

BOOK VII - ATTACHMENT AND EXECUTION OF DECREES

TITLE 1 - EXECUTION OF DECREES PASSED IN ERITREA

Chapter 1. - Courts Executing Decrees

Art. 406. - Principle.

A decree may be executed in accordance with the provisions of this Title either by the court which issued it or by the court to which it is sent for execution. Nothing in this Title shall affect the provisions of the Maritime Code regarding the arrest, detention and sale of ships.

Art. 407. - Transfer of Decree.

(1) The court which issued a decree may, by order in the form prescribed, or its own motion, or on the application of the decree-holder when execution is sought, send it for execution directly to another court where:

(a) the judgment-debtor resides, carries on business or personally works for gain within the local limits of the jurisdiction of such other court;

(b) the judgment-debtor has property sufficient to satisfy the decree within the local limits of the jurisdiction of such other court, but not of the court which issued the decree;

(c) the decree directs the sale or delivery of immovable property located within the local limits of the jurisdiction of such other court; or

(d) the court which issued the decree considers, for any other reason to be recorded, that the decree should be executed by such other court.

(2) Nothing in the preceding sub-Article shall prevent a court from directing attachment or sale of immovable property notwithstanding that the entire property is not located within the local limits of its jurisdiction.

Art. 408. - Procedure in Case of Transfer.

(1) The court sending a decree for execution shall send:

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the court by which it was passed

or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree or, if no such order has been made, a certificate to that effect.

(2) The court to which a decree is transferred shall execute it after causing such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof unless the court, for any special reason, to be recorded, requires such proof.

Art. 409. - Power of Court to Which Decree is Transferred.

(1) The court to which a decree is transferred shall have the same powers in executing such decree, and its orders in execution shall be subject to the same rules regarding appeals, as if the decree had been issued by itself.

(2) The court to which a decree is transferred shall certify to the court which issued such decree the fact of execution or, where the former court fails to execute the same, the circumstances attending such failure.

Art. 410. - Questions to be Determined by Court Executing Decree.

(1) Any question arising between the parties to the suit in which the decree was passed concerning the execution, discharge or satisfaction of the decree, shall be determined by the court executing the same and not by a separate suit.

(2) Any question arising as to whether or not any person is the representative of a party shall, for the purposes of this Article, be determined by the court executing the decree.

Art. 411. - Stay of Execution.

(1) The court to which a decree has been transferred shall, on good and sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the court which issued the decree for an order to stay execution or for any other order relating to the decree or execution which might have been made by such court if execution had been issued thereby.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application, but no such order shall prevent such property or person from

being subsequently retaken in execution of the decree sent for execution.

(3) Before ordering a stay of execution or the restitution of property or discharge of the judgment-debtor, the court may require such security from, or impose such conditions upon, the judgment-debtor as it deems appropriate.

Art. 412. - Binding Effect.

Any order of the court which passed the decree, in relation to the execution thereof, shall be binding upon the court to which the decree was transferred.

Art. 413. - Stay of Execution Pending Suit against Decree-holder.

Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was issued, the court may, on such terms as to security or otherwise as it deems appropriate, stay the execution of the decree until the pending suit has been decided.

Chapter 2. - Application and Process for Execution

Art. 414. - Making and Contents of Application.

(1) Where the holder of a judgment wishes to execute it, he shall apply to the court which passed such judgment to issue process for its execution. .

(2) The application may be made upon the passing of the judgment, unless the judgment-debtor was given time to satisfy the judgment by his personal obedience, in which case the application may not be made until the judgment-debtor is in default.

(3) The application, to which there shall be attached a certified copy of the judgment sought to be executed, shall be in writing, signed and verified in the same manner as a pleading, and shall state:

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) the amount with interest if any, due upon the judgment or the relief granted thereby;

- (e) the amount of the costs, if any, awarded;
- (f) the name of the person against whom execution is sought; and
- (g) the mode in which the assistance of the court is required, whether:
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment and sale, or by the sale without attachment, or any property;
 - (iii) by the appointment of a receiver; or
 - (iv) otherwise, as the nature of the relief granted may require.

Art. 415. - Particulars in Application for Attachment.

- (1) An application for the attachment of any movable property belonging to the judgment-debtor shall be accompanied by an inventory of the property to be attached, containing a reasonably accurate description of the same.
- (2) An application for the attachment of any immovable property belonging to the judgment-debtor shall contain:
 - (a) a description of such property, provided that, where such property is entered in the registers of immovable property, the court may require the applicant to produce a certified extract from such registers; and
 - (b) a specification of the judgment-debtor's share of interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Art. 416. - Application for Execution by Joint Decree-holder.

- (1) Where a decree has been passed jointly in favor of several persons, any one of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.
- (2) Where the court finds good and sufficient cause for allowing the decree to be executed on an application made under sub-Article (1), it shall make such order as it deems necessary for protecting the interests of the persons who have

not joined in the application.

Art. 417. - Application for Execution by Transferee of Decree.

(1) Where a decree, or if a decree has been issued jointly in favor of two or more persons, is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court that issued it.

(2) Subject to the provisions of sub-Articles (3) and (4), the decree may then be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

(3) Where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the judgment shall not be executed until the court has heard their objections, if any, to its execution.

(4) Where a decree for the payment of money against two or more persons has been transferred to one of them, the transferee judgment-debtor cannot execute against the other judgment-debtor or debtors.

Art. 418. - Enforcement of Liability of Surety.

Where any person has become liable as surety:

(a) for the execution of a decree or any part thereof;

(b) for the restitution of any property taken in execution of a decree; or

(c) for the payment of any money or the fulfillment of any condition imposed on any person under an order of the court, the decree or order may be executed against him to the extent to which he has rendered himself personally liable and he shall be deemed to be a party, provided that such notice as the court in case deems appropriate shall be given to him.

Art. 419. - Death of Judgment-debtor.

Where a judgment-debtor dies before the decree has been fully satisfied, the decree-holder may apply to the court which passed it to execute the same against the legal representative of the deceased.

Art. 420. - Execution When Barred.

No application for execution shall be submitted after the expiration of ten years from:

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

Art. 421. - Procedure on Receiving Application for Execution.

- (1) On receiving an application for execution the court shall ascertain whether the requirements of the preceding Articles, as may be applicable to the case, have been complied with, reject the application or allow the defect to be remedied on such terms as it shall fix.
- (2) Where an application is amended under the preceding sub-Article, it shall be deemed to have been an application in accordance with law presented on the day when it was first presented.
- (3) Every amendment made under this Article shall be dated and signed or initialed by the presiding judge.

Art. 422. - Order of Execution.

- (1) Where an application for execution is admitted, the court shall issue an order of execution and send a copy of the order thereof to the judgment debtor.
- (2) Every order shall be dated the day on which it is issued and shall be signed by a judge, sealed with the seal of the court and delivered to the execution officer.

Art. 423. - Objection by the Judgment-debtor.

If the judgment-debtor, having received a copy of the execution order, prefers to submit objections, the court shall consider the application and order as it deems appropriate.

Art. 424. - Examination of the Judgment-debtor.

- (1) Upon request of the judgment-creditor, or on its own motion, the court

may summon and examine the judgment-debtor under oath as to his means or for any other reason it deems necessary.

(2) Where the judgment-debtor fails to appear in answer to the summons, the court shall order that he be arrested and brought before it for the purpose of being examined.

(3) For the purpose of an examination under this Article, the court may summon any person or require the production of any book or record.

Art. 425. - Judgment-debtor Unable to Pay.

No order shall be issued where the court considers that the judgment-debtor is unable to pay the amount due under the judgment or any installment thereof, but the court may at any subsequent time issue process on being satisfied that the judgment-debtor has become able to pay such amount or installment.

Art. 426. - Where Warrant of Arrest May be Issued.

(1) The court may forthwith order the arrest of the judgment-debtor on being satisfied, by affidavit or otherwise, that, with the object or effect of obstructing or delaying execution, he is about or likely to abscond or leave the local limits of the jurisdiction of the court or to dispose of or remove his property or any part thereof from such limits.

(2) An order under sub-Article (1) may be issued pending the making of an application for execution.

Art. 427. - Particulars in Warrant of Arrest.

(1) Every warrant issued shall direct the officer entrusted with its execution to bring the judgment-debtor before the court unless the judgment-debtor satisfies the decree by personally appearing in court.

(2) No warrant of arrest shall be executed where satisfaction is obtained in accordance with sub-Article (1).

Art. 428. - Where Detention May be Ordered.

Where after the examination:

(1) the judgment-debtor refuses without good cause to comply with the decree; or

(2) the court is satisfied that the judgment-debtor, although able to comply with the decree, has willfully failed to do so, the court may order the arrest of the judgment-debtor, if he is not already under arrest, and his detention in the civil prison for a period not exceeding six months.

Art. 429. - Release from Detention.

(1) The court shall order that the judgment-debtor be released from detention:

(a) upon the amount due under the decree being paid into court or to the officer in charge of the prison, or satisfaction of the decree being otherwise obtained; or

(b) upon the request of the decree-holder.

(2) A judgment-debtor released under sub-Article (1) may not be rearrested in execution of the same decree.

Art. 430. - Effect of Detention or Release.

A judgment-debtor arrested or released shall not, merely by reason of his arrest or release, be discharged from the whole or any part of his debt.

Art. 431. - Endorsement of Order.

(1) The execution officer shall endorse on the order the day and manner in which it was executed and, if the latest day specified in the process for the return thereof has been exceeded, the reason for the delay or, if it was not executed, the reason why it was not executed, and shall return the order with such endorsement to the court.

(2) Where the endorsement is to the effect that the execution officer is unable to execute the order, the court shall examine him about the alleged inability and may, if it deems appropriate summon and examine witnesses as to such inability and shall record the result.

TITLE II - MODES OF EXECUTION

Chapter 1. - General Provisions

Art. 432. - Decree of Payment of Money.

(1) Without prejudice to the provisions of the following Articles, every decree

for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the attachment and sale of the judgment-debtor's property.

(2) The value of the property attached shall, as nearly as may be possible, correspond with the amount due under the decree.

Art. 433. - Modes of Payment of Money.

(1) All money payable under a decree shall be paid as follows, namely:

(a) into the court whose duty it is to execute the decree;

(b) out of court to the decree-holder; or

(c) otherwise as the court which passed the decree directs.

(2) Where any payment is made under sub-Article (1), notice thereof shall be given to the decree-holder.

Art. 434. - Payment out of Court to Decree-holder.

(1) Where any money payable under a decree of any kind is paid out of court or the, decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly.

(2) The judgment-debtor may also inform the court of such payment or adjustment and apply to the court to issue a notice in the form prescribed by the Fourth Schedule of this Code to the decree-holder to show cause, on a day to be fixed by the court why such payment or adjustment should not be recorded as certified.

(3) If, after service of a notice issued under sub-Article (2), the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(4) A payment or adjustment which has not been certified or recorded as aforesaid shall not be recognized by any court executing the decree.

Art. 435. - Execution in Case of Cross-decrees.

(1) Where applications are made to a court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then:

(a) if the two sums are equal, satisfaction shall be entered upon both decrees: and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) The provisions of sub-Article (1) shall apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) The provisions of sub-Article (1) shall not apply unless:

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same position in both suits, and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favor of one or more of such persons.

Art. 436. - Execution in Case of Cross-claims Under Same Decrees.

Where application is made to a court for the execution of a decree involving cross-claims under which two parties are entitled to recover sums of money from each other, then:

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the

smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Art. 437. - Decree for Specific Movable Property.

A decree for any specific movable property or any share therein may be executed by the seizure of the movable property or share and the delivery thereof to the decree-holder or to such person as he appoints to receive delivery on his behalf.

Art. 438. - Decree for Specific Performance or Injunction.

(1) Where the party against whom a decree for the specific performance of a contract or for an injunction has been issued has had an opportunity of complying with the decree and has willfully failed to do so, the decree may be executed by the attachment and sale of his property and the court shall award the proceeds to the decree-holder in such an amount as it deems appropriate.

(2) Nothing in sub-Article (1) shall prevent the court from directing that the act required to be done may be done as far as practicable by the decree-holder or some other person appointed by the court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as though they were included in the decree.

**Art. 439. - Decree for Execution of Document, or
Endorsement of Negotiable Instrument.**

(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court.

(2) The court shall make such order approving or altering the draft as it deems appropriate.

(3) The decree-holder shall deliver to the court a copy of the draft with such alterations, if any, as the court may have directed, and the execution officer or such officer as may be appointed on his behalf, shall execute the document so delivered.

(4) The court, or such officer as it may appoint in this behalf, shall cause the

document to be registered if its registration is required by law and may make such order as it deems appropriate as to the payment of the expenses of the registration.

Art. 440. - Decree for Immovable Property.

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the decree-holder, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, possession shall be delivered by affixing a copy of the decree in some conspicuous part of the property and proclaiming such possession by a customarily accepted mode.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree does not afford free access, the execution officer may remove or open any lock or bolt or break open any door or do any other act necessary to put the decree-holder in possession.

Art. 441. - Distribution of Assets.

Where assets are held by or under the authority of a court and more persons than one have, before the receipt of such assets, applied to the court for the execution of decree for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization shall be distributed among all such persons in the prescribed manner.

Chapter 2. - Attachment of Property

Art. 442. - Property Not Liable to Attachment.

The following property shall not be liable to attachment or sale at any stage of the proceedings:

- (1) the necessary wearing-apparel, cooking vessels, bed and bedding of the judgment-debtor and his family;
- (2) tools, books, instruments or implements of any kind used by the judgment-debtor in his profession, art or trade;
- (3) where the judgment-debtor is an agriculturist, such livestock and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his

livelihood;

(4) such amount of food and money as may, in the opinion of the court, be necessary for the judgment-debtor and his family for a period of six months;

(5) pensions and alimonies;

(6) three-fourth of the judgment-debtor's salary, provided that the entire salary shall be exempt from liability to attachment where it does not exceed a reasonable amount prescribed by the court and the judgment-debtor has no other income;

(7) any other property declared by or in accordance with any law to be exempt from liability to attachment or sale; and

(8) the installations, machinery or other instruments specified or meant for the use of public utilities whether the administration of such public utility is undertaken by the management itself or entrusted to any person, natural or corporate.

Art. 443. - Attachment Where Amount Due Not Determined.

Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Art. 444. - Attachment of Movable Property Other Than Agricultural Produce.

(1) Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the execution officer shall, subject to the provisions of sub-Article (2), keep the property in a safe place, and shall be responsible for the due custody thereof.

(2) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the execution officer may sell it at once.

Art. 445. - Attachment of Agricultural Produce.

(1) Where the property to be attached is agricultural produce, the attachment

shall be made by affixing a copy of the warrant of attachment:

- (a) where such produce is a growing crop, on the land on which such crop has grown; or
 - (b) where such produce has been cut or gathered at or near the threshing - floor or place for treading out grain or the like or fodder-stack or in which it is deposited.
- (2) Another copy of the warrant shall be affixed on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain.
- (3) Upon the affixing of the warrant, the produce shall be deemed to have passed into the possession of the court.

Art. 446. - Provisions as to Agricultural Produce under Attachment.

- (1) Where agricultural produce is attached, the court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.
- (2) Subject to such conditions as may be imposed by the court either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it.
- (3) Where the judgment-debtor fails to do all or any of the acts mentioned in sub-Article the decree-holder may, with the permission of the court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.
- (4) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require reattachment merely because it has been severed from the soil.
- (5) Where an order for the attachment of a growing crop has been made at a

considerable time before the crop is likely to be fit to be cut or gathered, the court may suspend the execution of the order for such time as it deems appropriate, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(6) A growing crop by which its nature does not admit of being stored shall not be attached under this Article at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Art. 447. - Attachment of Property Not in Possession of Judgment-debtor.

(1) Where the property to be attached is a debt not secured by a negotiable instrument or a debt owing to the judgment-debtor under another decree, the attachment shall be made by a written order prohibiting the creditor from recovering the debt and the debtor from making payment thereof until the further order of the court.

(2) Where the property to be attached is a share in the capital of a corporation, the attachment shall be made by a written order prohibiting the person in whose name the share may be from transferring the same or receiving any dividend thereon and the corporation from registering any transfer of such share.

(3) Where any other movable property or a sum of money is to be attached, the attachment shall be made by a written order prohibiting the person in possession of the same from giving it over to the judgment-debtor.

(4) A copy of the order made under sub-Articles (1)-(3) shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of any other movable property, to the person in possession of the same.

(5) A debtor prohibited under sub-Article (1) may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

(6) Any order under this Article shall be accompanied by a notice informing the person in possession of the property that he may appear before the court on a day to be fixed in the notice to show cause why he should not comply with the order.

Art. 448. - Attachment of Share in Movables.

Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or changing it in any way.

Art. 449. - Attachment of Salary.

(1) Where the property to be attached is the salary of an employee the court may order that the amount due be withheld from such salary either in one payment or by monthly installments, as the court may direct.

(2) A copy of an order made under sub-Article (1) shall be sent to the employer of the judgment-debtor and the amount due under the order, or the monthly installments, as the case may be, shall thereupon be withheld from the judgment-debtor's salary and remitted to the court.

(3) Where the attachable proportion of the judgment-debtor's salary is already being withheld and remitted to a court in pursuance to a previous and unsatisfied order of attachment, the employer of the judgment-debtor shall forthwith return the subsequent order to the court issuing it with a full statement of all the particulars of the existing attachment.

Art. 450. - Attachment of Negotiable Instruments.

Where the property to be attached is a negotiable instrument not deposited in a court, nor in the possession of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to further order of the court.

Art. 451. - Attachment of Property in Custody of Court or Public Officer.

Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the court from which the notice is issued: Provided that, where such property is in the custody of a court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Art. 452. - Attachment of Immovable Property.

- (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property with any right *in rem*, and all persons from taking any benefit from such transfer or charge.
- (2) The order shall be proclaimed at some place on or adjacent to such property by the customarily accepted mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house.

Art. 453. - Removal of Attachment after Satisfaction of Decree.

Where:

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into court;
- (b) satisfaction of the decree is otherwise made through the court or certified to the court; or
- (c) the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed.

Art. 454. - Order for Payment of Coin or Currency Notes to Party Entitled Under Decree.

Where the property attached is coin or currency notes, the court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Art. 455. - Determination of Attachment.

- (1) Where any property has been attached in execution of a decree but by reason of the decree-holder's default the court is unable to proceed further with the application for execution, it shall either dismiss the application or for any good and sufficient reason adjourn the proceedings to a further date.
- (2) Upon the dismissal of such application the attachment shall cease.

Chapter 3. - Investigation of Claims and Objections

Art. 456. - Investigation of Claims to Attached Property.

- (1) Where any claim is presented against, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit: Provided that no such investigation shall be made where the court considers that the claim or objection was designed to cause unnecessary delay.
- (2) Any claim or objection under sub-Article (1) shall be made by presenting a written application to the court executing the decree.
- (3) The claimant or objector shall adduce evidence to show that as of the date of the attachment he had some interest in, or was possessed of, the property attached.
- (4) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection.

Art. 457. - Decision on Claim or Objection.

- (1) Where upon the said investigation the court is satisfied that for the reason stated in the claim or objection or for any other reason such property is not liable to attachment, it shall make an order releasing the property, wholly or to such extent as it deems appropriate from attachment.
- (2) Where the court is satisfied that such property is liable to attachment, it shall disallow the claim or objection.

Art. 458. - Continuance of Attachment Subject to Claim of Encumbrance.

Where the court is satisfied that the property is subject to a mortgage or right *in rem* in favor of some person not in possession, and deems appropriate to continue the attachment, it may do so, subject to such mortgage or right *in rem*.

Art. 459. - Suits to Establish Right to Attached Property.

Where a claim or an objection is disallowed, the claimant or objector may institute a suit to establish the right which he claims, to the property in dispute, but, subject to the result of such suit, if any, the order shall be final.

Chapter 4. - Sale Generally

Art. 460. - Order for Sale of Property Attached.

- (1) Any court executing a decree may, on application, order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.
- (2) Unless otherwise directed, every sale in execution of a decree shall be:
 - (a) conducted by an officer of the court or by such other person as the court may appoint in this behalf (hereinafter referred to as the auctioneer); and
 - (b) made by public auction in accordance with the following Articles.
- (3) Nothing in this Article shall prevent the court from authorizing a sale by private contract at the request or with the consent of the judgment-debtor and after hearing the decree-holder.

Art. 461. - Proclamation of Sale by Auction.

- (1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made.
- (2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible:
 - (a) the property to be sold and the estimated value thereof;
 - (b) any encumbrance to which the property is liable;
 - (c) the amount for the recovery of which the sale is ordered;
 - (d) the terms, and conditions of the sale and manner in which and time within

which the purchase price shall be paid; and

(e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property.

Art. 462. - Application for Sale.

(1) An application for an order for sale shall be accompanied by a statement signed and verified in the manner prescribed for the signing and verification of pleadings and containing, so far as they are known or can be ascertained by the person making the verification, all relevant particulars of the application.

(2) For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it deems necessary to summon and may examine him with respect to any such matters and require him to produce any document in his possession or power relating thereto, and may appoint an expert to estimate the value of the property to be sold.

Art. 463. - Mode of Making Proclamations.

(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by law.

(2) Where the court so directs, such proclamation shall also be published in a newspaper circulating at the place of the sale and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the court, otherwise be given.

Art. 464. - Time of Sale.

No sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the court ordering the sale or, where the proclamation has been published in a newspaper, from the date of such publication, whichever is the later.

Art. 465. - Stoppage of Sale.

Every sale shall be stopped if, before the lot is knocked down, the debt and costs, including the costs of the sale, are tendered to the auctioneer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the court which ordered the sale.

Art. 466. - Second Auction.

(1) Where the highest bid at a sale by auction does not reach a sum equal to the value specified in the proclamation, a second sale by auction shall be held after the issuance of a fresh proclamation in the manner and within the time specified for the first auction.

(2) The beginning value for the second auction shall be half of the estimated value for the first auction.

(2) Where no bidder presents himself at the second auction, the court may, notwithstanding any provision to the contrary, authorize the decree-holder to take possession of the property ordered to be sold at its estimated value in full or partial satisfaction of the decree, as the case may be.

Art. 467. - Defaulting Purchaser Answerable for Loss on Re-sale.

(1) Where the purchase price is not paid or deposited according to the provisions of the law or the terms and conditions of sale, such sale shall be deemed to be cancelled and a resale may be ordered by the court after the issue of a new proclamation in the manner and within the time specified above.

(2) Any deficiency of price which may happen on such resale and all expenses attending such resale shall be certified to the court by the auctioneer and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

(3) On payment of the purchase money the auctioneer shall grant a receipt for the same, and the sale shall become absolute,

(4) For purposes of bidding, a resale by auction ordered under this Article shall be deemed to be a first auction.

Art. 468. - Decree-holder Not to Bid for Property without Permission.

(1) No holder of a decree in execution of which property is sold shall, without the written permission of the court, a copy of which shall be given by the court to the auctioneer, bid for or purchase the property.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree, may, on such terms as shall be prescribed, be set off against one other, and the court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the court may on the application of the judgment-debtor or any other person whose interest are affected, set aside the sale.

Art. 469. - Restriction on Bidding or Purchase by Officers.

(1) No auctioneer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

(2) Where a sale takes place in contravention of the provisions of sub-Article (1), it shall be set aside.

Chapter 5. - Sale of Movable Property

Art. 470. - Sale of Agricultural Produce.

(1) Where the property to be sold is agricultural produce, the sale shall be held:

(a) if such produce is a growing crop, on or near the land on which such crop has grown; or

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited: Provided that the executing court or the execution officer may direct the sale to be held at the place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) The sale shall, as far as possible, be held on a market day.

Art. 471. - Special Provisions Relating to Growing Crops.

(1) Where the property to be sold is a growing crop and the nature of the crop

allows it to be stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the nature of the crop does not allow it to be stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Art. 472. - Negotiable Instruments and Shares.

Where the property to be sold is a negotiable instrument or a share in a corporation, the court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Art. 473. - Irregularity Not to Vitate Sale.

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or, if such other person is the purchaser, for the recovery of the specified property and for compensation in default of such recovery.

Art. 474. - Delivery of Movable Property and Shares.

(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a share in a corporation, the delivery thereof shall be made by a written order of the court prohibiting the person in whose name the share may be held from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest hereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Art. 475. - Transfer of Negotiable Instruments and Shares.

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is held is required to transfer such negotiable instrument or share, the execution or endorsement shall have the same effects as an execution or endorsement by the party.

(2) Until the transfer of such negotiable instrument or share, the court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same, and any receipt so signed shall be as valid and effective for all purposes as if the same had been signed by the party himself.

Art. 476. - Vesting Order in Case of Other Property.

In the case of any movable property not hereinbefore provided for, the court may issue an order vesting such property in the purchaser or as the purchaser may direct, and such property shall vest accordingly.

Chapter 6. - Sale of Immovable Property

Art. 477. - Postponement of Sale to Enable Judgment-debtor to Raise Amount of Decree.

(1) Where an order for the sale of immovable property has been issued, if the judgment-debtor can satisfy the court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the court may, on his application, postpone the sale of the property covered by the order for sale on such terms and for such period as it deems appropriate to enable the judgment-debtor to raise the amount.

(2) In such case the court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, to make the proposed mortgage, lease or sale: Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money, into court.

(3) No mortgage, lease or sale under this Article shall become absolute until it has been confirmed by the court.

(4) Nothing in this Article shall be deemed to apply to a sale of property

directed to be sold in execution of a decree for sale in enforcement of a mortgage of such property.

Art. 478. - Deposit by Bidder.

(1) On every sale of immovable property the person declared to be the bidder shall pay, immediately before such declaration, a deposit of twenty-five per cent on the amount of his purchase-money to the auctioneer.

(2) Where the decree-holder is the bidder and is entitled to set off the purchase-money, the court may dispense with the requirements of sub-Article (1).

Art. 479. - Time for Payment in Full of Purchase Money.

The full amount of purchase-money payable shall be paid by the purchaser to the auctioneer within fifteen days from the sale of the property: Provided that, in calculating the amount to be so paid, the purchaser shall have the advantage of any set-off to which he may be entitled.

Art. 480. - Procedure in Default of Payment.

In case of default of payment within the period prescribed, the deposit may, if the court deems appropriate, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Art. 481. - Bid of Co-sharer to Have Preference.

Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the successful bid shall be deemed to be the bid of the co-sharer.

Art. 482. - Application to Set Aside Sale.

(1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on such conditions as the court may determine.

(2) Where a person applies to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute

an application under this Article.

(3) Nothing in this Article shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Art. 483. - Application to Set Aside Sale on Ground of Irregularity or Fraud.

Where an immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a ratable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it: Provided that no sale shall be set aside on the ground of irregularity or fraud unless the applicant satisfies the court that he has sustained substantial injury by reason of such irregularity or fraud.

Art. 484. - Application to Set Aside Sale Where no Saleable Interest.

The purchaser at any such sale in execution of a decree may apply to the court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

Art. 485. - When Sale to Become Absolute or be Set Aside.

(1) Where no application is made within two months of the sale, the sale shall become absolute.

(2) Where any such application is made but it is disallowed, the court shall issue an order confirming the sale and thereupon the sale shall become absolute.

(3) Where a sale of immovable property has become absolute, the court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

(4) Where any such application is made and allowed, the court shall make an order setting aside the sale: Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(5) Where a sale of immovable property is set aside under sub-Article (4), the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the court may direct, against any person to whom it has been paid.

Art. 486. - Delivery of Property Occupied by Judgment-debtor.

Where the immovable property sold is occupied by the judgment-debtor or by some person on his behalf or by some person claiming under a title created by the judgment-debtor, and subsequently the property is attached and a certificate in respect thereof has been granted, the court shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, remove any person who refuses to vacate the same.

Art. 487. - Delivery of Property Occupied by Tenant.

Where the property sold is occupied by a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under Art. 485 (3), the court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by customary accepted mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Chapter 7. - Resistance to Delivery of Possession

Art. 488. - Resistance or Obstruction to Possession of Immovable Property.

(1) Where the holder of a decree for the possession of immovable property, or the purchaser of any such property sold in execution of a decree, is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Art. 489. - Resistance or Obstruction by Judgment-debtor.

Where the court is satisfied that the resistance or obstruction was occasioned without good cause by the judgment-debtor or some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a period not exceeding thirty days.

Art. 490. - Resistance or Obstruction by *Bona Fide* Claimant.

Where the court is satisfied that the resistance or obstruction was occasioned by any person, other than the judgment-debtor, claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the court shall make an order dismissing the application.

Art. 491 - Dispossession by Decree-holder or Purchaser.

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession or such property or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

(3) Where the court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

Art. 492. - Provisions not Applicable to Transferee *lite pendente*.

Nothing in the preceding Chapter shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Art. 493. - Orders Conclusive Subject to Regular Suit.

Any person not being a judgment-debtor against whom an order is made under the preceding Chapter may institute a suit to establish the right which he claims to the present possession of the property, but, subject to the result of such suit, if any, the order shall be conclusive.

Chapter 8. - Execution of Foreign Judgments

Art. 494. Principle

(1) Unless otherwise expressly provided for by international conventions,

foreign judgments may not be executed in Eritrea except in accordance with the provisions of this Chapter.

(2) No foreign judgment shall be executed in Eritrea unless an application to this effect is made.

(3) An application under sub-Article (2) shall be made to the division of the High court situate in the Region where execution is to take place.

Art. 495. Form of Application

An application for the execution of a foreign judgment shall be in writing and shall be accompanied by:

(a) a certified copy of the judgment to be executed; and

(b) a certificate signed by the President or the registrar of the court having given judgment to the effect that such judgment is final and enforceable.

Art. 496. - Conditions for Allowing Application.

Permission to execute a foreign judgment shall not be granted unless:

(1) the execution of Eritrean judgments is allowed in the country in which the judgment to be executed was issued;

(2) the judgment was issued by a court duly established and constituted;

(3) the judgment-debtor was given the opportunity to appear and present his defense;

(4) the judgment to be executed is final and enforceable; and

(5) execution is not contrary to public order or morals.

Art. 497. - Procedure.

(1) The court to which the application is made shall enable the party against whom the judgment is to be executed to present his observations within such time as it shall fix.

(2) The court shall decide whether pleadings may be submitted.

(3) In cases of doubt the court may suspend its decision until all doubtful

points have been clarified.

Art. 498. - Decision.

- (1) The decision shall be made on the basis of the application, unless the court for some special reason to be recorded decides to hear the parties at a hearing which it shall fix.
- (2) The court shall at the same time decide on costs.
- (3) Where the application is allowed and permission to execute is granted, the foreign judgment shall be executed in Eritrea as though it had been issued by an Eritrean court.