
ABSCONDING DEBTORS.

41° VICTORIÆ, No. 17.

[As amended by 43 Vict. No. 24.]

AN ACT to repeal an Act intituled "An Act to facilitate the arrest of Absconding Debtors," and to make other provision in lieu thereof.

[Assented to 17th August, 1877.]

WHEREAS the laws now in force for the arrest of debtors absconding from the Colony are insufficient for that purpose, and it is further expedient to afford facilities to prevent persons who may have engaged to pay any sum or sums of money on their leaving the Colony from leaving the Colony without paying the same: Be it therefore 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:—

1. If any professing creditor shall, by affidavit of himself or any other credible person, satisfy any Justice of the Peace in the said Colony that any person is indebted to such creditor in any sum not less than five pounds; or if any duly authorised person shall by affidavit satisfy any such Justice that any person is under an engagement to remain in the Colony for any agreed term, or otherwise to pay any sum of money not less than Five pounds on his leaving the Colony prior to the expiration of such term; or if any duly authorised person shall by affidavit satisfy any such Justice that he has a good cause of action against any person to an amount not less than Five pounds; and if in either of such cases it be further shown to the satisfaction of such Justice as aforesaid that there is reasonable ground for believing that the person so indebted or under engagement or liability as aforesaid is about to quit the Colony without paying his said debt or the sum of money he is under engagement to pay on leaving the Colony, or discharging his liability as aforesaid, it shall be lawful for such Justice of the Peace, by a warrant to be signed

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and sealed by him, to direct any constable to apprehend such person so about to quit the Colony. Provided that no such warrant shall be executed except at a sea port of the Colony.

2. Upon the arrest of any such person under any such warrant, he shall be brought as soon as may be before a Justice of the Peace, who shall proceed to hear and inquire into the case; and it shall be lawful for such Justice to take and receive evidence upon affidavit upon any such inquiry; and if it shall appear to such Justice that such person so arrested is indebted as aforesaid, or is under an engagement or any liability as aforesaid, or is about to quit the Colony without paying his said debt or the sum of money as aforesaid or discharging his said liability, it shall be lawful for the said Justice, by warrant under his hand and seal, to direct any constable to apprehend such debtor or other person as often as he may be found in any vessel about to proceed to sea, in default of payment of his said debt or the sum of money as aforesaid, or discharging his said liability, or unless and until he shall sooner give security by bond with at least one sufficient surety for double the amount claimed, and conditioned for the payment of any sum which may be recovered against him in respect of the alleged debt or liability as aforesaid, or, in the case of a person under engagement as aforesaid, that he will not leave the Colony without first paying any sum of money which he may have contracted to pay on his leaving the Colony. Provided always, that any person arrested as lastly mentioned shall be forthwith brought ashore and liberated.

3. All necessary and proper proceedings for the final determination or recovery of any claim or matter in respect of which any such last-mentioned warrant has issued as aforesaid, shall be taken and completed with reasonable diligence; in default whereof any person against whom any such warrant has issued may apply to any two Justices to quash the said warrant, and such Justices are hereby empowered, in case it shall appear to them that the said proceedings have not been taken or completed with such diligence as aforesaid, to quash the said warrant.

4. At any time after the expiration of three months from the issuing of any such last-mentioned warrant as aforesaid, it shall be lawful for the person against whom such warrant has issued to apply to the Chief Justice to quash the same, and

thereupon it shall be lawful for the Chief Justice, on being satisfied that such person has no means wherewith to pay the debt or debts in respect of which any such warrant has issued, to quash the said warrant, and also any other warrant that may have been issued against such person, pursuant to the provisions of this Act, upon such terms and conditions as to him may seem fit; and after any such warrant or warrants have been quashed by the Chief Justice under the provisions of this section, no fresh warrant shall issue against such person under the provisions of this Act for a period of six calendar months.

5. (1.) In all cases where a person shall be arrested under the provisions of this Act, the person making the affidavit upon which the warrant of apprehension issues shall, if the said warrant be unlawfully or maliciously, injuriously or oppressively, or by abuse of process obtained, be liable to a fine or penalty not exceeding Fifty pounds on a summary conviction before any two or more Justices of the Peace.

Persons unlawfully or maliciously arresting to be liable to fine.
See 43 Vic., No. 24.

(2.) The whole of the said penalty shall be payable to the person aggrieved.

(3.) Such conviction shall be in addition to any civil remedy which the person aggrieved and so arrested might but for such conviction have against the person so convicted or any other person in respect of the matter complained of.

(4.) Sections B and I of the Shortening Ordinance shall be incorporated with and taken to form part of this section to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth herein.

See Interpretation Act, 1918, Second Schedule, paragraph B, and Part VIII. of Justices Act, 1902-1926, as to "I." (Appeal.)

6. The Act of the Legislative Council, No. 27 of 1871, is hereby repealed.