



ANNO DECIMO-QUINTO

VICTORIÆ REGINÆ,

No. 4.

*By His Excellency SIR WILLIAM THOMAS DENISON, Knight,
Lieutenant-Governor of the Island of Van Diemen's Land
and its Dependencies, with the Advice of the Legislative
Council.*

*AN ACT to make temporary provision for the Recovery
of Small Debts owing by Persons about to leave the
Colony.*

PREAMBLE.

3 Vict. No. 5.

Persons owing not
less than £2 nor
more than £20
and about to leave
the Colony may
be apprehended
by warrant of a
Justice.

WHEREAS in consequence of the recent discoveries of Gold in the Colonies of New South Wales and Victoria large numbers of persons have left and are leaving this Colony without making provision for the payment of their debts—AND WHEREAS by the Act of Council or Ordinance of this Island made and passed in the third year of the reign of Her present Majesty intituled *An Act to regulate the Law of Arrest for Debt in Van Diemen's Land* it was enacted that no mesne process should be issued for the arrest of any person in any Civil Action except for a cause of action to the amount of Twenty Pounds or upwards—AND WHEREAS it is expedient to make provision in the manner herein-after mentioned for the recovery of Debts under the sum of Twenty Pounds owing by persons about to leave this Colony—BE IT THEREFORE ENACTED by His Excellency SIR WILLIAM THOMAS DENISON Knight Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council of the said Island that on from and after the passing of this Act if any person claiming to be the Creditor of another shall upon his own oath or that of some other person show to the satisfaction of any Justice of the Peace of this Island and its Dependencies that such person claiming to be a Creditor hath a good cause of action against his alleged Debtor to an amount of not less than Two Pounds and not more than Twenty Pounds and if such person claiming to be a Creditor or any other person on his behalf shall also at the same time depose on oath before such Justice that he believes and that in his opinion there is sufficient reason to believe that such alleged Debtor is shortly about to depart from this Colony it shall be lawful for such Justice of the Peace by

Warrant in writing under his hand and seal returnable immediately which Warrant such Justice is hereby authorised and required to issue and which may be in the form in the Schedule to this Act annexed marked (A) which is hereby declared to be part and parcel of this Act to order and direct that such alleged Debtor be forthwith taken into custody and brought before such Justice of the Peace to answer the demand of such person claiming to be a Creditor as aforesaid and such alleged Debtor may be thereupon taken into custody and brought before such Justice accordingly any thing in the said recited Act or Ordinance to the contrary notwithstanding—PROVIDED ALWAYS that it shall be lawful for such Justice to examine *viva voce* and upon oath such Deponent as aforesaid as to the grounds of his or her belief that such alleged Debtor is shortly about to depart from this Colony and to refuse to issue such Warrant if in the opinion of such Justice such belief be not well founded.

II. AND BE IT FURTHER ENACTED that upon every such alleged Debtor being brought before such Justice as aforesaid it shall be lawful for such Justice and he is hereby authorised and required to take Bail from such alleged Debtor by bond with one or more sufficient Sureties to the amount of the alleged Debt together with Three Pounds for costs and which Bond may be in the form in the Schedule to this Act annexed marked (B) which is hereby declared to be part and parcel of this Act and such Bond shall be assigned by such Justice to such person claiming to be a Creditor at his request and the assignment thereof may be in the form in the Schedule to this Act annexed marked (C) which is also declared to be part and parcel of this Act.

Bail to be taken from Debtor by Justice and Bail-bond to be assigned to Creditor.

III. AND BE IT FURTHER ENACTED that it shall be lawful for such person so claiming to be a Creditor as aforesaid to enforce such Bond after such assignment thereof by action thereupon in his own name in the Court of Requests for the District in which he may reside and every such Court when held by a Deputy or Assistant Commissioner shall have power and authority to hear and determine in a summary way all such actions in cases where the amount secured by any such bond shall not exceed Ten Pounds and every such Court when held by a Commissioner shall have the like power and authority in cases where the amount secured by any such Bond shall exceed Ten Pounds and every such Court shall have power and authority to award costs to the prevailing party in every such action.

Bail-bond may be enforced by Creditor in Courts of Request.

IV. AND BE IT FURTHER ENACTED that it shall be lawful for such alleged Debtor instead of providing such bail as aforesaid to deposit in the hands of such Justice the amount of such alleged Debt together with Three Pounds for costs and that upon bail being given or deposit made as aforesaid such alleged Debtor shall forthwith be discharged from custody under such Warrant as aforesaid and the same shall thereupon become vacated but in default of such alleged Debtor providing such bail or making such deposit as aforesaid such Justice shall forthwith by warrant in writing under his hand and seal and which may be in the form in the Schedule to this Act annexed marked (D)

Amount of debt and costs may be deposited with Justice instead of bail being taken.

In default of bail or deposit Debtor to be committed to Gaol.

which is hereby declared to be part and parcel of this Act commit such alleged Debtor to Gaol to be there kept on the Debtor's side thereof until he shall provide such bail or make such deposit as aforesaid or until he shall be discharged from custody by operation of Law.

Deposit to be applied in liquidation of the debt and costs after recovery of same.

Provides for such recovery in case Debtor shall leave the Colony after giving bail or making deposit.

By consent of Creditor and Debtor the Justice may adjudicate upon the demand.

If debt found due and not paid Debtor to be committed to Gaol.

V. AND BE IT FURTHER ENACTED that in the event of such alleged Debtor making such deposit as aforesaid the same shall be held by such Justice as aforesaid for the space of Three calendar months next thereafter and if within the time last aforesaid such person claiming to be a Creditor shall proceed to enforce his demand in due course of Law and shall recover a judgment against his Debtor (of which said judgment an examined copy under the hand of the proper Officer of the Court in which the same shall be recovered shall be sufficient evidence before such Justice) the amount of such deposit shall be applied in or towards payment or satisfaction of the amount of such judgment but if no such judgment as last aforesaid shall be recovered within the said space of Three calendar months then the amount deposited by such alleged Debtor shall be repaid to him by such Justice on demand and that if such judgment as last aforesaid shall be recovered and the amount thereof shall be less than the amount deposited as aforesaid the residue shall on demand thereof be repaid to such alleged Debtor by such Justice as aforesaid—PROVIDED ALWAYS AND BE IT FURTHER ENACTED that in case such alleged Debtor after providing such bail or making such deposit shall depart from this Colony within the said space of three calendar months and before service upon him of Writ of Summons in any action or summons in any plaint which shall be brought in any Court by such person so claiming to be a Creditor to enforce such demand it shall be lawful for the Plaintiff in such action or plaint upon filing with the proper Officer of such Court upon or after the return day of such Writ or Summons a certificate in writing from such Justice that such alleged Debtor has provided such bail or made such deposit as aforesaid (which certificate every such Justice is hereby required to furnish to such Plaintiff on his request) to proceed to judgment in such action or plaint as if due service of such Writ or Summons had been effected and the Defendant had duly appeared where appearance is by the practice of such Court necessary.

VI. AND BE IT FURTHER ENACTED that it shall be lawful for any such Justice as aforesaid and he is hereby authorised and empowered with the consent of any such person claiming to be a Creditor and of such alleged Debtor as aforesaid to hear and finally adjudicate upon the demand of any such person claiming to be a Creditor as aforesaid and upon an adjudication by such Justice if the same shall be in favour of the person claiming to be a Creditor as aforesaid and if the alleged Debtor shall not forthwith pay and satisfy the debt found or declared to be due by such adjudication as aforesaid such Justice shall forthwith by warrant in writing under his hand and seal and which may be in the form in the Schedule to this Act annexed marked (E) which is hereby declared to be part and parcel of this Act commit such alleged Debtor to Gaol to be there kept on the Debtor's side thereof until such alleged Debtor shall pay and satisfy such debt

as aforesaid or until he shall be discharged from custody by operation of Law.

VII. AND BE IT ENACTED that the adjudication of such Justice shall be final and conclusive to all intents and purposes and shall not be nor shall any of the proceedings before such Justice be liable to be or be questioned by any writ of *certiorari mandamus* or other process whatsoever from the Supreme Court of this Island any law or usage to the contrary in anywise notwithstanding.

Adjudication by Justice to be conclusive.

M. A. L.

VIII. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that nothing in this Act contained shall alter or affect any of the provisions contained in the Act of Council or Ordinance of this Island made and passed in the third year of the reign of Her present Majesty intituled *An Act to make provision for the more effectual Distribution of Insolvent Estates.*

Act not to affect Insolvent Act (3 Vict. No. 1.)

IX. AND BE IT ENACTED that every word or term used in this Act in the singular number only and every word importing the masculine gender only shall be respectively construed to signify and include the plural number and feminine gender or *vice versa* unless such construction be in any wise repugnant to the spirit or context of the provisions of this Act.

Interpretation.

X. AND BE IT ENACTED that this Act shall continue and be in force until the end of the next Session of the Legislative Council of this Island and no longer.

Duration of Act.

SCHEDULE A.

ISLAND OF VAN DIEMEN'S LAND }
(TO WIT).

To Chief Constable and all Constables and others in the said Island whom it may concern.

WHEREAS *A. B.* of in the said Island claiming to be the Creditor of *C. D.* hath come before me *J. P.* Esquire one of Her Majesty's Justices of the Peace for the Island of Van Diemen's Land and its Dependencies and shown to my satisfaction on his oath [or on the oath of as the case may be] that he the said *A. B.* hath a good cause of Action against the said *C. D.* his alleged Debtor to the amount of £ and the said *A. B.* [or other person as the case may be] hath at the same time deposed on oath before me that he believes and that in his opinion there is sufficient reason to believe that the said *C. D.* is shortly about to depart from this Colony. These are therefore to command you and every of you forthwith to take the said *C. D.* into your custody and bring him before me immediately at to answer the demand of the said *A. B.*

Given under my hand and seal at this day of in the year of our Lord one thousand eight hundred and fifty-

SCHEDULE B.

KNOW all men by these presents that we *C.D.* of *E.F.* of
and *G.H.* of are held and firmly bound unto *J.P.* of [*insert here*
the name and place of residence of the Justice] in the sum of £ [*insert*
here the amount of the alleged debt with Three Pounds for costs] of
lawful money of Great Britain to be paid to the said *J.P.* or his
certain attorney executors administrators or assigns for which payment
to be made we bind ourselves and each of us and any two of us our and
each of our and any two of our heirs executors and administrators
jointly severally and respectively firmly by these presents. Sealed with
our seals. Dated this day of in the year of our Lord
one thousand eight hundred and fifty-

WHEREAS under the provisions of the Act of Council or Ordinance of the
Island of Van Diemen's Land intituled *An Act to make temporary provision*
for the Recovery of Small Debts owing by Persons about to leave the Colony
the above-bounden *C. D.* hath been taken into custody and brought before the
said *J. P.* Esquire a Justice of the Peace of this Island and its Dependencies
to answer the demand of *A. B.* of against the said *C. D.* for the sum
of £ . AND WHEREAS the said *J. P.* hath under the authority of
the said recited Act consented to take Bail from the said *C. D.* with the said
E. F. and *G. H.* as his sureties to the amount of the said alleged debt together
with Three Pounds for costs—NOW therefore the condition of the above-written
obligation is this that if the said *A. B.* or his executors or administrators shall
within the space of three calendar months next after the day of the date of the
above written Bond recover in the Supreme Court of this Island or in any Court
of Requests in this Island a Judgment against the said *C. D.* for the amount
of the said alleged debt of or any part thereof and if the said *C. D.*
E. F. and *G. H.* or any or either of them or their or any or either of their
heirs executors or administrators do and shall well and truly pay or cause to
be paid unto the said *A. B.* his executors administrators or assigns the amount
of the debt or damages and costs which may be recovered by him or them as
aforesaid such costs not exceeding the sum of Three Pounds then the above-
written Bond shall be void but shall otherwise be and remain in full force.

SCHEDULE C.

KNOW all men by these presents that I the within-named *J. P.* have at the
request of the within-named *A. B.* assigned and do by these presents assign
the within-written Bond unto him the said *A. B.* pursuant to the Act or Ordinance
of the Island of Van Diemen's Land in such case made and provided
intituled *An Act to make temporary provision for the Recovery of Small Debts*
owing by Persons about to leave the Colony. In witness whereof I have here-
unto set my hand and seal this day of in the year of our Lord
one thousand eight hundred and fifty-

SCHEDULE D.

ISLAND OF VAN DIEMEN'S LAND }
(TO WIT). }

To Chief Constable and all other Constables and to the Keeper
of Her Majesty's Gaol at in the said Island of Van Diemen's
Land and to each of them.

WHEREAS *C. D.* hath been brought before me *J. P.* Esquire one of Her Majesty's Justices of the Peace for the Island of Van Diemen's Land and its Dependencies under and by virtue of an Act of Council of this Island intituled *An Act to make temporary provision for the Recovery of Small Debts owing by Persons about to leave the Colony* as being the alleged Debtor of *A. B.* to the amount of £ AND WHEREAS the said *C. D.* hath been required by me to provide Bail by executing a Bond in the form contained in Schedule B to the said Act annexed with one or more sufficient sureties to the amount of £ together with Three Pounds for Costs or instead thereof to deposit in my hands the said sum of £ together with Three Pounds for Costs but the said *C. D.* hath made default in providing such Bail or making such deposit as aforesaid —THESE are therefore to command you the said Constables and each of you forthwith to convey and deliver into the custody of the said Keeper of the said Gaol the Body of the said *C. D.* and you the said Keeper are hereby required and commanded hereupon immediately to receive the said *C. D.* into your custody in the said Gaol and him there in your custody securely to detain and keep on the Debtor's side thereof until he shall provide such Bail or make such deposit as aforesaid or until he shall be thence discharged by due course of law.

Given under my hand and seal at this day of
in the year of our Lord one thousand eight hundred and fifty-

SCHEDULE E.

ISLAND OF VAN DIEMEN'S LAND }
(TO WIT). }

To Chief Constable and to all other Constables and to the
Keeper of Her Majesty's Gaol at in the said Island of Van
Diemen's Land and to each of them.

WHEREAS *C. D.* hath been brought before me *J. P.* Esquire one of Her Majesty's Justices of the Peace for the Island of Van Diemen's Land and its Dependencies under and by virtue of an Act of Council of this Island intituled *An Act to make temporary provision for the Recovery of Small Debts owing by Persons about to leave the Colony* as being the alleged Debtor of *A. B.* to the amount of AND WHEREAS the said *A. B.* and *C. D.* having consented thereto I did in pursuance of the provisions of the said Act in that behalf hear and finally adjudicate upon the demand of the said *A. B.* against the said *C. D.* and by such adjudication did find and declare that there was a debt due to the said *A. B.* from the said *C. D.* to the amount of £

AND WHEREAS the said *C. D.* did not though required by me so to do forthwith pay and satisfy to the said *A. B.* the said sum of £ so found and declared to be due as aforesaid but therein hath made and still continues to make default—THESE are therefore to command you the said Constables and each of you forthwith to convey and deliver into the custody of the said Keeper of the said Gaol the Body of the said *C. D.* and you the said Keeper are hereby required and commanded hereupon immediately to receive the said *C. D.* into your custody in the said Gaol and him there in your custody securely to detain and keep on the Debtor's side thereof until he shall pay and satisfy the said sum of £ or until he shall be discharged thence by operation of law.

Given under my hand and seal at this day of
in the year of our Lord one thousand eight hundred and fifty-

J. P.

RICHARD DRY, *Speaker.*

Passed the Legislative Council this tenth
day of February one thousand eight
hundred and fifty-two.

FR. HARTWELL HENSLOWE,
Clerk of the Council.

In the name and on the behalf of Her Majesty I assent to this Act.

W. T. DENISON,
Lieut.-Governor.

Government House, Hobart Town,
11th February, 1852.