

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1849. Montreal: Stewart Derbyshire & George Desbarats, 1849.

12 Victoria – Chapter 42

**An Act to abolish Imprisonment for Debt, and for the punishment of Fraudulent Debtors, in Lower-Canada, and for other purposes. 30th May, 1849.**

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 interests of the creditor as it is inconsistent with that forbearance and humane regard to the misfortunes of others which should always characterise the legislation of every Christian country; And whereas it is desirable to soften the rigor of the laws 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, and 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 priest or minister of any religious denomination whatsoever, no person of the age of seventy years or upwards, and no female, shall be arrested or held to bail by reason of any debt, or by reason of any other cause of civil action or suit whatsoever; and that no person shall be arrested or held to bail or detained in custody upon any cause of civil action arising or which may have arisen in any 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 no Writ of *capias ad satisfaciendum* or other execution against the person, shall issue or be allowed after the passing of this Act.

II. And be it enacted, That it shall not be lawful for the Plaintiff in any civil suit or action to proceed to arrest the body of the defendant, or detain him in custody, unless an affidavit be made, in the manner provided by law, by such Plaintiff, his book-keeper, clerk or legal attorney, that the defendant is personally indebted to the Plaintiff in a sum amounting to or exceeding ten pounds of lawful money of this Province, and also that such Plaintiff, his book-keeper or legal attorney, hath reason to believe, and doth verily believe, upon grounds to be specially set forth in such affidavit, that the defendant is immediately about to leave the Province of Canada, with intent to defraud his creditors generally, or the Plaintiff in particular, or that the defendant hath secreted or is about to secrete his property with such intent; Provided always, that it shall be lawful for the Court or any Judge of the Court whence any Process shall have issued to arrest any person, either in Term or in vacation, to order any such person to be discharged out of custody, if it shall be made to appear to him, on summary petition and satisfactory proof, either that the defendant is a priest or minister of any religious denomination, or is of the age of seventy years or upwards, or is a female, or that the cause of action arose in a foreign country, or does not amount to ten pounds of lawful money of this Province, or that there was not sufficient reason for the belief that the defendant was immediately about to leave the Province with fraudulent intent where that is the cause

assigned for the arrest, or that the defendant had not secreted and was not about to secrete his property with such intent where that is the cause assigned for such arrest.

III. And be it enacted, That any defendant arrested after the passing of this Act and confined in Gaol under and by virtue of any Writ of *capias ad respondendum*, shall at any time before the rendering of final judgment, if such Writ have been sued out before judgment, and at any time before the judgment declaring the arrest under such Writ valid, if such Writ have been sued out after judgment, be released from such arrest and confinement, if he give good and sufficient security to the satisfaction of the Court into which the process under which he shall have been arrested shall be returnable or returned, or of any Judge of such Court, that he, the defendant, will surrender himself into the custody of the Sheriff whenever required so to do by any order of such Court or of any one Judge thereof, made as hereinafter is provided, or within one month after the service of such order upon him or upon his sureties, and that, in default of his so doing, he will pay the Plaintiff his debt, interest and costs; and the Court or Judge before whom such security shall be given, shall cause the sureties to justify upon oath, (if the Plaintiff require it) and on security being given by the defendant as aforesaid, the Judge or Court before whom such security shall be given, shall order the defendant to be released from such arrest and confinement; and in like manner any defendant so arrested, but who shall have given hail to the Sheriff as hereinafter is provided, shall have a right on the return day of the Writ or at any time previously thereto, or within eight days thereafter, to give good and sufficient security before the Court into which the Process under which he shall have been arrested shall be returnable or returned, or before any Judge thereof, that he will surrender himself into the custody of the Sheriff whenever required so to do by any order of such Court, or of any Judge thereof made as hereinafter is provided, or within one month after the service of such order upon him or upon his sureties, and that in default of his so doing, he will pay the Plaintiff his debt, interest and costs, and the sureties shall justify upon oath as to their sufficiency, if the Plaintiff require it, and upon the security so offered being received and put in, the bail given to the Sheriff shall thereby be discharged.

IV. And be it enacted, That if judgment for a sum of, or exceeding twenty pounds of lawful money of this Province, exclusive of interest from the service of Process and costs, be rendered against any defendant who shall so have been arrested and shall so have put in security as herein before is provided, then such defendant shall be bound within thirty days from the rendering of such judgment, if the same remain then unsatisfied, to make and file in the office of the Prothonotary or Clerk of the Court a statement, under oath, making known of what property, real or personal, he is possessed, and where the same is situate, to the intent that the Plaintiff may proceed and take the said property in execution, if he see fit, and also making known the names and addresses of all and every the creditors of such defendant, and the amount and nature (privileged, hypothecary or otherwise) of the claim or claims of every such creditor, and also a declaration that he is willing to abandon the property real and personal set forth in the said statement for the benefit of his creditors; and if the defendant neglect to file such statement as aforesaid, or if at any time within two years after the filing of such statement, the plaintiff in the suit shall establish, either by the examination of the defendant under oath or by other evidence, that when the statement was so filed the defendant was proprietor of any chattels, effects, lands or tenements, of the value of twenty pounds currency, wilfully omitted from the said statement,

or that at any time between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors, or that the defendant has made any fraudulent mis-statement in respect of his creditors or their claims, or if the defendant fail to appear for the purpose of being examined in relation to such statement, at any time appointed for such examination by the Court or any Judge thereof, then the said Court, or in vacation any Judge thereof, shall order the defendant to be imprisoned in the Common Gaol of the District for such period not exceeding one year as such Court or Judge shall think reasonable, in punishment of the misconduct of which he or they shall adjudge such defendant to have been guilty; and if the defendant so ordered to be imprisoned shall not surrender himself or be surrendered for that purpose according to the requirements of the order in that behalf, then the parties who shall so have become security that the defendant would so surrender himself as aforesaid, shall forthwith be liable to pay to the said Plaintiff the debt, interest and costs, in relation to which such security shall have been given, and all subsequent costs.

V. And be it enacted, That it shall be lawful for any defendant arrested as aforesaid, and confined in gaol, at any time either before or after judgment, to make and file a statement of his property real and personal, and of his creditors, such as is mentioned in the next preceding section of this Act, and to make and file with such statement a declaration that he is willing to abandon the property real and personal set forth in the said statement, for the benefit of his creditors; and if the Plaintiff, within four months from the service upon him or upon his Attorney of a copy of such statement and declaration, shall establish either by the examination of the defendant under oath or by other evidence, that when the statement was so filed, the defendant was proprietor of any chattels, effects, lands or tenements of the value of twenty pounds currency, wilfully omitted from such statement, or that at any time between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors, or that the defendant has made any fraudulent mis-statement in respect of his creditors or their claims, then the said Court, or in vacation any Judge thereof, shall order the defendant to be imprisoned in the Common Gaol of the District for such period not exceeding one year, as such Court or Judge shall think reasonable, in punishment of the misconduct of which he or they shall adjudge the defendant to have been guilty; but if no omission such as aforesaid in the statement so made and filed by the defendant, be established, and if it be not established that the defendant has secreted any part of his property within the period aforesaid, and with the intent aforesaid, then it shall be lawful for the said Court, or in vacation for any Judge thereof, at the expiration of the said period of four months, to order the defendant to be discharged from his imprisonment: Provided always, that in any case where such omission or other misconduct shall have been formally alleged and complained of against such defendant before the expiration of the said term of four months, such Court or Judge, upon satisfactory cause shown, may extend the time during which proof relative to such complaint may be taken, for a period of not more than two months, and if during such extension of time such omission or other misconduct be established, such Court or Judge may order such defendant to be imprisoned in punishment thereof, in the same manner as if the same had been established during the said term of four months.

VI. And be it enacted, That when any defendant, arrested or imprisoned as aforesaid, shall have made and filed a statement of his property real and personal as aforesaid, and shall as aforesaid have declared himself willing to abandon the same for the benefit of his creditors, it shall be lawful for the Court or for any Judge thereof upon the application of the plaintiff, (if made within two months from the service of such statement and declaration upon the plaintiff or his Attorney, and after fifteen days' notice, in the form of the Schedule No. 1, subjoined to this Act, of the time and place of such application, previously given in the Canada Gazette,) to appoint, at the discretion of such Court or Judge, after hearing any parties claiming to be interested, a fit and proper person as Curator to the property so offered to be abandoned, and of such appointment notice shall by such Curator forthwith be given (in the form of the Schedule No. 2, subjoined to this Act) for the space of one month in the Canada Gazette, and also for any period which may be ordered by such Court or Judge, in any other newspaper or newspapers which such Court or Judge may see fit to name; and in case such Curator shall fail or delay to give such notice, then the same may be given either by the Plaintiff or by the defendant; and during the said period of four months, within which the Plaintiff shall have it in his power to adduce evidence with respect to any omissions such as aforesaid, in the statement so made and filed by the defendant, or with respect to the defendant having secreted any part of his property within the period and with the intent aforesaid, or made any fraudulent mis-statement in respect of his creditors or their claims, it shall also be in the power of any other creditor of such defendant to appear in the cause in relation to which such notice shall have been given, and to adduce evidence and examine the defendant for the same purpose, in the same manner and with the same effect as the plaintiff in such cause under this Act can adduce such evidence or examine the defendant; and whenever, as hereinbefore provided, a defendant shall have been arrested or imprisoned as aforesaid, and shall have declared his willingness to abandon all his property, real and personal, for the benefit of his creditors, and a Curator shall thereupon have been appointed to take charge of such property in pursuance of this Act, and public notice shall have been given as hereinbefore required of the appointment of such Curator within fifteen days after the same shall have been made, and the defendant shall not be adjudged guilty of any misconduct in the premises rendering him liable to punishment as hereinbefore is provided, such Defendant shall not thereafter be liable to be arrested or imprisoned or detained in prison at the suit of the Plaintiff by whom he shall have been arrested, or at the suit of any other person, for or by reason of any cause of action arising before the making and filing of such statement and declaration by such defendant; and in case such defendant shall notwithstanding at any time afterwards be arrested for or by reason of any such cause of action, it shall be lawful for the Court or for any Judge of the Court whence the Process shall have issued for such arrest, upon a summary petition and satisfactory proof, to order such defendant to be discharged out of custody.

VII. And be it enacted, That the powers of the Curator so to be appointed, shall extend not only to the property real and personal comprehended in the statement to be so made and filed by such defendant, but also to any other property real or personal of the defendant, that ought to have been comprehended in such statement; and the real estate comprehended or that ought to have been comprehended in such statement, shall be sold upon such Curator in the ordinary course of law; and the personal property comprehended or that ought to have been comprehended in such

statement shall be collected and got in by such Curator, and by him be paid over or distributed, or caused to be paid over or distributed also in the ordinary course of law.

VIII. And be it enacted, That in every case in which a judgment shall, either before or after the passing of this Act, have been rendered against a defendant, for a sum amounting to or exceeding twenty pounds of lawful money of this Province, exclusive of interest from the service of Process and costs, and for the satisfaction of which judgment a Writ of *capias ad satisfaciendum* might have been sued out according to the laws in force in Lower-Canada before the passing of this Act, such defendant shall, after the discussion of his apparent property real and personal in the ordinary course of law, be bound, within thirty days from personal service upon him of a certified copy of such judgment, together with a notice in writing (in the form of the Schedule No. 3, subjoined to this Act) demanding of him that he do make and file the statement hereinafter mentioned, to make and file in the Office of the Prothonotary or Clerk of the Court, a statement under oath, making known of what property, real or personal, he is possessed, and where the same is situate, to the intent that the Plaintiff may proceed and take the said property in execution, if he see fit, and also making known the names and addresses of all and every the creditors of such defendant, and the amount and nature (privileged, hypothecary or otherwise) of the claim or claims of every such creditor; and if the defendant neglect to file such statement as aforesaid, or if at any time within two years after the filing of such statement, the Plaintiff in the suit shall establish, either by the examination of the defendant under oath or by other evidence, that when the statement was so filed the defendant was proprietor of any chattels, effects, lands or tenements, of the value of twenty pounds currency, wilfully omitted from the said statement, or that at any time between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors, or that the defendant has made any fraudulent mis-statement in respect of his creditors or their claims, or if the defendant fail to appear for the purpose of being examined in relation to such statement, at any time appointed for such examination by the Court or any Judge thereof, then the said Court, or in vacation any Judge thereof, shall order the defendant to be imprisoned in the Common Gaol of the District, for such period not exceeding one year, as such Court or Judge shall think reasonable, in punishment of the misconduct of which he or they shall adjudge such defendant to have been guilty.

IX. And be it enacted, That it shall be lawful for any defendant, who at the time of the passing of this Act shall be imprisoned under and by virtue of any Writ of *Capias ad respondendum* or *Capias ad satisfaciendum*, to apply by summary petition to the Court in which the suit wherein such Writ issued is pending, or to any Judge thereof, for release from custody, on the ground that such defendant is a priest or minister of some religious denomination, or is of the age of seventy years or upwards, or is a female, or that the cause of the action arose in a foreign country, or does not amount to ten pounds of lawful money of this Province; and if it shall be made to appear to the said Court or to any Judge thereof, by satisfactory proof, that the application so made is well founded, then such Court or Judge shall forthwith order such defendant to be discharged from imprisonment.

X. And be it enacted, That all the provisions of this Act shall extend and apply to, and be held to extend and apply to, all persons who at the time of the passing of this Act or at any time thereafter, shall be in prison under and by virtue of any Writ of *Capias ad respondendum* or *Capias ad satisfaciendum*, as well to those who have surrendered or may surrender themselves in discharge of their bail, or who have been or may be surrendered in discharge of their bail, as to others.

XI. And be it enacted, That nothing in this Act contained, or by this Act required or permitted to be done, shall have the effect of discharging any debt or debts due by any person or persons who shall be proceeded against, or who shall take any proceedings under the provisions of this Act; but all such debts shall continue in all respects unimpaired, excepting only that the debtor shall not be liable to be arrested or imprisoned in relation to such debt or debts, if expressly exempted from such liability by the provisions of the present Act.

XII. And be it enacted, That nothing in this Act contained shall prevent any person arrested under any Writ of *Capias ad respondendum*, from putting in special bail to the action, as permitted by the laws of Lower-Canada now in force, excepting only that such special bail shall not be received unless put in on the return day or at any time before the return day, or within the eight days next after the return day; Provided always, that, it shall be in the power of the Court, upon special application and sufficient cause shewn, to extend the time for putting in such special bail; and it shall also be in the power of the Court, upon special application and sufficient cause shewn, to allow any defendant arrested, and who shall have given bail for his appearance at the return of (lie Writ, to put in security that he will surrender himself as provided by the third section of this Act, even after the period in that behalf prescribed by the said third section of this Act.

XIII. And whereas doubts have been and are entertained, as to the form of the bail to be taken by the Sheriffs for the appearance of defendants arrested and holden to bail, and also as to the liability of the Sheriff taking such bail towards the Plaintiff causing the defendant to be arrested, and it is necessary to remove such doubts: Be it therefore declared and enacted, That any bail-bond heretofore taken by any Sheriff for the appearance of any defendant arrested and holden to bail, subject to the condition that the defendant shall appear in Court on the return day of the action, and surrender himself, or be by his bail surrendered, into the custody of the Sheriff in discharge of his bail, or in default thereof shall pay to the Sheriff any sum of money mentioned in such bond, or subject to the condition that the defendant shall appear in Court on the return day of the action to answer the Plaintiff in a plea as contained in the declaration to be annexed to the Writ under which the defendant shall so have been arrested, or subject to the condition that the defendant shall put in special bail, or surrender himself or be surrendered by his bail into the custody of the Sheriff in discharge of his bail, at or before any certain time or event, or in default thereof shall pay to the Sheriff any sum of money mentioned in the bond,—or subject to any other condition, as to the appearance or surrender of the defendant, or the giving of special bail or other security at or before any time or event, shall notwithstanding any supposed illegality or any irregularity or insufficiency in the condition set forth in such bond, be good and valid, if such bond be good and valid in other respects; and from and after the passing of this Act, the bond to be taken by any Sheriff for the appearance of any defendant arrested and holden to bail, shall and

may be according to the form contained in the Schedule No. 4 subjoined to this Act; and it is hereby declared and enacted that no Sheriff is or shall be held liable, towards any Plaintiff at whose suit any defendant shall at any time before the passing of this Act have been arrested and admitted to bail by such Sheriff, or towards any Plaintiff at whose suit any defendant shall be arrested and admitted to bail after the passing of this Act, if the bail taken by such Sheriff were, at the time they were taken as such bail, solvent or reputed so to be, to the amount of the sum for which the bond entered into by such bail shall have been given.

XIV. And be it enacted, That nothing herein contained shall prevent any Sheriff from assigning any bail-bond by him to be taken under this Act, in the manner that bail-bonds heretofore taken by any Sheriff have been assignable.

XV. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to exempt from arrest or imprisonment, any person who may be indebted as tutor, curator, sequestrator depository, sheriff, coroner, bailiff or other officer having charge of public monies, or who may be a *caution judiciaire*, or indebted for the purchase money of any lands or tenements, goods or chattels, sold and adjudged under the authority of justice by licitation, Sheriff's sale *décrèt*, or otherwise, or for the amount of any condemnation money for damages arising out of personal wrongs for which *contrainte par corps* may be now by law awarded.

XVI. And be it enacted, That any person making a false declaration under oath in any of the matters aforesaid, shall be guilty of perjury and subject to punishment accordingly.

XVII. And be it enacted, That this Act shall apply only to Lower-Canada, and that all Acts and provisions of law repugnant to or inconsistent with this Act or which make any provision in any matter provided for by this Act other than such as is made by this Act, shall be and are hereby repealed.

Schedules.

Schedule No. 1  
(Referred to in the foregoing Act.)

Province of Canada,  
District (or Circuit,  
As the case may be)  
Of \_\_\_\_\_

In the (here state the Court in which the action in question is pending.)

No, (here slate the number of the action.)

A. B. Plaintiff;  
vs.

C. D., Defendant.

Public Notice is hereby given, in pursuance of the provisions of the Act of the Parliament of Canada, passed in the \_\_\_\_\_ year of Her Majesty’s Reign, and intituled, “An Act,” (here insert the title of this Act), that at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ next (or instant, as the case may be), or as soon after that hour as may be, at the Court House of \_\_\_\_\_ (or, as the case may be,) at the Chambers of the Judge, (sufficiently describing the same), the said A. B., Plaintiff in this cause, will apply to (naming the Court, and indicating whether the application is to be made to such Court, or to a Judge thereof), for the appointment of a fit and proper person to be Curator to the property, real and personal, of the said C. D., Defendant in this cause, who has made and filed in the Office of the Prothonotary (or Clerk, as the case may be) of the said Court, a statement under oath of the same, and also of his Creditors and their claims, together with a declaration that he is willing to abandon his property for the benefit of his Creditors—the whole as by the said Act required.

And all persons, creditors of the said C. D., are hereby notified then and there to attend, to make to the said Court (or Judge, as the case may be) such representation or statement in the premises as they may see lit to make.

Given at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_  
A. B., Plaintiff.

Schedule No. 2  
(Referred to in the foregoing Act.)

Province of Canada, }  
District (or Circuit, }  
As the case may be) }  
Of \_\_\_\_\_ }

In the (here state the Court in which the action is pending.)  
No. (here state the number of the action.)

A. B., Plaintiff;  
vs.  
C. D., Defendant,  
and  
E. F., Curator to the property and effects of the said  
Defendant.

Public Notice is hereby given, in pursuance of the provisions of the Act of the Parliament of Canada passed in the \_\_\_\_\_ year of Her Majesty’s Reign, and intituled, “An Act,” (here insert the title of this Act,) that on the \_\_\_\_\_ day of \_\_\_\_\_ instant (or last past, as the case may be,) the said E. F., of (state here the address and calling of the Curator,) was, by order of (describe here the Court or Judge in question), appointed to be Curator to the property and effects, of every kind,



real and personal, of the said C. D., Defendant in this cause, abandoned by the said C. D. for the benefit of his Creditors—the whole as by the said Act provided.

And all persons, Creditors or Debtors of the said C. D., are hereby notified and required to govern themselves in the premises accordingly.

Given at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_.

E. F., Curator.

(Or A B., Plaintiff, or C. D., Defendant, as the case may be.)

Schedule No. 3  
(Referred to in the foregoing Act.)

To C. D. of (state here the address and calling of the party,) Defendant in the cause wherein the Judgment, an authentic copy whereof is hereunto prefixed, has been rendered.

Take Notice that the undersigned, A. B., Plaintiff in the said cause, hereby demands of you, under and by virtue of the \_\_\_\_\_ section of the Act of the Parliament of Canada, passed in the \_\_\_\_\_ year of Her Majesty's Reign, and intituled, "An Act," (here insert the title of this Act)—a copy of which section is hereunto subjoined for your further information in the premises—that, within thirty days from the personal service to be made upon you of the foregoing certified copy of the said Judgment, together with this Notice, you do make and file the statement in the said section prescribed, in the manner and under the penalties therein set forth.

Done at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_.

A. B., Plaintiff.

(Here insert a copy of the said \_\_\_\_\_ section of this Act.)

Schedule No. 4  
(Referred to in the foregoing Act.)

Know All Men by these presents, that we, (name here the Defendant and his bail,) are held and firmly bound to (name here the Sheriff,) Sheriff of \_\_\_\_\_, in the Province of Canada, in the sum of (state here the amount sworn to and endorsed on the Writ, with twenty-five per centum added for interest and, costs,) currency, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns; for which payment, to be welt and faithfully made, we bind ourselves, and each of us by himself for the whole and every part thereof, and the heirs, executors, and administrators of us, and every of us, firmly by these presents, sealed with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of Our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of Our Lord one thousand eight hundred and \_\_\_\_\_

Whereas the above bounden (name here the Defendant) has been by the said Sheriff arrested under and by virtue of a certain Writ sued out of (name here the Court out of which such Writ may

have been sued,) at the instance of (name here the Plaintiff,) and to the said Sheriff in due course of law delivered;

The condition of this obligation is such that if the said (name here the Defendant) do on (state here the return day of the Writ,) or at any time previously thereto, or within eight days thereafter, give good and sufficient security to the satisfaction of (name here the Court into which the Writ may be returnable,) or of any one of the Judges of the said Court, that he, the said (name here the Defendant,) will surrender himself into the custody of the said Sheriff whenever required so to do by any order of the said Court, or of any Judge thereof, made as by law provided, or in default thereof, will pay to the said (name here the Plaintiff) the debt for which he, the said (name here Defendant,) has been arrested as aforesaid, with interest and costs; or do on (state here the return day of the Writ,) or at any time previously thereto, or within eight days thereafter, put in special bail, as by law provided, to the action wherein the said Writ has been sued out as aforesaid, then this obligation shall be void and of no force, but otherwise shall stand in full force, vigor and effect.

Signed, sealed and delivered in presence of \_\_\_\_\_