

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

12 Victoria – Chapter 69

An Act to authorize Attachments against Personal Property, for sums of ten pounds and under in certain cases in Upper-Canada. 30th May, 1849.

Whereas it is necessary to provide further protection to Creditors, and to afford the means of attaching the personal property of absconding, removing or concealed Debtors in Upper-Canada, for any sum to the amount of ten pounds, and not less than twenty shillings, for any debt or damage arising upon any contract express or implied, or upon any judgment: 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 if any person or persons in any District of Upper-Canada, being indebted in such sum and manner as mentioned in the preamble to this Act, shall abscond from this Province, leaving personal property liable to seizure under Execution for Debt, in any District in Upper-Canada, or shall attempt to remove his, her or their personal property of the description above-mentioned, either out of Upper-Canada or from one District to another therein, or from Upper to Lower-Canada, or shall keep concealed in any District of Upper-Canada to avoid service of Process, with intent and design to defraud his or her Creditor or Creditors, it shall and may be lawful for any Creditor or Creditors of such person or persons, his, her or their Servant or Agent, to make application to the Clerk of any Division Court of the District wherein the Debtor or Debtors were or was last domiciled, or where the debt was contracted, or to the Judge of the District Court therein, or to any Justice of the Peace in any District of Upper-Canada, and upon making or producing an affidavit or affirmation to the purport of that in the Schedule to this Act annexed marked A, (which affidavit or affirmation the said Clerks, Judges and Justices of the Peace are respectively hereby authorized to administer,) and upon then and there filing the said affidavit or affirmation with such Clerk, Judge, or if taken before a Justice of the Peace with such Justice of the Peace (whose duty it shall be to transmit the same forthwith to the Clerk of the Division Court within whose Division the same was so made or taken, to be filed and kept among the papers in the cause,) it shall be lawful for such Clerk, Judge or Justice of the Peace forthwith to issue a Warrant under his hand and seal, directed to the Bailiff of the Division Court within which the same was issued, or to any Constable of the District, commanding such Bailiff or Constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person or persons, of what nature and kind soever, liable to seizure under execution for debt, within such District, or a sufficient portion thereof to secure the sum mentioned in the Warrant, with the costs of the action, and to return the same forthwith to the Division Court of the Division wherein such Warrant was issued, upon receipt of which Warrant the Bailiff or Constable to whom the same may be directed, shall forthwith execute the same, and with the assistance of two freeholders make a just and true inventory of all such personal estate and effects as he shall seize and take by

virtue thereof, and shall forthwith return the same to the Clerk of the Division Court of the Division within which such Warrant was issued, and which Warrant may be in the form of that in the Schedule to this Act annexed marked B; Provided always, that the freeholders and appraisers authorized by this Act shall be entitled to receive for each day they may be employed in carrying its enactments into effect the sum of two shillings and six pence each, to be paid in the first instance by the Plaintiff or Plaintiffs and allowed in the costs of the cause: Provided always, that proceedings may be conducted to Judgment and Execution in any case commenced by Attachment under the provisions of this Act, in the Division Court of the Division within which the Warrant of Attachment shall issue; and that when proceedings shall be commenced in any case before the issuing of an Attachment under the provisions of this Act, such proceedings may be continued to Judgment and Execution in the Division Court within which such proceedings may have been commenced, and the property seized upon any such Attachment, shall be liable to seizure and sale under the Execution to be issued upon such judgment or the proceeds thereof, in case such property shall have been sold as perishable, shall be applied in satisfaction of such judgment; Provided further, that it shall not be lawful for any Plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of any Division Court, but any Plaintiff having a cause of action above the value of ten pounds, for which an Attachment might be issued under this Act, if the same were not above the value of ten pounds, may abandon the excess, and upon proving his case, shall and may recover to an amount not exceeding ten pounds, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly.

II. And be it enacted, That all property seized under the provisions of this Act, shall be forthwith handed over to the custody and possession of the Clerk of the Division Court of the Division within which the Warrant was issued, who shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same.

III. And be it enacted, That if any person or persons against whose estate or effects, such Warrant or Warrants may have been issued, or any person or persons on his, her or their behalf, shall at any time prior to the recovery of judgment in the cause, execute and tender to the creditor or creditors who sued out such Warrant or Warrants as aforesaid, and shall file in the Division Court to which the Warrant or Warrants of Attachment shall have been returned a bond with good and sufficient sureties, to be approved of by the Judge or Clerk of the Division Court, binding the obligors, jointly and severally, in double the amount, of the sum claimed, conditioned that the debtor or debtors, (naming him, her or them) shall in the event of the claim being proved and judgment being recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same, or the value of the property so taken and seized, to the claimant or claimants, or shall produce such property whenever thereunto required to satisfy such judgment, it shall and may be lawful for such Clerk to supersede such Warrant, and all and singular the property which may have been attached shall be restored.

IV. And be it enacted, That if after the period of one month from the seizure aforesaid, the party against whom the Warrant issued, or some one on his behalf, do not appear and give such bond

with sureties conditioned as above mentioned, whenever and as soon as judgment shall have been obtained upon such claim or claims, execution thereupon may immediately issue, and the property seized upon such attachment or attachments, or enough of such property to satisfy the same, may be sold thereon to satisfy the same according to law, or enough of the proceeds thereof may be applied to satisfy the judgment and costs, if the same shall have been previously sold under the provisions of this Act, as perishable property.

V. And be it enacted, That in order to proceed in the recovery of any debt due by the person or persons against whose property a Warrant shall have issued under this Act, where Process shall not have been previously served, the same may be served either personally or by leaving a copy at the last place of abode of the Defendant, with any person or persons there dwelling, or by leaving the same at the said dwelling, if no person be there found; and in every case, all subsequent proceedings shall and may be conducted according to the usual course of practice and proceedings in the Division Court aforesaid: Provided always, that if it shall appear to the satisfaction of the Judge in the trial of any cause, upon affidavit or other sufficient proof, that the creditor or creditors suing out an attachment under the provisions of this Act, had not reasonable or probable cause for taking such proceeding, then it shall be the duty of the Judge to order that no costs whatever shall be allowed to such creditor or creditors, Plaintiff or Plaintiffs therein, and no costs in such case shall be recovered in the cause.

VI. And be it enacted, That in case any horses, cattle, sheep or other perishable goods or chattels shall be taken upon any Warrant to be issued under this Act, it shall be lawful for the Clerk of the Court in whose custody or keeping the same shall be, to have the same valued by two freeholders, and at the request of the Plaintiff suing out the Warrant, to expose and sell the same at public Auction to the highest bidder, giving at least eight days' notice, at the office of the Clerk of the said Division Court, and at two other public places within such Division, of the time and place of such sale, if the articles seized will admit, otherwise to sell the same at his discretion: Provided always, that it shall not be compulsory upon the Bailiff or Constable to seize, or upon the Clerk to sell such perishable articles, until the party suing out the Warrant shall have given a bond to the defendant or defendants therein, with good and sufficient sureties in double the amount of the appraised value thereof (to be ascertained as aforesaid) conditioned that the party directing such seizure and sale will repay the value thereof, together with all costs and damages that may be incurred in consequence of such seizure and sale, in case judgment be not obtained for such party suing out such attachment, which bond shall also be filed with the papers in the cause: Provided always, that any bond given in the course of any proceeding under this Act, may be sued in any Division Court of the District wherein the same shall have been executed, and proceedings may be thereupon carried on to judgment and execution in such Court notwithstanding the penalty contained in such bond may exceed the sum of Ten pounds: And provided further, that every such bond shall and may be delivered up to the party entitled to the same, by the order and at the discretion of the Judge of such Court to be enforced or cancelled, as the case may require.

VII. And be it enacted, That any residue which may remain after satisfying such judgment, with the costs thereupon, shall be delivered to the defendant, or to the agent of the defendant, or to

the person or persons in whose custody the same were found, whereupon the responsibility of the Clerk as respects such property shall cease.

VIII. And be it enacted, That in addition to the usual costs allowed on proceedings in the Division Courts, the following charges shall be taxed and allowed against the defendant for the several proceedings under this Act, viz:

	£	S.	D.
Every Oath or Affirmation, including the drawing thereof	0	1	6
Every Warrant	0	1	3
Every Mile necessarily travelled in going to seize	0	0	4
Every Schedule of Property seized, and return, including Affidavit of Appraisal	0	2	6
Every Bond, including Affidavit of Justification	0	2	6

To the Clerk for taking charge of and keeping the property seized, such sum as the Judge may order in each particular case.

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IX. And whereas, by the present practice in some of the Division Courts in Upper-Canada, no interest is allowed on the amount recovered under any judgment therein, and it is considered doubtful whether interest can be charged thereon, and it is right that such interest should be allowed and recoverable: Be it therefore enacted, That legal interest shall be allowed and recoverable upon the sum recovered under any judgment of a Division Court in Upper-Canada, (reckoning from the date of the entry thereof,) upon the amount remaining unpaid of the sum so recovered, and such interest, if not paid, shall be levied in the same manner as the amount of the judgment itself, and paid over in like manner to the Plaintiff, and the judgment shall mention the day from which interest is to be recovered, and the Bailiff levying under the judgment shall ascertain and levy the amount thereof at the rate aforesaid.

X. And be it enacted, That no privilege shall be allowed to any person to exempt him from suing or being sued in the Division Courts aforesaid, upon any cause of action within the jurisdiction of the said Courts.

XI. And be it enacted, That it shall and may be lawful for any executor or administrator to sue and be sued in any Division Courts in Upper-Canada, in like manner as if he were a party in his own

right, and the judgment and execution shall be such as in the like cases would be given or issued in any Superior Court.

XII. And be it enacted, That it shall be the duty of the Clerks of the several Division Courts in Upper-Canada, to make out a copy of the Summons for each defendant in every suit, together with a copy of the particulars of the Plaintiff's demand therein, for service, for which such Clerks shall be entitled to receive six pence, for each defendant, to be allowed in the costs of the cause; and such Clerks shall and may issue alias and pluries Summonses in actions within the said Courts, for which the same costs shall be allowed as for original Summonses.

XIII. And be it enacted, That it shall be lawful for the Judges of the said Courts respectively, upon proof of personal service of a copy of Summons, and of the particulars of the Plaintiff's demand, in undefended cases, to give judgment in their discretion for any such demand.

XIV. And be it enacted, That the Judges of the said Courts, upon proof of and being satisfied with the general correctness of the Plaintiff's books, may receive the same in evidence and give judgment to the amount of two pounds in any cause within the said Courts; and that it shall be lawful for the Judge of any such Division Court, in his discretion, to grant a new trial, upon application of either party, within fourteen days after the trial of any cause therein.

XV. And whereas it is desirable that judgments in the said Division Courts should be revived by and against the personal representatives of the parties thereto: Be it therefore enacted, That in the event of the death of either or both of the parties to any such judgment, it shall and may be lawful for the party in whose favor such judgment may have been entered, or his personal representatives in case of his death, to revive such judgment against the other party, or his personal representatives in case of his death, and to issue execution thereupon, according to such practice and after such notice therein, as may be provided and established by the Judges of the said Courts respectively.

XVI. And be it enacted, That the Judges of the District Courts respectively shall have power, from time to time, to make general rules for regulating the practice and proceedings of the said Division Courts, and also to frame forms for any proceeding in the said Courts, for which they shall think it necessary that a form be provided, and from time to time to alter any such form.

XVII. And whereas the amount of business in certain Divisions is not so great as to require the holding of Courts therein once in every two months, while from the remoteness and inaccessibility of the same, the holding of the said Courts therein is, especially at certain seasons of the year, attended with great difficulty: Be it therefore enacted, that if it shall be certified to His Excellency the Governor-General in Council, by the Magistrates of any District in Quarter Sessions assembled, that in any Division of such District, it is expedient for the above causes that such Courts should be held there less frequently than, once in every two months, it shall and may be lawful for His Excellency in Council to order such Courts to be held therein, at such periods as to His Excellency in Council shall seem fit: Provided always, that such Courts shall be held in any such Division at least

once in every six months, and that it shall be lawful for His Excellency in Council to revoke any such order at pleasure.

XVIII. And be it enacted, That it shall not be necessary that any person to be appointed as Deputy for holding any Division Court in the absence of the Judge shall be a Barrister of five years' standing, nor resident in the District in which he is appointed to act, but that it shall be sufficient if he be a Barrister duly admitted as such.

Schedule A.

District of _____ } A. B., of _____, in the District of _____,
(Here state the District.) } (the Plaintiff or Agent, as the case may be,) maketh oath and saith,
that C. D. (the debtor's name) is or are justly and truly indebted to (the creditor's name) in the sum of _____ of lawful money of Canada, for (here state the cause of action briefly). And this Deponent further saith, that he hath good reason to believe, and verily doth believe, that the said C. D. hath absconded from this Province with intent and design to defraud the said A. B. (the creditor) of the said debt, and hath left personal property liable to seizure under execution for debt within the District of _____; or that the said C. D. (is or are) about to abscond from this Province, or to leave the District of _____, with intent and design to defraud the said _____ (the creditor) of the said debt, taking away personal estate liable to seizure under execution for debt; or that the said C. D. is concealed within the District of _____, to avoid being served with Process, with intent and design to defraud the said _____ (the creditor) of his said debt; and this Deponent further saith, that this affidavit (or affirmation, as the case may be,) is not made, nor the Process thereon to be issued, from any vexatious or malicious motive whatever.

Sworn (or affirmed, as the case may be,) before me, }
the _____ day of _____, one thousand } Signature of Deponent here.
eight hundred and _____ }

Schedule B.

District of _____ To A. B., Bailiff of the Division Court of the said
(Here insert the District.) District of _____, or

To A. B., a Constable of the said District of _____ (as the case may be.)

You are hereby commanded to attach, seize, take and safely keep all the personal estate and effects of C. D. (naming the debtor,) an absconding, removing or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt, within the said District of _____ (here name the District,) or a sufficient portion thereof to secure A. B. (here name the creditor) for the sum of (here state the amount sworn to be due,) together with the costs of his suit thereupon, and to return this Warrant with what you shall have taken thereupon, to the Clerk of the (here

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state the number of the Division) Division Court of the District aforesaid forthwith—and herein fail
not.

Witness my hand and seal, the _____ day of _____, 18_____.

E. F., [L.S.]

Clerk, Judge or Justice of the Peace, (as the case may be.)