

*The Provincial Statutes of Lower-Canada, Being the first session of the twelfth Provincial Parliament of Lower-Canada.* Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1825.

5 George IV – Chapter 2

**An Act to alter and amend certain parts of an Ordinance made and passed in the twenty-fifth Year of the Reign of His late Majesty King George the Third, intituled, "An Ordinance to regulate the proceedings of the Courts of Civil Judicature, and to establish Trials by Juries, in actions of a Commercial nature, and personal wrongs, to be compensated in damages, in what relates to the issuing of Writs of Capias ad respondendum and to Special Bail." (23d March, 1825.)**

Whereas, in and by an Ordinance made and passed by the Governor and Legislative Council of the Province of Quebec, in the twenty-fifth year of the Reign of His late Majesty King George the Third, intituled, "An Ordinance to regulate the proceedings in the Courts of Civil Judicature, and to establish Trials by Juries, in actions of a Commercial nature and personal wrongs, to be compensated in damages," it is, among other things, ordained and enacted, that in all and every case where one or more Judges of any Court of Common Pleas is or may be satisfied, by the Affidavit of the Plaintiff, or his Book-keeper or Clerk, or legal Attorney, that the Defendant is personally indebted to the Plaintiff in a sum exceeding ten pounds sterling, and may also be satisfied, by the oath of the Plaintiff or some other person, that the Defendant is immediately about to leave the Province, and whereby the Plaintiff might be deprived of his remedy against such Defendant, it shall and may be lawful for one or more Judge or Judges of any Court of Common Pleas, to grant a Capias or attachment against the body of such Defendant, to be directed to the Sheriff; to hold such Defendant to Bail for his appearance at the return of such Writ, and in default thereof to commit him to prison, there to remain until Special Bail may be given by such Defendant, or until two days after Execution may be obtained by the Plaintiff, if Judgement be in his favour; And whereas the facility thereby afforded of obtaining a Capias ad respondendum against Debtors, whereby such Debtors become liable in their body for the payment of debts for which otherwise, and of common right, they would not be so liable, has encouraged, and may for the future encourage, divers Creditors vexatiously to obtain such Capias as a means of altering and tortiously improving the nature of their security, to the manifest oppression and ruin of such Debtors: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province;" And it is hereby enacted by the authority of the same, that, from and after the passing of this Act, the condition of every Recognizance of Special Bail, or Bail to the action, to be given or put in by any Defendant, who shall have been arrested under and by virtue of any Writ of Capias ad respondendum, issued agreeably to the provisions of the said Ordinance, shall be such that the Cognizors thereof shall not become liable unless the Defendant shall leave this Province without having paid the debt, interest and costs, for which the action shall have been brought, and such Special Bail may be put in and given, at any time

after the arrest of the Defendant in virtue of such Capias, either before the Court from which the same shall have issued, or before any Judge or Justice of such Court, at any time before or after Judgment.

II. Provided always, and be it further enacted by the authority aforesaid, that nothing in this Act contained shall be construed, or taken in any manner, to affect the right of the Bail to take and surrender the Defendant in discharge of themselves.

III. And whereas persons residing in the Province of Upper-Canada, coming into this Province with an intent speedily to return to the said Province of Upper Canada, have oftentimes been arrested and imprisoned in this Province, by virtue of Capias ad respondendum issued therein, at the suit of their, Creditors, also resident in the said Province of Upper-Canada, to the intolerable vexation of such Debtors, and contrary to the true intent and meaning of the said Ordinance, which was made for the Province of Quebec, comprehending the Provinces of Lower-Canada and Upper-Canada; for remedy thereof, be it further enacted by the authority aforesaid, that, from and after the passing of this Act, no Writ of Capias ad respondendum shall be granted or issued at the suit of any person or persons residing in the Province of Upper-Canada, against any person or persons residing within the said Province, unless, in addition to the Affidavit required by the said Ordinance, the Plaintiff or Plaintiffs, or some other person or persons, shall make oath, before a Judge or Justice of any Court of King's Bench, or Provincial Judge, that the Defendant or Defendants is or are immediately about to resort to some country or place without the limits of the Province of Upper-Canada, and hath not, or have not, within the limits of the said Province, any Lands or other immoveable Estate out of which the Plaintiff or Plaintiffs can reasonably expect to be paid or satisfied the amount of his debt.