

THE SECOND SCHEDULE. – [Repealed by section 49 and Third Schedule of the Arbitration Act, 1940 (Act No. X of 1940).]

THE THIRD SCHEDULE

(See s. 69)

EXECUTION OF DECREES BY COLLECTORS

1. Where the execution of a decree has been transferred to the Collector under section 68, he may— Powers of Collector

- (a) Proceed as the Court would proceed when the sale of immovable property is postponed in order to enable the judgment-debtor to raise the amount of the decree ; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold ; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

2. Where the execution of a decree, not being a decree ordering the sale of immovable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immovable property, may proceed as hereinafter provided. Procedure of Collector in special cases

3.(1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon— Notice to be given to decree holders and to persons having claims on property

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immovable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing

the same, declaring the amount recoverable thereunder ;

- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the Court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of
decrees for
payment of
money to be
ascertained,
and
immovable
property
available for
their
satisfaction

4.(1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immovable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immovable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immovable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court ; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

Where District Court may issue notices and hold inquiry

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

Effect of decision of Court as to dispute

7.(1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

Scheme for liquidation of decrees for payment of money

- (a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property ; or
- (b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)
 - (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or
 - (ii) by mortgaging the whole or any part of such property ; or
 - (iii) by selling part of such property ; or
 - (iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or
 - (v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sale any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector purposes to deal under this clause, he may institute suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceedings under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Government.

Recovery of
balance (if
any) after
letting or
management

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to made up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property ; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

Collector to
render
accounts to
Court

9.(1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

- (a) in providing for the maintenance of such members of the judgment's debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each members as the Court thinks fit; and
- (b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immovable property, or otherwise as the Court may under section 73 direct; or
- (c) where the Collector has proceeded under paragraph 2,—
 - (i) in keeping down the interest on incumbrances on the property;
 - (ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
 - (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-

debtor or such other person as the Court directs.

Sales how to be conducted

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;
- (c) buy in the property offered for sale, and re-sell the same by the public auction or private contract, as he thinks fit.

Restrictions as to alienation by judgment debtor or his representative, and prosecution of remedies by decree-holders

11.(1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immovable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

Provision where property is in several districts

12. Where the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the Government may by general rule or special order direct.

Powers of Collector to compel

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses

attendance
and
production

and the production of documents.

THE FORTH SCHEDULE

(See section 155)

ENACTMENTS AMENDED

1	2	3	4
Year	No.	Short title	Amendment.
1870	VII	The Court-fees Act, 1870.	<p>In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set-off or counter-claim" and after the word "Act" the words "or of cross-objection" shall be inserted.</p> <p>From article 11 of Schedule II the words "from and order rejecting a plaint or" shall be omitted.</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely :- "Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908".</p>

THE FIFTH SCHEDULE. – [Repealed by section 3 and Second Schedule of the Second Repealing and Amending Act, 1914 (XVII of 1914).]