

Seychelles

Imprisonment for Debt Act Chapter 96

Legislation as at 1 December 2014

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Seychelles

Imprisonment for Debt Act

Chapter 96

Commenced on 11 January 1870

[This is the version of this document as it was at 1 December 2014 to 19 January 2020.]

[Act 16 of 1969 (Mauritius); Act 7 of 1890; Act 34 of 1919; Act 23 of 1976]

1. Short title

This Act may be cited as the Imprisonment for Debt Act.

2. Imprisonment for debt abolished, except in certain cases

Imprisonment for debt in civil and commercial matters and against foreigners is abolished in Seychelles, except in the cases hereinafter provided for.

3. Caption of the body cannot be stipulated in contracts

If by any clause in any contract, whether made in Seychelles or elsewhere, it has been agreed that the conditions of the contract shall be enforced by caption of the body, such clause shall be deemed to be null and void.

4. Ordinance not to apply to the payment of fines, etc

The provisions of this Act shall not apply to fines, restitutions or costs, adjudged in criminal or correctional matters, or for contraventions of the laws of Seychelles whenever any such laws have ordered or shall order that in default of the payment of such fines, restitutions or costs, imprisonment shall take place; and the said Act shall not apply to cases of imprisonment under the stipendiary laws.

Cases when imprisonment may be decreed for the recovery of a judgment debt, in the Supreme Court.

5. Cases where civil imprisonment may be ordered

In any civil suit or action before the Supreme Court, it shall be lawful for the said court to decree that its judgments shall be enforced by imprisonment, whenever the said court shall have condemned to the payment of a sum of money or to the restitution of property any of the parties to the said suit or action, in any of the following cases:-

- (i) when a contract is annulled, as having been obtained by fraud or violence, or as having been made for the purpose of defrauding third parties;
- (ii) when damages have been given by the court as amends for a prejudice caused by a fraudulent act, or by an act of bad faith;
- (iii) when lessees of property do not produce at the expiration of their lease the cattle leased to them under a contract of mutual profit, or the farming or agricultural implements, or the chattels which have been entrusted to them, unless they prove to the satisfaction of the court that such cattle, implements or chattels have perished or are deficient by no fraud of theirs;
- (iv) when damages have been obtained on account of any fraudulent possession of property.

6. Embezzlement, etc

It shall further be lawful for the Supreme Court to decree that its judgments or orders in any civil suit or matter, shall be enforced by imprisonment, whenever the said court shall have condemned to the payment of damages, or to the restitution of money or property any person who shall have embezzled, fraudulently appropriated or employed, squandered away or destroyed, to the prejudice of the owner thereof or of any interested party whether such owner or party had kept possession or not thereof, any goods, money, merchandise, bill, acquittance, or other writing, containing or operating an obligation or discharge, which had been delivered to such person or obtained by him as a tenant, or depository or agent, or trustee, or as a guardian of a minor or interdicted person, or in any official or ministerial capacity, or for any labour, with the condition that the same be returned or produced or accounted for, or be employed for any special purpose, or for the benefit of the owner thereof, or of any party interested therein.

General dispositions

7. No imprisonment to be decreed in certain cases

Imprisonment for debt shall not be decreed in suits between husbands and wives, ascendants and descendants, and brothers and sisters.

It shall not be decreed against minors, against women, or against men who have commended their 70th year.

8. Bankruptcy and insolvency

No adjudication of bankruptcy or petition for a cessio bonorum shall operate in bar of the execution of any decree of imprisonment given by the court, in any case hereinbefore stated, provided such decree has been given prior to any vesting order under a petition of cessio bonorum.

9. Imprisonment in civil cases not to affect criminal prosecutions

None of the provisions of this Act shall prejudicially affect the right of the Attorney General to prosecute any person before any criminal court for any offence to the laws of Seychelles.

10. Limit of civil imprisonment

The imprisonment which the Supreme Court may decree under the provisions of this Act shall not exceed one month, when the award in execution of which imprisonment is decreed does not exceed Rs. 500, shall not exceed three months if the award exceeds Rs. 500 but does not exceed Rs. 1,000, and shall not exceed one year if the award exceeds Rs. 1,000.

11. Execution of the decree of the court

It shall be lawful for the court, in decreeing that its judgment shall be enforced by imprisonment, to grant a reasonable time to the debtor to satisfy the judgment.

At the expiration of such time, the Registrar of the Supreme Court shall, *ex-officio*, issue a writ or warrant for the arrest of the debtor and shall forward the same to the Commissioner of Police for execution.

The writ or warrant shall be executed by any officer or non-commissioned officer of police, in the same manner in which warrants of arrest issued by the Supreme Court are executed.

The debtor, upon his apprehension, shall as soon as possible be taken to the prison of Victoria and delivered into the custody of the chief officer of the prison.

The said chief officer shall mark upon the aforesaid writ or warrant the date and hour when the prisoner was handed over to his custody and he shall return the same to the Registrar of Supreme Court, who shall file it among the records of the court.

12. Debtor cannot be arrested on certain occasions

No judgment debtor shall be arrested-

- (i) in any church or chapel, while a religious ceremony is celebrated therein;
- (ii) in the Assembly Chambers while the People's Assembly is holding one of its sittings;
- (iii) in any house even in his own domicile, except with a warrant of a Judge in chambers;
- (iv) when called as a witness before any court or board authorised by law to summon and examine witnesses. In this case the summons of the court or board shall be a sufficient safe conduct, and the debtor shall not be arrested during the day mentioned in the summons, or during any subsequent day in which the attendance of such debtor may be required as a witness.

13. Treatment of the debtor during the time of his imprisonment

During the time of his imprisonment the debtor shall be detained in such separate part of the prison, as may, from time to time, be appointed as a debtors' ward.

He shall be permitted to receive his food and clothing from outside the prison, and, if no such food or clothing is provided for him, he shall be entitled to the usual prison rations, and to the prison clothing. He shall not be subjected to any labour, but he shall be, in every other respect, treated as an ordinary prisoner, or in such manner as may be provided for by the Prisons Act.

14. Release of debtor

No debtor imprisoned under the provisions of this Act shall be discharged from prison before the expiration of his term of imprisonment except upon an order signed by a Judge of the Supreme Court in chambers, certifying that the judgment of the court, under which the debtor was imprisoned, has been duly and properly executed, and ordering the release of the debtor.

This order shall be filed by the chief officer of the prison, among the records of the prison.

15. Rights of creditors not interfered with

The imprisonment of a debtor under the provisions of this Act shall in no way interfere with or prejudicially affect the right of his creditors to obtain the payment of their claims by the seizure or sale of the property of such debtor or by all other legal means whatsoever.

16. Repeal of laws

- (1) Title XVI of Book III of the Civil Code except with respect to such of its provisions as have been maintained in this Act is hereby repealed.
- (2) Title XV of Book V of the French Code of Civil Procedure is hereby repealed.
- (3) All laws in so far as they are contrary to or inconsistent with the provisions of this Act are hereby repealed.