

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 41

An Act relating to insolvent confined Debtors. Passed 16th March 1886.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That an Act made and passed in the tenth and eleventh years of the reign of His late Majesty King George the Fourth, intituled *An Act to repeal all the Acts now in force for the support and relief of confined Debtors, and to make more effectual provisions for the same*; also an Act made and passed in the first year of the reign of His present Majesty, intituled *An Act to amend the Laws in force relating to insolvent confined Debtors*; also an Act made and passed in the second year of the same reign, intituled *An Act to continue and amend the Acts relating to the support and relief of confined Debtors*; also an Act made and passed in the third year of the said last mentioned reign, intituled *An Act further to amend the Acts relating to the support and relief of confined Debtors*, be and the same are hereby severally repealed.

II. And be it 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, immediately or at any time after the said debtor may be put in confinement, to make application to any Judge of the Supreme Court of this Province, or any Justice of the Inferior Court of Common Pleas, together with any Justice of the Peace, being of the Quorum, and in the County where such person shall be confined, for a weekly support or maintenance; and such Judge or Justices (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 himself 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 Justices that such person is utterly unable to support himself 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 the first or mesne process in the suit in which he or she may have been confined, or since he or she had notice of the said suit having been commenced, made over, assigned, transferred or put out of his or her possession or power, either directly or indirectly, any property whatsoever, whether real or personal, for the purpose of defrauding such plaintiff or giving any undue preference to any other plaintiff or creditor, that then it shall be lawful for such Judge or Justices to make an order for the party at whose suit such person may be confined, to pay a weekly sum of five shillings 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 or Justices may in such order direct; 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 Justices

as aforesaid, on such failure being made known to him or them, to make an order under his or their hands, directed to the Sheriff or Gaoler, to discharge the said person out of confinement by reason of such suit, and such person shall be forthwith discharged by the said Sheriff or Gaoler without any claim or detention for any reason of any Sheriff's fees, Gaoler's fees, board found or provided, or any other pretence whatsoever; 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 *fiery facias* against the goods and chattels, lands and tenements of such defendant, or from recovering in any other manner the amount of the judgment obtained in the suit, so always that the person of any debtor so discharged shall be freed from arrest in any proceedings or actions upon such judgment.

III. And be it enacted, That such allowance shall be paid to the gaoler of the County in which such debtor may be confined, at any time during the day (between sunrise and sunset) such allowance becomes due, for the use and support of such confined debtor.

IV. 'And whereas it is expedient in certain cases to authorise and empower the Supreme Court of Judicature of this Province to grant relief or discharge confined debtors, who by the strict provisions of this Act may not be entitled to the benefit thereof;' Be it therefore further enacted, That when any person may have been confined in any gaol or limits thereof in this Province for the space of one year at the suit of any person for either debt, costs or damages, such confined person may apply to the said Supreme Court in term time, on affidavit of the circumstances, for relief or discharge, which said Court on notice having been given of such application to the adverse party or his attorney may enquire into the matter on affidavit or otherwise, and if it shall thereupon appear to said Court that the person so confined has no property whatever, real or personal, within his possession, power or control, wherewith he can satisfy such demand or any part thereof, or support himself in custody, such Court may in its discretion make an order either for the maintenance or discharge of such person so confined, in the same manner as any Judge of such Court may do by virtue of this Act, and which order or discharge shall in all respects have the like force and effect as any order or discharge made by any Judge pursuant to the directions of this Act.

V. And be it 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 Justices of the Peace who made the order for such weekly support, or any other Judge or Justice of the Peace as aforesaid, is hereby authorised 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.

VI. And be it 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 Justices 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 are 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.

VII. And be it enacted, That upon the application of any such person to any such Judge or Justices as aforesaid for such support, such Judge or Justices is hereby authorised and required to make an order under his or their band, directed to the Sheriff or Gaoler in whose custody such person may be confined, to bring up such person before him or them, at the time and place in such order to be specified, for the purpose of being examined as is 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.

VIII. And be it enacted, That in any case where it shall be made to appear to the satisfaction of any Judge or Justices 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 or them, such Judge or Justices shall be and are hereby authorised and empowered, by order under his or their hand and seal, to suspend the payment of such support for a stated time, or until further orders given in that behalf by such Judge or Justices, or by the Court out of which the process shall have issued: Provided always, that in case the said Judge or Justices 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 at 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 authorised; 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 Justices aforesaid may order and direct the Sheriff or Gaoler to cause such person to be brought before him or them for that purpose in the same manner as directed in and by the seventh section of this Act.

IX. And be it enacted, That if it shall at any time be made out to the satisfaction of any Judge or Justices 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 or maintenance, such Judge or Justices 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 eighth section of this Act.

X. And be it 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 Justices 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 Justices 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 expenses in the same manner as if the subpoena had issued from such Court in the ordinary manner, and the witness or 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.

XI. And be it 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 and 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, and that when such party or parties may have received such assignment or payment from such confined person as aforesaid, or when 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.

XII. And be it enacted, That the Justices of the Peace in the several and respective Counties shall and they are hereby authorised and empowered, at any general or special Sessions to be holden in the respective Counties, to designate certain limits around 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 one hundred and sixty 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 plat of the town of Saint Andrews.

XIII. And be it enacted, That when any person is confined in any gaol in this Province either upon mesne process or execution, the Sheriff in whose custody such person may be is hereby authorised and empowered to permit such person to go about and have his liberty within the limits designated for such gaol as provided in the twelfth 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. Dated this ____ day of _____ in the _____ year of the reign of our Sovereign Lord _____ of the United Kingdom of Great Britain and Ireland, &c. &e. 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 the City and County) above mentioned, to go about and have his liberty within the limits of such gaol: Now the condition of the above 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 is to be void, otherwise to remain in full force and virtue. Signed, sealed and delivered in the presence of _____.

Which said bond the said Sheriff or his deputy, at 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 agreeably to justice and reason, and that said rule or rules of the said Court shall have the nature and effect of a defeazance to such bond.

XIV. And be it 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, under 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 authorised 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 judgment obtained against such debtors;' Be it therefore 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 is 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 is 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 an action or actions on every such judgment, or to bring any action or use any remedy for the recovery of his, her or their demand 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 hereinbefore 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 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 *devastavit*, or be chargeable with the debt due from the person or persons so discharged.

XVII. And be it 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 herein before 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 or 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 authorised 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 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 Provinces 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, 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 to same, which oath the said Sheriff is hereby authorized and empowered to administer.

XIX. And be it enacted, That every person who shall be convicted of making or taking a false oath to any of the matters hereinbefore 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 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 and prosecutions, informations or judgments 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 as aforesaid.

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

XXII. And be it enacted, That any debtor having the liberty of the gaol limits under the provisions of this Act, may render himself or be rendered by his sureties or one of them to close custody in the gaol in discharge of the limit bond, in like manner a principal may render himself or be rendered in discharge of his bail in cases of special bail, and upon such render being made the obligation of the said bond shall become void.

XXIII. And be it enacted, That an Act made and passed at the Session of the General Assembly holden in the ninth and tenth years of the reign of King George the Fourth, intituled *An Act to*

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authorise, the extension of the gaol limits in the City of Saint John, be and the same is hereby declared to be continued and in force for and during the continuance of this Act.

XXIV. 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.