

1927

## c 115 Fraudulent Debtors' Arrest Act

Ontario

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## CHAPTER 115.

## The Fraudulent Debtors' Arrest Act.

Interpretation **1.** In this Act,

- "County." (a) "County" shall include district;
- "County Court." (b) "County Court" shall include district court;
- "Sheriff." (c) "Sheriff" shall include any officer to whom an order for arrest is delivered for execution. R.S.O. 1914, c. 83, s. 2.

## ORDER FOR ARREST.

When order for arrest of debtor may be made.

**2.**—(1) Where a person by affidavit of himself or some other person shows to the satisfaction of a judge of the Supreme Court or of a county court that he has a cause of action against a person liable to arrest to the amount of not less than \$100, and also such facts and circumstances as satisfy the judge that there is good and probable cause for believing that such person unless he be forthwith apprehended is about to quit Ontario with intent to defraud his creditors generally or the applicant in particular, the judge may order that the person against whom the application is made shall be arrested and shall give security for such sum as the judge thinks fit.

Powers of county court judge.

(2) A judge of a county court may make an order for arrest in the Supreme Court as well as in his own court.

Order before action.

(3) The order may be made as well before as after an action has been commenced.

When action to be brought.

(4) Where the order is made before action, unless an action is commenced and notice thereof is given to the sheriff within two days after the date of the order or within such further time as the judge may by the order allow the order shall be superseded and the person against whom it was made shall, if under arrest, be entitled to be discharged out of custody. R.S.O. 1914, c. 83, s. 3.

Term of validity.

**3.** An order for arrest shall be in force for two months from the date thereof and no longer; but on the expiration thereof a new order may be obtained in the manner provided by this Act. R.S.O. 1914, c. 83, s. 4.

**4.**—(1) Every order of the Supreme Court and of a county court directing payment of money or of costs, charges or expenses, so far as it relates thereto, shall be deemed a judgment, and the person to receive payment a creditor, and the person to make payment a debtor, within the meaning of this Act. Effect of orders for payment.

(2) Where the judgment or order directs the payment of money into Court, or otherwise than to any person, the person having the carriage of the judgment or order, so far as relates to the payment, shall be deemed the person to receive payment or the plaintiff, as the case may be, within the meaning of this Act. R.S.O. 1914, c. 83, s. 5. Who to be deemed the plaintiff, etc., etc.

**5.** Where an order for arrest is made in an action for alimony the amount for which security is to be given shall not exceed what may be considered sufficient to cover the amount of future alimony for two years, besides arrears and costs, but may be for less, at the discretion of the judge. R.S.O. 1914, c. 83, s. 6. Limit of security in alimony.

**6.** Concurrent or duplicate orders may be issued from time to time in like manner and form as the original order, and shall be in force for the same period as the original order and no longer. R.S.O. 1914, c. 83, s. 7. Concurrent order for arrest.

**7.** Unless otherwise ordered the costs of and incidental to an order for arrest shall be costs in the cause. R.S.O. 1914, c. 83, s. 8. Costs.

**8.** The order and as many copies thereof as there are persons intended to be arrested thereon shall be delivered to the sheriff, and the plaintiff or his solicitor may direct the sheriff to arrest one or more of the persons therein named, which direction shall be obeyed by the sheriff. R.S.O. 1914, c. 83, s. 9. Order and copies to be delivered to sheriff.

#### ARREST OF DEFENDANT.

**9.** The sheriff shall, within two months from the date of the order, but not afterwards, execute the same according to the exigency thereof, and shall upon or immediately after the execution of the same cause one copy thereof to be delivered to the person whom he is directed to arrest, and shall exhibit the original order to him. R.S.O. 1914, c. 83, s. 10. Time within which arrests to be made.

**10.** The sheriff shall, within two days after the arrest, indorse on the order the true date of the arrest. R.S.O. 1914, c. 83, s. 11. Indorsement of date.

**11.** No person shall be subject to arrest who, by reason of any privilege, usage or otherwise, is by law exempt therefrom. R.S.O. 1914, c. 83, s. 12. Privileged person.

Arrest for non-payment of money, costs, etc., abolished.

**12.** No person shall be liable to arrest for contempt for non-payment of any sum of money or of any costs, charges or expenses payable by a judgment or order of the Supreme Court or of a judge thereof, or of a county court or of a judge thereof; and no person shall be liable to arrest for non-payment of costs. R.S.O. 1914, c. 83, s. 13.

No married woman to be arrested.

**13.** A married woman shall not be liable to arrest on mesne or final process. R.S.O. 1914, c. 83, s. 14.

#### SECURITY IN THE ACTION.

Security by defendant in action.

**14.** The security in the action to be given by the defendant pursuant to the order for arrest, may be by payment into court of the amount mentioned in the order, or by a bond to the plaintiff by the defendant and two sufficient sureties, or, with the leave of the judge or officer who allows the bond, either one surety or more than two, or, with the plaintiff's consent, by any other form of security. R.S.O. 1914, c. 83, s. 15.

Condition of bond.

**15.** Where the security is given by bond the condition shall be that the defendant will pay the amount by any judgment in the action adjudged to be recovered or directed to be paid, either as a debt or for damages or costs, or will render himself to the custody of the sheriff of the county in which the action has been commenced or that the sureties will do so for him. E.S.O. 1914, c. 83, s. 16.

Persons ineligible as sureties.

**16.** A person who has been indemnified for so doing by a solicitor concerned for the defendant shall not be a surety in such bond. R.S.O. 1914, c. 83, s. 17.

Justification when claim over \$4,000.

**17.** Where the plaintiff's claim exceeds \$4,000 it shall be sufficient for each surety to justify in \$4,000 beyond the amount of the claim. R.S.O. 1914, c. 83, s. 18.

Allowance of bond.

**18.** The bond shall be filed in the office in which the action was commenced, and may be allowed by the proper officer in such office or by the local judge or master upon service upon the plaintiff or his solicitor of notice of the filing of the bond and of the names and addresses of the sureties and a copy of an appointment from such officer, local judge, or master at least forty-eight hours, unless otherwise directed by the officer, judge or master, before the time named in the appointment. R.S.O. 1914, c. 83, s. 19.

Security by payment into court.

**19.**—(1) Where security is desired to be given by payment of money into court the same may be paid in without an order, and shall stand as security to the plaintiff that the defendant will pay the amount by the judgment in the action adjudged to be recovered or directed to be paid either as a debt or for damages or costs, or will render himself to the custody of the sheriff of the county in which the action has been commenced.

(2) After the payment of money into court, a bond or other security in section 14 mentioned may be substituted therefor, and the money paid in shall be repaid upon the production of a certificate of the allowance of the bond or other security signed by the officer allowing the same or by the plaintiff's solicitor. R.S.O. 1914, c. 83, s. 20.

Substitution of other security after payment into court.

Repayment of money paid in.

**20.**—(1) The money paid in and the security, and all proceedings thereon shall be subject to the order and control of the court or a judge.

Control of court.

(2) The delivery to the sheriff executing the order for arrest of a certificate of the accountant of the Supreme Court of the payment of the money into court, or of a certificate of the allowance of the bond or other security signed by the officer allowing the same, or by the plaintiff or his solicitor, to the sheriff, shall entitle the defendant to be discharged out of custody. R.S.O. 1914, c. 83, s. 21.

Discharge of defendant on giving security.

#### DELIVERY OF STATEMENT OF CLAIM IN ACTION.

**21.** Where a defendant is taken or detained in custody under an order for arrest in default of giving security, the plaintiff, if he has not already delivered his statement of claim, shall deliver the same within one month after the arrest, or within the time prescribed by the Rules of the Supreme Court, whichever shall be the earlier date, otherwise the defendant shall, unless further time is allowed by the court or a judge, be entitled to be discharged out of custody. R.S.O. 1914, c. 83, s. 22.

Time for delivery of statement of claim.

#### ORDER TO BRING IN THE BODY.

**22.**—(1) Where, on the expiration of an order to return an order for arrest, the sheriff returns *cepi corpus* thereon, an order may thereupon issue requiring the sheriff, within six days after the service of the order, to bring the defendant into court, by bringing in the body or by causing security in the action to be given and, if the sheriff does not obey the order, an attachment may be granted for disobedience thereto.

Order to bring body into court.

Attachment for disobeying order.

(2) Where a sheriff, before going out of office, makes an arrest, and takes security under the order for arrest and makes a return of *cepi corpus*, the order shall and may, within the time allowed by law, be directed to him notwithstanding that he may be out of office before the order is issued. R.S.O. 1914, c. 83, s. 23.

Where sheriff goes out of office.

**23.** An order shall not be made for setting aside an attachment regularly obtained against a sheriff for not bringing in the body, or for staying proceedings regularly commenced on the assignment of a bail bond, unless the application for the order, if made on the part of the original defendant, be

Order to set aside attachment or stay proceedings on bond—affidavit of merits, etc.

grounded on an affidavit of merits, or, if made on the part of the sheriff, or a surety, or any officer of the sheriff, unless the application be grounded on an affidavit showing that the application is really and truly made on the part of the sheriff, or surety, or officer of the sheriff, as the case may be, at his or their own expense, and for his or their indemnity only, and without collusion with the original defendant. R.S.O. 1914, c. 83, s. 24.

## APPLICATION FOR DISCHARGE FROM CUSTODY.

Application for discharge from custody by defendant.

**24.**—(1) A person arrested upon an order for arrest may apply to the court or a judge for an order that he be discharged out of custody; and the court or judge, subject to appeal, may make such order thereon as may seem just.

Powers of county court judge.

(2) A judge of a county court making an order for arrest, whether in the Supreme Court or in his own court, shall, in respect to such order and the arrest made thereupon, possess all the powers of a judge of the Supreme Court under this section, and may in like manner, on application to him, order the defendant to be discharged out of custody, or make such order therein as to him seems just.

Discharge or variance of order.

(3) Any such order made by a judge of a county court may be discharged or varied by the Appellate Division. R.S.O. 1914, c. 83, s. 25.

Misnomer of defendant in order for arrest.

**25.** Where the defendant is described in the order for arrest, or affidavit therefor, by initials, or by wrong name, or without a Christian name, he shall not for that cause be discharged out of custody, or the security be delivered up to be cancelled. R.S.C. 1914, c. 83, s. 26.

## SURRENDER BY SURETIES.

Surrender of debtor by sureties.

**26.**—(1) The sureties may at any time surrender their principal to the sheriff of the county in which the principal is resident or found, and the sheriff shall receive the principal into his custody, and give the sureties a certificate under his hand and seal of office of the surrender, for which certificate he shall be entitled to the sum of \$1.

Order to cancel security and discharge of sureties.

(2) A judge of the court in which the action is pending, upon proof of due notice to the plaintiff or his solicitor of the surrender, and upon production of the sheriff's certificate thereof, shall order the security to be cancelled, and thereupon the sureties shall be discharged.

Transfer of person arrested out of his county.

(3) Where a person is surrendered by his sureties to the sheriff of any county other than that in which he resides or carries on business he shall be entitled to be transferred to the gaol of his own county on prepaying the expenses of his

removal; and the sheriff in whose county he was arrested may transfer him accordingly; but, if the sheriff declines to act without an order of the court or a judge, such order may be made on the application of the person arrested, upon notice to the opposite party. R.S.O. 1914, c. 83, s. 27.

## WRITS OF CAPIAS AD SATISFACIENDUM.

**27.**—(1) Where a defendant has been arrested and has given security in the action pursuant to the order for arrest, or is imprisoned or detained in custody in default of giving security, unless he has been discharged under the provisions of section 52, any judgment which the plaintiff may obtain in the action may be enforced by writ of *capias ad satisfaciendum* without an order therefor; but where the defendant is so imprisoned or detained in custody the plaintiff shall issue such writ within fourteen days after he has become entitled to enter final judgment.

When *ca. sa.*  
may issue  
without order.

(2) Where the defendant has not been arrested, or has been discharged under the provisions of section 52, if the plaintiff, by the affidavit of himself or of some other person shows to the satisfaction of a judge of the Supreme Court or, where the action is in a county court, to a judge of such court, that he has recovered judgment against the defendant for not less than \$100, exclusive of costs, and also such facts and circumstances as satisfy the judge that there is good and probable cause for believing either that the defendant, unless he be forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally or the plaintiff in particular, or that the defendant has parted with his property or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution, the judge may order that a writ of *capias ad satisfaciendum* be issued.

When order  
for *ca. sa.*  
necessary.

(3) Every writ of *capias ad satisfaciendum* against a debtor who has not been previously arrested or who has not given security pursuant to an order for arrest shall be returnable immediately after the execution thereof, and shall continue in force for two months from the day of the issue thereof, and no longer, but on the expiration thereof another writ may be obtained upon a judge's order as provided by subsection 2. R.S.O. 1914, c. 83, s. 28.

*Ca. sa.* when  
returnable.

**28.**—(1) A writ of *capias ad satisfaciendum*, issued for the purpose of fixing the liability of the sureties, shall be returnable on a day certain to be named therein not later than fourteen days from the date of the teste of the writ, and shall be delivered to the sheriff of the county in which the action was commenced eight clear days before the return day so named.

*Ca. sa.* to fix  
liability of  
sureties.

When  
returnable.

Duty of sureties.

(2) The sureties shall take notice of the delivery of the writ, and it shall not be necessary for the plaintiff to give them any further or other notice thereof. R.S.O. 1914, c. 83, s. 29.

Postponement of action on security.

**29.**—(1) An action shall not be brought upon the bond or other security given in an action pursuant to an order for arrest until after the return of a writ of *capias ad satisfaciendum* for the purpose of fixing the liability of the sureties.

Return to writ.

(2) To such a writ the sheriff may return *non est inventus*, without taking any steps to arrest the defendant, unless he is already in, or is rendered into, his custody. R.S.O. 1914, c. 83, s. 30.

Limitation of liability of sureties.

**30.** In an action upon the bond the sureties shall only be liable for the amount recovered by the plaintiff in the action in which the bond was given, and the costs of suit, not exceeding in the whole the amount of the penalty in the bond. R.S.O. 1914, c. 83, s. 31.

Sureties' right to surrender their principal

**31.**—(1) Subject to section 26, where the plaintiff brings an action on the bond or other security, the sureties shall be at liberty to satisfy the bond or security by rendering their principal to the custody of the sheriff of the county in which the action was brought at any time within eight days next after service of the writ of summons upon them, but not at any later period; and, upon notice thereof being given to the plaintiff or his solicitor, the action shall be stayed and the plaintiff shall be entitled to the costs of the action up to the date of service of the notice.

Stay on surrender.

Costs.

(2) Such costs may be taxed upon production of the notice so served without an order, and if not paid within four days from taxation the plaintiff may, without an order, sign judgment therefor. R.S.O. 1914, c. 83, s. 32.

#### PRIVILEGE OF DEFENDANT AS TO COMMITTAL TO GAOL.

Delay of 24 hours before committal.

**32.** The sheriff at the request of the person arrested, and upon being prepaid a sum of money sufficient to cover the sheriff's reasonable fees and expenses incident to the delay, shall grant to such person a delay of twenty-four hours after the arrest before committing him to gaol, and shall take him for the said twenty-four hours to some safe and convenient house in his county. R.S.O. 1914, c. 83, s. 33.

Right of person arrested to be transferred to gaol of his own county.

**33.** A person arrested and imprisoned in any other county than that in which he resides or carries on business, shall be entitled to be transferred to the gaol of his own county, on prepaying the expenses of his removal; and the sheriff in whose county he was arrested may transfer him accordingly; but if the sheriff declines to act without an order of the



court or a judge, such order shall be made on the application of the person arrested, upon notice to the opposite party. R.S.O. 1914, c. 83, s. 34.

SECURITY FROM DEBTORS IN CUSTODY.

**34.**—(1) At any time before the expiration of ten days from the date of the arrest the defendant shall be entitled to be released from custody upon paying into court, without special order, the amount named in the order for arrest, together with \$40, to answer the costs which may have accrued up to the time limited for giving security in the action pursuant to the order for arrest, or upon giving to the sheriff a bail bond, with two sufficient sureties in a penal sum double the amount named in the order for arrest, and upon payment of the sheriff's fees, including the cost of the bond.

How defendant may be released.

Payment into court.

Bail bond.

(2) Money so paid into court shall remain in court, subject to order of the court or a judge, as security to the plaintiff that the defendant will cause security in the action to be given pursuant to the order for arrest. R.S.O. 1914, c. 83, s. 35.

Custody of money paid.

**35.** The sheriff may take from a debtor confined in the gaol of his county upon mesne process a bond, with not less than two nor more than four sufficient sureties, to be jointly and severally bound in a penal sum of double the amount for which the debtor is so confined, conditioned that the debtor will observe and obey all notices or orders of court touching or concerning the debtor, or his appearing to be examined *viva voce*, or his returning and being remanded into close custody, and that upon reasonable notice to them or any of them requiring them so to do they will produce the debtor to the sheriff, and also the debtor will, within thirty days, cause the bond, or the bond that may be substituted for the same according to the provisions hereinafter contained, to be allowed by the judge of the county court of the county wherein the debtor is confined, and the allowance to be endorsed thereon by the judge. R.S.O. 1914, c. 83, s. 36.

Security from debtors in custody.

**36.** The sheriff may also require each surety, where there are only two, to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Ontario (stating where), and is worth the sum for which the debtor is in custody (naming it) and \$200 more, over and above what will pay all his debts; or where there are more than two sureties, then he may require each surety to make oath as aforesaid, that he is a freeholder or householder as aforesaid, and is worth one-half the sum for which the debtor is in custody (naming it), and \$200 more, over and above what will pay all his debts. R.S.O. 1914, c. 83, s. 37.

Affidavits of sufficiency.

When sheriff may allow the debtor out of close custody.

**37.** Upon receipt of the bond, accompanied by an affidavit of a subscribing witness of the due execution thereof, and by the sureties' affidavits of sufficiency, if required by the sheriff, the sheriff may permit and allow the debtor to go out of close custody; and so long as the debtor in all respects observes the conditions of the bond, the sheriff shall not be liable to the party at whose suit the debtor is confined in any action for the escape of the debtor from gaol. R.S.O. 1914, c. 83, s. 38.

Application for allowance of bond.

**38.**—(1) The debtor may apply for the allowance of the bond upon four clear days' notice in writing to the plaintiff or his solicitor, who at the time of the application may object to the sufficiency of the sureties; and if the judge refuses to allow the bond, the debtor may cause another bond, made to the sheriff in the same terms and under the same conditions, to be executed without further application to the sheriff, and may apply in like manner and upon like notice for the allowance thereof; and the bond, if allowed and endorsed as aforesaid, shall be substituted for and have the like effect in all respects as the bond first given to the sheriff would have had upon the allowance thereof and the like remedies may be had thereon, and the first given bond shall thereupon become void.

Production of bond before judge.

(2) The sheriff shall, upon reasonable notice given by the debtor, cause the bond to be produced before the judge. R.S.O. 1914, c. 83, s. 39.

Sheriff's discharge from responsibility.

**39.** Upon the allowance being so indorsed the sheriff shall be discharged from all responsibility respecting the debtor, unless he is again committed to the close custody of the sheriff in due form of law. R.S.O. 1914, c. 83, s. 40.

Deposit in lieu of bail on arrest under civil process.

**40.** In lieu of giving the bond provided for by section 35 the debtor or any person on his behalf may deposit with the sheriff the amount for which he is arrested, and, where the person is held under an order for arrest, the further sum of \$40, and such deposit shall stand as security in place and for the purposes of the bond provided for by sections 34 and 35, and the money so deposited shall be subject to the order of a judge of the court in which the order of arrest was made, but such deposit shall be repayable to the person making it upon the sheriff being furnished with a certificate of the judge or officer who allows the same, that the bond provided for by sections 34 and 35 has been perfected and allowed. R.S.O. 1914, c. 83, s. 41.

Re-taking the debtor if sureties become insufficient.

**41.**—(1) Where the sheriff has good reason to apprehend that a surety after entering into the bond has become insufficient to pay the amount sworn to in his affidavit of sufficiency the sheriff may again arrest the debtor, and detain him in close custody, and such arrest shall discharge the sureties from all liability on the bond.

(2) The sureties of the debtor may set up the arrest and detention as a defence to an action brought against them upon the bond entered into by them, and the defence, if sustained in proof, shall wholly discharge them.

Effect of such arrest on liability of sureties.

(3) The debtor may again be allowed to go out of close custody on giving to the sheriff a new bond with sureties as aforesaid. R.S.O. 1914, c. 83, s. 42.

New bond.

**42.**—(1) Where default is made in compliance with the conditions of a bail bond to the sheriff the sheriff shall, upon the request and at the cost of the plaintiff, assign the bond to him, and he may bring an action thereon in his own name.

Assignment of bail bond.

(2) Upon executing the assignment the sheriff shall thenceforth be discharged from all liability on account of the debtor or his safe custody.

Discharge of sheriff's liability.

(3) Where the bond is taken under the provisions of section 34, if the plaintiff does not take an assignment of it within five days after default, the sheriff may rearrest the defendant in any county and bring him into his own county and detain him in custody until he has given and obtained the allowance of security in the action pursuant to the order for arrest. R.S.O. 1914, c. 83, s. 43.

Re-arrest on default of security in action.

**43.** Notwithstanding the default the defendant may, at any time before judgment in an action brought upon the bail bond to the sheriff or before the expiration of any order to bring in the body, give security in the original action pursuant to the order for arrest. R.S.O. 1914, c. 83, s. 44.

Defendant's right to give security preserved.

**44.** The plaintiff shall not be at liberty to proceed upon the bail bond to the sheriff pending an order to bring in the body of the defendant. R.S.O. 1914, c. 83, s. 45.

Stay of action on bail bond.

**45.** Where an action is brought upon the bail bond to the sheriff the court or a judge may upon application in such action give such relief to the plaintiff and defendant in the original action and to the sureties in the bail bond as may be just and reasonable, and the order made on any such application shall have the effect of a defeasance to the bail bond. R.S.O. 1914, c. 83, s. 46.

Power of court to relieve.

**46.**—(1) The sureties of a debtor may surrender him into the custody of the sheriff at the gaol, and the sheriff or gaoler shall there receive him into custody, and the sureties may set up the surrender, or the offer to surrender and the refusal of the sheriff or gaoler to receive the debtor into custody at the gaol, as a defence to any action brought on the bond for a breach of the condition happening after such surrender or tender and refusal, and the defence, if sustained in proof, shall discharge them.

Surrender by sureties.

New bond.

(2) The debtor may again be allowed to go out of close custody on giving to the sheriff a new bond, with sureties as aforesaid. R.S.O. 1914, c. 83, s. 47.

Debtor on bail liable to be examined.

**47.**—(1) The party at whose suit a debtor has been confined in execution may, at any time while the debtor is at large upon bail, apply to the court or a judge for an order for the examination *vivâ voce* on oath of the debtor, touching the matters mentioned in section 51, and if the debtor does not submit himself to be examined pursuant to the order, or refuses to make full answer in respect to the matters touching which he is examined, to the satisfaction of the court or a judge, the court or judge may order the debtor to be committed to close custody, and the sheriff, on due notice of the order, shall forthwith take the debtor and commit him to close custody until he obtains an order of the court or a judge for again allowing him to go out of close custody, on giving the necessary bond as aforesaid, or until he is otherwise discharged in due course of law.

or to be re-committed.

Order for discharge.

(2) An order for the discharge of the debtor may be made on his showing that he has submitted himself to be examined and made full answer as aforesaid and has thereafter given to the plaintiff or his solicitor five days' notice of his intention to apply. R.S.O. 1914, c. 83, s. 48.

Proceedings under bailable process in case of dissolution of a union of counties.

**48.**—(1) Where a union of counties is dissolved or a county is separated from a union of counties a person arrested, or who has given security in the action before the separation or dissolution and is liable to be imprisoned, shall be imprisoned in the gaol of the county in which he was arrested.

Further proceedings, where to be carried on.

(2) All proceedings in the action, and all proceedings after judgment founded on the arrest or the security given, shall be carried on as if the arrest had taken place or the security had been given in such county as a separate county; and all the records and papers relating to the action shall be transmitted to the proper officer of the county in which the debtor was arrested.

Gaol for debtor where united counties dissolved.

(3) Where a debtor or other person is admitted to bail in a union of counties, and the union is afterwards dissolved, or one or more counties are separated therefrom, and such person is afterwards surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the sheriff of the county in which he was arrested, and be imprisoned in the gaol thereof. R.S.O. 1914, c. 83, s. 49.

#### LIABILITY OF SHERIFF FOR ESCAPE.

Extent of sheriff's liability.

**49.** If a debtor in execution escapes out of legal custody, the sheriff, bailiff, or other person having the custody of the debtor, shall be liable only to an action for damages sustained

by the person at whose suit the debtor was taken or imprisoned, and shall not be liable to any other action in consequence of the escape. R.S.O. 1914, c. 83, s. 50.

## DISCHARGE OF DEBTOR FROM CUSTODY.

**50.** A debtor in close custody in execution or on mesne process, and a debtor arrested under a writ of *capias ad satisfaciendum*, though he is not in close custody but has given bail, may, after giving to the person at whose instance he is in close custody or has been so arrested ten days' notice in writing of his intention to do so, apply to the court or a judge to be discharged. R.S.O. 1914, c. 83, s. 51.

A debtor in custody in execution may apply to be discharged.

**51.** Where the notice is given by a debtor in close custody in execution or by a debtor who has been arrested under a writ of *capias ad satisfaciendum* and has given bail, the person at whose instance he is in close custody or has been so arrested may apply to the court or a judge for an order that the debtor be examined *viva voce* on oath for the purpose of discovering any property or effects which he is possessed of or entitled to, or which are in the possession or under the control of any other person for the use or benefit of the debtor, or which the debtor having been in possession of may have fraudulently disposed of for the purpose of hindering, delaying, defrauding or defeating his creditors, and touching the debtor's estate and effects and the circumstances under which he contracted the debt or incurred the liability which was the subject of the action in which judgment has been recovered against him, and as to the means and expectations he then had, and as to the property and means he still has, and as to the disposal he may have made of any of his property. R.S.O. 1914, c. 83, s. 52.

Examination of debtor as to his property, etc.

**52.**—(1) Upon an application under section 50, and upon the debtor making oath that he is not worth \$20 exclusive of his goods and chattels exempt from seizure under execution, and, in the case of a debtor in execution, that he has submitted himself to be examined pursuant to any order which may have been made for his examination, or that no order for his examination has been served, and where such examination has been had, if the matter thereof is deemed satisfactory, and, in the case of a debtor confined in close custody on mesne process, that he does not believe the demand of the plaintiff to be just and for that reason and no other resists payment of it and refuses to suffer judgment to be entered against him for the sum sworn to, and if the cross examination, if any, of the debtor upon his affidavit is deemed satisfactory, the debtor shall be discharged from custody, but the discharge shall not be a release or satisfaction of the judgment or of the claim of the plaintiff or deprive the plaintiff of any remedy against the debtor or his property.

Application of debtor for discharge

Discharge and its effects

Cross examination of debtor on affidavit.

(2) A debtor in close custody upon mesne process may be cross examined upon his affidavit according to the practice of the court as to cross examination upon an affidavit on a motion. R.S.O. 1914, c. 83, s. 53.

Discharge may be on condition of assignment by debtor.

**53.** In the case of a debtor in execution it may be made a condition of his discharge that he shall first, by assignment or conveyance to be approved of by the court or a judge, assign and convey to an assignee for the benefit of his creditors any right or interest he may have in and to any property real or personal, credits or effects, other than goods and chattels exempt from seizure under execution, and in the case of a debtor in close custody on mesne process it may be made a condition of his discharge that he shall first suffer the plaintiff to have judgment against him for the sum sworn to or such part thereof as to the court or judge may seem just. R.S.O. 1914, c. 33, s. 54.

Recommittal in cases of fraud, etc.

**54.** In the case of a debtor in execution, if it appears that the debt for which he is in close custody or has been arrested was contracted by fraud, or breach of trust, or under false pretences, or that he wilfully contracted the debt without having had at the time a reasonable expectation of being able to pay or discharge it and with intent to defraud, the court or judge may order the debtor to be remanded into close custody for any period not exceeding twelve months and to be then discharged. R.S.O. 1914, c. 83, s. 55.

Debtor's liability to be retaken in execution.

**55.** Where the discharge has been unduly or fraudulently obtained by a false allegation of circumstances which, if true, would have entitled the debtor to be discharged, he shall, upon the same being made to appear to the satisfaction of the court or a judge, be liable to be again taken in execution or remanded to his former custody by order of the court or judge. R.S.O. 1914, c. 83, s. 56.

Production of debtor for examination.

**56.** The court or judge making an order for the examination of a debtor under this Act may direct the sheriff or gaoler having the custody of the debtor, to bring him before the court or judge or before some person to be named in the order for the purpose of being examined, and the sheriff or gaoler shall take the debtor before the court or judge or the person so named for examination in the same manner as if the sheriff or gaoler were acting in obedience to a writ of *habeas corpus ad testificandum*. R.S.O. 1914, c. 83, s. 57.

Discharge by consent of plaintiff.

**57.** A written order under the hand of the judgment creditor or of the solicitor by whom a writ of *capias ad satisfaciendum* has been issued, shall justify the sheriff, gaoler or officer in whose custody the debtor is under the writ, in discharging him, unless, where the order is given by the solicitor, the party for whom such solicitor professes to act has

given written notice to the contrary to the sheriff, gaoler or officer; but such discharge shall not be a satisfaction of the debt; and nothing herein contained shall justify the solicitor in giving an order for discharge without the consent of his client. R.S.O. 1914, c. 83, s. 58.

#### SAVING OF REMEDIES UNDER OTHER WRITS OF EXECUTION.

**58.** Neither the taking of a debtor in execution under a writ of *capias ad satisfaciendum* nor his imprisonment there-<sup>When plaintiff may issue other writs.</sup> under or under the provisions of this Act nor his discharge from custody, by the voluntary action of his creditor or under the powers conferred by this Act, shall operate as a satisfaction or extinguishment of the debt or deprive the creditor of the right to take out execution or other process against the property of the debtor or to take any other proceeding against him in the same manner as if the debtor had not been taken in execution or discharged out of custody. R.S.O. 1914, c. 83, s. 59.

#### APPLICATION OF JUDICATURE ACT AND RULES.

**59.** *The Judicature Act* and Rules of Court shall apply to this Act. R.S.O. 1914, c. 83, s. 60. <sup>Application of Rev. Stat. c. 88.</sup>

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