

The Creditors' Relief Act

being

Chapter 67 of *The Revised Statutes of Saskatchewan, 1930*
(effective February 1, 1931).

FOR HISTORICAL REFERENCE ONLY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 | 23 | Procedure |
| | INTERPRETATION | 24 | Production and examination |
| 2 | Interpretation | | CLERK TO KEEP RECORDS |
| | PRIORITIES ABOLISHED | 25 | Particulars to be recorded |
| 3 | No priorities | | CLAIMS IN DIFFERENT DISTRICTS |
| | DISTRIBUTION OF MONEYS LEVIED | 26 | Establishing claim in another district |
| 4 | Sheriffs records of levy | 27 | Executions may issue to any district |
| 5 | Attachment proceeds distributable | | PAYMENT WITHOUT SEIZURE AND FUNDS IN COURT |
| 6 | Distribution | 28 | Decision in one district binding in others |
| 7 | Distribution of subsequent levies | 29 | Application of payments by debtor |
| 8 | Equality of all executions | 30 | Fund in court belonging to execution debtor |
| 9 | Costs made preference | 31 | Distribution where amount levied insufficient to meet all claims |
| 10 | What creditors share in distribution | 32 | Directions by judge to avoid unnecessary parties and trials |
| | INTERPLEADER PROCEEDINGS | | PROVISIONS AFFECTING SHERIFF |
| 11 | Certain creditors only entitled to share | 33 | Sheriff entitled to single poundage only |
| 12 | Carriage of proceedings | 34 | Sheriffs return after levy |
| 13 | Costs | 35 | Compelling payment by sheriff |
| | CLAIMS FOR WAGES | 36 | Sheriffs records |
| 14 | Employees have priority | 37 | Sheriff to give information |
| | EXEMPTIONS | 38 | Undisposable money to be placed in bank |
| 15 | Seizure and sale | | GENERAL PROVISIONS |
| | PROCEDURE TO OBTAIN CERTIFICATE | 39 | One seizure sufficient |
| 16 | Proceedings by other creditors where execution unsatisfied | 40 | Direction by judge to sheriff where claim is disputed |
| 17 | Affadavit and notice of claim served and filed | 41 | Appeal |
| | ISSUE, EFFECT AND DURATION OF CERTIFICATE | 42 | Decisions binding on all creditors |
| 18 | Certificate granted where claim undisputed | 43 | Powers of judge |
| 19 | Effect of certificate | 43 | Evidence on proceeding before judge |
| 20 | Duration of certificate | 45 | Application of <i>District Courts Act</i> and rules of court |
| | CONTESTATION OF CLAIM | 46 | Irregularities not to void proceedings |
| 21 | Procedure | 47 | Fees and costs |
| 22 | Distribution in case of contestation | | |

CHAPTER 67

An Act to abolish Priority among Execution Creditors

SHORT TITLE

Short title

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

1923, c.21, s.1; R.S.S. 1930, c.67, s.1.

INTERPRETATION

Interpretation

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

“Sheriff”

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

“Judge”

2. “**Judge**” means a judge of the district court of the judicial district to the sheriff of which a writ of execution is delivered.

1923, c.21, s.2; R.S.S. 1930, c.67, 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 King's Bench or from a district court.

1923, c.21, s.3; R.S.S. 1930, c.67, 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 shall be 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.

1928, c.23, s.2; R.S.S. 1930, c.67, s.4.

Attachment proceeds distributable

- 5 Moneys realised 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.

1923, c.21, s.5; R.S.S. 1930, c.67, s.5.

Distribution

6 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, subject, however, to the provisions of section 9:

Provided that, if money is realised 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.

1923, c.21, s.6; 1930, c.25, s.2; R.S.S. 1930, c.67, s.6.

Distribution of subsequent levies

7(1) In case 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 the 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 to be 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.

1923, c.21, s.7; 1928-29, c.20, s.2; R.S.S. 1930, c.67, 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 realised under execution either against goods or lands or against both.

1923, c.21, s.8; R.S.S. 1930, c.67, 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 such debts and costs after retaining the sheriff's fees 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 whose writ of execution or certificate was placed in the sheriff's hands first among those under whose executions or certificates the levy was made.

1923, c.21, s.9; 1930, c.25, s.3; R.S.S. 1930, c.67, s.9.

What creditors share in distribution

10 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.

1923, c.21, s.10; R.S.S. 1930, c.67, s.10.

INTERPLEADER PROCEEDINGS**Certain creditors only entitled to share**

11 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.

1923, c.21, s.11; R.S.S. 1930, c.67, s.11.

Carriage of proceedings

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

1923, c.21, s.12; R.S.S. 1930, c.67, s.12.

Costs

13 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.

1923, c.21, s.13; R.S.S. 1930, c.67, s.13.

CLAIMS FOR WAGES**Employees have priority**

14(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 within one month 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 money's levied by him under execution.

(3) 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.

1923, c.21, s.14; R.S.S. 1930, c.67, s.14.

EXEMPTIONS

Seizure and sale

15(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 such article, 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) 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 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.

1923, c.21, s.15; R.S.S. 1930, c.67, s.15.

CERTIFICATE OF PROOF OF CLAIM

PROCEDURE TO OBTAIN CERTIFICATE

Proceedings by other creditors where execution unsatisfied

16 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 authorised may be taken by other creditors or claimants in respect of debts which are overdue.

1928, c.23, s.3; R.S.S. 1930, c.67, s.16.

Affidavit and notice of claim served and filed

17(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 cognisant 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.

1923, c.21, s.17; 1924, c.7, s.2; R.S.S. 1930, c.67, s.17.

ISSUE, EFFECT AND DURATION OF CERTIFICATE

Certificate granted where claim undisputed

18 In case the claim is not contested in 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 17, as the case may be, 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.

1923, c.21, s.18; 1924, c.7, s.3; R.S.S. 1930, c.67, s.18.

Effect of certificate

19(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 indorsed 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 in case further certificates are received.

1923, c.21, s.19; R.S.S. 1930, c.67, s.19.

Duration of certificate

20(1) A certificate shall remain in force for six years from the date thereof but may from time to time be renewed in the same manner as an execution.

(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) Notwithstanding the expiry of a certificate, it may be renewed in the same manner as if it had not expired, and when renewed it shall, subject to the rights of third parties accrued since the date of expiry, be of the same force and effect as if it had been renewed prior to that date.

1923, c.21, s.20; 1925-26, c.10, s.1; 1928, c.23, s.4; R.S.S. 1930, c.67, s.20.

CONTESTATION OF CLAIM

Procedure

- 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 mentioned in the order provided for by subsection (3) of section 17, 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.
- (7) The affidavit of the debtor or other contestant shall have indorsed 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, if any, 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.

1923, c.21, s.21; 1928-29, c.20, s.3; R.S.S. 1930,
c.67, s.21.

Distribution in case of contestation

22 Where a claim is contested by a creditor after a 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.

1923, c.21, s.22; R.S.S. 1930, c.67, s.22.

TRIAL OF CONTESTED CLAIMS**Procedure**

23(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 \$800 exclusive of costs the judge shall direct that the action be brought or the issue tried in the Court of King's Bench, 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.

(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.

1923, c.21, s.23; R.S.S. 1930, c.67, s.23.

Production and examination

24 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.

1923, c.21, s.24; R.S.S. 1930, c.67, s.24.

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

25(1) The clerk of the district court shall keep a book in which, before giving a certificate or issuing an execution to be recorded 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.

1923, c.21, s.25; R.S.S. 1930, c.67, s.25.

CLAIMS IN DIFFERENT DISTRICTS

Establishing claim in another district

26 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.

1923, c.21, s.26; R.S.S. 1930, c.67, s.26.

Executions may issue to any district

27 A creditor, entitled to obtain a certificate from the 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.

1923, c.21, s.27; R.S.S. 1930, c.67, s.27.

Decision in one district binding in others

28 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.

1923, c.21, s.28; R.S.S. 1930, c.67, s.28.

PAYMENT WITHOUT SEIZURE AND FUNDS IN COURT

Application of payments by debtor

29(1) In case 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 the executions having been in the sheriff's hands.

(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) In case 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.

1923, c.21, s.29; 1924, c.7, s.4; R.S.S. 1930, c.67, s.29.

Fund in court belonging to execution debtor

30 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.

1923, c.21, s.30; R.S.S. 1930, c.67, s.30.

SCHEME OF DISTRIBUTION AND CONTEST

Distribution where amount levied insufficient to meet all claims

31(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 to meet all 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 23 shall apply.

(10) 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.

1923, c.21, s.31; R.S.S. 1930, c.67, s.31.

Directions by judge to avoid unnecessary parties and trials

32 Where several creditors are interested in a contestation either for or against the same, the judge shall give such parties 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.

1923, c.21, s.32; R.S.S. 1930, c.67, s.32.

PROVISIONS AFFECTING SHERIFF

Sheriff entitled to single poundage only

33 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 only distributed by him and at the same rate as if the whole amount had been payable under one writ.

1923, c.21, s.33; R.S.S. 1930, c.67, s.33.

Sheriffs return after levy

34 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 any such execution or certificate, indorse 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.

1923, c.21, s.34; R.S.S. 1930, c.67, s.34.

Compelling payment by sheriff

35 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.

1923, c.21, s.35; R.S.S. 1930, c.67, s.35.

Sheriff's records

36 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.

1928, c.23, s.5; R.S.S. 1930, c.67, s.36.

Sheriff to give information

37 The sheriff shall at all times, without fee, answer 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 realised therefrom in his district, or any other information in connection with the estate which the creditor may reasonably desire to obtain.

1923, c.21, s.37; R.S.S. 1930, c.67, s.37.

Undisposable money to be placed in bank

38 In case 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 to be designated by the Attorney General and such deposit shall be made in the name of the sheriff in trust.

1923, c.21, s.38; R.S.S. 1930, c.67, s.38.

GENERAL PROVISIONS

One seizure sufficient

39 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.

1923, c.21, s.39; R.S.S. 1930, c.67, s.39.

Direction by judge to sheriff where claim is disputed

40(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.

1923, c.21, s.40; R.S.S. 1930, c.67, s.40.

Appeal

41 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 \$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 district court or a judge thereof.

1923, c.21, s.41; R.S.S. 1930, c.67, s.41.

Decisions binding on all creditors

42(1) The decision of a judge of the Court of King's Bench or the district court, or 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.

1923, c.21, s.42; R.S.S. 1930, c.67, s.42.

Powers of judge

43 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.

1923, c.21, s.43; R.S.S. 1930, c.67, s.43.

Evidence on proceeding before judge

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

1923, c.21, s.44; R.S.S. 1930, c.67, s.44.

Application of *District Courts Act* and rules of court

45 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.

1923, c.21, s.45; R.S.S. 1930, c.67, s.45.

Irregularities not to void proceedings

46 No proceeding under this Act shall be void for any 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 King's Bench of 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.

1923, c.21, s.46; R.S.S. 1930, c.67, s.46.

Fees and costs

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

1923, c.21, s.47; R.S.S. 1930, c.67, s.47.

SCHEDULE

FORM A

(Section 7, 18 and 26)

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

2. And I further certify that the debtor has only consented 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 has been allowed by the judge at the sum of \$ _____ with \$ _____
 for costs.

G.H.,

[L.S.]

Clerk.

CREDITORS' RELIEF

c. 67

FORM B

(Section 14)

AFFIDAVIT OF CLAIM FOR WAGES

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

I, AB. 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 Commissioner, etc.

}
A.B.

FORM C

(Section 17(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 authorised 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, etc.(or as the
 case may be).*

FORM D

(Section 17 (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 (10) 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 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 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 17(5))

AFFIDAVIT OF SERVICE OF CLAIM
THE CREDITORS' RELIEF ACT

In the District Court of the Judicial District of _____

A.B., claimant, and C.D., debtor.

I, G.H., of _____ in the Judicial District of _____ (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 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 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 A having enclosed such original in an 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 indorsed upon) the said affidavit so enclosed a true copy of the notice addressed to the debtor, now attached to (or indorsed 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, etc.(or as the
case may be).*

FORM F

(Section 31 (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 *E.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.*

FOR HISTORICAL REFERENCE ONLY