

1937

c 126 Creditors Relief Act

Ontario

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CHAPTER 126.

The Creditors Relief Act.

1. In this Act,—

Interpreta-
tion.

- (a) "County" shall include a provisional judicial dis-
trict; "County."
- (b) "County court" shall include district court; "County
court."
- (c) "Execution" shall include a writ of *feri facias* and
every subsequent writ for giving effect thereto; "Execu-
tion."
- (d) "Judge" shall mean a judge of the county court of
the county the sheriff of which is required to take
the proceedings directed by this Act; "Judge."
- (e) "Sheriff" shall include any officer to whom an execu-
tion is directed. R.S.O. 1927, c. 113, s. 1. "Sheriff."

2. Where a judge is disqualified to act in a matter arising
under this Act, a judge of the county court of an adjoining
county shall have jurisdiction to act in his place. R.S.O.
1927, c. 113, s. 2. Where judge
is disqualified.

3. Subject to the provisions hereinafter contained, there
shall be no priority among creditors by execution from the
Supreme Court or from a county court. R.S.O. 1927, c. 113,
s. 3. Priority
among
execution
creditors
abolished.

4.—(1) A creditor who attaches a debt shall be deemed to
do so for the benefit of all creditors of his debtor as well as
for himself. Attachment
to be for
benefit of
all creditors.

(2) Payment of such debt shall be made to the sheriff of
the county in which the garnishee resides or, if there are
more garnishees than one in respect of the same debt, then
to the sheriff of the county in which any one of them resides. To whom to
be paid.

(3) This section shall not apply to debts attached by pro-
ceedings in a division court unless before the amount recov-
ered by the garnishee proceedings is actually received by the
creditor an execution against the property of the debtor is
placed in the hands of the sheriff of such county. Attachments
in division
courts.

Money paid to sheriff who has no execution in hand.

(4) Where money is paid to a sheriff in whose hands there is no execution against the property of the debtor, and there is in the hands of the sheriff of another county an execution against the property of the debtor, the court or a judge on the application of such last mentioned sheriff or of a creditor or of the debtor may direct, on such terms as to costs and otherwise as may seem just, that such money be paid over to such last mentioned sheriff to be distributed by him as if such money had then been paid to him by the garnishee, and the court or judge shall fix the compensation to be paid to the sheriff by whom the money was received from the garnishee for his services.

Money paid into division court.

(5) Where money which a sheriff is entitled to receive under the provisions of this section is paid into a division court the sheriff shall be entitled to demand and receive the same from the clerk of such court for the purpose of distributing it under the provisions of this Act.

Right of attaching creditor to share with other creditors.

(6) An attaching creditor shall be entitled to share in respect of his claim against the debtor in any distribution made under the provisions of this Act, but his share shall not exceed the amount recovered by his garnishee proceedings unless he has in due time placed an execution or a certificate given under this Act in the sheriff's hands.

Sheriff's poundage.

(7) The sheriff shall be entitled to poundage upon money received and distributed by him under the provisions of this section at the rate of one and a quarter per centum and no more.

Sheriff's right to recover attached debt.

(8) If an attached debt which the sheriff is entitled to receive, or any part of it, is received by the attaching creditor the sheriff may recover the same from him; but a clerk of a division court shall not be liable for making payment to the creditor unless at the time of payment he has notice that there is an execution against the property of the debtor in the sheriff's hands. R.S.O. 1927, c. 113, s. 4.

Entries by sheriff after levy.

5.—(1) Where a sheriff levies money under an execution against the property of a debtor, or receives money in respect of a debt which has been attached or sold under the provisions of section 15 of *The Absconding Debtors Act*, he shall forthwith make an entry (Form 1) in a book to be kept in his office open to public inspection without charge.

Rev. Stat., c. 127.

Distribution.

(2) The money shall thereafter be distributed rateably among all execution creditors and other creditors whose executions or certificates given under this Act were in the sher-

iff's hands at the time of the levy or receipt of the money, or who deliver their executions or certificates to the sheriff within one month from the entry, subject to the provisions hereinafter contained as to the retention of dividends in the case of contested claims, and to the payment of the costs of the creditor under whose execution the amount was made, and subject also to the provisions of subsection 6 of section 4, and, as respects money recovered by garnishee proceedings, subject to the payment thereof to the creditor who obtained the attaching order of his costs of such proceedings.

(3) Subsection 2 shall not apply to money received by a sheriff as the proceeds of a sale of property by him under an interpleader order; but upon the determination of the interpleader proceeding in favour of the creditors the money, whether in the sheriff's hands or in court pending such determination, shall, subject to the provisions of subsection 4, be distributed by the sheriff among the creditors contesting the adverse claim.

Money realized on sale under interpleader order.

(4) Where proceedings are taken by a sheriff for relief under any provisions relating to interpleader those creditors only who are parties thereto and who agree to contribute *pro rata* in proportion to the amount of their executions or certificates to the expense of contesting any adverse claim shall be entitled to share in any benefit which may be derived from the contestation of such claim so far as may be necessary to satisfy their executions or certificates.

Rights of creditors in case of interpleader proceedings.

(5) The judge making the interpleader order may direct that one creditor shall have the carriage of the interpleader proceedings on behalf of all creditors interested, and the costs thereof, as between solicitor and client, shall be a first charge upon the money or goods which may be found by the proceedings to be applicable upon the executions or certificates.

Order as to carriage of proceedings.

(6) Upon any interpleader application the judge may allow to other creditors who desire to take part in the contest a reasonable time in which to place their executions or certificates in the sheriff's hands upon such terms as to costs and otherwise as may be deemed just.

Time allowed in interpleader.

(7) Where the sheriff, subsequently to the entry, but within the month, levies a further amount from the property of a debtor or receives money in respect of a debt which has been attached or sold the same shall be dealt with as if such amount had been levied or received prior to the entry.

Application of subsequent levy.

Notice and distribution on further levy.

(8) If, after the month, a further amount is so levied or received a new notice shall be entered and the distribution to be made of the amount so levied or received and of any further amount levied or received within a month of the entry of the last mentioned entry shall be governed by the entry thereof in accordance with the foregoing provisions of this section, and so from time to time as further amounts are so levied or received.

Share in subsequent distribution.

(9) Where a creditor has shared in a previous distribution he shall be entitled to share in a subsequent one only in respect of the amount remaining due to him after crediting what he has received in any previous distribution.

Equality of all executions.

(10) In distributing money under this section creditors who have executions against goods or lands only or against goods and lands shall be entitled to share rateably with all others and money realized under execution against either goods or lands or against both, or under an attaching order.

What creditors may share.

(11) Subject to the provisions of subsection 6 of section 4 a creditor shall not be entitled to share in the distribution unless by the delivery of an execution, or otherwise under this Act, he has established a claim against the debtor either alone or jointly with some other person.

Money realized under Rev. Stat., c. 127.

(12) Where money in the hands of the sheriff for distribution is the proceeds of the property of an absconding debtor against whom an order of attachment has been issued under *The Absconding Debtors Act*, the period mentioned in subsection 2 shall be two months, and subsection 8 shall be read as if the words "the month" in the first line were "the two months." R.S.O. 1927, c. 113, s. 5.

(NOTE—*As to right of employees of debtors for wages, see The Wages Act, Rev. Stat. c. 196.*)

Proceedings where debtor allows execution to remain unsatisfied.

6.—(1) If a debtor permits an execution issued against him under which any of his goods or chattels are seized by a sheriff to remain unsatisfied in the sheriff's hands until within two days of the time fixed by the sheriff for the sale thereof, or for twenty days after the seizure, or allows an execution against his lands to remain unsatisfied for nine months after it has been placed in the sheriff's hands, the proceedings hereinafter authorized may be taken by other creditors or claimants in respect of debts which are overdue.

When sale occurs.

(2) When a sale has taken place under an execution the proceedings hereinafter authorized may be taken by any

creditor of the execution debtor even though his claim is not then due. R.S.O. 1927, c. 113, s. 6.

7.—(1) An affidavit (Form 2) of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in case of a joint debt, or by a person cognizant of the facts. Affidavit of creditor.

(2) Prior to or simultaneously with the filing with the clerk of the county court of the affidavit there shall be filed with him a certificate of the sheriff, or an affidavit, showing that such proceedings have been had against the debtor as entitle the creditor to proceed under this Act. Filing affidavit or certificate.

(3) The claimant shall serve on the debtor one of the duplicates and a notice (Form 3). Service on debtor.

(4) Where the affidavit and notice are to be served out of Ontario the judge shall by order fix the time after which the next step may be taken by the claimant as hereinafter provided. R.S.O. 1927, c. 113, s. 7. Service out of Ontario.

8.—(1) An execution debtor may give notice in writing to the sheriff that any claims to be served upon him may be served upon a solicitor in Ontario, whose name and address shall be given, or by mailing the same to an address stated in the notice. Notice by debtor of address for service.

(2) The sheriff shall thereupon enter the notice in the book mentioned in subsection 1 of section 5, and so long as any execution which was in the sheriff's hands at the time the notice was given shall remain in his hands shall repeat such entry immediately below any entry (Form 1), made in respect of the execution, unless the notice is revoked in writing, in which case the entry thereof shall be marked "revoked." Entry of notice.

(3) So long as the notice is not revoked the affidavit of claim and notice (Form 3) may, where a solicitor is named, be served upon an execution debtor by serving the same upon the solicitor, or, if mailing is required, then by mailing the same by registered post to the address in the notice given by the execution debtor. Service at address.

(4) Where the notice (Form 3) served on a debtor does not state some place in or within three miles of the county town of the county in which the proceedings are being taken, at which service may be made upon the claimant, or does not give the name and address of some solicitor in Ontario who may be served on the claimant's behalf, service of any notice, Service by mail.

paper or document may be made upon the claimant by mailing the same, by registered post, addressed to the claimant at the county town.

Filing affidavit.

(5) The claimant shall file with the clerk of the county court of the county, the sheriff of which has the execution, one of the duplicate affidavits of claim, and a copy of the notice with an affidavit of service thereof (Form 4).

Service generally.

(6) The affidavit and the notice shall, where practicable, be personally served upon the debtor; but if it is made to appear to the judge that the claimant is unable to effect prompt personal service, the judge may order substitutional or other service, or may direct some act to be done which shall be deemed sufficient service. R.S.O. 1927, c. 113, s. 8.

Certificate where claim not disputed.

9.—(1) Where the claim is not contested in manner hereinafter mentioned, after ten days from the day of service, or after the time mentioned in the order provided for by subsection 4 of section 7, as the case may be, on the application of the claimant and his filing proof of due service of the affidavit and notice, or where the claim is contested, upon the determination of the dispute in favour of the claimant, either in whole or in part, the clerk of the county court shall deliver to the creditor a certificate (Form 5), and where the claim is disputed as to a part only, the claimant may elect, by a writing filed with the clerk, to abandon such part and shall be entitled to a certificate as to the residue.

Delivery to sheriff and effect of certificate.

(2) Upon delivery of the certificate to the sheriff the claimant shall be deemed to be an execution creditor within the meaning of this Act, and shall be entitled to share in any distribution as if he had delivered an execution to the sheriff, and the certificate shall bind the lands and goods of the debtor in the same manner as an execution, subject, however, to the debt being afterwards disputed by a creditor as hereinafter provided.

In case of interpleader.

(3) For the purpose of interpleader proceedings the certificate shall be deemed to be an execution.

Address for service to be endorsed.

(4) If the certificate is obtained by a solicitor his name and address shall be endorsed thereon, and if obtained by the claimant in person there shall be endorsed thereon a statement of some place in, or within three miles of the county town of the county in which the proceedings are being taken, at which service may be made upon him, and, in default thereof, service of any notice, paper or document may be

made upon the claimant by mailing the same by registered post addressed to him at the county town.

(5) On receiving the certificate the sheriff shall make a further seizure of the property of the debtor to the amount of the debt so claimed, and the sheriff's fees, and so from time to time in case further certificates are received.

(6) A certificate shall remain in force for three years from the date thereof but may from time to time be renewed in the same manner as an execution.

(7) Notwithstanding the expiry of an execution or certificate before the termination of the month during which a notice of money having been levied or received is required to be entered, the execution or certificate, as to any money levied or received during such month, shall be deemed to be in full force and effect. R.S.O. 1927, c. 113, s. 9.

10.—(1) The claim may be contested by the debtor or by a creditor of the debtor.

(2) Where the debtor contests the claim, he shall file with the clerk an affidavit stating that he has a good defence to the claim, or to a specified part of it on the merits, but the judge may dispense with the affidavit on terms or otherwise.

(3) The debtor shall file the affidavit and serve upon the claimant a copy thereof within ten days after service upon him of the affidavit of claim and the notice, or within the time mentioned in the order provided for by subsection 4 of section 7 as the case may be, or within such further time as the judge may allow.

(4) Where the contestation is by a creditor he shall file with the clerk an affidavit to the effect that he has reason to believe that the debt claimed is not really and in good faith due from the debtor to the claimant; but the judge may dispense with the affidavit on terms or otherwise.

(5) Notice of contestation, whether by the debtor or by a creditor, together with a copy of the affidavit, if any, shall be served upon the claimant within five days after filing the affidavit, or after the order of the judge if the affidavit is dispensed with.

(6) The affidavit by a creditor may be filed, and a certificate thereof delivered to the sheriff, at any time before distribution is made, and the sheriff shall forthwith give notice of the receipt of such certificate to the claimant.

Address for service.

(7) The affidavit of the debtor or other contestant shall have endorsed thereon a statement of some place, in or within three miles of the county town of the county in which the proceedings are being taken, at which service may be made upon him, or the address of a solicitor in Ontario who may be served on his behalf, and in default thereof, service of any notice, paper or document may be made upon the debtor or contestant by mailing the same by registered post addressed to him at such county town. R.S.O. 1927, c. 113, s. 10.

Service on Toronto agent.

11. Where the address of a solicitor is given for service which is not within three miles of the county town where the proceedings are carried on, service may be made upon him by serving his agent in Toronto. R.S.O. 1927, c. 113, s. 11.

Distribution in case of contestation.

12.—(1) Where a claim is contested by a creditor after a certificate has been placed in the sheriff's hands, the sheriff unless the judge otherwise orders, shall levy as if such contestation had not been made, and shall, until the determination of the contestation, retain in the bank the amount which would be apportionable to the claim if valid, and shall, as soon after the expiry of the month as is practicable, distribute the residue of the money made amongst those entitled.

Application for allowance of claim.

(2) The claimant whose claim is contested may apply to the judge for an order allowing his claim and determining the amount, and if he does not make such application within eight days after receiving notice of the contestation or within such further time, if any, as the judge may allow, he shall be taken to have abandoned his claim.

When contest is not in good faith.

(3) Where the contestant is a creditor and there is reason to believe that the contestation is not being carried on in good faith, any other creditor may apply for an order permitting him to intervene in the contestation. R.S.O. 1927, c. 113, s. 12.

Trial of contestation.

13.—(1) The judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried with or without a jury in any court and in any county for the determination thereof, and make such order as to the costs of the proceedings as he may deem just.

Where amount in controversy exceeds \$400.

(2) Where the sum in controversy appears to be over \$400 exclusive of costs, the judge shall direct that the action be brought on the issue tried in the Supreme Court, and subject to any order which that court or a judge thereof may make

in that behalf, shall name the county in which the trial is to take place.

(3) Where an issue is directed the trial shall take place and all proceedings subsequent thereto shall be the same as if it had been an action in the court in which it is ordered to be tried. Proceedings where issue tried. R.S.O. 1927, c. 113, s. 13.

14. The same proceedings may be had for the production of documents and for the examination of parties or others, either before or at the trial, as may be taken in an ordinary action, and such proceedings may also be taken before the application to the judge, and as a foundation therefor. Production, examination, etc. R.S.O. 1927, c. 113, s. 14.

15.—(1) The clerk of the county court shall keep a book in which, before giving a certificate or issuing an execution for a claim, he shall enter the following particulars with reference to every claim in respect of which he gives a certificate or issues an execution:— Clerk to keep book of record.

- (a) The name of the claimant, and of the debtor;
- (b) The date of the entry;
- (c) The amount of the debt, exclusive of costs;
- (d) The amount of costs;
- (e) If the proceedings have been set aside, that fact, and shortly the reason therefor.

(2) The entry shall, subject to the provisions of this Act, have the effect of and be a final judgment of the court for the debt and costs. Effect of entry.

(3) The clerk shall index the entries in a book alphabetically under the names of the debtors. Index.

(4) Where the original papers are lost or destroyed a copy of the entry shall be evidence of the matters therein set forth. Copy of entry as evidence. R.S.O. 1927, c. 113, s. 15.

16. A creditor who has recovered a judgment in a division court against the debtor may deliver to the sheriff a certificate, under the hand of the clerk and the seal of the division court, of the amount of his judgment and of the costs to which he is entitled, and the certificate so delivered shall have the same effect, for the purposes of this Act, as if the Division court judgment creditors.

creditor had delivered to the sheriff an execution from a county court. R.S.O. 1927, c. 113, s. 16.

Establishing claim in another country.

17. Where a creditor has taken in one county the prescribed proceedings in respect of his claim and desires to establish his claim, for the purposes of this Act in another county he may do so by obtaining from the clerk of the county court of the county first mentioned another certificate (Form 5), and delivering the same to the sheriff of such other county, and the delivery of the certificate to the sheriff shall have the same effect in such other county from the time of the delivery thereof as if the certificate had been issued by the clerk of the county court of such other county upon the proceedings therein. R.S.O. 1927, c. 113, s. 17.

Executions may issue to any county.

18. A creditor, entitled to obtain a certificate from the clerk of a county court, may also sue out an execution into any county in the same manner as on an ordinary judgment; but this shall not prejudice the right of any other creditor to contest the claim of such first mentioned creditor under the provisions of this Act. R.S.O. 1927, c. 113, s. 18.

Effect of decision after contestation.

19.—(1) Where a claim is contested in one county, the decision thereon shall, as between the parties to the contestation, determine the amount of the claim, for the purposes of this Act, and in all other counties in which the claim is filed, and the certificate of the clerk of the county court of the county in which the contestation has taken place of the result thereof shall be sufficient evidence of the decision.

Fee for certificate of result.

(2) Upon payment of a fee of fifty cents the certificate shall be granted to any party to the proceedings who applies therefor. R.S.O. 1927, c. 113, s. 19.

Effect of payment or withdrawal of all executions and certificates.

20.—(1) Where the debtor, without a sale by the sheriff, pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment, and no other claim has been filed, or where all executions and certificates in the sheriff's hands are withdrawn and any claims filed are paid or withdrawn, notice shall not be entered under the provisions of section 5 and no further proceedings shall be taken under section 6.

Where not all satisfied.

(2) Save as aforesaid after a certificate has been delivered to the sheriff, the withdrawal or expiry of the execution upon which the proceedings are founded, or any stay of the same, or the satisfaction of the plaintiff's claim thereon, or the setting aside or return of the execution, shall not affect the proceedings which may be taken under this Act, and except so

far as the action taken with respect to the execution may affect the amount to be levied, the sheriff shall levy upon the property of the debtor, as he would have done had the execution remained in his hands in full force for execution, and he may also take the like proceedings as he would have been entitled to take had the execution been a writ of *venditioni exponas*.

(3) Where a debtor, without a sale by the sheriff, pays to him part of the amount owing in respect of an execution or certificate in his hands, and there is at the time no other execution or certificate in his hands, he shall apply the same on the execution or certificate, and section 5 shall not apply to the money so paid. R.S.O. 1927, c. 113, s. 20.

21.—(1) Where proceedings have been taken against a debtor under *The Absconding Debtors Act*, and his property has been attached under an order of attachment before an execution has been placed in the hands of the sheriff, and the money levied is the proceeds of such property or a part thereof, the cost of the order of attachment, or, if there are more than one, the one first placed in the sheriff's hands and the proceedings thereon shall have priority over the claim of all other creditors.

(2) Where an attaching creditor is entitled to priority under subsection 1 the priority provided for by subsection 2 of section 5 shall not be given to the execution creditor. R.S.O. 1927, c. 113, s. 21.

22.—(1) The clerk of the county court shall ascertain and state in his certificate the amount of the costs to which the claimant is entitled as against the debtor.

(2) Such costs shall be the following:

(a) For serving the affidavit of claim and notice, in the case of claims over \$400, on the scale of the Supreme Court, and in the case of claims exceeding \$200 and not exceeding \$400, on the county court scale, and in the case of claims of \$200 and under, on the division court scale; but if the claim does not exceed \$200 no greater fees are to be allowed than would be allowed to a division court bailiff for the service of a division court summons and mileage if the claim had been sued in the proper division court;

(b) The fees paid to the clerk of the county court, on

the scale for like proceedings in the county court, unless the claim does not exceed \$200, in which case his fees shall be those allowable for like proceedings in the division court;

- (c) Where there is no contest, \$5 for fees of a solicitor, if one is employed, unless the amount of the claim does not exceed \$200, in which case the sum of \$2 shall be allowed;
- (d) Where there is a contest, such additional costs as the judge may allow, to be taxed on the scale of the Supreme Court, county court, or division court, according as the amount in dispute is within the jurisdiction of one or other of such courts;
- (e) The costs of obtaining an order for substitutional service or other similar order and of such service, and of or incidental to service out of Ontario, if the claim is within the jurisdiction of the division court, only such costs as would have been allowed in the division court. R.S.O. 1927, c. 113, s. 22.

Payment to
sheriff of
fund in
court.

23. Where there is in any court a fund belonging to an execution debtor, or to which he is entitled, the same or a sufficient part thereof to meet the executions and certificates in the sheriff's hands may, on the application of the sheriff or any person interested, be paid over to the sheriff, and the same shall be deemed to be money levied under execution within the meaning of this Act. R.S.O. 1927, c. 113, s. 23.

Money made
by receiver.

24. Where a judgment creditor obtains the appointment of a receiver by way of equitable execution of property of his debtor, the receiver shall pay into court the money received by him by virtue of his receivership, and the same shall be subject to the provisions of section 23, but the creditor shall be entitled to be paid thereout the costs of and incidental to the receivership order and the proceedings thereon in priority to the claims of all other creditors. R.S.O. 1927, c. 113, s. 24.

Goods in
hands of
division
court
bailiff.

25.—(1) If the sheriff does not find property of a debtor leviable under the executions and certificates in his hands sufficient to pay the same in full, but finds property or the proceeds thereof in the hands of the bailiff of a division court under an execution or attachment against the debtor, the sheriff shall demand and obtain them from the bailiff, who shall forthwith deliver the same to the sheriff, with a copy of every execution and attachment in his hands against

Duty of
bailiff.

the debtor, and a memorandum showing the amount to be levied under the execution, including the bailiff's fees, and the date upon which each execution or attachment was received by him.

(2) If the bailiff fails to deliver any of such property or the proceeds thereof he shall pay double the value of that which is retained, which may be recovered by the sheriff from him with costs of suit, and shall be accounted for by the sheriff as part of the estate of the debtor. Penalty for default.

(3) The costs and disbursements of the bailiff shall be a first charge upon such property or the proceeds thereof and shall be paid by the sheriff to the bailiff upon demand, after being taxed by the division court clerk. Costs.

(4) The sheriff shall distribute the proceeds among the creditors entitled to share in the distribution and the division court execution creditors shall be entitled without further proof to stand in the same position as creditors whose executions are in the sheriff's hands. R.S.O. 1927, c. 113, s. 25. Distribution of proceeds.

26. Where the amount levied by the sheriff is not sufficient to pay the executions and certificates with costs in full the money shall be applied to the payment rateably of such debts and costs of the creditors, after retaining the sheriff's fees, including poundage, and after payment in full of the taxed costs and the costs of the execution to the creditor at whose instance and under whose execution the seizure and levy were made where he is entitled to priority therefor under the provisions of this Act. R.S.O. 1927, c. 113, s. 26. Apportionment of money when amount insufficient to pay claim in full.

27. The sheriff, if directed by an endorsement upon a certificate, shall, in addition to the amounts named therein, levy interest on such amounts from the date of the certificate, or from the date named in that behalf in the certificate, and also \$1.35 for the disbursements on every renewal of the certificate, and where such renewal is made upon the application of a solicitor he shall also levy \$1.25 for the solicitor's costs on the renewal. R.S.O. 1927, c. 113, s. 27. Levy of interest and costs of renewals.

28. Where money is to be distributed by the sheriff under this Act he shall not be entitled to poundage as upon separate executions or certificates, but only upon the net proceeds distributable by him at the same rate as if the whole amount had been payable upon one execution. R.S.O. 1927, c. 113, s. 28. Sheriff's poundage.

Application
of money
made under
execution.

29.—(1) Where money is made under an execution it shall be taken to have been made under all the executions and certificates entitled to the benefit thereof, and, upon payment being made to the person entitled under any such execution or certificate, the sheriff shall endorse thereon a memorandum of the amount so paid, but he shall not, except on the request of the party who issued the execution, or by direction of the court out of which the same issued, or of a judge thereof, return the execution until the same has been fully satisfied or has expired, in which latter case the sheriff shall make a formal return of the amount made thereunder.

Return.

Compelling
payment by
sheriff.

(2) The like proceedings may be taken to compel payment by the sheriff of money payable in respect to a certificate as can now be had to compel the return by the sheriff of an execution. R.S.O. 1927, c. 113, s. 29.

Statement
to be kept in
sheriff's
office, pend-
ing
distribution.

30. Pending the distribution the sheriff shall keep, in the book mentioned in section 5, a statement (Form 6) showing the following particulars,—

- (a) the amounts levied or received and the dates of levy or receipt;
- (b) each execution, certificate or order in his hands at the time of making the entry (Form 1), or subsequently received during the month, the amount thereof, for debt and costs, and the date of receipt, and such statement shall be amended from time to time as additional amounts are levied or received or further executions, certificates or orders are received. R.S.O. 1927, c. 113, s. 30.

Sheriff to
give inform-
ation as to
estate of
debtor.

31. The sheriff shall at all times without fee answer any reasonable question which he may be asked orally in respect to the property of the debtor by a creditor or any one acting upon his behalf, and shall facilitate the obtaining by him of full information respecting the same and the probable dividend to be realized therefrom in his county, or any other information in connection with the property which the creditor may reasonably desire to obtain. R.S.O. 1927, c. 113, s. 31.

Distribution
by sheriff
where
amount
levied in-
sufficient to
meet all
claims.

32.—(1) Where at the time for distribution the money is insufficient to pay all claims in full the sheriff shall first prepare for examination by the debtor and his creditors a list of the creditors entitled to share in the distribution, with the amount due to each for principal, interest and costs.

(2) The list shall be so arranged as to show the amount payable to each creditor, and the total amount to be distributed, and the sheriff shall deliver, or send by registered post to each creditor or his solicitor, a copy of the list. Contents of list.

(3) If within eight days after all the copies have been delivered or posted, or within such further time as the judge may allow, no objection is made as provided by this Act the sheriff shall make distribution forthwith pursuant to such list. Time for distribution.

(4) If objection is made the sheriff shall forthwith distribute rateably so much of the money made, and among such persons, as will not interfere with the effect of the objection in case the same should be allowed. Where objection made.

(5) Any person affected by the proposed scheme of distribution may contest the same by giving, within the time mentioned in subsection 3, a notice in writing to the sheriff stating his objection to the scheme and the grounds thereof. Right of contestation.

(6) The contestant shall within eight days thereafter apply to the judge for an order adjudicating upon the matter in dispute, otherwise the contestation shall be taken to be abandoned. Order.

(7) The contestant shall, within the time mentioned in subsection 6, obtain from the judge an appointment for hearing and determining the matter in dispute. Appointment.

(8) A copy of the appointment and a notice in writing, (Form 7), of the objections stating the grounds thereof shall be served by the contestant upon the debtor, unless he is the contestant, and upon the creditors or such of them as the judge may direct. Service.

(9) The judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried with or without a jury in any court, and in any county for the determination thereof, and may make such order as to the costs of the proceedings as he may deem just, and the provisions of subsections 2 and 3 of section 13 shall apply. Determination of dispute.

(10) Where a claimant is held to be not entitled, or to be entitled to part only of his claim, the money retained pending the contestation, or the portion as to which the claimant shall have failed, shall be distributed among the creditors who would have been entitled thereto as the same would Distribution of money retained.

have been distributed had the claim in respect thereof not been made.

Rights of subsequent execution creditors where first execution followed by a mortgage.

(11) Where a debtor has executed a mortgage or other charge, otherwise valid, upon his property or any part thereof after the receipt of an execution by the sheriff and before distribution, such mortgage or charge shall not prevent the sheriff from selling the property under any execution or certificate placed in his hands before distribution as if such mortgage or charge had not been given, nor prevent creditors whose executions or certificates are subsequent thereto from sharing in the distribution; but in distributing the money realized from the sale of such property the sheriff shall deduct and pay to the person entitled thereto the amount of such mortgage or charge from the amount which would otherwise be payable out of the proceeds of such property to such subsequent creditors.

Scheme of distribution in above case.

(12) In the case provided for in subsection 11 the sheriff shall prepare a separate scheme of distribution of the proceeds of the encumbered property without reference to the mortgage or charge, and, from the dividends payable according to such scheme to subsequent creditors, there shall be deducted the amount of the mortgage or charge and the amount so deducted shall be paid to the encumbrancer. R.S.O. 1927, c. 113, s. 32.

Directions by judge to avoid unnecessary parties and trials.

33. Where several creditors are interested in a contestation, either for or against the same, the judge shall give such directions for saving the expense of an unnecessary number of parties and trials, and of unnecessary proceedings, as he may deem just, and shall direct by whom and in what proportions any costs incurred in the contestation, or in any proceedings thereunder, shall be paid, and whether any and what costs shall be paid out of the money levied. R.S.O. 1927, c. 113, s. 33.

Direction by judge to sheriff where claim is disputed.

34.—(1) The judge may direct the sheriff to levy for an amount sufficient to cover a claim which is in dispute, or part thereof, or if it appears to the judge that it is improbable that the debtor has other sufficient property he may direct the sheriff to retain in his hands during the contestation the share which, if the claim is sustained, will be apportionable to it, or a part thereof.

Authority of sheriff under order.

(2) An order to levy under this section shall confer on the sheriff the same authority as he would have under an execution. R.S.O. 1927, c. 113, s. 34.

35. The decision of a judge of the county court or of the Court of Appeal on an appeal shall bind the debtor and all his creditors, unless it appears that the decision was obtained by fraud or collusion. R.S.O. 1927, c. 113, s. 35. Effect of decisions.

36.—(1) Where money comes into the hands of a sheriff he shall, whenever the same amounts to \$100, deposit it in some incorporated bank designated for that purpose by order of the Lieutenant-Governor in Council, or, where there is no such bank, in some incorporated bank in which public money of Ontario is then being deposited. Deposit of money in bank.

(2) The deposit shall be made in a special account in the name of the sheriff as "Trustee for the creditors of (the debtor)." R.S.O. 1927, c. 113, s. 36. Special account.

37. Where there are in the sheriff's hands several executions and certificates, and there does not appear to be sufficient property to pay all and his own fees, he may apply for an order attaching any debt owing to the execution debtor by any person resident in the county of such sheriff, whether the debt is owing by such person alone or jointly with another person resident or not resident in such county, and to procure an order and to obtain and enforce payment of the debt, the sheriff may take the same proceedings as a creditor, and in such case an execution may be directed to him in the same manner as if the attachment were by a creditor, and the proceeds of the debt attached shall be dealt with and distributed in the same manner as if he had realized the same under execution. R.S.O. 1927, c. 113, s. 37. Attaching orders by sheriff.

38. If any party to a contestation or matter upon which a judge has rendered or made a final judgment or order is dissatisfied with such judgment or order, and the same is in respect to a question involving a sum greater than \$100, he may appeal therefrom to the Court of Appeal as nearly as may be according to the practice in force in respect of appeals from a county court or a judge thereof. R.S.O. 1927, c. 113, s. 38. Appeal.

39. For the purpose of giving effect to this Act and carrying out its provisions a judge shall have all the powers which a county court or a judge thereof has by law for other purposes, and any proceedings erroneously taken under this Act may be set aside by the judge, with or without costs as he thinks fit. R.S.O. 1927, c. 113, s. 39. Powers of judge.

40. Upon any proceeding before the judge the evidence may be taken orally or by affidavit as the judge may direct. R.S.O. 1927, c. 113, s. 40. Evidence on proceeding before judge.

Fees payable to the Crown.

41. Besides the fees authorized to be paid to the clerk of the county court for his own use, the following fees shall be payable to the Crown in law stamps upon all claims filed, where the amount of the claim exceeds \$200:—

	\$	cts.
On an affidavit of claim where the amount claimed does not exceed \$400.....	0	80
On every such affidavit where the claim exceeds \$400.	1	50
On every certificate of the clerk given under section 9, where the claim does not exceed \$400.....	0	80
On every such certificate where the claim exceeds \$400.	1	50
On every order made by the judge allowing or disallowing a claim, where the claim does not exceed \$400.....	0	50
On every such order where the claim exceeds \$400....	1	00

R.S.O. 1927, c. 113, s. 41.

Application of Judicature Act and rules of court.

Rev. Stat., c. 100.

42. Except where inconsistent with this Act, the provisions of *The Judicature Act* and rules of court as to practice and procedure shall apply to proceedings under this Act.

R.S.O. 127, c. 113, s. 42.

SCHEDULE.

FORM 1.

(Section 5, Subsection 1.)

SHERIFF'S ENTRY.

I have on this day in my hands for distribution under *The Creditors Relief Act* among the creditors of *C.D.*, the sum of \$
and the distribution will be made among the creditors of the said *C.D.* entitled to share therein, at the expiration of one month from this day.

Dated , 19 .

F. G.,
Sheriff.

R.S.O. 1927, c. 113, Form 1.

FORM 2.

(Section 7, Subsection 1.)

AFFIDAVIT OF CLAIM

THE CREDITORS RELIEF ACT.

In the County Court of the County of

A. B..... Claimant.

and

C. D..... Debtor.

I, A. B., of _____, in the County of _____,
Merchant (or as the case may be), make oath and say:—

1. I am the above named claimant (or the duly authorized agent of the claimant) in this behalf, and have a personal knowledge of the matter hereinafter deposed to.

2. The above named debtor is justly and truly indebted to me (or to the above named claimant) in the sum of \$ _____, for [here state shortly the nature and particulars of the claim.]

Sworn before me at
this _____ day of
19 _____

A. B.

A Commissioner, etc., (or as the case may be).

R.S.O. 1927, c. 113, Form 2.

FORM 3.

(Section 7, Subsection 3.)

NOTICE TO BE SERVED WITH CLAIM.

THE CREDITORS RELIEF ACT.

In the County Court of the County of

A. B..... Claimant.

and

C. D..... Debtor.

To the above (or within) named debtor.

Take notice that the claimant intends to file with the clerk of the County Court of the County of _____ (or as the case may be) the original affidavit of claim of which a duplicate is served herewith, and that this proceeding is taken by reason of there being in the hands of the sheriff of the said county an execution against your property, and that the claimant intends to call on the sheriff to levy the amount of the said debt from your property under the authority of *The Creditors Relief Act*.

And further take notice that if you desire to contest the said claim, or any part thereof, you must, within ten (10) days* after the service of this notice upon you, file with the clerk of the said Court an affidavit stating that you have a good defence to the said claim on the merits, or that you have such defence to a specified part of the claim. If no such affidavit is filed the claim will be treated as admitted by you. If the affidavit is filed contesting the claim as to part only, such claim may be so treated as to the part not contested.

You are further hereby notified that unless you endorse upon such affidavit filed by you a statement of some place in, or within three miles of the county town of the said county at which service may be made upon you, or the address of some solicitor in Ontario who may be served on your behalf, service may be made upon you of any notice, paper, or document, by mailing the same by registered post addressed to you at the said county town.

Dated the _____ day of _____, 19 .

A. B.,
Claimant.

*NOTE.—If further time is given by a judge the notice should be varied accordingly.

R.S.O. 1927, c. 113, Form 3.

FORM 4.

(Section 8, Subsection 5.)

AFFIDAVIT OF SERVICE OF CLAIM.

THE CREDITORS RELIEF ACT.

In the County Court of the County of _____

A. B. Claimant,
and
C. D. Debtor.

I, G. H., of _____, in the County of _____, make oath and say:—

1. That I did, on the _____ day of _____, 19 _____, personally serve C. D., the above named debtor (*or as the case may be*) with an original affidavit, identical with the annexed affidavit, and that there was at the time of such service, attached to (*or endorsed upon*) the said affidavit so served a true copy of the notice addressed to the debtor, now attached to (*or endorsed upon*) the said annexed affidavit.

Sworn before me at
this _____ day of _____
19 _____

} G. H.

A Commissioner, etc. (*or as the case may be*).

R.S.O. 1927, c. 113, Form 4.

FORM 5.

(Section 9, Subsection 1, and Section 17.)

CERTIFICATE OF PROOF OF CLAIM.

THE CREDITORS RELIEF ACT.

In the County Court of the County of

A. B. Claimant.

and

C. D. Debtor.

I, Clerk of the County Court of the County of , do hereby certify

(1) That the above named claimant did on the day of , 19 , file with me a claim against the above named debtor, for the sum of , together with an affidavit of personal service thereof (or as the case may require) and of the notice required by *The Creditors Relief Act*, upon the said debtor, and that it thereby appears that such service was made on the day of , 19 .

(2) And I further certify that the debtor has not contested the said claim (or, has only contested the sum of part of the said claim (as the case may be), and that the claimant having abandoned such part is entitled to the residue of his claim, being the sum of and the further sum of for costs) (Or when the claim is contested in whole or in part, (2) That the claim has been allowed by the judge at the sum of \$, with \$ for costs.)

G. H.,

Clerk.

R.S.O. 1927, c. 113, Form 5.

FORM 6.

(Section 30.)

SHERIFF'S STATEMENT OF EXECUTIONS, ETC., IN HIS HANDS AGAINST C. D.

CAUSE	Proceedings.	Claim without Costs.	Costs.	Date of Receipt by Sheriff.	Amount Levied or Received.	Date of Levy or Receipt.
A. B. v C. D.	<i>Fi. fa.</i> goods and lands.	\$ 504	\$ 30	18th Feb., 19 .	\$ 500	1st May, 19 .
F. G. v C. D. & E. G.	<i>Fi. fa.</i> goods and lands.	400	20	1st March, 19 .	300	3rd May, 19 . Nothing made against E.G.
K. L. v C.D.		Garnishee order.....	500	30	300
M. N. v C. D.	Creditor's Certificate	400	5	15th May, 19 .		

R.S.O. 1927, c. 113, Form 6

FORM 7.

(Section 32, Subsection 8.)

NOTICE OF CONTESTATION OF SCHEME OF DISTRIBUTION.

THE CREDITORS RELIEF ACT.

In the County Court of the County of

A. B. Claimant,
and
C. D. Debtor.

To C. D., debtor, and F. G. and M. N., claimants.

Take notice that I contest the scheme of distribution prepared by the Sheriff of the County of _____ in respect of the claims of you, the said F. G. and M. N., on the following ground (*state distinctly the ground*), and a copy of the judge's appointment to adjudicate upon the matter is served herewith.

Dated, etc.

X. Y.,
Contestant.

R.S.O. 1927, c. 113, Form 7.
