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FIRST SCHEDULE

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CHAPTER 198

DEBTORS

An Act for the abolition of imprisonment for debt and for the punishment of fraudulent debtors.

1879-2.
1956-56.
1956-57.
1961-54.
L.N. 168/
1967.

[3rd November, 1879] Commence-
ment.

1. This Act may be cited as the Debtors Act.

Short title.

2. (1) No person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of any sum of money, except in the following cases—

Abolition of imprisonment for debt with certain exceptions.

- (a) default in payment of a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract;
- (b) default in payment of any sum recoverable summarily before a magistrate;
- (c) default by a trustee or person acting in a fiduciary capacity and ordered to pay by the High Court any sum in his possession or under his control;
- (d) default by a solicitor in payment of costs, when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order;
- (e) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which the court having jurisdiction is authorised to make an order;
- (f) default in payment of sums in respect of the payment of which orders are in this Act authorised to be made.

(2) No person shall be imprisoned in any case mentioned in paragraphs (a) to (f) for a longer period than one year.

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(3) Nothing in this section shall alter the effect of any judgment or order of any court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money.

Power of committal under certain circumstances.

3. Subject to the provisions hereinafter mentioned, any court may commit to prison for a term not exceeding six weeks, unless within that time payment be made of the sum due, any person who makes or has made default in payment of any debt due from him in pursuance of any order or judgment of that or any other court.

How power to be exercised.

4. The jurisdiction of committing a person to prison under this Act shall only be exercised (except where it is exercised in pursuance of sections 2, 8 and 9) subject to the following restrictions, that is to say—

- (a) as respects a judgment of the High Court by a Judge and by an order showing on its face the ground on which it is issued;
- (b) as respects a judgment of a magistrate's court in exercise of his civil jurisdiction by a magistrate in open court and by an order showing on its face the ground on which it is issued.

When power not to be exercised.

5. (1) Subject to this section, such jurisdiction shall not be exercised if the court is satisfied that the person making default has not or has not had since the date of the order or judgment the means to pay the sum in respect of which he has made default and has not refused or neglected and does not refuse or neglect to pay the same.

(2) Such jurisdiction may be exercised if the court is satisfied that the person making default contracted the original debt, for the payment of which any order or judgment has been made, without at the time of contracting such debt having had any reasonable prospect of being able to satisfy the same.

Proof of inability to pay.

6. (1) The onus of proving inability to have satisfied or to satisfy any order or judgment shall lie on the person who has made default in satisfying the same.

(2) Proof of the inability or ability of the person making default may be given in such manner as the court thinks just, and for the purpose of such proof the creditor and debtor and any witnesses may be summoned and examined on oath.

7. No person shall be imprisoned under section 3 or 4 more than once as regards the same debt, when an order of imprisonment has been made for non-payment in one sum of the entire debt.

Imprisonment for non-payment not to exceed one month.

8. (1) For the purposes of sections 3 and 4, any court may, in lieu of any immediate order of imprisonment, direct any debt due from any person in pursuance of any order or judgment of that or any other court to be paid by instalments and may from time to time rescind or vary such order.

Debt may be ordered to be paid by instalments.

(2) Where an order is made that any debt be paid by instalments, it shall be lawful for the court or judge, on the non-payment of any one or more of the instalments at the time ordered, to commit to prison for a term not exceeding one month, for the non-payment of any instalments then due, unless within that time payment be made of the instalment or instalments for the non-payment of which the order of commitment is issued.

9. (1) It shall not be necessary on the non-payment of any instalment ordered to be paid by the court that the person failing to pay be again summoned before the court, but on an application by the judgment creditor and on satisfactory proof by him that any instalment has not been paid, the court or judge may thereupon issue a warrant of commitment for non-payment of the same.

Procedure when instalments not paid.

(2) No such warrant of commitment shall be issued unless the court or judge is satisfied that the judgment debtor has received, three clear days previous to such an application being made, a written notice from the judgment creditor, according to the form prescribed by the First Schedule or as near thereto as possible, of the judgment creditor's intention to make such application or that such notice, three clear days

First Schedule.

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previous to such application, was left at the last known place of abode of such judgment debtor.

(3) Proof of having posted such a notice in such a way that in the ordinary course of postage such notice would have reached the debtor three clear days previous to the application for the warrant being made shall be considered *prima facie* proof that such notice duly reached the debtor.

Committal orders.

10. Persons committed to prison under this Act or under any other Act, notwithstanding that any such other Act may specify any particular place of imprisonment, may be imprisoned in Glendairy prison or any other prison in this Island, and every order of committal issued by any court under this Act shall be issued, obeyed and executed in the like manner as a writ of *capias ad satisfaciendum*.

Imprisonment not to operate as satisfaction of debt.

11. No imprisonment under sections 3 or 4 shall operate as a satisfaction or extinguishment of any debt or demand or cause of action or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Persons imprisoned to be released upon payment of debt and costs.

12. Any person imprisoned under section 3 or 4 shall be discharged out of custody upon a certificate signed by a Judge or a magistrate, according to the court under whose order such person may be confined, to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any) or, upon payment to the officer, constable, or gaoler in whose custody he may be of the amount of the debt and costs appearing on the warrant of commitment as due by him and for the non-payment of which he was arrested, which amount such officer, constable, or gaoler shall transmit to the court from which the warrant of commitment issued.

Arrest upon mesne process abolished.

13. After the commencement of this Act a person shall not be arrested upon mesne process in any action.

14. (1) Where the plaintiff in any action where the damages are ascertained at any time before final judgment proves on oath that he has good cause of action and that the absence of the defendant from the Island will materially prejudice him in the prosecution of his action or where the defendant after judgment gives notice of appeal, the plaintiff, if he proves by evidence on oath to the satisfaction of a Judge or a magistrate that there is probable cause for believing that the defendant is about to quit this Island unless he be apprehended, the Judge or magistrate, as the case may be, may by an order under his hand, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he sooner gives security to be approved of by such Judge or magistrate in a sum not exceeding the amount claimed and the probable costs of the action or not exceeding the amount ordered to be paid and the probable cost of the appeal, as the case may be, that he, the defendant, will not go out of the Island without leave of the court.

Power to arrest defendant about to leave Island.

(2) Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from the Island will materially prejudice the plaintiff in the prosecution of his action, and the security given, instead of being that the defendant will not go out of the Island, shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

15. Any person who swears that there is probable cause for believing the defendant is about to leave the Island when such is not the case shall be liable to be prosecuted for perjury and to be punished accordingly and shall be further liable, as shall also any person who may have in any way induced him to so swear falsely, to an action for damages at the suit of the party aggrieved.

Falsely swearing that defendant is about to leave Island.

16. Any jurisdiction given to the High Court under this Act, except under section 2, may be exercised by a Judge in open court or sitting in chambers.

Jurisdiction of High Court may be exercised in open court or chambers.

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Sequestration
of debtor's
property.

17. Sequestration against the property of a debtor may, after the commencement of this Act, be issued by the High Court in the same manner as if such debtor had been actually arrested.

Form of
summons.
Second
Schedule.

18. A summons to a judgment debtor to appear under this Act shall be in the form prescribed by the Second Schedule or as near thereto as possible.

How
summonses to
be served.

19. All summonses issued under this Act shall be served in the same manner as other summonses are now issued from such courts, and any person duly summoned as a witness under this Act shall be liable for non-attendance thereto to the same penalties as witnesses are now liable to for disobedience to any summons.

Court may
hear *ex parte*
when
defendant
fails to
appear.

20. Whenever a judgment debtor has been duly summoned to appear under this Act, and does not appear within one hour of the time and at the place mentioned in the summons and it appears to the court on oath that the summons was duly served a reasonable time before the time therein appointed for hearing and no sufficient grounds are shown for an adjournment, the court may either proceed *ex parte* to hear and determine the matter or adjourn the hearing to a future day.

Appeals.

21. There shall be no appeal from any order or judgment given by a Judge under this Act, but from any order or judgment of any magistrate, under any of the provisions of this Act, an appeal may lie as in any other matter of summary jurisdiction.

Fees.
1961-54.

22. The scale of fees for summonses issued under this Act, and any proceedings consequent thereon, shall be fixed by the Judicial Advisory Council.

Rules and
regulations.
1956-56.

23. (1) It shall be lawful for the Judicial Advisory Council to make rules and regulations for the better carrying out of this Act.

(2) All general rules and regulations made under this Act shall be laid before both Houses within forty days after the making thereof, if Parliament is then sitting or, if not, within forty days after the commencement of the next ensuing session, and if either House by resolution annuls any such rule or regulation, the rule or regulation so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same. L.N. 168/
1967.

FIRST SCHEDULE

s. 9.

Take Notice

In the High Court/or Magistrate's Court of District*

A.B.
C.D.

Judgment creditor.
Judgment debtor.

To C.D.
of in the parish of

Whereas by an order of the Court of given on the day of you were ordered and adjudged to pay me by certain instalments the sum of \$, portion of a judgment debt owing to me by you;

and whereas you did fail on the day of to pay me the sum of \$, being an instalment (or instalments) of the said debt ordered to be then paid by you;

Now I do hereby give you notice that it is my intention to apply on the day of under section 9 of the Debtors Act, Chapter 198, for a warrant of commitment against you for having failed to pay such instalment (or instalments) unless you do before that date pay such instalment (or instalments) or unless you before that date show good cause to the court why such warrant should not issue against you.

Dated this day of

Signed,

Judgment creditor.

* Strike out which does not apply.

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s. 18.

SECOND SCHEDULE

In the High Court/or Magistrate's Court of District*

A.B.

Judgment creditor.

v.

C.D.

Judgment debtor.

To C.D. of in the parish of

You are hereby required to attend at the before me, or such other Judge/Magistrate* as may be then sitting, to answer a summons taken out against you by the above-named A.B., for having made default in satisfying a judgment pronounced against you in the Court of on the day of in virtue of which you were ordered to pay to the said A.B., the sum of \$, such judgment still remaining unsatisfied.

Signed,

Judge of the Supreme Court.*

or

Magistrate.*

District.....

You are hereby warned that if you fail to appear, an order of imprisonment may be made against you for having failed to satisfy such judgment, and you may be further condemned to pay costs consequent on the issuing of this summons.

* Strike out which does not apply.