

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1834.* Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1834.

4 William IV – Chapter 36

**An Act in Addition to and in Amendment of an Act passed in the Twenty sixth Year of the Reign of His late Majesty King George the Third, intituled *An Act for Relief against absconding Debtors.* Passed 22d March 1834.**

Whereas the Laws now in Force relating to absconding Debtors, have in many Respects been found defective, and in some Cases oppressive;

I. Be it therefore enacted by the Lieutenant Governor, Council and Assembly, That the Fourth, Seventh and Eleventh Sections of the said recited Act, be and the same are hereby repealed.

II. Be it enacted, That if any Sheriff or Sheriffs shall by virtue of any Warrant or Warrants hereafter to be issued in pursuance of this or the above recited Act, through Ignorance or Want of proper Information, seize and take any Goods, Chattels or Effects which shall or may be claimed or challenged by any Person or Persons as his or their Property, it shall and may be lawful for such Sheriff, thereupon to summon and swear a Jury of Twelve discreet Persons, competent by Law to serve as Petit Jurors, to inquire into and try the Right of Property thereof; and if such Jury shall, upon such Inquest, find the Right of Property of such Goods, Chattels or Effects to be in the Person or Persons so claiming the same, or in any other than the Person or Persons against whose Estate or Effects such Warrant or Warrants did issue, such Sheriff shall, forthwith after such Inquisition had and taken, deliver such Goods, Chattels or Effects in the like good Order and Condition in which they were seized and taken, to the Person or Persons in whom the Property thereof shall be so found, or to his, her or their Agent, Attorney or Assigns; and such Sheriff shall not in such Case be liable to any Suit or Prosecution for his having seized and taken such Goods, Chattels or Effects through ignorance or for Want of proper Information: and all reasonable Charges arising from such Seizure, and Inquest as aforesaid, shall be allowed, and certified by the Judge or Judges who issued such Warrant, and paid by the Trustees out of the Effects or Estate of the absconding or concealed Person or Persons, against whose Estate and Effects such Warrant issued, if the Property of such Goods, Chattels or Effects so claimed shall by such Inquisition be found to be in any other than the Person or Persons against whose Estate or Effects such Warrant issued; but if the Property of the Goods, Chattels or Effects so claimed shall by such Inquisition be found to be in the Person or Persons against whose Estate or Effects the Warrant of Attachment which caused them to be seized did issue, then all Costs, Charges and Expenses accrued or arising by such Claim and Inquisition, or either of them, shall be paid and borne by the Person or Persons who claimed the same from the Sheriff, or applied for Inquisition to be had, or occasioned the same to be had and taken, to be recovered by Action of Debt or Assumpsit, at the Suit of the Trustees on the said Estate.

III. And be it enacted, That the Decision of the Jury on any such Inquisition, shall in all Cases be final and convulsive, and a good Bar to any Action that may thereafter be brought by the Party or

Parties against whom such Inquisition may be found, unless written Notice to the contrary shall be given by the Party or Parties failing on that Inquisition, to the Sheriff or Person holding such Inquisition, within Six Days after taking such Inquisition, and unless such Action be brought within Three Calendar Months from the Time of taking the same; and that all Inquisitions had and taken by any Sheriff by virtue of this Act, shall be returned in Writing under the Hands and Seals of the Sheriff and Jury taking the same, and filed by him in the Court out of which such Warrant issued.

IV. And be it enacted, That if any Person or Persons against whose Estate or Effects such Warrant or Warrants of Attachment shall have issued, shall, at any Time before the Appointment of Trustees for all the Creditors of such Debtor be made either by himself or by his Attorney or Agent, by Petition to the Judge or Judges who issued such Warrant, or to any other Judge of the same Court, offer to prove to the Court of which the Judge who issued such Warrant is a Judge, in open Court, that he, she or they against whose Estate and Effects such Warrant or Warrants issued, is or are resident within this Province, and was or were not at the Time such Warrant issued, nor within Thirty Days preceding, nor at any Time since, an absconding or concealed Debtor, and thereby pray that the same may be heard and determined at the then next sitting of such Court, and shall and do at the same Time execute and deliver to the Creditor or Creditors who applied for and obtained such Warrant or Warrants of Attachment, a Bond with good and sufficient Security, to be approved of by the said Judge or Judges, if in the Supreme Court, in the Sum of Forty Pounds, if in any of the Inferior Courts, in the Sum of Twenty Pounds, with a Condition thereunder written, that if such Person or Persons, by Name, against whose Estate or Effects such Warrant or Warrants issued, do and shall well and truly pay or cause to be paid all the Expenses the Obligees or Obligee may be put to in opposing or attending such Application, to be taxed and allowed by the Court issuing such Warrant, in case the Person or Persons against whom such Warrant or Warrants issued, do not prove to the Satisfaction of the said Court out of which such Warrant issued, at the then next Term, or at such other Time as the said Court may order and appoint for hearing the same, that he, she or they is or are then resident within this Province, and was or were not at the Time such Warrant or Warrants issued, nor within Thirty Days preceding the issuing thereof, nor at any Time after, an absconding or concealed Debtor within the meaning of this Act, then the said Obligation to be void, otherwise to remain in full Force and Virtue, then and in every such Case the Judge or Judges who issued such Warrant or Warrants shall report his or their Proceedings in the Premises to the next Court whereof he or they is or are Judges; which Courts hereby fully authorized and empowered to compel the Parties and their Witnesses to come into Court, and hear the Proofs and Allegations of the Parties and their Witnesses in a summary Way, and thereupon to determine whether the Matter and Things in such Petition have been fully proved and supported; and if such Court shall adjudge and determine that the Matters and Things contained in such Petition have been fully proved and supported, then such Court shall grant a Supersedeas to such Warrant or Warrants, and the Person or Persons against whose Estate and Effects such Warrant or Warrants did issue, shall recover his, her or their Costs, (to be taxed by the said Court in open Court,) of the Creditor or Creditors who procured such Warrant or Warrants of Attachment to be issued, by Action of Debt or Attachment out of the said Court, and shall also have an Action of Damages against the Creditor or Creditors, or other Person or Persons on whose Application such Warrant issued: Provided always, that where the Court out of which such Warrant issued, shall on or immediately after granting such Supersedeas, certify that there was

probable Cause of Suspicion, and no Malice on the Part of the Party or Parties causing such Warrant to be issued, then and in such Case such Certificate shall and may be pleaded in Bar to such Action.

V. And be it enacted, That if any Person or Persons indebted to such absconding or concealed Debtor or Debtors, or having the Custody of any Goods, Chattels or Effects, or other Thing or Things whatsoever, of such absconding or concealed Person or Persons, shall conceal the same, and not deliver a just Account thereof, to such Trustees as aforesaid, or One of them, by the Day for that Purpose by them appointed, he, she or they so concealing shall forfeit Double the Sum of the Debt or Debts, or Double the Value of the Goods, Chattels, Effects or other Thing or Things so concealed, to be recovered by the said Trustees in any Court within this Province having Jurisdiction to the Amount of such Forfeiture, and applied as hereinafter is directed; which said Courts or either of them are hereby respectively fully empowered, by Order of Court, on the Application of the said Trustees, to compel to come before such Court all and every Person and Persons suspected of concealing, or of being concerned in concealing, the Debts, Goods, Chattels and Effects of the said absconding or concealed Debtor, and them respectively to examine upon Oath touching the Premises, and to commit them or either of them, if they refuse to be so examined, or being so examined refuse to answer fully and satisfactorily to such Court, or refuse to obey the Order and Decision of such Court.

VI. And be it enacted, That in order to obviate the Difficulties and Inconvenience felt in remote Situations in this Province, where there are no Judge or Judges of the Supreme Court residing, arising from the Necessity of sending to a Judge of the Supreme Court, where the Proceedings are intended to be instituted in that Court, to obtain a Warrant against an absconding Debtor's Estate, that it shall and may be lawful hereafter for the Judges of the Supreme Court, during Term Time, and they are hereby fully authorized and empowered to appoint Three Commissioners in such Situations or Places in the several Counties in this Province as in the. Opinion of such Court require the same, for the Purpose of taking the Examination of the Person or Persons applying for a Warrant against an absconding or concealed Debtor or Debtors' Goods, Chattels and Effects; which said Commissioners or any Two of them when so appointed and sworn as hereinafter directed, are hereby fully authorized and empowered to take the Examination in Writing of any Person or Persons applying for such Warrant, and upon the Proof required by the above recited Act of which this is an Amendment being duly made before them or any Two of them of the Debt due, and of the Absconding or Concealment of the Debtor or Debtors, to their Satisfaction, to issue a Warrant or Warrants against, such absconding or concealed Debtor's Goods, in the Name of the Chief and Senior Justice of the said Supreme Court, and returnable therein, and in every Respect agreeable to the Form of the Warrant issued and adopted by the Judges of the same Court; which Warrants when so issued shall be as valid and effectual, to all Intents and Purposes, as if issued by the Judges of the said Court or One of them, and the same Proceedings shall be had therein as if issued by the said Court, or any One of the Judges thereof, any Thing herein contained to the contrary thereof in anywise notwithstanding: Provided always, that the said Commissioners taking such Examination, and issuing such Warrant, shall forthwith after the taking such Examination and issuing such Warrant transmit the Examination and Proof upon which they issued such Warrant to the Chief Justice, or, in his Absence, to the next Senior Judge of the said Court, with a

Memorandum of the Date and Time of issuing such Warrant, also of the Name of the Creditor or Creditors at whose Instance such Warrant was issued, and of the Person or Persons against whom such Warrant issued.

VII. And be it enacted, That before the said Commissioners, or any of them, enter upon the Duties of their said Office, they shall be respectively sworn before the said Court, or One of the Judges thereof, or before a Commissioner of the said Court for taking Affidavits, or before a Commissioner to be for that Purpose appointed by His Excellency the Lieutenant Governor or Commander in Chief for the Time being to administer such Oath, to the due and faithful Discharge of the Duties of their said Office; which Oath shall be endorsed on the Back of their Commission or respective Commissions appointing them to such Office.

VIII. And whereas by the Sixteenth Section of the said Act of which this is an Amendment, it is among other Things enacted, that if any Surplus shall remain after all just Debts and legal Charges and Commissions are fully paid and satisfied, such Surplus shall be paid or delivered to the said absconding or concealed Person or Persons, his, her or their Executors, Administrators or Assigns; but as in the Event of no such Person or Persons appearing or being present to whom such Surplus should be paid or delivered, it is necessary that some Person should be authorized to receive the same; Be it therefore enacted, That the said Surplus shall in that Case be paid or delivered to a Receiver to be appointed by the Court wherein the Proceedings have been had.

IX. And be it enacted, That when the Account of the Proceedings, and Accounts of such Trustees, are duly filed with the Clerk of said Court agreeably to the Directions of the Twenty fourth Section of said Act, and the same is satisfactory to such Court, the said Court, shall be and is hereby authorized by Rule or Order of said Court to discharge such Trustees from their Appointment, and from the Performance of all further Duties or Liabilities thereunder.