

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1836. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1836.

6 William IV – Chapter 36

An Act for more effectually securing the liberty of the subject by enforcing the execution of writs of *Habeas Corpus*. Passed 8th March 1836.

'Whereas 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;'

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 wilfully 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 recognisance 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, in like manner as upon disobedience to any writ originally awarded by the said Court:

Provided also, that if such writ shall be awarded by the said Supreme Court in term, but so late that in the judgment of the Court obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said Court, be made returnable at a day certain in the then next vacation, before any Justice of the same Court, who shall and may proceed thereupon in such manner as by this Act is directed concerning writs issuing in and made returnable during the vacation.

II. And be it further enacted, That although the return to any such writ of *Habeas Corpus* shall be good and sufficient in law, it shall be lawful for the Justice before whom such writ may be returnable to 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 to do therein as to justice shall appertain; and if such writ shall be returned before any one of the said Justices, 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 the said Justice to let to bail the said person so confined or restrained, upon his or her entering into a recognizance with one or more sureties, or in case of infancy or coverture, or other disability, upon security by recognizance in a reasonable sum, to appear in the said Supreme Court, upon a day certain in the term following, and so from day to day as the Court shall require, and to abide such order as the Court shall make in and concerning the premises; and such Justice shall transmit into the same Court the said writ and return, together with such recognizance, affidavits and affirmations; and thereupon it shall be lawful for the said Court to proceed to examine into the truth of the facts set forth in the return, either in a summary way by affidavit or affirmation (in cases where by law affirmation is allowed), or by directing one or more issues for the trial of the facts set forth in the said return or any of them, and to order and determine touching the discharging, bailing or remanding the party, as to justice shall appertain.

III. And be it further enacted; That the like proceeding may be had in the Court for controverting the truth of the return to any such writ of *Habeas Corpus* awarded as aforesaid, although such writ shall be awarded by the said Court itself or be returnable therein.

IV. And be it further enacted, That it shall and may be lawful for the Court or Justice proceeding on any such writ of *Habeas Corpus* to make such order in regard to the payment of the charges and expenses of bringing up the party so confined and restrained, and for carrying him or her back to his or her place of confinement in case of remanding, as to such Court or Justice 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.