



ANNO QUINQUAGESIMO SECUNDO ET QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ.

A.D. 1889.

No. 466.

An Act to abolish Imprisonment for Debt, except in certain cases.

[Assented to, December 6th, 1889.]

WHEREAS it is desirable to abolish imprisonment for debt, Preamble.
except in certain cases—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 :

1. This Act may be cited for all purposes as “The Abolition of Imprisonment for Debt Act,” and shall come into operation on the twenty-fourth of December, one thousand eight hundred and eighty-nine. Short title and date of commencement.

2. From and after the passing of this Act no person shall be arrested or imprisoned for making default in payment of a sum of money, except in the following cases— Abolition of imprisonment for debt.

- 1.** Default in payment of a fine or penalty, or sum in the nature of a fine or penalty, other than a fine or penalty in respect of any contract: Exceptions.
- II.** Default in payment of any sum recoverable summarily before a Justice, or Justices of the Peace, or Special Magistrate of the said province :
- III.** Default by a trustee, auctioneer, bailiff, messenger, or person acting in a fiduciary capacity and ordered by the Supreme Court or the Court of Insolvency, or any Local Court of Insolvency, to pay any sum in his possession or under his control in such capacity :
- IV.** Default

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- iv. Default by a practitioner of the Supreme Court in payment of costs, when ordered to pay costs for misconduct as such practitioner, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order :

Provided that no person shall be imprisoned, in any case excepted from the operation of this section, for a longer period than six months; and, also, that nothing in this section shall alter the effect of any judgment or order of any Court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money: Provided also that, except as provided in section 5, nothing in this section contained shall alter or repeal the powers given to any Local Court under the provisions of the "Local Courts Act, 1886," Part ix., to commit a debtor to gaol, as therein authorised, or alter or repeal Part XIII. of the last-mentioned Act, or an Ordinance of the Governor and Legislative Council, No. 9 of 1845, intituled "An Ordinance for adopting in South Australia certain parts of an Act made and passed in the Imperial Parliament which was held in the first and second years of the reign of Her present Majesty, intituled 'An Act for abolishing arrest on *mesne process* in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.'"

Discharge of persons
in custody.

3. Where any person is, at the coming into operation of this Act, in custody, in pursuance of a writ, attachment, or other process, in any case in which he would not be liable to be arrested or imprisoned after the coming into operation of this Act, such person shall, on the coming into operation of this Act, be discharged from such custody; but his arrest, imprisonment, or discharge, or the issue of an unexecuted writ of *capias ad satisfaciendum*, or warrant of a Local Court in the nature of a writ of *capias ad satisfaciendum* against a debtor, shall not affect the creditor's rights or remedies for enforcing the payment of any money due to him, or deprive the creditor of the benefit of any charge or security on any property of the debtor, or of his remedies under "The Insolvent Act, 1886."

Bail, alteration in
condition of.

4. Whenever, at or after the passing of this Act, bail has been or has to be given in any action, the defendant in which, after the passing hereof, cannot be imprisoned on making default in satisfying the judgment recovered against him in such action, the condition of such bail (instead of being that the judgment shall be satisfied, or the defendant rendered to prison) shall be deemed to be, or shall be, as the case may be, that the defendant shall not go out of the said province without the leave of the Court in which such action shall have been brought.

Discharge of persons
arrested on unsatis-
fied judgments.

5. Notwithstanding anything in section 243 of the "Local Courts Act, 1886," or any other part of such Act contained, every person heretofore or hereafter arrested under Part XIII. of such Act in respect

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respect of a debt due on an unsatisfied judgment, shall be discharged from custody on the expiration of forty days from the day of his arrest, or, if such forty days shall have expired on the passing hereof, then such person shall be discharged forthwith.

6. The provisions of sections 162, 163, 172, 173, 175, 176, and 177 of the "Local Courts Act, 1886," shall extend to cases in which any party shall have obtained any unsatisfied judgment, decree, or order in the Supreme Court, or any court of competent jurisdiction, for the payment of any sum of money to enable such party in the prescribed manner to obtain an unsatisfied judgment summons from the local court nearest to where the other party shall then dwell or carry on business, or by order of a special magistrate from the Adelaide Local Court, and to proceed thereon in like manner as if such judgment, decree, or order were the judgment or order of a local court held by virtue of the said Act, and as if the court granting the unsatisfied judgment summons were the court in which the judgment was obtained.

Unsatisfied judgment summons on Supreme Court judgment.

7. Nothing in this Act shall affect any right or power under "The Insolvent Act, 1886," to arrest or imprison any person, or entitle any person imprisoned under such Act to be discharged from custody, except as therein provided.

Saving clause.

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

KINTORE, Governor