

No. XV.

INSOLVENCY.

An Act to amend the Act passed in the Fifth Year of Her Majesty's Reign for the relief of Insolvent Debtors and also the Act lately passed for amending the same and abolishing Imprisonment for Debt. [23rd December, 1844.]

Preamble.

5 Vic. No. 17.

Orders made under said Act appointing or confirming trustees shall vest in them such estate or interest as insolvent had therein.

As to deeds executed by trustees.

As to arrests on mesne process.
7 Vic. No. 19.

WHEREAS an Act was passed by the Governor and Legislative Council of New South Wales in the fifth year of the reign of Her present Majesty intituled "*An Act for giving relief to Insolvent Persons and providing for the due collection administration and distribution of Insolvent Estates within the Colony of New South Wales and for the prevention of frauds affecting the same*" and whereas doubts have arisen as to the nature and duration of the estate and interest of the trustee or trustees of insolvent estates appointed and confirmed under the authority of the said Act in the real and personal estate of such insolvent and as to the power of the said trustee or trustees to make and execute conveyances assignments and other assurances to purchasers and others of such estates and whereas it is expedient that such doubts should be removed and that full power should be given to such trustee or trustees to make valid conveyances assignments and assurances to purchasers and others of all property whether real or personal belonging to such insolvent estates Be it therefore enacted and declared by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That every order made under and by virtue of the said Act confirming the appointment of any trustee or trustees shall for the uses and purposes of the sequestration be deemed to have had and shall have the effect in law of vesting in such trustee or trustees absolutely or for such estate and interest as the insolvent had therein all the real and personal estate of such insolvent which belonged or was due to such insolvent or to which he was in any manner entitled at the time when the order for placing his estate under sequestration was made and also all the real and personal estate which since such last mentioned order shall have been or shall be purchased by or which shall have reverted descended or come to or shall revert descend or come to the insolvent during the continuance of such sequestration and before he shall have obtained his certificate and allowance thereof as in the said Act or in the Act lately passed for amending the same is provided.

2. And be it enacted That all deeds now executed or which may hereafter be executed by any such trustee or trustees purporting to convey assign or assure any part of the real or personal estate and interest of an insolvent to any purchaser mortgagee or other person in fee simple or for other less estate or interest shall be and be deemed to have been from the time of the execution thereof valid and effectual in the law for conveying assigning and assuring such estate and interest to the purchaser mortgagee or other person for such estate or interest.

3. And whereas by an Act passed in the last Session for amending the said recited Act intituled "*An Act to amend an Act intituled 'An Act for giving relief to Insolvent Persons and providing for the administration of Insolvent Estates and to abolish Imprisonment for Debt'*" it was amongst other things enacted that after a certain day therein

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therein limited no person should be arrested or imprisoned for debt except in certain cases and it has been doubted whether that enactment does not wholly prevent arrests on mesne process. Be it enacted That the said enactment shall not extend or be taken or construed to extend to any mesne process for arrest or to prevent any arrest on any such mesne process in cases provided for by the Act passed in this Colony in the third year of the reign of Her Majesty for regulating such arrests intituled "*An Act for abolishing Arrest on Mesne Process in Civil Actions except in certain cases in New South Wales and the Dependencies thereof*" anything in the aforesaid Act of the last Session notwithstanding.

4. And whereas by the twenty-eighth section of the said recited Act passed in the last Session it is enacted that in all cases where by the sections immediately preceding said section a defendant cannot be arrested it shall be lawful for the plaintiff who shall have obtained a judgment or decree against such defendant in any Court of Record or Court of Requests in said Colony to apply to any Judge of the Court in which the suit is brought for a warrant to arrest the defendant in such suit provided that such plaintiff shall by the affidavit of himself or some other person or persons shew to the satisfaction of a Judge of the said Court of Record or Commissioner of the Court of Requests (as the case may be) that the defendant is about to remove any of his property out of the jurisdiction of the Court in which any such suit is brought with intent to defraud his creditors or that the defendant has property or rights in action which he fraudulently conceals or that he has rights in action or some interest in any public or corporate stock money or evidences of debt which he unjustly refuses to apply to the payment of any just judgment or decree which shall have been pronounced against him or that he has any other means whereby (in the opinion of such Judge or Commissioner as the case may be) he can pay the same and refuses so to do or that he fraudulently contracted the debt or incurred the obligation respecting which such suit is brought and that such judgment or decree will be defeated unless such defendant be apprehended and that in any such cases it shall be lawful for such Judge or Commissioner to order and direct that such defendant shall be held to bail for such sum as to him shall seem meet not exceeding the amount of such judgment or decree such order or direction to be under the hand and seal of said Judge or Commissioner and whereas it is considered expedient and necessary to specify what form of writ shall be used for such arrest and to whom the same shall be directed Be it enacted That in the cases hereinbefore recited it shall and may be lawful for such Judge or Commissioner as the case may be to authorize by ordinary writ of *capias ad satisfaciendum* the same to be by such Judge or Commissioner signed in the usual form and directed to the Sheriff of New South Wales (or Deputy Sheriff of Port Phillip as the case may be) and their respective deputies and such writ so issued and signed shall be held to be full and sufficient authority to such Sheriff or Deputy Sheriff and their assistants in that behalf to apprehend and detain in custody the person or persons therein named until he shall be dealt with according to law.