

No. 36.

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

BILL.

**An Act for abolishing Imprisonment
for Debt in Upper Canada.**

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Hon. Mr. BOULTON.

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BILL.

An Act for abolishing Imprisonment for Debt in Upper Canada.

WHEREAS 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 Debtor 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 Minister of Religion shall be arrested or held to bail by reason of any debt alleged to be due or by reason of
 15 any other cause of civil action or suit whatsoever; and that no person shall be arrested or held to bail, upon any 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 person shall be taken or charged in execution in any such action for any sum whatever, whether the party shall originally have been held to bail, or been merely served
 40 with common process: Provided always, that it shall be lawful for any Judge of the Court whence any process shall have issued to arrest any person or persons as aforesaid, to order any such person or persons to be discharged

In what cases and on what conditions only parties shall be held to bail in Civil suits.

Or taken in execution.

Proviso: judge may discharge the defendant from custody.

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 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 verdict shall be rendered in favour of the defendant, on such plea to the process, the Jury may 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 and obtain 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 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 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, 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 contained 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 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 certified in the jurat to the affidavit.

Defendants appearing to have acted fraudulently or refusing to discover their property, &c.,

IV. And be it enacted, That if such defendant or defendants upon examination upon oath, either upon interrogatories or *vis à voce*, in open Court or before a Commissioner of the Court in which the suit shall be pending, or a Judge of any County Court; or upon the

examination in like manner of any witness or witnesses may be com-
mitted.
 for either party, shall appear to the said Court to have
 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 com-
 ply 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 cus-
 tody and all future imprisonment on such judgment.

V. And be it enacted, That should any person have Persons im-
prisoned for
contempt in
not paying
costs, &c.,
may be ex-
amined.
 40 been or hereafter be committed to prison upon any
 attachment or other process issued by any Court of Law
 or Equity, for a contempt or otherwise in not paying costs,
 or any other sum of money directed or decreed to be paid
 by such Courts respectively, it shall and may be lawful
 45 for such person to give notice to the party at whose in-
 stance 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
vivâ 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.

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.

Proviso.

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

VII. And be it enacted, That no person shall hereafter
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 Supe-
rior 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.