Legislative Council.

37° VICTORIÆ, 1874.

A BILL

To amend the Law of Arrest and Imprisonment on Civil Process.

[MR. INNES :—19 *February*, 1874.]

WHEREAS the Law of arrest on Mesne Process and of imprisonment for debt requires amendment Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :— Preamble.

1. After the day of next no person shall be arrested under the Act for abolishing arrest upon Mesne Process (third Victoria number fifteen) unless the Judge shall have been satisfied by affidavit that the application for an order to hold to bail has been made within a reasonable time after the fact of the defendant's intention to abscond or remove as in the second section of the said Act mentioned had come to the knowledge of the plaintiff and unless the Judge shall also be satisfied by affidavit disclosing the facts constituting the ground of the claim or by evidence on oath before such Judge that such plaintiff has *primâ facie* a good cause of action in respect of his claim against the defendant. No arrest allowed after undue delay and unless Judge satisfied of cause of action &c.

Seamen allowed the means of obtaining such arrest &c.

2. Where any seaman shall have absented himself from his ship without leave for the *bonâ fide* purpose of making such an application or of commencing an action at law or instituting any proceeding before Justices against the master of such ship or any officer thereof such absence shall not be punishable either as desertion or absence without leave and if any master or officer knowing that any seaman is desirous of commencing or instituting such an action or proceeding shall in any manner prevent him from going on shore or unreasonably refuse him leave of absence for that purpose such master or officer shall be liable to a penalty of not less than *five* nor more than *fifty* pounds which may be recovered in a summary way before any two Justices of the Peace Provided that this section shall not apply to any seaman who has not asked for leave of absence for the purposes aforesaid or one of them within seven days after the arrival of his ship in port or if the cause of action or prosecution have arisen since her arrival then within three days after the accruing of such cause Provided also that no such absence without leave shall in any case for the purposes of this section exceed forty-eight hours.

Proviso.

Occasional absence of Judges.

3. In case of the absence at any time from Sydney of all the Judges of the Supreme Court or of the illness of the Judge remaining in Sydney any order or rule to arrest or discharge a defendant from arrest under the first recited Act may be made by the Chief Commissioner of Insolvent Estates who shall for the purposes of the Act and in all matters relating thereto possess during such absence all the powers of any such Judge (subject to appeal to the Supreme Court or a Judge thereof as hereinafter provided upon such terms and within such time as the Judges by General Rules shall direct) Provided that immediately before the signature of the Chief Commissioner in every such case there shall be written by him the words "In the absence of the Judges" Provided further that no order or rule made under the provisions of this Act by the Chief Commissioner of Insolvent Estates shall be void or invalid in law by reason of the alleged absence from Sydney of all the Judges or of the alleged illness of the Judge remaining in Sydney not being true in fact but such order or rule shall remain in force and be valid in law unless and until avoided by being discharged with or without costs on fresh evidence and on the merits by the said Chief Commissioner or on appeal by motion before the Supreme Court or on summons in Chambers by a Judge thereof as the case may be.

Amendment of 11 Vic. No. 13 sec. 14.

4. Notwithstanding the provisions of the fourteenth section of the Act eleventh Victoria number thirteen intituled "*An Act to amend the law respecting Defamatory Words and Libel*" any person who shall at any time at or after the passing of this Act have been or be for a period of twelve calendar months in the custody of the Sheriff or of any gaoler or officer in execution of any judgment obtained under the said Act shall be entitled to his discharge from such custody and shall be forthwith discharged therefrom after sequestration of his estate (made at any time whilst he shall have been or be in custody on such execution) on the order of the Chief Commissioner of Insolvent Estates directed to such Sheriff gaoler or officer Provided always that no such Sheriff gaoler or officer shall incur any liability whatsoever in respect of such discharge to any judgment creditor or other person for anything done by him under this or the next following section.

When judgment debtors and other persons in custody may be discharged.

5. Any person now or who may hereafter be in the custody of any sheriff gaoler or officer in execution of a judgment (not being a judgment obtained under the said last recited Act) under any writ of *capias ad satisfaciendum* issued out of the Supreme or any District Court or under any writ of *capias ad respondendum* shall upon sequestration of his estate (whether made before or after the passing of this Act)

Act) in pursuance of the provisions in that behalf in the Act or Acts in force for the time being relating to Insolvency be entitled to his discharge from such custody on the order of the Chief Commissioner of Insolvent Estates and shall be forthwith discharged from such custody either absolutely or on such conditions as the said Commissioner may think fit to impose Provided that in case such person is or shall be in such custody under any writ of *capias ad satisfaciendum* issued to restrain him from leaving the Colony under the provisions of any enactment in that behalf he shall not be entitled to his discharge unless he shall find security in such manner and to such amount as shall be ordered by such Commissioner conditioned that he will not remove from the Colony until he shall have received his certificate in due course of law under the Act or Acts relating to Insolvency or have been otherwise lawfully released from his insolvency.

Provision as to reference &c. made Rules of Court.

6. When any reference or submission to arbitration has been or shall be made a rule of the Supreme Court no writ of attachment shall hereafter be issued to enforce payment of any money costs or expenses thereunder but writs of *Fieri Facias* or *Capias ad satisfaciendum* and such other writs as may be necessary shall be issued by order of the Supreme Court or a Judge thereof in vacation or by the Chief Commissioner of Insolvent Estates in the cases specified in section three hereof And every such order shall have the force and effect of a Judgment at Law or Decree in Equity.

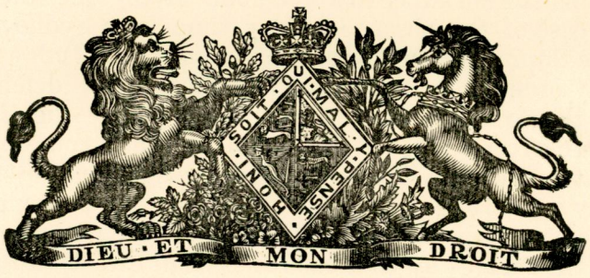
Repeal of sec. 32 of 5 Vic. No. 17.

7. The thirty-second section of the Act fifth Victoria number seventeen is hereby repealed.

Short title.

8. This Act may be cited as the "Imprisonment on Civil Process Amendment Act of 1874."

Sydney : Thomas Richards, Government Printer.—1874.



New South Wales.

ANNO TRICESIMO SEPTIMO

VICTORIÆ REGINÆ.

* * *

No. XI.

An Act to amend the Law of Arrest and Imprisonment on Civil Process. [Assented to, 2nd April, 1874.]

Preamble.

WHEREAS the Law of arrest on Mesne Process and of imprisonment for debt requires amendment Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

No arrest allowed after undue delay and unless Judge satisfied of cause of action &c.

1. After the thirty-first day of March next no person shall be arrested under the Act for abolishing arrest upon Mesne Process (third Victoria number fifteen) unless the Judge shall have been satisfied by affidavit that the application for an order to hold to bail has been made within a reasonable time after the fact of the defendant's intention to abscond or remove as in the second section of the said Act mentioned had come to the knowledge of the plaintiff or might have become known to him by reasonable diligence on his part and unless the Judge shall also be satisfied by affidavit disclosing the facts constituting the ground of the claim or by evidence on oath before such Judge that such plaintiff has *primâ facie* a good cause of action in respect of his claim against the defendant.

2.

Seamen allowed the means of obtaining such arrest &c.

2. Where any seaman shall have absented himself from his ship without leave for the *bonâ fide* purpose of making such an application or of commencing an action at law or instituting any proceeding before Justices against the master of such ship or any officer thereof such absence shall not be punishable either as desertion or absence without leave and if any master or officer knowing that any seaman is desirous of commencing or instituting such an action or proceeding shall in any manner prevent him from going on shore or unreasonably refuse him leave of absence for that purpose such master or officer shall be liable to a penalty of not less than two nor more than fifty pounds which may be recovered in a summary way before any two Justices of the Peace Provided that this section shall not apply to any seaman who has not asked for leave of absence for the purposes aforesaid or one of them within seven days after the arrival of his ship in port or if the cause of action or prosecution have arisen since her arrival then within three days after the accruing of such cause Provided also that no such absence without leave shall in any case for the purposes of this section exceed twelve hours at any one time.

Proviso.

Occasional absence of Judges.

3. In case of the absence at any time from Sydney of all the Judges of the Supreme Court or of the illness of the Judge remaining in Sydney any order or rule to arrest or discharge a defendant from arrest under the first recited Act may be made by the Chief Commissioner of Insolvent Estates who shall for the purposes of the Act and in all matters relating thereto possess during such absence all the powers of any such Judge (subject to appeal to the Supreme Court or a Judge thereof as hereinafter provided upon such terms and within such time as the Judges by General Rules shall direct) Provided that immediately before the signature of the Chief Commissioner in every such case there shall be written by him the words "In the absence of the Judges" Provided further that no order or rule made under the provisions of this Act by the Chief Commissioner of Insolvent Estates shall be void or invalid in law by reason of the alleged absence from Sydney of all the Judges or of the alleged illness of the Judge remaining in Sydney not being true in fact but such order or rule shall remain in force and be valid in law unless and until avoided by being discharged with or without costs on fresh evidence and on the merits by the said Chief Commissioner or on appeal by motion before the Supreme Court or on summons in Chambers by a Judge thereof as the case may be.

Amendment of 11 Vic. No. 13 sec. 14.

4. Notwithstanding the provisions of the fourteenth section of the Act eleventh Victoria number thirteen intituled "*An Act to amend the law respecting Defamatory Words and Libel*" any person who shall at any time at or after the passing of this Act have been or be for a period of twelve calendar months in the custody of the Sheriff or of any gaoler or officer in execution of any judgment obtained under the said Act shall be entitled to his discharge from such custody and shall be forthwith discharged therefrom after sequestration of his estate (made at any time whilst he shall have been or be in custody on such execution) on the order of the Chief Commissioner of Insolvent Estates directed to such Sheriff gaoler or officer Provided always that no such Sheriff gaoler or officer shall incur any liability whatsoever in respect of such discharge to any judgment creditor or other person for anything done by him under this or the next following section.

When judgment debtors and other persons in custody may be discharged.

5. Any person now or who may hereafter be in the custody of any sheriff gaoler or officer in execution of a judgment (not being a judgment obtained under the said last recited Act) under any writ of *capias ad satisfaciendum* issued out of the Supreme or any District Court or under any writ of *capias ad respondendum* shall upon sequestration of his estate (whether made before or after the passing of this Act)

Act) in pursuance of the provisions in that behalf in the Act or Acts in force for the time being relating to Insolvency be entitled to his discharge from such custody on the order of the Chief Commissioner of Insolvent Estates and shall be forthwith discharged from such custody either absolutely or on such conditions as the said Commissioner may think fit to impose Provided that in case such person is or shall be in such custody under any writ of *capias ad satisfaciendum* or *capias ad respondendum* issued to restrain him from leaving the Colony under the provisions of any enactment in that behalf he shall not be entitled to his discharge unless he shall find security in such manner and to such amount as shall be ordered by such Commissioner conditioned that he will not remove from the Colony until he shall have received his certificate in due course of law under the Act or Acts relating to Insolvency or have been otherwise lawfully released from his insolvency.

Provision as to reference &c. made Rules of Court.

6. When any reference or submission to arbitration has been or shall be made a rule of the Supreme Court no writ of attachment shall hereafter be issued to enforce payment of any money costs or expenses thereunder but writs of *fieri facias* or *capias ad satisfaciendum* and such other writs as may be necessary shall be issued by order of the Supreme Court or a Judge thereof in vacation or by the Chief Commissioner of Insolvent Estates in the cases specified in section three hereof And every such order shall have the force and effect of a Judgment at Law or Decree in Equity.

Writs of *ne exeat Coloniâ* in absence &c. of Judge.

7. In case of the absence from Sydney of the Primary Judge or of all the Judges of the Supreme Court or of the illness of the Judge remaining in Sydney any order for a writ *ne exeat Coloniâ* may after a Bill filed in the Equitable Jurisdiction of the Supreme Court be made by the Chief Commissioner of Insolvent Estates according to the powers and jurisdiction and subject to the conditions hereinbefore provided by the third section hereof as to arrests in actions at Law.

Repeal of sec. 32 of 5 Vic. No. 17.

8. The thirty-second section of the Act fifth Victoria number seventeen is hereby repealed.

Short title.

9. This Act may be cited as the "Imprisonment on Civil Process Amendment Act of 1874."

By Authority: Thomas Richards, Government Printer, Sydney, 1874.