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2nd Session, 3rd Parliament, 12 Victoria, 1849

BILL.

An Act to abolish Imprisonment for
Debt, and to punish Fraudulent
Debtors.

Received and Read a first time, Tuesday, 23rd
January, 1849.

Second Reading, Wednesday, 31st January, 1849

Hon. Mr. BADGLEY

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BILL.

An Act to abolish Imprisonment for Debt, and to punish Fraudulent Debtors.

WHEREAS it is just and expedient to Preamble
abolish Imprisonment for Debt, in this Province, and to subject dishonest and fraudulent Debtors to punishment, for debts contracted by them: Be it therefore enacted, &c.

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 imprisoned on any civil process issuing out of any Court of Law, or on any execution issuing out of any Court of Law or Equity, or subjected to any *contraainte par corps*, according to the Law of Lower Canada. in any suit or proceeding instituted for the recovery of any money due, or upon any judgment or decree founded upon contract, or due upon any contract express or implied, or for the recovery of any damages for the non-performance of any contract, or for the payment of any costs or expenses under any judgment or decree; Provided always, that the said exemption and freedom from arrest or imprisonment, shall not extend or apply to proceedings as for contempts to enforce civil remedies, nor to actions for fines or penalties, nor for monies collected by any Public Officer, nor for any misconduct or neglect in office, nor to any Judicial Officer, Sheriff, Bailiff, or person acting as such, nor to any Sequestrator or Guardian of any property taken or seized, or held in possession by him, in virtue of legal process, and ordered by competent and legal authority, to be restored and delivered up to the person directed and ordered to receive the same.

No person can be imprisoned for debt here after

Proviso—not to apply to contempts or actions for fines, &c

Cases in which
a *Capias* may
issue

II. And be it enacted, That in all cases after an action shall have been commenced and returned into the proper Court by any plaintiff against any defendant, and in all cases in which a judgment or decree shall have been obtained against a defendant, it shall be lawful for the plaintiff in such case, to make application to any Judge of the Court in which such suit is brought, or to any officer authorized by law to issue Writs of *Capias* for a Warrant to arrest the defendant in such suit, or on such judgment, and the said Judge or officer shall issue the same on satisfactory evidence on oath adduced before him by the affidavit of the plaintiff, or of some other person or persons on his behalf, that the defendant is indebted to the plaintiff in a debt or demand amounting to currency, or upwards, and specifying the nature and amount thereof, and establishing one or more of the following facts and particulars :

£20 or

When it is
proved that
Defendant is
about to leave
Canada, &c

1st. That the defendant is immediately about to depart from the Province of Canada with intent to defraud his creditors. 25

Or to remove
his property,
with intent to
defraud, &c

2nd That the defendant is about to remove all or any of his property out of the jurisdiction of the Court in which such suit is brought. with intent to defraud his creditors.

Or conceals
his property,
&c

3rd That the defendant fraudulently conceals his property or rights in action, specifying their tangibility or the existing avails of the same, if they shall have been converted, or some interest in any public or corporate stock, money or evidence of debt, belonging to him, specifying the same, which he unjustly refuses to apply to the payment of the Plaintiff's judgment or decree against him. 30

Or is about to
dispose of his
property, with
intent

4th. That he has assigned, removed or disposed of, or is about to dispose of any of his property, specifying the same, with intent to defraud his creditors. 40

III. And be it enacted, That upon such proof being made to the satisfaction of the said Judge or officer, a Warrant, either with or without seal, shall issue directed to any Sheriff or Bailiff within the District in which such Defendant shall reside or be, briefly setting forth the complaint, and commanding the officer to whom the said writ shall be directed, to arrest the person named in the said warrant, if he shall be found in such District, and to bring him without delay before the Judge issuing such warrant, or any Judge of the court in which the said suit or action shall be pending, or any judge of any competent Court of civil jurisdiction in the said District, which warrant shall be accompanied with a copy, of all affidavits upon which the warrant shall have issued, which shall be certified by the said Judge or officer, and shall be delivered to the Defendant at the time of serving the writ by the officer serving the same.

On such proof being made, warrant may issue

IV. And be it enacted, That the said officer shall execute the warrant by arresting the person named therein and conveying him to the Common Jail of the District until he can be brought before such Judge as directed in the said warrant, and such Defendant shall be kept in custody in such Common Jail, subject always to the order of any such Judge or Court as aforesaid, who may at any time, while he shall be in custody, command him to be brought before such Judge or Court, until he shall be duly discharged or committed as hereinafter provided.

Officer shall execute warrant and keep party in custody

V. And be it enacted, That on the appearance before such Judge of the person so arrested, he may controvert, by witnesses, all or any of the facts and circumstances mentioned in the affidavit or affidavits on which the said warrant is issued, and may at his option deny the complainant's allegations and verify the said denial by his own affidavit, and in case of his so verifying the same

On appearance of party arrested he may controvert all facts mentioned in affidavits, &c.

he may be examined on oath by the complainant touching any fact or circumstance, material or pertinent to the inquiry, and the answers of the Defendant on such examination shall be reduced to writing and subscribed by him, and the Judge conducting the inquiry shall also receive other proof which the parties may offer either at the said first appearance or at any adjournment thereof, which the Judge may order in his discretion: 5 and in case of adjournment such Judge may take recognizance from the defendant, with or without bail, also at his discretion, for the appearance of the defendant at such adjourned hearing: Provided always, that 15 when the application for such warrant is founded on the provisions of the second section of this Act, the defendant shall not be entitled to the adjournment or postponement of such hearing, unless he shall, in addition 20 to the requirements of this section, enter into a bond to the complainant in a penalty of not less than twice the amount of the debt or demand claimed, with such sureties as shall be approved by the said Judge hearing 25 the parties, conditioned that, until the final decision of the matter pending before such Judge, the defendant will not remove any property which he then has, out of the jurisdiction of the Court in which the suit in 30 which such warrant is issued shall be brought, with intent to defraud any of his creditors, and that he will not assign or dispose of any such property with intent or with a view to give a preference to any creditor 35 for any debt antecedent to such assignment or disposition.

Judge may
enforce atten-
dance of wit-
nesses

VI. And be it enacted, That the Judge conducting such inquiry shall have the same power of enforcing the attendance of 40 all or any and the like witnesses as may now be or heretofore have been examined in any civil suit or action, who shall be subject to the same penalties for refusing to appear or for refusing to testify or otherwise, 45

as they are now liable to under the laws in such cases in force in this Province.

VII. And be it enacted, That if the said Judge shall be satisfied that the allegations of the plaintiff are substantiated according to the requirements of the said second section he shall by a commitment under his hand, setting forth therein the cause of the said commitment with sufficient certainty, direct the said defendant to be committed to the Common Jail of the District, in which the said hearing shall be had, to be there detained until he shall be discharged according to law, and such defendant shall be committed and detained accordingly.

If Judge is satisfied that allegations of Plaintiff are substantiated, he may direct commitment of Defendant to gaol.

VIII. And be it enacted, That such commitment shall not be granted if the defendant shall either

But not if Defendant

1st. Pay the debt or demand claimed, with the costs of the suit or proceeding against him ; or

Pays debt and costs,

2d. Find security to the satisfaction of the Judge before whom the hearing shall be had that the said debt or demand, with the costs aforesaid, shall be paid within ninety days from the date of the commitment, with interest on the said debt or claims ; or

Or finds security that debt and costs will be paid in ninety days,

3d. Make and deliver under his oath to the said Judge an inventory of all his property of what nature or kind soever, and an account of his creditors, and a consent in writing to a judgment ordering the assignment of his property as hereinafter provided, on which the same proceedings shall be had as upon a petition of such defendant in the manner hereinafter directed, except that no notice to the plaintiff shall be requisite ; and no adjournment shall be granted for more than three days, except at the instance of the defendant, and a discharge shall be granted in the like case and with the same

Or delivers an inventory of his property under oath, &c.,

effect as upon a petition of such defendant in the manner hereinafter directed; or

Or enters into a bond to Plaintiff that he will within 30 days apply for a judgment of assignment of his property, &c.,

4th. Enter into a bond to the plaintiff under a penalty not less than twice the amount of the debt or demand claimed, with such sureties as shall be approved by such Judge, conditioned that such defendant will, within thirty days, apply for a judgment of assignment of all his property as aforesaid, and for a discharge as hereinafter provided, and diligently prosecute the same until he obtains such discharge, or

Or if he gives complainant a bond conditioned that he will not remove his property out of jurisdiction of Court, &c

5. If the defendant shall give a bond to the complainant with the sureties aforesaid, conditioned that he will not remove his property, which he then has, to wit, at the time when the said warrant was granted, out of the jurisdiction of the Court in which such suit is brought, or in which it then is, with intent to defraud his Creditors, and that he will not assign or dispose of any such property with such intent or with a view to give a preference to any creditor for any debt antecedent to such judgment of assignment or disposition, until the demand of the complainant with the costs aforesaid shall be satisfied, or until the expiration of six months after a final judgment shall have been rendered in the suit brought for the recovery of such demand.

Defendant to remain in custody until final judgment rendered in his favor

IX. And be it enacted, That the said defendant so committed, shall remain in custody until a final judgment shall have been rendered in his favour, in the suit in the prosecution whereof he shall have been committed, or until he shall have obtained his discharge in the manner provided by this Act; but such defendant may be discharged by such Judge, on his payment of the debt or demand claimed, with costs aforesaid, or on giving security for the payment thereof within ninety days as hereinbefore provided, or on executing either of the bonds also hereinbefore mentioned.

X. And be in enacted, That any person committed as aforesaid, or imprisoned in virtue of any execution, or who shall have given the bond conditioned that he shall apply for the judgment of assignment hereinbefore mentioned and provided, may petition any Judge of any Superior Court of civil jurisdiction in that part of the province in which such person resides or is imprisoned, setting forth facts necessary to confer jurisdiction in such Judge's Court, praying that his property may be assigned under the provisions of this Act, and that he may have the benefit thereof, and he shall with his said petition deliver on oath an inventory of his said property, and an account of his creditors in manner hereinbefore required, together with an affidavit that the said inventory and account are in all respects just and true, and that he hath not at any time or in any manner disposed of or made over any part of his property with a view to the future benefit of himself or his family, or with any intent to injure or defraud any of his creditors; a copy of which said petition, and of the inventory and account shall be served personally upon the Plaintiff, his personal representative or his Attorney, *ad litem*, and published in the *Canada Gazette* twice at least during fourteen days before such petition shall be presented, together with a notice in writing of the time and place at which the petition will be presented, and proof of such service shall be made at the time of presenting such petition; and the said inventory shall contain a just and true account of all his said property in law and equity, and of all charges affecting the same, as such property and charges existed at the time of his imprisonment, and as they exist at the time of making such petition, together with a just and true account of all his deeds, securities, books and writings whatsoever relating to his property and the charges thereon, with the names and places of abode of the witnesses to such deeds, securities and writings, and the Notaries or

Provision with respect to parties imprisoned, petitioning Judge, &c

public officers before whom they were executed.

Creditors of
petitioner may
appear before
Judge and
may examine
him, his wife,
&c respecting
his property,
&c

XI. And be enacted, That any creditor of such petitioner may oppose such application, and may thereupon examine the petitioner, or any other person, *visà voce*, respecting his property and estate, before such Judge, who shall take notes of such examination, and shall be entitled to enforce their attendance, and to compel them to testify in the same manner as is provided for such purpose, for witnesses in civil suits and actions in any Court of Justice, and the said examination may be adjourned by the said Judge, on good cause shewn, for a period not exceeding thirty days, and if such Judge shall be satisfied, upon the hearing of such petition, that the opposition of the creditor is unfounded, and that the proceedings of the petitioner are just and fair, and that the petitioner has not concealed, removed or disposed of any of his property with intent to defraud his creditors, the Judge shall order the assignment to take effect, and shall by a judgment under his hand and seal, order and declare the same.

And Judge
may order as-
signment of
petitioner's
property

Judgment to
vest in assign-
ees all proper-
ty of petition-
er &c

XII. And be it enacted, That the said judgment so signed or sealed shall vest, and be construed to vest in the Assignees all the property of the said petitioner, whether in his possession or otherwise, or held under attachment or seizure by execution or otherwise, and such attachment or seizure shall, by the effect of the said judgment cease and determine, and be absolutely discharged, and shall also vest and be construed to vest in the Assignees all his debts due to him or held in trust for him, all liens and securities therefor, and all his rights of action for any goods or estate, real or personal, and all his rights of redeeming any such goods or estate, and shall give power to the Assignees to redeem all mortgages, hypothecs, condi-

tional contracts, pledges and liens of or upon any of his goods or estate, or to sell the same subject to such mortgage or other incumbrance, and the petitioner shall like-
 5 wise, at the expense of the estate, make and execute all such deeds and writings, and endorse all such bills, notes and other negotiable papers, and draw checks and orders for moneys deposited, and do all such other
 10 lawful acts and things as the Assignees shall at any time reasonably require, and which may be necessary for enabling them to demand, recover and receive all his estate and effects, whether in or out of this Province,
 15 and the Assignees shall have the like remedy to recover all the said estate, debts and effects in their own names, as the Petitioner might have had if no warrant had issued against him; and if at the date of such war-
 20 rant any suit or action shall be pending in the name of the petitioner for the recovery of any debt or other thing which might or ought to pass to the Assignees, such Assignees, if they desire it, shall be admitted to
 25 intervene and become a party to, and to substitute their names for that of the Petitioner, and thenceforth in their own names to prosecute in like manner and to the like effect as if the same had been originally
 30 commenced by them as such Assignees; and in case of the death of any of the Assignees, the surviving or remaining Assignee shall upon his application, be admitted to prosecute such suit or action, and with the like
 35 effect as if the same had been originally commenced by him; and if the Petitioner shall die after the date of the said warrant, all proceedings shall, notwithstanding, be continued and concluded in like manner,
 40 and with the same validity and effect as if he had lived.

XIII. And be it enacted, That such Judge Judge to appoint one or more assignees shall in his discretion appoint one or more Assignees, and shall name them in the said
 45 judgment, in whom the said assignment

shall vest, and shall after being satisfied by sufficient evidence produced before him, or by a Certificate of the Assignees, that the property of the petitioner as specified in the inventory has been delivered to them, or that he has given to them satisfactory security for the future delivery of the same, forthwith grant to the petitioner a discharge which shall exonerate him from being proceeded against by any creditor entitled to claim against him or to have a dividend of the estate of the petitioner so discharged: Provided always, that any person arrested and imprisoned as heretofore provided, in addition to the case in this section contained, shall also be entitled to the discharge provided by the said section, upon his putting in and perfecting special bail before any Judge or Court, in any suit commenced against him by the creditor upon whose complaint he may have been arrested, and at any time, whether a judgment or decree shall have been obtained or not; but he shall be liable to be imprisoned upon any execution to be issued against his body in such writ, in the same manner as though this Act had not been passed, subject however to be released on bail according to the provisions of the law of that section of the Province in which he shall be imprisoned.

Assignees to realize property with least possible delay

XIV. And be it enacted, That the Assignees shall realize the said property with the least possible delay, and in the manner most consistent with the interests of the creditors, and shall file for the information of the creditors in each Term of the Superior Court heretofore mentioned, a statement on oath, of the management and administration of the said property assigned as aforesaid, and thereupon it shall be competent to any creditor to petition the said Court to cause the proceeds in hand, or so much thereof as the said Court, upon notice by public advertisement to the said Creditors, may reasonably direct, to be divided and

distributed according to law among the creditors of the persons whose Estate was so assigned, according to their several privileges or claims thereon.

5 XV. And be it enacted, That every person imprisoned on civil process, at the time this Act shall go into effect, shall be entitled to be discharged therefrom at the expiration of one calendar month after this Act shall
 10 take effect as a law, unless the creditor at whose suit such person shall be imprisoned, shall within the said time make application and complaint against him in the manner
 15 heretofore provided to be adopted by a creditor against a person at large, and unless in that time a warrant shall issue thereon; and if such warrant do issue, such and the same proceedings shall be had thereon by the creditor to continue the defendant in
 20 prison, and by the defendant to be relieved therefrom as are hereinbefore provided: and every person so imprisoned may present a petition for assignment and give notice there-
 25 upon which the same proceedings shall be had as are hereinbefore provided, and a discharge granted on such petition shall entitle such petitioner to be discharged from imprisonment as before directed.

Persons imprisoned at the time this Act comes into effect, to be discharged after one month, unless creditor makes application in manner heretofore provided by law

30 XVI. Provided always, and be it enacted, That the removal, concealment or disposal of any property declared by this Act to be ground of any complaint or proceedings whereon any bond is required in reference
 35 to such removal, concealment or disposal, shall not be deemed to apply to any property which shall by any Statute or Law be expressly exempted from levy and sale under execution.

Removal of property not to apply to property exempted from sale under execution

40 XVII. And be it enacted, That the forfeiture of any bond given under the provisions of this Act shall entitle the plaintiff to recover the amount due to him on the judg-

Forfeiture of bond will entitle Plaintiff to recover amount due him in original suit.

ment in the original suit instituted against the defendant giving such bond.

Penalty on parties removing property out of this Province with intent, &c.

XVIII. And be it enacted, That any person who shall remove any of his property out of any District or County in this Province; with intent to prevent the same from being levied upon by any execution, or who shall secrete, assign, convey, or otherwise dispose of any of his property with intent to defraud his creditors, or to prevent such property being made liable for the payment of his debts, and any person who shall receive such property, with such intent, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be imprisoned for not less than twelve calendar months in the Common Gaol of the District in which such conviction shall be had. 5 10 15

Nothing herein to prevent parties suing out attachments against property of their debtors.

XIX. Provided always and be it enacted, That nothing in this Act contained shall have the effect of abrogating or diminishing the right of parties to sue out and obtain attachments against the property of their debtors, whether upon or after judgment, and as is now practised and allowed by law. 25

No warrant to issue for any sum less than £25 currency.

Proviso.

XX. And be it enacted, That no warrant shall issue against any person for any sum less than twenty pounds currency aforesaid, nor in any case in which, by the provisions of any existing law in this Province or either section thereof, a person shall be exempted from arrest: Provided always, that nothing in this Act contained shall have the effect, in Lower Canada, of causing any person to be arrested other than those who, by the law in force in Lower Canada at the passing of this Act, are liable to arrest therein, and that the provisions of this law shall not in any manner be construed to extend to or affect any other person. 30 35 40

Persons entitled to be discharged under

XXI. And be it enacted, That any persons imprisoned on any process issued out of any

Court of competent civil jurisdiction, who shall be entitled to be discharged from such imprisonment under the provisions of this Act, may bring a Writ of Habeas Corpus for that purpose

this Act, may
bring a Writ
of Habeas
Corpus

XXII. And be it enacted, That no warrant shall issue in any case against any person being in this Province for any debt contracted by him while residing in the United States of North America or any of them; and that any person who may be hereafter arrested for debt, or who shall be imprisoned therefor at the time of this Act coming into force, or be under recognizance or special bail for any such debt, shall upon petition by him duly sworn to any Judge aforesaid, setting forth the fact of such debt being or having been contracted in the said United States or any of them without fraudulent intent, and establishing such facts by the affidavit of a witness cognizant thereof, and after notice in manner hereinbefore required to the party plaintiff in the cause or his Attorney *ad litem*, be forthwith discharged, and the recognizance and special bail also discharged, by order of the Judge if he shall be satisfied that such was so contracted as aforesaid, and without fraudulent intention by the person so imprisoned as aforesaid.

No warrant to
issue against
parties being
in this Pro-
vince, for debts
contracted in
United States

XXIII. And be it enacted, That this Act shall come into force and effect on the _____, and not before.

Public Act.