

CHAPTER 227

JUDICIAL SALE OF LAND

1906-2

This Act came into operation on 20th January, 1906.

Amended by:

1956-56

1967/168

1992-17

1963-5

1980-43

2000-24

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

1995

2002

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 227

**JUDICIAL SALE OF LAND
1906-2**

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SCHEDULE

**BARBADOS****JUDICIAL SALE OF LAND
1906-2**

An Act to make certain provisions in relation to the sale of land ordered to be sold by the High Court and for other purposes connected therewith.

[Commencement: 20th January, 1906]

Short title

1. This Act may be cited as the *Judicial Sale of Land Act*.*

**[This chapter contains unrepealed sections of the Chancery Act, 1906-2.]*

PART I**PRELIMINARY****Interpretation**

2. For the purposes of this Act, the expression “Registrar” means the Registrar of the Supreme Court.

PART II
APPRAISEMENT

Qualification of appraisers

3. Real estate agents registered under the *Profession, Trade and Business Registration Act*, Cap. 373 and all qualified valuers (including valuers attached to the Valuation Office) may act as appraisers of any property ordered to be sold by the High Court.

[1980-43]

Disqualifications

4.(1) Any person having an interest in the property to be sold may object to the name of any appraiser, when so drawn, on the ground that such appraiser is not disinterested or unbiased in the matter, and on the objection being raised, the Registrar shall, unless it be agreed between all the parties present to dispense with the attendance of such appraiser, decide on the validity of such objection; and from his decision an appeal may be made to a Judge in Chambers.

(2) No person who has a pecuniary interest in the property ordered to be sold (even if such person be in other respects disinterested and unbiased) or who is the manager thereof shall be qualified to appraise such property.

Annual list of appraisers

5. The Registrar shall, within the month of January in each year, draw up a list of the names of persons qualified to act as appraisers under sections 3 and 4 and publish the same in the *Official Gazette* as a public document.

Drawing of appraisers

6.(1) The names of the appraisers of any property ordered by the High Court to be sold shall be drawn by the Registrar from the names of those persons whose names are on the list of appraisers, settled under section 5, in the presence of the

attorneys-at-law for the parties to the action or proceeding under which the property is ordered to be sold.

(2) Where any attorney-at-law, on receiving 3 days' previous notice of the time when the appraisers are to be drawn, fails to attend, then the drawing may proceed in his absence.

[1980-43]

[1980-43]

Exemption owing to distance

7. Where any appraiser whose name is drawn resides outside a radius of 7 miles from the place where the appraisal is to be held, the attendance of such appraiser may, with the consent of the attorneys-at-law for the parties present as aforesaid, be dispensed with and the name of another appraiser drawn instead thereof.

[1980-43]

PART III

SALE

Registrar may receive offer for less than last advertised price

8.(1) The Registrar shall be at liberty to receive any offer for the purchase of any land ordered to be sold for any sum less than the then advertised upset price thereof, provided such land has remained unsold for 3 months at such upset price.

(2) On receiving any such offer, the Registrar shall forthwith advertise the same in the *Official Gazette* and give notice to each of the persons whose debt or debts come within the purchase money, either as parties to the action in which the land is ordered to be sold or as incumbrancers against such land, who have claimed before the Registrar; and in the event of there being any surplus of the

last appraised value going to the owner then and in such case the Registrar shall also give notice to such owner.

(3) Where at the expiration of 14 days from the giving of such notice no higher or greater offer has been made to the Registrar for such land, or no objection in writing has been made to the Registrar by any or either of the persons whose debt or debts come within the purchase money, or such owner as aforesaid, to the offer so notified being accepted, the Registrar shall declare the person making such offer to be the purchaser of the land at the sum offered by him, and on the same conditions as if such person had purchased the land at its appraised value; and the Registrar shall receive the deposit money thereof in the usual course and put such person into possession of the land as the purchaser thereof.

(4) The Registrar shall thereupon report to the High Court, at its next sitting, the offer so made to him and what he has done in relation thereto.

Sale at four-fifths of last advertised price on application of lien holder

9. Where any land ordered by the High Court to be sold has been set up for sale by the Registrar at an upset price for 6 months and remains unsold, the Registrar shall, on the application in writing of the holder of any lien against the said land coming within the last upset price or the holder of any registered certificate made by any receiver under the *Agricultural Aids Act*, Cap. 252, or the *Barbados National Bank (Transfer and Vesting of Assets) Act*, Cap. 322A, re-advertise and set up for sale such land for the next 6 months (if no sale is in the meantime effected) at four-fifths of the last upset price and so on from time to time until such land is sold.

[1980-43; 2000-24]

Land unsold for one year may be set up at auction

10.(1) When any land ordered to be sold by the High Court remains unsold for one year or more from the date of the order for sale, then the holder of any lien against the land coming within the last upset price thereof or any person entitled to any estate, right or interest in such land or the holder of any registered

certificate made by any receiver under the *Agricultural Aids Act*, Cap. 252 or the *Barbados National Bank (Transfer and Vesting of Assets) Act*, Cap. 322A whose debt secured thereunder is then owing, or any receiver of the land to whom any money is owing in respect of the same, may apply to the Registrar in writing requiring him to set up the land for sale at public auction to the highest bidder without reserve at the expiration of 3 months from the date of the first publication of the notice of the intended sale.

[2000-24]

(2) In order to ascertain what liens come within the last appraised value of such land, any sum appearing in the accounts of any receiver of the land to be owing to him or to holders of certificates made by him at the end of the then preceding year shall be taken into account as a lien against the said land.

[1980-43]

Mode of proceeding to a sale

11.(1) On receiving any such application, the Registrar shall forthwith advertise the intended sale of the land and the date on which the sale is to take place in the *Official Gazette* and one other newspaper published in Barbados and shall also give notice of such intended sale to

(a) each of the persons whose debt or debts come within the last upset price of the said land (regard being had to any amount due for costs of suit or to the receiver or under the *Agricultural Aids Act*, Cap. 252 or the *Barbados National Bank (Transfer and Vesting of Assets) Act*, Cap. 322A) and who have claimed the same before him including the holders of certificates of loans; and

[1980-43; 2000-24]

(b) any receiver to whom any money may be so owing; or

(c) if such person or holder of certificate or receiver is not resident in Barbados, to the attorney of such person, holder of certificate or

receiver, and, in default of attorney, to the attorney-at-law who may have filed any claim for the same; and

[1980-43]

(d) in the event of there being any surplus under the last upset price going to the owner, then to such owner.

(2) Such notice may be sent through the General Post Office as a prepaid letter and shall be deemed to have been served at the time when such notice would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the notice was properly addressed and put into the Post Office in due time.

(3) Notwithstanding the foregoing, the Registrar shall be at liberty to sell such land at any time during the 2 months for the last upset price on the terms on which it had been last set up for sale.

[1980-43]

Deposit of 10 percent and balance in 21 days

12.(1) The purchaser of any land sold by the Registrar shall forthwith pay a deposit of 10 percent of the purchase money and shall, within 21 days from the date of the sale, either pay to the Registrar the balance of the purchase money in cash or settle the same to the satisfaction of the Registrar and the person or persons who is entitled thereto.

(2) The Registrar shall not give possession of the land so sold to the purchaser until the whole of the purchase money has been so paid in cash or otherwise settled and until the purchaser has paid to the receiver (if any) of such land any amount which may be due for carrying on the cultivation and management of such land from the date of sale to the date of possession.

(3) The purchaser shall be entitled to all the rents, issues, proceeds and profits of such land accruing between the date of sale and date of possession.

Penalty on failure to complete purchase

13. Where the purchaser of any such land does not pay the whole of the purchase money within 21 days of such sale, or otherwise settle the same to the satisfaction of the Registrar and the persons entitled to the same, the Registrar shall again set up such land for sale in the manner hereinbefore directed and advertise such intended sale for not less than 3 weeks from the expiration of the 21 days, and the deposit of 10 percent so paid shall be forthwith forfeited and applied in payment in the usual manner of the debts and liens against the land, and the purchaser who has failed to complete his purchase shall also be liable for any further loss which may arise through his neglect to complete the purchase.

Opening buildings not allowed except in case of fraud or improper conduct

14.(1) The High Court shall not have power to open the buildings on the sale of any land made by the Registrar under or by virtue of any order of the High Court, and the highest *bona fide* bidder at such sale, provided he bids a sum equal to or higher than the appraised value or reserved price, if any, shall be declared and allowed the purchaser, unless the High Court, on the ground of fraud or improper conduct in the management of the sale, upon the application of any person interested in any such land, or any creditor against the same, either opens the buildings, holding such bidder bound by his bidding or discharges him from being the purchaser and orders such land to be re-sold upon such terms as to costs or otherwise as the High Court thinks fit.

(2) An application under subsection (1) shall be made to the High Court before the Registrar's report of the sale becomes binding.

[1980-43]

Form of conveyance

15. Every conveyance by the Registrar shall be in the form set out in the Schedule, or as near thereto as circumstances will admit.

Effect of conveyance

16.(1) Subject to subsection (2), all conveyances executed by the Registrar in pursuance of an order, directing the sale of any land or any interest therein shall effectually pass such interest in the land, thereby expressed to be conveyed as specified in the conveyance and shall effectually discharge such land from all estates, rights, interests, liens and incumbrances of all persons, including the Crown, except as specified in such conveyance and subject and liable to which the Registrar conveys the land.

(2) Except in the case of a conveyance consequent upon an absolutely cash purchase, no conveyance shall be made under this section unless prior to that conveyance

(a) the Registrar makes an inquiry and issues an advertisement for claims made in accordance with this Act so as to ascertain what estates, rights, interests, liens and incumbrances exist in, or on or affect the land to be conveyed; and

(b) the reports of such estates, rights, interests, liens and incumbrances and of the application of the purchase money of the land sold are duly made by the Registrar and confirmed by the High Court.

(3) No conveyance made by the Registrar may be set aside on the ground of the High Court not having jurisdiction over the subject thereof.

[1980-43]

Parties to conveyance

17. In the conveyance of land purchased from the Registrar under an order of the High Court, it shall not be necessary to join as parties with the Registrar persons in whom any estate, right or interest, legal, equitable or otherwise, or any mortgage term of years, is vested, but such conveyance, when executed by the Registrar, shall be effectual to vest in the purchaser the estate or interest purported to be conveyed as if the persons entitled thereto or interested therein or having

any claim thereon had been made parties to and had executed the conveyance and had thereby granted, transferred, surrendered or released the same.

Effect of Registrar's signature to conveyance

18. The signature of the Registrar to the conveyance shall be conclusive evidence that all the provisions of this Act and all proceedings necessary for the validity and full effect under this Act of the conveyance have been complied with and duly taken.

Registrar to demand and pass to purchaser

19.(1) Where any estate or interest is by any order of the High Court ordered to be sold by the Registrar he shall demand the title deeds, plots and plans of such estate or interest from the mortgagor or mortgagee, or other person in possession of the same.

(2) The Registrar is hereby authorised to examine any such person on oath or affirmation, when affirmation is allowed, touching the possession of such deeds, plots or plans.

(3) On refusal of any such person to deliver up any such deeds, plots or plans to the Registrar or to answer such questions as the Registrar shall put to him the Registrar shall report the same to the High Court, and the High Court is hereby authorised to commit such person for contempt, until he delivers up such deeds, plots or plans or answers such question.

(4) The Registrar shall deliver such title deeds, plots and plans to the attorney-at-law for the plaintiffs in the action, and when any estate or interest is so put up for sale, a time for the delivery of such title deeds, plots and plans to the purchaser, or his attorney-at-law shall be specified in the conditions of sale.

[1980-43]

PART IV
MISCELLANEOUS

Claims if unsecured rank as open account debts

20.(1) The claims and demands of persons against the owners or proprietors of land in Barbados for money lent and advanced to such owners or proprietors for any purpose or on any pretext or on any other account, so long as they remain unsecured and on open account shall not be liens on such lands and shall be placed and ranked, along with all other debts on open account, junior to all debts or claims secured against such lands by mortgage, judgment, order of the High Court, charge by will, or other recognised mode of charging land.

(2) Subject to subsection (3), the claims and demands of persons referred to in subsection (1) against the owners or proprietors of land for which securities affecting such land have been obtained shall be placed and ranked against such land along with other securities and charges affecting the same land according to the date on which the respective securities were obtained or created, and priority shall be determined thereby.

(3) Priority determined in accordance with subsection (2) is only effective if the deed conveying, mortgaging or charging the land is recorded at the Registration Office.

[1980-43]

Answers made out of jurisdiction

21.(1) All pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters depending in the High Court, shall and may be sworn and taken in any part of the Commonwealth, before any judge, mayor, court, notary public or person lawfully authorised to administer oaths in that part of the Commonwealth, or in any foreign state before a consular representative for Barbados, and the Judges and officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such court,

judge, mayor, notary public or person or consular representative attached, appended, or subscribed to such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations or other documents, to be used in the High Court.

(2) Any person who forges the signature or the official seal of any such judge, mayor, court, notary public or other person lawfully authorised to administer oaths under this Act or tenders in evidence any plea, answer, disclaimer, examination, affidavit or other judicial or official document, with a false or counterfeit signature or seal of any such judge, mayor, court, notary public or other person authorised as aforesaid attached or appended thereto, knowing the signature or seal to be false or counterfeit shall be guilty of an offence and shall upon conviction be liable to imprisonment for 3 years.

[1992-17]

[1967/168]

SCHEDULE

(s.15)

THIS CONVEYANCE is made the _____ day of _____ 19

BETWEEN _____ Registrar of the Supreme Court (hereinafter called "the Registrar") - of the one part and _____ of (hereinafter called 'the purchaser') of the other part.

WHEREAS—

(1) in pursuance of an order of the High Court made on the _____ day of _____ 19 _____ in proceedings therein entitled shortly _____ vs. _____, the Registrar on the _____ day of _____ 19 sold the property described in the FIRST SCHEDULE hereto for an estate in fee simple absolute in possession free from incumbrances (*or otherwise as the case may be*) to the purchaser for the sum of _____ dollars (hereinafter referred to as 'the purchaser money')

(2) the purchaser has paid to the Registrar the sum of _____ dollars on account of the purchase money, leaving the sum of _____ dollars still due and owing on account thereof in the order of priority in favour of the persons and in the amount mentioned in columns one, two and three of Part II of the SECOND SCHEDULE hereto with interest thereon from the date specified in column four thereof

NOW THIS CONVEYANCE WITNESSETH that in consideration of the premises, _____ Registrar in pursuance of the said order and of the *Judicial Sale of Land Act*, Cap. 227, hereby conveys to the purchaser ALL THAT property as described in the FIRST SCHEDULE TOGETHER WITH all the rights appertaining or annexed to the property hereby conveyed as provided for by section 66 of the *Property Act* Cap. 231. 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 purchaser in fee simple (or otherwise as the case may be)

BUT SUBJECT and liable to the several estates, rights and interests in Part I of the SECOND SCHEDULE hereto AND ALSO SUBJECT and liable to the payment of the liens in the order of priority — in favour of the persons and in the amount mentioned in columns one, two and three of Part II of the SECOND SCHEDULE hereto with interest thereon from the date specified in column four thereof and the securities for which liens with the dates thereof are stated in column five of Part II of the SECOND SCHEDULE hereto

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

FIRST SCHEDULE

Description of Property

SECOND SCHEDULE

Part I

Nature of estate, right of interest	Names of persons entitled thereto	Nature (shortly) with dates of the latest instrument of title

Part II

Number of liens	Names of holders of liens	Amount of liens	Dates from which interest is payable	Nature (shortly) with dates of the securities for the liens

[1980-43]