

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

7 Victoria – Chapter 33

An Act to render more summary the means of enforcing the returns of process by Sheriffs and Coroners, in that part of this Province called Upper Canada. 9th December, 1843.

Whereas it is expedient to facilitate and render more summary the means of enforcing the returns of process by Sheriffs and Coroners in that part of this Province called Upper Canada; 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 when any Sheriff or Coroner shall, at any time after the passing of this Act, fail to return any writ to him directed and delivered for execution, which shall have been issued out of Her Majesty's Court of Queen's Bench, or any of the District Courts, within the time when he shall be ordered to return the same by any rule or order of the Court out of which such writ shall have been issued, then, and in every such case it shall and may be lawful to and for a Judge of such Court to grant to the Plaintiff or Plaintiffs, Defendant or Defendants, in the cause in which such writ shall have been issued, a Summons calling upon such Sheriff or Coroner to shew cause why a writ of attachment should not be issued against him; and that the same or any other Judge of the said Court shall have power at the return of such summons, to discharge the said summons, or order a writ of attachment to be issued against such Sheriff or Coroner, or to limit a further period after which such writ of attachment shall be issued unless a return be made in the mean time, or otherwise to order, as to such Judge shall seem proper under the circumstances.

II. And be it enacted, that if at the expiration of any further time which such Judge may limit by any order made at the return of such summons, such writ shall not have been returned, it shall and may be lawful to and for any Judge of the Court out of which such writ issued, in vacation, or for the Court in term, upon proof of the service of such order and of the failure of such Sheriff or Coroner to return such writ, to order a writ of attachment to be forthwith issued against such Sheriff or Coroner.

III. And be it enacted, that writs of Habeas Corpus may in like manner be issued out of any of the said Courts under the order of a Judge, who shall have the same powers, authority and discretion in issuing any such writ of Habeas Corpus, or in committing any such Sheriff or Coroner to close custody when brought before him upon such writ, or in admitting him to bail, and in all other proceedings which maybe had or taken thereupon, as are now possessed by the said Court of Queen's Bench, or any of the said District Courts.

IV. And be it enacted, that all writs of attachment and Habeas Corpus issued against any Sheriff or Coroner, may be returnable on a day certain in vacation, which day shall be fixed by the order of

the Judge or the Court under which the same shall be issued, and shall not be more than thirty days from the time of issuing such writ of attachment or Habeas Corpus; and that when any such writ shall be returnable in vacation, it shall be made returnable before the presiding Judge in Chambers when the same is issued out of the said Court of Queen's Bench, and when the same is issued out of any of the said District Courts, then before the Judge of the District Court out of which the same is issued.

V. And be it enacted, that any Sheriff or Coroner who shall not return any writ issued out of the said Court of Queen's Bench or any of the said District Courts, within the period of three Calendar months after a writ of attachment for not re-turning the same shall be executed against him, shall forfeit his office; and if any Sheriff or Coroner, who shall not have returned any such writ within such period, shall continue after the expiration of such period to exercise the duties of his office without having been duly re-appointed to the same, he shall forfeit and pay the sum of one hundred pounds of lawful money of this Province, to any person who shall sue for the same in any of Her Majesty's Courts of Record, having competent jurisdiction: Provided always, that such action shall be brought within the period of twelve Calendar months after such forfeiture shall have been incurred.

VI. And be it enacted, that the cost of any proceedings under the authority of this Act to enforce the return of process, shall be in the discretion of the presiding Judge or of the Court, as the case may be, who may order them to be paid by the Sheriff or Coroner against whom the proceedings are had, or by either of the parties in the cause.

VII. And be it enacted, that, this Act shall not be construed to interfere with or take away any remedy which existed before the passing thereof.