

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1830. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1830.

10 & 11 George IV – Chapter 30 (Session 1)

An Act to repeal all the Acts now in force for the support and relief of confined Debtors and to make other and more effectual provisions in lieu thereof. Passed 8th March, 1830.

I. Be it therefore enacted by the President, Council and Assembly, That an Act made and passed in the Forty-first year of the Reign of His late Majesty King George the Third, intituled, "An Act for the support and relief of confined Debtors;" also, an Act made and passed in the Forty-seventh year of the same reign, intituled, "An Act for the further relief of Debtors, with respect to the imprisonment of the persons;" also an Act made and passed in the Fiftieth year of the same, Reign, intituled, "An Act to revive and make perpetual an Act, intituled, An Act for the support and relief of confined Debtors, and further to extend the provisions of the same;" also an Act made and passed in the fifty ninth year of the same Reign, intituled "An Act in addition to, and in amendment of, an Act intituled, An Act for the support and relief of Confined Debtors, and the Act further to extend the provisions thereof;" also, an Act made and passed in the third year of the Reign of His present Majesty, King George the Fourth, intituled "An Act in amendment of the laws now in force for the support and relief of confined Debtors, and for the further relief of Debtors, with respect to the imprisonment of their persons;" also, an Act made and passed in the Fourth year of the present Reign, intituled "An Act in further amendment of the laws now in force for the support and relief of confined Debtors, and for the further relief of Debtors, with respect to the imprisonment of their persons;" also, an Act made and passed in the seventh year of the present Reign, intituled "An Act in further amendment of the laws in force for the support and relief of confined Debtors," be, and each and every of said Acts are hereby repealed.

II. And be it further enacted, That whenever any person may be confined within any Gaol, or the limits thereof, within this Province, for any debt, damages or costs, whether on mesne or final process, and such person so confined shall be unable to provide or obtain his or her necessary support, it shall and may be lawful for such person, after fourteen days confinement, to make application to any judge of the Supreme Court of this Province, or any Justice of the Inferior Court of Common Pleas of the County where such person shall be confined, for a weekly support or maintenance, and such Judge or Justice (after fourteen days previous notice to the plaintiff, or person at whose suit such person may be confined; his or her attorney) shall examine on oath such person so confined, as to his or her ability to support him or herself and if, on examination, to be taken in writing on oath as aforesaid, to be filed in the office of the Clerk of the Court, out of which such process may have issued, it shall appear to such Judge or Justice, that such person is utterly unable to support him or herself, and has no property whatever, real or personal, of what nature or kind soever, (except necessary bedding, wearing apparel, kitchen utensils, and necessary tools of his trade or occupation, not exceeding in value in the whole fifteen pounds,) and that such confined person hath not at any time, since he or she was served with such process, or since he or she had notice thereof, made over, assigned, transferred, or put out of his or her possession or power any property whatsoever, whether real or personal, for the purpose of defrauding such

plaintiff, of giving any undue preference to any other plaintiff or creditor, that then, it shall be lawful for such Judge or Justice to make an order for the party, at whose suit such person may be confined, to pay a weekly sum, to be applied for the support of such person; which sum shall be paid weekly, and the first payment be made at the time such judge of Justice may in such order direct; and from the first day of November until the last day of March, shall be five shillings per Week, and the remainder of the year four shillings per week; and after such order made, it shall be the duty of such party, without any further notice, to pay such weekly support, agreeably to such order; and in case of failure thereof, it shall and may be lawful for any such Judge or Justice as aforesaid, on such failure being made known to him, to make an order under his hand, directed to the Sheriff or Gaoler, to discharge the said person out of confinement by reason of such suit: Provided, That nothing in this Act shall prevent any plaintiff from prosecuting his or her suit (if on mesne process) to final judgment, or from taking out *fieri facias* against the goods and chattels, lands and tenements of such defendant, in the same manner as if no application or order had been made in manner aforesaid.

III. And be it further enacted, That each and every defendant committed to gaol in execution upon any judgment recovered before any justice of the Peace in such Justice's Court, shall be entitled to the benefit of this Act, and such justice, or any other Justice of the Peace of the County, in the gaol of which the defendant shall be confined, upon such application, notice and examination, as prescribed in the cases mentioned in this Act, shall make the like orders for the relief of such defendant in every respect as if the execution against such defendant had issued out of either of the courts before mentioned in this Act.

IV. And be it further enacted, That upon the application of any such person to any Judge or justice as aforesaid, for such support such Judge or Justice is hereby authorized and required to make an order under his hand, directed to the Sheriff or Gaoler in whose custody such person may be confined, to bring up such person before him at the time and place in such order to be specified, for the purpose of being examined, as provided in the second section of this Act; and such Sheriff or Gaoler shall not be liable to any action for escape or other suit for or on account of obeying such order, according to the true intent and meaning of this Act.

V. And be it further enacted, That in any case where it shall be made to appear to the satisfaction of any Judge or justice who may have ordered support to any person, or to any other Judge or justice of the Court out of which the process may have issued upon which such person may be confined, after such support ordered, that such person has the means of providing his or her necessary support, whether from property possessed at the time or since obtained, or by any other means, in either such cases, upon application made to him such Judge or Justice shall be and is hereby authorized and empowered, by order under his hand and seal, to suspend the payment of such support for a stated time, or until further order is given in that behalf by such Judge or Justice, or by the Court out of which the process shall have issued. Provided always, That in case the said judge or Justice shall direct the suspending or withholding support until further order from the Court is given in that behalf, it shall and may be lawful for such Court, at the next or any future sitting, to hear and determine upon the same; and make such order as to such Court may appear fit and proper: Provided, That such Court shall not direct the payment of any greater support than

by this Act is authorized: And further Provided, that no order shall be made for suspending the payment of support without due notice being given to the confined person of the application for that purpose being made, in order that such person may attend, if he or she think proper; and any Judge or Justice as aforesaid may order and direct the Sheriff or Gaoler to cause such person to be brought before him for that purpose, in the same manner as directed in and by the fourth section of this Act.

VI. And be it further enacted, That if it shall at any time appear or be made out to the satisfaction of any such Judge or justice as aforesaid, That the person so applying for or having support under this Act, (and having the benefit of the Gaol limits) can either by labour or otherwise earn or procure his or her necessary support and maintenance, such Judge or Justice shall and may refuse to make such order for support as aforesaid, or in case the same be made, to suspend the same in the manner as is provided in the fifth section of this Act.

VII. And be it further enacted, That any person who may have received such weekly allowance for the space of one year, shall immediately thereafter be entitled to his or her discharge from confinement at the suit of the party who may have paid the same; and in such case the said Judge or Justice of the Peace, who made the order for such weekly support, or any other Judge or Justice of the Peace as aforesaid, is hereby authorized and required to discharge such person from custody at the suit of the party who may have paid the support. Provided always, That in case of such discharge the party shall be entitled to the same remedy, by proceeding to final judgment, or taking out execution against goods, chattels, lands and tenements, as is provided in the second section of this Act.

VIII. And be it further enacted, That when any plaintiff or defendant shall have occasion to compel the attendance of any witness or witnesses to testify or give evidence, before the Judge or Justice, to, or before whom, any application, examination or other proceeding may be had under this Act, it shall and may be lawful for such plaintiff or defendant to issue a subpoena, or if need be a subpoena *duces tecum*, out of the Court from which the process under which the person is confined may have issued, commanding and requiring the attendance of such witness, and the production of books and papers before such Judge or Justice at the time and place in such subpoena to be specified, which said subpoena shall be served, and the witness paid or tendered his reasonable expences, in the same manner as if the subpoena had issued from such Court in the ordinary manner; and the witness, or the person served therewith, shall be subject to the same punishment by such Court, or liable to the like damages in all respects to the party injured, for wilfully refusing or neglecting to obey such subpoena, as in any other case he would be liable or subject to.

IX. And be it further enacted, That when any person so confined shall be possessed of money or debts at the time of his or her confinement or afterwards, and shall have offered to pay or assign the same to the party at whose suit such person may be confined, or in case there be several parties, to them respectively, in part payment of and in proportion to such demand or demands, or when such confined person shall be possessed of either real or personal property (excepting nevertheless wearing apparel, bedding and tools to the value of fifteen pounds as before

excepted) and shall have offered to convey or assign the same to the party or parties, at whose suit or suits such person may be confined, at a fair price, to be agreed upon, in part payment and in proportion as aforesaid) and in case of disagreement as to the price or value of such property, shall have offered to pay in manner aforesaid, the proceeds arising from the sale of such property, which said property, shall be sold at public auction by such confined person, after having first advertised the time and place of the sale thereof, for the space of fourteen days, and given the party or parties respectively, or their attorneys, notice of such sale, and the said party or parties shall have refused to accept and receive the said payment or assignments, or the said proceeds arising from the sale of the said property as aforesaid that then it shall and may be lawful for the said person, so confined, to assign or pay over the same to any other *bona fide* creditor or creditors.

X. And be it further enacted, That when such party or parties may have received such assignment or payment from such confined person, as aforesaid, or where the confined person, in case of refusal by such party or parties, may have assigned or paid the same to other *bona fide* creditors as aforesaid, that then in either of such cases the said confined person shall be entitled to the benefit of this Act, in all respects, the same as if such person had no such debt or property at the time of confinement or application.

XI. And be it further enacted, That the justices of the Peace in the several and respective Counties shall, and they are hereby authorized and empowered, at any general or special sessions to be holden in the respective Counties, to designate certain limits round the several and respective Gaols in this Province, without any reference to Gaol Yards; which limits shall in no case, be less than forty rods, nor exceed eighty rods from any Gaol: Provided always, That nothing in this section shall be construed to extend to prevent the Justices of the Peace for the County of Charlotte, in General Sessions, to extend the limits of the Gaol in that County, so as to allow persons confined therein to attend divine service on Sabbath days in the town plot of the town of Saint Andrews.

XII. And be it further enacted, That the Act made and passed in the tenth year of the reign of His Majesty King George the Fourth, intituled "An Act to authorize the extension of the Gaol limits in the City of Saint John," be and the same is hereby continued in full force and virtue during the continuance of this Act.

XIII. And be it further enacted, That when any person is confined in any Gaol in this Province, either upon mense process or execution, the Sheriff in whose custody such person may be, is hereby authorized and empowered to permit such person to go about and have his liberty within the limits designated for such Gaol, as provided in the eleventh section of this Act, upon a Bond being given to the Sheriff, by the name of his Office, by such person with two sufficient sureties, to the satisfaction of the Sheriff, in double the amount of the sum for which such person shall be in confinement, upon condition, thereunder written, that such defendant, shall not go or be at large out of such limits, or escape at any time while he has the liberty of the same, as aforesaid, any law or custom to the contrary notwithstanding; and the Sheriff shall be entitled to demand, and

receive for making such Bond five shillings and no more; and such Bond shall be in the form following, that is to say:—

Know all men by these presents, that we _____ are held and firmly bound to _____ Sheriff of the County (or City and County) of _____ in the sum of _____ lawful money of New-Brunswick, to be paid to the said Sheriff or to his certain Attorney, Executors, Administrators or Assigns; for which payment to be well and truly made, we bind ourselves and each of us by himself, for and in the whole, our and each and every of our Heirs, Executors and Administrators, firmly by these presents; sealed with our seals and dated this _____ day of _____ in the _____ year of the Reign of our Sovereign Lord _____ of the United Kingdom of Great Britain and Ireland, &c. &c. and in the year of our Lord one thousand eight hundred and _____.

Whereas the above named _____ Sheriff as aforesaid, hath given permission to the above bounden _____, a person confined in the Gaol of the County (or City and County) above mentioned, to go about and have his liberty within the limits of such Gaol, now the condition of this obligation is such, that if the said _____ shall not go or be at large, out of the said limits of such Gaol, or escape at any time, while he has the liberty of the same as aforesaid, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered in presence of _____.

Which said Bond, the said Sheriff or his Deputy, the request of the Plaintiff in such suit or his Attorney, shall assign to the said Plaintiff in such action, by endorsing the same, (and attesting to it) under his hand and seal, in the presence of two or more credible witnesses; and if the said Bond or Assignment be forfeited, the plaintiff in such action, after such assignment made, may bring an action and sue therefor in his own name, and the Court where the action is brought, may by rule or rules of the same Court, give such relief to the plaintiff and defendant in the original action, and to the obligors in the said Bond, as is agreeable to Justice and reason, and that said rule or rules of the said Court shall have the nature and effect of a defezance to such bond.

XIV. And be it further enacted, That no Sheriff shall be liable to any action of escape or other suit or information for or on account of any liberty that may be granted to any confined debtor tinder the provisions and according to the true intent and meaning of this Act. Provided always, that if any confined person shall go or be at large in any manner, or by any means not authorized by this Act, the Sheriff shall then be liable to all intents and purposes, in the same manner as if this Act had not been made.

XV. And whereas, it is expedient that creditors may have power to discharge Debtors without losing the benefit of judgments obtained against such debtors, Be it therefore further enacted, that it shall and may be lawful for any creditor or creditors, at whose suit any debtor, or debtors, is, are, or shall be in prison, and taken or charged in execution for any sum of money, by writing signed by such creditor or creditors, or by one of them, for and in behalf of himself or herself and the others of them (being complainants in the same action) to signify or declare his, her or their consent to the discharge of such debtor or debtors from the prison in which he, she or they, is, are or shall be confined in execution at the suit of such creditor or creditors, without losing the benefit

of the judgment upon which such execution issued, except as hereinafter provided; and that notwithstanding the discharge of any debtor or debtors, in pursuance of such consent as aforesaid, the judgment upon which such debtor or debtors, was or were taken or charged in execution, shall continue and remain in full force to all intents and purposes, except as hereinafter provided. And it shall be lawful for such creditor or creditors, at any time to take out execution on every such judgment against the lands, tenements, hereditaments, goods and chattels, of such debtor or debtors, or any of them, (other than, and except the necessary; apparel and bedding of him, her or them, or his, her or their families, and the necessary tools of his, her or their trade or occupation, not exceeding the value of fifteen pounds in the whole) or to bring any action or actions on every such judgment, or to bring any action or use any remedy for the recovery of his, her or their demands against any other person or persons liable to satisfy the same, in such and the same manner as such creditor or creditors could or might have had or done in case such debtor or debtors had never been taken or charged in execution upon such judgment: Provided always, That no debtor or debtors, who shall be discharged in pursuance of this Act, shall at any time afterwards be taken or charged in execution, or convicted upon any judgment herein-before declared to continue and remain, in full force, or in any action which may be brought on any such judgment, and that no proceeding by *feri facias*, action or otherwise, shall be had against any bail, in the action on which such judgment was obtained.

XVI. And be it further enacted, That the Executors and Administrators of any such creditor as aforesaid, shall and may consent to the discharge of any debtor or debtors to their testator or intestate, in such and the same manner, and with the same advantages and consequences in all respects, as such creditors if living might or could have done, in pursuance of this Act, and such Executors and Administrators respectively, shall not, by reason of any such discharge in pursuance of this Act, be deemed guilty of *destravit*, or be chargeable with the debt due from the person or persons so discharged.

XVII. And be it further enacted, That every Sheriff, Gaoler or Keeper, in whose prison, gaol or custody any debtor or debtors, is, are or shall be confined or detained in execution, shall, and every of them is hereby required, within twenty-four hours next after such consent in writing of any creditor or creditors as hereinbefore mentioned, shall have been produced to, and left with such Sheriff, Gaoler or Keeper, or his deputy or agent, at such prison or gaol (the hand writing of mark of such creditor or creditors to such consent in writing being duly proved by affidavit of some credible person to be thereunto annexed, and to be sworn before one of the Judges of the Court, out of which the execution against such debtor or debtors issued, or a commissioner duly authorized to take affidavits in the County where such debtor or debtors shall be confined) to discharge and set at liberty the debtor or debtors, to whose discharge such consent shall be signified or declared as aforesaid, if he, she or they are in custody only upon the execution issued at the suit of the creditor or creditors signifying and declaring such consent.

XVIII. And be it further enacted, That in all cases wherein a writ of *feri facias* shall be issued upon any judgment obtained, or to be obtained in any Court in the Province, it shall not be lawful for the Sheriff or other Officer executing such writ, to seize or levy upon the necessary apparel and bedding of the debtor or debtors against whom such judgment shall be obtained, or of his, her or

their family or families, or the necessary tools of his, her or their trade or occupation in satisfaction of such judgment. Provided always, that such apparel, bedding and tools so to be exempted from being seized or levied upon as aforesaid, shall not exceed the value of Fifteen pounds in the whole, to any one debtor, which value shall be ascertained by the oath of three disinterested freeholders, in the County, to be appointed by such Sheriff or other Officer to appraise the same; which oath the said Sheriff is hereby authorized and empowered to administer.

XV. And be it further enacted, That every person who shall be convicted of making or taking a false oath to any of the matters herein before described, or required to be sworn to, shall be deemed guilty of perjury, and shall be liable to all the pains and penalties to which persons are liable for wilful and corrupt perjury.

XX. And be it further enacted, That in case any confined person may have been discharged in consequence of the weekly support ordered, agreeably to the provisions of this Act, not having been paid, or after a twelve months confinement agreeably to this Act, all persons whosoever shall be indemnified, and are hereby freed and discharged, against and from all suits, actions, prosecutions, informations or judgment whatsoever, that may be had, moved, prosecuted or adjudged against them, or any of them, for, or by reason, or on account of such person having been discharged at aforesaid.

XXI. And be it further enacted, That any gaol limits already established in any County or City in this Province, by virtue of any Act or Acts now in force, shall continue and remain to all intents and purposes until others be established agreeably to this Act.

XXII. And be it further enacted, That this Act shall continue and be in force for two years and no longer.