

this Part 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 payment of such money; and provided also, that nothing in the preceding Section shall be deemed to limit the power of imprisonment for contempt of Court.

68. Subject to the provisions hereinafter mentioned, any Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, with or without privilege of bail or limits, any person who makes default in payment of any sum due from him in pursuance of any order or judgment of the Court.

69. Provided that the jurisdiction by the last Section given of committing a person to prison, shall in the case of the Supreme Court be exercised by the Court or a Judge thereof, and may be exercised in respect of the judgment or order of any Court; and in case of the County Court, be exercised by the Court, or the Judge of any of the County Courts; and in respect of the judgment or order of any County Court, or any Court having jurisdiction to a lesser amount than the County Court, and by an order shewing on its face the grounds on which it is issued; and in the case of any Court other than the Supreme or County Courts, by an order made in open Court and shewing on its face the ground on which it is issued, except that in the case of a Justice's Court, the jurisdiction shall be exercised by the Justice who tried the cause and another Justice sitting together.

70. And provided also, that such jurisdiction shall only be exercised where it is proved to the satisfaction of the Court or Judge, as the case may be—

- (1) 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 has made default, and has refused or neglected, or refuses or neglects to pay the same; or
- (2) That the person making default had, in incurring the debt or liability in respect of which he has made default, obtained credit under false pretences, or by means of any other fraud; or
- (3) That the person making default has with intent to defraud his creditors or any of them, made or caused to be made any gift, delivery or transfer of or charge on his property, whereby the plaintiff is materially prejudiced in obtaining satisfaction of the order or judgment; or
- (4) That the person making default has with intent to defraud his creditors, or any of them, concealed or removed any part of his property since or within two months before the date of the judgment or order, whereby the plaintiff is materially prejudiced in obtaining satisfaction of the order or judgment; or
- (5) That the person making default is about leaving the Province, and that his absence will materially prejudice the plaintiff in obtaining satisfaction of his judgment.

71. The order of commitment may be issued on an *ex parte* application of the plaintiff upon oath or upon summons, and hearing both parties upon oath; but if an *ex parte* order be made the debtor may apply to the Court or Judge that issued the order, or to any other Court or Judge that would have been entitled to have issued the order in the first instance, for his discharge, and on notice to the plaintiff or his attorney the matter shall be heard upon oath and the order of commitment be discharged, varied or confirmed; and if an *ex*

*parte* order be made the debtor may have the privilege of limits for one week after his arrest in order to admit of the application for discharge as aforesaid, notwithstanding that such order for commitment be expressed to be without privilege of bail or the limits. In any such hearing the testimony shall be reduced to writing, and subpoenas may be issued out of the Court in which the judgment was recovered, or any Court of equal or superior jurisdiction, requiring the witness to attend at such examination, and the same shall be of like force as subpoenas issued out of such Court in other cases, and except on an *ex parte* application the Court or Judge may award costs to the creditor or debtor, and if awarded against the debtor may include the same in the order for commitment.

72. In any such inquiry the Court or a Judge shall have power, by writing, to direct the Sheriff or Gaoler to bring the debtor up for examination, and the Sheriff or Gaoler shall not, in the absence of negligence or default, be liable for any escape in consequence of obeying such order.

73. The order of commitment shall direct the immediate payment of the amount for which default is made, and any costs awarded as aforesaid, and on non-payment of the same, that the defendant be committed, and the order shall state whether the commitment be with or without privilege of bail or limits; and the order of commitment shall be obeyed and executed by the Sheriff; and on failure of payment the defendant shall be imprisoned according to the tenor of the order, and shall be discharged out of custody upon payment of the amount named in the order.

74. No imprisonment under the sixty eighth Section shall operate as a satisfaction or extinguishment of any debt or demand, or cause of action, or deprive any person of any right after such imprisonment 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.

75. When any person is at the commencement of this Act in custody, in pursuance of a writ of attachment or other process in any case in which he would not be liable to be arrested or imprisoned after the commencement of this Act, such person shall be discharged from custody without payment of any fees, but his arrest, imprisonment or discharge shall not effect the creditor's rights or remedies against the lands, goods or chattels of the person imprisoned, as if such imprisonment had not taken place.

76. When any person is at the commencement of this Act in custody, as in the last Section mentioned, in any case excepted from the operation of the sixty sixth Section, such person shall be discharged from such custody without payment of any fees in case one year or more has elapsed since his arrest, and if one year has not elapsed, then at the expiration of one year from his arrest, or at the sooner determination of the period for which he is imprisoned, but the creditor shall have the same right and remedies against the lands, goods and chattels of the person imprisoned as mentioned in the last preceding Section.

77. After the commencement of this Act a person shall not be arrested upon mesne process in any action, unless the plaintiff, or some person on his behalf, in an action in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, shall at any time, when by the practice of the Court a writ for the arrest of the person might have issued, make oath, in addition to what is