



ST. CHRISTOPHER AND NEVIS

CHAPTER 5.07

DEBTORS ACT and Subsidiary Legislation

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This edition contains a consolidation of the following laws—

	Page
DEBTORS ACT	3
Act 2 of 1888 ... in force 31st December 1888	
Amended by: Act 6 of 1976	
Act 7 of 1976	
DEBTORS (COMMITTAL) RULES – Section 8	12
S.R.O. 4/1890	

CHAPTER 5.07

DEBTORS ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

ABOLITION OF IMPRISONMENT FOR DEBT

3. Abolition of imprisonment for debt; Exceptions
4. Saving of power of committal for judgment debts
5. Court may make a receiving order
6. Power under certain circumstances to arrest defendant about to quit the State
7. Saving for Bankruptcy Act
8. Rules

PART III

PUNISHMENT OF FRAUDULENT DEBTORS

9. Punishment of fraudulent debtors
 10. Penalty for absconding with property
 11. Penalty for fraudulently obtaining credit, etc.
 12. False claim, etc., a misdemeanour
 13. Debts incurred by fraud
 14. Order by Court for prosecution on report of trustee
 15. Power for Court to commit for trial
 16. Form of indictment
 17. Criminal liability after discharge or composition
 18. Punishments under this Act not cumulative
- SCHEDULE: Debtors (Committal) Rules

CHAPTER 5.07 DEBTORS ACT

AN ACT TO PROVIDE FOR THE IMPRISONMENT OF PERSONS WHO MAKE DEFAULT IN PAYMENT OF CERTAIN JUDGMENT DEBTS; TO PROVIDE FOR THE PUNISHMENT OF FRAUDULENT DEBTORS; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I PRELIMINARY

Short title.

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

Interpretation.

2. In Part II of this Act—

“Court” means the High Court;

“receiving order” means a receiving order made under the provisions of any Bankruptcy Act.

PART II ABOLITION OF IMPRISONMENT FOR DEBT

Abolition of imprisonment for debt; Exceptions.

3. (1) With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money.

(2) There shall be excepted from the operation of subsection (1)—

- (a) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract;
- (b) default in payment of any sum recoverable summarily before a magistrate;
- (c) default by a trustee or person acting in a fiduciary capacity, and ordered by a Court to pay any sum in his or her possession or under his or her control;
- (d) default by a solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his or her character of an officer of the Court making the order;
- (e) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order;

- (f) Default in payment of sums in respect of payment of which orders are in this Act authorized to be made:

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and, secondly, that 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 such money.

Saving of power of committal for judgment debts.

4. (1) Subject to the provisions hereinafter mentioned, and to the prescribed rules, the Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him or her in pursuance of any order or judgment of that or any other competent Court:

Provided that—

- (a) the jurisdiction by this section given of committing a person to prison shall, subject to any rules, be exercised only by a Judge or his or her deputy, and by an order made in open Court, and showing on its face the ground on which it is issued;
- (b) such jurisdiction shall only be exercised where it is proved to the satisfaction of the Court that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he or she has made default, and has refused or neglected, or refuses or neglects, to pay the same.

(2) Proof of the means of the person making default may be given in such manner as the Court thinks just, and, for the purposes of such proof, the debtor and any witnesses may be summoned and examined on oath according to the prescribed rules.

(3) Any jurisdiction by this section given to the Court may be exercised by a Judge sitting in Chambers, or otherwise, in the prescribed manner.

(4) For the purposes of this section, any Court may direct any debt due from any person, in pursuance of any order or judgment of that or any other competent Court, to be paid by instalments, and may from time to time rescind or vary such order.

(5) No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned in the same manner as if such imprisonment had not taken place.

(6) Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he or she has satisfied the debt or instalment of the debt in respect of which he or she was imprisoned, together with the prescribed costs (if any).

Court may make a receiving order.

5. (1) The Court may, if it thinks fit, on any application, made to it under section 4, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him or her of the prescribed fee, make a receiving order against the debtor.

(2) In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made.

***Power under certain circumstances to arrest defendant about to quit the State.**

6. (1) Where the plaintiff in any action in the Court proves at any time before final judgment, by evidence on oath, to the satisfaction of a judge, that the plaintiff has good cause of action against the defendant to the amount of one hundred dollars or upwards, and that there is probable cause for believing that the defendant is about to quit the State unless he or she be apprehended, and that the absence of the defendant from the State will materially prejudice the plaintiff in the prosecution of his or her action, such judge may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he or she has sooner given the prescribed security, not exceeding the amount claimed in the action, that he or she will not go out of the State without the leave of the Court.

(Amended by Act 6 of 1976)

(2) Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from the State will materially prejudice the plaintiff in the prosecution of his or her action, and the security given (instead of being that the defendant will not go out of the State) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

Saving for Bankruptcy Act.

7. Nothing in this Part shall in any way affect any right or power under any Bankruptcy Act in force in this State to arrest or imprison any person.

Rules.

8. All general rules and orders may, respectively, be made by the Chief Justice, for the purpose of carrying into effect this Part.

(Amended by Act 6 of 1976)

PART III

PUNISHMENT OF FRAUDULENT DEBTORS

Punishment of fraudulent debtors.

9. Any person adjudged bankrupt shall, in each of the cases following, be deemed to have committed a misdemeanour, and shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour, that is to say—

- (a) if he or she does not, to the best of his or her knowledge and belief fully and truly discover to the trustee administering his or her estate for the benefit of his or her creditors all his or her property, real and personal, and how, and to whom, and for what consideration, and when he or she disposed of any part thereof, except such part as has been disposed of in the ordinary way of his or her trade (if any), or

* Subsection (1) deleted by Act 7 of 1976.

laid out in the ordinary expense of his or her family, unless the jury is satisfied that he or she had no intent to defraud;

- (b) if he or she does not deliver up to such trustee, or as he or she directs, all such part of his or her real and personal property as is in his or her custody or under his or her control, and which he or she is required by law to deliver up, unless the jury is satisfied that he or she had no intent to defraud;
- (c) if, he or she does not deliver up to such trustee, or as he or she directs, all books, documents, papers, and writing in his or her custody, or under his or her control, relating to his or her property or affairs, unless the jury is satisfied that he or she had no intent to defraud;
- (d) if, after the presentation of a bankruptcy petition by or against him or her, or within four months next before such presentation, he or she conceals any part of his or her property to the value of one hundred dollars or upwards, or conceals any debt due to or from him or her, unless the jury is satisfied that he or she had no intent to defraud;
(Amended by Act 7 of 1976)
- (e) if, after the presentation of a bankruptcy petition by or against him or her, or within four months next before such presentation, he or she fraudulently removes any part of his or her property of the value of one hundred dollars or upwards;
(Amended by Act 7 of 1976)
- (f) if he or she makes any material omission in any statement relating to his or her affairs, unless the jury is satisfied that he or she had no intent to defraud;
- (g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he or she fails, for the period of a month, to inform such trustee as aforesaid thereof;
- (h) if, after the presentation of a bankruptcy petition by or against him or her, he or she prevents the production of any book, document, paper, or writing affecting or relating to his or her property or affairs, unless the jury is satisfied that he or she had no intent to conceal the state of his or her affairs or to defeat the law;
- (i) if, after the presentation of a bankruptcy petition by or against him or her, or within four months next before such presentation, he or she conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his or her property or affairs, unless the jury is satisfied that he or she had no intent to conceal the state of his or her affairs or to defeat the law;
- (j) if, after the presentation of a bankruptcy petition by or against him or her, or within four months next before such presentation, he or she makes or is privy to the making of any false entry in any book or document affecting or relating to his or her property or affairs, unless the jury is satisfied that he or she had no intent to conceal the state of his or her affairs or to defeat the law;
- (k) if, after the presentation of a bankruptcy petition by or against him or her, or within four months next before such presentation, he or she fraudulently parts with, alters, or makes any omission in, or is privy to

the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his or her property or affairs;

- (l) if, after the presentation of a bankruptcy petition by or against him or her, or at any meeting of his or her creditors within four months next before such presentation, he or she attempts to account for any part of his or her property by fictitious losses or expenses;
- (m) if, within four months next before the presentation of a bankruptcy petition by or against him or her, he or she, by any false representation or other fraud, has obtained any property on credit and has not paid for the same;
- (n) if, within four months next before the presentation of a bankruptcy petition by or against him or her, he or she, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his or her trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he or she had no intent to defraud;
- (o) if, within four months next before the presentation of a bankruptcy petition by or against him or her, he or she being a trader, pawns, pledges, or disposes of, otherwise than in the ordinary way of his or her trade, any property which he or she has obtained on credit and has not paid for, unless the jury is satisfied that he or she had no intent to defraud;
- (p) if he or she is found guilty of any false representation or other fraud for the purpose of obtaining the consent of his or her creditors, or any of them, to any agreement with reference to his or her affairs or his or her bankruptcy.

Penalty for absconding with property.

10. If any person who is adjudged a bankrupt, after the presentation of a bankruptcy petition by or against him or her, or within four months before such presentation, quits the State and takes with him or her, or attempts or makes preparation for quitting the State and for taking with him or her, any part of his or her property to the amount of three hundred dollars or upwards, which ought by law to be divided amongst his or her creditors, he or she (unless the jury is satisfied that he or she had no intent to defraud) commits a felony, punishable with imprisonment for a time not exceeding two years, with or without hard labour.

(Amended by Act 7 of 1976)

Penalty for fraudulently obtaining credit, etc.

11. Any person, in each of the cases following, commits a misdemeanour, and shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour, that is to say—

- (a) if, in incurring any debt or liability, he or she has obtained credit under false pretences, or by means of any other fraud;
- (b) if he or she has, with intent to defraud his or her creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his or her property;
- (c) if he or she has, with intent to defraud his or her creditors, concealed or removed any part of his or her property since or within two months

before the date of any unsatisfied judgment or order for payment of money obtained against him or her.

False claim, etc., a misdemeanor.

12. If any creditor in any bankruptcy wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he or she commits a misdemeanour, punishable with imprisonment for a time not exceeding one year, with or without hard labour.

Debts incurred by fraud.

13. Where a debtor makes any arrangement or composition with his or her creditors under the provisions of any Bankruptcy Act in force in the State, he or she shall remain liable for the unpaid balance of any debt which he or she incurred or increased, or whereof, before the date of the arrangement or composition, he or she obtained forbearance, by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his or her debt and accepting dividends.

Order by Court for prosecution on report of trustee.

14. Where a trustee or official receiver in any bankruptcy reports to any Court exercising jurisdiction in bankruptcy that, in his or her opinion, a bankrupt has committed any offence under this Act, or where the Court is satisfied upon the representation of any creditor, or member of the committee of inspection, that there is ground to believe that the bankrupt has committed any offence under this Act, the Court shall, if it appears to the Court that there is a reasonable probability that the bankrupt may be convicted, order the trustee to prosecute the bankrupt for such offence.

***Power for Court to commit for trial.**

15. (1) Where there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has committed any offence which is by statute made a misdemeanour in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial.

(2) For the purpose of committing the bankrupt or such other person for trial, the Court shall have all the powers of a magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise.

Form of indictment.

16. In an indictment for an offence under this Act it shall be sufficient to set forth the substance of the offence charged, in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceeding in, or order, warrant, or document of any Court acting under any Bankruptcy Act.

Criminal liability after discharge or composition.

17. Where a debtor has committed any criminal offence, he or she shall not be exempt from being proceeded against therefor, by reason that he or she has obtained his or her discharge, or that a composition or scheme of arrangement has been accepted or approved.

* Section 16 was deleted by Act 7 of 1976. Rest of sections have been renumbered accordingly.

Punishments under this Act not cumulative.

18. Where any person is liable under any other Act or at common law, to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act, or at common law, or under this Act, provided that he or she is not punished twice for the same offence.

SCHEDULE*(Section 8)***DEBTORS (COMMITTAL) RULES****Short title.**

1. These Rules may be cited as the Debtors (Committal) Rules.

Application for Committal.

2. All applications to commit to prison under section 4 of the Debtors Act shall in the first instance be made by summons before a Judge of the High Court which shall specify the date and other particulars of the judgment or order, for non-payment of which the application is made, together with the amount due, and be endorsed with the following particulars—

- (a) where the summons is taken out by a solicitor, with the name, place of abode, or office of business of such solicitor; and
- (b) where no solicitor is employed to take out such summons then with a memorandum expressing that the same has been taken out by the plaintiff in person and setting forth the full name and address of such plaintiff.

Service of Summons.

3. The service of the summons wherever it may be practicable shall be personal, but if it appears to the Judge that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he or she wilfully evades service, an order may be made as if personal service had been effected, upon such terms as to the Judge may seem fit.

Proof of Means.

4. (1) Proof of means of the debtor shall, whenever practicable, be given by affidavit, but if it appears to the Judge, either before or at the hearing that a *viva voce* examination, either of the debtor or any other person, or the production of any document, is necessary or expedient, an order may be made commanding the attendance of any such person before the Judge at a time and place to be therein mentioned, for the purpose of being examined on oath touching the matter in question, (or, and) for the production of any such document, subject to such terms and conditions as to the Judge may seem fit.

- (2) The disobedience to any such order shall be deemed a contempt of Court and punishable accordingly.

Order of Committal.

5. (1) The order of committal (which may be in Form A set out in the Schedule to these Rules or to the like effect) shall, before delivery to the Provost-Marshal be endorsed with the particulars required by rule 2.

- (2) The Provost-Marshal shall be entitled to the same fees in respect thereof as are now payable to him or her under the High Court (Fees in Civil Proceedings) Order for executing a writ of attachment.

Certificate to be given to Debtor on payment of Debt.

6. Upon payment of the sum or sums mentioned in the order including the Provost-Marshall's fees as aforesaid, the debtor shall be entitled to a certificate in Form B set out in the Schedule to these Rules or to the like effect signed by the solicitor in the cause of the creditor, or signed by the creditor and attested by a solicitor on his or her behalf, or a Justice of the Peace.

Procedure for obtaining Order of Arrest.

7. An order to arrest made under section 6 of the Debtors Act (which shall be in Form C set out in the Schedule to these Rules with such variations as circumstances may require) shall be made upon affidavit and *ex parte*, but the defendant may at any time after arrest apply to the Court or a Judge to rescind or vary the order or to be discharged from custody, or for such other relief as may be just.

Endorsement of plaintiff's address for service on order.

8. An order to arrest shall, before delivery to the Provost-Marshall, be indorsed with the plaintiff's address for service, and the Provost-Marshall shall be entitled to the same fees as those mentioned in rule 5.

Nature of security to be given by defendant.

9. (1) The security to be given by the defendant may be a deposit in Court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or with the leave of the Court or a Judge either one surety or more than two) or with the plaintiff's consent, any other form of security.

(2) The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, give notice that he or she objects thereto, stating in the notice the particulars of his or her objection.

(3) In such case the sufficiency of the security shall be determined by the Registrar who shall have power to award costs to either party.

(4) It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he or she does so within four days after giving notice of objection, the security shall be deemed sufficient.

Control of security.

10. The money deposited and the security, and all proceedings thereon, shall be subject to the order and control of the Court or a Judge.

Costs.

11. Unless otherwise ordered, the costs of and incidental to an order of arrest shall be costs in the cause.

Payment into Court.

12. (1) Upon payment into Court of the amount mentioned in the order, a receipt shall be given, and upon receiving the bond or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's solicitor if he or she have one, or by the plaintiff if he or she sue in person.

(2) The delivery of such receipt or a certificate to the Provost-Marshall shall entitle the defendant to be discharged out of such custody.

Endorsement on order of date of arrest.

13. The Provost-Marshall or the officer executing an order to arrest shall, within two days after the arrest, indorse on the order the true date of such arrest.

Order of committal to be addressed to Provost-Marshall or his or her agent.

14. An order of committal or an order of arrest may be addressed to the Provost-Marshall or to such other officer as agent for the Provost-Marshall as the Court or Judge may direct.

SCHEDULE TO THE RULES

FORM A

(Rule 5)

In the EASTERN CARIBBEAN Supreme Court of SAINT CHRISTOPHER AND NEVIS

	State of	
Suit No. of 20..	}	Between A.B. Plaintiff and C.D. Defendant.

IN THE MATTER OF THE DEBTORS ACT.

Upon hearing, etc.

I do order that the said C.D. be for default in payment of the debt hereinafter mentioned committed to prison for the term of (.....) weeks from the date of his or her arrest, including the day of such date, or until he or she shall pay \$ being the amount of (an instalment due to the said A.B. upon), (or a judgment of the Court of) (or an order made by) bearing date the day of together with \$ for costs of this order, and Provost Marshal's fees, for the execution thereof. And I order that the Provost-Marshall of do take the said C.D. for the purpose aforesaid, wherever he may be found within the State.

Dated, etc.

FORM B

(Rule 6)

I certify that C.D. now in the prison at
upon an order of the Honourable Mr. Justice at the
suit of A.B. for non-payment of a debt of \$ has satisfied the said debt, together with
the costs mentioned in the said order, and Provost-Marshal's fees.

Dated, etc.

E.F. of etc.

Solicitor for the said A.B.

or A.B. of &c.

Witness to the signature of A.B.

G.H. of, etc., his solicitor, or J.K.

Justice of the Peace for

FORM C

(Rule 7)

In the Supreme Court of the Eastern Caribbean Saint Christopher and Nevis.

Suit No. of 20...	}	State of
		Between A.B. Plaintiff
		and
		C.D. Defendant.

IN THE MATTER OF THE DEBTORS ACT.

Upon hearing and upon reading the affidavit
of filed the
day of 20.....

It is ordered that the defendant be arrested and imprisoned for the term
of from the date of his or her arrest, including the day of such
date, unless and until he or she shall sooner deposit in Court the sum of
\$....., or give to the plaintiff a bond executed by him or
her and two sufficient sureties in the penalty of \$..... or
some other security satisfactory to the plaintiff that

And it is further ordered that the Provost-Marshal of
do take the defendant for the purpose aforesaid wherever he or she may be found
within the State.

Dated the day of 20.....
