

CHAP. 62.

An Act for the Abolition of Imprisonment for Debt, for the punishment of fraudulent debtors, and for other purposes. A.D. 1869.

[9th August 1869.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as "The Debtors Act, 1869." Short title.

2. This Act shall not extend to Scotland or Ireland. Extent of Act.

3. This Act shall not come into operation until the day on which The Bankruptcy Act, 1869, comes into operation, which day is herein-after referred to as the commencement of this Act, and words and expressions defined or explained in The Bankruptcy Act, 1869, shall have the same meaning in this Act. Commencement and construction of Act.

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PART I.

Abolition of Imprisonment for Debt.

4. With the exceptions herein-after mentioned, no person shall, after the commencement of this Act, 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 the above enactment:

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract:
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace:
3. 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:

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4. 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:

5. 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:

6. 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 for small debts.

5. Subject to the provisions herein-after 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—(1.) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions; that is to say,

(*a.*) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued:

(*b.*) Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed fifty pounds, exclusive of costs:

(*c.*) Be exercised only as respects a judgment of a county court by a county court judge or his deputy.

(2.) 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, 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 a superior 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 any superior 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 county court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the County Court Act, 1846, and that Act and the Acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court other than a county 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).

Power under certain circumstances to arrest defendant about to quit England.

6. After the commencement of this Act a person shall not be arrested upon mesne process in any action.

Where the plaintiff in any action in any of Her Majesty's superior courts of law at Westminster, 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 a judge of one of those courts, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the

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absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such 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 go out of England 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 England 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 England) 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.

Discharge of persons in custody at the commencement of this Act.

7. Where any person is, at the commencement of this Act, in custody in pursuance of a writ, attachment, or other process in any case in which he would not be liable to be arrested or imprisoned after the commencement of this Act, such person shall, at the commencement of this Act, be discharged from such custody without payment of any fees, but his arrest, imprisonment, or discharge shall not affect the creditor's rights or remedies for enforcing the payment of any money due to him, or deprive the creditor of the benefit of any charge or security on any property of the debtor.

Where at the commencement of this Act special bail has been given in any action the defendant in which after the commencement of this Act cannot be imprisoned on making default in satisfying the judgment recovered against him in such action, the condition of such bail, instead of being that the judgment shall be satisfied or the defendant rendered to prison, shall be deemed to be that the defendant shall not go out of England without leave of the court.

Saving for sequestration against property.

8. Sequestration against the property of a debtor may, after the commencement of this Act, be issued by any court of equity in the same manner as if such debtor had been actually arrested.

Saving for Bankruptcy Act, 1869.

9. Nothing in this part of this Act shall in any way affect any right or power, under The Bankruptcy Act, 1869, to arrest or imprison any person.

Definition of "prescribed."

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

As respects the superior courts of common law, prescribed by general rules to be made in pursuance of The Common Law Procedure Act, 1852;

As respects the superior courts of equity, prescribed by general rules and orders to be made in pursuance of the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter eighty;

As respects the county courts, prescribed by general rules to be made under the County Court Act, 1856; and

As respects any other court, prescribed by the rules to be made, with the approval of the Lord Chancellor, 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.

Punishment of fraudulent debtors.

11. Any person adjudged bankrupt, and any person whose affairs are liquidated by arrangement in pursuance of The Bankruptcy Act, 1869, shall, in each of the cases following, be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour; that is to say,

1. 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:
2. 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:
3. 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:

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4. 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 ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud:

5. 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 ten pounds or upwards:

6. 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:

7. If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fail for the period of a month to inform such trustee as aforesaid thereof:

8. 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:

9. 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 to defeat the law:

10. 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:

11. 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:

12. 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:

13. 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:

14. 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:

15. 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:

16. 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.

Penalty for absconding with property.

12. 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 England and takes with him, or attempts or makes preparation for quitting England and for taking with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided 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 a time not exceeding two years, with or without hard labour.

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Penalty on fraudulently obtaining credit, &c.

13. Any person shall in each of the cases following be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour; that is to say,

(1.) If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud:

(2.) 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:

(3.) 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.

False claim, &c. a misdemeanor.

14. If any creditor in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of The Bankruptcy Act, 1869, 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 misdemeanor, punishable with imprisonment not exceeding one year, with or without hard labour.

Debts incurred by fraud.

15. Where a debtor makes any arrangement or composition with his creditors under the provisions of The Bankruptcy Act, 1869, 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.

Order by court for prosecution on report of trustee.

16. 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.

Expenses of prosecutions.

17. Where the prosecution of the bankrupt under this Act is ordered by any 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.

Application of Vexatious Indictments Act to offences under this Act.

18. Every misdemeanor under the Second Part of this Act shall be deemed to be an offence within and subject to the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misde- "meanors;" and when any person is charged with any such offence before any justice or justices, such justice or justices shall take into consideration any evidence adduced before him or them tending to show that the act charged was not committed with a guilty intent.

Form of indictment.

19. In an indictment for an offence under this Act it shall be sufficient to set forth the substance of the offence charged, in the words of this Act specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of any court acting under The Bankruptcy Act, 1869.

Quarter sessions to have jurisdiction in respect of offences under Act.

20. So much of the Act of the session of the fifth and sixth years of Her Majesty's reign (chapter thirty-eight), "to define the "jurisdiction of justices in general and quarter sessions of the "peace," as excludes from the jurisdiction of justices and recorders at sessions of the peace or adjournments thereof the trial of persons for offences against any provision of the laws relating to bankrupts, is hereby repealed as from the passing of this Act; and any offence under this Act shall be deemed to be within the jurisdiction of such justices and recorders.

Mayors, &c. disqualified by arrangements.

21. The provisions of the Act of the session of the fifth and sixth years of William the Fourth, chapter seventy-six, for the regulation of municipal corporations, sections fifty-two and fifty-three, as to the disqualification of mayors, aldermen, and town councillors having been declared bankrupt or having compounded by deed with their creditors, shall extend to every arrangement or composition by a mayor, alderman, or town councillor with his creditors under The Bankruptcy Act, 1869, whether the same is made by deed or otherwise.

Justices of the peace becoming bankrupt or arranging with creditors.

22. If any person being assigned by Her Majesty's Commission to act as a justice of the peace is adjudged bankrupt, or makes any arrangement or composition with his creditors under The Bankruptcy Act, 1869, he shall be and remain incapable of acting as a justice of the peace until he has been newly assigned by Her Majesty in that behalf.

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Punishments under this Act cumulative.

23. Where any person is liable under any other 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 of Parliament or at common law or under this Act, so that he be not punished twice for the same offence.

PART III.

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.

24. 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 one of the superior courts 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.

Warrant, &c. not formally executed invalid.

25. 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.

26. 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 docquets and judgments in the Court of Queen's Bench within twenty-one days next after the execution thereof as required by the Act of the third year of the reign of King George the Fourth (chapter thirty-nine), "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 or cognovit shall be void.

Filing of judge's order to enter up judgment.

27. Where a judge's order made by consent is given by a defendant in a personal action whereby the plaintiff is authorized forthwith or at any future time to sign or enter up judgment, or to issue or to take out execution, whether such order is made subject

to any defeasance or condition or not, then if the action is in the Court of Queen's Bench the order, and if the action is in any other court a true copy of the order, shall, together with an affidavit of the time of such consent being given, and a description of the residence and occupation of the defendant, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench within twenty-one days after the making of the order, otherwise the order and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment, shall be void.

Application of 3 Geo. 4. c. 39. and 6 & 7 Vict. c. 66. to judge's orders.

28. The provisions of the said Act of the third year of King George the Fourth, and of the Act of the session of the sixth and seventh years of Her Majesty's reign (chapter sixty-six), "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 docquets and judgments, and for that 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.

Exemption from act of foreign attachment.

29. Nothing in this Act contained shall affect the custom of foreign attachment as exercised by any competent court, or the proceedings in relation to such custom.

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