

ANNO PRIMO

GULIELMI IV. REGIS.

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CAP. XXXVI.

An Act for altering and amending the Law regarding Commitments by Courts of Equity for Contempts, and the taking Bills *pro Confesso*.

[16th *July* 1830.]

WHEREAS by Two several Acts, the one passed in the Fifth Year of the Reign of His late Majesty *George* the Second, intituled *An Act for making Process in Courts of Equity effectual against Persons who abscond and cannot be served therewith, or refuse to appear;* and the other, passed in the Forty-fifth Year of the Reign of His late Majesty King *George* the Third, intituled *An Act to amend an Act passed in the Fourth Year of His present Majesty, intituled 'An Act for preventing Inconveniences arising 'in Cases of Merchants, and such other Persons as are within the 'Description of the Statutes relating to Bankrupts, being entitled to 'Privilege of Parliament and becoming insolvent, and to prevent Delay 'in the entering Appearances in Actions brought against Persons having 'Privilege of Parliament;'* certain Provisions were made for entering Appearances and taking Bills in Equity *pro Confesso:* And whereas it is expedient to alter and amend and to consolidate the Laws on that Subject; and it is also expedient to alter and amend the Law relating to Commitments by Courts of Equity for Contempts; be it therefore enacted by the King'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

5 G. 2. c. 25.

45 G. 3. c. 124.

Recited Act 5 G. 2. and so much of 45 G. 3. as relates to Courts of Equity, and the reading of Bills of Discovery as Evidence, repealed.

Authority of the same, That the whole of the said recited Act of the Fifth Year of King *George* the Second, and so much of the said recited Act of the Forty-fifth Year of His late Majesty *George* the Third, as relates to Courts of Equity, and the reading of Bills of Discovery as Evidence, shall be and the same are hereby repealed; but so as not to affect any thing done or executed in pursuance thereof respectively; and any Suit, Matter, or Thing now in progress under the Authority of the said Acts respectively, and not completed, shall or may be completed under the Powers of this Act; and all the Powers of this Act shall or may be exercised as well in regard to new Suits, Commitments, Discharges, Conveyances, Fines, Recoveries, Matters, or Things, as to Suits, Commitments, Discharges, Conveyances, Fines, Recoveries, Matters, or Things now subsisting or remaining to be made, done, or perfected, whether the Powers of the said Acts or any of them respectively shall or shall not have been applied thereto.

Warden of the Fleet to keep a Register of Persons committed, and report Four Times a Year to the Lord Chancellor.

II. And be it further enacted, That the Warden of the *Fleet* Prison shall keep a Register of the Names of all Persons committed by the Courts of Equity for Contempts, stating the Dates and the Grounds of their several Commitments, and the Dates of their respective Discharges, and shall, on the Twentieth Day of *January*, the Twentieth Day of *April*, the Twentieth Day of *July*, and the Twentieth Day of *October*, in every Year, make a Report to the Lord Chancellor of the Names and Descriptions of such Prisoners in his Custody on each of such Days respectively, with the Causes and Dates of their respective Commitments.

Manner of proceeding in case of Persons not appearing within the usual Time after Subpœna or other Process has been issued.

III. And whereas sometimes Persons have withdrawn themselves beyond the Seas, or otherwise absconded, to avoid appearing in Courts of Equity, or being served with Process for that Purpose, or being brought into Court by Habeas Corpus, have refused to appear; for Remedy of the Inconvenience thence ensuing, be it further enacted, That if in any Suit which hath been or hereafter shall be commenced in any Court of Equity, any Defendant against whom any Subpœna or other Process shall issue, shall not cause his Appearance to be entered upon such Process within such Time and in such Manner as according to the Rules of the Court the same ought to have been entered in case such Process had been duly served, and an Affidavit or Affidavits shall be made to the Satisfaction of such Court that such Defendant is beyond the Seas, or that upon Inquiry at his usual Place of Abode he could not be found so as to be served with such Process, and that there is just Ground to believe that such Defendant is gone out of the Realm, or otherwise absconded, to avoid being served with the Process of such Court; then and in such Case the Court out of which such Process issued, may make an Order directing and appointing such Defendant to appear at a certain Day therein to be named, and a Copy of such Order shall, within Fourteen Days after such Order made, be inserted in the *London Gazette*, and published on some Lord's Day immediately after Divine Service in the Parish Church of the Parish where such Defendant made his usual Abode within Thirty Days next before such his absenting; and also a Copy of such Order shall, within the Time aforesaid, be posted up as after

after mentioned; (that is to say,) a Copy of every such Order made in His Majesty's High Court of Chancery, Court of Exchequer, or the Court of the Duchy Chamber of *Lancaster* at *Westminster*, shall be posted up in some public Place at the Royal Exchange in *London*; and a Copy of every such Order made in any of the Courts of Equity of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or of the Great Sessions in *Wales*, shall be posted up at some public Place in some Market Town within the Jurisdiction of the Court by which such Order was made, and nearest to the Place where such Defendant made his usual Abode as aforesaid, such Place of Abode being also within the Jurisdiction of the said Court; and if the Defendant do not appear within the Time limited by such Order, or within such further Time as the Court shall appoint, then on Proof made of such Publication of such Order as aforesaid, the Court being satisfied of the Truth thereof, may order the Plaintiff's Bill to be taken *pro Confesso*, and make such Decree thereupon as shall be thought just, and may thereupon issue Process to compel the Performance of such Decree, either by an immediate Sequestration of the Real and Personal Estate and Effects of the Party so absenting (if any such can be found), or such Part thereof as may be sufficient to satisfy the Demands of the Plaintiff in the said Suit, or by causing Possession of the Estate or Effects demanded by the Bill to be delivered to the Plaintiff, or otherwise, as the Nature of the Case shall require; and the said Court may likewise order such Plaintiff to be paid and satisfied his Demands out of the Estate or Effects so sequestered, according to the true Intent and Meaning of such Decree, such Plaintiff first giving sufficient Security, in such Sum as the Court shall think proper, to abide such Order touching the Restitution of such Estate or Effects as the Court shall think proper to make concerning the same, upon the Defendant's Appearance to defend such Suit, and paying such Costs to the Plaintiff as the Court shall order; but in case such Plaintiff shall refuse or neglect to give such Security as aforesaid, then the said Court shall order the Estate or Effects so sequestered, or whereof the Possession shall be decreed to be delivered, to remain under the Direction of the Court, either by appointing a Receiver thereof, or otherwise, as to such Court shall seem meet, until the Appearance of the Defendant to defend such Suit, and his paying such Costs to the Plaintiff as the said Court shall think reasonable, or until such Order shall be made therein as the Court shall think just.

Persons in Custody so neglecting, to be served with a Copy of the Decree.

IV. Provided always, and be it further enacted, That if any Person against whom any Decree shall be made upon Refusal or Neglect to enter his Appearance, or appoint a Clerk in Court or Attorney to act on his behalf, shall be in Custody or forthcoming, so that he may be served with a Copy of such Decree, then he shall be served with a Copy thereof before any Process shall be taken out to compel the Performance thereof.

Persons out of the Realm affected by such Decrees, if they return within Seven

V. Provided also, and be it further enacted, That if any Decree shall be made in pursuance of this Act against any Person being out of the Realm or absconding, in manner aforesaid, at the Time such Decree is pronounced, and such Person shall, within Seven Years after the making such Decree, return, or become publicly visible, then and in

Years, to be served with a Copy; or in case of Death, their Heirs, &c.

in such Case he shall likewise be served with a Copy of such Decree within a reasonable Time after his Return or public Appearance shall be known to the Plaintiff; and in case any Defendant against whom such Decree shall be made shall, within Seven Years after the making such Decree, happen to die before his or her Return into this Realm or appearing openly as aforesaid, or shall, within the Time last before mentioned, die in Custody before his or her being served with a Copy of such Decree, then his or her Heir, if such Defendant shall have any Real Estate sequestered, or whereof Possession shall have been delivered to the Plaintiff, and such Heir may be found, or if such Heir shall be a Feme Covert, Infant, or *non compos Mentis*, the Husband, Guardian, or Committee of such Heir respectively, or if the Personal Estate of such Defendant be sequestered, or Possession thereof delivered to the Plaintiff, then his Executor or Administrator (if any such there be), may and shall be served with a Copy of such Decree, within a reasonable Time after it shall be known to the Plaintiff that the Defendant is dead, and who is his Heir, Executor, or Administrator, or where he may be served therewith.

Persons not petitioning a Rehearing of the Cause within Six Months, the Decree to be absolutely confirmed.

VI. Provided always, and be it further enacted, That if any Person so served with a Copy of such Decree shall not, within Six Months after such Service, appear and petition to have the said Cause reheard, such Decree so made as aforesaid shall stand absolutely confirmed against the Person so served with a Copy thereof, his Heirs, Executors, and Administrators, and all Persons claiming or to claim by, from, or under him, or any of them, by virtue of any Act done or to be done subsequent to the Commencement of such Suit.

Persons petitioning a Rehearing within Seven Years, and giving Security for Costs, admitted to answer, and the Cause to be heard again.

VII. Provided always, and be it further enacted, That if any Person so served with a Copy of such Decree shall within Six Months after such Service, or if any Person not being so served shall within Seven Years next after the making such Decree, appear in Court and petition to be heard with respect to the Matter of such Decree, and shall pay down or give Security for Payment of such Costs as the Court shall think reasonable in that Behalf, the Person so petitioning, or his Representatives, or any Person claiming under him by virtue of any Act done before the Commencement of the Suit, may be admitted to answer the Bill exhibited, and Issue may be joined, and Witnesses on both Sides examined; and such other Proceedings, Decree, and Execution may be had thereon, as there might have been in case the same Party had originally appeared, and the Proceedings had then been newly begun, or as if no former Decree or Proceedings had been in the same Cause.

Persons not appearing within Seven Years, and making such Petition, to be absolutely barred.

VIII. Provided always, and be it further enacted, That if any Person against whom such Decree shall be made, his Heirs, Executors, or Administrators, shall not, within Seven Years next after the making of such Decree, appear and petition to have the Cause reheard, and pay down or give Security for Payment of such Costs as the Court shall think reasonable in that Behalf, such Decree made as aforesaid shall stand absolutely confirmed against the Person against whom such Decree shall be made, his Heirs, Executors, and Administrators, and against all Persons claiming or to claim by, from, or under him,

or

or any of them, by virtue of any Act done or to be done subsequent to the Commencement of such Suit; and at the End of such Seven Years it shall and may be lawful for the Court to make such further Order as shall be just and reasonable, according to the Circumstances of the Case.

Not to affect Persons beyond the Seas, unless in certain Cases.

IX. Provided always, and be it further enacted, That this Act shall not extend or be construed to extend to warrant or make good any Proceeding against any Person beyond the Seas, unless it shall appear to the Satisfaction of the Court by Affidavit or Affidavits, before the making of such Decree, that such Person had been in that Part of *Great Britain* called *England* within Two Years next before the Subpœna in such Suit issued against such Person.

As to Courts having a limited Jurisdiction.

X. Provided also, and be it further enacted, That the Provisions herein-before contained shall not extend or be construed to extend to warrant or make good any Proceeding against any Person in any Court of Equity having a limited Jurisdiction, unless it shall appear to the Satisfaction of such Court by Affidavit, before the making of such Decree, that such Person had resided within the Jurisdiction of such Court within One Year next before the Subpœna in such Suit issued against such Person.

Defendants brought into Court by Habeas Corpus, or in Custody, and refusing to enter Appearance, Court may enter it for them.

XI. And be it further enacted, That from and after the passing of this Act, if any Defendant, by virtue of any Writ of Habeas Corpus or other Process issuing out of any Court of Equity, shall be brought into Court, and shall refuse or neglect, or, being within the Walls of any Prison in *England* under or charged with an Attachment or other Process of Contempt, shall, after Fourteen Days previous Notice in Writing requiring him to enter an Appearance, refuse or neglect to enter his Appearance according to the Rules or Method required by the said Court, or to appoint a Clerk in Court or Attorney of such Court to act on his Behalf, such Court may appoint a Clerk in Court or Attorney of such Court to enter an Appearance for such Defendant, and such Proceedings may thereupon be had in the Cause as if the Party had actually appeared.

Appearances may be put in for Defendants having Privilege of Parliament in Courts of Equity, on Return of Process of Sequestration.

XII. And whereas in many Cases Persons having Privilege of Parliament are named as Defendants in Suits instituted in Courts of Equity against them, either alone or jointly with other Persons, for enforcing against them Demands and Duties cognizable in Courts of Equity, and in some Cases such Defendants having Privileges of Parliament have stood out to the Return of Process of Sequestration issued against them for enforcing Appearance, and such Process of Sequestration hath not been found sufficient to enforce such Appearance; be it therefore enacted, That from and after the passing of this Act, in case any Defendant having Privilege of Parliament shall, upon a Return of Process of Sequestration issued against him for not putting in an Appearance to any original or other Bill of Complaint instituted against him in a Court of Equity for enforcing Discovery and Relief, or Discovery alone, (as the Case may be,) neglect to appear, that then and in such Case such Court, upon producing the

Return of such Sequestration in Court, may, on the Motion or other Application of the Plaintiff in such Cause, appoint a Clerk in Court to enter an Appearance for such Defendant so having Privilege of Parliament, and such Proceedings may be thereupon had in the Cause as if the Party had actually appeared.

In default of Answer to Bill in Equity against Persons having Privilege of Parliament, Bill shall be taken pro Confesso.

XIII. And whereas in many Cases it is necessary, on the Part of the Persons having legal Rights against Persons having Privilege of Parliament, to proceed by Bill in Equity against such Persons so having Privilege of Parliament, to obtain from them Discovery on Oath of Facts intended to be used or given in Evidence in Courts of Law against the Persons making such Discovery; and in Cases where such Persons having such Privilege as aforesaid shall stand out Process of Contempt, Parties entitled to such Discovery against them have not sufficient Means of compelling or obtaining the same in all Cases; be it therefore enacted, That from and after the passing of this Act, when any Defendant having Privilege of Parliament shall have appeared to any Bill filed against him seeking a Discovery upon Oath, or when an Appearance shall have been entered for such Defendant according to the Provisions aforesaid, and such Person shall refuse or neglect to put in his Answer to such Bill within the Time for that Purpose allowed by the Rules and Orders of such Court, that then it shall and may be lawful for the Plaintiff in such Suit to apply to the Court for an Order that such Bill shall be taken *pro Confesso* against such Defendant, and upon such Application such Court of Equity shall make an Order that such Bill shall be taken *pro Confesso*, unless the Defendant shall within Eight Days after being served with such Order shew good Cause to the contrary.

Such Bill shall be read in Evidence as an Answer admitting the Facts.

XIV. And be it further enacted, That when and so soon as any such Order shall have been pronounced by any such Court of Equity for taking such Bill *pro Confesso*, such Bill in Equity, or an examined Copy thereof, so taken *pro Confesso*, shall be taken and read in any Court of Law or Equity as Evidence of the Facts and Matters and Things therein contained, in the same Manner as if such Facts, Matters, and Things had been admitted to be true by the Answer of the Defendant put in to such Bill; and such Bill so taken *pro Confesso* shall be received and taken in Evidence of such and the same Facts, and on behalf of such and so many Persons, as the Answer of the Defendant to the said Bill could and might have been read and received in Evidence of, in case such Answer had been put in by the Defendant thereto, and had admitted the same Facts, Matters, and Circumstances as in such Bill stated and set forth; and in like Manner every other Bill of Discovery taken *pro Confesso*, under any of the Provisions of this Act, shall or may be taken and read as Evidence of the Facts and Matters and Things therein contained, to the Extent aforesaid.

Rules for Courts of Equity.

XV. And for remedying the Practice of Courts of Equity in regard to Process of Contempt and the taking of Bills *pro Confesso*, be it further enacted, That the Rules and Regulations herein-after provided and contained shall be adopted by the High Court of Chancery, and

shall from henceforth become Orders and Rules of the said Court of Chancery, and be observed and enforced in and by the said Court; (that is to say,)

1. That when a Writ of Attachment shall have duly issued against any Defendant for Contempt in not answering the Bill, and such Defendant shall not have been taken under such Writ, and the Sheriff of the County into which such Writ shall have issued shall make a Return of Non est inventus to the same, the Court shall, upon Motion by or on behalf of the Plaintiff, (Notice of which shall not be required,) order that the Serjeant at Arms attending the Court do apprehend such Defendant and bring him to the Bar of the Court to answer his Contempt, and the same Proceedings may thereupon be had as if such Order had been made in the Manner heretofore in use; provided that before such Order shall in any such Case be made, the Plaintiff applying for the same shall be required to satisfy the Court, by the Affidavit of the Solicitor of the Plaintiff, or of his Town Agent, if the Writ of Attachment was issued by such Town Agent, that due Diligence was used to ascertain the Place where such Defendant was at the Time of issuing such Writ, and in endeavouring to apprehend such Defendant under the same, and that the Person suing forth such Writ verily believed at the Time of suing forth the same that such Defendant was in the County into which such Writ was issued.
2. That if any Defendant, being in Contempt for not answering the Bill, shall have been brought to the Bar of the Court under Process for such Contempt, and shall have been committed or remanded back to the Prison of the *Fleet*, the Plaintiff may sue forth the Writ of Habeas Corpus in the Manner and Form heretofore in use in the like Cases, provided that there shall be at least Twenty-eight Days between the Day on which such Defendant was so committed or remanded back and the Return of such Writ of Habeas Corpus; and upon or after the Return of such Writ of Habeas Corpus, in case such Defendant shall not have put in his Answer, the Court shall order the Bill to be taken *pro Confesso* against such Defendant, in the same Manner as is now usual in the like Cases upon the Return of a Writ of Alias pluries Habeas Corpus, and such Decree shall thereupon be made as shall be thought just; but in regard to any Defendant in Custody before and at the Time of the passing of this Act, there shall be at least Thirty Days between the Time of passing this Act and the Return of such last-mentioned Writ of Habeas Corpus; and it shall not be necessary in the Case of any Defendant now in Custody as aforesaid, who shall have been brought to the Bar of the Court as aforesaid, to sue forth more than One Writ of Habeas Corpus in order to take the Bill *pro Confesso*.
3. That the Party prosecuting any Contempt shall be at liberty, without Order, to sue forth the several Writs in Process of Contempt, returnable immediately in case the Party in Contempt resides or is in *London* or within Twenty Miles thereof; and that in other Cases, the Party prosecuting a Contempt shall be at liberty, without Order, to sue forth such several Writs, returnable

able in Vacation, provided that there be Fifteen Days between the Teste and the Return of each of such Writs.

4. That where a Defendant is confined for a Misdemeanor, and has been brought before the Court upon an Habeas Corpus, and thereupon has been turned over to the *Fleet pro formâ*, but has been carried back to the Prison from whence he came, with his Cause, another Writ of Habeas Corpus may issue, directed to the Gaoler or Keeper of the Prison to which he has been carried back, and thereupon the Defendant shall be brought into Court, and remanded to the Prison from whence he came, with his Cause, without being turned over again to the *Fleet* Prison, and the Bill may be taken *pro Confesso*, in the same Manner in all Respects as if the Defendant had been all along in the Custody of the Warden of the *Fleet*.

5. That if the Defendant, under Process of Contempt for not appearing or not answering, be in actual Custody, and shall not have been sooner brought to the Bar of the Court under Process to answer his Contempt, the Plaintiff, if the Contempt be not sooner cleared, shall bring the Defendant by an Habeas Corpus to the Bar of the Court within Thirty Days from the Time of his being actually in Custody, or detained (being already in Custody) upon Process of Contempt, and if the last Day of such Thirty Days shall happen out of Term, then within the Four first Days of the ensuing Term; and where the Defendant is in Custody of the Serjeant at Arms, or of the Messenger, upon an Attachment or other Process, the Plaintiff shall, within Ten Days after his being taken into such Custody, or if the last of such Ten Days shall happen out of Term then within the first Four Days of the next ensuing Term, cause the Defendant to be brought to the Bar of the Court; and in case any such Defendant shall not be brought to the Bar of the Court within the respective Times aforesaid, the Sheriff, Gaoler or Keeper, Serjeant at Arms or Messenger, in whose Custody he shall be, shall thereupon discharge him out of Custody without Payment by him of the Costs of Contempt, which shall be payable by the Party on whose Behalf the Process issued; and this Rule shall apply to every Defendant in Custody before and at the Time of passing of this Act, who shall not have been brought to the Bar of the Court; but the Thirty Days allowed in the first above mentioned Case, and the Ten Days allowed in the second above mentioned Case, shall be reckoned from the first Day of next Term.

6. That if a Defendant, upon being brought before the Court upon an Habeas Corpus, shall make Oath (which shall be administered to him by the Registrar, and he shall be examined in open Court,) that he is unable by reason of Poverty to employ a Solicitor to put in his Answer, the Court shall thereupon refer it to a Master in Rotation to inquire into the Truth of that Allegation, and to report thereon to the Court forthwith, and thereupon the Court may make such Order as upon other Reports of the like Nature under the Provisions herein-after contained.

7. That

7. That on the Thirtieth Day of *January*, the Thirtieth Day of *April*, the Thirtieth Day of *July*, and the Thirtieth Day of *October*, in every Year, or if any of those Days happen on a *Sunday*, then on the following Day, One of the Masters of the Court of Chancery, to be named by the Court, shall visit the *Fleet* Prison, and examine the Prisoners confined there for Contempt, and shall report their Opinion on their respective Cases to the Court; and thereupon it shall be lawful for the Court to order, if it shall see fit, that the Costs of the Contempt of any such Prisoner shall be paid out of the Interest and Dividends arising from the several Government or Parliamentary Securities standing in the Name of the Accountant General of the said Court of Chancery, intituled "Account of Monies placed out for the Benefit and "better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with Surplus Interest "arising from Securities carried to an Account of Monies placed "out for the Benefit and better Security of the Suitors of the "High Court of Chancery," or out of any Cash standing to either of such Accounts, or to any other Account which is now or hereafter may be standing to the Credit of the Suitors of the said Court of Chancery, (after and subject to the Payment of all Charges which by any Act heretofore passed are directed to be paid thereout,) and to assign a Solicitor and Counsel to such Prisoner, for putting in his Answer and defending him *in formâ pauperis*, and to direct any such Prisoner, having previously done such Acts as the Court shall direct, to be discharged out of Custody; provided that if any such Defendant become entitled to any Funds out of such Cause, the same shall be applied, under the Direction of said Court, in the first Instance to the Reimbursement of the Suitors Fund.

8. That it shall be lawful for the Master visiting the *Fleet*, or to whom the Case of a Prisoner shall be referred by the Court itself, to examine the Prisoner, and all other Persons whom he may think it proper to examine, upon Oath, and to administer an Oath or Oaths to any such Prisoner and other Persons accordingly; and to cause any Officers, Clerks, and Ministers of any Court of Law or Equity to bring and produce upon Oath before him any Records, Orders, Books, Papers, or other Writings belonging to the said Courts, or to any of the Officers within the same as such Officers.

9. That if it shall appear to the Satisfaction of the Court, that any such Prisoner is an Idiot, Lunatic, or of unsound Mind, although no Commission has issued, the Court shall appoint a Guardian to put in his Answer and discharge the Defendant, providing for the Costs in any of the Ways pointed out by this Act, as shall seem just; and if the Court shall see fit, the Defence may be made by such Guardian *in formâ pauperis*.

10. That where the Defendant has been brought to the Bar of the Court for his Contempt in not answering, and refuses or neglects to answer, (not being Idiot, Lunatic, or of unsound Mind,) the Court may, upon Motion or Petition, of which due Notice shall be given personally to the Defendant, authorize the Plaintiff to amend his Bill, without such Amendment

operating as a Discharge of the Contempt, or rendering it necessary to proceed with the Process of Contempt *de novo*; but after such Amendment the Plaintiff may proceed to take the amended Bill *pro Confesso*, in the same Manner as if it had not been amended: Provided nevertheless, that if the Defendant shall be desirous to answer such amended Bill, the Court shall allow him such Time as shall seem just for that Purpose; but if he shall not within the Time allowed by the Court put in a sufficient Answer to the amended Bill, the Process for taking the Bill *pro Confesso* may be resumed and carried on.

11. That in every Case where the Defendant has been brought to the Bar of the Court to answer his Contempt for not answering, and shall refuse or neglect to answer within the next Twenty-one Days, the Plaintiff shall be at liberty, with the Leave of the Court, upon Ten Days previous Notice to the Defendant after the Expiration of such Twenty-one Days, unless good Cause be shown to the contrary, instead of proceeding to have the Bill taken *pro Confesso*, to put in such an Answer to the Bill as herein-after is mentioned, in the Name of the Defendant, without Oath or Signature; and thereupon the Suit shall proceed in the same Manner as if such Answer were really the Answer of the Defendant, with which the Plaintiff was satisfied; and the Costs of the Contempt and of putting in such Answer may be provided for in like Manner as if the Defendant himself had put in such Answer; and such Answer, besides the formal Parts thereof, shall be to the following Effect; that the Defendant leaves the Plaintiff to make such Proofs of the several Matters in the Bill alleged as he shall be able or be advised, and submits his Interests to the Court.

12. That in any Case where, upon the Application of the Plaintiff, the Court shall be satisfied that Justice cannot be done to the Plaintiff without an Answer to the Bill or to the Interrogatories from the Defendant himself, it shall be lawful for the Court to order the Defendant to remain in Custody until Answer or further Order, but without Prejudice to the Plaintiff's availing himself of any of the Provisions of this Act.

13. That where the Defendant is in Contempt for not appearing or not answering, and in actual Custody under Process for such Contempt, or being already in Custody shall be detained by an Attachment for such Contempt, and shall not, where the Contempt is for not appearing, enter an Appearance within Twenty-one Days after he is lodged in Gaol or Prison, or the Attachment is lodged against him, (he being already in Prison,) as the Case may be, or, where the Contempt is for not answering, put in an Answer within Two Calendar Months after he is lodged in Gaol or Prison, or the Attachment is lodged against him, he being already in Prison, the Plaintiff shall (as the Case may be), within Fourteen Days after the Period computed from the Expiration of such Twenty-one Days within which he may by the Provisions of this Act be able to enter such Appearance, cause an Appearance to be entered for the Defendant under the Powers of this Act, and shall at the Expiration of such Two Calendar Months proceed to take the Bill *pro Confesso*, and shall accordingly

obtain an Order for taking the same *pro Confesso* within Six Weeks after the Period computed from the Expiration of such Two Calendar Months within which he may be able to take the same *pro Confesso;* or in default of so doing in either of such Cases, the Defendant shall, upon Application to the Court, be entitled to be discharged out of Custody without paying any of the Costs of the Contempt, unless the Court shall, under the Power herein-before contained, see good Cause to remand and detain the Defendant in Custody; and this Rule shall apply to every Defendant in Custody before and at the Time of the passing of this Act, who shall not have entered his Appearance, and for whom an Appearance shall not have been entered, or shall not have answered the Bill, and the Bill shall not have been taken *pro Confesso*, but the Twenty-one Days and Two Calendar Months respectively to be reckoned from the first Day of next Term, and the other Periods to be altered accordingly in Computation; but nothing in this Act shall prevent any Plaintiff from proceeding to take his Bill *pro Confesso*, according to the Practice existing before the passing of this Act, where at the Time of passing of this Act his Proceedings shall be so far advanced that the Powers of this Act would not enable him to accelerate the Period for taking his Bill *pro Confesso*.

14. That where a Defendant is in Custody for Contempt in not answering, and shall be able to put in his Answer by borrowing or obtaining a Copy of the Bill, without taking an Office Copy of the Bill, he shall not be compellable to take any such Copy, but the Clerk in Court may (if he think the Defendant is of sufficient Ability to pay for an Office Copy) require him, before the Answer is filed, to make an Affidavit denying his Ability in consequence of Poverty to pay for an Office Copy of the Bill.

15. That when any Person shall have been directed by any Decree or Order to execute any Deed or other Instrument, or make a Surrender or Transfer, or to levy a Fine or suffer a Recovery, and shall have refused or neglected to execute, make, or transfer, or levy or suffer the same, and shall have been committed to Prison under Process for such Contempt, or, being confined in Prison for any other Cause, shall have been charged with or detained under Process for such Contempt, and shall remain in such Prison, the Court may, upon Motion or Petition, and upon Affidavit that such Person has, after the Expiration of Two Calendar Months from the Time of his being committed under, or charged with, or detained under such Process, again refuse to execute such Deed or Instrument, or make such Surrender or Transfer, or levy or suffer such Fine or Recovery, order or appoint One of the Masters in Ordinary, or if the Act is to be done out of *London*, then, if necessary, One of the Masters Extraordinary, to execute such Deed or other Instrument, or to make such Surrender or Transfer, for and in the Name of such Person, and to levy such Fine or suffer such Recovery in his Name, and to do all Acts necessary to give Validity and Operation to such Fine and Recovery, and to lead or declare the Uses thereof; and the Execution of the said Deed or other Instrument,

Instrument, and the Surrender or Transfer made by the said Master, and the Fine or Recovery levied or suffered by him, shall in all Respects have the same Force and Validity as if the same had been executed or made, levied or suffered, by the Party himself; and within Ten Days after the Execution or making of any such Deed or other Instrument, or Surrender or Transfer, or levying or suffering such Fine or Recovery, Notice thereof shall be given by the adverse Solicitor to the Party in whose Name the same is executed or made; and such Party, as soon as the Deed or other Instrument, or Surrender, Transfer, Fine, or Recovery shall be executed, made, levied, or suffered, shall be considered as having cleared his Contempt, except as far as regards the Payment of the Costs of the Contempt, and shall be entitled to be discharged therefrom under any of the Provisions of this Act applicable to his Case; and the Court shall make such Order as shall be just, touching the Payment of the Costs of or attending any such Deed, Surrender, Instrument, Transfer, Fine, or Recovery.

16. That where a Person shall be committed for a Contempt in not delivering to any Person or Persons, or depositing in Court or elsewhere, as by any Order may be directed, Books, Papers, or any other Articles or Things, any Sequestrator or Sequestrators appointed under any Commission of Sequestration shall have the same Power to seize and take such Books, Papers, Writings, or other Articles or Things, being in the Custody or Power of the Person against whom the Sequestration issues, as they would have over his own Property; and thereupon such Articles or Things so seized and taken shall be dealt with by the Court as shall be just; and after such Seizure it shall be lawful for the Court, upon the Application of the Prisoner, or of any other Person in the Cause or Matter, or upon any Report to be made in pursuance of this Act, to make such Order for the Discharge of the Prisoner, upon such Terms, and, if it shall see fit, making any Costs in the Cause, as to the Court shall seem proper.

17. That in any other Case of a Commitment for Contempt, not herein specially provided for, the Court may upon any such Application as last aforesaid, or upon any such Report as aforesaid, make such Order for the Discharge of the Prisoner, upon any such Terms, and making, if the Court shall see fit, any Costs Costs in the Cause, as to the Court shall seem proper.

18. That where any Person committed for a Contempt shall be entitled to his Discharge upon applying to the Court, but shall omit to make such Application, the Court may upon any such Report as aforesaid compulsorily discharge such Person from the Contempt and from Custody, and pay the Costs of the Contempt out of any Funds belonging to him over which the Court may have Power, or make them Costs in the Cause as against him, or may discharge him from the Contempt, but leave him in Custody for the Costs, which may be cleared, if he be insolvent, under the Provisions herein-after contained in that Behalf.

19. That where any Party obstinately retains Possession of Lands or other Real Property after a Writ of Execution of a Decree or an Order for Delivery of Possession has been duly served and Demand

Demand of Possession made, and upon an Affidavit of such Service of the Writ of Execution, and of such Demand made thereunder, and a Refusal to comply therewith on the Part of the Person against whom the Writ issued, the Party issuing it shall be at liberty, upon an Affidavit of Service of the Writ of Execution and Demand of Possession and Refusal, to obtain the usual Order of Course for the Writ of Assistance to issue, and that the intermediate Writs of Attachment and Injunction further commanding the Party to deliver Possession, or any other Writ, shall be unnecessary.

20. That in order to relieve Persons in Prison from the Expence of a Master's Attendance to take Affidavits or Answers, the Lord High Chancellor do, by One or more Commission or Commissions under the Great Seal, upon or in respect of which no Fee shall be payable, nominate and appoint the Warden, Keeper, or other Chief Officer of every Prison within the City of *London*, or the Bills of Mortality, and their Deputies, to be Masters Extraordinary of the High Court of Chancery, for the Purpose of taking and receiving such Affidavits and Answers as any Person or Persons within any such Prison shall be willing or desirous to make, and for no other Purpose; and the Person so taking such Affidavit or Answer shall in respect thereof be entitled to receive a Fee of One Shilling, and no more; and the Court of Exchequer shall in like Manner appoint such Persons as aforesaid a Commissioner or Commissioners of the said Court, for the Purposes aforesaid, and no others, and with the Right to the like Fee, and no more; and in every Case of an Answer being sworn in Prison, a Clerk of a Master or Baron (as the Case may require) shall attend to take and carry back to and from the Prison the Answer, and shall in respect thereof be entitled to a Fee of Three Shillings, and no more.

Discharge may extend to Process for Contempt in Nonpayment of Money, and to Costs incurred by Creditor, but subject to Taxation.

XVI. And be it enacted, That the Discharge of any Prisoner adjudicated upon under the Authority of an Act passed in the Seventh Year of His present Majesty's Reign, intituled *An Act to amend and consolidate the Laws for the Relief of Insolvent Debtors in* England, or any other Act which may hereafter be passed for the Relief of Insolvent Debtors, shall and may extend to all Process issuing from any Court of Equity for any Contempt of such Court for Nonpayment of Money, or of Costs, Charges, or Expences in any such Court; and that in such Case, the said Discharge shall be deemed to extend to all Costs which such Prisoner shall be liable to pay in consequence or by reason of such Contempt, or on purging the same; and that every Discharge, so adjudicated as aforesaid, as to any Debt or Damages of any Creditor of such Prisoner, shall be deemed to extend also to all Costs incurred by such Creditor, before the filing of such Prisoner's Schedule, in any Action or Suit brought by such Creditor against such Prisoner for the Purpose, for the Recovery of the same; and that all Persons as to whose Demands for any such Costs, Money, or Expences any such Person shall be so adjudged to be discharged, shall be deemed and taken to be Creditors of such Prisoner in respect thereof, and entitled to the Benefits of all the Provisions made for Creditors by the said Act, or any future Act; subject nevertheless to

such ascertaining of the Amount of the said Demands as may be had by Taxation or otherwise, and to such Examination thereof as is in the said last-mentioned Act, or as shall be in any future Act provided in respect of all Claim to a Dividend of such Insolvent's Estate and Effects.

When Process of Contempt is for Nonperformance of an Act.

XVII. And be it further enacted, That where the Process of Contempt is for the Nonperformance of an Act, for Example, the not answering the Plaintiff's Bill, and the Bill in Equity to which the Insolvent is a Party is taken *pro Confesso*, and he has not paid the Costs of the Contempt, or the Insolvent has fully answered the Plaintiff's Bill or Interrogatories, or otherwise cleared his Contempt, except as far as regards the Payment of the Costs, or it has become in Event unnecessary for him to do the Act for the Nonperformance of which he was committed or attached, the Court of Equity in which the Suit is depending shall, upon the Application of the Party in Contempt, discharge him from the same, except as to the Costs thereof, for which he shall remain in Custody, and such Costs shall be deemed within the Provision lastly herein-before contained, and he shall be dischargeable therefrom, and from the Process of Contempt, in like Manner as if the Process of Contempt were for Nonpayment of Money or Costs; provided that this Order or Regulation shall not weaken any of the other Powers by this Act given, nor shall anything herein contained lessen the Operation of the said Act for the Relief of Insolvent Debtors.

Powers given by this Act to the Court of Chancery to extend to the Lord Keeper.

XVIII. And be it enacted, That the Powers and Authorities given by this Act to the Court of Chancery, or to the Lord Chancellor of *Great Britain*, shall and may be exercised as well by such Lord Chancellor as by (and they are hereby given to) the Lord Keeper or Commissioners of the Great Seal of *Great Britain* for the Time being, and to the Master of the Rolls and Vice Chancellor respectively; but the Reports of the Warden of the *Fleet*, and of the Masters visiting there, shall be made to the Lord Chancellor, Lord Keeper, or Lords Commissioners only, who alone are to make Orders thereupon for Discharge or Relief of Prisoners.

Certain Rules to be adopted by Court of Exchequer.

XIX. And be it further enacted, That such of the Rules herein-before directed to be adopted by the Court of Chancery as are numbered from Five to Twenty, both inclusive, shall be adopted by the Court of Exchequer, which Court shall, for the Purposes of this Act, draw upon the Suitors Fund of that Court.

Powers contained in such last-mentioned Rules extended to the Court of Exchequer.

XX. And be it further enacted, That the Powers and Authorities contained in such last-mentioned Rules, and given by this Act to the Lord Chancellor, shall and may be exercised in like Manner by, and are hereby given to His Majesty's Court of Exchequer, and may be exercised by the said Court, or by the Lord Chief Baron thereof; but such periodical Visits only to be made to the *Fleet* Prison, in regard to Prisoners for Contempt of the said Court, as the Lord Chief Baron shall direct, and by such Officer or Officers of the Court as he shall nominate.

XXI. And

XXI. And be it further enacted, That wherever this Act, in describing or referring to any Person, or any Conveyance, Transfer, Matter, or Thing, uses the Word importing the Singular Number or the Masculine Gender only, the same shall be understood to include and shall be applied to several Persons as well as One Person, and Females as well as Males, and Bodies Corporate as well as Individuals, and several Conveyances, Transfers, Matters, or Things respectively, as well as One Conveyance, Transfer, Matter, or Thing respectively, unless there be something in the Subject or Context repugnant to such Construction. Rule for the Interpretation of this Act.

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