

## CHAPTER 11.

## CIVIL PROCEDURE (EXECUTION).

4 of 1938.

AN ORDINANCE TO MAKE PROVISION FOR THE EXECUTION OF JUDGMENTS OF CIVIL COURTS.

[4th June, 1938.]

Short title  
and  
extent.

1. (1) This Ordinance may be cited as the Civil Procedure (Execution) Ordinance.

(2) It shall extend to proceedings in the Supreme Court and to proceedings in all Subordinate Courts in the Colony.

Interpreta-  
tion.

2. In this Ordinance unless there is anything repugnant in the subject or context:

“Degree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, and may be either preliminary or final. It shall be deemed to include the rejection of a plaint or writ and the determination of any question within section 6, but shall not include—

(a) an adjudication from which any appeal lies as an appeal from an order; or

(b) any order of dismissal for default;

“Decree holder” means any person in whose favour a decree has been passed or an order capable of execution has been made, and includes the assignee of such decree or order;

“Judgment” means the statement given by the Court of the grounds of a decree or order;

“Judgment debtor” means any person against whom a decree has been passed or an order capable of execution has been made.

[Note. This Ordinance is declared to be in force in the Dependencies by the Application of Colony Laws Ordinance, Cap. 1 (D.S).]

“Mesne profits” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;

“Movable property” includes growing crops.

3. In the absence of any specific provision to the contrary nothing in this Ordinance shall be deemed to limit or otherwise affect any special jurisdiction or power conferred, or any special form of procedure prescribed by or under any other law for the time being in force. Savings.
4. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits if any of its ordinary jurisdiction. Pecuniary jurisdiction.
5. The provisions of this Ordinance relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders. Application to orders.
6. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Questions to be determined by the Court executing decree.
- (2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional Court fees.
- (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.
- (*Explanation.*—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.)
7. (1) Where an application to execute a decree, not being a decree granting an injunction, has been made, no order for the execution of the same decree shall be made upon any Execution barred in certain cases.

fresh application presented after the expiration of twelve years from—

- (a) the date of the decree sought to be executed; or
- (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application; or
- (b) to limit or otherwise affect the operation of any law of limitation for the time being in force in the Colony.

Legal  
representa-  
tive.

8. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the decree-holder may apply to the Court which passed it to execute the same against the legal representative of such deceased, or against any person who has intermeddled with the estate of such deceased.

(2) Where the decree is executed against such legal representative, or against any person as aforesaid, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Powers of  
Court to  
enforce  
execution.

9. Subject to such conditions and limitations as may be prescribed, the Court may, on application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale, or by sale without attachment, of any property;

- (c) by attachment of debts; or
- (d) in such other manner as the nature of the relief granted may require.

10. (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

Enforcement of decree against legal representative.

(2) Where no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

11. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation, and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Property liable to attachment and sale in execution of decree.

Provided that the following particulars shall not be liable to such attachment or sale, viz.—

- (a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, and of his wife and children;
- (b) tools of artizans; and where the judgment-debtor is an agriculturalist, such implements of husbandry and such livestock and agricultural produce not exceeding in value £50 as may, in the opinion of the Court, be necessary to enable him to earn his livelihood;
- (c) books of accounts;
- (d) a mere right to sue for damages;

- (e) any right of personal service;
- (f) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the *Gazette* by the Governor in Council in this behalf;
- (g) the salary of any public officer, servant of a company or local authority, or any person privately employed to the extent of—
  - (i) the whole of the salary, where the salary does not exceed £1 10s. 0d. weekly;
  - (ii) £1 10s. 0d. weekly, where the salary exceeds £1 10s. 0d. and does not exceed £3 weekly; and
  - (iii) one moiety of the salary in any other case;
- (h) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (i) a right of future maintenance;
- (j) any fund or allowance declared by the law to be exempt from attachment or sale in execution of a decree.

Seizure of property in dwelling-house.

12. (1) No person in executing any process under this Ordinance directing or authorising seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the person executing any such process has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman the person executing the process shall give notice to such woman that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

13. (1) Where assets are held by the Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be rateably distributed among all such persons:

Proceeds of execution to be rateably distributed among decree-holders.

Provided as follows—

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;
- (c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of the sale shall be applied—

*first*, in defraying the expenses of the sale;

*secondly*, in discharging the amount due under the decree;

*thirdly*, in discharging the interest and principal moneys due on subsequent incumbrances if any; and

*fourthly*, rateably among the holders of decrees for the payment of money against the judgment-debtor who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for the execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in the section affects any right of the Government.

Resistance  
to execution.

14. Where the Court is satisfied that the holder of a decree for the possession of immovable property, or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf, and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in prison for a period which may extend to thirty days and may further direct that the decree-holder or purchaser be put in possession of the property.