



**BERMUDA
1973 : 69**

DEBTORS ACT 1973

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[9 July 1973]

[*preamble and words of enactment omitted*]

Interpretation

- 1 In this Act, unless the context otherwise requires,—
- "the court" means the Supreme Court or a court of summary jurisdiction;
- "debtor" means a person who makes default in the payment of any judgment debt;
- "judgment debt" means any debt due from any person in pursuance of any order or judgment of the court and includes an instalment of any debt payable under an order under section 4;

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"judgment summons" means a summons issued on the application of a person entitled to enforce a judgment debt requiring a person to appear and be examined on oath as to his means;

"prescribed" means prescribed by the prescribed rules;

"prescribed rules", in relation to proceedings in the Supreme Court, means rules of court prescribed under section 62 of the Supreme Court Act 1905 [*title 8 item 1*], and in relation to proceedings in a court of summary jurisdiction means rules prescribed under section 21 of the Magistrates Act 1948 [*title 8 item 15*].

Imprisonment for debt

2 (1) Save as provided in subsection (2), no person shall be arrested or imprisoned for making default in payment of a sum of money.

(2) Subsection (1) shall not apply in the case of —

- (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 court of summary jurisdiction;
- (c) default by a trustee or person acting in a fiduciary capacity and ordered to pay by the Supreme Court any sum in his possession or under his control;
- (d) default by a barrister and attorney 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 Supreme Court exercising its jurisdiction under the Bankruptcy Act 1989 [*title 8 item 49*] is authorized to make an order;

[paragraph (e) amended by 1989:58 effective 31 January 1990]

(f) default in payment of sums in respect of the payment of which orders are in this Act authorized to be made.

(3) No person shall be imprisoned in any case falling within subsection (2) for a longer period than one year.

(4) 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.

Judgment debt; committal for default in payment

3 (1) Subject to this Act (and to the prescribed rules) on the hearing of any judgment summons the court may, on proof of service of the judgment summons, make an order committing a debtor to prison for a term not exceeding three months, or until payment of the sum due.

(2) An order for committal shall not be made under subsection (1) if the debtor proves to the satisfaction of the court that he has not, and since the date of the judgment or order for the payment of the judgment debt has not had, the means to pay the sum due.

(3) The jurisdiction conferred by subsection (1) shall not be exercised unless the debtor is before the court.

(4) The jurisdiction conferred by subsection (1) shall be exercised by a court of summary jurisdiction —

(a) only where the order for committal shows on its face the ground on which it is issued; and

(b) in a case where the judgment for the payment of the judgment debt was made by the Supreme Court, only if such judgment is for an amount not exceeding two thousand five hundred dollars, exclusive of costs.

(5) Proof of the means of the debtor may be given in such manner as the court thinks just and witnesses may be summoned to give evidence thereof.

(6) Imprisonment under this section shall not operate as a satisfaction or extinguishment of any judgment debt or cause of action, nor 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.

(7) Any person imprisoned under this section shall be discharged out of custody upon a certificate in the prescribed form to the effect that he has satisfied the judgment debt in respect of which he was imprisoned, together with the costs, if any.

Instalment orders

4 (1) On the hearing of a judgment summons the court in may, if an order for the payment of the judgment debt by instalments has not been made, make such an order in lieu of committing the debtor to prison under section 3.

(2) If a debtor defaults in the payment of any instalment of a debt due under an instalment order made under subsection (1) and is committed to prison under section 3, the instalment order shall, unless otherwise ordered by the court, be suspended during the period of such

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imprisonment but shall again become operative from the termination thereof.

Penalty in default of attendance on judgment summons

5 (1) If the debtor fails to attend the court on the day and at the time fixed for the hearing of—

- (a) a judgment summons; or
- (b) the adjourned hearing of a judgment summons,

the court may, on proof of service of the summons or, in the case of the adjourned hearing, if the court is satisfied that the debtor has been notified thereof, issue a warrant for his arrest.

(2) A debtor arrested by virtue of a warrant issued under subsection (1) shall be brought before the court without delay and the court may—

- (a) forthwith proceed to hear the judgment summons, or
- (b) adjourn the hearing of the judgment summons to a specified time on a specified day and may further, if it does so, make an order committing him to prison and directing that he shall be brought before the court at the adjourned hearing.

(3) No debtor shall be imprisoned under subsection (2)(b) for a period in excess of fourteen days.

Execution of order for committal

6 An order for the committal of any person to prison under this Act shall be directed to the Provost Marshal General who shall thereby be empowered to detain the person against whom the order is made and deliver him into the custody of the Commissioner of Prisons, who shall keep such person in prison until he may lawfully be discharged.

Court may order discharge

7 The court may at any time revoke an order committing a person to prison under this Act and, if he is already in custody, may order his discharge.

Defendant in Supreme Court action about to leave Bermuda may be arrested

8 (1) Where the plaintiff in any action in the Supreme Court proves at any time before final judgment by evidence on oath, to the satisfaction of a judge, that he has good cause of action against the defendant and that there is probable cause for believing that the defendant is about to leave Bermuda unless he is apprehended, and that the absence of the defendant from Bermuda will materially prejudice the

plaintiff in the prosecution of his action, then the judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not leave Bermuda without the leave of the court.

(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 Bermuda will materially prejudice the plaintiff in the prosecution of his action, and the security given instead of being that the defendant will not leave Bermuda shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be committed to prison.

Saving for Bankruptcy Act 1989

9 Nothing in this Act shall in any way affect any right or power under the Bankruptcy Act 1989 [*title 8 item 49*] to arrest or imprison any person.

[section 9 amended by 1989:58 effective 31 January 1990]

Repeals

10 [*omitted*]

[Amended by

1974 45

1975 50

1989 58]