

AN ACT for more effectually securing the Liberty of the Subject.

[1st July, 1816.]

WHEREAS the writ of *habeas corpus* hath been found 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 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 for Prevention of Imprisonment beyond the Seas," and also by an Act passed in Ireland in the twenty-first and twenty-second years of His present Majesty, intituled "An Act for better securing the Liberty of the Subject," only extend to cases of commitment or detainer for criminal or supposed criminal matter:

1. Where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit) within that part of Great Britain called England, Dominion of Wales, or Town of Berwick-upon-Tweed, or the Isles of Jersey, Guernsey, or Man, it shall and may be lawful for any one of the Barons of the Exchequer of the Degree of the Coif, as well as for any one of the Justices of one Bench or the other, and, where any person shall be so confined in Ireland, it shall and may be lawful for any one of the Barons of the Exchequer or of the Justices of one Bench or the other in Ireland, and they are hereby required, upon complaint made to them by or on the 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 such Court whereof he or they shall then be Judges or one of the Judges, to be 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 other Judge of the Court under the seal of which the said writ issued.

Judges to issue, in vacation, writs of *habeas corpus* returnable immediately, in cases other than for criminal matter or for debt.

2. If the person or persons to whom writ of *habeas corpus* shall be directed according to the provision of this Act, upon service of such writ, either by the actual delivery thereof to him, her, or them, or by leaving the same at the place where

Non-obedience to such writ to be a contempt of Court.

the party shall be confined or restrained, with any servant or 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 said Justice or Baron before whom such writ shall be returnable, 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 before some other Justice or Baron of the same Court, the person or persons so wilfully disobeying the said writ, in order to his, her, or their being bound to the King's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the Court of which the said Justice or Baron is a Judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she, or they are charged ;

Punishment.

And, in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such Justice or Baron to commit such person or persons so neglecting or refusing to the gaol or prison of the Court of which such Justice or Baron shall be a Judge, 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 one of the Justices or Barons of the Court 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 :

Judges to make writs of *habeas corpus*, issued in vacation, returnable in Court in the next term.

Provided that, if such writ shall be awarded so late in the vacation by any one of the said Justices or Barons 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 of which the said Justice or Baron shall be a Justice or Baron, 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 :

Proviso.

Provided also that if such writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer in the said countries respectively, which last-mentioned Court shall have like power to award such writs as the respective Courts of King's Bench and Common Pleas in each of the said countries now have in term, but so late that, in the

Courts to make writs, issued in term, returnable in vacation.

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 any Justice or Baron of the Degree of the Coif, or, if in Ireland, before any Justice or Baron of the same Court, 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.

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 Justice or Baron 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 ;

Judges to inquire into the truth of facts contained in return.

And if such writ shall be returned before any one of the said Justices or Barons, and it shall appear doubtful to him, on such examination, whether the material facts set forth in the said return, or any of them, be true or not, in such case it shall and may be lawful for the said Justice or Baron 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 a reasonable sum, to appear in the Court of which the said Justice or Baron shall be a Justice or Baron, 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 ;

Judge to bail on recognizance to appear in term, &c.

And such Justice or Baron shall transmit into the same Court the said writ and return, together with such recognizance, affidavits, and affirmations ; and thereupon it shall 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 law affirmation is allowed), and to order and determine touching the discharging, bailing, or remanding the party.

Court to examine into the truth of facts set forth in return.

4. The like proceeding may be had in the Court for controverting the truth of the return to any such writ of *habeas corpus*, awarded as aforesaid, although such writ shall be awarded by the said Court itself, or be returnable therein.

Court may controvert truth of return.

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6. 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

Process of contempt may be awarded in vacation against persons disobey-

56 *Geo. III.*,
c. 100.

ing writs of
habeas corpus
in cases within
Statute 31
Cha. II., c. 2.

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 Justices or Barons, or any of them, any person or persons wilfully disobeying any such writ, and, in case 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 of the said Act passed in Ireland in the twenty-first and twenty-second years of His present Majesty, and hereinbefore recited, 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.
