

No. XXIV.

An Act to revive and continue for a limited time
an Act passed in the Second Year of the
Reign of Her present Majesty for the relief
of Debtors in execution for Debts which
they are unable to pay and to make certain
Amendments therein. [20th October, 1840.]

WHEREAS an Act of the Governor and Legislative Council of Preamble.
New South Wales was passed in the second year of the reign
of Her present Majesty Queen Victoria intituled "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 2 Wm. IV. No. 11
"are unable to pay" which said Act was to be and continue in force revived and con-
until the first day of October one thousand eight hundred and forty tinued until 1st
and it is expedient that the same should be altered and amended and October 1842.

Debtors' Relief.

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 of New South Wales with the advice of the Legislative Council thereof That the said recited Act shall by virtue of this Act be adjudged deemed and taken to have been in full force and effect from and after the said first day of October until the passing of the present Act and from thenceforth as hereby amended shall be and continue in the like force until the first day of October one thousand eight hundred and forty-two.

Form of Schedule.

2. Provided always and be it enacted That after the passing of this Act the schedule of every prisoner need not be deposited to by any affidavit but the insolvent shall be examined on oath as to the contents thereof *viva voce* at the hearing and such schedule shall be either in the form prescribed by the said recited Act or in such other form as the Judges shall from time to time prescribe and it shall be lawful for the Judge presiding at such hearing or at any adjournment thereof to allow or direct any amendment or amendments to be made of and in any such schedule as the justice of the case may require or to remand the insolvent for the purpose of making any such amendment.

Service on creditor
may occasionally be
dispensed with.

3. And be it enacted That it shall be lawful for the Judge before whom the rule for bringing up the insolvent shall be returnable to dispense with service of the schedule and of such rule upon the detaining creditor in any case (if such shall appear to be proper) on such terms as to such Judge shall seem meet and also that in any case such amount in value shall or may be allowed by such Judge to be retained by the insolvent of his or her apparel bedding and necessities less than twenty pounds as to such Judge shall under the circumstances seem proper.

When and in what
manner the insol-
vent's property to
vest in creditor.

4. And be it enacted That from the time of the filing of the schedule of any prisoner under the said recited Act (so by this Act revived and continued as aforesaid) all and singular the estate and effects real and personal whether in possession reversion remainder or expectancy and also all the rights monies debts and credits of such prisoner shall (subject to the control of the Court and to the award or determination of the presiding Judge at any such hearing as aforesaid) be and continue to be vested in the detaining creditor or creditors or (if such Court or Judge shall at any time so order) in such assignee or assignees as shall be named by such Court or Judge for the benefit of such creditor or creditors and after the first hearing of the case shall or lawfully may at any time and from time to time be sold or otherwise disposed of as the Court or such Judge shall direct or (in the absence of any such direction) as such creditor or assignee may think best and whenever any purchaser shall (for better security) so require it shall be lawful for any Judge to direct the insolvent at any time to concur in any such sale or disposition and the non-compliance with any such direction shall or may be dealt with and punished as for a contempt of the Court.

Punishment for fraud
or other misconduct.

5. And be it enacted That in every case where under the seventh section of the said recited Act the insolvent is punishable for or in respect of any act done or committed after the commencement of his or her imprisonment in execution such insolvent shall be equally liable to punishment although such act was done or committed prior to such imprisonment and in every case where it shall be made to appear that the insolvent hath culpably squandered his means or put his creditor to any unjustifiable and unnecessary expense it shall be lawful for the Judge to order and direct the said insolvent to be committed to the common gaol for such period or periods not exceeding one year in the whole as to such Judge shall seem proper.

Courts of Requests.

6. And be it enacted That in all cases where a debtor discharged under this or the said recited Act shall be again taken in execution in respect of any sum or demand due at the time of such discharge it shall be unnecessary for him to file any fresh schedule except in respect of property (if any) subsequently acquired by him but a rule or order may be obtained under the said Act upon a certificate (to be recited therein) of such former discharge which need be served upon the detaining creditor's attorney only and may be made returnable at any time two days after service Provided that in all other respects the proceedings under such rule or order shall be the same as if this present section had no existence.

Provision as to
subsequent arrests
in execution.