

Laws of Her Majesty's Province of Newfoundland, passed in the year 1844.

7 Victoria – Chapter 2

An Act to amend an Act passed in the Fourth Year of His Late Majesty's Reign, entitled "An Act for the Relief of Insolvent Debtors taken in Execution." (Passed 29th April, 1844.)

Whereas an Act was passed in the Fourth Year of the Reign of His late Majesty, entitled "An Act for the Relief of Insolvent Debtors taken in Execution;" and whereas it is expedient and necessary that the said Act should be in certain respects amended:

I. it therefore enacted, by the Governor, Council, and Assembly, in Legislative Session convened, that in all cases where any application shall be made to the Supreme Court, or to the Chief Justice, or other Judges thereof, by any person or persons to be discharged from Gaol, as an Insolvent Debtor or as Insolvent Debtors, pursuant to the provisions of the said Act, and where it shall appear to the said Court, or the said Chief Justice, or other Judges, that such Debtor or Debtors have fraudulently, with intent to conceal the state of his or their affairs, or to defeat the purposes of this and the said Act, destroyed or otherwise wilfully prevented or purposely withheld the production of, any books, papers, or writings, relating to such of his or their affairs as are subject to investigation under this and the said Act; or kept or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified any such books, papers and writings,—or that such Debtor or Debtors have fraudulently, with intent of diminishing the sum to be divided among his or their Creditors or of giving an undue preference to any of his or their Creditors, discharged or concealed any debt due to or from the said Debtor or Debtors, or made away with, assigned, conveyed, charged, mortgaged or concealed, any part of his or their property, or what kind soever, either before or after the commencement of his or their imprisonment, or have been guilty of any other act or acts of fraud that might have prevented the discharge of such Debtor or Debtors under the aforesaid Act,—then it shall be lawful for the said Court or the said Chief Justice or other Judges, to declare such Debtor or Debtors Insolvent, and to appoint Trustees for the collecting, selling and realizing the Debts, Estates and Effects of such Debtor or Debtors, and distributing the produce thereof amongst the Creditors of such Debtor or Debtors, and to adjudge that such Debtor or Debtors shall be discharged and entitled to the benefit of the provisions of the said Act, so soon as he or they shall have been in custody at the suit of some one or more persons as to whose debts and claims such discharge is so adjudicated, for such period or periods, not exceeding Three Years in the whole, as the said Court or the said Chief Justice, or other Judges, shall direct,—to be computed from the time of such adjudication.

II. And be it further enacted, that in case it shall appear to the Court, or the said Chief Justice or other Judges, that such Debtor or Debtors shall have contracted any of his or their debts fraudulently or by means of a breach of trust, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of paying the same,—or shall have fraudulently or by means of false pretences obtained the forbearance of any of his or their debts by any of his or their creditors, —or shall have put any of his or their creditors to any unnecessary expense by any vexatious or frivolous defence or delay to any suit for recovering any debtor sum of money,—or shall be indebted for damages recovered in any action for a malicious prosecution, or for a libel, or for slander, or for

criminal conversation with the wife, or for seducing the daughter or servant, of the Plaintiff in such action, —or for damages recovered in any action for a malicious injury, or in any action of Tort or Trespass to the person or property of the Plaintiff therein, where it shall appear that the injury complained of was malicious; then it shall be lawful for the said Court or the said Chief Justice or other Judges to declare such Debtor or Debtors Insolvent, and to appoint Trustees for the collecting, selling, and realizing the Debts, Estates, and Effects, of such Debtor or Debtors, and distributing the produce thereof amongst the Creditors of such Debtor or Debtors, and to adjudge that such Debtor or Debtors shall be so discharged and so entitled as aforesaid forthwith,— except as to such debt or debts, sum or sums of money, or damages, as above-mentioned; and as to such debt or debts, sum or sums of money, or damages, to adjudge that such Debtor or Debtors shall be so discharged and so entitled as aforesaid so soon as he shall have been in custody at the suit of such person or persons who shall be a Creditor or Creditors for the same, respectively, for a period or periods not exceeding two years in the whole, as the said Court or the said Chief Justice or other Judges shall direct, to be computed as aforesaid.

III. And be further enacted, That where it shall appear to the said Court or the said Chief Justice or other Judges that certain matters or things ought to be performed by or on behalf of such Debtor or Debtors before he or they are to be actually discharged from custody, but that nevertheless it is expedient not to adjourn the hearing of the case absolutely to some future occasion without the opportunity of such discharge being had sooner by doing such things as aforesaid, it shall be lawful for the said Court, or the said Chief Justice or other Judges, to adjudge that such Debtor or Debtors shall be so discharged and so entitled on the performance of such matters or things as aforesaid,—and that on the non- performance thereof the hearing of such case shall stand adjourned according to the direction made in that behalf: — Provided always, and be it enacted, That in all cases where it shall have been adjudged that any such Debtor or Debtors shall be so discharged and so entitled as aforesaid, at some future period, such Debtor or debtors shall be subject and liable to be detained in prison and to be arrested and charged in custody at the suit of any one or more of his or their creditors, with respect to whom it shall have been so adjudged at any time before such period shall arrive, in the same manner as he would have been subject and liable thereto if this Act had not passed. Provided nevertheless, that when such period shall have arrived, such Debtor or Debtors shall be entitled to the benefit of the said Act, notwithstanding that he or they may have been put of actual custody during all or any part of the time subsequent to such adjudication, by reason of such Debtor or Debtors not having been arrested or detained during such time or any part thereof.

IV. And be it further enacted, That in all cases where such Debtor or Debtors shall, upon such adjudication as aforesaid, be liable to any further imprisonment at the suit of his or their Creditor or Creditors, it shall be lawful at any time for the said Court, or the said Chief Justice or other Judges, upon the application of such Debtor or Debtors, to order the Creditor or Creditors at whose suit he or they shall be so imprisoned, to pay to such Debtor or Debtors such Sum or sums of money, not exceeding the rate of Four Shillings by the week in the whole, at such times and in such manner as the said Court, or the said Chief Justice or other Judges shall direct,—and that on failure of payment thereof, the said Court or the said Chief Justice or other Judges shall order such Debtor or Debtors to be forthwith discharged from Custody at the suit of the Creditor or Creditors so failing to pay the same.

V. And be it further enacted, That whenever any Creditor or Creditors opposing the discharge of such Debtor or Debtors shall prove to the satisfaction of the said Court or the said Chief Justice or other Judges, that such Debtor or Debtors have done or committed any act for which, upon such adjudication as aforesaid, he or they may be liable to remain in such custody as aforesaid, for a period not exceeding three years, to be computed as aforesaid, the said Court or the said Chief Justice or other Judges shall adjudge the taxed costs of such opposition to be paid to such opposing Creditor or Creditors out of the Estate and Effects of such Debtor or Debtors before any dividend made thereof; and in all other cases of opposition to a Debtor or Debtors' discharge being substantiated or effectual, it shall be lawful for the said Court, or the said Chief Justice or other Judges, to adjudge in like manner, if it shall seem fit; and that in case it shall appear to the said Court, or the said Chief Justice or other Judges that the opposition of any Creditor to the discharge of any such Debtor or Debtors was frivolous and vexatious, it shall be lawful for the said Court or the said Chief Justice or other Judges, to award such costs to such Debtor or Debtors as shall appear to be just and reasonable, to be paid by the Creditor or Creditors making such opposition.

VI. And be it further enacted, That the discharge of any such Debtor or Debtors shall extend to all Process issuing out of any Court for contempt for the non-payment of any money or of any costs or expenses, in any Court, and to all costs which such Debtor or Debtors would be liable to pay in consequence or by reason of such contempt or on purging the same.

VII. And be it further enacted, That it shall be lawful and competent for any Debtor or Debtors who may be declared Insolvent by virtue of the provisions of this or the aforesaid Act, to obtain and be allowed his or their Certificate of discharge in like manner and to the like effect as though such Debtor or Debtors had been declared Insolvent at the return of the writ, and had obtained the like consent of Creditors as is prescribed by the provisions of the Act of the Imperial Parliament 5 Geo. 4, chap. 67, entitled "An Act for the better administration of justice in Newfoundland and for other purposes."

VIII. And be it further enacted, That it shall and may be lawful for any Debtor or Debtors who, having applied to be discharged as Insolvent and having been remanded for non-compliance with or in consequence of the provisions of the said Act for the relief of Insolvent Debtors taken in execution, shall be confined in Gaol in this Colony and charged in execution at the time of the passing of this Act, to apply by Petition to the Court or Judges by whom such Debtor or Debtors may have been so remanded, and thereupon it shall be lawful for such Court or Judges, as the case may be, to order such Debtor or Debtors to be brought before the said Court, or before such Judges, on a day certain (reasonable notice thereof being served on such of the Creditors of such Debtor or Debtors as may reside in this Colony), then and there to be examined touching the matter of his or their Petition, and thereon to extend and apply to such Debtor or Debtors the provisions of this and of the aforesaid Act.

IX. Provided always, and be it further enacted, That it shall be lawful for any of the Circuit Courts of this Island, in term time, or for any one Judge of the Supreme Court in vacation, to hear and determine all matters provided by this Act or by the aforesaid Act for the relief of Insolvent Debtors taken in execution, as fully and amply as the said Supreme Court or the said Chief Justice is by the said last mentioned Act empowered to hear and determine the same.

X. And be it further enacted, That in case any Debtor who shall be brought up for examination and discharge before any Court or Judge as aforesaid, shall wilfully refuse to deliver up to his Trustees, any money, property, deeds, accounts, books or other documents, pursuant to any order of such Court or Judge, it shall be lawful for such Court or Judge to remand to Prison such Debtor from time to time, until he shall conform to such order of the said Court or Judge.