



1870.

ANNO TRICESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 33.



AN ACT to make better provision for the Abolition of Imprisonment for Debt, for the Punishment of Fraudulent Debtors, and for other Purposes. [18 October, 1870.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

Preliminary.

1 This Act may be cited for all purposes as “The Debtors Act, Short title. 1870.”

2 This Act shall not come into operation until the day on which “The Bankruptcy Act, 1870,” comes into operation, which day is hereinafter referred to as the commencement of this Act; and words and expressions defined or explained in “The Bankruptcy Act, 1870,” shall have the same meaning in this Act. Commencement and construction of Act.

PART I.

Abolition of Imprisonment for Debt.

3 With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money. Abolition of imprisonment for debt, with exceptions.

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There shall be excepted from the operation of the above enactment:—

1. Default in payment of a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract :
2. Default in payment of any sum recovered summarily before a Justice or Justices of the Peace :
3. Default by a Trustee or person acting in a fiduciary capacity and ordered to pay by the Supreme Court in its Equity Jurisdiction any sum in his possession or under his control :
4. Default by any Attorney or Solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order :
5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in Bankruptcy is authorised to make an order :
6. Default in payment of sums in respect of the payment of which orders are in this Act authorised to be made :

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this Section for a longer period than One year ; and, secondly, that nothing in this Section shall alter the effect of any judgment or order of any Court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money.

Saving of power of committal for small debts.

4 Subject to the provisions hereinafter mentioned, and to the prescribed Rules, any Court may commit to prison for a term not exceeding Six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court.

Provided—(1.) That the jurisdiction by this Section given of committing a person to prison shall, in the case of any Court other than the Supreme Court, be exercised only subject to the following restrictions ; that is to say,—

- (a.) Be exercised only as respects a judgment of the Supreme Court at Law or in Equity when such judgment does not exceed Fifty Pounds, exclusive of costs :
- (b.) Be exercised only as respects a judgment of a Court held under "The Small Debts Act," by the Commissioner or Chairman, as the case may be, of such Court.

(2.) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the Court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the Court thinks just ; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed Rules.

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Any jurisdiction by this Section given to the Supreme Court may be exercised by a Judge sitting in Chambers, or otherwise in the prescribed manner.

Any jurisdiction by this Section given to any Court held under "The Small Debts Act" may be exercised by the Chairman or Commissioner of such Court, as the case may be.

For the purposes of this Section any Court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent Court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this Section may be committed to any gaol; and every order of committal shall, subject to the prescribed Rules, be issued, obeyed, and executed in the like manner as nearly as may be as a Writ of *Capias ad satisfaciendum*.

No imprisonment under this Section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this Section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

Every order made by a Commissioner or Chairman may be set aside or varied by a Judge of the Supreme Court, in such manner and upon such terms as he thinks fit, upon application being made to him in a summary way; and a Judge may order the release of any person arrested under such order in the absence of such person.

Mesne Process.

5 After the commencement of this Act a person shall not be arrested upon mesne process in any action.

Where the plaintiff in any action in the Supreme Court in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment by evidence on oath, to the satisfaction of a Commissioner of the Supreme Court, that the plaintiff has good cause of action against the defendant to the amount of Twenty Pounds or upwards, and that there is probable cause for believing that the defendant is about to quit *Tasmania* unless he be apprehended, and that the absence of the defendant from *Tasmania* will materially prejudice the plaintiff in the prosecution of his action, such Commissioner may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding Six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of *Tasmania* without the leave of the Court or a Judge thereof.

Every order made by a Commissioner may be set aside or varied by a Judge of the Supreme Court, in such manner and upon such terms as he thinks fit, upon application made in a summary way; and a Judge may order the release of any person arrested under such order in the absence of such person.

Where the action is for a penalty or sum in the nature of a penalty other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from *Tasmania* will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out

Power under certain circumstances to arrest defendant about to quit *Tasmania*.

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of *Tasmania*) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

Saving for sequestration against property.

6 Sequestration against the property of a debtor may, after the commencement of this Act, be issued by the Supreme Court in its Equity Jurisdiction in the same manner as if such debtor had been actually arrested.

Saving for "The Bankruptcy Act, 1870."

7 Nothing in this part of this Act shall in any way affect any right or power under "The Bankruptcy Act, 1870," to arrest or imprison any person.

Definition of "prescribed."

8 In this part of this Act the term "prescribed" means as follows:—

Prescribed by General Rules to be made by the Judges of the Supreme Court; and the Judges shall have the same powers with reference to making and altering such Rules as is conferred on the Judges of making and altering Rules by "The Bankruptcy Act, 1870," and such Rules shall have the force of law and be judicially noticed.

PART II.

Punishment of Fraudulent Debtors.

Punishment of fraudulent debtors.

9 Any person adjudged bankrupt, and any person whose affairs are liquidated by arrangement in pursuance of "The Bankruptcy Act, 1870," shall, in each of the cases following, be deemed guilty of a Misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding Two years, with or without hard labour; that is to say,—

1. If he does not to the best of his knowledge and belief fully and truly discover to the Trustee administering his estate for the benefit of his creditors all his property, real and personal, and how and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud :
2. If he does not deliver up to such Trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud :
3. If he does not deliver up to such Trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud :
4. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within Four months next before such presentation or commencement, he conceals any part of his property to the value of Ten Pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud :

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5. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within Four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of Ten Pounds or upwards :
6. If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud :
7. If knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fails for the period of a month to inform such Trustee as aforesaid thereof :
8. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :
9. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within Four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :
10. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within Four months next before such presentation or commencement, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law :
11. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within Four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs :
12. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or at any meeting of his creditors within Four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses :
13. If within Four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, by any false representation or other fraud, has obtained any property on credit, and has not paid for the same :
14. If within Four months next before the presentation of a bankruptcy petition against him or the commencement of the

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liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud :

15. If within Four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud :
16. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy or liquidation.

Penalty for absconding with property.

10 If any person who is adjudged a bankrupt or has his affairs liquidated by arrangement after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within Four months before such presentation or commencement, quits *Tasmania* and takes with him, or attempts or makes preparations for quitting *Tasmania* and for taking with him, any part of his property to the amount of Twenty Pounds or upwards which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of Felony, punishable with imprisonment for a time not exceeding Four years, with or without hard labour.

Penalty on fraudulently obtaining credit.

11 Any person shall in each of the cases following be deemed guilty of a Misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding One year, with or without hard labour ; that is to say,—

1. If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud :
2. If he has with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property :
3. If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within Two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

False claim, &c. a Misdemeanor.

12 If any creditor in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of "The Bankruptcy Act, 1870," wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a Misdemeanor, and be punishable with imprisonment for any period not exceeding One year, with or without hard labour.

Debts incurred by fraud.

13 Where a debtor makes any arrangement or composition with his creditors under the provisions of "The Bankruptcy Act, 1870," he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof before the date of the arrangement or com-

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position he obtained forbearance by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

14 Where a Trustee in any bankruptcy reports to any Court exercising jurisdiction in Bankruptcy that in his opinion a bankrupt has been guilty of any offence under this Act, or where the Court is satisfied upon the representation of any creditor or member of the Committee of Inspection that there is ground to believe that the bankrupt has been guilty of any offence under this Act, the Court shall, if it appears to the Court that there is reasonable probability that the bankrupt may be convicted, order the Trustee to prosecute the bankrupt for such offence. Order by Court for prosecution on report of Trustee.

15 Where the prosecution of the bankrupt under this Act is ordered by any Court, the reasonable expenses incurred by the Justice in the prosecution shall be allowed, paid, and borne out of the assets of the bankrupt. Expenses of prosecutions.

16 In every information for any offence under this Act it shall be sufficient to set forth the substance of the offence charged in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of any Court acting under "The Bankruptcy Act, 1870." Form of information.

17 The trial of persons for offences against any provision of the laws relating to bankrupts may be had before the Supreme Court or any Court of General Sessions of the Peace held before a Recorder. Jurisdiction in respect of offences under Act.

18 When by the provisions of any Act any person is disqualified from holding office by reason of his being declared insolvent or compounding by deed or otherwise with his creditors, such disqualification shall extend to every case in which any such person is adjudicated a bankrupt or enters into an arrangement or composition with his creditors under "The Bankruptcy Act, 1870," whether the same is made by deed or otherwise. Persons, &c. disqualified by arrangements.

19 If any person being assigned by Her Majesty's Commission or being appointed to act as a Justice of the Peace is adjudged bankrupt, or makes any arrangement or composition with his creditors under "The Bankruptcy Act, 1870," he shall be and remain incapable of acting as a Justice of the Peace until he has been newly assigned or appointed by Her Majesty in that behalf. Justices of the Peace becoming bankrupt or arranging with creditors.

20 Where any person is liable under any other Act or at Common Law to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act, or at Common Law, or under this Act, so that he be not punished twice for the same offence. Punishments under this Act cumulative.

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PART III.

Warrants of Attorney, Cognovits, and Orders for Judgment.

Warrants of Attorney and Cognovit actionem to be executed in the presence of an Attorney on behalf of the person.

21 After the commencement of this Act, a Warrant of Attorney to confess judgment in any personal action or Cognovit actionem given by any person shall not be of any force unless there is present some Attorney of the Supreme Court on behalf of such person expressly named by him and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed, which Attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be Attorney for the person executing the same, and state that he subscribes as such Attorney.

Warrant, &c. not formally executed invalid.

22 A Warrant of Attorney to confess judgment or Cognovit actionem not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof, or was fully informed of the same.

Filing of Warrant of Attorney and Cognovit actionem.

23 Where in an action a Warrant of Attorney to confess judgment or a Cognovit actionem is given, the same, or a true copy thereof, shall be filed within Fourteen days after the execution thereof with the Registrar of the Supreme Court; and unless the same or such copy thereof is so filed within the said period, the same shall be deemed fraudulent and shall be void; and if any such Warrant of Attorney or Cognovit actionem so filed was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper or parchment with the warrant or cognovit before the filing thereof, otherwise the warrant or cognovit shall be void.

Filing of Judge's order to enter up judgment.

24 Where a Judge's order made by consent is given by a defendant in a personal action in the Supreme Court whereby the plaintiff is authorised forthwith or at any future time to sign or enter up judgment, or to issue or to take out execution, whether such order is made subject to any defeasance or condition or not, then the order shall, together with an affidavit of the time of consent being given, and a description of the residence and occupation of the defendant, be filed with the Registrar of the Supreme Court within Fourteen days after the making of the order, otherwise the order and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment, shall be void.

Application of 3 Geo. 4, c. 39, to Judge's order.

25 The provisions of the Act of the Third year of King *George the Fourth*, chapter Thirty-nine, relating to liberty to file a Warrant of Attorney or Cognovit actionem, or a copy thereof, and for making certain entries and searches in relation thereto, and for entering satisfaction thereon, and for fees for search, and filing and taking office copies, shall extend and be applicable to every such Judge's order.

Exemption from act of foreign attachment.

26 Nothing in this Act contained shall affect the process of foreign attachment as exercised by the Supreme Court, or the proceedings in relation to such process.

Repeal.

Acts named in Schedule repealed.

27 The Acts named in the Schedule to this Act are hereby repealed; but this repeal shall not affect anything done before the commencement

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of this Act, or any right, title, or obligation accrued or restriction imposed before the commencement of this Act by or under any such repealed Act; nor shall this repeal interfere with the prosecution or affect the course of any legal proceeding under any such Act before the commencement of this Act, but such proceedings shall be prosecuted as if this Act had not passed; nor shall this repeal interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any forfeiture or penalty incurred under, any enactment hereby repealed.

SCHEDULE.

ACTS TO BE REPEALED.

<i>Reference to Act.</i>	<i>Title of Act.</i>
3 Vict. No. 1.	<i>An Act to make provision for the more effectual Distribution of Insolvent Estates.</i>
5 Vict. No. 6.	<i>An Act to subject Insolvents' Estates to the Payment of the Expenses of Executions issued against such Estates prior to Declarations of Insolvency.</i>
7 Vict. No. 11.	<i>An Act to extend the Order of Discharge to be granted by the Commissioners under the Provisions of the Act of this Island intituled An Act to make provision for the more effectual Distribution of Insolvent Estates to certain Cases hereinafter mentioned.</i>
15 Vict. No. 2.	<i>An Act to explain and amend the Fifty-ninth Section of an Act intituled An Act to make provision for the more effectual Distribution of Insolvent Estates.</i>
20 Vict. No. 12.	<i>An Act to amend an Act, intituled "An Act to make provision for the more effectual Distribution of Insolvent Estates."</i>
23 Vict. No. 2.	<i>An Act to regulate Arrest on Mesne Process in Civil Actions.</i>
23 Vict. No. 25.	<i>An Act to amend the Laws relating to Insolvency.</i>
27 Vict. No. 31.	<i>An Act to amend the Laws relating to Insolvency.</i>
30 Vict. No. 2.	<i>An Act to enable the Governor to appoint Substitutes for the Commissioners of Insolvent Estates during their Absence from Duty.</i>
30 Vict. No. 6.	<i>An Act to confer Jurisdiction upon the Judges of the Supreme Court in Cases of Insolvency.</i>
31 Vict. No. 16.	<i>An Act to abolish Imprisonment for Debt, and to provide for the Punishment of Frauds committed by Debtors.</i>
33 Vict. No. 14.	<i>An Act to amend the Law as to Arrest on Mesne Process in Civil Actions.</i>