



ANNO QUINTO

GULIELMI IV. REGIS.

No. 7.

*By His Excellency Colonel GEORGE ARTHUR, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.*

*AN ACT for the Support and Relief of Persons under Imprisonment for Debt or for Penalties.*

WHEREAS in the year one thousand eight hundred and twenty-five an Act was passed in New South Wales (of which Colony this Island was then a dependency) intituled "An Act for the Relief of " Persons imprisoned for Debt" bearing date the thirtieth day of March in that year whereby the allowance of a weekly sum of money is authorised to be made to insolvent debtors in certain cases for their support in prison—AND WHEREAS that Act has been in this Colony found to be in several particulars insufficient and defective insomuch that the beneficial objects contemplated by it have only been partially attained and it would be expedient therefore to repeal the same in the manner hereinafter mentioned—BE IT ENACTED by His Excellency Colonel GEORGE ARTHUR Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that from and after the publication of this Act the said New South Wales Act of the thirtieth day of March one thousand eight hundred and twenty-five shall as to this Island and its Dependencies be repealed—EXCEPTING ALWAYS as to orders made and matters or things done under the said Act before such publication which shall be of the same effect and validity as if this Act had not been passed and

Recites Act of New South Wales 6 G. 4, No. 8.

The said Act repealed.

Exception.

all matters now remaining to be done or hereafter arising to be done under or in consequence of any such order may be done or proceeded in and prosecuted either under that Act (notwithstanding such repeal) or under the present Act (so far as its provisions can be made applicable) at the discretion of the party promoting the same or as the Supreme Court of Van Diemen's Land or any Judge thereof shall in any case think fit to order any thing hereinafter contained to the contrary notwithstanding.

Mode of petitioning for allowance.

II. AND BE IT ENACTED that it shall be lawful for any person now or hereafter suffering imprisonment for debt or process issued out of the Supreme Court (whether of execution or mesne process) to apply to the said Court by petition subscribed by him setting forth the gaol wherein he is then confined the date when he was first detained in custody and at whose suit and for what amount and the names of all other his detaining creditors (if any) with their residences and the sums due to them respectively and that the petitioner hath no available effects or property sufficient for his maintenance but that he is in truth and in fact unable to maintain himself in prison and praying therefore that a weekly allowance may be ordered for his maintenance under the provisions of this Act—PROVIDED ALWAYS that no person imprisoned upon mesne process only shall be entitled so to apply until he shall have been so imprisoned three months or upwards.

A day and place to be appointed for hearing petition.

III. AND BE IT ENACTED that thereupon or as soon after as conveniently may be a day and place shall be appointed by the said Court or one of the Judges thereof for the hearing of the matters of the said petition and such Court or Judge shall at the same time order notice to be given by or on behalf of the petitioner in such manner as the said Court or Judge may think fit to the several detaining creditors or their agents of the presentation of such petition and of the day and place so appointed.

Where petitioner is in gaol at Launceston the hearing may be directed before quarter sessions.

IV. AND BE IT ENACTED that it shall be lawful for the said Court or Judge if the petitioner be confined in His Majesty's Gaol at Launceston to direct by the same order that the matters of the said petition (or such of them as the same Court or Judge shall think fit to be there inquired into) shall be heard and determined by the Court of General Quarter Sessions of the Peace there holden either at the then next ensuing sittings of the said last-mentioned Court or upon such other day of meeting of the said Court as the Chairman thereof for the time being shall in that behalf order—AND in every such case from and after the making of such order the several powers and authorities conferred by this Act upon the said Supreme Court and the Judges thereof

5<sup>o</sup> GULIELMI IV. No. 7.

3

(excepting the powers conferred by the sixteenth section of this Act) shall be and the same are hereby for the purposes of such order conferred upon and vested in the said Court of Quarter Sessions and every succeeding such Court whether holden during the same quarter or not and whether upon an original or an adjourned day of meeting.

V. AND BE IT ENACTED that upon the day appointed for the hearing of such petition and upon every day if any to which the matter may from time to time be adjourned it shall be lawful for the Court or Sitting Judge until the making of the order of allowance hereinafter mentioned to cause the petitioner to be brought up by an order or orders made for that purpose and to be examined upon oath touching the truth of the matters contained in his said petition and touching such other matters in respect of his alleged incapacity to maintain himself as the Court or Judge may think proper to be inquired into and particularly touching all the estate and effects real and personal in possession or expectancy of every nature which such petitioner or any person for his use or benefit shall be possessed of or interested in either solely or jointly with any other person or which he was possessed of or interested in at the time of his first imprisonment and touching all debts then or since due to and monies received by him and touching the manner in which such estate and effects debts and monies have been applied or disposed of since the time of such first imprisonment and what part thereof shall have been in any manner assigned or encumbered in any manner and for what consideration and to whom and what part or parts of such estate and effects can be in any manner made at any time applicable to the discharge of his debts or otherwise available for his creditors' benefit.

Matters to be inquired into at the hearing.

VI. AND BE IT ENACTED that upon every such day of hearing every detaining creditor may be heard as well as the petitioner in opposition to or support of the petition in person or by counsel and it shall be lawful for the Court or Sitting Judge from time to time if occasion shall seem so to require to summon the petitioner's wife or any other person supposed to have any of the estate or effects of the petitioner in her or his possession or control or to be able to give information to enable such Court or Judge the better to discover such estate and effects or otherwise more fully to inquire into the matter of such petition and to examine every such person as any other witness may be examined in an action at law—AND the substance of all such examinations as well of such witnesses as of the petitioner shall be taken down in writing at the time and being certified as correct by the clerk so taking the same shall be afterwards transmitted to and deposited in the office of the said Supreme Court together with the other proceedings upon the petition when the whole matter thereof shall have been deter-

Witnesses may be examined.

Examinations to be in writing and transmitted to Supreme Court.

mined to be kept in the said office amongst the records of the Court for purposes of future reference.

Perjury.

VII. AND BE IT ENACTED that if any such petitioner or any other person examined under the provisions of this Act shall upon any occasion wilfully forswear himself or herself upon any examination under this Act he or she shall be liable to suffer such punishment as by law may be inflicted for wilful and corrupt perjury.

Weekly allowance to be ordered.

VIII. AND BE IT ENACTED that in case after such inquiry made into the matter as the Court or Sitting Judge shall think sufficient it shall appear to such Court or Judge that the petitioner hath in fact made a true discovery of his estate and effects and that excepting from a sale of his necessary wearing apparel or that of his family he is in truth unable to maintain himself in prison and also that he hath not during his imprisonment fraudulently made away with or disposed of any of his property the said Court or Judge shall forthwith make an order for allowing to the petitioner such weekly sum or sums of money as shall in the whole appear to be reasonably sufficient for such maintenance the same allowance to be paid by such detaining creditors (if more than one) and in such proportions respectively as to such Court or Judge shall seem expedient.

Allowance how paid.

IX. AND BE IT ENACTED that the sum or sums of money so ordered to be paid and allowed as aforesaid shall be invariably paid weekly upon each Monday into the hands of the gaoler or his deputy for the use of the petitioner between the hours of nine and four or by two weekly instalments at one time upon every alternate Monday—

On default debtor to be discharged.

AND if failure shall happen to be in any instance made in the due payment of any or either of the sums so ordered (or shall be or have been made in the due payment of any sum ordered under the provisions of the said Act hereby repealed) it shall be lawful for the debtor or any person on his behalf immediately to apply by petition in a summary way to one of the Judges of the Supreme Court (or in Launceston to the Chairman of the said Court of General Quarter Sessions) and upon proof of such failure being made by affidavit or otherwise to the satisfaction of such Judge or Chairman be (as to the creditor or creditors having made such default) forthwith discharged out of custody.

Debtors lying in prison may be examined.

X. AND (in order to prevent as far as may be the voluntary continuance of a debtor in prison until he shall have become insolvent) BE IT ENACTED that in any case in which after the publication of this Act a debtor shall remain in prison in execution on process issued out of the Supreme Court for the space of one calendar month or upwards

5<sup>o</sup> GULIELMI IV. No. 7.

5

it shall be lawful for the creditor or creditors at whose suit he shall have so remained in execution in a summary way to apply to one of the Judges of the said Court that such debtor may be examined under the provisions of this Act touching his available effects and property and thereupon or as soon after as conveniently may be such Judge shall by an order in writing for that purpose cause such debtor to be brought up and examined upon oath before him by any or every such creditor touching the estate and effects of such debtor both real and personal whether in possession or expectancy or which he or any person for him shall be in any manner entitled to or interested in and touching all debts at the date of his caption due to and all monies then or since received or receivable by him and what part or parts of such estate and effects then are or can be at any time made in any manner applicable to the discharge of the debt or debts of such execution creditor or creditors—AND if the debtor be confined in the gaol at Launceston then it shall be lawful for the Judge to direct the said matters to be inquired into before or by the next Court of General Quarter Sessions to be there holden or before or by the Chairman of the said Court.

XI. AND BE IT ENACTED that it shall be lawful for such Judge or Court or Chairman from time to time to adjourn every such examination or inquiry and to summon the debtor's wife or any other person supposed to have any of the estate or effects of the debtor in her or his possession or control or to be able to give information to enable such Judge or Court or Chairman the better to discover such debtor's estate and effects and to examine every such person as any other witness may be examined in any action at law—AND the substance of all such examinations (as well of such witness as of the debtor) shall be taken down in writing at the time and being certified as correct by the clerk so taking the same shall be afterwards transmitted to and deposited in the office of the said Supreme Court for purposes of future reference.

Witnesses may be examined.

XII. AND (for the protection of execution creditors voluntarily consenting to the discharge of their debtors' persons) BE IT ENACTED that it shall be lawful for any creditor at whose suit any debtor shall be in prison in execution by writing subscribed by him in the presence of two witnesses and verified by affidavit before any Justice of the Peace to signify his consent to the discharge of such debtor without losing the benefit of his judgment—AND in every such case notwithstanding the subsequent discharge of such debtor thereupon the judgment upon which he was taken or charged in execution shall remain in full force and such creditor may at any time or times afterwards take out execution thereupon (notwithstanding that more than one year from the date thereof shall have expired) against the lands hereditaments and

Any creditor voluntarily discharging his debtor not to lose the benefit of his judgment.

chattels of such debtor or bring any action on such judgment or use any other remedy against any other person for the recovery of his demand (except by proceeding against the bail if any or by arrest of the person) as he might have done or had in case such debtor had never been charged or taken in execution by him.

For protection of  
Sheriffs.

XIII. AND BE IT ENACTED that every Sheriff or Gaoler in whose custody any such debtor as aforesaid shall be confined shall within twenty-four hours next after the receipt by him or his lawful deputy of any such order of discharge as aforesaid or of any such consent in writing so verified (if such debtor be detained only at the suit of the creditor so making such default as aforesaid or signing such consent) discharge and set at liberty such debtor and if any action shall be brought or proceeding be taken against such Sheriff or Gaoler for so doing or for any other thing done by him under the authority of this Act he may plead the general issue and give the special matter in evidence thereupon and if the verdict shall be for the defendant or the plaintiff be nonsuited or discontinue his action or if upon demurrer judgment be given against the plaintiff the defendant shall have treble costs and the like remedy for the same as any other defendant hath in any other case to recover costs by law.

For the relief of  
insolvent persons  
imprisoned for  
nonpayment of  
penalties.

XIV. AND (for the relief of persons imprisoned for the non-payment of fines or penalties wherein the Crown may be interested) BE IT ENACTED that it shall be lawful for any person now or hereafter suffering under such imprisonment for any sum not exceeding fifty pounds (whether the Crown shall be solely interested therein or jointly with an informer or other person) to apply by petition in writing to any Court of General Quarter Sessions of the Peace at one of its original days of meeting in the months of January April July or October (one week's previous notice of his intention so to apply having been given by him to the Justice or Justices under whose warrant or warrants he shall be so detained) setting forth the date when he was first taken in custody and for what amount and at whose instance or prosecution and upon the warrant of what Justice or Justices and that he hath no available property sufficient for his maintenance but is in truth unable to pay the amount for which he is so detained or any part thereof or to maintain himself in prison and praying therefore to be discharged under the provisions of this Act.

Such persons may  
be examined and  
discharged.

XV. AND BE IT ENACTED that thereupon (proof being made of such previous notice as aforesaid having been given) the said Court of Quarter Sessions at such sitting or upon some day or days of adjournment for that purpose shall cause the petitioner to be brought up by an

5° GULIELMI IV. No. 7.

order or orders made for that purpose and to be examined upon oath touching the truth of the matter contained in his said petition and touching such other matters in respect of the offence of which he was convicted and also in respect of his alleged incapacity to pay the amount for which he is so detained or to maintain himself in prison as the said Court may think proper to be inquired into—AND in case after inquiry so made it shall appear to the Court that the allegations of such petition are in fact true it shall be lawful for the said Court forthwith to transmit a certificate thereof with such petition to the Governor or Lieutenant-Governor for the time being who shall have power in his discretion at any time afterwards to make an order for the discharge of the petitioner out of custody as to the warrant or warrants mentioned in such petition but upon such terms and conditions nevertheless as to the petitioner's continuing under imprisonment for any further specified period or otherwise as to the said Governor or Lieutenant-Governor shall seem meet and as the circumstances of the case may appear to require.

XVI. AND BE IT ENACTED that in all cases in which no provision or no sufficient provision is by this Act made it shall be lawful for the Supreme Court of Van Diemen's Land from time to time to make and prescribe such rules and orders (either in any particular case or generally applicable to all cases) touching the manner of proceeding under this Act and otherwise for facilitating or more fully carrying its objects into effect and also for establishing a reasonable scale of fees to be paid in proceedings under this Act as to the said Court shall seem expedient and such rules and orders from time to time to revoke or alter as to the Court shall appear to be requisite and all such rules and orders shall be of the same force and effect as if they had been inserted in this present Act and the said Court and each of the Judges thereof in every matter or proceeding under this Act shall have power to award costs to be paid as and when and by and to whom the said Court or Judge shall in any case think fit to order.

Supreme Court may make rules for facilitating proceedings under the Act.

Costs may be awarded.

GEORGE ARTHUR.

Passed the Legislative Council this seventeenth day of September one thousand eight hundred and thirty-four,

ADAM TURNBULL, *Clerk of the Council.*

