



WESTERN AUSTRALIA.

ANNO TRICESIMO QUARTO

VICTORIÆ REGINÆ.

No. XXI.

AN ACT for the Punishment of Fraudulent Debtors, and
for other purposes.

[13th January, 1871.]

BE it enacted, by His Excellency the Governor of Western
Australia and its Dependencies, by and with the advice and
consent of the Legislative Council thereof, as follows:—

PRELIMINARY.

1 THIS Act may be cited for all purposes as “The Debtors’
Act, 1871.” Short title.

2 THIS Act shall not come into operation until the day on
which “The Bankruptcy Act, 1871,” comes into operation, which
day is hereinafter referred to as the commencement of this Act; and
words and expressions defined or explained in “The Bankruptcy
Act, 1871,” shall have the same meaning in this Act.

Commencement and con-
struction of Act.

PART I.

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PART I.—EXCEPTIONS TO THE ABOLITION OF IMPRISONMENT FOR DEBT.

Power to commit for small debts.

3 SUBJECT to the provisions hereinafter mentioned, and to the prescribed rules, any Court may commit to prison, for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court.

Provided (I.) That the jurisdiction by this section given of committing a person to prison shall, in the case of any Court other than the Supreme Court, be exercised only subject to the following restrictions; that is to say—

- (a.) Be exercised only by a Judge or his deputy, and by an order made in open Court, and showing on its face the ground on which it is issued.
 - (b.) Be exercised only as respects a judgment of the Supreme Court at law or in equity, when such judgment does not exceed fifty pounds exclusive of costs.
 - (c.) Be exercised only as respects a judgment of a Local Court by a Local Court Judge or his deputy.
- (II.) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the Court that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the Court thinks just; and for the purpose of such proof, the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Any jurisdiction by this section given to the Supreme Court may be exercised by the Chief Justice sitting in Chambers, or otherwise, in the prescribed manner.

For the purposes of this section any Court may direct any debt due from any person, in pursuance of any order or judgment of that or any other competent Court, to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by the Supreme Court may be committed to the prison in which they would have been confined if

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if arrested on a writ of *capias ad satisfaciendum*; and every order of committal by the Supreme Court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ.

This section, so far as it relates to any Local Court, shall be deemed to be substitution for Sections 51 and 52 of the "Ordinance for the recovery of Small Debts and Demands, 1863;" and that Ordinance shall be construed accordingly, and shall extend to orders made by the Local Court with respect to sums due, in pursuance of any order or Judgment of any Court other than a Local Court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner, to the effect that he has satisfied the debt or instalment of a debt, in respect of which he was imprisoned, together with the prescribed costs (if any).

4 WHERE the plaintiff in any action in the Supreme Court proves at any time before final judgment by evidence on oath, to the satisfaction of the Chief Justice, 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 the Colony unless he be apprehended, and that the absence of the defendant from Western Australia will materially prejudice the plaintiff in the prosecution of his action, the Chief Justice 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 Western Australia without the leave of the Court: Provided that the plaintiff claiming such order of arrest shall prosecute his suit with reasonable diligence; otherwise it shall be lawful for the said Chief Justice to discharge the party from custody.

Power under certain circumstances to arrest defendant about to quit the Colony.

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 Western Australia will materially prejudice the plaintiff in the prosecution of his action; and the security given (instead of being that the defendant shall not go out of Western Australia) shall be to the effect that any sum recovered against the defendant in the
action

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action shall be paid, or that the defendant shall be rendered to prison.

Saving for Bankruptcy Act, 1871.

5 NOTHING in this part of this Act shall in any way affect any right or power under "The Bankruptcy Act, 1871," to arrest or imprison any person.

Definition of "prescribed."

6 IN this part of this Act the term "prescribed" means as follows:—

As respects the Supreme Court, prescribed by general rules and orders to be made in pursuance of "The Supreme Court Ordinance, 1861;"

As respects the Local Courts, prescribed by general rules to be made under "The Small Debts Ordinance, 1863;" and

As respects any other Court, prescribed by the rules to be made, with the approval of the Chief Justice, by the persons having power to make rules in relation to the practice of such Court; or if there be no such persons, by the Judge of such Court.

And general rules and orders may respectively be made by such authorities as aforesaid, for the purpose of carrying into effect this part of this Act.

PART II.—PUNISHMENT OF FRAUDULENT DEBTORS.

Punishment of fraudulent debtors.

7 ANY person adjudged bankrupt, and any person whose affairs are liquidated by arrangement or by a composition, in pursuance of "The Bankruptcy Act, 1871," shall in each of the cases following be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labor; that is to say—

- (1.) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud.

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- (II.) If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud.
- (III.) If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud.
- (IV.) If, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, or within four months next after such presentation or commencement, he conceals any part of his property to the value of Ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud.
- (V.) If, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of Ten pounds or upwards.
- (VI.) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud.
- (VII.) If knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation or composition, he fail for the period of a month to inform such trustee as aforesaid thereof.
- (VIII.) If, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he he had no intent to conceal the state of his affairs or to defeat the law.
- (IX.) If, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, or within four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs,
unless

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unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

- (x.) If, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, or within four months next before such presentation or commencement, he makes, or is privy to the making of, any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.
- (xi.) If, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, or within four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission, in any document affecting or relating to his property or affairs.
- (xii.) If, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, or at any meeting of his creditors within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses.
- (xiii.) If within four months next before the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same.
- (xiv.) If within four months next before the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud.
- (xv.) If within four months next before the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, he, being a trader, pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud.

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- (XVI.) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs or his Bankruptcy, liquidation, or composition.

8 IF any person who is adjudged a bankrupt, or has his affairs liquidated by arrangement or composition after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, or, within four months before such presentation or commencement, quits the Colony and takes with him, or attempts or makes preparation for quitting the Colony and for taking with him, any part of his property, to the amount of Twenty pounds or upwards, which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony, punishable with imprisonment for a time not exceeding two years, with or without hard labor. Penalty for absconding with property.

9 ANY person shall, in each of the cases following, be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labor; that is to say— Penalty on fraudulently obtaining credit, &c.

- (I.) If, in incurring any debt or liability, he has obtained credit under false pretences, or by means of any other fraud.
- (II.) If he has, with intent to defraud his creditors or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property.
- (III.) If he has, with intent to defraud his creditors, concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him.

10 IF any person in any bankruptcy, or liquidation by arrangement or composition with creditors, in pursuance of "The Bankruptcy Act, 1871," wilfully and with intent to defraud, makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanor, punishable with imprisonment not exceeding one year, with or without hard labor. False claim, &c., a misdemeanor.

11 WHERE a debtor makes any arrangement or composition with

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Debts incurred by fraud.

with his creditors under the provisions of "The Bankruptcy Act, 1871," he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof before the date of the arrangement or composition he obtained forbearance by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

Order by Court for prosecution on report of trustee.

12 WHERE a trustee in any bankruptcy reports to any Court exercising jurisdiction in bankruptcy, that in his opinion a bankrupt has been guilty of any offence under this Act, or where the Court is satisfied, upon the representation of any creditor or member of the committee of inspection, that there is ground to believe that the bankrupt has been guilty of any offence under this Act, the Court shall, if it appears to the Court that there is a reasonable probability that the bankrupt may be convicted, order the trustee to prosecute the bankrupt for such offence.

Expenses of prosecution.

13 WHERE the prosecution of the bankrupt under this Act is ordered by the Court, then, on the production of the order of the Court, the expenses of the prosecution shall be allowed, paid, and borne, as expenses of prosecutions for felony are allowed, paid, and borne.

Justices should consider any evidence adduced to disprove guilty intent.

14 WHEN any person is charged with any misdemeanor under the second part of this Act before any Justice or Justices, such Justice or Justices shall take into consideration any evidence adduced before him or them tending to show that the act charged was not committed with a guilty intent.

Form of indictment or information.

15 IN an indictment or information for an offence under this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant or document of any Court acting under "The Bankruptcy Act, 1871."

Justices of the Peace become bankrupt or arranging with creditors.

16 IF any person, being assigned by Her Majesty's Commission to act as a Justice of the Peace, is adjudged bankrupt, or makes any arrangement or composition with his creditors under "The Bankruptcy Act, 1871," he shall be and remain incapable of acting as a Justice of the Peace until he has been newly assigned by Her Majesty in that behalf.

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17 WHERE any person is liable under any other Act, Ordinance, Act of Parliament, or at Common Law to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act, Ordinance, Act of Parliament, or at Common Law, or under this Act, so that he be not punished twice for the same offence.

Punishments under this Act cumulative.

PART III.—WARRANTS OF ATTORNEY, COGNOVITS, AND ORDERS FOR JUDGMENT.

18 AFTER the commencement of this Act, a warrant of attorney to confess judgment in any personal action, or *cognovit actionem* given by any person, shall not be of any force unless there is present some attorney of the Supreme Court on behalf of such person, expressly named by him and attending at his request to inform him of the nature and effect of such warrant or *cognovit* before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney.

Warrants of attorney and *cognovit actionem* to be executed in the presence of an attorney on behalf of the person.

19 A WARRANT of attorney to confess judgment or *cognovit actionem*, not executed in manner aforesaid, shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof, or was fully informed of the same.

Warrants, &c., not formally executed, invalid.

20 WHERE in an action a warrant of attorney to confess judgment or a *cognovit actionem* is given, and the same, or a true copy thereof, is not filed with the officer acting as clerk of the dockets and judgments within twenty-one days next after the execution thereof (as required by the statutory practice of the Supreme Court for preventing frauds upon creditors by secret warrants of attorney to confess judgment), the same shall be deemed fraudulent, and shall be void; and if any such warrant of attorney or *cognovit actionem* so filed was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper or parchment with the warrant or *cognovit* before the filing thereof, otherwise the warrant or *cognovit* shall be void.

Filing of warrant of attorney and *cognovit actionem*.

21 WHERE a Judge's order, made by consent, is given by a defendant in a personal action, whereby the plaintiff is authorised forthwith or at any future time to sign or enter up judgment, or to issue or to take out execution, whether such order is made subject to any defeasance or condition or not, the order shall, together with an affidavit of the time of such consent being given, and a description of

Filing of Judge's order to enter up judgment.

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of the residence and occupation of the defendant, be filed with the officer acting as clerk of the dockets and judgments in the Supreme Court, within twenty-one days after the making of the order, otherwise the said order and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment, shall be void.

Application of 3 Geo. IV.
c. 39 and 6 & 7 Vic. c. 66
to Judge's orders.

22 THE provisions of the Act of the third year of King George the Fourth, (chapter 39) and of the Act of the session of the sixth and seventh years of Her Majesty's reign (chapter 66), "To enlarge the provisions of an Act for preventing frauds upon creditors by secret warrants of attorney to confess judgment," for liberty to file a warrant of attorney or *cognovit actionem*, or a copy thereof, with the clerk of the dockets and judgments, and for the clerk to make certain entries and search in relation thereto, and for entering satisfaction thereon, and for fees for search, and filing and taking office copies, shall extend and be applicable to every such Judge's order.

REPEAL.

Enactments described in
Schedule repealed.

23 THE enactments described in the Schedule of this Act are hereby repealed; but this repeal shall not affect the past operation of any such enactment, or affect the validity or invalidity of any thing done or suffered before the commencement of this Act, or of any right, title, obligation, or liability accrued, or restriction imposed, before the commencement of this Act, by or under any such enactment; nor shall this repeal interfere with the institution or prosecution of any proceedings in respect of any offence committed against, or under any penalty or forfeiture incurred under, any enactment hereby repealed.

SCHEDULE

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SCHEDULE.

ENACTMENTS REPEALED.

- 20 Vic. 9. An Ordinance to enlarge the remedies of creditors against the persons of their debtors.
- 24 Vic. 15. An Ordinance to provide for the more
(*in part*) effectual administration of Justice by } In part: namely, Section 25.
establishing a Supreme Court.
- 27 Vic. 21. An Ordinance for the recovery of small
(*in part*) debts and demands. } In part: namely, Sections
51 to 54 both inclusive,
and Section 73.
- 31 Vic. 8. An Ordinance for adopting certain Acts
(*in part*) of Imperial Parliament. } In part: namely, so much
and so far as adopts and
puts in force the tenth
Section of an Act of the
Imperial Parliament (18 &
19 Vic. c. 15), intituled
*An Act for the better
protection of purchasers
against judgments, Crown
debts, cases of lis pendens,
and life annuities or rent
charges.*

PERTH:

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