

SECTION 2. This act shall take effect on July first, nineteen hundred and seventy-four.

Approved June 25, 1974.

Chap. 414. AN ACT FURTHER REGULATING THE APPLICATION OF SUPPLEMENTARY PROCESS PROCEEDINGS IN CIVIL ACTIONS IN THE DISTRICT COURTS TO CORPORATIONS AND CERTAIN TRUSTS.

Be it enacted, etc., as follows:

SECTION 1. Chapter 224 of the General Laws is hereby amended by striking out section 14, as appearing in the Tercentenary Edition, and inserting in place thereof the following section:—

Section 14. A judgment creditor or a person in his behalf may file in court an application for supplementary process under this chapter. Upon the filing of such an application, a summons may issue, requiring the judgment debtor to appear at a time and place named therein and submit to an examination relative to his or its property and ability to pay. Such summons may be served by an officer qualified to serve civil process and shall be served at least seven days before the return day thereof. If the debtor is a natural person, service shall be made by delivery in hand or by leaving a copy at the debtor's last and usual place of abode. If the debtor is a corporation, service shall be made by delivery in hand to, or by leaving a copy at a business office of, the president, treasurer, clerk, resident agent appointed pursuant to section forty-nine of chapter one hundred and fifty-six B, cashier, secretary, agent or other officer in charge of its business, or, if no such officer is found within the county, any member of the corporation. If the debtor is a trust with transferable shares, service shall be made in the same manner on any trustee. If due service is not made, the court may order further notice. A judgment debtor who has been arrested on mesne process or on execution, or a person in his behalf, may file such an application and cause service to be made upon the judgment creditor or his attorney of record in the action, in a similar manner, requiring the judgment creditor to appear at such examination; and upon failure of the judgment creditor to appear personally or by attorney the proceedings under this section may be dismissed. The failure of a judgment debtor personally to appear without reasonable excuse upon such summons, or at an examination otherwise appointed, or to submit to the examination as provided in section fifteen, shall constitute a contempt of court; and if the debtor is a corporation or a trust with transferable shares, the court shall treat the officer, trustee or agent served as the contemnor. Supplementary proceedings shall be in order for examination at the return day and hour set forth in the summons or further notice, but may by order of court for good cause shown be continued from time to time for examination, and may be brought up for further proceedings at such time or times, and in such manner as the court by general or special rule or order may direct.

The death of the judgment creditor shall not affect supplementary proceedings.

SECTION 2. Section 15 of said chapter 224, as so appearing, is hereby amended by striking out the first two sentences and inserting in place thereof the following two sentences:— The judgment debtor, if appearing, shall be examined on oath as to his or its property and ability to pay; provided, however, if the debtor is a corporation the person examined shall be its president, treasurer, cashier or other officer or agent in charge of the payment of debts, or if the debtor is a trust with transferable shares the person examined shall be any trustee or agent in charge of payment of debts; and such examination, if in writing, shall be signed and sworn to by the debtor if a natural person, or by the officer, trustee or agent in charge of payment of debts appearing in its behalf, if a corporation or trust with transferable shares, and filed with the court. Either party may introduce additional evidence, and if the debtor fails to appear at the examination and is a natural person, the examination may proceed and orders may be made in such debtor's absence.

SECTION 3. Said chapter 224 is hereby further amended by striking out section 16, as appearing in section 1 of chapter 292 of the acts of 1943, and inserting in place thereof the following section:—

Section 16. If the court finds that the debtor has no property not exempt from being taken on execution, and is unable to pay the judgment, in full or by partial payments, or if the creditor fails to appear at the examination, personally or by attorney, the proceedings may be dismissed. If the court is satisfied that the debtor has property not exempt from being taken on execution, the court may order him or it to produce it, or so much thereof as may be sufficient to satisfy the judgment and costs of the proceedings, so that it may be taken on the execution; or may order him or it to execute, acknowledge if necessary, and deliver to the judgment creditor, or to a person in his behalf, a transfer, assignment or conveyance thereof; or if the debtor is able to pay the judgment in full or by partial payments the court may, after allowing the debtor, if a natural person, out of his income an amount not less than twenty dollars each week for the support of himself and family if he be the head of a family, order the debtor to pay the judgment and costs of the proceedings in full or by partial payments from time to time; or the court may make an order combining any of the orders above mentioned. The court may prescribe the times, places, amounts of payments, forms of instruments and other details in making any of the orders above mentioned. The court may at any time renew, revise, modify, suspend or revoke any order made in any proceedings under the provisions of this chapter. Failure, without just excuse, to obey any lawful order of the court in supplementary proceedings shall constitute a contempt of court; and if the debtor is a corporation, the court shall treat the president, treasurer, cashier or other officer or agent in charge of the payment of debts as the contemnor; and if the debtor is a trust with transferable shares, the court shall treat any trustee or agent in charge of the payment of debts as the contemnor.

SECTION 4. The first paragraph of section 18 of said chapter 224, as appearing in the Tercentenary Edition, is hereby amended by inserting after the first sentence the following sentence:— The term debtor, as used in this section shall mean, if the debtor is a corporation or a trust with transferable shares, the contemnor as defined in section fourteen or section sixteen.

SECTION 5. Said chapter 224 is hereby further amended by striking out sections 19 to 22, inclusive, as so appearing, and inserting in place thereof the following four sections:—

Section 19. At any time pending the examination of the defendant or debtor, the plaintiff or creditor or a person in his behalf may allege charges, to wit:—

First, That, since the debt was contracted or the cause of action accrued, the defendant or debtor has fraudulently conveyed, concealed or otherwise disposed of the whole or a part of his or its property, with intent to secure it to his or its own use or to defraud his or its creditors; or

Second, That, since the debt was contracted or the cause of action accrued, the defendant or debtor has hazarded his or its money or other property to the value of one hundred dollars or more in some kind of gaming prohibited by the laws of this commonwealth; or

Third, That, if the action was founded on contract, the defendant or debtor contracted the debt with intent not to pay it.

Such charges shall be in writing, subscribed and sworn to by the plaintiff or creditor or by a person in his behalf, and shall be considered in the nature of an action at law, to which the defendant or debtor may plead that he or it is guilty or not guilty, and the court may thereupon hear and determine the same. The plaintiff or creditor shall not upon the hearing give evidence of a charge which is not made or filed as herein provided, nor of a fraudulent act of the defendant or debtor which was committed more than three years before the commencement of the original action.

If the court finds that the defendant or debtor, if a natural person, is guilty of the charges so alleged, he shall be sentenced to imprisonment in the common jail for not more than one year, and if the defendant or debtor is a corporation or trust with transferable shares and found guilty of the charges so alleged, it shall be fined not more than one thousand dollars; and the proceedings for the examination of the defendant or debtor as to his or its property or ability to pay may be continued by the court to enable the defendant or debtor to appear.

A party aggrieved by a judgment rendered under this section may appeal therefrom to the superior court in the same manner as from a judgment of a district court in civil actions. If the plaintiff or creditor appeals, he shall before allowance thereof recognize with sufficient sureties to enter and prosecute his appeal, to file therewith a copy of all the proceedings on said charges, and to pay all costs if judgment is not reversed. If the defendant or debtor appeals, he or it shall recognize in like manner, and with the further condition that if final judgment is against him, if a natural person, he will, within thirty

days thereafter, surrender himself to be taken on execution and abide the order of the court, or, if a corporation or trust with transferable shares, it will, within like time, pay the fine previously ordered, or pay to the plaintiff or creditor the amount due him upon the claim or execution as the case may be. In the superior court trial shall be by a jury or, with the consent of both parties, by the court.

Section 20. If at the examination of the debtor it appears that after service of supplementary process, the debtor has made a payment of money or a conveyance, assignment or transfer of property which is not exempt from being taken on execution, with intent to prevent it from being transferred or paid to the creditor or applied to the satisfaction of the judgment, and the court so certifies, the debtor or, in the case of a corporation or trust with transferable shares, its officer, trustee or agent as provided in section sixteen, may in the discretion of the court be committed as for a contempt. The payment by the debtor of a debt for necessities, or a debt due on any judgment on which he or it has previously been summoned to appear in supplementary proceedings, or a reasonable fee for counsel relative to the proceedings, shall not render him or it liable for contempt.

Section 21. Supplementary proceedings shall be dismissed, and if the debtor or, if a corporation or trust with transferable shares, its officer, trustee or agent, has been imprisoned, he or it shall be discharged from custody, on payment in full to the creditor or his attorney of the amount due on the judgment, with all the costs of the proceedings, or, unless the judgment is upon a bond or recognizance given under the provisions of this chapter, on the giving to the creditor or his attorney of a bond, payable to the creditor, with sufficient surety or sureties, approved by the creditor, his attorney or the court, conditioned that the debtor shall pay to the creditor the amount due on the judgment, with all the costs of the proceedings, within sixty days after the date of giving such bond or within such longer time as the court may allow.

Section 22. The court may issue a writ of habeas corpus to bring before it for examination or disposition or for the purpose of giving bond, a defendant or debtor or, in the case of a corporation or trust with transferable shares, its officer, trustee or agent who has been imprisoned under the provisions of this chapter.

Approved June 25, 1974.

Chap. 415. AN ACT PROVIDING FOR THE ACCEPTANCE BY CITIES, TOWNS AND FIRE DISTRICTS OF THE LAW RELATIVE TO THE COMPENSATION OF POLICE AND FIRE CHIEFS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for local acceptance of the law establishing salaries for police and fire chiefs in municipalities and fire districts of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.