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SCHEDULE

CHAPTER 24.

DEBTORS.

7 of 1883.
13 of 1927.

An Ordinance for the Abolition of Imprisonment for Debt, and for the Punishment of Fraudulent Debtors.

[14TH MARCH, 1883.]

WHEREAS it is expedient to abolish imprisonment for debt, except under certain circumstances, and to provide for the punishment of fraudulent debtors:

Short title.

1. This Ordinance may be cited as the Debtors' Ordinance, and shall apply to the Colony and Protectorate.

Interpretation.

2. In this Ordinance, if not inconsistent with the context, the term "property" shall mean and include money, goods, things in action, land, and every description of property, whether real or personal, also obligations, easements and every description of estate, interest, and profit, present or future, vested or contingent, arising out of, or incident to, property as above defined.

Abolition, with certain exceptions, of arrest upon mesne process.

3. Subject to the provisions in this Ordinance contained, no person shall, after the commencement of this Ordinance, be arrested upon mesne process in any action.

Defendant leaving jurisdiction or removing property.

4. If a plaintiff, in any action or suit, brought or instituted in any Court for any cause of action of an amount or value of ten pounds or upwards shall, by the affidavit of himself or of some other person, show to the satisfaction of the Court that such plaintiff has a cause of action against the defendant to the amount of ten pounds, and that such defendant is about to leave the Colony or Protectorate, or has disposed of or removed from the Colony or Protectorate his property, or any part thereof, the plaintiff may, either at the institution of the action or suit or at any time thereafter until final judgment, make an application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against him in the action or suit.

Application for security. Warrant to arrest.

5. If the Court, after making such investigation as it may consider necessary, shall be of opinion that there is a probable cause for believing that the defendant is about to leave the

Colony or Protectorate, or that he has disposed of, or removed from, the Colony or Protectorate, his property or any part thereof, and that in either case by reason thereof the execution of any judgment or decree which may be made against him is likely to be obstructed or delayed, it shall be lawful for the Court to issue a warrant in, or to the like effect as, the form marked A in the schedule to this Ordinance annexed, to bring the defendant before the Court, that he may show cause why he should not give good and sufficient bail for his appearance.

6. If the defendant fail to show such cause, the Court shall order him to give bail for his appearance at any time when called upon while the action or suit is pending, and until execution or satisfaction of any decree or judgment which may be passed against him in the action or suit; and the surety or sureties shall undertake in default of such appearance to pay any sum of money which may be adjudged against the defendant in the action or suit, with costs. The order and bail bond shall be in, or to the like effect as, the forms marked B and C in the schedule.

Bail for appearance.

7. If the defendant offers, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with costs of the action or suit, the Court may accept such deposit.

Deposit in lieu of bail.

8. In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to custody until the decision of the action or suit, or, if judgment be given against the defendant, until the execution of the judgment or decree, if the Court shall so order.

Committal in default of bail or deposit.

9. It shall be lawful for any person arrested upon a warrant, or committed to custody under this Ordinance, to make a written application to the Court at any time after such arrest or committal to custody as aforesaid, and if the written permission of the Court be first had and obtained in that behalf to serve an order or rule on the plaintiff in the action to show cause, on a day to be named in such order or rule, why the person arrested or committed to custody as aforesaid should not be discharged out of custody; and it shall be lawful for such Court to make absolute or discharge such order or rule, and to direct the costs of the application to be paid by either party, or to make such order therein as to such Court shall seem just and fit.

Proceedings by person arrested or committed to obtain discharge.

Cost of subsistence of persons arrested.

10. The plaintiff shall pay to the keeper of the prison, weekly in advance, such a sum as the Court shall direct, and, in the absence of any such direction, the sum of seven shillings a week for the subsistence in prison of a defendant so committed as aforesaid; and the amount so paid may be recovered by the plaintiff in action or suit, unless the Court shall otherwise order. The Court may release the person so imprisoned on failure of the plaintiff to pay the subsistence money.

Interim attachment of property.

11. If the defendant in any action or suit for an amount or value of ten pounds or upwards, with the intent to obstruct or delay the execution of any judgment or decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the Colony or Protectorate, the plaintiff may apply to the Court, either at the time of the institution of the action or suit, or at any time thereafter until final judgment, to call upon the Defendant to furnish sufficient security to satisfy or fulfil any judgment or decree that may be made against him in the action or suit, and, on his failing to give such security, to direct that any property moveable or immoveable belonging to the defendant shall be attached until the further order of the Court.

Application for attachment.

12. The application shall contain a specification of the property required to be attached, and the estimated value thereof as far as the plaintiff can reasonably ascertain the same; and the plaintiff shall, at the time of making the application, declare that to the best of his information and belief, the defendant is about to dispose of, or remove, his property with such intent as aforesaid.

Form of order.

13. If the Court, after making such investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of, or remove, his property with intent to delay or obstruct the execution of the judgment or decree, it shall be lawful for the Court to order the defendant, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property, or the value of the same, or such portion thereof as may be sufficient to satisfy the judgment or to fulfil the decree, or to appear and show cause why he should not furnish security. The Court may also in the order direct the attachment, until further order, of the whole or any portion of the property specified in the application.

14. If the defendant fails to show such cause, or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to satisfy the judgment, or fulfil the decree, shall be attached until further order. If the defendant show such cause or furnish the required security, and the property specified in the application, or any portion of it, shall have been attached, the Court shall order the attachment to be withdrawn. The warrant of attachment shall be in, or to the like effect as, the form marked D in the schedule.

Failure of defendant to furnish security.

15. The attachment shall not affect the rights of persons not parties to the action or suit; and in the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the same manner as claims upon interpleader summons are investigated.

Rights of third parties not affected.

16. In all cases of attachment before judgment, the Court shall at any time remove the same on the defendant furnishing security, as above required, together with security for the costs of the attachment.

Removal of attachment.

17. Subject to the provisions in this Ordinance contained, no person shall, after the commencement of this Ordinance, be arrested or imprisoned for making default in payment of a sum of money.

Abolition of imprisonment for debt, with exceptions.

There shall be excepted from the operation of the above enactment—

(i) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract;

(ii) default in payment of any sum recoverable summarily before a Magistrate;

(iii) 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;

(iv) 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 the character of an officer of the Court making the order;

(v) default in payment of any sum ordered to be paid by a Court having jurisdiction in bankruptcy or insolvency, in exercise of such jurisdiction:

Provided that no person shall be imprisoned in any such excepted case for a longer period than one year, and 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:

And provided further that so far as concerns the Protectorate nothing in this section contained shall deprive the Native Courts in causes between natives of the right to observe and enforce the observance, or shall deprive any person of the benefit, of any law or custom existing in the Protectorate and not being repugnant to natural justice, equity and good conscience.

Examination
of judgment
debtors.

18. Where a judgment for the payment of money remains wholly or in part unsatisfied, whether a warrant or writ of execution has issued or not, the judgment creditor may apply to the Court for a summons requiring the judgment debtor to appear and be examined respecting his ability to make the payment directed; and the Court shall, unless it sees good reason to the contrary, issue such summons. Such summons shall be in, or to the like effect as, the form marked E in the schedule.

Order of
arrest in
certain cases.

19. In case it shall be made to appear to the Court that there is probable cause to believe that the judgment debtor is about to leave the Colony or Protectorate, or in case he shall not appear in obedience to such summons, the Court may, in its discretion, issue a warrant for the arrest of the judgment debtor and for his custody in prison until the day appointed for such examination, when he shall be brought before the Court under the said warrant, unless sooner discharged by order of the Court.

Discovery of
property.

20. On the appearance of the judgment debtor before the Court on the summons or warrant, he may be examined upon oath by, or on behalf of, the judgment creditor, and by the Court, respecting his ability to pay the money directed to be paid, and for the discovery of property applicable to such payment, and as to what debts are owing to him, and as to the disposal he may have made of any property, and he shall be bound to produce on oath, or otherwise, all books, papers and documents, in his possession or power, relating to property applicable to such payment. If the judgment debtor appears at the return day, but the judgment creditor fails to appear, the Court may award costs to the judgment debtor.

Production
of books.

21. The judgment debtor may also be examined respecting the circumstances under which he contracted or incurred the debt or liability in respect of which the money is directed to be paid, and respecting the means or expectation he then had of paying or discharging the debt or liability.

Mode in which liability is incurred.

22. Whether the judgment debtor appears or not, the judgment creditor and all other witnesses whom the Court thinks requisite may be examined on oath, or otherwise, respecting the matters aforesaid.

Examination of judgment creditor and other witnesses.

23. The Court may, if it thinks fit, adjourn the examination from time to time, and require from the judgment debtor such security for his appearance at the adjourned hearing as it thinks fit, and, in default of his finding security, may commit him to prison, there to remain till the adjourned hearing, or may discharge him from custody.

Adjournment of hearing and proceedings thereon.

24. The Court may, upon such investigation as aforesaid, make an interim order for the protection of any property, applicable or available, in discharge of the judgment or decree, as it shall think expedient.

Interim order for the protection of property.

25. At the close of the investigation, the judgment debtor, if still in custody under such warrant as aforesaid, shall be discharged unless the Court shall issue a warrant for his arrest or detention under section 29 of this Ordinance.

Close of investigation.

26. The Court, at the original hearing of the cause, or at any adjournment thereof, shall have the same power of examining the defendant and the plaintiff and other persons touching the discovery of the property of the defendant, the production of books and documents, and the mode in which the liability was incurred as hereinbefore is provided and, if judgment be given, of committing the judgment debtor to prison, and of making an order for the protection of property as the Court might have and exercise, in case the judgment creditor had obtained a summons or order for that purpose upon a judgment remaining unsatisfied.

Power of examination by the Court at hearing.

27. When any judgment is for the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments. Such order may be made at the time of giving judgment or at any time afterwards, and may be rescinded or varied upon sufficient cause being shown.

Payment by instalments.

When payment by instalments ordered, no execution until default.

28. When a judgment or decree orders payment of money by instalments, execution shall not issue until after default in payment of some instalment according to the order, and execution or successive executions may issue for the whole money then remaining unpaid, or for such portion thereof as the Court orders, either when making the original order or at some subsequent time.

Proceeding upon misconduct of judgment debtor.

29. If a person summoned as a judgment debtor shall not attend as required by the summons, and shall not excuse his non-attendance to the satisfaction of the Court, or shall refuse to be sworn, or to disclose the matters upon which he shall be examined, or shall not answer to the satisfaction of the Court, or if it is proved to the satisfaction of the Court by any examination of a judgment debtor or other evidence—

(a) that the judgment debtor has, or has had since the date of the judgment or decree, sufficient means to pay the money directed to be paid by him, or part thereof, and refuses or neglects to pay the same; or

(b) that the debt or liability was lawfully contracted or incurred by him or her without his or her having at the same time a reasonable expectation of being able to discharge it;

then and in such case the Court may issue a warrant for the arrest of the judgment debtor and his detention in custody; or for his detention, if already in custody, until further order; or if it thinks fit may make an order calling upon such judgment debtor to show cause why he should not be committed to prison.

Party in default to be brought before the Court.

30. If such judgment debtor is arrested or in custody, he shall be brought before the Court at the first convenient opportunity, and shall then, or if an order to show cause as aforesaid has been made, he shall, on appearing on the return day of the order, have opportunity of showing cause why he should not be committed to prison.

Commitment of party in default.

31. If such judgment debtor does not show cause to the satisfaction of the Court why he should not be committed to prison, the Court may commit him to prison, with or without hard labour, for any period not exceeding six weeks.

Enlargement of time. Conditional order.

32. The Court may enlarge the time for return to the order, and may direct that the warrant shall only issue after a certain time, in the event of the continued refusal or neglect of the judgment debtor at that time to comply with the judgment or decree.

33. Upon any person committed to prison under section 31 of this Ordinance satisfying the judgment or decree, or upon the request of the judgment creditor, it shall be lawful for the Court to make an order for the liberation of the person so imprisoned, to take effect either immediately, or after he has been imprisoned for such portion of the term of imprisonment ordered as the Court in its discretion may think fit to appoint.

Liberation of imprisoned debtor on satisfying judgment.

34. Imprisonment under this Ordinance shall not in any case operate as satisfaction or extinguishment of the debt or cause of action, or deprive the judgment creditor of any right of execution against the moveable or immoveable property of the judgment debtor.

Imprisonment not satisfaction of debt.

35. Any person shall, in each of the cases following, be deemed guilty of a misdemeanour, and on conviction thereof before the Supreme Court shall be liable to be imprisoned for any term not exceeding one year, with or without hard labour, that is to say—

Punishment for fraudulently obtaining credit.

(1) if in incurring any debt or liability, such person has obtained credit under false pretences, or by means of any other fraud;

(2) if such person has, with intent to defraud his or her creditors, or any of them, made, or caused to be made, any gift, delivery, or transfer of, or any charge on, his property;

(3) if such person has, with intent to defraud his or her 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.

36. In an information for an offence under this Ordinance, it shall be sufficient to set forth the substance of the offence charged in the words of this Ordinance, specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, document, deed, transfer, judgment, or order for payment of money.

Form of information.

Section 5.

SCHEDULE.

FORM A.

WARRANT TO ARREST AN ABSCONDING DEFENDANT.

Between A.B.,
 and
 C.D.,

Plaintiff,
 Defendant.

In the Supreme Court of Sierra Leone
 or

In the Magistrate's Court of the..... District of Sierra Leone.

To the Sheriff of the Colony or of the..... Province of the
 Protectorate of Sierra Leone.

Greeting,

You are hereby commanded, in Her Majesty's name, to take and arrest the body of C.D., of....., the above-named Defendant, and him to deliver to the Keeper of the Prison at....., there to be kept until he shall have given bail or security, by deposit or otherwise, to the satisfaction of the said Court, for his appearance at any time when called upon while the above suit is pending, and until execution or satisfaction of any judgment that may be passed therein against him, or until he shall otherwise be lawfully delivered from custody under the said arrest; and also that you bring and have the said C.D. before the Court forthwith after the execution of this Writ or Order, that he may show cause, touching the matter of such bail or security, and have there then this Writ.

Dated at....., this..... day of....., 19.....

(Signed).....

Chief Justice, Judge, Magistrate.

FORM B.

ORDER FOR DEFENDANT TO FIND BAIL.

Between A.B.,
 and
 C.D.,

Plaintiff,
 Defendant.

In the Supreme Court of Sierra Leone
 or

In the Magistrate's Court of the..... District of Sierra Leone.

To the Sheriff of the Colony or of the..... Province of the
 Protectorate of Sierra Leone.

Greeting,

Whereas A.B., late of....., the above-named Plaintiff, hath proved that there is probable cause for believing that C.D., of....., is about to leave the Colony or Protectorate (or that he has disposed of, or removed from the Colony or Protectorate, his property, or part thereof), and that, by reason thereof, the execution of any judgment which may be made against the said C.D. is likely to be obstructed or delayed; and whereas the said C.D., having been allowed and required to show cause why he should not give bail, as afterwards herein ordered, has failed to show any such sufficient cause; I do hereby order that the said C.D. do find security, by deposit

Section 6.

or otherwise, to the satisfaction of the Court, for his appearance at any time when called upon while the above action (or suit) is pending, and until execution or satisfaction of the judgment of the Court, in case judgment be given against him; and further, that the said C.D. be committed to the Prison at....., until the decision of the above-mentioned action or suit or execution of the judgment, if judgment shall be given against the said C.D., or until he comply with this Order.

Dated at....., this.....day of....., 19.....

(Signed).....

Chief Justice, Judge, Magistrate.

FORM C.

Section 6.

BAIL BOND BY DEFENDANT AND SURETIES.

In the Supreme Court of Sierra Leone

or

In the Magistrate's Court of the.....District of Sierra Leone.

To the Sheriff of the Colony or of the.....Province of the Protectorate of Sierra Leone.

Know all men by these presents, that we, C.D. (the Defendant arrested), of....., O.P., of....., Q.R., of....., are held and firmly bound to A.B., of....., in the sum of.....pounds of lawful money of Sierra Leone, to be paid to the said A.B., his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself, in the whole, our and every of our heirs, executors, or administrators, firmly by these presents.

Sealed with our Seals. Dated the.....day of....., in the year of our Lord 19.....

Whereas an action (or suit) has been brought in the said Court wherein the said A.B. is Plaintiff and the above C.D. is Defendant. And whereas the said C.D. hath been ordered to give bail to the satisfaction of the Court for his appearance at any time when called upon while the action or suit is pending, and until execution or satisfaction of the judgment of the Court, in case judgment therein be given against the said C.D. And whereas the above-named O.P. and Q.R., at the request of the said C.D., have agreed to enter into this obligation for the purposes aforesaid. Now the condition of this obligation is such, that if the said C.D. shall appear when called upon as aforesaid, or if, in default of such appearance as aforesaid, the said O.P. and Q.R., any or either of them shall pay unto the said A.B., or his executors, administrators, or assigns, any sum of money that may be adjudged against the said C.D., with costs then this obligation shall be void, otherwise it shall remain in full force.

C.D. (L.S.)
O.P. (L.S.)
Q.R. (L.S.)

Signed, sealed and delivered in the presence of.....

N.B.—All bonds shall be executed in the presence of the Clerk of Court.

Section 14.

FORM D.

WARRANT TO ATTACH PROPERTY BEFORE JUDGMENT.

Between A.B.,

Plaintiff,

and

C.D.,

Defendant.

In the Supreme Court of Sierra Leone.

or

In the Magistrate's Court of the.....District of Sierra Leone.

To the Sheriff of the Colony or of the.....Province of the Protectorate of Sierra Leone.

Whereas it has been shown, to the satisfaction of this Court, that C.D., of, the Defendant in the above action or suit, with intent to obstruct or delay the execution of any judgment which may be passed against him [or her] therein, is about to dispose of or remove from the Colony or Protectorate his [or her] goods and chattels, you are hereby commanded to seize, attach, and take into your hands (*the moveable and immoveable property of the Defendant*) (or certain property specified, to the value of £.....), and to hold the same until the further order of the Court; and you are also commanded forthwith, after the execution of this Writ, to return the same into the Court, with the place, time, and particulars of execution indorsed thereon.

Dated at....., this.....day of....., 19.....

(Signed).....
*Master of the Supreme Court,
 Magistrate.*

Section 18.

FORM E.

JUDGMENT DEBTOR SUMMONS.

Between A.B.,

Plaintiff,

and

C.D.,

Defendant.

In the Supreme Court of Sierra Leone.

or

In the Magistrate's Court of the.....District of Sierra Leone.

To the Sheriff of the Colony or of the.....Province of the Protectorate of Sierra Leone.

To C.D., the above-named Defendant.

Your are hereby summoned to appear before this Court at.....on the.....day of....., at.....o'clock in the....., there and then to be examined respecting your ability to satisfy the judgment recovered against you in the above action (or suit) on the.....day of.....last, for £.....and costs.

Issued at....., the.....day of....., 19.....

(Signed).....
*Master of the Supreme Court,
 Magistrate.*