

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

5 William IV – Chapter 5

**An Act to continue and amend the Law for Attaching the Property of Absconding Debtors. Passed 16th April, 1835.**

Whereas an Act passed in the second year of His Majesty's Reign entitled, "An Act to afford means for Attaching the Property of absconding Debtors," will expire at the end of the present Session of the Provincial Legislature; And whereas it is expedient to continue and amend the same: 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 the said recited Act be and the same is hereby continued for and during the term of two years from the passing of this Act, and from thence to the end of the then next ensuing Session of Parliament, and no longer, any thing herein contained to the contrary notwithstanding.

II. And whereas it is necessary to make certain amendments in the said Act, and to remove doubts which have arisen respecting some of its provisions; Be it therefore enacted by the authority aforesaid, That from and after the passing of this Act it shall be lawful to grant an Attachment in the manner provided by the first clause of the said Statute, when a Debt is sworn to as therein mentioned, notwithstanding the absconding or concealed Debtor may not be indebted to an Inhabitant of this Province.

III. And be it further enacted by the authority aforesaid, That the Bond mentioned in the fourth clause of the said Statute shall be given to the Sheriff of the District in which the Estate has been attached, and the penalty need not be more than double the amount of the value of the Estate attached, and the condition of the Bond may be so framed that whatever may be the amount of the several claims against the absconding Debtor, the Bond shall be void upon the payment by the Obligors, or any of them, of the value of the Estate taken and seized; and the Bond so given shall and may be put in suit by the Sheriff for the benefit of any party entitled whenever the case may require it, and the amount collected thereon shall and may be retained in his hands, to be applied by him in the same manner as it would be to apply the proceeds of the Estate in respect of which the Bond shall have been given.

IV. And be it further enacted and declared by the authority aforesaid, That notwithstanding any thing contained in the said Act, any person who shall have commenced a suit against another by Process, bailable or non-bailable, which Process shall have been served before

the suing out of any Attachment against the same person as an absconding or concealed Debtor, shall, notwithstanding the subsequent suing out of such Attachment, be allowed to proceed in the ordinary manner to Judgment and Execution; and in case of his obtaining Execution before any person at whose suit the Estate, real or personal, of such Debtor shall have been Attached, he shall be allowed the full advantage of his legal priority of Execution, in the same manner as if the Estate had not been Attached and were remaining in the possession of the Debtor; and in case the goods shall have been delivered up to the absconding or concealed Debtor or his Agent upon security, the Sheriff shall enforce the Bond taken for his benefit in the same manner as in the case of a Creditor suing out an Attachment: Provided always, that the amount of costs incurred by the suing out and Executing the Attachment, or such portion thereof as the Court in which the cause is pending, or a Judge thereof, shall think reasonable, shall be retained for the benefit of the person who has paid the same, or who is liable therefor, in consequence of his having taken out the Attachment: And provided also, that nothing in this Act contained, shall prevent the Court in which the action was brought, and Process served upon the person against whom an Attachment or Attachments shall afterwards issue, from setting aside the Judgment and Execution in such action as fraudulent, or staying proceedings therein, when such action shall appear to have been instituted or proceeded in, by collusion with the Debtor, or to have been otherwise fraudulently brought for the purpose of defeating the claims of others.

V. And be it further enacted by the authority aforesaid, That upon the trial of any action against an absconding or concealed Debtor, it shall be lawful for any other person who shall before such trial have sued out an Attachment, to contest the Plaintiff's demand, in the same manner as the Defendant might, and to call evidence to disprove the same, or to establish a set off; Provided, he shall have given notice of such set off fifteen days exclusive before the trial.

VI. And be it further enacted by the authority aforesaid, that when several Attachments shall be placed in the Sheriff's hands, against the same absconding or concealed Debtor, the proceeds of the Estate which shall have been Attached, shall not be paid over to such Attaching Creditor or Creditors according to priority, but they shall be ratably distributed among such of the Creditors suing out the said Attachments as shall obtain Judgment against the Debtor, in proportion to the amount of the sums really due upon such Judgments, and no distribution shall take place until reasonable time in the opinion of the Court has been allowed for the several Creditors to proceed to Judgment: Provided always, that when the Estate shall not be sufficient to satisfy the claims of all the Attaching Creditors, none shall be allowed to share, unless he shall have sued out his Attachment, and placed it in the hands of the Sheriff within six months from the issuing of the first Writ of Attachment.

VII. And be it further enacted by the authority aforesaid, That before Execution shall be taken out in any action brought against an absconding or concealed Debtor, the Plaintiff shall make and file an affidavit which shall be kept among the papers in the cause, in which he shall swear that to the best of his knowledge and belief the sum which has been allowed to him by the Jury is justly and truly due to him by the Defendant, and that he has given

credit for all payments made to him by the Defendant, and for every demand which the Defendant could rightly make against him, or if the Plaintiff shall in his affidavit acknowledge that the sum actually due to him is less than that which the Jury have awarded, then the Execution shall be endorsed accordingly, and no more shall be levied for the Plaintiff than is admitted to be due: Provided always, that if the affidavit of the Plaintiff cannot be obtained in due time by reason of his foreign residence, or from any other reason which shall be assigned, then an affidavit to the effect above mentioned may be received from the Attorney or Agent of such Plaintiff.