



Debtors Act 1869

1869 CHAPTER 62 32 and 33 Vict

An Act for the Abolition of Imprisonment for Debt, for the punishment of fraudulent debtors, and for other purposes. [9th August 1869]

PRELIMINARY

1 Short title.

This Act may be cited for all purposes as “The Debtors Act 1869”.

2 Extent of Act.

This Act shall not extend to Scotland or Ireland.

3 Commencement and construction of Act.

.....^{F1} words and expressions defined or explained in the Bankruptcy Act 1869 shall have the same meaning in this Act.

Textual Amendments

F1 Words repealed by [Statute Law Revision \(No. 2\) Act 1893 \(c. 54\)](#)

^{X1}PART I

ABOLITION OF IMPRISONMENT FOR DEBT

Editorial Information

X1 [S. 10](#) repealed as respects courts of summary jurisdiction by [Justices of the Peace Act 1949 \(c. 101\)](#), [Sch. 7 Pt. II](#)

Status: Point in time view as at 01/02/1991.
Changes to legislation: There are currently no known outstanding effects for the Debtors Act 1869. (See end of Document for details)

4 Abolition of imprisonment for debt, with exceptions.

With the exceptions herein-after mentioned, no person shall 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 [^{F2}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:
- (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.

Textual Amendments

F2 Words substituted by virtue of [Solicitors Act 1974 \(c. 47\), s. 89\(6\)](#)

Modifications etc. (not altering text)

C1 [S. 4](#) extended with modification by [Crown Proceedings Act 1947 \(c. 44\), s. 26\(2\)](#)

C2 [S. 4](#) amended as to exceptions (3) (4) by [Debtors Act 1878 \(c. 54\), s. 1](#)

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)

^{F3}

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- (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 ^{M1}County Courts 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 course 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).

Textual Amendments

- F3** S. 5 proviso (1)(b) repealed by [Bankruptcy Act 1883 \(c. 52\)](#), [Sch. 5](#)

Modifications etc. (not altering text)

- C3** S. 5 extended by [Crown Proceedings Act 1947 \(c. 44\)](#), [s. 26\(2\)](#) and [Administration of Justice Act 1956 \(c. 46\)](#), [s. 40](#); restricted by [S.I. 1952/2113 \(1952 I, p. 213\)](#), rr. 377, 378, [National Insurance \(Industrial Injuries\) Act 1965 \(c. 52\)](#), [s. 28\(2\)](#), [Family Allowances Act 1965 \(c. 53\)](#), [s. 10\(2\)](#), [Administration of Justice Act 1970 \(c. 31\)](#), [s. 11](#) and [Social Security Act 1975 \(c. 14\)](#), [s. 87\(3\)](#); modified by [Attachment of Earnings Act 1971 \(c. 32\)](#), [s. 3\(4\)–\(7\)](#)
- C4** S. 5 modified (1.7.1992) by [Social Security Administration Act 1992 \(c. 5\)](#), [ss. 187\(3\)](#), 192(4)

Marginal Citations

- M1** 1846 c. 95.

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

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Where the plaintiff in any action in [^{F5}the High Court] 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 [^{F5}the High Court], 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.

Textual Amendments

- F4 Words repealed by [Statute Law Revision \(No. 2\) Act 1893 \(c. 54\)](#)
- F5 Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\)](#), s. 224(1)

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F6

Textual Amendments

- F6 S. 7 repealed by [Statute Law Revision Act 1883 \(c. 39\)](#)

8 Saving for sequestration against property.

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

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F7

Textual Amendments

- F7 S. 9 repealed by [Statute Law Revision \(No. 2\) Act 1893 \(c. 54\)](#)

X210 Definition of “prescribed.”

In this part of this Act the term “prescribed” means as follows:—

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As respects the superior courts of common law, prescribed by general rules to be made in pursuance of the ^{M2}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 ^{M3}Court of Chancery Act 1852.

As respects the county courts, prescribed by general rules to be made under the [^{F8M4}County Courts Act 1959]; and

... ^{F9}

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.

Editorial Information

X2 [S. 10](#) repealed as respects courts of summary jurisdiction by [Justices of the Peace Act 1949 \(c. 101\)](#), [Sch. 7 Pt. II](#)

Textual Amendments

F8 Words substituted by virtue of [Interpretation Act 1889 \(c. 63\)](#), [s. 38\(1\)](#)

F9 Words repealed by [Courts Act 1971 \(c. 23\)](#), [Sch. 11 Pt. IV](#)

Marginal Citations

M2 [1852 c. 76](#).

M3 [1852 c. 80](#).

M4 [1959 c. 22](#).

PART II

PUNISHMENT OF FRAUDULENT DEBTORS

11, 12. ^{F10}

Textual Amendments

F10 [Ss. 11, 12, 14–16](#) repealed by [Bankruptcy Act 1914 \(c. 59\)](#), [Sch. 6](#)

13 Penalty on fraudulently obtaining credit, &c.

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, ^{F11}; that is to say,

(1) ^{F12}

(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:

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(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.

Textual Amendments

F11 Words omitted by virtue of [Criminal Justice Act 1948 \(c. 58\)](#), **s. 1(2)**

F12 [S. 13\(1\)](#) repealed by [Theft Act 1968 \(c. 60\)](#), **Sch. 3 Pt. I**

Modifications etc. (not altering text)

C5 [S. 13](#) amended by [Criminal Law Act 1977 \(c. 45\)](#), **s. 16(1) Sch. 2 para. 6**

C6 [S. 13](#) amended as to mode of trial by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 17, **Sch. 1 para. 7**

14— **F13**
16.

Textual Amendments

F13 [Ss. 11, 12, 14–16](#) repealed by [Bankruptcy Act 1914 \(c. 59\)](#), **Sch. 6**

17 **F14**

Textual Amendments

F14 [S. 17](#) repealed by Costs in [Criminal Cases Act 1908 \(c. 15\)](#), **Sch.**

18 **F15**

Textual Amendments

F15 [Ss. 18, 23](#) repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), s. 1(1), **Sch. 1 Pt. I Gp. 5**

19 **F16**

Textual Amendments

F16 [S. 19](#) repealed by [Indictments Act 1915 \(c. 90\)](#), **Sch. 2**

20 **F17**

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Textual Amendments

F17 S. 20 repealed by [Criminal Law Act 1967 \(c. 58\)](#), [Sch. 3 Pt. II](#)

21, 22. **F18**

Textual Amendments

F18 Ss. 21, 22 repealed by [Bankruptcy Act 1883 \(c. 52\)](#), [Sch. 5](#)

23 **F19**

Textual Amendments

F19 Ss. 18, 23 repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), s. 1(1), [Sch. 1 Pt. I](#) Gp. 5

PART III

24— **F20**
28.

Textual Amendments

F20 Ss. 24–28 repealed by [Administration of Justice Act 1956 \(c. 46\)](#), s. 16, [Sch. 2](#)

29 **F21**

Textual Amendments

F21 S. 29 repealed by [Courts Act 1971 \(c. 23\)](#), [Sch. 11 Pt. IV](#)

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