

ABSCONDING DEBTORS ACT

CHAPTER 8:08

Act
20 of 1898

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on Adaptation

Certain fees in this Chapter were increased by the Commission under paragraph 4 of the Second Schedule to the Law Revision Act (Ch. 3:03). Where this occurs, a marginal reference in the form normally indicating an amendment is made to LN 51/1980 (the Legal Notice by which the President's approval was signified).

CHAPTER 8:08

ABSCONDING DEBTORS ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 8:08

ABSCONDING DEBTORS ACT

An Act relating to the arrest of absconding debtors.

1950 Ed.
Ch. 6. No. 4.
20 of 1898.

Commencement.

[5TH AUGUST 1898]

Short title.

1. This Act may be cited as the Absconding Debtors Act.

Fugae
Warrant.

2. A Judge of the High Court may, by warrant under his hand, authorise the Marshal to arrest and bring before him or some other Judge of the said Court any person alleged to be indebted and to be about to quit Trinidad and Tobago on the conditions and subject to the procedure set out below. Save as provided in this Act no person shall be arrested for debt on mesne process.

When warrants
not to issue.
[51/1980].

3. Such warrant shall not issue against an infant, nor in respect of any debt less than two hundred and fifty dollars, nor in respect of any debt that has been due and owing for more than two years previously to the application for such warrant, nor until an action shall have been commenced by the alleged creditor against the debtor for the recovery of such debt by writ specially endorsed as provided by the Rules of the Supreme Court.

Application for
warrant.
[51/1980].

4. Such application shall be made only in respect of a debt or liquidated demand for a sum of two hundred and fifty dollars or upwards, and shall be founded on affidavit made by some person who can swear positively thereto, verifying the cause of action and the amount and the date when the amount accrued due, and stating that in his belief there is no defence to the action, in the same manner in every respect as the facts are stated in an application for judgment in an action for a debt or liquidated demand in which the defendant has appeared to a writ of summons specially endorsed.

Form of
affidavit.

5. The intention of the defendant to quit Trinidad and Tobago shall in like manner appear on the same or another affidavit, showing satisfactorily the ground on which the deponent believes, and the date on which, and place for which, the debtor proposes to leave, as far as the same is known to the deponent.

6. If the Judge grants the application for a warrant of arrest, the same shall forthwith be signed by the Judge and placed in the hands of the Marshal, who shall immediately proceed to arrest the person against whom such warrant is granted.

Warrant to be delivered to Marshal.

7. On the arrest the Marshal may receive the sum endorsed on the writ, together with the prescribed costs of issuing and executing the same, and in such event he shall forthwith endorse the writ with a statement of such receipt, and return the same to the Registry of the Supreme Court, and account for the money so received in the same manner as if it had been received by him under a writ of execution on a judgment, and shall release the defendant immediately without any order of a Judge.

When sum and costs paid to Marshal.

8. (1) The Marshal shall, at the time of making such arrest, serve the defendant with the writ if not already served, and give notice to the plaintiff, and convey the defendant in custody before a Judge in Chambers if a Judge is then sitting in Chambers, and if not, shall detain the defendant and on the next day that a Judge sits bring him before the Judge, who (the plaintiff being in attendance or having been notified) may order the defendant either to give security for the payment of the alleged debt, or to be committed to prison in default of such security, or to be discharged, and may, on the application of either party, adjourn the matter to such convenient date, for such purposes, and on such terms as to custody, security, the filing of further affidavits or otherwise, as he thinks fit.

Procedure on arrest.

(2) The Judge may, if he thinks fit, require the person arrested then and there to enter an appearance to the action in the event of such appearance not having been already entered, and in the event of his refusing to do so may order the Registrar of the Supreme Court then and there to enter an appearance for him as appearing in person, and without requiring the delivery of any memorandum of appearance; and the Judge may, by consent of the parties, proceed to dispose of the action by trial thereof without appeal, or, in default of confession or of such consent, may direct such action to be set down for trial, irrespective of the amount claimed, at the first convenient sitting of the Court.

(3) There shall be no pleadings in any such action unless a Judge otherwise orders, but the affidavits filed on behalf of the plaintiff and defendant, respectively, shall be taken to set forth the respective grounds of claim and defence.

Security.

9. The security may be given by the deposit of money or by bond or otherwise to the satisfaction of the Judge.

Confessing judgment.

10. On the entry of appearance being made, the defendant may forthwith confess judgment, and the same shall in such case be entered accordingly for the debt, with such costs as the Judge may award.

Imprisonment in default of security.

11. After judgment has been given in the action, the Judge may, on its being proved to his satisfaction that the absence of the debtor will materially prejudice the plaintiff in the recovery of his judgment debt, order the imprisonment of the defendant in default of security for such time as he may deem sufficient to enable the plaintiff to obtain discovery under the Rules of the Supreme Court, and in such case such rules shall be deemed to apply without any summons for discovery having been taken out, and, subject however to section 13, all subsequent proceedings shall in such case be had and taken under such rules in the same manner as if the defendant had been arrested on a discovery summons under the said rules.

In certain cases Judge may discharge defendant and award him damages and costs.

12. On the defendant appearing before the Judge, if the Judge—

- (a) is satisfied that the defendant is not about to quit Trinidad and Tobago or that his absence from Trinidad and Tobago will not materially prejudice the plaintiff in respect of the recovery of the debt for which the action has been brought; or
- (b) is not satisfied, on hearing the parties and such evidence as may be adduced, that the defendant owes the plaintiff a sum of two hundred and fifty dollars or over,

the Judge shall discharge the defendant unconditionally, and may in such case, if he thinks fit, award such damages (to include costs) in respect of the arrest and detention, to be paid to the defendant in such time and manner as he may direct; and such damages shall in such event be leviable by execution on the order of a Judge in the same manner as costs under a judgment in an action.

13. If the defendant proves to the satisfaction of a Judge that he is without means to pay the debt, and is not likely, if detained in Trinidad and Tobago to obtain such means, then, whether judgment has been confessed or not, the Judge may, in his discretion, refuse to commit or detain the defendant on the ground that his absence would not materially prejudice the plaintiff as aforesaid.

When defendant without means.

14. All committals to prison in pursuance of this Act shall be in default of security only, and shall be to the Port-of-Spain Prison, and in the event of the debt not having been admitted or confessed, may be for such term, not exceeding three months in all in any case, as the Judge may deem sufficient to give time for the trial of the action, and for no longer; and no person once committed to prison under this Act shall be again arrested or committed in respect of the same debt or any part of it, either on a discovery summons or under this Act.

Committals to prison.

15. The Rules Committee established by the Supreme Court of Judicature Act shall have the same powers to make Rules, and to prescribe forms, schedules of costs and fees in respect of any procedure under this Act as are conferred on the Committee by that Act in respect of the practice thereunder.

Rules.
Ch. 4:01.

16. Any person committed under this Act shall be entitled, at any time after such commitment, to an order of discharge to be made by a Judge on proof of—

When defendant entitled to discharge.

- (a) the payment or settlement of the debt;
- (b) the consent of the creditor;
- (c) the giving of security as required;
- (d) an adjudication of bankruptcy against the defendant; or

(e) on satisfying the Judge that he is without means, and that his absence will not materially prejudice the plaintiff.

Application for discharge.

17. A defendant desirous of applying to a Judge for a discharge on any of the above grounds shall, on notifying such desire, be brought before such Judge by the Superintendent of Prisons, and the Judge may refuse such application forthwith, or may direct such notice thereof to be given to the plaintiff as he shall think requisite, or, in case he is satisfied by sufficient documentary evidence of any of the grounds mentioned in section 16(a), (b), (c) or (d), may, if he thinks fit, order the discharge of the defendant without calling on the plaintiff.