

## DEBTORS ACT, 1936

being

Debtors Act, 1936, No. 2266 of 1936 [Assented to 13th August, 1936].

### An Act to consolidate certain enactments relating to debtors.

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 The Acts mentioned hereunder are repealed:—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.

(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:

(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<sup>1</sup>, or any Local Court of Insolvency<sup>1</sup>, 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<sup>2</sup>, to

<sup>1</sup> See The Insolvent Act, 1886, (now Insolvent Acts, 1886 to 1942) and Commonwealth laws relating to Bankruptcy.

<sup>2</sup> Now Local and District Criminal Courts Act, 1926-1975.

commit a debtor to gaol, as therein authorized, or alter or repeal Part XIII of the last-mentioned Act, or section 35 of Supreme Court Act, 1935<sup>1</sup>;

- (iv) nothing in this section shall affect any right or power under The Insolvent Act, 1886<sup>2</sup>, 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*

Penalty for  
debtor  
absconding or  
attempting to  
abscond.  
407, 1887, s. 11.

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 twenty dollars<sup>3</sup> or upwards, whether on an unsatisfied judgment of a local court or otherwise; or,
- (b) to defraud any creditor who, alone or jointly with any other creditor or creditors, has sustained damage to the extent of forty dollars<sup>3</sup> 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.

<sup>1</sup> Now Supreme Court Act, 1935-1975.

<sup>2</sup> See The Insolvent Act, 1886, (now Insolvent Acts, 1886 to 1942) and Commonwealth laws relating to Bankruptcy.

<sup>3</sup> Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.