
CHAPTER 70**DEBTORS****ARRANGEMENT OF SECTIONS****PRELIMINARY**

SECTION

1. Short title.
2. Interpretation.

PART I**ABOLITION OF IMPRISONMENT FOR DEBT**

3. Abolishes imprisonment for debt.
4. Circumstances under which courts may commit to prison.
5. Persons not to be arrested on mesne process unless good cause on oath be shown.
6. How sequestration may issue.
7. Effect of this Part of Act.

PART II**PUNISHMENT OF FRAUDULENT DEBTORS**

8. What cases in bankruptcy shall be deemed a misdemeanour.
9. Felony by debtor.
10. Misdemeanour by debtor.
11. Misdemeanour by creditor.
12. Debtors making arrangement liable for any unpaid balance before composition.
13. Trustees may on report be ordered to prosecute bankrupt.

PART III**WARRANTS OF ATTORNEY AND COGNOVITS**

14. Every *cognovit actionem* to be of force must be signed by the attorney for the person executing it.
15. A justice of the peace must witness a warrant of attorney on the Out Islands.
16. Proof not to be given of bad execution of cognovit.
17. Circumstances which render void or make fraudulent cognovits.
18. Rules.

SCHEDULE — Description of Traders.

CHAPTER 70**DEBTORS**

An Act for the abolition of imprisonment for debt, for the punishment of fraudulent debtors and for other purposes. *9 of 1870
13 of 1870
46 of 1964
5 of 1987*
[Commencement 15th March, 1870]

PRELIMINARY

1. This Act may be cited as the Debtors Act. Short title.
2. In this Act, unless the context otherwise requires — Interpretation.
 - “court” means the Supreme Court;
 - “debt provable in bankruptcy” includes any debt or liability by this Act made provable in bankruptcy;
 - “person” includes a body corporate;
 - “prescribed” means prescribed by rules to be made under this Act;
 - “property” includes money, goods, things in action, land, and every description of property, whether real or personal; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined; *13 of 1870, s. 2.*
 - “Registrar” means the Registrar of the court;
 - “rules” means rules made under this Act;
 - “trader” means the several persons in that behalf mentioned in the Schedule to this Act. Schedule.

PART I**ABOLITION OF IMPRISONMENT FOR DEBT**

3. With the exceptions hereinafter mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money. Abolishes imprisonment for debt.

Exceptions.

There shall be excepted from the operation of the above enactment —

- (a) default in payment of a penalty or sum in the nature of a penalty, or other than a penalty in respect of any contract;
- (b) default in payment of any sum recoverable summarily before a justice or justices of the peace;
- (c) default by a trustee or person acting in a fiduciary capacity and ordered to pay to the court any sum in his possession or under his control;
- (d) default by an attorney or 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 any court having jurisdiction in bankruptcy 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:

Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year:

Provided also that 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.

Circumstances under which courts may commit to prison.

4. Subject to the provisions hereinafter mentioned, and to the rules, any court may commit to prison for a term of six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court:

Provided —

- (a) that the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the court, be exercised only by an order made in open court, and showing on its face the ground on which it is issued;
- (b) that such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has, or has had since the date of the order of judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the rules.

Any jurisdiction by this section given to the court may be exercised by a judge sitting in chambers or otherwise in the prescribed manner.

For the purposes of this section, any court may direct any debt due from any person in pursuance of any order or judgment, of that, or any other competent court, to be paid by instalments, and may, from time to time, rescind or vary such order.

Persons committed under this section by the court, may be committed to the prison in which they would have been confined, if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by the court shall, subject to the rules, be issued, obeyed and executed in the like manner as such writ.

No imprisonment under this section 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.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner 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).

Persons not to be arrested on mesne process unless good cause on oath be shown.

5. A person shall not be arrested upon mesne process in any action —

- (a) where the plaintiff in any action in the court in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment, by evidence on oath, to the satisfaction of the court, that the plaintiff has good cause of action against the defendant, and that there is probable cause for believing that the defendant is about to quit The Bahamas, unless he be apprehended, and that the absence of the defendant from The Bahamas will materially prejudice the plaintiff in the prosecution of his action, the court may, in the prescribed manner, order such defendant to be arrested and imprisoned, for a period of six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of The Bahamas without the leave of the court;
- (b) 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 the absence of the defendant from The Bahamas 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 Bahamas) 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.

How sequestration may issue.

6. Sequestration against the property of a debtor may be issued by the court in the same manner as if such debtor had been actually arrested.

Effect of this Part of Act.
Ch. 69.

7. Nothing in this Part of this Act shall in any way affect any right or power, under the Bankruptcy Act, to arrest or imprison any person.

PART II
PUNISHMENT OF FRAUDULENT DEBTORS

8. Any person adjudged bankrupt, and any person whose affairs are liquidated by arrangement in pursuance of the Bankruptcy Act, shall, in each of the cases following, be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for two years, that is to say —

What cases in bankruptcy shall be deemed a misdemeanour.
Ch. 69.

- (a) if he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors, all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud;
- (b) if he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud;
- (c) if he does not deliver up to such trustee, or as he directs, all books, documents, papers and writings in his custody or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud;
- (d) if, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals any part of his property to the value of forty dollars or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud;
- (e) if, after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of forty dollars or upwards;

5 of 1987, s. 2.

5 of 1987, s. 2.

-
- (f) if he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud;
 - (g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fails for the period of a month to inform such trustee, as aforesaid, thereof;
 - (h) if, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;
 - (i) if, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or defeat the law;
 - (j) if, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;
 - (k) if, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months next before such presentation, or commencement, he fraudulently parts with, alters or makes any omission or is privy to the fraudulently parting with, altering or making any omission in any document affecting or relating to his property or affairs;

-
- (l) if, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or at any meeting of his creditors within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses;
 - (m) if, within four months next before the presentation of a bankruptcy petition against him, or the commencement of the liquidation, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same;
 - (n) if, within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud;
 - (o) if, within four months next before the presentation of a bankruptcy petition against him, or the commencement of the liquidation, he, being a trader, pawns, pledges or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud;
 - (p) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs or his bankruptcy or liquidation.

9. If any person who is adjudged a bankrupt, or has his affairs liquidated by arrangement, after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months before such presentation or commencement, quits The Bahamas, and takes with him, or attempts or makes preparation for quitting The Bahamas, and for taking with him any part of his property to the amount of eighty dollars or upwards, which ought by law to be divided

Felony by debtor.

5 of 1987, s. 2.

amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud be guilty of felony, punishable with imprisonment for two years.

Misdemeanour
by debtor.

10. Any person shall, in each of the cases following, be deemed guilty of a misdemeanour and, on conviction thereof, shall be liable to be imprisoned for one year, that is to say —

- (a) if, in incurring any debt or liability, he has obtained credit under false pretences, or by means of any other fraud;
- (b) if he has, with intent to defraud his creditors, or any of them, made, or caused to be made, any gift, delivery or transfer of or any charge on his property;
- (c) if he has, with intent to defraud his creditors, concealed or removed any part of his property since, or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

Misdemeanour
by creditor.

Ch. 69.

11. If any creditor in any bankruptcy or liquidation, by arrangement or composition with creditors in pursuance of the Bankruptcy Act, wilfully, and with intent to defraud, makes any false claim, or any proof, declaration or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanour, punishable with imprisonment for one year.

Debtors making
arrangement
liable for any
unpaid balance
before
composition.

12. Where a debtor makes any arrangement or composition with his creditors under the provisions of the Bankruptcy Act, he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof, before the date of the arrangement or composition, he obtained forbearance, by any fraud:

Provided that the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debts and accepting dividends.

Trustees may on
report be ordered
to prosecute
bankrupt.

13. Where a trustee in any bankruptcy reports to any court exercising a jurisdiction in bankruptcy that in his opinion a bankrupt has been guilty of any offence under this Act, or where the court is satisfied, upon the representation of any creditor or member of the committee

of inspection, that there is ground to believe that the bankrupt has been guilty of any offence under this Act, the court shall, if it appears to the court that there is a reasonable probability that the bankrupt may be convicted, order the trustee to prosecute the bankrupt for such offence.

PART III WARRANTS OF ATTORNEY AND COGNOVITS

14. A warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person, then being in New Providence, shall not be of any force unless there is present some attorney of the court on behalf of such person expressly named by him and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney.

Every *cognovit actionem* to be of force must be signed by the attorney for the person executing it.

15. Where a warrant of attorney or *cognovit actionem* is given by any person residing at any Out Island, the same shall be of full force and effect if at the time of the execution of the said warrant or cognovit a justice of the peace shall be present, and shall subscribe his name as a witness to the due execution thereof, and shall also certify that the party so executing the warrant or cognovit did fully understand the nature and effect thereof.

A justice of the peace must witness a warrant of attorney on the Out Islands.

16. A warrant of attorney to confess judgment or *cognovit actionem* not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof or was fully informed of the same.

Proof not to be given of bad execution of cognovit.

17. Where, in an action, a warrant of attorney to confess judgment or a *cognovit actionem* is given, and the same or a true copy thereof is not filed with the Registrar, within twenty-one days next after the execution thereof, the same shall be deemed fraudulent and shall be void; and if any such warrant of attorney or *cognovit actionem* so filed was given subject to any defeasance or condition, such

Circumstances which render void or make fraudulent cognovits.

defeasance or condition shall be written on the same paper or parchment, with the warrant or cognovit before the filing thereof, otherwise the warrant or cognovit shall be void.

Rules.

*46 of 1964, Sch.
Ch. 53.*

18. It shall be lawful for rules of court to be made under section 76 of the Supreme Court Act for the purpose of generally carrying into effect the provisions of this Act and for prescribing fees in relation to any matter arising under the Act or the said rules of court.

SCHEDULE (Section 2)

DESCRIPTION OF TRADERS

*13 of 1870,
Schedule.*

Apothecaries, auctioneers, bankers, brokers, builders, carpenters, carriers, inn keepers, tavern keepers, hotel keepers, coffee house keepers, lime burners, livery stable keepers, printers, shipowners, shipwrights, victuallers, warehousemen, wharfingers, persons insuring ships or their freight or other matters against perils of the sea, persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail, and persons who, either for themselves or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods or commodities, or by the workmanship or the conversion of goods or commodities; but a farmer, grazier, common labourer or workman for hire, shall not, nor shall a member of any partnership, association or company which cannot be adjudged bankrupt under the Bankruptcy Act, be deemed as such a trader for the purposes of this act.

Ch. 69.