

TRINIDAD AND TOBAGO.

Absconding Debtors.

No. 20.—1898.

18th July.

AN ORDINANCE to regulate process for the arrest of
Absconding Debtors.

[L.S.]

C. C. KNOLLYS,

ACTING GOVERNOR.

5th August, 1898.

WHEREAS doubts have been entertained as to the legality of the existing procedure with respect to the arrest of debtors supposed to be about to quit the Colony, and it is desirable to set at rest such doubts and to amend and regulate such procedure: Be it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as “The Absconding Debtors Ordinance, 1898.”

2. It shall be lawful for a Judge of the Supreme Court by warrant under his hand to authorize 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

Warrant of
arrest.

about to quit the Colony on the conditions and subject to the procedure hereinafter set forth. Save as herein provided no person shall be arrested for debt on mesne process.

When war-
rants not to
issue.

3. Such warrant shall not issue against a married woman or an infant, nor in respect of any debt less than £10, 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 order III., rule 7 of the rules and orders of the Supreme Court, 1879, or such other rule or order as may for the time being be in force in place of the same.

Application
for warrant.

4. Such application shall be made only in respect of a debt or liquidated demand for a sum of £10 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 same accrued due, and stating that in his belief there is no defence thereto, 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.

Intention of
defendant to
quit Colony
must be shown.

5. The intention of the defendant to quit the Colony shall in like manner appear on the same or another affidavit shewing 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. No such application shall be granted in respect of any immigrant alleged to be about to depart by a ship conveying immigrants on their return passage under section 229 of "The Immigration Ordinance, 1896," unless it is made to appear to the satisfaction of the Judge that such ship is not due to sail for seven full days after the day of the application.

Warrants not to be granted against return immigrants.

7. 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.

8. On the arrest it shall be lawful for the Marshal to 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 and account for the money so received in the same manner as if the same had been received by him under a writ of execution on a judgment, and shall release the defendant forthwith without any order of a Judge.

When sum and costs paid to Marshal.

9. 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 be then sitting in Chambers, and if not shall detain the defendant and on the next day that a Judge so sits bring him before such Judge, who (the plaintiff being in attendance or having been notified as aforesaid) may order the defendant either to give security for the payment of the alleged debt or

Procedure on arrest.

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 shall think fit. And the Judge may if he shall think 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 so to do may order the Registrar of the Supreme Court then and there to enter such 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 sitting in its Summary Jurisdiction. There shall be no pleadings in any such action unless a Judge shall otherwise order, 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.

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

Confessing judgment.

11. 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 shall award.

Imprisonment in default of security.

12. After judgment has been given in the action the Judge may if it is 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 provision of Order XLII of the rules and Orders framed under the Judicature Ordinance, 1879, or any rules and orders in force for the time being in place thereof, and in such case the provisions of Rules 3-7 included of such orders shall be deemed to apply without any summons for discovery having been taken out, and, subject however to the provisions of Section 14 hereof, all subsequent proceedings shall in such case be had and taken under the provisions of such rules in the same manner as if the defendant had been arrested on a discovery summons under Rule 3 thereof.

13. On the defendant appearing before the Judge, the Judge shall if he is satisfied that the defendant is not about to quit the Colony, or that his absence from the Colony will not materially prejudice the plaintiff in respect of the recovery of the debt for which the action has been brought, or if he is not satisfied on hearing the parties and such evidence as may be adduced that the defendant owes the plaintiff a sum of £10 or over, discharge the defendant unconditionally and may in such case, if he shall think 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 shall 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.

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

When defendant without means.

14. 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 the Colony to obtain such means, then, whether judgment has been confessed or not, it shall in any case be lawful for the Judge in his discretion to refuse to commit or detain the defendant on the ground that his absence would not materially prejudice the plaintiff as aforesaid.

As to committals to prison.

15. All committals to prison in pursuance of this Ordinance shall be in default of security only and shall be to the Royal Gaol, and in the event of the debt not having been admitted or confessed may be for such term, not exceeding 3 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 Ordinance shall be again arrested or committed in respect of the same debt or any part thereof, either on a discovery summons or under the provisions of this Ordinance.

Rules.

16. The Chief Justice with the assent of a Puisne Judge shall have the same powers to make and publish rules, forms, schedules of costs and fees in respect of any procedure under this Ordinance, as are conferred in and by the Judicature Ordinance, 1879, in respect of the practice thereunder.

When defendant entitled to discharge.

17. Any person committed under the provisions hereof shall be entitled at any time after such commitment to an order of discharge to be made by a Judge on proof of

1. The payment or settlement of the debt.
2. The consent of the creditor.

3. The giving of security as required.
4. An adjudication of bankruptcy against the defendant; or
5. On satisfying the Judge that he is without means, and that his absence will not materially prejudice the plaintiff.

18. 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 Gaoler, 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 the 1st, 2nd, 3rd, or 4th grounds in the last Section mentioned, may if he shall think fit order the discharge of the defendant without calling on the plaintiff.

Passed in Council this Eighteenth day of July, in the year of Our Lord one thousand eight hundred and ninety-eight.

C. J. ROOKS,
Acting Clerk of the Council.
