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

BILL.

An Act to relieve from Arrest for Debt in Lower Canada, persons residing in Upper Canada.

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

Second Reading, Wednesday, 31st January, 1849.

Hon. Mr. BADGLEY.

BILL.

An Act to relieve from Arrest for Debt in Lower Canada, persons residing in Upper Canada.

WHEREAS it is desirable to remove Preamble. all impediments to the intercourse happily subsisting between the inhabitants of the heretofore Provinces of Lower Ca-5 nada and Upper Canada, and to that end to amend the Ordinance of Lower Canada, of the twenty-fifth George the Third, intituled: "An Ordinance to regulate the proceedings in Ont. L. C. 25 "the Courts of Civil Judicature, and to esta-cited." 10 " blish Trials by Juries in actions of a Com-"mercial nature and personal wrongs to be " compensated in damages." Be it therefore

And it is hereby enacted by the authority of 15 the same, That from and after the passing Novertof Cap. of this Act, no writ of Capias ad Respondendum shall be granted or issued at the suit of after issued any person whatsoever, against any person residing in Upper Canada, un-Cauntess and 20 less in the affidavit required by the set that he is about a grant and grant person against any person residing in Upper Canada, un-Cauntess and cath be made and grant person and the grant person and the grant person are the grant person and person are the grant person at the grant person and person are the grant person and person are the grant person are the grant person are the grant person and person person are the grant person are the grant person p cond section of the said Act it shall be to leave the sworn that the defendant is indebted to da. the plaintiff in a sum of twenty pounds, Currency, and upwards, and that he is im-25 mediately about to resort to some country or place without the limits of the Province of Canada, and that he has not any estate, property or effects, out of which the plaintiff

can reasonably expect to be paid or satisfied

enacted, &c.

30 the amount of his debt.

II. And be it enacted, That whenever Provides that any person, residing in Upper Canada, shall special bail be have been arrested in Lower Canada aforestics residing in said, under and by virtue of any such Writ, it u. C. arrested shall be lawful for the person arrested to sive 35 shall be lawful for the person arrested to give

special bail or bail to the action, at any time after his said arrest, either before the Court into which the said Writ shall be returnable, or before any Judge thereof, at any time before or after judgment in the said action, and the conditions of every recognizance of special bail aforesaid, shall be, that the defendant shall not leave the said Province of Canada without having paid the debt, interest and costs for which the action shall be brought.

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Person arrestfraud, &c.

III. And be it enacted, That it shall be ed may apply lawful for any such person arrested as aforebe discharged, said, to apply at any time after such arrest, and may state to any such Court or Judge, to be dischargin his petition in his petition had out of custody, or if not in custody, 15 intentiontode but under bail, for the cancelment of the part, & with the custody intention to de recognizance of special bail put in by him as aforesaid, as the case may be; and the said application shall be by petition, in writing, and signed by the defendant or his attorney adlitem 20 on his behalf, setting forth that the said defendant, at the time of the said arrest, was a resident inhabitant of Upper Canada, and that at the said time of his arrest he had no intention to depart from the Province of Canada with 25 intent to defraud his creditors, and that he has estate, property and effects in the said Province by means of which he reasonably expects to pay the said debt for which he He shall also has been arrested; and the said person so 30

aitness;

make a state arrested shall also make, under oath a state-ment of his property, see, ment of his estate, property and effects, and supported by where and in whose hands the same are, affidant of a and of the estimated value thereof, which and of the estimated value thereof, which statement shall be in writing, signed by the 35 person arrested, and furnished to the Judge or Court at the time of making the application aforesaid, and shall by the said Judge or Court be fyled of record in the said action; and the said statement shall more- 40 over be supported and verified by the affidavit of a witness cognizant of and making oath to the truth of the facts therein contained; and thereupon the said

person so arrested shall be forthwith dis- 45

and shall be therespon dis

charged from arrest by an order of the charged by Court or Judge aforesaid, as the case may court, be, and the said recognizance shall be and be held to be cancelled forthwith; and and Plaintiff 5 the Plaintiff may thereafter proceed upon may proceed his said action, or on his judgment thereon, had issued. as if no such writ of Capias ad Responden-dum had issued against the said Defendant.

IV. And be it enacted, That whenever Penalty on 10 the Plaintiff or person making the affidavit persons swe for the issue of the said writ or any person so arrested as aforesaid, or the said witness to the truth of the said statement, or either of them, shall have wilfully sworn 15 falsely to any material fact or matter set out on the said affidavit, petition or statement, and shall be convicted thereof in any Court of competent criminal jurisdiction in the section of the said Pro-20 vince where he may reside, or be indicted therefor, the person so convicted shall be subject and liable to the penalties incurred in convictions for wilful and corrupt perjury, and may in addition be imprisoned 25 and kept at hard labour in the Common Jail of the District or County in which he shall be convicted, for the space of not less than six calendar months.

V. And be it enacted, That every judg- Judgments for 30 ment rendered in any Court of competent upwards ren civil jurisdiction in Lower Canada for an dered in L. C. amount of twenty pounds currency and up-may, be executed in U. C. wards, against any person residing in Upper Canada, at the rendering of the judgment in 35 the said action, or when the same shall have become executory, shall have the same force and effect in law, in Upper Canada against the defendant, as if the said judgment had been rendered against such defendant in the Court 40 of Queen's Bench in Upper Canada aforesaid, and execution thereon shall and may issue for the plaintiff for the recovery of the amount of the said judgment in the manner provided by the law of Upper Canada aforesaid, against

Proviso; not unless sum-mons shall baye boen served on detendant personally, &c.

the goods and lands of the said defendant, subject however to all the provisions and requirements of the said law in respect of such judgment and execution and the levy and sale thereunder; Provided always, that such 5 judgment so rendered in Lower Canada aforesaid, shall not have force or effect in Upper Canada aforesaid, unless the service of the summons or mesne-process in the action in which such judgment was rendered, 10 shall have been made personally upon the defendant, and unless an exemplification of the said judgment (which shall state such personal service.) certified under the hand of one of the Judges of the Court rendering the 15 same, and scaled with the s -1 thereof, shall have been duly entered up in conformity with the law and practice of the Courts in Upper Canada aforesaid.

Proceedings entorcia judgments ngainst goods &c. within ju-risdiction of District Courts in U.

VI. And be it enacted, That whenever the 20 with respect to said plaintiff shall be desirous to enforce the said judgment against the goods or lands of a defendant situated within the jurisdiction of any District Court in Upper Canada aforesaid, he shall, upon producing and fyling in 25 the office of the said District Court an exemplification of the said judgment certified as aforesaid, together with an affidavit that such judgment or some part thereof, remains unpaid and unsatisfied, be permitted to sue out 30 execution in such District, in conformity with the law and practice of such District Court in respect of such executions, and the costs of obtaining such exemplification and execution shall be added to the amount directed to be 35 levied by such execution.

Judements declared 'xe-

VII. And be it enacted, That every judgrendered in U. ment rendered in Upper Canada against C. agaust De-Gagainst Lecture any Defendant residing in Lower Canada, ding in L. C. at the time of the rendering of such judg-40 declared to. cutory against ment or when the same might by the law of goods, &c., of Lower Canada become executory if rendered therein, shall be and is hereby declared to be executory for the actual sum of debt

or damage, interest and costs thereby adjudged to be paid by the Defendant, against his goods and lands in Lower Canada, from and after fifteen days after the fyling, 5 in the office of the Prothonotary of the Superior Court of civil jurisdiction, held at the City of Montreal, of an exemplification of the said judgment, certified under the hand of one of the Judges of the Court in or by 10 which the said judgment shall have been rendered, and sealed with the seal of the said Court, together with an affidavit by the Plaintiff that the said debt or damage, interest and costs, or some and what part there-15 of remains unpaid and unsatisfied; and thereupon the said judgment shall and may be enforced in Lower Canada by execution, attachment or otherwise, in the same manner and to the same extent for the whole or 20 the part remaining unsatisfied, as if the said judgment had been rendered in and by the said Superior Court held at Montreal aforesaid.

VIII. And be it enacted, That all and Provisions in 25 every the provisions in the said recited Act Act above recited at vainconsistent or at variance with the provi-riance with this Act, resions hereof, shall be and are hereby repeal-pealed. ed in the particulars herein contained.

IX. And be it enacted, That all words in Interpretation 30 this Act importing the singular number or the masculine gender only, shall extend to more than one person, party or thing, and to females as well as males, unless the context shall be inconsistent with such construction.