

*At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Wednesday the first day of July, 1761, and in the first year of His Majesty's Reign.*

1 George III – Chapter 8

**An Act to enable Creditors to receive their just Debts, out of the Effects of their absent or absconding Debtors.**

Be it enacted by the Honourable the Commander in Chief, the Council, and Assembly that it shall and may be lawful for any person intituled to any action for any debts, dues or demands whatsoever, against any person absconding or absent out of this Province, to cause the goods and estate of such absconding or absent person to be attached in whose hands or possession soever the same are, or may be found: And the attaching; of any part thereof shall secure and make the whole, that is in such person's hands, liable in the law to respond the Judgment to be recovered upon such process, if so much there be, and no further, and shall be subjected to be taken in execution for satisfaction thereof, or so far as the value thereof will extend, and the person in whose hands they are shall expose them accordingly.

And be it further enacted, that where no goods or effects of such absent or absconding person in the hands of his attorney, factor, agent, or trustee, shall be exposed to view, or can be come at so as to be attached, it shall and may be lawful to and for any person intituled to any such action as aforesaid, to file a declaration against such absent or absconding person, in the clerk's office of the Inferior Court of Common Pleas in the same county where such factor, agent or trustee lives, therein particularly setting forth his debt and damage, how and for what cause it arises; and to cause the attorney, factor, agent or trustee, of such absent or absconding person, to be served with a summons out of the office, annexed to the said declaration, fourteen days before the sitting of the Court, for his appearance at such Court; which being duly served, and return thereof made under the officer's hand, shall be sufficient in the law to bring forward a trial, without other or further summons, unless the principal be an inhabitant, or hath for sometime had his residence within this Province, in which case a like summons with an attested copy of the declaration annexed, shall also be left at his dwelling house, lodging or place of his last and usual abode, fourteen days before the sitting of the Court; and such attorney, factor, agent, or trustee, upon his desire, shall be admitted to defend the suit on behalf of his principal throughout the course of the law, and an imparlance shall be granted of course at two terms successively, that he may have an opportunity to notify his principal thereof; and at the third term without special matter alledged and allowed, in bar, abatement, or further continuance, the cause shall peremptorily come to trial; and if judgment be rendered for the plaintiff, all the goods, effects, or credits of such absent or absconding person, in the hands of such attorney, factor, agent or trustee, which were in his hands at the time of his being served with the summons and declaration aforesaid, to the value of such judgment, (if so much there be) shall be liable and subjected to the execution granted upon such judgment, for or towards satisfying the same; and from the time of serving the summons as aforesaid, shall be liable and secured in

the law, in his hands to answer the same, and may not be otherwise disposed of or converted.

Provided nevertheless, and be it enacted, that if upon summons being served as aforesaid, the supposed attorney, factor, agent, or trustee, shall come into Court at the first term, and declare, that he had not in his hands, at the time of the service of such summons, any goods, effects, or credits, whatsoever of the absent or absconding person, and shall submit to an examination upon oath respecting the same; and if upon such examination, it shall appear to the satisfaction of the Justices of the Court, that he had not any goods, effects, or credits whatsoever, of the absent or absconding person, in his hands at the time of his being summoned as aforesaid, then in every such case, the plaintiff shall become nonsuit, and shall pay to him who was summoned as attorney, factor, agent, or trustee, his reasonable costs, to be taxed in common form by the Justices of the Court.

And be it further enacted, that if any attorney, factor, agent, or trustee, being served with summons and declaration as aforesaid, shall not appear at the first term, and then either acknowledge himself to have had in his hands some goods, effects, or credits of the absent or absconding person at the time of the service aforesaid; and thereupon pray that he may be admitted to defend the action, or otherwise submit himself to an examination upon oath as aforesaid, he shall be liable to pay to the plaintiff all such costs as shall arise upon his suit, to be taxed by the Justices of the Court before which the action shall be brought.

And be it further enacted, that in case any attorney, factor, agent, or trustee, from and after the time of his being served with summons and declaration as aforesaid against his principal, (being an absent or absconding person) shall transfer, remit, dispose of, or convert any of the goods, effects, or credits of such absent or absconding person, in his hands at the time of such service, so that there shall not be sufficient to satisfy the judgment, (the debt being afterwards ascertained by judgment of Court) or that shall not discover, expose, and subject the goods, effects, or credits, of such absent or absconding person in his hands, to be taken in execution for or towards the satisfaction of the judgment, so far as what were in his hands at the time of said service, will extend, shall be liable to satisfy the same of his own proper goods and estate, and as of his own debt; and a Writ of Scire-facias may be taken out of the same court and served upon him as the law directs, to appear and shew cause (if any he have) to the contrary, where upon default of appearance, or refusal to disclose upon his oath, (which oath the Justices of such Court are empowered to administer) what goods, effects or credits of the absent or absconding person, are in his hands, and to what value; then judgment shall be entered up against him of his own proper goods and estate, and execution be awarded accordingly.

Presided nevertheless, and be it enacted, that if it shall appear that the attorney, factor, agent, or trustee, so summoned as aforesaid, and having in his hands at the time of such summons, any goods, effects, or credits of the absent or absconding person, hath not any ways remitted, disposed of, or any ways converted the same after the summons being served on him as aforesaid; but that he hath discovered, exposed, and subjected them to be

taken in execution, to satisfy the judgment recovered against the absent or absconding person as aforesaid; then the party who commenced the suit shall pay such attorney, factor, agent, or trustee, his reasonable costs to be taxed in common form by the Justices of the Court from which the Scire-facias issued as aforesaid.

And be it further enacted, that the goods, effects, or credits, of any absent or absconding person, so taken as aforesaid by process and judgment of law, out of the hands of his attorney, factor, agent, or trustee, by any of his creditors, shall fully, acquit and forever discharge such attorney, factor, agent, or trustee, his executors or administrators, of, from, and against all actions and suits, damages, payments, and demands whatsoever, to be asked, commenced, had, claimed, or brought by his principal, his executors or administrators, of and for the same; and if any attorney, factor, agent, or trustee, shall be molested, troubled, or sued by his Principal for any thing by him done in pursuance of this Act, he may plead the general issue, and give this Act in evidence.

Provided nevertheless, and be it further enacted, that any absent or absconding person, against whom judgment shall be recovered as aforesaid, shall be intitled to a rehearing of such cause at any time within three year after such judgment; and the plaintiff in such action, before any execution shall issue on such judgment, shall give sufficient security to the satisfaction of the Court, for the repayment of all such monies as may be levied by virtue of such execution, in case the said judgment should be reversed on such rehearing as aforesaid.

Provided always, that so much of this Act only as relates to the commencing of the action, and attaching the goods, shall be of force, till His Majesty's further pleasure be known therein.