

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

John Despard  
Major General  
& President of Council

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  
St. John's 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 Person's 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

2 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

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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 file 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 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 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 his 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 be admitted to defend the Suit  
on behalf of his Principal throughout the course of the Law  
and an Imparance shall be granted of course at Two Term  
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

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

- 3 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
- 4 And Be it further Ordained that if any Attorney Factor

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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

5 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 appear

and

and shew cause (if any he have) to the contrary whereupon  
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

6<sup>th</sup> 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 Remitted 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.

7<sup>th</sup> And Be it further Ordained 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  
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

c  
this Ordinance He may Plead the General Issue and give  
this Ordinance in Evidence.

8<sup>th</sup> Provided Nevertheless and be it further Ordained that  
any absent or absconding Person against whom Judgment  
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

9<sup>th</sup> 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,

By His Honors Command.

John L Stow  
Clerk Secretary.

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