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CHAPTER 114

DISTRICT AUCTIONEERS

An Act to consolidate the Acts relating to the sale of goods distrained on or taken under executions issuing from the inferior courts.

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[9th April, 1904] Commence-
ment.

PART I

Preliminary

1. This Act may be cited as the *District Auctioneers Act*. Short title.
2. For the purpose of this Act Interpreta-
tion.
"district auctioneer" means an auctioneer appointed in accordance with section 3;
"functions" includes jurisdictions, powers and duties.

PART II

Administration

3. (1) For the purpose of selling goods and chattels distrained on and effects levied on by police or parish constables, the Minister may, by instrument in writing, appoint such number of auctioneers for each district as the Minister considers necessary. The Minister
may appoint
an auctioneer
for each
district.
1992-11.

(2) The area of the districts to which auctioneers may be appointed for the purposes of this Act shall correspond with that of the several magisterial districts within Barbados.

(3) Auctioneers appointed pursuant to subsection (1) hold office subject to such terms and conditions as the Minister, in writing, specifies.

Each District Auctioneer to enter into bond. L.N.168/1967. 1973-7.

4. Every district auctioneer shall enter into a bond to the Crown, in the case of the auctioneer for District "A", himself in the sum of \$1 000, and 2 sureties, to be approved by the Minister responsible for the Judiciary, in the sum of \$500 each, and in the case of the auctioneers for the other districts, himself in the sum of \$500 and 2 sureties, to be approved by the Minister, in the sum of \$250 each, for the faithful discharge of the functions of his office, and for the due disposal of all money for which he may sell any goods.

Auctioneers to use receipt books and account books. 1973-7. Cap. 5.

5. (1) An auctioneer appointed under this Act shall be supplied with, and shall keep and use, receipt books and account books issued by the Chief Supply Officer.

(2) Any rules made under the *Financial Administration and Audit Act* relating to the form, preparation, custody and issue of receipts and receipt books apply, so far as is practicable, to receipts and receipt books to be used by auctioneers appointed under this Act.

(3) The account books to be used by auctioneers appointed under this Act shall be in a form approved by the Director of Finance.

(4) On the completion of a sale, the auctioneer shall

(a) hand to the owner of the goods distrained on a receipt duly filled up and signed by the auctioneer from a receipt book kept by him under subsection (1); and

(b) enter the particulars of the sale and of all receipts and payments on account of the sale effected by him under this Act in an account book kept by him under that subsection.

5A. (1) The Registrar of the Supreme Court or the Auditor-General may at any reasonable time require an auctioneer to produce for inspection the books kept by him under section 5(1).

Inspection
and audit of
accounts.

(2) An auctioneer appointed under this Act shall within one month after the end of each financial year produce the books kept by him under section 5(1) in respect of that financial year to the Auditor-General, who shall audit them and make a report on the audit to the Minister responsible for the Judiciary.

(3) An auctioneer appointed under this Act who, without reasonable excuse,

(a) fails or refuses to comply with a request made under

subsection (1) by the Registrar of the Supreme Court or the Auditor-General; or

(b) fails to comply with subsection (2),

is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred and fifty dollars, and, in the case of a continuing offence, to a further fine not exceeding twenty-five dollars for each day or part thereof during which the offence has continued.

6. (1) No person shall act as a bailiff to levy any distress for rent unless he is authorised to act as a bailiff by a certificate in writing under the hand of a magistrate.

Persons acting as bailiffs to be authorised by certificates of magistrates.

(2) Such certificate may be general or apply to a particular distress, and may be granted at any time in the forms prescribed by the First Schedule.

First Schedule.

(3) Any person who holds a certificate and is proved to the satisfaction of a magistrate to have been guilty of any extortion or other misconduct in the discharge of his functions as a bailiff shall be liable to have his certificate summarily cancelled by the magistrate.

(4) Nothing in this section shall be deemed to exempt such bailiff from any other penalty or proceeding to which he may be liable in respect of such extortion or misconduct.

(5) Any person not holding a certificate under this section who levies a distress contrary to this Act, and any person who has authorised him so to levy, shall be deemed to have committed a trespass.

7. (1) Whenever any goods or chattels shall be distrained on for any rents, taxes on land or other taxes, the person levying such distress shall, within twenty-four hours, leave either at the chief mansion house, or other most notorious place on the premises on which the said goods or chattels are distrained on, a notice in the Form A prescribed by the Second Schedule.

Notice to be given of goods distrained on. 1954-9. 1973-1.

Second Schedule.

(2) Any distress which is levied without notice being given under subsection (1) shall be and is hereby declared to be illegal.

THE LAWS OF BARBADOS

Writ officers
distraining
on goods or
taking them
in execution
to make
return
thereof to
the District
Auctioneer.

8. (1) Every writ officer, constable or bailiff who makes a distress or levies an execution on any goods or chattels, shall make a return of such distress or levy and of the goods taken to the District Auctioneer for the district wherein the same are distrained or levied on within three days after he has made such distress or levy.

(2) After such return he shall not receive any such money or security for money, that may be tendered in satisfaction of such distress or levy, or deliver up the goods and chattels which he shall have taken in distress or execution to any person, except by order of such District Auctioneer.

Notice to
be given of
goods dis-
trained or
levied on by
writ officers,
etc.
1954-9.

9. (1) Whenever any writ officer, constable or bailiff makes a distress or levies an execution on any goods or chattels in any case to which section 7 does not apply, such writ officer, constable or bailiff shall, within twenty-four hours after he has made such distress or levy, deliver to the debtor, or leave on the premises on which the said goods or chattels are distrained or levied on, a notice in the Form B prescribed by the Second Schedule.

(2) Any distress or execution which is made or levied without notice being given under subsection (1) shall be and is hereby declared to be illegal.

District
Auctioneer's
fees.
1954-63.
1973-7.
Third
Schedule.

10. (1) Subject to subsection (2), the fees prescribed in the Third Schedule shall be paid to the District Auctioneer.

(2) The fees for notices of sale shall be prepaid by the person on whose behalf any distress or levy is made, and if such fees are not paid within fourteen days after the date of the distraint or levy, the auctioneer shall, subject to subsection (3), forthwith return any goods and effects distrained or levied on to the possession of the debtor.

(3) Goods or effects shall not be returned to the possession of a debtor pursuant to subsection (2) unless the debtor signs an inventory thereof made by the auctioneer, and where any goods or effects are so returned, section 12 shall *mutatis mutandis* apply as if the goods or effects had been left in the possession of the debtor under that section.

(4) Subsections (2) and (3) shall have effect in relation to goods and effects which on the 11th June, 1973 are in the possession of an auctioneer appointed under this Act as if they had come into his possession after that date.

11. (1) In all cases where a warrant of distress is issued for the recovery of rent or rates or taxes, the person against whom the same is issued shall, notwithstanding that he may tender the amount sought to be recovered before any distraint is made or before any goods or chattels are sold by the District Auctioneer, be liable to pay to the constable or person entrusted with the execution of such warrant the like sum of five dollars as such constable or person would have been entitled to receive from the District Auctioneer if he had distrained on the goods and chattels of the person against whom such warrant is issued, and the same had been sold by the District Auctioneer.

Person against whom a warrant of distress for rent, rates or taxes is issued to pay the fee to the constable, notwithstanding tender of amount before distraint is made or goods sold. 1973-7.

(2) Where the said sum of five dollars is not tendered with the amount sought to be recovered, the constable or other person entrusted with the execution of the warrant may refuse the amount tendered, and proceed to execute the warrant.

PART III

Sale of Goods

12. (1) Subject to the provisions of any rules of court relating to interpleader in the case of personal estate levied on under any execution, whenever any personal estate is attached under any distraint warrant or levied on under any execution issuing out of any magistrate's court in the exercise of its civil jurisdiction and the debtor chooses to retain possession thereof, the same shall be left in the possession of the debtor on his signing the inventory to be made of the same by the bailiff or execution officer making such distraint or levy.

Chattels left with the debtor till day of sale. 1954-63.

(2) An inventory made and signed in accordance with subsection (1) shall be attached to the return of such distress or levy to be made to the District Auctioneer by the person executing the distress or levy.

(3) Where an inventory cannot be completed at the time when the distraint or levy is made the bailiff or execution officer

shall retain possession of the personal estate distrained or levied on under subsection (1) until the inventory can be completed.

(4) Any such personal estate shall be produced to the District Auctioneer by the debtor on the day of sale upon a notice from the District Auctioneer for that purpose.

(5) Any creditor who or whose agent has good cause to suspect that the debtor intends to make away with the effects attached under subsection (1) may make oath before the magistrate of the district in the exercise of his civil jurisdiction that he has good cause to suspect the removal of the effects by the debtor or any other person and the said magistrate shall thereupon by an order in writing signed by him authorise and empower the District Auctioneer, and any person acting under him, to take immediately in his custody all such effects as have been so attached.

(6) Where on the day of the sale or any time after notice of an order made under subsection (5) and signed by the District Auctioneer has been served on the debtor or left at his last known place of abode, the effects referred to in that subsection are not produced to the District Auctioneer at the time and place stated in the notice, the debtor is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 6 months. 1985-21.

(7) Notwithstanding subsection (6), a debtor shall not be found guilty of an offence under that subsection if he proves that the non-production of the effects referred to in subsection (5) was not due to any fault or neglect on his part. 1985-21.

(8) All proceedings brought under subsection (6) are required to be brought by way of information.

13. (1) Any goods and chattels distrained on for the recovery of any rent or rates or taxes or taken by virtue of executions issuing from the magistrates in the exercise of their civil or their criminal jurisdiction shall be sold not less than 10 days from the service of a notice in the appropriate form prescribed by the *Second Schedule* by the District Auctioneer for the district in which such distress or execution was made. Time and place of sale of goods distrained on or taken in execution. 1954-9. 1956-56. Second Schedule.

(2) Goods and chattels which can be removed shall be sold by the District Auctioneer at Police Headquarters in cases where they have been distrained or levied on within the limits of District A and in cases where the same have been distrained or levied on within the limits of Districts B, C, D, E, or F respectively, at the appropriate police stations for the several parishes comprised in those districts or, in

whatever district the same have been distrained or levied on, at such other place as may be specified in the appropriate form prescribed by the *Second Schedule*.

(3) The removal of such goods and chattels shall be at the cost of the person on whom the distress or execution was made.

(4) Board and shingle houses shall be sold on the spot where they were taken in distress or execution.

District Auctioneer to set up notices relating to sale of goods. 1954-9.

14. (1) Every District Auctioneer shall affix, 7 days at least before the day of sale, a notice in writing specifying the description of the goods and chattels distrained or effects levied on, the person from whom the same were taken, and the hours within which the sale will take place.

(2) The notice shall be affixed at Police Headquarters or the appropriate police station in accordance with section 13 and, in either case, also at such other place of sale as may have been specified in the appropriate form prescribed by the *Second Schedule*.

Second Schedule.

(3) In the case of houses to be sold at places other than the police stations, the notice shall be affixed at the police station.

(4) In the case of board and shingle houses distrained or levied on a copy of such notice shall be affixed not only at the police station but also on such board and shingle house for the immediate information of the persons in the neighbourhood thereof.

Day on which sales are to be made. 1954-9. 1998-33.

15. (1) Any day that is convenient to the District Auctioneer shall be a day of sale for all removable goods and chattels distrained or levied on pursuant to this Act, except Christmas Day, a public holiday or any day which is set apart by proclamation for divine worship.

(2) Houses to be sold on the spot shall be sold on a day to be fixed by the auctioneer, which shall not be less in the case of distraint for rent, or a levy under an execution, than 10 days, and in the case of distress for rates, than 7 days, from the date of the affixing of the notice of sale.

District Auctioneer may postpone sale.

16. Where the auctioneer is unable to obtain a reasonable price for any article exposed for sale, he may postpone the sale

until the next sale day; and, in case of any such postponement, he shall renew the notices required by section 14.

17. (1) All goods and chattels sold by the District Auctioneer shall be paid for by the purchaser in cash at the time of such sale and before the delivery thereof to the purchaser.

Chattels sold to be paid for before delivery and if not paid for to be re-sold.
1954-9.

(2) Where the purchaser does not comply with subsection (1) the District Auctioneer shall renew the notices of sale required by section 14 and re-sell such goods and chattels, and shall take proceedings against the purchaser to recover the costs and expenses of such renewal of notices and re-sale and the sum representing the diminution in price (if any) on such re-sale.

18. The powers conferred on the District Auctioneer by section 17 may be exercised if occasion require, in the case of the re-sale under that section, as if such re-sale were an original sale and the second or subsequent purchaser were the original purchaser, but the liability of the first purchaser to pay the cost and expenses of the first renewal of notices and of the first re-sale and also the difference between the price offered and the price obtained on the first re-sale shall not be in any way affected thereby.

Powers of District Auctioneer on a re-sale.

19. (1) The District Auctioneer shall, out of the proceeds arising from the sale of any goods and chattels distrained on or effects levied on, in the first place deduct the commission, cost, and expenses hereinbefore allowed him, and pay to the police or parish constable, or person who distrained or levied, the costs of any removal of such goods, chattels or effects, and also, in the case of livestock, the expenses of keeping the same pending the sale thereof.

Distribution of proceeds of sale.
1954-63.

(2) The expenses of keeping livestock referred to in subsection (1) shall not exceed such expenses as may be provided by, or determined pursuant to, regulations made under the *Livestock (Control of Strays) Act*.

1992-11.

Cap. 139A.

(3) In the case of a sale of goods and chattels distrained on the District Auctioneer shall within 7 days after the sale further pay to the constable or other person who levied the distress a fee of \$10, and to the landlord the amount distrained for, and the surplus (if any) he shall pay to the Chief Marshal who shall apply the same in the same manner

1992-11.

Cap. 111. as if the sale had been effected under the *Chief Marshal Act*.

(4) In the case of a sale of effects levied on under an execution, he shall within 7 days after the sale pay into the court out of which the same shall have issued the amount stated on the writ of execution together with the charges for issuing and levying the same, and the surplus, if any, he shall pay to the Chief Marshal who shall apply the same in the same manner as if the sale had been effected under the *Chief Marshal Act*.

Cap. 111. *Act*.

Proceeds of sale if undistributed by the District Auctioneer for 21 days after sale to be paid to the Accountant General.

20. Whenever a District Auctioneer does not apply in the manner provided for by section 19 the moneys in his hands arising from the sale of any goods and chattels distrained or effects levied on, or any part of such moneys, for the space of 21 days next after such sale, or he is unable from any cause whatever so to apply the same, he shall immediately after the expiration of such period of 21 days pay such moneys to the Accountant-General and forward the receipt of the Accountant-General for the same to the Auditor-General when the next audit of his accounts is to be made.

Payment out of money paid in under section 20.

21. Any person entitled to any moneys so paid to the Accountant-General under section 20 and desiring to obtain the same shall apply therefor to the Accountant-General who is hereby authorised to direct payment thereof to such person as he may deem entitled thereto.

PART IV

Offences

Contravention of section 8. 1985-21.

22. A person who contravenes section 8 is guilty of an offence and is liable on summary conviction to a fine of \$100 or to imprisonment for a term of 1 month.

Removal of goods or chattels. 1985-21.

23. (1) A person who, without the consent of the District Auctioneer, takes possession of or assists in removing any goods or chattels that have been distrained or levied on by a bailiff or execution officer before

(a) the sale of the goods or chattels is stayed by the payment of the debt and the costs incurred under section 10, or

(b) the goods or chattels are sold by the District Auctioneer,

is guilty of an offence.

(2) A person who is found guilty of an offence under this section is liable on summary conviction to a fine of \$250 or to imprisonment for a term of 3 months.

24. (1) A person who obstructs a District Auctioneer, bailiff or execution officer in the exercise of his duties is guilty of an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for a term of 12 months.

Obstructing
District
Auctioneer.
1985—21.

(2) All proceedings brought under subsection (1) are required to be brought by way of information by the person aggrieved.

25. A District Auctioneer who contravenes section 19 or 20 is guilty of an offence and is liable on summary conviction to a fine of \$100 or to imprisonment for a term of 1 month.

Contraven-
tion of
section 19 or
20.
1985—21.

26. (1) A person who wilfully mutilates, defaces or removes a notice of sale affixed pursuant to section 14 or 16 is guilty of an offence and is liable on summary conviction to a fine of \$250 or to imprisonment for a term of 3 months.

Mutilating,
defacing or
removing
notice of
sale.
1985—21.

(2) All proceedings brought under subsection (1) are required to be brought by way of information by the person aggrieved.

PART V

Saving

27. Nothing in this Act relating to a distress for taxes on land or to a sale of any goods or chattels distrained on for the recovery of taxes on land shall affect the provisions of the *Land Tax Act* that confer power to distrain for taxes on land, to sell any such distress taken or to sell any premises in respect of which a tax on land is due and payable.

Saving.
1973—1.
Cap. 78A.

s.6.

FIRST SCHEDULE

FORM I

General Certificate

Date

District

Pursuant to section 6 of the District Auctioneers Act I hereby authorise
A.B. of _____ to act as a bailiff to levy distresses
for rent within the limits of District _____

Sgd.

Magistrate,
District

FORM II

Special Certificate

Date

District

Pursuant to section 6 of the District Auctioneers Act I hereby authorise
A.B. of _____ to act as a bailiff to levy a distress
on the premises of C.D. of _____ for rent alleged to be
due to E.F. of _____

sgd.

Magistrate,
District

SECOND SCHEDULE

s.7.

FORM A

Notice of distress [for rent or rates (or as the case may be)]

To C.D. and all others whom it may concern.

Take notice that I, R.S. as agent of and for A.B. Esquire, [your landlord
or Commissioner of Land Tax _____ (or as the
case may be)] have this day distrained on the premises [in your occupation or
possession, (if the fact be so)] named in the inventory hereunto annexed,
the [cattle] goods and chattels mentioned in the said inventory, for \$
_____ being the amount due to the said A.B. on the _____ day of
_____ for [rent of said premises; or rates (or as the case may be)]: And unless you pay
the said sum of \$ _____ with the charges of distraining for the same within
[seven (in case of rates) ten (in the case of rent)] days from the service here-
of, the said [cattle] goods and chattels will be sold at (here specify the place)

according to law. (*If live stock or goods are removed, mention the place thus: And take notice that the said [cattle or goods] have been removed to and are now at*).

Dated this day of 19

R.S.
Agent of A.B.
[or A.B. of]

Inventory of goods and chattels taken (*to be filled in with particulars above referred to*)

FORM B

(Section 9)

*Notice of distress or levy
[by virtue of execution issuing from the magistrate
(or as the case may be)].*

To C.D. and all others whom it may concern.

Take notice that I, R.S., Writ Officer (*or as the case may be*) in pursuance of (an execution issuing from (*or as the case may be*)) in respect of (a judgment obtained against you by A.B. of (*or as the case may be*)) (have this day levied (distraigned)) on the [cattle] goods and chattels named in the inventory hereunto annexed for \$ being the amount due (to the said A.B.) on the day of in respect of (the said judgment (*or as the case may be*)). And unless you pay the said sum of \$ with the charges of levying (distraing) for the same within 10 days from the service hereof, the said (cattle) goods and chattels will be sold at (*here specify place of sale*) according to law. (If livestock or goods are removed, mention the place thus: And take notice that the said (cattle or goods) have been removed and are now at).

Dated this day of 19 .

R.S.
Writ Officer (*or as the case may be*)

Inventory of goods and chattels taken.

THIRD SCHEDULE

(Section 10)

1973-7
1992-11.
1998-33

A commission of 15 per cent on the amount realised by the sale of the goods and chattels distrained on and of the effects levied on or, if the person levying or distraining withdraws from the levy or distress, a commission of 15 per cent on amount for which the goods or chattels were levied or distrained on

<i>Service Rendered in Respect of the Distraint or the Levying of Execution on Goods and Chattels</i>	<i>Fee \$</i>
Preparing a notice of a sale set up by the District Auctioneer in accordance with this Act	40.00
Preparing a notice to a debtor to produce goods left in or returned to the possession of a debtor	35.00
Attending and taking possession of goods under order of a magistrate's court and checking the inventory in respect thereof	40.00
Serving notice of an order on a debtor	35.00
Receiving and paying out moneys where the sale of goods does not take place	40.00
Travelling to the spot where a chattel house is situated for the purpose of selling it	50.00
Travelling for the purpose of serving notice of an order on a debtor or going to a debtor's last known place of abode	50.00
Attending at a spot on the day of sale of a house, where the sale is stayed by the payment of the debt and costs incurred	50.00