EXECUTION AGAINST LAND IN NEWFOUNDLAND

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I. Introduction

The Report[1] of the Newfoundland Law Reform Commission on section 9 of the *Registration of Deeds Act*[2] contains a detailed and interesting analysis of the present state of the law of Newfoundland with respect to execution against land. The following comments may be of some assistance in developing a modern and efficient system for execution against land for Newfoundland.

In canvasing the possible bases for seizing and selling land, I was initially concerned that the Report did not discuss the possibility that a judgment might bind land. The English Statute of Westminster II (1285)[3] provided that a common law judgment created a lien on the debtor's land. Such a judgment lien could arguably[4] have been received law of the colony and therefore part of the common law of Newfoundland today. However, in 1732 the Imperial Parliament enacted a Statute[5] that expanded the scope the writ of *fieri facias* for the North American colonies by making land exigible as if it were goods and chattels. Ontario courts[6] have held that the Imperial Statute of 1732 abolished the common law judgment lien by implication. Newfoundland, it appears, did not introduce legislation to preserve this judgment lien on the assumption that it did form part of the received law of the colony. Nevertheless, land could be seized and sold since the Imperial Statute of 1732 itself extended the scope of the writ of *fieri facias* to reach land. With the repeal of this Imperial Statute in 1887, the authority making land exigible in Newfoundland was no longer clear.[7]

The Report canvasses a number of statutory provisions, in particular the

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[1]Newfoundland Law Reform Commission, *Report on Section 9 of the Registration of Deeds Act* (Saint John's: Newfoundland Law Reform Commission, 1990).

[2]R.S.N. 1970, c.328.

[3]*Statute of Westminster* II, 1285 (13 Edw 1).

[4]Due to the history of land titles in Newfoundland, there is some question as to the reception of certain English statutes as a result of local circumstances. See Gushue, Q.C., "The Law of Real Property in Newfoundland" (1926) 4 C.B.R. 310; McEwen, *Newfoundland Law of Real Property; The Origin and Development of Land Ownership* (University of London 1978) [unpublished Ph.d. Thesis] and McEwen, A.C., "Land Titles in Newfoundland" (1977) 31 The Canadian Surveyor 151.

[5]An Act for the more easy recovery of debts in his Majesty's plantations and colonies, 1732 (5 Geo. 2) c.7, s.4.

[6]C.R.B. Dunlop, *Creditor-Debtor Law in Canada* (Toronto: Carswell, 1981), at 58-59.

[7]*Ibid.* at 135-136.

Chattels Real Act,[8] which possibly make land exigible in Newfoundland today. The analysis appears to be both complete and the conclusion correct – there is no such clear authority for executing against land in Newfoundland. The need for reform appears obvious.

The Report recommends that there be clear statutory provision permitting a creditor to bind the land of a debtor by first delivering an Execution Order to the sheriff and then by registering it in the provincial land registry office located in St. John's. The lien created would be a specific lien which would require that a description of the property to be bound accompany the Execution Order. Since Newfoundland does not have a system of pro rata sharing, priority among creditors would be determined on the basis of the time of delivery of the Execution Order to the sheriff. As against third party transferees, the Execution Order would not bind the land until ten days after it was registered in the land registry office. These recommendations would require changes to the *Judicature Act*,[9] the *Registration Of Deeds Act*,[10] and to the *Rules of Court*.[11]

Following are some comments on the proposals for reform with respect to the time of binding, priorities among creditors, and the choice between a general or specific lien.

II. Time of Binding

(a) Present State of The Law

On the assumption that land is presently exigible under an Execution Order, the Report attempts to determine when land would be bound by that Order. Reference is then made to section 9 of the *Registration of Deeds Act*[12] to determine when land is bound by an Execution Order for all purposes. Section 9 states in part that:

> All instruments... not duly proved and registered... shall be judged fraudulent and void... as against any subsequent purchaser or mortgagee for valuable consideration who shall first register his instrument... or against any creditor who shall have actually seized or levied under attachment or execution: Provided that such attachment with a description of the property attached, shall be entered by the sheriff in his office books immediately after such attachment shall be executed and duly returned.

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[8]R.S.N. 1970, c. 36; see Gushue, *supra*, note 4 at 313-314.

[9]S.N. 1986, c. 42.

[10]*Supra*, note 2.

[11]Schedule D of the *Judicature Act*, *supra*, note 9.

[12]R.S.N. 1970, C. 328.

Due to the lack of any clear statutory authority, this provision has been considered to be of general application even though it is simply a statement of defeasance of certain interests in specified circumstances. The assumption appears to be that section 9 provides that land is bound upon seizure by the sheriff. However, it is arguable that the section contemplates and permits binding prior to the act of seizure by the sheriff; for example, upon delivery of the Execution Order to the sheriff. Delivery of the writ of *fieri facias* to the sheriff was the time when the goods and chattels of the judgment debtor were bound and the Imperial Statute of 1732[13] deemed land to be goods and chattels. The Imperial Statute was the basis for executing against land in 1862 when section 9 of the *Registration of Deeds Act* was first enacted.[14] If land were bound on delivery of the writ at that time, how would priorities be determined in circumstances where a judgment creditor had delivered a writ to the sheriff after the judgment debtor had conveyed an interest in the land but before the transferee had registered the instrument of transfer. Under the common law principle of *Jellett* v. *Wilkie,*[15] the conveyance, even if never registered, would have priority over the interest of the "subsequent" judgment creditor.[16]

However, section 9 could easily be interpreted as providing that such a "subsequent" judgment creditor would have priority over a prior unregistered instrument unless that instrument were registered before the sheriff actually seized the land. Implying the word "subsequent" before "creditor" where it appears in section 9 is consistent with the reference to "subsequent purchaser" earlier in the section. This interpretation appears to be both consistent with the clear statutory scheme of binding at the time and the apparent purpose of the section which is to deal with priorities of registration and not with the time of binding of executions generally. This interpretation would also make the situation in Newfoundland with respect to such priority issues consistent with that in other jurisdictions such as New Brunswick.[17]

The Report[18] suggests, however, that there may have been policy considerations which possibly led colonial law-makers to conclude that land should not be bound until the public act of seizure by the sheriff had occurred. Section

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[13]*Supra*, note 5.

[14]*An Act to Amend and Consolidate the Law now in force providing for the Registration of Deeds in the colony*, 1862, 25 Vict. c.8 (Nfld); see the Report at 26.

[15](1896), 26 S.C.R. 282; see also, Dunlop, *supra*, note 6 at 169.

[16]*MacDonald* v. *The Royal Bank of Canada*, [1937] O.R. 418 (C.A.).

[17]*Registry Act*, R.S.N.B. 1973, c. R-6, s. 19(2). For a detailed discussion of this provision see, *Bank of Montreal* v. *Chedore* (1986), 7 N.B.R. 99 (C.A.).

[18]See *supra*, note 1 at 25.

9 was part of a legislative package intended to replace a registration system that declared instruments null and void if not registered within six months of their execution. The principal complaint seemed to be that it was difficult, if not impossible, for those living outside St. John's to register their instruments within the six month period. The current system does not require registration for the purpose of validity; it is advisable only for the purpose of maintaining priority. Recognizing that many deeds were not registered, the Report concludes that the law makers may have decided to protect unregistered owners from creditors of the grantor by declaring that land was bound only upon seizure by the sheriff. There appears to be no compelling reason to treat creditors differently in this regard from other subsequent transferees who acquire an interest in the debtor's land and who may defeat previous unregistered interests by registering first. One possible argument for a different result is that the transferee may reasonably trust that the transferor will not convey the property again, while no such trust or control exists with respect to the grantor's creditors. If this were a major concern, a system where land was bound only upon seizure by the sheriff might be desirable.

There is some question whether it is still open for the Newfoundland courts to adopt the interpretation of section 9 suggested above. It does appear to be inconsistent with the assumption apparently underlying the decision of the Newfoundland Court of Appeal in *Gough* v. *Esso Home Comfort Centre.*[19] On a review of this case, as well as other authorities noted in the Report,[20] it appears that section 9 has been applied to require a physical act of seizure by the sheriff in order to bind the lands of a judgment debtor. If this is the current state of the law, it is certainly an unsatisfactory situation. The act of seizure is clearly an inappropriate event for binding land in a modern system of execution, particularly where a land registry system exists.

(b) Principles for Reform

Since any reform in this area of the law would be relatively independent and specialized, fundamental reform is possible without disturbing the general law of execution in the province. In these circumstances, reform should be unencumbered by existing execution processes which were never intended or designed to reach land. Ideally, all provisions necessary to implement a new system for execution against land should be, to the extent possible, contained in one statute and integrated with the land registry system.

Based on this approach, a new system could be created under which land would be made exigible and bound upon registration of a new instrument in the

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[19](1988), 71 Nfld. & P.E.I.R. 226 (Nfld. C.A.).

[20]See *supra*, note 1 at 25.

land registry office. This instrument, perhaps called a Certificate of Judgment Lien, would determine priorities for all purposes. The Certificate would be available to judgment creditors or creditors who had obtained an Attaching Order prior to judgment. The statutory scheme would make it clear that no other enforcement procedures could be used to reach the debtors land with the possible exception of a Receiving Order by way of equitable execution. The creation of a new process avoids the confusion and complication that results if the Execution Order is used, and the questions that could arise with respect to such issues as the requirement for seizure and the application of the sale procedures. An even more basic concern is that the Execution Order is in essence the common law writ of *fieri facias* and combines the dual function of binding and realization. It is important to appreciate that the functions of binding and realization should be clearly separated in order to attain the maximum simplicity and efficiency possible. In my proposal, the Certificate of Judgment Lien would bind the land while a separate process, perhaps called a Direction for the Sale of Land, would be required to complete the basics of the system. This new process would authorize and direct the sheriff to sell the land of the debtor in order to realize on the lien created by the Certificate.

(c) The Recommendation for Reform

The basic recommendations made in the Report with respect to the time and scope of the binding of the debtor's land are as follows:

> (4) *The Judicature Act*, 1986 should be amended to provide that the interest of a debtor in land, as well as the interest in land of any purchaser, mortgagee, or other transferee from the debtor under an instrument, shall be bound by an execution order or attached by an attachment order from the time of delivery of the order to the sheriff.
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> (5) *The Judicature Act*, 1986 should be amended to provide that notwithstanding the delivery of an execution order or attachment order to the sheriff, no such order shall prejudice the title of any purchaser, mortgagee or other transferee of an interest in land from the debtor under an instrument who has registered his instrument at the registry of deeds before the registration of such order.
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> (6) *The Registration of Deeds Act* and *The Judicature Act*, 1986 should both be amended to provide that, notwithstanding the registration of an execution order or attachment order at the registry of deeds, no such order shall prejudice the title of any purchaser, mortgagee or other transferee of an interest in land from the debtor under an instrument who has registered his instrument at the registry of deeds within ten days of the registration of the order in the registry of deeds, except in the case of a transferee who has had actual notice of the order prior to the execution of his instrument.

These recommendations use the Execution Order for both binding and realization, create a dual system of priorities, require the creditor to both deliver and register

the Execution Order, and reverse the common law principle of *Jellett* v. *Wilkie*. The comments to follow will deal first with concerns relating to the general scheme of priorities proposed; in particular the effect on the rights of third parties with an interest in the debtor's property. Secondly, the dual aspect of the priority system proposed will be dealt with in the context of priorities between creditors.

As noted, the proposals for reform would basically give a creditor priority over all unregistered interests in the debtor's land. In contrast, under the common law principle of *Jellett* v. *Wilkie*,[21] a creditor could not be in a better position with respect to the debtor's property than the debtor. Therefore, a subsequent creditor could not take priority over a prior *bona fide* purchaser of the debtor's land even though the instrument was never registered. This common law principle appears to be fundamentally sound since the creditor is not a purchaser of the property from the debtor. The unsecured creditor's right to sell the property is only a remedy given by the law of execution. However, as is often the case, such principles must be balanced against other policy considerations. There is a need to promote the registration of instruments, to maintain the integrity of the registry system, and to reduce the risk of fraud on creditors. Therefore, it is reasonable to require that a *bona fide* purchaser register an instrument within a reasonable time after its execution. If the instrument is not so registered, then the creditor should be given priority. This approach appears to reach an equitable balance and is simple. The interpretation of section 9 suggested above would provide a similar balance by requiring that, to take priority over the creditors interest, instruments be registered before the sheriff actually seizes the land.

The principle of *Jellett* v. *Wilkie*[22] coupled with a requirement to register within a reasonable time recognizes the practicalities of real estate transactions, including closings outside of the registry office. This approach will not eliminate the need for a sub-search prior to closing. A sub-search prior to closing will always be required to ensure that an instrument, such as a mortgage or an Execution Order, has not been registered prior to closing. However, in the case of closings outside of the registry office, a closing in escrow would not be necessary to enable the purchaser to confirm that an Execution Order had not been registered after closing but before the registration of the deed. A closing in escrow would not be necessary for this purpose since, even if a creditor registered an Execution Order during that period, the purchaser will have priority as against the creditor as long as the deed is registered within the statutory time period after closing. A closing in escrow will still be necessary, however, to enable the purchaser to determine whether an instrument of another type, such as a deed or

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[21] *Supra*, note 15

[22] *Ibid.*

mortgage, has been registered during that period.

The Report rejected of the principle of *Jellett* v. *Wilkie*[23] even though it was recognized as the simplest solution to the problem of an Execution Order being registered after closing but before registration of the deed. The only reason given for this decision was stated as follows:

> The Commission accepted the argument that the rule in *Jellett* v. *Wilkie* would not work successfully in a system which did not have registry closings. A registry closing fixes the date of the deed's execution; it is signed, sealed, and delivered. There is little opportunity for a fraud to be perpetrated against an execution creditor by back dating a deed. If *Jellett* v. *Wilkie* were restored without the practice of registry closings also being implemented (which is impractical given the fact that the province's only registry is in St. John's), whenever a deed is registered after an execution order, but executed, apparently, before the registration of the execution order, the question will arise as to whether the deed was actually executed before the registration of the execution order. The Commission concluded that, by itself, the reinstatement of *Jellett* v. *Wilkie* would lead to uncertainty and serve only to create unproductive litigation.[24]

As illustrated above, the common law rule is actually more compatible with closings out of the registry office than the system being recommended. The risk of fraud through back-dating does not appear to be a compelling reason to reject that rule as the basis for determining general priority questions.

The Report, having rejected the common law rule of *Jellett* v. *Wilkie*,[25] went on to recommend that the Execution Order not be binding as against third party transferees for a period of ten days after registration. This was considered necessary to accommodate closings outside the registry office by permitting the registration of the deed after closing. In light of the alternate approach suggested above for restoring and balancing *Jellett* v. *Wilkie*,[26] the ten day delay appears to be a further unnecessary complication for a system that should be as simple as possible. In assessing the advisability of the delay, it should also be remembered that Execution Orders are not the only instruments that may be registered after closing but before the registration of the purchaser's deed. Applying the same reason used to justify the ten day delay to protect against the registration of Execution Orders, a similar delay period should also exist for all instruments. It would appear that a practice of closings in escrow could resolve these problems without the need for any statutory delay period.

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[23]Ibid.

[24]See Report, *supra*, note 1 at 33.

[25]*Supra*, note 15

[26]*Ibid.*

Another concern is that neither the proposals for binding nor the ten day delay adequately address the rights of persons who may have acquired an interest in the debtor's land other than by an instrument prior to delivery or registration of the Execution Order. This may be of particular concern for the deemed joint tenancy created under section 8 of *The Family Law Act*.[27]

Even though the principal reason for the proposed system is to reduce the risk of fraud on creditors, there is a concern that it may have the opposite result. For example, an instrument may have been executed many months or years before the debtor experiences the financial problems that result in the registration of the Execution Order. Such an instrument could be used to both surprise and defeat creditors by registering it when the creditor first commences the action against the debtor. While this type of fraud can be controlled with a requirement to register within a reasonable time after execution, the recommendation for a ten day delay increases the possibility that it will occur. For a period of ten days after registration of the Execution Order, the debtor could transfer the land and the instrument could be registered.

The Report does recommend that a person with actual notice of the Execution Order, who purchases during this period, should not be protected. It should be noted briefly that it is not clear whether the actual notice is of the registration of or the issuance of the Execution Order. However, if there were a transfer during this period, there would then be litigation on the issue of "actual notice."

If the ten day delay is adopted, it would seem both simpler and consistent with sound policy to state that all instruments which take effect after the registration of the Execution Order should be defeated. One should not forget the objective of encouraging transferees to search the registry office before any transfer becomes effective. A purchaser or mortgagee should be expected to find the Execution Order on a sub-search before closing or advancement of funds. The purpose of the ten day delay is not to eliminate the need for sub-searches, but only to preserve the priority of previously executed deeds which are registered after the registration of the Execution Order. This approach of giving the Execution Order priority over all subsequent instruments, would require a determination of the effective date of the transfer. Since the question of the effective date may be the source of some litigation, this approach may be considered unacceptable. However, the Report did decide that a certain amount of litigation on the question of "actual notice" was acceptable. One cannot help but wonder why it would not be preferable to restore the common law principle of *Jellett* v. *Wilkie*[28] if a certain amount of litigation in the system is acceptable.

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[27]S.N. 1988, c.60.

[28]*Supra*, note 15.

In summary, it is suggested that the principle of *Jellett* v. *Wilkie*[29] can be balanced with the need to control fraud, promote the registration of instruments, and maintain the integrity of the registry system. As indicated, the balance can be attained in a manner that is both simple and workable from the standpoint of real estate practice including closings outside the land registry office. This can be accomplished by enacting a defeasance provision in favour of creditors as against instruments not registered within a reasonable time after their execution.

II. Priorities Among Creditors

Where the execution system and the land registry system are to be integrated, it is certainly preferable that the land of the debtor be bound for all purposes upon registration of a document. Registration should be the basis for determining the priority of a creditor as against third party transferees as well as between other creditors. The Report, however, recommends two systems for determining the priority of the Execution Order; one as against third party transferees and the other as against other creditors who have also bound the debtor's land. A dual system of priorities was deemed necessary since, due to the lack of creditors' relief legislation in Newfoundland, creditors' priorities are on the basis of first come, first paid. As a result, the Report would require that two steps be taken by creditors in order to fully secure their position with respect to land of the debtor. A creditor must first deliver the Execution Order to the sheriff and then register it in the land registry office. The system being proposed is complicated, perhaps inequitable, and probably unnecessary even when the priority system is based on first come, first paid.

The Report considered that priorities based solely on the registration of an instrument in the land registry office would not be feasible. It was feared that, because the sheriff would not have direct knowledge of the order of such registration, it would not be possible to conduct a proper sale and distribution of the proceeds. The fundamental problem is that one process, which was never intended or designed for land, is being used to both bind and realize on the debtor's land. The common law principle is that the sheriff, as an officer of the court, can act only on the first execution received since it is the first direction from the court to seize and sell the debtor's land. After the sale, the sheriff's duty is to distribute the proceeds to any subsequent creditors in the order that their executions bound the property.[30]

It is suggested that there would be no need for the sheriff to have direct knowledge of the priorities between creditors if two separate processes were

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[29] *Ibid.*

[30] Dunlop, *supra*, note 6 at 414-415.

created as suggested earlier in this comment; the Certificate of Judgment Lien for the purpose of binding upon registration and the Direction for the Sale of Land for the purpose of directing the sheriff to sell the land in order to realize on the lien created by the Certificate. In such circumstances, a dual system of priorities is not necessary. The lien or charge created upon registration of the Certificate should be considered equivalent to a statutory mortgage. Any creditor who has registered a Certificate should be entitled to deliver a Direction for the Sale of Land to the sheriff. The sheriff, when so directed, would sell only the interest of the debtor bound by that creditor. This interest may be subject to the rights of other creditors who had previously bound the debtor's property. On this approach, the sheriff does not need to know the title to the land being sold nor the priorities among creditors who have bound that land. Obtaining that information becomes the responsibility of the creditor or the purchaser at the sheriff's sale. Thus, a clear separation of binding and realization would permit a system of execution with priorities based solely on the registration of an instrument in the registry office.

An example will more fully illustrate how such a system would work. Assume that the debtor owns land in fee simple absolute free and clear of any liens or encumbrances. Three creditors of the debtor each register a Certificate in the land registry office. The liens thereby created in favour of each creditor would be equivalent to first, second, and third mortgages. Assume that the second creditor is the first to deliver a Direction for Sale to the sheriff. Accordingly, the sheriff would sell an interest in the property to a purchaser at the sheriff's sale. The interest acquired by that purchaser would be the interest of the debtor still subject to the Certificate of the first creditor but free of the Certificates of the second and third creditors. It would be the responsibility of the purchaser, not the sheriff, to determine the title to the property being sold. The amount realized would depend on the value of the debtor's interest less the amount still unpaid on the first creditor's Certificate. Since priorities are on a first come, first paid basis, the second creditor may be required to give notice to all those persons with a subordinate interest as is the case with the distribution of the proceeds of a mortgage sale. However, an even simpler alternative would be to adopt the requirements applicable to execution creditors in those jurisdictions with creditors' relief legislation. Generally under this type of legislation, a creditor wishing to share in the proceeds of a levy by the sheriff must come forward within 30 days of notice of the levy being entered in the sheriff's book. Other creditors are not entitled to special notice nor is the sheriff under an obligation to search for creditors who might be entitled to share.

As indicated earlier, simplicity in the system has its own intrinsic value. The proposals made in the Report unnecessarily complicate the system. There is no reason given for retaining the Execution Order for both functions of binding and realization. There does not appear to have been any discussion of other possible mechanisms. One can only conclude that the Execution Order simply represents

the *status quo*. It is unfortunate that the consequence of this decision is to create a dual system of priorities when a more fundamental reform as suggested could easily avoid this result.

III. General or Specific Liens

The Report recommends that the Execution Order continue to create a specific lien rather than a general lien. With a general lien, the creditor would simply register a document which would bind all of the debtor's land in the province without the need to describe the specific properties being bound. Also, a general lien usually binds any land subsequently acquired by the debtor during the currency of the registered document. However, the binding of after-acquired property is not inherently or necessarily part of the general lien concept. In contrast, a specific lien requires that a sufficient description of the property to be bound accompany the document that is to be registered in the land registry office. With a specific lien, there is virtually no possibility of providing that after-acquired property will be bound. The Report considers that, because section 9 focused on seizure as the effective time of binding, only a specific lien exists under the present law.

The Report reviews the advantages and disadvantages of a general lien from both the standpoint of creditors and the system as a whole. With respect to creditors, the Report identifies what were perceived to be problems with a general lien. The first problem identified is that a general lien would only benefit the first creditor to register since that creditor would thereby gain control over the sale of all of the debtor's land. It is also suggested that the general lien would cause a reduction in the efficiency of the execution system. Both of these problems appear to exist if the Execution Order is retained since the sheriff could only sell the land under the first Order delivered. If two new documents are created as suggested, all creditors would benefit in accordance with the order of registration, regardless of whether the debtor's land is bound by a general or specific lien.

The Report is also concerned that a general lien would permit fraud on creditors. The following scheme was suggested as an example of how fraud could be perpetrated: an accomplice of the debtor could obtain a judgment against the debtor, bind all of the land of the debtor, and refuse to give specific instructions to the sheriff to sell the land. Again, it is suggested that this problem does not exist as a result of a general lien, but as a result of retaining the Execution Order thereby requiring the sheriff to sell on the first Order received. This opportunity for fraud exists regardless of whether a specific or general lien is created. This sort of activity is properly and better controlled by the law relating to fraudulent conveyances and preferences.

The Report suggests that the general lien may cause an increase in

bankruptcies since creditors will see a more favourable distribution of the debtor's assets under federal law. While this may be true, it would not be as a result of a general as opposed to a specific lien, but as a result of the lack of a system of *pro rata* sharing under provincial law.

One concern expressed in the Report of significant negative consequence is the potential for confusion over similar names. While the similar name problem exists for purchasers searching titles, how great a problem is it if properly controlled? The incidence of this problem can easily be reduced by requiring the creditor to provide, with the Execution Order or Certificate to be registered, sufficiently detailed information with respect to the debtor. If these steps were taken, is the similar name problem of sufficient concern that a general lien should be rejected? In answering the question, one must remember that the alternative of a specific lien has its own administrative problems. For example, the Report spends some time in dealing with the question of what constitutes a sufficient description of the specific property to be bound by the lien. On balance, it appears that the general lien is still the preferred option.

In the final analysis, the Report's recommendation for a specific lien reflects a desire to maintain the status quo as a result of resistance to change within the Bar. It is unfortunate that the Report did not take the relatively small steps necessary to create a system with a general lien.

IV. Conclusions

The Report clearly identifies the need for changes in the law relating to execution against land in Newfoundland. While the amendments being proposed do clarify the authority for executing against land, they are technical amendments which create an unnecessarily complicated system. An ideal opportunity exists for basic reform in this relatively self-contained area of the law of execution. As suggested earlier in this comment, the execution system and the land registry system can be integrated by using two processes; a Certificate of Judgment Lien and Direction for the Sale of Land. A general lien could be created with or without the binding of after-acquired property. The general lien would determine priorities for all purposes subject to the common law rule of *Jellett* v. *Wilkie*;[31] that is, a creditor can be in no better position with respect to the debtor's property than the debtor. In order to prevent fraud on creditors and to promote and preserve the integrity of the registry system, a defeasance provision would require that an instrument be registered within a reasonable time after its execution. This alternative proposal for reform is workable in a system where creditors priorities are based on the principle of first come, first paid. In addition, the system is perhaps preferable in a jurisdiction where the practice of law regularly involves real estate closings

[31] *Supra*, note 15.

outside the registry office.

If Newfoundland does decide to undertake reform in the area of execution against land, it will be interesting to see the extent of any such reform.