

No. XIV.

An Act to authorize the Appointment of a Commissioner to issue Writs of Summons and Arrest at the Port of Newcastle. [26th April, 1861.]

ABSCONDING DEBTORS
NEWCASTLE.

WHEREAS by reason of there being no means of issuing at Newcastle Writs of Summons or *Capias* out of the Supreme Court persons are able to evade payment of their debts and other just demands against them by suddenly or clandestinely departing out of the Colony from the Port of Newcastle aforesaid For remedy whereof Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Preamble.

1. It shall be lawful for the Chief Justice of the Supreme Court to appoint from time to time by Commission under his hand and the Seal of the said Court some fit person residing at Newcastle or within five miles thereof to be a Commissioner of the said Court for the purposes of this Act which Commissioner shall at the instance of any plaintiff have power to issue Writs of Summons and of *Capias ad respondendum* in the said Court against any defendant about to depart out of the Colony from the said Port of Newcastle in cases where by law an arrest upon *mesne* process is now allowed in an action in the said Court and every such Writ of *Capias* shall (except where hereby otherwise provided) have the same force and effect as an ordinary Writ of *Capias ad respondendum* issued out of the said Court at Sydney directed to the Sheriff.

Commissioner for
Writs at Newcastle.

Commissioner to
issue Writs of Sum-
mons and *Capias*.

2. No Writ of Summons shall be issued under this Act except to ground a Writ of *Capias* to be issued hereunder and no Writ of *Capias* shall be issued hereunder unless proof by affidavit shall be first given to such Commissioner that the defendant is about to depart out of the said Colony from the said Port of Newcastle and of all such other facts and matters which are or may be necessary to be given and

Requisites to obtain
Capias.

Absconding Debtors Newcastle.

Plaintiff to give bond as security against abuse of process.

and established to obtain an order from a Judge of the said Court for the issue of an ordinary Writ of *Capias ad respondendum* out of the said Court at Sydney nor unless the plaintiff shall first give a bond of two sufficient persons (of whom the plaintiff if in the opinion of the said Commissioner of sufficient ability may be one) to the satisfaction of such Commissioner to the defendant in a sum of money to be fixed by such Commissioner not being less than double the amount for which the defendant shall be liable to be arrested or held to bail under such Writ conditioned to be void on payment to the defendant of all damages costs and charges which may be adjudged to him in any action by him against the plaintiff and the Bailiff to whom such Writ of *Capias* shall be directed or either of them for or by reason of such Writ having been issued or of his being arrested thereunder or of any wrong or damage sustained by him on account thereof or of any wrongful act or omission of such Bailiff in or about the execution thereof or otherwise in relation thereto and of all costs charges and expenses which upon any application by the defendant to the said Court or any Judge thereof for any rule or order to set aside any such Writ or to discharge the defendant from custody thereunder or to cancel any bail bond given thereunder or otherwise in relation to or connected with such Writ or anything done thereunder may be adjudged or ordered to be paid to the defendant Provided always that the amount for which such bond shall be given shall in no case exceed the sum of four hundred pounds And such Commissioner shall forthwith transmit such bond to the Prothonotary of the said Court at Sydney and such Prothonotary shall upon demand deliver such bond to the defendant or any one applying for the same on his behalf.

Bond not to be for more than £400.

No order necessary for *Capias*.

3. It shall not be necessary for any order to be made to warrant the issuing of any Writ of *Capias* under this Act but the Commissioner shall by memorandum thereon under his hand certify on whose application and on what affidavit or affidavits and when it was issued and the amount for which the defendant is to be arrested or held to bail thereunder in the form or to the effect following—

“ This Writ was issued this day of 18
 “ under the provisions of the Act Victoria number
 “ on the application of the therein named A. B. (*naming*
 “ *the plaintiff*) and upon reading the affidavit of (*naming*
 “ *the deponent*) sworn on the day of 18
 “ (*describing each affidavit if more than one*) And the
 “ defendant C. D. (*naming the defendant*) is to be arrested
 “ or held to bail hereunder for or in the sum of
 “ pounds (*specifying the amount*) E. F. (*here to be signed*
 “ *by the Commissioner*) Commissioner under the said Act.”

Form of *Capias*.

Powers of Bailiffs.

4. Every Writ of *Capias* issued under this Act shall instead of being directed to the Sheriff be directed to some person to be specially named by the plaintiff as a Bailiff to execute the same and such Bailiff shall have all the authority thereunder which the Sheriff has under an ordinary Writ of *Capias ad respondendum* issued out of the said Court at Sydney directed to him save only that such Bailiff shall not have power to appoint a deputy to execute the same but shall execute it personally with such assistant or assistants if any as he may require in that behalf.

Persons not bound to act as Bailiffs without first agreeing.

Persons after so agreeing bound to act as such Bailiffs.

5. No person shall be bound to accept the office of or to act as a Bailiff under any Writ issued in pursuance of this Act unless he shall consent or agree so to do And every person who shall consent or agree so to do shall be bound to act as such Bailiff under the Writ directed to him until his whole duty as such Bailiff under such Writ is fully performed.

Absconding Debtors Newcastle.

6. Every Writ of Summons and of *Capias* issued under this Act shall be issued under the signature and seal of the Commissioner issuing the same but in all other respects (except where other provision is hereby made) shall be in the same form and shall have all such notices and indorsements thereon respectively as are or may be required in respect of ordinary Writs of Summons and of *Capias ad respondendum* issued out of the said Court at Sydney. Form of Writs.
7. Every Writ of Summons issued under this Act shall be the commencement of an action in the said Court by the plaintiff against the defendant and such Commissioner upon issuing any such Writ of Summons or *Capias* shall forthwith transmit copies thereof and of every indorsement thereon and the original affidavits upon which any such Writ of *Capias* was issued by him to the Office of the Prothonotary of the said Supreme Court at Sydney to be there filed and kept And it shall not be requisite to file or deliver any *Præcipe* for or in respect of any Writ of Summons or of *Capias* issued under this Act. Summons to be commencement of action.
Copy of Writs to be sent to Supreme Court Office.
No præcipe required
8. Every such Commissioner shall be entitled to receive and retain for his own use for issuing any Writ of Summons under this Act the sum of five shillings and for issuing any Writ of *Capias* under this Act the sum of one pound and to no other fees payment or remuneration whatsoever And every plaintiff issuing or obtaining any such Writ of Summons or of *Capias* shall be entitled to the same costs thereupon as he would be entitled to upon issuing or obtaining a similar Writ out of the said Court at Sydney in the ordinary way. Commissioner's fees.
Plaintiff's costs.
9. No action shall lie against such Commissioner for issuing any Writ of *Capias* under this Act unless the plaintiff in such action shall allege and prove that such Commissioner knowingly and wilfully issued the same without reasonable proof being given to him to warrant the issuing thereof and also that in issuing the same he acted corruptly. No action against Commissioner except in case of corruption.
10. Every Bailiff to whom a Writ of *Capias* issued under this Act shall be directed and who shall consent and agree to act as such Bailiff to execute the same shall make a due return thereto to the Supreme Court in like manner as the Sheriff is bound to make a Return to an ordinary Writ of *Capias ad respondendum* issued out of the said Court at Sydney directed to him and shall be subject to attachment and action in respect of the execution of such Writ or incident thereto and to an action at the suit of the plaintiff or defendant for any wrongful act or omission by him in or about the execution of such Writ and incident thereto in like manner as the Sheriff is liable under the same circumstances in respect of an ordinary Writ of *Capias ad respondendum* issued out of the said Court at Sydney and directed to him. Bailiffs to return Writs of Capias.
Liabilities of Bailiffs.
11. The Bailiff acting under any Writ of *Capias* issued under this Act shall have authority and shall be bound to take bail by bond of the defendant and sureties to himself for the appearance and rendering of the body of the defendant according to the exigency of such Writ and the practice of the said Court of the same kind and in like manner in all respects as the Sheriff is bound to take bail from a defendant arrested under an ordinary Writ of *Capias ad respondendum* issued out of the said Court at Sydney directed to himself and such Bailiff upon such bail bond being entered into and given to him shall release the defendant from his custody under such Writ And every such bail bond shall be assignable by such Bailiff to the plaintiff and such Bailiff upon being required so to do shall assign the same to the plaintiff and the plaintiff upon such assignment thereof may sue thereon in like manner in all respects as if it were an ordinary bail bond to the Sheriff. Bailiffs to take bail.
Bail bond assignable.

Absconding Debtors Newcastle.

Bailiffs to take
deposit in lieu of bail.

12. Every Bailiff acting under any Writ of *Capias* issued under this Act shall be bound to receive from the defendant as a deposit in lieu of bail the amount for which he is to be arrested or held to bail thereunder and the sum of ten pounds for costs in like manner as the Sheriff is bound to do under an ordinary Writ of *Capias ad respondendum* issued out of the said Court at Sydney directed to and executed by him. And upon receipt of such deposit such Bailiff shall release the defendant from his custody under such Writ and shall forthwith pay or cause to be paid over to the Prothonotary of the said Court at Sydney the money so deposited by such defendant as aforesaid to be held and disposed of by such Prothonotary according to law.

Bailiff's fees.

13. Every Bailiff serving any Writ of Summons or executing any Writ of *Capias* issued under this Act shall be entitled to the same fees mileage and other remuneration for everything done by him as such Bailiff under the provisions of this Act as the Sheriff and his Bailiff are or is or may be entitled to for the same or similar acts done by them or either of them in serving or executing or otherwise in relation to any ordinary Writ of Summons or of *Capias ad respondendum* issued out of the said Court at Sydney or taking bail thereunder and to no other payment or remuneration whatever.

Plaintiff and Bailiff
to be jointly and
severally liable for
misfeasance of
Bailiff.

14. Every plaintiff obtaining any such Writ of *Capias* under this Act and the Bailiff to whom the same is directed shall be jointly and severally liable to the defendant for any wrongful act or omission by such Bailiff in or about the execution of such Writ or incident thereto.

Proceedings in
actions commenced
by Writs under this
Act.

15. All proceedings in any action commenced by any Writ of Summons and under any Writ of *Capias* issued under the provisions hereof shall (except as herein otherwise directed) be taken and had in like manner as if such action had been commenced by ordinary Writ of Summons issued out of the said Supreme Court at Sydney and the said Court and any Judge thereof shall have all such and the same powers to set aside any Writ of Summons or *Capias* issued under the provisions hereof or the service of any such Writ of Summons or to discharge from custody any defendant arrested under any such Writ of *Capias* and to order any bail bond given thereunder to be cancelled and in every other respect as such Court or any Judge thereof has or may have in case of ordinary Writs of Summons or *Capias ad respondendum* issued out of the said Court at Sydney.

Judges to make rule.

16. The Judges of the said Court or any two of them shall and may from time to time make all such rules as such Court or Judges may think necessary or proper for carrying this Act into execution and revoke repeal alter and amend the same when and as they shall think fit.

Interpretation.

17. In the construction of this Act the word "plaintiff" shall mean a person having commenced or about to commence an action in the Supreme Court and the word "defendant" shall mean a person against whom an action in the said Court has been or is about to be brought.