

# Imprisonment for Debt Abolition.

## ANALYSIS.

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## A BILL INTITULED

### AN ACT for the Abolition of Imprisonment for Debt, and for Other Purposes. Title.

**BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act shall be "The Imprisonment for Debt Abolition Act, 1873." Short Title.
2. This Act shall come into operation on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and seventy \_\_\_\_\_, which day is herein referred to as the commencement of this Act. Commencement of Act.
3. Nothing in this Act contained shall in any way affect any right or power under an Act intended to be passed in the present Session, the Short Title whereof is "The Insolvency Act, 1873." Not to affect "The Insolvency Act, 1873."
4. 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

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 recoverable summarily before a Resident Magistrate, or a Justice or Justices of the Peace, or Court of Petty Sessions, under "The Justices of the Peace Act, 1866," or any Act amending the same or passed for like purposes, or otherwise than under "The Resident Magistrates Act, 1867," and Acts amending the same.
- (3.) Default by a trustee or person acting in a fiduciary capacity, and ordered to pay, by a Court or Justice, any sum in his possession or control.
- (4.) Default by a 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 or insolvency is authorized to make an order.

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.

Repeal of sections five to seventeen of "The Resident Magistrates Act, 1868."

5. From and after the commencement of this Act, the fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth sections of "The Resident Magistrates Act, 1867," shall be and the same are hereby repealed; but, subject to the provisions of this Act, such repeal shall not affect any act matter or thing lawfully done under the provisions in the said sections contained.

Power under certain circumstances to arrest defendant about to quit New Zealand.

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

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 Judge of the said Court, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit New Zealand unless he be apprehended, and that the absence of the defendant from New Zealand will materially prejudice the plaintiff in the prosecution of his action, such Judge 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 New Zealand without the leave of the Supreme Court.

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 New Zealand 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 of New Zealand) 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.

Discharge of persons in custody at commencement of this Act."

7. Where any person is, at the commencement of this Act, in custody in pursuance of a writ judgment attachment or other process in any case in which he would not be liable to be arrested or imprisoned after the commencement of this Act, such person shall, at the commencement of this Act, be discharged from such custody without payment of any fees, but his arrest imprisonment or discharge shall not affect the creditor's rights or remedies for enforcing the payment of any money due to him, or deprive the creditor of the benefit of any charge or security on any property of the debtor.

Condition of bail.

8. Where at the commencement of this Act special bail has been given in any action in the Supreme Court, the defendant in which after the commencement of this Act cannot be imprisoned on making default in satisfying the judgment recovered against him in such action, the condition of such bail, instead of being that the judgment shall be satisfied or the defendant rendered to prison, shall be deemed to be that the defendant shall not go out of New Zealand without the leave of the Supreme Court.

Definition of "prescribed."

9. In this Act the term "prescribed," means prescribed by general rules to be made in pursuance of "The Supreme Court Act, 1860," or any Acts amending or altering the same; and general rules and orders may respectively be made by and under such authority as aforesaid for the purpose of carrying this Act into effect.