

*Laws of His Majesty's Province of Upper Canada*, passed in the year 1832. York: Robert Stanton, 1832.

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**An Act to afford means for attaching the Property of Absconding Debtors. Passed 28th January, 1832.**

Whereas it is necessary, for the protection of persons engaged in trade, to afford the means of attaching the Property of Absconding Debtors, that the same may be taken in Execution and sold for the benefit of their Creditors.—Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province,*" and by the authority of the same, That if any person or persons, being indebted to an Inhabitant of this Province, shall, before the passing of this Act, have secretly departed from this Province, or if any person or persons so indebted shall, after the passing of this Act, secretly depart from this Province, or keep concealed within the same, it shall and may be lawful for any person or persons, their Servants or Agents, to whom such Absconding or Concealed person or persons is or are indebted in the sum of Five Pounds or upwards, to make application to the Court of King's Bench in this Province, in Term time, or to any Judge thereof, in vacation, or to any Judge of the District Court in the different Districts of this Province, either within or without the limits of the District for which such Judge is appointed, where the sum claimed is within the Jurisdiction of such District Court, and there make an Affidavit that the said Absconding or Concealed person or persons is or are indebted to him, her, or them, in the sum of Five Pounds or upwards, expressing the cause of Action, and that he, she, or they, do verily believe that the said Absconding or Concealed person or persons hath departed this Province, or is concealed within the same, (which Affidavit may also be taken before a Commissioner for taking Affidavits in the King's Bench,) with intent and design to defraud him, her, or them, and other Creditors, (if any there be) of their just dues, or to avoid being arrested or served with process, which departure or concealment shall also be proved to the satisfaction of such Court, or Judges of such Court, by the Oath or Affidavit of at least two credible Witnesses; and upon such proof, the said Court of King's Bench, and District Court respectively, in Term time, or the Judges thereof in vacation, or any one of them, shall forthwith direct a Warrant or Warrants to be issued under the Seal of the said Courts respectively, and signed by the Clerk of the Crown or the Clerk of such District Court, (as the case may be,) directed to the Sheriff of the District in which such Absconding or Concealed person or persons has been resident, or to the Sheriff or Sheriffs of any or every other District within the Province, commanding such Sheriff or Sheriffs respectively, to attach, seize, take, and safely keep, all the Estate, as well real as personal, found within his District, of the said Absconding or Concealed person or persons, of what kind or nature soever, together with all evidences of debt, books of account, vouchers and papers relating thereto, upon receipt of which Warrant the Sheriff to whom the same may be directed, shall forthwith execute the same, and

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with the assistance of two substantial Freeholders, make a just and true inventory of all such Estate and Effects as he shall seize and take by virtue thereof, and shall return the same, signed by himself and the said Freeholders, to such Court from whence the Warrant issued.

II. And be it further enacted by the authority aforesaid, That immediately upon making the seizure of the Estate and Effects of the Absconding or Concealed person or persons, it shall be the duty of the Sheriff making such seizure, to cause a notice to be inserted in the Upper Canada Gazette, and also in some one or more of the Newspapers printed in his District, and continued therein weekly for at least three calendar months; which notice shall set forth, that by virtue of the said Writ he has seized all the Estate, real and personal, of such Absconding or Concealed person or persons; and unless such Absconding or Concealed person or persons (naming the same,) return within the Jurisdiction of the Court from whence such Warrant issued, and put in bail to the Action, or cause the claim or claims of such Plaintiff or Plaintiffs (naming the same,) to be discharged within three calendar months after such public notice, (to be computed from the first day of publishing the same in the Upper Canada Gazette) all his, her, or their Estate, real or personal, or so much thereof as may be necessary, will be held liable for the payment, benefit, and satisfaction of the claim or claims of such Plaintiff or Plaintiffs.

III. And be it further enacted by the authority aforesaid, That the Sheriff to whom any Warrant of attachment shall issue, shall take into his charge and keeping all the Property, Estate, and Effects of such Absconding or Concealed person or persons, and shall be allowed all necessary disbursements for keeping the same.

IV. And be it further enacted by the authority aforesaid, That if any person or persons, against whose Estate or Effects such Warrant or Warrants of attachment may have been issued, or any person or persons on his, her, or their behalf, shall at any time before the expiration of three calendar months from the first publication of the notice before mentioned, execute and tender to the Creditor or Creditors who sued out such Warrant or Warrants as aforesaid, a Bond, with good and sufficient Sureties, binding the Obligors, jointly and severally, with a condition in double the amount of the sum claimed, that the person or persons aforesaid shall not depart the Province without satisfying the said claims in the event of the same being proved and Judgment recovered as in ordinary cases where proceedings have been commenced against the person, or that he, she or they, will render such Absconding or Concealed person or persons to the custody of the Sheriff of the District to whom such Writ shall have been directed, or that they will pay the amount of the claim of the party suing out such attachment, or the value of the Property or Estate so taken and seized to the said Claimants, it shall and may be lawful for such Court or Judge to order a Supersedeas to such Warrant or Warrants, and all and singular the Property which may have been attached shall be restored; and if it shall appear at any trial to be subsequently had, and shall be so certified by the Judge presiding at such trial, that the person or persons against whose Estate or Effects such Warrant or attachment was issued hath not been Absconding or Concealed at the time of issuing such Warrant, then such person or persons shall recover his, her, or their costs of the person or persons suing out the said Warrant, which costs may be taxed by the Court from whence the said attachment may have issued.

V. And be it further enacted by the authority aforesaid, That if after the period of three calender months from the first publication of the notice above mentioned, the Absconding or Concealed party, or some one on his behalf, do not appear and give bonds, with sureties as before mentioned, for the payment of the claims of the party sueing out the attachment as aforesaid, in the event of Judgment being given against such Absconding or Concealed party, then the proceedings in the suit against the Estate, Property and effects, of such Absconding or Concealed party shall be the same as if the suit had been commenced in the usual manner against the person, and Judgment and Execution against the Goods and Lands of the said party shall follow, as hath been the custom of the Courts of this Province previous to the passing of this Act.

VI. And be it further enacted by the authority aforesaid, That in order to proceed in the recovery of any Debt due by the person or persons against whose Property a Writ of Attachment shall have been ordered under this Act, process may be served by leaving a copy thereof at the last place of abode of such person within this Province with any grown up person there dwelling, and also by affixing a copy of such process in the Crown Office, or in the Office of the Deputy Clerk of the Crown in the District where the Absconding or Concealed person was last resident, or in the Office of the Clerk of the District Court of such District, when the proceedings shall be in the District Court, eight days before the return thereof; and all subsequent proceedings necessary to be served on the Defendant in ordinary cases shall be deemed to be served upon such Absconding or Concealed person by filing a copy in the Crown Office, or in the Office of the Deputy Clerk of the Crown in which the declaration shall have been filed as aforesaid, or in the Office of the Clerk of the District Court, as the case may be.

VII. And be it further enacted by the authority aforesaid, That notwithstanding Judgment by default may be signed in any action in which the process and other proceedings may have been served in the manner aforesaid, such Judgment shall in no case be final: and it shall be incumbent on the Plaintiff nevertheless to prove his cause of Action in the same manner as if the general issue had been pleaded, or the deed denied in case the Action shall have been brought on any specialty, and in case the Jury at any such assessment of damages shall not find the Plaintiffs' demand, or any part thereof, proved, the verdict shall be rendered for nominal damages only, and the Plaintiff shall recover no Costs of suit.

VIII. And be it further enacted by the authority aforesaid, That in case any Sheriff or Sheriffs shall, by virtue of any Warrant or Warrants to be issued in pursuance of this Act, seize and take any perishable Goods or Chattels, it shall and may be lawful for such Sheriff to have the same appraised and valued by two substantial Freeholders or competent judges, and upon the request of the person or persons sueing out such Warrant or Warrants, to expose and sell the same at public Auction to the highest bidder, giving at least eight days notice of the time and place of such sale, if the articles so seized will admit of such delay, but if otherwise, then the Sheriff shall proceed to sell the same at such time as in his discretion may seem meet: Provided also, that it shall not be compulsory upon such Sheriff to seize or sell such perishable articles until the person or persons sueing out such Warrant or Warrants of Attachment shall have given a Bond to the Defendant or Defendants, with good and sufficient Sureties in double the amount of the appraised value of such articles (ascertained as aforesaid) conditioned that the person or persons directing such seizure

and sale will repay the value of such articles so seized and sold to the owner thereof, together with all costs and damages that may have been incurred in consequence of such seizure and sale, in case Judgment be not obtained for such person or persons so suing out such Warrant or Warrants of Attachment.

IX. And be it further enacted by the authority aforesaid, That if any person or persons being indebted to, or having the custody or possession of any property or effects of any such Absconding or Concealed person or persons shall, after such public notice given as aforesaid, and a copy thereof duly served upon him, her or them, by the said Sheriff, pay any debt or demand, or deliver any such property or effects to any such Absconding or Concealed person or persons, or his, her, or their Attorney, Agents, Factors or Assigns, the person or persons so paying any such debt, or delivering such property or effects, shall be deemed to have paid or done the same fraudulently, and is, and are, hereby made liable to answer the same, or the amount or value thereof, to the person or persons suing out such Warrant of Attachment, in the event of such person or persons recovering Judgment and Execution against such Absconding or Concealed person or persons, and if any such person or persons, being so indebted, or having such custody as aforesaid, shall, after such public notice, and being served with a copy thereof as aforesaid, be sued by such Absconding or Concealed person or persons for any such debt, or property or effects, he, she or they, so sued, may plead the general issue, and give this Act and the special matter in evidence.

X. And be it further enacted by the authority aforesaid, That the costs of such Sheriffs, either for seizing, securing, or taking charge of property and effects so attached, under and by virtue of any Warrant or Warrants issued in pursuance of the provisions of this Act, shall be paid in the first instance by the party or parties suing out such Warrant or Warrants as aforesaid, his, her, or their Attorney or Agent, to the Sheriff to whom such Writ may be directed, and may be recovered by such Sheriff by action in any of His Majesty's Courts of Record in this Province, and in case such person or persons recover Judgment against the person or persons so Absconding or Concealed, the same shall be allowed with costs of suit, to be taxed by the proper Officer as the ordinary disbursements of the suit.

XI. And be it further enacted by the authority aforesaid, That the Freeholders and Appraisers authorised by this Act, shall be entitled to receive for each day they may be employed in carrying its enactments into effect the sum of Five Shillings.

XII. And be it further enacted by the authority aforesaid, That if after Judgment and Execution by any Plaintiff or Plaintiffs against any Absconding or Concealed person or persons, obtained under and by virtue of the provisions of this Act, the Goods and Chattels, Lands and Tenements, of such Absconding or Concealed person or persons taken and seized by any Sheriff or Sheriffs by virtue of such Execution or Executions, shall not be sufficient to discharge the same, it shall and may be lawful for the Plaintiff or Plaintiffs to sue for and recover of and from any person or persons indebted to the Absconding or Concealed person or persons as aforesaid, the amount of the debt so owing by them to the Absconding or Concealed person or persons, or so much thereof as may be necessary to satisfy the claim of such Plaintiff or Plaintiffs, and payment made by such person or persons to such Plaintiff or Plaintiffs shall be considered legal and valid to all intents and

purposes, and shall operate as a discharge for the debt, or so much thereof (as the case may be) owing to the Absconding or Concealed person or persons: Provided always, that the declaration in such action shall contain an introductory averment to this or the like effect, that is to say:—

A. B. who sues under the provisions of an Act of the Parliament of this Province for Attaching the Property of Absconding Debtors, in order to recover from C. D. Debtor to one E. F. an Absconding or Concealed person, such sum as C. D. may owe to the said E. F. or so much thereof as will discharge the sum of \_\_\_\_, being the amount due by the said E. F. to him the said A. B. complains, &c.

XIII. And be it further enacted by the authority aforesaid, That before Execution shall issue upon any Judgment obtained under this Act against an Absconding or Concealed Debtor, a Bond to the Defendant in double the sum to be levied, to be executed by the Plaintiff and two sufficient sureties, to be approved of by some one of the Judges of the Court in which the Action shall have been instituted, shall be filed among the papers of the cause, the condition of which Bond shall be to the effect, that if the Defendant, his Executors or Administrators, shall within the period allowed by Law contest the justice of the Plaintiffs demand, and succeed in reversing the recovery, the Plaintiff, his Executors, or Administrators, shall restore to the Defendant, his Heirs, Executors or Administrators, the amount that shall have been levied upon execution in such cause with interest, and shall make good to the Defendant, his Heirs, Executors or Administrators, any further damage occasioned by the seizure and sale of real and personal estate in order to satisfy the Judgment obtained against such Absconding or Concealed Debtor.

XIV. And be it further enacted by the authority aforesaid, That at any time within one year after the rendering of Judgment against an Absconding or Concealed Debtor, such Debtor may, upon his personal appearance in Court in term time apply through his Counsel, or in case of his death his Executors or Administrators may, within the same period, apply for a re-hearing of the cause, which re-hearing shall be granted upon giving security for costs, and the cause may be again tried upon a Record to be prepared for that purpose, on which the entry of a new Venire may be made after the entry of issue joined, or of Judgment by default without any continuance or alteration of the Record in consequence of the death of parties, but the title of any purchaser, other than the Plaintiff himself, at the Sheriffs' Sale upon the execution which shall have previously issued in such cause shall not be affected by the Defendant obtaining a verdict or Judgment upon such subsequent proceeding.

XV. And be it further enacted by the authority aforesaid, That nothing in this Act contained shall be construed to prevent one or more new trials being granted, either after the first verdict or after the verdict rendered upon the re-hearing, when the same shall appear necessary to the ends of Justice.

XVI. And be it further enacted by the authority aforesaid, That in case any re-hearing under this Act after the period shall have elapsed within which a new trial can be moved for, or in case a new trial shall be refused, the verdict shall be taken to be conclusive so far as respects the liability of the obligors in the Bond required to be filed previous to the suing out Execution, and it shall not be

necessary for the Defendant succeeding on such re-hearing to enter final Judgment for that purpose.

XVII. And be it further enacted by the authority aforesaid, That if after the period of one month from the return day of any Execution against the goods and chattels, lands and tenements of any Absconding or Concealed person or persons, (the same having been satisfied) no other Warrant or Warrants of Attachment shall come into the hands of any such Sheriff against the property or effects of such Absconding or Concealed person or persons, all the property and effects then remaining in the hands of such Sheriff, together with all Books of accounts, evidences of debt, vouchers and papers relating thereto, shall be delivered to the person or persons in whose custody the same were found, being the Factor, Agent or Servant, of such Absconding or Concealed person, and the responsibility of such Sheriff as respects such property shall from thenceforth cease.

XVIII. And be it further enacted by the authority aforesaid, That this Act shall continue and be in force for the period of two years, and from thence to the end of the then next ensuing Session of Parliament and no longer: Provided always, That it shall nevertheless be lawful to proceed in any matter that may be depending under this Act until the same shall be brought to a final termination according to the provisions thereof.