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No. 291.

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3rd Session, 5th Parliament, 20 Victoria, 1857.

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## BILL.

An Act to consolidate and amend the Law of  
Lower Canada, relative to Attachments,  
before Judgment.

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Received and read, first time, Monday, 29th  
April, 1857.

Second reading, Monday, 4th May, 1857.

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MR. SOMERVILLE.

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TORONTO :

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to consolidate and amend the Law of Lower  
Canada relative to attachments before Judgment.

WHEREAS it is expedient to consolidate and amend the law of Lower Canada relative to Writs of Attachment, *arret simple* and *saisie arret*, before trial or judgment: Therefore Her Majesty, &c., enacts as follows: Preamble.

5 I. The tenth and eleventh sections of the Ordinance of Lower Canada, passed in the twenty-seventh year of the Reign of his late Majesty King George the Third, intituled, "*An Ordinance to continue in force for a limited time an Ordinance made in the twenty-fifth year of His Majesty's* Sect. 10 and 11 of Ord. 27 G. 3 c. 1.  
 0 "*Reign, intituled, An Ordinance to regulate the proceedings in the Courts of Civil Judicature, and to establish trials by juries in actions of a commercial nature and personal wrongs to be compensated in damages, with such additional regulations as are expedient and necessary;*" The Act of the Legislature of Lower Canada, passed in the session held in the 10th and 11th years of the Reign of King George the Fourth, intituled, "*An Act to repeal so much of the Ordinance of the twenty-seventh George the* 10 and 11 G. 4, c. 26.  
 5 "*Third, chapter four, intituled, 'An Ordinance to continue in force for a limited time an Ordinance made in the twenty-fifth year of His Majesty's*  
 0 "*Reign, intituled, an Ordinance to regulate proceedings in the Courts of Civil Judicature, and to establish trials by juries in actions of a commercial nature and personal wrongs to be compensated in damages with such additional regulations as are expedient and necessary, as requires that writs of attachment be indorsed,*" and so much of the Act of Lower Canada, passed in the seventh year of the Reign of his late Majesty King George the Fourth, intituled, "*An Act to facilitate the pro-* Part 7 G. 4, c. 8.  
 5 "*ceedings at law in certain cases therein mentioned relating to Writs of capias and Attachment,*" as relates to cases where Writs of Attachment issue for attaching the estate, debts, and effects of what nature soever, whether in the hands of the owner, the debtor, or of a third person; The Act passed by the Legislature of Lower Canada in the ninth year of the Reign  
 0 of His late Majesty George the Fourth, intituled "*An Act to facilitate the proceedings against the estates and effects of Debtors in certain cases;*" 9, G. 4, c. 23.  
 And so much of the Act passed by the Legislature of Lower Canada in the ninth year of the Reign of His late Majesty King George the Fourth, intituled, "*An Act to prevent fraudulent Debtors evading their Creditors* Part of 9 G. 4 c. 27.  
 5 "*in certain parts of this Province,*" as empowers the Commissioners therein named to issue attachments against the moveable property and effects of Debtors; The Act passed the eighteenth year of Her Majesty's Reign, intituled "*An Act to enable creditors to attach the effects of debtors before judgment in cases under ten pounds;* and all other acts and provisions of law inconsistent with this Act shall be, and the same are hereby repealed. 18 V. c. 107. The said enactments repealed.

Attachment before judgment may be sued out in cases above £1 5s.

Proviso.

II. In all cases where a person shall be personally indebted to another person in a sum exceeding one pound and five shillings currency, the creditor may sue out a writ of attachment, *arret simple*, or *saisie arret*, to attach and seize the moveable property, debts, and effects of the debtor, whether in the hands and possession of the debtor or of a third person either before trial or judgment; Provided always, no person shall be entitled to such writ of attachment, *arret simple*, or *saisie arret*, unless the cause of action shall have accrued or arisen in Lower Canada, or unless the creditor is domiciled or carrying on business therein. 5

Affidavit to be made before such writ shall issue.

III. No such writ of attachment, *arret simple*, or *saisie arret*, shall be issued unless upon the affidavit of the creditor, his book-keeper, clerk or agent, to the effect that—the debtor is personally indebted to the creditor in the sum of money therein mentioned, and for the causes therein set forth, that such debtor is secreting, or that he is about to secrete his estate, debts and effects, or that he hath absconded, or that he is about to abscond, or that he hath departed, or that he is immediately about to depart from Lower Canada,—with intent to defraud the said creditor and his other creditors, and that without the benefit of such writ of attachment, the said creditor may lose his debt and sustain damage. 15

Before whom the affidavit shall be sworn in Superior Court.

Proviso: as to 12 V. c. 38, s. 63.

IV. In cases where the amount mentioned in any such affidavit is within the jurisdiction of the Superior Court, such affidavit may be sworn to before the Prothonotary of the Superior Court in any district or before any Judge of the said Court, or before any Commissioner for receiving affidavits to be used and read in such Court: Provided always, that nothing herein contained shall be held to affect or impair the right of the Clerk of any Circuit Court to receive and take such affidavit in any such case, and to issue a writ thereon returnable before the Superior Court as provided for by the Act passed in the twelfth year of Her Majesty's Reign, chapter thirty-eight, section sixty-three. 25

And in Circuit or Commissioners' Courts.

V. In cases where the amount is cognizable by the Circuit Court, the Clerk of any such Circuit Court or any of the persons having authority to take or receive affidavits to obtain writs from the Superior Court, shall have power to receive any such affidavit; and in cases cognizable by any Commissioners' Court, the Clerk of any such Court or any one of the Commissioners may take and receive the necessary affidavit. 35

On the fying of affidavit, writ may issue.

By whom executed.

VI. The fying of any affidavit made in conformity with the provisions of the preceding sections of this Act, shall be sufficient to authorize the Prothonotary or Clerk of the Court with whom the same is fyled to issue a writ of attachment, *arret simple*, or *saisie arret*, which writ shall be directed to and executed by the officer or officers to whom writs of execution issued out of the said Court are addressed. 40

Indorsement on writ.

VII. The amount or sum of money specified in any affidavit together with the name of the person making such affidavit shall be endorsed on the back of the writ issued thereon.

Declaration may be fyled after the service of the writ.

VIII. It shall not be necessary in any case where a declaration is required, that such declaration should be annexed to the writ or a copy thereof annexed to the copy of the Writ served upon the defendant, but such declaration shall be served by leaving a copy thereof for the defendant with the Clerk of the Court, by whom the writ in the cause was 45

issued, within eight days after the issuing of such writ, unless the said writ be returnable before the expiration of such period of eight days, in which case such copy shall be served as aforesaid before the return day.

IX. The Sheriff or other officer entrusted with the execution of any writ issued under this Act, may at any time before the return day of the writ deliver up the goods and effects seized under and by virtue of any such writ, upon the defendant's paying the amount endorsed on the back of the said writ, and also a sufficient sum to pay all interest accrued and all costs incurred in the case, or upon the plaintiff or his attorney certifying in writing that the said amount and all interest and costs have been paid; but no sheriff or other officer shall be obliged to deliver up such goods and chattels until the costs of seizing and keeping the goods and effects seized are paid to him.

Goods seized may be delivered up on payment or certificate of payment.

X. The defendant shall be entitled to have the goods and chattels seized restored to him upon his offering and giving good and sufficient security for the value of the goods and chattels seized as hereinafter is mentioned; which security if the writ shall have been addressed to the Sheriff, shall be given to the Sheriff, and if the writ shall have been addressed to, or executed by any Bailiff, shall be given to the Clerk of the Court from which the writ is issued; and such security shall be given by a bond entered into by two good and responsible persons who shall be obliged to justify as to their sufficiency, and which said persons shall in and by the said bond bind themselves jointly and severally to produce the said goods and chattels seized to any officer charged with a writ ordering him to take the said goods in execution and sell them, or in default of so doing, to pay the amount of the debt, interest, and costs recovered in the cause in which said goods and effects were seized.

Goods may be released on security being given.

XI. The form of affidavit annexed to this Act, or any form of like effect, shall be sufficient under the provisions of this Act.

Forms under this Act.

*Form of Affidavit to obtain Writ of Attachment, saisie simple, or saisie arret.*

Province of Canada, District of }  
(and if necessary add Circuit.) } In the (name of Court.)

A. B. Plaintiff.  
vs.  
C. D. Defendant.

A. B. of in the (name of District or Circuit or as the case may be) Trader, (or as the case may be) being duly sworn, doth depose and say that C. D. of (here insert the residence and profession or trade of Defendant) is personally indebted to him the said A. B. in the sum of (state sum) currency, as for (give cause of debt briefly, i. e., as for "goods, sold and delivered by the said A. B. to to the said C. D.," or for "the amount of a Promissory Note, bearing date at (date) and payable three months after date to the said A. B. or order.") That he the said A. B. is credibly informed, and hath reason to believe, and doth believe that the said C. D. is secreting his estate, debts,

and effects, (or that he is about to secrete his estate, debts and effects, or that he hath absconded, or that he is about to abscond, or that he is immediately about to leave Lower Canada) with an intent to defraud the said A. B. and his other creditors, and that without the benefit of a Writ of Attachment, *arret simple*, to attach and seize the moveable property and effects of the said C. D., or of a writ of *saisie arret* to attach all the debts and effects of the said C. D. in the hands of G. H., E. F. (or both, *as the case may be*,) the said A. B. will lose his debt and sustain damage.

Sworn before  
this

at  
day of

}

A. B.