



THE  
**Hobart Town Gazette.**

PUBLISHED BY AUTHORITY.

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

*By Command of His Excellency,*

JOHN MONTAGU, Colonial Secretary.

VOLUME XX.)

FRIDAY, OCTOBER 16, 1835.

(NUMBER 1011)

ANNO SEXTO

**Gulielmi IV. Regis.**

No. 10.

*By His Excellency COLONEL GEORGE ARTHUR Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies.*

*AN ACT to provide for the Distribution of Insolvent Estates and for the Amendment in other respects of the Law of Debtor and Creditor.*

**W**HEREAS it would be beneficial if Provision were made by Law for the distribution of the Estates of Debtors when Insolvent amongst all their Creditors and thereby preventing fraudulent or unjust preferences. Preamble.

AND WHEREAS persons who become Insolvent by misfortune only and without fraud or dishonesty ought on delivering up all their property for such distribution to be relieved from protracted imprisonment.

AND WHEREAS also it is expedient that the Law of Debtor and Creditor in this Colony should in the several other particulars herein-after mentioned be amended:—

BE IT THEREFORE ENACTED by His Excellency Colonel GEORGE ARTHUR Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies with the advice of The Legislative Council that it shall be lawful for The Supreme Court of Van Diemen's Land or either of the Judges thereof upon the Petition in writing of any person whatsoever whether then in custody for Debt or not setting

Petition of an Insolvent.

forth that he is Insolvent and desirous of surrendering his Estate for the benefit of his Creditors to direct such person to appear before the said Court or one of the Judges thereof or if such Court or Judge shall see fit before any Commissioner or other Officer of the said Court to be examined touching such alleged Insolvency and also to produce such proof thereof by Affidavit or otherwise as to the said Court or Judge shall seem fit.

Examinations to be in writing &c.

II.—AND BE IT ENACTED that the substance of every such Examination and of every other Examination of any Insolvent Witness or Creditor under this Act shall be taken down in writing at the time and being certified as correct by the Clerk taking the same shall be transmitted to and deposited in the Office of the Registrar of the said Court to be there kept amongst the Records of the Court for purposes of future reference.

Provisional Assignee.

III.—AND BE IT ENACTED that after proof of such Insolvency made to the satisfaction of the said Court or of the Judge Commissioner or Officer before whom such Examination of the Petitioner shall have been had it shall be lawful for the said Court or either of the Judges thereof to declare such Petitioner Insolvent accordingly and thereupon to appoint some Officer of the Court or other person as to the said Court or Judge may seem proper as and to be the Provisional Assignee of the Estate and Effects of such Insolvent.

Deceased persons and Co-partnerships.

IV.—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 Co-partnership carrying on business within this Colony upon the Petition of the greater number of the Members of such Co-partnership residing within the Colony setting forth the Insolvency of such Co-partnership 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 Co-partnership and to the several Members thereof as to other Insolvent Estates and Insolvents.

Effect or appointment of Assignees.

V.—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 of divesting from the Assignee or Assignees (if any) previously appointed subject to the Order of the Court 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.

VI.—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 whatsoever shall commit either of the acts hereinafter specified as Acts of Insolvency it shall be lawful for the said Supreme Court or either of the Judges thereof 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 Officer of the Court or other person as to the said Court or Judge may 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 on full pay.

Petition by a Creditor.

VII.—**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 Court or the Judge 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.

Proof of such Petition.

Term "Insolvency."

VIII.—**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 Co-partnership 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 Co-partnership 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 Co-partnership and the several Members thereof as to other Insolvent Estates and Insolvents.

Deceased persons and Co-partnerships.

IX.—**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 upon and shall allege that to the best of the Petitioner's knowledge and belief the person or persons having committed such Acts or Act is or are really and in fact Insolvent within the meaning of this Act and shall

Petitioning Creditor's debt.

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 and every person who shall have given credit to another upon valuable consideration for any sum certain payable at a day certain but which day shall not have arrived when the alleged Act of Insolvency was committed and whether he has security for the same Debt or not shall be deemed a Creditor within the meaning of this Act to all intents and purposes.

Examination of Insolvent &  
Creditors or Witnesses on  
Oath.

X.—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 the said Court or any Judge thereof or (in case such Court or Judge shall think fit at any time so to order) any Commissioner or other Officer of the said Court 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.

Perjury.

Acts of Insolvency.

XI.—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 name 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.

Any malicious petition to  
be actionable.

XII.—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.

XIII.—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.

XIV.—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 said Court or one of the Judges thereof 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 Court or Judge shall cause notice to be given by advertisement in the Hobart Town Gazette and at least one other public Newspaper (and in such other manner if any in addition thereto as the said Court or Judge 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 Court or Judge shall cause notice to be given by advertisement in the said Gazette and at least one other public Newspaper (and in such other manner if any in addition thereto as the said Court or Judge shall think fit) to the several other Creditors of the Insolvent and also to such Insolvent himself or his Agents if he be absent from the Colony of the presentation of such last-mentioned Petition and of the day and place so appointed:

Mode of proceeding after declaration of Insolvency.

XV.—AND BE IT ENACTED that every Debtor presenting any such Petition as aforesaid for the purpose of being declared Insolvent shall with such Petition present to the said Court or one of the Judges thereof 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.

Debtors to present a Schedule with Petition.

Opposition to the Petition.

XVI.—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 one of the Judges of the said Court 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 Court or one of the Judges thereof of which postponement or adjournment (if any) such Judge 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.

XVII.—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 Court or one of the Judges thereof 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 particular 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 Court or Judge from time to time seem to require and the Petition of Insolvency shall be retained or dismissed accordingly.

Insolvent's examinations.

XVIII.—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 any such Judge or Commissioner or Officer 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 shewing the true state of his accounts and affairs.*

Insolvent to give up books,  
&c.

Assignees to take possession  
of Insolvent's property.

XIX.—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 of such Insolvent to be recovered and collected and if any 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 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 as the Court shall think fit to impose and also in addition thereto if the Court shall think fit to Imprisonment with or without hard labour for any period not exceeding two years.

Obstructing Assignees

XX.—AND BE IT ENACTED that whenever 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 Court or Judge so to dismiss the same with Costs to be paid to such specified amount or to an amount to be taxed by the Master and by and to such party or parties respectively as to such Court or Judge shall seem fit and upon the dismissal of any such Petition all questions affecting in any manner the Estate or Effects of the Insolvent or supposed Insolvent and the respective Rights of such Insolvent and his Creditors (except in so far as the Court or Judge shall otherwise order) shall remain and be determined as if no such Petition had ever been presented.

Dismissal of Petition.

Meeting of Creditors.

XXI.—AND BE IT ENACTED that every Meeting of Creditors may from time to time be adjourned as the majority of Creditors present at any such Meeting or in their default as the Assignee or Assignees or presiding Judge or Commissioner shall think fit *Provided* that no Meeting of Creditors shall take place by adjournment or otherwise until after at the least ten days' notice shall have been given of the time and place of holding the same by advertisement in not less than two Newspapers of which one shall be published at Hobart Town and one at Launceston.

Proof of debts.

XXII.—AND BE IT ENACTED that no person shall be entitled to attend and vote as a Creditor at any such Meeting or to be in any other respect deemed a Creditor of any Insolvent under this Act until he shall have proved his Debt by Affidavit made by himself or some competent person on his behalf or otherwise to the satisfaction of one of the Judges of the said Court or of the Master thereof or of some Commissioner or other Officer of the Court appointed for that purpose and shall have produced at such Meeting or at some prior Meeting of Creditors a Certificate of having so proved his Debt which Certificate shall set forth the nature and amount of such Debt and shall be signed by such Judge Master Commissioner or Officer who shall (subject to an appeal to the decision of the Court) admit or reject any Debt at his discretion. *And* it shall be lawful for the said Court to entertain such Appeal and make all necessary orders in the matter and finally to admit or reject any such Debt on the application in a summary way of either the Creditor or the Insolvent or any other party interested. *Provided* that where either of the said Judges shall preside at any such Meeting as hereinafter is provided any Appeal may be entered against or objection be made to any such Debt or Certificate or proof of Debt and the matter of such Appeal or Objection be there upon or at any subsequent period inquired into and determined in a summary way as to such Judge shall seem just.

Proceedings at first meeting.

XXIII.—AND BE IT ENACTED that the said first Meeting of Creditors and every or any adjournment thereof shall be holden either before one of the said Judges or the Master or some Commissioner of the said Court or before the Provisional Assignee as the Court or either of the Judges shall in any case think fit to order and such presiding Judge Master Commissioner or Assignee shall receive all such Certificates as shall be produced at any such Meeting 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 said 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.

**XXIV.—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 shewing 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 together with the several Certificates as to proof of Debts produced by the several Creditors shall then be by such Provisional Assignee deposited in the Office of the Registrar of The Supreme Court for future reference.

Provisional Assignee to report elections.

**XXV.—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 Court or one of the Judges thereof by summary application or proceeding for that purpose and such Court or Judge 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 Court without any Order actually made for that purpose.

Election of Assignees how confirmed.

**XXVI.—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 incapacity 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.

**XXVII.—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

Proceedings thereon.

one of the persons so subscribing the same be deposited in the said Registrar's Office 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 Court without any Order actually made for that purpose.

Actions &c. by Assignees.

XXVIII.—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 or Assignees shall not abate or prejudicially affect 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 or Assignee nor shall any such death removal or new appointment prejudicially affect 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 Court or one of the Judges thereof.

Notice of their appointment to be advertised.

XXIX.—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

XXX.—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 the 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.

XXXI.—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 Co-partnership 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.

XXXII.—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.

XXXIII.—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 Court or any Judge thereof 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 one of the said Judges or the Master or one of the Commissioners 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 Court or Judge by whom he was appointed shall in that behalf have provided or shall specially think fit to order.

Allowance to Assignees.

XXXIV.—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 part or parts of the Insolvent Estate and in the meantime to lease or raise money upon the same for paying any Debts or lien thereon or otherwise as to such Assignees shall seem fit or for a limited period to place any part of the property under management or 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.

XXXV.—AND BE IT ENACTED that every Assignee so 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 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 favor 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.

Assignee retaining or employing money &c.

XXXVI.—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 five times 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.

Assignees to keep accounts.

XXXVII.—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.

Offers of composition.

XXXVIII.—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. To be approved of by one of the Judges.

XXXIX.—PROVIDED ALWAYS that the Creditors accepting such offer shall by themselves or their Agents within not less than ten nor more than thirty 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 one of the Judges of The Supreme Court and filed in the said Court with a Certificate thereon signed by such Judge 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.

Creditors below twenty pounds.

XL.—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.

XLI.—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 out-standing 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.

XLII.—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 filed in The Supreme Court 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 said Court or either of the Judges thereof 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 Court or Judge 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 therefrom.

XLIII.—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 &c. to persuade Creditors to compound &c. void.

XLIV.—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 any Judge or Commissioner of The Supreme Court 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 Judge or 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.

Knowingly receiving any  
fraudulent alienation &c.

XLV.—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 being at the time of such Transfer Gift Delivery Mortgage or Pledge in a state of Insolvency the 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.

Proof of mutual Debts and  
Debts payable at a future  
time.

XLVI.—AND BE IT ENACTED that all Debts of every kind wheresoever contracted which shall be due by any Insolvent at the time of his being so declared may be proved against his Estate and where there are mutual Debts or Claims between the Insolvent and any Creditor the Judge Master Commissioner or Officer taking the proof of Debt shall examine the Account between them and set one Debt or Demand against the other and what shall appear due on either side on the balance of such Account and no more shall be allowed to be proved or claimed on either side provided that the person claiming the benefit of such set off had not when the cause of his Debt accrued notice of the Insolvency. *And* for the several purposes of this Act every person to whom the Insolvent was at the time of his being so declared Insolvent under any legal Obligation to pay Money at a certain future time shall be accounted a present Creditor and be entitled to prove his Debt for the amount of the Money for which such Obligation was given or so much thereof as shall then be due although payment of the same be not actually demandable.

Creditor holding any se-  
curity or lien.

XLVII.—AND BE IT ENACTED that every Creditor holding any security or lien upon any part of the Insolvent Estate shall be compelled upon oath when proving his Debt to Assign a value to such security or lien and shall deduct such value from the Debt proved by him and give his vote in all matters as a Creditor only for the balance but without prejudice to such valuation being afterwards corrected and without prejudice to his claim for the full amount of the Debt in other respects.

Assignees may take same.

XLVIII.—AND BE IT ENACTED that in every such case as last aforesaid the Assignees shall have the option either of taking such security or lien for the benefit of the Creditors at large on payment of the value so estimated out of the Assets of the Estate or of reserving the full effect of the same to the Creditor himself such Creditor being in either case ranked on the divisible fund for the balance of his Debt only.

Securing Debts which may  
eventually be established.

XLIX.—AND BE IT ENACTED that when by reason either of the absence of any Creditor or Witness from this Colony or for any other cause represented to The Supreme Court or one of the Judges thereof the said Court or Judge shall be of opinion that a Claimant who has not sufficiently proved a Debt may eventually be able to establish the same it shall be lawful for the said Court or Judge to give such reasonable time for that purpose and to make such Order

for securing the amount thereof in case it shall be eventually established as the said Court or Judge shall think fit.

**L.—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.

Within what time Debts are proveable.

**LI.—AND BE IT ENACTED** that it shall be lawful for the said Court or any Judge thereof upon the application of the Assignees of any Insolvent for the time being to summon such Insolvent or his Wife before the said Court or Judge or any Commissioner or Officer thereof if such Court or Judge shall think fit at any time or times whenever such Court or Judge 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 Assignees 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 Examinations to be reduced to writing and signed by such Examinant.

Examination of Insolvent may be allowed at any time.

**LII.—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 Court or Judge or for such Commissioner or Officer to grant a Warrant under his hand authorising any person to apprehend such Insolvent or person and forthwith to bring him before such Court Judge Commissioner or Officer or to lodge him in any Prison therein to be detained until the time which such Court Judge Commissioner or Officer shall have appointed anew for his Examination and the Gaoler of such Prison shall then cause him to be brought before such Court Judge Commissioner or Officer. *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.

Apprehension of Insolvent or Witness not appearing.

**LIII.—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 other person so summoned as aforesaid shall at any such Meeting or at any Examination before the Court or any such Judge

Insolvent or Witness under examination.

Commissioner or Officer as aforesaid refuse to be sworn or to answer any lawful question put to him touching any Matter proper to be enquired into or shall refuse to subscribe his Examination when reduced into writing (not having any lawful objection thereto) it shall be lawful for the said Court or such Judge Commissioner or Officer by Warrant under his hand to commit such Insolvent or person to such Prison as the said Court Judge Commissioner or Officer shall think fit there to remain without bail until he shall submit to do so.

Expenses to persons summoned,

LIV.—PROVIDED ALWAYS that every Insolvent or other person summoned before the said Court or any such Judge Commissioner or Officer to be examined or give evidence under this Act shall have his necessary expenses tendered to him by the party requiring his appearance in like manner as is by Law required upon service of a Subpœna on a Witness in any Action at Law.

Frauds by Insolvent.

LV.—AND BE IT ENACTED that if any person declared Insolvent under this Act shall either before or after being so declared alienate transfer give cede deliver mortgage pledge embezzle conceal or remove any part of his Estate or Effects to the value of Ten Pounds or upwards or conceal remove or destroy or mutilate any Book of Accounts Paper Writing Document Bill or Voucher relating thereto or contract any Debt whether real or pretended to the amount of Ten Pounds or upwards *with intent in any such case as aforesaid to defraud his Creditors* or shall after such Insolvency produce any false or falsified Book of Accounts Paper Writing Document Bill or Voucher or on which any erasure or alteration shall have been made either by him or with his knowledge *with intent in any such case to defraud his Creditors* he shall be deemed guilty of Felony and on conviction thereof shall be liable to Transportation for any term not exceeding seven years or Imprisonment with or without hard labour for any period not exceeding three years.

What alienations &c. void.

LVI.—AND BE IT ENACTED that every Alienation Transfer Gift Cession Delivery Mortgage or Pledge of any Property whatever real or personal made *without valuable consideration* by any person who at the time is actually Insolvent or who by any such Alienation Transfer Gift Cession or Delivery shall be rendered Insolvent shall be and the same are respectively hereby declared to be fraudulent and void.

Alienations liable to be set aside.

LVII.—AND BE IT ENACTED that every Alienation Transfer Gift Cession or Delivery of any Property whatever real or personal made *without valuable consideration* by any person within twelve months preceding any time at which it shall be made to appear that he was actually Insolvent shall also be and the same are respectively hereby declared void but only as against and at the instance of persons having been Creditors of such Insolvent at the time of the making of such Alienation Transfer Gift Cession or Delivery and whose Debts shall have been thereby prejudiced.

Alienations having the effect to prefer one Creditor to another.

LVIII.—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.



LIX.—PROVIDED ALWAYS that for the protection of third persons 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 and without valuable consideration but the person by whom such Property shall have been actually received from the Insolvent under or 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.

Exception in favour of third parties.

LX.—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.

Discharging a Debt.

LXI.—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.*

Alienation &c. after petition presented.

LXII.—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

What transactions not to be Invalid.

Act not to affect 13 El. c. 5  
and 27 El. c. 4.

Reputed Property of Insol-  
vent.

Warrants of Attorney and  
other voluntary preferen-  
ces to Creditors.

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.

LXIII.—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 the 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.

LXIV.—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 Judgement entered up under or in pursuance of any Warrant of Attorney or Cognition Actionem such Writ shall *as against every then 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.

LXV.—AND BE IT ENACTED that no Assignment or delivery of any property or security of any kind given to the Plaintiff or to 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.

LXVI.—AND (the more effectually to prevent undue preferences 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

Writs of fi. fa. to be adver-  
tised &c.

What to be deemed satis-  
faction of an execution.

*For the Sheriff in  
receipt*

*in 20 days*

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.

Extending Sheriff's powers  
under such Writs.

LXVII.—AND WHEREAS the compulsory payment of Debts especially where the Debtor is Insolvent or likely to become so would be better secured and much delay and expense as well as fraud in such cases be avoided if fuller effect were given to all Writs of Execution against the Property of a Debtor by making every species of Property liable thereto. AND WHEREAS notwithstanding the Statute passed in the fifty-fourth year of King George the Third for the more easy recovery of Debts in New South Wales and Van Diemen's Land whereby real Estate within this Colony is made liable to the satisfaction of Debts in like manner as personal Estate the remedy of a Creditor against his Debtor's Property is defective:—BE IT THEREFORE ENACTED that that it shall be lawful for the Sheriff or other Officer to whom any Writ of Fieri Facias against Lands and Chattels shall be issued to seize attach or take in Execution under such Writ Property both real and personal of every nature and kind and every Right Title or Interest of any kind whatsoever in or to the same or any part thereof in whose hands soever any such Property shall then be and whether such Property Title or Interest shall be legal or equitable or the same or any part thereof shall be Monies or Bank Shares or other such Interest or shall be of the nature of a Chose in Action only and to cause all such Property to be sold under such Writ as in ordinary cases.

54 G. 3. C. 15. S. 4.

LXVIII.—PROVIDED ALWAYS that in the case of any such Chose in Action no actual seizure shall be essential but the same may be attached by Notice given to the Parties or party therein interested and every person liable upon or under such Chose in Action shall after receipt of any such Notice become liable in the same manner and to the same extent to the Sheriff by virtue of such attachment under such Writ. *Provided Also* that nothing in the preceding Section shall be construed to authorise the Sheriff's taking in execution any Implement of Trade or any Deed or Writing not being in fact in its nature saleable or convertible into Money or given as a security for Money or to authorize any search which is not now by law authorized whether of the person or otherwise.

Proviso.

LXIX.—AND BE IT ENACTED that no Debt shall be liable to be so attached or taken in Execution unless the same be of some certain and liquidated amount and be secured by some Bond or other Deed in the possession or power of the party against whom

As to disposal of choses in  
action.

the Execution issued or some Promissory Note or Bill of Exchange of which such party shall then be the holder. *And* no such Debt or other mere Chose in Action after being so attached or taken in Execution shall be actually sold or be otherwise disposed of by the Sheriff except by Order of one of the Judges of the said Supreme Court which Order may at any time be made on the application in a summary way either of the Plaintiff or Defendant in such Writ or of the Sheriff and such Judge shall in all such cases in a summary way give such directions to the Sheriff and to all parties interested therein as he shall from time to time think proper. *And* it shall be lawful for such Judge at any time in a summary manner either to authorise an Action for the amount of any such Debt so taken in Execution to be brought in the name of the party suing forth the Writ of Execution or to cause the Debtor to be summoned to attend such Judge to shew cause why he should not forthwith pay the same amount to such party and if no sufficient cause be shewn to order such payment accordingly and to enforce such Order together with all Costs attending the same by an Attachment for a Contempt as in other cases.

By Sheriff's sale all a defendant's right and interest to pass.

LXX.—AND BE IT ENACTED that in every case of Sale of any Property so attached or taken in Execution by the Sheriff under any Writ of Fieri Facias it shall be sufficient for such Sheriff or his Deputy to put up for Sale and to sell and dispose of all the Right Title and Interest of the party against whom such Writ issued in and to such Property. *And* the Assignment by such Sheriff of such Right Title and Interest to the Purchaser thereof at such Sale by writing under his hand in a short form of words attested by one Witness reciting the issue of such Writ of Fieri Facias and stating the time and place of such Sale and that the same was in pursuance of such Writ shall have the effect of immediately and absolutely vesting in such Purchaser all such Right Title and Interest from the time when the Property was taken in Execution as fully and effectually to all intents and purposes as the same then were vested in such party and such Purchaser shall have and exercise thereafter in his own name and to his own use the same means of enforcing such Right and Interest and of recovering and possessing the Property to which the same shall relate together with every Title Deed Conveyance Document Power Matter Right or Thing incident thereto as such party himself at the time of such taking in Execution might have had and exercised in case no such Writ had issued. *Provided* that where any such Assignment relates to real Estate the same shall be Registered in like manner as is provided with respect to Deeds and Conveyances by other persons affecting real Property.

Enforcing Bills and Notes against the acceptor or maker.

LXXI.—AND WHEREAS persons in a state of Insolvency or with doubtful or uncertain means occasionally accept Bills of Exchange or give Promissory Notes which are afterwards put into circulation and obtain Credit but are dishonored when at maturity to the inconvenience and injury not only of the holders but of all persons having become parties to them. AND WHEREAS it is expedient for the protection of such holders and other parties and for

avoiding the delays and accumulated Expenses in such Cases of the ordinary proceeding by an Action or Actions at Law that as against every such Acceptor or Maker a cheaper and more summary remedy should be provided:—BE IT ENACTED that after the publication of this Act it shall at any time within six months next after the dishonor of any Bill of Exchange or Promissory Note be lawful for the holder thereof upon filing an Affidavit of his cause of Action in the usual form to cause a Writ of Summons to be issued out of The Supreme Court against the Acceptor of such Bill or Maker of such Note which said Summons shall be made returnable not as in ordinary cases on a day certain but within thirty days or if the Defendant reside at any distance from Hobart Town exceeding seventy miles then within forty days whether in or out of Term next after the day of the service thereof on such Defendant.

LXXII.—PROVIDED ALWAYS that under or annexed to every such Writ of Summons there shall be written a Copy of the Bill or Note on which such Writ is issued and of the several Indorsements thereon together with a notice to the Defendant signed by the Plaintiff or his Attorney of the place of abode of such Plaintiff and that unless the said Defendant shall within the time limited by such Writ as aforesaid cause the amount of such Bill or Note together with Interest thereon and the Costs of that Writ to be paid to the said Plaintiff or his Attorney or cause an Affidavit made by him the said Defendant to be filed that he the said Defendant hath a good and substantial Defence to the Action on such Bill or Note then Execution will forthwith issue against the said Defendant for the amount of such Bill or Note and Interest with Costs of Suit the same as if such Defendant had appeared and confessed the Action and Judgment had been given against him accordingly.

A summons and notice to issue.

LXXIII.—AND BE IT ENACTED that every such Summons and Notice shall be served upon the Defendant by the Sheriff or his Deputy by delivering a Copy thereof to such Defendant and such Sheriff or Deputy shall within fourteen days after such service thereof return the same Summons and Notice into the proper Office of the Court and shall therewith file an Affidavit setting forth the fact of such service and the particular date and mode thereof. *And* if after the filing of such last mentioned Affidavit and after the expiration of the time in that behalf limited by such Summons it shall appear that no such Affidavit as is mentioned in the preceding Section in that behalf hath been filed by the Defendant (specifying therein also the particular ground or grounds of his intended Defence and which grounds respectively shall be substantial only and to the merits) then upon leaving with the Registrar the original of the Bill or Note of which a Copy shall have been so made as aforesaid the Plaintiff shall be at liberty forthwith to issue Execution against such Defendant for the Principal and Interest then due by him upon such Bill or Note without any reference to compute such Interest together with Costs of Suit the same as if Judgment had been actually entered up or given in such Action for the same. *Excepting Always* that no such actual Judgment shall be at any time necessary and that no Costs as for any such Judgment shall therefore be allowed.

Proceedings thereon to execution.

Where defence made.

LXXIV.—AND BE IT ENACTED that if within the time so in that behalf limited as aforesaid any such Affidavit by the Defendant as aforesaid shall be made and filed then upon an appearance to the Action being entered by him or in his default by the Plaintiff for him such Action shall proceed as in any ordinary case.

After insolvency all execution stayed.

LXXV.—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 delivered 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.

Actions against Insolvent.

LXXVI.—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 only until 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 commenced by Insolvent.

LXXVII.—AND BE IT ENACTED that all Actions (except only as next 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 to have wholly abandoned the same. *Provided* that every 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.

**LXXVIII.—AND BE IT ENACTED** that at any time after such first Meeting of Creditors as aforesaid it shall be lawful for the Insolvent to apply in a summary way to the said Court or one of the Judges thereof for an Order of Discharge under this Act as next mentioned and thereupon or as soon after as conveniently may be the said Court or Judge 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 Court or Judge shall think proper. *Provided* that such hearing may if the said Court or Judge think fit be authorised or directed in any case to be had before and by any Commissioner or other Officer of the Court and in every such case after the making of such Order the several powers by this Act conferred upon the said Court and the Judges thereof respectively shall be and the same are hereby conferred upon and vested in such Commissioner or Officer not only in relation to such hearing and the day and place in that behalf so appointed or to be appointed but to the making or postponing of such Order of Discharge as hereinafter mentioned and to all matters and things connected therewith respectively.

Discharge of Insolvent.

**LXXIX.—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 Court Judge or 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 Court Judge or 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 Court or Judge or Commissioner shall cause the said Insolvent to execute before such Court Judge or 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 by such Insolvent and of which Debts specifying the sum or sums due to each Creditor a Schedule signed by such Insolvent shall be indorsed on or annexed to such Warrant of Attorney. *And* upon such Warrant of Attorney being duly executed the said Court or Judge or Commissioner shall (except in the cases in that behalf hereinafter mentioned) make an Order in Writing for the discharge of such Insolvent.

How obtained &c.

**LXXX.—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 any Judge of the said Court or for the Commissioner or Officer by whom such Order of Discharge was made

Effect of discharge as to Insolvent's person.

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.

**LXXXI.—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.

Cases against which the order of discharge shall not operate.

**LXXXII.—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 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 Sections or the seventy-sixth Section of this Act extend to or affect any Debt or sum of Money due to His 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.

When the order of discharge may be postponed.

**LXXXIII.—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 Judge or Commissioner or other Officer 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 Judge Commissioner or Officer 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 three years from the time of the Insolvent's application for the same.

**LXXXIV.—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 Court that such Insolvent hath obtained such Order of Discharge by means of any fraud deceit concealment misrepresentation or undue practice whatsoever it shall be lawful for the Court to declare such Order of Discharge to be absolutely 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 Court to remand such Insolvent again into custody on the original Process from which he shall have been discharged and the Court shall have power to remand such Insolvent accordingly.

*When the order of discharge may be revoked.*

**LXXXV.—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 Court 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 Court 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 Court 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 Court until the whole of the Debts secured by or included in such Warrant of Attorney shall be fully satisfied together with such Costs as the Court shall think proper and no Assignment of such Judgment or any Scire Facias to revive the same shall be necessary to authorise the issue of any such Execution.

*Mode of proceeding against after acquired property.*

**LXXXVI.—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

*When the Insolvent's future property shall not be liable.*

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 Court 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 Court shall direct the Warrant of Attorney executed by such Insolvent to be given up to him to be cancelled and the Judgment (if any) entered up thereon to be vacated and thenceforth every Debt included in or secured by such Warrant of Attorney or Judgment shall be deemed absolutely released and discharged to all intents and purposes whatsoever.

Creditors below twenty pounds.

**LXXXVII.—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 computed in value.

Court may make rules.

**LXXXVIII.—AND BE IT ENACTED** that in all cases in which no Provision or no sufficient Provision in that behalf is by this Act made it shall be lawful for The Supreme Court of Van Diemen's Land 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 the said Court or Judges or any such Commissioner or Officer as aforesaid 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 the said Court 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.

Costs.

**LXXXIX.—AND BE IT ENACTED** that the said Court shall also have power to frame and establish from time to time a reasonable scale or scales of Charges to be made and Fees or other Sums to be payable in Proceedings under this Act and the said Court and each of the Judges thereof shall in all cases whatsoever either of Applications made to or Proceedings taken before or by authority of the Court or any Judge thereof have power to award or refuse Costs such Costs to be paid either out of the Insolvent's Estate or by and to such party or parties as such Court or Judge shall in each case think fit to order.

Insolvent may be a Witness.

**XC.—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.

XCI.—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 last 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 as 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 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.

Preamble.

Act 5 W. 4 No. 7. Sections 10 and 12.

Debtors under £50.

XCII.—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.

For protection of Sheriff's &c.

XCIII.—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 occa-

Proofs by or against Assignees.

sioned 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.

**XLIV.—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 any thing 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 person so delivering or paying shall also have been apprised thereof.

Arrests on Mesne Process.

**XCV.—AND WHEREAS** it is expedient to regulate the law of Arrest for Debt in this Colony on mesne process :—**BE IT THEREFORE ENACTED** that without a special order of the Court or one of the Judges for that purpose no Writ of Capias ad respondendum or other mesne process against the person shall issue against a Defendant (except in cases of non-appearance after summons) but upon Oath in addition to a full Affidavit of the cause of Action that the Deponent believes and that in his opinion there is sufficient reason to believe that such Defendant is about shortly to depart from the Colony nor shall any such Capias or Process issue in any case where (except as hereinafter mentioned) an Arrest would not now be allowed in England on mesne process out of one of the King's Courts at Westminster.

How Writ to issue.

**XCVI.—AND BE IT ENACTED** that in every such case as aforesaid the Affidavit may be made before and the Writ of Capias issued by not only either of the Judges but any Commissioner of The Supreme Court. *Provided* that it shall be lawful for any such Judge or Commissioner in any such case to examine the person making such Affidavit viva voce upon Oath as to the grounds of such belief and to refuse to issue the Writ applied for if in his opinion such belief be in fact ill founded.

Certain Special Cases of Bills and Notes.

**XCVII.—PROVIDED ALWAYS AND BE IT ENACTED** that where in Addition to any such Affidavit as aforesaid Oath shall be made that the Deponent believes the party to be about so to depart from the Colony with intent to evade the payment of the amount of any Bill of Exchange or Promissory Note to the amount of Twenty Pounds or upwards of which such party shall be the Acceptor or Maker such Deponent being the Holder or Agent of the Holder thereof it shall be lawful for the Judge or Commissioner taking such Affidavit to issue a Writ of Capias against such Acceptor or Maker in respect of such Bill or Note although the day of payment of the same shall not then have actually arrived. *Provided* that such day of payment shall not be more than three months' distant. *And Provided also* that the Plaintiff shall not declare in the

Action until after the arrival of such day of payment and that he shall in every case so declare within three months after such day of payment unless further time be given him for that purpose by the Court or one of the Judges thereof.

XCVIII.—AND BE IT ENACTED that this Act shall commence and take effect on and from the first day of *November* next excepting the first and sixth Sections which shall commence and take effect on and from the first day of *January* next and not before. *Provided* that with respect to persons now actually in Custody for Debt the said first Section shall take effect on and from the said first day of November.

GEORGE ARTHUR.

Passed the Legislative Council this  
seventh day of October one thousand eight hundred and thirty-five.

ADAM TURNBULL,  
Clerk of the Council.