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ENFORCEMENT OF JUDGMENTS IN DEBT

Discussion Paper
MP 11

Queensland Law Reform Commission
November 1983

The short citation for this Miscellaneous Paper is Q.L.R.C. M.P. 11.
Published by the Queensland Law Reform Commission, November 1983.
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ISBN:

Printed by: Queensland Law Reform Commission

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QUEENSLAND

LAW REFORM COMMISSION

DISCUSSION PAPER

Enforcement of Judgments in Debt
(Item 8 - Third Programme)

Compiled by:

K.J. DWYER
Principal Legal Officer.
18th November, 1983

SUMMARY

The main criticism of the existing debt enforcement procedure are the variations which exist in the different jurisdictions and also that it is possible for the one creditor who gets in first to seize all the assets of the debtor and so deprive other creditors of the opportunity to satisfy their judgments.

There is also concern for the debilitating effect on debtors which needs to be overcome by counselling and rehabilitation.

Four Commissions have reported on proposals relating to enforcement of Debt and legislation providing for some similar proposals has been introduced in Northern Ireland and South Australia.

All proposals were in favour of the establishment of an Enforcement Office to which the Judgment creditor applied to enforce his judgment. Most of the proposals were for the debtor to formulate a scheme to pay his debts by instalments to the Enforcement Office which distributed money collected to creditors pro rata. In the event a scheme failed, active enforcement measures were to be carried out by the Office itself in proposals by Payne, N.S.W. and Ontario and the Northern Ireland Act. Australia suggested bankruptcy procedures and the South Australian Act was silent but presumably the creditor could then take the usual measures.

The Commission reports were all in favour of debt counselling and the achievement ultimately of the debtor's rehabilitation. If legislation is to be introduced, some of the questions which should be resolved are:

1. Does the Enforcement Office take all recovery actions thus removing all traditional court-based recoveries?
2. What is the effect on other creditors if the debtor's affairs are being handled by the Enforcement Office? (e.g. South Australian Act (S.14) deprives a creditor of his entitlement to traditional court procedures).
3. Can the debtor incur further debts? The South Australian Act (S.24) makes it an offence for the debtor to seek credit without disclosing the existence of a scheme.

Item No. 8 on the Law Reform Commission's Third Programme is :

"To examine the methods of execution of judgments with particular reference to enforcement of judgments in debt at the Supreme, District and Magistrates Courts levels."

Supreme Court:

Order 47 rule 3 provides that a judgment may be enforced by writ of fieri facias or writ of elegit, writ of capias ad satisfaciendum or by the appointment of a receiver. Rule 8 of that order provides that a party may sue out any of these writs at any time after judgment (except when a time for payment is mentioned or execution has been stayed). The writ can remain in force for one year but it may be renewed before expiration for periods of one year. Execution is to be issued within 6 years of date of judgment or later by leave of a judge (rules 21, 23 and 24). Rule 33 sets out the procedure for orally examining a debtor to ascertain what debts are owing to him and whether he has any property or means to satisfy judgment. Rule 36 states a receiver may be appointed when it is otherwise impracticable to enforce payment. The merits of such an appointment are determined by a Court or Judge (r37).

Order 48 provides that writs of fieri facias and elegit are to have the same force and effect they always have had. Under rule 2, when the Sheriff makes a return to a writ of fi fa that he has seized but not sold goods of the judgment debtor, the person entitled to the sum in the writ can sue out a writ of venditioni exponas (which compels the goods seized be sold for any price they will fetch). Rule 6 provides that either party may apply to a Judge that the sale be made otherwise than by public auction and the Sheriff compiles a list of other persons at whose suit a writ of execution has been lodged with him. By rule 11, the person against whom execution has issued may point out the property he wants sold and in what order. The intended sale is to be advertised by newspaper (r12).

Order 49 sets out the procedure for Attachment of Debts (Garnishee proceedings).

Order 50 has the procedure for enforcing a charging order under s.49 and s.50 of the Common Law Practice Act 1867-1981 against any annuities, funds, stocks or shares of the person against whom judgment has been obtained.

District Court

District Courts Act 1967-1982 and Rules

Civil jurisdiction in all personal actions in the District Court is limited to \$40,000.

Rule 287 provides that when judgment is given for payment of money the Registrar may, upon application by the person in whose favour judgment was given, issue a warrant of execution directed to a Bailiff. Under r.288 the Bailiff may seize and sell land under the warrant. The sale is to be advertised in the newspapers and once land is sold, the Registrar executes a transfer to the purchaser (r.290). Under rules 292 et seq, execution may issue against goods of the person named in the warrant and these goods, with certain exceptions, may be seized and sold.

Rule 296 provides that if the judgment creditor can show to the satisfaction of a Judge of the Supreme Court or District Court that the debtor is about to remove himself or his goods from the State or to a remote part of the State to prevent payment and so defeat the judgment debt, the Judge may authorise the issue of a warrant committing the debtor to prison. The person arrested or imprisoned will be discharged if the amount in the warrant is paid (r.297). Rule 299 provides that the Registrar may send the warrant for execution to another district in which the person or his property is believed to be. A warrant will continue in force for 12 months but no longer unless by order of a Court or Judge (r.300). Rule 301 empowers a Judge to order payment by instalments. Under r.302 if the debtor is unable to pay an instalment, a Judge may order its postponement until the cause of his inability has ceased.

Rule 303 provides that if the amount in the warrant is paid the execution is superseded. Otherwise there is to be a public sale with the goods going to the highest bidder.

Rule 305 provides that the debtor is orally examined before a Judge or Registrar as to debts owing to him and his means of satisfying judgment. Rules 306 to 314 set out the procedure for Garnishee Proceedings (Attachment of Debts) which is an alternative method to execution for enforcing judgment. Under r.315 when execution has been issued out of the Supreme Court as well as the District Court, entitlement to property seized by the Sheriff is determined by the priority of the time the writ was delivered to the Sheriff or application was made to the Registrar.

Magistrates Courts, 1921-1982 and Rules:

Under s.4(1)(a) every personal action in which the amount claimed is not more than \$5,000, may be commenced in a Magistrates Court.

Under r.230 if the person in whose favour judgment was obtained wishes, he may apply to the Registrar for the issue of a warrant of execution. The warrant continues in force for 12 months and may be renewed during that period for a further 12 months. If a warrant expires, a new warrant may be issued. The warrant is directed to a Bailiff of the Court to levy by seizure and sale of the goods of the person against whom judgment has been obtained. The Bailiff is empowered to make successive levies for the amount remaining unsatisfied. Warrants may be also issued concurrently into one or more districts (r.233). When sufficient cause has been shown, the Registrar may suspend execution (r.234).

The time and date application is made for the warrant, are to be entered in an execution book and if there are more than one warrants against the same person, the Bailiff is to execute them in the order in which they are entered in that book (r.237). Rules 238 to 241 set out the procedure for executing against land and r.242 to r.246 set out the procedure for selling goods seized under a warrant.

Rule 258 states that if the Plaintiff can show that the Defendant is about to abscond and that the action will be thereby defeated, the Court may authorise the Bailiff to seize and attach the goods of the Defendant.

Rules 259 to 273 concern Garnishee proceedings and Ancillary proceedings. Rule 274 contains the procedure for orally examining a Judgment Debtor. The examination is intended to reveal whether any and what debts are owing to the Judgment Debtor and whether he has any and what other property or means of satisfying the judgment. Failure to attend the examination renders the debtor liable to arrest.

In addition to their jurisdiction under these Rules, Magistrates have jurisdiction under the Justices Act 1886-1980 to order execution in some cases. Under s.161 a Magistrate may, instead of ordering imprisonment for non-payment of a sum of money, order that the sum be recovered by execution against the goods and chattels of the person ordered to pay. He can also order that the person be detained in custody unless he gives security conditioned for his appearance at a time appointed for the return of the warrant (s.162). If the person has no goods or chattels or if those he has are insufficient to levy for the amount in the warrant or if it appears to the Magistrate that the issue of a warrant of execution would be injurious to that person or his family, or if he has no goods or chattels on which to levy, a warrant may be issued for his imprisonment (s.163 and s.167). If the amount is paid after his imprisonment, the person is discharged (s.168). The procedure for executing the warrant is in s.172. If proceeds of sale exceed the amount owing, the surplus is paid to the owner. If the amount owing is paid before the warrant is executed, execution is stayed.

The following table compares the procedures for execution in the civil jurisdiction of the three Courts.

On the subject of execution of judgments, reference should also be made to the relevant provisions of the Common Law Process Act 1867-1972 and the Common Law Practice Act 1867-1981. Discussion concerning these provisions occurs at pages 69 to 92 of Q.L.R.C. 32, the Commission's Report on the Supreme Court Acts. Clauses of the Bill annexed to that report which are relevant to execution of judgment and orders are numbered 88 to 95.

Section 49 of the Common Law Process Act 1867-1972 and the rules of each Court contain provisions relating to the apprehension of absconding debtors. In the report of the New South Wales Commission on Supreme Court Procedure (L.R.C.7 - 1969) it is stated at p.15:

"imprisonment for debt is the survival of an archaic procedure it has no place in a modern system."

However the Queensland Law Reform Commission in Q.L.R.C.32 stated at p.77:

"it is incorrect and misleading to regard the process laid down under either the Victorian Imprisonment of Fraudulent Debtors Act or the Queensland Common Law Process Act as imprisonment for debt. It is not a procedure by which unfortunate or inadequate debtors can be imprisoned because they have failed to discharge their liabilities. Rather it is a procedure to prevent reprehensible conduct by a judgment debtor. The Queensland legislation is directed not so much at the punishment of the offending debtor as at ensuring that the creditor's rights are not defeated by his conduct."

The foregoing material has set out the methods to be adopted to enforce judgments but the item on the programme probably envisages some resolution of the conflict of interests between creditors and debtors. The Australian Law Reform Commission is currently considering a reference on Consumer Indebtedness. Its terms of reference given by the Attorney-General in May 1976 read:

"Having regard to:

a

b the desirability of avoiding injustice to and oppression of debtors and of facilitating the collection of debts,

to report on -

and in making it's report, to have regard to:

(a) the community's interest in the financial rehabilitation of small but honest debtors and the need to ensure that creditors have an effective means of enforcing the payment of debts due to them; and

(b)

(Law Reform Commission Report No. 6. Insolvency: The Regular Payment of Debts A.G.P.S. Canberra 1977).

The recommendations of that report are:

1. A Regular Payment of Debts Program should be established, laying down the procedures to be followed in assisting non-business debtors to enter into regular payment plans.
2. The procedures should be available outside bankruptcy. They should be aimed not only at arrangements providing for extension of time for payment of debts, but also at arrangements providing for composition or rateable reduction of debts, where payment in full is not expected.
3. The procedures should be available to an insolvent non-business debtor in respect of non-business debts, provided that his total indebtedness (excluding home mortgage) does not exceed \$15,000.
4. The procedures should be operated in a given case not by the debtor himself but either by a separate official within the Department of Business and Consumer Affairs (the Administrator of the Regular Payment of Debts Program) or, alternatively, by a debt counsellor licensed by the Department.
5. The procedures should not involve meetings of creditors. Instead, use should be made of the mail both as a means of informing creditors of a proposal and as a means of creditors signifying their approval or disapproval of a debtor's proposal.

6. The debtor's proposal should indicate the extent to which he proposes to pay his non-business debts over a maximum period of three years. It should contain a full statement of his financial position.
7. The proposal should become operative and binding on all creditors unless more than one half of the creditors in number and amount indicate that they reject the proposal.
8. Creditors should be restricted from further recovery action whether by legal process or otherwise. A secured creditor should not be permitted to realise his security, provided that the proposal ensures that his security interest will be adequately protected.
9. A plan should not be terminated automatically by default on the part of a debtor, but a creditor might, after 60 days default, give notice of his intention to commence recovery action. The debtor should be granted fourteen days within which to apply to the Court for reinstatement in the plan.
10. Upon successful completion of the payments due under a plan, the debtor should be discharged from debts covered by the plan.
11. A debtor who remained subject to a continuing plan three and a half years after its commencement should be discharged from debts covered by the plan unless a creditor entered, and successfully maintained, an objection before the Court. The Court should uphold an objection if it believed that the debtor had not made honest and reasonable efforts to comply with the terms of the plan."

It will be noted that no. 9 recommends there be no automatic termination because of the debtor's default but after 60 days, the creditor may give notice of his intention to commence recovery action. Paragraph 78 of the report also suggests a creditor could apply for termination of a scheme where the debtor is merely fraudulently delaying his creditors. (This could occur if the debtor has concealed income or substantial assets). The creditor could then proceed with his own recovery action against the debtor. The debtor can also terminate the scheme if he applies under s.55 of the Bankruptcy Act to be declared bankrupt.

In 1969 a Committee under the Chairmanship of Mr. Justice Payne published its report on the Enforcement of Judgment Debts (Cmd.3909). A summary of that Committee's recommendations (pp.9-12) is:-

"The recovery of debts

39. In Part II sections 1 and 2 of the Report, after examining the jurisdiction and procedures of the High Court, the county courts and the magistrates' courts, we come to the following conclusions:

- (a) As far as possible the overlapping jurisdiction of the three types of court in claims for debt and liquidated sums should be eliminated.

- (b) All actions for the recovery of debt within the jurisdiction of the county courts (i.e. at present for sums not exceeding £500) should, in the future, be commenced in the county courts and not in the High Court except with leave.
- (c) The purely civil jurisdiction of the magistrates' courts including the enforcement of rates and taxes, but excluding matrimonial and affiliation cases, should be transferred to the county courts.

The enforcement of judgment debts

40. In Part III of the Report after reviewing the defects in, and the objections to, the present enforcement processes in all the courts we come to the following conclusions:

- (d) A new Enforcement Office should be established with local offices attached to the county courts in each district.
- (e) All money judgments from all courts should be channelled and enforced through the Enforcement Office.
- (f) A new integrated system of enforcement should be introduced in which all modes of enforcement should be available on one application and should, if necessary, be pursued concurrently instead of, as at present, separately.
- (g) Full information about the means, property, assets and circumstances of a defendant should be ascertained before the appropriate modes of enforcement are selected.
- (h) All money recovered from the debtor or elsewhere under enforcement should be distributed rateably amongst the creditors.

Modes of enforcement and imprisonment

41. In Parts IV and V of the Report we review the current modes of enforcement with a view to their improvement and adaptation to the new system and we make recommendations for the abolition or fundamental change of some sanctions and the introduction of others. In particular, we have come unanimously to the following conclusions:

- (i) Attachment of earnings (now used only for the enforcement of maintenance orders and fines) should be available for the enforcement of all money judgments.
- (j) New procedures should be introduced for the attachment of income and assets which cannot be reached by attachment of earnings; and for interim control by orders to prevent disposal of such assets.
- (k) Committal of debtors to prison under the Debtors Act 1869 and the judgment summons procedure in the county courts should be abolished. (No agreement has been reached as to the abolition of imprisonment as a sanction against maintenance defaulters.)

- (l) All orders for execution against goods (save as mentioned below) should be issued by the Enforcement Office and carried out by its bailiffs. This will involve the abolition of execution in the High Court by writ of fieri facias enforced by the under sheriff and his officers, all execution and distress by bailiffs or officers acting on behalf of the Board of Inland Revenue for taxes, the rating authorities for rates or landlords for arrears of rent. Some execution against goods will remain under the magistrates' courts for the enforcement of fines and maintenance orders.
- (m) Administration orders in the Enforcement Office (now used in the county courts) should be more frequently used for the administration of the affairs of multiple debtors, if the judgment summons is abolished. The administration order procedure should be modified to accord with the new system of enforcement and improved to provide effective means of restricting the debtor's credit and deferring creditors. The limit of £300 indebtedness prescribed for administration orders should be revoked.
- (n) All courts and the Enforcement Office should have power to order payment of money judgments and orders by instalments provided that there is evidence upon which an assessment can be made or the parties consent to the order.

Matters ancillary to enforcement

42. In Part VI we examine many branches of law, practice and procedure ancillary to recovery and enforcement and, in particular, we make the following recommendations:

- (o) On a distribution of moneys received into the Enforcement Office the same priority should be recognised between the different classes of judgment creditor as exist in bankruptcy so that, for example, preference is accorded to certain claims for rates and taxes.
- (p) There should be attached to each Enforcement Office an agency, to be called the Social Service Office for Debtors, where a debtor could receive advice and assistance in arranging his affairs with a view to meeting his judgment debts.

Enforcement of orders of Magistrates' Courts

43. In Part VII we examine the effect of the new enforcement system on orders made by the magistrates and come to certain conclusions:

- (q) Where more than one attachment of earnings order is made against a debtor, they should all be under the control and administration of the Enforcement Office.
- (r) Magistrates should be empowered to transmit any enforcement to the Enforcement Office if money has to be recovered.

- (s) All maintenance orders made in the county courts may be enforced in the Enforcement Office unless they are registered in the magistrates' courts.

Orders for the delivery of goods

44. In Part VIII we consider the law relating to orders for the delivery of goods and reach the following conclusions:

- (t) The court should have power to suspend or stay the operation of an order for the delivery of goods supplied under hire-purchase, conditional sale or hire and to grant relief against forfeiture.
- (u) The county court should have exclusive jurisdiction for actions for the delivery of goods if the aggregate of the plaintiff's money claim does not exceed the county court's jurisdiction.

Postponement of orders for possession of mortgaged property

45. In Part IX we consider at length the question whether the courts should have power to postpone orders for the possession of mortgaged property and we come to the following conclusions:

- (v) The final decision as to enforcement of an order for possession should rest with the court, which should have a discretion, where the property is a dwelling house within the Rent Acts, to adjourn the application, to stay execution or to postpone the date of possession.
- (w) Any action for possession of such a dwelling house should be commenced in the county court for the district in which the property is situate.

It will be noted that paragraph 40 recommends the establishment of an " Enforcement Office". The report states later at paragraph 338:

"We are fortified in making this recommendation by the knowledge that a substantially similar recommendation was made in Northern Ireland."

The recommendations referred to were contained in a report of a joint working party on the enforcement of Judgments, Orders and Duress of the Courts in Northern Ireland. Many of those recommendations were implemented by the Judgments (Enforcement) Act (Northern Ireland) 1969.C30.

In 1975 the Law Reform Commission of New South Wales published its Draft Proposal relating to the Enforcement of Money Judgments. The Commission acknowledged its debt to the Payne Report and the Northern Ireland Statute. The major recommendation of the New South Wales Commission was that there be a Registrar of Judgments whose Office would be the sole means of enforcing most of the judgments and orders for the payment of money made by civil courts having jurisdiction in this State.

Judgment creditors who desire to enforce judgment debts, and judgment debtors who desire to obtain an order or to vary a court order to pay by instalments, would be required to register the judgment debts with the Registrar. On registration of a judgment debt, all payments on account of the judgment debt would have to be made to the Registrar.

On application by the judgment creditor for enforcement (or by the judgment debtor for an order to pay by instalments) the Registrar would -

- (a) ascertain the debtor's means;
- (b) decide upon and institute an appropriate mode of enforcement ...

The Registrar would maintain a register which would show the amount currently owing in relation to registered judgment debts. On the payment of a prescribed fee, the Registrar would make available prescribed information from this register to members of the public (including credit organisations).

The register is to take the form of a central computer which will operate continuously in ordinary working hours and will be fed with daily information from the 63 branch offices of the Registrar established at District Court towns in the State.

The register would not be a comprehensive register of all money judgments and orders for payment of money made by the various courts, but will only comprise those judgments, etc., that are registrable and are in fact registered. It will, however, be maintained as an up-to-date record of amounts presently owing on registered debts and in that regard will differ from presently existing registers of judgments.

With respect to the registration of judgments, reference should be made to clause 12(1) of the draft bill in the report, which provides that "[a]ny creditor or debtor may apply to the Registrar for the registration of a judgment". The Draft Bill is not intended to apply to all judgments, however, and in this connection reference also should be made to the lengthy definition of "judgment" in clause 5. In addition, only registered judgments would be enforceable.

The continuing financial accuracy of the central register is sought to be assured by requiring all payments on the judgment to be made directly to the Registrar, rather than privately to the creditor. Moreover, channelling all payments through the Registrar would enable him to apply the moneys received pursuant to the terms of the statute.

Concerning the role of the Registrar in the enforcement process, clause 16(1) accords any creditor "under a registered judgment" the right to "apply to the Registrar for an order for its enforcement". Clause (4) provides further that, "[u]pon receipt of an application under clause (1), the Registrar shall make an order for the enforcement of the registered judgment". The order would require the debtor to pay the amount owing "within seven days after the service on him of the order", unless the Registrar rescinds, or suspends the operation of, the order. In the absence of payment, the "Registrar may, at the same time or at different times, exercise such one or more of the powers conferred by this Part as he thinks fit".

Once again, attention should be directed to the very broad discretionary jurisdiction to be granted to the Registrar with respect to the continuance of an enforcement order under clause 6, the type of active enforcement measures to be undertaken against the debtor, and the making of an instalment payment order under clause 23(1). As indicated by the explanatory notes, the Registrar is to be given sole responsibility for enforcing money judgments, subject to appeal.

As far as can be ascertained, there has been little legislative activity to introduce the system recommended in these reports. Apart from the Northern Ireland Act mentioned earlier, the only other Statute appears to have been the Debts Repayment Act, 1978 of South Australia. The Act was assented to on 30th November, 1978 but does not appear to have been proclaimed.

Inquiries into alternative methods of enforcing judgments in Australia and Overseas seem to have been prompted by the disenchantment with existing methods. The Payne Committee reported:

"In the present processes of enforcement there is almost total absence of co-ordination or integration between the different courts or between different processes in the same court. In general the rule is "first come, first served". Each creditor having obtained his judgment or order may proceed to enforcement by such means as he may choose. He need have no regard to the interests of other creditors. He may, for example, by execution seize and sell the debtor's available goods and chattels or by garnishee proceedings attach the bank account or other deposit, and leave nothing for other creditors. It is true that, if they move quickly enough, they may defeat such an attempt to secure priority by making the debtor bankrupt but more often than not the more pressing or more ruthless creditor secures and maintains his advantage to the frustration of others and, as one can readily imagine, it is not the most deserving creditors who move quickly. Whilst the considerate creditors hold back to give the debtor a chance to put his affairs in order, the determined and less meritorious move in to seize the assets. In a properly ordered system of enforcement this should not be tolerated.
(para 304 p.85)

In 1981 the Ontario Law Reform Commission reported:

"This study was a direct response to substantial deficiencies in the existing enforcement system or, to put it more accurately, enforcement systems. The deficiencies and vagaries of present debtor-creditor law, including the miscellany of enforcement offices responsible for its implementation, have bedevilled the process of judgment debt enforcement for generations, and continue to frustrate the attempts of both debtors and creditors to understand the rights and remedies available to them under the law. The often ambiguous, complex and archaic state of debtor-creditor law - largely the result of uneven and haphazard historical growth - frequently serves as a disincentive for creditors to enforce a judgment debt; in some instances, the inadequacies of the law mask the very existence of rights and remedies available to the parties."
(p.1)

Before taking the matter further, perhaps members of the Commission could indicate whether they consider the item on the programme contemplates this type of Inquiry and the introduction

of legislation of this nature. For their information, summaries of the Northern Ireland legislation and the South Australian legislation are attached.

(K.J. DWYER)
Principal Legal Officer

A.

	Supreme Court	District Court	Magistrates Court
Judgment may be enforced by writ of fieri facias, writ of elegit, writ of capias ad satisfaciendum or by appointment of a receiver	0.47 r.3	r.287	r.230
Term "Warrant of Execution" includes all above writs	0.47 r.9	-	-
Writs may be sued any time after judgment (except when time to pay is specified or Judge stays execution)	0.47 r.18	-	-
Writ in force for year - may be extended before it expires for 12 months at a time	0.47 r.21	r.300	r.230(3)
Warrant to be issued in 6 years of date of Judgment	0.47 r.23	-	-
Court or Judge may grant leave to issue execution after 6 years	0.47 r.24	-	-
Oral examination of debtor to ascertain what debts are owed him and whether he has any property to satisfy the judgment	0.47 r.33	r.305	r.274
Receiver may be appointed when it is otherwise impracticable to enforce judgment	0.47 r.36	-	-
Merits of application for a receiver to be determined by Court or Judge	0.47 r.37	-	-
Writs of fieri facias and elegit to have same force and effect as they have had previously	0.48 r.1	-	-
If the Sheriff seizes but does not sell goods, person entitled to sum in writ may sue out writ of venditioni exponas (goods to be sold for any price they will fetch)	0.48 r.2	r.288. Bailiff may seize, sell land. R.292 execution against goods	r.242 - goods r.238 - land

B.

	Supreme Court	District Court	Magistrates Court
Either party may apply to a Judge for an order that the sale be made otherwise than by public auction. Sheriff compiles a list of other persons at whose suit a writ has been issued and lodged with him	0.48 r.6	CFr.315. Priority of Execution is determined by date of issue	r.237 - Warrants to be executed in order
The person against whom the writ has issued may point out the property he wants sold and in what order	0.48 r.11	-	-
The intended sale is to be advertised in newspapers	0.48 r.12	r.290	r.239(3)
Attachment of Debt (Garnishee proceedings)	0.49	r.306-314	r.259-273
Enforcement of Charging Orders made under s.49 and s.50 of the Common Law Practice Act 1867 against any annuities, funds, stock or shares of the person against whom judgment has been obtained	0.50	-	-
Writ of Capias ad Respondendum - arrest of absconding Debt. See s.49 - Common Law Process Act 1867	0.78	r.296-297	r.258
Warrant of Execution may be issued out of District to another in which Debtor's property is believed to be	-	r.299	r.233
Debt may be ordered to be paid by instalments	-	r.301	r.198
If Debtor is unable to pay an instalment, the Judge may order a postponement until cause of inability has ceased	-	r.302	r.234
If the amount of the warranties paid, execution is superseded. Otherwise there is a sale and property goes to highest bidder	-	r.303	r.237

JUDGMENTS (ENFORCEMENT) ACT 1969
(NORTHERN IRELAND)

- S.3 Enforcement of Judgments Office established.
- S.10 Jurisdiction includes making enforcement orders, issuing custody warrants, process for examination of judgment debtors, receiving payment and setting aside orders.
- S.13 Methods by which a judgment may be enforced:
- (a) an instalment order under section 31;
 - (b) an order of seizure under section 32 or an authorisation given under section 44;
 - (c) an order charging land under section 46;
 - (d) an order for delivery of possession of land under section 53;
 - (e) an order for the delivery of goods under section 57;
 - (f) a charging order on funds, stock or shares under section 58;
 - (g) an order for the sale of funds, stock or shares under section 60;
 - (h) a debenture order under section 61;
 - (i) a stop order under section 62;
 - (j) a restraining order under section 66;
 - (k) a partnership order under section 67;
 - (l) an order appointing a receiver under section 68;
 - (m) an attachment of debts order under section 69;
 - (n) an attachment of earnings order under section 73.
- S.15 Office to notify when it considers a judgment cannot be enforced wholly or partly within a reasonable time. (See S.78 for effect of Certificate).
- S.18 Person entitled to judgment may apply to the Office for enforcement.
- S.20 Applications are assigned serial numbers as they are received and they are dealt with in the order of that number.
- S.21 After a custody warrant has been served on the debtor, all goods in his custody are deemed to be in the Office's custody.
- S.22-29 Examination of debtor. (These are similar to the provisions in Queensland legislation for Oral Examination).
- S.31-77 Orders which can be made (See S.13 supra).
- S.78 The certificate of unenforceability referred to in S.16 can form the basis for Bankruptcy or Winding-up proceedings.
- S.79 Despite the institution of these proceedings, a creditor is entitled to money paid by or on behalf of the creditor when the Office has not received Notice of the Bankruptcy or Winding-up within 21 days of receiving the money.
- S.85 A charge on land (S.46) is void if the debtor is adjudged bankrupt or is wound-up within 28 days of the registration of the charge.
- S.86 An instalment order (S.31) or a restraining order (S.66) cease to have effect where the debtor is adjudged bankrupt or is wound-up.

ENFORCEMENT OF JUDGMENTS - NORTHERN IRELAND (2)

- S.88 A court may make an order committing the debtor to prison if he defaults in paying the amount due or an instalment under S.31, but he can be discharged from custody by paying the amount in the committal order.
- S.104 Imprisonment under S.88 does not operate as a satisfaction or extinguishment of the debt.
- S.121 The following writs are abolished (schedule 3):
1. Writ of assistance.
 2. Writ of attachment.
 3. Writ of capias ad satisfaciendum.
 4. Writ of capias de retorno habendo.
 5. Writ of capias in withernam.
 6. Writ of delivery.
 7. Writ of distringas.
 8. Writ of distringas in detinue.
 9. Writ of distringas nuper vice comitem.
 10. Writ of fieri facias.
 11. Writ of fieri facias de bonis intestati.
 12. Writ of fieri facias de bonis propriis.
 13. Writ of fieri facias de bonis testatoris.
 14. Writ of pluries.
 15. Writ of possession.
 16. Writ of restitution other than-
 - (a) a writ of restitution issued upon a conviction for forcible entry or detainer; and
 - (b) a warrant issued under section 1(2) of the Summary Jurisdiction (Miscellaneous Provisions) Act (Northern Ireland) 1946.
 17. Writ of scire facias except in so far as that writ is an original proceeding for the repeal of letters patent, charters and like instruments.
 18. Writ of sequestration.
 19. Writ of venditioni exponas.
 20. Any other writ of, or in aid of, execution or enforcement of judgments.

DEBTS REPAYMENT ACT, 1978 SOUTH AUSTRALIA

- S.7 Establishment of "Debtors' Assistance Office".
- S.8 Functions of the Office:
- (a) to provide debt counselling for any members of the public who desire such counselling;
 - (b) to assist debtors in working out satisfactory arrangements for the settlement of their debts;
 - (c) to negotiate with creditors, or to arrange meetings between debtors and their creditors, in an endeavour to bring about satisfactory arrangements for the settlement of debts;
 - (d) to provide training in debt counselling;
 - (e) to conduct research into matters related to debt counselling;
 - (f) to publish information relating to debt counselling;
 - (g) to receive and distribute funds payable in accordance with schemes for the regular payment of debts; and
 - (h) to do anything incidental to the performance of any of the preceding functions.
- S.11 Debtor requiring assistance applies to a debt counsellor.
- S.12 Debt Counsellor may formulate a scheme for regular repayment of debts.
- Scheme sets out all debts it covers, requires debtors to make periodic or other payments for distribution among the creditors stipulated and provides for distribution without preference (unless specially granted). It also limits the extent to which the debtor may become further indebted during the subsistence of the scheme. The scheme may also provide for the sale or conversion into money of any of the debtor's property and prohibit or restrict the sale of specified property.
- S.13 The scheme formulated is referred to the Credit Tribunal established under the Consumer Credit Act 1972-1973. The debtor, the counsellor, the creditor (and such other person as the Tribunal permits) can give evidence or make representations to the Tribunal in relation to the scheme. The Tribunal may accept or reject the scheme. The scheme remains in force for a term not exceeding 3 years and may be varied by admitting further debts or in any other manner but notice of the variation is to be given to the debtor and creditors affected by it.
- S.14 During the subsistence of the scheme, a creditor is not entitled to take proceedings against the debtor for recovery of the debt covered by the scheme. Any proceedings instituted but not completed are to be stayed during the subsistence of the scheme and public utilities (water, electricity or gas) are not to cut off supply for non-payment of a debt covered by the scheme.
- S.15 A Debt Counsellor is to advise the Tribunal if the debtor fails to comply with the scheme.
- S.16 The Tribunal can revoke the scheme if the debtor has withheld information or made a material misstatement or has contravened a provision of the scheme.

SOUTH AUSTRALIA (2)

- S.17 The scheme terminates when its term expires, on the death of the debtor or if Bankruptcy procedures are invoked by or against the debtor.
- S.24 It is an offence for the debtor whilst the scheme is in force, to try to obtain credit from any person without disclosing the existence of the scheme. It is also an offence for the creditor to whom a debt covered by the scheme is owed to take other proceedings to recover his debt (S.14(5))

AUSTRALIA

Insolvency. The regular payment of debts.
The Law Reform Commission. Report No. 6. 1977.

The report recommended that a "Regular Payment of Debts Program" be instituted, to be administered by the "Debtors' Assistance Office" and that there should be a Deputy Administrator in each State and Territory. An insolvent debtor who wished to utilize the procedures would be protected from other debt and recovery procedures until the debt was discharged. In lieu of recovery action, creditors will be required to apply for inclusion in the plan.

The proposal by the debtor has to contain sufficient information to enable a creditor to assess whether it is a reasonable proposal. The debtor is to be assisted by the Administrator or a Debt Counsellor in compiling his proposal.

Creditors should have the right to accept or reject the proposal. If not disapproved by a certain number of creditors, it becomes operative. During the currency of the plan, obtaining further credit was generally considered inadvisable.

Where the debtor was in default in his payments for 8 weeks or 2 months, recovery action can be pursued by the creditor. The creditor gives notice to the debtor who can apply for a reinstatement of the plan. The scheme terminates when the debtor, through the administrator or debt counsellor, gives notice of his intention to terminate and files a petition in Bankruptcy. If the debtor completes his payment under the plan, he is discharged from all his debts covered by the plan.

NEW SOUTH WALES

Proposal relating to the Enforcement of Money Judgment
(1975).

The introduction to this paper echoed the criticism of the existing system found in similar papers by other bodies. In particular it was critical of the limited provisions in legislation for obtaining information as to the debtor's financial circumstances and the lack of a requirement that information in the possession of one creditor be made available to others. The paper was also critical of the uncharitable haste adopted by some creditors to secure satisfaction of their judgments, to the detriment of other, more patient creditors.

The Commission proposed that there be a Registrar of Judgments whose office would be the sole means of enforcing most of the judgments and orders for the payment of money made by Courts exercising civil jurisdiction. The first step in the recovery action would be for a creditor who wants to enforce his judgment, registering with the Registrar.

The Registrar ascertains the debtor's means and decides the appropriate mode of enforcement. Thereafter all payments in respect of the judgment are to be made to the Registrar who pays it to the registered creditors in proportion to the amount of their outstanding debts.

Under proposals in the Bill, a purchaser of the debtor's property at the Registrar's sale would receive protection as to the title each acquires. (A purchaser of goods receives good title and a purchaser of land will contract to purchase a specific interest and may rescind if the interest is not made out). Proceeds of sale are held by the Registrar for twenty-one (21) days so that a person who loses his title presumably can institute interpleader proceedings.

Another aspect of the Registrar's function would be to ensure the rehabilitation of the debtor and he would employ staff trained in social work for that purpose. Orders for enforcement, for example Garnishment, Sale of Property and Charging Orders are issued by the Registrar. Actions of the Registrar are subject to appeal to the District Court or, in limited circumstances, the Supreme Court.

The New South Wales Commission envisaged finance for the running of the Office could be obtained by charging commission on amounts collected and by a fee for inspection of the register by members of the public (including credit organizations).

ONTARIO

Report on the Enforcement of Judgment Debts and Related Matters. Ontario Law Reform Commission.

Over recent years the Ontario Law Reform Commission had conducted a detailed study of the substantive law and procedural rules as well as the actual practice concerning the enforcement of judgment debts and related matters. Of the report published in five parts between 1981 and 1983, Part 1 has the most relevance to the foregoing paper.

The first part of this report concerns a submission concerning a proposal to amend the Bankruptcy Act.

In the second part of Part 1 the Commission recommended the establishment of an enforcement office in each County under the supervision of the Sheriff and all such offices were to be under the supervision of a Provincial Director.

Recovery action is commenced by the delivery by Creditor to the Sheriff of a certified copy of the judgment which has been endorsed by the Court with a direction to the Sheriff to commence enforcement proceedings. The Sheriff may require the Creditor to supply information concerning property of the debtor against which enforcement measures are required.

The enforcement office is to maintain an enforcement register containing details of writs already delivered to which the Sheriff should have recourse before making a levy to ensure any amount recovered would be sufficient to cover all outstanding amounts.

The Ontario Commission and the Payne Committee were concerned that the lack of information as to the debtor's financial status had a debilitating effect. They felt the debtor should be under a legal obligation to make full disclosure of his means and circumstances either by completing a questionnaire or attending an examination. The Payne Committee preferred the questionnaire and the Ontario Commission felt it could prove useful to uncover information concerning the debtor's property. Although using the questionnaire did not preclude the need for Oral Examinations in all cases, there could be a significant reduction in the use of Oral Examinations. The Commission envisaged the rules could be changed to provide that the Sheriff conduct the Oral Examination in the presence of creditors who could cross-examine the debtor if they wished.

The Commission concluded that the use of questionnaires, Oral Examinations and creditor supplied information would provide the enforcement office with reasonably accurate knowledge of the property in respect of which the debtor has some exigible right title or interest.