

Bill No. 10 of 1934.

A BILL RESPECTING THE RIGHTS OF EXECUTION  
CREDITORS AND THE DISTRIBUTION OF  
THE PROCEEDS OF EXECUTIONS.

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NOTE.

This Bill is intended to replace *The Creditors' Relief Act*.

It provides that the persons entitled to share in the proceeds of an execution are those creditors who have subsisting executions in the hands of the sheriff within fourteen days after the receipt of money under an execution by the sheriff, or in certain cases, within twenty-eight days. (Section 10.)

A subsisting execution is any execution other than one which the sheriff is directed to disregard (Section 29), that is, an execution which has been in his hands for more than one year after the date of its delivery to him, or one year after the delivery to the sheriff of the statement required by section 28, as the case may be.

By section 4 a sheriff is prohibited from proceeding under any writ of execution unless he is expressly instructed so to do, and until provision has been made for his fees, charges and expenses.

By section 5 provision is made whereby a garnisheeing creditor may attach the debt owing by the garnisheed to the debtor to the extent of the garnisheeing creditors and the amount owing to all creditors who have subsisting executions in the hands of the sheriff as at the issuance of the garnishee summons.

Section 6 declares money paid into court under a garnishee to be available for distribution amongst the execution creditors of the debtor whose debt is garnisheed, subject to the exceptions therein mentioned.

Money in court available for execution creditors and money in court belonging to an execution debtor is required to be paid over to the sheriff. (Sections 7 and 8.)

Section 19 provides for the rateable distribution of the moneys in the sheriff's hands amongst the creditors entitled thereto.

Sections 18 to 27 deal with the issuance of certificates to creditors of an execution debtor, and are generally similar to provisions to the same effect in *The Creditors' Relief Act* except that the certificate is given the force of a judgment and not of an execution; and special provision is made for certificates under *The Creditors' Relief Act* in force at the commencement of this Act by section 22.

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. 10 of 1934.

An Act respecting the Rights of Execution Creditors and the Distribution of the Proceeds of Executions.

(Assented to 1934.)

**H**IS 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 Execution Creditors Act*."

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

- (a) "District" means a judicial district or a subjudicial district;
- (b) "Execution" means a writ of *feri facias* and includes a certificate issued under *The Creditors' Relief Act*. So long as it has the effect of any execution, and every subsequent writ for giving effect to any writ of *feri facias*;
- (c) "Judge" means a judge of the District Court;
- (d) "Sheriff" includes a deputy sheriff and an acting sheriff;
- (e) "Subsisting execution" means any execution in the hands of a sheriff other than one which by this Act he is directed to disregard.

**3.** Except only in the cases where it is otherwise specifically provided by this Act, all property seized or attached by virtue of any writ of execution, writ of attachment, garnishee proceedings or proceedings in the nature of equitable execution shall be deemed to have been attached on behalf of all creditors who are entitled by this Act to share in any money received by the sheriff by reason of such seizure or attachment; and all moneys realized thereby shall be dealt with and distributed by the sheriff of the district in which such seizure or attachment is made under the provisions of this Act.

**4.—(1)** A sheriff shall not proceed to make any seizure under any writ of execution unless and until he has been instructed so to do in writing by or on behalf of the execution creditor and he shall not be bound to make any such seizure unless and until he has been furnished with such security as he deems reasonably sufficient for his indemnity in respect of his fees, charges and

expenses and any claims for damages which may be incurred by him in making the seizure and levy and anything done in relation thereto.

(2) Upon the requisite instructions being given and any security required by the sheriff for his indemnity being furnished, it shall be the duty of the sheriff to make a seizure to the extent of the eligible goods and chattels which will be sufficient to satisfy all the subsisting writs of execution then in his hands against the judgment debtor, and the sheriff shall seize for the aggregate amount of all the subsisting executions then in his hands and shall set forth in his warrant and notice of seizure the names of all the execution creditors and the aggregate amount for which the seizure is made.

(3) In case a sheriff has made a seizure under any writ of execution he shall proceed to give notice thereof in writing to all persons who at the time of seizure have subsisting executions in his hands.

(4) In case the sheriff has made a seizure and the execution creditor upon whose instructions the seizure was made instructs the sheriff to release or abandon the seizure at a time at which there are any other subsisting executions against the debtor in the hands of the sheriff, the sheriff shall proceed to give notice in writing that he has been so instructed to all other persons who at the time he receives instructions have in his hands a subsisting writ of execution, and in case any such other person gives the sheriff instructions in writing so to do within ten days after the day upon which the notice is mailed and furnishes the sheriff with any security required by him for his indemnity, the sheriff shall continue the seizure and all proceedings thereunder to the extent of the aggregate of the sums payable under all the subsisting executions then in his hands other than those in respect of which he has been instructed not to seize, or not to continue seizure, or to discontinue, release or abandon, as the case may be, in every respect as if such other person had been the person who had originally instructed the sheriff to make a seizure; and the sheriff shall not release or abandon the seizure until the expiration of the said ten days unless he is instructed in writing so to do by all persons who at the time of the receipt of the instructions to release or abandon the seizure had subsisting writs of execution in his hands.

(5) In case a seizure has been made under a writ of execution any other creditor who has a subsisting writ of execution in the sheriff's hands may by writing require the sheriff to take any proceedings to enforce the executions in his hands which may be lawfully taken by the sheriff, and thereupon provision having been made for the sheriff's fees and expenses and indemnity, if required, it shall be the duty of the sheriff to comply with that requirement.

(6) In case the sheriff has made a seizure under a writ of execution and subsequently thereto receives any other execution, he shall, upon being instructed so to do and being furnished with any security required by him for his indemnity, make such further or additional seizure as he deems proper having regard to the amount of money leviable under all the subsisting executions then in his hands.

**5.**—(1) Upon a garnisheeing creditor filing with the Clerk of the Court of any district a certificate of the sheriff of that district in Form A, in the schedule to this Act, certifying the total amount of the subsisting executions against the debtor in his hands as of the day upon which garnishee summons is to be issued, the clerk shall at the request of the garnisheeing creditor issue the garnishee summons for the amount of the claim of the garnisheeing creditor and for the amount payable in respect of all the subsisting executions other than any execution for the amount of the garnisheeing creditor's claim together with costs.

(2) Every garnishee summons, upon being served upon the garnishee, shall as and from the time of service bind every debt due or accruing due from the garnishee to the debtor or so much thereof as shall be necessary to satisfy the amount set forth in the summons together with the costs payable in respect of the summons under the Rules of Court.

(3) Every garnishee summons issued under this section shall be in such form as may be prescribed by the Lieutenant Governor in Council or by the Rules of Court.

**6.** Where any money is paid into court under any garnishee proceedings in the Supreme Court of Alberta or any District Court, the same shall be available for distribution by the sheriff amongst the execution creditors of the debtor whose debt is garnisheered except only in each of the following cases, namely:

- (a) When the money paid into court is not liable to attachment;
- (b) When the amount paid into court does not exceed the sum of twenty-five dollars;
- (c) When by virtue of any statute or Rule of Court the money is required to be paid to the debtor as being exempt from attachment; and
- (d) When it is otherwise ordered by a court or judge.

**7.** 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 pay the subsisting executions in the sheriff's hands may, on application of the sheriff or any party interested, be paid over to the sheriff and the same shall be deemed to be money received by him under execution within the meaning of this Act.

**8.—**(1) Except only in cases where it is otherwise specifically provided by this Act, or where it is otherwise ordered by a court or a judge, all moneys paid into any court by virtue of a garnishee summons shall be paid by the Clerk of that Court to the sheriff of his judicial district without any order—

- (a) in case the garnishee summons is based upon a judgment immediately after the expiration of the tenth day after the service of the summons on the judgment debtor and on the garnishee or for such longer period as may be ordered by a court or judge; or
  - (b) in case the garnishee summons is issued before judgment immediately upon the plaintiff entering judgment against the defendant or at such later time as may be ordered by a court or judge.
- (2) Immediately upon the receipt by the sheriff of any money from the Clerk of the Court—
- (a) in case there are no subsisting writs of execution against the debtor whose debt was garnisheed, or any of the persons entitled to the said moneys, he shall immediately pay out the money or such part thereof in respect of which he has no subsisting writs of execution to the persons entitled by law to receive such money;
  - (b) in case there is a subsisting execution against the debtor or any of the persons entitled by law to receive such money, the sheriff shall retain the said money and shall distribute the same as moneys levied under execution amongst the creditors of the debtor or the person entitled to receive the moneys, as the case may be.

**9.** Immediately upon the receipt by the sheriff of any money which is available for distribution amongst creditors he shall make an entry thereof in a book kept in his office setting out the date of the receipt of the money and shall keep such other records and make such other entries as may be prescribed by the Lieutenant Governor in Council.

**10.** Except only in the cases where it is otherwise specifically provided by this Act all moneys received by a sheriff in respect of any execution shall, subject to the other provisions of this Act as to priorities, be distributed immediately after the expiration of the period of fourteen days after the date upon which the money is so received or after such longer period as may be ordered by a judge amongst those creditors of the execution debtor who have subsisting executions in the hands of the sheriff either within fourteen days after the receipt of the money by the sheriff or within such further period, not exceeding fourteen days, as a judge may order in any case where it is made to appear to him that the money represents

the proceeds of all the exigible goods of the debtor, or that there are no other goods available to creditors other than those who, within the said period of fourteen days, had subsisting executions in the hands of the sheriff.

**11.** Any creditor who institutes and continues proceedings for the seizure garnishment or attachment of any property which by this Act he is deemed to have seized or attached on behalf of other creditors, or any creditor who instructs continuance of any such proceedings which have been abandoned by the creditor instituting the same shall, in case the proceedings taken by him directly result in payment of any money to the sheriff, be entitled to be paid out of such money his taxed costs subsequent to judgment together with his costs of all proper and necessary steps or proceedings, taken by him for the realization of such moneys and the payment thereof to the sheriff in priority to the claims of the other creditors of the execution debtor entitled by this Act to share in such money.

**12.** When the amount received by the sheriff in respect of an execution is not sufficient to pay the claims of creditors and the executions with costs in full, the sheriff shall firstly retain his fees, and secondly, in the event of any creditor being entitled under the provisions of this Act to priority for costs, the sheriff shall pay such costs to that creditor, and thirdly, shall pay the claim of any person who is entitled to be paid in preference to any other creditor, and fourthly, shall distribute the balance (if any) rateably amongst such execution creditors as are entitled to share therein under the provisions of this Act.

**13.** Where money is paid to the sheriff in respect of an execution or attachment without any seizure having been made thereunder—

- (a) in case the amount is sufficient to pay the full amount payable under all executions in the sheriff's hands which are at the time of payment valid and subsisting; or
- (b) in case the sheriff has at the time of payment no more than one execution in his hands which is then valid and subsisting, then in either case the sheriff shall deal with the money so paid having regard only to the executions in his hands at the time of payment and which were then valid and subsisting.

**14.** After an execution has been delivered to the sheriff the subsequent withdrawal or expiration of any other execution upon which the proceedings are founded or any stay upon the writ or the satisfaction of the plaintiff's claim thereon or the setting aside of the return of the writ shall not affect the proceedings under this Act.

**15.** No proceeding whereby property has been attached by virtue of any writ of attachment, garnishee proceedings or proceedings in the nature of equitable execution shall be discontinued, withdrawn or settled as against any debtor except by leave of a judge unless at the date of such discontinuance, withdrawal or settlement there are no subsisting writs of execution against such debtor in the hands of the sheriff of the district in which such proceedings are taken.

**16.**—(1) All persons employed by an execution debtor at the time of the seizure under execution in respect of which any money is realized by the sheriff within one month before the seizure who, prior to the expiration of the time fixed for the distribution of such moneys under such seizure, file in the office of the sheriff their claims for wages or salary with the particulars thereof proved by affidavit shall, subject to the provisions hereinafter contained, be entitled to be paid out of the money so levied the amount of wages or salary due to them respectively by the execution debtor not exceeding wages or salary for three months 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, such wages or salary to be for arrears only then owing or accrued, and not for any unearned portion.

(2) The provisions of this section shall apply to wages or salary whether the employment in respect of which the same may be payable is by the day, week, month or year.

**17.**—(1) Where money received by the sheriff is the proceeds of the sale of an article under execution upon a judgment rendered in an action for the price of such article and such article would otherwise be exempt from seizure under the provisions of The Exemptions Act, that money shall not be liable to distribution amongst other execution creditors but shall be applied upon the execution under which it was levied.

(2) In case the amount levied as above mentioned is more than sufficient to pay the execution debt with costs in full, the balance in the sheriff's hands shall be paid over to the execution debtor.

(3) In case the amount is insufficient to pay the execution debt with costs in full, the execution creditor shall to the extent of the deficiency be entitled to share in any other money received by the sheriff under execution against the debtor rateably with the other execution creditors.

**18.** When the sheriff has seized goods and chattels under a writ of execution or a debtor 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 authorized may be taken by other creditors or claimants in respect of debts which are overdue.

**19.**—(1) An affidavit of the debt and the particulars thereof in Form B of the schedule to this Act 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 and authorized so to do by a creditor.

(2) The claimant shall serve a duplicate of the affidavit of claim, and a notice in Form C of the schedule to this Act on the debtor and upon each creditor who has a subsisting execution in the hands of the sheriff.

(3) Where the affidavit and notice are to be served out of the Province the judge may by order fix the time after which the next step may be taken by the claimant as hereinafter provided.

(4) The claimant shall file with the Clerk of the District Court of the district the sheriff of which has the execution, a duplicate of the affidavit of claim and a copy of the notice with an affidavit of service thereof in Form D of the schedule to this Act.

(5) 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 and the names of the creditors who have in his hands subsisting executions.

(6) An execution debtor may by notice in writing to the sheriff furnish him with the address for service within the Province of all notices and other documents, and the sheriff shall make an entry thereof upon his books.

(7) Where the notice served on a debtor does not state some place within three miles of the office of the Clerk of the District Court 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 within the Province who may be served on the claimant's behalf, service of any notice, paper or document may be made upon the claimant by posting up the same in the office of the Clerk of the Court and in such case shall be deemed good service.

**20.**—(1) In case the claim is not contested in manner hereinafter mentioned, then, after ten days from the day of service or after the time fixed by order of the judge, as the case may be, or in the absence of such order, after twenty days if service is made in any part of Canada without the Province, or twenty-five days if service is made in the United States, on the application of the claimant and his filing proof of due service of the affidavit and notice, or where the claim is contested, upon the determination of the dis-



pute in favour of the claimant either in whole or in part, the Clerk of the District Court shall make out and enter a certificate of judgment in Form E in the schedule to this Act for the amount of the claim and costs; 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 thereupon the Clerk shall make out and enter a certificate of judgment for the residue and costs.

(2) Every certificate of judgment made out and entered pursuant to this section shall be deemed to be a judgment of the court and shall be enforceable in any manner in which a judgment may be enforced.

**21.**—(1) The claim may be contested by the debtor or by any 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 within ten days after service upon him of the affidavit of claim and the notice, or within the time fixed by order of the judge, 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 certified copy thereof delivered to the sheriff at any time before distribution is made and the sheriff shall forthwith give notice of the receipt of such certified copy to the claimant and all creditors of the debtor who then have subsisting executions in his hands.

(7) The affidavit of the debtor or other contestant shall have endorsed thereon a statement of some place within three miles of the office of the clerk at which service may be made upon him, or the address of a solicitor within the Province 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 filing the same in the office of the Clerk of the Court.

(8) Where the address of a solicitor is given for service which is not within three miles of the clerk's office, service may be made upon him by mailing papers by registered post to him at the address so given.

(9) Upon the application of a claimant whose claim is contested, the judge may proceed to hear and determine the contest in a summary manner upon such notice to such persons as he deems proper and for that purpose may receive evidence either *viva voce* or by affidavit, or both, as he deems fit, and may make an order allowing the claim and determining the amount thereof or disallowing the claim, and may make such order as to the payment of costs as he thinks proper in the circumstances.

(10) In case a claimant who has received a notice of contestation does not apply to the judge to hear and determine the contest within the period of ten days after the receipt of the notice of contestation or within such further time as the judge may either before or after the expiration of the said period by order fix, he shall be deemed to have abandoned his claim.

(11) Upon the application of any creditor the judge may by order give leave and liberty to that creditor to intervene in any contestation if it appears to the judge that any contestation is not being carried on in good faith by any other creditor.

**22.**—(1) Every certificate issued under the provisions of The Creditors' Relief Act which was in force immediately before the repeal of the said Act took effect shall, upon the expiration of the period of six months after the coming into force of this Act, cease to have force and effect as an execution, and after the expiration of the said period shall have the same force and effect as if the same had been made and entered under this Act; and for the purpose of computing the period of limitation thereof; that period shall be deemed to run from the date upon which it was issued.

(2) Nothing in this Act shall affect any right which has accrued to any person under The Creditors' Relief Act by virtue of any such certificate at any time before the expiration of the period of six months after the coming into force of this Act under any seizure made prior to the expiration of the said period.

**23.** Notwithstanding the expiration of an execution before the termination of fourteen days after the date of entry of the receipt by the sheriff of any money distributable amongst creditors pursuant to this Act, the execution shall as to any money so received remain in full force and effect until the money has been distributed.

**24.** Where a claim is contested by a creditor after the execution based on the 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 a bank the amount which would be apportionable to the claim if valid, and shall, as soon after the

expiry of the period of fourteen days as is practicable, distribute the residue of the money made amongst those entitled.

**25.**—(1) In case the sum in controversy appears to be over six hundred dollars exclusive of costs the judge shall direct that the action be brought or the issue tried in the Supreme Court of Alberta and subject to any order which such court or a judge thereof may make in that behalf shall name the district in which the trial is to take place.

(2) In all other cases 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 termination thereof and may make such order as to the costs of the proceedings as he deems just.

(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.

(4) Where the sum in controversy does not exceed the sum of two hundred dollars the determination of the judge shall be binding and conclusive on all the parties thereto, and there shall be no appeal therefrom.

**26.** The same proceedings may be had for the production of documents and for the examination of parties or others as may be taken in an ordinary action before the application to the judge and as a foundation therefor.

**27.**—(1) The Clerk of the District Court shall, upon making out any certificate of judgment, make an entry thereof in an appropriate book with reference to every claim in respect of which he makes out a certificate of judgment with the following particulars:

- (a) The name and address 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 clerk shall index the entries in a book alphabetically under the names of the debtors.

(3) Where the original papers are lost or destroyed an entry made in pursuance of this section shall be deemed to be an entry of final judgment and a copy certified by the clerk shall be conclusive evidence thereof.

**28.** In case any execution creditor receives any money on account of any execution debt or receives anything by way of satisfaction, either wholly or in part, of any execu-

tion debt, or enters into any agreement whereby proceedings under any writ of execution are to be stayed or suspended or any order is made staying the execution, the execution creditor shall immediately thereafter deliver to every sheriff to whom the writ of execution has been delivered a certified copy of every such order or a notice in writing setting out with particularity every such payment, satisfaction or agreement, as the case may be, and upon the receipt of any such notice it shall be the duty of the sheriff to enter in the said book a memorandum of any statement received by him pursuant to this section together with the date of its receipt and to keep the same on file.

**29.** After the expiration of the period of one year either from the time of delivery of a writ of execution to the sheriff or from the receipt of the last statement pursuant to section 28 of this Act as to amount leviable thereunder, as the case may be, the sheriff shall for the purposes of this Act disregard the writ and the same shall be deemed not to be subsisting until the creditor or his agent delivers to him a notice in writing setting forth a description of the writ of execution, that it remains unsatisfied, any payments made on account thereof, and the extent to which it is unsatisfied, and the sheriff shall upon receipt of any such notice make an entry thereof in the register thereof kept by him.

**30.** In case any creditor makes default in making any return which he is required to make pursuant to this Act, and by reason of such default the sheriff makes any excessive or wrongful levy, or any creditor makes an excessive or wrongful attachment, the person so in default shall be liable for any damages occasioned thereby and no action shall be maintainable against the sheriff in respect thereof.

**31.—(1)** Where at the time fixed by this Act for distribution the money is insufficient to pay all claims in full, the sheriff shall immediately prepare for examination by the debtor and his creditors a statement setting out the creditors entitled to share in the distribution with the amount due to each for principal, interest and costs.

(2) The statement 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 the debtor and to each creditor or his solicitor a copy of the statement.

(3) If within ten days after all the copies of the statement 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 statement shall be deemed to be final and conclusive as between all persons whatsoever and the sheriff, and the sheriff shall make distribution forthwith pursuant to such statement.

(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) of this section, a notice in writing to the sheriff stating his objection to the scheme and the grounds thereof.

(6) The contestant shall, within ten 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 subsection (6) of this section, 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 in Form F in the Schedule to this Act 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) In case the sum in controversy appears to be over six hundred dollars exclusive of costs the judge shall direct that the action be brought or the issue tried in the Supreme Court of Alberta and subject to any order which such court or a judge thereof may make in that behalf shall name the district in which the trial is to take place.

(10) In all other cases 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 termination thereof and may make such order as to the costs of the proceedings as he deems just.

(11) 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.

(12) Where the sum in controversy does not exceed the sum of two hundred dollars the determination of the judge shall be binding and conclusive on all the parties thereto, and there shall be no appeal therefrom.

(13) In case 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.

**32.** 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 unneces-

sary number of parties and trials and of unnecessary proceedings as he deems 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.

**33.** Where proceedings are taken by the sheriff for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute *pro rata*, in proportion to the amount of their executions or certificates, to the expense of contesting any adverse claim, shall be entitled to share in any benefit which may be derived from the contestation of such claim so far as may be necessary to satisfy their executions or certificates.

**34.** The court or judge may direct that one creditor shall bear the carriage of the interpleader proceedings on behalf of all creditors interested.

**35.** The costs of interpleader proceedings, as between solicitor and client, shall be a first charge upon the moneys or goods which may be found by the proceedings to be applicable upon the executions or certificates.

**36.** Where money is to be distributed under this Act the sheriff shall be entitled only to such poundage as may be from time to time prescribed pursuant to this Act.

**37.** When money is made under an execution the same shall be taken for the purposes of the sheriff's return and otherwise to be made upon all the executions and certificates entitled to the benefit thereof and the sheriff shall, upon payment being made to the person entitled upon any such execution or certificate, endorse thereon a memorandum of the amount so paid but he shall not, except on the request of the party who issued the writ or by direction of the court out of which the same issued or of a judge of such court, return the writ until the same has been fully satisfied or unless the same has expired by effluxion of time in which case the sheriff shall make a formal return of the amount paid thereon.

**38.** The like proceedings may be taken to compel payment by the sheriff of money payable in respect to an execution or other claim as can now be had to compel the return by the sheriff of a writ of execution.

**39.** In any case in which any question, doubt or difficulty arises as to the exercise by the sheriff or the clerk of the court of any power, duty or authority conferred 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, either orally or by affidavit, as he may think proper, 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 pursuance of or in conformity to any direction so given.

**40.** Every sheriff shall deposit all money received by him in respect of any execution or other proceeding under the provisions of this Act in such chartered banks and in such manner as may be from time to time designated by the Lieutenant Governor in Council.

**41.**—(1) 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 had 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.

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

**42.** If any party to a contestation or matter upon which a judge has rendered or made a final judgment or order is dissatisfied therewith and the same is in respect to a question involving a sum greater than two hundred dollars, he may appeal therefrom to the Court of Appeal as nearly as may be according to the practice in force in respect of appeals from a District Court or a judge thereof.

**43.** 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.

**44.** The decision of the judge of the Court of Appeal on an appeal shall bind the debtor and all his creditors unless it appears that the decision was obtained by fraud or collusion.

**45.** 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.

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

**47.** Except where inconsistent with this Act or any regulations made pursuant to this Act, the provisions of The District Courts Act, The Judicature Act and The Rules of Court shall apply to proceedings under this Act.

**48.** No proceeding under this Act shall be void for any defect of form, and the rules of the Supreme Court as to amending or otherwise curing irregularities or defects shall apply to all proceedings under this Act, and any proceedings wrongfully taken under this Act may be set aside by the judge with or without costs as he may think fit.

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

- (a) 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 under this Act;
- (b) prescribe a tariff of the fees which shall be payable to the clerk or to the sheriff in respect of any proceedings under this Act.

(2) Every rule, regulation and tariff so made or prescribed shall be published in *The Alberta Gazette* and shall come into force upon being so published or upon such later day as may be designated by the Lieutenant Governor in Council for that purpose.

**50.** *The Creditors' Relief Act*, being chapter 88 of the Revised Statutes of Alberta, 1922, is hereby repealed.

**51.** This Act shall come into force upon a day to be fixed by Proclamation of the Lieutenant Governor in Council.



## THE SCHEDULE.

## FORM A.

(Section 5.)

## CERTIFICATE OF SUBSISTING EXECUTIONS.

I, the undersigned Sheriff for the Judicial District of ..... do hereby certify that upon the date of issuance of this certificate all the subsisting executions against ..... of ..... then in my hands are as hereunder set out and the particulars thereof and the amounts exigible thereunder as shown by my records are as follows:

Cause	Proceeding	Amount Exigible with Costs

Dated at the office of the Sheriff at .....  
this ..... day of ....., 19....

.....  
(Signature of Sheriff)

## FORM B.

(Section 19 (1).)

## AFFIDAVIT OF CLAIM.

## THE EXECUTION CREDITORS' ACT.

In the District Court of the District of .....  
A.B., Claimant, and  
C.D., Debtor.

I, A.B., of ..... in the Province of Alberta, merchant (*or as the case may be*), make oath and say:

1. I am the above named claimant (*or the duly authorized agent of the claimant in this behalf, and have a personal knowledge of the matter hereinafter deposed to*).

2. The above named debtor is justly and truly indebted to me (*or to the above named claimant*) in the sum of \$..... for (*here state shortly the nature and particulars of the claim*).

Sworn before me at .....  
this ..... day of ..... } A.B.  
19....

.....  
A Commissioner, etc. (*or as the case may be*).

## FORM C.

(Section 19 (2).)

## NOTICE TO BE SERVED WITH CLAIM.

## THE EXECUTION CREDITORS' ACT.

In the District Court of the District of .....  
*A.B.*, Claimant, and  
*C.D.*, Debtor.

To the above (*or* within) named debtor.

Take notice that the claimant intends to file with the Clerk of the District Court of the District of ..... (*or as the case may be*) the original affidavit of claim of which a duplicate is served herewith, and that this proceeding is taken by reason of there being in the hands of the sheriff of the said district an execution against your property, and that the claimant intends to call on the sheriff to levy the amount of the said debt from your property under the authority of *The Execution Creditors' Act*.

And further take notice that if you desire to contest the said claim, or any part thereof, you must, within ten\* days after the service of this notice upon you, file with the Clerk of the said Court an affidavit stating that you have a good defence to the said claim on the merits, or that you have such defence to a specified part of the claim. If no such affidavit is filed the claim will be treated as admitted by you. If an affidavit is filed contesting the claim as to part only such claim may be so treated as to the part not contested.

You are further hereby notified that unless you indorse upon such affidavit filed by you a statement of some place within three miles of the said Clerk's office at which service may be made upon you, or the address of some solicitor in Alberta who may be served on your behalf, service may be made upon you of any notice, paper, or document, by mailing the same by registered post addressed to you at the town in which the said Clerk's office is situate.

Dated the ..... day of ..... 19...

*A.B.*,  
 Claimant.

\*NOTE—If further time is given by a judge the notice should be varied accordingly.

## FORM D.

(Section 19 (4).)

## AFFIDAVIT OF SERVICE OF CLAIM.

## THE EXECUTION CREDITORS' ACT.

In the District Court of the District of .....  
*A.B.*, Claimant, and  
*C.D.*, Debtor.

I, *G.H.*, of ..... in the District of .....  
 make oath and say:

That I did on the.....day of.....19...., personally serve *C.D.*, the above named debtor (*or as the case may be*) with an original affidavit identical with the annexed affidavit and that there was at the time of such service attached to (*or indorsed upon*) the said affidavit so served a true copy of the notice addressed to the debtor, now attached to (*or indorsed upon*) the said annexed affidavit.

Sworn before me at..... }  
 this.....day of..... } *G.H.*  
 19.... }

.....  
 A Comissioner, etc., (*or as the case may be*).

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FORM E.

(Section 20.)

CERTIFICATE OF PROOF OF CLAIM.

THE EXECUTION CREDITORS' ACT.

In the District Court of the District of.....  
*A.B.*, Claimant, and  
*C.D.*, Debtor.

I, *G.H.*, Clerk of the District Court of the District of  
 .....do hereby certify:

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  
 Execution Creditors' 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 F.

(Section 31 (8).)

NOTICE OF CONTESTATION OF SCHEME OF DISTRIBUTION.

THE EXECUTION CREDITORS' 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. 10.

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FOURTH SESSION  
SEVENTH LEGISLATURE  
24 GEORGE V  
1934

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**BILL**

An Act respecting the Rights of Execution Creditors and the Distribution of the Proceeds of Executions.

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Received and read the

First time .....

Second time.....

Third time.....

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HON. MR. LYMBURN

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EDMONTON:  
W. D. McLEAN, KING'S PRINTER  
1934