

CHAPTER 131

THE DEBTORS ACT

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DEBTORS

(31st December, 1888.)

2/1888.
S.R.O. 22/1956.
15/1971.
S.I. 39/1989.

1. This Act may be cited as the Debtors Act. **Short title.**
2. In Part I of this Act— **Interpretation.**
- "the Court" means the High Court;
- "receiving order" means a receiving order made under the provisions of any Bankruptcy Act.

PART I

ABOLITION OF IMPRISONMENT FOR DEBT

3. With the exceptions hereinafter 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. 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, other than a penalty in respect of any contract;
- (b) Default in payment of any sum recoverable summarily before a magistrate;
- (c) Default by a trustee or person acting in a fiduciary capacity, and ordered by a Court to pay any sum in his possession or under his control;
- (d) Default by a 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 authorized to make an order;

(*f*) Default in payment of sums in respect of 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
judgment debts.

4. (1) Subject to the provisions hereinafter mentioned, and to the prescribed rules, the 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—

(*a*) That the jurisdiction by this section given of committing a person to prison shall, subject to any rules, 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*) 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.

(2) 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.

(3) Any jurisdiction by this section given to the Court may be exercised by a Judge sitting in Chambers, or otherwise, in the prescribed manner.

(4) 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.

(5) 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.

(6) 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 the debt in respect of which he was imprisoned, together with the prescribed costs (if any).

5. The Court may, if it thinks fit, on any application, made to it under section 4, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made.

Court may make a receiving order.

6. Nothing in this Part shall in any way affect any right or power under any Bankruptcy Act in force in Antigua and Barbuda to arrest or imprison any person.

Saving for Bankruptcy Act. Cap. 41.

7. All general rules and orders may, respectively, be made by the Minister, for the purpose of carrying into effect this Part.

Rules.

PART II

PUNISHMENT OF FRAUDULENT DEBTORS

**Punishment of
fraudulent
debtors.**

8. Any person adjudged bankrupt shall, in each of the cases following, be deemed guilty of a misdemeanour, and shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour; that is to say—

(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 writing 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 by or against him, or within four months next before such presentation, he conceals any part of his property to the value of forty-eight 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 by or against him, or within four months next before such presentation, he fraudulently removes any part of his property of the value of forty-eight dollars or upwards;

(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, he fails, for the period of a month, to inform such trustee as aforesaid thereof;

(h) if, after the presentation of a bankruptcy petition by or against him, 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 by or against him, or within four months next before such presentation, 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;

(j) if, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, 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 by or against him, or within four months next before such presentation, he fraudulently parts with, alters, or makes any omission in, 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 by or against him, or at any meeting of his creditors within four months next before such presentation, 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 by or against him, 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 by or against him, 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 by or against him, 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.

Penalty for absconding with property.

9. If any person who is adjudged a bankrupt, after the presentation of a bankruptcy petition by or against him, or within four months before such presentation, quits Antigua and Barbuda and takes with him, or attempts or makes preparation for quitting Antigua and Barbuda and for taking with him, any part of his property to the amount of ninety-six dollars 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.

Penalty for fraudulently obtaining credit, &c.

10. Any person shall, in each of the cases following, be deemed guilty of a misdemeanour, and shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour; 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.

11. If any creditor in any bankruptcy 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 a time not exceeding one year, with or without hard labour.

**False claim &c.,
a misdemeanour.**

12. Where a debtor makes any arrangement or composition with his creditors under the provisions of any Bankruptcy Act in force in Antigua and Barbuda, 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:

**Debts incurred
by fraud.**

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

13. Where a trustee or official receiver 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.**

14. (1) Where there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has been guilty of an offence which is by statute made a misdemeanour in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial.

**Power for Court
to commit for
trial.**

(2) For the purpose of committing the bankrupt or such other person for trial, the court shall have all the powers of a magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise.

Expenses of prosecution.

15. 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.

Form of indictment.

16. 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 proceeding in, or order, warrant, or document of any Court acting under any Bankruptcy Act.

Criminal liability after discharge or composition.

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

Punishments under this Act not cumulative.

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