

31 G. 3, C. 5, s. 6, repealed.

Terms to be 2d Tuesday in February, and 3d Tuesdays in June and October.

the reign of King George the Third, intituled *An Act for regulating Marriage and Divorce, and for preventing and punishing incest, adultery and fornication*; and also an Act made and passed in the forty eighth year of the same reign, for altering and amending the said recited Act, be and the same are hereby repealed.

II. And be it enacted, That the fixed and stated terms of holding the court of the Governor and Council for the purposes and causes mentioned in the said recited Act of the thirty first year of the reign of King George the Third, shall be and commence on the second Tuesday in February, the third Tuesday in June, and the third Tuesday in October in each and every year, and shall continue during the space of ten days.

CAP. XXXV.

An Act to regulate Pawn Brokers within this Province.

Passed 8th March 1836.

General Sessions to grant licences to pawn brokers demanding at the rate of £10 per annum.

I. **BE** it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the Justices of the Peace in the several Counties in this Province shall at their general sessions have full power and authority, and they are hereby authorised and empowered to give and grant licences to such persons as they in their discretion shall think fit, being of good fame and character, to use, exercise and carry on the trade or business of a pawn broker in their respective Counties, and that it shall and may be lawful for such Justices to ask, demand and receive for every such licence as aforesaid the sum of ten pounds for one year, and in that proportion for a less period of time, and that all sums so received shall be paid by the clerks of the respective Counties into the hands of the respective County Treasurers, to be appropriated by the Justices towards defraying the necessary contingent expenses of the County, such clerks retaining for their trouble ten shillings for each licence so granted.

Fee to Clerk.

Pawn brokers to enter into recognizance.

II. And be it enacted, That every person so licensed as aforesaid, shall at the time of taking such licence enter into recognizance with two good and sufficient sureties to His Majesty in the sum of one hundred pounds, conditioned for the observance of this Act, and to obey such rules and regulations as the said Justices in their general sessions shall from time to time make and ordain, to be observed by pawn brokers in their respective Counties; which rules and regulations the said Justices are hereby authorised and empowered to make and ordain.

Penalty for acting as pawn broker without licence.

III. And be it enacted, That no person shall use, exercise or carry on the trade or business of a pawn broker or deal in any way as a pawn broker within this Province without having such license as aforesaid, under the penalty of ten pounds for each and every offence.

Who shall be deemed pawn brokers.

IV. And be it enacted, That all persons who shall receive by way of pawn, pledge or exchange, any goods, wares or merchandize for the repayment of money lent thereon, shall be deemed pawn brokers, except such persons as shall lend money at six per cent. interest, without taking any other or greater profit for the loan thereof.

Name and word "pawn broker" to be painted over the shop door.

V. And be it enacted, That every pawn broker shall cause his christian and sur name and the word "Pawn Broker" to be painted in large legible characters over the door on the outside of the shop or other place used by him for carrying on such business, on pain of forfeiting two pounds for every week such pawn broker shall use such shop or place without having the same there painted.

VI. And be it enacted, That every pawn broker may demand and take the following rates of profit over and above the principal sum advanced before he shall be obliged to re-deliver the goods pawned, viz: for every pledge upon which there shall have been lent not exceeding two shillings and sixpence, one halfpenny for any time not exceeding one calendar month, and the same for every calendar month afterwards including the current month in which such pledge shall be redeemed, although such month shall not be expired; if five shillings shall have been lent thereon, one penny; if seven shillings and sixpence, one penny halfpenny; if ten shillings, two pence; if twelve shillings and sixpence, two pence halfpenny; if fifteen shillings, three pence; if seventeen shillings and six pence, three pence half penny; if twenty shillings, four pence; and in that proportion for any sum not exceeding forty shillings; and if exceeding forty shillings and not exceeding ten pounds, after the rate of three pence for every twenty shillings by the calendar month, including the current month aforesaid, and so in proportion for any fractional sum; which said several sums shall be in lieu of and taken as a full satisfaction for all interests due and charges for warehouse room or otherwise.

Rate of profits to be taken by pawn brokers.

VII. And be it enacted, That every pawn broker shall cause to be painted or printed in large legible characters the rate of profit allowed by this Act to be taken, and also the price of obtaining a second note or memorandum of the articles pawned where the former one has been lost, mislaid or destroyed, or fraudulently obtained, and place the same in a conspicuous part of the shop or place where such business is carried on, so as to be visible to and legible by persons pledging goods standing in the places provided for such persons coming to pawn or redeem goods.

Rate of profits and price of a second note of articles pawned, to be posted in the shop.

VIII. And be it enacted, That every pawn broker shall keep a book in which shall be entered in a fair and regular manner at the time of each loan a description of the goods, article or thing so received in pawn, pledge or exchange, and the sum lent thereon with the day and year of pledging the same, and the name and place of residence of the person by whom they were pawned; and the said pawn broker at the time of taking such pawn shall deliver to the person pawning the same a note or memorandum written or printed, and signed by such pawn broker, containing a description of the goods pawned and substance of the entry made in his book aforesaid, for which note or memorandum no charge shall be made; and such note or memorandum shall be produced to the pawn broker before he shall be obliged to re-deliver the goods pawned (except as is hereafter excepted).

Pawn broker to keep regular books and deliver to persons pawning articles a note containing description of articles and substance of entry in his books.

IX. 'And for the purpose of recovering goods which may have been lost or stolen and detecting offenders;' Be it enacted, That the book so kept by any pawn broker as aforesaid, shall at all reasonable times within the hours of business be open to the inspection of any Justice of the Peace within the respective Counties, and that any goods or other articles pawned as aforesaid shall be produced for the examination of such Justice if thereunto required; and if any pawn broker shall at any time refuse or neglect to exhibit such book for inspection as aforesaid, or to produce any goods or other articles pawned when thereunto required by any Justice of the Peace as aforesaid, he shall forfeit and pay the sum of two pounds for each and every offence.

Books to be subject to the inspection of Justices of the Peace.

X. And be it enacted, That all pawned goods shall be deemed forfeited if not redeemed within one year from the time of pawning the same, but that no pawn broker shall sell any goods so pawned until the same shall have remained in his or her custody one full year, and such goods shall then be sold at public auction and not otherwise, and that there shall be at least ten days notice of the time and place of such sale, with a description of the goods given in some public news-

Goods not redeemed within one year to be forfeited and then sold by auction.

paper or posted up in the pawn office and at two other public places in the town where such sale is to take place, and if any surplus shall remain of the monies arising from such sale after deducting the amount of loan with all interests due thereon, and the expenses of advertising and selling the same, such surplus shall be paid over by the pawn broker to the person who would be entitled to redeem the said pawn in case no such sale had taken place, and if any pawn broker shall neglect or be guilty of any offence against any of the provisions of this section, he shall forfeit and pay the sum of five pounds for each and every offence.

A true account of all sales to be entered in a book, and to be liable to inspection.

XI. And be it enacted, That every pawn broker shall enter in a book to be kept for that purpose, a just and true account of the sale of all such goods, expressing the day of the month when pledged, the name of the person pledging, and the day when, and the money for which the same were sold, together with the name and abode of the auctioneer, and the expenses of such sale; and the person who pawned such goods, his executors or administrators shall be permitted to inspect the entry made of such sale; and if any pawn broker shall not have made such entry as aforesaid, or shall neglect or refuse to permit any person entitled thereto, to inspect such entry, or shall not have *bona fide* according to this Act sold such goods, or shall refuse to pay over the surplus arising from any such sale when demanded, he shall be liable to the penalty of five pounds for each and every offence.

Penalty for purchasing or receiving in pledge goods from minors &c. between sun rise and sun set.

XII. And be it enacted, That no pawn broker shall purchase, receive or take any goods in pledge from any person, knowing or believing him or her to be a minor, apprentice or servant, or to be intoxicated with liquor, nor receive any goods by way of pawn or pledge, nor purchase, take or receive any goods in the way of his trade or business, between the setting of the sun and rising of the same, under the penalty of five pounds for each and every offence.

Pawn brokers refusing to deliver back goods pawned on tender of proper amount, to be brought before a Justice, and on further refusal to deliver up or make satisfaction to be committed.

XIII. And be it enacted, That if any goods shall be pawned or pledged for securing any money lent thereon, and within one year from the pawning thereof, the pawner being the real owner of such goods at the time of pawning thereof, shall tender to the pawn broker who lent on security of the said goods, the principal money borrowed thereon, and the profit according to the rates by this Act established, and such pawn broker shall thereupon, without reasonable cause, neglect or refuse to deliver back the said goods so pawned, to the person who borrowed the money thereon, his executors or administrators, in such case, on oath thereof made by such pawner, his executors or administrators, it shall be lawful for any Justice of the Peace where such pawn broker shall reside, on the application of such pawner, his executors or administrators, to cause such pawn broker to come before him, and shall inquire touching the premises; and if it shall be made to appear to the satisfaction of such Justice that a tender of the principal money due, and all profit thereon has been made to the said pawn broker within one year as aforesaid, then the said Justice shall, by order under his hand, direct the goods so pawned, forthwith to be delivered up to such pawner, his executors or administrators; and if such pawn broker shall neglect or refuse to deliver up or make satisfaction for such goods as aforesaid, as such Justice shall order, then the said Justice shall commit the said pawn broker, so refusing, to the common gaol of the County where the offence is committed, until he shall deliver up the said goods or make satisfaction for the value thereof to the party entitled to the redemption.

Person producing note and requiring delivery of goods to be deemed their owner.

XIV. And be it enacted, That the person who shall produce the note or memorandum which shall have been given by any pawn broker as aforesaid, and require a delivery of the goods named thereon, shall be deemed, so far as concerns the person who has the goods in pledge, the owner, and any pawn broker, who shall

shall deliver any goods to the person producing such note or memorandum, shall be indemnified and saved harmless, unless he shall have had previous notice from the real owner not to deliver such goods to the person producing such note or memorandum, or notice that the same are suspected to have been fraudulently or feloniously taken or obtained, or that the said note or memorandum hath been lost, mislaid or fraudulently obtained from the owner thereof.

XV. And be it enacted, That in case any such note or memorandum shall be lost, mislaid, destroyed or fraudulently obtained from the owner, and the goods mentioned therein shall remain unredeemed, the pawn broker with whom such goods were pledged, shall at the request of the person representing himself to be the owner, deliver to such person a copy of the note or memorandum of the articles so pledged from the book of entries kept by such pawn brokers, and if the person shall thereupon prove his property in or right to the said goods as therein mentioned to the satisfaction of some Justice of the Peace, and verify on oath the particular circumstances of the loss, destruction or fraudulent obtaining of the original note or memorandum, and such Justice shall certify the same under his hand, then and in such case the said pawn broker shall suffer the person so proving such property to redeem such goods, on leaving with him such copy of the said note or memorandum with the affidavit so certified as aforesaid.

A second note of goods pledged to be given, the first being lost &c., and on proof before a Justice as to ownership, goods may be redeemed.

XVI. And be it enacted, That nothing herein contained shall extend or be construed to extend to interfere with the Mayor, Aldermen and Commonalty of the City of Saint John in granting licenses to pawn brokers in the City of Saint John as has been heretofore accustomed, but that such pawn brokers shall be under the same restrictions, pains and penalties, and under the like regulations in every other respect as are provided in and by this Act; and the said Mayor, Aldermen and Commonalty are hereby vested with the like power as in granting licences to pawn brokers in the City of Saint John as are hereby given and granted to the Justices of the Peace in the several Counties, but that the amount of licence money and all fines and penalties arising in the City of Saint John shall be paid into the hands of the Chamberlain of the said City for the public use of the said Mayor, Aldermen and Commonalty.

Rights of the corporation of the City of Saint John reserved, and the like powers as to granting licences extended to them.

XVII. And be it enacted, That it shall and may be lawful for the Courts of General Sessions in the several Counties, and for the said Mayor, Aldermen and Commonalty of the City of Saint John, to revoke and annul any licence to any pawn broker by them respectively granted in case of conviction of any of the offences under this Act or for any other satisfactory cause appearing unto them.

Licences may be revoked.

XVIII. And be it enacted, That the several and respective penalties imposed by this Act, shall and may be recovered upon complaint made to any one of His Majesty's Justices of the Peace in the County where such offence shall be committed, or if in the City of Saint John before the Mayor, Recorder or any of the Aldermen of the said City, or any Justice of the Peace for the said City and County, upon the oath of one or more credible witness or witnesses, and levied by warrant of distress and sale of the offender's goods or chattels, under the hand and seal of such Justice, directed to any constable of the town, parish or city where such offence shall be committed, rendering the overplus, if any, after deducting the costs and charges of such distress and sale to the offender, and if no goods shall be found whereon to levy such distress, it shall and may be lawful for such Justice to issue his warrant under his hand and seal to commit such offender to the common gaol of the County where such offence shall have been committed, there to remain without-bail or mainprize for such time not exceeding thirty days as such Justice shall think fit, unless such penalty and forfeiture together with the costs and charges shall be sooner paid.

Recovery of penalties.

Limitation.

XIX. And be it enacted, That this Act shall continue and be in force until the first day of April which will be in the year of our Lord one thousand eight hundred and forty.

CAP. XXXVI.

An Act for more effectually securing the liberty of the subject by enforcing the execution of writs of *Habeas Corpus*.

Passed 8th March 1836.

Preamble.

6 **W**HEREAS the writ of *Habeas Corpus* hath been found by experience 'to be an expeditious and effectual method of restoring any person to his liberty who hath been unjustly deprived thereof: And whereas the Justices of the Supreme Court in this Province have and are accustomed to exercise the same power and authority as the Justices of the Court of King's Bench in England, in awarding, as well in vacation as in term time, writs of *Habeas Corpus ad subjiciendum* under the seal of the said Court, in cases where any person is confined or restrained of his or her liberty as well for some criminal or supposed criminal matter, as otherwise: And whereas enforcing obedience to such writs and preventing delays in the execution thereof, will be advantageous to the public;'

Neglect to make return to or obey a writ of *Habeas Corpus* deemed a contempt of Court.

Proceedings thereupon.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That if the person or persons to whom any such writ of *Habeas Corpus* shall be directed, 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 or persons 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 said Court; and it shall be lawful to and for the Justice before whom such writ shall be returnable, who may be either the Justice awarding the said writ, or any other Justice of the said Supreme Court, upon proof made by affidavit of wilful disobedience of the said writ, to issue a warrant under his hand and seal, for the apprehending and bringing before him, or before some other Justice of the same Court, the person or persons so willfully disobeying the said writ, in order to his, her or their being bound to the King's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the said Court, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such Justice to commit such person or persons so neglecting or refusing to any county gaol, there to remain until he, she or they shall have become bound as aforesaid, or shall be discharged by order of the Court in term time, or by order of one of the Justices of the Court in vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the said Court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the Court to be discharged; Provided that if such writ shall be awarded, so late in the vacation by any one of the said Justices, 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 said Court, 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,

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