

JOURNAL OF MERCANTILE LAW.

ACT FOR THE ABOLITION OF IMPRISONMENT FOR DEBT.

Not the least important of the measures of the late Session of Parliament, is the Act intitled "An Act for abolishing arrest in civil actions in certain cases, and for the better prevention and more effectual punishment of fraud."

The aim of the Act is to abolish arrest—not in all cases, but "in certain cases." To abolish arrest in all civil cases, would be to commit a piece of absurdity of which we are sure Mr. Macdonald could not be guilty. Again, the Act is not only to abolish arrest in certain cases, but for "the better prevention and more effectual punishment of fraud." This branch of the title also foreshadows important provisions.

As the Act came into force on the 1st of the present month of September, we append a synopsis of it.

I.—After 1st September, 1858, no person to be arrested upon mesne or final process in any civil action, except in the case and in the manner provided for by this Act.

II.—If any party being creditor of or having a cause of action against any person now liable to arrest, shall by affidavit of himself or of some other individual, show to the *satisfaction* of a Judge of either of the Superior Courts of Common Law a cause of action to the amount of £25 or upwards, and shall also by affidavit *show such facts and circumstances* as shall satisfy the Judge that "there is good and probable cause for believing that such person, unless he be forthwith apprehended, is about to quit *Canada* with intent to defraud his creditors," &c., it shall be lawful for such Judge to direct, &c., that such persons shall be held to bail for such sum as the Judge shall think fit, &c. Thereupon a capias may issue, &c.

III.—Special bail may be put in and perfected according to present practice, and action to proceed as if commenced by writ of summons.

VI.—An order for a capias may be obtained after commencement of action. The capias to be in the form in Schedule A. of C. L. P. A., 1856.

V.—The Sheriff, &c., within two calendar months after date of capias to proceed to arrest defendant.

VI.—When capias issued under this Act, not necessary before suing out *Ca. Sa.* to obtain a Judge's order for the issue thereof, or to make or file any further affidavit. But where defendant has not been held to bail, plaintiff must by affidavit of himself or some other party, show to the *satisfaction* of a Judge of either of the Superior Courts of Common Law that "he has recovered judgment against defendant for the sum of £25 or upwards, exclusive of costs," and show also by affidavit "such facts and circumstances as shall satisfy the Judge that there is good and probable cause for believing either that defendant, unless forthwith apprehended, is about to quit *Canada* with intent to defraud his creditors, &c.," or that defendant "hath parted with his property, or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution," and then the Judge may direct a *Ca. Sa.* to issue.