

ACT NO. VI OF 1888.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 23rd
March, 1888.)*

An Act to amend the law relating to
Imprisonment for Debt.

WHEREAS it is expedient to amend the law relating to imprisonment for debt; It is hereby enacted as follows:—

1. (1) This Act may be called the Debtors Act, 1888; and

Title, commencement and extent.

(2) It shall come into force at once.

(3) The several portions thereof have the same local extent as the enactments to which they respectively relate.

XIV of 1882.

2. After section 245 of the Code of Civil Procedure the following sections shall be inserted, namely:—

Addition of sections after section 245 of the Code of Civil Procedure.

“245A. Notwithstanding anything in the last foregoing section or in any other section of this Code, the Court shall not order the arrest or imprisonment of a woman in execution of a decree for money.

Prohibition of arrest or imprisonment of women in execution of decrees for money.

“245B. (1) Notwithstanding anything in section 245 or in any other section of this Code, when an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear

Discretionary power to permit other judgment-debtors to show cause against imprisonment.

before

before the Court on a day to be specified in the notice and show cause why he should not be committed to jail in execution of the decree.

“(2) If appearance is not made in obedience to the notice, the Court shall, if the decreeholder so requires, issue a warrant for the arrest of the judgment-debtor.”

Amendment
of section
250 of the
Code.

3. In section 250 of the said Code, between the word “shall” and the word “issue”, the following shall be inserted, namely:—

“subject to the provisions of sections 245A and 245B,”.

Addition of
new section
after section
337 of the
Code.

4. After section 337 of the said Code the following shall be inserted, namely:—

Proceedings
on appear-
ance of judg-
ment-debtor
in obedience
to notice
under sec-
tion 245B,
or after arrest
in execution
of decree for
money.

“337A. (1) When a judgment-debtor appears before the Court in obedience to a notice issued under section 245B, or is brought before the Court after being arrested in execution of a decree for money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms, if any, as it thinks fit, make an order disallowing the application for his arrest and imprisonment, or directing his release, as the case may be.

“(2) Before making an order under sub-section (1), the Court may take into consideration any allegation of the decreeholder touching any of the following matters, namely:—

(a) the decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account;

(b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the com-

mission

mission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decreeholder in the execution of the decree;

- (c) any undue or unreasonable preference given by the judgment-debtor to any of his other creditors;
- (d) his refusal or neglect to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it;
- (e) the likelihood of his absconding or leaving the jurisdiction of the Court with the object or effect mentioned in clause (b) of this sub-section.

“(3) While any of the matters mentioned in sub-section (2) are being considered, the Court may in its discretion order the judgment-debtor to be imprisoned, or leave him in the custody of an officer of the Court, or release him on his furnishing sufficient security for his appearance on the requisition of the Court.

“(4) A judgment-debtor released under this section may be re-arrested.

“(5) If the Court does not make such an order as is mentioned in sub-section (1), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to jail.”

5. To section 380 of the said Code the following shall be added, namely:—

“On the application of any defendant in a suit for money in which the plaintiff is a woman the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India independent of the property in suit.”

Addition to
section 380
of the Code.

6. In section 640 of the said Code, after the words

Amendment
of section 640
of the Code.

words "from arrest in execution of civil process" the words "in any case in which the arrest of women is not prohibited by this Code" shall be added.

Amendment
of section 642
of the Code.

7. In section 642 of the said Code, for the words and figures "except as provided in sections 256 and 643" the following shall be substituted, namely:—

"except as provided in section 337A, sub-section (5), and sections 256 and 643."

Addition of
new section
after section
652 of the
Code.

8. After section 652 of the said Code the following shall be added, namely:—

Release on
ground of
illness of
judgment-
debtor.

"653. (1) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

"(2) When a judgment-debtor has been arrested under this Code the Court may release him if in its opinion he is not in a fit state of health to undergo imprisonment.

"(3) When a judgment-debtor has been committed to jail, he may be released therefrom—

(a) by the Local Government, on the ground of his suffering from any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

"(4) A judgment-debtor released under this section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed that prescribed in section 342 or section 481, as the case may be."

Repeal of
other enact-
ments.

9. The last sixteen words of section 8 of the Married Women's Property Act, 1874, and the whole III of 1874. of section 31 of the Ajmere Courts Regulation, 1877, I of 1877. are hereby repealed.

Amendment
of parts of

10. (1) For the first fifty-five words of section

48 of the Act of the Governor of Fort St. George in Council, No. VIII of 1865, the following shall be substituted, namely:—

Madras Act
VIII of 1865
and India
Act XII of
1881.

“No person shall be imprisoned as a defaulter for a longer period than six months whatever the amount of the arrears may be, nor for a longer period than six weeks if the arrears do not exceed fifty rupees.”

(2) For the proviso to section 163 of the North-
XII of 1881. Western Provinces Rent Act, 1881, the following shall be substituted, namely:—

“Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed six weeks when the amount decreed (exclusive of costs) does not exceed fifty rupees, or six months in any other case.”