



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

JUDGMENT AND EXECUTION ACT

PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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JUDGMENT AND EXECUTION ACT

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JUDGMENT AND EXECUTION ACT CHAPTER J-2

JUDGMENTS

1. Definitions

(1) In this Act

- (a) repealed by 2008, c.20, s.72;
- (b) “**judgment**” means a decision that finally disposes of an application or action on its merits, including an order, decree or rule, and includes a judgment entered in consequence of the default of a party;
- (c) “**judgment creditor**” includes a party entitled to a payment of money and costs, or either, under a judgment, and any executor, administrator or assign of a judgment creditor;
- (d) “**judgment debtor**” includes a party required to make a payment of money and costs, or either, under an order, and any executor, administrator or assign of a judgment debtor
- (e) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (f) “**registered judgment**” means a judgment on which a minute of judgment has been registered with the Registrar;
- (g) “**Registrar**” means the Registrar of the Court of Appeal and the Supreme Court, and includes a deputy registrar of the court of Appeal or the Supreme Court;

Judgment lien against land

- (2) A judgment entered against any person in the Court of Appeal or the Supreme Court operates as a lien and charge upon all lands, tenements, and hereditaments, leasehold as well as freehold, of or to which such person is, at the time of entering up the judgment or at any time afterwards, seised, possessed or entitled for any estate or interest whatsoever, in law or in equity, whether in possession, reversion, remainder or expectancy, or over which such person, at the time of entering up the judgment, or at any time afterwards, has or shall have any disposing power which he might, without the assent of any other person, exercise for his own benefit.

Judgment binding upon certain persons

- (3) A judgment referred to in subsection (2) is binding as against the person against whom it has been or shall be so entered, and against all persons claiming under and against him after the judgment, and is also binding as against the issue of his body, his heirs, executors, administrators and personal representatives, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion of other

interest in or out of the lands, tenements and hereditaments. *R.S.P.E.I. 1974, Cap. J-2, s.1; 1994, c.30, s.1; 1997, c.20, s.3; 2000, c.5, s.3; 2008, c.20, s.72(50); 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

2. Remedies of judgment creditor

Every such judgment creditor shall have such and the same remedies in the Supreme Court against the hereditaments so charged, by virtue of this Act, or any part thereof, as he would be entitled to if the person against whom such judgment has been or shall be so entered had power to charge the same hereditaments, and had, by writing under his hand, agreed to charge the same with the amount of such judgment debt, and interest. *R.S.P.E.I. 1974, Cap. J-2, s.2; 1974(2nd), c.65, s.16.*

3. Filing minute of judgment, precondition to effective judgment

- (1) No judgment of the Court of Appeal or the Supreme Court, or of the Federal Court of Canada affects any lands, tenements or hereditaments, as to purchasers, mortgagees, creditors, or other encumbrancers, unless and until a minute thereof signed by the attorney filing it, containing the name and the usual or last place of abode of the person whose estate is intended to be affected thereby, and the court and title of the cause or matter in which the judgment, decree or order has been obtained and the amount of the debt, damages, costs or moneys thereby secured or ordered to be paid, shall be filed with the Registrar.

Certification of certain facts on minute

- (2) Upon receipt of the minute referred to in subsection (1) and upon payment of the fee prescribed under the *Court Fees Act* R.S.P.E.I. 1988, Cap. C-27.001 the Registrar shall certify thereon the year, month, day of the month, and hour of the day when it was presented for registry; and shall also enter the same in the margin of the register book, opposite the commencement of the registry of such minute.

Order in which filed

- (3) The Registrar shall duly record any such minutes in the order in which they come to his hands, without favour or partiality. *R.S.P.E.I. 1974, Cap. J-2, s.3; 1974(2nd), c.64, s.16; 1002, c.36, s.1; 1994, c.30, s.2; 2008, c.20, s.72(50); 2012, c.10, s.5; 2015, c.36, s.36(2).*

4. Certification before filing, where

No minute of a judgment of the Federal Court of Canada shall be received or registered by the Registrar unless certified by the Registrar of that court to represent a corresponding judgment in that court. *R.S.P.E.I. 1974, Cap. J-2, s.4; 1974(2nd), c.64, s.16.*

5. Priority of registered judgments

Every registered judgment is and shall be a prior lien and charge upon any lands, tenements and hereditaments of the defendant thereto, which have been or shall be granted or mortgaged by any unregistered deed or instrument, in the same manner as if the unregistered deed or instrument had never been made or executed. *R.S.P.E.I. 1974, Cap. J-2, s.5; 1994, c.30, s.3.*

6. Judgment not binding on land, where

- (1) No judgment of the Court of Appeal or the Supreme Court binds or is a lien upon any lands or any interest or estate therein vested in any person by any deed containing any clause or proviso for the redemption of the said lands upon the payment of any sum of money, or the performance of any condition.



Garnishee Act, effect on

- (2) The provisions of this section do not restrict the operation of the liens created by or under the provisions of the *Garnishee Act* R.S.P.E.I. 1988, Cap. G-2. *R.S.P.E.I. 1974, Cap. J-2, s.6; 2008, c.20, s.72(50)*.

7. Recording in register

- (1) The Registrar shall keep a record, in books or other appropriate means, for the purpose of registering all minutes of judgment, and also in another record for that purpose, make and keep an index to such record, wherein he shall enter in alphabetical order the names of the persons whose estates or interests are intended to be affected by the judgments.

Microfilm

- (2) When directed to do so by the Minister, the Registrar shall cause any document registered in the registry to be photographed on microfilm and the microfilm, for the purposes of this Act or an Act authorizing registration in the registry, is deemed to be the document that was registered.

Destruction of records

- (3) When directed to do so by the Minister, the Registrar shall authorize the destruction of any books, documents, records, cards, papers or forms that have been preserved in the registry for so long that it appear that they need not be preserved any longer. *1994, c.30, s.4*.

8. Requisition of search

- (1) Upon payment of the fee prescribed under the *Court Fees Act*, any person may, in person at the principal office or by mail,
- (a) requisition a search against the name of any individual or business debtor and obtain the results of the search;
 - (b) requisition the printed results of the search mentioned in clause (a);
 - (c) obtain a certified copy of any registered document.

Idem

- (2) Upon receipt of the prescribed fee in the prescribed manner, a deputy registrar employed at the office other than the principal office shall requisition, by telephone, telegraph message or mail,
- (a) oral or printed search results of a search against the name of any individual or business debtor;
 - (b) a certified copy of any registered document.

Registrar may substitute printed search

- (3) If oral search results, are requested and the results of the search are, in the opinion of the Registrar, of such length as to preclude oral search results the Registrar may, after informing the person searching of his decision, forward by mail the printed results of the search.

Making of requisition

- (4) Requisitions authorized by subsection (2) may be made by persons other than the Deputy Registrar with the approval of the Registrar.

Idem

- (5) Where so approved by the Minister, searches may be requisitioned and provided in a manner other than that provided in subsection (1) or (2).

Contents of search results

- (6) The results of any search conducted under this section may contain information actively maintained for inquiries in the registry and may include information corresponding to search criteria similar to those provided by the person requisitioning the search.

Printed search result proof

- (7) A printed search result certified by the Registrar is receivable in evidence as proof of its contents without proof of his signature or official position.

Certified copy proof

- (8) A copy of any registered document certified by the Registrar is receivable in evidence as proof for all purposes, without proof of his signature or official position. *1994, c.30, s.4; 2008, c.20, s.72(50); 2012, c.10, s.5.*

8.1 Action against Registrar

- (1) Subject to this section, any person who suffers loss or damage as a result of his reliance on a registered document or printed search result that is incorrect because of an error in the operation of the registry may bring action against the Registrar in the court for recovery of damages, but no award of damages to any single claimant shall exceed the prescribed amount.

Limitation of action

- (2) No action for damages under this section lies against the Registrar unless it is commenced within one year after the time when the loss or damage first came to the knowledge of the claimant.

Class action

- (3) Any action for recovery of damages under this section brought by a person shall be brought as an action on behalf of all other persons who relied on the same registered document or printed search result, and the judgment in the action, except to the extent that it relates to the finding of the fact of reliance by each person and provides for subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the Registrar in respect of an error or omission in the operation of the registry.

Idem

- (4) An action for recovery of damages under this section brought by a trustee under a trust indenture or any person with an interest in a trust indenture shall be brought as an action on behalf of all persons with interests in the same trust indenture, and the judgment in the action, except to the extent that it provides for subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the Registrar in respect of the error or omission.

Proof of reliance

- (5) In an action brought by a trustee under a trust indenture or by any person with an interest in a trust indenture, proof that each person relied on the registered document or printed search results is not necessary if it is established that the trustee relied on the registered document or printed search results, but no person is entitled to recover damages under this section if he



knew at the time he acquired his interest that the registered document or printed search results relied on by the trustee were incorrect.

Total claims

- (6) The total of all claims for compensation paid under subsections (3) and (4) in any single action shall not exceed the prescribed amount.

Powers of court

- (7) In proceedings under subsections (3) and (4), the court may make any order that it considers appropriate in order to give notice to members of the class.

Total claims

- (8) Subject to subsection (6), the court may order payment of all or a portion of the damages awarded to identified members of the class at any time after judgment, and the obligation of the Registrar to satisfy the judgment is satisfied to the extent that payment is made.

Payment of claim

- (9) The Minister of Finance may, without action brought, pay the amount of a claim against the Registrar when authorized to do so by the Minister on the report of the Registrar setting forth the facts and receipt of a certificate of the Registrar that in his opinion the claim is just and reasonable.

Payment of award of damages

- (10) When an award of damages has been made in favour of the claimant and the time for appeal has expired or when an appeal is taken and it is disposed of in favour of the plaintiff, the Minister shall authorize payment in the manner and in the amount specified in the judgment, including any costs awarded to the claimant.

Immunity from action

- (11) Notwithstanding the *Crown Proceedings Act* R.S.P.E.I. 1988, Cap. C-32, no action shall be brought against the Crown in right of the province, the Registrar or any officer or employee of the registry in respect of the discharge or purported discharge of any duty or function under this or any other Act or under the regulations, other than as provided in this section.

Fund

- (12) The Minister may establish a fund to meet claims under this section and may require a prescribed portion of the fees received under this Act to be paid into the fund. *1994, c.30, s.4; 2010, c.31, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

9. Notice of judgment not effective until

- (1) No notice of any judgment of the Court of Appeal or the Supreme Court, or of the Federal Court of Canada affects any lands, tenements, hereditaments, or leaseholds, at law or in equity, as to purchasers, mortgagees, creditors or encumbrancers unless and until a minute thereof as herein mentioned shall have been filed with the Registrar as aforesaid.

Future judgment creditors

- (2) As between future judgment creditors, any registered judgment, (whether entered up for securing the payment of money agreed to be lent, or otherwise) shall, during the continuance of the registry have priority over any judgment previously entered but whereof a minute has not been registered as aforesaid; and the person claiming under the registered judgment shall

not be affected by notice of any previous unregistered judgment. *R.S.P.E.I. 1974, Cap. J-2, s.9; 1974(2nd), c.64, s.16; 2008,c.20,s.72(50); 2015,c.36,s.36(2).*

10. Reminuting judgments

- (1) All registered judgments shall, after the expiration of ten years from the date of registration thereof, be void against lands, tenements, hereditaments and leaseholds as to purchasers, mortgagees, creditors, or encumbrancers, unless a minute in the form and substance as a minute required under section 3 is filed with the Registrar at Charlottetown and registered, before the expiration of ten years from the date of the registration of the judgment.

Effect of re-minuting

- (2) A minute filed with the Registrar under subsection (1) shall after the expiration of ten years from the date of registration thereof, be void against lands, tenements, hereditaments and leaseholds as to purchasers, mortgagees, creditors or encumbrancers.

Maximum life of registered judgment

- (3) A registered judgment can be extended by only one ten-year period so that the maximum term of registration for any judgment is twenty years. *1994, c.30,5; 2015,c.36,s.36(3).*

11. Executing a levy, effect on other judgments

The issuing or levying of an execution on lands, tenements, hereditaments, leaseholds, or any interest therein under any judgment, does not entitle the judgment to preference or priority over others which have been registered before it; and every purchaser under the execution, takes and holds his purchase subject to and bound by all judgments, decrees or orders standing against the person whose lands, tenements, hereditaments or leaseholds are so sold, according to the order and priority in which the judgments, decrees, or orders bind the lands, tenements, hereditaments and leaseholds respectively. *R.S.P.E.I. 1974, Cap. J-2, s.12.*

12. Presumption

All registered judgments not being over ten years standing from the date of registration shall be presumed to be due and unpaid, notwithstanding that execution may never have been issued, until satisfaction is entered for them. *1994, c.30, s.6.*

13. Release of lands from registered judgment, effect on unreleased lands

The release from a registered judgment of the Court of Appeal or the Supreme Court or part of any lands or hereditaments charged therewith does not affect the validity of the registered judgment as to the lands or hereditaments remaining unreleased or as to any other property not specifically released, without prejudice nevertheless to the rights of all persons interested in the lands or hereditaments remaining unreleased and not concurring in or confirming the release. *R.S.P.E.I. 1974, Cap. J-2, s.14; 1994, c.30, s.7; 2008,c.20,s.72(50).*

14. Satisfaction of judgment executed outside province

Notwithstanding any provision in the rules of court of the Court of Appeal or the Supreme Court, a satisfaction of judgment executed outside the province may be acknowledged and proved for filing in the manner prescribed by the *Affidavits Act* R.S.P.E.I. 1988, Cap. A-7. *R.S.P.E.I. 1974, Cap. J-2, s.15; 2008,c.20,s.72(50).*



15. Assignment of judgments, filing

- (1) All assignments of judgments entered in the Supreme Court may be filed in the office of the Registrar at Charlottetown, if before the assignment is filed the due execution thereof is proved by affidavit in the manner prescribed by the *Affidavits Act*.

Assignments not filed: effect

- (2) All assignments of, or instruments affecting, any judgment entered in the Supreme Court, and not filed in the office of the Registrar as aforesaid, are void against subsequent assignees of the same judgments, for valuable consideration, whose assignments or instruments are previously filed, whether such assignees had notice thereof or not.

Endorsements on assignment

- (3) It is the duty of the Registrar to endorse on every assignment by judgment when filed with him the date of the filing and to annex the assignment to the record of the judgment assigned.

Assignment covers several judgments

- (4) Where any assignment presented for filing as aforesaid, purports to assign more than one judgment, the assignment shall be annexed to the record of any one of the judgments so assigned, and the Registrar shall endorse on the record of each of the other judgments so assigned, a memorandum of such assignment. *R.S.P.E.I. 1974, Cap. J-2, s.16.*

EXECUTION AGAINST CHATTELS

16. Execution against goods and chattels

Execution may be issued out of the Supreme Court against the goods and chattels of the party against whom judgment has been recovered; the execution binds the goods and chattels from the time that the execution is delivered to the sheriff to be executed. *R.S.P.E.I. 1974, Cap. J-2, s.17.*

17. Parchment not required

No writ of execution shall be required to be written on parchment. *R.S.P.E.I. 1974, Cap. J-2, s.18.*

18. Execution out of superior court of record

Execution may be issued out of any superior court of record in the province to enforce payment of any moneys ordered to be paid by any judgment recovered in the court, and goods, chattels, and lands of the judgment debtor may be taken and disposed of thereunder, in like manner and with the like effect as if the judgment had been recovered in the Supreme Court. *R.S.P.E.I. 1974, Cap. J-2, s.19.*

19. Discharge

A written order, under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* has been issued, shall justify the sheriff, jailer or person in whose custody the party may be under writ, in discharging such party, unless the party for whom such attorney professes to act has given written notice to the contrary to the sheriff, jailer, or person in whose custody the opposite party may be. *R.S.P.E.I. 1974, Cap. J-2, s.20.*

20. Execution: seizure of gold, silver, moneys, etc.

- (1) The sheriff or other officer, having the execution of a writ against goods shall seize any gold and silver coin, money or bank notes, including any surplus of a former execution against the debtor, and any cheques, bills of exchange, promissory notes, or debentures, belonging to the person against whose effects the writ of execution has issued, and shall pay or deliver to the party who sued out the execution the money or bank notes so seized, or a sufficient part thereof, and all such cheques, bills of exchange, or promissory notes, taken in execution may be paid to the party who sued out the execution at their par value as money collected, if he will accept them, otherwise they shall be sold as other chattels.

Assignment of promissory note etc. seized

- (2) The sheriff, or other officer seizing or taking any cheque, bill of exchange, promissory note, or debenture under subsection (1), shall execute to the person who sued out the execution if he accepts it, or in the event of its being sold then to the purchaser thereof, an assignment of the cheque, bill of exchange, promissory note, or debenture, in his own name for the recovery of the amount recoverable upon the cheque, bill of exchange, promissory note, or debenture, in like manner as if it had been endorsed or assigned to him by the person to whom it belonged at the time of the seizure.

Discharge: payment to sheriff

- (3) The payment to the sheriff or other officer before assignment, or afterwards to the assignee thereof, by the party liable on the cheque, bill of exchange, promissory note, or debenture, with or without suit, or the recovery and levying execution against the party so liable, discharges him to the extent of the payment, or of the recovery and levy in execution, as the case may be, from his liability thereon. *R.S.P.E.I. 1974, Cap. J-2, s.21.*

21. Seizure of goods subject to security interest

A sheriff to whom any execution against goods is directed may seize any security interest of the execution debtor by registering a financing change statement in the prescribed form under the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1 and may sell the security interest subject to the rights of persons having priority of claims thereto under that Act. *1997,c.33, Schedule.*

22. Seizure and sale of equity of redemption

Under any writ of execution against goods the sheriff, or other officer to whom it is directed, may seize and sell the interest or equity of redemption in any goods or chattels of the party against whom the writ has issued, and such sale shall convey whatever interest such party has in the goods and chattels at the time of the seizure. *R.S.P.E.I. 1974, Cap. J-2, s.23.*

23. Seizure and sale of joint stocks

- (1) The stock held by any person, in any company in the province having transferable joint stock, may be taken and sold in execution, in the same manner as other personal property of a debtor.

Sheriff's notice of seizure of joint stocks

- (2) The sheriff to whom a writ of execution is addressed, on being informed on behalf of the plaintiff that the defendant has stock in any company, shall forthwith serve a notice on the company that all the shares that the defendant may have in the stock of the company are



seized, and from the time of the service no transfer of stock by the defendant is valid unless or until the seizure is discharged.

Transfer of stock to purchaser

- (3) Upon the production of a certificate, under the hand of the sheriff, declaring to whom any stock taken under any execution has been sold by him, the proper officer of the company, the stock of which has been sold, shall transfer the stock from the name of the original stockholder to the name of the purchaser under the execution, and the purchaser is thereupon entitled to receive a certificate of being the holder of the stock so sold and to receive all dividends and profits, premiums and bonuses arising from such stock and in all other respects be considered in the place of the former stockholder.

Shares deemed personally

- (4) The shares in the said stock shall be held to be personal property found by the sheriff in the place where notice of the seizure thereof is served as aforesaid. *R.S.P.E.I. 1974, Cap. J-2, s.24.*

24. Exemption from seizure

The following goods and chattels are exempt from seizure under a writ of execution:

- (a) the necessary and ordinary clothing of the debtor and his family;
- (a.1) any motor vehicle owned by the debtor not exceeding \$3,000 in value;
- (b) the household furniture, utensils, equipment, food and fuel that are contained in and form part of the permanent home of the debtor, not exceeding \$2,000 in value;
- (c) in the case of a debtor other than a farmer, tools, instruments and other chattels ordinarily used by the debtor in his business, trade or calling, not exceeding \$2,000 in value;
- (d) in the case of a debtor who is a farmer,
 - (i) livestock, fowl, agricultural machinery and equipment ordinarily used by the debtor in his farm operation, not exceeding \$5,000 in value, and
 - (ii) sufficient seed to seed all his land under cultivation not exceeding 100 acres.
R.S.P.E.I. 1974, Cap. J-2, s.25; 1983, c.23, s.1; 1990, c.25, s.1.

25. Articles for which debt contracted

- (1) The exemptions prescribed in section 24 do not apply to exempt any chattel from seizure to satisfy a debt contracted for the purchase of that chattel.

Maintenance

- (2) The exemptions prescribed in section 24 do not apply to exempt any article from seizure to satisfy a debt for maintenance of a spouse, former spouse or child except tools, instruments and other chattels ordinarily used by the debtor in his business, trade or calling.

Attempt to defeat creditors

- (3) The exemptions prescribed in section 24 do not apply to chattels purchased for the purpose of defeating claims of creditors.

Corporations

- (4) The exemptions prescribed in section 24 are not available to a corporate debtor.

Unpaid fines

- (5) The exemption set out in clause 24(a.1) does not apply to exempt a motor vehicle from seizure to satisfy all or any part of a fine the payment of which is in default under the *Summary Proceedings Act* R.S.P.E.I. 1988, Cap. S-9;1983, c.23, s.1; 2001, c.55,s.2.

EXECUTION AGAINST LANDS

26. Sale of lands upon execution personally not sufficient

- (1) Subject to subsection (2), the lands of any person against whom any judgment has been recovered in the Supreme Court may be seized and taken in execution and sold thereunder in the manner prescribed by this Act and the rules of court.

Execution first against personal property

- (2) Execution against the land of any person shall only be made if the person does not produce sufficient personal estate to satisfy the judgment upon which execution is levied. 1990, c.25, s.2; 2008,c.20,s.72(50).

27. Advertising land for sale

When any execution, under which any lands may be sold has been delivered to the sheriff, he shall endorse thereon the date of the receipt thereof, and when the endorsement is made the lands shall be deemed to be levied upon under the execution, and the sheriff shall forthwith proceed to advertise the lands for sale. *R.S.P.E.I. 1974, Cap. J-2, s.27.*

Sections 28 to 32 repealed by 1990,c.25,s.3.

33. Application to show cause why certain lands should be sold

- (1) Any person having an interest in land taken in execution, may apply to the Supreme Court or a judge thereof, for a summons calling upon all persons interested in any such land to show cause why certain parts thereof should not be first sold before resorting to the other part or parts thereof, or why the lands or certain parts thereof, should not be sold in such order as may be directed.

Application: procedure

- (2) The application referred to in subsection (1) shall be made at least twenty days before the day of sale and shall be supported by an affidavit stating the nature of the interest of the applicant in such land, and the names of all others interested therein, so far as the applicant can ascertain.

Summons returnable

- (3) The summons shall be returnable at least ten days before the day of sale and shall be served upon such persons, or notice thereof given in such manner as the court or judge shall direct.

Jurisdiction of court in making order

- (4) Upon the return of the summons the court or judge, may make an order absolute and therein direct the sheriff to sell the said lands, or any part or parts thereof, in such order, and in such manner, as the justice of the case may require.



Costs, payment of

- (5) When the costs of the application are directed to be paid out of the proceeds arising from the sale, the costs shall be returned by the sheriff as part of his incidental expenses, and shall be paid by him to the party or parties entitled. *R.S.P.E.I. 1974, Cap. J-2, s.33.*

SHERIFF'S DEEDS**34. Sheriff's deed and contents**

Upon the sale of any land under execution under this Act the sheriff, or other officer making the sale, shall execute to the purchaser an absolute deed of the estate or interest of the judgment debtor in the land sold; and the deed shall contain a recital that it is executed by the sheriff or other officer in his official capacity, by virtue of the execution therein recited. *R.S.P.E.I. 1974, Cap. J-2, s.34.*

35. Recitals

The recitals in the deed shall be as concise as is consistent with a clear and distinct statement of the facts intended to be set forth, and shall be sufficient if in Form 2 in the Schedule. *R.S.P.E.I. 1974, Cap. J-2, s.35.*

36. Errors or omissions in deed, effect of

No deed executed by any sheriff shall be void by reason of the misrecital, or non-recital of any statute, or of any matter or thing required to be done by the sheriff in the premises; but it must appear therein that the deed was executed by the sheriff in his official capacity. *R.S.P.E.I. 1974, Cap. J-2, s.36.*

37. Affidavit by sheriff

The sheriff shall make an affidavit in Form 3 in the Schedule endorsed upon every deed of land sold under execution, that the land therein mentioned was regularly seized, advertised, and sold, in every respect as by law directed; the deed shall be *prima facie* evidence of all the facts therein stated. *R.S.P.E.I. 1974, Cap. J-2, s.37.*

CONFIRMATION OF SHERIFF'S SALES**38. Confirmation of sale of land**

The sheriff shall not execute any deed of land sold under execution, until the sale thereof has been confirmed by the Supreme Court, if the purchaser in writing requires the confirmation. *R.S.P.E.I. 1974, Cap. J-2, s.38.*

39. Hearing to show cause why sale should not be confirmed

If any purchaser requires the confirmation referred to in section 38, upon the production of an affidavit that all the requirements of the statutes of this province regulating the sale of lands under execution have been duly performed and complied with, the Supreme Court or a judge thereof shall grant a summons to show cause why the sale should not be confirmed, returnable at such time and place as the court or judge directs; the summons shall be served

upon such persons or shall be published in the Gazette for such time, or both, as the court or judge shall direct. *R.S.P.E.I. 1974, Cap. J-2, s.39.*

40. Order absolute

On the return of the summons the court or judge shall, if no cause to the contrary is shown, make an order absolute declaring the sale to be a good and valid sale. *R.S.P.E.I. 1974, Cap. J-2, s.40.*

41. Setting aside sale

If cause is shown against the summons the court or judge may set aside the sale and order the land to be resold, or confirm the sale upon the terms, and in the manner, and subject to such conditions as the court or judge shall think fit. *R.S.P.E.I. 1974, Cap. J-2, s.41.*

42. Resale of the land

If the court or judge orders a resale of the land, no new execution shall issue, but the land shall be resold by the sheriff under an order of the court or judge as in the order shall be directed. *R.S.P.E.I. 1974, Cap. J-2, s.42.*

43. Order absolute: sheriff to execute deed

When an order confirming absolutely any sale has been made, the sheriff shall thereupon execute a deed to the purchaser of the land sold, and the order signed by the Registrar, and sealed with the seal of the court, having been first entered on the minutes of the court, shall be annexed to the deed, and registered therewith, in the registry office. *R.S.P.E.I. 1974, Cap. J-2, s.43.*

44. Deed conclusive evidence of regularity

Any deed and order referred to in section 43, or certified copies of the registry thereof, shall be conclusive evidence of the regularity of the sale in every respect, and no evidence shall be admitted to show the irregularity of any proceedings in any way connected with the sale. *R.S.P.E.I. 1974, Cap. J-2, s.44.*

45. Costs of confirmation of sale

The costs of the confirmation of any sale shall be taxed to the party obtaining an order for confirmation, and the costs shall be included in the sheriff's expenses incidental to the levy and sale under the execution. *R.S.P.E.I. 1974, Cap. J-2, s.45.*

46. Purchaser's title

When any land is regularly seized, advertised and sold by any sheriff under execution under this Act, a deed of the land executed by the sheriff vests in the purchaser his heirs or assigns, all the estate and interest, legal and equitable, which the defendant in the judgment upon which the execution issued, had in the land at the time of the entry of the judgment, or that he may have afterwards acquired therein up to the time of the sale. *R.S.P.E.I. 1974, Cap. J-2, s.46.*



47. Registrar of Deeds to note confirmation

When the sale of any land referred to in section 46 is confirmed, and the deed of the land has been already registered, the Registrar of Deeds shall register the order confirming the sale, with red ink, across the face of the copy of the deed in the registry book in which the deed is copied. *R.S.P.E.I. 1974, Cap. J-2, s.47.*

48. Rights to enforce tenancy arrangements

Where any land taken in execution, or any part thereof, is in the possession of a tenant by virtue of any demise made prior to the entry of the judgment upon which the execution issued, the purchaser under the execution of the land demised, after the registry of the deed thereof, shall have all the rights and remedies of the former landlord to enforce the payment of rent and compel the performance of the covenants, conditions and agreements reserved by and contained in the demise. *R.S.P.E.I. 1974, Cap. J-2, s.48.*

49. Proof of office of sheriff and deputy sheriff

It is not necessary to prove a power under the hand and seal of a sheriff, to a deputy sheriff, authorizing him to execute any deed of land sold under execution; but general evidence of the deputy sheriff having acted as such in the execution of writs, or other process, shall be sufficient evidence of his appointment as deputy sheriff, and of his authority to execute such deed in the name of the sheriff. *R.S.P.E.I. 1974, Cap. J-2, s.49.*

SURPLUS MONEYS

50. Disposal of surplus moneys after sale

When the sum realized by the sale of any land under execution is more than sufficient to satisfy the execution and the costs and expenses attending the levy and sale thereunder, the surplus shall be paid by the sheriff into the Supreme Court, and the surplus or any part thereof shall be paid out, on an order of the court, to such person as the court shall consider entitled to it, or the court may order that the surplus or any part thereof be invested on such security as the court may consider proper. *R.S.P.E.I. 1974, Cap. J-2, s.50.*

51. Jurisdiction of court in making order

Upon any application for payment out of court of the surplus moneys the court has full power and authority to make any order or orders respecting the surplus moneys, upon any and such terms or conditions as may be considered expedient, and notice of any rule or order in any such application may be given to such persons and in the manner and for such time as the court or a judge considers proper. *R.S.P.E.I. 1974, Cap. J-2, s.51.*

SHERIFF'S COSTS

52. No costs where land not sold

The sheriff is not entitled to any poundage on an execution against lands when no part of the lands levied upon have been sold. *R.S.P.E.I. 1974, Cap. J-2, s.52.*

53. No costs where costs not taxed

No sheriff shall collect any fees, costs, poundage or incidental expenses, after having been required in writing to have the same taxed, without taxation, and upon tender of the amount taxed no fees, costs, poundage or incidental expenses in respect of proceedings subsequently taken shall be allowed to any sheriff. *R.S.P.E.I. 1974, Cap. J-2, s.53.*

54. Amount of costs where part only of levy made by sheriff

In case a part only of the amount of the levy is made by the sheriff on or by force of any execution against goods and chattels the sheriff is entitled, besides his fees and expenses of execution, to poundage only upon the amount so made by him, whatever is the sum endorsed upon the execution, and in case the personal estate of the defendant is seized or advertised on or under an execution but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the sheriff on or by force of the execution, the sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized, not exceeding the amount endorsed on the execution, or such lesser sum as a judge may consider reasonable under the circumstances of the case. *R.S.P.E.I. 1974, Cap. J-2, s.54.*

55. Regulations

The Lieutenant Governor in Council may make regulations

- (a) repealed by *2012, c.10, s.5*;
- (b) governing practice and procedure applicable to proceedings under this Act;
- (c) prescribing forms and providing for their use;
- (d) defining any word or expression used in this Act that is required to be defined in the regulations;
- (e) prescribing any matter required or authorized by this Act to be prescribed by regulations;
- (f) prescribing the amount of compensation payable under subsection 8.1(6);
- (g) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. *1994, c.30, s.8; 2012, c.10, s.5.*



SCHEDULE

FORM 1*

Statutory Execution to Sell Lands

Canada
Province of
ELIZABETH the Second &c., &c,
Prince Edward Island

To the Sheriff of County greeting:

WHEREAS by the consideration of our Justices of the
..... (Court of Appeal or the Supreme Court) of
Prince Edward Island lately recovered judgment against for the sum of
..... debt or damage and the sum of costs of suit as
appears to us of record, whereof execution remains to be done:

We command you therefore that of the goods and chattels or in default of goods and chattels of the
said to be by him or someone on his behalf shown to you then of the lands and
tenements of the said within your bailiwick you cause to be made
the aforesaid sums being in all and also your own fees
and have that money before our said Justices of our said (Court of Appeal or the
Supreme Court) at Charlottetown immediately after the execution hereof to be rendered to the said
..... and also at the same time and place make appear to us in
what manner you shall have executed this our writ.

Witness at Charlottetown, the day of
..... in the year of our Lord two thousand and

.....
Registrar

Endorsement on Statute Execution

This writ is issued by attorney for the
said
The defendant is a and resides at
..... in your bailiwick.

*{Note: Form 1 is prescribed by section 26.}

2008,c.20,s.72(50); 2015,c.36,s.36(4).

FORM 2*

Sheriff's Deed

To all to whom these presents shall come I (E.F.) of
in Prince Edward Island, Sheriff of County send greeting.

WHEREAS judgment was entered of record in Her Majesty's (Court of
Appeal or Supreme Court) of Prince Edward Island on the..... day of in
the year of our Lord two thousand and wherein (A.B.) was plaintiff and (C.D.)

was defendant for the sum of dollars debt and dollars
costs (and whereas the said (C.D.) having died, the Court did direct that execution should issue
against his lands and tenements) and whereas Her Majesty's writ of statutory execution was
afterwards issued upon the judgment whereby I the said (E.F.) as the Sheriff as aforesaid was
commanded that of the goods and chattels, lands and tenements of the said (C.D.) in my bailiwick I
should cause to be paid and satisfied unto the said (A.B.) the said sum of dollars debt
and dollars costs and which said execution was marked (here insert levy), and whereas
by virtue of the said writ and of my said office as the Sheriff as aforesaid and of all powers and
authorities me in anywise in that behalf enabling I the said (E.F.) as the Sheriff as aforesaid having
given the notice of sale required by law did on the day of in the year of our Lord
two thousand and sell and dispose of the land and premises hereinafter described to (G.H.)
of, he appearing to be the best and highest bidder.

NOW KNOW YE that I the said (E.F.) by virtue of the aforesaid execution of all Acts of the General
Assembly of the Province and all other powers and authorities in anywise in that behalf me enabling
and in consideration of the sum of dollars paid by the said (G.H.) the receipt whereof is
hereby acknowledged do grant bargain sell and assign unto the said (G.H.) his heirs, executors,
administrators and assigns all the estate, right, title and interest whatsoever both at law and in equity
of the said (C.D.) in and to (here insert description);

TO have and to hold the same unto and to the use of the said (G.H.) his heirs and assigns forever (or
to have and to hold the same unto the said (G.H.) his executors, administrators and assigns for all the
rest, residue and remainder of a term of years yet to come to him the said (C.D.) in and to the said
piece of land under and by virtue of a certain indenture of lease made between (J.K.) of the one part
and one (L.M.) of the other part) of which the said (C.D.) is now the assignee.

IN WITNESS WHEREOF I the said (E.F.) have hereunto set my hand and seal this day of
..... A.D. 20.....

Signed, sealed and delivered in the presence of

.....

*{Note: Form 2 is prescribed by section 35.} 2008,c.20,s.72(50).

FORM 3*

To be endorsed upon Deed
Prince Edward Island

..... County, to Wit

I (E.K.) of Sheriff of County make
oath and say that the lands described in the within deed were regularly seized, advertised and sold in
every respect as by law directed.

Sworn,

.....
*{Note: Form 3 is prescribed by section 37.}