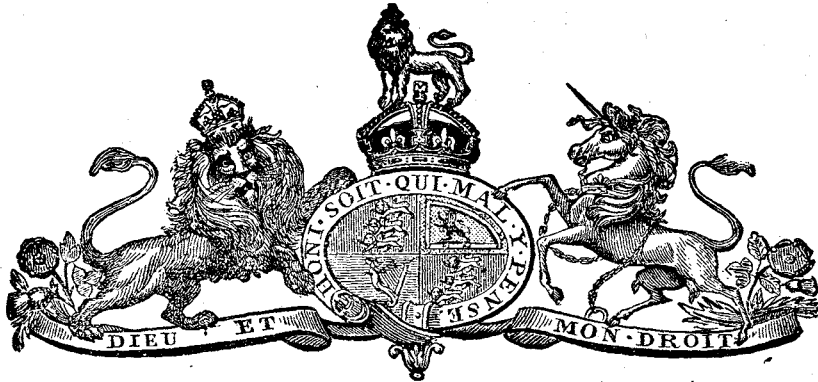


TASMANIA.



1920.

ANNO UNDECIMO

GEORGII V. REGIS.

No 67.

ANALYSIS.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Short title. 2. Interpretation. 3. "Bankruptcy Act, 1883" (Eng.)
 Sec. 122 and Rules. 4. "Debtors Act" Rules (2). 5. Notice to creditors. 6. Hearing of application. 7. Instalment order. 8. Stay of proceedings. 9. Creditor not appearing. 10. Conduct of instalment order. | <ol style="list-style-type: none"> 11. Default in payment of instalment order. 12. Order may be varied. 13. Rules by court. 14. Moneys to be paid Registrar. 15. Creditor may subsequently be included. 16. Discharge of debtor. 17. <i>Femme couverte</i>. 18. Issue of judgment summons. |
|--|--|

AN ACT to further amend "The Debtors Act, 1870," and to extend to Poor Debtors the Benefits of the Bankruptcy Law, and for other purposes. [10 January, 1921.]

A.D.
1920.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited for all purposes as "The Small Debtors' Short title, Relief Act, 1920,"

Small Debtors' Relief.

A.D. 1920.

Interpretation.

"Bankruptcy
Act, 1883"
(Eng.) Sec. 122
and Rules.

2 In this Act the expression the said Act means "The Debtors Act, 1870."

3 Where a judgment has been obtained in any court and the judgment debtor is unable to pay the full amount thereof forthwith, and his whole indebtedness to all his creditors, inclusive of that judgment debt, does not exceed Fifty Pounds, he may apply for an order (hereinafter called an instalment order) for the payment of his debts by instalments, and otherwise and either in full or to such extent and subject to such conditions as to his present estate or his future earnings or income as the instalment order shall prescribe.

"Debtors Act"
Rules (2).

4 A debtor desiring an instalment order shall file a request in writing according to the Form (I) in the schedule hereto with the registrar of the court having jurisdiction under Section Four of the said Act which is nearest to the debtor's place of abode or business, unless the judge of some other court in the exercise of his discretion grants leave to file the same with the registrar of such other court. The debtor shall at the same time pay a fee of Five Shillings. When the debtor is illiterate or unable to fill up such request, the registrar or his clerk shall, without fee, fill up the same from the information given by such debtor. The registrar shall inform the debtor of the date of the hearing of the application.

Notice to
creditors.

5 Upon the filing of any such request the registrar shall forthwith send a notice according to the Form (II) in the Schedule hereto to all the creditors mentioned in the request. Such notice shall be sent by post Ten clear days before the day appointed for the hearing of the application.

Hearing of
application.

6 Upon the hearing of the application—

- i. The debtor shall attend in person and answer upon oath all questions put and allowed by the court :
- ii Any creditor, whether notified by the registrar or not, may, by himself or his counsel or agent, attend the hearing and prove his claim upon oath, either verbally or by affidavit sworn before a justice of the peace, but all claims set out or admitted by the debtor shall be taken to be proved unless objected to by a creditor :
- iii. The debtor or any creditor may at the hearing object to any claim admitted by the debtor or submitted by a creditor, and the court may either adjourn the further hearing of the application or proceed to determine the claim ; in which latter case the claim, if admitted by the court, shall be added to the debtor's list of claims, or, if rejected, shall be struck out or omitted therefrom ; and the court may allow costs to any creditor, the proof of whose debt is not admitted by the debtor :

Small Debtors' Relief.

iv. Any creditor whose claim is proved, and, by leave of the court, any creditor, the proof of whose claim has been adjourned, shall be entitled to be heard personally or by his counsel or agent, and to adduce evidence : A.D. 1920.

v. The court may in its discretion either reject the application, or make an instalment order in the Form (III) in the Schedule hereto, or with such variation as the court may order. In determining whether the debtor shall pay his debts in full, or to any less extent, the court shall take into consideration the circumstances under which the indebtedness was incurred, and particularly whether the same or any part thereof was incurred by means of fraud or unfair dealing by either party, and whether the debtor has been guilty of idleness, improvidence, gambling, or intemperance.

7 Any court having jurisdiction under Section Four of the said Act may grant an instalment order and do all things incidental thereto notwithstanding that the total debts of the debtor or any One of such debts may exceed the sum to which the jurisdiction of such court is otherwise limited. Such order shall not be invalid by reason only that the total amount of debts is found at any time to exceed Fifty Pounds, but in such case the judge may, if he thinks fit, set aside the order. Instalment order.

8 When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which is admitted by the court except with the leave of the court and on such terms as the court may impose ; and any court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but the court making the instalment order may allow costs, already incurred by the creditor, to be added to the debt. Stay of proceedings.

9 The court may direct that notice of an instalment order be given to any creditor who does not appear at the hearing, but failure to give any such notice shall not effect the validity of the order. Creditor not appearing.

10 The court may appoint, subject to removal at any time, any person to have the conduct of the instalment order, whose duty it shall be to take all proper proceedings for enforcing the same, but in case of his neglect to proceed or of urgency, any creditor may take them. In default of any such appointment the registrar shall have the conduct of the instalment order. Conduct of instalment order.

11 If the debtor makes default in payment of any instalment payable under an instalment order, the registrar may from time to time issue without fee a summons in the Form (IV) in the Schedule hereto, and all proceedings thereafter shall be taken in like manner as if it were a judgment summons issued under the said Act, except that the debtor must prove that he has not had the means to pay the sum in Default in payment of instalment order.

Small Debtors' Relief.

A.D. 1920.

respect of which he has made default; and, if he does so prove, the court may direct that the instalment order shall be deemed to have been suspended during the period covered by such default or any portion of such period.

Order may be varied.

12 The court may from time to time inspect the operation of any order or vary the same; or may, if has been obtained by misrepresentation, or if in the opinion of the court it would be unjust to continue the order, set it aside on such terms as regards payments made thereunder, and otherwise as the court shall direct.

Rules by court.

13 Any matter, not hereby provided, may be prescribed by the court from time to time.

Moneys to be paid registrar.

14 All moneys to be paid under any instalment order shall be paid to the registrar of the court who may, unless the court shall otherwise order, deduct therefrom a commission of not exceeding One Shilling in the Pound on the total amount of instalments paid, which commission shall be dealt with as and follow the destination of court fees collected by the registrar. The balance of such moneys shall be appropriated in liquidation of the debts in accordance with the order.

Creditor may subsequently be included.

15 The court may on the application of any creditor, not included in an instalment order, direct that his debt be added thereto. Three clear days' notice of such application shall be given to the person having the conduct of the instalment order, who may appear at the hearing of the application and object thereto; but no creditor shall be entitled to any dividend in respect to any indebtedness incurred subsequent to the date of the instalment order, until those creditors who are allowed by the court as having been creditors before the date of the order have been paid to the extent provided by the order. All such lastmentioned creditors shall participate *pari passu inter se*.

Discharge of debtor.

16 When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the commission as aforesaid, and any costs incurred by the person having the conduct of the instalment order in and about the enforcement thereof, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

Femme couverte.

17 No judgment summons shall issue under the said Act against a *femme couverte*, unless with the application therefor an affidavit is filed that the judgment debtor is possessed of separate estate.

Issue of judgment summons.

18 The issue of a judgment summons under the said Act, or under this Act against a debtor for default in payment of any instalment of a judgment debt, shall not be a bar to the issue of a further judgment summons in respect of default in payment of any other instalment. Any such summons to which Form (IV) is inapplicable may be in the Form (V) in the Schedule, or to the like effect.

Small Debtors' Relief.

A.D. 1920.

SCHEDULE.**I.—REQUEST FOR ORDER.**In the Court of
held at

Between

and

Plaintiff.

Defendant.

I, the abovenamed Defendant, state that a judgment was obtained against me in the above action in the Court of held at on the day of , 19 , for the sum of £ , and I am unable to pay the amount forthwith.

I am indebted to the several persons mentioned in the schedule hereto in the sums set opposite their names, not exceeding in the whole £50: and I am not to my knowledge indebted to any other person.

I request that an instalment order be made against me, and I offer to pay instalments at the rate of per (month or week).

Schedule.

Name of Creditor.—Address.—Description.—Amount of Debt.

Dated this day of 19 .

II.—NOTICE TO CREDITORS.In the Court of
held at

NOTICE is hereby given you that A.B. states that he owes you the sum of £ and has applied to this Court for an Instalment Order, and his application will be heard at the Courthouse at on the day of , 19 , at o'clock in the noon.

You may inspect a list of his creditors at my office, and may appear at the hearing and object to the allowance of any debt appearing in that list.

If you claim more than the amount stated to be due to you, you should bring with you to Court any witnesses necessary to prove your claim.

Dated this day of 19 .

Registrar.

III.—INSTALMENT ORDER.In the Court of
held at

In the matter of A.B., Debtor.

It is this day adjudged that the abovenamed debtor do pay the several debts in the schedule hereto, and all others which may be hereafter ordered to be included therein, in full (or to the extent of shillings in the £). And that debtor do pay to the Registrar of this Court instalments at the rate of per until this order is satisfied according to the Law.

(Here add any conditions which are imposed by the Court.)

Schedule.

By the Court,

Registrar.

Small Debtors' Relief.

A.D. 1920.

IV.—SUMMONS TO DEBTOR MAKING DEFAULT.

In the Court of
held at

In the matter of A.B., Debtor.

WHEREAS you have made default in payment of the sum of instalments payable by you under an Instalment Order of this Court, you are hereby summoned to appear personally at the Courthouse at on the day of , 19 , at o'clock in the noon, to show cause why you should not be committed to prison for such default, and you are hereby warned that unless you can prove to the contrary, you will under the Statute be deemed to have had the means and have refused or neglected to pay the amount now due.

Dated this day of , 19 ,

Registrar.

V.—SUMMONS IN CASE OF ORDINARY JUDGMENT DEBT
PAYABLE BY INSTALMENTS.In the Court of
held at

Between

and

Plaintiff,

Defendant.

WHEREAS on the day of , 19 , an order was made against you for payment of the judgment debt and costs herein by instalments of per : And whereas you have made default in payment thereof, and the same are in arrear to the extent of £ : You are hereby summoned to appear personally at the Courthouse at , on the day of , 19 , at o'clock in the noon, to show cause why you should not be committed to prison for such default.

If you do not appear you are liable to a penalty of £10, or, in default, One month's imprisonment.

Dated this day of 19

Registrar.