

CONSOLIDATED TO 30 JUNE 2014

LAWS OF SEYCHELLES

CHAPTER 94

IMMOVABLE PROPERTY (JUDICIAL SALES) ACT

[12th October, 1877]

*Act 19 of 1868.
*Act 15 of 1888.
*Act 6 of 1890.
Act 8 of 1893.
Act 3 of 1900.
Act 16 of 1908.
Act 26 of 1915.
Act 3 of 1959.
Act 3 of 1963.
Act 14 of 1964.
Act 18 of 1963.
Act 26 of 1964.
Act 13 of 1965.
Act 25 of 1965.
Act 4 of 1975.
Act 13 of 1975.
S.I.72 of 1976.
Act 23 of 1976.
SI. 61 of 1988.
SI. 41 of 1991.
*Mauritius
Ordinances
Proc.
36 of 1877

ARRANGEMENT OF SECTIONS

Short title

1. This Act may be cited as the Immovable Property (Judicial Sales) Act.

PART I

CHAPTER I - Seizure of Immovable Property (Saisie Immobilière)

SUBHEAD I - Seizure of Immovable Property in General

Seizure to be preceded by commandment

2. Every seizure of immovable property shall be preceded by a commandment to be served upon the debtor in person. The creditor shall, in the commandment elect a domicile at the office of the attorney at law retained by him for the purpose of such proceedings, at which domicile all acts relative to or in connection with the proceedings, or the claims to be enforced thereunder, shall be served upon him. He shall thereby notify to his debtor that, if he fail to pay the amount claimed, a seizure will be effected of his immovable property.

It shall not be necessary to copy or to set forth in extenso in the commandement the title (titre) in virtue of which the seizure is to be made; it shall be sufficient to mention and describe the same, by stating the date of the title, the name of notary (if the title be a notarial deed), the amount of the sum due and the nature of the claim.

If the title be a notarial deed, it shall not be necessary to take a copy in executory form (grosse exécutoire) either for the purpose of the commandement or of the seizure, anything contained in article 2213 of the Civil Code of Seychelles to the contrary notwithstanding.

The usher serving the commandement need not be accompanied by witnesses: he shall within forty eight hours after service obtain upon the original the visa of the Registrar of the Supreme Court.

Note: As to “usher”, see section 22(3) of the Courts Act (Cap 52); see also section 8 of proclamation 36 of 1877

Periods for seizure after commandment

3. The seizure of immovable property cannot be effected until after the expiration of ten days from the date of the commandement.

If the creditor allows more than ninety days to elapse, after service, without having effected the seizure, he shall be bound to serve a fresh commandement subject to the same formalities and within the same time limits, as prescribed in section 2.

Authority to usher to seize

4. The usher effecting the seizure must have a special authority so to do, in writing, from the execution creditor. Such authority shall be annexed by the usher to his memorandum of seizure, and shall be registered therewith.

Requisites of the memorandum of seizure

5. The memorandum of seizure (procès verbal de saisie) besides the formalities common to all ushers' process shall contain.

(i) A description of the title in virtue of which the seizure is effected, the said description containing the date of the title, the name of the notary (if the act is notarial), the amount of the debt, and a reference to the transcription, if the title has been transcribed

(ii) Mention of the presence of the usher upon the property at the time of effecting the seizure.

(iii) A description of the property seized, viz.: In the case of urban property, the district, the street, and the street number, if such there be, of the property, and if there be no number, two at least of the meets and bounds (tenants et aboutissants) of the property.

In the case of rural property, the district, the boundaries, the approximate area of the land, a description of the buildings, machinery and plantations thereon, and the enumeration of the carts and animals seized.

(iv) The apparent value of the property as estimated by the usher.

- (iv) Constitution of an attorney at law whose office shall be taken to be the domicile of the execution creditor, and at which domicile all acts connected with the seizure shall be served upon the said creditor.

Notification of seizure

6. If the execution debtor (saisie) be domiciled in the district where the property seized is situated, the usher shall, at the time of the seizure, leave a copy of his memorandum of seizure with the said debtor in person, or at his domicile.

If the execution debtor be domiciled in another district, or if he reside at a distance of more than six miles from the property seized, the usher shall within eight days after the registration of the seizure serve a copy of his memorandum of seizure upon the said debtor in person or at his domicile.

If the seizure be made upon the heirs of the original debtor, it shall be sufficient notification to serve one copy upon the heirs collectively at the elected or at the last known domicile of the deceased.

Transcription of the seizure

7. The memorandum of seizure shall be transcribed at the Mortgage Office within fifteen days after notification thereof, and at the same time mention of such notification and of the mode in which it has been made shall be inserted upon the margin of the transcription.

Transcription of seizures of land registered under Land Registration Act

8. The transcription of seizures in respect of land registered under the Land Registration Act shall be effected by delivering to the Land Registrar an application for a restriction under section 84 of that Act with a certified copy of the memorandum of seizure.

Concurrent seizures

9. In case the Registrar of Deeds is unable to transcribe the seizure immediately after the same has been, for that purpose, presented to him, he shall make a note upon the original left with him of the hour, day, month and year, when the same shall have come to his hands, and if there be concurrent seizures, the seizure first presented to him shall be transcribed.

Anterior seizure

10. If there has been an anterior seizure the Registrar of Deeds shall note his refusal in the margin of the second seizure: he shall note the date of the anterior seizure, the name, residence and calling of the execution creditor and of the execution debtor the name of the attorney of the execution debtor and the date of the transcription of the seizure.

Judicial sequestrator

11. If the property seized is not let or leased, the execution debtor shall continue in possession thereof, as judicial sequestrator, unless it shall be otherwise ordered in accordance with the provisions of Chapter VII of Part I.

Sale of crop

12. At any time, while the execution debtor remains in possession of the property seized, as judicial sequestrator, any creditor may obtain an order for the sale of part or of the whole of the crop

of the said property. Application for such order shall be made conformably with the provisions of Chapter VII and the net proceeds of the sale shall be deposited in the hands of a Judge of the Supreme Court.

Produce of land immobilised

13. The natural and industrial produce of the property seized, or the proceeds of the sale thereof shall, after transcription, be immobilized, to be distributed together with the sale price of the property according to the rank of claims thereon.

Deterioration of the property seized

14. The execution debtor is prohibited from cutting down timber or in any way deteriorating the value of the property seized. In case of his so doing he shall be liable to an action in damages, entailing arrest in execution, without prejudice to any criminal prosecution to which he may thereby render himself liable.

Voidable leases

15. Any lease made subsequently to the transcription of the seizure, shall be null ipso facto, without the necessity of proceedings being taken for having it annulled.

As to leases made between the date of service of the commandement and the date of the transcription, they may be annulled at the instance of any creditor or of the adjudicatee.

In no case shall any lease be valid, unless it has been inserted in the memorandum of charges, and made one of the conditions of the sale.

And any creditor inscribed before the transcription of any such lease shall have a right to prevent the insertion of any such lease in the memorandum of the cahier des charges.

Immobilisation of rent

16. The rents and profits of the property shall be immobilised from the date of the transcription of the seizure, to be distributed together with the sale price of the property, according to the ranking of claims.

A simple opposition without further formality, at the instance of the execution or any other creditor, shall operate as an attachment in the hands of the lessee who shall henceforth be bound to deposit in the hands of a Judge all rent due by him, so often as the same shall fall due. Failing any such opposition, any payments made to the debtor shall operate pro tanto as a valid discharge to the lessee, and the execution debtor shall be accountable, as judicial sequestrator of the property, for the amount so paid to him.

Execution debtor cannot alienate

17. The execution debtor, from and after the date when the seizure shall have been transcribed, shall have no right to alienate or hypothecate the property under seizure; any alienation or hypothecation so made shall be null and void ipso facto, without the necessity of proceedings being taken to have the nullity declared.

When sale may be validated

18. Nevertheless, any such alienation shall become valid and effectual if, before the date fixed for the adjudication of the property, the purchaser deposit in the hands of a Judge a sum sufficient to cover in principal, interest and costs, the amount due to the inscribed creditor (who shall require payment) and to the execution creditor, and if he notify to such parties respectively the fact of such deposit having been made.

Ranking of money borrowed to pay off inscribed claims

19. If the moneys so deposited have been borrowed, the lender can only acquire a mortgage taking rank subsequent to the creditors inscribed at the date of sale.

Deposit of money to pay off claims, when too late

20. Failing such deposit as aforesaid, no further time for making the deposit shall be granted under any pretext whatever.

Deposit of memorandum of charges

21. Within thirty days of the transcription of the memorandum of seizure, the execution creditor shall deposit at registry the memorandum of charges (cahier des charges) which shall contain

- (i) a reference, to the title in virtue of which seizure has been made, to the usher's memorandum of seizure including the return of service, and to any procedure or judgments or orders which may have been rendered or made in the course of the proceedings:
- (ii) the description of the property as set forth in the memorandum of seizure:
- (iii) the conditions under which the property is to be sold:
- (iv) a mise à prix on the part of the seizing creditor.

The Judge shall, at the foot of the memorandum of charges, fix the day for the reading thereof, or for the sale of the property if the property seized is a small property which is to be sold conformably to subhead II of this Chapter.

Notice to execution debtor

22. Within eight days of filing the memorandum of charges, notice thereof shall be served upon the execution debtor, in person or at his domicile. The notice shall call upon the execution debtor to examine the memorandum of charges and to make thereon such observations as he may think fit, and further to be present at the time of the reading of the memorandum of charges, at which time a day shall be fixed for the final adjudication. The notice shall specify the day, hour and place appointed for the reading.

Notice to inscribed creditors

23. A similar notice shall be served within the same period, at the respective domiciles elected by them in their inscriptions, upon all inscribed creditors, who have taken their inscriptions before the date of the deposit of the memorandum of charges.

One notice shall suffice for each creditor, whatever may be the number of inscriptions taken by him.

Notice to unpaid vendor

24. If, amongst the inscribed creditors there be any creditor holding a vendor's privilege duly inscribed, a similar notice shall be served upon that creditor at the domicile elected by him in his inscription.

The notice shall inform such creditor that unless he commences his action in cancellation of sale, and makes a declaration of having done so, at the foot of the memorandum of charges, before the day to be fixed for the adjudication, he shall be definitively foreclosed, quâ the adjudicatee, from having such cancellation decreed.

If no election of domicile shall have been made on behalf of such creditor, the notice shall be served upon him either in person, or at his actual, or last known domicile in Seychelles.

Every vendor shall be entitled to commence his action in cancellation whether his claim be due or not.

Stay of sale upon vendor's declaration

25. If such declaration shall have been filed in due time, the sale shall thereupon be stayed, and the Supreme Court shall, upon the application of the execution creditor or of any other inscribed or judgment creditor, fix a period within which the plaintiff in such action shall be bound to bring his action to trial.

The execution creditor or any inscribed or judgment creditor may intervene in such action.

The said action may, at any time, be entered upon the cause list, and shall thereupon be heard and determined as an urgent case, with precedence over all other cases, upon the cause list, for the hearing of which no special day shall already have been appointed.

When sale may take place notwithstanding such action

26. In case the action in cancellation shall not have been heard and determined, within the period fixed by section 25, the sale and adjudication of the property shall take place notwithstanding the pendency of such action, unless the Supreme Court, upon good and sufficient cause shown, shall have extended for a further definite period the time previously fixed for the hearing and determining of the said action.

Entry of notices in margin of inscription of seizure

27. Within eight days after service of the last of the notices prescribed by sections 22, 23 and 24, an entry shall be made in the margin of the transcription of the seizure, to the effect that such notices have been served. From and after the day when such entry shall have been made, the seizure can no longer be erased, except by consent of the seizing creditor, of the sequestrator, if such there be, and of such of the inscribed creditors as shall have lodged oppositions in the hands of the Registrar of Deeds against the erasure of the seizure.

Originals of notices and copies of newspapers to be filed

28. The originals of the notices prescribed by sections 22, 23 and 24, shall, within fifteen days from the date of entry prescribed by section 27, be filed in the registry and annexed to the memorandum of charges.

Reading of memorandum of charges

29. The reading of the memorandum of charges shall take place before a Judge at a public sitting to be holden on some day not less than ten nor more than thirty days after the filing of such memorandum of charges. The day for the sale and adjudication shall be fixed by the Judge immediately after the reading of the memorandum of charges, which day shall be at least six weeks after the day of such reading.

Change in conditions of sale

30. Whenever any inscribed creditor or the execution debtor may desire that the memorandum of charges, as drawn up by the attorney having the carriage of the proceedings, be rectified and amended in any respect, such party may apply by petition to a Judge, twenty one days at the least (unless cause be shown to the satisfaction of the Judge for entertaining such application, if made beyond the above period) previous to the day fixed for the sale, to appoint a day for the appearance of parties before him.

In all cases the execution creditor shall be made a party to such proceedings, as also the execution debtor (unless the application be made by him) and any other parties whom the Judge may in his discretion think proper to join.

Such petition, with the Judge's order thereon, shall be served upon the parties named therein five days previous to the day fixed for hearing, and shall further be made known to creditors by an advertisement in the manner prescribed in section 224 setting forth the desired change and acquainting them that they have the right, if they think fit, of intervening, before the Judge, on the day appointed by him, for the purpose of opposing such rectification or amendment. Any creditors so intervening shall do so, at their own cost, unless in any case where the Judge on dismissing such application, shall condemn the applicant to pay the costs of any intervening parties.

The costs of such application shall be borne by the unsuccessful party, unless it shall be otherwise ordered; and in no case shall they be considered as costs of sale.

Notice of day of sale and warning of creditors

31. Within fourteen days, after the reading of the memorandum of charges, the attorney in charge of the sale shall publish in the manner prescribed in section 224, a notice as near as may be in form of the schedule hereunto annexed (marked A) announcing the day when the said property shall be put up for sale and adjudication, and calling upon all parties who may have a right to take inscription of legal hypothec upon the property, to exercise such right before the transcription of the title deed of adjudicatee.

Similar notices shall be again published in the manner prescribed in section 224, twelve days at the least, before the day fixed for the sale and adjudication of the property.

Taxation of costs of sale

32. All costs of sale, due at the time of sale, shall be taxed by the Registrar previous to the adjudication; the bill for such costs duly taxed shall be filed in the registry twenty four hours before the sale.

Cost of sale

33. No judgment by consent relative to the payment of any costs, as costs of sale, shall be binding upon the creditors who have not been parties to such judgment.

The execution creditor shall have no power to bind any other creditor by his consent to any such judgment.

Announcement of costs of sale

34. The amount of the taxed costs of sale shall be announced publicly on the day of adjudication, before the opening of the bidding. It shall also be mentioned in the judgment of adjudication, and beyond the amount so taxed no further sum shall be claimable or allowed in respect of such costs.

Proceedings on day of sale

35. On the day fixed for the adjudication, the bidding shall be open, at the instance of the execution creditor or, failing him, at the instance of any one of the inscribed creditors or judgment creditors.

Postponement of sale

36. Nevertheless the sale may be postponed either sine die, or to a specified day, at the instance of the execution creditor or of any one of the inscribed or judgment creditors, or of the execution debtor; but only upon strong grounds of necessity or expediency to be established to the satisfaction of a Judge. The decision of the Judge postponing the sale shall be final and without appeal.

Fresh publication after postponement

37. When the sale shall have been so postponed as aforesaid, fresh publications, as prescribed in section 31 and in the form of Schedule A, shall be published in the manner prescribed by section 224.

Bidding how to be made

38. The bidding shall be made before a Judge in open court, either by the bidders in person or by a duly empowered agent, bidding on their behalf.

When once a bid has been covered by a higher bid, the former bid shall cease to be binding, even though the higher bid may be declared void.

If mise à prix not covered

39. If there be no higher bid that the mise à prix of the execution creditor, the property shall be adjudicated to him. But if the execution debtor, or any inscribed or judgment creditor shall prove to the satisfaction of the Judge that such bid, or the highest covering bid is much below the value of the property, and that there is a reasonable prospect that, if the sale be postponed to a future day, a higher price will then be bid, the Judge may, in his discretion, postpone the sale as provided in section 36.

Election of domicile by purchaser

40. The highest bidder, if he has purchased on his own account, shall be bound at the time of adjudication to elect a domicile in Victoria, and all acts connected with the proceedings, up to the closing of the order, shall be served upon him at the said domicile.

Bidding on behalf of another

41. The highest bidder, if he has purchased on behalf of a third party, shall be bound within three clear days, after the date of the adjudication, to declare the name of the real adjudicatee and to produce either his ratification of the bidding, or the power of attorney authorising the bidding. The one or the other of the aforesaid documents, as the case may be, shall be annexed to the memorandum of his declaration. Failing the above, such bidder shall be deemed and taken to have bid and purchased on his own account unless he be, by law, a person incapable of purchasing for himself.

The third party for whom the purchase has been made shall, at the same time, make an election of domicile in Victoria, and all acts mentioned in section 40 shall be served upon him at that domicile.

Parties incapacitated from purchasing

42. The following persons are incapacitated from purchasing either in person or through the interposition of a third party:

- (i) the Judge, or any officer or clerk of his office, unless specially authorised to do so by the President;
- (ii) the execution debtor;
- (iii) the guardian or curator of the execution debtor;
- (iv) the attorney having the carriage of the sale;
- (v) any person known to be in insolvent circumstances.

Any bidding or outbidding or purchase made by or on behalf of any of the above shall be absolutely null and void, and shall render the party making the bidding, as well as any third party, on whose behalf the bidding shall have been made, liable to an action in damages, at the suit of any interested party.

Title of the adjudicatee

43. The title deed of the adjudicatee shall consist simply of the memorandum of charges drawn up in the manner prescribed by section 21, together with any modification which may have been ordered to be made thereon, and also of the memorandum of adjudication. No other incidental proceedings need be inserted thereon.

When to be delivered to purchaser

44. The aforesaid title deed shall not be delivered by the Judge until the purchaser shall have deposited in the Registrar's hands the costs claimable by the Judge, as also the amount payable by way

of stamp duty and registration and transcription fees in respect of the title deed, nor until the purchaser shall have proved to the satisfaction of the Judge that he has fulfilled all the conditions of the memorandum of charges incumbent upon him at the time being and especially that he has paid all the taxed costs of sale, the receipts for which he shall be bound to produce to the Judge.

Purchaser not fulfilling conditions liable to folle enchère

45. If the purchaser fail to deposit the sums aforesaid and to make proof as above within twenty days after the adjudication, he shall become liable to be sued by way of folle enchère as hereinafter provided, without prejudice to any other legal remedies against him.

Judgment of adjudication not to be notified

46. It shall not be necessary to notify the judgment of adjudication to any party. The title deed of the adjudicatee shall be sufficient authority for him to take possession. In case of opposition on the part of any party whom he may find in actual possession, he shall cause himself to be put into possession by all legal ways and means.

Formalities and periods

47. The formalities and periods prescribed by sections 2, 3, 4, 5, 6, 7, 21, 22, 23, 24, 27, 28, 29, 31 and 37, shall be observed under pain of nullity, conformably with the provisions hereinafter contained in sections 67, 68 and 214.

Misdescription of one of several properties included in same seizure

48. Where several immovable properties, not united as one property, are included in the same seizure, any misdescription or imperfect description of one the properties shall not vitiate the proceedings as regards the residue.

Rights vested in the purchaser

49. The judgment of adjudication shall transmit to the adjudicatee no other rights over the property sold than those belonging to the execution debtor.

Nevertheless the purchaser shall not be troubled, as to his rights of ownership, by any action in cancellation of sale grounded upon the non payment, in whole or in part, of any former sale price of the property, unless such action shall have been declared and proceeded with in conformity with sections 24, 25 and 26.

After sale, remedy restricted to production upon sale price

50. In case under the provisions of section 26, the sale and adjudication of the property shall have taken place before the said action in cancellation shall have been heard and determined, or in case any holder of a vendor's privilege, upon being duly served with the notice mentioned in section 24, shall have neglected to exercise his resolatory right in the manner hereinbefore prescribed prior to the adjudication of the property, the adjudicatee shall not be troubled by any resolatory action in respect of any such vendor's right. In any such case, the holder of such right shall be debarred from all remedy, as regards the adjudicatee, saving the right of producing his claim for collocation at the distribution by way of ordre of the sale price of the property.

SUBHEAD II -Seizure of small properties

Formalities for sale of small properties

51. Whenever immovable property not exceeding in value six thousand rupees shall have been seized, and is to be sold by way of forcible ejectment, it shall not be necessary to give notice of the filing of the memorandum of charges to any party other than a creditor by way of conventional mortgage, as also to an inscribed vendor under the provisions of section 24 and to the execution debtor; nor shall it be necessary to read the conditions of sale.

The day of sale and the value of the property shall be fixed by a Judge in writing at the foot of the memorandum of charges at the time of filing thereof, and such sale shall take place at least six weeks after the date of filing.

Within fourteen days after the filing of the memorandum of charges, and again, twelve days at the least, before the day fixed for the sale, the notices prescribed by section 31 shall be published.

How value to be ascertained

52. The value of any such immovable property shall, for the purposes of the preceding section, be determined by the Judge, in any of the following manners:

- (i) by sale price or the estimated value of the same upon the last mutation thereof;
- (ii) according to the estimated value of the property for the payment of any tax;
- (iii) according to the estimation of the usher as declared in the memorandum of seizure.

CHAPTER II - On incidental applications after Seizure of an Immovable Property (Des incidents de la Saisie Immobilière)

Form of incidental application

53. Every application to a Judge incidental to the seizure or sale of immovable property shall be made by petition setting forth summarily the grounds upon which such application is made and the parties against whom the same is made.

The Judge shall at the foot of such petition make an order fixing a day for hearing such petition, and may in his discretion join as parties any persons whom he may think affected in their rights by the application in question.

Service thereof

54. A copy of such petition with the Judge's order thereon shall be served upon the respective attorneys of the parties named therein or ordered to be joined by the Judge, five days at the least before the day of hearing.

If any party shall not have constituted an attorney for the purposes of the said seizure, service shall be made upon such party either in person or at his usual place of residence eight days before the day of hearing.

Consolidation of several seizures

55. In case two levying creditors shall have caused to be transcribed seizures of different immovable properties seized upon one and the same debtor, which properties have been united into one and have been cultivated or occupied as one property by the execution debtor, such seizures shall be, on the application of either the execution creditor, the inscribed creditors or even the execution debtor, consolidated ex officio by a Judge, and the proceedings shall thereupon be carried on by the party whose seizure was earliest in date.

The consolidation must be ordered before the filing of the memorandum of charges, otherwise it cannot take place except by consent of parties.

Carriage of sale in such case

56. If the two seizures are of the same date, the carriage of the sale shall devolve upon the attorney whose executory title is of oldest date. If both titles are of the same date, the carriage of the sale shall devolve upon the attorney senior in standing.

Second seizure more extensive than first. Consolidation

57. In case a second seizure, on being presented for transcription, is found to be more extensive than the first seizure, such second seizure shall be transcribed with regard to any property not included in the first seizure, and the second execution creditor shall be bound to give notice of his seizure to the first execution creditor. The latter shall thereupon consolidate and carry on as one the two seizures if at the same stage; otherwise he shall stay proceedings upon the first seizure and shall carry on the second up to the stage attained by the first; he shall then consolidate the two.

Subrogation of second seizing creditor

58. If the first execution creditor take no steps to carry on the second seizure within eight days after the same shall have been notified to him under the provisions of section 57, the second execution creditor shall be entitled to ask subrogation in the proceedings.

Subrogation in seizure generally

59. Any inscribed or judgment creditor may also ask subrogation in the proceedings, in case of collusion, fraud or negligence on the part of the creditor carrying on the proceedings; saving the right of any party prejudiced by the collusion or fraud in question to sue in damages the party guilty of such collusion or fraud.

Negligence

60. Negligence consists in the non fulfilment of any formality prescribed by law, or in the fulfilment of any such formality after the prescribed periods, or in not using due diligence to bring the property under seizure to adjudication.

Decision of Judge as to subrogation

61. The decision of a Judge upon any demand in subrogation shall be final and without appeal, excepting in any case where subrogation is asked on the ground of fraud or collusion. The cost of the proceedings shall, in all cases, be borne by the losing party in conformity with articles 130 and 131 of the French Code of Civil Procedure, and in no case shall they be considered as costs of sale.

Proceedings on subrogation

62. When subrogation shall have been granted against any party having the carriage of sale, such party shall be bound forthwith to deliver up to the party subrogated all documentary procedure relative to the seizure, upon a simple receipt for such documents. He shall not be entitled to claim payment of any costs, until after the judgment of adjudication, when he shall be entitled to claim payment of his disbursements only as part of the costs of sale.

Continuance of proceedings in subsequent seizures after erasure of first seizure

63. In any case where a seizure shall have been erased, and where subsequent to the transcription thereof, and prior to the erasure, other creditors shall have presented seizures for transcription, the proceedings shall be continued by the creditor who has applied for the erasure.

And if such creditor take no step, within three days, to have his seizure transcribed, the proceedings may be continued at the instance of the most diligent among the creditors.

Demand of distraction

64. The demand of distraction of the whole or any portion of the property seized shall be instituted against both the execution creditor and the execution debtor. The first inscribed creditor shall also be joined; service of the demand shall be made upon the latter at the domicile elected by him in his inscription.

Form of demand

65. The demand of distraction shall mention the titles (titres justificatifs) if any, relied upon in support of such demand, which titles shall be filed together with the original of the demand, at the registry after service of the demand. Notice of the demand shall be published in the manner prescribed in section 224.

Every inscribed or judgment creditor shall have a right to intervene, at his own cost.

Demand as to portion of seizure

66. If the demand of distraction applies only to a portion of the property seized, the proceedings for the sale and adjudication of the residue shall be continued, such demand notwithstanding.

Nevertheless a Judge may, if he thinks fit, upon application made to him to that effect by any interested party, order a stay of proceedings as regards the whole of the property seized. If a distraction of a part is ordered, the execution creditor shall have a right to reduce his mise à prix in the memorandum of charges.

Nullities anterior to the reading

67. Any nullities alleged to exist in the proceedings, antecedent to the reading of the memorandum of charges, shall be shown before a Judge, three days at least previous to such reading, otherwise they shall be deemed to have been waived. If the objection shall be held good, the proceedings shall be resumed from the last valid step and the times for the fulfilment of the subsequent steps in the proceeding shall begin to run from the date of the judgment which shall have definitively pronounced the nullity.

Nullities subsequent the reading

68. Any nullities alleged to exist in the proceedings subsequent to the reading of the memorandum of charges and all other matters incident to, or connected with, the sale and adjudication of the property in question, shall be shown before a Judge eight days at the least before the day appointed for the sale and adjudication, or not at all. If the objections are held good, the Judge shall set aside all proceedings subsequent to the reading of the memorandum of charges, and shall appoint a further day for the sale and adjudication.

Notice of day fixed for hearing objections

69. Five days' previous notice, with summons, of the day appointed by the Judge for having such nullities shown before him, or for having such other matters dealt with by him, must be given to the parties interested.

Nullities in cases of small properties

70. In the case of a property not exceeding six thousand rupees in value, any nullities alleged to exist in the proceedings shall be objected to, by a simple declaration made and signed by the party objecting or his attorney at the foot of the memorandum of charges six days at least before the day of the sale.

Such declaration shall set forth summarily the grounds of objection. The mere fact of making such declaration at the foot of the memorandum of charges shall be sufficient notice to all interested parties. The Judge shall hear such objections on the day of sale and his decision thereon shall be final and without appeal. If the objections be held good the proceedings shall be resumed from the last valid step and the periods on the fulfilment of the subsequent steps shall begin to run from the date of the Judge's judgment pronouncing the nullity.

Costs of objection

71. The costs of such incidents shall be borne by the unsuccessful parties, in conformity with articles 130 and 131 of the French Code of Civil Procedure. In no case shall they be considered as part of the costs of sale.

Costs of sale claimable at time of sale

72. The attorney prosecuting the sale shall be entitled to claim from the adjudicatee at the time of sale, his costs of disbursements as taxed by the Registrar; no further sum beyond costs of disbursement, of the proceedings towards the seizure and sale of the property shall in any case be claimable as against the execution debtor or the adjudicatee as the case may be.

Costs of sale claimable at Ordre

73. The attorney prosecuting the sale shall, over and above such costs of disbursement, be entitled upon any distribution of the sale price of an immovable property to claim his fees of sale which shall be a percentage upon the sale price calculated according to the following scale, viz.

(i)	On the first Rs. 1,000	5 per cent.
(ii)	From Rs. 1,000 to Rs.	4 per

	2,000	cent.
(iii)	From Rs. 2,000 to Rs. 6,000	3 per cent.
(iv)	From Rs. 6,000 to Rs. 40,000	2 per cent.
(v)	From Rs.40,000 to Rs. 200,000	$\frac{1}{2}$ per cent.
(vi)	On any amount above Rs.200,000	$\frac{1}{4}$ per cent.

And he shall be paid thereof out of the sale price by way of privilege, and with interest.

Costs only claimable if client collocated

74. The right of any such attorney to claim such percentage specified in section 73 or any share of the same shall be contingent upon the party for whom any such attorney acts, being collocated at the order for some portion of his claim in respect of which the seizure has been made, or the subrogation has been obtained.

Costs when claim settled

75. Whenever the claim of the execution creditor is paid or settled, and when consequently the proceedings towards the sale of the property seized are, in respect of such, discontinued; in any such case, notwithstanding the foregoing provisions, the attorney prosecuting in respect of such claim shall be entitled to claim payment for his full costs of proceedings up to the time of payment or settlement. Such costs to be taxed according to the tariff in force for the time being.

CHAPTER III - Of the sale of Immovable Property belonging to Minors

To be authorised by family council

76. The sale of immovable property belonging to minors can only take place when there is a manifest advantage or an absolute necessity for such sale, and conformably with the provisions of article 457 and following of the Civil Code of Seychelles, in pursuance of the resolution of a family council duly assembled under the presidency of the President of Family Councils.

If however any immovable property be in the joint ownership of minors and persons of full age, and if the sale be prosecuted at the instance of the latter, no family council shall be requisite, The sale shall, in such case, be prosecuted in conformity with the rules laid down in Chapter IV relative to sales by licitation.

Where a family council shall be required, if the sub guardian does not form part of the council he shall be added thereto, and he shall have a right to vote.

Note: References to powers of the Family Council shall be construed as references to the powers of the Court and references to the sub guardian shall be construed as references to the guardian: refer 3rd Schedule Civil Code of Seychelles Act (Cap. 33).

Homologation

77. The resolution of the family council shall be submitted for homologation to a Judge in chambers.

Order for sale

78. At the foot of the minute of the deliberation of the family council, and after the homologation thereof, the Judge shall write his order for the sale of the property.

The Judge shall, in his order, fix a mise à prix: he may base his estimate

- (i) upon the valuation made by the family council;
- (ii) upon examination of the title deeds of the property;
- (iii) according to any existing lease of the same, whether by authentic deeds, or by private writing, having a date certain (date certaine);
- (iv) according to the monthly rental of the same, if let by the month;
- (v) according to the estimated value of the property for the purposes of assessment for the payment of any tax.

If the Judge is unable to satisfy himself as to the value of the property by any of the above methods, he shall, instead of fixing the price in his order of sale, direct in the said order that the same shall be valued by an appraiser (expert).

In such case, the appraiser shall, within a time to be fixed by the Judge in the said order, make his report which shall, in a summary manner, give a description of the property and of the basis upon which he has made his valuation. The report when made shall be annexed to the deliberation of the family council.

It shall not be necessary to administer an oath to the appraiser, or to summon any of the parties to be present at any stage of the proceedings to the appraisal, or to serve or notify to any of the parties the report of the appraiser.

Memorandum of charges

79. The sale shall take place pursuant to a memorandum of charges, which shall be filed in the registry by the attorney prosecuting the sale and which shall contain

- (i) a reference to the order of homologation and to the order of sale;
- (ii) a reference to the title deeds of the property;
- (iii) a description of the property, similar to that hereinbefore prescribed in section 5, paragraph (iii), for the memorandum of seizure of immovable property;
- (iv) the mise à prix and the conditions of the sale.

The said memorandum of charges shall be annexed to, and form one record with the resolution of the family council.

Day of sale

80. The day of sale shall be fixed by the Judge in writing at the foot of the memorandum of charges at the time of the filing thereof.

Notice to inscribed creditors, of filing

81. Thirty days at least before the day of sale, notice of the filing of the memorandum of charges and of the day fixed for the sale shall be served upon all inscribed creditors at the respective domiciles elected by them in their inscriptions, provided that the said creditors have taken their inscriptions before the deposit of the memorandum of charges.

One notice shall suffice for each creditor whatever may be the number of inscriptions taken by him.

Notice to unpaid vendor

82. If amongst the inscribed creditors there be any holding a vendor's privilege duly inscribed, a notice similar to that prescribed hereinbefore in section 24 shall be served upon him in the manner prescribed in the said section.

Notice to sub guardian

83. In addition to the above notices, notice of the filing of the memorandum of charges, and of the day fixed for the sale, shall, at least thirty days before the sale, be served upon the sub guardian in person.

The said sub guardian shall, in conformity with the provisions of article 459 of the Civil Code of Seychelles, be summoned by such notice to be present at the sale, with the intimation that the sale shall take place at the time appointed, whether he be present or not.

Notice of day of sale to be sufficient notice to creditors by legal mortgage not inscribed

84. Thirty days at least before the day of sale, notice thereof, as near as may be in the form in the schedule hereunto annexed (marked B) shall be published in the manner prescribed in section 224. Such notices shall, for all intent and purposes, be taken to be sufficient notice to the creditors, if any, by way of legal mortgage not inscribed. A similar notice shall be again published in the manner aforesaid twelve days at least, before the day of sale.

Change in conditions of sale. Demands in nullity

85. Any judgment creditor or inscribed creditor may apply for a change in or modification of the memorandum of charges and may also demand the nullity of the proceedings.

This application shall be made at least ten days before the day of the sale. It shall be made by petition to a Judge setting forth summarily the nature and grounds of the application or demand. The Judge shall thereupon make his order upon the petition appointing a day for hearing.

The petition, with the Judge's order thereon, shall be served upon the parties who, by the petition and order, are required to show cause five days previous to the day of hearing, and shall

within the like period, be made known to creditors by an advertisement in the manner prescribed in section 224, setting forth summarily the nature of the application or demand, informing them of their rights to intervene if they think fit before the Judge on the day of hearing.

Any creditors so intervening shall do so at their own costs, unless in any case where the Judge, on dismissing such petition, shall condemn the petitioner to pay the costs of any intervening parties.

Costs of objection

86. The costs of the application or demand, as also all costs of any other incidental proceedings arising out of or in connection with the proceedings towards the sale of the property, shall be borne by the unsuccessful party in conformity with articles 130 and 13 of the French Code of Civil Procedure, and, in no case, shall they be considered as costs of sale.

Bidding not reaching the upset price

87. In case on the day of sale the biddings do not reach the upset price, the Judge may, upon application then and there party prosecuting the sale, or by any other interested party, order that the property shall be sold below the upset price, and shall in such case fix a day when the property shall again be put up for sale, which day shall be at least fourteen days from the date of such order.

Notice of day of sale

88. Notice of the day of sale so fixed as above shall be published in the manner prescribed in section 224, at least eight days before the day so fixed.

Apportionment of price where property belongs to several minors

89. If the property to be sold belongs to several minors, and their respective rights therein are liquidated and ascertained, it shall not be necessary to apportion the sale price by deed of partition, but the said apportionment may be made in and by the memorandum of charges, or the Judge may, in case of need, distribute the sale price between the parties entitled thereto.

Costs of sale

90. The costs of sale which the attorney prosecuting the sale shall have a right to claim shall consist of –

- (i) his disbursement as taxed by the Registrar;
- (ii) a percentage upon the sale price according to the scale hereinbefore laid down in section 73.

No further or other costs shall be claimable by him as costs of sale.

Private sale of share of minor in property

91. In like manner, and subject to the same conditions and formalities, it shall be lawful for any guardian to sell, by notarial contract, any share in any immovable property not exceeding thirty thousand rupees in value, belonging to a minor.

If the sale of such minor's share in a property be made after proceedings for the judicial sale of the property have begun, the proceedings shall continue between the parties to the sale, and the

purchaser of such share and the Judge shall make the necessary suggestion to make such purchaser a party to the sale.

Definition of "minor" and "guardian"

92. In section 91 the word "minor" includes emancipated minors and interdicted persons; and "guardian" includes the curator of an emancipated minor.

Share of minor

93. In the first paragraph of section 91 the words "not exceeding thirty thousand rupees in value" have reference to the share of a minor in an immovable property whatever may be the total value of such property.

Exchange of property belonging to minors

94. In any case when immovable property belonging to a minor may be sold under section 91 an exchange of such property may be made subject to the same conditions and formalities.

Benefit of inventory maintained notwithstanding any such sale

95. In case of any sale by notarial contract of property belonging to a minor or of any share thereof, under the provisions of section 91 such minor shall, notwithstanding such sale, retain his capacity of heir under benefit of inventory, conformable with article 461 of the Civil Code of Seychelles.

Value of property of share, how ascertained

96. For the purpose of section 91, the value of the immovable property or of any share thereof to be sold under the provisions of the said section, shall be fixed and determined by an expert who shall be appointed by the Judge and who shall proceed conformable to the terms of section 78.

Nullities

97. The formalities and times prescribed by sections 81, 82, 83, 84, 85 and 88, shall be observed under pain of nullity conformably with the provisions hereinafter contained in section 214.

The Judge shall not proceed to the adjudication before he has ascertained and certified that the formalities and times provided by this chapter have been duly observed. The adjudicatee shall not be troubled on account of any of the said nullities.

CHAPTER IV - Sales by Licitation

Demand in licitation

98. In any case where according to law, the sale by licitation of an immovable property can only take place under judicial authority (en justice) the demand in licitation shall from henceforth be made, ex parte, by petition to a Judge setting forth a summary description of the property sought to be licitated, and the respective names, places and abode, and callings of the several parties against whom the licitation is to be prosecuted.

The Judge shall, upon the petition being presented to him, note thereon the day and hour when the same has come to his hands.

Of several demands

99. When several demands for licitation or for a division in kind, of the same property shall have been made, the carriage of the proceeding shall belong to the party whose petition shall have been presented first in order of time.

If two demands are presented simultaneously the attorney being the senior in date of admission shall have the carriage of the proceedings.

Collective demand by co licitants

100. A demand for a licitation or for a division in kind may be made in the joint names of all the co licitants, even in the case where some of them are minors, or under interdiction, provided that in either of the two latter cases the demand be sanctioned by a Judge.

Commencement of proceedings. Memorandum of charges

101. The party having carriage of the proceedings shall, within a fortnight after the deposit of his demand, commence the proceedings by filing in the registry of the Supreme Court the memorandum of charges pursuant to which he proposes to sell the property, which memorandum shall be drawn up in the manner prescribed in Chapter III relative to sales of immovable property belonging to minors, but shall, in addition, contain the following particulars:

- (i) the name, place of abode, and calling of the party prosecuting the sale;
- (ii) the name and place of business of his attorney;
- (iii) the respective names, places of abode, and callings of the several parties defendants in licitation;
- (iv) election of domicile in the town of Victoria by the party prosecuting the sale.

Notification of deposit of memorandum of charges

102. Within fifteen days of the date of deposit of the memorandum of charges, notice thereof shall be given

- (i) to the several parties who have been made defendants in the licitation, by service of such notice upon them, in person;
- (ii) to the several inscribed creditors, by service upon them at the respective domiciles elected by them in their inscriptions, provided the said creditors have taken their inscriptions before the deposit of the memorandum of charges:

Provided that, if amongst such inscribed creditors there be any holding a vendor's privilege duly inscribed, the notice to such creditor shall be similar to that hereinbefore prescribed in section 24, and shall be served in the manner prescribed in that section;

- (iii) to any creditors by way of legal mortgage not inscribed, by publication in the manner prescribed in section 224 of a notice as near as may be in the form in the schedule marked B.

Objection to licitation. Conditions of sale or nullities

103. Within thirty days, after the expiry of the period for notice prescribed in section 102, any defendant in the licitation, or any inscribed or judgment creditor may, if he think fit, object to the licitation, or to any of the clauses or conditions of the memorandum of charges, or to any nullities in the proceedings, Such objections shall be made, heard and determined in like manner and subject to the same rules as are hereinbefore prescribed in sections 85 and 86, the provisions of which said sections are hereby extended and applied to the proceedings.

If no objection, judge to fix day of sale

104. After the expiry of the period above prescribed for making objections, or after any objections shall have been heard and finally determined, as the case may be, the Judge shall, at the foot of the memorandum of charges, make his order fixing the day of sale which shall be at least four weeks from the date of such order.

Notice to be published on day of sale

105. Within eight days after the date of the Judge's order fixing the day of sale, a notice, as near as may be according to the form in the form in the schedule marked A, shall be published in the manner prescribed in section 224.

The notice shall be repeated at least twelve days before the day of the sale in the same manner.

Application for stay of licitation on grounds of hardship

106. (1) Any defendant in licitation, may, within the time prescribed in section 103, apply by petition to a Judge for an order staying the proceedings in licitation on grounds of hardship.

(2) The provisions of sections 108, 109 and 110 shall apply in the case of an application under this section.

(3) The Judge may, after hearing the parties and notwithstanding the provisions of Article 1686 of the Civil Code of Seychelles, make an order staying the proceedings in licitation if he is satisfied that greater hardship would be caused by refusing to grant the order than by granting it.

(4) On an application under this section the Judge may make such order as to costs as to him may seem just.

Application for stay of licitation and division in kind

107. (1) Any defendant in licitation, may, within the time prescribed in section 103, apply by petition to a Judge for an order staying the proceedings in licitation and substituting in lieu thereof proceedings for a division in kind (partage en nature) of the property sought to be licitated.

(2) Any co owner of an immovable property may also by petition to a Judge ask that the property be divided in kind or, if such division is not possible, that it be sold by licitation.

Judge's order thereon fixing day

108. Upon any such application, the Judge shall at the foot of the petition make an order fixing a day when the several other co owners, and any other parties, whom he may in his discretion order to be joined, shall show cause before him.

Service of order

109. A copy of the petition and of the Judge's order thereon shall be served upon the respective parties named therein ten days at the least before the day of hearing.

Parties appearing to elect domicile in Victoria

110. All parties appearing shall be required by the Judge to elect domicile respectively in the town of Victoria, at which domicile all acts relative to or in connection with the proceedings may thenceforth be served upon such parties.

When Judge may refuse application for division in kind

111. The Judge may, after hearing the parties, and without previous appraisalment (expertise) refuse the application for a division in kind in any of the cases following

- (i) if the rights of the parties are not liquidated;
- (ii) in case it appear to him that the property cannot be conveniently divided in kind;
- (iii) in case it be shown to his satisfaction that the costs of the proceedings for a division in kind, including any ulterior proceedings of mise en règle, consequent thereon, would be excessive, regard being had to the value of the property.

Appraisalment

112. The Judge may also, before deciding upon the demand, order an appraisalment (expertise) by an appraiser to be named by him.

In such case the appraiser shall, within a delay to be fixed by the Judge, make and file in the registry his report which shall in a summary manner give a description of the property, the estimated value thereof, and the basis upon which such valuation is made. The report shall further state whether or not the property can conveniently be divided in kind, and if so divisible shall set forth the proposed lots in conformity with this Act and the provisions of the Civil Code of Seychelles.

In no case of appraisalment under the provisions of this Chapter shall it be necessary to administer an oath to the appraiser.

The parties to the division in kind shall be summoned, by a notice served upon them in person or at the domicile elected by them in accordance with section 110, four days at least before the day fixed for the appraisalment, to attend at the time and place where the said appraisalment is to be made.

Formation of lots in case of unequal rights

113. If the rights of the parties to the division (co partageants) although liquidated are unequal, the Judge, if of opinion that the drawing of lots would be attended with inconvenience or disadvantage, may either refuse to order the division in kind, or he may, in ordering an appraisalment, direct the appraiser to form the respective lots in proportion to the rights of the respective parties, and further to allot accordingly without any drawing of lots.

Costs where division in kind refused. Order for licitation

114. In every case where the Judge refuses to order a division in kind he shall condemn the applicant for the division to the payment of all costs of such application.

In the case of an alternative demand, made in accordance with subsection (2) of section 107, the Judge shall authorise the applicant to prosecute the sale of the property by licitation.

Confirmation of appraiser's report

115. Within fifteen days after the report of the appraiser shall have been filed, the party having the carriage of the sale shall apply to the Judge to appoint a day when parties shall appear before him to show cause against the confirmation (enterrinement) of the report, and, as the case may be, against the drawing of lots. In default of his so doing, within the above period, any of the interested parties may make the said application to the Judge.

Drawing of lots

116. In case the Judge authorises a division in kind, under the provisions of section 113, the order of the Judge confirming the report of the appraiser shall operate as a definite allotment of shares. In case the Judge authorises a division in kind under the provisions of section 112, the drawing of lots shall take place before him, either immediately after the confirmation of the report, or at such future day as the Judge shall appoint.

Memorandum of proceedings by judge

117. The Judge shall, in all cases, draw up a memorandum of proceedings, to which shall be annexed the report of the appraiser.

Partition by agreement

118. Any parties having occasion to make a partition of immovable or movable properties, or both, amongst themselves, even though some of them are minors, absent, or under interdiction, may, if such are legally represented, proceed à l'amiable, to the operations of accounts, liquidation, and partition, without its being any longer necessary to draw lots, subject nevertheless to the fulfilment of the following conditions:

- (i) that, previous to the partition, a valuation of all the movable and immovable property to be divided be made by an appraiser appointed by the Judge in chambers;
- (ii) that partition be, in all cases, made by notarial deed before a notary chosen by all the parties or appointed by the Judge in chambers;
- (ii) that the deed of partition when drawn up be, as regards the interests of any minor or interdicted person, a party thereto, submitted for approval to and approved by a resolution of a family council;
- (iv) that such family council be not composed of any of the parties to the deed of partition;
- (v) that the memorandum of the deliberation of the family council do contain the grounds upon which the family council has adopted its resolutions, and that in case of

objections, such objections be recorded by the Judge at the foot of the said memorandum;

(vi) that the deed of partition be homologated by the Supreme Court upon the conclusions of the Attorney General.

Costs

119. The provisions of sections 86 and 90, relative to costs, shall be applicable to sales by licitation.

CHAPTER V - Sales under benefit of inventory

Petition for sale. Proceedings

120. In any case where an heir under benefit of inventory shall desire that any immovable property belonging to a succession be sold, he shall present a petition to a Judge setting forth a summary description of the property and praying that the sale be ordered.

This petition shall be communicated to the Attorney General, and upon his conclusions, the Judge shall order the sale to take place, and shall fix the mise à prix, according to any of the modes prescribed in section 78.

The formalities and times prescribed in and by Chapter III of this part, relative to the sale of immovable properties belonging to minors, shall be observed in all sales under this chapter.

The provisions of sections 86 and 90 shall be applicable to sales under this chapter.

Consequence of non compliance with formalities

121. The heir under benefit of inventory shall be reputed to be purely and simply heir (héritier pur et simple) if he sell any such immovable property otherwise than in compliance with the rules prescribed in this chapter.

CHAPTER VI - Sequestration

Powers of the Supreme Court

122. In all sales by a Judge under the Act, the Supreme Court shall have power, upon the application of an interested party in the sale, to make an order for the sequestration of an immovable property and for the management and administration thereof, and may further authorise the sequestrator to provide money for the payment of the current wages of the labourers and the current salary of the employees and manager of the property, for the purchase of provisions and of manure, and generally for maintaining the property in such condition as to prevent its deteriorating in value during such sequestration.

The court may also order the payment of the totality or of part of the arrears of wages which may be due to the labourers of the property under a judgment of a magistrate. The sequestration shall further be under such other conditions as the court, in its discretion, may determine.

Application for order of sequestration

123. The application may be made to a Judge in chambers returnable before the Supreme Court, if in term time, or before the Judge in chambers, if in vacation.

Notice of such application having been made and of the return day shall be published in the manner prescribed in section 224, three clear days at least before the return day.

The same notice shall be served upon the first and last inscribed creditors, in person, and the Judge may in his discretion order that notice of such application shall be served upon any party who may have an interest to oppose the same.

Inspection of the property

124. The Judge may order that, in the first instance, the property shall be visited by some competent person to be appointed by such Judge, and the said person shall, after inspection of the property and examination of the books, report –

- (i) the monthly amount of wages and salaries according to the paybook;
- (ii) what reductions therein are practicable without detriment to the property;
- (iii) the weekly amount required for provisions;
- (iv) whether it be necessary to expend any, and if any, what amount, for the purchase of guano or other manure;
- (v) generally, what other items of expenditure may be necessary in order to prevent the property from deteriorating in value.

The above report when made shall be verified by affidavit of the party making it, and the costs of such report shall be defrayed, in the first instance, by the party applying for sequestration, but shall be made costs of sequestration, if a sequestration be ordered.

Interventions

125. On the return day any parties having an interest may intervene and oppose such application. The costs of such interventions shall be borne by the intervening parties, unless the Judge otherwise order.

Duration of sequestration

126. The sequestration if ordered shall be limited to such period not exceeding four months as may be necessary in order to bring the estate to sale.

But the same may be continued, upon similar application, and upon good and sufficient cause shown for such further periods, one or more, as shall together with the original period not exceed six calendar months.

Nothing hereinbefore contained shall prevent the Judge, in his discretion, from extending, with the consent of all the inscribed creditors, the sequestration of the property for such further period, beyond the period of six calendar months, as the said creditors may agree to, and as the said Judge may think necessary in the interest of all interested parties.

Order to specify the amount to be expended

127. The sequestration order shall, in all cases, specify the amount which the sequestrator shall be authorised to expend and the mode in which such amount is to be applied.

The sequestrator shall have no power without the special leave of the court to incur any further expenses, or to apply any money otherwise than in conformity with the sequestration order.

Privilege of sequestration

128. All sums of money which shall have been advanced by any sequestrator in accordance with the foregoing provisions shall be a privileged claim on the crop of the property, and on the sale price thereof, in case of insufficiency of the crop, such privilege having priority over all other claims.

Sequestrator not to have any interest in supplies to the estate

129. The sequestrator shall have no direct or indirect interest in any furnishing of supplies to the estate under his charge. Any items of his accounts which the court shall be satisfied to have been incurred in contravention of this section, shall be disallowed.

Sequestration accounts

130. The sequestrator shall be bound to deposit in the registry of the Supreme Court a copy of the accounts of his administration, at the times which may have been specified in the sequestration order, or at any other time which the Judge may order.

CHAPTER VII - Provisions applicable in general to all sales by public competition.

Provisions applicable to all sales

131. The provisions hereinbefore contained in the third paragraph of section 15, and in sections 24, 26, 32, the first paragraph of section 33, sections 34, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 49 and 50 are mutatis mutandis applicable to all sales by public competition of immovable properties under the provisions of this Act.

PART II

CHAPTER I - Of Outbidding (De la Surenchère)

Time for, and amount of outbidding

132. In all sales before a Judge, any person may, within eight days from the adjudication, either in person, or by his attorney, specially authorised to that effect by written power, make an outbidding, provided the same be of at least one sixth of the sale price, exclusive of all costs of sale.

How to be made

133. Such outbidding shall be made at the registry of the Supreme Court, and when once made shall not be withdrawn.

Amount of deposit

134. If the outbidding do not exceed in amount one thousand rupees, the full amount shall be deposited at the time when such outbidding is made.

If it exceed one thousand rupees, the amount to be deposited shall be at the discretion of a Judge, but, in such case, the minimum shall be one thousand rupees and the maximum five thousand rupees.

Publication of outbidding by judge

135. Upon such outbidding being made, a Judge shall ex officio cause to be published in the manner prescribed in section 224, and, at least ten days before sale, a notice as near as may be in the form in the schedule marked C to the effect that the property in question has been sold at a certain price, that an outbidding has been made upon such sale, that the property will again be put up for sale on a specified day which shall be fixed by the Judge, and which shall not be more than fifteen days from the date of making the surenchère; and that all parties desirous of purchasing may attend and bid on such last mentioned day.

Costs of outbidding

136. No further formalities shall be requisite. The costs of making the outbidding shall be taxed immediately upon the outbidding being made, and shall be included in the costs of sale.

Reopening bidding

137. Upon the day fixed for the re opening of the bidding, any person shall be at liberty to bid, either in person, or by a duly empowered agent.

If there are no bidders, the property shall be adjudicated to the outbidder.

Outbidders making default, to forfeit amount of deposit

138. If, on the day when the bidding is re opened, the outbidder does not appear, or if appearing he does not fulfil the conditions of sale, and the property remains finally adjudicated to the original adjudicatee for the original price, the outbidder shall, in any such case forfeit the amount of his deposit which, after deduction therefrom of the costs of such outbidding, shall be added on to and form part of the sale price of the property.

He shall furthermore be liable for the difference between the price of adjudication and the amount of his outbidding at the suit of any interested party.

No outbidding on outbidding allowed

139. When a property shall have been adjudicated upon an outbidding, no further outbidding shall be admissible upon such adjudication.

Except when property resold by folle enchère

140. An outbidding may be made upon all sales by folle enchère.

CHAPTER II -Of the Folle Enchère

Folle enchère upon non execution of the conditions of sale

141. In case any adjudicatee fail to execute the conditions of sale incumbent upon him, the property shall be resold by folle enchère.

Before judgment of adjudication taken out

142. If the folle enchère be prosecuted before delivery of the title to the adjudicatee, as hereinbefore provided by section 44, the party prosecuting the folle enchère shall cause to be delivered to him by a Judge a certificate to the effect that the adjudicatee has not justified fulfilment of the conditions of the adjudication then incumbent upon him.

This certificate together with a commandement to execute the conditions of sale shall be served upon the adjudicatee in person.

Objections

143. Any opposition which may be lodged against the delivery of such certificate shall be by way of petition to a Judge, setting forth in detail the grounds of such opposition.

At the foot of the petition the Judge shall fix a time for hearing the objections.

The costs shall be paid conformably to the provisions of articles 130 and 131 of the French Code of Civil Procedure: and in no case shall they be considered as costs of sale.

Proceedings for resale

144. The party prosecuting the folle enchère shall, upon proof of service of the certificate and commandement mentioned in section 142, or, in case the folle enchère be prosecuted after deliverance of the title of the adjudicatee, upon proof of the service of the warrant for payment and commandement, apply to a Judge to appoint a day for the resale by way of folle enchère.

Such day shall not be less than twenty days nor more than thirty days from the date of such application.

Notices

145. The party prosecuting the folle enchère shall cause a notice of such resale to be published in the manner prescribed in section 224, within four days from the date of the Judge's order fixing the day of such resale, and in the Gazette within eight days therefrom.

The notice shall be as much as possible in the form in the schedule marked D.

If the property of which the folle enchère is prosecuted has been previously adjudicated for less than six thousand rupees, no notice in the Gazette shall be required.

Postponement of sale

146. On the day appointed for such resale by way of folle enchère, the postponement of the sale may, upon application of any of the interested parties, be ordered by the Judge.

The postponement shall take place conformably to the provisions of section 36 and the sale shall take place after fresh publications which must be made in the manner prescribed in section 224, at least twelve days previous to the sale.

Resale prevented by adjudicatee

147. In case, at any time, before the resale of the property as aforesaid, the adjudicatee shall prove to the satisfaction of a Judge that he has fulfilled all the conditions of the adjudication then incumbent upon him, and shall also have deposited with the Judge a sum sufficient to defray the costs of folle enchère, as taxed by the Judge, such resale shall not take place.

Costs of concurrent sale and resale

148. The costs of a sale begun before a Judge shall never be employed as costs of resale, and reciprocally the costs of a resale which is in course of prosecution shall never be employed as costs of a concurrent sale.

Liability of the fol enchérisseur

149. The adjudicatee against whom the resale by way of folle enchère is prosecuted (fol enchérisseur) shall be responsible for the difference between the purchase price and the price at which the property shall have been resold by way of folle enchère, without any right to claim any excess of price obtained upon the resale, which excess shall be distributed as part of the sale price of the estate.

PART III

Procedure for the Clearance of Immovable Properties sold otherwise than by Public Auction before the Judge.

New proprietor to deposit his title deed and notify the deposit thereof to inscribed creditors

150. Any new proprietor of an immovable property acquired by him otherwise than under any sale by public competition before a Judge, who shall be desirous of protecting himself from the effect of proceedings under the provisions of article 1658 of the Civil Code of Seychelles shall be bound to that end, either before such proceedings shall have been commenced, or, at latest, within thirty days of service upon him of the first summons (sommation), to deposit at the registry his title, and to notify such deposit through an usher of the Supreme Court specially designated on that behalf by a Judge in chambers, to the creditors who have taken their inscriptions before or on the day of the transcription of the aforesaid title.

The summons shall be served upon the said creditors at the domicile elected by them in their inscriptions.

If no election of domicile shall have been made on behalf of a vendor, the notification shall be served upon him either in person or at his actual or last known domicile.

The new proprietor shall also, within the same periods, publish, in the manner prescribed in section 224, a summary notice of such deposit.

Requisition for resale before judge

151. Any inscribed creditor or judgment creditor may, within fifteen days next following the fulfilment of the above formalities, make a requisition that the property be put up for sale by public competition before a Judge.

If the requisition is made by a creditor holding a vendor's privilege duly inscribed, such creditor shall not be debarred of the right of making a declaration that he intends to enter an action in cancellation, in the manner provided for by section 24.

Such requisition shall be made by a mere declaration to the above effect, in the margin or at the foot of the act of deposit (acte de dépôt) and by a simultaneous deposit of a sum of money to be fixed by a Judge, and which, in no case, shall exceed five thousand rupees.

If no requisition price definitively fixed

152. In the event of none of the inscribed or judgment creditors having made requisition as aforesaid, within the time and in the manner hereinbefore prescribed, the value of the property shall be deemed to be definitively fixed at the price stipulated in the deed of sale, or declared by the purchaser, and the purchaser shall be freed from every privilege or inscribed hypothec, upon paying his price to the creditors according to the ranking of their claims, or upon depositing the said price in the hands of a Judge.

Formalities of resale

153. In the case the property be put up for sale by public competition, the sale shall be proceeded with under the formalities prescribed for sales by forcible ejectment.

The sale shall be proceeded with at the instance of the purchaser within fifteen days after the date of the requisition mentioned in section 151. If after such period the purchaser has taken no step the sale may be prosecuted at the instance of any inscribed or judgment creditor.

Memorandum of charges

154. The first formality to be fulfilled in the proceedings for resale shall be the deposit of the memorandum of charges and conditions of sale which shall be made by the party prosecuting the resale within fifteen days after the requisition for the sale.

Failing his doing so within the above period, any inscribed or judgment creditor may do so in his stead, and shall thereupon be ipso facto subrogated in the proceedings.

Sale not to be stopped

155. The abandonment of the proceedings (désistement) by the creditor who shall have made requisition for the resale shall not put a stop to such resale, except upon the express and written consent of all the inscribed creditors and of such judgment creditors who may have previously filed in the hands of the Judge an opposition against any abandonment of the proceedings.

Forfeiture of deposit

156. In case the bidding at the resale by public auction does not exceed the tenth of the price stipulated in the deed of sale, the sum deposited under the provisions of section 151 shall be forfeited, and shall be added to the price aforesaid to be distributed conformably to law.

Case of several properties in the deed of sale

157. In case the title of the new proprietor comprises movables as well as immovable properties some of which are burdened with hypothecs, and others not so, or which are all of them so burdened, and the claims on each are different, the new proprietor shall, in any of the above cases, be bound to declare in his act of deposit and in his act of notification what respective portions of the total price he proposes to affect to each property.

Reimbursements to evicted purchaser in case of resale

158. The adjudicatee shall be bound, over and above his price of adjudication, to reimburse to the dispossessed purchaser the costs of his contract, those of the transcription, of the deposit, and of the notification of the same.

He shall also pay the costs incurred towards the resale of the property in manner as provided by sections 34 and 73.

The stamp duty and registration and transcription fees in respect of the voluntary alienation shall be also refunded to the dispossessed proprietor by the Principal Secretary of the Ministry of Finance, upon the certificate of the Registrar and of the Stamp Duty Commissioner respectively as soon as the property shall have been adjudicated upon the resale.

Effect of adjudication

159. The adjudication shall operate pleno jure as a resolution of the previous alienation.

Foregoing provisions applicable to exchanges and donations

160. The provisions of the part shall extend and apply to acquisitions of immovable property by exchange or donation, but they shall only apply to acquisitions made after the date when this Act shall take effect.

PART IV

Of the distribution by way of Order (De l'Ordre)

Judgment of adjudication to be registered and transcribed

161. As soon as the adjudicatee shall, in conformity with the provisions of section 44, have deposited in the hands of the Judge the amount payable by way of stamp duty and registration and transcription fees in respect of his title, the Judge shall ex officio cause such title to be registered and transcribed and thereafter to be returned to him by the Registrar of Deeds.

Application for certificate of inscriptions

162. Immediately after the date of the transcription of the title of the adjudicatee, the party having the carriage of the proceedings shall make application in writing to the Registrar of Deeds for a certificate of inscriptions burdening the property sold. If such application be not made within fifteen days after the transcription, the most diligent amount the creditors or the purchaser shall be entitled to make such application and on doing so he shall be ipso facto subrogated in the carriage of the proceedings.

Registrar to transmit certificate to judge

163. The Registrar of Deeds shall ex officio transmit the said certificate, as soon as drawn up, to the Judge and the cost of such certificate shall be paid to the Judge by the party having the carriage of the proceedings.

Opening of ordre

164. The Judge, upon receipt of such certificate, shall make an order declaring that the ordre is opened, and shall cause a copy of his said order to be posted up in some public place in his office. The original shall be annexed to the certificate of inscriptions, and shall be filed therewith in the registry.

Notice to inscribed creditors

165. The party having the carriage of the ordre shall be bound, within fifteen days of the opening of the order as aforesaid, to summon the inscribed creditors to produce their claims; the summons shall be served upon them at the respective domiciles elected by them in their inscriptions.

As regards any vendor for whom no election of domicile shall have been made the summons shall be served upon him, either at his actual domicile in Seychelles, if any such there by, or at his last known domicile.

Notice to adjudicatee and to judgment creditor

166. The opening of the ordre shall, within the same period, be notified to the adjudicatee at the domicile elected by him under the provisions of sections 40 and 41.

Originals to be filed in registry

167. Within fifteen days after service of the summonses upon the inscribed creditors, the party having the carriage of the ordre shall file in the registry the originals of the summonses.

The said several documents shall be marked as filed, and the fact of filing shall be mentioned in the memorandum of proceedings (procès verbal) of the ordre.

Production of claims

168. Within thirty days after service of the above summonses every creditor shall be bound to produce his titles (titres) together with a memorandum of production signed by his attorney and containing a demand of collocation for the claim produced and for the costs of production. The Judge shall mark as filed the titles and shall annex the several acts of production to the minutes of the proceeding.

The said titles shall not be withdrawn from the registry under any pretence whatever, until after the ordre has been finally closed, and while there deposited shall be open to the inspection of all interested parties, subject to any regulations in that behalf which may be from time to time made by the Judge.

Nevertheless the creditors whose claims have been finally collocated shall have the right to withdraw their titles, unless it be otherwise ordered by the Judge, upon the opposition of any of the other parties to the ordre.

Notice of provisional closing of ordre

169. The Judge, after having drawn the provisional scheme of distribution, shall sign it, and shall issue a notice thereof signed by him, which notice shall be posted up in his office.

Within ten days after the posting of such notice in the registry the attorney having the carriage of the proceedings shall give notice of the same to the attorneys of the several creditors who have made production and to the execution debtor, and shall thereby summon them to take communication of the provisional scheme of distribution, and make such objections thereto as they may think fit within thirty days from date of service.

Late production

170. In case any creditor shall have neglected to make production of his claim within the time prescribed by section 168, he may do so at any time prior to the expiry of the thirty days for objecting to the provisional scheme of distribution; but in such case he shall be bound to give, at his own cost, notice of his production to the several creditors who shall already have made production of their claims, and he shall also pay the costs of his production.

Foreclosure

171. If any of the creditors who have made production and have been served with the notice prescribed by section 169 fail to take communication of the provisional scheme of distribution or to object thereto within the above period, they shall ipso facto be finally foreclosed from making any further objections.

Ventilation

172. Whenever a necessity shall arise for the ventilation of the sale price of immovable properties sold together in one lot, the Judge may, upon the ex parte application of any interested party or even ex officio, make order to that effect, upon the memorandum of proceedings, thereby appointing an appraiser and fixing a time within which he shall be bound to file his report.

The above order shall be notified to the appraiser by the party having the carriage of the proceedings. It shall not be necessary to administer an oath to the appraiser.

The report of the appraiser when filed, shall be annexed to the said memorandum without further formality, and the Judge shall thereupon make the ventilation and establish the provisional scheme of distribution.

Contredits

173. Any party objecting to the provisional scheme of distribution shall be bound to specify the several collocations contested by him, and to set forth his principal grounds of objection against the same, as also to produce and file any titles or documentary proofs which he may at the time, have to adduce in support of his objections.

Partial closing of ordre as to uncontested claims

174. If there be any uncontested claims anterior in ranking to contested claims, the Judge shall close the ordre in respect thereof, and shall forthwith issue warrants for payment (bordereaux de collocation) for the same.

He may proceed in like manner as regards any uncontested claims ranking subsequent to any contested claims, provided a sufficient surplus be reserved for payment of such contested claims.

Final closing where no contestation

175. If there be no contestation relative to the provisional scheme of distribution, the Judge shall, after the expiry of the time fixed in that behalf, finally close the ordre.

He shall tax the costs of erasure of inscriptions not collocated for payment, and of the procedure for the establishing of the ordre, which costs shall be collocated by preference over all claims of creditors.

He shall deliver warrants for payment to the creditors collocated for payment.

He shall furthermore order the erasure of the inscriptions of all creditors who have not been collocated, in so far only as such inscriptions affect the estate sold.

Costs of acquittance

176. The costs of discharge (quittance), and of erasure of inscription of the several creditors collocated for payment, shall be borne by the adjudicatee.

Day of hearing objections

177. The Judge shall, upon the petition of the attorney having the carriage of the proceedings, appoint a day for hearing the objection to the provisional scheme of distribution. If such attorney shall have taken no steps to have such objections disposed of within fourteen days of the expiry of the period for making such objection, the attorney of any other interested party may do so. If any party shall produce further titles or documentary evidence, he must do so at least three days before the hearing.

Nevertheless, the Judge may, in his discretion, upon good cause shown to his satisfaction, grant postponement for a specified time, for the production of further proof; his decision in that behalf shall be without appeal.

Appeal

178. In case of appeal from the decision of the Judge, the creditor collocated last in rank may be made a party thereto in case of need. But no other parties shall be made parties in the appeal, except those whose collocations are contested by the appellant.

Any parties whose collocations are not contested upon appeal shall be entitled to immediate deliverance of their bordereaux by the Judge.

The appellant shall, in his appeal, set forth his principal grounds of appeal.

Final closing of ordre after appeal

179. Forthwith upon final judgment being given upon appeal, the Judge shall definitively close the ordre and he shall deliver warrants for payment to the parties entitled to receive the same. He shall furthermore order the erasure of the inscriptions of all creditors who have not been collocated for payment.

All the warrants for payment delivered by the Judge in virtue of any of the foregoing dispositions, shall specify the title in virtue of which the collocation has taken place, with the date, volume and number of the inscription.

Costs of contested claims

180. The costs of the litigant creditors, whether before the Judge or upon appeal, shall be paid by the losing party, unless the Judge or the court, as the case may be, shall otherwise order; in no case shall such costs be paid as costs of ordre.

Any contesting party who shall have been negligent in producing in due time his titles or documentary evidence may be condemned to payment of costs of the day, even though successful.

Erasure of inscriptions

181. Forthwith upon the final closing of the ordre the Judge shall deposit at the office of the Registrar of Deeds an extract of the judgment ordering the erasure of all inscriptions not collocated for payment, and the Registrar upon the receipt of the same shall proceed to the erasure of all such inscriptions.

Certificate of erasure to be annexed to memorandum

182. The certificates of erasure shall be annexed to the memorandum of proceedings.

Mainlevée on payment of warrant

183. Each creditor collocated for payment, by the mere fact of giving an authentic acquittance for the amount for which he has been collocated, shall be deemed to have given his consent to the erasure of all inscriptions profiting to him in respect of this claim.

Erasure by Registrar of inscriptions as each claim paid

184. According as each claim collocated is paid, the Registrar of Deeds, upon production of the warrant for payment and an extract of the authentic acquittance of the creditor, shall ex officio erase the inscriptions to the extent of the amount paid.

Definitive erasure of ex officio inscription

185. The ex officio inscription may be reduced, upon the payment of the claim collocated, according to the extent of the amount paid. The ex officio inscription shall be definitively erased upon proof by the adjudicatee that he has paid the whole of his purchase price to the creditors collocated for payment, or to the execution debtor as the case may be.

Ordre how opened in sales other than by forcible ejectment

186. When a property has been sold, otherwise than by forcible ejectment, the ordre may be opened at the request either of the most diligent creditor or of the purchaser.

Whatever may be the mode of sale, no distribution by way of order shall be necessary whenever there are fewer than four inscribed creditors upon the property.

In any such case, the distribution of the price shall take place, under and in virtue of a judgment of the Judge.

Warrants for payment executory

187. All warrants for payment issued by the Judge shall be executory without further formality.

Payment of interest when ordre not closed in six months

188. In any case of sale by forcible ejectment, when the ordre shall not have been finally closed within six months from the judgment of adjudication, the adjudicatee shall, notwithstanding any stipulation to the contrary in the memorandum of charges, be bound, at the end of such six months until the final closing of the ordre, to pay into the hands of the Judge all interest at such periods due by him in respect of the sale price. In any case at any time, the adjudicatee shall be three months in arrear of payment, any inscribed creditor may, upon obtaining a certificate to that effect from the Judge, and after service thereof upon the adjudicatee, together with a mise en demeure to pay the interest in arrear, take proceedings as prescribed in and by Chapter II of Part II for the resale of the property by way of folle enchère.

Inscription by creditor to preserve rights to debtor

189. Any creditor may take an inscription to preserve the rights of his debtor. But the amount of the collocation of the debtor shall be distributed rateably amongst all creditors of such debtor who, before the final closure of the ordre, shall either have taken inscriptions as above, or shall have lodged attachments against the amount of such collocation.

Subrogation in proceedings for non observance of formalities

190. In case of non observance by the attorney having the carriage of the proceedings of any of the formalities or time limits prescribed in this part, the said attorney shall be deprived of the further carriage of the proceedings, and the Judge shall, upon the ex parte application of any interested party, substitute another attorney in his place, by an order to that effect entered upon the memorandum of proceedings, which order shall be final and irrevocable.

The attorney so deprived shall be bound forthwith to hand over to the attorney substituted in his place, upon a simple receipt from the same, all documentary procedure in his possession relative to the said proceedings, and he shall not be entitled to claim payment of his costs until the costs of the ordre shall have become payable, after the final closing thereof.

Rectification of ordre in case of folle enchère

191. In case a property be resold by way of folle enchère, pending the proceedings for the distribution by way of ordre of the sale price thereof, or even after the ordre shall have been finally closed and the warrants for payment issued, a fresh ordre shall not be requisite: but the Judge shall rectify the scheme of distribution according to the result of such resale and he shall make the warrants for payment executory against the new adjudicatee.

The party applying for the rectification shall give notice of his application to the several creditors collocated at the ordre.

Distribution of sale price

192. In case any immovable property be sold by public competition before a Judge, the sale price shall be distributed conformably to law without regard to any previous sale which may have taken place of the same property, and that whether an ordre of the previous sale price has been opened or not.

No right of folle enchère by unpaid vendor

193. In case any immovable property be sold by public competition before a Judge, the adjudicatee shall not be troubled by any right of folle enchère resulting from any unpaid sale price of the property, or warrant of collocation upon any anterior sale.

The holder of such right shall only retain his right to produce and claim payment at the ordre or distribution of the new purchase price.

Of Distribution of Sale Price otherwise than by way of Ordre

Order to be made fixing date of hearing on application

194. Whenever the distribution of the price of an immovable property shall take place not by way of an ordre, but under section 186, the party in charge of the proceedings shall apply to a Judge by way of petition to have a day fixed for the hearing of the matter, and the Judge shall enter his order at the foot of the petition.

Parties to be ordered to file claims

195. On the day fixed the Judge shall order parties to file their claims with their application for collocation supported by vouchers, within eight days or more if need be.

Production out of time

196. It shall be lawful for the Judge so long as he has not closed his provisional scheme of distribution to admit production out of time without notice being given to the other producing parties:

Provided that any creditor may make a production out of time within the period of ten days mentioned in section 198 for objecting to the provisional scheme, but in such case he shall be bound to give, at his own cost, notice of such production out of time to the parties having already made production of their claims, and he shall also pay the costs of the action.

Closing of provisional scheme

197. All schemes of distribution by attribution of price shall be closed provisionally and notice of the said closing shall be posted up in the court on the same day.

Objections to provisional scheme

198. The parties having made production and wishing to object to the provisional scheme, shall be bound within ten days from the said notice, to enter at the foot of such provisional scheme a declaration setting forth summarily the grounds of their objection.

If there are no objections filed within the said period, the Judge shall finally close the scheme of distribution.

Notice of objections

199. The mere fact of making such declaration at the foot of the provisional scheme shall be sufficient notice to all interested parties. Within three days after the expiry of the period of ten days mentioned in section 198, the attorney in charge of the proceedings shall apply to the Judge for a day to be fixed, on which all the objections shall be heard and adjudicated upon.

Any interested party may apply for day of hearing of objections to be fixed

200. In case of neglect on the part of the attorney in charge of the proceedings to make such application any of the interested parties may apply to the Judge for such order. After having adjudicated upon the objections the Judge shall proceed to the final judgment of distribution of the price.

The costs of such objections shall be borne by the unsuccessful party, and in no case shall they be considered as part of the costs of distribution.

Application of section 174

201. Section 174 shall apply to the distribution of price made in virtue of section 186 and sections 194 to 200.

Appeals

202. In case of appeal from the Judge's final judgment no other grounds than those set out in the objections to the provisional scheme shall be entertained by the appellate court unless it be shown to the satisfaction of the court that the facts relied on in the new grounds could not have been known to the appellant before the Judge's final judgment.

Registrar may draw up provisional scheme of distribution

203. It shall be lawful for the Registrar of the Supreme Court to draw up and sign any provisional scheme for the distribution of monies required to be made under this Act and to sign all notices announcing that such provisional scheme has been drawn up and signed:

Provided that no attribution of price of ordre shall be finally closed except by order of a Judge and no distribution of price shall be finally made until it has been homologated and declared executory by the Judge who alone shall have power to order that warrants for payment do issue and that inscriptions be erased.

Warrants for payments

204. All warrants for payment ordered by the Judge to issue may be signed by the Registrar.

Price of estate sold before the Judge

205. When any sum of money forming part of the price of an estate sold before a Judge shall be payable on account of the expenses of sequestration of the said estate such sum shall be paid in the presence of the Registrar by the purchaser to the sequestrator or to the person duly authorised by the sequestrator to receive the same, and the receipt of the sequestrator or person aforesaid for the amount shall be filed in the record of the judgment of adjudication of the said estate:

Provided that nothing herein contained shall be taken as restrictive of any powers which a Judge may have to order the deposit in a bank or at the Treasury of any part of the sequestration account which may be the subject matter of contestation.

PART V

CHAPTER I - Consequential effects of sales before the Judge

Price fixed by sale

206. From henceforth whenever an immovable property shall be sold by public competition, before a Judge, the final price of adjudication shall, for all intents and purposes, be deemed to be the final and definitive value of the property, and the adjudicatee shall be exonerated and liberated from all privileged and mortgage claims thereon by paying his price conformably to law.

Legal Mortgages

207. In like manner every such sale shall have the effect of clearing ipso facto the property from all legal mortgages not inscribed prior to the date of the transcription of the title of the adjudicatee:

Saving always the right of any creditors by way of legal mortgage who shall not have inscribed their claims, previous to transcription, to claim payment thereof, according to their ranking, at the distribution of the sale price.

Date of sale

208. No sale has effect with regard to third parties, except from the date of transcription of the title of the adjudicatee.

CHAPTER II - Appeals from Decisions of the Judge

Time of appeal

209. In all cases where a Judge shall have given any decision, or made any order, under or in execution of the provisions of this Act, a party dissatisfied therewith may appeal therefrom.

Such appeal shall be by notice with summons to be served upon the opposite party or parties, or their attorneys, if any have been appointed.

This notice with summons shall set out the principal grounds of appeal. The procedure to be followed shall be that laid down for appeals in civil causes and matters.

Setting down appeals for hearing

210. All such appeals may, at any time of the term, be entered upon the cause list, and shall be heard and determined, with precedence over all other causes for the hearing of which no special day shall have been already appointed.

Dismissal of appeal. Costs

211. In case of appeal, if such appeal be dismissed, the appellant shall pay all the costs of appeal.

Possession of property pending appeal

212. No appeal shall be against any judgment of adjudication, when unobjected to at the time of the adjudication. The fact of any objection shall be recorded by the Judge, on the day of adjudication, upon the memorandum of the cashier des charges. In the case of appeal, the adjudicatee may take

possession, notwithstanding such appeal, and, in such a case, if he is afterwards dispossessed, he shall be entitled to claim and recover, by way of privilege ranking over all other privileges, upon the price of the property, his outlay for the maintenance of the property, and such claim for outlay shall be subject to revision and approval by a Judge.

CHAPTER III - General Dispositions

Incidental application before the Judge

213. All applications before a Judge relative or incidental to any of the matters treated of in this Act, in respect of which express provision is not hereinbefore contained, shall be made by petition, in conformity with the provisions hereinbefore contained in sections 53 and 54.

Nullities

214. Any nullities enacted by any of the provisions of this Act can only be raised in objection by parties prejudiced thereby.

Parties in the same interest to be represented by same attorney

215. In all proceedings under the provisions of this Act several parties having the same interest shall be represented by one and the same attorney. If they cannot agree upon the choice of an attorney, a Judge in chambers shall appoint the attorney representing the greatest number of interested parties, and if the parties represented by several attorneys are equal in number, then the attorney senior in date of nomination shall have charge of the proceedings, unless strong and reasonable grounds be shown against the choice of such attorney.

The same attorney may appear for the guardian and sub guardian of any minor, except in any case where the interest of the minor and guardian appear to be in conflict.

Judgment by consent as to costs

216. No judgment by consent for the payment of any costs, out of a common fund, the subject matter of distribution, shall be binding upon any parties other than the actual parties to such judgment.

Newspapers prove themselves

217. No other proof of the authenticity of the Gazette, or of any newspapers published in Seychelles shall henceforth be necessary, except the signature of a Judge upon the sheets filed in his office, in accordance with the provisions of this Act.

Petitions to Judge need not be registered

218. In all sales made before a Judge, and by public competition it shall not be necessary to register any petition addressed to the Judge or any order of the Judge.

Notaries to insert mainlevée in deeds of acquittance and to erase inscription

219. Every notary drawing up a deed of acquittance, either in whole or in part, of any privileged or mortgaged claim inscribed in the books of the Registrar of Deeds, shall be bound, under a penalty of one hundred rupees, to be levied by such Registrar, to insert in such deed a clause giving, to the extent

of the amount paid, a mainlevée of the inscription, indicating the date, the volume and the number of the inscription. Every notary before whom shall have been executed any deed containing a clause giving mainlevée either in whole or in part of any inscription, shall, under a like penalty, be bound, within twenty days from the date of such deed, to cause the said inscription to be erased in the books of the Registrar of Deeds, in conformity with the terms of the clause of mainlevée.

Seizure lapsed if no step taken for one year

220. Any seizure of immovable property made subsequent to the passing of this Act shall be deemed and taken as lapsed, if no step shall have been taken in the proceedings, for one year from the date of the last step in such proceedings.

Suggestions

221. Whenever it shall be necessary, in any of the cases enumerated in section 176 of the Seychelles Code of Civil Procedure, or in any other case to enter a suggestion in any record of proceedings under this Act, such suggestion shall be entered, at the request of any interested party, at the foot of the memorandum of charges.

The suggestion so entered shall be read and made public at the following public sitting held by a Judge for the prosecution of the sale, and if any objections are made to such suggestion, the Judge shall then and there hear such objections and shall finally decide touching them, and no costs shall be awarded thereupon.

One notice sufficient for each inscribed creditor

222. Whenever under any of the provisions of this Act notice is to be served upon inscribed creditors, one notice shall suffice for each such creditor, whatever may be the number of his inscriptions.

Service of notices on heirs in cases of forcible ejectment

223. In the case of proceedings by way of forcible ejectment prosecuted against the heirs of the debtor, it shall not be necessary, except in the case of the service of the commandement, to serve the several notices prescribed by law upon all the heirs individually; it shall be sufficient if such notice be served collectively upon the heirs, at the elected or last known domicile of the deceased.

Manner of publishing notices

224. Whenever by any law in force relating to judicial sales of immovable property it is required that notices shall be published, such publication shall be made as follows

- (i) by insertion in the Gazette and in one local daily or weekly newspaper, if any exist;
- (ii) if no local daily or weekly newspaper exist, but in addition to publication in the Gazette, by placards posted up at the Court House, in two public and conspicuous places in the town of Victoria, and at the police station nearest to the place where such immovable property may be situated:

Provided that a Judge may in any particular case direct the publication by placards in addition to or in lieu of publication in a newspaper:

Provided also that the cost of such notices in the local newspaper shall not exceed the cost of the same in the Gazette

Boundaries of property to be sold, description

225. In all cases where by this Act a notice having reference to the sale of property before a Judge is required to be published in any daily newspapers or in such newspapers and the Gazette, it shall not be necessary to give in the notice published in such daily newspapers and Gazette all the boundaries of the property to be sold and of any plot of land included therein, but it shall be sufficient to give a general description of the whole property with two of the meets and bounds (tenants et aboutissants) or in case of urban property the street and number, if there is one, and to refer to the cahier des charges in which a full description of the property and of any plot of land therein included shall as heretofore be given.

Proof of publication in newspaper to be filed

226. Where notices have been published under this Act, either in the Gazette or in any daily newspaper, it shall not be necessary to file in the registry more than the single sheet upon which the notice is printed. The Judge shall certify this sheet to be part of a newspaper or Gazette, giving the name of the paper and its date.

Notices may be published in English and French

227. All notices which under this Act are to be published, may be published in French and in English.

Schedules to form part of this Ordinance

228. The several forms in the schedules hereunto annexed shall be read and taken as part of this Act, and shall be followed as near as may be in each case respectively.

PART VI

Repeal of anterior Laws

Repeal of parts of the French Code of Civil Procedure

229. The following articles of the French Code of Civil Procedure are hereby repealed, viz

OF PART I. BOOK V

Articles 673 to 717 both inclusive being Title XII. (De la Saisie Immobilière.)

Articles 718 to 748 both inclusive being Title XIII. (Des incidents sur la poursuite de la Saisie Immobilière.)

Article 749 to 779 both inclusive being Title XIV. (De l'Ordre.)

OF PART II. BOOK I

Articles 832 to 838 both inclusive being Title IV. (De la Surenchère sur aliénation volontaire).

OF PART II. BOOK II

Articles 953 to 965 both inclusive being Title VI. (De la vente des biens immeubles appartenant à des mineurs.)

Articles 969 to 975 both inclusive being Title VII. (Des partages et licitations.)

Articles 987 and 988 of Title VIII. (Du bénéfice d'inventaire) and

Article 997 being Title IX. (De la renonciation à la communauté ou à la succession.)

Repeal of certain articles of the Civil Code

230. Articles 2183 to 2192 both inclusive, of Chapter VIII, Title XVIII of the Civil Code of Seychelles, are hereby repealed.

General repeal

231. The provisions of all Arrêtées, rules and orders of courts, Acts and laws which are, in any way, contrary to the provisions of this Act, are hereby repealed.

SCHEDULE A (NOTICE UNDER SECTION 31): JUDICIAL SALES

Warning is hereby given that on the day of instant (or) next, shall take place the final adjudication, before the Judge of the Supreme Court, of a portion of land (or) of a house situate in the District (or) Town of admeasuring and seized against (or) the heirs of at the request of (or) the heirs of

All parties claiming to take inscriptions of Legal Mortgage upon the said property are warned that they must do so before the transcription of the judgment of adjudication, failing which they shall be debarred of such right.

(Dated) the of 1.....

Of Street, Victoria,
Attorney in charge of the sale.

SCHEDULE B (NOTICE UNDER SECTION 84): JUDICIAL SALE

Warning is hereby given that the Cashier des Charges of the judicial sale of a portion of land (or) a house, or a country house, or belonging to the minor (or) minors situate in the District (or) Town of admeasuring and bounded as follows has, on the day of instant (or) last, been filed in the Registry.

The day of has been fixed for the day of the sale.

The parties claiming a right to take inscriptions of Legal Mortgage are warned that they must exercise such right before the transcription of the judgment of judication, failing which they shall forfeit such right.

(Dated) the of 19.....

Of Street, Victoria
Attorney in charge of the sale.

SCHEDULE C (NOTICE UNDER SECTION 135): SURENCHER

Notice is hereby given that on the day of the property, situate in the District of (or) Town of levied on (or) the heirs of at the request of (or) the heirs of was sold, for a price of Rs. and purchased by A.B.

Afterwards, on the day of one C.D. has made on outbidding of one sixth above the aforesaid price.

Whereupon I have fixed the day of the month of for the sale of the said property, upon the said outbidding.

Dated this

V.E.
Judge of the Supreme Court.

SCHEDULE D (NOTICE UNDER SECTION 145): FOLLE ENCHERE

Notice is hereby given that on the day of the property situate in the District of (or) Town of admeasuring and bounded and which had been adjudicated to on the day of will be resold by way of Folle Enchère. The resale has been fixed by the Judge to take place on the day of
(Dated) the of 1...

A.B.

Of Street, Victoria.
Attorney in charge of the sale.

EXPLANATION OF TERMS USED IN THIS ORDINANCE

Adjudicatee. The purchaser of an immovable property sold by public competition before the Judge.

Collocation. Admission of a creditor to receive payment out of the sale price.

Commandement. Notice given by a creditor to his debtor summoning him to pay his debt, and warning him that, in case of non payment, his immovable property will be seized and sold.

Registrar of Deeds. A public officer charged with the enrolment of hypothecary claims, and with the transcription of documents.

Constitution of an Attorney. Choice and appointment of an attorney, by any part in a suit.

Distraction. Exclusion from a seizure of the whole or part of a property which has been wrongly included in such seizure.

Date Certain. The legal date of a document with regard to third parties.

Dotal Property. Property constituted as the marriage portion of a woman, and which cannot be hypothecated or alienated by the husband and by the wife, or by any of them, during the marriage, except under exceptional circumstances.

Expert. A person employed as appraiser to value an immovable property.

Folle Enchère. Public resale, before a Judge, of an immovable property, for non execution by an adjudicatee of the conditions of his adjudication.

Family Council. Meeting of a number of relatives, and in their default of a number of friends of an infant, or of an idiot, or lunatic, held before the President of the Family Councils for the purpose of deliberating and deciding upon questions concerning the interest of such infant, or idiot, or lunatic.

Homologation. judicial sanction given by the Supreme Court to the decision of the family council or to a deed of partition in any case in which the interest of an infant or of an idiot or lunatic is affected.

Immobilisation. Conversion by a legal fiction, of movables, such as crops, rents, industrial produce, profits, and other advantages which an immovable property may yield, into an actual portion of the said property, so as to form part of the sale price of such property, if it be sold.

Inscribed Creditors. Those whose mortgage or privilege rights have been made public by enrolment upon the registers of the Registrar of Deeds.

Interdicted Persons. Parties who are judicially deprived of the management of their affairs, such as idiots and lunatics.

Intervention. When a person not originally a party to a suit, but claiming an interest in the matter, interposes, at any stage of the suit, in defence of his own interest, whenever it is affected.

Inventory (Heirs under benefit of). When heirs have caused an inventory to be made of the property of the deceased and declare that they accept the succession under benefit of such inventory, id est, that their liability for the debts of the deceased shall not exceed the value of the property as declared in the inventory.

Minors are always held by law to be heirs under benefit of inventory.

Licitation. The sale of property belonging to two or more joint owners.

Mise en règle. The execution of the formalities required by law to clear an immovable property of all the charges and encumbrances by which a purchaser may be troubled.

Mortgage or Hypothec. A real right acquired by a creditor over an immovable property which becomes pledged to him, as security for his claim, the debtor not parting with the possession of the property.

Legal Mortgage. A hypothec created by law in favour of a wife over the property of her husband, in favour of infants and interdicted persons over the property of their guardians, and in favour of the State and of Public establishments over the property of receivers and accountants of public moneys.

Such hypothec exists without the necessity of being inscribed.

Judicial Mortgages. An hypothecary right in favour in a judgment creditor by which, before its abolition by Ordinance No. 5 of 1927, sec. 16, the immovable property, both present and future of the debtor was affected as security for the payment of the the judgment debt.

Conventional Mortgages. A real right conferred by a debtor, in an authentic deed, over his immovable property, for the security of a debt.

Ordre. The process by which the sale price is distributed among creditors, according to the ranking of their claims.

Renunciation of Community. Takes place when, after the dissolution of the marriage or a judicial separation of property, a woman married under the system of community of property declares that she renounces all interest in such community, and restricts her rights to her marriage portion and her personal fortune.

Sequestrator. A responsible person to whom the custody or management of an immovable property, which is to be sold by public competition before a Judge is entrusted by the Judge of the Supreme Court pending the proceedings for the sale.

Subrogation. Takes place when a party who has begun the carriage of a suit fails to take the steps necessary to carry on such suit, and thereupon another party is substituted to him in the management of the proceedings.

Title (Titre). The document on which the creditor's claim or right is founded.

Transcription. Publicity given to a title by its insertion, at full length, in the public registers of the Registrar of Deeds.

Ventilation. When separate immovable properties belonging to the same debtor, but encumbered with separate real rights had been reunited and worked as one estate and are sold as one property or, when although not reunited and worked as one estate, they are nevertheless sold together at the request of one creditor, at the same time, and for a single price, any creditor, whose right only affects one or more of the said properties, is entitled to ask for ventilation, that is, that the respective value of each separate property, as compared with the total sale price be ascertained, and that the amount of the price assigned to each property be divided among the separate creditors of such property.

Note to official 1991 edition: Mauritius Ordinance No. 19 of 1868 is, in both Mauritius and Seychelles, the fundamental law regulating sales of real property made by public competition.

Ordinance No. 19 of 1868 was formally extended with certain modifications by M. Proclamation No. 36 of 1877, which in 1890, was amended by S. Ordinance No. 6 of that year so as to make it clear that the powers exercised by the

Supreme Court of Mauritius under the Ordinance as extended could be locally exercised by the Court of Seychelles.

The Proclamation and the amending Ordinance run thus, with the necessary amendments inserted, consequent upon the provisions of Ord. 6 of 1890.

PROCLAMATION NO. 36 OF 1877. [12TH OCTOBER, 1877.]

WHEREAS by Ordinance No. 14 of 1853 the Governor in his Executive Council is empowered to extend to the Seychelles Islands and other Dependencies of Mauritius any Laws or Regulations published in the Colony, under such modifications and restrictions in the said Laws and Regulations as the Governor may deem fit, according to the local circumstances of the said Dependencies;

AND WHEREAS it is expedient that Ordinance No. 19 of 1868 entitled "An Ordinance to repeal certain of the provisions of the Code of Civil Procedure, of the Civil Code, and of the Colonial Ordinances, relative to "sales of immovable properties" to be extended to the Seychelles Islands and adapted to the local circumstances of those Dependencies, in manner hereinafter specified;

NOW THEREFORE in virtue of the powers vested in me in Executive Council by the above recited Ordinance first;

I do hereby, in and with the advice of my Executive Council, order that the law hereinbefore mentioned shall be and the same is hereby extended to the Seychelles Islands, Dependencies of Mauritius, but subject to the modifications hereinafter specified, viz.

1. (1) The powers vested by the said Ordinance [No. 19 of 1868] in the Supreme Court, the Judges of the Supreme Court and the Master of the Supreme Court shall be exercised in the Seychelles Islands respectively by the Court of Seychelles and the Judge of Seychelles. Whenever in the said Ordinance the words "Judge" or "Master of the Supreme Court" occur, the words "Judge of Seychelles" shall be read.

(2) Provided, however, that the power of holding family councils in virtue of section 76 of the said Ordinance shall be exercised by the Registrar of the Supreme Court.

2. All the powers and duties vested in the Procureur General or Ministère Public by the said Ordinance shall be vested in the Governor.

3. The elections of domicile shall be made at Victoria, Mahé, Seychelles.

4. The Judge shall have power in case of need to extend any times mentioned in the said Ordinance.

5. All moneys to be paid under the Ordinance into the hands of the Registrar.

6. Provided also the power of taxation conferred upon the Master of the Supreme Court by section 31 of the said Ordinance shall be exercised by the Registrar.

7. The seniority in carriage of proceedings provided in section 55 shall be given to the parties themselves when there is no attorney retained.

8. For the purposes of paragraph 4 of section 2, the visa of the Registrar shall be deemed sufficient.

9. Owners of immovable property or guardians of minors shall have the right of appearing by themselves in prosecuting sales, if they choose to do so.

10. Appeals under this Ordinance shall be subject to the same rules as appeals from decisions of the Court of Seychelles.

11. Fees to be paid in virtue of this Ordinance shall be those payable to ushers under the Ordinances regulating fees in the Court of Seychelles.

NO SUBSIDIARY LEGISLATION
