

CHAPTER 3

THE ABSCONDING DEBTORS ACT

Arrangement of Sections

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ABSCONDING DEBTORS

(1st April, 1977.)

15/1971.

- 1.** This Act may be cited as the Absconding Debtors Act. **Short title.**
- 2.** It shall be lawful for a Judge of the High Court, by warrant under his hand, to authorise the Provost Marshal to arrest and bring before him or some other Judge of the said Court any person alleged to be indebted and to be about to quit Antigua and Barbuda, on the conditions and subject to the procedure hereinafter set forth. Save as be provided no person shall be arrested for debt on mesne process. **Warrant of Arrest.**
- 3.** A warrant of arrest shall not issue against a married woman or an infant, nor in respect of any debt less than two hundred dollars, nor in respect of any debt that has been due and owing for more than two years previously to the application for such warrant, nor until an action shall have been commenced by the alleged creditor against the debtor for the recovery of such debt by writ especially endorsed as provided by the Rules of the Supreme Court. **When warrant not to issue.**
- 4.** An application for a warrant of arrest shall be made only in respect of a debt or liquidated demand for a sum of two hundred dollars or upwards and shall be founded on affidavit made by some person who can swear positively thereto, verifying the cause of action and the amount and the date when the debt or demand accrued due, and stating that in his belief there is no defence thereto, in the same manner in every respect as the facts are stated in an application for judgment in an action for a debt or liquidated demand in which the defendant has appeared to a writ of summons specially endorsed. **Application for warrant.**
- 5.** The intention of the defendant to quit Antigua and Barbuda shall in like manner appear on the same or another affidavit showing satisfactorily the ground on which the deponent believes, and the date on which, and the place for which the debtor proposes to leave, as far as the same is known to the deponent. **Form of Affidavit.**

Warrant to be delivered to Provost Marshal.

6. If the Judge grants the application for a warrant of arrest, the same shall forthwith be signed by the Judge and placed in the hands of the Provost Marshal who shall immediately cause the person against whom such warrant is issued to be arrested.

When sum and costs paid to Provost Marshal or Bailiff.

7. On such arrest as aforesaid being effected it shall be lawful for the Provost Marshal or any Bailiff of the High Court so authorised by him in that behalf to receive the sum endorsed on the writ, together with the prescribed costs of issuing and executing the same, and in such event he shall forthwith endorse the writ with a statement of such receipt, and return the same to the Registry of the High Court, and account for the money so received in the same manner as if the same had been received by him under a writ of execution or a judgment, and shall release the defendant forthwith without any order of the Judge.

Procedure on Arrest.

8. (1) The Provost Marshal or Bailiff shall at the time of making such arrest, serve the defendant with the writ if not already served and give notice on the prescribed form to the plaintiff and forthwith convey the defendant in custody before a Judge in Chambers, if a Judge be then present in Antigua and Barbuda, and in the absence of the Judge before the Registrar of the High Court who (the plaintiff being in attendance or having been notified as aforesaid) may order the defendant either to give security for the payment of the alleged debt, or if default be made in the giving of such security, to be committed to Prison or to be discharged, and may on the application of either party, adjourn the matter to such convenient date, for such purposes, and on such terms as to custody, security, bail, the filing of further affidavits, or otherwise, as he shall think fit.

(2) The Judge or Registrar as the case may be, may, if he shall think fit, proceed to dispose of the action by trial thereof, or, may direct such action to be set down for trial, irrespective of the amount claimed, at the first convenient sitting of the Court.

(3) There shall be no pleadings in any such action unless a Judge shall otherwise order, but the affidavits filed on behalf of the plaintiff and defendant respectively shall be taken to set forth the respective grounds of claim and defence.

9. Security may be given by the deposit of money or by bond, or otherwise to the satisfaction of the Judge or Registrar as the case may be. Security.

10. The defendant may at any time confess judgment, and the same shall in such case be entered accordingly for the debt, with such costs as may be agreed upon or taxed. Confessing Judgment.

11. On the determination of the issue, if the Judge or Registrar as the case may be, awards judgment in favour of the plaintiff, he may on its being proved to his satisfaction that the absence of the defendant will materially prejudice the plaintiff in the recovery of his judgment debt, order the imprisonment of the said defendant in default of security for such time as he may deem fit. Imprisonment in default of security.

12. On the defendant appearing before him the Judge, or Registrar as the case may be, shall, if he is satisfied that the defendant is not about to quit Antigua and Barbuda, or that his absence from Antigua and Barbuda will not materially prejudice the plaintiff in respect of the recovery of the debt for which the action has been brought, or if he is not satisfied on hearing the parties and such evidence as may be adduced, that the defendant owes the plaintiff a sum of two hundred dollars or over, discharge the defendant unconditionally, and may in such case, if he shall think fit, award such damages (to include costs) in respect of the arrest and detention, to be paid to the defendant in such time and manner as he shall direct; and such damages shall on such event be leviable by execution in the same manner as costs under a judgment in an action. In certain cases Judge may discharge.

13. If the defendant proves that he is without means to pay the debt, and is not likely, if detained in Antigua and Barbuda, to obtain such means, then, whether judgment has been confessed or not, it shall in any case be lawful for the Judge or Registrar, as the case may be, to refuse to commit or detain the defendant on the ground that his absence would not materially prejudice the plaintiff as aforesaid. When defendant without means.

14. All committals to prison in pursuance of this Act, shall be for failure to give security to satisfy the debt or to Committals to Prison.

obey the order of the Court, and shall be to Her Majesty's Prison, and, in the event of the debt not having been admitted or confessed, may be for such term, not exceeding three months in any case, as the Judge or Registrar, as the case may be, may deem sufficient to give time for the trial of the action, and for no longer, and no person once committed under this Act shall again be arrested or committed in respect of the same debt or any part thereof.

Rules.

15. Rules, forms, schedules of costs and fees in respect of any procedure under this Act shall be made from time to time by the Chief Justice.

When Defendant entitled to discharge.

16. Any person committed under the provisions of this Act shall be entitled, at any time after such commitment, to an order of discharge to be made by a Judge or Registrar as the case may be on—

- (a) the payment or settlement of the debt; or
- (b) the consent of the creditor; or
- (c) the giving of security as required; or
- (d) an adjudication of bankruptcy against the defendant; or
- (e) proof that he is without means, and that his absence will not materially prejudice the plaintiff.

Application for discharge.

17. A defendant desirous of applying to the High Court for a discharge on any of the above grounds shall, on notifying such desire, be brought before the said Court by the Superintendent of Prison and the Judge or, in his absence the Registrar, may refuse such application forthwith, or may direct such notice thereof to be given to the plaintiff as he shall think requisite, or, in case he is satisfied by sufficient documentary evidence of either of the grounds mentioned in paragraphs (a), (b), (c), or (d) of section 16, may if he shall think fit, order the discharge of the defendant without calling on the plaintiff.

Saving.
Cap. 131.

18. Nothing in the Debtors Act shall in any way affect any right or power under this Act to arrest or imprison any person for any debt.