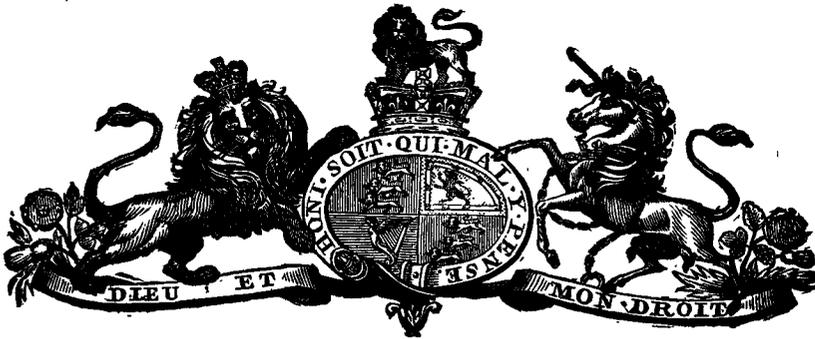


NEW ZEALAND.



TRICESIMO OCTAVO

VICTORIÆ REGINÆ.

No. XIV.

ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Commencement of Act. 3. Abolition of imprisonment for debt, with exceptions. 4. Repeal of sections 6 to 16 of "The Resident Magistrates Act, 1868." 5. Power of committal for non-payment of debts in certain cases. 6. Cases in which debtor may be committed. 7. Examination may be on oath. 8. Procedure. 9. Judges sitting in Chambers may exercise jurisdiction given by Act to Supreme Court. 10. Court may order payment of debt by instalments. | <ol style="list-style-type: none"> 11. Committals may be made to public prison. Order of committal. 12. Imprisonment not to operate as extinguishment of debt. 13. Discharge out of custody on payment. 14. Provision for discharging out of custody in other cases. 15. Power under certain circumstances to arrest defendant about to quit New Zealand. 16. Discharge of persons in custody at commencement of this Act. 17. Condition of bail. 18. Power to make rules. 19. Interpretation. |
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AN ACT for the Abolition of Imprisonment for Debt, Title.
and for other Purposes. [22nd August, 1874.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act shall be "The Imprisonment for Short Title.
Debt Abolition Act, 1874."

2. This Act shall come into operation on the first day of Commencement of Act.
October, one thousand eight hundred and seventy-four, which day is herein referred to as "the commencement of this Act."

3. With the exceptions hereinafter mentioned, no person shall, Abolition of imprisonment for debt, with exceptions.
after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money.

There shall be excepted from the operation of the above enactment,—

- (1.) Default in payment of a penalty or sum in the nature of a penalty other than a penalty in respect of any contract.

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- (2.) Default in payment of any sum recoverable summarily before a Resident Magistrate or a Justice or Justices of the Peace or Court of Petty Sessions under "The Justices of the Peace Act, 1866," or any Act amending the same or passed for like purposes, or otherwise than under "The Resident Magistrates Act, 1867," and Acts amending the same.
- (3.) Default by a trustee or person acting in a fiduciary capacity, and ordered to pay by a Court having jurisdiction in the matter any sum in his possession or control.
- (4.) Default by a solicitor in payment of costs when ordered to pay costs for misconduct as such, 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.
- (5.) Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy or insolvency is authorized to make an order.

Provided first that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and, secondly, 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.

Repeal of sections 6 to 16 of "The Resident Magistrates Act, 1868."

4. From and after the commencement of this Act, the sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth sections of "The Resident Magistrates Act, 1868," shall be and the same are hereby repealed; but, subject to the provisions of this Act, such repeal shall not affect any act matter or thing lawfully done under the provisions in the said sections contained.

Power of committal for non-payment of debts in certain cases.

5. Subject to the provisions hereinafter mentioned and to the prescribed rules, any Court may commit to prison for a term not exceeding three months, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court:

Provided that the jurisdiction given by this section of committing a person to prison shall, in the case of any Court other than the Supreme Court, be exercised only subject to the following restrictions contained in sub-clauses (a.), (b.), (c.), and (d.), that is to say,—

- (a.) Be exercised only by an order made in open Court showing on its face the ground on which it is issued.
- (b.) Be exercised only in respect of a judgment or order not exceeding, exclusive of costs, such sum as is within the jurisdiction of the Court or other tribunal to which application for committal is made with regard to the recovery of debts.
- (c.) Be exercised only as respects a judgment or order of a District Court by a District Judge or his Deputy, or by a Resident Magistrate's Court or Court of Petty Sessions, or two Justices exercising jurisdiction under "The Resident Magistrates Act, 1867," or any Act amending the same.
- (d.) Be exercised only as respects the judgment or order of a Resident Magistrate's Court or Court of Petty Sessions or two Justices of the Peace exercising jurisdiction under "The Resident Magistrates' Act, 1867," or any Act amending the same, by a District Court Judge or his Deputy, or by a Resident Magistrate's Court or Court of Petty

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Sessions, or by two Justices exercising jurisdiction under the last-mentioned Acts.

Provided also that such jurisdiction shall only be exercised in the cases hereinafter mentioned.

6. Whenever and so often as any sum of money due under any judgment or order in any Court shall remain unsatisfied, it shall be lawful for the person entitled to recover such money, whether any writ of *feri facias* or any other writ, or any warrant to levy on goods or any other warrant, shall or shall not have been issued for the same, to obtain from time to time from the Registrar of any Court a summons in the prescribed form or to the like effect, directed to the person liable to pay such money, and such summons shall be served personally or in the prescribed manner; and if such person as last aforesaid shall appear in pursuance of such summons, he may be examined upon oath—

Cases in which debtor may be committed.

- (1.) As to his estate and effects, and as to the property and means he has of paying satisfying and discharging such sum of money.
- (2.) As to the disposal he may have made of any property.
- (3.) As to his intention to leave the colony without paying such money as is still unsatisfied, or to depart elsewhere within the colony with intent to evade payment.
- (4.) As to the mode in which the liability the subject of such judgment or order was incurred.

7. The person obtaining such summons as aforesaid, and all other witnesses whom the Court shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid.

Examination may be on oath.

8. If a party so summoned as aforesaid—

Procedure.

- (1.) Shall not attend as required by such summons, and shall not allege a sufficient cause for not attending :
- (2.) Or shall, if attending, refuse to be sworn or to disclose any of the things in the sixth section aforesaid :
- (3.) Or if he shall not make answer touching any of the things in the sixth section aforesaid to the satisfaction of such Court :
- (4.) Or if it shall appear to such Court by oral testimony or affidavit, or by both, that such party contracted the liability which was the subject of such judgment or order by any fraud, or that such party has made or caused to be made any gift delivery or transfer of any property, or changed removed or concealed the same, with intent to defraud the person entitled to such money as aforesaid, or with intent to defeat any execution issued upon such judgment or order :
- (5.) Or if on oral testimony or affidavit, or by both, it shall appear to the satisfaction of such Court that the party so summoned has then, or has had since the time of obtaining such order or judgment, sufficient means and ability to pay the sum so recovered against him, and so due and unsatisfied as aforesaid, or any instalment thereof when an order to pay by instalments has been made, or that he is about to leave the colony without paying such money as is still unsatisfied, or to depart elsewhere within New Zealand with intent to evade payment :

then, in any or either of the cases aforesaid, it shall be lawful for such Court, if it shall think fit to order that unless such party shall pay into such Court, either forthwith or by such instalments as the Court may fix, or within the time limited in such order, the money

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so unsatisfied, with interest thereon at such rate as the Court shall direct, not exceeding five per centum per annum, and the costs of any fruitless writs or warrants of execution and of levies thereunder, together with the costs of and occasioned by such summons and examination, he shall be committed to prison for a period not exceeding three months.

Judges sitting in Chambers may exercise jurisdiction given by Act to Supreme Court.

9. Any jurisdiction by the preceding sections of this Act given to the Supreme Court may be exercised by a Judge sitting in chambers or otherwise in the prescribed manner.

Court may order payment of debt by instalments.

10. For the purposes of the preceding sections of this Act, any Court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent Court to be paid by instalments, and may from time to time rescind or vary such order.

Committals may be made to public prison.

11. Persons committed under the preceding sections of this Act may be committed to such public prison within the Colony as the Court shall think fit.

Order of committal.

Whenever any such order of committal as aforesaid shall have been made, and the money and costs specified therein, or any part thereof or any instalment, shall not have been paid into Court in pursuance thereof, the Registrar of the Court shall, without previous notice or summons to the party required to pay the same, issue a warrant in the prescribed form, and the bailiff of the Court and the keeper of the gaol to whom such warrant is directed shall respectively execute and obey the warrant, and all constables and other peace officers shall aid and assist in the execution of such warrant.

Imprisonment not to operate as extinguishment of debt.

12. No imprisonment under the preceding sections of this Act shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands goods or chattels of the person imprisoned in the same manner as if such imprisonment had not taken place.

Discharge out of custody on payment.

13. Any person imprisoned under the preceding sections of this Act shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

Provision for discharging out of custody in other cases.

14. Notwithstanding the provisions hereinbefore contained, it shall be lawful for the Court making any such order of committal, or for the Supreme Court or any Judge thereof, at any time (if under the special circumstances of any particular case the Court or Judge shall think fit to do so), to direct that any person in custody under any such order as aforesaid shall be forthwith discharged, and he shall be forthwith discharged accordingly.

Power under certain circumstances to arrest defendant about to quit New Zealand.

15. After the commencement of this Act a person shall not be arrested upon mesne process in any action in the Supreme Court.

Where the plaintiff in any action in the Supreme Court, in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment, by evidence on oath to the satisfaction of a Judge of the said Court, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit New Zealand unless he be apprehended, and that the absence of the defendant from New Zealand will materially prejudice the plaintiff in the prosecution of his action, such Judge may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of New Zealand without the leave of the Supreme Court.

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Where the action is for a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from New Zealand will materially prejudice the plaintiff in the prosecution of his action; and the security given (instead of being that the defendant will not go out of New Zealand) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

16. Where any person is, at the commencement of this Act, in custody in pursuance of a writ judgment attachment or other process in any case in which he would not be liable to be arrested or imprisoned after the commencement of this Act, such person shall, at the commencement of this Act, be discharged from such custody without payment of any fees, but his arrest imprisonment or discharge 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.

Discharge of persons in custody at commencement of this Act.

17. Where at the commencement of this Act special bail has been given in any action in the Supreme Court, the defendant in which, after the commencement of this Act, 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 that the defendant shall not go out of New Zealand without the leave of the Supreme Court.

Condition of bail.

18. In this Act the term "prescribed" means as follows:—

As respects the Supreme Court, prescribed by general rules to be made in pursuance of "The Supreme Court Act, 1860," or any Acts amending or altering the same.

As respects the District Courts, prescribed by general rules to be made under "The District Courts Act Amendment Act, 1865," or any Acts amending the same.

As respects Resident Magistrates' Courts and Courts of Petty Sessions and Justices of the Peace acting under "The Resident Magistrates Act, 1867," or any Acts amending the same, prescribed by general rules and orders to be made by the Governor in like manner as he is now authorized under the said Acts to frame and establish general rules for the purposes thereof.

And general rules and orders may respectively be made by such authorities as aforesaid for the purpose of carrying this Act into effect.

Power to make rules.

19. In this Act, the following terms have the meanings hereafter attached to them respectively:—

Interpretation.

The term "Registrar" includes, with relation to the Supreme Court, a Deputy Registrar; and with relation to every other Court than the Supreme Court, means and includes the Chief Clerk of such Court, or any person or officer for the time being acting as Chief Clerk thereof.

"Bailiff" means and includes, with relation to the Supreme Court, such Sheriff or other person as would be authorized to execute a writ of *capias ad satisfaciendum*, and includes any other officer or person appointed by the Governor to act as Bailiff of the Court; and with relation to every Court other than the Supreme Court, means and includes the Bailiff of such Court, or any person or officer acting as such Bailiff.