

WESTERN AUSTRALIA

ANNO OCTAVO

VICTORIÆ REGINÆ

No. 10

An Act to extend the remedies of Creditors against Debtors about to leave the Colony.

[Assented to 22nd August, 1844.]

Preamble

WHEREAS by the ninth section of an Act of the Legislative Council passed in the second year of the reign of King William IV., intituled 'An Act for establishing a Court of Civil Judicature,' it is enacted that if any person shall have a claim or ground of action of whatsoever nature against any other person who may be about to leave this Colony, and the party having such claim or ground of action as aforesaid shall produce to the Commissioner of the Civil Court reasonable *prima facie* evidence of such his right of action and of the intention of such other party to leave the Colony, in such case it shall be lawful for the said Commissioner to issue a warrant under his hand for the apprehension of the party intending to leave the Colony, who

*Remedies of Creditors against Debtors*

shall thereupon give reasonable security, at the discretion of the said Commissioner, to abide the result of proceedings in the said Court to be founded on such right of action, or else shall be kept in custody until such proceedings shall have terminated: Provided always that the party claiming such warrant shall prosecute his claim with all reasonable diligence, otherwise it shall be lawful for the said Commissioner to discharge the party so kept in custody as aforesaid on his petition; and whereas it is expedient to empower some other person to issue such warrant as aforesaid during the occasional absence on circuit of the said Commissioner: Be it therefore enacted by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that during any occasional absence on circuit of the Commissioner of the Civil Court, it shall be lawful for His Excellency the Governor, upon the written application of any party desiring such warrant as aforesaid, or such warrant as hereinafter mentioned, to appoint some fit and proper person to receive such evidence and to issue such warrant as aforesaid or as hereinafter mentioned, and to do all things incident to and collateral therewith as the said Commissioner is empowered to do by the said section of the Act aforesaid or by this Act.

The Governor empowered to appoint a person to act in certain cases during the occasional absence of the Commissioner of the Civil Court

2. And be it enacted that if any person has or shall, before or after the passing of this Act, become the sole acceptor of any bill of exchange, or sole maker of any promissory note, or has or shall have entered into any other valid contract, written or verbal, by which bill, note or contract such person is or shall be solely bound or liable to pay within this Colony to any other person or persons any sum of money on or before a certain day or time (the payment of such money not being secured by mortgage or pledge), and if the person for the time being entitled to the benefit of such bill, note or contract, or his or her agent, shall, by the affidavit of himself or herself or of any other person, show to the satisfaction of the Commissioner of the Civil Court that the person so liable as aforesaid is about to leave this Colony before the time of payment specified by such bill, note, or contract without having satisfied the same, and without giving or tendering reasonable security (other than such bill, note, or contract itself) for the due satisfaction thereof it shall be lawful for the said Commissioner, or for any person appointed to act during his absence as aforesaid, to order that the person so about to leave this Colony be forthwith arrested to answer an action to be forthwith commenced against him or her by, or in the name of, the person by whom or in whose behalf such order shall have been obtained, for the amount secured by or remaining due upon such bill, note, or contract, as for a debt already payable; and thereupon it shall be lawful for the person on whose behalf such order shall have been obtained, or for his or her agent, forthwith to commence such action and to sue out of the said Court, a writ or warrant in the form sanctioned by the present or any future rules and orders of the said Court for the arrest of the person so about to leave this Colony as aforesaid.

Sole acceptor of a Bill of Exchange, &c., payable in the Colony, about to leave the Colony before the time of payment, may be arrested, and action commenced against him as for a present debt

3. And be it enacted that if any person arrested under any such order as aforesaid shall pay to the Sheriff or Sheriff's Officer making such arrest (in acquiescence and satisfaction to and of the plaintiff's claim) the sum sued for, less interest thereon (after the rate allowed by

If the person so arrested shall either pay the sum sued for, or give security, he may be discharged

---

*Remedies of Creditors against Debtors*

---

the rules for the time being of the said Court) for the interval between the time of such actual payment and the time of payment according to contract, together with the Sheriff's lawful fees and charges for such arrest, and the sum of thirty shillings to answer plaintiff's costs; or if the person so arrested shall make such deposit or give such other security as is or shall be required by the rules and orders of the said Court to procure the discharge of a person arrested for a present ground of action, then and in any of the said cases the person arrested under any such order as aforesaid shall be forthwith discharged from the custody of the Sheriff without any order for that purpose.

If the person so arrested shall not pay or give security, he shall remain in custody till judgment or nonsuit

4. And be it enacted that if any person arrested under any such order as aforesaid shall fail to make such payment to the Sheriff or Sheriff's Officer, or give such security as aforesaid, he or she shall remain in the custody of the Sheriff till final judgment or nonsuit; and it shall be lawful for the plaintiff in any such action as aforesaid to prosecute the same in like manner as for a debt already payable; but the plaintiff shall not be entitled to recover by such action more than the difference between the amount contracted to be paid by the defendant therein and the interest on such amount after the rate aforesaid for the interval between the date of judgment in such action and the time fixed by contract for the payment of such amount: Provided always that if the plaintiff in such action shall fail to prosecute the same with all reasonable diligence, it shall be lawful for the said Commissioner to discharge the party so kept in custody as aforesaid on petition or motion.

But if plaintiff fail to use due diligence, Commissioner may discharge the party from custody.

Sheriff to dispose of the sum as directed by the rules and orders of the Court

5. And be it enacted that the Sheriff shall dispose of any sum or sums paid into his hands under the provisions of this Act in like manner as he is directed by the rules and orders for the time being of the said Court to dispose of any sums paid to him in cases of ordinary arrests.

Act may be amended

6. And be it enacted that this Act may be altered, amended, or repealed by any Act to be passed during this present session.

JOHN HUTT,  
GOVERNOR.

---