

Statutes of Upper-Canada, Passed in the third session of the second provincial parliament (1798). From The Provincial Statutes of Upper-Canada: Revised, Corrected, and Republished (York, R. C. Horne, 1818.)

38 George III – Chapter 6

The following Act passed the Legislative Council and House of Assembly in the thirty-eighth year of George the Third, but the Royal Assent was reserved for the signification of His Majesty's pleasure.

An Act to amend part of an Act passed in the thirty-fourth year of the Reign of His Majesty, intituled, "An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeals," and also to amend and repeal part of an Act passed in the thirty-seventh year of the Reign of His Majesty, intituled, "An Act for Regulating the Practice of the Court of King's Bench," and to make further Provision respecting the same.

(The Royal Assent to this Act was promulgated by Proclamation, bearing date January first, in the year of Our Lord One thousand eight hundred, and fortieth of His Majesty's Reign.)

Whereas by an Act passed in the thirty-fourth year of the Reign of His Majesty, intituled, "An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeals, it is enacted, That no person shall be arrested or holden to bail upon any process issuing out of the Court of King's Bench in a Civil suit, unless an affidavit be first made by the plaintiff, that the defendant is justly and truly indebted to him in a sum certain, which together with the account for which it became due, shall be specified, and also that the deponent verily believes the defendant is about to leave the Province, with an intent to defraud his creditors; and whereas many persons having contracted debts in this Province, have fraudulently left the same before their creditors can have sufficient knowledge of their intention, so as safely to make the affidavit by the said Act required, for remedy thereof, Be it 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 Upper 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 by the authority of the same, That in order to hold any person to bail in any Civil suit in the said Court of King's Bench, it shall be sufficient that the said affidavit (which may be made by the plaintiff, his servant or agent) besides stating the cause of action in the manner in the said Act mentioned, do also state that the deponent is apprehensive that the defendant will leave the Province without paying his debts. (a)

II. And for the more effectual prevention of such fraudulent practices as aforesaid, be it enacted by the authority aforesaid, That in ease the plaintiff in any action now pending, or hereafter to be brought in the said Court, his servant, or agent shall, at any time after action brought, and before final judgment, be apprehensive that the defendant will leave the Province without paying his debts, it shall and may be lawful to and for the said plaintiff, his servant or agent, having made and

filed such affidavit as aforesaid, to sue out a writ of Capias ad Respondendum, and to cause the said defendant to be thereupon arrested and holden to bail, which bail if the said writ shall have been sued out after appearance made, shall be bail to the action.

III. Provided nevertheless, and be it enacted by the authority aforesaid, That the suing out of such Writ, shall not be taken or construed in any manner to affect any proceedings theretofore had in the said action; but the same shall continue in like manner as if the said Writ had been sued out at the commencement thereof; any Law to the contrary notwithstanding.

IV. And be it further enacted by the authority aforesaid, That the condition of every recognizance of bail to the action shall be such, that the cognizors thereof shall not become liable, unless the defendant shall leave the Province, without having paid the debt for which such action shall have been brought.

V. And be it further enacted by the authority aforesaid, That no writ of capias ad satisfaciendum, shall issue in any action now pending, or hereafter to be brought into the said Court, unless an affidavit be first made and filed by the plaintiff, his servant, or agent, in the manner herein before directed, with respect to holding to bail, that he is apprehensive that the defendant will leave the Province without paying his debts, or that he hath reason to believe that the defendant hath removed or secreted his effects, or hath made some secret and fraudulent conveyance thereof, in order to prevent the same from being taken in execution.

VI. Provided nevertheless, and be it further enacted by the authority aforesaid, That nothing herein 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.

VII. And be it further enacted by the authority aforesaid, That in case the plaintiff in any action now pending, or hereafter to be brought in the said Court, his servant or agent, at any time before or after final judgment, and before the debt for which such action shall have been brought, is paid or satisfied, shall be apprehensive that the defendant will leave the Province without paying his debts, and that he may leave the same before he can be arrested and holden to bail, or taken in execution as aforesaid, it shall and may be lawful to and for any of His Majesty's Justices of the Peace, upon oath thereof made before him, by the said plaintiff, his servant, or agent, to issue his warrant, and cause the said defendant to be arrested and detained, until he can be served with the proper process of the said Court. Provided nevertheless, That the time of such detention shall in no case exceed the space of eight days.

VIII. And be it further enacted by the authority aforesaid, That so much of an Act passed in the thirty-seventh year of the reign of His present Majesty, intituled "An Act for regulating the practice of the Court of King's Bench," as enacts, that the parties may plead to issue in the office of the Clerk of the Crown and Pleas of this Province, in and for the several Districts thereof, and also that every Monday in the course of the year, except Easter Monday and Christmas Day, in case it shall happen on a Monday, shall be a return day for the return of Writs issuing out of the said Court of King's Bench, and also that the plaintiff shall cause the defendant to be served with the Writ of

Summons, and that no milage shall be allowed for the same, shall be, and the same is hereby repealed.

IX. Provided nevertheless, and be it further enacted by the authority aforesaid, That the said office of the Clerk of the Crown and Pleas shall be an office for issuing the original process of the said Court, and also for issuing writs of *capias ad satisfaciendum*.