



1960

c 124 Estreats Act

Ontario

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CHAPTER 124

The Estreats Act

1.—(1) Unless otherwise provided, all fines and forfeited recognizances, the disposal of which is within the power of the Province, set, imposed, lost or forfeited, by or before the Supreme Court or a court of general sessions of the peace, shall, upon the adjournment of such court, be entered and extracted on a roll by the registrar or clerk of the peace, as the case may be, or by some other person under the direction of a judge, which roll shall be made in duplicate and signed by the registrar or clerk or by the judge. ^{Entry of fines, etc.}

(2) The person by whom the roll is prepared shall, at the foot thereof, certify in the following form: ^{Affidavit by clerk}

I, *A. B.*, (*describing his office*), do certify that this roll is truly and carefully made up and examined, and that all fines, issues, amerçiements, and forfeited recognizances, which were set, imposed, lost or forfeited, at or by the court therein mentioned, and which in right and due course of law ought to be levied and paid, are inserted in such roll; and that in the roll are also contained and expressed all such fines as have been paid to or received by me, either in court or otherwise, without any wilful error, omission, misnomer, or defect whatever. *A. B.*

R.S.O. 1950, c. 118, s. 1.

2.—(1) Subject to section 8, as soon as the roll is prepared, one copy shall, in the Supreme Court, be transmitted to the office of the Registrar of the Supreme Court at Osgoode Hall, and in the general sessions shall remain deposited in the office of the clerk of the peace, and in both cases the other copy, with a writ of execution and *capias* (Form 1), shall be transmitted to the sheriff of the county or district in and for which such court was held. ^{Transmission of copy of roll}

(2) Where the writ is intended to be executed in any other county or district, a certified copy of the roll, with a concurrent writ of execution and *capias* (Form 1), shall be transmitted to the sheriff of such county or district. ^{Idem}

(3) A writ, if unexecuted, remains in force for three years and no longer, unless renewed in the manner provided in the case of other writs of execution. ^{Duration of writ}

Alias

(4) Where a recognizance is estreated and has not been discharged or satisfied, the court may order the issue of a new or alias writ of execution and *capias*, notwithstanding that more than three years have elapsed since the issue of the original writ. R.S.O. 1950, c. 118, s. 2.

Preparation of roll and issue of execution before adjournment of court

3.—(1) At any time before the adjournment of the court, the registrar or clerk shall at the request of the Crown attorney prepare and certify a roll dealing with any one or more forfeited recognizances or fines and issue a writ of execution and *capias* in respect thereof, and such writ of execution and *capias* may be immediately placed in the hands of the sheriff for execution.

Note to be made on roll

(2) In any such case, the forfeiture or fine shall be mentioned in the roll and certificate required to be made up upon the adjournment of the court with an annotation of the issue of the certificate and execution, and the execution then to be issued does not apply thereto. R.S.O. 1950, c. 118, s. 3.

Mode of proceeding to levy fine, etc.

4. The sheriff shall proceed to the immediate levying and recovering of such fines, issues, *americiaments* and forfeited recognizances on the goods and chattels, lands and tenements of the persons named in the roll, or to the taking into custody of the bodies of such persons in case sufficient goods and chattels, lands or tenements cannot be found whereof the sums required can be made, and every person so taken shall be lodged in the common jail of the county or district until satisfaction is made or until the court, upon cause shown by the party as hereinafter mentioned, makes an order in the case, and until the order has been fully complied with. R.S.O. 1950, c. 118, s. 4.

Estreat of recognizances to county court judges' criminal court and magistrates

5.—(1) Where a person bound by a recognizance for his appearance, or for whose appearance any other person has become so bound, does not appear at the time and place required or during the time the judge of the county or district judges' criminal court or magistrate or justice of the peace has appointed, according to the terms of the recognizance, the judge or magistrate or justice shall within forty-eight hours after such failure to appear cause a record of the recognizance to be drawn up and shall sign it and return it to the clerk of the peace for the county or district with a certificate on the back thereof signed by the judge, magistrate or justice stating that the person charged has not complied with the obligation contained in the recognizance.

(2) The clerk of the peace shall make a like record of estreat of every such recognizance as in the case of other recognizances forfeited at the court of general sessions of the peace. Record of estreats at sessions

(3) The other provisions of this Act apply to every such recognizance. Application of other provisions

(4) In the case of the forfeiture of a recognizance given by or on behalf of a person for his appearance before a magistrate or justice of the peace or before the judge of the county or district judges' criminal court or by or on behalf of a person appealing from a conviction or order made in the first instance or on appeal, if the court of general sessions of the peace is not in session at the time of such forfeiture, the clerk of the peace shall prepare and certify a roll setting out the forfeited recognizance and lay it before a judge of the county court in chambers, and the judge may thereupon by memorandum upon the roll order the estreating of such recognizance, and the clerk of the peace shall thereupon proceed as in other cases provided for by this Act. When recognizance forfeited while court not in session R.S.O. 1950, c. 118, s. 5.

6. Where a person bound by recognizance for his appearance, or for whose appearance any other person has become so bound, to prosecute or give evidence in the case of an offence for the commission of which a fine or penalty is imposed that the Province is entitled to receive makes default, the officer of the court by whom the estreats are made out shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person or his surety was so bound, together with the residence, trade, profession or calling of every such person and surety, and shall in the list distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of his non-appearance, the ends of justice have been defeated or delayed. Report by officer of the court R.S.O. 1950, c. 118, s. 6.

7. Every officer before a recognizance is estreated shall lay the list before a judge of the court, who shall examine the list and make such order touching the estreating or putting in process the recognizance as appears just, and no officer of the court shall estreat or put in process a recognizance without the written order of the judge before whom the list has been laid. Estreat of recognizances, etc. R.S.O. 1950, c. 118, s. 7.

Forbearance
from estreat

8.—(1) Except in the cases of persons bound by recognizance for their appearance, or for whose appearance any other person has become so bound, to prosecute or give evidence, in every case of default whereby a recognizance has become forfeited, if the cause of absence is made known to the court, the court, on consideration of the cause and considering also whether by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated, and with respect to all recognizances estreated and all fines imposed by any court for the non-attendance of a juror or constable, or of a public officer bound to attend at the court, if it appears to the satisfaction of the judge who presided thereat that the absence of the person for whose appearance a recognizance was entered into, or that the absence of a person fined for non-attendance was owing to circumstances that rendered his absence justifiable, the judge may make an order directing that the sum forfeited upon the estreated recognizance or the fine imposed not be levied.

Forbearance
from levying
fines, etc.

(2) The clerk before sending to the sheriff the roll, with the writ of execution and *capias*, shall submit the same to the judge for his revision, and the judge may make a minute on the roll and writ of any forfeited recognizances and fines that he thinks fit to direct not to be levied, and the sheriff shall observe the direction of the minute, and shall accordingly forbear to levy the forfeited recognizance or fine. R.S.O. 1950, c. 118, s. 8.

Procedure
where lands
are seized

9. Where the sheriff takes land or tenements in execution, his duties and the practice and procedure as to the sale shall be the same as in other cases of execution against lands. R.S.O. 1950, c. 118, s. 9.

Conditions
upon which
a party in
custody of
the sheriff
may be
released

10. If a person on whose goods and chattels a sheriff is authorized to levy a forfeited recognizance gives security to the sheriff for his appearance in the court into which the writ is returnable within thirty days after the giving of the security, or so soon thereafter as the court sits, then and there to abide the decision of the court, and also to pay the forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as are adjudged and ordered by the court, such person shall be discharged out of custody, and, if he does not appear in pursuance of his undertaking, the court may forthwith issue a writ of execution and *capias* against the surety or sureties of the person so bound. R.S.O. 1950, c. 118, s. 10.

11. The court into which a writ of execution and *capias* is returnable may inquire into the circumstances of the case and may order the discharge of the whole of the forfeited recognizance, or sum paid or to be paid in lieu of satisfaction thereof, and may make such order thereon as to the court appears just, and the order is a discharge to the sheriff or to the party, according to the circumstances of the case. R.S.O. 1950, c. 118, s. 11.

Discharge of
forfeited
recognizances, etc.

12. The sheriff to whom a writ is directed shall with his return state on the back of the roll attached to the writ what has been done in the execution thereof, and the return shall be filed in the proper office of the court into which it is made. R.S.O. 1950, c. 118, s. 12.

Manner of
return by
sheriff, etc.

13. A copy of the roll and return, certified by the clerk of the peace or by the local registrar of the Supreme Court, shall be forthwith transmitted to the Inspector of Legal Offices, with a minute thereon of any of the sums therein mentioned that have been remitted by order of the court, in whole or in part, or directed to be forborne under this Act. R.S.O. 1950, c. 118, s. 13.

Certified
return to
Inspector of
Legal Offices

14. The sheriff shall, without delay, pay over all money collected by him to the Treasurer of Ontario or other officer or person entitled to receive it. R.S.O. 1950, c. 118, s. 14.

Payment to
Treasurer
of Ontario

15. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules regulating the practice and procedure for the estreating of recognizances in the Supreme Court or in the court of general sessions of the peace. R.S.O. 1950, c. 118, s. 15.

Rules

16.—(1) This Act applies to any bond, recognizance or other security furnished under any statute of Ontario by or on behalf of any person for his appearance before a magistrate or a justice or for the prosecution of any appeal in any matter or case punishable on summary conviction or in which an appeal lies from a conviction or order made by a judge, magistrate or justice.

Recognizances to
prosecute
appeal from
convictions,
etc.

(2) Rules may be made for regulating the practice upon the estreating of any such bond, recognizance or other security by the same authority and in the same manner as under section 15. R.S.O. 1950, c. 118, s. 16.

Rules

FORM 1

The Estreats Act

(Section 2)

WRIT OF EXECUTION AND CAPIAS

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

To the Sheriff of, Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements of each of the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them severally imposed and charged as therein is specified; and if any of the said several debts cannot be levied by reason that no goods or chattels, lands or tenements can be found belonging to the said persons respectively, then, and in all such cases, you are to take the bodies of such persons and keep them safely in the jail of your county (or district), there to abide the judgment of Our Supreme Court (or Court of General Sessions of the Peace, *as the case may be*) upon any matter to be shown by them respectively, or otherwise to remain in your custody as aforesaid until such debt is satisfied, unless any of such persons respectively gives sufficient security for his appearance at the said court within thirty days after the giving of the security, or so soon thereafter as the court sits, for which you will be held answerable; and what you do in the premises make appear before Us in Our Supreme Court at Toronto (or at the next Court of General Sessions of the Peace for the county (or district) of) immediately after the execution hereof and have then and there this writ.

Witness my hand this day of, 19

.
A. B.
Registrar (or Clerk of the Peace or *as the case may be*)
for the County of

R.S.O. 1950, c. 118, Form 1.

