

[No. 98.]

5th Session, 8th Parliament, 29 Victoria, 1866.

BILL.

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

Received and read 1st time, Friday, 22nd
June, 1866.

Second reading, Monday, 25th June, 1866.

MR. WOOD.

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

WHEREAS the Writ of *Habeas Corpus* hath been found Preamble. ,
 by experience 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
 5 Writ, and enforcing obedience thereunto, and preventing delays
 in the execution thereof, will be advantageous 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
 10 *for prevention of imprisonment beyond the seas, only extend*
 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:—

- 15 **1.** When any person shall be confined or restrained of his In what cases
 or her liberty (except persons imprisoned for debt, or by process Hab. Corp. ad
 in any civil suit, or by the judgment, conviction or decree of Subjiciendum
 any Court of Record, Court of Oyer and Terminer or General may be award-
 Gaol Delivery, or Court of General Quarter Sessions of the ed.
 20 Peace, or Recorder's Court not being a Court wherein the
 Recorder shall sit alone without a jury), within Upper Canada,
 it shall and may be lawful for any of the Judges of either of
 the Superior Courts of Law or Equity in Upper Canada, and
 they are hereby required upon complaint made to them by or
 25 on behalf of the person so confined 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 Return.
 30 wherein the application shall be made, directed to the person
 or persons in whose custody or power the party so confined or
 restrained shall be, returnable immediately before the person
 so awarding the same, or before any Judge in Chambers for
 the time being.
- 35 **2.** If the person or persons to whom any writ of *Habeas* Proceedings
Corpus shall be directed according to the provisions of this Act, in case of dis-
 upon service of such writ, either by the actual delivery thereof obedience to the
 to him, her or them, or by leaving the same at the place where writ.
 the party shall be confined or restrained, with any servant or
 40 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 contempt

of the Court, under the seal whereof such writ shall have issued, and it shall be lawful to and for the Judge before whom such writ shall be returnable, or any Judge in Chambers, upon proof made by affidavit of wilful disobedience of the said writ, to issue a warrant under his hand and seal for the apprehending 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, 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 the condition to appear in the Court under the seal of which the writ issued, at a day in the same or any 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 or Court to commit such person or persons so neglecting or refusing, to the common gaol of the county wherein such person resides, or may be found, 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 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 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 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 this Act is directed concerning writs issuing in and made returnable during the vacation.

Proviso.

Proviso.

Proceedings for inquiring into the truth of the matters alleged in the return: before judge before the writ is returnable.

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 Court or for any 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 upon such return it shall appear doubtful on such examination, whether the material facts set forth in the said return, or any 50 of them, be true or not, in such case it shall and may be lawful

for the said Judge or the Court 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
 5 a reasonable sum to appear in the Court 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 any Judge before whom such writ shall be returned shall
 10 transmit into the same Court the said writ and return, together with such recognizance, affidavits and affirmations; and thereupon 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
 15 law affirmation is allowed,) and to order and determine touching the discharging, bailing, or remanding the party.

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

The same in the Court whence the writ issued.

5. In all cases, in which a writ of *Habeas Corpus* shall be issued under the authority of this Act or of the said Act of the thirty-first year of the reign of King Charles the Second or otherwise, it shall and may be lawful for the judge or court
 25 ordering the issuing of such writ or for the judge before whom such writ shall be returnable, either in term time or vacation, to direct the issuing of a writ of certiorari out of the court from which such writ of *Habeas Corpus* shall have issued, directed to the person or persons by whom or by whose
 30 authority any such person shall be confined or restrained of his or her liberty, or other person having the custody or control thereof, requiring him to certify and return to any Judge in Chambers or to the Court as by the said writ shall be provided, all and singular the evidence, depositions, convictions, and all
 35 proceedings had or taken, touching or concerning such confinement or restraint of liberty, to the end that the same may be viewed and considered by such judge or court, and to the end that the sufficiency thereof to warrant such confinement or restraint, may be determined by such judge or court.

Certiorari to bring proceedings and papers before the Court for Examination.

40 6. In case any person confined or restrained of his or her liberty, as aforesaid, shall be brought before the court in term time upon a writ of *Habeas Corpus*, and shall be remanded to custody again upon the original order or warrant of commitment, or by virtue of any warrant, order or rule of such court,
 45 it shall and may be lawful for such person to appeal from the decision or judgment of the said court, to the Court of Error and Appeal; And it shall be the duty of the Clerk of the Court whose decision or judgment shall be appealed from, upon notice to be given by or on behalf of the person so remanded to

Appeal from remandment.

Certifying proceedings to Court of Appeal.

custody, to certify under the seal of the court, the writ of *Habeas Corpus*, the return thereto, and all and singular the affidavits, depositions, evidence, conviction and other proceedings returned to or had before the said Court, unto the Court of Error and Appeal; and the said Court of Error and Appeal shall thereupon hear and determine the said appeal without any formal pleadings whatever; And if the said Court of Error and Appeal shall adjudge or determine that such confinement or restraint is illegal, such court shall certify the same, under the seal of the said court, to the person or persons having the custody or charge of the person so confined or restrained, and shall order his immediate discharge, and he shall be discharged accordingly.

Court may order discharge.

Provisions of this Act to extend to cases where the writ issues under the English Act.

7. 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 Courts, Judge or any of them, any person or persons wilfully disobeying any such writ, and in all cases 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, or otherwise, 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.

Rules of practice may be made.

8. The said Court of Error and Appeal may from time to time and as often as it shall see occasion, make such rules of practice in reference to the proceedings on Writs of *Habeas Corpus* as to the said court may seem necessary or expedient.