



1927

c 128 Estreats Act

Ontario

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CHAPTER 128.

The Estreats Act.

Entry of fines, etc., within 21 days from adjournment of Court. **1.**—(1) Unless otherwise provided all fines and forfeited recognizances, the disposal of which is within the power of the Province, set, imposed, lost or forfeited, by or before the Supreme Court or a court of general sessions of the peace, shall, upon the adjournment of such court, be entered and extracted on a roll, by the registrar or clerk of assize, or clerk of the peace, as the case may be, or by some other person under the direction of a judge, which roll shall be made in duplicate and signed by the registrar or clerk or by the judge.

Affidavit by clerk. (2) The clerk or other person by whom the rolls are prepared shall, at the foot thereof, certify in the following form:

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

R.S.O. 1914, c. 98, s. 2, *part*.

Transmission of copy of roll to Central Office or clerk of the peace. **2.**—(1) Subject to the provisions of section 8 as soon as the rolls are prepared one shall, in the Supreme Court, be transmitted to the Central Office at Toronto, and in the general sessions shall remain deposited in the office of the clerk of the peace, and in both cases the other, with a writ of execution and *capias*, Form A, shall be transmitted to the sheriff of the county or district in and for which such Court was held.

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

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

Alias. (4) Where a recognizance is estreated, and has not been discharged or satisfied, the Court may order the issue of a new or alias writ of execution and *capias*, notwithstanding that more than three years may have elapsed since the issue of the original writ. R.S.O. 1914, c. 98, s. 3, *part*.

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

Entry of fines, etc., and issue of execution before adjournment of court.

(2) In any such case the forfeiture or fine shall be mentioned in the roll and certificate required to be made up upon the adjournment of the Court with an annotation of the issue of the certificate and execution and the execution then to be issued shall not apply thereto.

Note to be made on roll provided by section 1.

4. The sheriff shall proceed to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the persons named in the roll, or for taking into custody the bodies of such persons in case sufficient goods and chattels, lands or tenements cannot be found whereof the sums required can be made; and every person so taken shall be lodged in the common gaol of the county or district until satisfaction is made or until the Court, upon cause shown by the party as hereinafter mentioned, makes an order in the case, and until the order has been fully complied with. R.S.O. 1914, c. 98, s. 4.

Mode of proceeding to levy fine, etc.

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

Estreat of recognizances to county court judges, criminal court and magistrates.

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

Record of estreats at sessions.

(3) The other provisions of this Act shall apply to every such recognizance. R.S.O. 1914, c. 98, s. 5.

Application of the provisions.

6. Where a person bound by recognizance for his appearance, or for whose appearance any other person has become so bound, to prosecute or give evidence in the case of an offence for the commission of which a fine or penalty is

Report by officer of the Court.

imposed which the Province is entitled to receive makes default, the officer of the Court by whom the estreats are made out shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person or his surety was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall in the list distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of his non-appearance, the ends of justice have been defeated or delayed. R.S.O. 1914, c. 98, s. 6.

Estreat of
recognizances,
etc.

7. Every officer before a recognizance is estreated shall lay the list before a judge of the Court, who shall examine the list and make such order touching the estreating or putting in process the recognizance as appears just; and no officer of the Court shall estreat or put in process a recognizance without the written order of the judge before whom the list has been laid. R.S.O. 1914, c. 98, s. 7.

Judge's order.

Forbearance
from estreat
under certain
circumstances.

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

Forbearance
from levying
fines, etc.
under certain
circumstances.

(2) The clerk before sending to the sheriff the roll, with the writ of execution and *capias*, shall submit the same to the judge for his revision; and the judge may make a minute on the roll and writ of any forfeited recognizances and fines which he thinks fit to direct not to be levied; and the sheriff shall observe the direction of the minute, and shall accordingly forbear to levy the forfeited recognizance or fine. R.S.O. 1914, c. 98, s. 8.

Procedure
where lands
are seized.

9. Where the sheriff takes land or tenements in execution his duties and the practice and procedure as to the sale shall be the same as in other cases of execution against lands. R.S.O. 1914, c. 98, s. 9.

10. If a person on whose goods and chattels a sheriff is authorized to levy a forfeited recognizance gives security to the sheriff for his appearance in the Court into which the writ is returnable within thirty days after the giving of the security, or so soon thereafter as the Court shall sit, then and there to abide the decision of the Court, and also to pay the forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as may be adjudged and ordered by the Court, such person shall be discharged out of custody; and if he does not appear in pursuance of his undertaking the Court may forthwith issue a writ of execution and *capias* against the surety or sureties of the person so bound. R.S.O. 1914, c. 98, s. 10.

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

11. The Court, into which a writ of execution and *capias* is returnable, may inquire into the circumstances of the case and may order the discharge of the whole of the forfeited recognizance, or sum paid or to be paid in lieu of satisfaction thereof, and may make such order thereon as to the Court appears just; and the order shall be a discharge to the sheriff or to the party, according to the circumstances of the case. R.S.O. 1914, c. 98, s. 11.

Discharge forfeited recognizances, etc., under certain circumstances.

12. The sheriff to whom a writ is directed shall with his return state on the back of the roll attached to the writ what has been done in the execution thereof; and the return shall be filed in the proper office of the Court into which it is made. R.S.O. 1914, c. 98, s. 12.

Manner of return by sheriff, etc.

13. A copy of the roll and return, certified by the clerk of the peace or by one of the registrars of the Supreme Court shall be forthwith transmitted to the Treasurer of Ontario and to the Inspector of Legal Offices, with a minute thereon of any of the sums therein mentioned which have been remitted by order of the Court, in whole or in part, or directed to be forborne under the authority of this Act. R.S.O. 1914, c. 98, s. 13.

Certified return to Treasurer of Ontario.

14. The sheriff shall, without delay, pay over all money by him collected to the Treasurer of Ontario or other officer or person entitled to receive the same. R.S.O. 1914, c. 98, s. 14.

Payment to Treasurer of Ontario or person entitled.

15. The judges of the Supreme Court authorized to make rules for regulating the practice of the Court, may make rules regulating the practice and procedure for the estreating of recognizances in the Supreme Court or in the court of general sessions of the peace. R.S.O. 1914, c. 98, s. 15.

Rules.

FORM A.

WRIT OF EXECUTION AND CAPIAS.

Section 2 (1).

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain, Ireland, and the Dominions beyond the Seas, King; Emperor of India, Defender of the Faith, etc.

To the Sheriff of _____, Greeting:

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

Witness _____ this _____ day
of _____ 19 _____ .

A. B.,

Deputy Clerk of the Crown (or Clerk of the Peace or *as the case may be*) for the County of _____

R.S.O, 1914, c. 98, Form A.