ANNO SEPTIMO & OCTAVO

GEORGII IV. REGIS.

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CAP. LXXI.

An Act to prevent Arrests upon Mesne Process where the Debt or Cause of Action is under Twenty Pounds; and to regulate the Practice of Arrests. [2d *July* 1827.]

WHEREAS by an Act made in the Twelfth Year of the Reign of His late Majesty King *George* the First, intituled *An Act to prevent frivolous and vexatious Arrests*, it was 12 G. 1. c. 29. amongst other things enacted, that from and after the Twenty-fourth Day of *June* One thousand seven hundred and twenty-six no Person should be held to Special Bail upon any Process issuing out of any superior Court where the Cause of Action should not amount to the Sum of Ten Pounds or upwards, nor out of any inferior Court where the Cause of Action should not amount to the Sum of Forty Shillings or upwards; and that in all Cases where the Cause of Action should not amount to Ten Pounds or upwards in any such superior Court, or to Forty Shillings or upwards in any such inferior Court, and the Plaintiff or Plaintiffs should proceed by way of Process against the Person, he, she, or they should not arrest, or cause to be arrested, the Body of the Defendant or Defendants, but should serve him, her, or them personally, within the Jurisdiction of the Court, with a Copy of the Process; and if such Defendant or Defendants should not appear at the Return of the Process, or within Four Days after such Return, in such Case it should be lawful for the Plaintiff or Plaintiffs, upon Affidavit

being made and filed in the proper Court of the personal Service of such Process as aforesaid (which Affidavit should be filed *gratis*), to enter a Common Appearance or file Common Bail for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his, her, or their Appearance, or filed Common Bail; which Act was explained and amended by an Act passed in the Fifth Year of the Reign of His Majesty King *George* the
5 G. 2. c. 27. Second, intituled *An Act to explain, amend, and render more effectual an Act made in the Twelfth Year of the Reign of His late Majesty King* George *the First, intituled 'An Act to prevent frivolous and 'vexatious Arrests:'* And whereas by the said Act made in the Fifth Year of the Reign of His said late Majesty King *George* the Second it was enacted, that where the Cause of Action should not amount to Ten Pounds or upwards in any superior Court, or to Forty Shillings or upwards in any inferior Court, no Special Writ or Writs, nor any Process specially therein expressing the Cause or Causes of Action, should be sued forth or issued from any such superior or inferior Court, to compel any Person or Persons to appear thereon in such Court or Courts; and all Proceedings and Judgments on any such Writs are thereby declared to be void and of none Effect: And whereas the said several Acts being temporary, the same were afterwards made perpetual by an Act passed in the Twenty-first Year of the Reign of His said late Majesty King *George* the Second: And whereas by an Act passed in the Nineteenth Year of the Reign of
19 G. 3. c. 70. His late Majesty King *George* the Third, intituled *An Act for extending the Provisions of an Act made in the Twelfth Year of the Reign of King* George *the First, intituled 'An Act to prevent frivolous and 'vexatious Arrests;' and for other Purposes;* it was enacted, that from and after the First Day of *July* One thousand seven hundred and seventy-nine no Person should be arrested or held to Special Bail upon any Process issuing out of any inferior Court where the Cause of Action should not amount to the Sum of Ten Pounds or upwards, but that the like Copies of Process should be served, and the like Proceedings had thereupon in such inferior Court, in all Cases where the Cause of Action should not amount to Ten Pounds or upwards, as are directed to be had by the said Act of the Twelfth Year of the Reign of King *George* the First, in such inferior Court, where the Cause of Action shall not amount to the Sum of Forty Shillings, any Law or Usage to the contrary notwithstanding; and further Provisions were made touching Proceedings in such inferior Courts, in conformity to the Provisions of the said former Act; and so much of any Act or Acts passed for the Recovery of Debts within any Districts and Jurisdictions, as authorized Arrest and Imprisonment of Defendants where the Cause of Action should amount to less than Ten Pounds, was thereby repealed; and further Provisions were made touching Actions in inferior Courts where the Cause of Action should not amount to Ten Pounds: And whereas by an Act passed in the Forty-third Year of the Reign of His late
43 G. 3. c. 46. Majesty King *George* the Third, intituled *An Act for the more effectual Prevention of frivolous and vexatious Arrests and Suits, and to authorize the levying of Poundage upon Executions in certain Cases*, it was enacted, that from and after the First Day of *June* One thousand eight hundred and three no Person should be

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arrested

arrested or held to Special Bail upon any Process issuing out of any Court within those Parts of the United Kingdom of *Great Britain* and *Ireland* called *England* and *Ireland*, for a Cause of Action not originally amounting to such Sum for which such Person was by the Laws then in being liable to be arrested and held to Bail, over and above and exclusive of any Costs, Charges, and Expences that may have been incurred, recovered, or become chargeable in or about the suing for or recovering the same or any Part thereof: And whereas it is expedient to extend and render more effectual the Provisions of the said recited Acts: 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 of the same, That from and after the First Day of *August* One thousand eight hundred and twenty-seven no Person shall be held to Special Bail upon any Process issuing out of any Court, where the Cause of Action shall not have originally amounted to the Sum of Twenty Pounds or upwards, over and above and exclusive of any Costs, Charges, and Expences that may have been incurred, recovered, or become chargeable in or about the suing for or recovering the same or any Part thereof; and that in all Cases where the Cause of Action shall not amount to Twenty Pounds or upwards, exclusive of such Costs, Charges, and Expences as aforesaid, and the Plaintiff or Plaintiffs shall proceed by the way of Process against the Person, he, she, or they shall not arrest or cause to be arrested the Body of the Defendant or Defendants, but shall serve him, her, or them personally, within the Jurisdiction of the Court, with a Copy of the Process and Proceedings thereupon, in such Manner as by the said Act of the Twelfth Year of the Reign of His late Majesty King *George* the First is provided in Cases where the Cause of Action shall not amount to Ten Pounds or upwards in any superior Court, or to Forty Shillings or upwards in any inferior Court; and that where the Cause of Action in any Court shall not amount to the Sum of Twenty Pounds, exclusive of such Costs, Charges, and Expences as aforesaid, no Special Writ or Writs, nor any Process specially therein expressing the Cause or Causes of Action, shall from and after the said First Day of *August* be sued forth or issued from any Court, in order to compel any Person or Persons to appear thereon in such Court; and all Proceedings and Judgments that shall from and after the said First Day of *August* be had on any such Writ or Process shall be and are hereby declared to be void and of no Effect.

No Person to be held to Special Bail where the Cause of Action is less than 20*l.*

II. And whereas by the said Act passed in the Forty-third Year of the Reign of His late Majesty King *George* the Third, Persons arrested upon Mesne Process were enabled, in lieu of giving Bail to the Sheriff, to deposit in the Hands of the Sheriff the Sum indorsed upon the Writ, together with Ten Pounds in addition to such Sum, to answer the Costs which might accrue up to the Time of the Return of the Writ, and also such further Sum, if any, as should have been paid for the King's Fine upon any Original Writ, and should thereupon be discharged from such Arrest: And whereas it is expedient to extend the Provisions of the said Act, and to enable Persons who have been arrested to deposit or pay into the Court in which the

Defendant discharged from Arrest upon making Deposit with the Sheriff pursuant to 43 G. 3. c. 46. may, instead of perfecting Special Bail, allow Deposit to be paid into Court;

the Writ shall be returnable the Sum indorsed upon the Writ, together with an additional Sum as a Security for Costs, to abide the Event of the Suit, instead of putting in and perfecting Bail in the said Action: Be it therefore enacted, That in all Cases in which any Defendant shall have been discharged from Arrest upon making such Deposit as is required by the said recited Act, and the Sum so deposited shall have been paid into Court, it shall be lawful for such Defendant, instead of putting in and perfecting Special Bail in the Action, according to the Course and Practice of the Court, to allow the Sum so deposited with the Sheriff, and by him paid into Court as aforesaid, together with the additional Sum of Ten Pounds, to be paid into Court by such Defendant as a further Security for the Costs of the Action, to remain in the Court to abide the Event of the Suit; and in all Cases where any Defendant shall have been arrested and shall have given Bail to the Sheriff, or shall have been arrested and remain in Custody, it shall be lawful for such last-mentioned Defendant, instead of putting in and perfecting Special Bail, to deposit and pay into the said Court the Sum indorsed upon the Writ, together with the Amount of the King's Fine, if any, upon the Original Writ, and the further Sum of Twenty Pounds as a Security for the Costs of the Action, there to remain to abide the Event of the Suit; and thereupon the said Defendant may, and he is hereby required to enter a Common Appearance, or file Common Bail in the Action, within such Time as he would have been required to have put in and perfected Special Bail in the Action according to the Course of the said Court, or in default thereof the Plaintiff in the Action is hereby empowered to enter such Common Appearance or file Common Bail for the said Defendant, and the Cause may proceed as if the Defendant had put in and perfected Special Bail; and in case Judgment in the said Action shall be given for the Plaintiff, he shall be entitled, by Order of the Court, upon Motion made for that Purpose, to receive the said Money so remaining in, or so deposited or paid into the Court as aforesaid, or so much thereof as will be sufficient to satisfy the Sum recovered by the Judgment and the Costs of the Application; and if Judgment be given in the said Action for the Defendant, or the Plaintiff discontinue his Suit, or be otherwise barred, or in case the Sum deposited and paid into Court be more than sufficient to satisfy the Plaintiff, the said Money so deposited or paid into Court, or so much thereof as shall remain, shall by Order of the Court, upon Motion to be made for that Purpose, be repaid to such Defendant.

or if he remains in Custody, or gives Bail to the Sheriff, he may pay the Debt into Court, with 20*l.* to answer Costs, and file Common Bail.

Defendant may receive such Deposits and Payment out of Court, upon perfecting Special Bail.

III. Provided always, and be it enacted, That it shall and may be lawful for the said Defendant who hath made his Election to make such Deposit and Payment as aforesaid, at any Time in the Progress of the Cause before Issue joined in Law or Fact, or final or interlocutory Judgment signed, to receive the same out of Court, by Order of the said Court, upon putting in and perfecting Special Bail in the Cause, and Payment of such Costs to the Plaintiff as the said Court shall direct.

Defendant, after perfecting Bail, may make De-

IV. Provided also, and be it further enacted, That it shall and may be lawful for any Defendant who shall have put in and perfected Special Bail in any Cause, upon Motion to the Court in which the Action

Action is brought, if the Court shall so think fit, to deposit and pay into Court the Sum which would have been deposited and paid in case the Defendant had originally elected so to do, together with such further Sum, to answer the Costs, as the Court may direct, to abide the Event of the said Suit, and to be disposed of in manner aforesaid; and thereupon it shall be lawful for the said Court to direct a Common Appearance to be entered, or Common Bail to be filed for the Defendant, and an Exoneretur to be entered upon the Bail Piece in the said Cause.

Deposit and Payment, and file Common Bail.

V. And whereas the Provisions in the said Acts authorizing Plaintiffs, in default of Appearance of Defendants, to enter a Common Appearance, or file Common Bail, as therein directed, are not deemed to extend to Proceedings by Original and other Writs whereupon no Capias is issued, and it is expedient to extend the Provisions of the said former Acts to such Proceedings; be it further enacted, That in all Cases where the Plaintiff or Plaintiffs shall proceed by Original or other Writ, and Summons or Attachment thereupon, or by Subpœna and Attachment thereupon, in any Action at Law against any Person or Persons not having Privilege of Parliament, no Writ of Distringas shall issue for Default of Appearance, but the Defendant or Defendants shall be served personally with the Summons or Attachment, at the Foot of which shall be written a Notice, informing the Defendant or Defendants of the Intent and Meaning of such Service, to the Effect following:

Personal Service of Summons to appear.

'C. D. [*naming the Defendant*], You are served with this Process at the Suit of *A. B.* [*naming the Plaintiff or Plaintiffs*], to the Intent that you may appear by your Attorney in His Majesty's Court of at *Westminster*, at the Return hereof, being the Day of , in order to your Defence in this Action; and take notice, that in default of your Appearance the said *A. B.* will cause an Appearance to be entered for you, and proceed thereon as if you had yourself appeared by your Attorney.'

But in case it shall be made appear to the Satisfaction of the Court, or, in the Vacation, of any Judge of the Court from which such Process shall issue, or into which the same shall be returnable, that the Defendant or Defendants could not be personally served with such Summons or Attachment, and that such Process had been duly executed at the Dwelling House or Place of Abode of such Defendant or Defendants, and then it shall and may be lawful for the Plaintiff or Plaintiffs, by Leave of the Court, or Order of such Judge as aforesaid, to sue out a Writ of Distringas to compel the Appearance of such Defendant or Defendants; and that at the Time of the Execution of such Writ of Distringas there shall be served on the Defendant or Defendants, by the Officer executing such Writ, if he, she, or they can be met with, and if he, she, or they cannot then be met with, there shall be left at his, her, or their Dwelling House or other Place where such Distringas shall be executed, a written Notice in the following Form:

When Defendant does not appear, the Plaintiff may proceed by Writ of Distringas.

Form of Notice on the Execution of Writ of Distringas.

'IN the Court of [*specifying the Court in which the Suit shall be depending*], between *A. B.* Plaintiff, and *C. D.* Defendant, [*naming the Parties*]: Take notice, that I have this Day distrained upon your Goods and Chattels for the Sum of Forty Shillings, in consequence of your not having appeared by your Attorney in the said Court at the Return of a Writ of ' returnable there on the Day of ; and that in default of your appearing to the present Writ of Distringas at the Return thereof, being the Day of the said *A. B.* will cause an Appearance to be entered for you, and proceed thereon as if you had yourself appeared by your Attorney.

'*E. F.* [*the Name of the Sheriff's Officer.*]'

'To *C. D.* the above-named Defendant.'

If Defendant does not appear within Eight Days, Plaintiff may enter a Common Appearance.

And if such Defendant or Defendants shall not appear at the Return of such Original or other Writ, or of such Distringas, as the Case may be, or within Eight Days after the Return thereof, in such Case it shall and may be lawful to and for the Plaintiff or Plaintiffs, upon Affidavit being made and filed in the proper Court of the personal Service of such Summons or Attachment, and Notice written on the Foot thereof as aforesaid, or of the due Execution of such Distringas, and of the Service of such Notice as is hereby directed on the Execution of such Distringas, as the Case may be, to enter a Common Appearance for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his, her, or their Appearance, any Law or Usage to the contrary notwithstanding; and that such Affidavit or Affidavits may be made before any Judge or Commissioner of the Court out of or into which such Writ shall issue or be returnable, authorized to take Affidavits in such Court, or else before the proper Officer for entering Common Appearances in such Court, or his lawful Deputy, and which Affidavit is hereby directed to be filed *gratis*.

From 1st August 1827, the Provisions of 19 G. 3. c. 70. extended to Actions for higher Sums.

VI. And be it further enacted, That all and every the Provisions contained in the said Act of the Nineteenth Year of the Reign of His late Majesty King *George* the Third, respecting Actions in inferior Courts where the Cause of Action should amount to less than Ten Pounds, shall be and the same are hereby, from and after the said First Day of *August*, extended to all Actions in such Courts where the Cause of Action shall not amount to Twenty Pounds, exclusive of all Costs, Charges, and Expences as aforesaid; and that so much of any Act or Acts heretofore passed for the Recovery of Debts within certain Districts and Jurisdictions, which may have authorized the Arrest and Imprisonment of Defendants when the Cause of Action amounts to less than Twenty Pounds, exclusive ~~of such Costs~~, Charges, and Expences as aforesaid, shall be and the same is hereby, from and after the said First Day of *August*, repealed.

As to Arrests in Wales, Chester, Lancaster, or Durham, by Process out

VII. And whereas the holding to Special Bail Persons inhabiting within the Principality of *Wales*, or Counties Palatine, by Process out of the Courts of Record at *Westminster*, in Debts of small Amount, is oppressive and vexatious, and the Remedy intended for Prevention thereof, by an Act passed in the Eleventh and Twelfth Years of the Reign

Reign of King *William* the Third, intituled *An Act for preventing of frivolous and vexatious Suits in the Principality of* Wales, *and the Counties Palatine*, ought to be amended and extended; be it enacted, That no Sheriff or other Officer within the said Principality, or the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, shall, upon any Mesne Process issuing out of any of His Majesty's Courts of Record at *Westminster*, after the said First Day of *August*, arrest or hold any Person to Special Bail, unless such Process shall be duly marked and indorsed for Bail in a Sum not less than Fifty Pounds. of any Courts at Westminster.

VIII. And whereas Arrests of the Person have in many Instances been made under Writs sued out by Persons not being Attornies or Solicitors, and whose Places of Residence have been unknown, and the Practice has been found to be productive of Oppression and Vexation; be it enacted, That from and after the said First Day of *August* next, no Sheriff, Under Sheriff, or other Officer having the Execution of Process, shall grant any Warrant for the Arrest of, or shall arrest the Person of any Defendant, upon any Writ or Process issued by any Plaintiff in his own Person, unless the same Writ shall, at or before the Time of granting such Warrant or of making such Arrest, be delivered to such Sheriff, Under Sheriff, or other Officer having the Execution of Process, by some Attorney of One of the Courts of Record at *Westminster*, or of the Courts of Great Sessions in *Wales*, or of the Courts of the Counties Palatine of *Lancaster* or *Durham*, or of the Court out of which the said Writ shall have issued, or by the Clerk of such Attorney, or an Agent authorized by such Attorney in Writing, and unless the said Writ shall be indorsed by such Attorney or his Clerk, or such Agent as aforesaid, in the Presence of such Sheriff, Under Sheriff, or other Officer having the Execution of Process, with the Name and Place of Abode of such Attorney. Sheriff, &c. not to execute Process, unless the Writ be delivered by an Attorney, &c. and indorsed with his Name and Place of Abode.

IX. And be it further enacted, That all Warrants granted, and all Arrests of the Person made, contrary to the Provisions of this Act, shall be altogether illegal and void: Provided always, that nothing herein contained shall extend to any Writ or Process sued out by any Attorney, Solicitor, Clerk of Court, or other Officer of any Court, having Authority to sue out Process in his own Name. Warrants, &c. contrary hereto, void. Exception.

X. Provided always, That nothing herein contained shall extend to those Parts of the United Kingdom called *Scotland* and *Ireland*. Act not to extend to Scotland or Ireland.

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