



ANNO QUADRAGESIMO TERTIO ET QUADRAGESIMO
QUARTO

VICTORIÆ REGINÆ.

A.D. 1880.

No. 181.

An Act to prevent the evasion of Judgments, Decrees, Rules, and Orders of the Supreme Courts of the Australasian Colonies and other British Possessions and Dominions, and to give further remedies to Creditors against Persons removing from any of the said Colonies, Possessions, or Dominions to the Province of South Australia.

[Assented to, October 25th, 1880.]

WHEREAS the proximity of the several Australasian Colonies and other British possessions and dominions to each other and the separation of their respective jurisdictions greatly facilitate the evasion of the judgments, decrees, rules, and orders of the Supreme Courts of the said colonies, possessions, and dominions respectively, and it is desirable to provide a remedy in that behalf: And whereas it would also be expedient to permit affidavits sworn in any of such colonies, possessions, or dominions to be used in the Supreme Court of South Australia, for the purposes after mentioned—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly [of the said province, in this present Parliament assembled, as follows:

Preamble.

1. The Act, No. 9 of 1855-6, intituled "An Act to give further remedies to Creditors against Persons removing from one Australasian Colony to another," is hereby repealed, and all rules made thereunder are hereby cancelled; but nothing herein contained shall affect the validity of any act or thing lawfully done or commenced to be done under the authority of the said Act.

Repeal.

2. In

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Interpretation.

2. In the construction of this Act, "colony" shall include and mean the Dominion of Canada and any of the provinces thereof, the Colonies of New South Wales, Victoria, Western Australia, Queensland, Tasmania, New Zealand, Fiji, and the British possessions of the Cape of Good Hope, Natal, and Mauritius, and any other of Her Majesty's colonies, dominions, or possessions with respect to which the provisions of this Act shall be applied by Proclamation by the Governor, published in the *Government Gazette*.

Memorial of judgment, &c., under seal of Supreme Court of any other colony filed in Supreme Court at Adelaide, shall be a record thereof, and execution may issue.

3. It shall be lawful for any person in whose favor any judgment, decree, rule, or order, whereby any sum of money is made payable, shall have been obtained in the Supreme Court of any colony, to cause a copy of the same on parchment, including the date of signing such judgment, authenticated by the seal of the Court wherein such judgment, decree, rule, or order was obtained, to be filed in the office of the Supreme Court, at Adelaide; and such copy, being so filed, shall thenceforth be a record of such judgment, decree, rule, or order, and execution may issue thereon as hereinafter provided.

Mode of obtaining execution.

4. It shall be lawful for any Judge of the Supreme Court of this province, upon the application of the person in whose favor such judgment, decree, rule, or order was obtained, or his attorney, to issue a summons calling upon the person against whom such judgment, decree, rule, or order was obtained, to show cause, within such time, after personal or such other service of the summons, as such Judge shall direct, why execution should not issue upon such judgment, decree, rule, or order; and such summons shall give notice that, in default of appearance, execution may issue accordingly; and if the person so summoned does not appear, by himself or his attorney, or does not show sufficient cause against such summons, it shall be lawful for any Judge of the Supreme Court, or the said Court, on due proof of such service as aforesaid, to order execution to issue as upon a judgment, decree, rule, or order of the Supreme Court of this province, subject to such terms and conditions (if any) as to such Judge or Court may seem fit; and, thereupon and subject thereto, the person entitled to such execution shall have and be entitled to all such process and to all such rights and remedies for the enforcement thereof; and the person against whom such execution is ordered shall, in like manner, be entitled to all such protective rights and advantages as they would respectively have been entitled to had such judgment, decree, rule, or order been obtained in the Supreme Court of this province, and all such proceedings may be had or taken for the revival of such judgment, decree, rule, or order, or the enforcement thereof, by and against persons not parties to such judgment, decree, rule, or order as may be had for the like purposes upon any judgment, decree, rule, or order of the Supreme Court of this province.

Affidavit to be sworn before execution issues, in default of appearance.

5. Provided always, that before any such execution as aforesaid shall be issued in default of appearance, an affidavit shall be made by

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by the person, or one of the persons in whose favor such judgment, decree, rule, or order was obtained, stating that the whole of such judgment debt is owing at the time of making such affidavit, or if any part thereof is unsatisfied, then what part remains unsatisfied, which affidavit shall be filed in the Supreme Court of South Australia; and if made in Canada, shall be sworn within four months; if in Cape of Good Hope, Natal, or Mauritius, shall be sworn within three months; if in New Zealand or Fiji, shall be sworn within two months; if in Victoria, within one month; and if in any other of such colonies, within two months next before the time of issuing such execution, or within such further period as the Judge who may order execution to issue, shall, in any of the said cases, in his discretion allow.

6. It shall be lawful for the Judges of the Supreme Court to make such rules with respect to the forms of writs of execution to be issued in pursuance of this Act, and with respect to all other matters arising out of, and connected therewith, including costs, as may from time to time be deemed necessary.

Power for Judges to make rules for carrying this Act into effect.

7. An affidavit, sworn before a Judge of the Supreme Court of any such colony as aforesaid, or before a person residing in such colony appointed a Commissioner for taking affidavits in the Supreme Court of South Australia, shall, subject to the same rules, with regard to the title jurat and other matters as may, at the time of making such affidavit, exist with respect to affidavits sworn in this colony, be received and read in the Supreme Court thereof, and have the same force and effect for the purpose of holding a person to bail, and for all the purposes for which an affidavit may be used therein, as if such affidavit were sworn before one of the Judges thereof, or before any person now authorised to take affidavits therein.

Affidavits sworn before a Judge or Commissioner in any of the colonies may be received and read in the Supreme Court of this colony.

8. This Act may be cited as "The Creditors Remedies Act, 1880."

Short title.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.