

ANNO DUODECIMO & DECIMO TERTIO

VICTORIÆ REGINÆ

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CAP. CI.

An Act to amend the Act for the more easy Recovery of Small Debts and Demands in *England*, and to abolish certain Inferior Courts of Record. [1st *August* 1849]

WHEREAS by an Act passed in the Tenth Year of Her present Majesty, intituled *An Act for the more easy Recovery of Small Debts and Demands in* England, Power is given to the Judge in the Cases therein mentioned to order that a Party summoned in respect of an unsatisfied Judgment or Order, or a Defendant in any Suit, may be committed to the Common Gaol or House of Correction of the County, District, or Place in which such Party or Defendant is resident, or to any Prison which should be provided as the Prison of the Court, for any Period not exceeding Forty Days: And whereas it is inexpedient that Persons should be committed under the said Act to Houses of Correction: Be it therefore enacted by the Queen'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 Thirty-first Day of *August* One thousand eight hundred and forty-nine so much of the said Act as authorizes any Judge to order any such Party or Defendant to be committed as herein-before mentioned shall be repealed;

9 & 10 Vict. c. 95.

To what Prisons Persons may be committed under recited Act for Frauds, &c.

repealed; and it shall be lawful for any Judge who would have been authorized under the said Act to order any Party or Defendant to be committed as aforesaid for any such Period as aforesaid, to order such Party or Defendant to be committed for the like Period to the Common Gaol wherein the Debtors under Judgment and in Execution of the Superior Courts of Justice may be confined for the County, City, Borough, or Place in which such Party or Defendant is resident, or to any other Gaol or Debtors Prison for the same County, City, Borough, or Place which shall by any Declaration of One of Her Majesty's Principal Secretaries of State be allowed as a Place of Imprisonment for Persons committed under the said Act, so long as such Declaration shall remain in force and unrevoked, or to any Prison which has been or shall be provided as in the said Act mentioned as the Prison of the Court by the Judge of which such Order may be made; and all the Provisions of the said Act applicable to and consequent upon the Order for Commitment under the Power herein-before repealed, and to the Prisons to which Persons might be committed under such Order, shall apply to and be construed with reference to any Order made under the Power herein-before contained, and the Prisons to which Persons may be committed under such Order.

To what Prisons Persons may be committed under the said Act, for Contempt.

II. And whereas by the said Act of the Tenth Year of Her Majesty it was enacted, that if any Person should wilfully insult the Judge, or any Juror, or any Bailiff, Clerk, or Officer of the Court for the Time being, during his Sitting or Attendance in Court, or in going to or returning from the Court, or should wilfully interrupt the Proceedings of the Court, or otherwise misbehave in Court, the Judge should be empowered, if he should think fit, by a Warrant under his Hand, and sealed with the Seal of the Court, to commit any such Offender to any Prison to which he had Power to commit Offenders under the said Act for any Time not exceeding Seven Days, or to impose upon any such Offender a Fine not exceeding Five Pounds for every such Offence, and in default of Payment thereof to commit the Offender to any such Prison as aforesaid for any Time not exceeding Seven Days, unless the said Fine were sooner paid: Be it enacted, That from and after the Thirty-first Day of *August* One thousand eight hundred and forty-nine so much of the last-recited Enactment as authorizes the Judge to commit any such Offender to any such Prison as therein mentioned shall be repealed, and in any Case in which any Judge would under such Enactment have been authorized to commit any such Offender to any such Prison as therein mentioned for such Period as therein mentioned, such Judge shall be empowered, if he think fit, by Warrant, as therein mentioned, to commit such Offender for the like Period to any Common Gaol wherein the Debtors

under

under Judgment and in Execution of the Superior Courts of Justice may be confined, for any County, City, Borough, or Place wholly or in part within any District of such Judge, or to any other Gaol or Debtors Prison for any such County, City, Borough, or Place which shall by Declaration as aforesaid be allowed as a Place of Imprisonment for Persons committed under the said Act, so long as such Declaration shall remain in force and unrevoked, or to any Prison which has been or may be provided, as in the said Act mentioned, as the Prison of the Court by the Judge of which such Offender shall be committed.

Where Debtors Prison is situated at an inconvenient Distance or crowded, Secretary of State may authorize Commitment to House of Correction.

III. Provided always, and be it enacted, That where, by reason of any Common Gaol wherein Debtors under Judgment and in Execution of the Superior Courts of Justice may be confined being situated at an inconvenient Distance, or of the crowded State of any such Gaol, or otherwise, it shall appear to One of Her Majesty's Principal Secretaries of State expedient so to do, it shall be lawful for such Secretary of State, by Order under his Hand, to authorize to be used for the Purposes of Commitments under the said Act of the Tenth Year of Her Majesty any House of Correction or Common Gaol in which such Debtors as aforesaid may not be confined (to be mentioned in such Order), and to make Orders for altering the Regulations of such House of Correction or Gaol as last aforesaid, so far as respects the Treatment of Persons to be committed under this Act, in order that such Persons may be treated as nearly as may be in like Manner as if they had been committed to a Gaol in which such Debtors as aforesaid may be confined, notwithstanding the Regulations in force in such House of Correction or Gaol to which such Persons may be committed; and every such Order may from Time to Time be revoked or varied by such Secretary of State as Occasion may require.

Gaols maintained by Lords of Liberties and private Persons not to be used without their Consent.

IV. Provided also, and be it enacted, That where, under the Provisions herein-before contained, Persons might be committed to any Gaol or Prison not now used for the Purposes of the said Act which by reason of the Tenure of any Liberty or Franchise, or otherwise, is maintained at the private Charges of the Lord of such Liberty or Franchise, or of any other private Person, such Gaol or Prison shall not be used for the Purposes of Commitments under the said Act until such Lord or Person as aforesaid shall have given his Consent in Writing to such Gaol or Prison being so used.

9 & 10 Vict. c. 95.

V. And whereas by the said Act of the Tenth Year of Her Majesty it was enacted, "that it should be lawful for any Court "holden under that Act, with the Approval of One of Her Majesty's "Principal Secretaries of State, to use as a Prison for the Purposes "of

" of that Act any Prison then belonging to any Court holden under " any of the Acts cited in the Schedules (A.) and (B.) to that Act, " in all Cases where it should appear to the said Secretary of State " that the Common Gaol or House of Correction of the County, " District, or Place in which the Court was established was incon- " veniently situated, or was not applicable for the Use of the said " Courts; and whenever any such Prison should be so allowed to be " used it should be deemed One of the Common Gaols of the " County for which it should be used, as if it had been provided " after Presentment of the Insufficiency of One Common Gaol for " such County under the Provisions of an Act passed in the Sixth " Year of the Reign of Her Majesty, intituled *An Act to amend* " *the Laws concerning Prisons*:" And whereas a Prison used under the said recited Enactment for a Division of a County may be deemed a Gaol for the County at large: Be it declared and enacted, That where a Prison allowed to be used with the Approval of such Secretary of State shall be so used for any Riding, Parts, or Division of a County having a distinct Commission of the Peace, or a distinct Rate in the Nature of a County Rate applicable to the Maintenance of a Prison for such Riding, Parts, or Division (and not for the County at large), such Prison shall be deemed One of the Common Gaols for the Riding, Parts, or Division for which it is so used (and not for the County at large), as if it had been provided after Presentment of the Insufficiency of One Common Gaol for such Riding, Parts, or Division under the said Act of the Sixth Year of Her Majesty.

5 & 6 Vict. c. 98.

A Prison used under recited Enactment for any Riding, Parts, or Division of a County, to be deemed a Common Gaol for such Riding, Parts, or Division.

Power to Secretary of State, with Consent of the Treasury, to alter Fees payable on Proceedings in County Courts.

VI. And be it enacted, That it shall be lawful for One of Her Majesty's Principal Secretaries of State, with the Consent of the Commissioners of Her Majesty's Treasury, from Time to Time to regulate or vary, lessen or increase, the Fees or Sums in the Name of Fees now payable, or which from Time to Time may be payable, on the several Proceedings in the Courts holden under the said Act of the Tenth Year of Her Majesty to the Judges, Clerks, and High Bailiffs of such Courts, and such Fees or Sums may be so regulated from Time to Time by way of Per-centage on the Amount of the Demand; and such Secretary of State, with such Consent as aforesaid, may from Time to Time appoint, instead of all or any of the Fees or Sums in the Name of Fees now payable or which may from Time to Time be payable as aforesaid, other Fees or Sums by way of Per-centage or otherwise, and to be payable on such Proceedings under such last-mentioned Act as such Secretary of State with such Consent as aforesaid may direct.

So much of recited Act 9 & 10 Vict. c. 95. as directs Clerk

VII. And be it enacted, That so much of the said Act of the Tenth Year of Her Majesty as directs that the Clerk of every Court holden under the said Act shall pay over to the Treasurer of the Court, quarterly

quarterly or oftener in every Year, by Order of the Court, the Monies remaining in his Hands over and above his own Fees, and such Balance as he shall be allowed by Order of the Court to retain for the current Expenditure of the Court, shall be repealed; and the Clerk of every Court holden under the said Act shall pay over to the Treasurer of the Court, quarterly or oftener in every Year, as he may be directed by the Commissioners of Her Majesty's Treasury, the Monies remaining in his Hands over and above his own Fees, and such Balance as he shall be allowed by Order of the said Commissioners to retain for the current Expenditure of the Court.

to pay over Monies to Treasurer repealed.

Clerk to pay over his Balance as the Treasury may direct.

VIII. And be it enacted, That so much of the said Act of the Tenth Year of Her Majesty as enacts that the Clerk of every Court, under the Directions of the Commissioners of Her Majesty's Treasury, and subject to such Regulations as they may require to be enforced, shall make all necessary Contracts or otherwise provide for repairing and furnishing, and for cleaning, lighting, and warming, the Court House and Offices of such Court, and for supplying the said Court and Offices with Law and Office Books and Stationery, and for defraying all other necessary Expenses not otherwise provided for incident to the holding of the said Court, and as provides that no Payment for any Charge shall be allowed in the Clerk's Accounts until allowed under the Hand of the Judge, shall be repealed; and it shall be lawful for the Commissioners of Her Majesty's Treasury to provide for the several Purposes and for defraying the several Expenses aforesaid in such Manner, and by the Agency of such Officers of the Court, or otherwise, as to them shall seem fit.

So much of 9 & 10 Vict. c. 95. as enacts that Clerks shall make all necessary Contracts, &c., repealed.

Treasury to provide for the several Purposes, and defray the Expenses.

IX. And be it enacted, That it shall be lawful for the Commissioners of Her Majesty's Treasury, if they shall think fit, to direct that the whole or Part of the Expenses incurred or to be incurred in the Performance of the Duties required by the Act passed in the Eleventh Year of Her Majesty's Reign, intituled *An Act to abolish the Court of Review in Bankruptcy, and to make Alterations in the Jurisdiction in the Courts of Bankruptcy and Court for Relief of Insolvent Debtors*, to be performed by the Officers of the Courts established by the said Act of the Tenth Year of Her Majesty, shall be paid out of "The General Fund" of such respective Courts, and that the Surplus for the Time being of the General Fund of each such Court, after defraying the Expenses of such respective Court, shall be applicable, under the Directions of the said Commissioners of the Treasury, to the Payment of the Expenses of any other of the said Courts of which the General Fund may be insufficient for that Purpose.

Providing for Payment of the Expenses incurred under 10 & 11 Vict. c. 102., and for applying the Surplus of General Fund of any Court to Expenses of any other Courts where such Fund is deficient.

Judge may authorize Bailiffs to act as Brokers.

X. And be it enacted, That it shall be lawful for the Judge of any Court holden under the said Act of the Tenth Year of Her Majesty, by any Writing under his Hand, to authorize any of the Bailiffs appointed by the High Bailiff under the said Act to act as Brokers or Appraisers for the Purpose of selling or valuing any Goods, Chattels, or Effects taken in Execution under the said Act; and the Bailiffs so authorized by the Judge may, without other Licence in this Behalf, do and perform all the Duties and shall be entitled to the Poundage which Sworn Brokers or Appraisers may now do and perform and are entitled to under the said Act.

So much of 9 & 10 Vict. c. 95. as requires Notice of HerMajesty's Intention to make Order in Council repealed.

XI. And be it enacted, That so much of the said Act of the Tenth Year of Her Majesty as requires that Notice of the Intention of Her Majesty to take into consideration the Propriety of making any Order in Council for the Purposes of the said Act shall be published in the *London Gazette* One Calendar Month at least before any such Order shall be made, shall be repealed.

Lord Chancellor may authorize Five Judges of County Courts to make General Rules, such Rules to be approved by Judges of the Superior Courts, and laid before Parliament.

XII. And be it enacted, That it shall be lawful for the Lord Chancellor to appoint and authorize Five of the Judges of the Courts holden under the said Act of the Tenth Year of Her Majesty to frame such General Rules and Orders as to them shall seem expedient for and concerning the Practice and Proceedings of the Courts holden under the said Act, and for the Execution of the Process of such Courts, and in relation to any of the Provisions of the said Act as to which there may have arisen Doubts or have been conflicting Decisions in the said Courts; and all such Rules and Orders as aforesaid as shall be certified to the Lord Chancellor, under the Hands of the Judges so appointed or authorized, or any Three of them, shall be submitted by the Lord Chancellor to Three or more of the Judges of the Superior Courts of Common Law at *Westminster*, of whom the Chief Justice of the Court of Queen's Bench or Common Pleas or the Chief Baron of the Court of Exchequer shall be one; and such Judges of the Superior Courts may approve or disallow, or alter or amend, such Rules and Orders, or any of them; and such of the Rules as shall be so approved by such Judges of the Superior Courts shall forthwith after the Approval thereof be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not sitting, then within Five Days after the next Meeting thereof; and no such Rule or Order shall have Effect until Six Weeks after the same shall have been so laid before both Houses of Parliament; and any Rule or Order so approved shall from and after the Expiration of such Time as last aforesaid be of the same Force and Effect as if the same had been enacted by Authority of Parliament.

XIII. And

No Action or Suit to be brought in the Marshalsea or Palace Court or Peveril Court after the passing of this Act.

XIII. And whereas it is expedient to abolish the Court of the Marshalsea of Household of the Kings of *England*, and the Court of our Lady the Queen of the Palace of the Queen at *Westminster*, and Her Majesty's Court of Record for the Honour of *Peveril* and additional Limits of the same: Be it enacted, That from and after the passing of this Act no Action or Suit shall be commenced in any of the said Courts.

Powers of Marshalsea and Palace and Peveril Courts to cease on 31st Dec. 1849, and Actions and Suits then depending to be transferred to the Court of Common Pleas or the County Court, as the Case may require.

XIV. And be it enacted, That from and after the Thirty-first Day of *December* One thousand eight hundred and forty-nine all the Power, Authority, and Jurisdiction of the said Court of the Marshalsea, and of the said Court of the Palace of the Queen at *Westminster*, and of the said Court for the Honour of *Peveril* and additional Limits of the same, and of the Judges of the said Courts respectively, shall cease and determine, and that all Actions and Suits then depending in the said Courts respectively shall be transferred, with all the Proceedings thereon, to Her Majesty's Court of Common Pleas at *Westminster*, if the Debt or Damages sought to be recovered in such Actions or Suits respectively shall exceed the Sum of Twenty Pounds, and to the County Court for the District in which the respective Defendants shall then reside, if the Debt or Damages sought to be recovered in such Actions or Suits respectively shall not exceed the Sum of Twenty Pounds; and such Actions and Suits so transferred shall be dealt with and decided according to the Practice of those Courts respectively, or of the Court whence the same shall be transferred, according to the Discretion of the Court to which the same shall be transferred, which Court shall, for the Purpose of such Actions or Suits only, be deemed and taken to have all the Power and Jurisdiction to all Intents and Purposes possessed before the passing of this Act by the Court whence such Action or Suit shall be transferred.

Judgments of abolished Courts obtained on or before 31st Dec. 1849 may be enforced as heretofore.

XV. Provided always, and be it enacted, That all Judgments obtained in any of the Courts hereby abolished on or before the Thirty-first Day of *December* One thousand eight hundred and forty-nine shall, notwithstanding the passing of this Act, be as valid and effectual, and as capable of being enforced by the Process of the Court in which such Judgments shall respectively have been obtained, as if this Act had not been passed.

Records of abolished Courts to be placed under the Charge of Master of the Rolls under 1 & 2 Vict. c. 94.

XVI. And be it enacted, That the Records, Muniments, and Writings of the several Courts abolished by this Act shall, as soon as conveniently may be after the Thirty-first Day of *December* One thousand eight hundred and forty-nine, be placed under the Charge and Superintendence of the Master of the Rolls for the Time being, to be deposited and kept in such Place or Places as the said Master of

of the Rolls shall direct; and such Records, Muniments, and Writings shall thenceforth be deemed to be in the Custody of the Master of the Rolls under the Authority of an Act passed in the Second Year of Her Majesty, intituled *An Act for keeping safely the Public Records;* and, until such Records, Muniments, and Writings shall be so placed under the Charge and Superintendence of the said Master of the Rolls as aforesaid, the same shall be respectively kept by the same Persons and in the same Places as before the passing of this Act.

Compensation to Officers of abolished Courts.

XVII. And be it enacted, That every Person who is legally entitled to any Franchise or Office in any of the Courts abolished by this Act shall be entitled to make a Claim for Compensation to the Commissioners of Her Majesty's Treasury within Six Calendar Months after the passing of this Act, and it shall be lawful for the said Commissioners, in such Manner as they shall think fit, to inquire what was the Nature of the Office, and what was the Tenure thereof, and what were the lawful Fees and Emoluments in respect of which such Compensation should be allowed; but any Increase of such Fees or Emoluments which shall have happened after the passing of the said Act of the Tenth Year of Her Majesty shall not be taken into account in estimating the Amount of such Compensation; and the Commissioners in each Case shall award such gross or yearly Sum, and for such Time as they shall think just, to be awarded, upon Consideration of the special Circumstances of each Case; and all such Compensations shall be paid out of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland:* Provided always, that if any Person holding any Office in any of the said Courts shall be appointed after the passing of this Act to any public Office or Employment, the Payment of the Compensation awarded to him under this Act, so long as he shall continue to receive the Salary or Emoluments of such Office or Employment, shall be suspended, if the Amount of such Salary or Emoluments be greater than the Amount of such Compensation, or, if not, shall be diminished by the Amount of such Salary or Emoluments.

Attornies and Solicitors not exempt from Provisions of this Act.

XVIII. And be it enacted, That no Privilege shall be allowed to any Attorney, Solicitor, or other Person, to exempt him from the Provisions of this Act or the said Act for the more easy Recovery of Small Debts and Demands in *England.*

Act may be amended, &c.

XIX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

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