



BY AUTHORITY.

THE SECOND YEAR OF THE REIGN OF HIS MAJESTY
KING EDWARD VII.

CAP. III.

An Act to abolish priority among Execution Creditors.

Passed 10th April, 1902.

BE it enacted by the Lieutenant-Governor and Legislative Assembly as follows:—

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

2. In this Act the word "Sheriff" shall include Coroners; the word "Judge" shall mean the Judge of the County Court of the County in which the claims are filed, or a Judge of another County authorized to act for the Judge of the County Court in which the claims are filed. If a Judge is disqualified to act in a matter arising under this Act, the Judge of the County Court of an adjoining County shall have jurisdiction to act in his place.

3. Subject to the provisions hereinafter contained, there shall be no priority among creditors by execution from the Supreme Court or County Courts.

4.—(1) In case a Sheriff levies money upon an execution against the property of a debtor where the amount endorsed to levy is upwards of \$200, he shall forthwith enter in a book to be kept in his office, open to public inspection without charge, a notice stating that such levy has been made, and the amount thereof, and the money shall thereafter be distributed ratably amongst all execution creditors and other creditors whose writs, or certificates given under this Act, were in the Sheriff's hands at the time of the levy, or who shall deliver their writs or certificates to the said Sheriff within one month from the entry of notice; subject, however, to the provisions hereinafter contained as to the retention of dividends in the case of contested claims, and to the payment of the costs of the creditors under whose writ the amount was made.

(2) The notice shall state the day upon which it was entered, and may be in Form A in the Schedule hereto.

(3) The two preceding sub-sections shall not apply to any moneys received by a Sheriff as the proceeds of a sale of property by him under an interpleader order; but, upon the determination of the interpleader issue in favor of the creditors, the moneys, whether in the Sheriff's hands or in Court pending the trial of the issue, shall be distributed by the Sheriff among the creditors contesting the adverse claim.

(4) Where proceedings are taken by the Sheriff or other officer 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. The Court or Judge may direct that one creditor shall have the carriage of all interpleader proceedings on behalf of all creditors interested, and the costs thereof, as between attorney and client, shall be a first charge upon the moneys or goods which may be found by the proceedings to be applicable upon the executions or certificates.

(5) "Adverse claim" in the next preceding sub-section shall mean any claim to contest which an interpleader issue is directed; and upon any interpleader application the Court or Judge shall have a discretion to allow the other creditors who desire to take part in the contest a reasonable time in which to place their executions in the Sheriff's hands, upon such terms as to costs and otherwise as may be just and reasonable.

(6) In case the Sheriff shall, subsequently to the entry of the notice, but within the month, levy a further amount from the property of a debtor, the same shall be dealt with as if such amount had been levied prior to the notice, but if after the month a further amount is levied, a new notice shall be entered; and the distribution to be made of the amount so levied, and of the further amount levied within a month of the entry of the last mentioned notice, shall be governed by the entry thereof in accordance with the foregoing provisions of this section; and so on from time to time.

(7) In distributing money under this section, creditors who have executions against goods or lands only, or against goods and lands, shall be entitled to share ratably with all others in moneys realized under execution against either goods or lands, or both.

5. No creditor shall be entitled to share in the distribution of money levied from the property of a debtor unless either 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 person.

6. If a debtor permits an execution, which is endorsed to levy for upwards of \$200, issued against him under which any of his goods or chattels are seized by a Sheriff, to remain unsatisfied in the Sheriff's hands till within two days of the time fixed by the Sheriff for the sale thereof, or for twenty days after the seizure, or allows an execution endorsed to levy for the amount aforesaid, against his lands to remain unsatisfied for nine months after it is placed in the Sheriff's hands, the proceedings hereinafter authorized may be taken by other creditors as claimants in respect of debts, whether the same are overdue or not; provided, however, that in any proceedings taken in respect of claims not due, there shall be a rebate of interest for the time which would elapse before such debt will be due.

7.—(1) An affidavit to the effect of Form B in the Schedule to this Act, 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. Prior to or simultaneously with the

filing, with the Clerk of the County Court, of the affidavits, there shall be filed with the Clerk the 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.

(2) The claimant is to serve on the debtor one of the duplicates, and a notice stating that the claimant intends to file the other duplicate with the Clerk of the County Court by reason of there being in the Sheriff's hands a writ of execution against the goods and chattels (or lands or both) of the debtor, and that the claimant intends to call on the Sheriff to levy the said debt out of the property of the debtor, under the authority of this Act; which notice is to contain the other particulars, and may be in the Form C given in the Schedule to this Act. The notice may be either attached to the affidavit served, or endorsed thereon; where the affidavit is to be served out of New Brunswick the Judge shall limit the time at which the next step may be taken by the claimant as hereinafter provided.

8.—(1) An execution debtor may give notice in writing to the Sheriff that any claims to be served upon him may be served upon any attorney in the Province, whose name and address shall be given, or by mailing the same to an address stated in the notice; the Sheriff shall thereupon enter the notice in the said book, and so long as any execution, which was in the Sheriff's hands at the time the notice was given, shall remain in his hands, shall repeat such entry immediately below any notice (Form A) given in respect of the execution, unless the notice be revoked in writing, in which case the entry or entries thereof shall be marked "revoked."

(2) So long as the notice remains unrevoked as aforesaid, an affidavit of claim and accompanying notice under this Act may be served upon an execution debtor by serving the same upon the attorney in accordance with this Act where an attorney is named, or if mailing is required, then by mailing the same, enclosed in an envelope, prepaid and registered to the address given in the notice; provided, however, that the Judge may in his discretion make such other order as to him may seem just as to the mode in which such service may be effected.

(3) In case the notice (Form C) served on a debtor does not state some place in or within three miles of the shire town of the County in 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 attorney in the Province who may be served in the claimant's behalf, service of any notice, paper or document requiring service may be made upon the claimant by mailing the same, prepaid and registered, enclosed in an envelope addressed to the claimant at the shire town.

(4) The claimant is to file with the Clerk of the County Court of the County, the Sheriff of which has the execution, one of the said duplicate affidavits of claim, and a copy of the said notice, with an affidavit of due service, which affidavit may be in Form D.

(5) Where no notice is given by the execution debtor, as provided for in sub-section (1) of this section, a copy of the affidavit and the notice shall, where practicable, be personally served upon the debtor; but if it be made to appear to a Judge that the claimant is unable to effect prompt personal service, the Judge may order substituted or other service, or may appoint some act to be done which shall be deemed sufficient service.

9.—(1) If the claim is not contested in manner hereinafter mentioned, the County Court Clerk, after ten days from the day of personal service, or service under sub section (2) of section 8, or within the time mentioned in the order, (as the case may be) on application and the filing with him of proof of service upon the debtor of an affidavit and notice in accordance with this Act, or proof of compliance with a Judge's order in that behalf, or upon the determination of the dispute in favor of the claimant, either in whole or in part, shall deliver to the creditor, or any one on his behalf, a certificate to the effect of Form E in the Schedule hereto; and in case the claim is only disputed as to a part, the creditor may elect, by a writing filed with the Clerk, to abandon such part, and obtain a certificate as to the residue.

(2) This certificate is to be delivered to the Sheriff, and thereby from the time of the delivery the claimant shall be deemed to be an execution creditor within the meaning of this Act, and to be entitled to share in whatever is made under the executions of creditors in the Sheriff's hands, as if he had delivered to the Sheriff an execution against lands or goods, or both, (as the case may be), and the certificate is in like manner to bind the lands and goods of the debtor; subject, however, to the debt being afterwards disputed by a creditor, as hereinafter provided for.

(3) A certificate under this Act shall, in interpleader proceedings, be deemed to be an execution.

(4) If the certificate is obtained by an attorney, the name and place of abode of the attorney are to be endorsed thereon; and if the certificate is sued out by the claimant in person, there shall be endorsed thereon a statement of some place in, or within three miles of, the shire town of the County in which the proceedings are being taken, at which service may be made upon the claimant; and, in default thereof, service of any notice, paper or document requiring service, may be made upon the claimant by mailing the same, prepaid and registered, enclosed in an envelope addressed to the claimant at the shire town.

(5) On receiving the certificate the Sheriff shall make a further seizure of the lands and tenements, or goods and chattels, on both, as the case may be (if any), of the debtor to the amount of the debt so claimed, and the Sheriff's fees; and so on from time to time in case more certificates are received after the further seizure so made.

(6) A certificate issued under this Act shall remain in force for three years from the date thereof, and no longer, unless renewed, but such certificate may from time to time be renewed in the same manner as a writ of execution, but, notwithstanding the expiry of a writ or certificate prior to the determination of the month during which a notice of moneys having been made is under this Act required to be posted, the said writ and certificate shall, as to any money levied during such month, be deemed to be in full force and effect.