

Ordinances of the Lieutenant Governor and Council of His Majesty's Province of Cape Breton passed in the year 1801. National Archives of the United Kingdom CO 219/2.

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An Ordinance to Enable Creditors to Receive their Just Debts out of the Effects of their absent or absconding Debtors.

Be it Ordained and Ordered by His Honor Major General John Despard President of His Majesty's Council and Commanding His Majesty's Forces in the Island of Cape Breton and its Dependencies &c. by and with the Advice and Consent of His Majesty's Council, And it is hereby ordained and ordered by the same. That it Shall and may be Lawful for any persons Entitled to any action for any Debts Dues or Demands whatsoever against any person absconding or absent out of this Government 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 Persons hands liable in the Law to respond Judgement to be recovered – upon such Process if so much there be and no further and shall be Subjected to be taken Execution for Satisfaction thereof so far as the Value thereof will extend and the Persons in whose hands they are shall expose them accordingly

2nd And Be it further Ordained that where no Goods or Effects of Such absent or absconding Persons are in the hands of his attorney Factor Agent or Trustee shall be exposed to View or cause to be come at so as to be attached. It shall may be Lawful to and for any Person Entitled to any such Action as aforesaid to fell a Declaration against such absent or absconding Person in the Clerks Office of the Supreme Court for the said Island where such Factor Agent or Trustee Live therein particularly setting forth his Debt and Damages 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 Summon out of the office annexed to the said Declaration fourteen days before the setting of the Court for his appearance at such Court which being duly served and return thereof made under the officers hand shall be sufficient in Law to bring forward a Trial without other or further summons unless the Principal be an Inhabitant or hath for some time had is residence within this Government 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 usual abode fourteen days before the Setting of the Court and such Attorney Factor Agent or Trustee upon his desire shall shall be admitted to defend the Suit on behalf of his Principal throughout the course of the Law and an Impar lance 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 tendered 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 Notice of such Judgment of so much there be shall be liable and Subject to the Execution Granted upon such Judgment for or towards Satisfying

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the same and from the time of sending the Summons as aforesaid shall be liable and Subject to the Execution in the Law in his hands to answer the same and may not be otherwise disposed of or converted.

3d Provided nevertheless and be it ordained 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 non Suit , 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

4th And Be it further ordained that if any Attorney Factor Agent or Trustee being Served with Summons and Declaration as aforesaid shall not appear at the First Term and 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 the Plaintiff all such Costs as shall arise upon Suit to be taxed by the Justices of the Court before which the action shall be brought

5th And Be it further ordained that in case any Attorney Factor Agent or Trustee from and after the time of his – being served with a 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 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 appease and show cause (if any he have) to the contrary whereupon Default of appearance or refusal to disclose upon his Oath (which oath the Justice of such Court are empowered to Administer) which 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

6th Provided Nevertheless and be it ordained that if it shall appear that the Attorney Factor Agent or Trustee so summoned as aforesaid and having in his at the time of such Summons any Goods Effects or Credits of the absent or absconding Person hath not any ways Permitted disposed of or any ways converted the same after summons being Served on him 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 *Scire Facias* Issued as aforesaid.

7th And Be it further ordained that the Goods Effect or Credits of any absent or absconding Person so taken as aforesaid by Process and Judgment of Law out of the hands Attorney Agent or Trustee His Execution 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 this ordinance He may Plead the General Issue and give this ordinance in Evidence.

8th Provided Nevertheless and be it further ordained that any absent or absconding Person against whom Judgement shall be recovered as aforesaid shall be Entitled to a re-hearing of such cause at any time within one 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 Payment 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

9th Provided always that so much of this ordinance as relates to the Commencing of the Action and Attaching the Goods Only shall be of force till His Majesty's further pleasure be known therein.

Ordained Ordered and Passed
in Council this 17th day of June
in the 41st Year of the Reign of
George the Third of the United
Kingdom of Great Britain
and Ireland King—

By His Honor's Command
John L Stout
D.y. Secretary.