

**PROCEDURE ON ELEGIT &
EQUITABLE EXECUTION:
WITH FORMS**

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Procedure on Elegit & Equitable Execution: With Forms by Frederick Stone

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FREDERICK STONE

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WITH FORMS**

PROCEDURE

ON

Elegit & Equitable Execution

WITH FORMS.

BY

FREDERICK STONE,

SOLICITOR,

And Clement's Inn Prisoner.



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ELEGIT.

Statutes.—The statute of Westminster II. (13 Edw. 1), c. 18, from which the writ of *elegit* has its origin, provides that it shall be in the *election* of a judgment creditor to have a writ of *feri facias*, or that the sheriff deliver to him all the chattels of the debtor (saving only his oxen and beasts of his plough), and the one half of his land, until the debt be levied according to a reasonable price and extent. The Statute of Frauds (29 Car. 2, c. 3), s. 10 (a), enabled the sheriff to deliver execution of tenements and hereditaments of which any person other than the debtor was seised or possessed in trust for the debtor; but this provision is more than covered by the 1 & 2 Vict. c. 110, s. 11, which enacts, that it shall be lawful for the sheriff to whom any writ of *elegit* shall be directed to make and deliver execution unto the party in that behalf suing of all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, as the person against whom execution is so sued, or any person in trust for him, shall have been seised or possessed of at the time of entering up the judgment, or at any time afterwards, or over

(a) This part of s. 10 is repealed by the Stat. Law Rev. Act, 1881.

which such person shall, at the time of entering up such judgment or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit, in like manner as the sheriff might at the time when this act was passed have made and delivered execution of one moiety of the lands and tenements of any person against whom a writ of elegit was sued out; which lands, tenements and hereditaments shall accordingly be held and enjoyed by the party to whom such execution shall be so made and delivered, subject to such account in the Court out of which such execution shall have been sued out as a tenant by elegit was at the date of this act subject to in a Court of Equity.

The creditor is entitled to issue writs of elegit for the whole debt into different counties at the same time, and to execute all or any of them.

Advantage of Elegit.—If the debtor is a trader, and the judgment debt is so near to 50*l.* as to make it uncertain whether or not the costs of judgment and of a writ of *fi. fa.* and the sheriff's costs and expenses chargeable against the debtor would, with the debt, exceed 50*l.*, it is now better to issue a writ of elegit, instead of a *fi. fa.*, whether the debtor have any lands or not, because sect. 87 of the Bankruptcy Act, 1869, requiring the sheriff, where the goods of a trader have been taken in execution for more than 50*l.* and sold, to retain the proceeds for fourteen days, does not apply to an elegit (*Ex parte Abbott, re Gourlay*, 15 Ch. D. 447; 50 L. J., Ch. 80;

43 L. T. Rep. (N. S.) 417). But where the debtor is not a trader, or where it is certain that the debt, costs and sheriff's expenses will not exceed 50%, it is better to issue a *fi. fa.*, because that process is more prompt and convenient, and 1 & 2 Vict. c. 110, s. 12, enabling the sheriff to seize bank notes and negotiable and other securities, is limited to *fi. fa.*

Relative Rights of Elegit Creditors and Trustees in Bankruptcy.—In ascertaining the rights of elegit creditors, as against trustees in bankruptcy, the first inquiry should be—At what time did the trustee's title commence? This time must be fixed with reference to sect. 11 of the Bankruptcy Act, 1869, which provides (in effect) that the trustee's title shall commence (1) at the time of the act of bankruptcy being completed on which the order of adjudication is made; or (2) if the bankrupt have committed more than one act of bankruptcy—then that the trustee's title shall commence at the time of the first act of bankruptcy committed within twelve months next preceding the order of adjudication, but that the trustee's title shall not commence at any time prior to the act of bankruptcy on which the order of adjudication is made, unless at the time of committing such prior act, the bankrupt was indebted to creditors to the extent of 50% or upwards, and such debts are still remaining owing at the time of adjudication. Having ascertained, by the light of this section, at what time the trustee's title commenced, the next inquiry should be—Did the *seizure* by the sheriff take place (1) before or