



Judgments Act 1838

CHAPTER 110

JUDGMENTS ACT 1838

- Arrest on Mesne Process abolished, except in certain Cases.
- II All Actions to be commenced by Writ of Summons.
 - III A Judge of a Superior Court may order Defendant to be arrested in certain Cases.
 - IV Sheriff may proceed to arrest Defendant. Defendant to remain in Custody until he finds Bail, or makes a Deposit.
 - V Order may be made at any Stage of Proceedings before final Judgment.
 - VI Defendant may apply for his Discharge forthwith. Judge may discharge Defendant or not. Order of Judge may be appealed from.
 - VII Prisoners in Custody on Mesne Process who have not filed Petitions under Insolvent Acts entitled to be discharged.
 - VIII Manner of making a Debtor a Bankrupt.
 - IX Warrants of Attorney and Cognovit Actionem to be executed in the Presence of an Attorney on behalf of the Person.
 - X Warrant, &c. not formally executed invalid.
 - XI Sheriff empowered to deliver Execution of Lands, &c. to Judgment Creditor. Proviso as to Copyhold Lands. Proviso as to Purchasers, Mortgagees or Creditors.
 - XII Sheriff empowered to seize Money, Bank Notes, &c. ; and to pay Money or Bank Notes to Execution Creditor ; and to sue for Amount secured by Bills of Exchange and other Securities. Proviso as to Indemnity for Sheriff.
 - XIII Judgment to operate as a Charge on Real Estate. Charge not to be enforced until after the Expiration of a Year. Proviso as to Purchasers, &c.
 - XIV Stock and Shares in Public Funds and Public Companies belonging to the Debtor, and standing in his own Name, to be charged by Order of a Judge.

- XV Order of Judge to be made in the first instance ex parte, and on Notice to the Bank or Company to operate as a Distringas.
- XVI Securities not realized to be relinquished if the Person taken in Execution.
- XVII Judgment Debts to carry Interest.
- XXVIII Decrees and Orders of Courts of Equity, &c. to have Effect of Judgments.
- XIX No Judgment, Decree, &c, to affect Real Estate, otherwise than as before the Act, until registered.
- XX New Writs to be framed.
- XXI Powers, &c. of this Act applicable to the Courts and Judges at Westminster to be applicable to Courts of Lancaster and Durham.
- XXII For Removal of Judgment of Inferior Courts.
- XXIII Powers now vested in the Court for Relief of Insolvent Debtors continued for the Purposes herein mentioned.
- XXIV Court now established, and Commissioners and Officers, to be continued.
- XXV Commissioners to hold their Offices during good Behaviour ;
- XXVI but may be removed upon Address.
- XXVII Court to be a Court of Record. Seal of the Court. Powers of Court and Commissioners.
- XXVIII Court to sit at the Court House in Portugal Street, and elsewhere, if necessary. One Commissioner may hear Matters out of Court upon Summons.
- XXIX Court to sit Twice a Week. Power to regulate Sittings otherwise during certain Periods.
- XXX Commissioners to make Circuit. Power of Commissioner on Circuit.
- XXXI Time and Manner of making Circuits. Travelling Expences to be paid by Treasury. One Commissioner to remain in London. All Commissioners may be on Circuit if necessary.
- XXXII Time of Circuits to be advertised. Commissioner not arriving, the Court to stand adjourned. Cause of Non-arrival to be signified to Secretary of State.
- XXXIII In case of Illness of a Commissioner another Person may be appointed to execute the Duties.
- XXXIV No Fees to be taken except such as shall be established.
- XXXV Persons imprisoned for Debt may apply to the Court in a summary Way for Discharge. Time of petitioning. What shall be stated in the Petition. Petition to be signed and filed.
- XXXVI Detaining Creditors of Prisoners in Execution may apply by Petition to Insolvent Debtors Court for an Order to vest Debtor's Estate in Provisional Assignee of Court.
- XXXVII Prisoner's Estate and Effects, except Wearing Apparel, &c. not exceeding 20l. and future Estate, to be vested in Provisional Assignee by Order of the Court.
- XXXVIII Prisoners within the Walls only to petition ; except in certain Cases. Power to Insolvent Debtors Court to direct Prisoner to be discharged on his finding Sureties to attend at the Time and Place of Hearing.
- XXXIX Filing Petition an Act of Bankruptcy, if acted upon within a certain Time ; in which Case Order avoided.
- XL Order to be filed although avoided by Commission of Bankruptcy ; and Court shall proceed to hear and adjudicate as in other Cases. If Insolvent obtains his Certificate, the Rights of Assignees afterwards to be the

- same as in other Cases. Not to affect Title of Assignees of Bankrupt, or Operation of Certificate.
- XL I Prisoner not to be discharged for Want of Plaintiff proceeding in his Action.
- XL II Provisional Assignee to take possession of Estates, &c. vested in him, and sell the same if the Court directs ; paying the Expences out of Proceeds ; to sue in his own Name, if the Court directs. Property vested in him to go to his Successor in Office.
- XL III Court may order an Allowance to Prisoner during his Confinement, or for Expence of Schedule.
- XL IV Where Prisoner is discharged out of Custody, Acts of Assignees to be valid. No Action to be brought against them where Assignment is avoided.
- XL V Power of Insolvent Debtors Court to appoint Assignees.
- XL VI Certified Copy of Order and Appointment to be Evidence. Proviso for Registry.
- XL VII Sale of Estate and Effects to be made immediately. Creditors to meet 30 Days before Sale of Real Estate. Meeting to be advertised. Assignee may surrender or convey Copyhold or Customary Estate.
- XL VIII Discretion in Court as to the Disposal of Property in certain Cases. Property may be mortgaged if more beneficial.
- XL IX Assignees may execute Powers which the Insolvent might have executed for his own Benefit.
- L Where Lease accepted by Assignees, the Insolvent not liable for the Rent. Assignees not determining whether to accept the Lease, Lease the Lessor may apply to the Court.
- LI Assignees may sue in their own Names ; may make Composition for Debts ; may submit Differences to Arbitration. Proviso for Consent of Creditors to Compositions and Arbitrations.
- LII Creditors to vote according to Balance due to them, on Account fairly stated.
- LIII Suits not to be abated by Death or Removal of Assignees.
- LIV Where the Prisoner is beneficially entitled to Stock, the Court may order a Transfer.
- LV Assignees Power not to extend to the Income of a Benefice or Curacy. Sequestration of Profit of Benefice may be obtained.
- LVI Assignees Fewer not to extend to the Pay or Pension of Naval, Military, or Civil Officers. Portion of Pay or Pension may be obtained on Application.
- LVII Goods in Possession of Prisoner, whereof he was reputed Owner, to be deemed his Property. No Assignment of Vessels under 3 & 4 W. 4. c. 55. to be affected.
- LVIII Distress not to be available for more than One Year's Rent.
- LIX Voluntary Preference fraudulent and void as against Assignees.
- LX Provisions of 3 G.4 c.39 extended to the Assignees of Insolvents.
- LXI Warrant of Attorney and Cognovit Actionem not to be acted upon against Goods of Insolvent after his Imprisonment.
- LXII Assignees to file Accounts. Accounts to be audited. Debts to be ascertained and Dividend made. How Dividend to be made. Court may examine into disputed Claims.
- LXIII If Prisoner or Creditor or Court dissatisfied with Assignee's Account, the Court may direct Inquiry. Court may charge Assignee with 20 per Cent. on Money wilfully retained.

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- LXIV Assignees to pay unclaimed Dividends into Court.
- LXV Court may remove Assignees and appoint new Assignees. What shall be Evidence of Removal and Appointment.
- LXVI Court may commit for refusing to file Accounts and other Contempts. Proviso.
- LXVII Provisions concerning Assignees, Dividends, &c. to extend to Cases now of Record.
- LXVIII Court may direct Conveyance by Provisional Assignee where no Assignee is appointed.
- LXIX After Order made, the Prisoner to deliver in a Schedule of Debts, Property, &c. Schedule to be filed with Books and Papers.
- LXX Court to appoint Time and Place for Prisoner to be brought up. Manner of proceeding by Commissioner on Circuit.
- LXXI Notice to be given to Creditors, and advertised.
- LXXII At the Time of hearing, the Schedule to be examined. Creditors may oppose Prisoner's Discharge. Hearing may be adjourned.
- LXXIII Affidavits may be received in opposition to Prisoner's Discharge in certain Cases.
- LXXIV Schedule and Prisoner's Accounts may be referred to an Officer of the Court, or an Examiner, who may order Prisoner to attend. Officer and Examiner may administer Oaths. Court may order Expences of Reference to be paid out of Insolvent's Estate.
- LXXV Court &c. may adjudge a Prisoner to be discharged from Custody, and entitled to the Benefit of this Act.
- LXXVI Court may adjudge Discharge, &c. to be forthwith, or not later than "Six Months from the filing of the Petition.
- LXXVII In certain Cases Discharge, &c. to be at any Period not later than Three Years from petitioning.
- LXXVIII In other Cases the Discharge, &c. to be at any Period not-later than Two Years from petitioning.
- LXXIX Discharge may extend to Process for Contempt in Nonpayment of Money ; and to Costs incurred by Creditor, but subject to Taxation.
- LXXX Discharge may extend to Sums payable by way of Annuity, &c.
- LXXXI Court &c. may order Prisoner to be confined within the Walls of the Prison.
- LXXXII Court, &c. may order Costs, in certain Cases, to be paid to opposing Creditors out of Insolvent's Estate. Where Opposition frivolous and vexatious, Costs may be awarded to Prisoner.
- LXXXIII Court or Commissioner to make Order, pursuant to Adjudication, and issue Warrant to Gaoler. Justices to certify their Adjudication to teh Court, who shall thereupon make Order, and issue Warrant to Gaoler. Specification of Debts, &c. not necessary in Order of Adjudication.
- LXXXIV Adjudication may be conditional in certain Cases.
- LXXXV Where Adjudication is a Discharge at a future Period, the Prisoner maybe detained or arrested, &c. till that Period arrives.
- LXXXVI Court may order detaining Creditor to pay Prisoner a Sum not exceeding 4s. a Week.
- LXXXVII Before Adjudication, Prisoner shall execute Warrant of Attorney to confess Judgment for Amount of Debts in Schedule. Court may permit Execution to be taken out thereupon, when Insolvent is of Ability to pay, or is dead, leaving Assets. No Scire facias necessary. If Application is ill-founded and vexatious, Court may dismiss the same, with Costs.

- LXXXVIII Where Insolvent shall after Discharge become entitled to Property which cannot be taken in Execution, the Assignee may apply to Court for Relief. Court may order Prisoner to be remanded to Custody until he transfers such Property.
- LXXXIX Manner of proceeding where, after the Discharge of a Prisoner, any Person shall be possessed of Stock in Public Funds &c. belonging to him.
- XC Persons discharged under this Act not liable to Imprisonment for Debts, &c. to which Adjudication extends. If arrested, to be released by Judge of the Court from which Process issued; who may order Costs to be paid to him.
- XCI After Discharge, no Execution to issue against Insolvent for Debts, &c. to which Adjudication extends. Discharge under this Act may be pleaded generally.
- XCII When Debts are satisfied, the Court may order Warrant of Attorney to be cancelled, and Satisfaction to be entered on the Judgment ; and a Reassignment to be executed.
- XCIII Where Error in Schedule, without Fraud, this Act to operate upon the actual Amount of Debt.
- XCIV Court, at Request of Creditors, may remove Prisoners from the Gaols of London, *Middlesex*, or *Surrey*, if their usual Residence was elsewhere, to be heard in the County to which they are removed. After such Removal, Creditors may oppose the Discharge, as in other Cases. Expençe of Removal of Prisoners.
- XCv Benefit of Act not to be allowed to Prisoners removed by Habeas Corpus. Court may permit such Prisoner to be removed back at the Expençe of any Person willing to pay the same ; whereupon the same Proceedings may be had as in other Cases.
- XCvi Adjudication and Order to be final, unless obtained on false Evidence, &c, in which Case Court may order a Re-hearing. Insolvent refusing to appear may be apprehended, &c. In Adjudication of Discharge on Re-hearing, the Time since former Hearing not to be calculated.
- XCvii Where an Order of Discharge has been issued by Mistake, the Court may revoke and amend the same.
- XCviii Prisoner may after Discharge, be examined as to Estate and Effects, on Application of Assignee. Prisoner refusing to appear, or to answer Questions may be committed.
- XCix Persons wilfully omitting any thing in the Schedule guilty of a Misdemeanor, and liable to Three Years Imprisonment. Indictment need only set out Substance of Offence charged.
- C Persons swearing falsely under this Act liable to Punishment inflicted for Perjury.
- CI Provisions of Act extended to Married Women.
- CII Mode of proceeding with Prisoners of unsound Mind. Application may be made by Persons on behalf of such Prisoners. Court may discharge such Prisoners ; may appoint Assignees; may order Judgment to be entered up.
- CIII Discharge not to extend to Crown Debtors, unless Treasury give Consent.
- CIV Prisoners under Writ of Capias or Extent may apply to the Barons of the Exchequer to be discharged.
- CV Officer of Court to produce Proceedings and give Copies. A Copy of such Proceedings under Seal to be admitted as Evidence.

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- CVI Manner of proceeding when the Hearing takes place before Commissioners on Circuit or Justices in Wales.
- CVII Power of Justices to compel the Attendance of Witnesses. Clerk of the Peace may issue Subpoenas.
- CVIII Examiners to be appointed for Counties. Their Fees.
- CIX Fee to Keeper for carrying each Prisoner before the Court. For paying the Expence of conveying Prisoners to the Assize Towns ; and also the other Expences in pursuance of the Act.
- CX Sheriffs and other Persons indemnified for obeying the Orders of the Court. If Action for Escape, &c. brought, the General Issue may be pleaded, and this Act given in Evidence.
- CXI What shall be sufficient to be set forth in the Rules and Proceedings of the Court.
- CXII Before whom Affidavits are to be sworn.
- CXIII Recovery of Costs.
- CXIV Court to admit Attornies to practise therein. Persons not duly appointed practising as Attornies, guilty of Contempt.
- CXV What shall be paid for Insertion of Advertisements.
- CXVI Proceedings not liable to Stamp Duty, nor Sales to Auction Duty.
- CXVII Court may invest unclaimed Money, and apply Profit towards Expences of the Court.
- CXVIII Court empowered out of Profit arising from unclaimed Money to direct the Payment of Expences of Prisoners Discharge.
- CXIX Prisoners for Debt, or their Creditors, not to petition any Court, for certain Purposes, under 32 G.2 C.28.
- CXX Records of the Court.
- CXXII Act may be altered.
- CXXIII Commencement of Act.

SCHEDULE to which —
this Act refers