

DEBTORS.

34^o Victoriae No. 21¹.

[As amended by Acts:

55 Vict. No. 32,² assented to 18th March, 1892;

1 and 2 Edward VII, No. 14,³ assented to 19th February, 1902;

No. 36 of 1935,⁴ reserved 7th January, 1936, Royal Assent proclaimed 3rd April, 1936;

No. 4 of 1965, assented to 15th September, 1965;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT for the Punishment of Fraudulent Debtors, and for other purposes.

[13th January, 1871.]

BE it enacted—

PRELIMINARY.

1. This Act may be cited for all purposes as the *Debtors Act, 1871-1965*.

Short title.
Amended
by No. 4 of
1965, s.1.

2. This Act shall not come into operation until the day on which The Bankruptcy Act, 1871, comes into operation,¹ which day is hereinafter referred to as the commencement of this Act; and words and expressions defined or explained in The Bankruptcy Act, 1871,⁵ shall have the same meaning in this Act.

Commence-
ment and
construction
of Act.

¹ Came into operation on 1st April, 1871. See 34 Vict. No. 20, s.2.

² Came into operation on 1st May, 1892. See 55 Vict. No. 32, s.3.

³ Came into operation on 1st May, 1902. See 1 and 2 Edw. VII, No. 14, s.2.

⁴ Proclaimed to commence on 1st May, 1936. See *Gazette* 9/4/36 p. 527.

⁵ Repealed by Bankruptcy Act, 1892.

PART I.—EXCEPTIONS TO THE ABOLITION OF IMPRISONMENT FOR DEBT.

Power to
commit for
small debts.
Amended by
No. 4 of
1965, s.2.

3. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any Court may commit to prison, 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—

- (i) That the jurisdiction by this section given of committing a person to prison shall, in the case of any Court other than the Supreme Court, be exercised only by an order made in open court, showing on its face the ground on which it is issued.
- (ii) 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 purpose 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 Supreme Court may be exercised by the Chief Justice 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 Supreme 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 Supreme Court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ.

This section, so far as it relates to any Local Court, shall be deemed to be substitution for sections 51 and 52 of the Ordinance for the recovery of Small Debts and Demands, 1863;¹ and that Ordinance shall be construed accordingly, and shall extend to orders made by the Local Court with respect to sums due, in pursuance of any order or Judgment of any Court other than a Local Court.

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).

4. [*Repealed by No. 36 of 1935, s. 3.*]

5. Nothing in this part of this Act shall in any way affect any right or power under The Bankruptcy Act, 1871,² to arrest or imprison any person.

Saving for Bankruptcy Act, 1871.

6. In this part of this Act the term "prescribed" means as follows:—

Definition of "prescribed."

As respects the Supreme Court, prescribed by general rules and orders to be made in pursuance of The Supreme Court Ordinance, 1861;³

¹ Now see Local Courts Act, 1904.
² Repealed by Bankruptcy Act, 1892.
³ Now see Supreme Court Act, 1935.

As respects the Local Courts, prescribed by general rules to be made under The Small Debts Ordinance, 1863;¹ and

As respects any other Court, prescribed by the rules to be made, with the approval of the Chief Justice, by the persons having power to make rules in relation to the practice of such Court; or if there be no such persons, by the Judge of such Court.

And general rules and orders may respectively be made by such authorities as aforesaid, for the purpose of carrying into effect this part of this Act.

PART II.—PUNISHMENT OF FRAUDULENT DEBTORS.

7. [*Repealed by 1 and 2 Edw. VII, No. 14, s. 3.*]
8. [*Repealed by 1 and 2 Edw. VII, No. 14, s. 3.*]
9. [*Repealed by 1 and 2 Edw. VII, No. 14, s. 3.*]
10. [*Repealed by 1 and 2 Edw. VII, No. 14, s. 3.*]

Debts incurred by fraud.

11. Where a debtor makes any arrangement or composition with his creditors under the provisions of The Bankruptcy Act, 1871,² 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 the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

¹ Now see Local Courts Act, 1904.

² Repealed by Bankruptcy Act, 1892.

12.¹ Where a trustee in any bankruptcy reports to any Court exercising 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.

Order by Court for prosecution on report of trustee.

13. Where the prosecution of the bankrupt under this Act is ordered by the Court, then, on the production of the order of the Court, the expenses of the prosecution shall be allowed, paid, and borne, as expenses of prosecutions for felony are allowed, paid, and borne.

Expenses of prosecution.

14. [*Repealed by 1 and 2 Edw. VII, No. 14, s. 3.*]

15. [*Repealed by 1 and 2 Edw. VII, No. 14, s. 3.*]

16. [*Repealed by 55 Vict. No. 32, s. 145.*]

17. Where any person is liable under any other Act, Ordinance, Act of Parliament, or at Common Law to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act, Ordinance, Act of Parliament, or at Common Law, or under this Act, so that he be not punished twice for the same offence.

Punishments under this Act cumulative.

¹ Section 140 of Act 55 Vict. No. 32 Bankruptcy Act, 1892, provides:

140. Section twelve of the Debtors Act, 1871, shall be construed and have effect as if the term 'a trustee in any bankruptcy' included the official receiver of a bankrupt's estate, and shall apply to offences under this Act as well as to offences under the Debtors Act, 1871.

PART III.—WARRANTS OF ATTORNEY, COGNOVITS,
AND ORDERS FOR JUDGMENT.

Warrants of attorney and *cognovit actionem* to be executed in the presence of an attorney on behalf of the person.

18. After the commencement of this Act, a warrant of attorney to confess judgment in any personal action, or *cognovit actionem* given by any person, shall not be of any force unless there is present some attorney of the Supreme 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 the attorney for the person executing the same, and state that he subscribes as such attorney.

Warrants, etc., not formally executed invalid.

19. 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.

Filing of warrant of attorney and *cognovit actionem*.

20. 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 officer acting as clerk of the dockets and judgments within twenty-one days next after the execution thereof (as required by the statutory practice of the Supreme Court for preventing frauds upon creditors by secret warrants of attorney to confess judgment), 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 defeasance or condition shall be written on the same paper or parchment with the warrant or *cognovit* before the filing thereof, otherwise the warrant of *cognovit* shall be void.

21. [Repealed by No. 36 of 1935, s. 3.]

22. The provisions of the Act of the third year of King George the Fourth (chapter 39),¹ and of the Act of the session of the sixth and seventh years of Her Majesty's reign (chapter 66),¹ "To enlarge the provisions of an Act for preventing frauds upon creditors by secret warrants of attorney to confess judgment," for liberty to file a warrant of attorney or *cognovit actionem*, or a copy thereof, with the clerk of the dockets and judgments, and for the clerk to make certain entries and search in relation thereto, and for entering satisfaction thereon, and for fees for search, and filing and taking office copies, shall extend and be applicable to every such Judge's order.

Application
of 3 Geo.
IV., c. 39 and
6 and 7
Vict., c. 66
to Judge's
orders.

REPEAL.

23. The enactments described in the Schedule of this Act are hereby repealed; but this repeal shall not affect the past operation of any such enactment, or affect the validity or invalidity of anything done or suffered before the commencement of this Act, or of any right, title, obligation, or liability accrued, or restriction imposed, before the commencement of this Act, by or under any such enactment; nor shall this repeal interfere with the institution or prosecution of any proceedings in respect of any offence committed against, or under any penalty or forfeiture incurred under, any enactment hereby repealed.

Enactments
described in
Schedule
repealed.

¹ Repealed by 4 and 5 Elizabeth 2, c. 46, s. 16. (Administration of Justice Act, 1956.)

Debtors.

SCHEDULE.

ENACTMENTS REPEALED.

- 20 Vict. 9. An Ordinance to enlarge the remedies of creditors against the persons of their debtors.
- 24 Vict. 15. An Ordinance to provide for the more effectual administration of Justice by establishing a Supreme Court. *(in part)* } In part; namely, Section 25.
- 27 Vict. 21. An Ordinance for the recovery of small debts and demands. *(in part)* } In part; namely, Sections 51 to 54 both inclusive, and Section 73.
- 31 Vict. 8. An Act for adopting certain Acts of Imperial Parliament. *(in part)* } In part; namely, so much and so far as adopts and puts in force the tenth Section of an Act of the Imperial Parliament (18 & 19 Vict. c. 15), intituled *An Act for the better protection of purchasers against judgments, Crown debts, cases of lis pendens, and life annuities or rent charges.*