

1914

c 84 Habeas Corpus Act

Ontario

© Queen's Printer for Ontario, 1914

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/rso>

Bibliographic Citation

Habeas Corpus Act, RSO 1914, c 84

Repository Citation

Ontario (1914) "c 84 Habeas Corpus Act," *Ontario: Revised Statutes*: Vol. 1914: Iss. 1, Article 87.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1914/iss1/87>

CHAPTER 84.

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

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Ontario Habeas Corpus Act*. Short title. 9 Edw. VII. c. 51, s. 1.

2.—(1) Where a person, other than a person imprisoned for debt, or by process in any action, or by the judgment, conviction or order of the Supreme Court, Court of General Sessions of the Peace or other Court of Record is confined or restrained of his liberty a Judge of the Supreme Court, upon complaint made by or on behalf of the person so confined or restrained, if it appears by affidavit that there is reasonable and probable ground for the complaint, shall award a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody or power the person so confined or restrained is, returnable immediately before the Judge so awarding the same, or before any Judge of the Supreme Court or before a Divisional Court.

In what cases *hab. corp. ad subjiciendum* may be awarded, and by whom.

(2) Instead of awarding the writ the Judge before whom the application is made may direct that the motion for the writ be adjourned to be heard before a Divisional Court.

Order adjourning motion for writ. 9 Edw. VII. c. 51, s. 2.

3. The writ may be served either personally by actual delivery thereof to the person to whom the same is directed or by leaving it with his servant or agent at the place where the person is so confined or restrained. 9 Edw. VII. c. 51, s. 3.

Service of writ.

4. If the person to whom the writ is directed wilfully neglects or refuses to make a return or pay obedience thereto he shall be deemed guilty of contempt of court, and the Court or Judge, upon proof by affidavit of such wilful neglect, refusal or disobedience, may issue a warrant for apprehending and bringing him before the Court or Judge to the end that he may be bound to His Majesty with two sufficient sureties in such sum as in the warrant is expressed, conditioned that he will appear on the day named in the warrant to answer the matter of the contempt. 9 Edw. VII. c. 51, s. 4.

Disobedience. Warrant for contempt.

Committal.

5. In case of neglect or refusal to become bound as aforesaid the Court or Judge may commit such person to the common gaol of the county wherein he resides or may be found there to remain until he becomes bound as aforesaid, or is discharged by order of the Court or a Judge; and if he becomes bound the recognizance shall be returned and filed and shall continue in force until the matter of the contempt has been heard and determined, unless sooner ordered by the Court to be discharged. 9 Edw. VII. c. 51, s. 5.

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

6. Where a writ of *habeas corpus* is issued under the authority of this Act, or otherwise, the Court or Judge may direct the issue of a writ of *certiorari* directed to the person by whom or by whose authority any person is confined or restrained of his liberty, or other person having his custody or control, requiring him to certify and return to the Court or Judge as by the writ may be provided, all the evidence, depositions, conviction, and all proceedings had or taken, touching or concerning such confinement or restraint of liberty, so that the same may be viewed and considered by the Court or Judge, and that the sufficiency thereof to warrant the confinement or restraint may be determined. 9 Edw. VII. c. 51, s. 6.

Proceedings for inquiring into the truth of the matters alleged in the return.

7. Although the return to a writ of *habeas corpus* is good and sufficient in law the Court or Judge before whom the writ is returnable may examine into the truth of the facts set forth in the return, by affidavit or other evidence, and may order and determine touching the discharging, bailing, or remanding the person.. 9 Edw. VII. c. 51, s. 7.

Appeal from remandment to custody.

8.—(1) Where a person confined or restrained of his liberty, is brought before the Court or Judge upon a writ of *habeas corpus*, and is remanded into custody upon the original order or warrant of commitment, or by virtue of any warrant, order or rule of such Court or Judge, such person may appeal from the decision or judgment of the Court or Judge to a Divisional Court; and thereupon the writ of *habeas corpus*, the return thereto, and the affidavits, depositions, evidence, conviction and other proceedings shall be certified by the proper officer to the Appellate Division.

Court may order discharge.

(2) The Divisional Court shall thereupon hear and determine the appeal without formal pleadings; and if the Court determines that the confinement or restraint is illegal shall so certify to the person having the custody or charge of the person so confined or restrained, and shall order his immediate discharge, and he shall be discharged accordingly. 9 Edw VII. c. 51, s. 8.

Application of Act.

9. The provisions of this Act shall extend to all writs of *habeas corpus* awarded in pursuance of the Act passed in

England in the 31st year of the reign of King Charles the Second, commonly called *The Habeas Corpus Act*, or otherwise in as ample and beneficial a manner as if such writs and the cases arising thereon had been herein specially named and provided for. 9 Edw. VII. c. 51, s. 9.

[See 29-30 Vict. c. 45, Canada, which is not included in the Revised Statutes of Canada.]

10. The Judges authorized under *The Judicature Act* to make rules may make such rules of practice in reference to the proceedings on writs of *habeas corpus* as may seem necessary or expedient. 9 Edw. VII. c. 51, s. 10. ^{Power to make rules.}
