ANNO QUADRAGESIMO QUINTO

GEORGII III. REGIS.

CAP. CXXIV.

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.

[12th *July* 1805.]

WHEREAS by an Act of Parliament, passed in the Fourth Year of the Reign of His present Majesty, intituled, *An Act for preventing Inconveniencies 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*, it is enacted, That, from and after the Eleventh Day of *May* One thousand 4 G. 3. c. 33.

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ſeven hundred and ſixty-four, it ſhould be lawful for any ſingle Creditor, or Two or more Creditors, being Partners, whoſe Debt or Debts ſhould amount to One hundred Pounds or upwards, and for any Two Creditors whoſe Debts ſhould amount to One hundred and fifty Pounds or upwards, or any Three or more Creditors whoſe Debts ſhould amount to Two hundred Pounds or upwards, of any Perſon or Perſons deemed a Merchant, Banker, Broker, Factor, Scrivenor, or Trader or Traders, within the Deſcription of the Acts of Parliament relating to Bankrupts having Privilege of Parliament, at any Time, upon Affidavit or Affidavits being made and filed on Record in any of His Majeſty's Courts at *Weſtminſter* by ſuch Creditor or Creditors, that ſuch Debt or Debts is or are juſtly due to him or them reſpectively; and that every ſuch Debtor, as he or they verily believe, is a Merchant, Banker, Broker, Factor, Scrivenor, or Trader, within the Deſcription of the Statutes relating to Bankrupts, to ſue out of the ſame Court, Summons, or an original Bill and Summons, againſt ſuch Merchant, Banker, Broker, Factor, Scrivenor, or Trader, and ſerve him with a Copy thereof; and if ſuch Merchant, Banker, Broker, Factor, Scrivenor, or Trader, ſhould not within Two Months after perſonal Service of ſuch Summons (Affidavits of the Debt or Debts having been duly made, and filed as aforeſaid) pay, ſecure, or compound for ſuch Debt or Debts to the Satisfaction of ſuch Creditor or Creditors, or enter into a Bond in ſuch Sum, and with two ſuch ſufficient Sureties as any of the Judges of that Court out of which ſuch Summons ſhould iſſue ſhould approve of, to pay ſuch Sum as ſhould be recovered in ſuch Action or Actions, together with ſuch Coſts as ſhould be given in the ſame, he ſhould be accounted and adjudged a Bankrupt from the Time of the Service of ſuch Summons, and any Creditor or Creditors might ſue out a Commiſſion againſt any ſuch Perſon, and proceed thereon in like Manner as againſt other Bankrupts: And whereas the ſaid recited Proviſion hath by Experience been found to be extremely ſalutary, but hath on ſome Occaſions, where Bonds have been given in purſuance thereof, been rendered nugatory by the Difficulty and ſometimes Impoſſibility of enforcing the entering Appearances in the Actions for the Payment of the Sums to be recovered, in which ſuch Bonds have been given: And whereas it is fitting and becoming the Honour and Dignity of Parliament to adopt every Means to give Effect to the ſaid recited Act, and all and every the Proviſions thereof: 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 it is hereby enacted by the Authority of the ſame, That, from and after the paſſing of this Act, when any Summons, or original Bill and Summons, ſhall be ſued out againſt any Perſon or Perſons deemed a Merchant, Banker, Broker, Factor, Scrivenor, or Trader or Traders, within the Deſcription of the Acts relating to Bankrupts having Privilege of Parliament, and ſuch Affidavit or Affidavits of the Debt or Debts duly made, and filed, as in the ſaid recited Act mentioned, and ſuch Merchant, Banker, Broker, Factor, Scrivenor, or Trader, ſhall enter into ſuch Bond as in the ſaid Act mentioned, to pay ſuch Sum as ſhall be recovered in ſuch Action

Proceedings againſt Perſons within the Deſcription of the Acts relating to Bankrupts having Privilege of Parliament.

Action or Actions, together with such Costs as shall be given in the same, every such Merchant, Banker, Broker, Factor, Scrivenor, or Trader, shall also within Two Months after personal Service of such Summons, cause an Appearance or Appearances to be entered to such Action or Actions, in the proper Court or Courts in which the same shall have been brought, and on default thereof he shall be accounted and adjudged Bankrupt from the Time of the Service of such Summons; and any Creditor or Creditors may sue out a Commission against any such Person, and proceed therein in like Manner as against other Bankrupts.

Limiting the Time of entering Appearances.

II. And be it further enacted by the Authority aforesaid, That, where any Person or Persons shall, before the passing of this Act, have sued out any Summons, or original Bill and Summons, against any such Merchant, Banker, Broker, Factor, Scrivenor, or Trader, and duly made and filed such Affidavit and Affidavits as in the said recited Act mentioned, and shall have been prevented from proceeding in any such Action or Actions for want of an Appearance or Appearances having been entered thereto, if the Defendant or Defendants shall not, within Eight Days next after the passing of this Act, cause such Appearance or Appearances to be entered, every such Action whereto no such Appearance shall have been entered shall be considered as absolutely discontinued, and it shall be lawful for the Plaintiff or Plaintiffs therein to commence and prosecute a new Action or Actions against such Merchant, Banker, Broker, Factor, Scrivenor, or Trader, and to proceed therein in the same Manner as if such former Action or Actions had never been commenced, and that it shall not be lawful for the Defendant or Defendants in such new Action or Actions to plead the Pendency of the former Action or Actions, in Abatement, or in any Manner to avail himself or themselves of the same having been brought, and in case the Plaintiff or Plaintiffs shall obtain a Verdict in such new Action or Actions, the Costs of the former Proceedings shall be taxed and allowed to him or them, as Part of the Costs of such new Action or Actions.

Appearances may be entered for Defendant after a certain Period.

III. And whereas the Mode of proceeding by Distringas is extremely dilatory and expensive, be it therefore further enacted by the Authority aforesaid, That, from and after the passing of this Act, when any Summons, or original Bill and Summons, shall be sued out against any Person having Privilege of Parliament, and no such Affidavit shall be made and filed as in the said recited Act, and herein-before is mentioned, if the Defendant or Defendants shall not appear at the Return of the Summons, or within Eight Days after such Return, in every 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, which said Affidavit shall be filed gratis, to enter an Appearance or Appearances for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his or their Appearance.

IV. And

Appearances may also be put in for Defendants, having Privilege of Parliament, in Courts of Equity.

IV. 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 by the Authority aforesaid, 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) 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.

Non-appearance, *etc.* of Persons having Privilege of Parliament, to be taken *pro confesso*;

V. 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 by the Authority aforesaid, 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 Persons 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.

and such Bills in Equity so taken *pro confesso*, shall be read in Evidence.

VI. 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*, that then such Bill in Equity 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

Manner as if such Facts, Matters, and Things had been admitted to be true by the Answer of the Defendant put into 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.

Proceedings against Persons within the Description of the Statutes relating to Bankrupts, disobeying the Order of the Court of Chancery, *etc.* to pay Money *etc.*

VII. And be it further enacted by the Authority aforesaid, That, from and after the passing of this Act, when any Decree or Order shall have been pronounced in any Cause depending in the High Court of Chancery, or in His Majesty's Court of Exchequer at *Westminster*, or any Order shall have been made in the Matter of any Bankruptcy, or in the Matter of any Lunacy, against any Person being a Merchant, Banker, Broker, Factor, Scrivenor, or Trader, within the Description of the Statutes relating to Bankrupts having Privilege of Parliament, thereby ordering such Person to pay any Sum or Sums of Money to any Person or Persons, or into the Bank, in the Name of the Accountant General of the said Court of Chancery, in Trust, in any Cause depending in that Court, or in the Matter of such Bankruptcy or Lunacy, or to the Deputy Remembrancer of the Court of Exchequer, in Trust, in any Cause depending in that Court (as the Case may be), and the Person so ordered to pay such Sum of Money, so being a Merchant, Banker, Broker, Factor, Scrivenor, or Trader, within the Description of the Statutes relating to Bankrupts, and having Privilege of Parliament, shall disobey such Order, the same having been duly served, then it shall be lawful for any Party or Person entitled to receive such Sum of Money under and by virtue of such Order or Decree, or interested in enforcing the Payment thereof, pursuant to such Order or Decree, in the Name of the said Accountant General or Deputy Remembrancer (as the Case may be) to apply to the Court by which such Decree or Order shall have been pronounced; or in the Matter of such Bankruptcy or Lunacy (as the Case may be) to fix a peremptory Day for the Payment of such Money, pursuant to the Terms of such Order or Decree, and such Day shall be accordingly appointed and fixed for that Purpose by an Order made in such Cause, or in the Matter of such Lunacy or Bankruptcy (as the Case may be); and if such Merchant, Banker, Broker, Factor, Scrivenor, or Trader, within the Description of the Statutes relating to Bankrupts, having Privilege of Parliament, being personally served with such Order at the least Eight Days before the Day therein appointed for Payment of such Money, shall neglect or omit to pay the same according to the Tenor of such Order, then such Person shall be deemed a Bankrupt from the Time of the Service of such last-mentioned Order; and any Creditor or Creditors may sue out a Commission against such Person, and proceed thereon in like Manner as against other Bankrupts.

Persons entitled to Privilege of Parliament still to retain it.

VIII. Provided nevertheless, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to subject any Person whatsoever, entitled to Privilege of Parliament, to be arrested, restrained

or impriſoned during the Term of ſuch Privilege; but that every ſuch Perſon ſhall continue to be exempt therefrom in like Manner as if this Act had not been made.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN, Printers to the King's moſt Excellent Majeſty. 1805.