



# Debtors Act 1869

## 1869 CHAPTER 62

### PART I

#### *Abolition of Imprisonment for Debt*

#### **4 Abolition of imprisonment for debt, with exceptions.**

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.

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:
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.

## 5 Saving of power of committal for small debts.

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).

## **6 Power under certain circumstances to arrest defendant about to quit England.**

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 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.

## **7 Discharge of persons in custody at the commencement of this Act.**

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

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.

## **8 Saving for sequestration against property.**

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.

## **9 Saving for Bankruptcy Act, 1869.**

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.

**10 Definition of "prescribed".**

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.