

UNEDITED

The Executions Act

being

Chapter 89 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FOR HISTORICAL REFERENCE ONLY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.

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CHAPTER 89

An Act respecting Executions

SHORT TITLE

Short title

1 This Act may be cited as *The Executions Act*.

R.S.S. 1953, c.89, s.1.

EXECUTIONS AGAINST GOODS

Writ to bind all goods of debtor

2 Every writ of execution against goods shall, from the time of its delivery to the sheriff to be executed, bind all the goods of the judgment debtor within the judicial district of the said sheriff, and shall take priority over any chattel mortgage or bill of sale executed by him after the receipt by the sheriff of such writ of execution or which by virtue of the provisions of *The Bills of Sale Act* has not taken effect prior to such receipt as against the interests of the creditor under the execution, but shall not take priority over a *bona fide* sale by the judgment debtor, accompanied by an immediate delivery and an actual and continued change of possession of the goods sold, without actual notice to the purchaser that such writ is in the hands of the sheriff of the judicial district wherein the said judgment debtor resides or carries on business.

R.S.S. 1940, c.81, s.2; 1943, c.14, s.2; R.S.S. 1953, c.89, s.2.

Equity of redemption in goods

3 Under any writ of execution against goods, the sheriff in charged with the execution of the same, may seize and sell the interest or equity of redemption in any goods or chattels, including leasehold interests in any lands, of the party against whom the writ has issued, and such sale shall convey whatever interest the judgment debtor had in the goods and chattels at the time of the seizure.

R.S.S. 1940, c.81, s.3; R.S.S. 1953, c.89, s.3.

Sheriff taking bond

4 Where the sheriff having seized goods under a writ of execution, takes a bond from the execution debtor binding him to hold the goods for the sheriff and to deliver them upon demand, the sheriff shall be deemed to remain in possession during the currency of the bond and the obligor to be his bailee.

R.S.S. 1940, c.81, s.4; R.S.S. 1953, c.89, s.4.

SEIZURE OF MONEY AND SECURITIES

Powers of sheriff

5 The sheriff having the execution of a writ against goods, may seize money or bank notes belonging to the debtor, including the surplus of a former execution against him and any moneys levied under an execution issued upon a judgment in his favour, as well as any cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money belonging to such debtor, and he may, subject to the provisions of *The Creditor's Relief Act*, pay and assign such securities to the execution creditor at the sum actually due on and secured by them respectively, if the creditor will accept them as money collected, or he may sue in his own name for the recovery of the sums secured thereby.

R.S.S. 1940, c.81, s.5; R.S.S. 1953, c.89, s.5.

Transfer of money, etc., a discharge

6 The transfer, by the sheriff to the execution creditor, a discharge of any cheques or property named in section 5 shall, to the extent of the amount due on and secured thereby, discharge the sheriff.

R.S.S. 1940, c.81, s.6; R.S.S. 1953, c.89, s.6.

Effect of payment to sheriff

7 Payment to the sheriff by the person liable on such cheque, bill of exchange, promissory note, bond, mortgage, specialty or other security, with or without suit, or recovery by the sheriff from him, shall discharge the person so liable to the extent of such payment or recovery, from his liability thereon.

R.S.S. 1940, c.81, s.7; R.S.S. 1953, c.89, s.7.

Payment of proceeds

8 Subject to the provisions of *The Creditors' Relief Act* the sheriff shall pay over to the party who sued out the execution the money so paid or recovered, or a sufficient sum to discharge the amount directed to be levied, and if, after satisfaction thereof and of the fees, poundage and expenses of the sheriff, a surplus remains, the same shall be paid to the party against whom the execution issued.

R.S.S. 1940, c.81, s.8; R.S.S. 1953, c.89, s.8.

Indemnity of sheriff

9 A sheriff shall not be bound to sue the person liable upon such cheque, bill of exchange, promissory note, bond, mortgage, specialty or other security, unless the party who sued out the execution enters into a bond with two sufficient sureties to indemnify the sheriff from all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof; and the expenses of the bond, not exceeding \$5, may be deducted from any money recovered in the action.

R.S.S. 1940, c.81, s.9; R.S.S. 1953, c.89, s.9.

SEIZURE OF MORTGAGES

Powers of sheriff

10(1) A sheriff, charged with the execution of a writ of execution against goods, may seize thereunder any registered mortgage in favour of the execution debtor, whether upon lands or chattels, by delivering a notice in writing of such seizure to the proper officer in the office where the mortgage is registered; but no such mortgage shall be affected or charged by any writ of execution until delivery of the notice.

(2) Upon receipt of such notice the proper officer shall make an entry thereof in the register, for which he shall be entitled to a fee of fifty cents.

(3) The mortgagor shall not be affected by such seizure until a notice thereof has been served upon him personally, and any payments made by him to the mortgagee before such service shall be valid.

R.S.S. 1940, c.81, s.10; R.S.S. 1953, c.89, s.10.

ORDER CHARGING STOCKS AND SHARES

Charging orders

11(1) If any person against whom judgment has been entered has Government stock, funds or annuities of the Province of Saskatchewan, or any stock or shares of or in a company, standing in his name in his own right, or in the name of any person in trust for him, a judge of the Court of Queen's Bench may, on the application of a judgment creditor, order that such stock, funds or annuities shall stand charged with the amount of the judgment and interest.

(2) Such order shall entitle the judgment creditor to all the remedies he would have been entitled to if the charge had been made in his favour by the judgment debtor, but no proceedings shall be taken to enforce the charge until after the expiration of six calendar months from the date of the order.

R.S.S. 1910, c.81, s.11; R.S.S. 1953, c.89, s.11.

Procedure

12 Every such order shall be made in the first instance *ex parte* and without notice to the judgment debtor, and shall be a summons to show cause only.

R.S.S. 1940, c.81, s.12; R.S.S. 1953, c.89, s.12.

Effect of summons

13(1) Such summons, if any Government stock, funds or annuities standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected thereby, shall restrain the Provincial Treasurer from permitting a transfer of such stock in the meantime and until the order shall be made absolute or discharged; and if any stock or shares of or in any company standing in the name of the judgment debtor in his own right or in the name of any person in trust for him, is or are to be affected, shall in like manner restrain the company from permitting a transfer thereof.

(2) If, after notice of such order to the persons to be restrained thereby or in the case of companies to any authorized agent of the company, such persons or company shall before the order is discharged or made absolute permit a transfer to be made, the persons or company so doing shall be liable to the judgment creditor for the value of the property charged and transferred or such part thereof as may be sufficient to satisfy his judgment.

(3) No disposition of the judgment debtor made after the notice mentioned in subsection (2) and before the order is made absolute or discharged, shall be valid or effectual as against the judgment creditor.

(4) Unless the judgment debtor, within a time to be mentioned therein, shows to a judge sufficient cause to the contrary, the order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute.

(5) The judge dealing with the matter may, upon the application of the judgment debtor or any person interested, discharge or vary the order and award such costs as he may think fit.

R.S.S. 1940, c.81, s.13; R.S.S. 1953, c.89, s.13.

Orders as judgments

14 All orders of a judge whereby any sum of money, or any costs, charges or expenses, are payable, shall have the effect of judgments in the courts, and the persons to whom such moneys, or costs, charges or expenses, are payable, shall be deemed judgment creditors within the meaning of this Act, and shall have all the remedies hereby given to judgment creditors.

R.S.S. 1940, c.81, s.14; R.S.S. 1953, c.89, s.14.

Company in liquidation

15 When a charging order absolute is made or has been made against any stock, share or shares of a company which is in liquidation, the court or a judge may direct the liquidator to pay to the judgment creditor any moneys from time to time payable in respect of such stock, share or shares, to the amount necessary to satisfy the judgment debt and costs.

R.S.S. 1940, c.81, s.15; R.S.S. 1953, c.89, s.15.

SALE BY THE SHERIFF

Notice of sale

16 No sale of personal property except grain seized under a writ of execution or process shall be made without the sale being advertised for at least ten days, by public notice thereof, describing the property to be sold, copies of which notice shall be posted in the offices of the local registrar and sheriff, and at least five public places in the locality where the same is to be sold and, at the discretion of the sheriff, inserted in short form in a newspaper published or circulating in the locality where the sale is to take place; but when the articles seized are of a perishable nature, or are of such a character as not to allow of a delay of ten days as hereinbefore provided, the same may be sold forthwith.

R.S.S. 1940, c.81, s.16; R.S.S. 1953, c.89, s.16.

Growing crops

17 No sale of growing crops, whether grain, or roots, shall take place until after the same have been harvested and threshed, or taken and removed from the ground, when after all charges for harvesting, threshing, taking, and removing, have been paid, and all exemptions been claimed and reserved, the balance may be sold.

R.S.S. 1940, c.81, s.17; R.S.S. 1953, c.89, s.17.

Sale of grain

18 Where the sheriff seizes grain under a writ of execution, or other process, against the goods of a member of a company or association established for the purpose of carrying on the business of buying, selling and marketing grain on the non-profit co-operative plan, which such member is under contract to deliver to such company or association, he shall sell the grain so seized through such company or association, and all moneys as and when received on account of such grain, shall be considered levies under the provisions of *The Creditors' Relief Act*.

R.S.S. 1940, c.81, s.18; R.S.S. 1953, c.89, s.18.

Sale of mortgage

19 If a mortgage of land, seized by the sheriff under a writ of execution against goods, is not paid or satisfied, nor the writ satisfied or withdrawn, within one year from the day on which the writ was delivered to him, the sheriff may, during the currency of the writ, sell the mortgage in the same manner as he sells lands under a writ of execution against lands, and the provisions of sections 20 and 21 shall, so far as applicable and with the necessary modifications, apply to such sale.

R.S.S. 1940, c.81, s.19; R.S.S. 1953, c.89, s.19.

EXECUTION AGAINST LANDS

Issue of execution

20(1) A person entitled to issue a writ of execution against goods, may then issue the same as well against the lands of the debtor in any judicial district, provided that not less than \$50 remain due and unpaid on the judgment, and may deliver the same to the sheriff of the district named in the writ and charged with the execution of the writ against goods, at or after the time of delivery to him of the writ against goods, and either before or after any return thereof; but such officer shall not sell the said lands, within less than one year from the day on which the writ against lands is delivered to him, nor until three months' notice of such sale has been posted in a conspicuous place in the sheriff's and local registrar's offices respectively, and published for two months in the newspaper nearest the lands to be sold.

(2) Where more than one newspaper is published in the same locality the notice of sale may be published in either one.

(3) One month's notice of such sale shall be given by registered letter to all persons appearing by the records of the land titles office to have any mortgage, encumbrance or lien upon, or estate, right, title or interest in or to the said land subsequent to the writ under which the lands are to be sold, unless such notice is dispensed with by a judge's order on application which may be made *ex parte*.

R.S.S. 1940, c.81, s.20; R.S.S. 1953, c.89, s.20.

Return of *nulla bona* before sale of lands

21(1) No sale of lands shall be had under an execution until after a return of *nulla bona*, in whole or in part, in the same suit or matter by the same officer.

Adjournment of sale

(2) Where there are no bidders, or no sufficient bid has been offered for the land to be sold as aforesaid, the sheriff may adjourn the sale from time to time, and a notice of the time and place of such adjourned sale shall be posted by him in a conspicuous place in the sheriff's and local registrar's offices respectively, which notice shall be sufficient.

R.S.S. 1940, c.81, s.21; R.S.S. 1953, c.89, s.21.

Registration and renewal of writs

22(1) The sheriff or other duly qualified officer, after the delivery to him of a writ of execution then in force affecting land shall, if a copy of such writ has not already been delivered, or transmitted to the registrar of land titles, and on payment to him by the execution creditor named therein of fifty cents together with the amount of the registrar's fee, forthwith deliver or transmit by registered letter to the registrar a copy of the writ and of all endorsements thereon, certified under his hand and seal of office, if any, together with the registration fee.

(2) Such writ shall, from and only from the receipt of a certified copy thereof by the registrar for the land registration district in which the land affected thereby is situated, bind and form a lien and charge on all the lands of which the debtor may be or become registered owner situated within the judicial district the sheriff of which transmits such copy, including lands declared by *The Exemptions Act* to be free from seizure by virtue of writs of execution, but subject, nevertheless, to such equities, charges or encumbrances as exist against the execution debtor in such land at the time of such receipt:

Provided that nothing contained herein shall be taken to authorize the sheriff to sell any lands declared by *The Exemptions Act* to be free from seizure by virtue of writs of execution.

(3) Every writ of execution issued upon a judgment or order dated on or after the first day of September, 1942, shall state the date of the judgment or order on which it is issued.

(4) Every such writ, a certified copy of which is received by the registrar, shall, at the expiration of ten years from the date shown by the certified copy to be the date of the judgment or order upon which the writ was issued, cease to bind or affect the land of the execution debtor in his district:

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.

R.S.S. 1940, c.81, s.22; 1941, c.15, s.2; 1942, c.17, s.1; 1943, c.14, s.3; R.S.S. 1953, c.89, s.22.

Note: Subsections (3) and (4) of section 22 as they appear in chapter 81 of *The Revised Statutes of Saskatchewan, 1940*, continue to apply to writs of execution issued prior to the first day of September, 1942. See 1941, c.15, s.2.

Assignment of execution

23 If an execution is assigned the assignee shall, from the time of registration of the assignment in the proper land titles office, have the same rights as those held at that time by the assignor.

R.S.S. 1940, c.81, s.23; R.S.S. 1953, c.89, s.23.

Satisfaction or withdrawal of writ

24 Upon the satisfaction or withdrawal from his hands of a writ a copy of which, or notice of which under section 10, has been transmitted or delivered to the registrar, the sheriff or other duly qualified officer shall forthwith transmit to the registrar a certificate under his official seal, if any, to the effect that such writ has been satisfied or with drawn.

R.S.S. 1940, c.81, s.24; R.S.S. 1953, c.89, s.24.

Sheriff's transfer of unpatented land

25 In cases where the sheriff or other officer sells under execution land for which a certificate of title has not been granted, a transfer executed by him in the form prescribed for land for which a certificate of title has been granted, shall be sufficient to convey the execution debtor's interest therein to the purchaser.

R.S.S. 1940, c.81, s.25; R.S.S. 1953, c.89, s.25.

Judgment debts to carry interest

26 Every judgment debt shall carry interest at the rate of five per cent per annum from the time of entering up the judgment until the same is satisfied, and such interest may be levied under a writ of execution on such judgment.

R.S.S. 1940, c.81, s.26; R.S.S. 1953, c.89, s.26.

EXECUTION ON JUDGMENT OBTAINED UPON A JUDGMENT**Priority of old writ retained by new writ in certain case**

27(1) Notwithstanding anything contained in this Act or *The Land Titles Act*, where action is brought on a judgment or order of any court in Saskatchewan for the payment of money and:

- (a) a writ of execution, issued on the judgment or order, is in force at the time judgment is entered in the action; and
- (b) before the writ mentioned in clause (a) expires by effluxion of time, a writ of execution is issued on the new judgment and is delivered to the sheriff and, if the writ affects lands, a certified copy thereof is received by the registrar of land titles;

then the writ mentioned in clause (a) shall, notwithstanding the entry of judgment, be deemed to have continued and to be in force until delivery to the sheriff of the writ issued on the new judgment and, if both writs affect lands, until receipt by the registrar of a certified copy of the writ issued on the new judgment; and the last mentioned writ shall have the same priority or priorities as the writ mentioned in clause (a).

(2) The priority or priorities provided by subsection (1) shall, with respect to any costs of the action upon the judgment or order, extend only to the taxable costs of obtaining such judgment by default; and the writ issued on the new judgment shall show the amount of the taxed costs of the said action.

(3) The writ of execution issued on the new judgment shall contain a statement to the following effect:

“This writ of execution is issued on a judgment obtained in an action upon a former judgment, and if the same is delivered to the sheriff or a certified copy thereof is received by the registrar before the _____ day of _____, 19____, (fill in the date of expiry by effluxion of time of the writ mentioned in clause (a) of subsection (1) of section 27 of *The Executions Act*) it shall have the priority or priorities provided by section 27 of *The Executions Act*.”

(4) Upon delivery to the sheriff of the writ issued on the new judgment before the date mentioned in the statement provided for in subsection (3), he shall endorse upon it and enter in the execution docket a memorandum as follows:

“Substituted for prior writ of execution dated the _____ day of _____, 19____”. (fill in the date of the prior writ).

(5) Upon receipt by the registrar of a certified copy of such writ before the date mentioned in the said statement, he shall file the same and shall endorse upon it and enter in the execution register a memorandum as follows:

“Substituted for prior writ of execution dated the _____ day of _____, 19____, and filed as number “ (fill in the date and number of the prior writ).

and shall describe such writ as a “substituted writ of execution” on all abstracts or certificates issued by him containing a reference to such writ.

R.S.S. 1940, c.81, s.27; 1941, c.15, s.4; R.S.S. 1953, c.89, s.27.

Note: Section 27 of chapter 81 of *The Revised Statutes of Saskatchewan, 1940*, continues to apply to writs of execution issued upon judgments or orders dated prior to the first day of September, 1942. See 1941, c.15, s.4.

WITHDRAWAL BY SHERIFF FROM POSSESSION OF PROPERTY SEIZED

Protection order

28(1) Where a claim is made to or in respect of property taken in execution by a sheriff or to the proceeds or value of such property, and the execution creditor has given notice to the sheriff that he admits the claim, the sheriff may thereupon withdraw from possession, and may apply in chambers for an order protecting him from any action in respect of the seizure and possession of the property, and the judge may make such order as he deems just and reasonable.

(2) The claimant shall be given notice of an application under subsection (1) and may attend the hearing, and if he attends the judge may, in and for the purposes of the application, make such orders as to costs as he deems just and reasonable.

R.S.S. 1940, c.81, s.28; R.S.S. 1953, c.89, s.28.