

Laws of His Majesty's Province of Upper Canada, passed in the year 1835. Toronto: Robert Stanton, 1835.

5 William IV – Chapter 3

An Act to mitigate the Law in respect to Imprisonment for Debt. Passed 16th April, 1835.

Whereas the Imprisonment of persons in Execution for Debt is no otherwise justifiable than as a means of compelling such persons to apply whatever monies or property they may be possessed of, or may have under their control, to the satisfaction of their Creditors: And whereas, it is impossible, with a just regard to the rights of Creditors and to the interests of Commerce, to afford effectual relief to Insolvent Debtors until a proper jurisdiction is provided and suitable Laws enacted to facilitate and ensure a recourse against all the property of such Insolvent Debtors, but in the mean time it is expedient to make such provision as will render the Law in this respect less rigorous than at present: 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 first day of June next after the passing of this Act, no person shall be arrested or holden to special bail upon any process issuing from His Majesty's Court of King's Bench for this Province, or from any District Court in this Province, when the cause of action shall not amount to Ten Pounds; and that so much of the eighth clause of a certain Act of the Parliament of this Province passed in the second year of the reign of His late Majesty King George the Fourth, entitled "*An Act to repeal part of and amend the Laws now in force respecting the practice of His Majesty's Court of King's Bench in this Province,'*" as authorises personal arrest in a civil suit when the cause of action shall amount to Five Pounds or upwards; and also, so much of the eighth clause of a certain other Act of the Parliament of this Province passed in the same year, entitled "*An Act to reduce into one Act the several Laws now in force establishing District Courts, and regulating the practice thereof, and also to extend the powers of the said District Courts,'*" as authorises personal arrest in all actions of contract within the Jurisdiction of such Courts, be, and the same is hereby repealed so far only as the said clauses extend, to authorize personal arrest for any sum less than Ten Pounds: Provided always nevertheless, that such repeal shall not take effect until after the said first day of June next, and shall not render illegal or irregular, any arrest for a less sum than Ten Pounds, which shall take place in any Court before or on the said first day of June next, and shall not render illegal or irregular, any proceedings which shall be had after or in consequence of such arrest.

II. And be it further enacted by the authority aforesaid, That from and after the said first day of June next it shall not be lawful to take execution against the body of any person, Plaintiff or Defendant, upon a Judgment recovered for Costs only, nor in any case in which

the Judgment shall not be rendered for the sum of Ten Pounds or upwards, exclusive of costs; and that if any person shall be in custody upon an execution at the time of the passing of this Act, or at any time hereafter upon an execution which may issue before the said first day of June next, in a case in which it is provided by this clause that no execution shall issue against the body, such person may, upon application to the Court from whence the execution shall have issued, or to a Judge thereof in vacation, and after notice given to the opposite party, or his Attorney, by a rule to shew cause, be discharged from custody by order of the said Court or Judge; but it shall be lawful to take out execution against the Goods and Chattels, or against the Lands or Tenements of the person so discharged in the same manner as in other cases of Debtors discharged under the provisions of this Act.

III. And whereas it might tend greatly to the relief of certain Debtors in execution for small Debts, and at the same time occasion no material prejudice to trade and public credit if such Debtors should, after a limited period of imprisonment, be allowed to be discharged, saving to their Creditors their remedy against the property of the Debtor so discharged; be it therefore enacted by the authority aforesaid, That from and after the passing of this Act all persons in execution upon any judgment rendered in this Province, in a Civil suit, for any Debt or Damages not exceeding the sum of Twenty Pounds, exclusive of the Costs recovered by such judgment, and who shall have lain in Prison thereupon for the space of three calendar months, or being confined under such execution upon the Gaol Limits of any District in this Province, for the space of twelve calendar months before the time of their application to be discharged as hereinafter mentioned, may make his, her or their application, in term time, to the Court from whence such execution shall have issued, to be discharged from custody upon such execution, and shall thereupon make and file an affidavit to the effect hereinafter mentioned, and if the Court shall be satisfied upon cause shewn, that the person in custody is entitled to relief under this Act, or if no cause to the contrary shall be shewn, then such Court shall forthwith make a rule or order for discharging the party or parties from custody, as to such execution; Provided always, that notwithstanding the discharge of any Debtor or Debtors, by virtue of this Act, the judgment against him or them shall continue and remain in full force to all intents and purposes, except as to the taking in execution the person or persons of such Debtor or Debtors thereupon; and it shall be lawful for the Creditor to take out execution against the lands and tenements, or goods and chattels of any such Debtor so discharged, or to bring any action on any such judgment against such Debtor, or to bring any such action or use any such remedy for the recovery of his demand, against any other person or persons, liable to satisfy the same, in the same manner as such Creditor could have done in case such Debtor had never been charged in execution upon such judgment; Provided also, that no Debtor so discharged shall be liable to be arrested or taken in execution upon the same judgment, or in any action or proceeding to be afterwards instituted thereupon.

IV. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, all persons in execution upon any judgment rendered in this Province, in a civil suit, for any debt or damages exceeding the sum of Twenty Pounds, exclusive of costs, and who shall have lain in prison thereupon for the space of six calendar months before the time of

their application to be discharged as hereinafter mentioned, when the debt shall not exceed One Hundred Pounds; or twelve calendar months when the debt shall exceed One Hundred Pounds, may, upon giving thirty days notice in writing, to the opposite party or his Attorney, of his intention to make such application as hereinafter mentioned, apply for his discharge, in term time, to the Court from whence the execution shall have issued; and that such application shall be founded on an affidavit of the person in custody as aforesaid, to the effect hereinafter mentioned.

V. And be it further enacted by the authority aforesaid, That the opposite party upon being called upon to shew cause against such application, may disclose to the Court upon affidavit of himself or of any other person or persons, any facts in answer to such application, and such Court may examine into the same, and may require further statements upon oath from or in behalf of either party, in their discretion, and that when, in the opinion of the Court, the party at whose suit the Debtor is in custody, shews no reasonable ground whatever, (and in such case only) for expecting benefit from the further detention of the Debtor in execution, it shall be lawful for the Court to make an order for discharging such Debtor forthwith: Provided always, that such discharge shall have the same and no other effect as to any other remedy upon the same judgment, or in consequence thereof, as a discharge ordered under this Act in cases where the Debt shall not exceed Twenty Pounds.

VI. And be it further enacted by the authority aforesaid, That the application made by any Debtor for his discharge from custody under this Act, whether the sum for which he is so detained, shall be under or above Twenty Pounds, shall be founded upon an affidavit made by such Debtor in the cause in which he is in custody, to be afterwards filed among the papers of such cause, in which affidavit shall be set forth the time that he has been in custody upon such execution, and the amount for which he is detained; and stating further that he is not possessed, nor any person or persons in trust for him, or to his use, of lands or tenements, monies, goods, chattels or effects of any description, besides his necessary wearing apparel or bedding, to the amount of Five Pounds; that since judgment in the cause was rendered against him he has not made any disposition or conveyance of his property or effects in order to defeat the remedy under the said judgment; that he has not the means within his power or under his control, excepting his necessary wearing apparel and bedding, of satisfying the debt for which he is in execution, or any part thereof; that he was guilty of no fraud, deceit or dishonest practice, in contracting the said Debt, and that to the best of his knowledge and belief, the party at whose suit he is in custody can derive no benefit from his the said Debtor's being longer imprisoned under such execution.

VII. And be it further enacted by the authority aforesaid, That if it shall happen that any discharge granted under this Act, shall have been unduly or fraudulently obtained upon any false allegation of circumstances, which, if true, might have entitled the prisoner to be discharged by virtue of this Act, such prisoner shall, upon the same being made appear to the satisfaction of the Court by whose rule or order the said prisoner had been so discharged, be liable to be again taken in execution, and remanded to his former custody, by the rule or order of the same Court: Provided always, that no Sheriff or Gaoler shall be liable

as for the escape of any such prisoner, in respect of his enlargement, during such time as he shall have been at large by means of such his undue discharge as aforesaid.

VIII. And be it further enacted by the authority aforesaid, That any person who shall assign, remove, conceal, or dispose of any of his property, with intent to defraud his Creditors, and any person who shall receive such property with such intent, shall, upon conviction be deemed guilty of a misdemeanor, and such offence may be tried before any Court of Oyer and Terminer or general Gaol Delivery, and may be punished by fine or imprisonment: Provided always, that no person convicted as aforesaid, shall be fined in a greater sum than One Hundred Pounds, nor be imprisoned for a longer period than six months.

IX. And be it further enacted by the authority aforesaid, That this Act shall continue in force for four years, and from thence to the end of the then next ensuing Session of Parliament.