

UNEDITED

# *The Creditors' Relief Act*

*being*

Chapter 90 of *The Revised Statutes of Saskatchewan, 1953*  
(effective February 1, 1954).

FOR HISTORICAL REFERENCE ONLY

## **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.

# Table of Contents

	SHORT TITLE		TRIAL OF CONTESTED CLAIMS
1	Short title	24	Procedure
	INTERPRETATION	25	Production and examination
2	Interpretation		CLERK TO KEEP RECORDS
	PRIORITIES ABOLISHED	26	Particulars to be recorded
3	No priorities		CLAIMS IN DIFFERENT DISTRICTS
	DISTRIBUTION OF MONEYS LEVIED	27	Establishing claim in another district
4	Sheriff's records of levy	28	Exceptions may issue to any district
5	Attachment proceeds distributable	29	Decision in one district bind in others
6	Distribution		PAYMENT WITHOUT SEIZURE AND FUNDS IN COURT
7	Distribution of subsequent levies	30	Application of payments by debtor
8	Equality of all executions	31	Fund in court belonging to execution debtor
9	Costs made preference		SCHEME OF DISTRIBUTION AND CONTEST
10	Redemption money made preference	32	Distribution where amount levied insufficient to meet all meets
11	What creditors share in distribution	33	Directions by judge to avoid unnecessary parties and trials
	INTERPLEADER PROCEEDINGS		PROVISIONS AFFECTING SHERIFF
12	Certain creditors share in distribution	34	Sheriff entitled to single poundage only
13	Carriage of proceedings	34	Sheriff's return after levy
14	Costs	36	Compelling payment by sheriff
	CLAIMS FOR WAGES	37	Sheriff's records
15	Employees have priority	38	Sheriff to give information
	EXEMPTIONS	39	Undisposable money to be placed in bank
16	Seizure and sale		GENERAL PROVISIONS
	CERTIFICATE OF PROOF OF CLAIM	40	One seizure sufficient
	PROCEDURE TO OBTAIN CERTIFICATE	41	Direction by judge to sheriff where claim is disputed
17	Proceedings by other creditors where execution unsatisfied	42	Appeal
18	Affidavit and notice of claim served and filed	43	Decisions binding on all creditors
	ISSUE, EFFECT AND DURATION OF CERTIFICATE	44	Powers of judge
19	Certificate granted where claim undisputed	45	Evidence on proceedings before judge
20	Effect of certificate	46	Application <i>District Courts Act</i> and rules of court
21	Duration of certificate	47	Irregularities not to void proceedings
	CONTESTATION OF CLAIM	48	Fees and costs
22	Procedure		SCHEDULE
23	Distribution in case of contestation		

## CHAPTER 90

### An Act to abolish Priority among Execution Creditors

#### SHORT TITLE

##### Short title

**1** This Act may be cited as *The Creditors' Relief Act*.

R.S.S. 1953, c.90, s.1.

#### INTERPRETATION

##### Interpretation

**2** In this Act:

##### “judge”

**1** “**judge**” means a judge of the district court of the judicial district to the sheriff of which a writ of execution is delivered;

##### “sheriff”

**2** “**sheriff**” includes deputy sheriffs, duly appointed bailiffs, coroners and any person discharging the duties of sheriff in the particular case for the time being.

R.S.S. 1940, c.82, s.2; R.S.S. 1953, c.90, s.2.

#### PRIORITIES ABOLISHED

##### No priorities

**3** Subject to the provisions hereinafter contained there shall be no priority among creditors by execution from the Court of Queen's Bench or from a district court.

R.S.S. 1940, c.82, s.3; R.S.S. 1953, c.90, s.3.

#### DISTRIBUTION OF MONEYS LEVIED

##### Sheriff's records of levy

**4** When a sheriff levies money upon an execution against the property of a debtor, he shall forthwith enter in a book to be kept in his office, in such form as is approved by the Lieutenant Governor in Council, the date and the amount of each levy and the date upon which the entry was made. Such book shall be open to public inspection, without charge, during office hours.

R.S.S. 1940, c.82, s.4; R.S.S. 1953, c.90, s.4.

##### Attachment proceeds distributable

**5** Moneys realized by the sheriff as the result of attachment of personal property shall be distributable under the provisions of this Act, and for the purposes thereof shall be deemed to be moneys levied under execution.

R.S.S. 1940, c.82, s.5; R.S.S. 1953, c.90, s.5.

**Distribution**

**6** Subject to section 9, the money levied shall at the expiration of two months from the levy, unless otherwise ordered by a judge, be distributed rateably among all execution creditors and other creditors whose executions or certificates given under this Act were in the sheriff's hands at the time of the levy, or who have delivered executions or certificates to the sheriff within the said two months or within such further time as may be ordered by a judge:

Provided that, if money is realized by sale of land for which a certificate of title has been granted under *The Land Titles Act*, the period of two months shall be computed from the date of confirmation of the sheriff's sale under the said Act.

R.S.S. 1940, c.82, s.6; R.S.S. 1953, c.90, s.6.

**Distribution of subsequent levies**

**7(1)** If the sheriff, subsequently to the entry of the note or memorandum but within two months thereof, levies a further amount upon the property of the debtor, the same shall be dealt with as if such amount had been levied prior to the entry of such note or memorandum.

**(2)** If, after two months, a further amount is levied a new note or memorandum shall be entered and the distribution to be made of the amount so levied, and of any further amount levied within two months of such last mentioned entry, shall be governed by the entry thereof in accordance with the provisions of section 6 and subsection (1) of this section, and so on from time to time:

Provided that the judge may, on application made *ex parte* or upon notice, as the judge may determine, delay any of such distributions or any part thereof to give reasonable time for obtaining judgment or a certificate (form A), and may fix a date for such distributions.

R.S.S. 1940, c.82, s.7; R.S.S. 1953, c.90, s.7.

**Equality of all executions**

**8** In the distribution of moneys under this Act creditors who have executions against goods and lands, or against goods only or lands only, shall be entitled to share rateably with all others any moneys realized under execution either against goods or lands or against both.

R.S.S. 1940, c.82, s.8; R.S.S. 1953, c.90, s.8.

**Costs made preference**

**9** When the amount levied by the sheriff is not sufficient to pay the executions and certificates with costs in full, the moneys shall be applied to the payment rateably of the debts and costs after retaining the sheriff's fees including poundage and after payment in full of the taxed costs and costs of execution, or of obtaining and delivering a certificate, and extra costs of seizure and sale incurred by the creditor at whose instance and under whose execution or certificate the seizure and levy were made.

R.S.S. 1910, c.82, s.9; 1948, c.27, s.2; R.S.S. 1953, c.90, s.9.

**Redemption money made preference**

**10(1)** Notwithstanding anything contained herein but subject to sections 12, 14 and 15, where a creditor having an execution in the sheriff's hands affecting land of the debtor has redeemed land pursuant to subsection (1) of section 20 of *The Tax Enforcement Act*, and the amount of the redemption money has been added to the sum remaining unpaid upon his execution, the money realized by the sheriff by sale of the land so redeemed shall, after retaining the sheriff's fees including poundage, be applied first toward repayment to the creditor of the redemption money.

(2) Where subsection (1) applies to more than one creditor and the money realized is not sufficient to pay the sheriff's fees including poundage and all the redemption moneys, the money shall, after retaining the sheriff's fees including poundage, be applied first toward repayment of the redemption money last paid and the balance, if any, shall be applied toward repayment of the other redemption moneys in the reverse order to that in which they were paid.

1952, c.38, s.1; R.S.S. 1953, c.90, s.10.

**What creditors share in distribution**

**11** No creditor shall be entitled to share in the distribution of money levied from the property of a debtor unless by the delivery of a writ of execution, or otherwise under this Act, he has established a claim against the debtor either alone or jointly with some other creditor.

R.S.S. 1940, c.82, s.10; R.S.S. 1953, c.90, s.11.

**INTERPLEADER PROCEEDINGS****Certain creditors share in distribution**

**12** 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.

R.S.S. 1940, c.82, s.11; R.S.S. 1953, c.90, s.12.

**Carriage of proceedings**

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

R.S.S. 1940, c.82, s.12; R.S.S. 1953, c.90, s.13.

**Costs**

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

R.S.S. 1940, c.82, s.13; R.S.S. 1953, c.90, s.14.

## CLAIMS FOR WAGES

**Employees have priority**

**15(1)** All persons employed by an execution debtor at the time of the seizure under which money has been levied upon any execution and of which levy notice has been given as prescribed in section 4, or at any time before such 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 (form B), 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) On receipt of any such claim the sheriff shall forthwith give notice thereof in writing, with particulars, to the execution debtor, either personally or by registered mail, and the sheriff shall have the same right to interplead in respect thereof as he would have in case of any adverse claim to moneys levied by him under execution.

(3) This section applies to wages or salary, whether the employment in respect of which the same may be payable is by the day, week, month or year.

R.S.S. 1940, c.82, s.14; 1948, c.27, s.3; R.S.S.  
1953, c.90, s.15.

## EXEMPTIONS

**Seizure and sale**

**16(1)** Where money levied is the proceeds of the sale of an article under execution upon a judgment rendered in an action for the price of the article or upon a judgment or order for the payment of alimony or for the payment of maintenance by a husband to his wife or his former wife, as the case may be, or for the payment of maintenance for any child of the debtor or upon a judgment founded upon a separation agreement, and such article would otherwise be exempt from seizure under the provisions of *The Exemptions Act*, such money shall not be subject to distribution under the terms of section 6 or 7, but shall be applied upon the execution under which it was levied.

(2) If 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) If such amount is insufficient to pay the execution debt with costs in full, the execution creditor shall be entitled to share in any money of the execution debtor which may be in the sheriff's hands for distribution under the terms of section 6 or 7 to the extent of the unpaid balance.

R.S.S. 1940, c.82, s.15; 1903, c.36, s.1; R.S.S.  
1953, c.90, s.16.

CERTIFICATE OF PROOF OF CLAIM  
PROCEDURE TO OBTAIN CERTIFICATE

**Proceedings by other creditors where execution unsatisfied**

17 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.

R.S.S. 1940, c.82, s.16; R.S.S. 1953, c.90, s.17.

**Affidavit and notice of claim served and filed**

18(1) An affidavit (form C) of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in case of a joint debt, or by a person cognizant of the facts.

(2) The claimant shall serve on the debtor one of the duplicates and a notice (form D).

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

(4) If no notice is given under subsection (7) the affidavit and notice may be personally served upon the debtor, or they may be served upon him, if in Saskatchewan, by forwarding to him by registered mail a duplicate original of the affidavit and a true copy of the notice, and such service shall be deemed sufficient if a receipt from the postmaster for the letter containing such original copy, and a post office receipt for such letter, purporting to be signed by the debtor, are produced as exhibits to the affidavit of service. In such case the affidavit and notice shall be deemed to be served on the day of the date of the receipt which purports to be signed by the debtor. Notwithstanding anything herein contained, the judge may order substitutional or other service, or may direct some act to be done which shall be deemed sufficient service.

(5) The claimant shall file with the clerk of the district court of the district, the sheriff of which has the execution, one of the duplicate affidavits of claim and a copy of the notice with an affidavit of service thereof (form E).

(6) 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.

(7) An execution debtor may give notice in writing to the sheriff that any claims to be served upon him may be served upon a solicitor in Saskatchewan whose name and address shall be given, or by mailing the same to an address stated in the notice.

(8) The sheriff shall thereupon enter the notice in a book to be kept by him for the purpose, and, so long as any execution which was in the sheriff's hands at the time the notice was given remains in his hands, shall repeat such entry immediately below any entry made in respect of the execution, unless the notice is revoked in writing, in which case the entry thereof shall be marked "revoked".

(9) So long as the notice is not revoked the affidavit of claim and notice may, where a solicitor is named, be served upon an execution debtor by serving the same upon the solicitor, or if mailing is required then by mailing the same by registered post to the address in the notice given by the execution debtor.

(10) 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 in Saskatchewan who may be served on the claimant's behalf, service of any notice, paper or document may be made upon the claimant by filing the same in the office of the clerk of the court and in such case shall be deemed good service.

R.S.S. 1940, c.82, s.17; R.S.S. 1953, c.90, s.18.

### ISSUE, EFFECT AND DURATION OF CERTIFICATE

#### **Certificate granted where claim undisputed**

**19** Where the claim is not contested in the manner hereinafter mentioned, then, after ten days from the day of service, or after the time mentioned in the order provided for by subsection (3) of section 18, or, in the absence of such order, after twenty days if service is made in Canada 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 dispute in favour of the claimant either in whole or in part, the clerk of the district court shall deliver to the creditor a certificate (form A); and, where the claim is disputed as to a part only, the claimant may elect by a writing filed with the clerk to abandon such part and shall be entitled to a certificate as to the residue.

R.S.S. 1940, c.82, s.18; R.S.S. 1953, c.90, s.19.

#### **Effect of certificate**

**20(1)** Upon delivery of the certificate to the sheriff, the claimant shall be deemed to be an execution creditor within the meaning of this Act and shall be entitled to share in any distribution as if he had delivered an execution to the sheriff, and the certificate shall bind the lands and goods of the debtor in the same manner and to the same extent as an execution; subject, however, to the debt being afterwards disputed by a creditor as hereinafter provided.

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

(3) If the certificate is obtained by a solicitor his name and address shall be endorsed thereon; and, if obtained by the claimant in person, there shall be endorsed thereon a statement of some place within three miles of the office of the clerk of the district court of the district within which proceedings are being taken, at which service may be made upon him, and in default thereof service of any notice, paper or document may be made upon the claimant by filing the same in the office of the clerk of the court and in such case shall be deemed good service.

(4) On receiving the certificate the sheriff shall make a further seizure of the property of the debtor to the amount of the debt so claimed, and the sheriff's fees; and so from time to time if further certificates are received.

R.S.S. 1940, c.82, s.19; R.S.S. 1953, c.90, s.20.



**Duration of certificate**

**21(1)** A certificate issued after the thirty-first day of August, 1942 shall remain in force for ten years from the date thereof:

Provided that the period commencing on the twenty-seventh day of March, 1933, and ending on the first day of April, 1944, shall not be included in calculating the said period of ten years.

(2) Notwithstanding the expiry of an execution or certificate before the termination of two months from the date of entry of a note or memorandum under section 4, the execution or certificate, as to any money levied during such two months, shall be deemed to be in full force and effect.

(3) If a new certificate is delivered to the sheriff by the claimant before the expiry by effluxion of time of the certificate mentioned in subsection (1), such certificate shall be accepted by the sheriff in substitution for the certificate already in his hands and shall be of the same force and effect and have the same priority or priorities as that certificate.

R.S.S. 1940, c.82, s.20; 1941, c.16, s.2; 1942, c.18, s.1; R.S.S. 1953, c.90, s.21.

*Note:* Subsection (1) of section 2 of *An Act to amend The Creditors' Relief Act*, chapter 16 of the statutes of 1941, repealed subsections (1) and (3) of section 20 of *The Creditors' Relief Act*, chapter 82 of *The Revised Statutes of Saskatchewan, 1940*, but provides that the repealed subsections continue to apply with respect to certificates issued prior to the first day of September, 1942.

**CONTESTATION OF CLAIM****Procedure**

**22(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 mentioned in the order provided for by subsection (3) of section 18, 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.

(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 in Saskatchewan 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) The claimant whose claim is contested may apply to the judge for an order allowing his claim and determining the amount; and if he does not make such application within eight days after receiving notice of the contestation or within such further time as the judge may allow, which extension may be granted either before or after the expiration of the time limited, he shall be taken to have abandoned his claim.

(10) Where the contestant is a creditor and there is reason to believe that the contestation is not being carried on in good faith any other creditor may apply for an order permitting him to intervene in the contestation.

R.S.S. 1940, c.82, s.21; R.S.S. 1953, c.90, s.22.

#### **Distribution in case of contestation**

**23** Where a claim is contested by a creditor after a contestation 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 two months as is practicable distribute the residue of the money made amongst those entitled.

R.S.S. 1940, c.82, s.22; R.S.S. 1953, c.90, s.23.

### **TRIAL OF CONTESTED CLAIMS**

#### **Procedure**

**24(1)** The judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried in any court and in any district for the determination thereof, and may make such order as to the costs of the proceedings as he deems just.

(2) Where the sum in controversy appears to be over \$1,200 exclusive of costs the judge shall direct that the action be brought or the issue tried in the Court of Queen's Bench and, subject to any order which such court or a judge thereof may make, shall name the district in which the trial is to take place.

(3) Where an issue is directed the trial shall take place and all proceedings subsequent thereto shall be the same as if it has been an action in the court in which it is ordered to be tried.

R.S.S. 1940, c.82, s.23; 1941, c.16, s.3; R.S.S. 1953, c.90, s.24.

**Production and examination**

**25** The same proceedings may be had for the production of documents and for the examination of parties or others, either before or at the trial, as may be taken in an ordinary action, and such proceedings may also be taken before the application to the judge, and as a foundation therefor.

R.S.S. 1940, c.82, s.24; R.S.S. 1953, c.90, s.25.

**CLERK TO KEEP RECORDS****Particulars to be recorded**

**26(1)** The clerk of the district court shall keep a book in which, before giving a certificate or issuing an execution for a claim, he shall enter the following particulars with reference to every claim in respect of which he gives a certificate or issues an execution:

- (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 entry shall, subject to the provisions of this Act, have the effect of and be a final judgment of the court for the debt and costs.

(3) The clerk shall index the entries in a book alphabetically under the names of the debtors.

(4) Where the original papers are lost or destroyed, a copy of the entry shall be evidence of the matters therein set forth.

R.S.S. 1940, c.82, s.25; R.S.S. 1953, c.90, s.26.

**CLAIMS IN DIFFERENT DISTRICTS****Establishing claim in another district**

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

R.S.S. 1940, c.82, s.26; R.S.S. 1953, c.90, s.27.

**Exceptions may issue to any district**

**28** A creditor, entitled to obtain a certificate from the any district clerk of a district court, may also sue out an execution into any district in the same manner as on an ordinary judgment; but this shall not prejudice the right of any other creditor to contest the claim of such first mentioned creditor under the provisions of this Act.

R.S.S. 1940, c.82, s.27; R.S.S. 1953, c.90, s.28.

**Decision in one district bind in others**

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

R.S.S. 1940, c.82, s.28; R.S.S. 1953, c.90, s.29.

## PAYMENT WITHOUT SEIZURE AND FUNDS IN COURT

**Application of payments by debtor**

**30(1)** Where the debtor, without any seizure by the sheriff, pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment, no note or memorandum shall be entered as required by section 4 and no further proceedings shall be taken under this Act against the debtor by virtue of such executions.

(2) Save as aforesaid, after an execution has been filed with the sheriff or a certificate has been delivered to him, the withdrawal or expiry of the 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 or return of the writ, shall not affect the proceedings to be taken under this Act, and, except so far as the action taken in regard to the writ may affect the amount to be levied, the sheriff shall proceed and levy upon the goods or lands of the debtor or both as he would have proceeded had the writ remained in his hands in full force to be executed, and may also take the like proceedings as he would have been entitled to take had the writ been a writ of *venditioni exponas*.

(3) Where a debtor, without any seizure by the sheriff, pays to the sheriff part of the amount owing in respect of an execution or certificate in the sheriff's hands and there is at the time no other execution or certificate in the sheriff's hands the sheriff shall apply the same on the execution or certificate so in his hands and sections 4 and 6 shall not apply to the money so received by the sheriff.

R.S.S. 1940, c.82, s.29; R.S.S. 1953, c.90, s.30.

**Fund in court belonging to execution debtor**

**31** 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 executions and certificates 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 levied under execution within the meaning of this Act.

R.S.S. 1910, c.82, s.30; R.S.S. 1953, c.90, s.31.

## SCHEME OF DISTRIBUTION AND CONTEST

**Distribution where amount levied insufficient to meet all meets**

**32(1)** Where, at the time for distribution, the money is insufficient to pay all claims in full, the sheriff shall first prepare for examination by the debtor and his creditors a list of the creditors entitled to share in the distribution, with the amount due to each for principal, interest and costs.

(2) The list shall be so arranged as to show the amount payable to each creditor and the total amount to be distributed; and the sheriff shall deliver, or send by registered post to the debtor and to each creditor or his solicitor, a copy of the list.

(3) If within ten days after all the copies have been delivered or posted, or within such further time as the judge may allow, no objection is made as provided by this Act, the sheriff shall make distribution forthwith pursuant to such list.

(4) If objection is made the sheriff shall forthwith distribute rateably so much of the money made, and among such persons, as will not interfere with the effect of the objection in case the same should be allowed.

(5) Any person affected by the proposed scheme of distribution may contest the same by giving, within the time mentioned in subsection (3), a notice in writing to the sheriff, stating his objection to the scheme and the grounds thereof.

(6) The contestant shall, within 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), obtain from the judge an appointment for hearing and determining the matter in dispute.

(8) A copy of the appointment and a notice in writing (form F) of the objections, stating the grounds thereof, shall be served by the contestant upon the debtor unless he is the contestant, and upon the creditors or such of them as the judge may direct.

(9) The judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried with or without a jury in any court and in any district for the determination thereof, and may make such order as to the costs of the proceedings as he deems just, and the provisions of subsections (2) and (3) of section 24 shall apply.

(10) Where a claimant is held to be not entitled, or to be entitled to part only of his claim, the money retained pending the contestation, or the portion as to which the claimant has failed, shall be distributed among the creditors who would have been entitled thereto, as it would have been distributed had the claim in respect thereof not been made.

R.S.S. 1940, c.82, s.31; R.S.S. 1953, c.90, s.32.

**Directions by judge to avoid unnecessary parties and trials**

**33** Where several creditors are interested in a contestation, either for or against the same, the judge shall give such directions for saving the expense of an unnecessary number of parties and trials, and of unnecessary proceedings, as he 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.

R.S.S. 1940, c.82, s.32; R.S.S. 1953, c.90, s.33.

## PROVISIONS AFFECTING SHERIFF

**Sheriff entitled to single poundage only**

**34** Where money is to be distributed under this Act the sheriff shall not be entitled to poundage as upon separate executions or certificates but only upon the net proceeds distributed by him and at the same rate as if the whole amount had been payable under one writ.

R.S.S. 1940, c.82, s.33; R.S.S. 1953, c.90, s.34.

**Sheriff's return after levy**

**35** 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 benefits thereof, and the sheriff shall, upon payment being made to the person entitled upon 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.

R.S.S. 1940, c.82, s.34; R.S.S. 1953, c.90, s.35.

**Compelling payment by sheriff**

**36** 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.

R.S.S. 1940, c.82, s.35; R.S.S. 1953, c.90, s.36.

**Sheriff's records**

**37** The sheriff shall, pending the distribution of the moneys levied, keep in the book mentioned in section 4 a statement showing in respect of any debtor on whose property money has been levied the following particulars:

- (a) the amount levied or received and the dates of levy or receipt;
- (b) each execution or certificate in his hands and the amount thereof;

and such statement shall be amended from time to time as additional amounts are levied or received or further executions or certificates are received.

R.S.S. 1940, c.82, s.36; R.S.S. 1953, c.90, s.37.

**Sheriff to give information**

**38** The sheriff shall at all times, without fee, answer information any reasonable question which he may be asked orally with respect to the estate of the debtor by a creditor or any one acting on behalf of a creditor, and shall aid him in obtaining full information as to the value of the estate and the probable dividend to be realized therefrom in his district, or any other information in connection with the estate which the creditor may reasonably desire to obtain.

R.S.S. 1940 c.82, s.37; R.S.S. 1953, c.90, s.38.

**Undisposable money to be placed in bank**

**39** Where a sheriff has money in his hands which by reason of the provisions of this Act or otherwise he cannot immediately pay over, he shall deposit the money in a bank designated by the Attorney General and the deposit shall be made in the name of the sheriff in trust.

R.S.S. 1940, c.82, s.38; R.S.S. 1953, c.90, s.39.

**GENERAL PROVISIONS****One seizure sufficient**

**40** One seizure by the sheriff of the goods and lands of the debtor shall be deemed sufficient and shall be deemed a seizure on behalf of all creditors sharing under such seizure as hereinbefore provided.

R.S.S. 1940, c.82, s.39; R.S.S. 1953, c.90, s.40.

**Direction by judge to sheriff where claim is disputed**

**41(1)** The judge may direct the sheriff to levy for an amount sufficient to cover a claim which is in dispute or part is disputed thereof, or, if it appears to the judge that it is improbable that the debtor has other sufficient property, he may direct the sheriff to retain in his hands during the contestation the share which, if the claim is sustained, will be apportionable to it, or a part thereof.

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

R.S.S. 1940, c.82, s.40; R.S.S. 1953, c.90, s.41.

**Appeal**

**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 of a question involving a sum greater than \$200, 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 judge of a district court.

R.S.S. 1940, c.82, s.41; R.S.S. 1953, c.90, s.42.

**Decisions binding on all creditors**

**43** A decision of a judge of the Court of Queen's Bench or the district court, or of the Court of Appeal shall bind the debtor and all his creditors, unless it appears that the decision was obtained by fraud or collusion.

R.S.S. 1940, c.82, s.42; R.S.S. 1953, c.90, s.43.

**Powers of judge**

**44** For the purpose of giving effect to this Act and carrying out its provisions, a judge shall have all the powers which a judge of a district court has by law for other purposes.

R.S.S. 1940, c.82, s.43; R.S.S. 1953, c.90, s.44.

**Evidence on proceedings before judge**

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

1940, c.82, s.44; R.S.S. 1953, c.90, s.45.



**Application *District Courts Act* and rules of court**

**46** Except where inconsistent with this Act, the provisions of *The District Courts Act* and the rules of court as to practice and procedure in force in the district courts shall apply to proceedings under this Act.

R.S.S. 1940, c.82, s.45; R.S.S. 1953, c.90, s.46.

**Irregularities not to void proceedings**

**47** No proceeding under this Act shall be void for any in defect of form, and the rules for amending or otherwise curing irregularities or defects which may from time to time be in force in the Court of Queen's Bench for Saskatchewan shall apply to 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.

R.S.S. 1940, c.82, s.46; R.S.S. 1953, c.90, s.47.

**Fees and costs**

**48** The judges of the Court of Queen's Bench may, by rule of court, prescribe the fees and costs to be payable for all services under this Act.

R.S.S. 1940, c.82, s.47; R.S.S. 1953, c.90, s.48.

---

## SCHEDULE

### FORM A

(Sections 7, 19 and 27)

## CERTIFICATE OF PROOF OF CLAIM

### THE CREDITORS' RELIEF ACT

In the District Court of the Judicial District of \_\_\_\_\_  
 A.B. of \_\_\_\_\_ in the Province of \_\_\_\_\_ claimant, and  
 C.D. of \_\_\_\_\_ in the Province of \_\_\_\_\_ debtor.

I, G.H., clerk of the District Court of the Judicial 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 Creditors' Relief Act*, upon the said debtor, and that it thereby appears that such service was made on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

2 And I further certify that the debtor has not contested the said claim and that claimant is entitled to the amount thereof and to the further sum of \$\_\_\_\_\_ for costs.

Or



## CREDITORS' RELIEF

c. 90

2 And I further certify that the debtor 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):

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

[L.S.]

G.H.,

Clerk.

## FORM B

(Section 15)

## AFFIDAVIT OF CLAIM FOR WAGES

Between A.B. of \_\_\_\_\_ claimant for wages and C.D. of \_\_\_\_\_ execution debtor.

I, A.B. of \_\_\_\_\_ (*occupation*) make oath and say:

1 That I am the above named claimant and was in the employment of the above named execution debtor at the time of the sheriff's seizure herein (*or was in the employ of the said execution debtor up to the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_*).

2 I claim priority over the execution creditors to the extent of \$\_\_\_\_\_ being the amount the said execution debtor is justly and truly indebted to me for wages (*or salary*) earned by me between the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ my said employment being at the rate of \$\_\_\_\_\_ per day (*week or month*).

3 In addition to the claim set out in paragraph 2 hereof, I claim to share *pro rata* with the execution creditors for the sum of \$\_\_\_\_\_ being the amount the above named execution debtor is justly and truly indebted to me for wages (*or salary*) earned between the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ my said employment during such period being at the rate of \$\_\_\_\_\_ per day (*week or month*).

Sworn before me at \_\_\_\_\_  
 \_\_\_\_\_ in the Province of \_\_\_\_\_  
 \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_, 19\_\_\_\_. } A.B.

\_\_\_\_\_  
 A Commissioner, *ect.*

## FORM C

(Section 18 (1))

## AFFIDAVIT OF CLAIM

## THE CREDITORS' RELIEF ACT

In the District Court of the Judicial District of \_\_\_\_\_  
 A.B. of \_\_\_\_\_ in the Province of \_\_\_\_\_ claimant, and  
 C.D. of \_\_\_\_\_ in the Province of \_\_\_\_\_ debtor.

I, A.B., of \_\_\_\_\_ in the Province of \_\_\_\_\_  
 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 \_\_\_\_\_  
 \_\_\_\_\_ in the Province of \_\_\_\_\_  
 \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_, 19\_\_\_\_. } A.B.

\_\_\_\_\_  
 A Commissioner, ect. (or as  
 the case may be).

## FORM D

(Section 18 (2))

## NOTICE TO BE SERVED WITH CLAIM

## THE CREDITORS' RELIEF ACT

In the District Court of the Judicial District of \_\_\_\_\_  
 A.B. of \_\_\_\_\_ in the Province of \_\_\_\_\_ claimant, and  
 C.D. of \_\_\_\_\_ in the Province of \_\_\_\_\_ 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 Judicial District of 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 Creditors' Relief Act*.

And further take notice that if you desire to contest the said claim, or any part thereof, you must, within ten days (1) 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 the 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 endorse 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 Saskatchewan who may be served on your behalf, service may be made upon you of any notice, paper, or document, by filing the same in the office of the clerk of the court and in such case shall be deemed good service.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*Claimant.*

*Note:—*(1) If further time is given by a judge the notice should be varied accordingly.

FORM E

(Section 18 (5))

AFFIDAVIT OF SERVICE OF CLAIM

THE CREDITORS' RELIEF ACT

In the District Court of the Judicial District of \_\_\_\_\_  
A.B. of \_\_\_\_\_ in the Province of \_\_\_\_\_ claimant, and  
C.D. of \_\_\_\_\_ in the Province of \_\_\_\_\_ debtor.

INSERT DATE AS I, G.H., of \_\_\_\_\_ in the Judicial District of \_\_\_\_\_  
OF EXHIBIT C \_\_\_\_\_ (occupation) make oath  
and say:

That I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally serve C.D., the above named debtor with an original affidavit identical with the annexed affidavit marked exhibit A by delivering the same to and leaving the same with the said debtor on the day last aforesaid at; (*or as the case may be*) and that there was at the time of such service attached to (*or endorsed upon*) the said affidavit so served a true copy of the notice addressed to the debtor, now attached to (*or endorsed upon*) the said annexed affidavit and marked exhibit B.

*Or*

1 That I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, serve the above named debtor with an original affidavit identical with the affidavit hereunto annexed and marked exhibit envelope addressed to the debtor at \_\_\_\_\_ and posted the same by registered mail in the post office at \_\_\_\_\_.

2 Hereunto annexed and marked exhibit B is the receipt from the postmaster at \_\_\_\_\_ for such registered letter; and hereunto annexed and marked exhibit C is the receipt of the debtor for such registered letter.

3 That there was attached to (*or* endorsed upon) the said affidavit so enclosed a true copy of the notice addressed to the debtor, now attached to (*or* endorsed upon) the said annexed affidavit and marked exhibit D.

Sworn before me at \_\_\_\_\_  
 \_\_\_\_\_ in the Province of \_\_\_\_\_  
 \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_, 19\_\_\_\_. } *G.H.*

\_\_\_\_\_  
*A Commissioner, ect. (or as  
 the case may be).*

FORM F  
 (Section 32 (8))

NOTICE OF CONTESTATION OF SCHEME OF DISTRIBUTION

THE CREDITORS' RELIEF ACT

In the District Court of the Judicial 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 Judicial 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.*