

*Act 1855*

ACT No. VII. OF 1855.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

*(Received the assent of the Governor General on the 17th February 1855.)*

*An Act to amend the law of Arrest on mesne process in Civil Actions in Her Majesty's Courts of Judicature, and to provide for the subsistence of Prisoners confined under Civil process of any of the said Courts.*

WHEREAS it is expedient to amend the law of arrest in the Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, and Bombay and in the Court of Judicature of Prince of Wales' Island, Singapore and Malacca: It is hereby enacted as follows:—

I. No person shall be arrested or held to bail upon mesne process in any action at law now pending or which shall be commenced in any of the said Courts, unless an order authorizing such arrest be made by the Court in which the action is pending or shall be commenced, or by one of the Judges thereof: and it shall be in the discretion of the Court or Judge in any case to grant or refuse an order.

Preamble.

No arrest upon Mesne Process without order of Court or Judge.

Granting of order to be discretionary.

II. Provided that no such order shall be made unless the Court or Judge shall be satisfied by Affidavit of the plaintiff or of some other person, that the plaintiff has a good cause of action against the defendant to the amount of two hundred Rupees or upwards either for debt or for damages, and in addition thereto, that there is probable cause for believing—

No order for arrest to be made without affidavit of debt or damage to the amount of 200 Rupees and probable cause for believing—

1,—That the defendant has absconded or is concealing himself for the purpose of avoiding service of the process of the Court, or that he is about so to do, or—

That defendant is concealing himself to avoid service of process, or is about to abscond, &c.

2,—That

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2,—That he has withdrawn or is about to withdraw himself or his property or effects, or some part thereof, from the jurisdiction of the Court, for the purpose of avoiding the process of the Court, or under such other circumstances as to induce the Court or Judge to believe that the ends of justice are likely to be defeated unless a Capias or Warrant of Arrest be issued against him, or—

That he is removing his property to avoid process.

3,—That he has removed, concealed or disposed of his property or effects, or some part thereof, for the purpose of defrauding his creditors generally or the plaintiff in the action, or that he is about to do so.

That he has disposed or means to dispose of his property to defraud creditors.

III. An order for arrest may be made, and a Capias or Warrant may be issued thereon, in any stage of the cause before final judgment, and against one or more of several defendants.

Order for arrest in any stage of cause and against one of several defendants.

IV. Previously to making such order, the Court or Judge may require the personal attendance of the plaintiff, and of any person who shall make an Affidavit for the purpose of obtaining such order, and of any other person whom the Court or Judge shall think fit to examine, and may examine them orally upon oath.

Before making order Court may examine plaintiff for other person.

V. A copy of every Affidavit upon which such order shall be founded shall be delivered to the Sheriff with the Writ or Warrant to be issued in pursuance of the order, and shall be delivered to the defendant at the time of his arrest or detention under the Writ, otherwise the Court or Judge may order the defendant to be discharged.

Copy of affidavit to be delivered to Sheriff and to be given to defendant at the time of arrest.

VI. Any person arrested or detained upon any such Writ of Capias or Warrant of Arrest, may apply to the Court or to a Judge thereof for a rule or summons calling on the plaintiff to show cause why the person arrested should not be discharged out of custody, and the Court may make absolute or discharge such rule, and may direct the costs of the application to be paid by either party or may make such other order as to the Court shall seem fit; and in the case of a summons, a Judge shall make such

Person arrested may apply to Court or Judge for his discharge.

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such order thereupon as he shall think fit. Provided that such rule shall be

Person arrested to be discharged if plaintiff is guilty of delay after arrest.

made absolute, or in the case of a summons an order for the defendant's discharge out of custody shall be made, in every case in which the Court or Judge shall be satisfied

that the plaintiff, in any stage of the cause subsequent to the arrest, has been guilty of unreasonable delay in pleading or in bringing on for trial or argument any issue of fact or law, notwithstanding the delay may not be such as to entitle the defendant to sign judgment of Non Pros., or to apply for judgment

Judge's order may be discharged &c. by Court.

as in case of a nonsuit; and provided also that any order made by a Judge under this Act may be discharged or varied by the Court on application made thereto by either party dissatisfied with the order.

VII. If any motion or application for the discharge of a defendant be

If motion for discharge be made upon affidavit, plaintiff may oppose it by further affidavits.

made upon Affidavit, but not otherwise, the plaintiff may oppose the same by affidavits in addition to that upon which the order for the arrest was made.

VIII. The Court or Judge may order and compel the personal attend-

At the hearing of the motion, Court may compel attendance of the parties or witnesses.

ance at the hearing of any motion or summons of both or either of the parties, and also of any other person whom the Court or Judge shall think fit to examine, and may examine such person or persons orally upon oath, or may allow him or them to be examined and cross-examined upon oath, and the Sheriff or Gaoler shall be

Attendance of person in custody on Civil process.

bound to bring before the Court or Judge any prisoner detained in his custody on Civil process, whose attendance may be so ordered.

IX. Every person now in custody upon mesne process issued out of

Persons now in custody on mesne process how entitled to their discharge.

any of the said Courts of Judicature for any debt or demand, and who shall not have filed a petition to be discharged under the laws in force for the relief of Insolvent Debtors in India, shall be entitled to his discharge at the expiration of one month from the time of the passing of this Act, upon entering a common appearance to the action: Provided nevertheless, that

Proviso.

every such prisoner shall be liable to be detained, or after such discharge to be again arrested by virtue of any writ of Capias or Warrant of Arrest issued in pursuance of the provisions of this Act.

X. Clause 1.—The

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X. *Clause 1.*—The person at whose suit any such mesne process or any writ of execution for the arrest of a defendant or any writ of attachment for the arrest of any person for the non-payment of money in the nature of Civil process shall be issued out of any of the said Courts, shall, previously to the arrest being made, deposit with the Sheriff or other officer to whom such mesne process or writ shall be delivered for the purpose of executing the same, a sum of money sufficient to provide for the subsistence of the defendant for the period of thirty days at the rate of four annas a day, which sum or so much thereof as shall be necessary shall be applied by the Sheriff or other officer for the subsistence of the person arrested from the time of the arrest until he shall be lodged in gaol, and the balance, if any, shall be deposited by such Sheriff or other officer with the keeper of the gaol to which the person arrested shall be committed.

Deposit of subsistence money before arrest on mesne or final process or by attachment—amount and application thereof.

*Clause 2.*—The Sheriff or such other officer by whom an arrest shall be made by virtue of any such writ or process, shall, before or forthwith after the defendant shall be lodged in gaol, give notice of the arrest and of the date on which the same was made to the plaintiff or his attorney.

Sheriff to give plaintiff notice of arrest.

*Clause 3.*—The person at whose suit such mesne process, writ of execution or attachment shall be issued shall, at or before the end of thirty days from the date of the arrest, or within a reasonable time after he shall have had notice of the arrest, if he shall not have had notice thereof within such period of thirty days, deposit with the Sheriff or with the keeper of the prison in which the person arrested shall be lodged, a further sum at the rate aforesaid for the subsistence of the prisoner for the next ensuing thirty days, and shall continue to make a similar deposit in advance at or before the end of such period of thirty days and of every subsequent period of thirty days during which the prisoner shall be detained in custody, and for every such deposit the Sheriff or keeper of the gaol or other officer as the case may be shall give a receipt for the same dated on the day on which the money shall be paid.

Further deposit of subsistence money after the arrest and during detainer.

Receipt for deposit.

*Clause 4.*—It shall be lawful for the Court out of which any such writ shall issue or for any Judge thereof to reduce the rate at which deposits are above ordered to be made, so that the rate ordered be not less than one anna a day, or in the

Rate of deposit may be varied by Court out of which writ issues.

case

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case of illness or other special cause to order the deposit to be increased to a rate not exceeding eight annas a day; and every such order may from time to time be revised and altered by the Court or any Judge thereof on sufficient grounds being shown.

*Clause 5.*—If the deposit required to be made previously to the arrest, be not made, no arrest shall be made. If any deposit hereby required to be made after the arrest, be not made on or before the day on which it ought to be made, the Court may, upon the application of the prisoner, order him to be discharged out of custody.

Deposit must be made before arrest.

Person arrested to be discharged if subsequent deposit not duly made.

*Clause 6.*—If any prisoner in execution be discharged out of custody by reason of a failure to make such deposit as aforesaid, the imprisonment shall not extinguish or affect his liability to pay the amount of any sum of money for which he was arrested, or to prevent any execution from being issued against his property.

Such discharge of a prisoner in execution not to affect his liability.

*Clause 7.*—The provisions of this Act are to be held applicable to all persons at present in confinement under Civil process, so far as relates to the deposit to be made in future by the parties at whose instance they are confined and to their immediate discharge on failure to make such deposit on or before the day on which it becomes due—The first deposit to be made within thirty days after the passing of this Act.

Provisions of these Clauses to whom applicable.

*Clause 8.*—The money so deposited shall be employed for the subsistence of the prisoner.

Deposit to be applied for subsistence of prisoner.

*Clause 9.*—The amount spent in providing subsistence for a prisoner detained upon mesne process shall be costs in the cause.

Amount spent in subsistence of prisoner obtained on mesne process to be costs in the cause.

*Clause 10.*—The amount spent in providing subsistence for a prisoner detained in execution shall be added to the amount of the judgment, and the prisoner shall be liable to be detained in execution for the amount, in the same manner as if such amount had been included in the Judgment and Writ of execution.

Amount spent in subsistence of prisoner detained in execution to be added to the judgment.

*Clause 11.*—The

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*Clause 11.*—The amount spent in providing subsistence for any person detained under any such writ of attachment as aforesaid, shall be deemed part of the demand in respect of which the attachment was issued, and shall subject the prisoner to the same liability as if the attachment had been issued for the non-payment thereof to the person making the deposit.

Amount spent in subsistence of person detained under attachment shall be deemed part of the demand.

*Clause 12.*—All money deposited as aforesaid which shall not have been spent at the time of the prisoner's discharge from custody, shall be returned to the person who made the deposit.

Return of unspent deposit money.

XI. Any order of the Court or of a Judge for the discharge of a prisoner under the provisions of this Act, shall be a sufficient authority to the Sheriff and Gaoler for such discharge, so far as concerns the action or suit to which such order relates. Provided that, when an order shall be made for the discharge of a prisoner upon his entering a common appearance, such discharge shall not be made until a certificate shall be produced to the keeper of the prison from the Officer of the Court with whom appearances are entered, to the effect that an appearance has been entered according to the terms of the order.

Effect of order for discharge of prisoner.

Proviso.

XII. It shall be the duty of the Sheriff and of the keeper of every prison in which any person shall be confined under any such process as above mentioned, to report to the Court out of which the process issued, the name of every prisoner confined under such process who shall appear to be unable to maintain himself in prison or who shall complain that he has been arrested without cause, and it shall be lawful for the Court or a Judge upon any such report to cause the prisoner to be forthwith brought before them, or to make such other order as may seem fit; and the Sheriff shall be bound to serve any rule, summons or order made under this Act which the Court or Judge shall order him to serve.

Keeper of prison, &c. when to report to Court the name of prisoner—proceedings thereupon.

Service of rule, &c. by Sheriff.

XIII. Any rule or order made in pursuance of the provisions of this Act shall be a sufficient justification for any Sheriff, Gaoler or other Officer for any act which he may do in pursuance thereof.

Order under this Act to be sufficient justification to Sheriff, &c.

XIV. In

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XIV. In the construction of this Act, the word "Affidavit" and the word "Oath" shall include affirmation in cases where "Affirmation" is allowed instead of an oath, and unless there is anything in the context repugnant to such a construction; words in the singular number shall include the plural, and words in the masculine gender shall include females.

XV. Nothing in this Act is intended to alter or affect any rule in force in any of the said Courts not inconsistent herewith or any of the provisions of the Act in force for consolidating and amending the law relating to Insolvent Debtors in India.

XVI. In the application of this Act in the Settlement of Prince of Wales' Island, Singapore and Malacca, a dollar shall be deemed equal to two rupees and one-fifth of a rupee and three cents shall be deemed equal to one anna.