



ANNO TERTIO

VICTORIÆ REGINÆ,

No. 5.

*By His Excellency SIR JOHN FRANKLIN, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.*

*AN ACT to regulate the Law of Arrest for Debt in the Island of Van Diemen's Land.*

**W**HEREAS by the Act of Council passed in the present Session PREAMBLE. intituled "An Act to make provision for the more effectual Distribution of Insolvent Estates" the Act of this Island passed in the sixth year of the reign of His late Majesty intituled "An Act to provide for the Distribution of Insolvent Estates and for the amendment in other respects of the Law of Debtor and Creditor" will become and be repealed from and after the first day of August now next ensuing—**BE IT THEREFORE ENACTED** by His Excellency SIR JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer a Captain in Her Majesty's Royal Navy and Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies by and with the advice of the Legislative Council that from and after the said first day of August no mesne process shall be issued for the arrest of any person in any civil action except in the cases and upon such orders for that purpose to be made as are herein-after provided for.

No mesne process to issue except in certain cases.

A Judge or Commissioner of the Supreme Court may order defendant to be arrested in certain cases.

II. AND BE IT FURTHER ENACTED that if a plaintiff in any action in the Supreme Court of Van Diemen's Land in which the defendant is now liable to arrest shall by the affidavit of himself or herself or of some other person show to the satisfaction of any Judge or any Commissioner of the same Court that such plaintiff hath a cause of action against the defendant or defendants to the amount of twenty pounds or upwards or hath sustained damage to that amount and such plaintiff or any other person shall in and by the same or any other affidavit make oath that the deponent believes and that in his or her opinion there is sufficient reason to believe that the defendant or any one or more of the defendants is or are shortly about to depart from this Colony it shall be lawful for such Judge or Commissioner by an order in writing to direct that such defendant or defendants as last aforesaid shall be held to bail for such sum as such Judge or Commissioner shall think fit not exceeding the amount of the debt or damages and thereupon it shall be lawful for such plaintiff within such time as shall be expressed in such order but not afterwards to sue out a writ of *capias* against any such defendant so directed to be held to bail.

Order may be made at any stage of the proceedings before final judgment.

III. AND BE IT FURTHER ENACTED that any such order may be made and the defendant arrested in pursuance thereof at any time after the commencement of such action and before final judgment shall have been obtained therein.

When Judge or Commissioner may refuse to make the order.

IV. AND BE IT FURTHER ENACTED that it shall be lawful for the Judge or Commissioner to whom application shall be made for any such order as aforesaid to examine *vivâ voce* and upon oath the person making such affidavit as aforesaid of his or her belief that any such defendant or defendants is or are shortly about to depart from the Colony as to the grounds of such belief and to refuse to make the order if in the opinion of such Judge or Commissioner such belief be in fact ill-founded.

Judge or Commissioner of the Supreme Court may order acceptors of certain bills and makers of certain notes to be held to bail in certain cases before the day of payment.

V. AND BE IT FURTHER ENACTED that whenever the holder or any one of the holders of any bill of exchange or promissory note for the payment of twenty pounds or upwards and of which the day of payment shall not be more than three calendar months distant or his her or their agent shall make oath by affidavit that the deponent believes and that in his or her opinion there is sufficient reason to believe that the acceptor or any one or more of the acceptors of such bill or the maker or any one or more of the makers of such note is or are shortly about to depart from this Colony with intent to evade the payment thereof it shall be lawful for any such Judge or Commissioner (notwithstanding that the day of payment of such bill or note shall not have arrived) by order in writing to direct that such acceptor or acceptors maker or makers as last aforesaid

shall be held to bail for such sum as such Judge or Commissioner shall think fit not exceeding the amount payable by such bill or note and thereupon it shall be lawful for such holder or agent within such time as shall be expressed in such order but not afterwards to sue out a writ of capias against any such acceptor or maker so directed to be held to bail—PROVIDED ALWAYS that the Judge or Commissioner to whom application shall be made for any such order as last aforesaid may examine vivâ voce and upon oath such holder or agent as to the grounds of his or her belief that any such acceptor or maker is shortly about to depart from this Colony with the intent aforesaid and to refuse to make such order if in the opinion of such Judge or Commissioner such belief be in fact ill-founded—PROVIDED ALSO that the plaintiff shall not

Time of declaring in the action.

VI. AND BE IT FURTHER ENACTED that the writ of capias in every case hereinbefore provided for may be issued by any Commissioner of the Supreme Court and that the name of every Commissioner who shall issue any such writ shall be by him subscribed thereto.

Writ of capias may be issued by a Commissioner.

VII. AND BE IT FURTHER ENACTED that after the first day of August now next ensuing the same proceedings may be had and taken upon any order to hold to bail (or for issuing a writ of capias) or upon any writ of capias which shall have been respectively made or issued on or before the said last-mentioned day as if the said Act of the sixth year of the reign of His late Majesty had not become repealed—PROVIDED that every such order or writ shall have been made or issued in conformity with the provisions of the said last-mentioned Act.

Regulating proceedings on writs issued on or before the first day of August next.

JOHN FRANKLIN.

Passed the Legislative Council this first day of July one thousand eight hundred and thirty-nine,

ADAM TURNBULL, *Clerk of the Councils.*

