

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1856.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1856.

19 Victoria – Chapter 42

**An Act for better securing the liberty of the Subject. Passed 1st May 1856.**

Section.

1. On cause, Judge may order keeper of a gaol to return to him whether a prisoner is detained, with the date and cause.
2. Return to be as to a Writ of Habeas Corpus and to include specified particulars.
3. Upon return made, Judge to proceed.
4. Keeper to inform his prisoner of the order, and obey it.

Section.

5. Wilful disobedience, a misdemeanor.
6. Case may be decided by other than the Judge who issued the order.
7. No order to discharge a prisoner for cause not specified; additional returns by the keeper.
8. Act not to preclude remedy for false imprisonment.

Whereas the present practice of bringing up prisoners on Writs of Habeas Corpus, is attended with delay, expense, and inconvenience, not in general necessary to the purposes of justice;—

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. Upon sufficient cause shewn to any Judge of the Supreme Court, by or on behalf of any person confined in any gaol or prison, such Judge may and is hereby empowered, (instead of granting his fiat for a Writ of Habeas Corpus cum causa, requiring the keeper of such gaol or prison to bring the prisoner before him in order that the legality of such imprisonment may be inquired into, and discharge, bailment, or recommitment had thereon,) by order, in writing signed by him, with his name, addition of office, and place of residence, to require and direct such keeper to return to him whether, or no such person is detained in prison, together with the day and cause of his having been taken and detained.

2. It shall be the duty of such keeper immediately upon the receipt of such order, to make a true and full return in writing to such Judge, of the day and cause of such taking and detention to the same effect as a return to a Writ of Habeas Corpus would now be made, such return always to include a copy of the process, warrant, or order, upon which the said prisoner is held, where the same is of a criminal nature, or upon any summary complaint or conviction before any Justice, of the Peace; and such Judge may enforce obedience to such order by process of contempt, in the same manner as he may now compel proper return to be made to a Writ of Habeas Corpus.

3. Upon return to such order, the Judge may proceed to examine into and decide upon the legality of the imprisonment, and make such order, require such verification, and direct such

notices or further returns in respect thereof, as he may deem necessary or proper for the purposes of justice, and may, and he is hereby empowered by order in writing, signed as aforesaid, to require the immediate discharge from prison, or may direct the bailment of such prisoner in such manner and for such purpose, and with the like effect and proceeding, as is now allowed upon habeas corpus; such bail when ordered, to be entered into before any Justice of the Peace specially named in such order, or any Justice of the County or placer where there is no such nomination.

4. It shall be the duty of such keeper immediately upon the receipt of any order of a Judge in relation to a prisoner in his custody, to communicate the same to such prisoner, and to give him a true copy thereof, if demanded, and to obey the requirements of the same.

5. Every wilful neglect or disobedience of the order of a Judge in relation to a prisoner shall be deemed a misdemeanor, and punishable as such by fine and imprisonment, or either, as the discretion of the Court.

6. The matter of the return made to the order of a Judge may be heard and decided on by any other Judge of the Supreme Court, who shall have the same power and jurisdiction in respect thereof as the Judge by whom the first order was made.

7. No order made under this Act shall require or enable the keeper of any gaol or prison to discharge the prisoner from any commitment or charge, other than that specified in such order; but it shall be the duty of such keeper, in every return made to be a Judge's order, to specify the several causes of commitment and detention, if more than one; and if between the time of making the return and receiving an order for the discharge or bailment, any other warrant, process, or order shall have been delivered to him, requiring the detention of the prisoner upon any charge of a criminal nature or summary complaint or conviction, such keeper shall, without any further order, make and transmit to the Judge an additional return, with a copy of such warrant, process, or order, and the time of receiving the same; which may be dealt with by such Judge as if made pursuant to an order for that purpose granted.

8. Nothing in this Act contained shall extend or be construed to deprive any person who may have been falsely imprisoned, from his remedy by civil suit against any person who may have illegally caused such imprisonment; but the judge by whom relief may be afforded under this Act, may by his order exempt any such keeper of a gaol from civil suit who may appear to him to have acted upon the warrant or order of any Judge or Justice, according to the requirement of the same, without malice or evil intent, although such warrant or order may be bad in form or substance; and any such order of exemption may be pleaded in bar to any action brought against such keeper, or notice given thereof as an additional ground of defence, under the Act of Assembly in such case made and provided.