

THE DEBTORS ACT

Cap. 93.

[1st January, 1872.]

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

Short title.

Abolition of Imprisonment for Debt

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

Abolition of imprisonment for debt with exceptions.

There shall be excepted from the operation of this Act—

Default in payment of a penalty, or sum in the nature of a penalty other than a penalty in respect of any contract.

Default in payment of any sum recoverable summarily before a Justice or Justices.

Default by a trustee, or person acting in a fiduciary capacity, and ordered to pay by a court of equity any sum in his possession or under his control.

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.

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 authorized to make an order.

Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made:

Provided first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and, secondly, 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.

Saving of power of committal with or without hard labour for debts not exceeding \$100.

3. Subject to the provisions hereinafter mentioned, any court having civil jurisdiction may commit to prison with or without hard labour, for a term not exceeding 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—

- (1) that the jurisdiction by this section given of committing a person to prison shall, when exercised by a Resident Magistrate's Court, be exercised subject to the following restrictions, that is to say—
 - (a) by an order made by the Judge himself in open court, and showing on its face the ground on which it is issued;
 - (b) as respects a judgment of a superior court of law or equity only when such judgment does not exceed one hundred dollars, exclusive of costs;
- (2) that the jurisdiction given by this section shall be exercised as respects a judgment of a Resident Magistrate's Court only by a Resident Magistrate's Court;
- (3) 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 or 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 prescribed rules.

Any jurisdiction by this section given to the superior courts may be exercised by a Judge sitting in Chambers, or otherwise, according to the prescribed rules.

For the purposes of this section, any court having civil jurisdiction 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 shall, unless otherwise prescribed, be committed to such convenient prison as the court which commits them thinks expedient.

This section, so far as it relates to any Resident Magistrate's Court shall be deemed to extend to orders made by the Resident Magistrate's Court with respect to sums due in pursuance of any order or judgment of any court other than a Resident Magistrate's Court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt, or demand, 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.

Any person imprisoned under this section shall be discharged out of custody upon a certificate, signed according

to the prescribed rules, 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).

Power under certain circumstances to arrest defendant about to quit the Island.

4. No person shall be arrested upon mesne process in any action.

Where the plaintiff in any action in the Supreme or any Resident Magistrate's Court of this Island, in which if brought before the commencement of this Act in the Supreme Court, the defendant would have been liable to arrest, proves at any time before final judgment, by evidence on oath, to the satisfaction of a Judge of the Court in which the action shall be brought, that the plaintiff has good cause of action against the defendant to the amount of forty dollars and upwards, and that there is probable cause for believing that the defendant is about to quit the Island unless he be apprehended, and that the absence of the defendant from this Island will materially prejudice the plaintiff in the prosecution of this action, such Judge may, according to the prescribed rules, 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 go out of this Island without the leave of the Court.

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.

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

Saving for sequestration against property.

6. Nothing in this Act shall in any way affect any right or power under the Bankruptcy Act to arrest or imprison any person.

Saving for Bankruptcy Act.

7. The word "prescribed" shall mean as to proceedings in the Supreme Court, prescribed by rules of court and as to proceedings in the Resident Magistrates' Courts, prescribed by rules made under the Judicature (Resident Magistrates) Act.

Meaning of the word "prescribed".