the parcels in the conveyance thereunder.

No. 26.

1898.

order for sale as against parties not served with the summons for sale, and not parties to the action in the course of which the order for sale has been made, or from raising any question as to the boundaries of the land sold or as to the identification of the parcels thereof or of any part thereof.

Passed in Council this Fifteenth day of August, in the year of Our Lord one thousand eight hundred and ninety-eight.

C. J. ROOKS,
Acting Clerk of the Council.

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