

The Provincial Statutes of Canada, passed in the year 1843. Kingston: Stewart Derbshire & George Desbarats, 1843.

7 Victoria – Chapter 31

An Act to abolish Imprisonment in execution for Debt, and for other purposes therein mentioned. 9th December, 1843.

Whereas Imprisonment for Debt where fraud is not imputable to the Debtor, is not only demoralizing in its tendency, but is as detrimental to the true interest of the Creditor as it is inconsistent with that forbearance and humane regard to the misfortunes of others which should always characterize the Legislation of every Christian country; and whereas it is desirable to soften the rigor of the Laws, in that part of this Province called Upper Canada, affecting the relation between Debtor and Creditor, as far as a due regard to the interests of commerce will permit; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that from and after the passing of this Act, no person shall be arrested or held to bail, upon any cause of action arising in any foreign country where the defendant would not have been liable to have been arrested or held to bail, had such defendant continued within the jurisdiction of the Courts of such foreign country, or in any civil suit where the cause of action shall not amount to ten pounds of lawful money of this Province; and where the cause of action shall amount to ten pounds and upwards, it shall not be lawful for the Plaintiff to proceed to arrest the body of the defendant or defendants, unless an affidavit be first made by such plaintiff, his servant, or agent, of such cause of action, and the amount justly and truly due to the said Plaintiff from the said defendant, and also that such Plaintiff, his servant or agent, hath good reason to believe, and doth verily believe that the defendant is immediately about to leave the Province of Canada with intent and design to defraud the Plaintiff of the said debt; and that no person shall be taken or charged in execution in any such action for any sum whatever, whether the party shall originally have been held to bail, or been merely served with common process.

II. And be it enacted, that it shall not be lawful for any Attorney at Law who swears a Plaintiff to an affidavit of debt, for the purpose of arresting or holding to bail a debtor, to become, or be or act as the attorney of such Plaintiff in any action at law for the recovery of such debt, or any part thereof.

III. And be it enacted, that it shall not be lawful for any process to issue against a Defendant or Defendants upon any affidavit aforesaid, unless the whole affidavit be read and explained over to the plaintiff or person making the same, and unless it be stated in words at full length in the jurat of such affidavit that the same affidavit was duly read over and explained to the deponent by the Commissioner, or party before whom it is sworn, antecedent to the swearing thereof.

IV. And be it enacted, that no female shall be arrested or held to bail by reason of any debt or debts whatever, owed by such female.

V. And be it enacted, that whenever any person shall be holden to bail in any form of action whatever, the recognizance of bail shall be taken in double the sum sworn to, and shall be subject to the condition, that if the defendant or defendants shall be condemned in the action, and shall neglect or refuse to pay the costs and condemnation money, or to appear personally in open Court, or before any Judge or Commissioner of the Court wherein such bail shall be taken, when thereunto required by notice to be left with either of such bail, and with the defendant, or at his or their last place of abode, at least twenty days before the day on which he shall be required to appear, and there to answer such questions or interrogatories as shall be propounded to him touching his lands, tenements, goods, chattels, money, rights, or credits, then and in such case the bail will pay the costs and condemnation money for him.

VI. And be it enacted, that if such defendant or defendants, upon examination upon oath, either upon interrogatories or *viva voce*, in open Court or before a Commissioner of the Court in which the suit shall be pending, or upon the examination in like manner of any witness or witnesses for either party, shall appear to the said Court to have acted fraudulently, either in the manner of contracting the engagement upon which the recovery shall have been had, or in evading the satisfaction thereof, or if, in causes arising *ex delicto*, the defendant shall neglect to pay the damages and costs recovered in any such action; or if such defendant or defendants shall refuse to make a full discovery of all his or their lands, tenements, goods, chattels, credits and other effects, (and to assign to the plaintiff or plaintiffs the whole or such part thereof as the said Court shall direct, in or towards the satisfaction of the judgment obtained in the said suit,) then, and in either of the said cases, it shall and may be lawful for the said Court to commit such defendant or defendants to the Common Gaol of any District, until he or they shall comply with the order of the said Court, or finally for such period not exceeding one year, as the said Court shall think reasonable in punishment of the fraudulent conduct of which they shall adjudge such defendant or defendants to have been guilty, or in punishment of the tort for which damages shall have been awarded, if they shall deem it proper so to do: Provided always, that such commitment shall not operate as a discharge of the said judgment, but the same shall continue in force in like manner as if the defendant or defendants had not been committed: And provided also, that it shall and may be lawful for the Court wherein any such recognizance of bail shall have been entered in term time, or for a Judge thereof in vacation, after any defendant or defendants shall have submitted to any such examination as aforesaid, or in case no such examination shall be had within two terms after judgment shall have been signed in any such cause, then upon hearing the parties, to order in their discretion an *exoneretur*, to be entered upon such Bailpiece.

VII. And be it enacted, that should any person have been or hereafter be committed to prison upon any attachment or other process issued by any Court of Law or Equity in Upper Canada for a contempt or otherwise in not paying costs, or any other sum of money directed or decreed to be paid by such Courts, respectively, it shall and may be lawful for such person to give notice to the party at whose instance such attachment or other process shall have issued, that application for his discharge will be made to the Court or a Judge thereof, whence such attachment or other

process shall have issued, whereupon it shall be lawful for the party at whose instance he shall have been committed as aforesaid, within ten days after the service of such notice to exhibit Interrogatories to such person so applying for his discharge, or to any witness or witnesses, in like manner as if such party were committed in execution on a judgment as aforesaid.

VIII. And be it enacted, that upon such interrogatories being answered, it shall be lawful for such Court or Judge to make such order thereon as if such party had been charged in execution upon a judgment as aforesaid: Provided always, that no such order of such Court or Judge so to be made as aforesaid, shall discharge the party so in custody on such attachment or other process, from the payment of the sum which such party had been directed to pay as aforesaid; but that the same shall be levied and collected by such process against the lands, tenements, goods, chattels, moneys, rights and credits, as the Superior Courts of Law and Equity shall prescribe in that behalf.

IX. And be it enacted, that no person shall hereafter be arrested or held to bail on any process of attachment for contempt for the non-payment of costs merely, which shall or may be ordered to be paid in the progress of any suit either at Law or in Equity, but that in lieu of any such process, it shall be lawful for Her Majesty's Superior Courts of Law and Equity, to prepare and adapt to the circumstances of the case, such a form of execution, attachment, warrant of distress or other process, against the lands and tenements, goods, chattels, money, debts, credits and effects of any person so ordered to pay such costs, as to such Courts shall seem meet.

X. And be it enacted, that this Act shall be deemed and taken to apply to Upper Canada only.