

ORDER OF THE ROYAL COURT

ENTITLED

The Saisie Procedure (Simplification) (Bailiwick) Order, 1952 *

[CONSOLIDATED TEXT]

NOTE

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* O.R.C. No. III of 1952, Orders of the Royal Court Vol. I, p. 49; as amended by the Decimal Currency (Bailiwick of Guernsey) Law, 1970 (Ordres en Conseil Vol. XXII, p. 560); the Royal Court (Days of Sitting) Order, 1960 (O.R.C. No. I of 1960, Orders of the Royal Court Vol. I, p. 180); the Royal Court (Days of Sitting) Order, 1973 (O.R.C. No. III of 1973); the Royal Court (Plaids d'Héritage) Order, 1982 (O.R.C. No. III of 1982); the Saisie Procedure (Simplification) (Bailiwick) (Amendment) Order, 1989 (O.R.C. No. XIV of 1989); the Royal Court (Plaids d'Héritage) Order, 1995 (O.R.C. No. I of 1995). See also the Saisie Procedure (Simplification) (Bailiwick) (Amendment) Order, 1989 (*supra*). This Order has been revoked, in its application to the Island of Sark, by the Saisie (Sark) Ordinance, 2021 (Sark Ordinance No. VII of 2021)

ORDER OF THE ROYAL COURT

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The Saisie Procedure (Simplification) (Bailiwick) Order, 1952

ARRANGEMENT OF PARAGRAPHS

PART I

Abolition of proceedings in relation to "actes 'permis exploiter', 'permis louer' and 'permis réparer'", etc.

1. Judgment against real property. Preliminary vesting order. Abolition of "actes". Rights, etc. of person in favour of whom an order has been made.

PART II

Proceedings against debtor "en Plaids d' Héritage", register of claims and letting, etc. of property.

2. Proceedings before Commissioner. Commissioner's report. Interim vesting order. Effect of interim vesting order. Making of interim vesting order. Abolition of further "actes". Rights, etc. of person in whose favour an order has been made. Opening of register.

PART III

Proceedings against "crédeurs, affieffeurs ou engageurs en Plaids d' Héritage"

3. Marshalling of claims. Preparation and authentication of report. Renunciation. Final vesting order. Abolition of further "actes". Savings. Proceedings to be conducted in English.

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FIRST SCHEDULE	Form of Commissioner's Report of the Marshalling of Claims.
SECOND SCHEDULE	Repeals.

(Made on 29th March, 1952.)

The Saisie Procedure (Simplification) (Bailiwick) Order, 1952

THE ROYAL COURT, in exercise of the powers conferred upon it by Article 64 of the Reform (Guernsey) Law, 1948, and by Section 12 of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950, hereby orders: –

PART I

Abolition of proceedings in relation to "actes 'permis exploiter', 'permis louer' and 'permis réparer'", etc.

Judgment against real property. Preliminary vesting order. Abolition of "actes". Rights, etc. of person in favour of whom an order has been made.

1. (1) Where it is intended that a judgment shall be executed against real property, the judgment shall contain the following words or words to the like effect, namely: "with power to levy execution on the real property of the defendant".

(2) A judgment containing such words as aforesaid may be referred to as "a preliminary vesting order" and shall, as respects the whole of the real property of the defendant, –

- (a) have the same effect as an "acte de vers saisie mobilière" or an "acte d'amerçi saisie mobilière" had before the date of the coming into force of this Order as respects the real property to which such "acte" applied, and
- (b) be sufficient authority to the judgment creditor to take

such action for the letting or repair of the property as could have been taken by virtue of an "acte de permis louer" or an "acte de permis réparer" respectively obtained as respects the whole of the same before the date of the coming into force of this Order.

Provided that any such action as is mentioned in clause (b) of this sub-paragraph shall be effective only if taken after the person against whom a preliminary vesting order has been obtained has been notified in writing of that order by Her Majesty's Sheriff (hereinafter referred to as "**the Sheriff**") and the Sheriff has certified in writing at the foot of the certified copy of the order that such notification has been given.

(3) The "actes" of "vers exploit" and "amerci sur exploit" and, so far as "saisie" procedure is concerned, the "actes" of "permis louer" and "permis réparer" are hereby abolished.

(4) For the removal of doubts, it is hereby declared that a person in favour of whom a preliminary vesting order has been made –

- (a) shall be entitled to exercise the same rights in relation to the whole of the real property of the defendant and, in particular, as respects the eviction of persons in occupation of the property, the setting aside of opposition to the letting of the same and the "affectement de loyers" as the first mentioned person, being a person entitled to style himself "saisi mobilièrement" of that property and having obtained an "acte de permis louer" as respects the same before the date of the coming into force of this Order would have been entitled to exercise. Proceedings in relation to the exercise of such rights shall be in the English language,

and

(b) shall, as hitherto, be deemed to have elected irrevocably, as respects the amount recoverable under that order, not to levy execution upon, or be entitled to recover out of, the personal property (meubles) of the debtor other than –

(i) personal property which, being real property on the date on which notification of the order to the defendant was made in accordance with the proviso to sub-paragraph (2) of this paragraph and being subject to execution under that order, subsequently became personal property by operation of law while that order remained effective, or

(ii) the net proceeds of the sale of the real property to which the order relates, being a sale effected by the defendant or a sale effected under the authority of the Court.

NOTE

The following cases have referred to this Order:

Gaudion v. Weardale (1998) 25.GLJ.61;

Pirito v. Curth 2003-04 GLR 571;

Pirito v. Curth 2005-06 GLR 34;

Trimbee v. Atlantique Holdings Ltd (2016) (Unreported, Royal Court, 6th December) (Guernsey Judgment No. 48/2016);

HSBC Bank v. Doyle (Unreported, Court of Appeal, 28th February & 2nd October) (Guernsey Judgment No. 39/2018).

In accordance with the provisions of the Saisie Procedure (Simplification)

(Bailiwick) (Amendment) Order, 1989, article 3, with effect from 1st January, 1990, this Order and the 1989 Order may be cited together as the Saisie Procedure (Simplification) (Bailiwick) Orders, 1952 and 1989.

This Order has been revoked, in its application to the Island of Sark, by the Saisie (Sark) Ordinance, 2021, section 26(1), with effect from 1st November, subject to the savings in section 28 of the 2021 Ordinance.

PART II

Proceedings against debtor "en Plaids d' Heritage", register of claims and letting, etc. of property.

Proceedings before Commissioner. Commissioner's report. Interim vesting order. Effect of interim vesting order. Making of interim vesting order. Abolition of further "actes". Rights, etc. of person in whose favour an order has been made. Opening of register.

2. (1) Where, in pursuance of a preliminary vesting order, it is intended to secure the vesting in the creditor, as trustee for claimants against the real property of the defendant (hereinafter referred to as ("**the debtor**")), of the ownership of the whole of such real property, then in substitution for the proceedings "en Plaids d'Héritage" hitherto necessary against the debtor, the creditor shall take proceedings against the debtor to appear before a Commissioner of the Court, to see the creditor produce an account setting forth his judgment claim with interest accrued thereon and his receipts and expenditure, including recoverable costs of legal proceedings, and to make such representations in relation thereto as the debtor may deem proper.

(2) Subject to the determination by the Court of any dispute concerning such account as cannot be determined before the Commissioner, the latter shall authenticate a report, in the English language, in the form hitherto in use in the French language but substituting for the expression "saisi mobilièrement" the expression "creditor in whose favour a preliminary vesting order in respect of the real property of (here insert the name of the debtor) was made on the

..... ", omitting any reference to the Sheriff or to his participation in the proceedings and recording instead whether or not the debtor attended, that the debtor (if present) examined, or had an opportunity, of which he did not avail himself, of examining the account and that he agreed it as correct, or made representations, as set out in the report (unless any such representations, if made, appear to the Commissioner to be frivolous or irrelevant) as to its incorrectness and declaring the amount appearing to the Commissioner to be payable to the creditor by the debtor.

(3) The Commissioner, on the conclusion of the proceedings mentioned in the last preceding sub-paragraph, shall not, as hitherto, fix a date on which the creditor shall table a cause "en Plaids d'Héritage" in relation to the next step in the proceedings but, instead, the creditor shall cause a summons to be issued to the debtor requiring the latter to pay to the creditor the sum declared to be due to the latter in pursuance of the last preceding sub-paragraph and notifying the debtor that in default of payment of that sum the creditor will on the date specified in the summons apply for the making of an order by the Court "en Plaids d'Héritage" (hereinafter referred to as "**an interim vesting order**") vesting the whole of the real property of the debtor in the creditor as trustee for claimants against the said real property and that the debtor may apply to the Court for a postponement of the making of such order.

(4) An interim vesting order shall have the same effect as an "acte prévôt renonce, et est permis de se saisir héréditalement de l'héritage de " had before the date of the coming into force of this order and, in addition, shall be sufficient authority to the person in whose favour the order is obtained to take such action for the opening at the Greffe of a register of claims against the real property in question, and for the letting or repair of the property as could have been taken before the date of the coming into force of this Order under "actes" respectively authorising the "ouverture du registre", the letting of the property or the repairing of the same.

Provided that any such action as is referred to in this sub-paragraph shall be effective only if taken after the debtor has been notified in writing of the making of that order by the Sheriff and the Sheriff has certified in writing at the foot of the certified copy of the order that such notification has been given.

(5) The Court, on an application for the making of an interim vesting order, is hereby empowered to make an order accordingly or, if the circumstances advanced by the debtor appear to render it just so to do, from time to time to postpone the making, or the operation, of such order on such conditions, if any, as the Court shall think just.

(6) The "actes en Plaids d'Héritage" of "vers premier défaut et sera le prévôt partie", of "vers deuxième défaut et est terme en venant", of "vers troisième défaut et est terme compétent", of "prevôt se fait tenant et pour compter sont envoyés devant ", and of "prevôt renonce et est permis de se saisir héréditalement de l'héritage de" are hereby abolished.

(7) For the removal of doubts, it is hereby declared that a person in whose favour an interim vesting order has been made shall, unless the Ordinary Court or the Court "en Plaids d'Héritage", on an *ex parte* application, otherwise directs be entitled to exercise the same rights and shall be subject to the same duties as respects the eviction of persons in occupation of the property to which the order relates, the letting of the same, the setting aside of opposition to the letting of the same and the "affectement de loyers" as the first mentioned person, being a person entitled to style himself "saisi héréditalement de l'héritage" of the person against whom the order is made and having obtained an "acte de permis louer" before the date of the coming into force of this Order, would have been entitled to exercise or would have been subject. Proceedings in relation to the exercise of such rights shall be in the English language and the expression "et est le loyer etc. affecté a la dite saisie" shall be rendered as "the rent etc. being payable to the said as trustee for claimants against the real estate

of (here insert the name of the debtor)".

(8) The period during which the register of claims against the real property of a person against whom an interim vesting order has been made shall remain open shall henceforth be twenty-eight days in all cases.

NOTE

The following cases have referred to paragraph 2:

Gaudion v. Weardale (1998) 25.GLJ.61;

Pirito v. Curth 2003-04 GLR 571;

Pirito v. Curth 2005-06 GLR 34;

Trimbee v. Atlantique Holdings Ltd (2016) (Unreported, Royal Court, 6th December) (Guernsey Judgment No. 48/2016).

PART III

Proceedings against "crédateurs, affieffeurs ou engageurs en Plaids d' Héritage"

Marshalling of claims. Preparation and authentication of report. Renunciation. Final vesting order. Abolition of further "actes". Savings. Proceedings to be conducted in English.

3. (1) After the closing of the register of claims against the real property which is the subject of proceedings, the creditor who has obtained an interim vesting order shall cause a summons to be served on such of the claimants whose claims are registered therein as he deems appropriate, requiring them to attend before a Commissioner of the Court, for the purpose of the marshalling of the claims registered against the said real property.

(2) It shall be the duty of the creditor to prepare and to present to the Commissioner a draft report marshalling the aforesaid claims in the form, as nearly as may be, set out in the First Schedule to this Order so that such claims appear

therein in order of priority and, after hearing the creditor and such claimants and their "garants" as attend, the Commissioner shall authenticate the report and shall appoint a date for the termination of the proceedings "en Plaid d'Héritage".

(3) On the date so appointed, it shall be the duty of the creditor to appear personally or by counsel before the Court and to table a cause against each of the said claimants requiring him to declare whether or not he elects to have the real property of the debtor vested in him for an estate of inheritance subject to the condition that he assume liability for all claims ranking in priority to his own and to read the report marshalling their claims and immediately thereafter, each cause being read in inverse order of the priority of the claimants, the name of the claimant named therein shall be called and, unless he shall either personally or by counsel elect to have the said real property vested in him subject to such condition as aforesaid, he shall be deemed to have renounced to his right so to do and his claim shall thenceforth cease to be of any effect and a record shall be made accordingly.

(4) On the creditor or any other claimant electing as aforesaid, an order (hereinafter referred to as "**a final vesting order**") shall be made vesting the said real property in him for an estate of inheritance and declaring the claims ranking in priority to his own and, thereupon, the obligations of the person so electing and the rights of the persons whose claims are declared so to rank in priority shall be identical in all respects with the obligations of a person entitled to style himself "saisi propriétairement de l'héritage de " and the rights of persons having claims declared "antérieurs et préférables" in "saisie" proceedings undertaken before the coming into force of this Order, save that in every case where a "saisi propriétairement" would have been liable before the commencement of the Court Term next following the date of the "acte" whereby he became "saisi propriétairement" to pay to each "créancier antérieur et préférable" ten per centum of the amount of the claim of such "créancier", a person in whose favour a final vesting order has been made shall be liable, unless the Court sitting "en Plaid d'Héritage" otherwise directs, to pay, within the fifteen days then next following, to each claimant

whose claim is declared to rank in priority to his own, the whole of the claim of such claimant.

(5) The "acte en Plaids d'Héritage" of "vers premier défaut, sera le Prévôt partie, et est terme compétent", the interval of forty days between the date of that "acte" and the date of the renewal of proceedings for obtaining an "acte" of "envoyés opposer droits", the "acte" of "envoyés opposer droits" and the proceedings for the purpose of determining whether any person entitled so to do renounces his claim or elects to "se faire tenant" are hereby abolished.

(6) A person who would have been entitled, but for the coming into force of this Order, to call in a "garant" or an "engageur" in the course of "saisie" proceedings shall have the same rights in respect thereto after the coming into force of this Order and he shall exercise his rights in that regard at the same stage in the proceedings in pursuance of this Order and in the same manner, the whole as nearly as may be, as if this Order had not been made but the proceedings as respects the same shall be conducted in the English language and in as simplified a form as is reasonably possible.

(7) For the purpose of the removal of doubts, it is hereby declared that no legal right or duty in relation to "saisie" proceedings existing immediately before the coming into force of this Order is affected save as is provided in this Order and, without prejudice to the generality of the foregoing, –

- (a) a creditor who has obtained an interim vesting order shall have the right to require proceedings to be stayed and to have a final vesting order made in his favour to the extent that he would have had the right in the capacity of "saisi héréditalement" of that property "d'arrêter les plaids et de se faire tenant" if this Order had not been made and the legal consequences of such a

stay of proceedings and of the making of such an order shall be identical with those flowing from an "acte" of "saisi héréditalement arrête les plaids et se fait tenant",

- (b) the owner of a "rente due comme reste de bail sur une prise a rente" shall be entitled to the same extent as he would have been in "saisie" proceedings had this Order not been made to "renoncer a sa rente et de s'arrêter a son fonds" and if he shall elect so do to, it shall be recorded that he has renounced his "rente" and has required that the property on which that "rente" is specifically charged be vested in him for an estate of inheritance and that it is vested accordingly.

(8) If proceedings are necessary for the precise determination of the amount of the claim of any claimant declared to rank in priority to that of the creditor in whose favour a final vesting order has been made, those proceedings shall, as nearly as may be, be conducted as hitherto save that they shall be in the English language.

PART IV

Transitional Provisions

"Saisie" proceedings already commenced. Effect of certain "actes".

4. (1) As respects "saisie" proceedings commenced but not concluded before the date of the coming into force of this Order, every step in those proceedings which has been completed shall continue to have full effect as though this Order had not been made and every step in those proceedings commenced but not completed at the date of the coming into force of this Order shall be completed in the manner in which it would have been completed had this Order not been made and all rights and

obligations arising thereout shall continue as effectually as if this Order had not been made but, as respects any further step in such proceedings which would have been necessary but for the making of this Order, the proceedings prescribed by this Order in the place and stead thereof shall be followed and the "acteur" shall thenceforth be entitled, subject to any directions which, in case of doubt or difficulty, the Court sitting "en Plaids d'Héritage" may give upon an ex parte application in that behalf, to make such variation in any summons or cause in such proceedings from the language or expressions which would have been used but for the making of this Order as are necessary for the purposes of conformity with the provisions thereof.

- (2) After the coming into force of this Order –
- (a) an "acte de saisie mobilière" certified by the Sheriff as having been signified to the debtor shall have the like effect as respects the property to which it relates as that of a preliminary vesting order certified by the Sheriff as having been notified to the debtor, and
 - (b) an "acte de saisie héréditaire" "baillé" by the Sheriff shall have the like effect as that of an interim vesting order certified by the Sheriff as having been notified to the debtor.

PART V

General and Repeals

Sittings of Court "en Plaids d'Héritage".

5. [[In Guernsey, sittings of the Court "en Plaids d'Héritage" shall be held at least once in each calendar month both in and out of term on such dates as shall from time to time be appointed by the Bailiff.] Each such sitting shall, as hitherto, be

styled a "Tour" and each such sitting in each calendar year shall be denoted by the number in French appropriate to that sitting in that calendar year.]

NOTES

Paragraph 5 was substituted by the Royal Court (Plaid d'Héritage) Order, 1982, article 1, with effect from 1st January, 1983.¹

In paragraph 5, the words in square brackets were substituted by the Royal Court (Plaid d'Héritage) Order, 1995, article 1, with effect from 12th December, 1995.

Error in proceedings.

6. In case of error in proceedings in pursuance of or referred to in this Order, the "acteur" shall, unless the Court "en Plaid d'Héritage" otherwise directs, be bound to recommence such proceedings but only as from and after the step in the proceedings taken immediately before the commission of the error.

Interval between serving of summons and tabling of cause.

7. [(1)] Two clear days shall elapse between the date of the service of a summons for any purpose referred to in paragraph 1 or in sub-paragraph (7) of paragraph 2 of this Order and the date of the tabling of the cause in relation thereto; three clear days shall elapse between the date of the service of a summons for any purpose referred to in the remainder of the said paragraph 2 and the date of the happening of the event to which the summons is directed; and seven clear days shall elapse between the date of the service of a summons for the purpose of paragraph 3 of this Order and the date of the happening of the event to which the summons is directed.

[(2) In calculating any time limit set by this order, no account shall be taken of a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended.]

NOTE

In paragraph 7, sub-paragraph (1) was re-numbered and sub-paragraph (2) inserted by the Saisie Procedure (Simplification) (Bailiwick) (Amendment) Order, 1989, article 1, with effect from 1st January, 1990.

Frais curiaux.

8. The provisions of any Law in force in relation to "frais curiaux" in "saisie" proceedings shall apply, in so far as applicable, to proceedings in pursuance of this Order but no such "frais curiaux" shall be chargeable in respect of any step in legal proceedings or of any attendance or act of any official which becomes unnecessary by reason of this Order.

Repeals.

9. Subject to the provisions of paragraph 4 of this Order, the enactments referred to in the First Column of the Second Schedule to this Order shall be repealed to the extent set out in the Second Column thereof.

Extent.

10. This Order shall have effect throughout the Bailiwick of the Island of Guernsey save that references to a Court in Guernsey shall, in relation to the Islands of Alderney and Sark, be deemed to be references to the Alderney Court or the Court of the Seneschal of Sark, as the case may require and that in the application of this Order to the Island of Alderney, references to "Her Majesty's Sheriff" shall be deemed to be references to the Clerk of the Court of Alderney and that in the application thereof to the Island of Sark, those references shall be deemed to be references to the Prévôt of Sark and, in the application of sub-paragraph (6) of paragraph 2 of this Order to the Islands of Alderney and Sark, references to "actes" which are thereby abolished shall be deemed to include references to any other "actes" which may have constituted necessary steps in "saisie" proceedings, according to the Law of Alderney or the Law of Sark, as the case may be, before the date of the coming into force of this Order.

Commencement.

11. This Order shall come into force on the 7th day of April, 1952.

Jurat

NOTE

In the First Schedule, the words and figures in square brackets were substituted in accordance with the provisions of the Decimal Currency (Bailiwick of Guernsey) Law, 1970, section 8, with effect from 15th February, 1971.

SECOND SCHEDULE

Repeals

First Column

Second Column

Loi portant modification a la Procédure en Plaids d'Héritage, registered on the 23rd November, 1858. The second sentence in Article 1. Article 2.

Ordonnance par rapport au Style de Procéder passée aux Chefs Plaids d'après Noël tenus le 18 janvier, 1836 (Vol. 11, p. 472) Article 11. So much of Article 13 as applies to proceedings "en Plaids d'Héritage".

Ordonnance relative a la Durée du Registre dans le cas d'une Renonciation Volontaire (Vol. V, p. 182) The whole Ordinance.

¹ Prior to its substitution, paragraph 5 was amended by the Royal Court (Days of Sitting) Order, 1960, article 1, with effect from 20th August, 1960; the Royal Court (Days of Sitting) Order, 1973, article 1, with effect from 26th November, 1973.