

No. XV.

An Act for abolishing Arrest on Mesne Process ARREST ON MESNE
PROCESS ABOLITION.
in Civil Actions except in certain cases in
New South Wales and the Dependencies
thereof. [3rd October, 1839.]

WHEREAS the present power of Arrest upon Mesne Process Preamble.
within the Colony of New South Wales and its Dependencies
is unnecessarily extensive and severe and ought to be relaxed Be it Arrest on mesne
process abolished
except in certain
cases.
therefore enacted by His Excellency the Governor with the advice of
the Legislative Council That from and after the time appointed for the
commencement of this Act no person shall be arrested upon mesne
process in any civil action in any Court within the said Colony or the
Dependencies thereof except in the cases and in the manner herein-
after provided.

2. And be it enacted That if a plaintiff in any action in which No person to be
arrested or held to
bail unless on proof
to the satisfaction of
a Judge that he is
about to remove out
of the jurisdiction of
the defendant is now liable to arrest whether upon the order of a
Judge or without such order shall by the affidavit of himself or some
other person or persons shew to the satisfaction of a Judge of the
Supreme Court that such plaintiff has a cause of action against
the

Arrest on Mesne Process Abolition.

the Supreme Court or to abscond to remote parts within the Colony.

the defendant or defendants to the amount of twenty pounds or upwards or has sustained damage to that amount and that the defendant or any one or more of the defendants is about to remove or is making preparations to remove out of the jurisdiction of the Supreme Court of New South Wales or otherwise to abscond to remote parts within the said Colony (by which is intended parts beyond the limits which now are or hereafter may be prescribed for location within the same) and that such action will be defeated unless he she or they be forthwith apprehended it shall be lawful for such Judge by a special order to direct that such defendant or defendants so about to remove or abscond shall be held to bail for such sum as such Judge shall think fit not exceeding the amount of the debt or damages and thereupon it shall be lawful for such plaintiff within the time which shall be expressed in such order but not afterwards to sue out one or more writ or writs of *capias* against any such defendant or defendants so directed to be held to bail which writ of *capias* shall be in the form to be prescribed by the Judges of the Supreme Court.

Sheriff may proceed to arrest defendant.

3. And be it enacted That the Sheriff or other officer to whom any such writ of *capias* shall be directed shall before the return of the said writ but not afterwards proceed to arrest the defendant thereupon and such defendant when so arrested shall remain in custody until he shall have given a bail bond to the Sheriff or other officer or shall have made deposit of the sum endorsed on such writ of *capias* together with ten pounds costs and all subsequent proceedings as to putting in and perfecting special bail shall be subject to the rules made or hereafter to be made by the Judges of the said Court for the practice of the Court in such cases.

Defendant to remain in custody until he finds bail or makes deposit.

Order may be made in any stage of the proceedings before final judgment.

4. And be it enacted That any such special order may be made and the defendant arrested in pursuance thereof at any time after the commencement of such action and before final judgment shall have been obtained therein.

Defendant may apply for his discharge forthwith.

5. And be it enacted That it shall be lawful for any person arrested upon any such writ of *capias* to apply at any time after such arrest to a Judge of the Supreme Court for an order or rule on the plaintiff in such action to shew cause why the person arrested should not be discharged out of custody and that it shall be lawful for such Judge to make absolute or discharge such order or rule and to direct the costs of the application to be paid by either party or to make such other order therein as to such Judge 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.

Judge may discharge defendant or not.

Prisoners in custody on mesne process at passing of Act to be discharged and detained again by special order.

6. And be it enacted That every prisoner who at the time appointed for the commencement of this Act shall be in custody on mesne process for any debt or demand shall be entitled to his discharge upon entering a common appearance to the action Provided nevertheless that every such prisoner shall be liable to be detained or after such discharge to be again arrested by virtue of any such special order as aforesaid at the suit of the plaintiff at whose suit he was previously arrested or of any other plaintiff.

Commencement of Act.

7. And be it enacted That this Act shall commence and take effect from and after the passing and publication thereof.