

The Absconding Debtors Act

being

Chapter 58 of *The Revised Statutes of Saskatchewan, 1920*
(Assented to November 10, 1920).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER 58

An Act respecting Absconding Debtors

SHORT TITLE

Short title

- 1 This Act may be cited as *The Absconding Debtors Act*.

1919-20, c.81; s.1; R.S.S. 1920, c.58, s.1.

INTERPRETATION

Interpretation

- 2 In this Act, unless the context otherwise requires, the expression:

“Court”

1. “**Court**” means His Majesty’s Court of King’s Bench for Saskatchewan;

“Judge”

2. “**Judge**” means a judge of His Majesty’s Court of King’s Bench for Saskatchewan.

1919-20, c.81, s.2; R.S.S. 1920, c.58, s.2.

ATTACHMENT OF PERSONAL PROPERTY

Attachment of goods

3(1) After the commencement of any suit wherein a claim is made for the recovery of a debt of \$50 or upwards, upon affidavit made by the plaintiff or one of several plaintiffs, his or their agent, having a personal knowledge of the matter, stating clearly and succinctly from what cause such debt arose and the amount thereof, and that he has good reason to believe (*giving reasons therefor*) that the defendant:

- (a) is about to abscond or has absconded from Saskatchewan, leaving personal property in any judicial district thereof liable to seizure under execution for debt; or
- (b) has attempted to remove such personal property out of Saskatchewan or to sell or dispose of the same with intent to defraud his creditors generally or the plaintiff in particular; or
- (c) keeps concealed to avoid service or process;

and stating further:

- (d) that the deponent verily believes that without the benefit of the attachment the plaintiff will lose his debt or sustain damage;

and upon the further affidavit of one other credible person, that he is well acquainted with the defendant and has good reason to believe (*giving such reasons*) that the defendant is about to abscond, or has absconded, or has attempted to remove his personal property out of Saskatchewan or to sell or dispose of the same, or keeps concealed with intent as aforesaid, as the case may be, the court or a judge, being satisfied with the reasons so given, may, on application *ex parte*, direct the local registrar to issue a writ of attachment (form A) which writ shall be executed by the sheriff according to its tenor.

Exemption from seizure

(2) In any case where the debtor has absconded or is about to abscond from Saskatchewan leaving no wife or family behind, no property of such debtor shall be exempt from seizure.

1919-20, c.81, s.3; R.S.S. 1920, c.58, s.3.

SERVICE AND RETURN OF WRIT**Copy writ of attachment to be served**

4 A copy of every writ (form A) shall be personally served on the debtor against whose effects the same is issued at the time of making any seizure thereunder, or as soon thereafter as such service can be effected, if the said debtor can be found; but if such personal service cannot be effected, a copy thereof shall be left with some grown up person resident at the place where seizure is made, or, if no person is so resident, posted in a conspicuous place on the premises.

1919-20, c.81, s.4; R.S.S. 1920, c.58, s.4.

Sheriff's return and inventory

5 Immediately after making a seizure the sheriff shall make a return of the writ, and with the return transmit annexed thereto an inventory of the property seized and the value thereof according to the best of his judgment, and an affidavit of the manner in which service of the writ was effected.

1919-20, c.81, s.5; R.S.S. 1920, c.58, s.5.

DISPOSAL OF PROPERTY SEIZED**Return of goods seized on giving security or deposit of value claimed**

6 Upon seizure of any property under the writ, the person in whose possession it was at the time of seizure may have the same returned to him upon giving the sheriff sufficient security for, or paying into court, an amount equal to its appraised value, as shown in the inventory prescribed by section 5.

1919-20, c.81, s.6; R.S.S. 1920, c.58, s.6.

Unless redelivered sheriff to hold until judgment

7(1) Unless the property seized is redelivered or relinquished by the sheriff under any of the provisions hereof, he shall hold the same until the plaintiff obtains judgment in the cause and an execution upon such judgment is delivered to him, the sheriff.

Redelivery ordered where unnecessary delay

(2) In case the plaintiff is guilty of unnecessary delay in the prosecution of his suit to judgment, the court or a judge may order redelivery of the property seized to the person from whose possession it was taken, unless some other writ of attachment or execution against the defendant is in the sheriff's hands for execution.

1919-20, c.81, s.7; R.S.S. 1920, c.58, s.7.

PERISHABLE PROPERTY

Disposal of cattle or perishable goods pending suit

8(1) In case any horses, cattle, sheep or perishable goods or chattels or such as from their nature cannot be safely kept or conveniently taken care of, are taken under any writ of attachment, the officer who seized the same shall have them appraised and valued on oath by two competent persons.

(2) If after such appraisal the plaintiff deposits with the sheriff a bond to the defendant executed by one or more persons whose sufficiency shall be approved of by that officer, in double the amount of the appraised value of such articles, conditioned for the payment of their appraised value to the defendant, together with all costs and damages incurred by the seizure and sale thereof in case judgment is not obtained by the plaintiff against the defendant; then the sheriff may sell all or any of such articles at public auction to the highest bidder, giving not less than six days' notice of the sale, except in the case of articles of such a nature as not to allow of that delay, which articles he shall sell forthwith, and he shall hold the proceeds of such sale for the same purpose as he would have held any property seized under the attachment.

1919-20, c.81, s.8; R.S.S. 1920, c.58, s.8.

Plaintiff omitting to give security

9 If the plaintiff, after notice to himself or his solicitor of the seizure of any articles mentioned in the preceding section, neglects or refuses to deposit a bond with sureties sufficient in the judgment of the sheriff, then at the expiration of four days next after such notice has been given, the sheriff shall be relieved from liability to the plaintiff in respect to the articles so seized, and shall forthwith restore the same to the person from whose possession he took them.

1919-20, c.81, s.9; R.S.S. 1920, c.58, s.9.

GENERAL PROVISIONS

Subsequent proceedings

10 Notwithstanding the issue of a writ of attachment the cause shall proceed in the ordinary way, but the plaintiff shall not have judgment against the defendant except by order of the court or a judge, and in case the plaintiff fails to recover judgment for the full amount of the debt sworn to, he shall not be entitled to any costs but may be ordered to pay the costs of the defendant.

1919-20, c.81, s.10; R.S.S. 1920, c.58, s.10.

Setting aside writ

11 A writ of attachment may be set aside by the court or a judge on satisfactory proof by affidavit that the creditor who sued out such writ had no reasonable cause for taking such proceeding.

1919-20, c.81, s.11; R.S.S. 1920, c.58, s.11.

PROCEDURE IN DISTRICT COURT

Application to district court

12 The provisions of this Act shall apply to proceedings in a district court with such changes in the title of the court, the style of the officer of the court and the forms of process, and with such other changes as are necessary to make the same applicable to such proceedings.

1919-20, c.81, s.12; R.S.S. 1920, c.58, s.12.

SCHEDULE

FORM A

(Section 3)

The Absconding Debtors Act

WRIT OF ATTACHMENT

In the King's Bench,

Judicial District of _____

between _____

of (*residence*) _____ plaintiff,

and

of (*residence*) _____ defendant.

George the Fifth (*name of the reigning Sovereign, as the case may be*), by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King (*or as the case may be*), Defender of the Faith, etc.:

To the Sheriff of the Judicial District of _____:

You are commanded to attach, seize and safely keep all the personal estate, credits and effects together with all evidences of title, debts, books and book accounts or other documents, vouchers or papers belonging thereto or otherwise of the above named defendant to secure and satisfy the plaintiff the sum of _____ with his costs of action and to satisfy the debt and demand of such other creditors of the said defendant as shall prosecute their claims to judgment and lodge executions with you, the said sheriff, within the time allowed by *The Creditors Relief Act* to entitle them to share in the distribution of the proceeds.

And we command you, the said sheriff, so soon as you shall have executed this writ you do return the same with an affidavit of service and a certificate of your action thereunder.

Issued at _____ this _____ day of _____ A.D. 19 ____.

I. J.,

Local Registrar.