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C A P. LXVIII.

An Act to stay Execution of Judgment for Misdemeanors upon giving Bail in Error.

[31st *July* 1845.]

WHEREAS it is expedient to make Provision for staying the Execution of Judgment upon Prosecution for Misdemeanor while a Writ of Error is depending to reverse such Judgment: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in every Case of Judgment, whether given before or after the passing of this Act for a Misdemeanor, where the Defendant or Defendants shall have obtained a Writ of Error to reverse such Judgment, Execution thereupon shall be stayed until such Writ of Error shall be finally determined; and in case the Defendant or Defendants shall be imprisoned under such Execution, or any Fine shall have been levied, either in whole or in part, in pursuance of such Judgment, the said Defendant or Defendants shall be entitled to be discharged from Imprisonment, and to receive back any Money levied on account of such Fine from the Person or Persons in whose Possession the same shall be, until such final Determination as aforesaid: Provided always, that no Execution upon any such Judgment shall be stayed unless and until the Defendant or Defendants

Execution on Judgments for Misdemeanors stayed or suspended by Writ of Error and Bail thereon.

dants shall become bound by Recognizance, to be acknowledged before One of the Judges of Her Majesty's Court of Queen's Bench, or One of the Commissioners appointed to take Special Bail in Actions depending in the Superior Courts, with Two sufficient Sureties, to be approved of by such Judge or Commissioner, in such Sum as such Judge or Commissioner shall direct, to prosecute the Writ of Error with Effect, and in case the Judgment shall be affirmed, forthwith to render the said Defendant or Defendants to Prison, according to the said Judgment, where Imprisonment shall have been adjudged; and every such Recognizance shall, after Justification of Bail, be filed of Record in the said Court of Queen's Bench, in like Manner and upon Payment of the like Fees as in the Case of other Recognizances filed in the Crown Office in that Court; and the Judge of the said Court of Queen's Bench, and the said Commissioner, shall have the like Powers in respect of the justifying such Bail in Error, and the Examination of the Sureties, and the like Rules shall apply, as in respect of Special Bail in Actions depending in such Court: Provided always, that in the Case of any Defendant under legal Disability it shall be sufficient if Two Persons, to be approved of by such Judge or Commissioner, shall become bound by Recognizance on the Behalf of such Defendant, to be acknowledged and conditioned as aforesaid.

Certificate of Recognizance being duly filed.

II. And be it enacted, That the Clerk of the Crown in the said Court of Queen's Bench shall for the Purposes herein-after mentioned make out and deliver to the Defendant or Defendants, or his or their lawful Attorney, Certificates in Writing under his Hand that such Recognizance is duly filed of Record in such Court, upon Payment of the like Fee as for other Certificates delivered at the Crown Office; and any such Certificate, when duly verified by Affidavit to be made before One of the Judges of the Superior Courts of Common Law, or a Commissioner duly authorized, shall be a sufficient Warrant to every Gaoler or other Person having Custody of such Defendant or Defendants in Execution of such Judgment to discharge him or them out of Custody, and also to every Person having in his Possession the whole or any Part of any Fine levied in Execution of such Judgment, to authorize and require the Repayment thereof to the Defendant or Defendants; but no Person who shall have received any such Money, and have paid it over to any other Person, according to the Course of the Exchequer, shall be liable to repay to the Defendant or Defendants any Part of the Money so paid over.

Time of Imprisonment how reckoned.

III. And be it enacted, That where Judgment upon such Writ of Error shall be affirmed, and Imprisonment shall have been adjudged, the Period for its Continuance in pursuance of such Judgment, if such Imprisonment shall not have commenced under such Execution, shall be reckoned to begin from the Day when such Defendant or Defendants shall be in actual Custody under such Judgment; and if the Defendant or Defendants shall have been discharged from Imprisonment in manner herein-before provided, such Defendant or Defendants shall be liable to be imprisoned for such further Period as, with the Time during which such Defendant or Defendants may already have been imprisoned under such Execution, shall be equal to the Period

for which such Defendant or Defendants was or were so adjudged to be imprisoned as aforesaid.

Payment and Recovery of a Fine not to prevent Imprisonment till Fine again paid.

IV. And be it declared and enacted, That when the Judgment shall have been for Payment of a Fine, and Imprisonment until such Fine be paid, either with or without Imprisonment for a certain Time, and the Defendant or Defendants shall have paid the Fine, or the same or any Part thereof shall have been levied, and shall have been received back, under the Provisions herein-before contained, and the Judgment upon Writ of Error brought shall be affirmed, the Defendant or Defendants shall not be entitled, by reason of such Payment as aforesaid, to be discharged from Imprisonment, notwithstanding the Expiration of any certain Time of Imprisonment for which the original Judgment shall have been given, until the Fine shall be again paid.

Writ of Error to be quashed in case of Delay or Neglect to prosecute it.

V. And be it enacted, That if the Court in which any such Writ of Error shall be pending shall upon Motion in that Behalf decide that the Defendant or Defendants by whom it shall be brought has or have wilfully delayed or neglected to prosecute the same with Effect, it shall be lawful for such Court to order the Writ of Error to be quashed, and thereupon the Defendant or Defendants who brought such Writ of Error shall be liable to Execution upon the Judgment.

Act not to extend to Scotland.

VI. And be it enacted, That this Act shall not extend to *Scotland*.

Alteration of Act.

VII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

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