

# BILL

No. 38 of 1910.

## An Act to Prevent Priority among Execution Creditors.

(Assented to 1910.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Creditors' Relief Act.*" Short title
2. In this Act—
  1. "District" shall mean a judicial district; District
  2. "Execution" shall include a writ of *feri facias* and every Execution subsequent writ for giving effect thereto;
  3. "Judge" shall mean a judge of the District Court of Judge the district, the sheriff of which is required to take the proceedings directed by this Act;
  4. "Sheriff" shall include any officer to whom an execution Sheriff is directed;
  5. Where a judge is disqualified to act in a matter arising Where judge is disqualified under this Act a judge of the District Court of an adjoining qualified district shall have jurisdiction to act in his place.
3. Subject to the provisions hereinafter contained there ~~shall be no priority among creditors by execution from the Supreme Court or from a District Court.~~ No priority among execution creditors
4. A creditor who attaches a debt shall be deemed to do Attachment to be for benefit of all creditors so for the benefit of all creditors of his debtor as well as for himself.
- (2) Payment of such debt shall be made to the sheriff of Payment to be made to sheriff the district 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 district in which any one of them resides.
- (3) This section shall not apply to debts attached by pro- Attachments in small debt case ceedings in a small debt case unless, before the amount recovered 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 district.
- (4) Where money is paid to a sheriff in whose hands there Money paid to sheriff who has no execution in hand is no execution against the property of the debtor and there is in the hands of the sheriff of another district 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.
- (5) Where money which a sheriff is entitled to receive under Money paid into District Court the provisions of this section is paid into a District Court in

upon the money or goods which may be found by the proceedings to be applicable upon the executions or certificates.

(6) Upon any interpleader application the judge may allow Time allowed in interpleader 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.

(7) Where the sheriff, subsequently to the entry, but within Application 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. <sup>Application to sheriff to levy</sup>

(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. <sup>Notice and distribution to be given of payment on further levy</sup>

(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. <sup>Credit to be given of payment received</sup>

(10) In distribution of money under this section creditors who have executions against goods or lands only or against goods and lands shall be entitled to share ratably with all others any moneys realized under execution against either goods or lands or against both, or under an attaching order. <sup>Lands and goods write share equally</sup>

(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. <sup>What creditors may share</sup>

(12) Where moneys in the hands of the sheriff for distribution are the proceeds of the property of an absconding debtor against whom an order of attachment has been issued under the rules of court relating to the attachment of personal property of absconding debtors 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." <sup>Money realized under rules of court relating to absconding debtors</sup>

(13) All persons who are at the time of the seizure by the sheriff, or who within one month prior thereto have been in the employment of the execution debtor, and who shall become entitled to share in the distribution of money levied out of the property of a debtor, shall be entitled to be paid out of such money the wages or salary due to them by the execution debtor, not exceeding three months' wages or salary, in priority to the claims of the other creditors of the execution debtor, and shall be entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. <sup>Wages or salary due by execution debtor</sup>

6. 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 author- <sup>Proceedings where debtor allows execution to remain unsatisfied</sup>

ized may be taken by other creditors or claimants in respect of debts which are overdue.

7. 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 District 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. Sherriff 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 Alberta the judge shall by order fix the time after which the next step may be taken by the claimant as hereinafter provided. Service out of Alberta

8. 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 Alberta 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 office of the clerk of the district within 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 Alberta who may be served on the claimant's behalf, service of any notice, paper or document may be made upon the claimant by mailing the same, by registered post addressed to the claimant at the town where the said clerk's office is situated. Service by mail

(5) The claimant shall file with the clerk of the District Court of the district, 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. Filing affidavit

(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. Service generally

9. 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 Certificate where claim not disputed

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 District 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.

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.

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

(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 within three miles of the office of the clerk of the district within which 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 town where the clerk's office is situated.

(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 two 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.

10. 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. Certificate of contestation

(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 office of the clerk of the district within which proceedings are being taken at which service may be made upon him, or the address of a solicitor in Alberta 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 the town where the office of the clerk of the district within which proceedings are being taken is situated. Address for service

11. Where the address of a solicitor is given for service which is not within three miles of the clerk's office in which the proceedings are being carried on service may be made upon him by mailing papers by registered post to him at the address so given. Service on solicitor by mailing

12. 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. Distribution in case of contestation

(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. Claimant may apply for allowance of claim

(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. When contest is not in good faith

13. 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 in any court and in any district for the determination thereof, and make such order as to the costs of the proceedings as he may deem just. Trial of contestation

(2) Where the sum in controversy appears to be over \$400 exclusive of costs the judge shall direct that the action be brought or the issue tried in the Supreme Court, and subject to any order which the Supreme Court or a judge thereof may make in that behalf shall name the district in which the trial is to take place. Where amount in controversy exceeds \$400

(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

14. The same proceedings may be had for the production of documents and for the examination of parties or others, Production, examination, etc.

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.

15. The clerk of the District 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 records

- (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 evidence

16. Where a creditor has taken in one district the prescribed proceedings in respect of his claim and desires to establish his claim for the purposes of this Act in another district he may do so by obtaining from the clerk of the District Court of the district first mentioned another certificate, form 5, and delivering the same to the sheriff of such other district, and the delivery of the certificate to the sheriff shall have the same effect in such other district from the time of the delivery thereof as if the certificate had been issued by the clerk of the District Court of such other district upon proceedings therein. Establishing claim in another district

17. A creditor, entitled to obtain a certificate from the clerk of a District Court, may also sue out an execution into any district 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. Executions may issue to any district

18. Where a claim is contested in one district the decision thereon shall, as between the parties to the contestation, determine the amount of the claim for the purposes of this Act in all other districts in which the claim is filed, and the certificate of the clerk of the District Court of the district in which the contestation has taken place, of the result thereof, shall be sufficient evidence of the decision. Decision in one district binding in others

(2) Upon payment of a fee of fifty cents the certificate shall be granted to any party to the proceedings who applies therefor.

19. 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. Application of money paid by debtor voluntarily to sheriff

(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.

20. Where proceedings have been taken against a debtor under the rules of court relating to the attachment of personal property of absconding debtors, 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 moneys levied are 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 of this section the priority provided for by subsection 2 of section 5 shall not be given to the execution creditor.

21. The clerk of the District 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 not exceeding \$400 on the District Court scale;
- (b) The fees paid to the clerk of the District Court on the scale for like proceedings in the District 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 or District Court, according as the amount in dispute is within the jurisdiction of one or other of such courts.

22. 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.

23. 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 the next preceding section, 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.

Money made by receiver

24. 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.

Amount of money when amount insufficient to pay claim in full

25. 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.

Levy of interest and costs of renewal

26. 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.

Sheriff's poundage

27. 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 later case the sheriff shall make a formal return of the amount made thereunder.

Money made on any writ to be considered as made on all writs entitled to benefit thereof

(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.

Compelling payment by sheriff

28. Pending the distribution the sheriff shall keep in the book mentioned in section 5 a statement, form 6, showing the following particulars:

Statement to be kept in sheriff's office pending distribution

- (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.



29. 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 district, or any other information in connection with the property which the creditor may reasonably desire to obtain. Sheriff to give information as to estate of debtor

30. 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. Distribution by sheriff where amount levied insufficient to meet all claims

(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.

(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.

(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.

(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.

(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.

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

(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.

(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 district 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.

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

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

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.

(12) In the case provided for in the next preceding subsection 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 dividend 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.

31. 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.

Directions  
by judge  
to avoid  
unnecessary  
parties and  
trials

32. 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.

Direction  
by judge to  
sheriff where  
claim is  
disputed

(2) An order to levy under this section shall confer on the sheriff the same authority as he would have under an execution.

33. The decision of a judge of the District Court or of a court *en banc* on an appeal shall bind the debtor and all his creditors, unless it appears that the decision was obtained by fraud or collusion.

Decisions  
to be  
binding on  
all  
creditors

34. 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 Alberta is then being deposited.

Sheriff to  
deposit  
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)".

35. 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 district of such sheriff, whether the debt is owing by such person alone or jointly with another person resident or not resident in such district, and to procure the 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

Attaching  
orders by  
sheriff or  
creditor

in the same manner as if he had realized the same under execution.

36. If any party to a contestation or matter upon which Appeal 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 \$400, he may appeal therefrom to a court *en banc*, as nearly as may be according to the practice in force in respect of appeals from a District Court or a judge thereof.

37. For the purpose of giving effect to this Act and carrying out its provisions a judge shall have all the powers which a District 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.

38. Upon any proceeding before the judge the evidence may be taken orally or by affidavit as the judge may direct.

39. The following fees shall be payable to the clerk in law stamps upon all claims filed:

On an affidavit of claim where the amount claimed does not exceed \$400.....	\$ .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.....	.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.....	.50
On every such order where the claim exceeds \$400.....	1.00

There shall be paid to the sheriff on certificates placed in his hands under this Act, the same fees as are payable on writs of execution.

40. 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.

41. The provisions of this Act shall not apply to the proceeds of any seizure allowed under section 4 of chapter 27 of the Consolidated Ordinances.

42. Chapter 26 of the Consolidated Ordinances of 1898 and all amendments thereto are repealed.

## 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

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
A.B.,  
Claimant.

FORM 4.

AFFIDAVIT OF SERVICE OF CLAIM.

Sworn before me at this day of 19 } G.H.,  
A Commissioner, etc. (or as the case may be).

CERTIFICATE OF PROOF OF CLAIM.

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),*

3. That the claim has been allowed by the judge at the sum of \$ \_\_\_\_\_ with \$ \_\_\_\_\_ for costs.

G.H.,  
Clerk.

#### FORM 6.

*(Section 28.)*

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

CAUSE	RECORDING	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. Fi.</i> goods and lands.	\$504	\$30	18 Feb. 19	\$500	1 May, 19
F.G. v C.D. & E.G.	<i>Fi. Fi.</i> goods and lands	400	20	1 Mch. 19	300	3 May, 19 Nothing made against F.G. 10 May, 19
K.L. v C.D.	Garnishee order	500	30		300	
M.N. v C.D.	Creditor's Certificate	400	5	15 May, 19		

#### FORM 7.

*(Section 30, Subsection 8.)*

#### NOTICE OF CONTESTATION OF SCHEME OF DISTRIBUTION.

##### THE CREDITORS' RELIEF ACT.

In the District Court of the District 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 district 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 the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
X.Y.,  
Contestant.

No. 11

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SECOND SESSION  
SECOND LEGISLATURE  
I GEORGE V.  
1910  
(SECOND SESSION)

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**BILL**

An Act to Prevent Priority among  
Execution Creditors

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Received and read the

First time

Second time

Third time

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Hon. C. R. MITCHELL

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EDMONTON  
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A.D. 1910