

WESTERN AUSTRALIA.

ABSCONDING DEBTORS.

41° Victoriæ, No. 17.

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

43 Vict., No. 24 of 1879, assented to 1st October, 1879;

No. 12 of 1960, assented to 6th October, 1960;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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 State 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 State from leaving the State 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:—

Amended by
No. 12 of
1960, s. 2.

1. If any professing creditor shall, by affidavit of himself or any other credible person, satisfy any Justice of the Peace in the said State that any person is indebted to such creditor in any sum not

Amended by
No 12 of
1960, ss. 2
and 3; No.
113 of 1965,
s. 8.

less than forty dollars; or if any duly authorised person shall by affidavit satisfy any such Justice that any person is under an engagement to remain in the State for any agreed term, or otherwise to pay any sum of money not less than forty dollars on his leaving the State 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 forty dollars; 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 State without paying his said debt or the sum of money he is under engagement to pay on leaving the State, or discharging his liability as aforesaid, it shall be lawful for such Justice of the Peace, by a warrant to be signed by him, to direct any constable to apprehend such person so about to quit the State.

Amended by
No 12 of
1960, ss. 2
and 4.

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 State 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, to direct any constable to apprehend such debtor or other person as often as he may be found in or on, or boarding or entering a vessel, aircraft, railway train, motor vehicle, or any other vehicle or means of transport, whether of the kind or class as those so expressly mentioned or not, about to leave the State, 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 State without first paying any sum of money which he may have contracted to pay on his leaving the State. Provided always, that any person arrested as lastly mentioned shall be forthwith brought from the vessel, aircraft, train or vehicle which he was in or on or was boarding or entering, 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 lastmentioned 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 lastmentioned 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 months.

Amended by
No. 12 of
1960, s. 5.

Persons unlawfully or maliciously arresting to be liable to fine.

Added by 43 Vict. No. 24, ss. 1 to 4; renumbered s. 5 in 1928 reprint.

Amended by No. 12 of 1960, s. 6; No. 113 of 1965, s. 8.

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 guilty of an offence, and be liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding six months.

(2) [*Repealed by No. 12 of 1960, s. 6.*]

(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) [*Repealed by No. 12 of 1960, s. 6.*]

Added by No. 12 of 1960, s. 7. Amended by No. 113 of 1965, s. 8.

5A. A person who, after he has been arrested under a warrant issued pursuant to the provisions of this Act, quits or makes preparation to quit the State with intent to defraud the creditor of the debt or sum of money or the amount of liability in respect of which the warrant was issued, is guilty of an offence, and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding six months.

S. 5 of 41 Vict., No. 17, renumbered s. 6 in 1928 reprint.

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