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

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## BILL.

An Act to abolish Imprisonment for  
Debt; and for the punishment of  
Fraudulent Debtors.

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Received and Read a first time, Monday, 5th  
March, 1849.

Second Reading, Monday, 12th March, 1849.

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HON. MR. BOULTON.

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PRINTED BY LOVELL AND GIBSON.

**BILL.**

An Act to abolish Imprisonment for Debt; and for the punishment of fraudulent Debtors in this Province.

**W**HEREAS Imprisonment for Debt Preamble. where fraud is 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 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 regard to the interests of commerce will permit: Be it therefore enacted, &c.

15 And it is hereby enacted by the authority of the same, That from and after the passing of this Act, no female shall be arrested or held to bail by reason of any Debt alleged to be due by her or by reason of any other

20 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

25 been arrested or held to bail, had such defendant continued 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 law-

30 ful money of this Province; and where the cause of action shall amount to twenty pounds and upwards, it shall not be lawful for the plaintiff to proceed to arrest the body of the defendant or defendants, unless an affidavit

35 be first made by such plaintiff, his

No woman to be arrested in any civil suit.

In what cases only any male person shall be held to bail.

No party to  
be imprisoned  
in execution.

Proviso :  
Judge may  
order persons  
arrested to be  
discharged in  
certain cases,  
or defendant  
may plead in  
abatement.

servant or agent, of such cause of action,  
and of the amount justly and truly due to the  
said plaintiff from the said defendant, and  
also that such plaintiff, his servant or agent,  
hath good reason (setting forth such reason 5  
or reasons at length) to believe, and doth ve-  
rily believe that the defendant is imme-  
diately about to leave the Province of Cana-  
da, with intent and design to defraud  
the plaintiff of the said debt; and that no 10  
person shall be taken or charged in execu-  
tion in any such action for any sum what-  
ever, whether the party shall originally  
have been held to bail, or been merely  
served with common process: Provided 15  
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 per-  
sons to be discharged out of custody, if it 20  
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 the reasons as- 25  
signed for the belief that the defendant was  
immediately about to leave the Province with  
intent and design to defraud the plaintiff of  
his debt were frivolous, or the defendant may,  
in his discretion in either case, plead the 30  
special matter in abatement of such process,  
in addition to any plea in the bar of such  
action, upon which he shall have been so  
arrested as aforesaid, and in case a verdict  
shall be rendered in favor of the defendant, 35  
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.

Amount and  
condition of  
bail in civil  
cases.

II. And be it enacted, That whenever 40  
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, and shall be subject to the con-  
dition, that if the defendant or defendants 45

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 5 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 10 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 15 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 20 themselves at any time before judgment shall have been rendered against them on such recognizance and upon payment of costs.

Examination of Defendant as to his property.

Proviso; bail may surrender their principal

III. And be it enacted, That no affidavit to 25 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 30 the *Jurat* to the affidavit.

How affidavit to hold to bail must be sworn to.

IV. And be it enacted, That if such defendant or defendants upon examination 35 upon oath, either upon interrogatories or *viva voce*, in open Court or before a Commissioner of the Court in which the suit shall be pending, or a Judge of any District, Circuit or County Court, or upon the examination in 40 like manner of any witness or witnesses 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 had, or in evading

Proceedings if the Defendant on examination shall appear to have acted fraudulently.

Or shall re-  
fuse to disco-  
ver his proper-  
ty.

Proviso ; im-  
prisonment not  
to be a dis-  
charge.

Proviso ; ex-  
oneretur may  
be granted in  
certain cases.

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 defen- 5  
dants shall refuse to make a full discovery of  
all his or their lands, tenements, goods, chat-  
tels, 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 10  
obtained in the said suit,) then, and in either  
of the said cases, it shall and may be lawful  
for the said Court to commit such defendant or  
defendants to the Common Gaol of any  
District until he or they shall comply with 15  
the order of the said Court, or finally for  
such period, not exceeding one year, as the  
said Court shall think reasonable in punish-  
ment of the fraudulent conduct of which they  
shall adjudge such defendant or defendants 20  
to have been guilty, or in punishment of the  
tort for which damages shall have been  
awarded, if they shall deem it proper so to  
do :—Provided always, that such commit- 25  
ment shall not operate as a discharge of the  
said judgment, 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 law- 30  
ful for the Court wherein any such recogni-  
zance of bail shall have been entered in term  
time, or for a Judge thereof in vacation, after  
any defendant or defendants shall have sub-  
mitted to any such examination as aforesaid,  
or in case no such examination shall be had 35  
within two terms after judgment shall have  
been signed in any such cause, when defen-  
dant shall be in custody for want of bail, then  
upon hearing the parties, to order in their  
discretion an *exoneretur* to be entered upon 40  
such Bail-piece, and that the defendant shall  
thenceforth be discharged from custody and  
all future imprisonment on such Judgment.

Proceedings in  
cases where  
parties may be

V. And be it enacted, That should any  
person have been or hereafter be com- 45

mitted to prison upon any attachment or imprisoned for  
 other process issued by any Court of contempt in  
 Law or Equity for a contempt or otherwise not paying  
 5 money directed or decreed to be paid by monies.  
 such Courts respectively, it shall and may be  
 lawful for such person to give notice to the  
 party at whose instance such attachment or  
 other process shall have issued, that applica-  
 10 tion for his discharge will be made to the  
 Court or a Judge thereof, whence such attach-  
 ment or other process shall have issued,  
 whereupon it shall be lawful for the party at  
 whose instance he shall have been com-  
 15 mitted as aforesaid, within ten days after the  
 service of such notice to examine such de-  
 fendant *visd voce* or to exhibit Interrogato-  
 ries to such person so applying for his dis-  
 charge or to any witness or witnesses, in  
 20 like manner as if such party were out upon  
 bail or mesne process and had come up  
 for examination, as in such case is herein-  
 before provided.

VI. And be it enacted, That upon such  
 25 examination 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 came up for examination as  
 aforesaid: Provided always, that no such  
 30 order of such Court or Judge so to be  
 made as aforesaid, shall discharge the  
 party so in custody on such attachment or  
 other process, from the payment of the  
 sum which such party had been directed  
 35 to pay as aforesaid; but that the same  
 shall be levied and collected by such pro-  
 cess against the lands, tenements, goods,  
 chattels, moneys, rights and credits, as the  
 Superior Courts of Law and Equity shall  
 40 prescribe in that behalf.

What order  
the Judge may  
make.

Proviso; as to  
the effect of  
such order.

VI. 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  
 45 What proces-  
dings shall in  
future be had  
against parties  
in contempt in

not paying  
costs.

shall or may be ordered 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, 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. 5 10