

The Provincial Statutes of Lower-Canada, Being the second session of the seventh Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1812.

52 George III – Chapter 8 (Session 1)

An Act to secure the liberty of the Subject, by extending the Powers of His Majesty's Courts of Law, in this Province, as to writs of Habeas Corpus ad Subjiciendum, and as to the means of enforcing obedience to such writs. (19th May, 1812.)

Whereas the writ of Habeas Corpus ad Subjiciendum, hath been found by experience to be the most expeditious and effectual method of restoring any person to his liberty, who hath been unjustly deprived thereof, and whereas extending the remedy of such writ, enforcing obedience thereunto, preventing delays in the execution thereof, and ascertaining the proceedings thereupon, will be greatly beneficial to the subject: Be it therefore declared and enabled by the King's most Excellent Majesty by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower 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 it is hereby enacted by the authority of the same, that when any person shall be confined or restrained of his or her liberty, otherwise than for some Criminal or supposed Criminal matter, it shall and may be lawful for the Chief Justice of the Province, and for the Chief Justice of the Court of King's Bench, for the District of Montreal, and for any one of His Majesty's Justices of the Court of King's Bench for the District of Quebec or of the Court of King's Bench for the District of Montreal, or of the Court of King's Bench for the District of Three Rivers [Trois-Rivières], and for the Judge of the Provincial Court of Gaspé, within the limits of their respective jurisdictions, and they are hereby required, upon complaint made to them, by or on the behalf of the person so confined or restrained, if it shall appear by Affidavit or Affirmation, in cases where by Law an Affirmation is allowed, that there is a probable and reasonable ground, for such complaint, to award, in Vacation time, a Writ of Habeas Corpus ad subjiciendum, under the Seal of such Court whereof he shall then be one of the Judges, or the Judge, to be directed to the person or persons in whose custody or power the party so confined or restrained, shall be returnable, immediate, before the Judge so awarding the same, or before any other Judge of the Court, under the Seal of which the said Writ issued.

II. And be it further enacted by the authority aforesaid, that if the person or persons to whom any Writ of Habeas Corpus shall be directed in pursuance of this Act, upon service of such Writ, either by the actual delivery thereof to him, her or them, or by leaving the same at the place where the party shall be confined or restrained, with any servant or agent of the person so confining or restraining, shall, wilfully neglect or refuse to make a return or pay obedience thereto, he, she or they shall be deemed guilty of a contempt of the Court, under the seal whereof such Writ shall issue, and it shall and may be lawful to and for the Chief Justice, Justice or Judge aforesaid, before whom such Writ shall be returnable, upon proof made of such service, to award, in the vacation time, process of contempt, under the Seal of such Court against the person or persons guilty of such contempt returnable before

himself in the vacation time, who shall proceed thereon as to law and justice shall appertain. Provided, that if such Writ of Habeas Corpus shall be awarded, so late in the vacation by any one of the Chief Justices, Justices or Judge, that in his opinion obedience thereto cannot be conveniently paid during such vacation, the same shall and may at his discretion be made returnable in the Court under the Seal whereof such Writ shall issue, at a day certain in the next Term, and the said Court shall and may proceed thereupon and award process of contempt in case of disobedience thereto, in like manner as if such Writ of Habeas Corpus had been originally awarded by such Court. Provided also, that if such Writ of Habeas Corpus shall be awarded by either of the said Courts of King's Bench or by the Provincial Court of Gaspé, in term, but so late that in the judgment of the Court so awarding such Writ, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the Court so awarding such Writ, be made returnable at a day certain in the then next vacation, before any Judge of the Court so awarding such Writ who shall and may proceed thereupon in such manner as by this Act is directed concerning Writs of Habeas Corpus issuing in and made returnable, during vacation.

III. And be it further enacted by the authority aforesaid, that in all cases provided for by this Act, although the return to any Writ of Habeas Corpus shall be good and insufficient in law, the Chief Justice, Justice or Judge aforesaid, before whom such Writ shall be returnable, shall as soon as conveniently may be, proceed to examine into the truth of the facts set forth in such return and into the cause of such confinement or restraint, by affidavit, or by affirmation, in cases where an affirmation is allowed by law, and shall do therein as to justice shall appertain; and if such Writ shall be returned before any one of the said Chief Justices, Justices or Judge, and it shall appear doubtful to him on such examination whether the material facts set forth in the said return or any of them be true or not in such case it shall and may be lawful for such Chief Justice, Justice or Judge to set to bail the person or persons confined or restrained upon his, her or their entering into a recognizance with one or more sureties, or in case infancy or coverture, upon security by recognizance in a reasonable sum, to appear in the Court under the Seal whereof such Writ shall have issued upon a day certain in the term then next following, and so from day to day as such Court shall require, and to abide such order as such Court shall make in and concerning the premises, and such Chief Justice, Justice or judge shall transmit into the Court under the Seal whereof such Writ shall have issued, the said Writ of Habeas Corpus and return, together with the said recognizance, affidavits and affirmations, and such Court thereupon shall proceed, order and determine touching the discharging or bailing or remanding such person or persons so confined or restrained, as to justice shall appertain, either in a summary way by affidavit or affirmation, or by directing one or more issues for the trial of the facts set forth in such return or any of them, whereupon such proceedings shall be had as in cases of issues directed by His Majesty's Court of King's Bench in England.

IV. And be it further enacted by the authority aforesaid, that the like proceeding shall be had in the aforesaid Courts of this Province and in each of them for controverting the truth of the return to all Writ of Habeas Corpus awarded for or on behalf of any person confined or restrained of his or her liberty, otherwise than for some Criminal or supposed Criminal matter, by affidavit, affirmation or otherwise, although such Writ shall be awarded by the Court or be returnable therein.

V. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the Court or Chief Justice, Justice or Judge proceeding on any Writ of Habeas Corpus ad subjiciendum, awarded

in cases of confinement not for Criminal or supposed Criminal matter, to make such order in regard to the payment of the charges and expenses of bringing up the party so confined or restrained, and for carrying him or her back to his or her place of confinement or restraint, in case of remanding as to such Court, Chief Justice, Justice or Judge shall, upon examination thereof, seem meet, and for non-payment thereof, to award process of contempt, whereupon such proceedings shall be had as in other cases of contempt, for non payment of Costs.

VI. And be it further enacted and Provided by the authority aforesaid, that nothing in this Act contained, shall extend to discharge out of Prison, any person charged in debt or other action, or with process in any civil suit.

VII. And be it further enacted by the authority aforesaid, that the several provisions made by this Act, touching the making Writs of Habeas Corpus issuing in time of vacation, returnable in the aforesaid several Courts of King's Bench of this Province, or for making such Writs awarded in term time, returnable in vacation, as the case may respectively happen, and also, for awarding process of Contempt in time of vacation against the person or persons neglecting or refusing to make return of such Writs or to pay obedience thereto, shall extend to all Writs of Habeas Corpus, awarded in pursuance of a certain Act passed in the thirty-first year of King Charles the Second, intituled, "An Act for the better securing the liberty of the subject and for prevention of imprisonment beyond seas" — And of a certain Ordinance of the late Province of Quebec, made and passed in the twenty fourth year of the reign of King George the third, intituled, "An Ordinance for securing the liberty of the subject and for the prevention of imprisonments, out of this Province," or of either of them, in as ample and beneficial a manner as if such Writs and the said cases arising thereon, had been herein before specially named and provided for.