

No. XIV.

DEBTORS' RELIEF.

An Act to revive and continue for a limited time an Act passed in the Second Year of the Reign of His late Majesty King William the Fourth intituled “ *An Act for the relief of Debtors in execution for Debts which they are unable to pay* ” and to make certain amendments therein. [20th September, 1838.]

Preamble.

2 Wm. IV. No. 11.

5 Wm. IV. No. 4.

6 Wm. IV. No. 18.

Any person charged in execution for debts which he is unable to pay may file a schedule of his effects and may be brought before a Judge and discharged.

Supreme Court or a Judge to appoint any time for hearing applications.

Schedule what it shall contain.

WHEREAS an Act of the Governor and Legislative Council of New South Wales was passed in the second year of the reign of His late Majesty King William the Fourth intituled “ *An Act for the relief of Debtors in execution for Debts which they are unable to pay* ” which said Act was by a certain other Act of the said Governor and Council passed in the fifth year of the reign of His said Majesty intituled “ *An Act to revive and continue for a limited time an Act of the Governor in Council passed in the second year of the reign of His present Majesty intituled ‘ An Act for the relief of Debtors in execution for Debts which they are unable to pay ’* ” continued until the thirty-first day of August one thousand eight hundred and thirty-six And whereas the said first recited Act was by a certain other Act of the said Governor and Council intituled “ *An Act further to continue for a limited time an Act intituled ‘ An Act for the relief of Debtors in execution for Debts which they are unable to pay ’* ” passed in the sixth year of the reign of His said Majesty further continued until the thirty-first day of August one thousand eight hundred and thirty-eight And it is expedient that the said first recited Act should be altered and amended and except in as far as so altered and amended should be revived and continued for a limited time Be it therefore enacted by His Excellency the Governor with the advice of the Legislative Council of the Colony of New South Wales aforesaid That it shall and may be lawful for any person from and after the first day of October next who shall have been charged in execution in any prison in New South Wales for or by reason of any debt damages or costs sum or sums of money to file a schedule in the office of the Supreme Court in the form marked A in the Schedule to this Act annexed and to obtain from the Chief Clerk of the said Court a rule to be brought up before the said Court or a Judge thereof for the purpose of being examined touching the truth of such schedule and to be discharged from custody as to such execution or executions.

2. And for the better and more effectually carrying this Act into effect Be it further enacted That it shall and may be lawful for the said Supreme Court or a Judge thereof to appoint such days and times for the hearing and determination of such applications and proceedings thereupon as shall be necessary.

3. And be it enacted That the schedule of every such prisoner who shall apply for relief under this Act shall contain a full and true 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

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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 seised 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 schedule 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 filing 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 said Court or a Judge thereof in that behalf and shall also fully and truly describe the wearing apparel bedding and other necessaries 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 signed by such prisoner and verified by affidavit in the form hereunto annexed marked B and 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 shall be filed with such schedule.

4. And be it enacted That the prisoner shall cause a true copy of his or her schedule and of the rule obtained by him or her upon the filing thereof to be served upon his or her detaining creditor or creditors and also upon the attorney or agent of such creditor or creditors at least three days before the day appointed for his or her examination and shall also within the like time serve a true copy of the said rule upon the gaoler of the prison wherein he or she shall be so detained provided always that if the detaining creditor or creditors cannot be found to be served with the said schedule and rule as aforesaid then their service upon his her or their attorney or attornies shall be deemed good service on such creditor or creditors.

Copy of schedule to be served on creditor or attorney and gaoler respectively.

5. And be it enacted That at the hearing as aforesaid the said Court or Judge shall examine into the matters of the schedule of every such prisoner so brought before the said Court or Judge upon the oath of such prisoner and of such parties and other witnesses as the said Court or Judge shall think fit to examine thereupon and in case any creditor having such judgment as aforesaid shall intend to oppose such prisoner's discharge it shall and may be lawful for such creditor

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

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creditor to put questions to such prisoner and examine such witnesses as the said Court or Judge shall think fit touching the matters in such schedule and touching such other matters as the said Court or Judge shall think fit and proper to enquire into in order to the due execution of this Act and in case the said Court or Judge 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 or Judge it shall be lawful for the said Court or Judge 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 day and in every such case the said Court or Judge 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 or Judge shall seem fit.

Court to discharge prisoner.

6. And be it further enacted That after such examination made into the matters of the schedule of any such prisoner as hereinbefore directed it shall and may be lawful for the said Court or Judge to adjudge that such prisoner shall be entitled to the benefit of this Act immediately or at such time as the said Court or Judge 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 or Judge 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 cause 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 her or made away with or assigned transferred charged delivered or made over any of his or her estate or effects or any part of his or her 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 or Judge 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 or Judge shall direct.

Prisoner if debts have been fraudulently contracted or be due for damages in any action for malicious prosecution to be imprisoned not exceeding two years.

8. And be it enacted That in case it shall appear to the said Court or Judge 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 in any other action for a malicious injury done to the plaintiff therein or in any

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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 or Judge that the injury complained of was malicious then it shall and may be lawful for the said Court or Judge 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 or Judge shall direct.

9. And be it enacted That whenever any such creditor as aforesaid opposing the discharge of such prisoner shall prove to the satisfaction of the said Court or Judge 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 or Judge 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 or Judge to adjudge in like manner if it shall seem meet.

Costs to be paid to creditor in certain cases.

10. And be it 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 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 or Judge 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 or Judge that such prisoner is able to satisfy such judgment or judgments or that he or she is dead leaving assets the said Court or Judge 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 or Judge 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 or Judge 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 or Judge 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 or Judge Provided always that in case any such application shall appear to the said Court or Judge to be ill-founded or vexatious it shall be lawful for the said Court or Judge 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 or Judge shall appear reasonable and the said costs shall be recovered in the usual way.

Liability of estate and effects.

Proviso 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 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 the said Court or Judge upon the application of the creditor or creditors against whom such prisoner shall have obtained his discharge and upon due notice of such application being given to such prisoner together with a copy of the affidavit upon which the application is founded to 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 or Judge shall direct and the costs of such application shall be in the discretion of the said Court or Judge.

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 or a Judge thereof 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 Judge 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 or Judge and if the said prisoner or other person on payment or tender of payment of such reasonable charges as the said Court or Judge shall judge sufficient shall neglect or refuse to appear before the said Court or Judge at such time as the said Court or Judge shall order or having come before the said Court or Judge shall refuse to be sworn or answer such questions as by the said Court or Judge 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 or Judge 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 or Judge 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 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 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

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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 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 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 see 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 the 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 or Judge 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 or Judge upon application duly made to order satisfaction to be entered on any such judgment as aforesaid and the order of the said Court or Judge 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 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 Her Majesty or Her Successors or to any penalty with which he or she stands 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.

18. And be it 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

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

and

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and his her or their attorney at such times as the said Court or Judge shall direct such schedule order or adjudication and all other orders and proceeding made and had in the matter 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 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 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 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.

*Ast to the proceedings
of the Court.*

19. And be it enacted That in all rules warrants and other proceedings of the said Court or Judge 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 Judge or for the enforcing any rule or order of the said Court or Judge 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 to the said Court or a Judge thereof 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 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.

*Court may award
costs.*

20. And be it further enacted That in all cases in which the said Court or Judge is by this Act authorized to award costs against any person or persons it shall and may be lawful for the said Court or Judge 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.

*Proceedings under
recited Acts depend-
ing in the Court may
be proceeded upon
under the provisions
of this Act.*

21. And be it further enacted That from and after the first day of October next every matter or proceeding which shall be depending in the said Court under all or any of the hereinbefore recited Acts shall not in any way abate or be discontinued but that the same shall and may be proceeded upon in the said Court or by any Judge thereof under the provisions of this Act and the said Court or any Judge thereof is hereby authorized to make any order in each and every case that may be so depending as the said Court or a Judge thereof 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 October one thousand eight hundred and forty.

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SCHEDULES REFERRED TO.

SCHEDULE A.

*In the Supreme Court of }
New South Wales. }*

A. B. } and { Plaintiff.
C. D. } Defendant.

A SCHEDULE of all the Estate and Effects of me A. B. or (C. D.) the above-named plaintiff or defendant (as the case may be) a prisoner in execution in the custody of the Sheriff at the suit of _____ or any person or persons in trust for me as I was or were possessed of or interested in or entitled unto either solely or jointly with any other person or persons or which I or any other person or persons at the time of filing this Schedule or at any time since have had any power to dispose of or charge for my benefit with a true account of all debts due or growing due or owing to me or to any person or persons in trust for me as witness my hand this _____ day of _____ one thousand eight hundred and _____

Name of Prisoner.	Trade or Profession.	Usual place of abode.	Date when lodged in execution.	Nature and amount of Judgment and the cause and consideration on which the demand arose.

REAL AND PERSONAL ESTATE.

[Here set forth a true and particular account and discovery of all the Estate and Effects of the Prisoner real and personal in reversion remainder or expectancy as required by the third section of the Act which the Prisoner had at the time of filing his Schedule and whether any of such Estate or Effects have been assigned disposed of or charged or incumbered and when and in what manner and to whom and for whose benefit and what part shall be applicable to the discharge of the demand for which the Prisoner is in execution or can be made available for such purpose also fully describe the bedding and other necessities of the Prisoner and his Family.]						
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DEBTS.

DEBTOR.		WITNESS.		Good.	Bad.	Doubtful.	Amount.		
Name.	Residence.	Name.	Residence.						

BALANCE SHEET.

To amount of Judgment.....					By amount of real and personal				
To amount of Cash expended					Estate with the exception				
since my imprisonment in					of Debts				
execution					Amount of Debts				
					Amount of Cash received				
					since in execution.....				

Appropriation.

SCHEDULE B.

*In the Supreme Court of }
New South Wales. }*

A. B. } and { Plaintiff.
C. D. } Defendant.

I of Sydney gentleman the above-named defendant do solemnly make oath and say that the Schedule hereunto annexed contains a particular statement of the several judgments for which I have been arrested or upon which any detainer has been lodged against me and the *bonâ fide* consideration for which the demand arose upon which the judgments were had Also a full and particular account and discovery of all my estate and effects real and personal in possession reversion remainder or expectancy of every kind and nature that I or any person has for my use and advantage or which I am seised possessed of interested in or entitled unto either solely or jointly with any other person or persons or which I or any other person or persons at the time of filing my petition or at any time since have had power to dispose of together with a full true and perfect account of all debts due or growing due and owing to me or to any person in trust for me or for my benefit or 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 are due or growing due and of the witnesses who can prove the same so far as I can set forth the same and in what manner all or any part of my estate or effects real or personal has been applied or disposed of since the commencement of this action And which or what part of my estate or effects 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 what part or parts of my estate and effects was at the time of the presentation of the annexed Schedule applicable to the discharge of the demand for which I am detained in execution or can be made available for such purpose And also a full and true description of the wearing apparel bedding and other necessities of myself and family together with the value thereof And of all books papers deeds and writings in anywise relating to my estate or effects in my possession or control.