

## CHAPTER 44.

## ABSCONDING DEBTORS.

AN ORDINANCE RELATING TO THE ARREST OF ABSCONDING DEBTORS. Ordinance No. 38.

[5th August, 1898.]

1. This Ordinance may be cited as the Absconding Debtors Ordinance. Short title.

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 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. Fugæ warrant.

3. Such warrant shall not issue against a married woman or an infant, nor in respect of any debt less than ten pounds, 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 for the time being in force. When warrants not to issue.

4. Such application shall be made only in respect of a debt or liquidated demand for a sum of ten pounds 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. Application for warrant.

Form of  
affidavit.

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.

Returning  
immigrants  
exempted.

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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 the Immigration Ordinance, 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.

Warrant to be  
delivered to  
Marshal.

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.

When sum  
and costs paid  
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.

Procedure on  
arrest.

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 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. 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.

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

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. Confessing judgment.

12. 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 provisions of the Rules of the Supreme Court for the time being in force, and in such case the provisions of such Rules shall be deemed to apply without any summons for discovery having been taken out, and, subject however to the provisions of section 14 of this Ordinance, 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 the said Rules. Imprisonment in default of security.

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

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 ten pounds 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.

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.

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 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 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 concurrence 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 in respect of the practice thereunder.

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When defendant entitled to discharge.

17. Any person committed under the provisions of this Ordinance 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; or

- (2) the consent of the creditor; or
- (3) the giving of security as required; or
- (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 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 the first, second, third, or fourth grounds in the last preceding section mentioned, may, if he shall think fit, order the discharge of the defendant without calling on the plaintiff.

Application  
for discharge.