

No. 158.

1st Session, 8th Parliament, 27 Victoria, 1863.

BILL.

**An Act for more effectually securing the
Liberty of the Subject.**

**Received and read, first time, Tuesday, 15th
September, 1863.**

**Second reading, Thursday, 17th September,
1863.**

Mr. Wood.

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BILL.

No. 158.]

[1863.—2nd Sess.]

An Act for more effectually securing the Liberty of the Subject.

WHEREAS the Writ of *Habeas Corpus* hath been found by ex-
Preamble.
perience to be an expeditious and effectual method of restoring
any person to his liberty, who hath been unjustly deprived thereof: And
whereas extending the remedy of such Writ, and enforcing obedience
5 thereunto, and preventing delays in the execution thereof, will be advan-
tageous to the public: And whereas the provisions made by an Act
passed in England, in the thirty-first year of King Charles the second,
intituled: "An Act for the better securing the liberty of the subject,
and for prevention of imprisonment beyond the seas," only extend
10 to cases of commitment or detainer for criminal or supposed criminal
matter: Therefore, Her Majesty, by and with the advice and consent of
the Legislative Council and Assembly of Canada, enacts as follows:—

1. When any person shall be confined or restrained of his or her
liberty (otherwise than for some criminal or supposed criminal matter,
15 and except persons imprisoned for debt, or by process in any
civil suit) within Upper Canada, it shall and may be lawful for
any of the Judges of either of the Superior Courts of Com-
mon Law in Upper Canada, and they are hereby required upon
complaint made to them by or on behalf of the person so confined
20 or restrained, if it shall appear by affidavit or affirmation (in cases
where by law an affirmation is allowed) that there is a probable
and reasonable ground for such complaint, to award in vacation time, a
writ of *Habeas Corpus ad Subjiciendum* under the seal of the Court
wherein the application shall be made, directed to the person or persons
25 in whose custody or power the party so confined or restrained shall be,
returnable immediately before the person so awarding the same, or be-
fore any Judge in Chambers for the time being.

Benefit of *Habeas Corpus*
extended to
persons con-
fined for
other than
criminal mat-
ters.

2. If the person or persons to whom any writ of *Habeas Corpus* shall
be directed according to the provisions of this Act, upon service of such
30 writ, either by the actual delivery thereof to him, her or them, or by
leaving the same at the place where the party shall be confined or re-
strained, with any servant or agent of the person or persons so confining
or restraining, shall wilfully neglect or refuse to make a return or
pay obedience thereto, he she or they shall be deemed guilty of a con-
tempt of the Court, under the seal whereof such writ shall have issued;
35 and it shall be lawful to and for the Judge before whom such writ shall
be returnable, upon proof made by affidavit of wilful disobedience of the
said writ, to issue a warrant under his hand and seal for the apprehend-
ing and bringing before him or some other Judge of the said Courts the
person or persons so wilfully disobeying the said writ, in order to his,
40 her or their being bound to the Queen's Majesty, with two sufficient
sureties, in such sum as in the warrant shall be expressed, with con-

Disobedience
to be con-
sidered a con-
tempt of
Court.

dition to appear in the Court under the seal of which the writ issued, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such Judge to commit such person or persons so neglecting 5 or refusing to the common gaol of the county wherein such person resides, there to remain until he, she or they shall have become bound as aforesaid, or shall be discharged by order of the Court in term time, or by order of a Judge in vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the same Court, and 10 shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the Court to be discharged: Provided that if such writ shall be awarded so late in the vacation by any one of the said Judges, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall 15 and may, at his discretion, be made returnable in the Court wherein the application is made, at a day certain in the next term; and the said Court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said Court: And if such writ shall 20 be awarded in term time so late that, in the judgment of the Court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said Court, be made returnable at a day certain in the then next vacation, before a Judge in Chambers, who shall and may proceed thereupon in such manner as by 25 this Act is directed concerning writs issuing in and made returnable during the vacation.

In certain cases the writ may be made returnable at day certain in the next term.

Judge to examine into the truth of the facts set forth in the Return.

3. In all cases provided for by this Act, although the return to any writ of *Habeas Corpus* shall be good and sufficient in law, it shall be lawful for the Judge before whom such writ may be returnable to proceed to examine into the truth of the facts set forth in such return, by affidavit or by affirmation, (in cases where an affirmation is allowed by law) and to do therein as to justice shall appertain; and if such writ shall be returned before any of the said Judges, and it shall appear doubtful to him on such examination, whether the material facts set forth in 35 the said return, or any of them, be true or not, in such case it shall and may be lawful for the said Judge to let to bail the said person so confined or restrained, upon his or her entering into a recognizance, with one or more sureties; or in case of infancy or coverture, or other disability, upon security by recognizance in a reasonable sum, to appear in the Court 40 wherein the application is made, upon a day certain in the term following, and so from day to day as the Court shall require, and to abide such order as the Court shall make in and concerning the premises; and such Judge shall transmit into the same Court the said writ and return, together with such recognizance, affidavits and affirmations; and there- 45 upon it shall and may be lawful for the said Court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation, (in cases where by law affirmation is allowed) and to order and determine touching the discharging, bailing, or remanding the party. 40

Judge to transmit Writ and Return to the Court whence issued.

Like proceeding in Court for controverting truth of Return.

4. The like proceeding may be had in the Court for controverting the truth of the return to any such writ of *Habeas Corpus* awarded as aforesaid, although such writ shall be awarded by the said Court itself, or be returnable therein.

5. The several Provisions made in this Act touching the making Writs of *Habeas Corpus* issuing in time of vacation, returnable into the said Courts, or for making such writs awarded in term time, returnable in vacation, as the cases may respectively happen, and also for making wilful disobedience thereto a contempt of the Court, and for issuing warrants to apprehend and bring before the said Court, Judge or any of them, any person or persons wilfully disobeying any such writ, and in all case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting, or refusing to Gaol as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon, shall extend to all Writs of *Habeas Corpus* awarded in pursuance of the said Act passed in England in the Thirty-first year of the Reign of King Charles the Second, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been hereinbefore specially named and provided for respectively.

Provisions of
this Act to
apply to
Writs issued
under Act 31
Charles II.