

Bring back debtors' prison' ? Contempt of court and other sanctions for unpaid judgments or awards

April 7, 2021 Robert Blackett

PRACTICES Litigation, International Arbitration

Consider the following scenario. A wealthy individual (call him Crassus) has been ordered to pay money, either by an English court or by an arbitral tribunal, with the English court then having entered a judgment in the terms of the award. Crassus does not pay despite having the means to do so. Crassus's ample assets are all beyond the creditor's reach in Crassus' home country of Tinpotia, a kleptocracy where an arbitral award / English judgment cannot be enforced against him. Crassus will not pay, but has complied with all the other court orders against him. So, for example, he complied with an order that he provide details of all his assets (they're in Tinpotia) and a post-judgment worldwide freezing injunction, requiring that he not dispose of, deal with or diminish the value of his assets up to the judgment amount (he's duly kept the relevant quantity of assets languishing in Tinpotia).

Crassus however loves visiting England. Is he at risk of being arrested and imprisoned for his brazen contempt of our courts in refusing to pay as he has been ordered to? He is not. He could, however, have been imprisoned if he had breached orders to disclose his assets or orders to refrain from moving them, but he can flout the order which matters most - the one requiring him to actually pay the money because English law does not allow people to be arrested and imprisoned for failing to pay such debts. Historically 'can pay' debtors like Crassus could have been imprisoned for such contempts. But Parliament did away with that power in 1970. This article argues that the reasons for having done away with that power were unsound, and it should be resurrected, giving English courts a power to arrest such 'can pay' debtors and commit them to prison until they pay, subject only to their creditors being prepared to foot the bill.

An unfortunate history

Up until the 19th century judgment creditors could easily have people who failed to pay court judgments locked up. They would stay in prison until they died, paid their creditors in full, or their debts were forgiven. Today, the prison population in England and Wales is around 78,000 out of a population of 59 million (0.13%). In the 18th century the prison population was much smaller. In 1774, for example, the prison population was around 4,000 people out of a population of six million (0.07% so around half the present level in relative terms). The majority of those prisoners were people who had been imprisoned for having failed to pay debts, with around 10,000 people each year being imprisoned on that ground. Imprisonment for crime, on the other hand, was relatively rare since the punishments for any but the most minor offences were hanging, flogging or transportation to Australia.

Read the full article [here](#).