

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, and there continued by several prorogations until the 19th day of October, 1763, in the Third Year of His Majesty's Reign.

3 George III – Chapter 5 (Session 2)

An Act for the Relief of Insolvent Debtors.

Be it enacted by the Honourable the Lieutenant Governor, Council, and Assembly, that from and after the end of this present session, if any person or persons now charged, or who shall, or may hereafter be charged in execution for any sum or sums of money, and shall be minded to deliver up to his, her, or their creditors, all his, her, or their effects, towards the satisfaction of the debts, wherewith he, she, or they stand charged, it shall and may be lawfull to and for such prisoner, to exhibit a petition to any of the courts of law within the said Province, or during the intervals of the sitting of such courts, to any two of the Justices of any such courts, from whence the process issued, upon which he, she, or they, was or were taken or charged in execution, certifying the cause or causes of his, her, or their imprisonment, and an account of his, her, or their whole real or personal estate, with the dates of the securities wherein any part of it consists, and the deeds or notes relating thereto, and the names of the witnesses thereto, as far as his, her, or their knowledge extends therein, and upon such petition the said court or the said two Justices may, and are hereby required by order or rule of the said Court, or by order under the hands and seals of the said two Justices, to cause the said prisoner to be brought up to the said court, or before them the said two Justices, and the several creditors at whose suit he, she, or they stand charged as aforesaid, to be summoned to appear personally, or by their attorney in the said court, or before them the said two Justices at a day to be appointed for the purpose; and upon the day of such appearance if any of the creditors summoned, refuse, or neglect to appear, upon affidavit, of the due service of such rule or order of the said court, or order of the said two Justices, the said court or the said two Justices shall and may in a summary way, examine into the matter of such petition, and hear what can or shall be alledged on either side, for or against the discharge of such prisoner, and upon such examination of the said court or the said two Justices may, and are hereby required, to administer or tender to the prisoner an oath to the effect following, which oath the said court, or the said two Justices are hereby impowered to administer.

I A. B. do solemnly swear in the presence of almighty God, that the account by me deliver'd into,
in my petition to,
doth contain a true and full account of all my real and personal estate, debts, credits, and effects whatsoever, which I, or any in trust for me, have, or at the time of my said petition had, or are or was in any respect intituled to in possession, remainder or reversion, (except the wearing apparel and bedding for me or my family, and the tools or instruments of my trade or calling, not exceeding ten pounds in the whole) and that I have not at any time since

my imprisonment or before, directly or indirectly, sold, leased, assigned or otherways disposed of, or made over in trust for my self, or otherwise, other than as mentioned in such account, any part of my lands, estate, goods, stock, money, debts, or other real or personal estate, whereby to have or expect any benefit or profit to myself, or to defraud any of my creditors, to whom I am indebted.

So help me God.

And be it further enacted, that in case the said prisoner shall in open court, or before the said two Justices, take the said oath, and upon such examination and his or her taking the said oath, the creditors shall be satisfied with the truth thereof, the said court or the said two Justices may immediately order the lands, goods, or effects, contained in such account, or so much of them as may be sufficient to satisfy the debts wherewith he, or she, is or shall be charged, and the fees due to the Provost Marshall of the said Province, and the keeper of the goal or prison from which the prisoner was brought, to be by a short indorsement on the back of the said petition, signed by the prisoner, assigned to the said creditors, or to one or more of them, in trust for the rest of the said creditors, and by such assignment, the estate, interest, and property of the lands, goods, debts, and effects so assigned, shall be vested in the person or persons to whom such assignment is or shall be made, who may take possession of or sue for the same in his, her, or their own name or names in like manner as assignees of commissioners of bankrupts, to which suit no release of the prisoner, his, or her executors, or administrators, or any trustees for him or her subsequent to such assignment shall be any barr; and immediately upon such assignment executed, the said prisoner shall be discharged out of custody by order of the said court, or of the said two Justices, and such order shall be a sufficient warrant to the Provost Marshall, goaler, or keeper of such prison, to discharge the said prisoner, if detained for the causes mentioned in such petition and no other; and he is hereby required to discharge and set him, or her at liberty forthwith without fee: nor shall such Provost Marshall, or goaler, be liable to any action of escape or other suit or information upon that account, and the person or persons to whom the said effects shall be assigned, paying the fees to said Provost Marshall, goaler or keeper of the prison, in whose custody the party discharged, was, shall and are hereby required to divide the effects so assigned among themselves, and all the persons for whom they shall be intrusted, in proportion to their respective debts: but in case the person or persons at whose suit such Prisoner was charged in execution or any of them, shall not be satisfied with the truth of the oath of such prisoner was charged in execution or any of them, shall not be satisfied with the truth of the oath of such prisoner before the two Justices aforesaid, and shall desire further time to inform himself or herself of the matters contained therein, and shall insist upon his, or her, being detained longer in prison at his or their suit, then the said Justices shall and may remand the said prisoner, and direct the said prisoner, and the person or persons dissatisfied with such oath, to appear before the court whence the process issued as aforesaid, at a certain day during the sitting of the said court then next following such examination, and to be by them at that time appointed for the further examination of the matters contained in the said oath; Provided the said person or persons so dissatisfied, do agree by writing under his or their hands, to supply and allow weekly the full quantity of

eight pounds of good and wholesome bisquit bread per week, unto the said prisoner to be so supplied and allowed the first day of every week, from and after the time of such prisoners being so remanded, until the said day so appointed for the further examination of the truth of the matters contained in the aforesaid oath before the said court as aforesaid; on failure of the supplying of which weekly allowance at any time, the said prisoner shall forthwith upon application to the said court, or to the said two Justices be discharged by such order as aforesaid; but in case the said prisoner shall refuse to take the oath before the said two Justices, or having taken the same, shall be detected of falsity therein, he, or she, shall be presently remanded.

And be it also enacted, that such Judgement, relief, and directions by the said two Justices, so to be given as aforesaid, shall be as good and effectual to all intents and purposes, as if the same had been made in the court out of which the process issued, on which such prisoner was taken in execution, and the like proceedings shall be held thereupon, and a record of such judgement shall be made up in the same form, and returned, and certified under the hands of such two Justices before whom it shall be made, unto the court from whence the process on which such prisoner was taken in execution issued, to be a record of the said court, and to be kept as such amongst the records there.

And be it further enacted, that if on the appearance of such prisoner or prisoners before the said court as aforesaid, at such second day so to his appointed by the said two Justices, the creditor or creditors of such prisoner or prisoners dissatisfied with the truth of such oath, before the said two Justices, shall make default in appearing; or in case he, she, or they shall appear, but shall be unable to uncover any estate or effects of the prisoner omitted in such his, or her petition; or to shew any probability of his or her, having been foresworn in the said oath, then the said court shall immediately cause the said prisoner to be discharged upon such assignment of his or her effects in manner as aforesaid, unless such creditor or creditors do insist upon his, or her, being detained longer in prison at their suit, and do agree by writing under his, her or their hands, to supply and allow weekly the full quantity of eight pounds of good wholesome bisquit bread per week, unto the said prisoner, to be supplied and allowed the first day of every week, so long as he or she, shall continue in prison at his, her, or their suit as aforesaid; on failure of the supply of which weekly allowance at any time, the prisoner shall forthwith, upon application to the said court, or during the interval of such court sitting to the said two Justices, be discharged by such order as aforesaid.

And be it enacted, that in case on the appearance of the said prisoner, before any of the said courts of law in this Province, on his petition to them at any time during their sitting, preferred as aforesaid, the person or persons at whose suit such prisoner was charged in execution, or any of them, shall not be satisfied with the truth of the said prisoners oath, at that time made, but shall desire further time to inform himself or herself of the matters contained therein, the said court may and shall remand the said prisoner, and direct the said prisoner, and the person or persons dissatisfied with such oath, to appear at another day, to be appointed by the said court sometime within and during their then present session, for that purpose; subject in the mean tie and untill such second day, to the same allowance to

the said prisoner, by such person or persons to dissatisfied with the said prisoners oath, and liable to the like discharge in case of default of such allowances as is herein before directed upon application to the said two Justices as aforesaid: And if at such second day so to be appointed, the creditor or creditors dissatisfied with such oath, shall make default in appearing, or in case he, she, or they shall appear but in such his or her petition, or to shew any probability of his, or her, having been foresworn in the said oath, then the said court shall immediately cause the said prisoner to be discharged, upon such assignment, of his or her upon his or her, being longer detained in prison at their suit, and do agree by writing under his, her, or their hands, to supply and allow weekly, the quantity of eight pounds, of good and wholesome bisquit bread per week, unto the said prisoner, to be supplied and allowed the first day of every week, so long as he, or she, shall continue in goal, at his, her, or their suit; on failure of the supplying of which weekly allowance at any time, the said prisoner shall forthwith upon application to the court, or during the interval of such courts sitting, to any two Justices of the said court, be discharged by such order as aforesaid; but in case the said prisoner shall refuse to take the said oath, or having taken the same shall be detected of falsity therein, he, or she, shall be presently remanded,

And to prevent persons who may be charged in execution from lying in prison, until they have spent their substance wherewith they should satisfy their creditors, and afterwards taking the benefit of this Act, where they have nothing left to deliver up to their creditors; it is hereby enacted, that no person charged or to be charged in execution, excepting those already in goal, shall be allowed or permitted to exhibit a petition to any of the courts of law in this Province, or to any of the said two Justices of such courts, from whence the process issued as is before provided, unless such petition be exhibited, it before the court, within ten days next after the first meeting of the said court, within ten days next after the first meeting of the said court which shall be next after such person shall be so charged in execution and it before the said two Justices within fourteen days next after such person shall be charged in execution: Provided always, that tho' the persons of the debtor or debtors so discharged, shall never after be arrested for the same debt or debts, yet notwithstanding such discharge the judgment against him or her, shall stand and remain in force, and execution may be taken out thereon against his, or her lands tenements or hereditaments, goods and chattels, (his, or her, wearing apparel, bedding for him, or herself and family, and necessary tools for the use of his or her, trade or occupation excepted, in the same manner as if he, or she, had never been taken in execution) for the said debt.

Provided also, that if any person who shall take such oath as aforesaid, before the said two Justices, or before the said court as aforesaid, shall upon indictment for perjury, in any matter or particular contained in the said oath, be convicted by his, or her own confession, or by verdict of twelve men, as he, or she may be by force of this Act, the person, so convicted, shall suffer all the pains and forfeitures which by law may be inflicted on any person convicted or wilful perjury, and shall be liable to be taken upon any process de nove, and charged in execution for the said debt, in the same manner as if he, or she had never been discharged or taken in execution before, and shall never afterwards have the benefit of this Act.

Provided also, that if the effects so assigned, shall not extend to satisfy the whole debts due to the persons at whose suit he, or she, was charged, and the fees due to the said Provost Marshall or goaler, there shall be an abatement in proportion; and such Provost Marshall or goaler shall come in as a creditor, for what shall be then due to him for his fees in proportion with the creditors at whose suit he, or she, was charged in execution.

And be it likewise enacted, that every Provost Marshall, or his deputy, bailiff, or other officer or minister aforesaid, offending against this Act shall (over and above such penalties or punishments as he shall be liable unto, by the law now in force) for every offence against this present Act, forfeit and pay to the part thereby grieved, the sum of fifty pounds, to be removed with treble costs of suit, by action of debt, bill, plaint, or information, in any of the courts of law within this Province wherein, no essoign protection or [wager] of law, or more than one imparlance shall be allowed.

And be it enacted, that all cases wherein by this Act an oath is required, the solemn affirmation of any person being a Quaker, shall and may be accepted and taken in lieu thereof, and every person making such affirmation who shall be convicted of willful and false affirming, shall incur and suffer such and the same pains, penalties, and forfeitures, as are inflicted and imposed by the laws and statutes now in force, upon persons convicted of wilfull and corrupt perjury.

Provided nevertheless, that nothing in this Act contained, shall extend or be construed to extend, to discharge any debtor imprisoned, the whole amount of whose debts, shall exceed the sum of one hundred pounds; nor that this Act shall be in force, till His Majesty's pleasure be known therein.

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