ANNO DECIMO QUARTO & DECIMO QUINTO

VICTORIÆ REGINÆ.

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C A P. LII.

An Act to facilitate the more speedy Arrest of absconding Debtors. [1st *August* 1851.]

WHEREAS the Laws now in force for the Arrest of Debtors absconding from *England* are insufficient and inadequate for that Purpose, by reason of the Delay which is occasioned in obtaining the necessary Process: And whereas Frauds are perpetrated upon Creditors residing at a Distance from *London* by Debtors embarking for distant Countries from various Towns and Seaports in *England:* And whereas it is expedient to provide a more expeditious and efficacious Mode of obtaining Process for the Arrest of Debtors about to quit *England* in all Cases where such Debtors are now liable by Law to be arrested: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Authority to Commissioners of Bankruptcy and Judges of County Courts to

I. That from and after the passing of this Act it shall be lawful for any Commissioner of the Court of Bankruptcy acting for any District in the Country, or the Judge of any District County Court, except the County Court Judges acting in the Counties of *Middlesex* and *Surrey*, on Application by or on behalf of any Creditor,

grant Warrants for the Arrest of absconding Debtors.

upon due Proof by Affidavit, intituled in One of Her Majesty's Superior Courts of Common Law, of the Creditor applying, or of some other Person, or by solemn Affirmation in Cases in which solemn Affirmation is allowed by Law, to the Satisfaction of such Commissioner or Judge, that a Debt of Twenty Pounds or upwards is owing to such Creditor, and is then payable from the Person or Persons against whom such Application shall be made, and that there is probable Cause for believing that such Debtor or Debtors, unless he or they be forthwith apprehended, is or are about to quit *England* with Intent to avoid or delay the said Creditor, or with Intent to remain out of the Jurisdiction of the Courts of Law in *England* so long that thereby the said Creditor will or may be delayed in the Recovery of the said Debt, to grant a Warrant, such Warrant being in the Form and endorsed in the Manner specified in the Schedule A. to this Act annexed, or to the like Effect, to the Messenger of the said Court of Bankruptcy, or to the High Bailiff of the said County Court, whereby the said Messenger or High Bailiff shall have Authority, at any Time within Seven Days after the Date of the said Warrant, including the Day of such Date, to arrest the Person or Persons named in such Warrant, and him or them safely keep until he or they shall have given Bail to such Messenger or High Bailiff, or made Deposit with him, according to the Practice observed in the Superior Courts of Law, or until he shall have paid the Debt and Costs endorsed on the said Warrant, or be otherwise discharged from Arrest under such Warrant by due Course of Law, and that such Warrant shall bear Date the Day of the issuing thereof, and may be executed in any Part of *England*, and that a Copy of such Warrant or Warrants shall at the Time of the Arrest be served upon the Party arrested: Provided always, that every Creditor who shall cause such Warrant to issue shall forthwith cause to be issued a Writ of Capias, and also, in Cases where no Action shall be pending, shall, before the issuing of such Writ of Capias, cause a Writ of Summons to be issued out of some One of the Superior Courts of Law against such Debtor or Debtors, and that upon such Capias all Mandates and Warrants shall issue according to the Practice now in use, notwithstanding that the Defendant shall have been arrested by virtue of any Warrant or Warrants granted by such Commissioner or Judge, and such Debtor or Debtors shall, if in Custody, be served with such Writ of Capias, within Seven Days from the Date of such Warrant, including the Day of such Date; and thereupon such Debtor or Debtors shall be considered and deemed to have been arrested by virtue of the said Writ of Capias, and all Proceedings shall be had upon such Writ of Capias as if the same had been issued prior to the issuing of such Warrant, and the Arrest made on such Writ of Capias, and according to the Practice now observed in the said Superior Courts of Law.

Writ of Capias to issue thereupon.

II. The

Before whom Affidavits to be sworn.

II. The Affidavit or Affirmation required by this Act may be sworn or made before such Commissioner or Judge, or before any Person having Authority to administer Oaths in any of the Courts of Law aforesaid.

Warrants to be auxiliary to such Writ of Capias.

III. The Warrant or Warrants which shall be issued by virtue of this Act shall be auxiliary only to the Processes now in use, and shall be wholly void and of none Effect whatsoever, as a Protection to the Person on whose Behalf such Warrant shall have issued, unless such Writ of Capias shall be issued and served in manner aforesaid.

Time and Place of Arrest of Debtor to be endorsed upon Warrant, and upon Production Sheriffs to receive and detain such Debtor.

IV. The Person to whom the Warrant hereby authorized to be issued shall be directed shall, immediately on the same being executed, endorse a Certificate thereupon of the Time and Place where the Debtor was arrested; and the Production of such Warrant and Certificate to the Sheriff of the County where such Warrants shall have issued, or to the Keeper of the Gaol of such County, shall be a sufficient Authority to such Sheriff or Keeper to detain such Debtor or Debtors until he or they shall be discharged by due Course of Law.

Persons arrested entitled to Discharge in certain Cases.

V. It shall be lawful for any Person arrested upon any such Warrant forthwith before the issuing of the said Writ of Capias to pay the Debt and Costs which shall be endorsed on such Warrant to the said Messenger or High Bailiff as aforesaid, or to enter into a Bail Bond to such Messenger or High Bailiff, with Two sufficient Sureties, for the Amount which shall be endorsed on such Warrant, conditioned to put in Special Bail as required by the said Warrant, or to make Deposit of the Sum endorsed on such Warrant, together with Ten Pounds for Costs, and thereupon he shall be entitled to be discharged from Custody, and such Messenger or High Bailiff is hereby authorized to discharge such Person accordingly.

Effect of Writs of Capias on previous Proceedings.

VI. As soon as the Person so arrested as aforesaid has been taken into Custody, or detained, under the Writ of Capias hereinbefore mentioned, the Force and Effect of the said Warrant so granted as aforesaid shall immediately cease and determine, and the said Sheriff shall hold the said Person under or by virtue of the said Writ of Capias, in like Manner as if the said Person had been first arrested under and by virtue of the same, or in case the Person so arrested shall have made Deposit with the said Messenger or High Bailiff as aforesaid, or entered into such Bail Bond as aforesaid, then, upon Delivery to the Messenger or High Bailiff respectively by whom such Person was arrested of a Copy of the Warrant granted by the Sheriff upon such Writ of Capias as aforesaid, the said Messenger or

or High Bailiff shall pay over to such Sheriff as aforesaid the said Deposit, or assign to the said Sheriff such Bail Bond as aforesaid, and the said Sheriff shall then hold the said Deposit or Bail Bond, and shall be entitled to enforce the said Bail Bond in his own Name, or to assign the same in the same Manner as if the said Person had been first arrested on the said Writ of Capias, and the said Deposit had been made, or Bail Bond entered into with the said Sheriff; provided always, that the said Sheriff shall not be in any Manner liable or answerable for any Default, Misbehaviour, or Miscarriage of the Person to whom such Warrant was addressed, or of the Person or Persons making the Arrest under and by virtue of the said Warrant: Provided also, that if no Writ of Capias be issued and served within Seven Days from the Date of the said Warrant, including the Day of such Date, the Person arrested under such Warrant shall be entitled to be discharged from Custody, or in case the Deposit has been made with, or Bail Bond given to, the said Messenger or High Bailiff, then the said Deposit shall be returned, and the said Bail Bond given up to be cancelled.

Endorsement on Warrant.

VII. Such Warrant shall be endorsed with the Amount of Debt and Costs claimed by the Plaintiff in such Manner as Writs of Capias are now directed to be endorsed, and on Payment of the Amount so endorsed all Proceedings shall be stayed, and the Person so arrested be discharged from Custody, and he shall be at liberty afterwards to tax the Costs so endorsed as if he had been arrested under a Writ of Capias.

Persons arrested may apply to a Commissioner of Bankrupt, a Judge, or the Court named in the Warrant, for their Discharge.

VIII. It shall be lawful for any Person for whose Arrest a Warrant shall have been granted to make Application, either before or after Arrest shall have been made by virtue of the said Warrant, and before a Writ of Capias shall have been issued as aforesaid to any Commissioner of Bankrupt, or County Court Judge as aforesaid, or to any Judge of the said Superior Courts, or to the Court mentioned in the Affidavit of Debt or Warrant for the Arrest, for a Summons or Rule calling upon the Creditor who shall have obtained such Warrant to show Cause why the Warrant should not be set aside and vacated, if such Application shall be made before Arrest, or why the Debtor should not be discharged out of Custody, if the Application should be made after Arrest, and that it shall be lawful for such Commissioner or Judge or Court to make absolute or discharge such Summons or Rule, and direct the Costs of the Application to be paid by either Party, or to make such other Order therein as to such Commissioner, Judge, or Court shall seem fit; provided that any such Order made by a Judge may be discharged or varied by the Court, on Application made thereto by either Party dissatisfied with such Order,

IX. The

Officer responsible for the due Execution of Warrant.

IX. The Officer to whom such Warrant shall be directed or addressed as aforesaid shall be subject to the Jurisdiction of the Court in which the Action shall be brought, or of any Judge thereof, and shall be responsible to such Court or Judge, and to the Person at whose Suit such Warrant shall issue, for the due Execution of the said Warrant, in the same Manner exactly as Sheriffs are now responsible for the due Execution of all Writs of Capias directed or addressed to them, and shall be entitled to the same Protection as Sheriffs now are entitled to on executing such Writs.

Costs of such Warrant to be Costs in the Cause, except as herein provided to the contrary.

X. The Costs of and attending the Warrant hereby authorized to be issued, and the Arrest thereon, shall be deemed to be Costs in the Cause: Provided always, that no such Costs shall be allowed to a Plaintiff unless the Court or the proper Officer thereof is satisfied, by Affidavit or otherwise, that the Plaintiff had good Reason to believe that he would probably have failed in causing the Defendant to be arrested if he had proceeded in the first instance by Application to a Judge of One of the Superior Courts for a Writ of Capias, without first applying to a Judge of a County Court or a Commissioner of the Court of Bankruptcy, as the Case may be, under the Provisions of this Act.

Fees to be taken in respect of Warrant to be issued.

XI. The Fees mentioned in Schedule B. to this Act annexed shall be paid to the Parties in the said Schedule named, and that no other Fees shall be allowed or taken in respect of the Warrant to be issued by virtue of this Act, and that the Costs of the Writs of Capias and Summons shall be the same as if this Act had not passed; and the said Fees shall be deemed subject to be regulated, varied, increased, or lessened, either by One of Her Majesty's Principal Secretaries of State, with the Consent of the Commissioners of Her Majesty's Treasury, as regards such Fees as are receivable by any Officer of the County Court, or by the Lord Chancellor, with the like Consent as regards such Fees as are receivable by any Officer of the Court of Bankruptcy; and a Table of such Fees as are hereby receivable by any Officer of either Court respectively shall be put up in some conspicuous Place in the County Court and the Bankruptcy Court respectively.

Short Title of Act.

XII. In citing this Act in other Acts of Parliament, or in any Instrument, Document, or Proceeding, it shall be sufficient to use the Expression "The Absconding Debtors Arrest Act, 1851."

SCHEDULE A.

THE ABSCONDING DEBTORS ARREST ACT, 1851.

WHEREAS *A. B.* [*the Creditor*] hath this Day proved upon Oath [*or* solemn Affirmation, *as the Case may be*,] to my Satisfaction that *C. D.* [*the Debtor*] is indebted to the said *A.B.* in the Sum of £ , and that there is probable Cause for believing that the said *C.D.*, unless he be forthwith apprehended, is about to quit England with such Intent as is mentioned in the Absconding Debtors Arrest Act, 1851. These are to desire and authorize you, that you take the said *C. D.* wheresoever he may be found, and him safely keep until he shall have given you Bail, or made Deposit with you according to Law in an Action ["on Promises," *or* "of Debt," *or* "Covenant," *as the Cause of Action may be*,] at the Suit of *A.B.*, or until the said *C.D.* shall have paid the Debt and Costs endorsed on this Warrant, *or* shall by other lawful Means be discharged from your Custody. I do further command you to whom this Warrant is directed, that on Execution hereof you do deliver a Copy hereof to the said *C.D.* And I hereby require the said *C.D.* to take notice that Application will be made forthwith to the Court of [Queen's Bench, *or* Common Pleas, *or* Exchequer, *or* Common Pleas at Lancaster, *or* Pleas at Durham, *as the Case may be*,] for a Writ of Capias to be issued against the said *C.D.*, and a Copy of such Writ if obtained will be served upon the said *C.D.*, if still in Custody, within Seven Days from the Date of this Warrant, including the Day of such Date. And I do further command you to whom this Warrant is directed, that immediately after the Execution hereof you do certify by Endorsement hereon the Time and Place when and where you shall have executed the same. Dated the Day of A. D.

This Warrant is to be executed within Days from the Date hereof, including the Day of such Date, and not afterwards.

(ENDORSEMENT.)

This Warrant was issued by of

Attorney for the within-named

A WARNING TO THE DEFENDANT.

WITHIN Seven Days from the Day of the Date of this Warrant, including the Day of such Date, you will be served with a Writ of Capias, and thereafter you will be considered as arrested by virtue of such Writ of Capias, and all Proceedings will be had upon the said Writ of Capias as if this Warrant had not issued, or you may be discharged forthwith on depositing in the Hands of the Officer to whom this Warrant is directed the Sum of £ and Ten Pounds for Costs, or on Payment to such Officer of the Debt and Costs endorsed on this Warrant, or on entering into a Bail Bond to such Officer, with Two sufficient Sureties, for the Amount endorsed on this Warrant.

The Plaintiff claims £ for Debt and £ for Costs.

Bail for the Sum of £ by Order of [*the Party issuing the Warrant*].

SCHEDULE B.

FEES.

	£	*s.*	*d.*
To the Attorney, for preparing the Affidavit of Debt, and showing that the Debtor is about to abscond, and Oath - - - - - - -	0	10	0
To the same, for attending to issue the Warrant - -	0	6	8
To the Clerk of the County Court on the issuing of a Warrant - - - - - - - - - -	0	5	0
To the Party executing the Warrant, for the Caption -	1	1	0
To the same, for every Mile from the Place where the Warrant shall be issued to the Place where it shall be executed, a further Sum of - - - - - -	0	0	6
To the same, for every Mile from the Place where the Debtor shall be arrested to the Gaol where he shall be lodged, the further Sum of - - - - -	0	1	0

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