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No. 287.

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

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## **BILL.**

An Act to abolish Imprisonment for  
Debt.

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Received and Read a first time, Thursday, 10th  
May, 1849.

Second Reading, Thursday, 17th May, 1849.

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**HON. MR. BOULTON.**

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PRINTED BY LOVELL AND GIBSON.

## BILL.

An Act to abolish Imprisonment for Debt; and  
for the punishment of fraudulent Debtors in this  
Province.

**W**HEREAS Imprisonment for Debt where fraud is Preamble.  
not imputable to the Debtor, is not only demoralizing  
in its tendency, but is as detrimental to the true inter-  
ests of the Creditor as it is inconsistent with that for-  
bearance 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 this Province affecting the rela-  
tion between Debtor and Creditor, as far as a due regard  
to the interests of commerce will permit: 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 female  
shall be arrested or held to bail by reason of any Debt  
alleged to be due by her 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 action arising in any foreign country,  
or in any civil suit where the cause of action shall not  
amount to twenty pounds of lawful money of this Pro-  
vince; and where the cause of action shall amount to  
twenty pounds and upwards, it shall not be lawful for the  
plaintiff to proceed to arrest the body of the defendant or  
defendants, or detain him in custody unless an affidavit  
be made by such plaintiff, his servant or agent, of such  
cause of action, and of 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 (set-  
ting forth such reason or reasons at length) to believe,  
and doth verily believe that the defendant is immediately  
about to leave the Province of Canada, or that he hath  
made a fraudulent assignment of his property 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 action for any sum whatever, whether the party shall  
originally have been held to bail, or been merely served  
with common process: Provided always, that it shall be  
lawful for any Judge of the Court whence any process  
shall have issued to arrest any person or persons to order  
any such person or persons to be discharged out of cus-  
tody, if it shall be made to appear to him on affidavit  
either that the cause of action arose in a foreign country

No woman to  
be arrested in  
any civil suit.

In what cases  
only any male  
person shall  
be held to bail.

No party to be  
imprisoned in  
execution.

Proviso:  
Judge may  
order persons  
arrested to be  
discharged in  
certain cases,  
or defendant  
may plead in  
abatement.

or that no sufficient reasons have been assigned by the plaintiff for the belief that the defendant was immediately about to leave the Province with intent and design to defraud the plaintiff of his debt or that the defendant hath not made any fraudulent assignment of his property to defraud the plaintiff of his debt. 5

Amount and condition of bail in civil cases.

II. And be it enacted, That whenever any person shall be holden to bail in any form of action whatever, the recognizance of bail to be taken at the return of the process 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, or a Judge of any District or County Court 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: Provided always, that nothing herein contained shall prevent the bail surrendering their principal in discharge of themselves at any time before judgment shall have been rendered against them on such recognizance and upon payment of costs. 10  
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Examination of defendant as to his property.

Proviso; bail may surrender their principal

How affidavit to hold to bail must be sworn to.

III. And be it enacted, That no affidavit to be made for the purpose of obtaining any process for the arrest of any person whomsoever, shall be sworn before any Attorney or other person promoting such arrest, nor until it shall have been read over and explained to the deponent by the party administering the oath, and to be so certified in the *Jurat* to the affidavit. 30  
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Proceedings if the defendant on examination shall appear to have acted fraudulently;

Or shall refuse to discover his property.

IV. And be it enacted, That if such defendant or defendants upon examination upon oath, either upon interrogatories or *vidé voce*, in open Court or before a Commissioner of the Court in which the suit shall be pending, or a Judge of any District, Circuit or County Court, 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 such defendant or defendants shall refuse to make a full discovery of all his or their lands, tenements, goods, chattels, moneys, credits and 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 40  
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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: Provided always, that such commitment shall not operate in matters founded on any contract 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 for such fraudulent conduct;—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 one term after judgment shall have been signed in any such cause, when defendant shall be in custody for want of bail, then upon hearing the parties, either to order in their discretion an *exoneretur* to be entered upon such Bail-piece, or that the defendant shall thenceforth be discharged from custody and all future imprisonment on such judgment.

Proviso; imprisonment not to be a discharge.

Proviso; *exoneretur* may be granted in certain cases.

V. 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 for a contempt or otherwise in not paying costs, or any other sum of money directed, adjudged or decreed by such Courts respectively, to be due from and to be paid by the party imprisoned, 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 examine such defendant *visà voce* or 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 out upon bail on mesne process and had come up for examination, as in such case is hereinbefore provided.

Proceedings in cases where parties may be imprisoned for contempt in not paying moneys.

VI. And be it enacted, That upon such examination being had, it shall be lawful for such Court or Judge to make such order thereon as if such party had been out on bail and came up for examination 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 cus-

What order the Judge may make.

Proviso; as to the effect of such order.

tody 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. 5

What proceedings shall in future be had against parties in contempt in not paying costs.

Proviso.

VII. And be it enacted, That no person shall hereafter be arrested or held to bail on any process of attachment for contempt or *contrainte par corps*, for the non-payment of costs or other sum of money 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: Provided always, that nothing hereinbefore contained shall extend, or be construed to extend to proceedings as for contempts to enforce civil remedies for moneys 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, Receiver or Guardian of any property, taken or seized or held in possession by him, in virtue of legal process or order of Court, and ordered by competent and legal authority to be restored and delivered up to the person directed and ordered to receive the same, nor to any curator or tutor who shall have become a *prévaricateur*, or have misapplied any goods, moneys, or effects movable or immovable intrusted to his charge. 10 15 20 25 30