

SAORSTÁT EIREANN.

BILLE UM FHEIDHMIU ORDUITHE CUIRTE, 1926. ENFORCEMENT OF COURT ORDERS BILL, 1926.

*Mar do leasúidh i gCoiste.
As amended in Committee.*

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SAORSTÁT EIREANN.

BILLE UM FHEIDHMIU ORDUITHE CUIRTE, 1926.
ENFORCEMENT OF COURT ORDERS BILL, 1926.

BILL

entitled

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AN ACT TO AMEND THE LAW RELATING TO THE
EXECUTION AND ENFORCEMENT GENERALLY OF
JUDGMENTS AND ORDERS OF COURTS OF JUSTICE.

BE IT ENACTED BY THE OIREACHTAS OF SAORSTÁT
EIREANN AS FOLLOWS:—

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PRELIMINARY.

Short title.

1.—This Act may be cited as the Enforcement of Court
Orders Act, 1926.

Definitions.

2.—In this Act—

the expression “ the Minister ” means the Minister for Justice; 15

the expression “ execution order ” means and includes any writ,
decree, warrant, or other document by whatever name called
issued by a court in a civil matter directing or authorising the
execution of an order of the court by the seizure and sale of
a person’s property or by putting a person in possession of lands 20
or premises.

PART I.

FUNCTIONS AND POWERS OF THE UNDER-SHERIFF.

Execution of
execution orders.

3.—(1) Subject to the provisions of this Act and of rules of
court made under the Courts of Justice Act, 1924 (No. 10 of 25
1924), all execution orders of the High Court shall be executed
by the under-sheriff in the like manner and with the like powers,
rights and authorities and subject to the like duties and obliga-
tions as similar writs of execution of the High Court have here-
tofore been executed by the under-sheriff. 30

(2) Subject to the provisions of this Act and of rules of court
made under the Courts of Justice Act, 1924, all execution orders
of the Circuit Court and (save as is hereinafter otherwise pro-
vided) of the District Court shall be executed by the under-sheriff
in the like manner and with the like powers, rights and authorities 35
and subject to the like duties and obligations as similar writs of
execution of the High Court have heretofore been executed by
the under-sheriff.

(3) Notwithstanding the provisions of the foregoing sub-section
or of the Courts of Justice Act, 1924, execution orders of the 40
District Court in cases which would before the 6th day of
December, 1922, have been within the jurisdiction of Justices of
the Peace sitting at Petty Sessions or of a Divisional Justice of
the Police District of Dublin Metropolis (other than ejection
cases, and proceedings for the recovery of rates exceeding five 45
pounds) shall be executed by the Gárda Síochána in like manner
in all respects as such execution orders were executed by the
Gárda Síochána and the Dublin Metropolitan Police respectively
before the commencement of Part III of the Courts of Justice
Act, 1924. 50

(4) No statutory provision or rule of court which was in force immediately before the commencement of Part II of the Courts of Justice Act, 1924, in relation to the execution of decrees or orders (whether for debt, possession of lands, or otherwise) of a Civil Bill Court shall apply to the execution of execution orders of the Circuit Court.

(5) Any judgment of the Circuit Court which is registrable by virtue of section 59 of the Courts of Justice Act, 1924, in the Central Office of the High Court shall be and shall be deemed always to have been, when so registered, registrable as a judgment mortgage if and so far as such judgment if it had been a judgment of the High Court would have been so registrable, but save as aforesaid no judgment of the Circuit Court shall be registrable as a judgment-mortgage.

(6) For the purpose of giving effect to the foregoing subsection but no further or otherwise, every reference contained in section 6 of the Judgment Mortgage (Ireland) Act, 1850, to Her Majesty's Superior Courts at Dublin shall be construed as including a reference to the Circuit Court whether sitting at Dublin or elsewhere, and the Circuit Court shall be a superior Court within the meaning of the said section 6, and that section shall have effect accordingly.

(7) No statutory provision or rule of court which was in force immediately before the commencement of Part III of the Courts of Justice Act, 1924, in relation to the execution of decrees or orders of District Justices or of Divisional Justices of the Police District of Dublin Metropolis shall apply to the execution of execution orders of the District Court which under this section are to be executed by the under-sheriff, but nothing in this section shall be construed as enabling any judgment, decree or order of the District Court to be registered as a judgment-mortgage.

4.—(1) Every under-sheriff shall, subject to the approval of the Minister, appoint such number of persons (who shall be styled and are hereinafter referred to as court messengers) as the Minister shall sanction to act for him and otherwise assist him in the execution of execution orders under this Act.

(2) Any court messenger may if the Minister so directs and the Minister for Finance so consents, be paid out of moneys provided by the Oireachtas such salary as the Minister, with the sanction of the Minister for Finance, shall determine.

(3) Every court messenger shall hold his office at the will of the Minister and may be removed from office by the Minister at the request of the under-sheriff or on his own motion.

(4) Every under-sheriff shall cause a correct list of the names and places of residence of the persons for the time being holding the office of court messenger in his bailiwick to be kept posted in his office and in every court-house in his bailiwick.

5.—(1) Every court messenger when assisting the under-sheriff in the execution of an execution order or when executing an execution order for an under-sheriff shall be furnished by the under-sheriff with a warrant in writing signed by the under-sheriff and authorising the court messenger by name to execute or assist in the execution of that particular execution order, and no court messenger shall execute or take part in the execution of any execution order unless duly authorised so to do by such warrant as aforesaid.

(2) It shall be the duty of every court messenger executing or assisting in the execution of an execution order, at any time after entering on any lands or premises under such execution order and before removing therefrom any property, to produce on demand to the person in apparent possession of such lands or premises the warrant issued to him under this section by the under-sheriff.

(3) A court messenger executing or assisting in the execution of an execution order in pursuance of a warrant duly issued to him under this section shall have all the powers which would be vested by law in a bailiff employed by an under-sheriff for that purpose.

Court messengers.

Issue of warrants to court messengers.

(4) A warrant issued by an under-sheriff under this section shall not lapse or be prejudiced by reason of such under-sheriff ceasing to hold office but every such warrant shall lapse and terminate on the court messenger named therein ceasing to hold office.

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Inventory of chattels seized.

6.—It shall be the duty of every under-sheriff under whose authority execution shall be levied upon goods, animals, or other chattels, to cause an itemised inventory of the chattels seized to be made out and within forty-eight hours of seizure and, if practicable, before any removal to cause to be furnished to the defendant (or other the person in apparent possession of such chattels) a duplicate of such inventory, signed by the under-sheriff or by a court messenger acting on his behalf.

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Certain chattels exempt from seizure.

7.—The necessary wearing apparel and bedding of a person against whom an execution shall be levied, and the necessary wearing apparel and bedding of his family, and the tools and implements of his trade, not exceeding in the whole the value of fifteen pounds, shall be exempt from liability to seizure.

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Under-sheriff may sell at any time.

8.—It shall be lawful for any under-sheriff who takes any goods, animals, or other chattels in execution under an execution order to sell by public auction such goods, animals, or other chattels at any time after the expiration of a period of twenty-four hours after he shall have taken the same in execution, but so that he shall not allow any unreasonable delay to occur, and it shall not be necessary for the under-sheriff to publish or announce that any such sale is a sale by an under-sheriff or is a sale of goods, animals, or chattels taken in execution.

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Under-sheriff may sell outside his bailiwick.

9.—(1) Any under-sheriff who takes goods, animals, or other chattels in execution under any execution order may sell such goods, animals and chattels by public auction at such place or places, whether within or outside his bailiwick, in which in his opinion such goods, animals and chattels can be sold to the best advantage, and may remove such goods, animals, and chattels or any of them or cause same to be removed from the place where same were seized to such place or places of sale.

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(2) All goods, animals, and other chattels taken in execution by an under-sheriff under any execution order may pending the sale thereof be impounded, stored and kept by the under-sheriff in such place or places as he shall think fit, and notwithstanding that such place or places is or are not appointed or authorised by law to be used as pounds.

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(3) The under-sheriff shall be sole judge of the place or places at which any goods, animals, or other chattels taken in execution by him can be sold to the best advantage and no action shall lie against any under-sheriff on account of his having sold any such goods, animals, or chattels as aforesaid outside his bailiwick.

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Validity of purchases from under-sheriff.

10.—Every person who purchases in good faith at a sale held by or under the authority of an under-sheriff any goods, animals, or other chattels taken in execution by such under-sheriff shall acquire a good title valid against all persons to the goods, animals, and chattels so purchased notwithstanding any invalidity or irregularity in or about the seizure or sale of such goods, animals, or chattels, and whether he knows or ought to or could have known or is affected with any kind of notice that the sale is a sale by or under the authority of an under-sheriff or not.

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Interruption of under-sheriff's custody not to prejudice sale.

11.—The power and authority of an under-sheriff to sell any goods, animals, or other chattels taken in execution by him shall not be prejudiced or affected by reason of such goods, animals, or chattels having been out of the custody of the under-sheriff or his custody thereof having been by any means interrupted at any time or times between the time of the seizure and the time of the actual sale of such goods, animals, or chattels.

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No action to lie against under-sheriff for entering or breaking premises.

12.—(1) No action shall lie against an under-sheriff who has complied with the conditions hereinafter stated for or on account of his having entered or broken into any lands, house, close, or other premises for the purpose of taking into execution any goods, animals, or other chattels which were or might be on or in

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such lands, house, close, or premises, or for or on account of any injury occasioned to such lands, house, or premises by or in the course of such entry or breaking in.

(2) The conditions hereinbefore mentioned are:—

5 (a) that before breaking into any dwellinghouse or other building the under-sheriff shall make reasonable efforts to enter peaceably and without violence, and

10 (b) where the under-sheriff breaks and enters the premises of a person other than the person against whom he has been called upon to enforce an execution order, he shall either have had reasonable grounds for believing that there were some goods, animals, or chattels of such last-mentioned person in such premises or he shall actually find some such goods, animals, or

15 13.—(1) No action shall lie against any under-sheriff for or on account of his having taken in execution under any execution order, any goods, animals, or other chattels found in the house or other place of residence or on the lands of the debtor and claimed or alleged (whether such claim or allegation does or does not prove to have been well-founded), to be the property of the wife or husband of the debtor, or to be the property of any parent or child of the debtor for the time being residing in the house or other place of residence of the debtor, and, in lieu of such action against the under-sheriff, the person to whom such goods, animals, or other chattels so taken in execution in fact belonged shall (if such goods, animals, or other chattels, should prove not to have been the property of the debtor) be entitled to recover from the debtor by action the value of such goods, animals, and other chattels, together with such damages as such person shall have suffered by reason of such goods, animals, or other chattels having been so taken in execution.

Under-sheriff not liable for seizing goods claimed by wife, etc., of debtor.

20 (2) The foregoing sub-section shall not operate to make it obligatory on any under-sheriff to take in execution under any execution order any such goods, animals or other chattels as are referred to in that sub-section.

25 14.—(1) The Minister may with the consent of the Minister for Finance by order appoint and from time to time revise—

Appointment of fees to be charged for or by under-sheriffs.

40 (a) scales of fees and expenses to be charged by and paid to under-sheriffs for their services in or about the execution of execution orders, and

(b) scales of fees to be charged by and paid to specified officers of any court for the account of the under-sheriff, and

45 (c) scales of fees and expenses to be charged by and paid to members of the *Gárda Síochána* in respect of the execution of execution orders which under this Act are to be executed by them.

(2) Every enactment in force immediately before the commencement of this Act in relation to the payment or recovery of fees chargeable by or payable to under-sheriffs, bailiffs, or other persons in respect of the execution of execution orders shall apply to the fees and the expenses (if any) specified in any scale of fees or fees and expenses for the time being in force by virtue of this section in relation to such execution.

50 (3) All fees appointed in a scale made under this Act of fees to be charged by and paid to a specified officer of a court for the account of the under-sheriff shall be charged by and paid to such officer at the times appointed in such scale and shall be paid or accounted for by such officer to the under-sheriff.

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PART II.

EXAMINATION OF DEBTORS.

15.—(1) If and whenever any person (in this Part of this Act called a creditor) shall produce to a Justice of the District Court prima facie evidence—

Procuring attendance of debtor for examination as to means.

65 (a) that any debt is due to the creditor under a judgment of a competent court, and

(b) that the person (in this Part of this Act called the debtor) by whom the said debt is payable is ordinarily resident in the court district for which the Justice is then sitting, and

(c) that the debtor has no goods which could be taken in execution under any process of the court by which the said judgment was given, 5

the Justice may make an order (in this Part of this Act called an examination order) that the debtor do attend before him on a specified date to be examined as to his means, and do also not less than one week before the said specified date lodge with the District Court Clerk a statement in writing (in this Part of this Act called a statement of means) setting forth his assets and liabilities, his income earned and unearned, and the means by which it is earned or the source from which it is derived, and the persons for whose support he is legally or morally liable. 10
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(2) The creditor shall be entitled to inspect and take or obtain copies of the statement of means at any time after it is lodged pursuant to the foregoing sub-section.

(3) In this section the word " judgment " includes any order or decree, and in this Part of this Act the word " debt " includes any balance of a debt remaining due after payment or recovery of part thereof. 20

Procedure on examination of debtor.

16.—(1) On the examination of the debtor as to his means pursuant to an examination order, the statement of means lodged by the debtor shall be received in evidence and the creditor and the debtor may each adduce further evidence as to the means of the debtor, and the debtor may also himself give evidence on oath, and may, whether he gives evidence or not, be cross-examined by or on behalf of the creditor on the statement of means and his evidence (if any). 25
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(2) If the Justice is satisfied on the evidence adduced on the examination as to means that the statement of means lodged by the debtor is false to the knowledge of the debtor in any material particular, the Justice may forthwith order the arrest of the debtor and sentence him to imprisonment with or without hard labour for any term not exceeding three months and the debtor shall be imprisoned accordingly. 35

Order for payment of debt by instalments.

17.—If the debtor fails to lodge a statement of means or fails to attend for examination in accordance with an examination order or refuses to submit himself to cross-examination by or on behalf of the creditor, or fails on such examination and cross-examination (if any) to satisfy the Justice that he is not able to pay the debt either in one sum or by instalments, the Justice, if so requested by the creditor, shall order the debtor to pay the debt and the costs of the proceedings in the District Court either in one payment or by such instalments and at such times as the Justice shall in all the circumstances consider reasonable. 40
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Imprisonment of debtor on failure to pay instalments.

18.—(1) If the debtor fails to pay the debt and costs, or any one or more instalments thereof at the time or times at which the same is or are made payable by an order under this Part of this Act, the Justice may, on the application of the creditor order the arrest and imprisonment of the debtor for any period not exceeding three months, and thereupon the debtor shall be arrested and imprisoned accordingly. 50
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(2) Whenever a debtor is arrested and imprisoned under this section he shall be entitled to be released immediately upon payment by him or on his behalf to the District Court Clerk or to the Governor of the Prison for the District Court Clerk of the sum of money (to be specified in the order of arrest and imprisonment) consisting of the amount of the debt and costs unpaid at the date of the order (including instalments which have not accrued due at that date), and such further sum (if any) for the 60

costs of the order and the expenses of the arrest and removal of the debtor as the Justice shall think reasonable.

(3) All moneys paid under this section to the District Court Clerk by or on behalf of the debtor shall be paid by the District Court Clerk to the creditor on demand.

19.—The imprisonment of a debtor under this Part of this Act shall not operate as a satisfaction or extinguishment of the debt or any part thereof or deprive the creditor of any other rights or remedies for the recovery thereof. Saving for other remedies.

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PART III.

MISCELLANEOUS

20.—(1) Whenever judgment shall be given by any court for payment of any sum of money by way of debt or damages by any person (in this section referred to as the debtor) and the court shall be satisfied at the time of giving of such judgment— Stay of execution in certain cases.

15 (a) that the debtor is unable to discharge by an immediate payment in full the said sum of money, and all costs payable by him under the said judgment; and

20 (b) that such inability is not occasioned by the debtor's own conduct, act or default; and

(c) that there is reasonable ground for granting to the debtor an extension of time in which to pay the said sum of money and costs,

25 the court may stay the execution of the judgment for such time and upon such conditions as shall appear to the court to be reasonable.

(2) The conditions upon which a stay of execution may be granted under the foregoing sub-section may include a condition that the said sum of money and costs shall be paid by the debtor by such instalments and at such times as the court may appoint, and that upon failure by the debtor to pay an instalment the stay shall cease.

(3) In this section the word " judgment " shall include decree and order.

35 21.—(1) Proceedings by way of interpleader may be instituted by an under-sheriff before the District Court in any case in which the under-sheriff shall have taken in execution or intended execution any goods, animals, or other chattels under any execution order and such goods, animals, or chattels are claimed by some person other than the debtor, and the value of such goods, animals, or chattels does not exceed twenty-five pounds. Interpleader before District Court in certain cases.

40 (2) On the hearing by the District Court of any interpleader proceedings under this section, the Justice shall have jurisdiction to hear and determine all matters in issue between the parties, including the amount of and liability for costs, and to make such order thereon as justice shall require.

50 22.—All orders of any court for the arrest, attachment, or committal of any person shall be executed by members of the *Gárda Síochána* and no such order shall henceforth be executed by an under-sheriff and no person shall be arrested or taken into custody under any such order otherwise than by a member of the *Gárda Síochána*. *Gárda Síochána* to make all arrests.

55 23.—(1) Every person who resists, obstructs, or impedes an under-sheriff, court messenger, or other person in the lawful execution of an execution order or resists, obstructs, or impedes any member of the *Gárda Síochána* in the lawful execution of an execution order which under this Act is to be executed by a member of the *Gárda Síochána* shall be guilty of a misdemeanour Offences and penalties.

and shall be liable on conviction thereof to a fine not exceeding one hundred pounds or, at the discretion of the Court, to imprisonment with or without hard labour for any term not exceeding twelve months, or to both such fine and such imprisonment.

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(2) Every person who rescues, removes, or conceals any goods, animals, or chattels which have been taken in execution under an execution order (including an execution order which under this Act is to be executed by a member of the *Gárda Síochána*) shall be guilty of a misdemeanour and shall be liable on conviction thereof to a fine not exceeding one hundred pounds or, at the discretion of the Court, to imprisonment for any term not exceeding twelve months or to both such fine and such imprisonment.

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(3) Whenever a person is charged before a Justice of the District Court with having committed any of the misdemeanours mentioned in this section and the Justice is of opinion that the facts proved against the person so charged constitute a minor offence fit to be tried summarily and the said person (inquiry having been made of him by the Justice) does not object to be so tried, the Justice may hear and determine the case summarily but shall not impose a greater term of imprisonment (whether with or without hard labour or with or without a fine) than six months or a greater fine (whether with or without imprisonment) than fifty pounds.

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Retaking
possession of
premises after
execution.

24.—Whenever an under-sheriff shall have entered on and taken possession of any lands or premises under an execution order directing him to put any person (in this section referred to as "the owner") into possession thereon and shall have delivered possession of the said lands and premises to the owner pursuant to such execution order, every person who, within one month after such delivery of possession, peaceably and without force but without the consent of the owner enters on the said lands and premises and takes possession thereof or of any part thereof shall be guilty of an offence under this section and shall be liable on summary conviction thereof to imprisonment for any term not exceeding six months or, at the discretion of the Court, to a fine not exceeding fifty pounds or to both such imprisonment and such fine.

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BILLE UM FHEIDHMIU ORDUITHE
CUIRTE, 1926.

ENFORCEMENT OF COURT ORDERS
BILL, 1926.

BILLE

(mar do leasúidh i gCoiste)

dá ngairmtear

Acht chun leasú do dhéanamh ar an dlí a bhaineann le breithiúntais agus orduithe cúirteanna breithiúnais do chur in éifeacht agus d'fheidhmiú go generálta.

An tAire Dlí agus Cirt do thug isteach.

*Do hordúidh, ag Dáil Éireann, do chlóbhuála,
10adh Márta, 1926.*

BAILE ATHA CLIATH:
FOILLSITHE AG OIFIG AN tSOLATHAIR.

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Baile Atha Cliath.

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[Leath-raol Glan.]

BILL

(as amended in Committee)

entitled

An Act to amend the law relating to the execution and enforcement generally of judgments and orders of courts of justice.

Introduced by the Minister for Justice.

*Ordered, by Dáil Éireann, to be printed,
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