

MEMORANDUM BY THE HON. MINISTER OF JUSTICECode of Organization and Civil Procedure (Amendment) Bill,  
1963

The main object of this Bill is to do away with the antiquated warrant of personal arrest for debt and meditatio fugae warrant. Both warrants imply arrest in connection with a debt and are nowadays looked upon as a slur on the dignity of man. Moreover they usually, if indirectly, hit the relatives of the debtor who, rather than see their kinsman languish in prison, pay up. They are the offspring of concepts which have now ceased to pervert adjective law.

This measure ought to be regarded as an important step forward in the procedural reform movement.

Various laws have had to be consequentially amended and the amendments have been collected into one schedule. A transitory provision lays down that any person who on the coming into force of the Act is in custody under any of these warrants (it is understood that at the moment there is only one such person) will be released within twenty-four hours.

Clauses 2, 3 and 4 relate to Deputy Registrars in Her Majesty's Superior Courts. It has always been the practice to fill posts of Deputy Registrars from General Service Officers. The duties of Deputy Registrars were examined in the course of the 1959 regrading exercise, and it was found that the proper grading of Deputy Registrar posts is that of Higher Executive Officer. It has long been recognised that there are advantages in having General Service officers, as against Departmental officers, doing the duties of Deputy Registrars, chief among which advantages is the fact that General Service officers can be moved if they prove to be unsuitable for the particular job.

Up to 1959, the procedure for the appointment of Deputy Registrars was for the Registrar of the Courts to select suitable officers from among those posted to his Department. These officers were then appointed Deputy

/Registrars .....

Registrars by the Governor on the recommendation of the Minister of Justice and of the Prime Minister. With the coming into force of the 1959 Constitution, the procedure was altered in the sense that appointments made between 1960 and 1962 were made by the Governor on the advice of the Judicial Service Commission. Both before and after the 1959 Constitution, the appointments were published in the Government Gazette.

However, the substantive office of those concerned remained the post which they held in the General Service. Those detailed to work as Deputy Registrars are shown, and provided for, in the annual Estimates, only as Higher Executive Officers.

The purpose of clauses 2, 3 and 4 of the Bill is to make it clear that Deputy Registrars do not hold an ad hoc office like that of Assistant Registrars but are General Service officers with a specific designation.

..... Honourable Ministers are requested to approve the attached Bill.

13th December, 1963.

A BILL  
entitled

AN ACT further to amend the Code of Organization  
and Civil Procedure, Cap. 15.

ENACTED by the Legislature of Malta:-

Short title.

1. This Act may be cited as the Code of Organization and Civil Procedure (Amendment) (No.2) Act, 1963, and shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter referred to as "the principal law".

Amendment of section 56 of the principal law.

2. In subsection (1) of section 56 of the principal law, for the words "Deputy Registrars" there shall be substituted the words "by Deputy Registrars (being officers in any such Court designated in that behalf by the Minister of Justice)".

Amendment of section 58 of the principal law.

3. In subsection (2) of section 58 of the principal law, immediately after the word "office" there shall be inserted the words "or designation".

Amendment of section 64 of the principal law.

4. In subsection (1) of section 64 of the principal law for the words "the Senior Deputy Registrar" there shall be substituted the words "the senior among the Deputy Registrars".

Repeal of section 252 of the principal law.

5. Section 252 of the principal law shall be repealed.

Amendment of section 265 of the principal law.

6. In paragraph (a) of section 265 of the principal law the words "in section 252 and" shall be deleted.

Amendment of section 266 of the principal law.

7. In section 266 of the principal law the number "252" shall be deleted.

Amendment of section 274 of the principal law.

8. Section 274 of the principal law shall be amended as follows:-

(a) paragraph (c) thereof shall be repealed; and

/(b) .....

- (b) paragraphs (d), (e) and (f) thereof shall be re-lettered as paragraphs (c), (d) and (e) respectively.

Repeal of Sub-title III of Title VII of Part I of Book Second of the principal law and saving.

9. Sub-title III of Title VII of Part I of Book Second of the principal law containing the heading "Of the Warrant of Imprisonment for Debt" and sections 358 to 375, both inclusive, shall be repealed:

Provided that paragraphs (f), (g) and (h) of section 361 of the principal law shall not cease to be operative for the purposes only of the reference thereto in section 840 of the principal law and section 367 of the principal law shall not cease to be operative for the purposes only of the reference thereto in section 387 of the principal law.

Amendment of section 833 of the principal law.

10. Paragraph (f) of subsection (1) of section 833 of the principal law shall be repealed.

Amendment of section 840 of the principal law.

11. In subsection (1) of section 840 of the principal law the words "or any meditatio fugae warrant" shall be deleted.

Repeal of Sub-title VI of Title VI of Book Third of the principal law.

12. Sub-title VI of Title VI of Book Third of the principal law containing the heading "Of the Meditatio Fugae Warrant" and sections 879 to 891, both inclusive, shall be repealed.

Amendment of section 951 of the principal law.

13. Section 951 of the principal law shall be amended as follows:-

- (a) subsection (2) thereof shall be repealed; and
- (b) subsection (3) thereof shall be re-numbered as subsection (2).

Repeal of section 958 of the principal law.

14. Section 958 of the principal law shall be repealed.

/15. ....

Transitory  
provision.

15. Any person who on the coming into force of this Act is in custody under a warrant of imprisonment for debt or a meditatio fugae warrant shall be released not later than twenty-four hours after such coming into force.

Consequential  
amendments.

16. The enactments specified in the First Column of the Schedule hereto shall have effect subject to the amendments specified in the Second Column of that Schedule, being amendments consequential on the enactment of this Act.

#### SCHEDULE

##### Section 16

##### Enactments Amended

First Column Enactments amended	Second Column Extent of amendment
Commercial Code, Cap. 17	<p>Subsection (3) of section 51 shall be repealed.</p> <p>In subsection (2) of section 568 the words "against debtors committing fraud in contracting debts" shall be deleted.</p> <p>For section 576 there shall be substituted the following section:-</p> <p>"576. Precautionary and conservatory acts against the property of the debtor can be sued out by the creditors by the same process as the law prescribes for the issue of any act or warrant in security of any other debt, having regard to the nature and quality of the debt."</p> <p>In subsection (3) of section 630 for the words "with respect both to his person and to his after-acquired property" there shall be substituted the words "with respect to his after-acquired property".</p>

Civil Code,  
Cap. 23

For paragraphs (b) and (c) of section 1214 there shall be substituted the following paragraphs:-

- "(b) in the case of several undisputed debts, the payment shall be applied to the debt already fallen due at the time of payment in preference to the debts not yet fallen due;
- (c) with regard to debts fallen due, the payment shall be appropriated to a debt bearing interest in preference to other debts;"

In section 1967 the words "make demand for the personal arrest of the debtor of the mandator, where such demand is competent" shall be deleted.

Prisons Ordinance,  
Cap. 44

Paragraph (d) of section 2 shall be repealed.

#### Objects and Reasons

The purpose of this Bill is to abolish the warrant of personal arrest for debt and the meditatio fugae warrant provided for in the Code of Organization and Civil Procedure and to make certain consequential amendments to other laws. Both warrants are not in accordance with modern judicial and sociological concepts.

The Bill also seeks to clarify the position of those public officers who perform the duties of Deputy Registrars in Her Majesty's Superior Courts. In practice they are selected from amongst Higher Executive Officers in the General Service. The Bill specifies that they are to be designated Deputy Registrars by the Minister of Justice.