

Laws of His Majesty's Province of Upper Canada, passed in the year 1837. Toronto: Robert Stanton, 1837.

7 William IV – Chapter 10

An Act for the more convenient Recovery of Estreats. Passed 4th March, 1837.

Whereas it is expedient to provide for the more summary and convenient collection of Fines, Issues, Amerciaments and Sums, due upon Recognizances forfeited to His Majesty: 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 ensuing the passing of this Act, all fines, issues, amerciaments and forfeited recognizances, save and except such as shall, by virtue of any Act or Acts of the Parliament of this Province, made or to be made, be directed to be otherwise levied, recovered, appropriated, or disposed of, which shall be set, imposed, lost, or forfeited, by or before any Court of Oyer and Terminer, or General Gaol Delivery, or before any Court of Assize and Nisi Prius, shall, within twenty-one days from the adjournment of such Court, be fairly entered and extracted on a roll, by the Clerk of Assize, or in case of his death or absence, by any other person under the direction of the Judge who presided at such Court, which roll shall be made in duplicate, and shall be signed by the Clerk of Assize, or such Judge as aforesaid, in case of his death or absence.

II. And be it further enacted by the authority aforesaid, That one of the said rolls shall be transmitted to the Office of the Clerk of the Crown, on or before the first day of the Term next succeeding such Court, and that the other of such rolls shall, so soon as the same shall be prepared, be sent by the Clerk of Assize, or in case of his death or absence, by such Judge as aforesaid, with a Writ of Fieri Facias and Capias, according to the form in the Schedule to this Act annexed, marked A., to the Sheriff of the District in or for which such Court was holden, which Writ shall be authority to such Sheriff for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, or any of them, as remain to be levied and recovered, on the goods and chattels, lands and tenements of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels, lands or tenements shall not be found, whereof the same can be made; and every person so taken shall be lodged in the common Gaol of the District, until satisfaction be made, or until the Court of King's Bench shall, upon cause shewn by the party, as hereinafter mentioned, make an order in the case, and until such order shall be fully complied with.

III. And be it further enacted by the authority aforesaid, That from and after the first day of June, next after the passing of this Act, all fines, issues, amerciaments and forfeited recognizances, save and except such as shall, by virtue of any Actor Acts of the Parliament of

this Province, made or to be made, be directed to be otherwise levied, recovered, appropriated or disposed of, which shall be set, imposed, lost or forfeited, by or before any Court of General Quarter Sessions of the Peace, shall, within twenty-one days after the adjournment of such Court, be fairly entered and extracted on a roll, by the Clerk of the Peace, which roll shall be made out in duplicate, and shall be signed by the Clerk of the Peace.

IV. And be it further enacted by the authority aforesaid, That one of the said rolls shall remain deposited in the Office of the Clerk of the Peace, and that the other of such rolls shall, so soon as the same shall be prepared, be sent by the Clerk of the Peace, with a Writ of Fieri Facias and Capias, according to the form in the Schedule to this Act annexed, marked B., to the Sheriff of the District in which such Court of Quarter Sessions shall have been holden, which Writ shall be authority to such Sheriff, for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, or any of them, as remain to be levied and recovered, on the goods and chattels, lands and tenements, of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels, lands or tenements, shall not be found, whereof the same can be made, and every person so taken, shall be lodged in the common gaol of the District, until satisfaction be made, or until the Court of General Quarter Sessions of such District shall, upon cause shewn by the party, as hereinafter mentioned, make an order in the case, and until such order shall be fully complied with.

V. And whereas the estreating indiscriminately of all recognizances for the appearance of persons to prosecute or give evidence, or to answer to criminal charges, would in many instances, be productive of hardship: Be it enacted by the authority aforesaid, That in every case of default, whereby a recognizance may be forfeited, if the cause of absence be made known to the Court in which the party shall be bound to appear, the Court, on consideration of such cause, and considering also whether, by the non-appearance of such person, the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated— and that with respect to all recognizances which shall be estreated in any Court, and also with respect to all fines which may be imposed by any Court, for the non-attendance of any Juror or Constable, or of any Public Officer, bound to attend at such Court, it shall be in the power of the Judge who presided at such Court, or in the case of proceedings before any Court of General Quarter Sessions of the Peace, for the Chairman, and for any two of the Justices who presided at such Court, to make an order, directing that the sum forfeited upon such estreated recognizance, or the fine imposed in any such case, as aforesaid, shall not be levied, provided it shall appear, to the satisfaction of such Judge, or of the Chairman and Justices, as aforesaid, that the absence of the person for whose appearance any recognizance was entered into, or of any person fined for non-attendance, was owing to circumstances which rendered such absence justifiable; and for such purpose, it shall be necessary for the Clerk of Assize, or Clerk of the Peace respectively, before sending to the Sheriff any roll, with a Writ of Fieri Facias and Capias, as directed by this Act, to submit the same to the Judge who presided at the Assizes, or to the Chairman who presided at the Court of Quarter Sessions respectively, for his revision, and that the Judge, or the Chairman of the Court of Quarter Sessions, taking to his assistance two of the Justices who presided with him at the Sessions, shall and may make a

minute on the said roll and writ, of such forfeited recognizance and fines as they may think fit to direct not to be levied, and the Sheriff shall observe the direction in such minute, written upon such roll and writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine.

VI. And be it further enacted by the authority aforesaid, That if upon any Writ to be issued under this Act, the Sheriff shall take lands or tenements in execution, he shall advertise the same, in like manner as he is required to do before the sale of lands in execution in other cases, and no sale shall take place in less than twelve calendar months, from the time the Writ shall come into the hands of the Sheriff.

VII. And be it further enacted by the authority aforesaid, That the Clerk of Assize, or Clerk of the Peace, shall, at the foot of each roll made out, as herein directed, make and take an affidavit, in the following form, (that is to say,) I, A. B., (describing his Office,) make Oath that this Roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances and forfeitures, which were set, lost, imposed or forfeited, at or by the Court therein mentioned, and which in right and due course of law, ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are also contained and expressed, all such fines as have been paid to, or revised by me, either in Court or otherwise, without any wilful discharge, omission, misnomer or defect whatsoever—so help me God: which oath any Justice of the Peace for such District, is hereby authorised to administer.

VIII. And be it further enacted, by the authority aforesaid, That each and every Justice of the Peace, before whom any recognizance shall be entered into or taken, shall give, or cause to be given, at the time of entering into such recognizance, to the person or persons so entering into the same, and to each of his sureties, a written or printed paper or notice, in the form or to the effect stated in the Schedule, marked C to this Act annexed, adapting the same to the particular circumstances of the case, and each and every such Justice, shall, in such recognizance, state and specify particularly the profession, art or trade, of every person so entering into such recognizance, together with the Christian name and surname, and also the place or his or her residence.

IX. And be it further enacted by the authority aforesaid, That if any person on whose goods and chattels such Sheriff, Bailiff or other Officer, shall be authorised to levy any such forfeited Recognizance, shall give security to the said Sheriff, or other Officer, for his appearance at the return day mentioned in the Writ, in the Court into which such Writ shall be returnable, then and there to abide the decision of such Court, and also to pay such forfeited Recognizances, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as shall be adjudged and ordered by the Court, it shall be lawful for such Sheriff or Officer, to discharge such person so giving such security, out of custody: Provided, that in case such party so giving such security shall not appear in pursuance of his undertaking, it shall be lawful for the Court forthwith to issue a Writ of Fieri Facias and Capias, against the Surety or Sureties of the person so bound as aforesaid.

X. And be it further enacted by the authority aforesaid, That the Court of King's Bench, or Court of General Quarter Sessions, into which any Writ of Fieri Facias and Capias, to be issued under this Act, shall be returnable, is authorised by this Act to inquire into the circumstances of the case, and may, in its discretion, order the discharge of the whole of the forfeited Recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as may to them appear just; which order shall accordingly be a discharge to the Sheriff, or to the party, according to the circumstances of the case.

XI. And be it further enacted by the authority aforesaid, That the Sheriff to whom any Writ shall be directed under this Act, shall return the same on the day on which the same is made returnable, and shall state on the back of the roll attached to such Writ, what shall have been done in the execution of such Process, which return shall be filed in the Court respectively into which such return is made—and that a copy of such roll and return, certified by the Clerk of the Peace, or by the Clerk of the Crown, (as the case may be,) shall be forthwith transmitted to the Receiver General of this Province, with a minute thereon of any of the sums therein mentioned, which may have been remitted by order of the Court, in the whole, or in part, or directed to be forborne, under the authority of this Act.

XII. And be it further enacted by the authority aforesaid, That the Sheriff shall, without delay, pay over all monies by him collected, to the Receiver General of this Province, for the time being.

Schedule A.

William the Fourth, by the Grace of God, &c. To the Sheriff of _____
Greeting: You are hereby commanded to levy of the goods and chattels, lands and tenements, of all and singular, the persons in the roll or extract to this Writ annexed mentioned, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements, being to be found, belonging to the said parties respectively, then and in all cases, that you take the bodies of the parties respectively, and keep them safely in the Gaol of your District, there to abide the judgment of our Court of King's Bench, upon any matter to be shewn by them, or otherwise to remain in your custody, as aforesaid, until such debt shall be satisfied, unless any such person shall give sufficient security for his or her appearance at the said Court, on the return day hereof, for which you will be held answerable; and what you shall do in the premises, make appear before us, in our Court of King's Bench, at Toronto, on the _____ day of _____ Term next, and have then there this Writ. Witness, &c. A. B., Clerk of Assize, at the last Assizes, for the District of _____ this _____ day of _____ 18____.

Schedule B.

William the Fourth, by the Grace of God, &c. To the Sheriff of _____

Greeting: You are hereby commanded to levy of the goods and chattels, lands and tenements, of all singular, the persons in the roll or extract to this Writ annexed mentioned, all and singular, the debts and sums of money upon them respectively imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements, being to be found, belonging to the parties respectively, then and in all cases, that you take the bodies of the parties respectively, and keep them safely in the Gaol of your District, there to abide the judgment of the Court of General Quarter Sessions, for the said District, upon any matter to be shewn by them, or otherwise to remain in your custody, as aforesaid, until such debt shall be satisfied, unless any such person shall give sufficient security for his or her appearance at the said Court, on the return day hereof, for which you will be held answerable—and what you shall do in the premises, make appear at the next Court of General Quarter Sessions of the Peace, for the said District, on the first day of the said Court, and have then there this Writ. Witness, C. D., Clerk of the Peace for the District of _____ this _____ day of _____ 18_____.

Schedule C.

_____ District, To Wit:

Take Notice, that you _____ are bound in the sum of _____ Pounds, and your Sureties _____ in the sum of _____ Pounds each, to appear at _____ to be holden at _____ and unless you personally make your appearance accordingly, the recognizance entered into by yourself and your Sureties, will be forthwith levied on you and your Bail. Dated this _____ day of _____ 18_____. A. B., Justice of the Peace, for the _____ District.