

Chapter 47.
Creditors' Remedies Act (Papua) 1905.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 47.

Creditors' Remedies Act (Papua) 1905.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Creditors' Remedies Act (Papua) 1905,

Being an Act applying in and to the former Territory of Papua to extend the remedies of creditors.

1. CONSTITUTIONAL LIMITATION ON APPLICATION OF ACT.

By virtue of Section Sch. 2.6(2) (*adoption of pre-Independence laws*) of the Constitution, this Act applies in relation to the area that, immediately before Independence Day, formed the Territory of Papua.

2. ORDER FOR ARREST OF DEFENDANT.

If a plaintiff—

- (a) in an action in the National Court shows to the satisfaction of a Judge; or
- (b) in an action in a District Court shows to the satisfaction of the Magistrate,

that—

- (c) he has a good cause of action against the defendant to the amount of K60.00. or more; and
- (d) with intent to defeat the plaintiff's action the defendant, or one or more of the defendants, is about to leave the country or to proceed to a remote part of the country; and
- (e) the action will be defeated unless the defendant is immediately arrested,

the Judge or Magistrate may, if in his discretion he thinks it advisable, order the defendant to be arrested and held to bail for a sum specified in the order, not exceeding the amount claimed in the action.

3. EFFECT OF ORDER.

(1) Subject to this Act, an order, or a copy of an order, under Section 2 signed or purporting to be signed by a Judge or Magistrate is a sufficient warrant to any member of the Police Force for the arrest and detention of the defendant.

(2) Subject to Section 14, when the defendant is arrested he shall remain in custody until the determination of the action unless he—

- (a) gives security to the satisfaction of a Judge or a Magistrate of the District Court that he will satisfy any judgement given against him in the action; or
- (b) deposits the amount specified in the order to comply with the result of the action.

4. TIME FOR MAKING OF ORDER.

An order under Section 2 may be made and the defendant arrested at any time after the commencement of the action and before final judgement.

5. ARREST OF JUDGEMENT DEBTOR.

(1) Where a sum of money has been recovered by the judgement of the National Court or of a District Court and the judgement creditor shows to the satisfaction of the court before which the judgement was recovered that the judgement debt is still unsatisfied, and that—

- (a) the debt was fraudulently contracted; or
- (b) the judgement debtor conceals any goods, chattels, money, valuable securities or other property; or
- (c) the Judgement debtor—
 - (i) has income, salary or means by which he can satisfy the judgement; or
 - (ii) is about to remove any of his property or to leave the country with intent to evade payment of the judgement debt,

the court may, if in its discretion it thinks it advisable to do so, make an order that the judgement debtor be apprehended and be kept imprisoned for a term not exceeding six months.

(2) An order or a copy of an order under Subsection (1) signed by a Judge or a Magistrate of the District Court is a sufficient warrant to any member of the Police Force for the arrest and detention of the judgement debtor.

6. EXAMINATION OF JUDGEMENT DEBTOR.

(1) A creditor who has obtained a judgement in the National Court may apply to the Court or a Judge for an order that the judgement debtor be orally examined as to—

(a) his property or means available for the satisfaction of the judgement; and

(b) whether any, and if so what, debts are owing to him,

before a Judge.

(2) The National Court or Judge shall make the order for the examination of the judgement debtor and for the production of any books or documents, and the examination shall be conducted in the same manner as in the case of an oral examination under the *Evidence Act 1975*.

7. ORDER FOR ATTACHMENT OF DEBTS.

(1) On the ex parte application of a judgement creditor under Section 6 before or after the oral examination and on affidavit by the judgement creditor or his lawyer stating—

(a) that judgement has been recovered; and

(b) that it is still unsatisfied; and

(c) the amount; and

(d) that any other person is indebted to the judgement debtor and is within the jurisdiction,

a Judge may order that all debts owing or accruing from the third person to the judgement debtor be attached to answer the judgement debt.

(2) By an order under Subsection (1) or by a subsequent order it may be ordered that the garnishee appear before the Judge to show cause why he should not pay to the judgement creditor the debt, or so much of the debt as is sufficient to satisfy the judgement debt.

8. EFFECT OF ORDER FOR ATTACHMENT.

Service of an order that debts due or accruing to the judgement debtor shall be attached, or notice of the order given to the garnishee in such manner as the Judge directs, binds any such debt in the hands of the garnishee.

9. PROCEEDINGS TO LEVY AMOUNT DUE.

(1) If the garnishee does not immediately pay into court—

(a) the amount due from him to the judgement debtor; or

(b) an amount equal to the judgement debt,

and does not—

(c) dispute the debt due or claimed to be due from him to the judgement debtor; or

(d) appear on motion,

the Judge may, if he thinks fit, order execution to issue.

(2) Execution in accordance with an order under Subsection (1) may be issued, without any previous writ or process, to levy the amount due from the garnishee towards satisfaction of the judgement debt.

10. TRIAL OF LIABILITY OF GARNISHEE.

(1) If the garnishee disputes his liability, a Judge, instead of making an order that execution issue, may order that any issue or question necessary for determining the liability of the garnishee be tried or determined.

(2) When an order is made under Subsection (1)–

- (a) the same proceedings may be had in all respects as if an action were pending between the parties; and
- (b) any order or judgement made in any such proceedings may be enforced in the same manner as a judgement in an action in the National Court.

11. CLAIM OF THIRD PERSON ON DEBT.

(1) When in proceedings to obtain an attachment of debts under this Act it is suggested by the garnishee or it otherwise appears that–

- (a) the debt sought to be attached belongs to a third person; or
- (b) a third person has a lien or charge on it,

the Judge may order a summons to be issued requiring the third person to appear and state the nature and particulars of his claim on the debt.

(2) After hearing the allegations of the third person or of any person whom by the same or a subsequent order the Judge directs to be summoned, or if the third person does not appear in obedience to the summons, the Judge may order that–

- (a) execution issue to levy the amount due from the garnishee; or
- (b) an issue or question be tried or determined as provided under Section 10,

and may–

- (c) bar the claim of the third person; or
- (d) make such other order as he thinks proper on such terms with respect to–
 - (i) the lien or charge (if any) of the third person; and
 - (ii) costs,

as he thinks just.

12. DISCHARGE OF GARNISHEE.

Payment made by or execution levied on a garnishee under this Act is a valid discharge to him as against the judgement debtor to the amount paid or levied, but the proceedings may be set aside or the judgement reversed.

13. DISCHARGE ON PAYMENT OF JUDGEMENT DEBT.

A judgement debtor arrested under Section 5 is entitled to his discharge on payment of the amount of the judgement debt, and the person in whose charge he is may be empowered and required to receive the amount so paid and to transmit it to the court in which judgement was recovered.

14. APPLICATION FOR DISCHARGE.

(1) A person arrested under this Act may apply to a Judge for an order of discharge.

(2) On application under Subsection (1), the Judge may—

- (a) order the release of the applicant on such terms and conditions (if any) as he thinks proper; or
- (b) call on the plaintiff to show cause why the applicant should not be released; or
- (c) make such other order as he thinks advisable.

15. COSTS.

Costs of an application for an attachment of debts and of the proceedings arising from or incidental to the application are in the discretion of the Judge.

16. ATTACHMENT BOOK.

(1) The Registrar shall keep a debt attachment book in which entries shall be made—

- (a) of all attachments made; and
- (b) of the proceedings taken in respect of them,

with—

- (c) names, dates and statements of the amount recovered; and
- (d) any other prescribed particulars.

(2) Copies of entries made in the debt attachment book may be taken by any person on application to the Registrar.

17. EFFECT OF IMPRISONMENT.

Imprisonment under this Act does not operate as a satisfaction of a debt or cause of action.

s. 17.

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