

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER D5

DEBTORS ACT

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DEBTORS ACT

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DEBTORS ACT

PRELIMINARY

Interpretation

1. In Part 1 of this Act—

"Court" means the High Court;

"Judge" means a Judge of the Court;

"receiving order" means a receiving order made under the Bankruptcy Act.

PART 1

ABOLITION OF IMPRISONMENT FOR DEBT

Abolition of imprisonment for debt; exceptions

2. No person shall be arrested or imprisoned for making default in payment of a sum of money other than—

(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 a sum recoverable summarily before the 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 it in his character as 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 authorised to make an order;

(f) default in payment of sums in respect of payment of which orders are in this Act authorised to be made;

but—

(g) no person shall be imprisoned under paragraphs (a), (b), (c), (d), (e) or (f) for a longer period than 1 year; and

(h) 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

3. (1) Subject to the provisions hereinafter mentioned, and to the prescribed rules, the Court may commit 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, to prison for a term not exceeding 6 weeks or until payment of the sum due, whichever occurs first, but the jurisdiction by this section given of committing a person to prison—

(a) shall, subject to any rules, be exercised only by a Judge or his deputy and by an order made in open Court showing on its face the ground on which it is issued; and

(b) 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 that 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.

Court may make a receiving order

4. The Court may, if it thinks fit, on any application made to it under section 3, 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, and the judgment debtor is deemed to have committed an act of bankruptcy at the time the order is made.

Power under certain circumstances to arrest defendant about to quit Anguilla

5. (1) A person shall not be arrested upon mesne process in any action.

(2) Where the plaintiff in any action in the Court in which, if brought before 31st December, 1888, 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, that the plaintiff has good cause of action against the defendant to the amount of $24 or more, and that there is probable cause for believing that the defendant is about to quit Anguilla unless he is apprehended, and that the absence of the defendant from Anguilla will materially prejudice the plaintiff in the prosecution of his action, the Judge may, in the prescribed manner, order the defendant to be arrested and imprisoned for a period not exceeding 6 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 Anguilla without the leave of the Court.

(3) 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 Anguilla 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 Anguilla) 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.

Saving for Bankruptcy Act

6. Nothing in this Part in any way affects any right or power under the Bankruptcy Act to arrest or imprison any person.

Rules

7. General rules and orders may by regulation be made by the Governor in Council for the purpose of carrying into effect this Part.

PART 2

PUNISHMENT OF FRAUDULENT DEBTORS

Punishment of fraudulent debtors

8. Any person adjudged bankrupt who commits any of the following offences is guilty of an offence and is liable to be imprisoned for a period of 2 years—

(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 4 months next before that presentation, he conceals any part of his property to the value of $48 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 4 months next before the presentation, he fraudulently removes any part of his property of the value of $48 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 the 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 4 months next before that 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 4 months next before that 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 4 months next before the presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent 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 4 months next before the presentation, he attempts to account for any part of his property by fictitious losses or expenses;

(m) if, within 4 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 4 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 it, unless the jury is satisfied that he had no intent to defraud;

(o) if, within 4 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 one or more of his creditors, 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 4 months before such presentation, quits Anguilla and takes with him, or attempts or makes preparation for quitting Anguilla and for taking with him, any part of his property to the amount of $96 or upwards that ought by law to be divided amongst his creditors, he is, unless the jury is satisfied that he had no intent to defraud, guilty of an indictable offence, punishable with imprisonment for 2 years.

Penalty for fraudulently obtaining credit, etc.

10. Any person who commits any of the following offences is liable to be imprisoned for 1 year—

(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 2 months before the date of any unsatisfied judgment or order for payment of money obtained against him.

False claim, an offence

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 that is untrue in any material particular, he is guilty of an offence, punishable with imprisonment for 1 year.

Debts incurred by fraud

12. Where a debtor makes any arrangement or composition with his creditors under the Bankruptcy Act, he shall remain liable for the unpaid balance of any debt that he incurred or increased, or whereof, before the date of the arrangement or composition, he obtained forebearance, by any fraud, if 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

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 is 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.

Power for Court to commit for trial

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 any offence that is by statute made an offence punishable summarily in cases of bankruptcy, the Court may commit the bankrupt or other person for trial.

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

Form of indictment

15. 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 the Bankruptcy Act.

Criminal liability after discharge or composition

16. 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

17. A person who is liable under any other Act or at common law to any punishment or penalty for any offence made punishable by this Act may be proceeded against under the other Act or at common law or under this Act, so that he be not punished twice for the same offence.

Citation

18. This Act may be cited as the Debtors Act, Revised Statutes of Anguilla, Chapter D5.

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