

Laws of His Majesty's Province of Upper Canada, passed in the year 1834. York: Robert Stanton, 1834.

4 William IV — Chapter 3

An Act to afford Relief to persons confined on Mesne Process. Passed, 6th March, 1834.

Whereas in many cases arrests are made upon Mesne Process, of persons not having the power of procuring bail, who are thereby kept in close confinement, and being destitute of the means of support it is expedient to afford relief; 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 from and after the passing of this Act, it shall and may be lawful for any person or persons arrested on Mesne Process issued from His Majesty's Court of King's Bench, or from any of the District Courts of this Province, being in actual and close custody, to make an affidavit before any person having authority to administer the same, that he, she, or they is or are in close custody, is or are unable to procure bail, and is or are not worth the sum of Five Pounds, and upon the production of such affidavit to the Court from whence the Writ issued, in term time, or to any Judge thereof, in vacation, it shall and may be lawful for such Court or Judge of such Court, to make an order upon the Plaintiff or Plaintiffs in any such Suit or Action, to pay to the Defendant the weekly allowance in the same manner as if the Defendant were in custody upon Final Process, and upon due service of a copy of such order upon the Plaintiff or his Attorney, and in the default of the payment of such weekly allowance, such Court respectively, in term time, or any Judge thereof in vacation, shall issue an order to the Sheriff of the District in which such Defendant shall be in custody, to discharge such Defendant upon filing common bail.

II. Provided always, and be it further enacted by the authority aforesaid, That nothing in this Act contained shall extend to prevent any such Plaintiff or Plaintiffs from proceeding to final judgment and execution, in the same manner as if the party had entered special bail, and as if this Act had not been passed; And provided also, that the Plaintiff shall be at liberty to tender interrogatories to the Defendant in like manner as if he were charged in execution, and such Defendant shall not be discharged for want of the payment of the weekly allowance, unless he shall answer such interrogatories to the satisfaction of the said Court, or to any Judge thereof in vacation.

III. And be it further enacted by the authority aforesaid, That any sum or sums of money paid by the Plaintiff or Plaintiffs in any Suit or Action, towards the weekly allowance directed to be paid under the provisions of this Act, shall be taxed as part of the costs of the Suit, and be allowed to the Plaintiff in his bill, to be taxed by the proper officer.

IV. And be it further enacted by the authority aforesaid, That the Defendant shall not be entitled to a weekly allowance under this Act, for any time during which the Plaintiff shall be delayed in his proceeding in consequence of any indulgence granted to the Defendant by rule of Court or order of a Judge; nor shall any order be made for such weekly allowance unless the Defendant shall make an affidavit to be filed among the papers in the cause that he does not believe the demand of the Plaintiff to be just, and that for that cause and no other he resists payment of the same, and refuses to confess judgment for the sum sworn to.

V. And whereas it is expedient to afford further relief in respect to destitute persons arrested for small sums: Be it therefore further enacted by the authority aforesaid, That when the sum sworn to shall not exceed Ten Pounds, it shall and may be lawful for the Defendant at the expiration of thirty days after having been committed to prison, to apply to the Court from whence the Process issued, in term time, or to a Judge thereof in vacation, setting forth on affidavit that he is not worth the sum for which he has been arrested, and that he hath not directly or indirectly, sold, or otherwise disposed of any goods, debts, moneys or other personal estates, in order to defraud his Creditors, or any of them, and that if upon the return of a summons or of a rule to shew cause, which may be thereupon issued, and upon answers to any interrogatories which the Plaintiff shall be at liberty to file, no good cause shall appear to the contrary, the Court or Judge shall discharge such Defendant from imprisonment upon his filing common appearance, and the Plaintiff may proceed in his action as in nonbailable actions where the Defendant has appeared.