

CHAPTER 111A
COURT PROCESS

ARRANGEMENT OF SECTIONS

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FIRST SCHEDULE

SECOND SCHEDULE

CHAPTER 111A

COURT PROCESS

An Act to provide for the establishment of a Court Process Office and related matters.

1978-31.
1980-44.
S.I. 1979/4.

[15th January, 1979] Commence-
ment.

PART I

Preliminary

1. This Act may be cited as the *Court Process Act*. Short title.
2. For the purposes of this Act Interpre-
tation.
 - "Chief Marshal" means the Chief Marshal of the Court Process Office established under section 3;
 - "Commissioner of Valuations" means the Commissioner referred to in the *Land Valuation Act*; Cap. 229A.
 - "Court Process Office" means the Court Process Office established under section 3;
 - "creditor" means a judgment creditor;
 - "debtor" means a judgment debtor;
 - "Marshal" means a person performing the functions of a Marshal under this Act and includes the Chief Marshal;
 - "Registrar" means the Registrar of the Supreme Court;
 - "Writ Department" means the Writ Department of the Police Establishment.

PART II

Administration

3. There is hereby established an office to be known as the Court Process Office, which shall be a section of the Registration Office. Establish-
ment of
Court
Process
Office.

Composi-
tion of
the Court
Process
Office.
Cap. 21.

4. The staff of the Court Process Office shall consist of a Chief Marshal and such other Marshals as may, subject to this Act, be authorised and provided by any order having effect by virtue of the *Civil Establishment Act*.

Functions
of
Marshals.

5. (1) The functions of a Marshal shall be

- (a) to execute writs, warrants, orders, levies for debt and the commands of any Judge or magistrate;
- (b) to serve summonses and other documents or process required to be served by the rules of court;
- (c) to attend the court when required to do so; and
- (d) to perform any other function required by any court, or by any law for the time being in force, to be performed.

(2) Notwithstanding subsection (1), the Chief Marshal may, for the purposes of this Act, assign any of the functions specified in subsection (1) to various Marshals.

(3) A Marshal shall, upon executing any writ, summons, warrant, order, levy or other process of a Judge or magistrate, make a return to the Judge or magistrate and swear to the due execution of that writ, summons, warrant, order, levy or other process.

Oath of
office.

6. The Chief Marshal and every other Marshal shall, at the time of his appointment and before being capable of performing any function, take an oath in the form set forth in paragraph 1 of the First Schedule before a Judge in open court or in chambers.

First
Schedule.

Breach of
duty etc.

7. (1) A Marshal who knowingly does anything in contravention of his oath or wilfully does anything amounting to neglect, misconduct or breach of duty is guilty of an offence and is liable on summary conviction to a fine of \$2 000 or imprisonment for 12 months.

(2) Subsection (1) operates whether or not the accused Marshal ceases to hold office.

Special ex-
penses.

8. All expenses properly incurred by a Marshal shall be charged on, and paid out of, the matter or suit in respect of which they were incurred.

9. (1) The Registrar shall each month submit to the Minister responsible for Finance a return of the expenses incurred by the Chief Marshal in—

Payment of fees in connection with Crown executions.

- (a) the levying of executions; and
- (b) the appraising and selling of properties attached under and by virtue of executions,

issued by the several courts at the suit of the Crown.

(2) The Minister responsible for Finance shall, upon receipt of a return submitted to him under subsection (1), issue a warrant to the Accountant-General directing him to pay to the Registrar on behalf of the Chief Marshal the amount of the expenses specified in the return.

10. (1) The Minister may, by order, prescribe such fees as he deems proper to be paid by any person in connection with the administration of this Act.

Chief Marshal's fees.

(2) All fees payable in pursuance of subsection (1) shall be paid to the Chief Marshal who shall pay them over to the Registrar for payment by him into the Consolidated Fund; and the Chief Marshal shall keep a full and accurate account of all fees he receives and all accounts and books relating thereto shall at all times be made available to the Auditor-General for audit by him.

11. The Chief Marshal shall display in a conspicuous place in the Court Process Office a table of the fees payable to him by law and any Marshal who knowingly extorts from any person more fees than those set forth in that table is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or imprisonment for twelve months.

Table of fees to be exhibited in Court Process Office.

12. (1) Where an office of Marshal becomes vacant, the person vacating the office or his legal personal representative shall, without delay, deliver to the person performing the functions of Registrar all writs or other process, official documents and records that were in the possession or care of the person vacating the office.

Vacation of office of Marshal.

(2) A person who fails to hand over any writ, process, official document or record required to be handed over by him under

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subsection (1) is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars or imprisonment for six months; and a Judge, or, as the case may be, a magistrate, may issue new process in any pending cause or matter if the former process is lost, withheld or suppressed by the negligence or contumacy of any former Marshal.

Process on
Chief
Marshal
served by
Registrar.

13. (1) All writs and process for requiring or compelling the appearance of the Chief Marshal as a witness and all writs and process in any suit, action or other proceedings in any court by or against the Chief Marshal that would, in the case of any other person required as a witness or in any similar proceedings in the same court by or against any other person, be served or executed by a Marshal shall be directed and sent to the Registrar.

(2) The Registrar shall serve and execute such writs and process as are mentioned in subsection (1) in the same manner as a Marshal would be bound to do in a case where such Marshal is neither a party nor a witness.

Liability
for neglect,
etc.

14. (1) Notwithstanding section 7, civil proceedings may be instituted against a Marshal for—

- (a) any refusal or neglect by him; or
- (b) any wilful delay or improper conduct by him or on his part,

in the performance of his functions under section 5.

(2) Nothing in this Act exempts a Marshal from any liability to which he is subject at common law.

Exemption
from
liability.

15. Subject to this Act, no liability attaches to a Marshal for any act committed by him in good faith in the performance of his functions.

PART III

Execution of Writs—General Provisions

No execution
to be levied.
except on
written order
of creditor.

16. (1) An execution shall not be levied unless—

- (a) a creditor interested therein or his representative gives instructions in writing to the Chief Marshal to do so;
or

(b) a creditor, other than a creditor referred to in paragraph (a), gives instructions in writing for a levy to be made.

(2) Where the Chief Marshal receives instructions under paragraph (b) of subsection (1) for a levy to be made, any creditor or his representative, attorney or assignee may, by notice given in writing to the Chief Marshal, forbid him or any other Marshal to proceed in respect of any execution in which such creditor, representative, attorney or assignee is interested.

(3) A levy made in contravention of subsections (1) and (2) is void.

(4) Notwithstanding subsections (1) and (2), a delay in favour of a debtor by a creditor in having execution levied does not prevent a Marshal from proceeding with an execution of another creditor against that debtor if that other creditor is not willing to grant a delay in favour of that debtor.

17. A Marshal shall exercise diligence and expedition in the levying of executions.

Marshals to exercise diligence.

18. (1) Subject to section 21, a creditor or his representative, attorney or assignee shall, before giving directions for levying an execution, set forth in an affidavit sworn before a Justice of the Peace the amount that, to the best of his knowledge, information and belief, is justly due to him from the debtor upon such execution.

No execution without affidavit as to amount due.

(2) After an affidavit referred to in subsection (1) has been sworn before a Justice of the Peace, it shall be forwarded to the Chief Marshal who shall do, or cause to be done, everything that is necessary for realising and paying the amount appearing to be due upon the levying of the execution.

19. The Chief Marshal shall keep all affidavits on file in the Court Process Office for the information of any person who applies for inspection or a copy thereof.

Affidavits to be preserved.

20. Moneys realised on an execution that is junior in priority to any other execution shall be deemed not applicable to an execution in respect of which an affidavit has not been forwarded to the Chief Marshal, and such moneys shall be applied exclu-

Application of moneys realised on execution.

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sively in favour of those executions in respect of which, according to their priority, affidavits have been forwarded to the Chief Marshal.

Affidavits
by persons
absent
from
Barbados.
Cap. 121.

21. A creditor or his representative, if absent from Barbados may, for the purposes of section 18, make an affidavit and swear it before a person before whom (and in the manner in which) the Evidence Act permits, in cases where the person making it is absent from Barbados; and an affidavit purporting to be so made and sworn shall be accepted by the Chief Marshal as being good and sufficient in so far as it relates to the ascertainment of any debt due on the execution in respect of which that affidavit was made.

Endorsement
of assign-
ments on
executions
already in
office of
Chief
Marshal.

22. (1) A creditor or his attorney, representative or assignee may endorse an assignment on the back of any execution, notwithstanding that it is lodged in the Court Process Office; and the Chief Marshal shall, at the request of any interested party or the attorney, representative or assignee of such party, produce the execution and permit the party or his attorney, representative or assignee to endorse the assignment thereon in such manner and form as they think fit.

(2) Where an execution required for endorsement under this section is not available for endorsement, the Chief Marshal shall enter in a register kept for the purpose—

- (a) the fact that such execution was requested for endorsement;
- (b) the date on which the request was made;
- (c) the substance of the endorsement proposed to be made; and
- (d) the reason why the execution was not available for endorsement,

and any entry so made shall be treated for all purposes as if it were an endorsement of the execution.

Access to
executions
lodged in
Court
Process
Office.

23. Creditors, debtors, assignors and assignees and their attorneys and representatives and other interested persons are entitled to inspect any execution and any assignment thereof lodged in the Court Process Office, and are, on payment of the

prescribed fee, entitled to a copy of such execution or assignment.

24. Where the Chief Marshal for any reason refuses a person referred to in section 23 access so any execution or assignment, the party aggrieved by the refusal may apply to a Judge in chambers to have the matter determined and the decision of the Judge shall be final.

Refusal
of access
to execu-
tions by
Chief
Marshal.

25. (1) Where a judgment has been granted in favour of a person and an execution has been issued in respect of that judgment and lodged in the Court Process Office, that person, an assignee of the execution or a representative of either of them, being desirous of having the judgment satisfied, may apply to the Chief Marshal requesting him to produce such execution.

Procedure in
entering
satisfaction
of judg-
ments.

(2) The Chief Marshal shall, upon receiving an application made to him in pursuance of subsection (1), without delay produce the execution in respect of which the application has been made and carry that execution to the clerk of the court from which it issued so that the clerk may inspect it, and upon its being shown that the amount set out in the execution has been paid in full, enter up satisfaction with due certainty upon the judgment whereon such execution is based.

(3) Where the Chief Marshal refuses to comply with this section, a Judge may, on application made to him by either of the parties interested or their representatives, issue a summons to the Chief Marshal commanding him to attend at such time and place as the Judge appoints and to bring with him the execution that is the subject of the proceedings; and the Judge may demand and receive the execution from the Chief Marshal and deliver it to the clerk of the court so that he may enter up satisfaction as provided in subsection (2).

(4) The clerk of the court shall, after inspecting an execution and entering up satisfaction of the judgment in respect thereof, re-deliver the execution to the Chief Marshal after having first—

- (a) made an endorsement thereon with respect to the satisfaction; and
- (b) attested the endorsement by signing his name at the foot of the endorsement.

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PART IV*Levy on Goods*

Property left
with debtor
until day of
sale.

26. (1) Subject to any rules of court relating to interpleader, where property is attached on an execution, the debtor from whom it is attached may elect to keep it in his possession until the day of sale, and where a debtor so elects, the Chief Marshal shall make out in duplicate an inventory of the property and—

- (a) request the debtor to sign both copies of the inventory; and
- (b) leave a copy thereof with the debtor.

(2) Where an inventory cannot be completed at the time of the making of the levy, the Chief Marshal shall take possession of the property until the inventory can be completed, and if the debtor refuses to sign the inventory the Chief Marshal shall take possession of the goods until the sale thereof.

(3) A creditor or his representative who has good cause to suspect that a debtor desires to make away with property to which this section relates may, upon stating on oath that he has good cause to so suspect, make application to a Judge, who shall order the Chief Marshal to take the property immediately into his custody.

(4) Where on the day of sale or after the making of an order under subsection (3) property to which this section relates is not produced to the Chief Marshal, the debtor is, unless non-production of the property is not due to his fault or neglect, guilty of an offence and is liable on summary conviction to a fine of one thousand dollars or imprisonment for twelve months.

(5) For the purposes of this section, “property” means personal property of a debtor subject to levy attached by a Marshal on an execution levied by a creditor.

Levy on
goods of
a stranger.

27. (1) Subject to—

- (a) any rules of court relating to interpleader; and
- (b) the terms of any order made thereunder pursuant to a claim lodged in respect of goods taken or proposed to be taken on execution,

in cases where a Marshal by virtue of any execution makes a levy upon the goods of a stranger or of any person other than the person against whom such execution is issued, the owner of the goods may bring an action against that Marshal either for damages or for recovery of the goods themselves.

(2) An action against a Marshal to recover goods under subsection (1) shall be filed and served before the sale of the goods alleged to have been wrongly levied on.

(3) Where a person claiming goods does not comply with the provisions of subsection (2) and the Chief Marshal proceeds with a sale, the property in the goods passes to a purchaser thereof without prejudice to any right the claimant has in respect of the purchase money, whether such money is in the hands of the Chief Marshal or the creditor.

28. (1) The Chief Marshal shall—

- (a) in order of priority, pay or deliver to the execution creditors entitled thereto any money (or a sufficient part thereof) that has been attached; and
- (b) hold any negotiable instrument that has been attached, as a security for the amount of the several executions lodged in the Court Process Office against the debtor, or of so much thereof as has not been levied.

Procedure
in case of
attachment
of negotiable
instruments.

(2) The Chief Marshal may sue in his own name for the recovery of any amount due on a negotiable instrument or secured thereby if the time for payment has arrived and the amount remains unpaid.

(3) Payment to the Chief Marshal of the amount due on a negotiable instrument by the party liable on such instrument or the recovery from, or the levying of execution against, the party so liable discharges him to the extent of such payment, recovery or levy of execution, as the case may be, from his liability on that negotiable instrument.

(4) The Chief Marshal shall, in order of priority, pay over to the execution creditors entitled thereto any money recovered under subsection (2) or such part of such money as is sufficient to discharge the amount of the several executions lodged in the Court Process Office.

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(5) Where, after payment of all amounts required to be paid by subsection (4), including all fees and expenses connected with any execution, there remains a surplus in the hands of the Chief Marshal, he shall pay it to the party against whom such execution was issued.

(6) The Chief Marshal may refuse to bring an action against any party who is liable upon a negotiable instrument unless the party who gave instructions for the levying of the writ of execution enters into a bond with two sufficient sureties for indemnifying the Chief Marshal from all costs and expenses to be occasioned by such action or to which he may become liable in consequence thereof; and all expenses relating to the bond shall be deducted out of money recovered in such action.

(7) For the purposes of this section, "negotiable instrument" includes any cheque, bill of exchange, promissory note, bond, specialty and any other security for money.

Time within
which and
place where
goods
attached
shall be
sold.

29. (1) Goods taken by the Chief Marshal by virtue of any execution lodged in the Court Process Office shall, not less than ten days after the levy, be sold in the district in which the execution was made.

(2) Goods that can be removed without damage and without incurring what is, in the opinion of the Chief Marshal, an excessive expense shall be sold at the salesroom of the Court Process Office if they have been levied on within the jurisdiction of the magistrate for District A, or, in other cases, at the place where the levy was made.

(3) Where goods are removed for purposes of sale, the cost of the removal shall be borne by the person against whom the execution was levied and shall be defrayed out of the proceeds of the execution.

(4) Chattel buildings and goods that cannot be removed without damage or without incurring what is, in the opinion of the Chief Marshal, excessive expense shall be sold on the spot where the levy was made.

Notices of
sale and
where
published.

30. (1) The Chief Marshal shall, not more than four days after the date of the making of a levy on goods and not less than seven days before a sale thereof, post in the Court Process Office

and at the place where the levy was made a notice in writing containing—

- (a) a description of the goods or chattel buildings that have been levied on;
- (b) the name and address of the person in whom ownership vested at the time the goods or chattel buildings were taken or levied on; and
- (c) the day on which and the hours during which the sale will take place,

and where a chattel building comprises part of the items to be sold, a copy of the notice shall be affixed thereto.

(2) Any person who wilfully mutilates, defaces, destroys or removes a notice that has been posted in accordance with this section is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars or imprisonment for six months.

31. Goods levied on by a Marshal may be sold on any day except Christmas Day, Good Friday, a Sunday or a public holiday. Prohibited days for sale.

32. A sale under this Part may be postponed if a reasonable price for any article that is the subject of the sale cannot be obtained; and if a sale is postponed the Chief Marshal shall give a fresh notice in accordance with this Act in respect thereof. Post-ponement of sale.

33. A Marshal who, in relation to a sale, acts in contravention of this Act is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or imprisonment for twelve months. Irregularity in respect of sales.

34. All articles sold under the provisions of this Act shall be paid for in cash before delivery. Sale must be for cash.

35. Notwithstanding section 34, where the purchase of goods or chattel buildings sold under this Part fails within seven days after the day of the sale to pay for them, the Chief Marshal shall— Non-payment of purchase price within specified time.

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- (a) give fresh notice of the sale in accordance with section 30;
- (b) re-sell the goods after giving such notice; and
- (c) take proceedings, if necessary, against the original purchaser to recover—
 - (i) the costs and expenses of the re-sale and the giving of fresh notice, and
 - (ii) an amount representing the diminution (if any) on the re-sale.

Powers of
Chief
Marshal in
relation to
a re-sale.

36. The powers conferred on the Chief Marshal by section 35 may be exercised as if the re-sale were an original sale and the second or subsequent purchaser were the original purchaser; but nothing affects the liability of the first purchaser to pay—

- (a) the costs and expenses of the first renewal of notices; and
- (b) the costs of the first re-sale,

and the difference between the price offered by him and the price obtained in the final sale shall not be in any way affected.

PART V

Levy on Lands

Procedure
in case of
levy on lands.

37. The Chief Marshal shall, upon a levy being made on land, take and keep actual possession thereof until it is sold or otherwise lawfully disposed of; and he shall cause to be posted in a conspicuous place on the land a notice bearing the words, “FOR SALE, APPLY REGISTRATION OFFICE ” printed in large letters.

Delivery of
plans and
title deeds
to Chief
Marshal.

38. (1) A debtor whose land is attached for non-payment of any debt or sum of money due under any execution (or any other person, if requested by the Chief Marshal) shall—

- (a) deliver to the Chief Marshal the title deeds and plans relating to the land, if they are in possession of such debtor or other person; and
- (b) if required by the Chief Marshal, swear an affidavit containing such information as he requires.

(2) Where a debtor or other person fails to deliver to the Chief Marshal any title deed or plan in his possession as requested by the Chief Marshal or refuses to swear such affidavit respecting those title deeds and plans as the Chief Marshal requires, the Chief Marshal shall postpone the sale and make a report to the court from which the execution issued, setting forth the facts of such failure or refusal.

(3) The court shall, upon receiving the report of the Chief Marshal under subsection (2), examine the debtor or other person on oath with respect to the land that is the subject of the proceedings, and if he refuses to answer any question put to him, it may commit him for contempt until he answers; and the court may, in addition to any order it makes as to costs, make such order as it deems proper respecting the title deeds, the plan and the land, as the justice of the case requires.

(4) The delivery of any title deed or plan by a person to the Chief Marshal does not deprive any person of the benefit of any lien to which he is entitled.

39. (1) A debtor shall, at the time he delivers up, or accounts for, title deeds under this Act, state on oath before the Chief Marshal what encumbrances exist, to the best of his knowledge, in respect of the property to which those title deeds relate.

Debtor to reveal encumbrances when delivering up title deeds.

(2) A debtor who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine of \$1 000 or imprisonment for 12 months or both.

40. (1) Where land is attached under execution from any court, the Chief Marshal shall, for the purpose of appraising such land, request each of the parties to nominate, within 7 days after being so requested, an appraiser who, for the purposes of this Part, shall be a real estate agent registered under the *Profession, Trade and Business Registration Act*.

Appraisal of lands.

Cap. 373.
1980-44.

(2) Where a party fails to nominate an appraiser, the Chief Marshal shall require the Commissioner of Valuations to supply a certificate as to the value of the land, and a certificate purporting to be signed by the Commissioner of Valuations shall be *prima facie* evidence of the facts contained therein.

First
Schedule.

(3) Where the parties each nominates an appraiser as requested by the Chief Marshal, the Chief Marshal shall summon those appraisers to the Court Process Office and accompany them to the land to be appraised and there administer to them severally the oath contained in paragraph 2 of the First Schedule and the appraisers shall, after being sworn, make an appraisal of the land to the best of their judgment and understanding.

(4) The Chief Marshal shall, upon receiving a certificate from the Commissioner of Valuations under subsection (2), or, if the appraisers agree as to the value of the land, as soon as practicable after an appraisal has been made under subsection (3), proceed to sell the land in accordance with this Act.

Failure to
agree on
appraise-
ment or
failure of
real estate
agents to
agree.

41. (1) In the event of the appraisers nominated under section 40 failing to agree as to the value of any land, the Chief Marshal shall apply to a Judge in chambers to have the matter determined, and the Judge shall, after hearing the parties and the appraisers who carried out the appraisal under that section, fix the amount at which the land should, in view of his findings, be valued.

(2) A decision by a Judge under this section is final.

(3) Any appraiser who fails to attend in obedience to a summons by the Chief Marshal under section 40 is guilty of an offence and liable on summary conviction to a fine of \$1 000 or imprisonment for 12 months or both.

Amount of
land that
may be
sold.

42. (1) Where a levy is made on land, the Chief Marshal shall sell as nearly as possible only so much of the land as will satisfy the execution, and if, after satisfying the execution, any money is left over it shall be paid to the debtor.

(2) The Chief Marshal may, if the debtor so requests and the creditor consents, sell the entire portion of any land.

(3) In any case where difficulty arises or the usual form of procedure would cause injustice to any party, the Chief Marshal shall report the circumstances to the court from which the execution issued, and that court shall give such directions as it considers reasonable having regard to all the circumstances of the case.

(4) Notwithstanding anything contained in this section, the court may determine whether the debtor's interest in the whole or only a part of any land may be sold; but where the land to be sold comprises a house, the house, together with the messuage and appurtenances thereto belonging, or the debtor's interest therein, shall be sold.

43. (1) The Chief Marshal shall cause all lands attached under any execution issuing from any court to be sold at public auction during any period of the year, after appraisalment in pursuance of section 40 and after giving fourteen days notice of such sale. Procedure subsequent to appraisalment, to complete sale of land.

(2) A notice mentioned in subsection (1) shall contain—

- (a) a description of the land;
- (b) the appraised value of the land;
- (c) the date, time and place of sale; and
- (d) the amount of the deposit required to be paid in respect of the sale,

and shall be given by the posting of a copy thereof in a conspicuous position in the Court Process Office and the advertising thereof in the *Official Gazette* and a newspaper published in Barbados.

(3) The Chief Marshal shall, at the time and place appointed for the sale of land, set up that land for sale at a public auction upon condition that—

- (a) the highest bidder for not less than the appraised value shall be declared the purchaser and pay to the Chief Marshal a deposit equal to such percentage, not exceeding twenty-five per cent of the purchase money, as the Chief Marshal determines;
- (b) the purchaser shall, within seven days after the date of the sale, complete payment of half of the purchase price and pay the other half together with interest at the current rate within a period of three months from the date of the sale (the deposit being regarded as part of the payment);
- (c) the purchaser shall at the time of making the first payment deliver to the Chief Marshal a judgment confessed by the purchaser for securing—
 - (i) payment of the balance of the purchase price and

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interest thereon at the time when they become payable, and

- (ii) payment of the expenses incurred in the taking out of execution and payment of the fees as prescribed under section 10.

(4) A judgment confessed under subsection (3)—

Second
Schedule.

(a) shall be in the form set forth in Form A of the Second Schedule;

(b) shall be prepared by the Chief Marshal; and

(c) has priority against all other securities and judgments in respect of the property purchased.

(5) The Chief Marshal shall, after delivery to him of a judgment confessed under this Act, execute in favour of the purchaser and in accordance with Form B set forth in the Second Schedule a conveyance of the property purchased, and that conveyance shall be good and effectual in law for the purpose of conveying all the estate, right, title and interest of the debtor, in and to the property so conveyed, and such property shall not ever be redeemed by the debtor or his heirs.

(6) Notwithstanding paragraph (b) of subsection (3), the Chief Marshal may extend the period of three months mentioned in that paragraph for a period not exceeding six months in a case where the circumstances so warrant.

(7) A party who objects to an extension granted under subsection (6) may give notice of objection in writing to the Chief Marshal within seven days after the date of the granting of extension, and the Chief Marshal shall upon receiving such objection refer it to a Judge in chambers who shall decide the issue, and the decision of the Judge shall be final.

Doubtful
or incom-
plete title.

44. Where—

(a) there is doubt concerning the title of a debtor to any land levied on under an execution; or

(b) all the parties to the execution do not attend to concur therein,

the Chief Marshal shall, for a period of not more than six weeks, place an advertisement in two issues of the *Official Gazette* and of a newspaper published in Barbados inviting all persons claiming any estate, right, title or interest in or to, or any lien (other than

a judgment on which execution has issued) on, such land to send to him on or before a specified date a statement in writing of their claims.

45. Any claim not received by the Chief Marshal or received by him after the date specified in an advertisement shall not in any manner affect the title to the land to which the advertisement relates.

Claims not received and late claims.

46. Subject to section 45, the Chief Marshal may admit the validity of any claim made under section 44 or require the claimant, on or before a specified date, to take proceedings in accordance with section 49 to establish the claim.

Power to require establishment of claims.

47. If proceedings are not taken where the Chief Marshal so requires under section 46, or the validity of a claim is not established, that claim shall be incapable of affecting the title to the land to which it relates.

Effect of claim where validity not established.

48. Where, in the case of any land levied on under this Act—

Procedure where there is valid claim.

(a) the validity of a claim is admitted by the Chief Marshal under section 46 or established in proceedings under section 49; and

(b) the debtor, notwithstanding the validity of the claim, still has an interest that is capable of being sold,

the Chief Marshal shall sell that interest without delay; but if the debtor has no interest, or if his interest is such that it cannot be sold, the Chief Marshal shall withdraw from possession of the land.

49. (1) Proceedings to establish validity of a claim in pursuance of section 46 shall be instituted by way of originating summons before a Judge in chambers.

Procedure to establish validity of claim.

(2) A Judge may, on hearing a summons made under this section, hear all persons necessary for determining the claim that is the subject of the application, or, if it appears to him desirable, direct that the matter be determined in open court.

(3) In a case under this section—

(a) the proceedings shall be conducted according to the rules of court relating to interpleader; and

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(b) costs shall be at the discretion of the Judge.

Effect of
signature
of Chief
Marshal on
conveyance.

50. The signature of the Chief Marshal on a conveyance is conclusive evidence that the provisions of this Act relating to that conveyance have been complied with.

Purchaser
to have
possession
upon pay-
ment of
half of the
purchase
money.

51. A purchaser of property under this Part is entitled to possession thereof upon payment of half the purchase price and may, personally or through his attorney-at-law, upon payment of a fee, inspect and make extracts from any title deed in possession of the Chief Marshal that relates to such property.

Failure of
bidder to
pay de-
posit.

52. Where a purchaser fails to pay a deposit, the Chief Marshal shall cancel his bid and adopt the procedure set forth in section 56 relating to property not sold on the first day of sale; and where the property is subsequently sold for less than the amount bid by the person failing to pay the deposit, the debtor may bring an action against that person to recover the difference.

Failure of
purchaser
to make
first pay-
ment or give
judgment.

53. (1) A purchaser who fails to make the first payment of the purchase money within the time specified in section 43 or to give the judgment required to be given under that section shall forfeit his deposit, unless—

- (a) he satisfies the Chief Marshal in writing that he has good cause for so doing;
- (b) he states in writing an objection to the title relating to the property purchased; or
- (c) the Chief Marshal grants an extended period for the purpose of investigating the debtor's title to the property purchased.

(2) The Chief Marshal may apply any deposit forfeited under subsection (1) towards the discharge of the execution against the debtor and shall re-attach and re-sell the property in respect of which the deposit was made.

Procedure
where there
is objection
to title.

54. (1) An objection by a purchaser to the title relating to any property shall be in writing and shall be delivered to the Chief Marshal who shall give notice thereof to the parties interested and apply to a Judge in chambers to have the validity of the objection determined by him.

(2) The question of costs in a matter being determined under this section is exclusively within the discretion of the Judge.

55. (1) Where a purchaser of any property under this Act fails to pay the balance of the purchase money when it is due, the Chief Marshal shall attach the property sold and re-sell it in accordance with the procedure set forth in this Act, and also attach such other estate or effects of the purchaser as may be necessary for the purpose of satisfying any deficiency.

Failure of purchaser to complete purchase.

(2) Where a purchaser defaults in the payment of any one instalment, the entire balance of the purchase price shall immediately become due and the Chief Marshal may take proceedings to recover such balance.

56. (1) Where property set up for sale under this Act remains unsold after the first day of sale, the sale shall be kept open and the property may be sold at any time for the appraised value without a public auction.

Property not sold on first day and remaining unsold for one month.

(2) Where a sale has been kept open for one month, an offer in writing that is not less than three-fourths of the appraised value may be accepted in which case the Chief Marshal shall—

- (a) give notice thereof to those parties who are in Barbados or are represented by attorneys who are in Barbados (such attorneys' names being known to him); and
- (b) insert on two separate occasions in the *Official Gazette*, and similarly in a newspaper published in Barbados, a notice of such offer.

(3) Where no objection is made by any party within ten days of his receiving a notice under subsection (2), or within fourteen days after a second publication in the *Official Gazette* of the notice referred to in subsection (2), whichever is the later, the Chief Marshal may accept the offer to which the notice relates and declare the person making that offer to be the purchaser.

(4) In a case where a party interested objects in writing to the acceptance of an offer to which subsection (2) refers, the Chief Marshal shall apply to the court from which the execution issued for that court to determine whether that offer should be accepted.

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Re-appraise-
ment of
lands.

57. (1) Notwithstanding section 56, where land put up for sale under this Act remains unsold for three months or more from the date on which it was put up for sale, the Chief Marshal shall, if requested by the creditor, cause it to be re-appraised, and, after re-appraisal, cause it to be advertised afresh in the same manner as set forth in section 56 and thereafter sell it for its re-appraised value, if such re-appraised value is obtainable.

(2) Where the re-appraised value referred to in subsection (1) is not obtainable and a subsequent offer less than the re-appraised value is made, the Chief Marshal shall deal with such offer as set forth in section 56.

(3) No subsequent re-appraisal under this section shall take place until after the expiration of a period of nine months from the date of any former appraisal.

Alternative
form of con-
veyance.

Second
Schedule.

58. (1) The Chief Marshal shall, if requested by a purchaser, in lieu of executing a conveyance in the form set forth in the Second Schedule, execute such other conveyance as the purchaser requires so that the purchase money may be applied in discharge of any debt affecting the property sold and the debtor discharged therefrom.

(2) A conveyance requested by a purchaser in lieu of a conveyance in the form set forth in the Second Schedule may be made to the purchaser or to any person named by him, and may be—

- (a) for securing money which the purchaser may have borrowed from that person to assist in the purchase; or
- (b) for security by way of mortgage to a creditor who may be willing to discharge his debtor and take the security of the purchase thereof,

and may be drawn up in such form or manner as the purchaser requires, so that the debtor for the satisfaction of whose debt the property is being sold is discharged from the debt to the amount of the purchase money of the property sold.

(3) A purchaser who requires a conveyance other than a conveyance in the form set out in the Second Schedule shall bear the expense thereof.

(4) Section 43 (3), in so far as it relates to judgments to be confessed, applies in respect of a conveyance, and any such judgment—

- (a) may be assigned at the request of the purchaser in accordance with the conveyance; and
- (b) has priority over purchased premises in relation to any debts to the purchaser of such premises.

59. Where a debtor is entitled to an undivided estate or interest in any land or house, such estate or interest shall be appraised and sold in the manner set forth in this Act, and, in a case of a joint tenancy, a conveyance by the Chief Marshal operates as a severance of the joint tenancy, and the purchaser shall hold the debtor's estate or interest as a tenant in common.

Sale of undivided interest and severance of joint tenancy.

60. No action for specific performance shall be brought against a purchaser of any property under this Act.

Immunity of purchaser from specific performance.

61. A creditor, to the payment of whose debt moneys due under a judgment taken by the Chief Marshal are applicable when received, may take an absolute assignment, not returnable, of such judgment in payment of such debt, entering satisfaction on the judgment against the debtor for the whole or for so much of such debt as the amount of the judgment assigned will satisfy; and the Chief Marshal shall, at the instance of the creditor, make such assignment.

Assignment of Chief Marshal's judgment in payment.

62. (1) The Chief Marshal shall set up for sale without reserve to the highest bidder at a public auction any land that—

Land unsold for six months to be sold without reserve at public auction.

- (a) has been set up for sale and has remained unsold for a period of six months from the date of its having been first put up for sale; or
- (b) has been attached under an execution and does not, in the opinion of the Chief Marshal, exceed ten thousand dollars in value.

(2) The Chief Marshal shall, for a period of not more than six weeks immediately preceding the sale of land referred to in subsection (1), by advertisement published in the *Official Gazette* and a newspaper published in Barbados, call upon all persons having any estates, rights, interests, liens or encumbrances affecting such land to bring in their claims in respect of such land.

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(3) In addition to subsection (2), an advertisement under that subsection—

- (a) shall be published once every fourteen days during the period referred to in that subsection;
- (b) shall contain the name of the execution debtor as being the owner; and
- (c) shall have stated therein the date on which the sale takes place and the fact that the sale will be by public auction without reserve.

(4) The execution creditor shall pay in advance to the Chief Marshal all expenses incurred by him in connection with the advertisements, and those expenses may be recovered as expenses out of the matter or suit concerned.

(5) Where a person having or claiming any estate, right, interest, lien or encumbrance in, on or affecting any land to which this section relates fails to give notice thereof to the Chief Marshal before the date specified in an advertisement under this section as being the date of sale, the Chief Marshal may direct the land to be sold; and such land shall be effectually freed and discharged from the estate, right, interest, lien or encumbrance of such person, but without prejudice to his claim on or against any other property or person.

(6) Where the Chief Marshal receives notice of any claim under this section, the validity of such claim shall be determined by a Judge in chambers.

(7) Section 44 does not apply in respect of a sale under this section if subsections (2) and (3) are complied with; but sections 46 to 49 apply in respect of any claim brought in pursuance of an advertisement published in accordance with those subsections.

(8) A conveyance of any land or house executed by the Chief Marshal under this section effectually passes the interest therein expressed to be conveyed by the conveyance and effectually discharges the land thus conveyed from any estate, right, interest, lien or encumbrance of any person, including the Crown, except such as may be specified in the conveyance and subject to which the Chief Marshal may have conveyed the land.

63. The Chief Marshal shall at all times keep in the Court Process Office a list of all properties that have been levied on and offered for sale under this Act, together with a description and the appraised value thereof, and any person desirous of—

List of unsold properties.

- (a) inspecting the list, may do so free of cost during office hours;
- (b) inspecting the property, may do so upon making application to the Chief Marshal,

and the Chief Marshal shall in either case permit inspection.

64. All executions issuing out of the High Court or a magistrate's court—

Executions.

- (a) shall be executed by a Marshal; and
- (b) shall contain only so much of the decree on which it is issued as suffices to direct a Marshal to raise money in respect thereof,

and none of the proceedings in the cause in which the decree was made shall be recited or set forth in any such execution.

65. This Part does not apply where an execution debtor has only an estate for life or where such debtor is tenant *pur autre vie*.

Exemption from Part V.

PART VI

Letting and Rental of Land

66. (1) Where any land that is levied on by the Chief Marshal is leased or rented at the date of the levy, the Chief Marshal shall receive and apply the rent raised by the lease or rental towards the payment of the debts affecting that property.

Application of rents of property levied on.

(2) No lease made or tenancy created after the date of any judgment affecting property leased or rented operates to bar the Chief Marshal from proceeding towards the sale of such property in as full and ample a manner as if there had been no such lease or tenancy; and a levy by the Chief Marshal operates to determine such lease or tenancy without any further notice or proceeding.

67. The Chief Marshal shall—

- (a) have all such remedies by distress, action or otherwise for

Chief Marshal to have remedies of landlord.

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enforcing the payment of rent and ejecting any tenant as the owner himself would have had for the recovery of rent and obtaining possession of the property leased or rented; and

- (b) retain all necessary expenses to which he is put in or about the recovery of such rents and premises.

PART VII

Transitional Provisions

Transfer of
existing
writs etc. to
Court Pro-
cess Office.

68. (1) As from the time of the commencement of this Act, all writs, process, official documents and records in the Chief Marshal's Office and the Writ Department or in the custody of any person employed in the Chief Marshal's Office or the Writ Department shall immediately become transferred to the Court Process Office.

Cap. 111.

(2) All rights accruing to, and all executions levied, proceedings commenced and liabilities or other things incurred or done by the Chief Marshal under the Chief Marshal Act shall, after the commencement of this Act, be treated as if they accrued to or were incurred or done by the Chief Marshal under this Act.

PART VIII

Miscellaneous

Offences
and powers
of arrest.

69. (1) Any person who—

- (a) assaults, resists, obstructs or intimidates a Marshal in the performance of his functions;
- (b) uses indecent, abusive, or insulting language to a Marshal in the performance of his functions;
- (c) interferes with or hinders a Marshal in the performance of his functions; or
- (d) by the offer of any gratuity, bribe, promise or other inducement prevents or attempts to prevent a Marshal from performing his functions,
- is guilty of an offence and is liable on summary conviction—
- (e) in respect of paragraphs (a) to (c), to a fine of two

thousand dollars or to imprisonment for twelve months or both; and

(f) in respect of paragraph (d), to a fine of five thousand dollars or imprisonment for twelve months or both.

(2) Any person who aids, abets or incites another person—

(a) to commit any of the offences mentioned in subsection (1), or

(b) to escape lawful custody,

is guilty of an offence and liable on summary conviction to the same punishment as that to which that other person would be liable.

(3) A Marshal may—

(a) arrest without a warrant a person who commits an offence under paragraphs (a) to (d) of subsection (1); or

(b) arrest on the order of a court any person required to be taken into custody by that court.

(4) A person arrested under this Act shall, for the purpose of all proceedings related to such arrest, be treated as if he were arrested by a member of the Police Force.

70. The Rules of the Supreme Court, 1958 and the Magistrates' Court (Civil Procedure) Rules, 1958 and such other enactments as make provision for the service of court process shall be construed *mutatis mutandis* in relation to their application in respect of this Act.

Adaptation
of Rules of
Court.
L.N. 50 of
1958 and
L.N. 51 of
1958.

71. The Chief Marshal Act is repealed, but the Second Schedule shall continue to have effect until an order is made pursuant to section 10.

Repeal and
saving.

72. This Act shall come into operation on such day as the Governor-General appoints by proclamation.

Commence-
ment.

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Printed in England by Eyre and Spottiswoode Limited, 2 Serjeants' Inn, London EC4,
by authority of the Government of Barbados

ss.6, 40.

FIRST SCHEDULE

1. OATH TO BE TAKEN BY MARSHAL

I, do swear that I will carefully keep, and duly and speedily serve all process whatsoever, which shall be to me delivered; and make no returns of any process, but of such as hath been duly served; and I will not receive or take, by any colour, means, or device whatsoever, or consent to the taking of any manner of fee, reward, gratuity, bribe or other consideration whatsoever, either immediate, future, conditional, or contingent, or any promise or assurance of any manner of fee, reward, gratuity, or other consideration whatsoever, for forbearing or delaying to serve or execute any process to me delivered or for forbearing to summon any inquest or jury returned or to be returned, to serve in any court of record; but will perform all the functions of my office faithfully, honestly, diligently, and impartially, without favour, affection, or wilful delay, according to the best of my knowledge, discretion, and abilities.

2. OATH TO BE TAKEN BY APPRAISERS

You do swear that you will give a true, just and conscionable appraisement of the lands, houses, etcetra, now shown unto you, according to your best judgment and understanding, and neither for favour or affection, hatred, or malice vary from the true value which in your judgment you think the same to be really worth. So help you God.

ss.43, 58.

SECOND SCHEDULE

A

FORM OF JUDGMENT

By the Judge

BARBADOS,

Be it remembered that on the _____ day of _____
 one thousand nine hundred and _____ A.B. of the parish of _____
 and Island abovesaid personally appeared before me the _____
 honourable _____ Judge of the Supreme Court, and con-
 fessed judgment unto C.D. esquire, Chief Marshal of Barbados, and his
 successors in office of the sum _____ of _____ dollars with
 lawful interest thereon (besides charges, etc) from the _____
 day of _____ : execution to issue, but not to be levied until de-
 fault happens to be made in payment of the said sum of _____
 dollars and the interest thereof, unless any other execution has in the mean-
 time been levied. Then and in either of such cases happening, the same to be
 levied on all that (insert the description of the property) sold by the said C.D.,
 Chief Marshal as aforesaid, under the Act in that case made and provided,
 to satisfy certain executions against E.F. And in case the said premises shall
 not be sufficient, then the said execution to be levied on all other the estate
 real and personal of the said A.B.

B**FORM OF CONVEYANCE**

1980-44.

This CONVEYANCE made the day of one thousand nine hundred and between A.B., esquire, Chief Marshal of Barbados, of the one part, and C.D., of the parish of in Barbados, of the other part.

Whereas on the day of one thousand nine hundred and E.F., of the parish of and Barbados abovesaid personally appeared before the honourable Judge of the Supreme Court, and confessed judgment unto G.H., for securing payment of the sum of besides charges and interest, on which judgment execution issued on the day of (or in case execution has issued on a decree of the High Court. Whereas under and by virtue of a decree of the High Court, made in a cause wherein J.K., was plaintiff, and L.M. defendant, the said L.M. was decreed to pay the said J.K. the sum of with interest from the day of besides the costs taxed of the said suit, on which decree a writ of execution issued on the day of),

And whereas for the satisfaction of the moneys due under the said judgment (or decree) and execution, all that property described in the Schedule hereto was on the day of sold by the said A.B., Chief Marshal, to the said C.D., for the sum of pursuant to the Act of Barbados in that case made and provided.

And whereas the said C.D. has paid to the said A.B., Chief Marshal, the sum of on account of the purchase money of the said property, and the said C.D. has also on the day of confessed a judgment before the honourable Judge of the Supreme Court to the said A.B., Chief Marshal, to secure the payment of the sum of being the balance of the said purchase money;

Now this conveyance witnesseth that in consideration of the said sum of to the said A.B., Chief Marshal in hand, well and truly paid by the said C.D., at or before the sealing and delivery of these presents, the receipts whereof he the said A.B., Chief Marshal hereby acknowledges, and therefrom

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by the authority of the Government of Barbados

acquits, releases and discharges the said C.D., and in consideration of the premises, he the said A.B., Chief Marshal, by virtue of the power given to and vested in him by the *Court Process Act, Cap. 111A*, by these presents convey to the said C.D. ALL THAT PROPERTY described in the Schedule hereto TOGETHER WITH all the rights appertaining or annexed to the property hereby conveyed as provided for by section 66 of the *Property Act*. AND TOGETHER ALSO WITH (set out any additional rights which are to be expressly conveyed and are not covered by sections 66 and 67 of the *Property Act*) TO HOLD the same unto the said C.D., in fee simple freed and absolutely discharged of and from all the judgments and executions against the said C.D. BUT SUBJECT to and charged and chargeable with the payment of the said sum of _____ and interest thereon from the _____ day of _____ and the said judgment and execution against the said C.D., for securing the payment thereof, being the balance of the purchase money of the said property prior and preferable to all debts claims and demands against the said C.D.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals the day and year first written herein.

Signed, sealed and
delivered in the
presence of }

SCHEDULE

(Description of property)