

DEBTORS ACT, 1936.

No. 2266 of 1936.

An Act to consolidate certain enactments relating to debtors.

[Assented to 13th August, 1936.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Debtors Act, 1936."

Short title.

2. The Acts mentioned hereunder are repealed:—

Repeal.

The Intercolonial Debts Act, 1887 (No. 407 of 1887).

The Abolition of Imprisonment for Debt Act (No. 466 of 1889).

Abolition of Imprisonment for Debt.

3. No person shall be arrested or imprisoned for making default in payment of a sum of money, except in the following cases:—

Abolition of imprisonment for debt.

466, 1889
ss. 2, 7
U.K., 32 & 33,
Vict., c. 62,
s. 4.

(a) Default in payment of a fine or penalty, or sum in the nature of a fine or penalty, other than a fine or penalty in respect of any contract:

(b) Default in payment of any sum recoverable summarily before a justice or justices or a special magistrate of the State:

s. 3. TUCKER v. TUCKER, 3rd August, 1894, S.A. *Register* (newspr.); 1 Austn. Digest 701. Held that the power of the court to attach for non-payment of alimony *pendente lite* was abolished.

Application made 10th August, 1897. *Re A DEBTOR*, 11th August, 1897. S.A. *Advertiser* (newspr.); 1 Austn. Digest 701. Held that The Abolition of Imprisonment for Debt Act, 1889, did not alter the power of the court to issue a writ of *capias ad satisfaciendum* on a forfeited recognisance.

MCKINNON v. THE KING (1927) 40 C.L.R. 217; 1 A.L.J. 321; 5 Austn. Digest 1234. The Supreme Court may order imprisonment in default of payment of a fine imposed by it, but the imprisonment must not exceed six months.

- (c) Default by a trustee, auctioneer, bailiff, messenger, or person acting in a fiduciary capacity and ordered by the Supreme Court or the Court of Insolvency, or any Local Court of Insolvency, to pay any sum in his possession or under his control in such capacity :
- (d) Default by a practitioner of the Supreme Court in payment of costs, when ordered to pay costs for misconduct as such practitioner, or in payment of a sum of money when ordered to pay that sum in his character of an officer of the Court making the order :

Provided that—

- (i.) no person shall be imprisoned, in any case excepted from the operation of this section, for a longer period than six months ;
- (ii.) 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 that money ;
- (iii.) nothing in this section shall alter or repeal the powers given to any local court under Part VIII. of the Local Courts Act, 1926, to commit a debtor to gaol, as therein authorised, or alter or repeal Part XIII. of the last-mentioned Act, or section 35 of Supreme Court Act, 1935.
- (iv.) nothing in this section shall affect any right or power under The Insolvent Act, 1886, to arrest or imprison any person, or entitle any person imprisoned under that Act to be discharged from custody, except as provided in that Act.

Absconding Debtors.

4. If any debtor quits the State, or makes preparation for quitting the State, with intent—

- (a) to defraud any creditor to whom, either alone or jointly with any other creditor or creditors, he is indebted to the amount of ten pounds or upwards, whether on an unsatisfied judgment of a local court or otherwise ; or,

Penalty for debtor absconding or attempting to abscond.

407, 1887, s. 11.
 Cf. U.K., 32 & 33, Vict., c. 62, s. 6 ;
 4 & 5, Geo. 5, c. 59, s. 23.

s. 4. REGINA v. STEVENSON (1891-92) 24 S.A.L.R. 105 ; 5 Austn. Digest 514. The term "debtor" is not limited to judgment debtors.

- (b) to defraud any creditor who, alone or jointly with any other creditor or creditors, has sustained damage to the extent of twenty pounds or upwards through breach of contract or through any tort on the part of the debtor,

he shall be guilty of a misdemeanour punishable by imprisonment, with or without hard labour, for a term not exceeding two years.

DECLARATIONS

see Oaths.

DEFAMATION

see Wrongs.