

Bill No. 20 of 1933.

A BILL RESPECTING EXECUTIONS, SEIZURES
UNDER WRITS OF EXECUTION, AND SEIZ-
URES UNDER POWERS OF DISTRESS.

NOTE.

The purpose of this Bill is the codification and clarification of the law relating to seizures whether made under any process in the nature of a writ of execution or under a distress warrant.

Section 3, and sections 18 to 33, both inclusive, contain a re-statement of the provisions of *The Extra-Judicial Seizures Act*.

Sections 4 to 17 contain a re-statement of the law as it appears in Rules 609 to 627, both inclusive, of the Rules of the Supreme Court.

Sections 11 to 15 contain special provisions with regard to the powers and duties of a sheriff in making any seizure of any growing grain crop or root crop, particularly with regard to the harvesting and marketing of any crop so seized by him.

Section 37 empowers the sheriff to apply to a judge for directions in any matter of doubt arising out of any proceeding authorized by the Act, and relieves the sheriff from liability if he follows any directions given by the judge.

Section 39 provides a penalty in the case of a person who being under the duty to deliver goods to the sheriff makes default in delivering the same within a reasonable time after request.

By section 40 the sheriff is empowered to seize goods and chattels exempt from seizure under *The Exemptions Act* in cases where he deems it impracticable to exempt the same, at the time of seizure, and to hold the same until he can ascertain the goods so exempt.

R. ANDREW SMITH,
Legislative Counsel.

(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)

BILL

No. 20 of 1933.

An Act respecting Executions, Seizures under Writs of Execution, and Seizures under Powers of Distress.

(Assented to _____, 1933.)

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 Seizures Act*."

2. In this Act, unless the context requires a contrary meaning—

- (a) "Clerk of a judicial district" includes the Deputy Clerk of a subjudicial district;
- (b) "Creditor" means, in relation to a writ of execution, any person entitled to enforce by execution the payment of any money payable pursuant to any judgment or order which is enforceable by execution, and in relation to any distress, the person who has the power of distress;
- (c) "Debtor" means, in relation to a writ of execution, any person liable for the payment of any money under a writ of execution and in relation to a distress, the person who is liable for the payment of any money or the delivery up of any goods or chattels which payment or delivery up, as the case may be, is enforceable by distress or by proceedings in the nature of distress;
- (d) "Distress" means any and all acts or things done in the exercise of a power of distress;
- (e) "Judge" means a judge of the District Court in the district for which he is appointed, or a judge of the District Court acting as the judge of any district in that district; any judge of the Supreme Court exercising the jurisdiction of a judge of the District Court; in the judicial district of Calgary, the Master in Chambers at Calgary, and in the judicial district of Edmonton, the Master in Chambers at Edmonton;
- (f) "Judgment debtor" means the person liable for the payment of any money payable under any judgment or order of the Supreme Court of Alberta or any District Court;
- (g) "Judgment creditor" means the person entitled to receive any money payable under any judgment or order of the Supreme Court of Alberta or of any District Court;

- (h) "Power of distress" means the right which a person may have to enforce the payment of any claim against or the taking of any goods or chattels out of the possession of another person by the taking of a personal chattel out of the possession of such last mentioned person otherwise than by the authority of a writ of execution or other process of a similar nature;
- (i) "Sheriff" includes deputy sheriff, assistant sheriff and sheriff's bailiff.
- (j) "Writ of execution" includes a writ of attachment.

3. This Act shall not apply to any power of distress under any trust, deed, mortgage or similar instrument made to secure any debentures, stocks, bonds or other securities of a body corporate, nor to any distress thereunder; to any power of distress for the recovery or enforcement of payment of any taxes nor to any distress thereunder, nor to any power of distress to enforce the payment of any money payable under any conviction or order of any justice or justices of the peace or any police magistrate by the authority of any Act or by virtue of any by-law having the force of law in the Province, nor to any distress thereunder.

4. Every writ of execution shall from the delivery thereof for execution to a sheriff bind the goods of the judgment debtor within the judicial district within which the goods are situate, but not so as to prejudice the title to such goods acquired by any person in good faith and for valuable consideration unless such person had at the time when he acquired his title notice that such writ had been delivered to the sheriff and remained in his hands unsatisfied.

5. By virtue of any writ of execution the sheriff charged with the execution thereof may seize and sell any equitable or other right, property, estate, interest of the debtor in or in respect of any goods or other personal property and any equity of redemption of the debtor therein, and also any leasehold interests in land and any other chattels real which are the property of the debtor, and upon the sheriff making a sale of any such property as aforesaid, whatever equitable or other right, property, interest or equity of redemption the debtor had or was entitled to in or in respect of the goods or other personal property so sold at the time of the seizure thereof under the writ of execution shall vest in the purchaser.

6.—(1) By virtue of a writ of execution a sheriff may seize money or bank notes belonging to the debtor including any surplus of a former execution against him and any moneys levied under a writ of execution issued upon a judgment or order in his favour as well as any cheques, bills of exchange, promissory notes, bonds, mortgages or other securities for money belonging to the person against whom the execution has been issued, and may hold such cheques,

bills of exchange, promissory notes, bonds or other securities for money as security for the amount directed to be levied or so much thereof as has not been otherwise levied or raised; and the sheriff may, subject to the provisions of *The Creditors' Relief Act*, pay and assign such securities to the creditor at the sum actually due on and secured by them respectively if the creditor will accept them as money collected, and such assignment shall upon notice to the debtor rest in the creditor all the rights which are capable of assignment in respect of the said securities, or the sheriff may sue in his own name for the recovery of the sums secured thereby, and for the enforcement of the security.

(2) The transfer by the sheriff to the creditor of any of the property mentioned in this section shall, to the extent of the amount due on and secured thereby, discharge the sheriff.

(3) Payment to the sheriff by the person liable under any of the securities mentioned in this section seized in execution by the sheriff shall discharge the person so liable to the extent of such payment from his liability in respect thereof.

(4) Subject to the provisions of *The Creditors' Relief Act*, any moneys realized by the sheriff under a writ of execution in respect of any of the property mentioned in this section shall, subject to the payment of the proper costs, charges, expenses, fees and poundages of the sheriff, be payable to the person entitled thereto under the provisions of *The Creditors' Relief Act* to the extent to which they are so entitled; and any surplus which may then remain shall be paid to the debtor or other person lawfully entitled to receive the same.

7.—(1) Shares and dividends, and any equitable or other right, property, interest or equity of redemption in or in respect of shares or dividends in an incorporated bank or an incorporated company having transferable shares shall be deemed to be personal property found in the place where notice of the seizure thereof is served, and may be seized under execution and may be sold thereunder in like manner as other personal property.

(2) The sheriff on being informed on behalf of the execution creditor that the debtor has such shares as aforesaid and on being required to seize the same, shall forthwith seize the share certificates or other documents evidencing the ownership of the said shares and thereupon shall serve a copy of the execution on the bank or company with a notice that all the shares of the debtor are seized thereunder; and from the time of service the seizure shall be deemed to be made and no transfer of the shares by the debtor shall be valid unless and until the seizure has been discharged; and every seizure and sale made under the execution shall include all dividends, premiums, bonuses or other pecuniary profits upon the shares seized, and the same

shall not, after notice as aforesaid, be paid by the bank or company to anyone except the person to whom the shares have been sold.

(3) Such seizure may be made and notice given by the sheriff of the judicial district or subjudicial district within which the bank or company has a place at which service of process may be made, or where a share register is kept.

(4) If the bank or company has more than one place where service of process may be made, and there is some place where transfers of shares may be notified to and entered by the bank or company, so as to be valid as regards the bank or company, or where dividends or profits as aforesaid on stock may be paid other than the place where service of such notice has been made, the notice shall not affect any transfer or payment of dividends or profits duly made and entered at any such other place, so as to subject the bank or company to pay twice, or so as to affect the rights of any *bona fide* purchaser, until after the expiration of a period from the time of service sufficient for the transmission of notice of service by post from the place where it has been made to such other place, which notice it shall be the duty of the bank or company to so transmit.

(5) Where any such share is sold the sheriff shall within ten days after sale serve upon the bank or company at some place where service of process may be made a copy of the execution with his certificate endorsed thereon, certifying the sale and the name of the purchaser who shall have the same rights and be under the same obligations as if he had purchased the share from the debtor at the time of the service of notice under subsection (2) of this section.

(6) Nothing in this Act shall affect any remedy which the creditor might, without this Act, have had against any such share or the dividends, premiums, bonuses or other pecuniary profits in respect thereof; and the provisions of the next preceding four subsections shall apply to such remedy in so far as they can be applied thereto.

(7) If a sheriff seizes the shares of a debtor in a private company he shall first offer them for sale to the other shareholders or any one of them in such private company, and send by mail to the company at its registered office and to at least three other shareholders of the company if there be so many, and if not to the other shareholders, notice of the seizure, and shall sell the shares seized or any part of them to any shareholder who within thirty days of the date of the mailing of the notice makes an offer for the purchase thereof at a price which appears to the sheriff to be reasonable and within the same period pays the purchase price to the sheriff, and any shares remaining unsold at the expiration of the said period shall be sold by the sheriff in the same manner as any other personal property.

8.—(1) A sheriff charged with the execution of a writ of execution may seize thereunder any registered mortgage or of encumbrance on lands or chattels of which the debtor

is the owner, by delivering a notice in writing of such seizure to the proper officer in the office in which the mortgage or encumbrance is registered, but no mortgage or encumbrance shall be affected or charged by any writ of execution until delivery of the notice.

(2) Upon receipt of any such notice by the proper officer, he shall make an entry thereof in the register or other book in which the mortgage or encumbrance is registered and shall be entitled to receive a fee of fifty cents therefor.

(3) No person liable to pay any money under any mortgage or encumbrance seized pursuant to this section shall be affected by the seizure thereof unless and until notice in writing of the seizure has been served upon him personally or he has otherwise acquired actual knowledge of the seizure and any payments made by him to the debtor after service of such notice or after acquiring actual knowledge of the seizure shall be of no force or effect whatsoever as against the sheriff and the creditor.

9. No mortgage or other security for money seized under a writ of execution shall be sold except upon the order of a judge and then only upon such conditions as the judge may think fit to prescribe.

10. By virtue of a writ of execution the sheriff may seize any of the goods and chattels of the debtor including any growing crop of grain or roots or any interest of the debtor therein.

11. At any time after making a seizure of any goods under a writ of execution or by virtue of a power of distress the sheriff may appoint the debtor or some other person as his agent to hold and keep the goods so seized for and on behalf of the sheriff upon the debtor or such other person signing an undertaking to hold the goods seized as bailee for the sheriff and to deliver up the possession thereof to the sheriff on demand, and thereupon and thereafter the goods so seized shall be deemed to be continuously under seizure by the sheriff until such time as the sheriff by notice in writing abandons the seizure or the goods have been sold.

12. Where any goods or chattels are seized the sheriff shall upon request deliver to any person who is the owner thereof or who is at the time of seizure in possession thereof, or to the agent or servant of any such person as aforesaid, an inventory of the goods seized before they are removed from the premises upon which they have been so seized.

13. In case an execution debtor has any growing grain crop or any growing root crop and the sheriff makes any seizure thereof under any writ of execution, such seizure shall extend to all the growing crops aforesaid of the execution debtor in the judicial district of the said sheriff and

all the interest of the execution debtor therein, unless the sheriff in writing declares that the seizure extends only to such part of the crop as the sheriff may in writing specify.

14. Any growing crop shall be deemed to have been seized upon the sheriff posting up a notice that such crop has been seized on any parcel of land upon which the crop seized or any part thereof is growing and thereupon and thereafter all crops so seized shall be deemed to be continuously under seizure by the sheriff whilst growing and during and after harvesting until the money levied thereon has been paid and satisfied unless the sheriff by writing sooner abandons the seizure, and he shall be under no obligation to release the same until he has been paid all moneys payable in respect of the seizure out of the proceeds thereof or otherwise.

15.—(1) Unless upon the seizure of a growing crop of grain or roots the debtor undertakes on behalf of and as agent for the sheriff to perform the things necessary for the harvesting and gathering in of the same, the sheriff may require the creditor to furnish him, on or before a day to be specified by him, with security to the satisfaction of the sheriff of the due payment of any costs, charges and expenses which may be incurred by him in such harvesting and gathering in of the crop, and if default is made by the creditor in furnishing the sheriff with such security, the sheriff may release the crop from seizure.

(2) Any expenses incurred by the sheriff in relation to any growing crop shall be a first charge upon and payable out of the proceeds of the crop in priority to all other claims and demands whatsoever: in case more than one person is entitled to the proceeds of the crop and their claims are *pari passu*, then the expenses shall be apportioned *pro rata* amongst all the persons entitled to the proceeds in proportion to their respective shares; in case more than one person is entitled to the proceeds of the crop and any of those persons is entitled to receive payment in priority to any other person, the expenses shall be charged against the proceeds of the crop payable to the person or persons whose claim is inferior and shall only be charged against the proceeds payable to any person or persons whose claim is superior to the extent that the amount payable to any person or persons having the inferior claim is insufficient to defray the expenses in full.

(3) No sale shall be made by a sheriff under a writ of execution of any grain or roots which are growing or which have not been harvested.

(4) In the case of grain, roots or live stock which are in condition for marketing and which are ordinarily disposed of in the open market at the price for the time being prevailing in such market, the sheriff may sell the same in any available open market at the prevailing market price.

(5) In the case of any grain or roots which are subject to any contract requiring the marketing thereof through a

co-operative marketing association and the sheriff has notice of such contract, he shall market the same in accordance with the provisions of such contract.

(6) In the case of any live stock which are subject to any contract requiring the marketing thereof through a co-operative marketing association, the sheriff may, if in his uncontrolled discretion he deems it advisable so to do, market the same in accordance with the provisions of such contract.

(7) In the case of any grain, roots or live stock being subject to any contract for the delivery thereof when made ready for market at a price which in the opinion of the sheriff is a reasonable price, the sheriff may deliver the goods in accordance with such contract upon the payment to him of the contract price.

16. All other personal property taken in execution under any writ of execution or by virtue of any power of distress not herein specifically mentioned shall be offered for sale by public auction and notice thereof shall be sent by mail to the creditor and debtor at their last known post office address at least ten days prior thereto, and every such sale shall be advertised for at least ten days prior thereto by public notice describing the property to be sold and the day, time and place of sale, which notice shall be posted up in the office of the sheriff, and at the discretion of the sheriff by posting up copies of the last mentioned notice in the locality where the same is to be sold, and by advertisement in a newspaper published or circulating in the locality of the place of sale.

17.—(1) Unless a judge otherwise orders, no sale of lands shall be had under a writ of execution until after a return of *nulla bona* in whole or in part, and until after the expiration of one year from the date of the receipt by the registrar of the copy of the writ of execution.

(2) No lands shall be sold under a writ of execution until after the giving of such notice of the sale by advertising or otherwise as may be directed by a judge.

(3) In case at any sale by auction held by a sheriff of land taken in execution, there are no bidders, or the sheriff receives no bid for the land which the sheriff deems sufficient, the sheriff may from time to time adjourn the sale to a date to be subsequently fixed by the sheriff and either to the same or a different place, and in any other case, notice of the adjourned sale shall be given in the manner prescribed by section 16 of this Act.

(4) If the amount authorized to be made and levied under a writ of execution is made and levied thereunder out of goods and chattels, the person issuing the writ shall not be entitled to the expenses of any advertising of lands thereunder.

18. Unless it is otherwise ordered by a Court or judge, no distress shall be made, taken, levied, executed or carried

into effect except only by a sheriff, assistant sheriff, deputy sheriff or sheriff's bailiff, or some other person authorized so to do by a sheriff, an assistant sheriff or a deputy sheriff, in writing.

19. The right of the sheriff to interpleader relief under the Rules of Court shall not be affected by the fact that the sheriff has been furnished with any security which he is permitted to require pursuant to any provisions of this Act.

20. No distress shall be made and no levy shall be made under any distress unless and until the person entitled to cause the distress and levy to be made or his duly authorized agent has executed and delivered to some person authorized by this Act to make and levy a distress a proper warrant in that behalf.

21. No person to whom a distress warrant is delivered for execution shall be bound to proceed thereon unless and until he has been furnished with such security as he deems to be reasonably sufficient from time to time to indemnify him in respect of his fees, charges and expenses, and any claims for damages in respect of the distress and levy, and anything done in relation thereto.

22. For the purpose of effecting the seizure of any goods and chattels authorized by any writ of execution or any distress warrant, or obtaining the possession of any goods which have previously been seized, the person lawfully charged with the execution thereof may, in case it is not possible otherwise to effect the seizure or to obtain possession of goods previously seized, as the case may be, either by himself or with the assistance of such persons as he may request, break open the door or doors of any building other than a private dwelling house in which any goods and chattels liable to seizure are contained and upon the order of a judge may similarly break open the door or doors of a private dwelling house.

23. In order to effect the seizure of any goods or chattels under any writ of execution or under any distress, the person duly authorized to effect the seizure shall serve upon the debtor and in case there are more than one debtor, upon each one of them, or upon some adult member of his household, or shall attach to the goods to be seized or some or all of them or shall post up in some conspicuous place upon the premises upon which the goods or some part of them are at the time of seizure, a notice of seizure in Form A in the Schedule to this Act, and a form of notice objecting to the removal and sale of the goods seized in Form B in the said Schedule.

24.—(1) The notice of seizure shall bear a heading in red letters and larger type than the body of the document, as follows: "NOTICE OF SEIZURE OF GOODS," and the names of the debtor and creditor shall be inserted therein before the seizure is made.

(2) The notice of objection to removal and sale shall be accompanied by a sufficiently stamped envelope addressed to the sheriff of the judicial district in which the goods are situated, or in case the goods are situated in a subjudicial district, to the deputy sheriff of such subjudicial district.

(3) The respective names and addresses of the creditor and debtor must be inserted in the notice of objection before the seizure is made.

25. The person liable for the payment of the debt for which the seizure is made, in case he objects to the removal and sale of the goods seized, shall sign the notice of objection and within fourteen days of the date of the seizure, cause the same to be delivered to the sheriff or deputy sheriff, as the case may be; but neither the absence of the signature nor of the post office address of the debtor shall invalidate the notice of objection if it be duly made.

26. In the event of no notice of objection being received by the sheriff or deputy sheriff, as the case may be, within fourteen days after the seizure of the goods, the goods seized may be disposed of according to law.

27.—(1) In case the sheriff receives any notice of objection he shall immediately notify the creditor and thereupon the creditor may from time to time apply by notice of motion to the judge for an order for the removal and sale or for the removal or the sale of the property seized or any part thereof.

(2) Seven days' notice of any such application shall be given to the debtor, or such other notice as the judge may in his discretion direct.

(3) Every such application shall be dealt with in a summary manner and may be adjourned from time to time and upon such hearing evidence may be taken either *viva voce* or by affidavit as the judge may direct, and upon any such application the judge may in his discretion either refuse the application, or may make an order for the removal or sale of the goods, or both, and may in such order provide, with the consent of the creditor, that the seizure of the goods is to satisfy the debt in respect thereof or any part of such debt, notwithstanding that an agreement or contract between the debtor and the creditor may make other provisions with respect thereto, and may make any such order upon such terms and conditions as to costs or otherwise as he determines or may by the same order or upon the application of the debtor by any order subsequent thereto suspend the operation of the order pending the payment of the debt by such instalments as the judge may fix, or the giving of such security or the performance of such other conditions as the judge may impose, and may order the release of all or any part of the goods seized.

(4) In any case in which the judge orders a sale he may give directions as to the manner, time and place of the sale and such other directions as may to him seem proper and convenient, and may give leave to any party to bid at the sale.

(5) There shall be no appeal from any order of a judge except only where the indebtedness in question exceeds the sum of one hundred dollars, and in that case there shall be an appeal to a Judge of the Supreme Court in Chambers, and such appeal shall be subject to the Rules of Court governing appeals from a local Judge or a Master of the Supreme Court.

28. In case no notice of objection is received by the sheriff within fourteen days after the seizure of goods—

- (a) the sheriff may upon the instructions of the creditor proceed to sell the goods seized in the manner prescribed by this Act; or
- (b) if he is entitled so to do, the creditor may sell the goods seized or cause the same to be sold by some person other than the sheriff, either by public auction or private sale, upon giving to the debtor five days' notice in writing of his intention to exercise his right so to do, and in such case shall within seven days after the making of any sale file with the sheriff of the judicial district in which the seizure was made a statutory declaration setting out the particulars of the sale, the amount realized thereby, and the necessary and proper disbursements and fees in connection therewith which disbursements and fees shall not exceed those which a sheriff would have been entitled to charge if the sale had been effected by the sheriff; and in case the proceeds of the sale exceed the amount for which the seizure was made together with the disbursements, or in case the said amount with disbursements was realized by the sale of a part only of the goods seized, the creditor shall immediately thereafter deliver the excess and any goods unsold to the sheriff to be delivered by him to the persons lawfully entitled thereto.

29. Notwithstanding any provision of this Act to the contrary, the sheriff who has lawfully seized any goods under any writ of execution or under any power of distress, and who believes that it is necessary or advisable that such goods be taken by him and removed may, in his absolute discretion, make such removal and disposition of the goods as he deems necessary without any order; and in case any goods lawfully seized are of a perishable nature, the sheriff may, in his absolute discretion, sell the same in any manner he deems proper without any order, and in such case the proceeds of the sale shall take the place of and be dealt with as if the same were the goods so sold.

30. Where any property taken in execution or under any power of distress is offered for sale by auction and either there are no bids made for the property or any part of it, or the bids made are in the opinion of the sheriff inadequate, having regard to the value of the property taken in execution or under any power of distress offered for sale, the sheriff may adjourn the sale; in case the adjournment of the sale is for a period of more than seven days or to a different place, the sheriff shall give five days' notice of the adjourned sale in the same manner as is provided by section 16 of this Act in case the sale has been adjourned *sine die*, the sheriff shall give notice of any adjourned sale by auction in the manner prescribed by section 16 of this Act.

31. In case any goods taken in execution or under any power of distress have been offered for sale and remain unsold, the sheriff may, without any writ of *venditioni exponas*, sell the same by private contract if the price offered for such property is in the opinion of the sheriff a fair and reasonable price having regard to all the circumstances.

32. At any time after the seizure of any chattels under distress or under a writ of execution and before the same have been sold, the debtor may apply to a judge upon four days' notice to the creditor or such other notice to the creditor as the judge may direct for an order restraining the creditor from proceeding to remove or sell or remove and sell all or any of the chattels seized, and upon the judge being satisfied that it is proper and convenient in the circumstances so to do, he may grant the application in whole or in part and subject to any conditions he may deem proper, or may refuse the same, and upon making any such order, may order the seizure to be released and may make such order as to the disposition of the goods seized as he deems proper in the circumstances.

33. In any case in which a creditor claiming under a bill of sale, chattel mortgage or lien note or for rent proceeds concurrently by way of distress and by way of action in any Court for the recovery of the said indebtedness, no costs or other disbursements shall be allowed in any such action against the debtor except upon the order of a judge or Master in Chambers upon such notice as the Judge or Master may direct.

34. Upon the sale by the sheriff of any goods pursuant to any writ of execution or any distress the sale shall be without warranty of title and the purchaser, upon paying the purchase price, shall thereby acquire the precise interest and no more in the goods so sold which may lawfully be sold under execution or distress, as the case may be.

35. Unless this Act contains express provisions to the contrary, any notice required to be served upon any person pursuant to this Act may be served by sending the same by registered mail in a duly prepaid cover addressed to such person at his last known post office address, and any such notice shall be deemed to have been duly served upon proof being made by affidavit stating that such notice was sent by registered mail in a prepaid envelope addressed to the person to be served at his last known post office address, and also stating the date and place of mailing of such registered letter, and the date at which such registered letter would, in the ordinary course of mail, reach its destination; and such last mentioned date shall be deemed to be the date of service of such notice.

36.—(1) A sheriff shall not be under any duty to seize any property which is in the possession of any person other than the debtor claiming any interest therein or right thereto unless and until the creditor delivers to him in writing instructions so to do together with such a description of the property seized as will enable the sheriff to identify the same, and also furnishes the sheriff with a good and sufficient bond of indemnity to the satisfaction of the sheriff.

(2) Any bond taken by the sheriff pursuant to this section shall be assignable to any person other than the debtor claiming an interest in the property, and shall be conditioned that the persons executing the bond shall be liable for the damages, costs and expenses which the sheriff or any person claiming an interest in the property may be put to by reason of the seizure and any subsequent proceedings including interpleader proceedings, if any, which are not recovered from any other persons who ought to pay the same.

(3) In case any difference arises as to the bond to be furnished pursuant to this section the sheriff shall, upon the request of the creditor, refer the matter to the judge for determination.

37. In case the sheriff has any doubts as to the exercise by him of any power, duty or authority conferred or imposed upon him by this Act, he may upon his own motion apply to the judge for directions and upon any such application the judge may, upon such notice to such parties as he may in his discretion think proper and after hearing such evidence as he deems necessary, make an order giving such directions not inconsistent with this Act as he may in his absolute discretion deem proper and convenient, and no action or proceeding of any kind shall lie against the sheriff for anything done in pursuant of or in conformity to any directions so given.

38. Any person who—

- (a) in contravention of this Act, makes any seizure or levies any distress under any power of distress or who does any act or thing for the purpose of carrying into effect any seizure or levy, and
- (b) by means of threats of seizure or sale obtains or takes or receives from any person any goods and chattels or the proceeds thereof not being there and then fully authorized to make a seizure or levy a distress in respect of such goods and chattels,—

shall be guilty of an offence and shall be liable upon summary conviction therefor, if a body corporate, to a penalty of not more than two hundred dollars and costs, and if any other person, in the case of a first offence to a penalty of not more than two hundred dollars and costs, and in default of payment forthwith to imprisonment for a term of not less than one nor more than six months, and for a second and any subsequent offence to imprisonment without the option of a fine for a term of not less than three nor more than six months.

39. Any person who is under any duty to deliver to the sheriff any goods or chattels which have been seized by him who makes default in delivering the same to the sheriff within a reasonable time after being required so to do by the sheriff shall be guilty of an offence and shall be liable on summary conviction therefor to a penalty of not more than one hundred dollars and costs and in default of payment to imprisonment for a term of not more than three months.

40. Notwithstanding any provision of *The Exemptions Act* to the contrary, the sheriff may in any case where a seizure under a writ of execution is made of any goods or chattels of such a nature or under such circumstances that the sheriff in his sole discretion deems it impracticable to except from the goods and chattels seized those goods and chattels which are under the said Act exempt from seizure, he may seize the same and hold them under seizure until the sheriff can conveniently ascertain the goods and chattels exempt from seizure, and thereupon he shall release the same to the debtor.

41. Every application to a Court or Judge required to be made under this Act in respect of any seizure shall be made to a Court or Judge of the judicial district in which the goods the subject matter of the application are situate at the time of seizure.

42. The provisions of *The Creditors' Relief Act* shall not be applicable to the proceeds of sale of any property seized and sold otherwise than under a writ of execution.

43.—(1) The Lieutenant Governor in Council may from time to time—

- (a) suspend the operation of any part or parts of this Act or of any schedule or any part or parts of any schedule to this Act, either for a specified period or until a date to be fixed by subsequent order;
- (b) amend, alter, rearrange, add to or strike out all or any of the provisions, forms, and items contained in any schedule to this Act or any schedule to *The Distress Act*;
- (c) make rules and regulations not inconsistent with this Act as to the procedure to be followed and the forms to be used in any proceeding authorized by this Act.

(2) Every such order shall be published in *The Alberta Gazette* and upon publication shall have the same force and effect as if the same had been enacted as a part of this Act.

44. The fees, costs and charges which may be made upon any seizure and which may be chargeable against the debtor shall not exceed the amounts set out in the Tariff in the schedule to this Act.

45. *The Extra-Judicial Seizures Act*, being chapter 96 of the Revised Statutes of Alberta, 1922, is hereby repealed, and the following Rules of the Supreme Court, namely, Rules 609 to 627, both inclusive, shall, upon the coming into force of this Act, cease to have any force.

46. This Act shall come into force on the day upon which it is assented to.

SCHEDULE

FORM A.

NOTICE OF SEIZURE OF GOODS

To.....

Take notice that.....
has caused the following goods to be seized to satisfy a
claim against you for the sum of.....
for.....

If you object to the removal and disposal of the said
property, or either, you must cause the attached notice in
Form "B" to be delivered to the Sheriff of the Judicial
District of.....
within fourteen days from the date of the seizure, and the
Judge will, after notice to you, decide whether he will give
an order for the removal and disposal of the property or
not.

Dated this.....day of.....193..

.....
(Signature)

FORM B.

NOTICE OF OBJECTION TO REMOVAL OF GOODS

I,
 hereby object to the removal and disposal of the goods men-
 tioned in the Notice of Seizure of Goods by.....

.....
(Signature)

My Post Office address is.....

To.....

Sheriff of the Judicial District of.....

.....
(Address of Sheriff)

N.B.—If there is no real reason for objecting to the re-
 moval and disposal of the goods, the sending of this notice
 may result in increased costs to the debtor.

 TARIFF

 FEES PAYABLE TO THE CLERK OF THE SUPREME OR
 DISTRICT COURT.

For every Judge's or Master in Chamber's order under
 this Act \$1.00

FEES PAYABLE TO THE SHERIFF

	Supreme	District	Small Debt
1. For receiving, filing, entering and endorsing every writ, warrant of distress, or other process of seizure \$.50	\$.25	\$.25
2. For receiving, entering and endors- ing every order.....	.50	.25	.25
3. For every warrant to execute any judgment or extra judicial process when given to bailiff.....	.50	.50	
4. For seizing estate or effects of debtor under execution or other process.....	2.00	1.00	1.00
5. For levying seizure or distress and preparing schedule	1.00	1.00	1.00
6. For return of all documents.....	.25	.25	.25
7. For every letter necessarily written respecting writs or process.....	.25	.25	
8. For every search not being by a party to a cause or his solicitor.....	.25	.25	

	Supreme	District	Small Debt
9. For making every affidavit.....	.50	.25	
10. For every bond required to be taken by the Sheriff for securing goods or for indemnity or other process.....	1.00	.50	.25
11. For every certificate when required whether under seal or not.....	1.00	.50	.25
12. For every notice of sale of goods.....	.75	.50	.25
For every copy exceeding seven.....	.10	.10	.10
13. For posting necessary notices.....	.50	.25	.25
14. For every notice of postponement of sale50	.25	
15. For fee on every service, if any.....	.50	.25	
16. Man in possession, per day, \$3.00. In case of the failure of the debtor to give his undertaking as bailee, such sum as is necessary and reason- able in the opinion of the taxing officer or a judge.			
17. For every appraisement, whether by one appraiser or more, two cents on the dollar on the value of the goods up to \$500, and one per cent. on the dollar for each additional \$500 or fraction thereof up to \$2,000, and one-half per cent. on all sums over that amount.			
18. All reasonable and necessary dis- bursements for advertising.			
19. For catalogue, sale, commission and delivery of goods, five per cent. on the net proceeds of the goods up to \$1,000, and one and one-half per cent. thereafter.			
20. On settlement being made through a sheriff, deputy sheriff or bailiff, after seizure and before sale, a mini- mum fee of \$1 on all sums under \$100; when the sum exceeds \$100, and does not exceed \$500, two and one-half per cent.; when the sum is over \$500 and does not exceed \$1,000, two and one-half per cent. for \$500 and one and a quarter per cent. for the balance up to \$1,000, and when the sum is over \$1,000, two and one- half per cent. for \$500, one and a quarter per cent. up to \$1,000, and one per cent. for the balance.			
21. For actual and necessary mileage, travelled and sworn to, from the place where same is severally received or the sheriff's office			

Supreme District Small
Debt

(whichever is nearer) to the place where any seizure under the authority of any chattel mortgage or bill of sale is made, or in retaking possession of goods under a hire receipt or conditional sale agreement, and return. (where mileage actually travelled under instructions from the person authorizing the seizure or retaking possession of goods, or from his agent, and no seizure is made by reason of there being no goods liable to seizure or retaking, or by reason of wrong address given, actual expenses incurred, including mileage, to be paid by the party in default)20

22. All necessary and reasonable disbursements for removing and storing goods and removing and keeping live stock and all other disbursements which in the opinion of the judge before whom a question as to the amount of the fees to be allowed under this Act may come for decision, are reasonable and necessary.
23. When the goods to be sold consist of a merchant's stock, and where in the opinion of a judge it was necessary for the sheriff to employ the assistance of an expert in making an inventory and valuation, such sum may be allowed as is actually and reasonably disbursed for such assistance, and as may be approved in each case by a judge.

FEES PAYABLE TO THE SHERIFF IN RESPECT OF SEIZURES
UNDER WRITS OF EXECUTION AND OTHER PROCESSES
OF A SIMILAR NATURE.

For poundage on executions and attachments in the nature of execution, when the sum realized shall not exceed \$400, five per cent.; when the sum realized is over \$400 and does not exceed \$4,000, five per cent. for \$400, two and one-half per cent. for the balance up to \$4,000; and when the sum realized is over \$4,000, five per cent. for \$400, two and one-half per cent. from \$400 to \$4,000, and one and one-quarter per cent. for the balance.

No. 20.

THIRD SESSION
SEVENTH LEGISLATURE
23 GEORGE V
1933

BILL

An Act respecting Executions, Seizures under Writs of Execution, and Seizures under Powers of Distress.

Received and read the

First time.....

Second time

Third time

HON. MR. LYMBURN.

EDMONTON:
W. D. McLEAN, KING'S PRINTER