

## CHAPTER 111

### CHIEF MARSHAL

1904-6

This Act came into operation on 2nd September, 1904.

#### **Amended by:**

*1944-26*

*1947-36*

*1949-5*

*1954-62*

*1956-56*

*1959-21*

*1963-5*

*1963-22*

*1966-2*

*1969-29*

*1971-26*

*1967/168*

*1970/239*

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#### **Guide to symbols in historical notes:**

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument



**CHAPTER 111**

**CHIEF MARSHAL  
1904-6**

*Arrangement of Sections*

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#### THE LAWS OF BARBADOS

Printed by the Government Printer, Bay Street, St. Michael  
by the authority of the Government of Barbados

**BARBADOS**

## CHIEF MARSHAL

1904-6

*An Act to consolidate the Acts of this Island relating to the Chief Marshal and his duties.*

[Commencement: 2nd September, 1904]

**Short title**

1. This Act may be cited as the Chief Marshal Act.

## PART I

## PRELIMINARY

**Interpretation**

- 2.(1) For the purposes of this Act, the expression—

“Chief Marshal” means the person holding or acting in the office of Chief Marshal and Sergeant-at-Arms established under the *Civil Establishment Act*, Cap. 21;

“Coroner” means the coroner for District A;

“functions” includes jurisdictions, powers and duties;

“lawful deputy” includes any person holding or acting in the office of Chief Deputy Marshal or Deputy Marshal established under the Civil Establishment Act;

“perform” in relation to functions includes exercise;

“under-officer” has the same meaning as is assigned by this section to the expression “lawful deputy”.

(2) The person holding the offices, permanently or otherwise, of Chief Marshal and Sergeant-at-Arms shall perform all the functions vested in the Chief Marshal and the Sergeant-at-Arms by law.

[1959-21]

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[1963-22]

## PART II ADMINISTRATION

### **Bond by Chief Marshal**

3. The Chief Marshal shall before beginning to perform the functions of his office become bound to the Crown in the penal sum of four thousand eight hundred dollars for the due performance of his functions and for duly accounting for and paying all sums of money received by him or his officers in such performances.

### **Oath of deputy marshal**

4.(1) Every deputy marshal shall on his appointment, and before being capable of performing any functions, take an oath in the form prescribed in the First Schedule before a Judge in open court, or, if the Court is not then sitting, in chambers.

(2) Any deputy marshal who wilfully does anything contrary to any part of his oath, or is guilty of any neglect, misconduct or breach of duty, shall, whether he be in or out of office at the time when a complaint is made against him by a person aggrieved, be liable to be brought by summons before a Judge to answer the complaint.

(3) Where a complaint under subsection (2) is proved to the satisfaction of the Judge, the deputy marshal shall—

- (a) forfeit for the use of the complainant such sum not exceeding ninety-six dollars, as the Judge thinks fit to award; and
- (b) be committed by order of the Judge to prison there to remain until he pays his said forfeiture; and
- (c) be liable to be indicted for a misdemeanour.

#### **Special marshals to attend sittings of Court**

5.(1) The Chief Marshal is hereby authorised to appoint special deputy marshals to attend the sittings of the High Court and Court of Appeal and perform such functions as may be required of them and as are usually performed by a deputy marshal at such Court.

(2) Each special deputy marshal shall on his first appointment take the oath of deputy marshal as prescribed in the First Schedule.

(3) Each deputy marshal and each special deputy marshal shall for each day's attendance at either of the said Courts in his capacity as deputy marshal receive from the moneys voted for the purpose by Parliament, on the certificate of the clerk of such Court, sums of three dollars and eight dollars respectively.

*[1967/168; 1971-26]*

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*[1967/168]*

**Supply of stationery**

6. The cost of all books and stationery required by and all incidental expenses of the Chief Marshal's office shall be paid for out of moneys voted for the purpose by Parliament.

**Expenses to be paid out of suit**

7. All expenses properly incurred by the Chief Marshal in the performance of his functions shall be borne and paid out of the matter or suit in respect of which such expenses were incurred.

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[1954-62]

**Payment of expenses connected with Crown executions**

8. The Chief Marshal shall make a return in every month to the Minister responsible for Finance of the expenses necessary for levying executions and appraising and selling properties attached under and by virtue of executions issued by the several Magistrates at the suit of the Crown, and the Minister responsible for Finance shall issue his warrant to the Accountant-General directing him to pay to the Chief Marshal the amount of the expenses incurred or to be incurred by him in and about the levying of executions and the appraisal and sale of any such properties attached as aforesaid.

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[1967/168; 1956-56]

**Chief Marshal's fees**

9. The Chief Marshal shall be entitled to demand and receive the fees mentioned in the Second Schedule and the said Schedule may be amended, varied and revoked by the same authority and in the same manner as rules of court may be made, amended, varied or revoked under the *Supreme Court of Judicature Act*, Cap. 117.

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[1956-56]

**Table of fees in office**

**10.(1)** The Chief Marshal shall set up in his office a fair table of the fees by the laws of this Island payable to him.

(2) A Chief Marshal who presumes to extort more than is allowed by law shall forfeit two hundred and forty dollars, one half to the Crown and the other half to the informer who sues for the same, and for ever after conviction thereof be deemed incapable to execute that office.

(3) A Chief Marshal who neglects to set up and keep the table of his fees in his office, shall for every month's neglect forfeit forty-eight dollars, one half to the Crown and the other half to the informer who sues for the same.

**Fees to be paid into Consolidated Fund**

**11.(1)** All fees and emoluments payable to and receivable by the Chief Marshal shall be paid by him into the Consolidated Fund at the end of every month.

(2) A full, accurate, and detailed account of all such fees and emoluments received shall be kept by the person discharging the duties of Chief Marshal, and the said accounts and all books relating thereto shall be examined and audited quarterly by the Auditor-General.

**Crown not liable for illegal acts**

**12.** The Crown shall in no wise be responsible for any illegal act done or performed by the Chief Marshal or any member of his staff.

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[1954-62]

**Liability of Chief Marshal to attachment for wrong doing**

**13.** The Chief Marshal shall be liable to be proceeded against and punished by attachment in any case of escape or of extortion, abuse of authority,

fraudulent or collusive proceeding, or corrupt practice by him or his officers, or of knowingly making any false return to any writ.

**Action against Chief Marshal for neglect of duty**

**14.(1)** The Chief Marshal may be proceeded against by action in any case of neglect or refusal by him or his under-officer to execute any writ, or of neglect or refusal by him or his under-officer to perform any functions imposed on the Chief Marshal by law, or for any delay or improper conduct by or on the part of him or his under-officer in the performance of any functions imposed on the Chief Marshal by law.

(2) The Chief Marshal shall not be responsible for the act of his under-officer if not within the limits of his functions, unless such act is subsequently assented to or adopted by the Chief Marshal.

**This Act not to exempt Chief Marshal from common law or statutory obligations**

**15.** Nothing in the preceding sections contained shall in any way exempt the Chief Marshal or his under-officers from any liability or responsibility to which by the common law or by any Act of the United Kingdom Parliament in force in the Island at the 2nd September, 1904, he or they may be subject.

**Obstructing Chief Marshal or under-officers**

**16.** Any person obstructing the Chief Marshal or his under-officers in the performance of their functions under this Act shall be deemed guilty of a misdemeanour, and shall be fined or imprisoned by the High Court sitting for the trial of criminal cases at its discretion.

**Chief Marshal or his representative, on vacation of office, to hand over all writs and records**

**17.** Whenever the office of Chief Marshal becomes vacant the person vacating the office or his legal personal representative shall deliver without delay

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to the person discharging the duties of the office all writs, process, official documents and records which were in the possession or under the care of the person vacating the office, and in default of so doing shall be guilty of a misdemeanour, and a Judge is hereby empowered if necessary to issue new process in any action or matter that is pending if the former process is lost, withheld, or suppressed by the negligence or contumacy of any former Chief Marshal or of any officer or person by him entrusted with the same.

### **Process on Chief Marshal served by Coroner**

**18.(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 proceeding in any court by or against the Chief Marshal, which would in the case of any other person required as a witness, or in any similar proceeding in the same court by or against any other person, be served or executed by the Chief Marshal, shall be directed and sent to the coroner, who shall be entitled to demand and receive for his own use the like fees thereon as the Chief Marshal himself would be entitled to demand in the like case.

(2) The coroner shall serve and execute such writs and process as are mentioned in subsection (1) in such manner as is usual for the Chief Marshal to execute the like writs or process in any case wherein the Chief Marshal is neither plaintiff, nor defendant, nor a witness.

(3) Where the coroner neglects, refuses, or delays to execute any such writ or process as is mentioned in subsection (1), he shall be guilty of contempt and liable to the same penalties as the Chief Marshal would in the like case have been liable to, recoverable in like manner as against the Chief Marshal.

## PART III

## EXECUTION OF WRITS—GENERAL PROVISIONS

**No execution levied except on written order of creditor**

**19.(1)** An execution, lodged in the Chief Marshal's office shall not be levied, unless either—

(a) some creditor interested therein, or his representative, attorney, or assignee, first gives express orders to the Chief Marshal for that purpose in writing, or

(b) some other creditor directs a levy to be made.

(2) Where a direction is given under paragraph (b) of subsection (1) such creditors as please, or their representatives, attorneys, or assignees, may by notice in writing forbid the Chief Marshal to proceed in respect of any executions wherein they alone or the persons whom they represent are interested.

(3) Any levy made contrary to subsections (1) and (2) shall be absolutely void.

(4) Any indulgence, given to a debtor by a creditor under this section, in respect of his own demand shall in no wise prevent the Chief Marshal from proceeding upon the execution of any other creditor against the same debtor, in case such creditor is not willing to give the like indulgence to the debtor under this section.

(5) The Chief Marshal shall use the utmost diligence and expedition in levying all executions which he is directed to levy.

**No execution without affidavit as to amount due**

**20.(1)** Before giving directions for levying an execution lodged in the Chief Marshal's office, a creditor or his representative, attorney, or assignee, shall make oath before a Justice of the Peace of the sum which to the best of his knowledge, information, and belief, is justly due to him from the debtor upon such execution.

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- (2) Such affidavit being first certified under the hand of the said Justice shall be sent or delivered to the Chief Marshal for his direction in the raising and payment of the money appearing to be due upon such execution.
- (3) The Chief Marshal shall file all such affidavits and keep them safely in his office, for the information of all persons who may have occasion to apply for an inspection or copy of the same.
- (4) Unless such affidavit shall be delivered to the Chief Marshal in manner aforesaid, no money whatsoever shall be raised on such execution.
- (5) Moneys raised on junior executions shall not be deemed applicable to other executions on which affidavits have not been made in accordance with subsection (1), but such moneys shall be applied to satisfy those executions only, according to their priority, in respect of which affidavits have been made in accordance with subsection (1) and delivered to the Chief Marshal in accordance with subsection (2).
- (6) A creditor, or his representative, who is absent from the Island, may make and prove such affidavit as is required by subsection (1) before the persons and in the manner before whom and in which by the *Evidence Act*, Cap. 121 affidavits may be made and proved by persons absent from the Island, and such affidavits shall be admitted and received by the Chief Marshal as good and sufficient, so far as the same relate to the ascertainment of any debts due on executions which he is required to levy under this section.

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[1963-5]

**Creditors may endorse assignments on, and inspect and have copies of, all executions and assignments in Chief Marshal's office**

**21.(1)** A creditor, or his representative, attorney, or assignee, may endorse an assignment on the back of any execution, notwithstanding that it is lodged in the Chief Marshal's office; and for that purpose the Chief Marshal shall at the request of any parties interested, or their representatives, produce the execution,

and permit an assignment to be endorsed thereon, in such manner and form as the party or his attorney thinks fit.

(2) Creditors, debtors, assignors, and assignees, and their representatives and others, shall have free recourse to and inspection of all executions and assignments of executions lodged in the Chief Marshal's office wherein they are interested or concerned, and may demand and receive a copy or copies thereof on paying the fee therefor.

(3) In case such copy or such liberty of inspection is refused in the Chief Marshal's office to any one demanding and tendering the fee for the same, on complaint thereof made before a Judge, the Chief Marshal, being first summoned to appear before the Judge to answer to the complaint, shall, on proof of the complaint made, be adjudged to forfeit and pay for the use of the party aggrieved, for each and every such refusal, any sum not exceeding twenty-four dollars, which the Judge thinks fit to award, the said forfeiture to be raised and levied in the manner usual in the case of other forfeitures.

#### **Proceedings on entering satisfaction on judgments**

**22.**(1) The conusee of any judgment whereon execution has issued and been lodged in the Chief Marshal's office, or the assignee of such execution, or their or either of their representatives, who may be desirous of having satisfaction entered on the judgment, may apply to the Chief Marshal for that purpose, and require him to produce such execution.

(2) The Chief Marshal shall produce immediately and carry without delay the said execution to the office of the clerk of the court from whence it issued, in order that the clerk may, upon the inspection thereof, enter up satisfaction with due certainty upon the judgment whereon such execution may be grounded.

(3) In case the Chief Marshal refuses to comply with the provisions aforesaid, a Judge on application to him made by either of the parties interested, or their representatives, shall issue out his summons to the Chief Marshal, thereby commanding the Chief Marshal to attend him at such time and place as he shall appoint, and to bring with him the said execution which the Judge is hereby

required to demand and receive from the Chief Marshal, and to deliver it over to the clerk of the court, in order that he may enter up satisfaction on the judgment as aforesaid.

(4) The clerk of the court, after he has made due entry on the record of the satisfaction of the judgment, shall re-deliver the execution to the Chief Marshal, having first made an endorsement thereon, and attested it by signing his name at the foot thereof.

(5) In case the Chief Marshal shall act in contempt of the order of the Judge, he shall be fined by the Judge for such contempt in any sum not exceeding two hundred and forty dollars, for the use of the party aggrieved, to be raised by execution from the Judge in manner hereinbefore prescribed.

#### PART IV

#### LEVY ON GOODS

##### **Chattels left with debtor until day of sale**

**23.(1)** Subject to any rules of court relating to interpleader, whenever any 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.

(2) Where a debtor so elects, the Chief Marshal shall make an inventory of the property and deliver a copy to the debtor and subject to subsection (4) shall leave the debtor in possession of the property until the day of sale.

(3) Where an inventory cannot be completed at the time when the levy is made, the Chief Marshal shall retain possession of the property until the inventory can be completed.

(4) A creditor, or his representative, who has good cause to suspect that the debtor intends to make away with the property, shall, upon oath that he has good cause to suspect the same, make an application to a Judge who shall order the Chief Marshal to take the property immediately into his custody.

(5) If on the day of sale or after an order made under subsection (4) the property is not produced to the Chief Marshal the debtor shall, unless he can prove that such non-production is not owing to any fault or neglect on his part, be guilty of a misdemeanour punishable with imprisonment for two years.

(6) For the purposes of this section, the expression “property” means personal property of the debtor attached by the Chief Marshal on an execution levied by a creditor.

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[1954-62]

### **Remedy when goods of a stranger attached**

**24.(1)** Subject to any rules of court relating to interpleader, and to the terms of any order made thereunder pursuant to a claim lodged to goods or chattels taken or intended to be taken in execution, in all cases where the Chief Marshal or any member of his staff by virtue of any execution makes a levy upon the goods or chattels of a stranger, or of any person other than him against whom such execution issued, the owner of the goods or chattels may bring against the Chief Marshal—

- (a) either an action to recover damages; or
- (b) an action to recover the goods or chattels themselves.

(2) An action against the Chief Marshal to recover the goods or chattels under subsection (1) shall be filed and served before and not after the sale of such goods and chattels as have been so wrongly levied on.

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[1954-62]

### **Proceedings in case of attachment of negotiable instruments**

**25.(1)** The Chief Marshal shall pay or deliver to the execution creditor entitled to the same in a due course of priority any money or bank-notes which shall be attached by him, or a sufficient part thereof, and shall hold any negotiable instrument attached by him under any writ of execution as a security for the

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amount of the several executions lodged in his office against the judgment debtor, or of so much thereof as has not been otherwise levied and raised.

(2) The Chief Marshal may sue in his own name for the recovery of the sum or sums due on any such negotiable instrument or secured thereby if and when the time of payment thereof has arrived.

(3) The payment to the Chief Marshal by the party liable on any such negotiable instrument with or without suit, or the recovery from and levying execution against the party so liable shall discharge him to the extent of such payment or such recovery and levy in execution (as the case may be) from his liability on any such negotiable instrument.

(4) The Chief Marshal shall pay over to the execution creditor or creditors entitled to the same in due course of priority the money recovered under subsection (2) or such part thereof as is sufficient to discharge the amount of the several executions lodged in the office of the Chief Marshal.

(5) Where after satisfaction of the amounts referred to in subsection (4), including all fees and expenses connected with the said executions, any surplus remains in the hands of the Chief Marshal, he shall pay it to the party against whom such execution was issued.

(6) The Chief Marshal shall not be bound to sue any party liable upon any such negotiable instrument unless the party who directed such writ of execution to be levied enters into a bond with two sufficient sureties for indemnifying the Chief Marshal from all costs and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof, and the expense of the bond shall be deducted out of any money recovered in such action.

(7) For the purposes of this section the expression “negotiable instrument” includes cheques, bills of exchange, promissory notes, bonds, specialties and other securities for money.

**Time within which and place where goods and chattels attached shall be sold**

**26.(1)** Goods and chattels taken by the Chief Marshal by virtue of any executions coming to him to be levied shall be sold not less than ten days after the levy in the district in which such execution has been made.

(2) Goods and chattels which can be removed without incurring what is in the opinion of the Chief Marshal excessive expense and without damage shall be sold at Police Headquarters in cases where the same have been levied on within the limits of District A and in other cases at the appropriate police station for the several parishes comprised in the other districts.

(3) The removal of such goods and chattels shall be at the cost of the person on whom the execution was made, and defrayed out of the proceeds of the execution.

(4) Board and shingle houses and goods and chattels which cannot be so removed as aforesaid shall be sold on the spot where they were taken in execution.

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[1954-62]

**Notices of sale, when and where published**

**27.(1)** Within four days after a levy made by him and seven days at least before the day of sale the Chief Marshal shall affix a notice to the effect required by subsection (2) at his office and at the Police Headquarters or the appropriate police station, as the case may be, and in the case of board and shingle houses levied on he shall also affix a copy of such notice.

(2) The notice shall be in writing and shall specify the description of the goods and chattels or board and shingle houses levied on, the person from whom they were taken or levied, and the day and hours on and within which the sale will take place.

(3) Any person who wilfully mutilates, defaces or removes any such notice shall be guilty of an offence punishable on summary conviction and shall be liable to a fine of fifty dollars or to imprisonment for one month or to both such fine and imprisonment.

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[1954-62]

### **Unlawful days for sale**

**28.** Goods and chattels levied on by the Chief Marshal may be sold on any day in the year fixed by him not being Christmas Day, Good Friday, Sunday, a public holiday, or a day set apart by proclamation as a day for divine service.

### **Postponement of sale**

**29.** Where the Chief Marshal is unable to obtain a reasonable price for any goods, chattels or board and shingle houses exposed for sale, he may postpone the sale; and in case of any such postponement, he shall renew the notices required by section 27.

### **Penalty on Chief Marshal or under-officers for neglect of provisions as to sales**

**30.(1)** Where the Chief Marshal or an under-officer acts contrary to the provisions of this Act relating to sales of goods in any particular, any creditor or debtor or representative of any creditor or debtor may within five days after the sale of any goods taken in execution lodge a petition with a Judge setting forth the cause of complaint.

(2) In any such case the Judge shall call the Chief Marshal before him, and if the matter of complaint is fully proved, the Judge shall order the Chief Marshal to forfeit and pay for the use of the party aggrieved such sum not exceeding ninety-six dollars as he thinks fit.

(3) The sum ordered to be paid shall be raised and levied by execution in the name of the Judge in the usual form against the Chief Marshal.

*Payment of purchase money***Chattels sold to be paid for before delivery**

**31.** All goods and chattels levied on and sold by the Chief Marshal shall be sold for ready money payable before the delivery of such goods and chattels to the purchaser.

**Re-sale if purchase money not paid in 7 days**

**32.** Where the purchaser of any goods and chattels sold by the Chief Marshal does not pay for them within seven days after the day of sale, the Chief Marshal shall—

- (a) renew the notice required by section 27 and resell such goods and chattels; and
- (b) take proceedings against the original purchaser to recover the costs and expenses of such renewal of notices and re-sale and the sum representing the diminution in price (if any) on such re-sale.

**Powers of Chief Marshal on a re-sale**

**33.** The powers conferred on the Chief Marshal by section 32 may be exercised, if occasion require, in the case of a re-sale under that section as if such re-sale were an original sale and the second or subsequent purchaser were the original purchaser, but the liability of the first purchaser to pay the costs and expenses of the first renewal of notices and of the first re-sale and also the difference between the price offered by him and the price obtained on the first re-sale shall not be in any way affected.

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PART V  
LEVY ON LANDS

**Proceedings of Chief Marshal on levy of lands**

**34.(1)** The Chief Marshal shall immediately take actual possession of any lands and houses upon which a levy has been made and keep possession thereof until they are sold or otherwise legally disposed of.

(2) The Chief Marshal shall cause notices to be affixed in some conspicuous place on the outside of all houses, and also on lands, under levy and for sale, with the words “ For sale, apply at the Registration Office”, painted in large legible characters.

*[1963-22]*

**Delivery of plans and title deeds and penalty on neglect**

**35.(1)** Every debtor whose property is attached for the payment of any debt or sum of money due under any execution, and every other person so requested by the Chief Marshal or his lawful deputy, shall on request deliver to the Chief Marshal or his lawful deputy the title deeds and plans relating to the property, in the possession or power of such debtor or other person.

(2) If required, such debtor or other person shall swear before the Chief Marshal or his lawful deputy an oath with respect to those title deeds and plans.

(3) When such debtor or other person neglects or refuses to deliver such title deeds and plans in his possession, or to make an oath as required by subsection (2), the Chief Marshal or his lawful deputy may postpone the sale of the property and make a report to the court from which the execution issued.

- (4) That court shall—
- (a) examine such debtor or other person on oath touching the premises, and on his refusal to answer any questions put to him, may commit him for a contempt, until he answers the same; and
  - (b) give such order respecting the title deeds and plans and the property as the justice of the case requires.
- (5) No person shall by the delivery to the Chief Marshal or his deputy of any title deeds and plans be deprived of the benefit of any lien to which he is entitled.

### **Debtor to state incumbrances against property and penalty on neglect**

**36.** Every debtor shall, at the time of delivering up or accounting for his title deeds, also state on oath before the Chief Marshal or his lawful deputy what are the incumbrances affecting such property so levied on, so far as the same may be within the knowledge of the debtor, and on refusal so to do such debtor shall be liable to be punished as for a contempt of the court from which the execution issued under which the levy was made.

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[1963-5]

### **Appraisalment of lands**

**37.(1)** When any lands or houses are attached under any execution from any court, the Chief Marshal shall nominate and summon by summons under his hand, in case the land attached be twenty acres or more, seven, or if it be under twenty acres, five persons of the parish where the attached land is situate to appraise the land attached.

(2) No person shall be qualified to be summoned unless he is a manager or householder qualified by law to appraise property directed by the High Court to be sold, or is a freeholder.

(3) The Chief Marshal or his deputy shall attend the persons so summoned to the land attached, and then and there administer to them severally the oath set out in the First Schedule.

(4) The said seven persons or any five of them or the said five persons or any three of them (as the case may be) shall after being so sworn make the appraisal and set down the same in writing under their hands and seals according to the best of their judgment and understanding.

(5) The Chief Marshal shall after such appraisal proceed to sell the land or houses as hereinafter provided.

#### **Penalty on appraisers for neglect of duty**

**38.(1)** Any person who, being duly summoned for the purpose of appraising any lands or houses, hereditaments or premises, neglects or refuses to obey such summons, or to take the oath or perform the service required of him by law, shall be liable to a penalty of twenty-four dollars, to be recovered in a summary manner before the magistrate of the parish in which he resides on complaint by the Chief Marshal or his lawful deputy.

(2) The Chief Marshal or his lawful deputy shall make such complaint, unless, in the case of absence such person shall make oath before the Chief Marshal or his lawful deputy of the cause which prevented his attendance on such appraisal and such cause shall appear to be a reasonable one.

#### **Except with consent only so much of land as will satisfy execution to be sold**

**39.(1)** Where any levy is made on land, the Chief Marshal or his lawful deputy shall sell as nearly as possible only so much of the land as will satisfy the execution, paying over any surplus to the debtor.

(2) Where a debtor wishes the whole of any property to be sold and the creditor consents, the Chief Marshal or his deputy shall sell the whole of that property.

(3) In all cases where any difficulty arises, or where the proceedings in the usual course would cause injustice, the Chief Marshal or his lawful deputy shall report the special circumstances to the court from which the execution issued, and that court shall direct the mode of proceeding in every such case in the manner most consonant with justice and equity.

(4) That court may also determine whether the whole or only a part of any property shall be sold, except in the case of houses, in which case the whole house with the outbuildings, land, yard and appurtenances thereto belonging, or the debtor's interest therein, shall be sold.

**Proceedings, subsequent to appraisalment, to complete sale of lands**

**40.(1)** The Chief Marshal or his lawful deputy shall cause all lands and houses that are attached by him under any execution issuing from any court to be sold after appraisalment under section 37 at public auction during any period of the year and after giving fourteen days' previous notice of such sale.

(2) The notice shall be set up in some conspicuous part of his office, and shall state the situation of the property, its appraised value, the time and place when and where it will be set up for sale, and the deposit to be paid.

(3) The notice shall be advertised in one of the public newspapers of the Island by the Chief Marshal or his lawful deputy.

(4) At the time and place appointed for the sale of the property the Chief Marshal or his lawful deputy shall set it up for sale at public auction upon the following conditions, that is to say—

- (a) the highest bidder for not less than the appraised value shall be declared the purchaser, and shall pay a deposit of such percentage, not exceeding twenty-five per cent on the amount of the purchase money, as the Chief Marshal shall before the sale determine, to the Chief Marshal or his lawful deputy;
- (b) the purchaser shall within twenty days pay half of the purchase money, and the other half shall be paid in twelve calendar months from the date

of the purchase with lawful interest, and the deposit shall be allowed as part of the first payment; and

- (c) the purchaser shall, at the time of making the first payment, deliver to the Chief Marshal or his lawful deputy a judgment confessed by him for securing the balance of the purchase money and interest at the time when the same shall become payable, together with the fees for taking out the execution thereon and the fees to the Chief Marshal specified in the Second Schedule.

(5) A judgment so confessed shall be in accordance with Form A as set out in the Third Schedule to be furnished by the Chief Marshal and shall have priority against the property purchased to all judgments or other securities against the purchase.

(6) After the confession and delivery of the judgment to him the Chief Marshal or his lawful deputy shall execute a conveyance of the property in accordance with Form B as set out in the Third Schedule and such 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 be subject to be redeemed by the debtor, or his heirs.

#### **Where title doubtful or incomplete Chief Marshal to advertise for liens**

**41.(1)** Where the title of any debtor to any land or house taken under an execution issued against him is not free from doubt, or all necessary parties do not attend to concur therein, the Chief Marshal shall for three months insert in the *Official Gazette* and in two newspapers of the Island an advertisement calling upon 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 or house, to send to him a statement in writing of their claims on or before the date specified in the advertisement.

(2) Nothing herein contained shall apply to cases where the execution debtor has only an estate for his life or where he is tenant *pur autre vie*.

**Any lien not claimed not to affect the property**

**42.** Any claims made to the Chief Marshal after the date fixed by an advertisement published in accordance with section 41 (1) shall not affect in any manner whatsoever the land or house to which that advertisement relates.

**Chief Marshal may admit or may require claimant to establish validity of claim**

**43.** The Chief Marshal may admit the validity of any claim made under section 41 (1) or require the claimant to take proceedings in accordance with section 46 to establish the claim on or before a date to be fixed by the Chief Marshal when making such requisition.

**Where validity not established, claim not to affect the property**

**44.** Where proceedings are not taken on or before the date fixed under section 41 or the validity of the claim is not established by such proceedings, such claim shall be incapable in any manner whatsoever of affecting the land or house with reference to which it was made.

**Where validity of claim established Chief Marshal to withdraw, first selling any interest in property debtor may have**

**45.** Where the validity of any claim is admitted by the Chief Marshal under section 43 or is established by proceedings under section 46, the Chief Marshal, in case the debtor notwithstanding the validity of such claim has an interest in the land or house capable of being taken in execution and sold, shall sell such interest without delay, but otherwise shall forthwith withdraw from the possession thereof.

**Proceedings to establish validity of claim**

**46.(1)** The proceedings to establish the validity of any such claim shall be by application in a summary way to a Judge in chambers.

- (2) The Judge may summon before him all such persons as may be necessary for determining the validity of such claim and may determine its validity in a summary manner, or if it appears to him desirable and right so to do may direct any questions of fact which may arise to be tried by a jury.
- (3) In any such case such proceedings shall be taken as are by the rules of court relating to interpleader, provided for every case where any court desires to have any question of fact decided by a jury, and the Judge shall have such powers as are by that Act conferred on the court desiring any such question to be so tried.
- (4) The costs of and attending all such proceedings shall be in the discretion of the court.

#### **Effect of Chief Marshal's signature to conveyance**

47. The signature of the Chief Marshal to the conveyance shall be conclusive evidence that the provisions of this Act have been complied with.

#### **On payment of deposit purchaser to have possession**

48. Purchasers of any property under this Act, on payment of their deposit money, shall be put into the possession of the property and shall be entitled, by themselves or by their legal advisers, to inspect and make extracts from the title deeds relating thereto and in the possession of the Chief Marshal or his lawful deputy gratis.

#### **Proceedings on purchaser failing to pay deposit**

49. Where any purchaser does not pay his deposit, the Chief Marshal shall cancel his bid and shall proceed in the manner prescribed in section 53 with reference to property not sold on the first day of sale, and where such property is sold for less than the sum bid by the person omitting to pay such deposit, the debtor demnified thereby shall have an action against such person to recover the difference.

**Proceedings on purchaser failing to make first payment of purchase money**

**50.(1)** Any purchaser, who omits or refuses within the time prescribed by section 40 to make the first payment of his purchase money and to give the judgment required by that section, shall forfeit his deposit, unless—

- (a) he states in writing his objections to the title of the purchased premises, or
- (b) the Chief Marshal or his lawful deputy grants a further time for the purpose of investigating the debtor's title to the property purchased, or
- (c) there is some other reasonable and just cause.

(2) The Chief Marshal shall apply any deposit forfeited under subsection (1) towards the discharge of the execution against the debtor, and shall re-attach the premises and re-sell the same.

**Proceedings on an objection to title**

**51.** Any objection made by a purchaser to the title of any premises purchased shall be reduced to writing by him and delivered to the Chief Marshal or his lawful deputy, who shall give notice thereof to the parties interested, and report the same to a Judge who shall decide on the validity thereof, and award costs or not as he deems just.

**Proceedings on failure to complete purchase**

**52.(1)** Where a purchaser of any property under this Act does not pay the amount of his purchase money at the time when it becomes due, the Chief Marshal or his lawful deputy shall attach the property sold and re-sell it in the manner hereinbefore prescribed, and also attach any other estate or effects of the purchaser for satisfying any deficiency.

(2) The failure in payment of any one instalment by any purchaser shall be construed as a forfeiture of the defeasance for the payment of the remaining

instalments, and the whole balance of the purchase money shall in such case be proceeded for.

**Proceedings if property not sold on first day, or remains unsold for 3 months**

**53.(1)** Where any property is set up for sale under this Act and not sold on the first day of sale, the sale shall be kept open, and the Chief Marshal may sell the property at any time for the appraised value without setting it up at public auction.

(2) Where any sale has been kept open for three months, the Chief Marshal or his lawful deputy may receive in writing an offer for a less sum than the appraised value, and give notice thereof to those parties interested who are within the Island or represented by an attorney within the Island, and whose, or whose attorney's, names and addresses are known to him, and shall also insert three times in the *Official Gazette* and two newspapers a notice of such offer.

(3) In case no objection is made by any party interested within ten days after receiving such notice or five weeks after the third notice in the *Official Gazette* the Chief Marshal or his lawful deputy may accept such offer and declare the person making the same the purchaser.

(4) In case any party interested shall object in writing to the acceptance of such offer, the Chief Marshal or his lawful deputy shall report the same to the court which shall determine whether such offer shall be accepted.

**Re-appraisal of lands**

**54.(1)** Where any lands or houses remain unsold in the Chief Marshal's office for three months or upwards from the day on which such lands or houses are set up for sale, the Chief Marshal shall, at the request of any judgment creditor against the same, cause any such lands or houses to be re-appraised, and advertise the same for sale afresh at public auction in the *Official Gazette* and a public newspaper of this Island, and sell the same for its re-appraised value if obtainable.

- (2) Where the re-appraised value cannot be obtained, then if any offer less than the re-appraised value be made, the Chief Marshal shall deal with such offer in the manner provided by law where less than the appraised value is bid for property that has remained unsold for three months in his office.
- (3) No subsequent re-appraisal under this section shall take place until after the expiration of six months from the date of any former appraisal.

### **Summoning of appraisers on re-appraisal**

**55.** After any lands or houses have been once appraised, the Chief Marshal shall proceed to a subsequent appraisal by summoning persons by law authorised to make appraisements as if no previous appraisal had been made, and the persons summoned shall be liable to the like fines and forfeitures for not attending such summons as if it were a summons for a first appraisal.

### **Chief Marshal's conveyance and judgment**

**56.(1)** The Chief Marshal, in lieu of executing a conveyance in the form given in the Third Schedule for any land or house levied on and sold for the payment of debts, shall on request execute such a conveyance for the same as the purchaser shall require, so that the purchase money be applied in discharge of the debts affecting the property sold and the debtor and debtors therefrom discharged.

(2) Such conveyance shall be either to the purchaser of the said land or house, or to any other person whom the purchaser directs, for securing any money which the purchaser may have borrowed from such person to assist in purchasing the same, or as security by way of mortgage to any creditor who may be willing to discharge his debtor and take the security of the purchaser thereof, or otherwise in such manner and form as the purchaser requires, so that the debtor for the satisfaction of whose debt the same is being sold be discharged from such debt to the amount of the purchase money of the property sold.

(3) Where the purchaser requires any other than the usual conveyance, he shall bear the expense of providing the same.

(4) The judgment to be confessed by the purchaser of such property as aforesaid for securing the purchase money thereof shall be confessed to the Chief Marshal for the amount remaining due on account of such purchase, and shall be assigned over at the request of the purchaser in accordance with the conveyance, and such judgment shall have priority over the purchased premises to any debts of the purchaser thereof.

#### **Sale of undivided interest and severance of joint tenancy**

**57.** Where any debtor is entitled to an undivided estate or interest in any land or house, such interest shall be appraised and sold in the manner hereinbefore prescribed, and in case of a joint tenancy the conveyance by the Chief Marshal or his lawful deputy shall be a severance of such joint tenancy, and such purchaser shall hold the debtor's estate or interest in any such house or land as a tenant in common.

#### **No action for specific performance against purchaser**

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

#### **Creditor may take an assignment of Chief Marshal's judgment in payment**

**59.** Any creditor, to the payment of whose debt the moneys due under any judgment taken by the Chief Marshal under this Act 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 or his lawful deputy shall at the instance and request of such creditor make such assignment.

#### **Land unsold for 12 months to be sold without reserve at public auction**

**60.(1)** Where any land or house set up for sale remains unsold in his office for one year from the day of its being first set up for sale, or where any land or

house attached under an execution is, in the opinion of the Chief Marshal, of the value of not more than two thousand dollars, the Chief Marshal shall set it up for sale at public auction to the highest bidder without reserve.

(2) The Chief Marshal shall for two months prior to the sale of any such land or house by advertisement in the *Official Gazette* and in a local newspaper once every fourteen days during the said two months (in all of which advertisements shall be stated the name of the execution debtor as the then owner) call upon all persons having any estates, rights, interests, liens, or incumbrances affecting any such land or house to bring in their claims against such land or house, and stating the date on which such land or house will be sold and that the sale will be by public competition without reserve.

(3) The execution creditor shall pay in advance to the Chief Marshal all expenses in connection with such advertisements and the same shall be recoverable as part of his expenses out of the matter or suit concerned.

(4) Where any person having or claiming any estate, right, interest, lien or incumbrance in, on, or affecting such land or house does not bring in an account of his claim with the witnesses, documents and vouchers therefor before the date fixed by an advertisement under subsection (2), the land or house directed to be sold shall be effectually freed and discharged from the estate, right, interest, lien or incumbrance of such person; but without prejudice to his claim on or against any other property or person.

(5) Where the requirements of subsection (2) are complied with, section 41 shall not apply to a sale under this section; but sections 43 to 46 shall apply to any claim brought in pursuance of an advertisement published under the said subsection (2).

[1954-62]

(6) All conveyances executed by the Chief Marshal of any lands or houses sold under this section shall effectually pass such interest in the lands or houses thereby expressed to be conveyed as in the conveyance is specified, and shall effectually discharge such lands or houses from all estates, rights, interest, liens, and incumbrances whatsoever of all persons whomsoever, including the Crown,

save and except such as are specified in such conveyance and subject and liable to which the Chief Marshal shall have conveyed the said lands or houses.

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[1969-29]

### **List of properties unsold to be kept open to inspection, in Chief Marshal's office**

**61.** The Chief Marshal shall keep constantly in his office a list of all properties which have been levied on and offered for sale with the description and appraised value thereof, to which all persons shall have free access during office hours: and any person desirous of inspecting any property under levy shall be at liberty to do so, on making an application for the purpose to the Chief Marshal, who shall allow such inspection.

### **Executions out of High Court**

**62.** All executions issuing out of the High Court whereby any moneys are to be raised shall be executed by the Chief Marshal or his lawful deputy, and every such execution shall contain only so much of the decree on which it has issued as is a sufficient direction to the Chief Marshal or his lawful deputy to raise the money therein directed to be paid, and none of the proceedings in the cause in which such decree shall have been made shall be recited or set forth in any such execution.

### **After levy on land not part of a plantation, no proceedings for foreclosure shall be instituted**

**63.** After a levy made or directed to be made under and by virtue of any judgment or execution upon any house or land not being part or parcel of a plantation or estate, any person who takes any proceedings in the High Court for the foreclosure of any mortgage over and affecting any such house or land shall not be entitled to recover his costs unless it appears to the satisfaction of the High Court that the proceedings were necessary to enable the complainant to obtain some further or other relief than he could obtain by other proceedings.

## PART VI

## LETTING AND RENTS OF PROPERTY

**Chief Marshal may let unsold land**

**64.(1)** Where any property remains unsold in the Chief Marshal's office for six months or upwards after being first offered for sale, the Chief Marshal may with the consent in writing of the major part in value of the judgment creditors, the aggregate amount of whose debts is equal to or greater than the appraised value of the property or with the consent in writing of the prior creditor whose debt is equal to or greater than the appraised value of the property, rent or lease the property for any time not exceeding five years at any one time.

(2) The rent of the property shall be applied in the same manner by the Chief Marshal as the purchase money of the property would have been applied if it had been sold.

**Lands unsold by reason of defective title may be let to prior creditor**

**65.** Where any title to any property is doubtful, and the person offering to purchase it is not compelled to accept the title, the Chief Marshal shall deliver possession of the property to a prior creditor who is willing to take the same at an annual rental or valuation to be made in like manner as the appraisal of the property for sale, for such period of time as will discharge the debt of any such prior creditor.

**Application of rents of property levied on**

**66.(1)** Where any property levied on by the Chief Marshal is leased or rented at the date of the levy the Chief Marshal shall receive and apply the rents towards the payment of the debts affecting the property.

(2) No lease made or tenancy created after the date of any judgment affecting the premises leased shall be valid to bar the Chief Marshal from proceeding for the sale of such property in as full and ample a manner as if there had been no

such lease or tenancy; and the levy by the Chief Marshal shall determine any such lease or tenancy without any further notice or proceeding.

**Chief Marshal to have remedies of landlord**

- 67.** The Chief Marshal shall—
- (a) have all such remedies by distress, action, or otherwise, for enforcing the payment of rent, and ejecting any tenant or tenants, as the owner himself would have had for the recovery of the 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

PROVISIONS AS TO DOWER

**Widow may elect to take for life either the interest on one third of the purchase money, or one third of the land itself**

**68.** Where any real property sold by the Chief Marshal, for which no conveyance has yet been executed, is subject to dower, the Chief Marshal shall give to the widow dowable notice of such sale in the manner directed in Form A of the Fourth Schedule and she shall within three weeks after such notice elect in writing either—

- (a) to accept in lieu of dower the interest during her life of one-third of the purchase money to be secured by the Chief Marshal's conveyance and a judgment in the usual way in which unpaid purchase money is secured on sales by the Chief Marshal, or
- (b) to have one-third of such property where practicable laid off and assigned to her by the Chief Marshal for her life in such manner as he shall see fit.

**When the Chief Marshal may secure the widow the interest on one-third of the purchase money**

**69.**(1) Where—

- (a) the property sold under subsection (1) consists principally of a house, or
- (b) from any other special circumstances the Chief Marshal considers it impracticable to have one-third of the property laid off and assigned under that subsection to the widow for her life, or
- (c) the widow refuses, declines or omits to make an election under that subsection,

the Chief Marshal shall convey the property to the purchaser subject to one-third of the purchase money thereof secured as aforesaid.

(2) The interest thereon shall be paid to the widow for life in lieu of dower and the principal thereof at the death of the widow to the Chief Marshal to be applied by him in accordance with law.

(3) Where the Chief Marshal considers it impracticable under paragraph (b) of subsection (1) to have one-third of the property laid off and assigned as aforesaid, he shall in place of the notice mentioned in Form A of the Fourth Schedule, give a notice to the widow in the manner directed in Form B of that Schedule.

**The mode of serving notice**

**70.**(1) Where the place of abode of the widow is situate in the Island and is known to the Chief Marshal, he may serve any notice required by sections 68 and 69 either personally or by post.

(2) Where the place of abode of the widow is situate out of the Island or is unknown to the Chief Marshal, he shall publish the notice required by sections 68 or 69, as the case may be, three times in the *Official Gazette* and one

newspaper of the Island, and such publication shall be deemed sufficient service of such notice and be considered as served on the day on which the first of such notices appears.

**On levy Chief Marshal may take possession and eject the widow**

**71.** The Chief Marshal may on levying on any property subject to dower take possession of such property ejecting the widow therefrom if necessary, and if practicable lay off and assign to her one-third of the said property for her life and put her in possession thereof, and thereupon all her right to dower in the remainder of the said property shall be released and for ever extinguished, and in case of its being impracticable to lay off such third, the Chief Marshal shall retain possession of such property and pay to such widow one-third of the rents and profits thereof until sold.

**Conveyance to release land from claim in respect to dower**

**72.** The conveyance of the Chief Marshal for all such property as aforesaid shall release and for ever discharge the same from all right, title and interest to dower therein of such widow.

**Questions as to assignment of dower to be decided in chambers**

**73.** Where any question arises as to the assignment of dower by the Chief Marshal under this section, he shall report the matter to a Judge in chambers, and his decision thereon shall be final.

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**FIRST SCHEDULE**
**OATH TO BE TAKEN BY DEPUTY MARSHAL AND SPECIAL DEPUTY 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, 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.

**OATH TO BE TAKEN BY APPRAISERS**

You do swear that you will give a true, just, and conscionable appraisement of the lands, houses, et cetera, 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. 4 and 5 (2); s. 37 (3)]*

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**SECOND SCHEDULE**

(ss.9 and 40)

<i>Fees</i>	\$ c
For serving every writ of summons, originating summons, petition or document unless otherwise provided for.....	2.50
For serving subpoena.....	1.50
Serving writ for contempt, each person.....	6.00
Serving every injunction.....	2.00
Serving attachment, each person.....	6.00
Making return of service.....	1.50
Lodging every execution.....	2.00
Levying executions.....	4.00
For making a return of the levy.....	4.80
Making return to each execution.....	1.50
For summoning appraisers.....	4.00
Attending appraisers and drawing their returns.....	6.00
For levy fee and commission on collection or sale:	
(i) on the first \$2,500.....	2½%
(ii) above \$2,500.....	2%
Car hire (as paid).....	
Warrants of appraisement, special writs, etc. . . . .	1.50
Executing a special writ.....	7.20
For levying <i>Ne Exeat</i> of attachment . . . . .	15.00
For giving possession of lands or houses.....	10.00

**THE LAWS OF BARBADOS**

Printed by the Government Printer, Bay Street, St. Michael  
by the authority of the Government of Barbados

<i>Fees</i>	\$ c
Drawing advertisement.....	1.50
Advertisement (as paid)	
Setting up notices for sale.....	4.00
Setting up notices of sale (chattels).....	3.00
Attending each outcry.....	1.50
Copy of all documents per folio of 90 words.....	.30
Producing every execution at registration office.....	1.00
Searching for any writ, first year.....	.50
Each succeeding year.....	.20
Every surety's bond for chattels sold at outcry.....	6.00
Executing every order of arrest.....	4.00
Bail bond on every order of arrest.....	4.00

[1970/239]

*[NOTE: The Chief Marshal's Fees contained in this Schedule are to apply in respect of all proceedings in the Supreme Court except proceedings under Order 37 of the Rules of the Supreme Court and non-contentious Probates.]*

### THIRD SCHEDULE

(ss. 40 (5) and (6))





**FOURTH SCHEDULE**

(s. 68)

**FORM A**

*Notice to widow of intention to sell property subject to dower*

**NOTICE**

To.....the widow of.....

Take notice that I have attached from.....under certain executions in my office and sold all that certain.....(*describe property*).....and you are hereby required within three weeks after the receipt [*or* publication] of this notice to notify me in writing whether you will accept in lieu of dower the interest during your life of one-third of the purchase money of such [land] or whether you desire me to have one-third of such [land] laid off and assigned to you for your life. Further take notice that unless you notify me as aforesaid within the time aforesaid it will be considered that you desire the interest on one-third of the purchase money secured to you for life and not to have one-third of the [land] laid off and assigned to you for life.

Dated this                      day of                      etc.

## FORM B

(s. 69(3))

*Notice to widow of intention to secure her interest in property subject to dower  
on one-third of the purchase money*

## NOTICE

To.....the widow of.....

Take notice that I have attached from.....under certain executions in my office and sold all that certain (*describe property*), and in my opinion it is impracticable to have one-third of the property laid off and assigned to you for life in satisfaction of your dower therein for the following reason (*state reason*). It is therefore my intention to secure to you for life the interest of one-third of the purchase money of the said property. You have the right to object in writing to this course within three weeks after the receipt [*or* publication] of this notice and such objection will be reported to a Judge for his decision thereon.

Dated, etc.