



ANNO TERTIO  
VICTORIÆ REGINÆ.

No. 1.

*By His Excellency, SIR JOHN FRANKLIN, Knight  
Commander of the Royal Hanoverian Guelphic  
Order, Knight of the Greek Order of the Re-  
deemer, and a Captain in Her Majesty's Royal  
Navy, Lieutenant-Governor of the Island of Van  
Diemen's Land and its Dependencies, &c.*

*AN ACT to make provision for the more effectual distri-  
bution of Insolvent Estates.*

**W**HEREAS it is expedient to repeal the laws at present in existence in this Island relating to the distribution of Insolvent Estates and to comprise as far as it may be practicable in distinct ordinances the various subjects included in the said Acts—**BE IT THEREFORE ENACTED** by His Excellency Sir JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies by and with the advice of the Legislative Council that from and after the first day of August one thousand eight hundred and thirty-nine the Act of this island passed in the sixth year of the reign of His late Majesty intituled "*An Act to provide for the distribution of Insolvent Estates*

*Amended in substance  
by 5 Vict 11.6  
of 20th July 1841  
as to Section 92.*  
PREAMBLE.

*Act 6 W. 4 No. 10 repealed.*

Act 2nd Victoria No. 29  
repealed.

and for the amendment in other respects of the Law of Debtor and Creditor" and also an Act passed in the second year of the reign of Her present Majesty intituled "*An Act for the further amendment of the Law of Debtor and Creditor*" shall be and the same are hereby repealed—*Excepting always* as to offences committed and matters or things done before the day on which this Act comes into operation which shall be dealt with respectively as if this present Act had not passed.

II.—AND WHEREAS it is highly desirable that effectual provision should be made for the protection of the unfortunate debtor against the vindictiveness of an angry or disappointed creditor and it is equally desirable that ample means for the punishment of the dishonest debtor should be given—*And whereas* it is also desirable that persons who have become insolvent should if imprisoned be forthwith released therefrom on delivering up the whole of their property for distribution amongst their creditors and that persons who have also become insolvent but who have not been in prison should upon a like surrender of their property become not liable to imprisonment—*And whereas* great hardship is frequently suffered by poor persons in consequence of imprisonment for debts to a small amount without producing thereby any adequate benefit to their creditors and it is expedient that a remedy should be provided against the prolonged continuance of such last-mentioned imprisonment—**BE IT THEREFORE ENACTED** by His Excellency Sir JOHN FRANKLIN Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that it shall be lawful for the Lieutenant-Governor at any time or times after the commencement of this Act to issue a commission or commissions under the seal of the Colony thereby appointing any two persons as and to be commissioners under this Act.

Lieutenant-Governor to appoint two commissioners under this Act.

III.—AND BE IT ENACTED that each of the said commissioners shall before proceeding to execute the duties by this Act imposed upon him take and subscribe before one of the judges of the Supreme Court who is hereby authorised to administer the same the oath the form whereof is contained in the schedule to this Act annexed marked A.

Style of commissioners.

IV.—AND BE IT ENACTED that the commissioners so appointed shall be styled respectively the commissioner of Insolvent Estates for Hobart Town and the commissioner of Insolvent Estates for Launceston and that the jurisdiction of the commissioner for Hobart Town shall extend to and include the several police districts of Hobart Town Richmond New Norfolk and Oatlands and the jurisdiction of the commissioner for Launceston shall include the police districts of Launceston Norfolk Plains and Campbell Town.

Jurisdiction of commissioners.

V.—AND BE IT ENACTED that the commissioners when so appointed shall and they are hereby authorised and empowered to hear and determine within their respective jurisdictions all matters in insolvency

under this Act and that the said commissioners respectively acting under the powers of this Act may adjourn any meeting under this Act as often as to the said commissioners respectively it may appear necessary and may administer oaths and examine all parties and witnesses on oath for the purposes of this Act and shall have the same powers of compelling the attendance of witnesses and of requiring and compelling the production of books papers and writings as are now possessed by the Supreme Court of this Island and that the said commissioners respectively shall have the power of committing all persons guilty of any contempt to the said commissioners respectively to the gaol of Hobart Town or Launceston according to the jurisdiction of the commissioners respectively.

VI.—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 either of the said commissioners appointed under this Act from time to time either upon application in a summary way made for that purpose or without any such application to make and prescribe all such rules and orders either generally and applicable to all cases or specially and for any particular case only concerning the examination of witnesses or of any insolvent or insolvents under this Act the proof of debts the collection and distribution of the debts and effects of the insolvent and the manner of proceeding before or applying to either of the said commissioners under this Act and otherwise for facilitating or more fully carrying into effect any or either of the several objects of this Act as to either of the said commissioners shall seem expedient and such rules and orders from time to time to revoke or alter as 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—*Provided always* that all such general rules and orders shall be concurred in by the two commissioners and shall previously to their coming into operation be published in the Hobart Town Gazette by the Colonial Secretary by command of the Lieutenant-Governor.

Commissioners may make rules.

Such rules of equal force with this Act.

VII.—AND BE IT ENACTED that it shall be lawful for the commissioners of Insolvent Estates respectively each within his own jurisdiction upon the petition in writing of any person whatsoever whether then in custody for debt or not setting forth that he is insolvent and desirous of surrendering his estate for the benefit of his creditors to direct such person to appear before him to be examined touching such alleged insolvency and also to produce such proof thereof by affidavit or otherwise as to the said commissioner shall seem fit.

Petition of insolvent.

VIII.—AND BE IT ENACTED that the substance of every such examination shall be taken down at the time by the commissioner and shall be kept by him for purposes of future reference.

Examination to be taken in writing by the commissioner.

IX.—AND BE IT ENACTED that after proof of such insolvency made to the satisfaction of the commissioner before whom such examina-

tion of the petitioner shall have been had it shall be lawful for the said commissioner to declare such petitioner insolvent accordingly and thereupon to appoint some proper person as and to be the provisional assignee of the estate and effects of such insolvent.

Provisional assignee.

Commissioner may order six months' wages of servants or clerks of insolvent.

X.—PROVIDED ALWAYS AND BE IT FURTHER ENACTED that when any insolvent shall have been indebted at the time of the declaration of insolvency against him to any servant or clerk of such insolvent in respect of the wages or salary of such servant or clerk it shall be lawful for the commissioner upon proof thereof to order so much as shall be so due as aforesaid not exceeding six months' wages to be paid to such servant or clerk out of the estate of such insolvent and such servant or clerk shall be at liberty to prove under the insolvency for any sum exceeding such last mentioned amount.

Apprentices discharged from their indentures.

XI.—AND BE IT ENACTED that where any person shall be an apprentice to an insolvent at the time of the declaration of insolvency such declaration of insolvency shall be and enure as a complete discharge of the indenture or indentures whereby such apprentice was bound to such insolvent and if any sum shall have been really and bonâ fide paid by or on the behalf of such apprentice to the insolvent as an apprentice fee it shall be lawful for the commissioner upon proof thereof to order any sum to be paid to or for the use of such apprentice which he shall think reasonable regard being had in estimating such sum to the amount of the sum so paid by or on behalf of such apprentice to the insolvent and to the time during which such apprentice shall have resided with the insolvent previous to the declaration of insolvency.

Deceased persons and copartnerships.

XII.—AND BE IT ENACTED that the like proceedings may be had and taken and the like appointment of a provisional assignee be made with respect to the estate and effects of any person deceased or any person by law incapable of administering his estate upon the petition of the person or persons legally invested with the actual administration of any such estate setting forth the insolvency of such estate or with respect to the estate and effects of any copartnership carrying on business within this colony upon the petition of the greater number of the members of such copartnership residing within the colony setting forth the insolvency of such copartnership and the several provisions of this Act shall in all other respects extend equally to the estate and effects of every such deceased or incapable person and of every such copartnership and to the several members thereof as to other insolvent estates and insolvents.

Effect of appointment of assignees.

XIII.—AND BE IT ENACTED that every such appointment and every other appointment of any provisional or permanent assignee or assignees under this Act shall have the effect of immediately divesting from the insolvent and vesting absolutely in such assignee or assignees and thereupon upon divesting from the assignee or assignees (if any) previously appointed subject to the order of the commissioner in trust for

the creditors all and every the estate and effects both real and personal rights duties claims choses in action interests powers and property whatsoever then belonging or which from thence until the making of the order of discharge of the insolvent 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 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 appointment shall have the same 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 as the insolvent himself would have had if not declared insolvent.

XIV.—AND WHEREAS it is expedient that insolvencies may also in certain cases be declared at the instance of any creditor—*Be it enacted* that in case any person resident in this colony shall commit either of the acts hereinafter specified as acts of insolvency it shall be lawful for either of the said commissioners upon the petition in writing of any creditor or creditors of such person to the amount or amounts hereinafter mentioned to declare such person insolvent and thereupon to appoint some person as to either of the said commissioners shall seem proper as and to be the provisional assignee of the estate and effects of such insolvent.—*Provided* that nothing in this section shall extend to any officer in the army or navy serving in this colony upon full pay.

Petition by a creditor.

*not by G. L. Carter C.*  
*see sec. 82.*

Commissioner to appoint provisional assignee.

XV.—PROVIDED ALWAYS that before any such insolvency shall be so declared the several allegations of such petition shall be inquired into in such manner or such reasonable proof of the said allegations shall be made either by affidavit or examination of the petitioning creditor or otherwise as the said commissioner by whom the matter of the petition is inquired into shall in any case think proper to direct—*And* for the purposes of this Act “insolvency” shall be understood to mean the inadequacy of the funds and property of the debtor to the payment of his debts but so nevertheless as that the existence of any act of insolvency shall be received as presumptive evidence of such insolvency.

Proviso.

Reasonable proof of the allegations to be given.

Term insolvency defined.

XVI.—AND BE IT ENACTED that the like proceedings may be had and taken and the like appointment of a provisional assignee be made with respect to the estate and effects of any person deceased or any person by law incapable of administering his estate in case the person or persons legally invested with the actual administration of any such estate shall have committed in that capacity any such act of insolvency upon the petition of any creditor or creditors of such estate to such amount or amounts as aforesaid or with respect to the estate and effects of any copartnership carrying on business within this colony and the several members thereof either individually or as such partners in case any such members or member shall have committed in that capacity any such act of insolvency upon the petition of any creditor or creditors of such copart-

Deceased persons.

Persons incapable of administering, &c.

Estate of copartnership in this colony liable to the provisions of this Act.

nership to such amount or amounts as aforesaid and the several provisions of this Act shall in all other respects extend equally to the estate and effects of every such deceased or incapable person and of every such copartnership and the several members thereof as to other insolvent estates and insolvents.

In what manner petitioning creditor's debt is to be set forth.

*Act Exemption CA  
See S 82*

XVII.—AND BE IT ENACTED that every such creditor's petition shall set forth the nature and amount of the debt or debts respectively of such creditor or creditors and shall specify the particular acts or act of insolvency intended to be by him or them relied on and shall allege that to the best of the petitioner's knowledge and belief the person or persons having committed such acts or act are really and in fact insolvent within the meaning of this Act and shall pray to have the estate and effects of the person or persons sought to be declared insolvent distributed generally amongst the creditors and every such petition shall be subscribed by some single creditor or company or his or their agent whose debt shall amount to not less than fifty pounds or by some two creditors or their agents whose debts united shall amount to not less than seventy-five pounds or some three or more creditors or their agents whose debts united shall amount to not less than one hundred pounds.

Examination of insolvent and creditors or witnesses on oath.

XVIII.—AND BE IT ENACTED that for any of the purposes aforesaid or for any other purpose connected with any object intended to be hereby provided for it shall be lawful for any commissioner to examine from time to time on oath any such creditor or any person declared or sought to be declared insolvent or any other person whatsoever whose testimony upon any point may be supposed to be material and for that purpose to summon any such creditor insolvent or other person and especially any person known or suspected to have any of the estate or effects of the insolvent in his possession or control or to be indebted to the insolvent and also from time to time for any such purpose as aforesaid to cause any such insolvent or any other person if in custody to be brought up by an order or orders from time to time in that behalf made—*And* any such creditor insolvent or person who shall upon any occasion wilfully forswear himself in any oath taken under the provisions of this Act shall be deemed guilty of wilful and corrupt perjury and suffer such punishment as by law may be inflicted for that offence.

Any person wilfully forswearing himself guilty of perjury.

What shall be deemed an act of insolvency.

XIX.—AND BE IT ENACTED that either of the acts next mentioned shall be an act of insolvency within the meaning of this Act that is to say—*first*—where any person possessing property within this colony real or personal shall depart from his dwelling-house or shall quit this colony or having quitted this colony shall remain absent therefrom or shall in any other manner absent himself or remain absent from his house or usual place of business with intent in any such case to defeat or delay his creditors—*secondly*—where any person against whom any writ of fieri facias or capias ad satisfaciendum or attachment for the non-payment of money shall have issued shall not satisfy the same or shall keep his

house so that the same cannot be executed—*thirdly*—where any person shall make or cause to be made within this colony or elsewhere any fraudulent grant or conveyance or gift mortgage pledge transfer or delivery of his estate and effects real or personal or any part thereof respectively.

XX.—AND BE IT ENACTED that if notwithstanding the committal by any person of any such act of insolvency it shall appear that such person was not in fact at that time insolvent and that the petition under this Act for declaring such person insolvent was not only unfounded but malicious every creditor subscribing such petition whether by himself or his agent shall be liable in an “action on the case” to make such person full satisfaction in damages for all injury thereby sustained by him in property reputation or otherwise and the plaintiff succeeding in any such action shall recover double costs of suit.

Malicious petition renders the petitioner liable to an action.

XXI.—AND BE IT ENACTED that if any person who shall have been declared insolvent under this Act shall afterwards make any payment or give any security on account of any petitioning creditor’s debt or any part thereof for the purpose of defeating the insolvency or giving any preference to such creditor the same shall be itself deemed a new act of insolvency and upon proof thereof the proceedings in such insolvency or upon such petition may be continued at the instance of any other creditor and the creditor receiving such payment or security shall not only be compelled to deliver up to the assignee or assignees such security or payment or the full value thereof but his debt shall be deemed and taken to be absolutely extinguished.

Compromising with petitioning creditor a new act of insolvency.

XXII.—AND BE IT ENACTED that upon any person being declared insolvent under this Act as aforesaid or as soon after as conveniently may be a day and place shall be appointed by the commissioner for the meeting of the creditors of such insolvent and for otherwise proceeding in the matter of such insolvency and if such declaration shall have been made on the petition of the debtor himself the said commissioner shall cause notice to be given by advertisement in at least one newspaper printed at Hobart Town if the application be made to the commissioner for Hobart Town and in at least one newspaper printed at Launceston if the application be made to the commissioner for Launceston (and in such other manner if any in addition thereto as the said commissioner shall think fit) to the several creditors of such petitioner or their agents of the presentation of such petition and of the day and place so appointed or if such declaration of insolvency shall have been made on the petition of any creditor then the said commissioner shall cause notice to be given by advertisement in the said newspapers (and in such other manner if any in addition thereto as the said commissioner shall think fit) to the several other creditors of the insolvent and also to such insolvent himself of the presentation of such last mentioned petition and of the day and place so appointed.

Mode of proceeding after a declaration of insolvency.

Debtors to present a schedule with petition.

**XXIII.—AND BE IT ENACTED** that every debtor presenting any such petition as aforesaid shall with such petition present to the said commissioner a schedule containing a particular account of all the persons to whom such petitioner is then indebted or who are or to his knowledge or belief claim to be his creditors together with the nature and amount of their debts and claims respectively and the bonâ fide considerations of or for such debts and claims respectively distinguishing admitted debts or claims from debts or claims disputed with the places of abode of all such creditors or persons claiming to be creditors respectively and also a schedule containing a particular account of all the estate and effects both real and personal then belonging to and of all debts then due to him either solely or jointly with any other person or persons or in or to which he shall then be in any manner interested or entitled and shall also upon presenting any petition praying that he may be declared insolvent annex to such petition a schedule containing a particular account of all the estate and effects both real and personal then belonging and of all debts then due to him either solely or jointly with any other person or persons or in or to which he shall then be in any manner interested or entitled.

**XXIV.—AND BE IT ENACTED** that every debtor against whom any petition by a creditor praying that he may be declared insolvent hath been preferred shall within ten days from his having notice the validity of which to be determined upon by the commissioner shall present to such commissioner a like schedule in every respect as is by the preceding section required from every debtor presenting a petition that he may be declared insolvent.

Opposition to the petition.

**XXV.—AND BE IT ENACTED** that if at any time before the day so appointed for such first meeting of creditors as aforesaid notice in writing shall be given to the provisional assignee by or on behalf of the person so declared insolvent as aforesaid or by or on behalf of any creditor of such person of his intention to oppose the farther prosecution of such insolvency the said assignee or if he refuse then the said commissioner shall or lawfully may at his discretion cause such meeting to be postponed or adjourned until the matter of such opposition shall have been heard and determined by the said commissioner of which postponement or adjournment if any such commissioner or assignee shall cause notice to be given as speedily as may be together with the day and place newly appointed by advertisement in one or more of the public newspapers as to him shall appear expedient.

Proceedings on such opposition.

**XXVI.—AND BE IT ENACTED** that within one week after the service of any such notice of opposition the insolvent or creditor so intending to oppose shall procure a day and place to be appointed by the said commissioner for the hearing of the matter of such opposition and shall cause notice in writing thereof to be given to the petitioner or petitioners prosecuting such insolvency together with notice of the particu-



lar ground or grounds of such intended opposition and the matter of such opposition shall be inquired into and be proceeded in and determined and such order or orders be made therein for the purpose of inquiry or otherwise as the case shall to the said commissioner from time to time seem to require and the petition of insolvency shall be retained or dismissed accordingly.

XXVII.—AND BE IT ENACTED that at the first meeting of creditors in the matter of any such insolvency as aforesaid and so from time to time as and when the assignee or assignees of the insolvent shall require ~~such insolvent~~ shall submit himself to be examined upon oath (such oath to be administered for that purpose by either of the commissioners as aforesaid) touching his estate and effects and shall whenever so required give 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 either he or any person in trust for him or for his use or benefit in any manner was or is seized or possessed of or interested in or entitled unto either solely or jointly with any other person or persons or which such insolvent 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 petition or of the committing by him of the act of insolvency (as the case may be) or at any time within twelve months preceding shall have had or at such time of examination hath any power to dispose of or charge for his benefit together with a full true and particular account of all debts at those times respectively owing to him or to any person in trust for him or for his benefit either solely or jointly with any other person and the names and places of abode of the persons from whom such debts were or are due and in what manner all or any part of such estate or effects have been applied or disposed of since the time of such presentation or act of insolvency and what part of such estate and effects 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 what part or parts of such estate and effects shall be in any manner applicable to the discharge of the demands of his creditors or can be made available for their benefit—*And* every insolvent shall upon the demand of his assignee or assignees produce and deliver up all books papers deeds writings and documents in his possession or power in any way relating to his estate and effects or showing the true state of his accounts and affairs.

Insolvent's examination.

Insolvent to give up books.

XXVIII.—AND BE IT ENACTED that the provisional or other assignee or assignees of any person declared insolvent shall with all convenient speed after appointment personally or by some person or persons employed for that purpose take possession of all the estate and effects of such insolvent both real and personal of which immediate possession may be had and use every endeavour to recover and reduce into possession as speedily as possible all debts claims choses in action and other the effects

Assignee to take possession of all insolvent's property

of such insolvent to be recovered and collected and if any such insolvent or any other person whatsoever having notice of the authority in that behalf of any such assignee or assignees shall dispose of remove conceal or receive any part whatsoever of the bonâ fide estate or effects of such insolvent with intent to injure or delay the creditors of such insolvent or to obstruct such assignee or assignees in the performance of his or their duty in obtaining possession thereof or shall in any manner knowingly obstruct any such assignee or assignees in the obtaining possession of any part of such estate and effects the person so offending shall be deemed guilty of a misdemeanor and be liable upon conviction thereof to such fine not exceeding One Hundred Pounds and also in addition thereto if the court before which such offender shall be convicted shall think fit to imprison with or without hard labour for any period not exceeding two years.

Obstructing assignee in his duty a misdemeanor.

XXIX.—AND BE IT ENACTED that wherever any petition under this Act shall be dismissed either for irregularity or because the same shall appear to have been unfounded or because the debtor shall appear really to be solvent or for any other reason whatever it shall be lawful for the commissioner so to dismiss the same with costs to be paid to a specified amount and by and to such party or parties respectively as to such commissioner shall seem fit and upon the dismissal of any such petition all questions affecting in any manner the estate and effects of the insolvent or supposed insolvent and the respective rights of such insolvent and his creditors (except in so far as the commissioner shall otherwise order) shall remain and be determined as if no such petition had ever been presented—*Provided* that nothing in this section contained shall be taken to deprive the insolvent or any creditor of such insolvent of the appeal hereafter given to the Supreme Court.

Effect of dismissal of petition.

XXX.—AND BE IT ENACTED that the commissioner may after the first meeting of creditors appoint not more than two general meetings for the proof of debts—*Provided* that not less than ten days' notice be given in one Hobart Town and one Launceston newspaper.

Commissioners to appoint meetings for proof of debts.

XXXI.—AND BE IT ENACTED that each commissioner shall for every meeting receive and be paid the fee of twenty shillings from the estate of the insolvent which sum shall be paid by the provisional or permanent assignee or assignees upon application made to the commissioner to convene such meeting—*Provided* that where any special meeting shall be called by any creditor or creditors such fee shall be paid by the person or persons calling the same before any proceedings at such meeting shall take place.

XXXII.—AND BE IT ENACTED that all debts that are or shall be due to any creditor under any insolvency now or hereafter to be declared shall be proved before the commissioner by the creditor's own

All debts due under any insolvency now or hereafter declared how to be proved.

*How Com. to be paid for meeting*

affidavit or otherwise and that such affidavit may be in the form of schedule B to this Act annexed—*Provided* that it shall be lawful for the commissioner to examine upon oath either vicâ voce or by interrogatories in writing every person claiming to prove a debt or to require such further proof and to examine such other persons in relation thereto as such commissioner shall think fit.

XXXIII.—AND BE IT ENACTED that whenever it shall appear to the provisional or permanent assignee or assignees under the insolvency or to two or more creditors who have each proved debts to the amount of twenty pounds or upwards that any debt proved under the insolvency is not justly due either in whole or in part such assignee or assignees or creditors may make representation thereof to the commissioner and it shall be lawful for the said commissioner to summon before him and examine upon oath any person who shall have so proved as aforesaid together with any person whose evidence may appear to the commissioner to be material either in support of or in opposition to any such debt and if the said commissioner upon the evidence given on both sides or (if the person who shall have so proved as aforesaid shall not attend to be examined having been first duly summoned or notice having been left at his last place of abode) upon the evidence adduced by such assignee or assignees or creditors as aforesaid shall be of opinion that such debt is not due either wholly or in part the said commissioner shall be at liberty to expunge the same either wholly or in part from the proceedings—*Provided* that such assignee or assignees or creditors requiring such investigation shall before it is instituted sign an undertaking to be filed with the proceedings to pay such costs as the commissioners shall adjudge to the creditor who has proved such debt as aforesaid.

Assignee or two or more creditors having proved debts amounting to £20 to whom it may appear that a debt proved under the insolvency was not due may make representation to the commissioner who may summon parties before him.

In such case security to be given for costs.

XXXIV.—AND BE IT ENACTED that any person who has or shall have given credit to any person now or hereafter declared insolvent upon valuable consideration for any money or other matter or thing whatsoever which shall not have become payable when the insolvency was or shall be declared and whether such credit shall have been given upon any bill bond note or other negotiable security or not shall be entitled to prove such debt bill bond note or other security as if the same was payable presently and receive dividends equally with the other creditors deducting only thereout a rebate of interest for what he shall so receive at the rate of ten per centum to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted.

Debts secured upon any bill &c. whether the credit shall have expired or not may be proved.

XXXV.—AND BE IT ENACTED that any person who at the time of any declaration of insolvency made or to be made was or shall be surety or liable for any debt of the insolvent or bail for the insolvent either to the sheriff or to the action if he shall have paid the debt or any part thereof in discharge of the whole debt (although he may have paid the same after the declaration of insolvency) if the creditor shall have

Surety for any debt or bail for insolvent entitled to prove his debt.

proved his debt under the insolvency shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the said insolvency which such creditor doth or may possess or is or would be entitled to in respect of such proof or if the creditor shall not have proved under the insolvency such surety or person liable or bail shall be entitled to prove his demand in respect of such payment as a debt under the insolvency not disturbing the former dividends and may receive dividends with the other creditors although he may have become surety liable or bail as aforesaid after an act of insolvency committed by such insolvent—*Provided* that such person had not when he became such surety or bail or so liable as aforesaid notice of any act of insolvency by such insolvent committed.

Obligee on bottomry or respondentia bond and after loss admitted to prove his debt.

**XXXVI.—AND BE IT ENACTED** that the obligee on any bottomry or respondentia bond and the assured in any policy of insurance made upon good and valuable consideration shall be admitted to claim and after the loss or contingency shall have happened to prove his debt or demand in respect thereof and receive dividends with the other creditors as if the loss or contingency had happened before the declaration of insolvency and that the person effecting any policy of insurance upon ships or goods with any person as a subscriber or underwriter becoming insolvent shall be entitled to prove any loss to which such insolvent shall be liable in respect of such subscription although the person so effecting such policy was not beneficially interested in such ship or goods in case the person or persons so interested is not or are not in the colony.

Debt payable upon a contingency which shall not have happened may have a value assigned to it by the commissioner and the person for whom it is valued shall be admitted to prove for the amount so ascertained.

**XXXVII.—AND BE IT ENACTED** that if any insolvent hath or before the declaration of insolvency shall have contracted any debt payable upon a contingency which shall not have happened before the declaration of such insolvency the person with whom such debt has been or shall be contracted may if he think fit apply to the commissioner to set a value upon such debt and the commissioner is hereby required to ascertain the value thereof and to admit such person to prove the amount so ascertained and to receive dividends thereon or if such value shall not be so ascertained before the contingency shall have happened then such person may after such contingency shall have happened prove in respect of such debt and receive dividend with the other creditors not disturbing any former dividends—*Provided* that such person had not when such debt was contracted notice of any act of insolvency by such insolvent committed.

Assignment made by a debtor of all his estate and effects for the benefit of all his creditors to trustees not to be deemed an act of insolvency.

**XXXVIII.—AND BE IT ENACTED** that where any debtor shall execute any conveyance or assignment by deed to a trustee or trustees of all the estate and effects of such debtor for the benefit of all his creditors the execution of such deed shall not be deemed an act of insolvency—*Provided* that such deed shall be executed by every such trustee within ten days and by three-fourths in number and value of the creditors

of such debtor within two calendar months after the execution thereof by the said debtor and that the execution by such debtor and by every such trustee be attested by an attorney of the Supreme Court and that notice be given within fourteen days after the execution thereof by such debtor in the Hobart Town Gazette and one Hobart Town and one Launceston newspaper and such notice shall contain the name and place of abode respectively of every such trustee.

XXXIX.—AND BE IT ENACTED that whenever any insolvent shall apply for an order of discharge under the provisions of this Act and the commissioner before whom such application shall be heard shall postpone the making of such order of discharge it shall be lawful for such commissioner to order such insolvent to be imprisoned for the period for which such postponement shall be ordered—*Provided always* that no such postponement shall in any case be for a longer period than twelve months.

Where order of discharge is postponed insolvent may be imprisoned for such period of postponement.

Proviso.

see 20/12/54

XL.—AND BE IT ENACTED that whenever it shall by or on behalf of any two or more creditors under the insolvency who have each proved debts to the amount of twenty pounds or upwards be made to appear to the commissioner under the insolvency that the insolvent hath committed any of the acts in respect of which such order of discharge as aforesaid may be postponed under the provisions of this Act it shall be lawful for such commissioner (although no application shall have been made by the insolvent for an order of discharge) to order such insolvent to be imprisoned for any period not exceeding twelve months from the time of such order being made—*Provided* that not more than one such order of imprisonment shall be made in any insolvency and that not less than ten days' previous notice of the application for such order shall be given to the insolvent.

Commissioner although no application made by insolvent for his discharge may order insolvent to be imprisoned upon proof that the insolvent hath committed any act which could have postponed his discharge.

Proviso.

XLI.—AND BE IT ENACTED that upon any order of imprisonment being made as aforesaid it shall be lawful for the commissioner making such order to issue a warrant authorising any person to apprehend the insolvent and to lodge him in prison accordingly.

Commissioner may issue warrant to apprehend.

XLII.—AND BE IT ENACTED that it shall not be lawful for any person who has been or shall be declared insolvent to depart from this Colony until he shall obtain the order of discharge provided for by this Act and that it shall be lawful for the said commissioner to grant a warrant under his hand authorising any person to apprehend such insolvent upon oath being made by or on behalf of any creditor of the said insolvent to the amount of twenty pounds (whether such creditor shall or shall not have then proved his debt under the insolvency) that the deponent believes and that in his opinion there is sufficient reason to believe that such insolvent is about shortly to depart from the Colony—*Provided* that it shall be lawful for such commissioner in any such case to examine the person making such affidavit *vivâ voce* upon oath as to the grounds

No person declared insolvent to leave the colony until he has obtained his order of discharge.

of such belief and to refuse to issue such warrant if in his opinion such belief be in fact ill-founded.

Insolvent when apprehended to be lodged in prison.

**XLIII.—AND BE IT ENACTED** that upon such insolvent being apprehended under such warrant he shall be forthwith lodged in prison therein to be detained subject to the provisions of this Act until he shall obtain the said order of discharge—*Provided* that in all such cases it shall be lawful for the commissioner to take bail for the appearance of such insolvent.

Election of assignees.

**XLIV.—AND BE IT ENACTED** that the first meeting of creditors and every and any adjournment thereof shall be holden either before the said commissioner or before the provisional assignee as the said commissioner shall in any case think fit to order and the creditors present shall at such first meeting unless it shall be especially adjourned for that purpose proceed to elect one or more person or persons (who need not be necessarily a creditor or creditors) as and to be the permanent assignee or assignees under this Act of the estate and effects of the insolvent—*And* the insolvent may also then or at any such adjourned meeting be examined as aforesaid by or at the instance of such assignees or either of them or any creditor present thereat—*And* the creditors present at the first meeting or some adjourned day thereof shall determine or authorise such assignee or assignees to determine what part of or to what amount the wearing apparel bedding household furniture and tools of trade of the insolvent or his family shall be excepted from the sale of his property and be allowed to him—*And* the creditors at such first meeting or upon some adjournment day thereof shall also give to such assignee or assignees such directions concerning the management of such estate as they shall think proper.

Provisional assignee to report elections.

**XLV.—AND BE IT ENACTED** that as soon as conveniently may be after such election of any permanent assignee or assignees a report in writing of such election and of the names of the creditors who voted thereat shall be prepared by the provisional assignee together with a statement or account of all goods and monies if any received and paid by such assignee in that character showing the balance if any then in his hands belonging to the insolvent estate which report and account shall be subscribed by such provisional assignee and also (if he shall not be elected as permanent assignee) by the permanent assignee or assignees so elected who shall at the same time signify also in writing thereon his or their acceptance or rejection of such office and the same report and account shall then be by such provisional assignee deposited with the said commissioner.

Election of assignees how confirmed.

**XLVI.—AND BE IT ENACTED** that either the insolvent or any creditor or other person interested in the insolvent's estate to the amount of fifty pounds or upwards may appeal against any such election at any time within ten days next after the same giving a notice in writing of the

particulars of his complaint to the provisional assignee who shall forthwith bring the matter under review of the commissioner by summary application or proceeding for that purpose and such commissioner on hearing the parties shall summarily decide and make such order therein as the justice of the case may require but if there be no such appeal the assignee or assignees so elected by the creditors shall be deemed duly appointed by the commissioner without any order actually made for that purpose.

**XLVII.—AND BE IT ENACTED** that it shall be lawful for the creditors at any special meeting called for that purpose to remove any assignee at their discretion and to elect another in his stead or to supply any vacancy occasioned by the death resignation or absence of any assignee and (in order to prevent repetition of terms) the term assignee in this or any other section shall be construed equally to intend and include assignees and the term assignees to extend equally to the case of any single assignee and those terms respectively shall in each instance apply as well to the provisional as to the permanent assignee or assignees unless there be something in the context repugnant to such construction. New assignees.

**XLVIII.—AND BE IT ENACTED** that so soon as conveniently may be after any such new election a report in writing of such election with the names of the creditors who voted thereat shall be prepared by one or more of such creditors by whom the same report shall be subscribed and every assignee so newly elected shall also subscribe the same and signify in writing thereon his acceptance or rejection of such office and the said report shall then by one of the persons so subscribing the same be deposited with the commissioner for future reference and the same proceedings may be had thereafter as to appeal against such election as are hereinbefore mentioned with respect to the original election of assignees and if there be no such appeal every assignee so newly elected shall be deemed duly appointed by the commissioner without any order actually made for that purpose. Proceedings therein.

**XLIX.—AND BE IT ENACTED** that it shall be lawful for the assignees for the time being of any insolvent to continue any suit or action commenced by the insolvent or to discontinue the same and to defend or compromise any suit or action brought against such insolvent or against themselves as such assignees and also to commence and prosecute any suit or action in their own names as such assignees for any debt due to or matter affecting the estate of such insolvent and the death or removal of any assignee or appointment of any new assignee shall not abate or prejudicially effect any such suit or action but the same on the suggestion of such death removal or new appointment may be continued by or against the surviving or new assignees nor shall any such death removal or new appointment prejudicially effect any other proceeding or the validity of any lawful act of any assignee prior to such death or removal—*Provided* that none of the powers herein mentioned shall be exercised by any provisional assignee without previous leave of the commissioner. Actions by assignees

Notice of their appointment  
to be advertised.

L.—AND BE IT ENACTED that every assignee shall within ten days next after his appointment cause notice thereof to be given by advertisement in not less than two of the public newspapers of the colony of which one shall be published at Hobart Town and one at Launceston.

Special meetings how called

LI.—AND BE IT ENACTED that it shall be lawful for the assignees for the time being or any one of them or for any three creditors whose debts united shall amount to not less than one hundred pounds to call at any time a special meeting of the creditors by advertisement inserted in two of the public newspapers ten days at least before the intended day of meeting of which newspapers one shall be published at Hobart Town and one at Launceston such advertisement specifying therein not only the day and place of such meeting but the persons by whom and the purposes or purpose for which the same is so called.

Votes of creditors.

LII.—AND BE IT ENACTED that at every meeting whatsoever of creditors under this Act the votes and decisions of the majority in number of the creditors present at such meeting either in person or by agent (holding a written authority in that behalf) shall be deemed and taken to be for the purposes of this Act the votes and decision of all the creditors of the insolvent—*Provided* that no creditor whose debt does not exceed the sum of ten pounds shall have a vote at any such meeting *And provided also* that the several members of a copartnership or the several persons possessing any joint representative character shall for the purposes of this section be considered as one person only.

Employment of insolvent.

LIII.—AND BE IT ENACTED that the insolvent himself shall in no case be elected an assignee but that it shall be lawful for the assignee to employ such insolvent or any other person under them (if such assignee shall have been thereto specially authorised by the creditors) in the preservation or management of the estate or any part thereof until the same can conveniently be disposed of and to make such insolvent or other person a reasonable compensation for his trouble in that behalf either by way of salary commission or otherwise.

Allowance to assignees.

LIV.—AND BE IT ENACTED that it shall be lawful for every assignee so elected by the creditors as aforesaid and also for every provisional assignee appointed by the commissioner to retain out of the assets of the estate all expenses reasonably incurred by him in that capacity the amount of such expenses to be assessed in a summary way (in case the same shall be disputed by the creditors) by the commissioner and every such provisional or other assignee may also receive in like manner such reasonable compensation for his trouble in the management of the affairs of the estate as (in case of any permanent assignee) the creditors at any such meeting as aforesaid shall have agreed or shall agree to allow him or (in case of any such provisional assignee) as the commissioner by whom he was appointed shall in that behalf have provided or shall specially think fit to order.



LV.—AND BE IT ENACTED that it shall be lawful for the assignees (being assignees elected by the creditors) to compound with any person indebted to the estate of the insolvent and to take a reasonable part of the debt in discharge of the whole or to give a reasonable time for the payment or take security for the payment of any such debt and also to submit any dispute whatsoever between them and any person concerning the affairs of the said estate to decision by arbitration in the usual manner and also to redeem any parts or part of the estate and effects of the insolvent mortgaged pledged or deposited by him and also either to sell or delay the sale of any parts or part of the insolvent estate and in the mean time to lease or raise money upon the same for paying any debts or lien thereon or otherwise as to such assignees shall seem fit and for a limited period to place any part of the property under management and to carry on any trade or business of the insolvent as such assignees shall deem most for the benefit of the creditors and generally (subject to any special directions of the creditors if any given at any such meeting as aforesaid) to execute all such powers and authorities and do such other acts for the benefit of the creditors as the insolvent himself could have done had he remained solvent.

General powers of assignees

LVI.—AND BE IT ENACTED that every assignee as soon as he shall receive or have from time to time in his possession in the whole any sum of money exceeding twenty pounds belonging to the insolvent estate shall within one week following cause the same to be paid into some one of the public banks or companies carrying on the business of banking in this colony to the credit of such estate and no part of any such money above the sum of five pounds shall at any time be withdrawn from any such bank but by check or order in writing signed by the assignees or the major part of them in favour of some person or persons by name or his or their order and truly specifying the particular cause of the drawing thereof.

Monies to be paid into some bank.

LVII.—AND BE IT ENACTED that any assignee who shall wilfully violate or knowingly permit any co-assignee so to violate any or either of the preceding provisions or shall in any manner employ or retain for his own benefit any money or thing belonging to the estate of the insolvent shall forfeit and pay for the use of the creditors a sum of money equal to one-fifth of the amount or value of the money or thing so employed or detained such sum to be deducted from the amount of any claim of such assignee against the insolvent estate or if there be no such claim or such claim be insufficient to be recovered by action at the suit of any creditor who shall sue for the same.

Assignee retaining or embezzling money.

LVIII.—AND BE IT ENACTED that every assignee shall either separately or jointly with his co-assignee or assignees keep an account or accounts wherein shall be entered all monies from time to time received and paid on account of the insolvent estate and any creditor shall have liberty to inspect every such account at all reasonable times.

Assignees to keep accounts.

Offers of composition.

LIX.—AND BE IT ENACTED that if at any time after an insolvency under this Act shall have been declared the insolvent or any person on his behalf shall make any offer to the assignees for the time being for composition of the debts of the insolvent or to give security for the payment of any such composition a special meeting of the creditors shall be convened by such assignees by advertisement for the purpose of considering and deciding on such offer and if at or after such meeting not less than four-fifths in number and in value of all the creditors of the insolvent shall accept such offer the said acceptance shall be binding upon all the creditors of the insolvent and payment or tender of their several debts at the rate and on the terms specified in and by such offer shall operate as a release by them to the insolvent of the full amount of all such debts respectively.

Proviso.

LX.—PROVIDED ALWAYS that the creditors accepting such offer shall by themselves or their agents within twenty days next following the time of the holding of such meeting signify such acceptance in writing under their hands and that such acceptance shall be afterwards exhibited to the said commissioner and deposited with him with a certificate thereon signed by such commissioner that he is satisfied that the several provisions of this Act in respect of such offer and acceptance have been duly complied with—*Provided also* that before such certificate be given the insolvent shall upon oath declare that such acceptance was obtained from the said several creditors without any money or other consideration paid or given or to be paid or given or contract or security of any kind entered into or other undue means or influence used by such insolvent or to the best of his knowledge and belief by any other person to persuade or induce any such creditor to sign or give the same and upon such certificate being given the insolvency shall *ipso facto* be superseded and determined.

Creditors below twenty pounds.

LXI.—AND BE IT ENACTED that no creditor present at such meeting as last aforesaid or accepting any such offer whose debt is below twenty pounds shall be reckoned in number but his debt only shall be computed in value.

Distribution of insolvent's estate.

LXII.—AND BE IT ENACTED that the assignees of any insolvent estate shall within twelve months at the latest after the day of such first meeting of creditors as aforesaid convene a general meeting of all the creditors of the insolvent for the purpose of laying before them and such assignees shall accordingly at such meeting lay before them a full and exact report and account in writing of the affairs of the said estate containing not only an account of all sales then realized and debts then collected and debts or monies paid but also of debts due to or by the said estate then outstanding and all property of every kind still unsold and such assignees shall also submit a plan for the distribution of the assets of the said estate distinguishing therein all creditors entitled by law to any preference in payment from creditors payable *pari passu* together with the amount of the funds remaining divisible and the sums payable *pro ratâ* amongst them.

LXIII.—AND BE IT ENACTED that it shall be lawful for any person conceiving himself aggrieved by any such plan of distribution to enter an appeal in writing against the same within fourteen days next after such meeting stating therein the ground or grounds of objection to such plan and it shall be lawful for the commissioner upon application in a summary way for that purpose to take such proceedings in the matter of such appeal and make such orders thereon from time to time and finally to approve or alter such plan of distribution as to the said commissioner shall seem fit but if no such appeal be so entered or being entered be afterwards delayed or not duly proceeded in by the party so objecting such plan of distribution may be deemed and taken to be confirmed and shall be forthwith acted upon accordingly.

Appeal.

LXIV.—AND BE IT ENACTED that any contract entered into or security of any kind given by an insolvent or any other person to persuade or induce any creditor to accept or agree to accept any offer of composition or security for composition or to sign or consent to sign any certificate under this Act for the discharge of such insolvent shall be and the same is hereby declared to be fraudulent and void and the money or thing thereby secured or agreed to be paid or given shall not be recoverable either at law or in equity—*And* such money or thing if actually paid or given may be recovered back by the party having paid or given the same any law to the contrary notwithstanding.

Contracts to persuade creditors to compound void.

LXV.—AND BE IT ENACTED that in all cases where on the application of any assignee of any insolvent it shall be made to appear on oath to the satisfaction of the commissioner that there is reason to suspect and believe that any property of such insolvent is concealed in any house or other place (whether belonging to the insolvent or not) it shall be lawful for the said commissioner to grant a warrant to search for and take the said property which warrant without particularising therein any quantity or species of property shall or may be executed in like manner as is by law allowed with respect to a search warrant for property reputed to be stolen and any property of the insolvent then found shall forthwith be delivered to the assignees for the time being or to any person appointed by them to receive the same.

Concealed property of insolvent.

LXVI.—AND BE IT ENACTED that if any person shall receive or accept any transfer gift delivery mortgage or pledge made by any person of any part of his estate or effects with intent to defraud his creditors such last mentioned person so receiving or accepting the same knowing the fact of such insolvency and knowing also such transfer gift delivery mortgage or pledge to be fraudulently made as aforesaid shall be deemed guilty of a misdemeanor and shall on conviction thereof be liable to transportation for any period not exceeding five years or to imprisonment with or without hard labour for any period not exceeding three years.

Knowingly receiving any fraudulent alienation a misdemeanor.

Within what time debts are proveable.

**LXVII.—AND BE IT ENACTED** that any debt due at the time of the declaration of the insolvency or the cause of which shall have arisen prior thereto may be proved at any time before final distribution of the estate and any creditor may at his own expense call a special meeting of the creditors expressly for the purpose of receiving the proof of any such debt and if such meeting be nevertheless not holden he may transmit such proof to the assignees—*Provided* that when a debt is so proved after any dividend has been paid such dividend shall not in any way be disturbed or affected in respect of such debt and if in consequence of such proof any alteration in the plan of distribution shall be rendered necessary the creditor proving such debt shall be liable for all expenses incurred in consequence of such alteration.

Examination of insolvent may be allowed at any time.

**LXVIII.—AND BE IT ENACTED** that it shall be lawful for the said commissioner upon the application of the assignees of any insolvent for the time being to summon by service personally or at his last or usual dwelling-place or abode such insolvent or his wife before the said commissioner if such commissioner shall think fit at any time or times whenever such commissioner shall see cause so to order unless the insolvent shall have obtained his certificate and final discharge as hereinafter mentioned and to examine or permit such assignee to examine such insolvent or his wife upon oath touching all matters whatsoever which it may be supposed will tend to disclose any secret or unlawful alienation transfer delivery or concealment of his estate or effects and to cause all such examination to be reduced to writing and signed by such examinant.

Insolvent or witness not appearing may be apprehended.

**LXIX.—AND BE IT ENACTED** that if any insolvent or other person whatsoever being duly summoned under the provisions of this Act shall not appear at the time and place for that purpose appointed (having no lawful impediment in that behalf) it shall be lawful for the said commissioner to grant a warrant under his hand authorising any person to apprehend such insolvent or person and forthwith to bring him before such commissioner or to lodge him in any prison therein to be detained until the time which such commissioner shall have appointed anew for his examination and the gaoler of such prison shall then cause him to be brought before such commissioner and every such insolvent or person who being so summoned as aforesaid shall depart from the Colony or otherwise abscond or shall conceal himself with intent to evade appearing at any such examination or to prevent any such warrant as last aforesaid from being executed shall be deemed guilty of a misdemeanor and shall on conviction thereof be liable to imprisonment with or without hard labour for any period not exceeding three years.

Insolvent or witness under examination refusing to answer &c. may be imprisoned.

**LXX.—AND BE IT ENACTED** that if any insolvent shall at any meeting of his creditors or any adjournment thereof being thereto required refuse or wilfully neglect to surrender any book paper writing document bill or voucher relative to his estate or if such insolvent or any



Alienations having the effect to prefer one creditor to another void.

LXXV.—AND BE IT ENACTED that every alienation transfer gift cession delivery mortgage or pledge of any property whatever real or personal made other than by or under legal process by any person knowing himself to be at the time insolvent or within sixty days next preceding his being declared insolvent, and having the effect of preferring one actually existing creditor to another shall also be and the same are hereby respectively declared to be absolutely void./

Exception in favour of third parties.

LXXVI.—PROVIDED ALWAYS that for the protection of third parties nothing contained in either of the three preceding sections shall be construed to avoid or affect any bonâ fide purchase of or other right lawfully acquired in any such property as aforesaid by any party not knowing of such alienation transfer gift cession delivery mortgage or pledge or not knowing of the same having been made under such circumstances as aforesaid but the person by whom such property shall have been actually received from the insolvent under and by virtue of any such alienation transfer gift cession delivery mortgage or pledge shall be bound to pay the true value thereof to the assignees of such insolvent for the benefit of his creditors and the same may be recovered at the suit of such assignees by an action as for money had and received.

Discharging a debt.

LXXVII.—AND BE IT ENACTED that every acquittance surrender or discharge of any debt or claim or of any security for any debt or claim not actually and bonâ fide received or satisfied made or given by any person knowing himself to be at the time insolvent or within sixty days next preceding his being declared insolvent and having the effect of depriving his creditors of any benefit arising from such debt or claim shall be and the same are hereby respectively declared to be absolutely void.

Alienation &c. after petition presented.

LXXVIII.—AND BE IT ENACTED that every alienation transfer gift cession delivery mortgage or pledge of any property real or personal made by any person either with or without consideration after having been declared insolvent and after notice thereof having been duly published or made with or without consideration by any person against whom a petition shall have been presented for causing him to be declared insolvent to any party having knowledge at the time of the presentation of such petition shall be and the same are hereby respectively declared to be absolutely void—*And* every payment made by any person whether on account of an existing debt or not after having been declared insolvent and after notice thereof having been duly published or by any person against whom a petition shall have been presented for causing him to be declared insolvent to any party having knowledge at the time of the presentation of such petition shall be and the same is hereby declared to be fraudulent and void and the person receiving any such payment shall be liable to refund the amount thereof to the assignees for the benefit of the insolvent's creditors generally.

LXXIX.—AND BE IT ENACTED that excepting only in the cases by this Act otherwise in that behalf specially provided for no bonâ fide payment by or to or other transaction of any kind with any insolvent either before or after insolvency shall be rendered void or voidable or be otherwise prejudicially affected by such insolvency or by any provision in this Act unless the party to or by whom such payment shall have been made or with whom such transaction shall have been entered into shall at the time have distinct notice or knowledge either of such insolvency having been declared or of a petition for that purpose having been actually presented and unless also such payment or transaction shall in fact be to the injury of the general creditors of the insolvent and tend to diminish the amount of the assets divisible amongst them—*Provided* that nothing in this Act shall be construed to repeal or affect the statutes of the thirteenth and twenty-seventh years respectively of Queen Elizabeth concerning fraudulent conveyances or either of them or any other law in force within this colony for preventing frauds on creditors.

What transactions not to be invalid.

Act not to effect 13 Elizabeth C. 5 and 25 Elizabeth C. 4.

LXXX.—AND BE IT ENACTED that if any insolvent at the time of the commission by him of any act of insolvency or at the time of the presentation by him of any petition to be declared insolvent shall by permission of the true owner thereof have in his possession order or disposition any goods or chattels whereof he shall be the reputed owner or of which he shall have undertaken the sale or disposition as owner the property therein shall pass to the assignees of such insolvent and they shall have power to dispose of the same accordingly for the benefit of such insolvent's creditors—*Provided* that nothing in this section shall extend to the assignment of any vessel or any interest therein made under the provisions of any act of parliament in force for registering of British vessels or to any goods bonâ fide in the possession of the insolvent as factor the true owner whereof shall not be resident within this colony.

Reputed property of insolvent.

LXXI.—AND WHEREAS frauds are committed on creditors not only in such cases of reputed ownership but also by secret warrants of attorney and writs of execution against which the general creditors of an insolvent have not sufficient protection—*Be it enacted* that where any writ of execution shall be sued out against the property of any person being at the time insolvent upon a judgment entered up under or in pursuance of any warrant of attorney or cognovit actionem such writ shall as against every existing creditor of such insolvent be deemed fraudulent and void unless the same shall be delivered to the sheriff with instructions actually to execute the same and unless also notice of the issue thereof and of the levy (if any) thereunder made shall be given by the sheriff or his deputy in the manner hereinafter mentioned.

Warrants of attorney and other voluntary preferences to creditors.

LXXXII.—AND BE IT ENACTED that no assignment or delivery of any property or security of any kind given to the plaintiff or to

What is to be deemed satisfaction of an execution.

the sheriff after actual receipt by such sheriff of any such writ nor any levy as aforesaid on any property under such writ shall be deemed a satisfaction of the writ within the meaning of this Act or prevent such defendant from liability to be afterwards declared insolvent in respect of having neglected to satisfy such writ—*Provided always* that no person shall be declared insolvent where the act of insolvency relied on is the neglect to satisfy an execution unless the petition for declaring him insolvent shall be presented within six months next after the issue of such execution—*Provided also* that the plaintiff in any such execution shall not be admitted as a petitioning creditor under this Act.

Writs of fi. fa. to be advertised.

LXXXIII.—AND (the more effectually to prevent undue preference to creditors and to secure as far as may be the equal distribution of an insolvent's estate in all cases) BE IT ENACTED that within twenty days next after the receipt by him of any writ of execution against property the sheriff or his deputy shall (unless such writ be in the meantime withdrawn) cause the fact of the receipt of such writ and the date of such receipt to be advertised in some public newspaper or newspapers and he shall also cause a notice of every levy made under such writ to be in like manner advertised within fourteen days after every such levy stating therein where the same was made and the time and place of the intended sale which time shall if the property taken be of the value of one hundred pounds or upwards be not less than twenty nor more than sixty days after the date of such levy and no property taken under any such writ of the value of twenty pounds or upwards shall in any case be delivered over to the plaintiff or disposed of by private valuation or contract but by public sale or competition only.

After insolvency all executions stayed.

LXXXIV.—AND BE IT ENACTED that no writ of execution on any judgment shall issue against any insolvent or his estate or if it should have issued shall be enforced or proceeded in after he shall have been declared insolvent provided that notice in writing of such declaration of insolvency be given either to the plaintiff in such judgment or (in case any such execution shall have actually issued) to the sheriff or his deputy and any property which at the time of the receipt of such notice shall have been taken in execution but not sold shall immediately be released therefrom and deliver up to the assignee of the insolvent for the time being as part of such insolvent's estate—*And* it shall be lawful for the plaintiff to prove the debt due upon such judgment together with all costs therein and the costs of any such writ of execution and to have the benefit thereof as a creditor in the general distribution of the insolvent's estate accordingly—*Provided always* that nothing herein contained shall be construed to affect any lien which such plaintiff shall by virtue of such judgment have or be by law entitled to upon or against the real estate of such insolvent or any part thereof.

see 5<sup>th</sup> V. Ch.  
N<sup>o</sup> 86  
sheriff to have his  
poundage &c  
costs of writ to be  
p<sup>d</sup> to sheriff.  
vide supra

LXXXV.—AND BE IT ENACTED that in every case in which a party is the holder of a registered judgment as is in the preceding sec-



tion mentioned it shall be competent to such party to give notice thereof to the assignee or assignees of the insolvent requiring him or them to dispose of such interest for his advantage and in the event of any refusal on the part of such assignee or assignees or of any delay beyond the period of two calendar months from the date of receiving such notice then it shall be lawful for the party holding such registered judgment to sue out execution and from the proceeds of the sale of such property if they should exceed the amount of such registered judgment and costs to pay over such surplus amount to the assignee or assignees of the estate of the insolvent.

LXXXVI.—AND BE IT ENACTED that after any such declaration of insolvency all actions and suits whatsoever then pending against the insolvent for any debt or demand proveable against his estate shall be stayed and the plaintiff like any ordinary creditor shall or may immediately proceed to prove his debt or demand against the insolvent estate together with the taxed costs of suit up to the time of such declaration of insolvency and shall or may take the benefit thereof upon distribution of such estate accordingly—*Provided* that all actions pending against the insolvent for any uncertain damages or claim unliquidated in amount shall be so stayed until the assignees shall have been elected upon which the plaintiff in such last-mentioned action (after notice to such assignees to defend the same) may proceed to trial and obtain judgment therein and such judgment together with the taxed costs of suit shall then become a debt proveable against the said estate.

Actions against insolvent.

LXXXVII.—AND BE IT ENACTED that all actions (except only as hereinafter mentioned) commenced by any person before his insolvency shall upon his being declared insolvent be stayed until the assignees thereafter elected shall determine to prosecute or discontinue the same which determination such assignees shall be bound to make and notify to the defendant in any such action within six weeks after they shall be required so to do by such defendant otherwise they shall be deemed wholly to have abandoned the same—*Provided* that every such insolvent shall be permitted to continue in his own name and for his own benefit any action commenced by him either before or after insolvency for any personal injury done to himself or any of his family.

Actions by insolvent.

LXXXVIII.—AND BE IT ENACTED that at any time after three months from the declaration of insolvency or within one month from the date of the first meeting of creditors as aforesaid it shall be lawful for the insolvent to apply in a summary way to the said commissioner for an order of discharge under this Act as next mentioned and thereupon or as soon after as conveniently may be the said commissioner shall appoint some day and place for the hearing of the matter of such application and shall cause notice thereof and of the day and place so appointed to be given by advertisement in one or more of the public newspapers as such commissioner shall think proper.

Discharge of insolvent.

How obtained.

LXXXIX.—AND BE IT ENACTED that if at the time and place so appointed or at any adjournment thereof it shall on such hearing be made to appear to the satisfaction of the commissioner (either by the evidence on oath of the insolvent or any other person or persons then or previously taken and either by vivâ voce examination or by affidavit or affidavits or otherwise as such commissioner shall in any such case think proper) that such insolvent hath made a full discovery and surrender of all his estate and effects and hath in all other respects conformed himself to the several provisions of this Act then the said commissioner shall cause the said insolvent to execute before such commissioner a warrant of attorney authorising the entering up of a judgment against such insolvent in the said court at the suit of his assignees for the time being for the amount of the debts which shall be due or claimed to be due by such insolvent and of which debts specifying the sum or sums due to or claimed by each creditor and distinguishing disputed from other claims a schedule signed by such insolvent shall be endorsed on or annexed to such warrant of attorney—*And* upon such warrant of attorney being duly executed the said commissioner shall (except in the cases in that behalf hereinafter mentioned) make an order in writing for the discharge of such insolvent.

Effect of discharge as to insolvent's person.

XC.—AND BE IT ENACTED that every such order of discharge so made shall exempt the person of the insolvent absolutely from all liability to imprisonment or arrest at the suit of any creditor named in such schedule of the insolvent in respect of any debt or sum of money proveable against his estate which shall be included in and secured by such warrant of attorney—*And* if the insolvent at the time of the making of such order of discharge be under imprisonment or in custody or shall at any time afterwards be taken in execution or be arrested or in custody for or in respect of any such debt or sum of money it shall be lawful for the commissioner or officer by whom such order of discharge was made by writing under his hand directed to the sheriff or gaoler having the custody of such insolvent to require such sheriff or gaoler forthwith to release him from such custody and such insolvent shall thereupon be forthwith released accordingly.

Effect of discharge as to insolvent's property.

XCI.—AND BE IT ENACTED that (excepting only by process upon the judgment to be entered up as hereinafter mentioned upon the warrant of attorney so executed by the insolvent as last aforesaid) every such order of discharge shall also exempt the insolvent from all liability to any suit or other proceeding at law or in equity and all or any property afterwards acquired by him from being attached or taken under any process of execution or otherwise for or in respect of any such proveable debt or sum of money as aforesaid so included in and secured by such warrant of attorney—*And* if any such suit or proceeding shall nevertheless be instituted for or in respect of any such debt or sum of money the insolvent may plead in bar thereto generally that such order of discharge as aforesaid was duly given under the provisions of this Act

and that the cause or causes of action accrued before the same was so given and may thereupon give the special matter in evidence and such order of discharge shall be sufficient evidence not only of the insolvency but of all proceedings antecedent to the obtaining thereof.

XCII.—PROVIDED ALWAYS that nothing contained in the two preceding sections or either of them shall extend to any debt or sum of money due by the insolvent to any person whatsoever who at the time of the insolvency having been declared shall habitually reside out of this island and its dependencies unless before the obtaining by the said insolvent of such order of discharge as aforesaid such person shall actually prove his debt under this Act or shall have received either by himself or by some duly authorised agent distinct notice in writing of such declaration of insolvency and shall have had opportunity to come in and prove such debt before the plan of distribution of such insolvent's estate under this Act shall have been made and approved of nor shall the said section or any other section of this Act extend to or affect any debt or sum of money due to Her Majesty or to any damages recovered in any action for any malicious injury or to any costs in any action whatever which either of the judges of the Supreme Court shall, at any time certify to have been in his opinion unnecessarily and improperly incurred in such action.

Cases against which the order of discharge shall not operate.

*see 7 Vict. 87. 11.*

XCIII.—AND BE IT ENACTED that if upon the occasion of any order of discharge being so applied for as aforesaid it shall appear to the commissioner before whom the insolvent's application in that behalf shall be heard that such insolvent hath contracted any debt fraudulently, or by means of any breach of trust, or false pretence, or without having had any reasonable expectation at the time when the debt was contracted of paying the same, or hath in any manner wilfully disposed of any of his property, or knowingly dissipated any of his means to the injury of his creditors, or hath put any creditor to unnecessary expense by any vexatious or frivolous defence, or delay in any suit for recovering his 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 given any undue preference to any creditor then or in any such case it shall be lawful for the said commissioner in his discretion according to the nature of the case to postpone the making of such order of discharge as aforesaid whether the making of such order be opposed by any creditor or not for any period not exceeding twelve calendar months from the time of the insolvent's application for the same.

When the order of discharge may be postponed.

*amended by 20 V 12 552/14*

XCIV.—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 assignee or creditor of the insolvent appear to the satisfaction of the commissioner that such insolvent hath

When the order of discharge may be revoked.

obtained such order of discharge by means of any fraud deceit concealment misrepresentation or undue practice whatsoever it shall be lawful for the commissioner to declare such order of discharge to be absolutely void and thereupon and thenceforth it shall be lawful for every creditor to proceed against such insolvent and all his then unapplied and all his future or after acquired property the same as if such order of discharge had never been obtained and any creditor at whose suit such insolvent shall have been in custody at the time of the making of such order of discharge may apply to the commissioner to remand such insolvent again into custody on the original process from which he shall have been discharged and the commissioner shall have power to remand such insolvent accordingly.

Mode of proceeding against  
after acquired property.

XCV.—AND BE IT ENACTED that judgment may at any time be entered up against the insolvent by virtue of the warrant of attorney so executed by him as aforesaid which judgment shall have the force and effect of a recognizance and whenever it shall be made to appear to the commissioner that the insolvent is of ability to pay the amount of the debts for which such warrant of attorney was so given or any part thereof or that he is dead leaving assets sufficient for that purpose the said commissioner may upon the application in a summary way of any assignee or creditor of such insolvent permit execution in the name either of such assignee or creditor or any other person to be taken out upon such judgment against any property acquired by such insolvent after his discharge for such sum of money as under all the circumstances of the case the commissioner shall think it expedient to order such sum to be distributed rateably amongst the creditors entitled under this Act to receive the same and so from time to time according to the discretion of the commissioner 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 commissioner shall think proper and no assignment of such judgment or any scire facias to revive the same shall be necessary to authorise the issue of any such execution.

When the insolvent's future  
property shall not be lia-  
ble.

XCVI.—AND BE IT ENACTED that if at any time after twelve months from the time of the making of such order of discharge as aforesaid four-fifths in number and in value of the creditors of the insolvent by writing under their hands or the hands of agents in that behalf authorised attested respectively by two witnesses shall certify that according to the best of their judgment and belief his insolvency hath been occasioned not by any misconduct but by misfortune only and shall 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 commissioner of such written certificate and consent with proof of the signatures thereto and of the authority of every such agent and upon affidavit at the same time made and filed by the insolvent that such certificate and consent were 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 such creditor to sign or give the same the commissioner 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 deemed absolutely released and discharged to all intents and purposes whatsoever.

XCVII.—AND BE IT ENACTED that no creditor signing any such certificate and consent whose debt is below twenty pounds shall be reckoned in number but his debt only shall be reckoned in value.

XCVIII.—AND (in order to facilitate the dispatch of business under this Act) BE IT ENACTED that the schedule of fees marked C to this Act annexed shall be deemed and taken to be the fees receivable under this Act and shall be received accordingly by the commissioner for his own use and benefit.

XCIX.—AND BE IT ENACTED that the schedule of costs marked D to this Act annexed shall be deemed and taken to be the schedule of costs receivable under this Act and shall be allowed accordingly by the commissioner.

C.—AND BE IT ENACTED that every person declared insolvent under this Act shall at all times be a competent witness whether before or after obtaining his discharge for the purpose of proving debts due to his estate or otherwise and as well for his assignees as against them in every suit or proceeding whatsoever unless such insolvent shall actually be a party thereto and be also directly and beneficially interested therein.

CI.—AND WHEREAS cases may arise in which a person may be arrested and may continue a long time imprisoned for debt and yet not be declared insolvent—*And whereas* by the Act passed on the seventeenth day of September in the fifth year of the reign of His late Majesty King William the Fourth intituled “An Act for the support and relief of persons under imprisonment for debt or for penalties” provision is made for preventing frauds by imprisoned debtors secretly possessed of property by permitting the summary examination of such debtors on oath to all such property—*And* by the same Act provision is also made for the protection of creditors consenting voluntarily to the discharge of their debtors’ persons by permitting such discharge to be effected in any case without prejudice to any remedy against the debtor’s property—*And whereas* under such circumstances it is not just that debtors especially for small sums should be exposed to protracted imprisonment—*Be it therefore enacted* that whenever any person shall have remained in prison in execution for the space of four calendar months or upwards for

Creditors below twenty pounds.

Fees.

Insolvent may be a witness

Act 5 W. 4 No. 7, sec. 10 and 12.

Debtors under £50

any debt or sum (including costs) not exceeding in the whole fifty pounds such debt or sum shall become thereupon and be thereby ipso facto discharged and satisfied to all intents and purposes—*And* the sheriff or gaoler having the custody of such debtor upon demand in writing at any time thereafter made for that purpose shall accordingly (as against any creditor or creditors having so detained him in execution as aforesaid) forthwith discharge such debtor out of custody.

For protection of sheriff.

CII.—AND BE IT ENACTED that if any action shall be brought or proceeding be taken against such sheriff or gaoler or any other officer or person for or in respect of any such discharge as aforesaid or any other thing whatsoever done under the authority of this Act such sheriff gaoler officer or other person may plead the general issue and give the special matter in evidence thereupon and if the verdict shall be for the defendant or the plaintiff be nonsuited or discontinue his action or if upon demurrer judgment be given against the plaintiff the defendant shall have double costs and the like remedy for the same as any defendant hath in any other case to recover costs by law.

Proof by or against assignee.

CIII.—AND BE IT ENACTED that in any action or suit by or against any assignee of any person declared insolvent under this Act no proof shall be necessary at the trial or hearing either of such person's insolvency or the declaration thereof or of any act of insolvency or of any petitioning creditor's debt or the presentation of the petition of insolvency or of the election or appointment of such assignee unless the opposite party shall before issue joined give notice in writing of his intention to dispute some and which of such matters and if the matter or matters disputed shall be afterwards proved or admitted at such trial or hearing then the party having given such notice shall be liable to satisfy the costs thereby occasioned although he may have succeeded in such suit or action—*And* in every suit or action by any assignee in respect of any debt or demand for which the insolvent himself if he had not been so declared might have sustained such suit or action the affidavits and other evidence taken in the matter of the insolvency shall be conclusive evidence of the matters therein contained respectively unless the court or one of the judges shall think fit in any case otherwise to order.

Indemnity to parties paying assignees.

CIV.—AND BE IT ENACTED that all persons delivering up to the assignees any real or personal estate of any person declared insolvent under this Act or paying them any debt or demand due to such insolvent shall be and they are hereby indemnified against any subsequent claim by him or any person claiming under him in case such declaration of insolvency be superseded or the petition of insolvency be dismissed anything in this Act to the contrary notwithstanding unless at the time of such delivery or payment notice of opposition to such declaration of insolvency shall have been given and the persons so delivering or paying shall also have been apprised thereof.

CV.—AND BE IT ENACTED that all proceedings under this Act shall be applied as well to insolvencies heretofore had as to those which may hereafter take place and all examinations heretofore taken before the judges of the Supreme Court or either of them in any insolvencies under the Act of this island passed in the sixth year of the reign of his late Majesty intituled “An Act to provide for the Distribution of Insolvent Estates and for the Amendment in other respects of the Law of Debtor and Creditor” and all papers relating to any such insolvencies shall no longer remain in the custody of the registrar or any of the clerks of the Supreme Court but shall immediately upon the appointment of commissioners under this Act be transmitted by the persons in whose custody or possession the same may be to the commissioner for Hobart Town or Launceston according to the jurisdiction of the commissioner within whose district the insolvency hath been declared.

Proceedings under this act to be applied to past as well as future insolvencies.

CVI.—AND BE IT ENACTED that in all cases which may hereafter arise under this Act and in which either the insolvent or any creditor or other person interested in the insolvent's estate may object to the decision at which the commissioner may have arrived it shall be lawful for the party by such decision deeming himself aggrieved to appeal against it and to bring such decision under review of the Supreme Court by summary application made for that purpose and such court shall on (and it is hereby full empowered to decide) having heard the parties determine and make such order therein as the justice of the case may require—*Provided always* that such appeal be made within three calendar months of such commissioner's decision.

Appeal given to the decision of the supreme court against commissioner's determination.

CVII.—AND BE IT ENACTED that in every information against any person for any offence committed against the provisions of this Act it shall be sufficient to set forth the substance of the offence charged on the accused party without setting forth the authority of the commissioner or the petition or the insolvent's examination or schedule or the appointment of assignee or assignees or any assignment whatever or balance sheet or order for hearing adjudication or discharge or any warrant rule or order of proceeding before the commissioners.

JOHN FRANKLIN,

Passed the Legislative Council  
this twenty-second day of June  
one thousand eight hundred  
and thirty-nine.

ADAM TURNBULL,

Clerk of the Councils.





## SCHEDULE B.

---

In the matter of the insolvency of A. B. C. D. of [insert place of residence and trade or profession] maketh oath and saith that the above-named A. B. was on the [date of declaration of Insolvency] and still is justly and truly indebted to this deponent in the sum of [here insert the amount and particulars of the claim and stating the consideration given if the claim be on a bill of exchange or promissory note] and this deponent further saith that the said A. B. has no set-off against the said sum of

as far as this deponent knows and believes and that this deponent has no security for the said sum of

or any part thereof [if the creditor has any security he must add the nature of such security]

## SCHEDULE C.

### SCHEDULE OF FEES PAYABLE IN INSOLVENCY CASES.

—————  
To the Commissioner.

	<i>£</i>	<i>s.</i>	<i>d</i>
On hearing Petition ... ..	1	0	0
Filing Petition and Schedule ... ..		2	6
For and in respect of every Affidavit and for every Wit- ness sworn ... ..		1	0
For every Order of Discharge .. ...		2	6
For every other Order and for every Summons ... ..		1	0
For attesting the execution of every Warrant of Attor- ney and examining Schedule annexed thereto ... ..		2	6
Filing every Warrant of Attorney ... ..		2	6
Written Examination per folio ... ..		0	2
Office Copies per folio ... ..		0	9

## SCHEDULE D.

### FEES TO ATTORNEYS OR SOLICITORS.

	<i>s.</i>	<i>d.</i>
Attending to take instructions for Petition and Schedule if not more than ten creditors .. .. .	6	8
Do. do. if more than ten creditors .. .. .	13	4
To present petition... .. .	3	4
For Order for hearing .. .. .	3	4
Attending if Counsel employed .. .. .	13	4
Attending Commissioner on Motions .. .. .	6	8
All other attendances .. .. .	3	4
Instructions for Special Affidavits .. .. .	6	8
Instructions for Brief if Counsel employed .. .. .	6	8
Drawing and engrossing Petition .. .. .	3	0
Drawing and engrossing Schedule for every Creditor .. .. .	1	0
Drawing and engrossing Schedule of Property if required per folio of seventy-two words .. .. .	1	0
Drawing and engrossing Special Orders Notices and Advertisements per folio of seventy-two words .. .. .	1	0
Drawing and engrossing Common Affidavits Orders Notices and Advertisements .. .. .	3	4
Drawing and engrossing Common Affidavits of Service of Notice &c. for every Creditor .. .. .	0	8
Drawing and engrossing Special Affidavits per folio of seventy-two words .. .. .	1	0
Drawing and engrossing Warrant of Attorney with Schedule annexed .. .. .	5	0
Drawing and engrossing per sheet of eight folio .. .. .	6	8
Drawing and engrossing Bill of Costs and Copies .. .. .	5	0
Fair Copy Brief per sheet of eight folios .. .. .	3	4
Fair Copy Common Order Notice &c. .. .. .	0	6
Fair Copy Schedule &c. per folio of seventy-two words .. .. .	0	6
Service of Notices &c. in Hobart Town, Launceston, and within five miles thereof each .. .. .	2	6
Do. above five miles at per mile going and also returning .. .. .	0	9
Writing Letters when absolutely necessary including delivery &c. .. .. .	2	6
Solicitor's fee &c. .. .. .	10	6

AN ACT

*To make provision for the more  
effectual distribution of Insol-  
vent Estates.*