

BILL

No. 40 of 1918.

An Act respecting the Recovery of Small Debts.

(Assented to , 1918.)

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

SHORT TITLE.

1. This Act may be cited as "*The Small Debts Act.*"

INTERPRETATION.

2. In this Act, unless the context otherwise requires, "justice" means—

- (a) Any justice of the peace or police magistrate appointed under the provisions of chapter 13 of the Statutes of Alberta, 1906, being an *Act respecting Police Magistrates and Justices of the Peace*;
- (b) Any person holding office as police magistrate under the provisions of the said above mentioned Act;
- (c) Any person declared by any Act of the Province of Alberta to be a justice of the peace.

JURISDICTION.

3. Every justice shall have jurisdiction in the judicial district in which he resides over any action of debt, whether payable in money or otherwise, where the amount claimed does not exceed fifty dollars, and over any such action where the amount originally claimed exceeds fifty dollars, but has been reduced by payment or abandonment to that sum; such action not being one to which the King is a party or in which the title to land is involved:

Provided, that a justice who resides within a subdistrict of any judicial district shall have jurisdiction under this Act only within the limits of such subdistrict and in any judicial district containing a subdistrict the jurisdiction of any justice (other than a District Court judge) not residing within such subdistrict shall extend only to such portions of the judicial district as are not contained within the limits of such subdistrict:

Provided, further, that no justice shall try any action under this Act unless the defendant or some one of the defendants resides or carries on business in the judicial district or subdistrict, as the case may be, in which the justice (if he be other than a District Court judge) resides. If any defendant is a municipal corporation the action may be tried in any judicial district or subdistrict in which the municipality or any part thereof is situate, or in any judicial district or subdistrict in which any other defendant resides or carries on business.

4. No justice who is or has been interested in any way in the claim for which a summons is issued or a counterclaim made, whether such interest be that of a collector or otherwise, shall take part in the hearing of such claim.

(2) No municipality, municipal district, school district, or local improvement district shall take proceedings under this Act for the recovery of taxes, except taxes imposed in respect of the occupancy of, or an interest in land which is itself exempt from taxation.

SUMMONS.

5. Any person having any such claim may obtain from a justice a summons substantially in form A in schedule A to this Act.

6. The person applying to a justice for a summons shall before the issuing thereof deliver to him the particulars of his claim, a copy of which shall be annexed to the copy of the summons, or endorsed thereon, and therewith served upon the defendant. The correctness of the claim shall be verified by the oath of the complainant or some person conversant with the facts.

7. The plaintiff shall, before such summons is issued, deposit with the justice an amount fixed by the justice, not exceeding the costs that may be taxable by way of fees to the justice and his bailiff, which amount shall be accounted for to the person paying the same; and in addition thereto where the defendant does not reside within twenty miles from the place where the trial is to be held a sum equal to ten cents per mile of the distance between the residence of the defendant and the place of trial.

(2) The amount of such deposit shall be endorsed on the summons and copy, and if the same is not actually paid and so endorsed such summons and the service thereof shall be void.

(3) Such deposit shall be retained by the justice until after the expiration of the time limited for appeal from the judgment, and in the event of an appeal such deposit shall not be paid over by the justice, but shall be sent by him to the clerk or deputy clerk of the district court with the papers in the cause.

(4) Such deposit shall be paid, in the case of an appeal by the clerk of the district court and, in the case of no appeal, by the justice—

- (a) To the plaintiff, if final judgment is given in favour of the plaintiff; or
- (b) To the defendant, for his personal expenses in attending upon the trial, if the plaintiff discontinues, or if judgment is for any cause given in favour of the defendant.

8. In the case of copartners in trade, doing business under a firm name, it shall be sufficient in actions by or against the copartners to insert the name and style of the firm as used by them.

9. The date fixed by the summons for the hearing of the action shall be not less than fifteen days nor more than twenty-five days from the date of issue.

10. Upon any summons being returned unserved the justice shall postpone the hearing for a period not exceeding twenty days by memorandum to that effect endorsed upon the summons, and may so postpone the hearing from time to time; and the justice shall notify the plaintiff of such postponement by letter addressed to him at the address furnished.

DEFENCE AND COUNTERCLAIM.

11. Every defendant having a counterclaim shall file particulars of the same with the justice and serve the plaintiff with a copy of such particulars six days at least before the day of trial.

(2) If the plaintiff does not reside or carry on business in the judicial district or subdistrict, as the case may be, such service may be made within the time limited as aforesaid by leaving a copy of such counterclaim with the justice and no further service thereof shall be necessary.

12. In suits brought by executors or administrators the defendant may counterclaim for any debt due him from the testator or intestate.

SERVICE.

13. Except as to subpoenas, service of all process, papers and documents may be made by any adult literate person other than the plaintiff upon the person to be served, either personally or by leaving a copy for him at his last or most usual place of abode with some inmate thereof apparently of the age of sixteen years or older.

(2) All summonses shall be served at least ten days before the date appointed therein for the hearing of the case.

14. Where it is required to make service upon a corporation or company service shall be made on the mayor or reeve, clerk, secretary or secretary-treasurer, or the president, head officer, secretary, or any agent, manager or officer of the company transacting business within the judicial district. In the case of a partnership, service may be made upon any member or manager of the firm residing or doing business in the judicial district and in the case of joint debtors it shall be sufficient if service be made upon one only.

15. The service of any summons, counterclaim, notice, paper, or other document may be proved by the oral testimony of the person effecting the same; or by affidavit of service in form C of schedule A hereto, or to the like effect.

16. A subpoena may be served by any person by showing it to the witness and delivering to him a copy thereof with his fees.

AFFIDAVITS.

17. Affidavits to be used in proceedings under this Act may be sworn before any justice of the peace, police magistrate, notary public or commissioner for taking affidavits.

WITNESSES AND EVIDENCE.

18. A justice may issue subpoenas to witnesses (form D of schedule A) to be served within the province and the person subpoenaed on being tendered the legal fee, shall attend.

19. A subpoena issued by a justice hereunder shall have the force and effect of a subpoena issued out of the District Court, and any witness not attending in obedience thereto shall be liable to attachment and shall also be liable in all other respects as for disobedience to such subpoena.

TENDER.

20. If a defendant has made a tender before action brought he shall pay the money into the hands of the justice before or at the hearing or it shall be of no avail, and a defendant may pay to the justice at any time before the trial a sum of money as compensation for the debt claimed, together with the cost of the summons and service. If the plaintiff proceeds with the suit after notice of such payment and does not recover a greater sum than the amount so paid for debt he shall be liable to pay to the defendant such costs as the justice shall direct.

TRIAL.

21. Every cause shall be tried or determined at the return of the process, if duly served, or on some day to which the hearing is adjourned before the justice who issued the summons or in case of his inability to attend or of his being a witness, or being otherwise disqualified, then before some other justice residing in the judicial district or subdistrict, as the case may be, who shall attend at the request of the justice who issued the summons to try the case. Where a justice has begun a trial and is unable from sickness or other reason to conclude the same another justice residing in the judicial district or subdistrict may be called upon, who shall take up the proceedings at the point where they were left and carry on the same to a close, or recommence the proceedings according to the justice of the case.

22. The room or place in which the justice sits to hear and try a claim under this Act shall be deemed to be an open and public court to which the public generally may have access so far as the same can conveniently be given them.

23. If a counterclaim is established equal to the debt due the plaintiff the defendant shall have judgment with costs, and if a counterclaim exceeding the amount of the debt due the plaintiff by a sum not more than fifty dollars is established then the defendant shall have judgment for the difference with costs.

24. If the defendant's counterclaim exceeds the debt due the plaintiff by more than fifty dollars the defendant may set off the amount of the plaintiff's claim but shall not have judgment for the excess unless he abandon so much as shall reduce the excess to fifty dollars; but such defendant may, at his option, instead of receiving judgment for such portion of the excess under this section, sue for the full amount of such excess in any court of competent jurisdiction.

25. When a counterclaim is established in a suit brought by executors or administrators the judgment shall be against them as such and execution thereon shall bind only the assets in their hands.

26. A justice may adjourn the hearing from day to day if necessary to finish the business, and may in the absence of necessary and material witnesses, or for other good cause appearing on oath or affidavit, adjourn the hearing for any period not longer than one week, on such terms as shall seem to him just, but only one such adjournment shall be granted, except in the case of the unavoidable absence by reason of serious illness of a material witness, such absence to be established to the satisfaction of the justice on oath or affidavit.

27. The plaintiff may withdraw his claim before trial by delivering or causing to be delivered a notice in writing to that effect to the justice, who shall thereupon notify the defendant thereof in writing; or the plaintiff may consent to judgment for the defendant; and in such cases the defendants shall recover costs.

(2) If the plaintiff fails to appear judgment shall be given for the defendant with costs, unless for good cause, as provided in section 26, the justice decides to adjourn the hearing; provided, however, that when the defendant has served a counterclaim as hereinbefore provided judgment shall not be given on such counterclaim until the defendant has proved the same.

28. The presiding justice shall take down in writing the evidence offered on the trial and shall read over to each witness the evidence given by him and the witness shall subscribe his name thereto and the justice shall certify the same. The evidence shall be taken on oath and the parties and witnesses shall be subject to cross-examination and re-examination.

29. Parties may appear in person or by a solicitor or agent.

30. If the defendant does not appear and defend the plaintiff may prove his case and judgment may be given against the defendant in his absence, unless for good cause, as provided in section 26, the justice decides to adjourn the hearing.

31. The parties on the trial of a cause shall be confined to particulars as shown in claim, unless good cause be shown in which case the justice may allow an amendment.

32. In any action founded upon a bill of exchange or other negotiable instrument it shall be lawful for the justice trying the action to order that the loss of such instrument be not set up as a defence, provided an indemnity by way of bond, which may be in form F in schedule A, with two sufficient sureties to the satisfaction of such justice, is given by the plaintiff to the defendant to protect the defendant against the claim of any other person upon such negotiable instrument.

COSTS.

33. The justice shall tax and allow to the successful party witness fees for the witnesses, including such party, who attend the trial on his behalf, whether such witnesses be sworn and examined or not; provided that it be made to appear to the justice that such witnesses were material and necessary and attended for the purpose of giving evidence.

JUDGMENT AND EXECUTION.

34. Any justice who has tried a case under this Act shall upon request and on payment of a fee of twenty-five cents therefor furnish a certificate of such judgment in form E of schedule A, and such certificate shall be admitted as evidence of the said judgment without any proof of the authenticity of the signature of such justice or any proof whatsoever.

35. Where the justice who tries the case is a District Court judge he shall forthwith after delivering judgment cause the said judgment, together with his notes of the evidence and all documents in his possession connected with the case, to be filed in the office of the District Court and upon payment to the clerk of a fee of fifty cents such judgment shall be entered as a judgment of the District Court, and execution and garnishee summons may be issued thereon according to the ordinary procedure of the court.

36. In other cases the person in whose favour judgment is given or his agent, upon payment of a fee of fifty cents, may file a certificate of the judgment in form E of schedule A, as provided in section 34, in the nearest office of the District Court in the judicial district or subdistrict in which the justice resides and thereupon it shall be entered as a judgment of such court, and execution and garnishee summons may be issued thereon according to the ordinary procedure of the court.

(2) In cases where an appeal has been taken as hereafter provided such filing may be made after the appeal has been heard and disposed of; where no appeal has been taken such filing may be made at any time after the expiry of ten days from the date of pronouncing judgment.

(3) The clerk of the District Court shall not accept a certificate for filing until he has satisfied himself that ten days have elapsed since judgment was pronounced and that no notice of appeal has been filed.

37. When a partnership is described by the firm name the justice shall require the individual names of the partners, whether plaintiffs or defendants, to be disclosed on oath

by the person appearing on behalf of such partnership, or by production of a certified copy of the certificate of registration of such partnership; and the said justice shall endorse the said individual names upon the certificate of judgment referred to in section 34 of this Act.

(2) Where a judgment is against a firm execution may issue—

- (a) Against any property of the partnership;
- (b) Against the property of any partner who has made defence;
- (c) Against the property of any person who has been individually served as a partner with a copy of the summons (or particulars of counterclaim, as the case may be).

(3) Where a judgment is against joint debtors, execution shall be levied upon their joint property and the separate property of such of them as have been served or, although not served, have made defence.

APPEAL.

38. Where the trial justice is a District Court judge there shall be no appeal from his decision.

39. Any party considering himself aggrieved by the judgment of a justice, other than a judge of a District Court, may appeal to the judge of the District Court of the judicial district in which the action was brought.

40. Such appeal shall be to the next sittings of the District Court to be held not earlier than fourteen days after the date of pronouncing judgment, at the place where the case was tried or the nearest place thereto where court is appointed to be held:

Provided that the judge may set down the appeal to be heard at any time after the expiry of the said period of fourteen days.

41. The appellant shall, within five days after the date of pronouncing of judgment, serve upon the justice a written notice of his intention to appeal, and the justice shall thereupon fix an amount, not exceeding the sum of fifty dollars, to be deposited by the appellant as security for costs. The amount so fixed shall be deposited by the appellant with the justice, who shall thereupon endorse upon the notice so served upon him a memorandum as follows:

“The sum of \$.dollars deposited as security for costs.”

He shall make a like endorsement upon two copies of such notice, furnished him by the appellant, who shall, before the expiration of ten days from the date of pronouncing of judgment, file one of such copies with the clerk of the District Court and serve the other upon the opposite party.

(2) Provided, however, that the justice may, in lieu of such deposit, approve and accept security by way of bond of the appellant and at least one other person, in the sum of one hundred dollars conditioned upon the due payment by the appellant of all costs which may be ordered to be paid by him. Such bond may be in form G in schedule A to this

Act, or to the like effect, and the endorsement upon the notice of intention to appeal shall in that case be varied accordingly.

42. The justice shall thereupon transmit to the clerk or deputy clerk of the district, the amount of money, or the bond, so taken as security for costs, together with the evidence taken by him at the trial, and all documents in his possession connected with the case, certified under his hand.

43. The court to which such appeal is made shall hear and determine the matter of the appeal and make such order thereon, with or without costs to either party, including costs of all proceedings previous to the appeal, as may seem meet.

44. The hearing of the appeal may be adjourned from time to time as circumstances require.

45. Upon the hearing of such appeal the evidence taken before the justice at the hearing, certified by the justice, shall be read and the matter of the appeal shall be decided upon such evidence.

46. The appeal shall be decided upon the merits of the case and the court to which the appeal is made shall be the absolute judge as well of the facts as of the law respecting the matter in appeal; the decision of such court shall be final and without further appeal.

47. No proceeding under this Act shall be deemed invalid for informality, provided there has been a substantial compliance with the requirements of this Act.

48. In every appeal in which a solicitor is employed the judge hearing the appeal may allow the successful party a sum for costs of the appeal in addition to the court fees and necessary disbursements; such sum shall not exceed ten per cent. of the judgment recovered if such fee is taxable to the plaintiff, or ten per cent. of the amount of the claim if such fee is taxable to the defendant.

BOOKS.

49. Every justice shall keep a book or books in which he shall enter all processes issued by him under this Act with the date and names of the parties and the judgments rendered, as well as a statement of all moneys received and the application thereof.

PENALTIES.

50. Any justice failing to pay over any moneys or to make any return, by this Act required to be so paid over or made, shall be liable on summary conviction to a penalty of not less than \$5 nor more than \$25 and costs; and in default of payment forthwith after conviction to imprisonment for a term not exceeding thirty days, with or without hard labour.

MISCELLANEOUS.

51. The processes and proceedings in actions of small debt taken under the provisions of this Act shall be according to the forms in schedule A to this Act or to the like effect, and the fees therefor shall be taxed according to the table of fees contained in schedule B.

52. Money paid by or on behalf of any person to a justice by virtue of this Act may, if detained by such justice after demand by the party entitled thereto, be recovered with treble costs by action in the District Court.

53. No person having a claim falling within the class to which this Act applies shall be bound to adopt the procedure herein prescribed, but he may proceed under the rules of the District Court governing small debt procedure, or in any other manner from time to time authorized by law in all respects as if this Act had not been passed.

54. The issuing of execution under this Act shall be subject to the provisions of chapter 4 of the Statutes of Alberta, 1914, being *An Act respecting Extra-Judicial and Other Seizures*, or any Act passed in substitution thereof.

55. The Lieutenant Governor in Council may make regulations not inconsistent with this Act, which shall be forthwith published in *The Alberta Gazette* and may vary or supplement the forms herein contained and prescribe additional forms if necessary.

56. This Act shall come into force on a day to be named by proclamation of the Lieutenant Governor in Council to be published in *The Alberta Gazette*.

 SCHEDULE A.

 FORM A.

SUMMONS.

(*Small Debts Recovery Act.*)

Province of Alberta,

Judicial District of

To, of

You are hereby required to appear before me at
, on the day of,
 at the hour of o'clock in the noon,
 to answer the demand of, of
 as shown by his claim hereto attached or endorsed hereon.

Dated the day of, A.D.
 19

.....
J.P.
P.M.

(ENDORSEMENT.)

This summons is adjourned to.....at the hour
of.....at the same place.

.....
J.P.
P.M.

FORM B.

CLAIM.

(Small Debts Recovery Act.)

CANADA }
PROVINCE OF ALBERTA }
To Wit:

The claim of....., of.....
in the Province of Alberta,(occupation),
made the.....day of....., 19.....,
before the undersigned, one of His Majesty's.....
(Justices of the Peace or Police Magistrates, as the case may
be) in and for the Province of Alberta, who saith that....
....., of....., in the said
province is indebted to him in the sum of \$.....
(here give particulars of claim or refer to them as attached).

Sworn before me the day and }
year first above mentioned }
at....., in the }
Province of Alberta. }
..... }
J.P. }
P.M. }

FORM C.

AFFIDAVIT OF PERSONAL SERVICE OF SUMMONS.

(Small Debts Recovery Act.)

Province of Alberta,
Judicial District of.....

I,....., of.....
(state residence and occupation of deponent) make oath and
say that I did on the....day of....., 191....,
personally serve....., the defendant in the
annexed process named, with a true copy thereof annexed
to or endorsed upon which were particulars of the plaintiff's
claim.

.....
(Signature.)

Sworn at.....the.....day
of....., A.D. 19....., before me.

.....
A Commissioner for Oaths (or as
the case may be. See
Section 17.)

(Service at last place of abode.)

AFFIDAVIT OF SERVICE OF SUMMONS.

(*Small Debts Recovery Act.*)

Province of Alberta,

Judicial District of

I,, of
 (state residence and occupation of deponent) make oath and
 say that I did on the day of
 A.D. 19, leave at the last place of abode of
 the defendant, a true copy of the annexed process with
, an inmate thereof, apparently of the
 age of sixteen years or over.

(Signature.)

Sworn at the day
 of, A.D. 19

A Commissioner for Oaths (or as
 the case may be. See
 Section 17.)

FORM D.

SUBPOENA.

(*Small Debts Recovery Act.*)

Province of Alberta,

Judicial District of

To:

You are required to appear before at
, on the day of
 at the hour of in the noon, to
 give evidence on the part of the in a suit
 now pending between plaintiff, and
, defendant, and then and there to be
 tried (see note at foot),
 and take notice that in case you neglect to appear and
 testify you will be liable to attachment and will also be
 liable to the said for any damage he
 may sustain by reason of such neglect.

Dated the day of
 A.D. 19

J.P.

P.M.

(NOTE.—If the witness is required to produce any books,
 papers, documents or other thing, insert words to that
 effect.)

FORM E.

CERTIFICATE OF JUDGMENT.

(*Small Debts Recovery Act.*)

Province of Alberta,
Judicial District of

This is to certify that in a certain action tried by me under the provisions of *The Small Debts Recovery Act* on the.....day of....., A.D. 19...., in which.....was the plaintiff and.....defendant, judgment was on the.....day of....., A.D. 19...., given in favour of the.....for the sum of.....for debt and.....for costs.

Dated at.....the.....day of....., A.D. 19....

.....
J.P.
P.M.

FORM F.

.....and.....
and their several heirs, executors and administrators are jointly and severally bound unto....., his executors, administrators and assigns, in the sum of.....dollars.

Dated the.....day of.....
A.D. 19.....

.....
Now the condition of this bond is that if the bondsmen will save the obligee harmless from any other action against the said.....in respect of a certain.....
(note, or as the case may be. Here state particulars of note or instrument, including date, due date, amount and names of parties.) then this bond shall be void.

FORM G.

BOND (SECURITY FOR COSTS.)

(*Small Debts Recovery Act.*)

.....and.....
and their several heirs, executors and administrators, are jointly and severally bound unto.....
his executors, administrators and assigns, in the sum of one hundred (\$100.00) dollars.

Dated the.....day of.....
A.D. 19.....

.....
Appellant.

.....
Surety.

Now the condition of this bond is that if the above bounden....(*Appellant*)... will pay and satisfy all costs which may be payable by him in the proceedings wherein is plaintiff and defendant, and wherein, judgment having been on the..... day of..... A.D. 19...., given by..... a justice of the peace in favour of the said.....(*Defendant or Plaintiff*) he.....(*Appellant's name*) has this day served upon..... a justice of the peace a notice of his intention to appeal from the said judgment, *then this bond shall be void*, but otherwise shall be of full force and effect.

SCHEDULE B.

FEES.

FEES TO BE TAKEN BY JUSTICES.

1. Issuing summons and entering same in procedure book..... \$.50
2. Every subpoena for a witness or witnesses (only one subpoena on each side to be charged for in each case, which may contain any number of names. If the justice requires it, additional subpoenas shall be issued without charge).. .10
3. For hearing and determining case..... 1.00
4. For hearing and determining case, if case lasts over two hours, 50c per hour more or less.... 2.00
5. For certificate of judgment.50
6. For copy of any other paper connected with any case, and the minutes of the same if demanded, per folio 100 words... .05
7. For every bill of costs when demanded, to be made out in detail.10
(Items 6 and 7 to be chargeable only when there has been an adjudication.)
8. All necessary postage.

SERVICE FEES.

1. Serving summons and returning same, including affidavit of service or attending to prove same.. \$.50
2. Mileage to serve summons or subpoena, per mile (one way) necessarily travelled... .10
3. Same mileage when service cannot be effected, but only upon proof of due diligence.
4. Serving subpoena and returning same, including affidavit of service or attendance to prove same. .50

SHERIFF'S FEES.

Where execution is issued upon a judgment rendered under this Act, sheriffs, deputy sheriffs and bailiffs shall be allowed the same fees as are prescribed for similar services under the rules governing small debt procedure in the District Court.

No. 40.

FIRST SESSION
FOURTH LEGISLATURE
8 GEORGE V
1918

BILL
An Act respecting the Recovery of
Small Debts.

Received and read the

First time.....

Second time....

Third time.....

HON. C. W. CROSS

EDMONTON:
J. W. JEFFERY, KING'S PRINTER
A.D. 1918