

CHAPTER 183.

DEBTORS.

[No. IX of 1884.]

[1st January, 1885.]

Short title.

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

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

“the Court” means the Supreme Court in its civil jurisdiction;

“insolvency Ordinance” means any Ordinance relating to insolvency in force, whether passed before or after the commencement hereof;

“receiving order” means a receiving order made under the provisions of any insolvency Ordinance;

a debtor includes any person, whether a British subject or not, who, at the time when any act of insolvency was done or suffered by him—

(a) was personally present in the colony; or

(b) ordinarily resided or had a place or residence therein; or

(c) was carrying on business therein personally or by means of an agent, attorney or manager; or

(d) was a member of a firm or partnership which carried on business therein.

Abolition of imprisonment for debt.

3.—(1) With the exceptions hereinafter mentioned, no person shall, after the commencement of this Ordinance, be arrested or imprisoned on process in execution for making default in payment of a sum of money.

Exceptions:

(2) There shall be excepted from the operation of the above enactment default in payment—

(a) of a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract;

(b) of any sum recoverable summarily before a magistrate or a justice of the peace;

- (c) by a person acting in a fiduciary capacity and ordered by the court to pay any sum in his possession or under his control;
- (d) by a solicitor of costs when ordered to pay costs for misconduct as a solicitor, or of a sum of money when ordered to pay it in his character of an officer of the court making the order;
- (e) 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 insolvency is authorised to make an order; and
- (f) of sums in respect of the payment of which orders are in this Ordinance authorised to be made :

Provided that—

Proviso.

- (i) no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and
- (ii) nothing in this section shall alter the effect of any judgement or order of a court for payment of money except as regards the arrest and imprisonment of the person making default in paying that money.

4.—(1) Subject to the provisions hereinafter contained, the court may commit to prison, for any 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 judgement of a court for the payment of any sum :

Committal of debtor to prison in certain cases :

Provided that that 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 judgement, 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 it.

Proviso.

(2) Proof of the means of the person making default may be given in any manner the Court thinks just; and, for the purposes of that proof, the debtor and any witnesses may be summoned and examined upon oath.

(3) Any jurisdiction by this section given to the Court may be exercised by a judge of the Court.

(4) For the purposes of this section, the Court may direct any debt due from any person in pursuance of any

order or judgement of that or any other competent court to be paid by instalments, and may from time to time rescind or vary the direction.

(5) A person committed under this section by the Court may be committed to any county prison.

(6) No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt, demand, or cause of action, or deprive any person of any right to take out execution against the movable or immovable property of the person imprisoned, in the same manner as if the imprisonment had not taken place.

(7) Any person imprisoned under this section shall be discharged out of custody upon a certificate signed by the creditor at whose instance the debtor was imprisoned, or by any officer of the Court or in the registry, to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with any prescribed costs.

(8) The Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgement creditor, his counsel or solicitor, and on payment by him of any necessary fees, make a receiving order against the debtor, and in that case the judgement debtor shall be deemed to have committed an act of insolvency at the time the order is made.

(9) Where a receiving order is made against a judgement debtor under this section, the insolvency of the debtor shall be deemed to have relation back to and to commence at the time of the order, or, if the insolvent is proved to have committed any previous act of insolvency, then to have relation back to and to commence at the time of the first of the acts of insolvency proved to have been committed by the debtor within three months next preceding the date of the order, and section forty-six of the Insolvency Ordinance, or any corresponding provision in any Ordinance for the time being in force relating to insolvency, shall apply as if the debtor had been adjudged insolvent on an insolvency petition presented at the date of the receiving order.

5. Nothing in this Ordinance shall in any way affect any right or power under any insolvency Ordinance to arrest or imprison anyone.

6. Where a debtor makes any arrangement or composition with his creditors under the provisions of any insolvency Ordinance, 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.

Liability of debtor for debt incurred by fraud.

7. Where the official receiver or assignee in the insolvency is of opinion that any person who has been adjudged insolvent, or in respect of whose estate a receiving order has been made, has been guilty of any offence under the provisions of any Ordinance for the time being in force for the punishment of fraudulent debtors or under the provisions of any insolvency Ordinance for the time being in force, and he is requested in writing to do so by a majority in number and value of the creditors, or is himself of opinion that there is a reasonable probability that the person may be convicted, he shall prefer a charge or complaint against that person for the offence and prosecute it in due course of law.

Prosecution by Official Receiver in certain cases.

8. Where there is, in the opinion of the Court or judge, ground to believe that an insolvent or any other person has been guilty of any offence which is, by any Ordinance for the time being in force, made a misdemeanour in cases of insolvency, the Court or judge may commit that insolvent or other person for trial, and, for the purpose of the committal, shall have all the powers of a magistrate as to taking depositions, binding over witnesses to appear, admitting the accused person to bail, or otherwise.

Committal for trial of insolvent in certain cases.

9. Where any person is liable under any other law to any punishment or penalty for an offence made punishable by this Ordinance, proceedings may be taken against him under that other law or under this Ordinance, so that he be not punished twice for the same offence.

Liability to punishment under other law.

10. Where the debtor has been guilty of any criminal offence, he shall not be exempt from proceedings against him therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Liability for criminal offence, notwithstanding discharge in insolvency.