

1927

c 110 Costs of Distress Act

Ontario

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CHAPTER 110.

The Costs of Distress Act.

Tariff of costs where sum demanded does not exceed \$80.

1.—(1) No person making distress for rent or for a penalty where the sum demanded and due, in respect of the rent or penalty, does not exceed \$80, and no person employed in making the distress, or doing any act in the course of the distress, or for carrying the same into effect, shall levy, take or receive any costs in respect of the distress other than such as are set forth in Schedule 1.

Where sum demanded exceeds \$80.

(2) Where the sum demanded and due exceeds \$80 no charges shall be made for or in respect of costs or expenses, except such as are set forth in Schedule 2. R.S.O. 1914, c. 78, s. 2.

Costs in respect of seizure of exempted goods.

2. No costs shall be levied, taken or received for or in respect of exempted goods when they may not be lawfully sold, and when sold no greater sum in all than \$2 and actual and necessary payments for possession money shall be levied, taken or received for or in respect of costs and expenses of sale of such exempted goods. R.S.O. 1914, c. 78, s. 3.

Tariff of costs under chattel mortgage.

3. No person making a seizure or sale of goods for default in payment of the principal money or interest secured by a chattel mortgage shall levy, take or receive any greater or other fees or costs than those set forth in Schedule 3. R.S.O. 1914, c. 78, s. 4.

No charge for anything not done.

4. No person shall make any charge for anything mentioned in such Schedule unless it has been actually done. R.S.O. 1914, c. 78, s. 5.

Penalty for contravention.

5. If a person offends against any of the provisions of the preceding sections the person aggrieved may apply to a justice of the peace for the county, city or town where the offence was committed for redress of the grievance; whereupon the justice shall summon the person complained of to appear before him at a reasonable time to be fixed in the summons, and the justice shall examine into and hear the complaint and defence; and, if it appears that the person complained of has so offended, the justice shall order and adjudge treble the amount of the money unlawfully taken and full costs to be paid by the offender to the party aggrieved. R.S.O. 1914, c. 78, s. 6.

6. In case of non-payment of the money or costs so adjudged the justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the person convicted, rendering to him the overplus, if any. R.S.O. 1914, c. 78, s. 7. How penalty to be levied.

7. Where no sufficient distress can be had the justice shall, by warrant under his hand and seal, commit the person convicted to the common gaol for such time not exceeding three months as the justice may deem just, unless the order is sooner satisfied. R.S.O. 1914, c. 78, s. 8. Commitment.

8. Where the justice finds that the complaint is not well founded he may order and adjudge costs, not exceeding \$4, to be paid by the complainant to the person complained against, and the order shall be enforced in the manner hereinbefore directed with respect to an order in favour of a complainant. R.S.O. 1914, c. 78, s. 9. Costs where complaint unfounded. How enforced.

9. The order may be according to the appropriate form in Schedule 4, and may be proved before any court by proof of the signature of the justice thereto. R.S.O. 1914, c. 78, s. 10. Form of order.

10. Except as provided in section 8, the costs and fees of and incidental to proceedings before a justice under this Act shall be according to the scale of fees established by law in proceedings had by and before justices. R.S.O. 1914, c. 78, s. 11. Costs and fees on proceedings before justice.

11. The justice, at the request of either party, shall summon and examine witnesses, and administer the oath to them touching the complaint or defence. R.S.O. 1914, c. 78, s. 12. Justice may summon witnesses.

12. Where a person so summoned neglects to obey the summons without reasonable or lawful excuse, or refuses to be examined, he shall forfeit a sum not exceeding \$8, to be adjudged, levied and paid in such manner, and by such means, and with such power of commitment, as hereinbefore directed with respect to an order in favour of a complainant, except as regards the form thereof, which may be as the justice thinks fit. R.S.O. 1914, c. 78, s. 13. Penalty for disobeying.

13. Nothing herein contained shall empower the justice to make an order against the person for whose benefit the distress, seizure or sale was made, unless he personally levied the distress or personally made the seizure or sale. R.S.O. 1914, c. 78, s. 14. Liability of person benefited.

14. No person aggrieved by a seizure or sale of goods under a chattel mortgage or by a distress for rent or for a penalty, or by any act done or proceeding had in the course Right of action unaffected.

thereof, or by any costs or expenses levied upon him in respect of the same, shall be barred from any action or remedy which he would have had if this Act had not been passed, except so far as any complaint preferred under this Act has been determined by the order of a justice. R.S.O. 1914, c. 78, s. 15.

Furnishing statement of demand and costs.

15.—(1) A person who makes a distress shall give a statement in writing of the demand, and of all the costs and expenses of the distress, signed by him, to the person on whose goods the distress is made, and a person who makes a seizure under a chattel mortgage shall give to the person in possession of the goods seized a statement in writing signed by him of the demand and of the costs charged in respect of the seizure and subsequent proceedings.

Taxation of costs of distress.

(2) The person whose goods are distrained or seized, or the person authorizing the distress or seizure, or any other person interested, upon giving two days' notice in writing, may have the costs and expenses of the bailiff or other person making the distress or seizure taxed by the clerk of the division court within whose division the same was made.

Furnishing bill of costs to clerk for taxation.

(3) The bailiff or person making the distress or seizure shall furnish the clerk with a statement of his costs and expenses for taxation at the time mentioned in the notice, or at such other time as the clerk may direct, and in default of his so doing he shall not be entitled to any costs or expenses.

Duty of clerk on taxation.

(4) The clerk upon the taxation shall, amongst other things, consider the reasonableness of any charges for removal and keeping possession of the goods, and for advertising, or any sums alleged to have been paid therefor, and may examine either party on oath, touching the same, and the person requiring the taxation shall pay the clerk a fee of twenty-five cents therefor.

Revision of taxation.

(5) Where that portion of the costs or expenses in dispute amounts to \$10 or upwards either party, on giving two days' notice, may have the taxation revised by the clerk of the county or district court of the county or district within which the distress or seizure was made who shall be paid a fee of fifty cents for such revision by the party appealing, and such fee may, in the discretion of the clerk, be deducted from or added to the bill as finally taxed by him. R.S.O. 1914, c. 78, s. 16.

Note.—See *The Magistrates Act, Rev. Stat. c. 119 as to the jurisdiction of police magistrates.*

SCHEDULE 1.

(Section 1 (1).)

COSTS ON DISTRESS WHERE SUM DEMANDED AND DUE DOES NOT EXCEED \$80.

1. Levying distress	\$1 00
2. One man keeping possession, per diem	75
3. Appraisal, whether by one appraiser or more— <i>two cents in the dollar on the value of the goods;</i>	
4. If any printed advertisement, not to exceed in all.....	1 00
5. Catalogues, sale and commission, and delivery of goods— <i>five cents in the dollar on the net proceeds of the sale.</i>	
6. Where the amount due is satisfied in whole or in part after seizure and before sale— <i>three cents in the dollar on the amount realized.</i>	

R.S.O. 1914, c. 78, Schedule 1.

SCHEDULE 2.

(Section 1 (2).)

COSTS ON DISTRESS, WHERE SUM DEMANDED AND DUE EXCEEDS \$80.

1. Levying distress	\$1 00
2. One man keeping possession, per diem	1 00
3. Appraisal whether by one appraiser or more, <i>two cents in the dollar on the value of the goods.</i>	
4. Advertisement when reasonably published in a newspaper, the actual outlay not exceeding	5 00
5. If any printed advertisement otherwise than in a newspaper, the actual outlay not exceeding	3 00
6. The actual expenses reasonably incurred in removing the goods distrained or part thereof when such removal is necessary.	
7. Catalogues, sale and commission and delivery of goods, <i>five cents in the dollar on the net proceeds of the sale, up to \$100, and where the proceeds of the sale exceed \$100 in addition thereto, two and one-half per centum on the excess over \$100.</i>	
8. Where the amount due is satisfied in whole or in part after seizure and before sale, <i>three cents in the dollar on the amount so realized.</i>	

R.S.O. 1914, c. 78, Schedule 2.

SCHEDULE 3.

(Section 3.)

COSTS ON SEIZURE UNDER CHATTEL MORTGAGES.

1. Making seizure where amount does not exceed \$80.....	\$1 00
2. Making seizure where amount exceeds \$80.....	1 50
3. One man keeping possession, per diem	1 00
4. Where the amount exceeds \$80, advertisement when reasonably published in a newspaper, the actual outlay not exceeding	5 00
5. If any printed advertisement otherwise than in a newspaper (where the amount does not exceed \$80) the actual outlay not exceeding	1 50
and where the amount exceeds \$80 the actual outlay not exceeding	3 00
6. Catalogues, sale and commission and delivery of goods, five cents in the dollar on the net proceeds of the sale, up to \$100, and where the proceeds of sale exceed \$100 in addition thereto two and one-half per centum on the excess over \$100.	
7. Where amount is paid before sale, a commission of two cents in the dollar, and the amount actually disbursed in cartage not to exceed	2 00

R.S.O. 1914, c. 78, Schedule 3.

SCHEDULE 4.

(Section 9.)

FORM 1.

FORM OF THE ORDER OF THE JUSTICE BEFORE WHOM COMPLAINT IS REFERRED WHEN THE ORDER AND JUDGMENT IS IN FAVOUR OF THE COMPLAINANT.

In the matter of the complaint of *A. B.* against *C. D.* for a breach of the provisions of "*The Costs of Distress Act*," I, *E. F.*, a Justice of the Peace for the _____, do order and adjudge that the said *C. D.* shall pay to the said *A. B.* the sum of _____, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said *A. B.*, under a distress for (or as the case may be), and the further sum of _____ for costs.

(Signed) _____ *E. F.*

R.S.O. 1914, c. 78, Schedule 3, Form 1.

FORM 2.

FORM OF THE ORDER OF THE JUSTICE WHEN HE DISMISSES THE COMPLAINT.

In the matter of the complaint of *A. B.* against *C. D.*, for a breach of the provisions of "*The Costs of Distress Act*," I, *E. F.*, a Justice of the Peace for the _____, do order and adjudge that the complaint of the said *A. B.* is unfounded; (if costs given add, and I do further order and adjudge that the said *A. B.* shall pay to the said *C. D.* the sum of _____ for costs).

(Signed) _____ *E. F.*

R.S.O. 1914, c. 78, Schedule 4, Form 2.