

No. XI.

DEBTORS' RELIEF.

An Act for the relief of Debtors in Execution for Debts which they are unable to pay. [6th March, 1832.]

Preamble.

11 Geo. IV. No. 7.

Any person imprisoned for debts which he is unable to pay may apply to the Court to be discharged.

Supreme Court to appoint days for sitting for hearing petitions distinct from the ordinary sittings of the Court.

Prisoner to file schedule with his petition.

WHEREAS an Act of the Governor in Council was passed in the eleventh year of the reign of His late Majesty King George the Fourth intituled "*An Act for the relief of Debtors and for an equal distribution of their Estates and Effects amongst Creditors*" which said Act will expire on the third day of April next And whereas it is expedient to make provision for the relief of such persons as by misfortune and without being guilty of fraud or dishonesty may be imprisoned for debts or demands which they are unable to pay Be it therefore enacted by His Excellency the Governor with the advice of the Legislative Council of the said Colony That it shall and may be lawful for any person from and after the third day of April next who shall have been charged in execution in any prison in New South Wales for a period of three months or upwards for or by reason of any debt damages or costs sum or sums of money to apply by petition in a summary way to the Supreme Court or to any of the Judges of the Supreme Court for his or her discharge from custody and such petition shall set forth his or her inability to pay the debt or demand for which he or she is imprisoned and shall be subscribed by such prisoner and shall be forthwith filed in such Court.

2. And for the better and more effectually carrying this Act into effect and to prevent the delays that may arise from the adjournment of the ordinary sittings of the Supreme Court Be it further enacted That it shall and may be lawful for the said Supreme Court as often as they see fit to appoint days and times for the hearing and determination of such petitions and all further proceedings thereupon and that one or more of the Judges of the said Supreme Court shall and may sit and preside therein and that the act and proceedings of any one of the Judges presiding therein shall be as valid and effectual as if the said act and proceedings had taken place in the ordinary sittings of the said Supreme Court.

3. And be it further enacted That every such prisoner who shall apply for relief under this Act shall together with his or her petition deliver into the said Court a schedule containing a full and fair

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fair description of such prisoner as to his or her name trade or profession together with the usual place of abode of such prisoner and also a particular statement of the several judgments for which he or she shall have been arrested or upon which any detainer or detainers may have been lodged against him or her and the *bonâ fide* cause or consideration of or for which the demands arose upon which such judgments were had and also a full true and particular account and discovery of all the estate and effects of such prisoner real and personal in possession reversion remainder or expectancy of every kind and nature whatsoever which such prisoner or any person or persons in trust for him or her or for his or her use benefit or advantage in any manner whatsoever shall have been or shall be seized or possessed of or interested in or entitled unto either solely or jointly with any other person or persons or which such prisoner or any other person or persons at the time of filing his or her petition or at any time since shall have had any power to dispose of or charge for his or her benefit together with a full true and perfect account of all debts at these times respectively due or growing due and owing to such prisoner or to any person or persons in trust for him or her or for his or her benefit and advantage either solely or jointly with any other person or persons and the names and places of abode of the several persons from whom such debts shall be due or growing due and of the witnesses who can prove such debts as far as such prisoner can set forth the same and in what manner all or any part of such estate or effects real or personal have been applied or disposed of since the time of the commencement of any action or suit upon which such prisoner was arrested as aforesaid and which or what part of such estate or effects or any of them shall have been in any manner conveyed assigned disposed of charged or incumbered in any manner whatsoever and when and in what manner and for what consideration and to whom and for whose benefit in particular and which and what part or parts of such estate and effects shall at the time of the presentation of such schedule be in any manner applicable to the discharge of the demands for which he or she is in execution or can be made available for such purpose And the said schedule shall also contain a balance sheet of so much of the receipts and expenditures of such prisoner and of the items composing the same as shall be at any time required by the Court in that behalf and shall also fully and truly describe the wearing apparel bedding and other necessities of such prisoner and his or her family not exceeding in the whole the value of twenty pounds which may be excepted by such prisoner from the operation of the said Act together with the value of such excepted articles respectively and the said schedule shall be sworn to and signed by such prisoner in the presence of two witnesses and after presentation thereof to the said Court as aforesaid shall be forthwith filed in the said Court together with all books papers deeds and writings in anywise relating to such prisoner's estate or effects in his or her possession or under his or her control.

4. And be it further enacted That the said Court shall cause notice of the filing of every such petition and schedule and of the time so appointed as aforesaid for hearing the matters and things therein set forth to be given to the creditor or creditors at whose suit such prisoner was arrested or detained in execution or to the attorney or agent of such creditor or creditors respectively.

Notice of the filing of schedule to be given to creditors.

5. And be it further enacted That at the hearing as aforesaid the said Court shall examine into the matters of the schedule of every such prisoner so brought before the said Court upon the oath of such prisoner and of such parties and other witnesses as the said Court shall think fit to examine thereupon and in case any creditor having

Court to examine into matter of schedule and to examine parties.

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having such judgment as aforesaid shall intend to oppose such prisoner's discharge it shall and may be lawful for such creditor to put questions to such prisoner and examine such witnesses as the said Court shall think fit touching the matters in such schedule and touching such other matters as the said Court shall think fit and proper to enquire into in order to the due execution of this Act and in case the said Court shall entertain any doubt touching any matter alleged against such prisoner at such hearing to prevent his or her discharge or otherwise touching the schedule or examination of such prisoner or it shall appear that amendment is necessary to be made of such schedule or in case such prisoner shall not answer upon oath to the satisfaction of the said Court it shall be lawful for the said Court to adjourn the hearing and examination of such prisoner and of the matters of his or her schedule and of witnesses thereupon to some future sitting of the said Court and in every such case the said Court shall commit the said prisoner to custody there to remain until such future day so as aforesaid to be appointed for the hearing of the said matter when such hearing and examination shall be further proceeded in as often as to the said Court shall seem fit.

Court to discharge
prisoner.

6. And be it further enacted That after such examination made into the matters of the petition and schedule of any such prisoner as hereinbefore directed it shall and may be lawful for the said Court upon such prisoner swearing to the truth of his or her schedule to adjudge that such prisoner shall be entitled to the benefit of this Act immediately or at such time as the said Court shall direct in pursuance of the provisions hereinafter contained in that behalf as to the several debts and demands included in such schedule and for which such prisoner shall have been imprisoned or detained in execution and to cause such prisoner to be discharged accordingly.

Prisoner fraudulently
concealing his affairs
&c. to be liable to
imprisonment for
three years.

7. And be it further enacted That in case it shall appear to the said Court that such prisoner has fraudulently with intent to conceal the state of his or her affairs or to defeat the object of this Act destroyed or otherwise wilfully prevented or purposely withheld the production of any books papers or writings relating to such of his or her affairs as are subject to investigation under this Act or kept or caused to be kept false books or made false entries in or withheld entries from or wilfully altered or falsified any such books papers or writings or that such prisoner has fraudulently and with intent to diminish his means of paying and satisfying any creditor or creditors at whose suit he shall have been imprisoned or detained in execution as aforesaid have discharged or concealed any debt due to him or made away with or assigned transferred charged delivered or made over any of his estate or effects or any part of his property of what kind soever after the commencement of his or her imprisonment in execution as aforesaid then it shall and may be lawful for the said Court to order and adjudge that such prisoner shall be committed and imprisoned in the common gaol for such period or periods not exceeding three years in the whole as the said Court shall direct.

Prisoner if debts
have been fraudu-
lently contracted or
be due for damages
in any action for a
malicious prosecu-
tion to be imprisoned
not exceeding two
years.

8. And be it further enacted That in case it shall appear to the said Court that such prisoner shall have been imprisoned for any debt or demand contracted fraudulently or by means of false pretences or without having any reasonable or probable expectation at the time when contracted of paying the same or shall have fraudulently or by means of false pretences obtained forbearance of any of his or her said debts or shall be imprisoned for damages recovered in any action for criminal conversation with the wife or for seducing the daughter or servant of the plaintiff in such action or for breach of promise of marriage made to the plaintiff in such action or for damages recovered in any action for a malicious prosecution or for libel or for slander or
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in any other action for a malicious injury done to the plaintiff therein or in any action of tort or trespass to the person or property of the plaintiff therein where it shall appear to the satisfaction of the Court that the injury complained of was malicious then it shall and may be lawful for the said Court to order and direct the said prisoner to be committed to the common gaol for a period or periods not exceeding two years in the whole as the said Court shall direct.

9. And be it further enacted That whenever any such creditor as aforesaid opposing the discharge of any such prisoner shall prove to the satisfaction of the said Court that such prisoner has done or committed any act for which upon such adjudication as aforesaid he or she may be committed to such custody as aforesaid for a period not exceeding three years as aforesaid the said Court shall adjudge the taxed costs of such opposition to be paid to such opposing creditor out of the estate and effects of such prisoner before any other appropriation shall be made thereof and in all other cases of opposition to a prisoner's discharge being substantiated or effectual it shall be lawful for the said Court to adjudge in like manner if it shall seem meet.

Costs to be paid to creditor in certain cases.

10. And be it further enacted That as soon as any such adjudication shall be made for the discharge of any prisoner pursuant to the provisions of this Act or Ordinance all and every the estates and effects of such prisoner shall be immediately liable to be taken in execution on any such judgment or judgments and sold by the Sheriff of the said Court and the proceeds of such sale shall be paid to or distributed rateably amongst the creditor or creditors of such prisoner at whose suit he or she shall have been imprisoned or detained in execution and all debts and claims whatsoever due and owing to such prisoner shall and may at the instance of any such creditor or creditors be sued for and recovered in the name of such prisoner and the proceeds after paying all expenses incurred in the recovery thereof shall be paid and distributed in like manner as the proceeds of the sale of the estate and effects of such prisoner are hereinbefore directed to be paid and distributed and if such creditor or creditors as aforesaid shall not be fully paid and satisfied as well in respect of any such judgment or judgments as aforesaid upon which such prisoner shall have been taken or detained in execution as of all such necessary costs as the Court shall award or if at any time after the discharge of such prisoner as aforesaid it shall appear to the satisfaction of the said Court that such prisoner is able to satisfy such judgment or judgments or that he or she is dead leaving assets the said Court may permit execution to be taken out on any such judgment or judgments for such sum of money as under all the circumstances of the case the Court shall order such sum to be paid and distributed in like manner as hereinbefore directed and such further proceedings shall and may be had upon such judgment as may seem fit to the discretion of the said Court from time to time until the whole of the debts due to the several creditors as aforesaid against whom such discharge shall have been obtained shall be fully paid and satisfied together with such costs as the said Court shall think fit to award and no *scire facias* shall be necessary to revive any such judgment on account of any lapse of time but execution shall at all times issue thereon by virtue of the order of the said Court. Provided always that in case any such application shall appear to the said Court to be ill-founded or vexatious it shall be lawful for the said Court not only to refuse to make any order on such application but also to dismiss the same with such costs against the party or parties making the same as to the said Court shall appear reasonable and the said costs shall be paid accordingly.

Liability of estate and effects.

Provido as to vexatious applications.

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If prisoner after adjudication become entitled to property Court may order execution to issue on judgment.

11. And be it further enacted That in case any such prisoner shall after he or she shall have been discharged by any such adjudication as aforesaid become entitled to or possessed of in his or her own right any stock in the bank establishments of this Colony or any bills of exchange promissory notes bank notes or other choses in action or other property whether the same be in this Colony or elsewhere which by law cannot be taken in execution under any such judgment as aforesaid and such prisoner shall have refused to convey or assign or transfer such stock bills of exchange promissory notes bank notes or other choses in action or other property or so much thereof as may be sufficient to satisfy any such judgment then and in such case it shall and may be lawful for any of the creditors against whom such prisoner shall have obtained his discharge to apply by petition in a summary way setting forth the facts of the case to the said Court and to pray that the said prisoner may be taken and committed to custody notwithstanding any such adjudication and discharge as aforesaid and thereupon if upon examination by the said Court and hearing as well the said creditor or creditors as the said prisoner in case he or she shall appear or (due notice having been given to him or her) shall not appear it shall appear to the said Court that the contents of such petition are true then and in such case the said Court shall so declare and adjudge and shall thereupon order the said prisoner to be apprehended and recommitted to prison until he or she shall convey assign and transfer such stock bills of exchange promissory notes or other choses in action and other property or so much thereof as the said Court shall direct for the benefit of such creditors as aforesaid.

Prisoner and persons knowing of his property to be examined relating thereto.

12. And whereas the estate both real and personal of any person whose discharge has been adjudicated under this Act may not be sufficiently described or discovered in his or her schedule so sworn to as aforesaid Be it therefore enacted That it shall and may be lawful to and for the creditors against whom any such prisoner shall have obtained his discharge as aforesaid from time to time to apply to the said Court setting forth that such person or his wife or any other person who shall be known or suspected to have any of the estate or effects of such prisoner in his or her custody possession or control or any person who shall be believed to be indebted to the said prisoner or to be capable of giving information to enable the Court or the said creditors more easily to discover or obtain possession of the estate or effects of such prisoner may be examined as to any matters or things relating to his or her estate and effects by the said Court And if the said prisoner or other person on payment or tender of payment of such reasonable charges as the said Court shall judge sufficient shall neglect or refuse to appear before the said Court at such time as the said Court shall order or having come before the said Court shall refuse to be sworn or answer such questions as by the said Court shall be put to him or her relating to the discovery of the estate and effects of such prisoner then and in every such case it shall be lawful for the said Court to order and direct such prisoner or other person to be apprehended and committed to prison there to remain without bail or mainprize until such time as he she or they shall submit to the order of the said Court in that behalf and shall answer upon oath or otherwise as shall be required to all such lawful questions as shall be put to him her or them in pursuance of the same for the purposes aforesaid.

Prisoner fraudulently omitting property in his schedule may be committed.

13. And be it further enacted That in case any prisoner shall with intent to defraud his or her said creditors wilfully and fraudulently omit in his or her schedule so sworn to as aforesaid any effects or property whatsoever or retain or except out of such schedule as wearing apparel bedding or other necessities property of greater value than

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than twenty pounds every such person so offending and any person aiding and assisting him to do the same shall upon being thereof convicted by due course of law be adjudged guilty of a misdemeanor and thereupon it shall and may be lawful for the said Court before whom such offender shall have been so tried and convicted to sentence such offender to be imprisoned and kept to hard labor for any period of time not exceeding three years and that in every indictment or information against any person for such offence it shall be sufficient to set forth the substance of the offence charged on the defendant without setting forth the petition or schedule order for hearing adjudication order of discharge or remand or any warrant rule order or proceeding of or in the said Court except so much of the schedule of such prisoner as may be necessary for the purpose.

14. And be it further enacted That if any prisoner who shall apply for his or her discharge under the provisions of this Act or any other person taking an oath under the provisions of this Act shall wilfully forswear or perjure himself or herself in any oath to be taken under this Act and shall be lawfully convicted thereof he or she so offending shall suffer such punishment as may by law be inflicted on persons convicted of wilful and corrupt perjury.

Persons guilty of perjury to be punished as by law.

15. And be it further enacted That no person who shall have been discharged by any such adjudication as aforesaid shall at any time thereafter be imprisoned by reason of any judgment so as aforesaid entered up against him or her according to this Act or for or by reason of any debt or sum of money or cash with respect to which such person shall have been discharged or for or by reason of any judgment decree or order for payment of the same but that upon every arrest or detainer in prison upon any such debt or sum of money or cash or judgment decree or order for payment of the same it shall and may be lawful for any Judge of the said Court and such Judge is hereby required upon proof made to his satisfaction that the cause of such arrest or detainer is such as hereinbefore mentioned to release such prisoner from custody unless it shall appear to such Judge upon enquiry that such adjudication as aforesaid was made without due notice where notice is by this Act required and at the same time if such Judge shall in his discretion seem fit it shall and may be lawful for him to order such plaintiff or any person or persons suing out such process to pay such prisoner the costs which he or she shall have incurred on such occasion or so much thereof as to such Judge shall seem reasonable and just such prisoner causing a common appearance to be entered for him or her in such action or suit.

No person after discharge to be imprisoned for any sum included in schedule.

16. Provided always and be it enacted That if at any time after adjudication made of any such prisoner's discharge in pursuance of this Act it shall appear to the satisfaction of the said Court that all the debts in respect of which such adjudication was made have been discharged and satisfied it shall be lawful for the said Court upon application duly made to order satisfaction to be entered on any such judgment as aforesaid and the order of the said Court for entering up such satisfaction shall be sufficient authority to the proper officer for entering up the same.

If debts be afterwards discharged Court may order satisfaction to be entered on judgment.

17. And be it further enacted That this Act shall not extend or be construed to extend to discharge any prisoner seeking the benefit thereof with respect to any debt due to His Majesty or His Successors or to any penalty with which he or she stand charged at the suit of the Crown or of any person for any offence committed against any Act or Acts relative to any branch of the Public Revenue or at the suit of the Sheriff or other public officer upon any bail-bond entered into for the appearance of any person prosecuted for any such offence.

Not to affect debts due to the Crown.

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Petitions books &c.
may by order of
Court be examined
by creditors &c.

18. And be it further enacted That the proper officer of the said Supreme Court shall on the reasonable request of any such prisoner as aforesaid or of any creditor or creditors of such prisoner at whose suit such prisoner shall be imprisoned or detained as aforesaid or his her or their attorney produce and shew to such prisoner creditor or creditors and his her or their attorney at such times as the said Court shall direct such petition schedule order or adjudication and all other orders and proceedings made and had in the matter of such prisoner's petition and all books papers and writings filed in such matter and permit him her or them to inspect and examine the same and shall provide for any such prisoner creditor or creditors or his or their attorney requiring the same a copy or copies of such petition and schedule or of such part thereof as shall be so required receiving such fee as the said Court shall appoint for so providing the same and that a copy of such petition schedule order and other orders and proceedings purporting to be signed by the officer in whose custody the same shall be or his deputy certifying the same to be a true copy of such petition schedule order or other proceeding and sealed with the seal of the said Court shall at all times be admitted in all Courts whatever as sufficient evidence of the same without any proof whatever given of the same further than the same is sealed with the seal of the said Court as aforesaid.

As to the proceedings
of the Court.

19. And be it further enacted That in all rules warrants and other proceedings of the said Court it shall be sufficient to set forth such rule order or warrant or in case of a warrant for the apprehension or detention of any person for the appearance of such person before the said Court or for the enforcing any rule or order of the said Court it shall be sufficient to set forth such rule or order and the warrant thereon and that the prisoner in any order rule warrant or other proceeding mentioned has been duly discharged under this Act or some other Act for the relief of insolvent debtors if he or she has been so discharged or if he or she has not been so discharged that he or she has applied by petition to the said Court for his or her discharge from custody according to the provisions of this Act without setting forth in any such order rule warrant or other proceeding the petition or the schedule balance sheet order for hearing adjudication order for discharge or any other rule order or proceeding of or in the said Court or any part thereof.

Courts may award
costs.

20. And be it further enacted That in all cases in which the said Court is by this Act authorized to award costs against any person or persons it shall and may be lawful for the said Court to authorize and cause such costs to be recovered from such person or persons in the same manner as costs awarded by any rule of the Supreme Court.

Insolvencies depend-
ing under former
Act to be proceeded
upon.

21. And be it further enacted That from and after the said third day of April next all and every matter and matters of insolvency which shall at that time have been declared and shall be depending in the said Supreme Court under the said recited Act passed in the eleventh year of the reign of his said late Majesty shall not in any way abate or be discontinued but that the same shall and may be proceeded upon in the said Court under the provisions of such recited Act or such of them as shall be then capable of taking effect or as near thereto as circumstances will allow and admit and the said Supreme Court is hereby authorized to make any such special order in each and every case that may be so pending as the said Court for that purpose may think proper to order and direct.

Continuance of Act.

22. And be it further enacted That this Law or Ordinance shall be and continue in force until the first day of May one thousand eight hundred and thirty-four.