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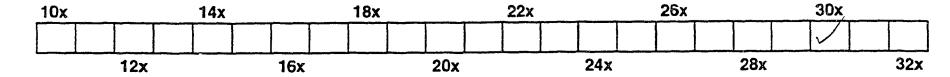
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4th Session, 3d Parliament, 14 Victoria, 1851.

## BILL.

An Act for abolishing Imprisonment for Debt in Upper Canada.

Received and read a first time, Friday, 30th May, 1851.

Second Reading, Thursday, 5th June, 1851.

Hon. Mr. BOULTON.

## BILL.

An Act for abolishing Imprisonment for Debt in Upper Canada.

HEREAS Imprisonment for Debt where fraud is Preamble. not imputable to the Debtor, is not only demoralizing in its tendency, but is as detrimental to the true interests of the Creditor as it is inconsistent with that 5 forbearance and humane regard to the misfortunes of others which should always characterize the legislation of every Christian country; And whereas it is desirable to soften the rigor of the Laws in this Province affecting the relation between Debter and Creditor, as far as a due 10 regard to the interests of commerce will permit: Be it therefore enacted. &c.

That from and after the passing of this Act no female or In what cases Minister of Religion shall be arrested or held to bail by and on what reason of any debt alleged to be due or by reason of only parties any other cause of civil action or suit whatsoever; and to bail in the bail in that no person shall be arrested or held to bail, upon any Civil suits. cause of action arising in any foreign country where the defendant would not have been liable to have been arrested or held to bail had such defendant continued 20 within the jurisdiction of the Courts of such foreign country, or in any civil suit where the cause of action shall not amount to twenty pounds of lawful money of this Province; and where the cause of action shall amount to twenty pounds and upwards, it shall not be lawful for the 25 plaintiff to proceed to arrest the body of the defendant or defendants, unless an affidavit be first made by such plaintiff, his servant or agent, of such cause of action; and of the amount justly and truly due to the said plaintiff from the said defendant, exclusive of any set off whereof 30 he may be informed, and also that such plaintiff, his servant or agent, hath good reason (setting forth such reason or reasons at length) to believe, and doth verily believe that the defendant is immediately about to leave the Province of Canada, or that he hath made a fraudulent 35 assignment of his property with intent and design to defraud the plaintiff of the said debt; and that no Or taken in person shall be taken or charged in execution in any execution. such action for any sum whatever, whether the party shall

40 with common process: Provided always, that it shall be Proviso: lawful for any Judge of the Court whence any process judge may discharge the shall have issued to arrest any person or persons as afore-defendant said, to order any such person or persons to be discharged from custody

originally have been held to bail, or been merely served

in certain cases.

out of custody if it shall be made to appear to him on affidavit either that the cause of action having arisen in a foreign country the defendant was not liable to have been arrested or held to bail there for such cause, or that no sufficient reasons have been assigned by the plaintiff for the belief that the defendant was immediately about to leave the Province with intent and design to defraud the plaintiff of his debt or that the defendant hath made any fraudulent assignment of his property to defraud the plaintiff of his debt; or the defendant may, in his discretion 10 in either case, plead the special matter in abatement of such process, in addition to any plea in bar of such action, upon which he shall have been so arrested as aforesaid: and in case a verdiot shall be rendered in favour of the defendant, on such plea to the process, the Jury may 15 thereupon in their discretion assess damages to be recovered by the defendant as for a malicious arrest.

Or defendant may plead in abatement of the process damages.

Amount and condition of the recognizance when any party is held to bail.

II. And be it enacted, That whenever any person shall be holden to bail in any form of action whatever, the recognizance of bail shall be taken in double the sum sworn 20 to or for which bail may be ordered by a Judge, and shall be subject to the condition, that if the defendant or defendants shall be condemned in the action, and shall neglect or refuse to pay the costs and condemnation money, or to appear personally in open Court, or before 25 any Judge or Commissioner of the Court wherein such bail shall be taken, when thereunto required by notice, to be left with either of such bail, and with the defendant, or at his or their last place of abode, at least twenty days before the day on which he shall be required to appear, 30 and there to answer such questions or interrogatories as shall be propounded to him touching his lands, tenements, goods, chattels, money, rights or credits, then and in such case the bail will pay the costs and condemnation money for him: Provided always, that nothing hereinbefore con- 35 tained shall prevent the bail surrendering their principal in discharge of themselves at any time before judgment shall have been rendered against them on such recognizance, and upon payment of costs.

Proviso.

Affidavit to hold to bail to be taken in a certain manner.

III. And be it enacted. That no affidavit to be made 40 for the purpose of obtaining any process for the arrest of any person whomsoever, shall be sworn before any attorney or other person promoting such arrest, nor until it shall have been read over and explained to the deponent by the party administering the oath, and to be so 45 certified in the jurat to the affidavit.

Defendants appearing to have acted

IV. And be it enacted, That if such defendant or defendants upon examination upon oath, either upon fraudulently interrogatories or wird voce, in open Court or before a or refusing to Commissioner of the Court in which the suit shall be 50 property, &c., pending, or a Judge of any County Court; or upon the

examination in like manner of any witness or witnesses may be comfor either party, shall appear to the said Court to have mitted. acted fraudulently, either in the manner of contracting the engagement upon which the recovery shall have been 5 had or in evading the satisfaction thereof, or if in causes arising ex delicto, the defendant shall neglect to pay the damages and costs recovered in any such action; or if such defendant or defendants shall refuse to make a full discovery of all his or their lands, tenements, goods, 10 chattels, credits and other effects, (and to assign to the plaintiff or plaintiffs, the whole or such part thereof as the said Court shall direct, in or towards the satisfaction of the judgment obtained in the said suit), then, and in either of the said cases, it shall and may be lawful for the said 15 Court to commit such defendant or defendants to the Common Gaol of any County until he or they shall comply with the order of the said Court, or finally for such period, not exceeding one year, as the said Court shall think reasonable in punishment of the fraudulent conduct 20 of which they shall adjudge such defendant or defendants to have been guilty, or in punishment of the cost for which damages shall have been awarded if they shall deem it proper so to do: Provided always, that such commitment Proviso. shall not operate as a discharge of the said judgment, 25 but the same shall continue in force in like manner as if the defendant or defendants had not been committed: And provided also, that it shall and may be lawful for the Court wherein any such recognizance of bail shall have Proviso. been entered in term time, or for a Judge thereof in 30 vacation, after any defendant or defendants shall have submitted to any such examination as aforesaid, or in case no such examination shall be had, within three months after judgment shall have been signed in any such cause, when defendant shall be in custody for want of bail, then 35 upon hearing the parties, to order in their discretion an exoneratur to be entered upon such bail-piece and that the defendant shall thenceforth be discharged from custody and all future imprisonment on such judgment.

V. And be it enacted, That should any person have Persons im-40 been or hereafter be committed to prison upon any prisoned for contempt in attachment or other process issued by any Court of Law not paying or Equity, for a contempt or otherwise in not paying costs, acc., may be exor any other sum of money directed or decreed to be paid amined. by such Courts respectively, it shall and may be lawful 45 for such person to give notice to the party at whose instance such attachment or other process shall have issued, that application for his discharge will be made to the Court or a Judge thereof, whence such attachment or other process shall have issued, whereupon it shall be 50 lawful for the party at whose instance he shall have been committed as aforesaid, within ten days after the service of such notice, to examine such defendant or any witness vivà voce, or to exhibit interrogatories to such person so

applying for his discharge, or to any witness or witnesses. in like manner as if such party were out upon bail on mesne process, and had come up for examination as in such case is hereinbefore provided.

Powers of Court or Judge in such case.

Proviso.

V. And be it enacted, That upon such examination 5 being had, it shall be lawful for such Court or Judge to make such order thereon as if such party had been out on bail and come up for examination as aforesaid: Provided always, that no such order of such Court or Judge so to be made as aforesaid, shall discharge the 10 party so in custody on such attachment or other process from the payment of the sum which such party had been directed to pay as aforesaid; but that the same shall be levied and collected by such process against the lands. tenements, goods, chattels, monies, rights and credits, as 15 the Superior Courts of Law and Equity shall prescribe in that behalf.

No person to merely for non-payment of costs:proceedings in such case.

VII. And be it enacted, That no person shall hereafter be imprisoned be arrested or held to bail on any process of attachment for contempt for the non-payment of costs merely, which 20 shall or may be entered to be paid in the progress of any suit, either at law or in equity; but that, in lieu of any such process, it shall be lawful for Her Majesty's Superior Courts of Law and Equity to prepare and adapt to the circumstances of the case, such a form of execution, 25 attachment, warrant of distress or other process, against the lands and tenements, goods, chattels, money, debts, credits and effects of any person so ordered to pay such costs, as to such Courts shall seem meet.