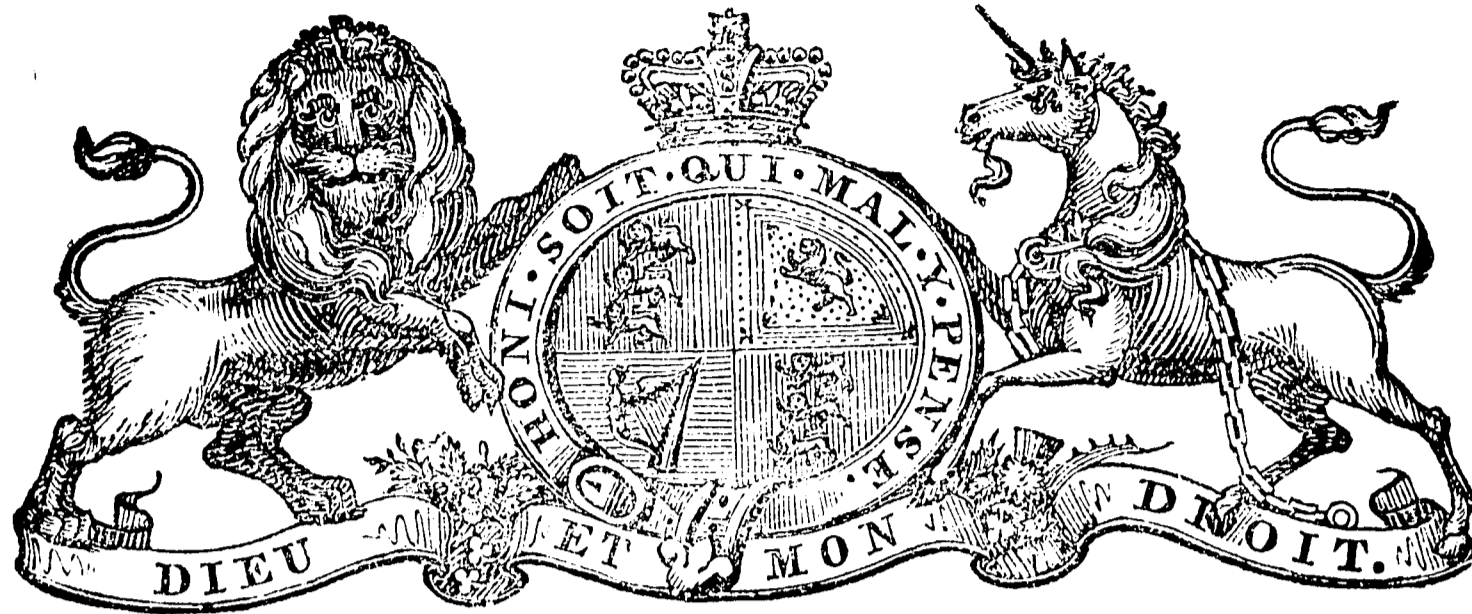


VICTORIA.



ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

No. CCLXXXIV.

An Act to amend the Law for Imprisonment for Debt. [20th September, 1865.]

WHEREAS it is expedient to amend the law for imprisonment for debt Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly in this present Parliament assembled and by the authority of the same as follows (that is to say)—

1. Except as is hereinafter provided no person after the commencement of this Act shall be arrested or imprisoned or shall be detained in prison upon any writ of *capias ad satisfaciendum* issued out of the Supreme Court after or before the passing of this Act any law or practice of such court to the contrary notwithstanding and no defendant shall be arrested or imprisoned for or in satisfaction of any order made by justices under any law authorising justices to make an order for the payment of any sum not exceeding twenty pounds in respect of any one or more cause or causes of action or the cause of complaint mentioned in the First Schedule hereto It shall not be lawful after the commencement of this Act for the clerk of any county court to issue a warrant of commitment upon a return made to any warrant of execution that the bailiff or officer could find no sufficient property of the person against whom such warrant shall have issued liable to satisfy such execution and no person shall be arrested or imprisoned in execution upon or in satisfaction of any judgment or order recovered or obtained in any county court save in the special cases where such court is empowered by law to make an order of commitment and in no such case shall any person be committed for a longer period than four months.

Imprisonment for debt abolished except in certain cases.

First Schedule

2. Whenever

Debtor may be summoned.

Second Schedule.

2. Whenever any sum of money recoverable under any judgment of the Supreme Court or under any such order of justices as aforesaid shall remain unsatisfied in the whole or in part it shall be lawful for the person entitled to recover such money whether or not any execution shall have issued upon or under such judgment or order to obtain from the prothonotary where the money is recoverable under a judgment of the Supreme Court or from the clerk of petty sessions where the money is recoverable under an order of justices a summons in the form contained in the Second Schedule to this Act or to the like effect directed to the person liable to pay such money and such summons shall be served personally and if he shall appear in pursuance of such summons he may be examined upon oath by any judge of the Supreme Court or by any two justices (as the case may be) touching his estate and effects and as to the property and means he has of paying satisfying and discharging such sum of money or such part thereof as shall remain unsatisfied and as to the disposal he may have made of any property and as to his intention to leave Victoria without paying such money as is still unsatisfied or to depart elsewhere within Victoria with intent to evade payment and as to the mode in which the liability the subject of such judgment or order was incurred and the person obtaining such summons as aforesaid and all other witnesses whom the judge or the justices shall think requisite may be examined upon oath touching the enquiries authorised to be made as aforesaid.

And may be examined and imprisoned.

3. If a person summoned as aforesaid shall not attend as required by such summons or allege a sufficient excuse for not attending or shall if attending refuse to be sworn or to disclose any of the things aforesaid or if he shall not make answer touching the same to the satisfaction of such judge or justices (as the case may be) before whom the summons is returnable or if it shall appear to the satisfaction of such judge or justices that such person if a defendant incurring the debt or liability which is the subject of the action or proceeding in which judgment or an order has been obtained has obtained credit from the plaintiff or complainant under false pretences or by means of fraud or breach of trust or has wilfully contracted such debt or liability without having at the same time a reasonable expectation of being able to pay or discharge the same or shall have made or caused to be made any gift delivery or transfer of any property or shall have charged removed or concealed the same with intent to defraud his creditors or any of them or has then or has had since the judgment obtained or order made against him sufficient means and ability to pay the debt damages costs or money so recovered against him or ordered either altogether or by any instalment or instalments which the court in which or the justices from whom the judgment or order was obtained shall have ordered and shall have refused or neglected to pay the same or that such person is about to leave Victoria without paying such debt damages costs or money or so much thereof as is still unsatisfied or is about to depart elsewhere within Victoria with intent to evade payment it shall be lawful for such judge or justices (as the case

case may be) if he or they shall think fit to order that unless such person shall pay into such court or to the clerk of petty sessions (as the case may be) either forthwith or within the time limited in such order the money so unsatisfied together with the costs of and occasioned by such summons and examination he shall be committed to prison for any time not exceeding six months when the order is made by a judge and not exceeding two months when the order is made by justices.

4. In any case in which any defendant in any action in the Supreme Court or upon any summons before justices in respect of any cause or causes of action or the cause of complaint aforesaid shall personally appear at the trial or hearing of the same the court or the justices at the trial or hearing of the cause or summons or at any adjournment thereof if a verdict or an order shall be found or made against the defendant shall have the same power and authority of examining the plaintiff or complainant and defendant and other parties touching the things hereinbefore in the last preceding section mentioned and of making an order as such court or justices might have exercised under the provisions hereinbefore contained in case the plaintiff or complainant had obtained a summons for that purpose after judgment or order as hereinbefore mentioned.

5. Whenever any order for commitment shall have been made under the provisions hereinbefore contained and the money and costs named therein shall not have been paid into court or to the clerk of petty sessions (as the case may be) in pursuance thereof the prothonotary or the clerk of petty sessions shall without any previous notice or summons to the party required to pay the same issue a warrant in the form in the Third Schedule to this Act or to the like effect and the sheriff or constable and the keeper of the gaol to whom such warrant is directed shall respectively execute and obey the said warrant and all constables and other peace officers shall aid and assist in the execution of such warrant.

6. Any judgment debtor or defendant aggrieved by any order of commitment made under the preceding sections may upon entering into such recognizance and subject to such terms and conditions as the judge or justices shall think fit appeal against such order to the Supreme Court where the order has been made by a judge of the said court or to the nearest county court where the order has been made by justices and such courts respectively shall have power to review the same and to confirm vary annul or discharge the same and to make such order as to the costs of such appeal as shall appear fit to such courts respectively.

7. Any person imprisoned under this Act by virtue of any such warrant as last aforesaid who shall have paid or satisfied the judgment debt or order and costs remaining due at the time of the issuing of such warrant together with all subsequent costs shall be discharged out of custody upon the certificate of such payment or satisfaction signed by the prothonotary or the clerk of petty sessions (as the case may be) Notwithstanding the provisions hereinbefore contained it shall

Examination may be had on the original hearing.

Form of commitment.

Third Schedule.

Judgment debtor and creditor may appeal to Supreme Court.

Prisoner to be discharged on payment of debt and costs.

Judge may order discharge.

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be lawful for such or any other judge of the Supreme Court or for such justices as the case may be at any time by order under his or their hand or hands (if under the special circumstances of the case he or they shall think fit so to do) to direct that any person in gaol or custody under any such order shall be forthwith discharged and such person shall be forthwith discharged accordingly.

Order may be *ex parte*.

8. Any order of commitment under the provisions hereinbefore contained may (if the special circumstances of the case shall appear to the judge or the justices to warrant it) be made by such judge or justices *ex parte* and without notice on proof by affidavit only of any of the matters aforesaid and in that case such order of commitment under the hand of such judge or justices may be filed in the Supreme Court or the court of petty sessions and such person may be dealt with as if an order of commitment had been made as hereinbefore directed.

Examinations to be taken down in writing.

9. The examinations of such person liable to pay money as aforesaid shall be taken down in writing and a copy thereof may be used on the hearing of any appeal from any order of commitment.

Examination to be a judicial proceeding.

10. The examination of any person examined under any of the provisions of this Act shall be deemed to be a judicial proceeding and any such person in any such examination wilfully knowingly and corruptly giving or making any untrue or false answer statement or declaration shall be deemed to have committed wilful and corrupt perjury.

Commencement duration and effect of this Act.

11. This Act shall commence and come into operation at the expiration of two months next after the passing hereof and shall continue in force for one year and thence until the end of the then next session of Parliament and imprisonment under this Act shall not operate as a satisfaction or discharge of the amount due on any judgment or order but notwithstanding such imprisonment a fresh writ or warrant against the property may be issued on such judgment or order and executed in due course of law.

SCHEDULES.

FIRST SCHEDULE.

Section 1.

Debt for—

1. Goods sold and delivered.
2. Money lent.
3. Work and labor done.
4. Use and hire of chattels or beasts.
5. Work and labor done and materials for the same provided.
6. Use and occupation of land house or apartments.
7. Board and lodging.
8. Feeding and taking care of horses sheep or cattle.
9. Warehouse room provided.
10. Carriage of goods and chattels.

Damages for—

Assault.

SECCO

SECOND SCHEDULE.

Section 2.

In the Supreme Court [or the Court of Petty Sessions at _____ as the case may be]
To A. B. of _____

Whereas judgment was signed [or an order was made as the case may be] against you
in the said court [or by _____ and _____ two of Her Majesty's
justices of the peace in and for _____ as the case may be] on the
_____ day of _____ for the sum of _____ and the said sum

[or £ _____ part of the said sum as the case may be] is still wholly due and unpaid.

These are therefore to require you to appear personally before _____ a judge
of the said court [or justices as the case may be] on _____ the _____ day of
_____ at _____ o'clock in the _____ noon to be examined by the said judge

[or justices] touching your estate and effects and as to the property and means you have
of paying the said sum and as to the disposal you have made of your property and as to your
intention to leave Victoria without paying the said sum or to depart elsewhere within
Victoria with intent to evade payment and as to the mode in which you incurred the
liability and if you disobey this summons you will be committed to prison.

Given under my hand this _____ day of _____
O.P. Prothonotary [or clerk of petty sessions].

THIRD SCHEDULE.

Section 5.

To the Sheriff of _____ [or _____ constable as the case may be] and to the keeper
of the gaol at _____

Whereas His Honor Mr. Justice _____ [or _____ and _____ two of Her
Majesty's justices of the peace in and for _____] did on the _____ day of _____

order that O.B. against whom A.T. has in the Supreme Court [or before two
justices] recovered [or obtained an order for the payment of] the sum of _____
should be committed to prison unless he did forthwith [or within _____ days

next] after the making of the said order pay into the said court [or to
clerk of petty sessions] the said sum together with the costs in that behalf amounting to _____

And whereas the said sum [or £ _____ part of the said sum] and costs have
not been paid into the said court [or to the said _____] according to the said order.

These are therefore to command you the said sheriff [or constable] to take the said
O.B. and convey him to the said gaol and deliver him to the said keeper thereof and you
the said keeper are hereby required to receive him into your custody in the said gaol and
him there safely to keep until you shall receive a certificate signed by the prothonotary
of said court [or the clerk of petty sessions as the case may be] that the said O.B. has
paid or satisfied the said sums together with all subsequent costs or until the said O.B.
shall be otherwise discharged by due course of law.

Given under my hand this _____ day of _____
JOHN DOE
Prothonotary [or clerk of petty sessions.]

MELBOURNE:

By Authority: JOHN FERRES, Government Printer.