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No. 130.

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

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## **BILL.**

An Act to authorize Attachments against personal property, for sums of ten pounds and under, in certain cases in Upper Canada.

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Received and Read a first time, Wednesday, 28th  
February, 1849.

Second Reading, Wednesday, 7th March, 1849.

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**Mr. SMITH** of Durham.

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PRINTED BY LOVELL AND GIBSON.

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**BILL.**

An Act to authorize Attachments against personal property, for sums of ten pounds and under in certain cases in Upper Canada.

**W**HEREAS it is necessary to provide Preamble. further protection to creditors, and to afford the means of attaching the personal property of absconding, removing or concealed debtors in Upper Canada, for sums of ten pounds or less, for any debt or damage arising upon any contract express or implied, or upon any judgment: Be it therefore enacted, &c.

10 And it is hereby enacted by the authority of the same, That if any person or persons in any District of Upper Canada, being indebted in such sum and manner as mentioned in the preamble to this Act, shall abscond from  
 15 this Province, leaving personal property liable to seizure under execution for debt, in any District in Upper Canada, or shall attempt to remove his, her or their personal property of the description above-mentioned,  
 20 either out of Upper Canada or from one District to another therein, or from Upper to Lower Canada, or shall keep concealed in any District of Upper Canada to avoid service of process,—it shall and may be  
 25 lawful for the creditor or creditors of such person or persons, his, her or their servant or agent, to make application to any Clerk of the Division Court of the District wherein the debtor or debtors were or was last domiciled, or where the debt was contracted, or  
 30 to the Judge of the District Court, or to any Justice of the Peace therein, and there, upon making or producing an affidavit or affirmation

Personal property of concealed or absconding debtors may be attached on certain conditions.

Affidavit to be made and filed.

similar to that in the Schedule to this Act annexed, marked A., (which affidavit or affirmation the said Clerks, Judges and Justices of the Peace are respectively hereby authorized to administer,) and upon then and there 5  
 fying the said affidavit or affirmation with such Clerk, Judge, or if taken before a Justice of the Peace with such Justice of the Peace (whose duty it shall be to transmit the same forthwith to the Clerk of the Division 10  
 Court within whose Division the same was so made or taken, to be filed and kept among the papers in the cause,) it shall be lawful for such Clerk, Judge or Justice of the Peace 15  
 forthwith to issue a warrant under his hand and seal, directed to the Bailiff of the Division Court within which the same was issued, or to any Constable of the District, commanding such Bailiff or Constable to 20  
 attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person or persons, of what nature and kind soever, liable to seizure under execution for debt, within such 25  
 District, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the same forthwith to the Division Court of the Division wherein such warrant was issued, 30  
 upon receipt of which warrant the Bailiff or Constable to whom the same may be directed, shall forthwith execute the same, and with the assistance of two freeholders make a just and true inventory of all such personal 35  
 estate and effects as he shall seize and take by virtue thereof, and shall forthwith return the same to the Clerk of the Division Court in the Division within which such warrant was issued, and which warrant may be in the form 40  
 of that in the Schedule to this Act annexed, marked B.; Provided always, that the free holders and appraisers authorized by this Act shall be entitled to receive for each day 45  
 they may be employed in carrying its enactments into effect the sum of *two shillings and sixpence* each, to be paid in the first instance

Warrant to be issued for seizing the property.

How such warrant shall be executed.

Proviso: fees of appraisers, &c.

by the plaintiff or plaintiffs and allowed in the costs of the cause.

II. And be it enacted, That all property seized under the provisions of this Act, shall  
 5 be forthwith handed over to the custody and possession of the Clerk of the Division Court, of the Division within which the warrant was issued, who shall take the same into his charge and keeping, and shall be allowed all  
 10 necessary disbursements for keeping the same.

Property to be in the custody of the Clerk.

III. And be it enacted, That if any person or persons against whose estate or effects, such warrant or warrants may have been  
 15 issued, or any person or persons on his, her or their behalf, shall at any time prior to the recovery of judgment in the cause, execute and tender to the creditor or creditors who sued out such warrant or warrants  
 20 as aforesaid, and shall file in the Division Court within which the warrant issued a bond with good and sufficient sureties, to be approved of by the Judge or Clerk of the Division Court, binding the obligors, joint-  
 25 ly and severally, in double the amount of the sum claimed, conditioned that the debtor or debtors, (naming him, her or them) shall not depart the Province without paying the claim in the event of the same being proved  
 30 and judgment recovered, as in other cases where proceedings have been commenced against the person, or that he, she or they will pay the same, or the value of the property so taken and seized, to the claimant or claim-  
 35 ants, it shall and may be lawful for such Clerk to supersede such warrant, and all and singular the property which may have been attached, shall be restored.

Defendant may obtain a release of the property on giving security, &c.

*omitted in act*

IV. And be it enacted, That if after the  
 40 period of one month from the seizure aforesaid, the party against whom the warrant issued, or some one on his behalf, do not appear and give such bond with sureties con-

If security be not given the property shall be sold whenever judgment is obtained.

ditioned as above mentioned, whenever and as soon as judgment shall have been obtained upon such claim or claims, execution thereupon may immediately issue, and the property seized upon such attachment or attachments, or enough of such property to satisfy the same, may be sold thereon to satisfy the same according to law, or enough of the proceeds thereof may be applied to satisfy the judgment and costs, if the same shall have been previously sold under the provisions of this Act, as perishable property. 5 10

As to service in cases where there has been none previous to the suing out of the warrant.

V. And be it enacted, That in order to proceed in the recovery of any debt due by the person or persons against whose property a warrant shall have issued under this Act, where process shall not have been previously served, the same may be served either personally or by leaving a copy at the last place of abode of the Defendant, with any person or persons there dwelling, or by leaving the same at the said dwelling, if no person be there found; and in every case, all subsequent proceedings shall and may be conducted according to the usual course of practice and proceedings in the Division Court aforesaid: Provided always, that if it shall appear to the satisfaction of the Judge in the trial of any cause, upon affidavit or other sufficient proof, that the creditor or creditors suing out an attachment under the provisions of this Act, had not reasonable or probable cause for taking such proceeding, then it shall be the duty of the Judge to order that no costs whatever shall be allowed to such creditor or creditors, plaintiff or plaintiffs therein, and no costs in such case shall be recovered in the cause. 15 20 25 30 35

Proviso: for the case where there was no reasonable cause for the attachment.

What shall be done with perishable goods.

VI. And be it enacted, That in case any horses, cattle, sheep or any other perishable goods or chattels shall be taken upon any warrant to be issued under this Act, it shall be lawful for the Clerk of the Court in whose custody or keeping the same shall be, to have 40

the same valued by two freeholders, and at the request of the plaintiff suing out the warrant, to expose and sell the same at public Auction to the highest bidder, giving at least 5 days notice of the time and place of such sale, if the articles seized will admit, otherwise to sell the same at his discretion : Provided always, that it shall not be compulsory upon the Bailiff or Constable to seize, 10 or upon the Clerk to sell such perishable articles, until the party suing out the warrant shall have given a bond to the defendant or defendants therein, with good and sufficient sureties in double the amount of the appraised value thereof (to be ascertained as afore- 15 said) conditioned that the party directing such seizure and sale will repay the value thereof, together with all costs and damages that may be incurred in consequence of such 20 seizure and sale, in case judgment be not obtained for such party suing out such attachment, which bond shall also be fyled with the papers in the cause.

Proviso : seizure not to be made until the plaintiff gives security.

VII. And be it enacted, That any residue 25 which may remain after satisfying such judgment, with the costs thereupon, shall be delivered to the defendant, or to the agent of the defendant, or to the person or persons in whose custody the same were found, 30 whereupon the responsibility of the Clerk as respects such property shall cease.

Residue to be paid to defendant.

VIII. And be it enacted, That in addition 35 to the usual costs allowed on proceedings in the Division Courts, the following charges shall be taxed and allowed against the defendant for the several proceedings under this Act, viz :

Costs on proceedings under this Act.

- Every oath or affirmation including the drawing thereof,..... 1s. 6d.
- 40 Every warrant,..... 1s. 3d.
- Every mile necessarily travelled in going to seize,..... 4d.

Every Schedule of property seized,  
and return, including affidavit of  
appraisal,..... 2s. 6d.  
Every bond including affidavit of jus-  
tification,..... 2s. 6d. 5

To the Clerk for taking charge of and keeping  
the property seized, such sum as the Judge  
may order in each particular case.

Recital.

Judgements  
of Division  
Courts to carry  
interest.

IX. And whereas by the present practice 10  
in some of the Division Courts in Upper Ca-  
nada, no interest is allowed on the amount  
recovered under any judgment therein, and  
it is considered doubtful whether interest can  
be charged thereon, and it is right that such 15  
interest should be allowed and recoverable ;  
Be it therefore enacted, That legal interest  
shall be allowed and recoverable upon the  
sum recovered under any judgment of a Di-  
vision Court in Upper Canada, (reckoning 20  
from the date of the entry thereof,) upon the  
amount remaining unpaid out the sum so re-  
covered, and such interest, if not paid, shall  
be levied in the same manner as the amount  
of the judgment itself, and paid over in like 25  
manner to the plaintiff: and the judgment  
shall mention the day from which interest is  
to be recovered, and the Bailiff levying under  
the judgment shall ascertain and levy the  
amount thereof at the rate aforesaid. 30

SCHEDULE A.

District of . ) A. B., of , in  
(Here state the ) the District of ,  
District.) (the Plaintiff or Agent, as  
the case may be,) maketh oath and saith that C. D.  
(the debtor's name) is or are justly and truly in-  
debted to (the creditor's name) in the sum of  
of lawful money of Canada, for  
(here state the cause of action briefly). And this  
Deponent further saith that he hath good reason to  
believe, and verily doth believe, that the said C. D.  
hath absconded from this Province with intent and  
design to defraud the said A. B. (the creditor) of  
the said debt, and hath left personal property liable



to seizure under execution for debt, within the  
 Division of the Division Court of the Dis-  
 trict of \_\_\_\_\_;  
 or that the said C. D. (is or are) about to abscond  
 from this Province, or to leave the District of  
 \_\_\_\_\_, with intent and design to defraud the  
 said \_\_\_\_\_ (the creditor) of the said debt, taking  
 away personal estate liable to seizure under execu-  
 tion for debt; or that the said C. D. is concealed  
 within the \_\_\_\_\_ Division of the Division  
 Court of the District of \_\_\_\_\_, to avoid  
 being served with process, with intent and design  
 to defraud the said \_\_\_\_\_ (the creditor) of his  
 said debt; and this Deponent further saith that this  
 affidavit (or affirmation, as the case may be,) is not  
 made, nor the process thereon to be issued, from any  
 vexatious or malicious motives whatever.

Sworn (or affirmed, as the case }  
 may be,) before me the } Signature of  
 day of \_\_\_\_\_, 18 } deponent here.

#### SCHEDULE B.

District of \_\_\_\_\_ } To A. B., Bailiff of the  
 (Here insert the } Division Court No. of the  
 District.) } said District, or \_\_\_\_\_.

To A. B., a Constable of the said District of \_\_\_\_\_,  
 (as the case may be.)

You are hereby commanded to attach, seize,  
 take and safely keep all the personal estate and  
 effects of C. D. (naming the debtor), an absconding,  
 removing or concealed debtor, of what nature or  
 kind soever, liable to seizure under execution for  
 debt, within the said District of \_\_\_\_\_, (here  
 name the District), or a sufficient portion thereof  
 to secure A. B. (here name the creditor) for the  
 sum of (here state the amount sworn to be due),  
 together with the costs of his suit thereupon, and to  
 return this warrant with what you shall have taken  
 thereupon, to the Clerk of the \_\_\_\_\_ (here  
 state the number of the Division) Division Court  
 of the District aforesaid forthwith—and herein  
 fail not.

Witness my hand and seal, the \_\_\_\_\_ day  
 of \_\_\_\_\_, 18

E. F., (L. S.)  
 Clerk, Judge or Justice of the Peace,  
 as the case may be.