
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.

WHILEAS 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* Ord. L. C. 25
“ *the Courts of Civil Judicature, and to esta-* Geo. 3, c. 2,
10 *blish Trials by Juries in actions of a Com-*
“ *mercial nature and personal wrongs to be*
“ *compensated in damages.”* Be it therefore
enacted, &c.

And it is hereby enacted by the authority of
15 the same, That from and after the passing
of this Act, no writ of *Capias ad Responden-* <sup>No writ of *Capias*
dum shall be granted or issued at the suit of <sup>*ad Responden-*
dum to be here-</sup>
any person whatsoever, against any person ^{after issued}
or persons residing in Upper Canada, un- ^{against a party}
20 less in the affidavit required by the sec- ^{residing in U.}
ond section of the said Act it shall be ^{C. unless an}
sworn that the defendant is indebted to ^{oath be made}
the plaintiff in a sum of twenty pounds, ^{that he is about}
25 Currency, and upwards, and that he is im- ^{to leave the}
mediately about to resort to some country ^{limits of Cana-}
or place without the limits of the Province ^{da.}
of Canada, and that he has not any estate,
property or effects, out of which the plaintiff
30 can reasonably expect to be paid or satisfied
the amount of his debt.</sup>

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 afore- ^{given by par-}
said, under and by virtue of any such Writ, it ^{ties residing in}
35 shall be lawful for the person arrested to give ^{U. C. arrested}
^{in L. C.}

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. 5 10

III. And be it enacted, That it shall be lawful for any such person arrested as aforesaid, to apply at any time after such arrest, to any such Court or Judge, to be discharged out of custody, or if not in custody, but under bail, for the cancelment of the 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 *ad litem* 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 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 has been arrested; and the said person so 30 arrested shall also make, under oath, a statement of his estate, property and effects, and where and in whose hands the same are, and of the estimated value thereof, which statement shall be in writing, signed by the 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 filed of record in the said action; and the said statement shall moreover 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

Person arrested may apply to the Court to be discharged, and may state in his petition that he had no intention to depart, &c., with intent to defraud, &c.

He shall also make a statement of his property, &c., supported by affidavit of a witness;

and shall be thereupon dis-

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

charged by
order of
Court,

and Plaintiff
may proceed
as if no *capias*
had issued.

IV. And be it enacted, That whenever the Plaintiff or person making the affidavit 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 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 Province 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 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.

Penalty on
persons swear-
ing falsely.

V. And be it enacted, That every judgment rendered in any Court of competent civil jurisdiction in Lower Canada for an amount of twenty pounds currency and upwards, against any person residing in Upper Canada, at the rendering of the judgment in 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 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

Judgments for
£20 cy. and
upwards ren-
dered in L. C.
may be execu-
ted in U. C.

Proviso; not unless summons shall have been served on defendant 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 sealed with the seal thereof, shall have been duly entered up in conformity with the law and practice of the Courts in Upper Canada aforesaid.

Proviso; not unless summons shall have been served on defendant personally, &c.

VI. And be it enacted, That whenever the 20 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 filing 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.

Judgments rendered in U. C. against Defendants residing in L. C., declared executory against goods, &c., of Defendants in L. C.

VII. And be it enacted, That every judgment rendered in Upper Canada against any Defendant residing in Lower Canada, at the time of the rendering of such judg- 40 ment or when the same might by the law 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 filing, 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 25 every the provisions in the said recited Act inconsistent or at variance with the provisions hereof, shall be and are hereby repealed in the particulars herein contained. Provisions in Act above recited at variance with this Act, repealed.

IX. And be it enacted, That all words in 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. Interpretation clause.