

T A S M A N I A.



1867.

ANNO TRICESIMO-PRIMO

VICTORIÆ REGINÆ,

No. 16.

AN ACT to abolish Imprisonment for Debt, and to provide for the Punishment of Frauds committed by Debtors. [11 October, 1867.]

WHEREAS it is expedient that Imprisonment for Debt should be abolished in all cases where the debtor is not adjudged guilty of fraud or of other criminal or dishonest conduct, and that every debtor adjudged to be guilty of obtaining credit under false pretences or by means of fraud or breach of trust, or of wilfully contracting a debt without having at the time a reasonable expectation of being able to pay the same, or of delivering, transferring, charging, removing, or selling any property with intent to defraud his creditors or any of them, or of refusing or neglecting to pay a debt adjudged or ordered to be paid although having sufficient means and ability to pay the same, or of intending to leave *Tasmania* without paying any such debt, should be punished by imprisonment for such criminal or dishonest conduct: Be it therefore 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:—

PREAMBLE.

1 After the commencement of this Act no person shall be arrested or imprisoned or detained in prison upon any judgment already obtained or hereafter to be obtained in the Supreme Court or in any inferior Court, in any action for the recovery of any debt or damages, nor shall any person be attached or imprisoned, or detained in prison, on any decree or order of the Supreme Court in Equity or Lunacy already made or hereafter to be made to enforce the payment of money.

Imprisonment for Debt abolished.

Imprisonment for Debt Abolition.

Debtor may be summoned.

2 Whenever any sum of money recoverable under any such judgment, decree, or order of the Supreme Court for debt, damages, or costs remains 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 been issued upon or under such judgment, decree, or order, to obtain from a Judge of the said Court a Judgment Summons in the form in the Schedule (1), or to the like effect, directed to the person liable to pay such money, and such summons shall be served personally on such person, and if he appears in pursuance of such summons he may be examined upon oath by a Judge of the Supreme Court touching his estate and effects, and as to the property and means he has of discharging such debt, damages, or liability, or such part thereof as remains unsatisfied, and as to the disposal he may have made of any property, and as to whether he is about to leave *Tasmania* without discharging the debt, damages, or liability, or so much thereof as is still unsatisfied, and as to the circumstances under which the debt, damages, or liability the subject of such judgment, decree, or order was or were incurred; and the person obtaining such summons as aforesaid, and all other witnesses whom such Judge thinks requisite, may be examined upon oath touching the enquiries authorised to be made as aforesaid; and the costs of such summons and of all proceedings therein shall be deemed costs in the cause.

And may be examined or imprisoned.

3 If a person summoned as aforesaid does not attend as required by such summons, or allege a sufficient excuse for not attending, or, if attending, refuses to be sworn or make affirmation or disclose any of the matters aforesaid, or if he does not make answer touching the same to the satisfaction of the Judge, or if it appears, either by the examination of the party or by any other evidence, to the satisfaction of such Judge that such person has obtained credit from the plaintiff 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 decree 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 the judgment, decree, 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 *Tasmania* with intent to evade the payment of such debt, damages, or costs, it shall be lawful for such Judge, if he thinks fit, to order that such person shall be committed to some Gaol or House of Correction for any period not exceeding Six months.

Person obtaining summons unreasonably to pay costs.

4 If it appears to the Judge, upon the hearing of any such summons, that the person obtaining such summons has applied for the same without reasonable or sufficient cause, such Judge may order such person to pay such costs to the person summoned as the Judge deems just.

Power to examine and commit at hearing of the cause.

5 In every case where the defendant in any action or suit has been personally served with the summons to appear, or personally appears at the trial of the same, the Court at the hearing of the cause, or at any adjournment thereof if judgment is given against the defendant, shall

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have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as are hereinbefore conferred on a Judge in cases where the plaintiff has obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

6 Whenever any order of commitment is made as aforesaid, a warrant shall be issued under the hand of the Judge making the order, directed to the Sheriff, who by such warrant shall be empowered to take the body of the person against whom such order is made; and all constables and other peace officers shall aid in the execution of every such warrant; and the gaoler or keeper of every Gaol or House of Correction mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this Act or otherwise by due course of law; and no order or certificate granted under any law relating to Insolvent debtors shall be available to discharge any defendant from any commitment under such last-mentioned order.

Mode of issuing and executing warrants of commitment.

7 Any judgment summons under this Act, or any warrant of commitment in respect of an unsatisfied judgment, decree, or order of the Court, may respectively be in the form or to the effect given in the Schedule (1) and (2); and all such summonses or warrants shall be deemed sufficient to justify proceedings under them without any further statements of facts to show jurisdiction: Provided that such forms may be varied to meet the several cases of proceedings under this Act.

Judgment summonses and warrants of commitment sufficient if in form in Schedule.

8 Any person imprisoned under this Act who has paid or satisfied the debt or demand and costs remaining due at the time of the order of imprisonment being made as hereinbefore provided, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction signed by the Registrar of the Court, by leave of a Judge of the Supreme Court: Notwithstanding the provisions hereinbefore contained, it shall be lawful for a Judge of the Supreme Court at any time to order under his hand (if under the special circumstances of the case he thinks fit so to do) that any person in gaol or custody under any such order of commitment shall be forthwith discharged, and such person shall be forthwith discharged accordingly.

Debtor to be discharged from custody upon payment of debt and costs.

9 Any order of commitment under the provisions hereinbefore contained may (if the special circumstances of the case shall appear to the Judge to warrant it) be made by such Judge *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 may be filed in the Supreme Court, and such person may be dealt with as if an order of commitment had been made as hereinbefore directed.

Orders may be made *ex parte*.

10 When any order for the payment of money is made by a Stipendiary Magistrate or Two Justices, the Magistrate or Justices making such order may at the hearing commit, or so long as any such order remains unsatisfied, any Justice may, on the application of the complainant, issue a summons in the form in the Schedule (1) or to the like effect to the defendant to appear before a Stipendiary Magistrate or any Two Justices for the purposes of this Act, and in either such case the Stipendiary Magistrate or any Two Justices, as the case may be, shall have the same

Justices may commit for 14 days.

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powers of examining the defendant and witnesses and of committing the defendant to prison as a Judge of the Supreme Court has under this Act in the case of a person against whom a judgment is recovered in that Court : Provided that in any such case the period of imprisonment shall not exceed Fourteen days ; and provided further, that upon production of the certificate of the Clerk of Petty Sessions that the amount ordered to be paid, with all costs, has been paid to him, it shall be lawful for any Justice of the Peace to order the discharge of the person imprisoned.

Chairman of General Sessions may commit for 40 days.

11 The Chairman of every Court of General Sessions of the Peace now constituted or which may hereafter be constituted for the purpose of entertaining actions for debts or damages under any law now in force, or which may hereafter be enacted in that behalf, shall have and exercise with respect to every person liable upon any judgment recovered in such Court, the same powers as are conferred by this Act upon a Judge of the Supreme Court with reference to persons liable to pay money under judgments in that Court, save and except that no such Chairman shall commit a defendant to gaol for any of the causes in this Act mentioned for a longer period than Forty days.

Commissioner of Court of Requests may commit for 40 days.

12 The Commissioner of every Court of Requests constituted or to be constituted under any law now in force, or which may hereafter be enacted in that behalf, shall have and exercise with respect to persons liable to pay money under judgments recovered in such Court the same powers as are conferred by this Act on a Judge of the Supreme Court with reference to persons liable to pay money under judgments in that Court, save and except that no such Commissioner shall commit a person to gaol for any of the causes in this Act mentioned for a longer period than Forty days.

Examination of persons.

13 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.

Powers of Judge as to witnesses.

14 Any Judge of the Supreme Court shall for the purpose of compelling the attendance and examination of witnesses have the powers of the Supreme Court, and the Commissioner of every Court of Requests, and the Chairman of every Court of General Sessions, shall have the same powers as are ordinarily exercised by him, or by the Court of which he is an officer, for the purpose of compelling the attendance and examination of witnesses in any proceeding under this Act, and the defendant shall be deemed to be a witness.

Appeal to Supreme Court against order of commitment.

15 Any judgment debtor or person aggrieved by any order of commitment made under this Act may, upon depositing the amount of debt and costs, or upon entering into such recognizance, and subject to such terms and conditions as the Judge of the Supreme Court, the Commissioner of the Court of Requests, or the Chairman of General Sessions who respectively made such order sees fit, appeal against such order to the Supreme Court, or, except where such order is made by a Judge, to a Judge thereof ; and such Court or Judge, as the case may be, 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.

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16 Any person imprisoned under this Act by order of any Chairman of General Sessions, or by any Commissioner of a Court of Requests, who has paid or satisfied the debt or demand and costs due at the time of the order of imprisonment being made, together with the costs of obtaining such order and all subsequent costs, shall be discharged out of custody upon the certificate of such payment or satisfaction signed by the Registrar of the Court in which the order for imprisonment was made by leave of the Chairman or Commissioner, as the case may be.

Person imprisoned to be released on payment of debt and costs.

17 The Judges of the Supreme Court may from time to time make and alter Rules for regulating the practice and proceedings before a Judge or any inferior Court, and such Rules shall be obeyed and observed in all such proceedings.

Judges may make Rules.

18 Imprisonment under this Act shall not in anywise operate as a satisfaction or discharge of the debt or other cause of action or suit on which a judgment, decree, or order has been obtained, or protect the person imprisoned from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or take away any right to take out execution or distress against the goods and chattels and land of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Imprisonment not to operate as a satisfaction for the debt, &c.

19 Any person in execution or imprisoned at or after the time of this Act coming into operation solely upon or in virtue of any judgment, decree, or order upon which such person could not after such date be taken or charged in execution or attached or imprisoned may make application to a Judge of the Supreme Court, or to the Court in which such judgment shall have been obtained or such decree or order shall have been made, to be discharged out of custody; and on such application, and on the facts entitling such person to apply under this Act for such discharge being proved to the satisfaction of such Judge or Court, such person shall be forthwith discharged out of custody without payment of any fees, by an order of such Judge or Court: Provided that if it shall happen that any such discharge shall have been unduly or fraudulently obtained upon any false allegation or circumstances which if true might have entitled the prisoner to be discharged by virtue of this Act, such prisoner shall, upon the same being made to appear to the satisfaction of the Judge or Court by whose order such prisoner shall have been so discharged, be liable to be again taken in execution and remanded to his former custody by an order of such Judge or Court: Provided also, that no Sheriff, Gaoler, or other person whatsoever shall be liable as for the escape of any such prisoner in respect of his enlargement during such time as he shall have been at large by means of such his undue discharge as aforesaid: Provided also, that notwithstanding the discharge of any debtor by an order of any such Judge or Court in manner aforesaid, the judgment, decree, or order whereupon any such debtor was taken or charged in execution, or attached or imprisoned, shall nevertheless remain in full force to the intent that the creditor thereunder may have and take remedy and execution upon every such judgment, decree, or order against the property and effects of any such debtor in such manner and form as such creditor otherwise could or might have done in case such debtor had never been taken or charged in execution or attached or imprisoned upon such judgment, decree, or order.

Person taken in execution after this Act comes into operation may apply for his discharge from custody.

If discharge fraudulently obtained, debtor liable to be again taken in execution.

Sheriff, &c., not liable for escape during time debtor is at large upon undue discharge. Notwithstanding discharge judgment to remain in force against property.

20 The judgments, decrees, and orders of any Court for the payment

Judgments for

Imprisonment for Debt Abolition.

(2.)

WARRANT OF COMMITMENT.

In the [*Title as in Summons.*]

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

To the Sheriff [*or Bailiff*] of the said Court and all Constables and Peace Officers,
and to the Keeper of the [*Gaol used by the Court.*]

WHEREAS the [Plaintiff] obtained a Judgment [*or Decree or Order*] against the [Defendant] in the [*give the Title of the Court*], on the day of 18 , for the payment of £ for Debt [*or Damages*] and Costs, upon which Judgment [*or Decree or Order*], and the subsequent Process issued thereon, the sum of £ was at the date of the issuing of the Summons hereinafter mentioned and still is due :

And whereas a Summons was at the instance of the [Plaintiff] duly issued out of this Court, by which the [Defendant] was required to appear at on the day of 186 , to answer such Questions as might be put to him pursuant to "The Imprisonment for Debt Abolition Act," in relation to such Debt [*Damages or Costs*], which Summons was proved to have been personally and duly served on the [Defendant] : [*or as the case may require if the Order be made ex parte.*]

And whereas this Court at the hearing of the said Summons ordered that the [Defendant] should be committed to Gaol for [*state the time*] for [*as the case may be*] not appearing pursuant to such Summons, or alleging a sufficient excuse for not so appearing ;

[*or for refusing to be sworn*] ;
[*or for refusing to answer such Questions as aforesaid to the satisfaction of the Judge, or as the case may be*] ;
[*or for contracting the said Debt or Liability under false pretences, or by means of fraud, or breach of trust, or without reasonable expectation of being able to pay the same*] ;
[*or for making a gift or transfer of part of his property with intent to defraud his Creditors*] ;
[*or for having charged or removed or concealed part of his property with intent to defraud his Creditors*] ;
[*or for not having satisfied the said Judgment, Decree, or Order, and Costs, having had sufficient means and ability so to do*] ;
or for being about to leave Tasmania without paying the Debt, Damages, or Costs [*or so much thereof as may still be unsatisfied*] ;

These are therefore to require you the said Sheriff [*or Bailiff*] and others to take the [Defendant], and to deliver him to the Keeper of the [*Gaol used by the Court*], and you the said Keeper to receive the [Defendant], and him safely keep in the said Gaol for days from the arrest under this Warrant, or until he shall be sooner discharged by due course of law.

Dated this [*insert date of Order*] day of 186 .

E.F.

Judge of the Supreme Court [*or Commissioner of Court of Requests, or Chairman of Court of General Sessions, or Two of Her Majesty's Justices, or a Stipendiary Magistrate, as the case may be*] ;

	£ s. d.
Amount remaining due	
Poundage for issuing this Warrant	
TOTAL.....	

This Warrant *remains in force One year* from the date hereof.

This Form to be applicable to all Judgments recovered at the hearing, or by default, or by consent, and to all Orders within the Jurisdiction of the Court.

