



THE

Hobart Town Gazette.

PUBLISHED BY AUTHORITY.

HIS Excellency The Lieutenant Governor directs, that all Public Notifications which may appear in this Paper with any Official Signature thereunto affixed, shall be considered as Official Communications made to those Persons to whom they may relate.

By Command of His Excellency,

JOHN BURNETT, Colonial Secretary.

VOLUME XV.)

SATURDAY, MAY 8, 1850.

(NUMBER 728.)

A N N O U N D E C I M O

Georgii 17 Regis.

No. 4.

AN ACT for the Relief of certain Insolvent Debtors.

Whereas there are several persons now under imprisonment in this Island for debt, and it is expedient to make provision under proper restrictions, for the relief of such of those persons as shall have been so under imprisonment three months or upwards, and shall appear to be insolvent, and be willing to deliver up all their effects for the benefit of their creditors:—

PREAMBLE.

Be it therefore Enacted By His Excellency Colonel GEORGE ARTHUR Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that any person who at the time of the passing of this Act shall be under imprisonment for debt, whether in execution or on mesne process, and who shall then have been under such imprisonment for a period of three months or upwards, may apply to the Supreme Court of Van Diemen's Land, by petition in writing, setting forth the Gaol wherein he shall be then confined,—the date when he was first detained in custody,—the name of the party by whom, and the cause and amount for which, he shall at the

Persons imprisoned three months or upwards may apply to the Court by petition to be declared insolvent.

time of presenting such petition be detained,—and that he the said petitioner or insolvent;—and praying, that he may be declared insolvent by the Court, and that his effects may be distributed for the benefit of his Creditors, and that he may upon surrendering the same be discharged from such imprisonment, according to the provisions of this Act: which petition shall be subscribed by the prisoner, and after presentation thereof, and an order thereon obtained as next mentioned, be by the said petitioner filed in the said Court, of record.

II. AND be it enacted, that with such petition, or within fourteen days after its presentation, the petitioner shall in like manner present to the said Court a Schedule, containing a full true and particular account and description, of all the persons to whom such petitioner shall then be indebted, or who to his knowledge or belief shall claim to be his creditors; together with the nature and amount of their debts and claims respectively, and the *bona fide* considerations of or for such debts and claims respectively, distinguishing admitted debts or claims, from debts or claims disputed, with the additions and places of abode of all such creditors, or persons claiming to be creditors respectively; and a full true and particular account and discovery, of all the estate and effects real and personal, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, which such petitioner, or any person in trust for him, or for his use or benefit in any manner, shall have been, or shall be seized or possessed of, or interested in, or entitled unto, either solely or jointly with any other person or persons, or which such petitioner, or any person in trust for him or for his benefit, either solely or jointly with any other person or persons, at the time of his first imprisonment, or at any time since, shall have had, or, at the time of the presentation of such Schedule, shall have, any power to dispose of or charge for the benefit of him the said petitioner, together with a full true and particular account of all debts at those times respectively, owing to such petitioner, or to any person in trust for him, or for his benefit, either solely or jointly with any other person, and the names additions and places of abode of the persons from whom such debts shall be or have been due, and in what manner all or any part of such estate or effects real or personal have been applied or disposed of since the time of such petitioner's first imprisonment, and which or what part of such estate or effects, or any of them, shall have been in any manner conveyed, assigned, disposed of, charged, or encumbered in any manner whatsoever, and when and in what manner, and for what consideration, and to whom, and for whose benefit in particular, and which and what part or parts of such estate and effects shall, at the time of the presentation of such Schedule, be in any manner applicable to the discharge of the demands of his creditors, or can be made available for their benefit; which Schedule shall be fairly written, without erasures, and be subscribed by the petitioner, in the presence of two witnesses, and after presentation thereof to the said Court, as aforesaid, be by the petitioner filed in the said Court, of record.

A Schedule to be also filed—and what such Schedule is to contain.

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III. AND be it enacted, that thereupon, or as soon after as conveniently may be, a day and place shall be appointed by the Court for the hearing of the matters of the said petition, and the Court shall at the same time order notice to be given by the petitioner, or some person on his behalf, by advertisement in one or more of the Public Newspapers, and in such other manner as the Court may in each case think fit, to the several creditors of the petitioner or their agents, of the presentation and filing of such petition and schedule, and of the day and place so appointed; and in the meantime, if it appear to the Court to be expedient, it shall be lawful for the said Court to appoint some officer of the Court, or other person, as and to be assignee of the estate and effects of the said petitioner, either permanently or provisionally only, as to the said Court shall seem proper.

A day to be appointed, for the hearing of the petitions.

IV. AND be it enacted, that upon the day so appointed by the Court for the hearing of such petition, and upon every or any day or days to which the matter may from time to time be adjourned, it shall be lawful for the Court, until the making of the order of discharge hereinafter mentioned, to cause the petitioner to be brought before it, by an order or orders made for that purpose, and to be examined upon oath touching the truth of the several matters contained in his said petition and schedule, and touching ~~such other matters in respect of his insolvency, or alleged insolvency,~~ as the Court may think material or proper to be inquired into:—Provided always, that if upon any such hearing it shall appear, to the satisfaction of the Court, that the prisoner is in fact insolvent, then the Court shall declare him to be insolvent accordingly, and shall thereupon nominate and appoint one or more of his creditors, as to the said Court may seem proper, as and to be the assignee or assignees of the estate and effects of such insolvent, in trust for all the creditors of such insolvent, under the provisions of this Act.

Proceeding upon the hearing.

V. AND be it enacted, that every such appointment, and every other appointment by the Court, of any assignee or assignees under this Act, shall have the effect of immediately transferring to and vesting in such assignee or assignees, subject to the orders of the Court, in trust for the creditors, and thereupon and thenceforth of discharging from any assignee or assignees (if any) who shall have been previously appointed, all and every the estate and effects, both real and personal, rights, duties, claims, choses in action, interests, powers and property whatsoever, which at the time of the presentation of the said petition shall have belonged, or from thence until the making of the order of discharge hereinafter mentioned shall belong, to such insolvent, either solely or jointly with any other person, or in or to which at those times he shall have been, or shall be in any manner interested or entitled, in reversion, remainder, or expectancy, together with all deeds and writings respecting the same; and every such assignee or assignees, during the term of his or their appointment, shall have such and the like means of collecting, recovering and disposing of the said estate, effects and property, and of enforcing the said rights, claims and interests, and of executing the said powers, in his or their name or names, as such assignee or assignees, as the insolvent himself would or might have had if

General effect of appointment of Assignees.

he had not been declared insolvent. Provided always, that it shall be lawful for such assignee or assignees to permit the insolvent to retain to his own use, such of the wearing apparel, bedding, and other necessaries, of such insolvent and his family, not exceeding in the whole the value of twenty pounds, as such assignee or assignees shall think fit: and all such articles so permitted to be retained, shall thenceforth be exempted from the operation of this Act; any thing in this Act contained to the contrary, notwithstanding.

VI. AND be it enacted, that upon every such day of hearing, it shall be lawful for the insolvent and any of his creditors, to be heard before the said Court, either in person or by counsel, in support of or in opposition to his petition, and the whole matter and substance of such petition shall or may be inquired into and examined by the Court, or by any such creditor or creditors, as well respecting the claims of the creditors who shall be absent, as of those who shall be present; and it shall be lawful for the Court, upon any such hearing, or at any time within six months after the presentation of the insolvent's petition, upon the application of any assignee or creditor of such insolvent, as often as occasion may require, to summon such insolvent, or his wife, or any other person who shall be known to suspected to have any of the estate or effects of such insolvent in his or her possession or control, or any person whom such assignee or creditor shall believe to be indebted to the insolvent, or to be capable of giving information to enable the Court, or the assignees, more easily to discover or obtain possession of the estate and effects of such insolvent, and to examine the said insolvent, or his wife, or such other person, as aforesaid, before the said Court, in the same way as any other witness may be examined before the said Court, in any action at Law:—Provided, that where any such person shall reside more than sixty miles from the said Court, or shall be incapable of attending, by reason of sickness or infirmity, it shall be lawful for the Court to permit interrogatories to be exhibited to such person for his or her examination and cross-examination, upon oath, before any person to be by the Court for that purpose appointed.

VII. AND be it enacted that the assignee or assignees for the time being of every such insolvent, shall once in every three months render into the Court a just and true account, in writing, of all the effects, monies and property, collected, received, or possessed by him or them, as such assignee or assignees, and of the sale, disposal, appropriation, or distribution thereof, respectively, and every such account shall be signed by the assignee or assignees so rendering the same, and be afterwards filed in the said Court, of record; and it shall be lawful for the said Court at any time, upon any application of, or complaint made by, the insolvent, or any person interested in the due distribution of such insolvent's estate, to remove any assignee or assignees so appointed, for neglect of duty in that or any other respect, and to appoint another or other assignee or assignees in his or their place and stead, and also to appoint a new assignee or new assignees, in the place and stead of any assignee or assignees who may have died or departed from the Colony; and no action, suit or proceeding, re-

Court to hear insolvent and creditors, and to examine witnesses, &c.

Assignees to render Accounts—Provision for appointing new Assignees.

lative to the affairs of such insolvent's estate, shall abate, or be otherwise prejudiced, by reason of any such death, departure, or new appointment, but the same may be continued by or in the name or names of the surviving or continuing assignee or assignees, or the assignee or assignees so newly appointed.

VIII. AND be it enacted, that, if upon any such hearing as aforesaid, it shall appear, to the satisfaction of the said Court, that the insolvent hath made a full and true discovery, disclosure and surrender of all his estate and effects, and if he shall in all other respects, touching the matters of his petition and schedule, have conformed himself to the orders of the Court, then the said Court shall cause such insolvent to execute, before the Court, a Warrant of Attorney, authorising the entering up of a judgment against such insolvent in the said Court, at the suit of his assignee or assignees, for the amount of the debts which shall appear to be then due by such insolvent, and upon such Warrant of Attorney being duly executed, the said Court shall (except in the cases next hereinafter mentioned) make an order for the immediate discharge of such insolvent from his imprisonment, which order of discharge, when made, shall exempt the person of such insolvent from all further or future imprisonment, or arrest, at the suit of any creditor named in the schedule of such insolvent, for, or in respect of any debt or sum of money which shall be therein admitted to be due to such creditor, or which shall be included in or secured by such Warrant of Attorney.

When the Court shall grant an order for discharge of insolvent.

IX. PROVIDED always, and be it enacted, that, in case it shall appear to the Court, that the insolvent hath contracted any debt fraudulently, or by means of any breach of trust or false pretence, or without having had any reasonable or probable expectation at the time when the debt was contracted of paying the same, or hath put any of his creditors to unnecessary expense, by any vexatious or frivolous defence or delay in any suit for recovering any such debt, or hath purposely destroyed, or wilfully prevented, or withheld the production of any book, paper or writing, subject to investigation and proper to have been produced or investigated under the provisions of this Act, for the purpose of more clearly elucidating his affairs, or hath kept or caused to be kept any false book of account, or made any false entry in, or withheld any entry from, or wilfully falsified any book of accounts, or hath given any undue preference to any of his creditors, then or in any such case, it shall be lawful for the said Court, in its discretion, according to the nature of the case, to postpone the making of such order of discharge as aforesaid, for any period, not exceeding three years from the time of the presentation of such insolvent's petition.

Court may in certain cases postpone the order of discharge

X. AND be it enacted, that judgment may at any time be entered up against the insolvent by virtue of such Warrant of Attorney as aforesaid, which judgment shall have the force and effect of a recognizance; and whenever it shall appear to the said Court, that the insolvent is of ability to pay the amount of the debts for which such Warrant of Attorney shall have been so given, or any part thereof, or that he is dead, leaving assets for that purpose, the Court may, upon the application of the assignee or assignees of such insolvent for the time being, permit execution to be taken out upon

How far the after acquired property of the insolvent to remain liable.

such judgment, against any estates or property which which may have been acquired by such insolvent after his discharge, for such sum of money as under all the circumstances of the case, the Court shall think it expedient to order such sum to be distributed rateable amongst the creditors, and so from time to time, according to the discretion of the Court, until the whole of the debts secured by or included in such Warrant of Attorney shall be fully satisfied, together with such costs as the Court shall think proper; and no *scire facias* shall be necessary to revive such judgment:—Provided that, in case any such application shall appear to the Court to be vexatious or ill-founded, it shall be lawful for the Court, in its discretion, to dismiss the same with costs.

In what case, the Insolvent's future property not to be liable.

XI. PROVIDED always and be it enacted, that, if at any time within three months after the making of any such order of discharge as aforesaid, the majority, in number and in value, of the creditors of the insolvent shall, by writing under their hands, attested respectively by two witnesses, consent absolutely to release and forego all claim to and interest in the future or after acquired property of such insolvent, then, upon the production to the Court of such written consent, and upon affidavit at the same time made and filed by the insolvent, that such consent was fairly obtained by him, and without any money or other consideration paid or given or to be paid or given, or contract or security of any kind entered into, by such insolvent, or to the best of his knowledge and belief by any other person, to persuade or induce any creditor to sign or give such consent, the Court shall direct the Warrant of Attorney executed by such insolvent, to be given up to him to be cancelled, and the judgment (if any) entered up thereon to be vacated, and thenceforth every debt included in or secured by such Warrant of Attorney or judgment, shall be and be deemed absolutely released and discharged, to all intents and purposes whatsoever:—Provided that no creditor signing such consent as aforesaid, whose debt is below twenty pounds, shall be reckoned in number, but his debt only shall be computed in value.

In what cases order of discharge may be revoked.

XII. PROVIDED always and be it enacted, that if at any time within twelve months after the making of any such order of discharge as aforesaid, it shall, upon the application of any creditor of the insolvent, appear to the satisfaction of the Court, that such insolvent hath obtained such order of discharge by or through the means of any fraud, deceit, concealment, misrepresentation, or undue practice whatsoever, it shall be lawful for the Court to declare such order of discharge to be absolutely null and void; and thereupon and thenceforth it shall be lawful for every creditor of such insolvent, to proceed against such insolvent, and against all his then unapplied, and all his future or after acquired, property and effects, the same as if such order of discharge had never been obtained; and any creditor, at whose suit such insolvent shall have been detained in custody at the time of the making of such order of discharge, may apply to the Court to remand such insolvent again into custody, on the original process from which he shall have been so discharged; and the said Court shall have power to remand such insolvent accordingly, by a warrant to be made and issued by the Court for that

purpose, which warrant shall be a sufficient authority for the arrest and detention of such insolvent upon such original process, the same in all respects as if no such order of discharge had been made:—Provided that, in case any such application shall appear to the Court to be vexatious or ill-founded, it shall be lawful for the Court in its discretion to dismiss the same with costs.

XIII. AND be it enacted, that if any such insolvent, or person praying to be declared insolvent under the provisions of this Act, shall wilfully embezzle, secrete, conceal, or omit to discover, any part of his real or personal estate or effects above the value of two pounds, with intent to defraud his creditors, or to diminish the funds or amount to be distributed amongst them, or shall knowingly and wilfully insert or omit, or cause to be inserted or omitted in his schedule, any matter or thing whatsoever, contrary to or for the purpose of concealing the truth, such insolvent or petitioner shall be deemed guilty of felony, and shall be liable to be imprisoned for any term not exceeding three years, or to be transported for any term not exceeding seven years, as the Court shall think fit to order:—And any such insolvent or petitioner, or any other person, who shall upon any occasion wilfully forswear himself, in any oath taken under the provisions of this Act, shall suffer such punishment as by law may be inflicted for wilful and corrupt Perjury.

False swearing to be subject to the penalties of perjury.

XIV. AND be it enacted, that, in all cases in which no provision or no sufficient provision in that behalf is by this Act made, it shall be lawful for the said Supreme Court, from time to time, to make and prescribe all such rules and orders, concerning the discovery, collection, disposal and distribution, of the estate, debts and effects of the insolvent, and the manner of proceeding before the said Court under this Act, and otherwise for facilitating or more fully carrying into effect the objects of this Act, as to the Court shall seem expedient; and such rules and orders from time to time to revoke or alter, as to the Court shall appear to be requisite; and all rules and orders, so made and prescribed, shall be of the same force and effect as if they had been inserted in this present Act:—And the said Court shall in all cases whatsoever, of applications made to, or proceedings had or taken before, or by authority of, the said Court, have full power to award or refuse costs, at its discretion, such costs to be paid out of the insolvent's estate, or by and to such party or parties, as the Court shall in each case think fit to order.

The Court may make rules, and award costs.

XV. PROVIDED always and be it enacted, that this Act shall not extend to or affect any debt or sum of money due to His Majesty, or to any damages recovered in any action for Criminal Conversation, or Seduction, or Breach of Promise of Marriage, or for a Malicious Prosecution, or for Libel, slander, or any other malicious injury, or to any costs recovered in any such action.

Certain cases, to which the Act is not to extend.

XVI. AND whereas by an Act of Parliament, passed in the fourth year of the Reign of His Majesty, intituled "An Act to provide until the first day of July, one thousand eight hundred and twenty-seven, and until the end of the next Session of Parliament, for the better administration of Justice in New South Wales and Van Diemen's Land, and for the more

G. 4, c. 96
secs. 72, and 73

* 9 G. 4, c. 83,
sec. 39.

Provision with
respect to per-
sons declared in-
solvent before
1st March, 1829.

“ effectual Government thereof, and for other purposes relating thereto,” certain provisions were made for declaring Insolvencies and distributing the effects of insolvent persons in this Island and for granting certificates to such insolvents:—And whereas the said Act of Parliament, after having been continued for a limited period by another Act of Parliament passed for that purpose, was repealed by an Act of Parliament, passed in the ninth year of the Reign of His Majesty, intituled “ An Act to provide for the administration of Justice in New South Wales and Van Diemen’s Land, and for the more effectual Government thereof, and for other purposes relating thereto:—And whereas, before the first day of March, one thousand eight hundred and twenty nine, [on and from which day such repeal took effect] certain persons were duly declared insolvent under the said in part recited provisions of the said first mentioned Act of Parliament, and it is expedient to remove doubts as to the effect of such repeal upon those cases:—Be it therefore and it is hereby declared and enacted, that, with respect to every person who shall have been so declared insolvent, under the said in part recited provisions of the said Act of the fourth year of the Reign of His Majesty, at any time before the said first day of March, one thousand eight hundred and twenty nine, and with respect to the estate, debts and effects of every such insolvent, and the discovery, collection, sale and distribution thereof, and with respect to any certificates granted, or to be granted, under the said in part recited provisions, to any such insolvent the said provisions of the said Act shall be, and be deemed to be and to have, been, and shall continue, in full force, and the same proceedings may hereafter be had and taken under the said in part recited provisions of the said Act, and every such certificate shall have the same effect, as if the said last mentioned Act of Parliament, of the ninth year of the Reign of His Majesty, had not been passed, but the said first mentioned Act had continued and were now in all respects unrepealed and subsisting.

GEORGE ARTHUR,

*Passed the Legislative Council
this 19th day of April 1830.*

W. T. PARRAMORE,
Clerk of the Council.