

No. XVII.

INSOLVENCY. An Act for giving relief to Insolvent Persons and providing for the due Collection Administration and Distribution of Insolvent Estates within the Colony of New South Wales and for the prevention of Frauds affecting the same. [29th December, 1841.]

Preamble.

Chief Justice and
Resident Judge at
Melbourne respec-
tively to appoint
Commissioners and
other ministerial
officers.

WHEREAS it is expedient and necessary to make provision for giving relief to such persons as by misfortune and without having been guilty of fraud or dishonesty are or may become insolvent and for the due collection administration and distribution of insolvent estates within the Colony of New South Wales and for the prevention of frauds affecting the same Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That it shall and may be lawful for the Chief Justice for the time being of the Supreme Court of New South Wales to appoint some fit and proper person resident at Sydney to be Chief Commissioner of Insolvent Estates in and for all parts of the Colony not being within the District of Port Phillip and for the Resident Judge in the District of Port Phillip to appoint some fit and proper person

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person resident at Melbourne to be Chief Commissioner of Insolvent Estates in and for the said district and for the said Chief Justice and Resident Judge respectively to appoint such Commissioners resident in the country parts of the said Colony and other ministerial officers as may be necessary to carry into effect the provisions of this Act and such Chief Commissioner and other Commissioners and Officers from time to time to suspend or remove and to appoint other persons in their stead respectively.

2. And whereas it is necessary to make provision for defraying such of the necessary expenses of carrying this Act into effect as are not otherwise hereinafter provided for Be it enacted That it shall be lawful for the Judges of the Supreme Court in Sydney and the Resident Judge at Melbourne respectively to cause such moderate fees to be paid for presiding at meetings of creditors and on all proceedings in Insolvency as to the said Judges respectively may seem meet the said fees to be taken by the Commissioners or other officers employed in carrying this Act into effect as the said Judges may direct.

3. And be it enacted That from and after the first day of February next it shall and may be lawful for any Judge of the Supreme Court of the said Colony upon the petition in writing of any person setting forth that he is insolvent and desirous of surrendering his estate for the benefit of his creditors either to direct such person to appear before him to be examined touching his said insolvency or to receive such other proof thereof by affidavits of the said insolvent and others as to the said Judge may seem fit or to direct such petitioner to appear before any such Commissioner as aforesaid and to direct such Commissioner to examine the petitioner in manner aforesaid and to take proof of the matters aforesaid and it shall and may be lawful for any Judge of the said Supreme Court on considering the report of any such Commissioner or upon proof of the matters aforesaid to his satisfaction to accept the surrender of such estate and by order under his hand to place the same under sequestration in the hands of the Chief Commissioner in and for that part of the Colony in which such insolvent shall reside.

4. And be it enacted That it shall in like manner be lawful for any Judge of the said Supreme Court upon the like petition of any person legally vested with the administration of the estate of any person deceased or with the estate of any other person situate in the said Colony in trust for creditors stating the insolvency of such estate or upon the like petition stating the insolvency of the estate of any company trading or having any estate or effects within the said Colony made by the greater number of the partners of such company who at the time of presenting the petition are within the said Colony to examine the petitioner or petitioners or cause him or them to be examined in manner aforesaid or to take or cause to be taken proof of the matters aforesaid in manner hereinbefore provided and it shall be lawful for any Judge of the Supreme Court upon proof of the matters aforesaid to his satisfaction to accept the surrender of any such estate and to place the same under sequestration in manner aforesaid and after the order for any such sequestration is made the like proceedings shall and may be had and take place concerning such estates and the persons in whom the administration thereof is legally vested and the partner or partners of such companies as are herein provided concerning other estates and other insolvents.

5. And be it enacted That if any person having any property personal or real within the said Colony shall depart therefrom or being out of the said Colony shall remain absent therefrom or shall depart from his dwelling-house or otherwise absent himself with intent to defeat

Fees to be paid in
insolvency pro-
ceedings.

Any Judge may
accept the surrender
of the estate of any
person by petition
declaring himself
insolvent.

Surrender by
persons vested with
the administration
of the estate of
others.

What shall be deemed
acts of insolvency.

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defeat or delay his creditors in obtaining payment of their debts or having against him the sentence of any competent Court being thereunto required shall not satisfy the same or shall not point out to the officer charged with the execution thereof sufficient disposable property to satisfy the same and if it shall appear from the return made by such officer or his affidavit that he has not found sufficient disposable property of such person to satisfy such sentence or shall make or cause to be made either within the said Colony or elsewhere any fraudulent alienation transfer gift surrender delivery mortgage or pledge of any of his estate goods or effects real or personal or give or execute any fraudulent warrant of attorney or cognovit actionem whereby the same or any part thereof may be affected shall be deemed thereby to have committed an act of insolvency.

What alienations transfers surrenders &c. fraudulent and void.

6. And be it enacted That every alienation transfer gift surrender or delivery mortgage or pledge of any estate goods or effects real or personal or warrant of attorney or cognovit actionem made by any person who at the time is actually insolvent or who by any such alienation transfer gift warrant of attorney cognovit actionem surrender or delivery shall be rendered insolvent to any person whatsoever without valuable consideration shall be and is hereby declared to be fraudulent and absolutely void Provided always that no conveyance or assignment which shall have been executed prior to the passing of this Act under the provisions of an Act of the said Governor and Council passed during the present Session intituled "*An Act for the further amendment of the Law and for the better advancement of Justice*" and in conformity with those provisions shall be deemed fraudulent or void within this or the next preceding section.

What alienations transfers surrenders &c. liable to be set aside at the instance of a creditor injured thereby.

7. And be it enacted That all alienations transfers gifts surrenders or deliveries of any goods or effects real or personal made by any person after he has contracted any debt and within twelve months preceding the commission of any act of insolvency by him or preceding the sequestration of his estate as insolvent or preceding any time at which it shall be made to appear by proof that he was actually insolvent to any person whatsoever without valuable consideration shall be and are hereby declared to be liable to be set aside on a summary application to and by order of the Supreme Court at the instance of any creditor of the said insolvent whose debt was contracted or the cause of whose debt had arisen prior to the making of such alienations transfers gifts surrenders or deliveries in so far as such creditor would thereby be prevented from receiving the full amount of his said debt.

What alienations surrenders &c. having the effect to prefer one creditor to another absolutely void.

8. And be it enacted That all alienations transfers gifts surrenders deliveries mortgages or pledges of any estate goods or effects real or personal warrants of attorney cognovits actionem and judgments entered up thereon made by any person being insolvent or in contemplation of surrendering his estate as insolvent or knowing that legal proceedings for obtaining an order for the sequestration of his estate as insolvent have been commenced or within sixty days preceding the making of any order for sequestration of his estate as insolvent and having the effect of preferring any then existing creditor to another shall be and are hereby declared to be absolutely void.

Exception where any third party has purchased and acquired the goods or effects for a just price or in satisfaction of a debt.

9. Provided always and be it enacted That if any person shall lawfully and *bond fide* purchase or acquire any of the estate goods or effects real or personal which have been alienated transferred given surrendered or delivered by any insolvent person in the manner set forth in any of the three last preceding clauses of this Act from any person to whom such estate goods or effects have been so alienated transferred given surrendered or delivered by any true bargain or agreement for a just and competent price or in satisfaction of any lawful debt due to him nothing contained in this Act shall extend or be construed

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construed to annul or affect any right which any such person has lawfully and *bond fide* purchased or acquired in such estate goods or effects but in all such cases the persons to whom such estate goods or effects were alienated transferred given surrendered or delivered by the insolvent shall be bound and obliged to pay the true value of all such estate goods and effects by them disposed of to a third party to or for behoof of such of the creditors of the insolvent as in virtue of the provisions of this Act shall be entitled to have the alienations transfers gifts surrenders or deliveries of such estate goods or effects by the insolvent declared to be void or set aside.

10. And be it enacted That all warrants of attorney and cognovits actionem alienations transfers gifts surrenders deliveries mortgages or pledges of any estate goods or effects real or personal made by any person after any order of sequestration of his estate has been made and before he shall have obtained his certificate as hereinafter mentioned shall be and are hereby declared to be absolutely void.

11. And be it enacted That all acquittances surrenders or discharges of any just debt or of any security for any just debt or other matter or thing payment or delivery of which has not been actually and *bond fide* received made by any person being insolvent or in contemplation of surrendering his estate as insolvent or knowing that legal proceedings for obtaining an order for sequestration of his estate as insolvent have been commenced or after any such order has been made or within sixty days preceding the making of any such order having the effect to deprive his creditors of the benefit of any debt or other matter or thing shall be and are hereby declared to be absolutely void.

12. And be it enacted That all payments made to any creditor by any person not compelled by legal process to make the same and knowing himself to be insolvent or in contemplation of surrendering his estate as insolvent or knowing that legal proceedings for obtaining an order of sequestration for his estate as insolvent have been commenced or that any such order has been made shall be and are hereby declared to be fraudulent but all payments really and *bond fide* made by any insolvent or by any person on his behalf to any creditor before any order made for the sequestration of his estate is known to the insolvent or to such creditor shall be valid and all payments really and *bond fide* made to any insolvent or to any person legally entitled to receive the same on his behalf before any order is made for the sequestration of the estate of the insolvent on his surrender thereof or before sequestration of his estate has been adjudged at the instance of his creditors shall be valid provided such person so making payment to the insolvent or to any person on his behalf had not at the time of such payment notice of any order for the sequestration of the estate of the insolvent having been made but if any person shall so receive any payment hereinbefore declared to be a fraudulent payment from the insolvent or if any person shall so make any payment to the insolvent or to any person on his behalf after an order for sequestration has been made on the surrender of the insolvent or after adjudication of sequestration at the instance of the insolvent's creditors or having at the time of such payment notice of any order for such sequestration having been made at the instance of the insolvent's creditors provided such sequestration shall thereafter be adjudged in manner hereinafter mentioned the person so receiving payment from the insolvent shall be bound and obliged to repay for the benefit of the creditors of the insolvent the sum so received by him and the person so making such payment to the insolvent or on his behalf shall be liable again to pay for the benefit of the creditors of the insolvent the sum so paid by him to the insolvent or to any person on his behalf.

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Sequestration upon petition of creditor against an insolvent person.

13. And be it enacted That it shall and may be lawful for any Judge of the Supreme Court upon petition made in writing against any person having committed any such act of insolvency as aforesaid by any creditor or creditors whose debt or debts amount to the value hereinafter provided and setting forth the amount of the debt of such creditor and the cause thereof and the alleged act of insolvency and praying that the estate of such person may be sequestrated for the benefit of his creditors upon proof thereof to the satisfaction of the said Judge by the examination of the parties or either of them or otherwise as the said Judge shall require and provided there shall be produced to the said Judge together with such petition the affidavit or affidavits and certificate hereinafter required by order under his hand to place the estate of every such person or persons under sequestration in the hands of the Chief Commissioner until the same shall in manner hereinafter mentioned be adjudged to be sequestrated or the said petition shall be discharged.

Nature and amount of petitioning creditor's debt.

14. And be it enacted That no estate shall be placed under sequestration unless the debt of a single creditor petitioning that the same may be sequestrated shall amount to fifty pounds or unless the debts of two or more creditors so petitioning shall jointly amount to one hundred pounds and every person who has given credit to another upon valuable consideration for any sum payable at a certain time which time shall not have arrived when the act of insolvency was committed may so petition or join in petitioning as aforesaid whether he shall have any security for the same or not.

Affidavit of petitioning creditor.

15. And be it enacted That every petitioning creditor shall before presenting any petition for having any estate placed under sequestration make an affidavit in writing before one of the Judges or a Commissioner (which affidavit shall be filed with the proceedings in the estate) of the truth of his debt and the cause thereof and shall likewise give security to the satisfaction of the Chief Commissioner for the payment of the necessary fees and charges for prosecution of the said sequestration until the choice or appointment of trustees and the said Chief Commissioner shall forthwith endorse on every such petition a certificate that such security has been found and shall sign the same.

Costs of sequestration.

16. And be it enacted That the creditor or creditors on whose petition any order for sequestration shall be made shall at his or their own cost prosecute all the proceedings in the said sequestration until the election or appointment of trustees in manner hereinafter mentioned and the same having been first taxed and ascertained by the Chief Commissioner the trustee or trustees shall reimburse the said creditor or creditors out of the first money that shall be received and the costs incurred under any sequestration after the election or appointment of trustees shall in the first place and before any other debt be paid out of the free residue of the insolvent estate when it shall be sufficient for the same and when the said free residue shall be insufficient for the payment thereof all the creditors who have proved debts against the insolvent estate shall be personally liable to the trustee or trustees for the same in proportion to such debts and the said trustee or trustees shall and may recover the same by summary application to and by order of the Supreme Court or any Judge thereof.

Sequestration of the estate of a company or partners.

17. And be it enacted That any creditor or creditors of any company may in like manner as aforesaid petition against all or any one or more of the partners of any such company to have the estate of such company placed under sequestration provided any such partner has committed any act of insolvency with intent or in such manner as to defraud the creditors of such company or to defeat or to delay them in

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in obtaining payment of the debts due by such company or provided the sentence of any competent Court has been obtained against such company and the partners thereof being thereunto required have not satisfied the same or pointed out to the officer charged with the execution of such sentence sufficient disposable property to satisfy the same and provided it shall appear from the return made by such officer or his affidavit that he has not found sufficient disposable property of such company to satisfy such sentence and every order for sequestration issued upon such petition shall be valid although it do not include all the partners of the company and after the order for sequestration of any such estate is made the like proceedings shall and may be had and take place concerning such estate and such partner or partners as are herein provided to be had and take place concerning other estates and other insolvents. Provided always that nothing herein contained shall extend or be construed to prevent the creditor or creditors of any company from proceeding against any partner or the separate estate of any partner thereof in respect of debts due by such company in the same way in which it is herein provided that the creditors of any person may proceed against him and his estate in respect of debts due by such person in his individual capacity.

18. And be it enacted That any creditor or creditors of the estate of any person deceased may in like manner as aforesaid petition to have such estate placed under sequestration as insolvent provided the person in whom the administration of such estate is legally vested has committed any act of insolvency with intent or in such manner as to defraud the creditors of such estate or to defeat or delay them in obtaining payment of the debts due to such estate or provided the sentence of any competent Court has been obtained against any such estate and the person in whom the administration thereof is legally vested has not satisfied the same or being thereunto required pointed out to the officer charged with the execution of such sentence sufficient disposable property to satisfy the same and provided it shall appear from the return made by such officer or his affidavit that he has not found sufficient disposable property belonging to such estate to satisfy such sentence and after the order for any such sequestration is made the like proceedings shall and may be had and take place concerning such estates and the persons in whom the administration thereof is legally vested as are herein provided to be had and take place concerning other estates and other insolvents.

19. And be it enacted That every privilege and power given by this Act to any creditor in respect of any debt due to him individually by any insolvent and every liability or penalty imposed by this Act on any such creditor shall be and is hereby declared to be given to and imposed on the partner or partners of any company in respect of any debt due to such company by any insolvent and to be given to and imposed on every person legally vested with the administration of the estate of any person deceased or of any person legally or actually incapable of the administration of his estate or of the estate of any other person situated within this Colony in respect of any debt due to such estate by any insolvent. Provided always that in reckoning the number of votes at any meeting of creditors or the number of creditors who have signed the certificate of any insolvent the partners of any company and any persons in whom the joint administration of any estate is vested as aforesaid shall be entitled to only one vote and shall be considered as one person.

20. And be it enacted That the party obtaining any order for sequestration shall forthwith lodge the same with the Sheriff of this Colony at his office in Sydney or if obtained within the District of Port

Proceedings against
the separate estate
of partners.

Sequestration by
creditor of estates
under legal adminis-
tration of other
persons committing
any act of insol-
vency.

Liability and
privileges of the
partners of any
company or of others
administering
estates.

Lodging with
Sheriff the order of
sequestration and
other proceedings
theron.

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Port Phillip with the Sheriff of that district and the Sheriff shall enregister the said order and note thereon the day and hour of its production and shall forthwith deliver or cause the same to be delivered to the Chief Commissioner who shall cause the same to be notified in the *Government Gazette* of the Colony and every insolvent obtaining any order for sequestration shall also lodge with the Chief Commissioner a list containing to the best of his knowledge and belief the names and places of abode of his several creditors.

Attachment upon the estate and how to be made.

21. And be it enacted That the Chief Commissioner upon any estate being placed under sequestration in his hands shall by his messenger authorized by warrant under his hand enter and seize and lay an attachment on the monies securities for money estate and effects wheresoever or with whomsoever they shall be and make an inventory thereof and it shall be lawful for the insolvent or any of the creditors or for the agent of any of the creditors of the insolvent to accompany the messenger and to be present with him while making out the inventory aforesaid.

Attachment of moveable property how to be made and penalty for defeating same.

22. And be it enacted That when any moveable property belonging to any insolvent estate is attached as aforesaid in virtue of any order for the sequestration thereof the messenger making such attachment shall leave with the person in whose possession any such property is attached a copy of the said inventory having subjoined thereto a notice that the property of the insolvent has been attached by the said messenger by virtue of an order for the sequestration thereof and that any person who knowing the same to have been so attached shall dispose of remove retain embezzle conceal or receive the same or any part thereof with intent to defeat the said attachment is liable on conviction of such offence to be imprisoned with or without hard labor for any period not exceeding three years Provided always that it shall be lawful for such messenger to secure on the premises by sealing up any repository room or closet any articles which in the discharge of his duty it shall seem to him expedient so to secure causing no unnecessary hindrance or inconvenience to any party by so doing or to leave some person on the premises in custody thereof and the said messenger shall forthwith report his execution of the said attachment to the Chief Commissioner who shall take such measures and give such directions for the safe custody of the said property as to him shall seem fit.

Commissioners to aid under rule of Court.

23. And be it enacted That the Commissioners of Insolvent Estates in their respective districts shall aid and assist in carrying this Act and the provisions thereof into effect and for that purpose shall do and execute all such matters and things as they shall be required to do and execute by any rule or order of the Supreme Court or any Judge thereof by virtue of this Act.

Sheriff or his deputies to execute duties of messengers.

24. And be it enacted That the Sheriff of this Colony or of any district thereof either by himself or by his deputies being thereunto required by the Chief Commissioner shall within the districts in which they have respectively been or shall be appointed to act do and execute the duties directed by this Act or by any rule or order of the Supreme Court or any Judge thereof in pursuance of this Act to be done and executed by a messenger and shall receive to their own use for such service out of the assets of any insolvent estate as to which they may be so employed such reasonable fees as are or shall be allowed by the Supreme Court for their service.

Summons to debtor upon order of sequestration and as to service thereof.

25. And be it enacted That every petitioning creditor who shall duly obtain any order for placing the estate of his debtor under sequestration as aforesaid shall forthwith take out the process of the Supreme Court to summon the debtor that he appear before the said Court on a certain day to be appointed by the Judge making such order as

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as to the said Judge may seem fit to shew cause why his estate should not by sentence of the said Court be adjudged to be sequestered for the benefit of his creditors and the service of the said summons shall be made in the same manner as is or shall be by law provided for the service of any other summons of the said Court. Provided that if any debtor has been forty days absent from his usual place of residence or business within the said Colony copies of the said summons shall also be inserted in three successive publications of the *Government Gazette* of the said Colony.

26. And be it enacted That upon the day appointed for any person to shew cause why his estate should not be adjudged to be sequestered it shall and may be lawful for the Court to receive proof of the matters aforesaid and to adjudge and finally determine thereon whether the said person having been thereto lawfully summoned shall appear to the said summons or not or upon sufficient cause being shewn to the satisfaction of the said Court to delay the said adjudication and determination for any reasonable time at discretion and if the petitioning creditor shall make default in appearing or proving his said debt or the act of insolvency to the satisfaction of the Court it shall and may be lawful for the said Court to supersede the said order for sequestration and to dismiss the said petition or to require further proof of the matters contained therein as to the said Court shall seem fit and whenever any such petition shall be dismissed by the said Court all questions affecting the estate of the person against whom it was presented or any right of such person or of his creditors or debtors or the validity of any alienation transfer gift surrender delivery mortgage pledge warrant of attorney cognovit actionem payment acquittance or discharge made by such person or payment made to such person shall be judged of and determined as if such petition had never been presented.

27. And be it enacted That if it shall appear to the Court upon such petition for sequestration that the said petition was unfounded and vexatious or malicious it shall and may be lawful for the said Court to allow the said person on his application for the same forthwith to prove any damage alleged to have been by him sustained thereby and to award to the said person such satisfaction for the said damage not exceeding two hundred pounds as the said Court shall deem fit and compel payment thereof by summary process or leave the said party to his action for the said injury.

28. And be it enacted That if after any order has been made for the sequestration of any estate the debts of the petitioning creditors or any of them be found insufficient to entitle such creditors to apply for and obtain such order for sequestration or if such order shall be superseded in consequence of the consent or default of the petitioning creditor or creditors or his or their collusion with the insolvent it shall be lawful for the Supreme Court or any Judge upon the application of any other creditor or creditors whose debt or debts amount to the value hereinbefore provided and have been incurred prior to the said order for sequestration and who shall produce at the time of making such application the affidavit or affidavits and the certificate hereinbefore required to order that the said sequestration shall be revived and be proceeded in as if it had been originally obtained on the petition of the creditor or creditors last mentioned and thereafter the said sequestration shall be revived with all the consequences and effects thereof as if it had never been superseded.

29. And be it enacted That if any person against whom any order for sequestration shall have been made shall pay any money to the person who obtained the same or give or deliver to any such person any satisfaction or security for his debt or any part thereof whereby

Court to adjudge if
order of sequestration
is to be confirmed or
otherwise and effect
thereof.

If petition unfounded
or malicious.

Sequestration re-
vived by other
creditor and effect of
though superseded
as to original peti-
tioning creditor.

As to payments &c.
or security from
insolvent to petition-
ing creditor after
order for sequestra-
tion.

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such person may receive more in the pound in respect of his debt than he would be entitled to receive if the sequestration were proceeded in and the estate distributed among the creditors thereof according to their legal rights and preferences such payment gift delivery satisfaction or security shall be a new act of insolvency and every person so receiving such money gift delivery satisfaction or security shall in the event of the sequestration being afterwards proceeded in by any other creditor or creditors in manner hereinbefore mentioned deliver up such security and shall repay the said money gift or the full value thereof to such person or persons as the Court shall appoint for the benefit of the creditors of such insolvent and shall pay all the costs which shall be incurred by any other creditor in obtaining the revival of the said sequestration.

Effect of the order of sequestration upon judgments.

30. And be it enacted That further execution of any judgment or process against the person or estate of any insolvent shall after any order for sequestration of such estate is lodged with the Sheriff for registration be stayed and it shall and may be lawful for the person having right to such judgment to prove his debt and costs against the sequestrated estate and to take the benefit thereof upon distribution of the said estate rateably with the other creditors and where any property has been attached by legal process for satisfaction of any judgment and has not been sold such property shall be placed under sequestration in the same manner as any other part of the insolvent estate.

Effect of the order of sequestration upon actions against insolvent.

31. And be it enacted That no action shall be brought against any insolvent for any debt or demand proveable against his estate and all proceedings in any action then pending shall upon any order being made for the sequestration of such estate in virtue thereof be stayed and it shall and may be lawful for the plaintiff in such action to prove his debt together with the taxed costs of it then incurred against the sequestrated estate and to take the benefit thereof upon distribution of the said estate Provided however that all actions pending against any insolvent for damages alleged to have been sustained from any injury or wrong or breach of any contract committed by him such damages being uncertain or for recovery of any claim unliquidated as to its amount and all proceedings therein shall upon any order being made for the sequestration of his estate be stayed until a trustee or trustees shall be elected for the administration thereof if the sequestration shall remain in force so long and thereupon the plaintiff in such action after summoning the trustee or trustees to take up and defend the said action may proceed to obtain the judgment of the Court thereon and the said judgment when recovered together with the taxed costs of suit shall be a debt proveable against the said estate.

Effect of order of sequestration on insolvent in custody under legal process.

32. And be it enacted That any insolvent who at the time any order for the sequestration of his estate is lodged with the Sheriff for registration shall be in custody of the said Sheriff or of any gaoler or officer either under *mesne process* or in execution on any judgment for any debt or demand proveable under this Act shall be entitled to be on the order of any Judge and shall be forthwith discharged out of custody in respect thereof either absolutely or on such condition or conditions as such Judge shall think fit to impose.

Effect of the order of sequestration upon action commenced by insolvent.

33. And be it enacted That all actions commenced by any person whose estate shall afterwards be placed under sequestration as insolvent for any debt or demand due to the said estate and all proceedings therein shall upon the order of such sequestration being made be stayed until the trustee or trustees thereafter chosen for the administration of the said estate shall make election to prosecute or discontinue the same and the trustee or trustees shall be bound to make such election

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election within six weeks after notice to that effect shall be served upon him or them by any defendant in any such action or otherwise shall be deemed to have abandoned the same Provided however that any insolvent person shall be permitted to continue in his own name and for his own benefit any action commenced by him previous to his insolvency for any personal injury or wrong done to himself or to any of his family.

34. And be it enacted That the Chief Commissioner shall after any estate has been placed under sequestration upon surrender thereof as insolvent or has been adjudged to be sequestrated forthwith cause notice thereof to be given in the *Government Gazette* of this Colony and shall thereby appoint two public meetings of the creditors of such estate at such times and places as he shall deem most convenient for all the parties concerned the first for receiving proof of debts against the said estate and the second for the same purpose and for electing a trustee or trustees for the collection administration and distribution thereof and such publication shall be deemed notice thereof to all persons and the times and places so fixed for the holding of any of the meetings aforesaid may on cause shewn to the Chief Commissioner by any party dissatisfied with the appointment so made be altered of which alteration notice shall be forthwith given in the *Government Gazette* Provided always that if it shall appear to the said Commissioner before causing notice to be given as aforesaid that the goods and effects of the insolvent available for the payment of his debts are not above the value of one hundred pounds he shall specify the same in the said advertisement and shall therein also give notice that unless it shall be shewn at the first meeting called as aforesaid that the goods and effects of the insolvent exceed the said value of one hundred pounds the Commissioner holding such meeting will summarily proceed to rank the debts which shall be proved at such meeting according to their respective preferences and to direct the proceeds of the insolvent estate to be forthwith distributed accordingly by a trustee or trustees to be then elected by the greater part of the creditors in number and value attending at such meeting and in such case the said insolvent shall at such first meeting attend before the creditors to account for his insolvency and shall being thereunto required do and perform thereat all such other matters and things as are hereinafter required to be done or performed by him at any meeting of the creditors under the provisions of this Act and if at the said first meeting it shall still appear to the Commissioner before whom the same is holden that the available assets of the said estate do not exceed the amount of one hundred pounds it shall and may be lawful for the said Commissioner to rank the creditors who shall prove their debts at such meeting according to the legal order of their preference and for the creditors to elect a trustee or trustees for the collection administration and distribution of the estate of the said insolvent according to the order of ranking and to direct the said trustee or trustees forthwith to collect administer and distribute the same accordingly and further at the said first meeting the said Commissioner shall execute all the powers and authority which may be executed by him at any meeting of creditors under the provisions of this Act and shall also do and perform thereat all matters and things required to be done for the final settlement of the said estate and the majority of the creditors present at the said meeting shall then determine what part of the wearing apparel bedding household furniture and tools of trade of the insolvent shall be excepted from the sale of his moveable property and shall be allowed to him and shall also give to the said trustee or trustees such directions as to the management of the said estate as to them shall seem

Appointment and
notice by the Chief
Commissioner of two
public meetings of
creditors for proof of
debts and election of
trustees.

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Where meetings of creditors to be holden.

Proof of debts.

What debts provable in cases of mutual credit.

Debts payable at a future time provable on a rebate of interest and as to votes of such creditors.

seem fit and no other meeting shall thereafter be holden unless upon cause shewn the said Commissioner shall think fit to order the same.

35. And be it enacted That in all cases where any meeting of creditors for the proof of debts or for the election of trustees shall be appointed to be holden in Sydney the same shall take place before the Chief Commissioner and if in any part of the Colony other than Sydney then before the Commissioner of such place and the said Commissioners shall respectively take the votes of the creditors and declare the party or parties elected trustee or trustees of the said estate and in all cases where such meeting shall be holden before any District Commissioner he shall forthwith certify to the Chief Commissioner the proceedings thereat.

36. And be it enacted That every creditor shall prove his debt against the said estate by affidavit or otherwise to the satisfaction of the Commissioner who shall admit any debt or reject the same as not proved subject to appeal from his decision to any Judge of the Supreme Court and it shall and may be lawful for the said Judge on the application of any party interested finally to admit or reject any debt admitted or rejected by the said Commissioner or to allow any action which may have been instituted for the proof or recovery of any such debt against the insolvent prior to the sequestration and which has in consequence thereof been stayed to be proceeded in after the election of a trustee or trustees shall have taken place and after the trustee or trustees so elected shall have been duly summoned to take up and defend such action and if the plaintiff shall thereafter obtain judgment thereon he shall be ranked on the insolvent estate for the amount of such judgment.

37. And be it enacted That all debts due by any insolvent at the time of adjudication or surrender may be proved against his estate and when there has been mutual credit given by the insolvent and any other person or where there are mutual debts between the insolvent and any other person upon which a set-off can by law be pleaded on either side the Commissioner taking the proof of debt shall thereupon state the account between them and shall 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 or paid on either side respectively Provided that the person claiming the benefit of such set-off had not when such credit was given or when the cause of his debt accrued notice of the said insolvency And provided always that it shall and may be lawful for any Judge of the Supreme Court on application of any person interested who shall consider himself aggrieved by any such decision of any Commissioner to review the same and to pronounce such judgment or to direct or allow such further proceedings as to the Judge shall appear just and proper.

38. And be it enacted That in all questions upon this Act every person to whom the insolvent was at the time of the surrender or adjudication of sequestration of his estate under legal obligation to pay money at a certain future time shall be accounted a creditor *de presenti* and shall be entitled to prove his debt for the amount of the money specified in the obligation but in case the said debt shall not have become payable at any time when such creditor shall give any vote at any meeting of creditors in respect thereof or at the time of distributing the said estate or of the payment of any dividend thereon and shall not bear interest until the time of payment or shall bear interest at a less rate than ten per cent. per annum the said debt shall be valued in voting and such creditor shall receive payment thereof or dividend thereon only after deduction thereout of a rebate of interest of ten per cent. per annum or of so much per cent.

per

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per annum as shall correspond with the difference between the rate of interest payable on such debt and the rate of ten per cent. per annum as the case may be to be computed from the time of voting or the distribution of the estate or payment of the dividend to the time when such debt would have become payable according to the terms on which was contracted.

39. And be it enacted That any creditor who shall have or ^{Proof by creditor holding pledge or lien.} hold any security or lien upon any part of the insolvent estate shall when he is the petitioning creditor be obliged upon oath in the affidavit accompanying the petition and when he is not the petitioning creditor in the affidavit produced by him at the time of proving his debt to put a value upon such security so far as his debt may thereby be covered and to deduct such value from the debt proved by him and to give his vote in all matters respecting the insolvent estate as creditor only for the balance which balance shall be specified in his affidavit without prejudice to such valuation being afterwards corrected and without prejudice to the amount of the said debt in other respects and in case any creditor shall hold any security or lien for payment of his debt obtained prior to the order for sequestration of the insolvent estate and not liable to be set aside by virtue of this Act upon any part of the said estate the amount of value of such security or lien shall be deducted from his debt and he shall only be ranked for or receive payment of or a dividend for the balance after such deduction and if any dispute shall arise about the value of such security the creditor or claimant shall upon oath put a value upon it and the trustee or trustees shall then have an option either of taking an assignment of the security for the benefit of the creditors at large on payment of the value so estimated out of the first assets of the insolvent estate or of reserving the full effect of it to the creditor himself and in either case the creditor shall be ranked on the divisible fund for the balance of his debt so ascertained together with the other creditors such creditor being in no event entitled to draw more than full payment of the debt Provided however that no creditor who shall hold any security or lien shall be entitled to any preference or advantage in respect thereof or to reckon as a part of his debt covered thereby any debt which shall have arisen or accrued to him subsequent to the order for sequestration.

40. And be it enacted That no person whose debt depends upon ^{As to proof of debts upon a contingency or condition valued by trustee or after the event and how dividend to be secured.} a contingency or an uncertain condition shall be entitled to petition or join in the petition for the sequestration of any estate or to vote in the choice of trustees or in any of the other proceedings herein specified so long as the contingency shall not happen or the condition shall not be performed Provided always that the creditor in any such debt contracted before the order for sequestration shall have been made may if he think fit while the contingency or condition upon which such debt depends shall not have happened or shall not have been performed apply to the trustee or trustees to set a value upon such debt and the trustee or trustees are hereby required to ascertain the value thereof and to admit such creditor to prove the amount so ascertained and such creditor shall thereafter be entitled to vote and to receive dividends or payments as in respect of a debt of the value of the amount so ascertained and if such value shall not be ascertained before the contingency shall have happened or the condition shall have been performed then such creditor may after such contingency shall have happened or such condition shall have been performed prove in respect of such debt and receive dividends or payments with the other creditors Provided always that when the creditor in any such debt or claim the contingency of which shall not have happened or the condition of which shall not have been performed and the value of which shall not

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not have been ascertained as aforesaid shall enter a claim on the estate in respect of such debt the trustee or trustees shall rank the claimant as if the contingency had happened or the condition had been performed and shall forthwith apply to the Supreme Court or any Judge thereof to make an order and the said Court or Judge shall make such order for securing the dividend or sum which the claimant would be entitled to draw until the contingency or condition upon which the debt depends shall happen or be performed when the sum so secured shall be paid to the claimant or to the general creditors as the case may be and any interest which may in the mean time arise and be received thereupon shall belong to and be paid to the other creditors.

Landlord to be entitled to one year's rent &c.

41. And be it enacted That no distress for rent shall be made or levied or proceeded in after any order made for sequestration as aforesaid but the landlord or party to whom the rent shall be due shall be entitled to receive out of the assets of the estate so much rent as shall be then due not exceeding six months' rent in the whole and shall be allowed to come in as a creditor and share rateably with the other creditors for the overplus.

Wages of clerks &c.

42. And be it enacted That it shall be lawful for the trustee or trustees to pay to any clerk or servant six months' salary or wages in full out of the insolvent estate provided so much shall be actually and *bond fide* due at the time of the order for sequestration made.

As to securing to claimants debts which may eventually be established.

43. And be it enacted That when by reason of the absence of any person from the Colony or for any other cause appearing to the Chief Commissioner the said Commissioner shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same it shall and may be lawful for the said Commissioner to allow such claim to be entered in the proceedings in the insolvent estate and to give reasonable time for proving the same and in the mean time to make such order for securing the amount thereof in case the said claim shall be afterwards established as the said Commissioner shall see fit.

Mode of settling interest upon claims.

44. And be it enacted That the mode of settling interest upon claims shall be as follows viz.:—The principal sum of each debt on which interest is chargeable together with the arrears of interest if there be any due upon it at the time the order for sequestration was made shall be accumulated as at the date of the said order for the purpose of the claimant being ranked for and receiving payment of such accumulated sum together with the principal sums of such debts as do not bear interest or from which there may be a rebate of interest as not being payable till an after period and the assets of an insolvent estate shall be applied—first in payment according to the legal order of preference of all the preferent debts and secondly in payment of all the other accumulated sums so ranked without allowing any interest upon them from and after the date of the order for sequestration if the said assets shall not be sufficient to discharge all the claims due by the insolvent estate but if after discharging the whole of such claims there shall be any residue left of the sequestrated estate the creditors shall also be entitled to claim out of such residue any arrear of interest which may be due to them as arising since the date of the said order for sequestration upon the respective sums ranked as hereinbefore mentioned.

Within what time and before whom debts are proveable and effect thereof in dividend previously made.

45. And be it enacted That any debt which was due or the cause of which arose prior to the order for sequestration of any estate may be proved at any meeting of the creditors appointed before any Commissioner at any time before the final distribution of the estate and any creditor may after the second meeting called by the Chief Commissioner in manner hereinbefore provided at his own expense call such meeting expressly for the purpose of proving his debt

Provided

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Provided always that when any debt is so proved after any dividend has been paid to the creditors such dividend shall not in any way be disturbed or affected by or in respect of any such debt but such creditor shall receive payment of his debt out of the future assets of the estate in the same proportion as the other creditors shall have already received and shall afterwards receive payment And provided also that when any such debt is proved after the plan of distribution of such estate has been confirmed and in consequence of the proof of such debt any alteration in such plan of distribution or any further proceedings in the sequestration shall be rendered necessary the creditor proving such debt shall be liable for all expenses which may be incurred in consequence of any such alteration or proceedings.

46. And be it enacted That in all cases of votes given by ^{what creditors} creditors under this Act when creditors are to be counted in ^{entitled to vote in} number ^{number and what in} no creditor whose debt is below fifty pounds sterling shall be reckoned ^{value.} in number but the debt due to such creditor shall be computed in value and that in all cases in which any deduction is directed by the provisions of this Act to be made from the amount of the debt of any creditor the vote of such creditor shall still be counted in value to the extent of the balance remaining after such deduction and such creditor shall also be reckoned in number provided such balance amounts to ten pounds and upwards.

47. And be it enacted That in all cases where under the provisions of this Act the creditors of any insolvent estate are required or entitled to meet and to vote in any matter regarding such estate any creditor so entitled may attend and vote at such meeting personally or by agent authorized by any writing under the hand of the said creditor or by any power of attorney to that effect duly executed upon proof thereof to the satisfaction of the Commissioner or other person presiding at such meeting.

48. And be it enacted That at the second meeting called as ^{as to choice of} aforesaid or any adjournment thereof (if the said Commissioner shall ^{trustees and how and} find it necessary to adjourn the same which he is hereby authorized ^{when to be brought} and empowered to do) a trustee or trustees not exceeding three in ^{under review of} number shall be chosen for the collection administration and distribution of the insolvent estate and effects and all creditors who have ^{Court and if fraudu-} proved debts against the insolvent estate shall be entitled to vote in ^{lently made.} such choice and the choice shall be made by the votes of the greater part in number and value of the creditors or their agents present and entitled to vote Provided however that it shall be competent to any person interested in any such insolvent estate or the due administration thereof and who shall complain of any such election upon giving within two days after the said election a notice in writing of the particulars of such complaint to the said Commissioner at any time before the election is confirmed in manner hereinafter mentioned to bring the same under the review of the Supreme Court or any Judge thereof who shall summarily decide and make such order thereon as the justice of the case may require Provided always that it shall be lawful for any person interested in the due administration of the estate at any time after the confirmation to apply to the Court to recall the confirmation and set aside the election on the ground that such election was fraudulently made but if the Court shall decide against such application the party failing therein shall pay all such costs to the other party as the Court shall award.

49. And be it enacted That in no case shall it be competent for the creditors to elect as trustee the insolvent himself nor any minor nor any practising attorney nor any person who having had his estate at any time surrendered or administered as insolvent or placed under sequestration shall not have obtained his certificate under some former law ^{Who incompetent to be appointed trustee.}

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law of this Colony or who shall not have obtained the sequestration to be superseded or who shall not have obtained his certificate and allowance thereof as hereinafter provided nor any person not resident within the jurisdiction of the Supreme Court.

As to appointment by
Court of provisional
trustee.

50. And be it enacted That it shall and may be lawful for the Supreme Court or any Judge thereof on cause shewn by the Chief Commissioner or any person interested in the due administration of the insolvent estate by order to appoint one or more fit and proper person or persons to be trustee or trustees of any insolvent estate provisionally and until the creditors of the said estate shall make choice of a trustee which trustee or trustees may be removed at the meeting of creditors for the choice of a trustee if the said creditors shall think fit but shall and may until so removed act in the collection administration and distribution of the said estate in all respects the same as trustees elected by the creditors are by this Act authorized to do.

Compensation to
trustees.

51. And be it enacted That all trustees so appointed by the Court or Judge or elected by the creditors shall receive and be paid out of the assets of the said estate a reasonable compensation for their care and diligence in the said trust to be assessed by the Chief Commissioner subject to the review of the said Court or Judge upon the petition of any creditor or of the said trustees or of the insolvent.

Confirmation of
trustees.

52. And be it enacted That so soon as the trustees elected by the creditors or appointed by the Court or Judge shall have accepted their office it shall and may be lawful for the Supreme Court to make an order confirming the appointment of such trustees.

Effect of order for
sequestration upon
the estate of
insolvent.

53. And be it enacted That every order made for placing any estate under sequestration as insolvent shall so soon as made have the effect in law to divest the insolvent and all persons administering the whole or any part of his estate for his use and behoof and to vest in the Chief Commissioner for the use and purposes of the sequestration all the present and future estate real and personal and every right title and interest in and to any property real or personal wheresoever the same may be known or found which shall belong or be due to or vested in such insolvent at the date of making such order or which may thereafter be purchased or acquired by or may revert descend or be devised or come to the insolvent while the insolvent estate shall remain under sequestration in the hands of the Chief Commissioner together with all deeds vouchers papers and writings respecting the same and after the said order for sequestration has been made neither the insolvent nor any person claiming through or under him shall have the power to alienate give surrender deliver mortgage pledge or to recover or to release or discharge the same or any part thereof neither shall the same be attached by any person as the property of or belonging to the insolvent so long as the said estate shall remain under sequestration.

Effect of order for
confirmation of
trustees.

54. And be it enacted That every order made as herein directed for confirming any trustee or trustees shall so soon as made have the effect in law to divest the Chief Commissioner and to vest in such trustee or trustees for the uses and purposes of the sequestration and so long as such trustee or trustees shall continue to hold their office as aforesaid all the present and future estate real or personal which shall have belonged or been due to such insolvent at the time when the order for placing his estate under sequestration was made or which may thereafter be purchased or acquired by or may revert descend or be devised or come to the insolvent during the continuance of the sequestration and before he shall obtain his certificate and allowance thereof as hereinafter provided wheresoever the same may be found or known together with all deeds vouchers papers and writings respecting the same and the said trustee or trustees shall have the

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the like remedy to recover the said estate of the insolvent or any part thereof in his or their own name or names for the purposes of the sequestration as the insolvent himself might have had if his estate had not been sequestrated and all powers vested in any insolvent at the time the order for placing his estate under sequestration was made or which may thereafter become vested during the continuance of the sequestration and before he shall obtain his certificate and allowance thereof which he might have legally executed for his benefit shall and may after the said order and until an order be made for confirming the appointment of a trustee or trustees as aforesaid be executed by the Chief Commissioner and after such order is made for confirming such appointment such powers may be executed by such trustee or trustees for the benefit of the creditors in such manner as the insolvent might have executed the same and the said insolvent is hereby declared to be incapable to exercise or execute any such powers as aforesaid.

55. And be it enacted That if any insolvent at the time of any order made for placing his estate under sequestration shall by the consent and permission of the true owner thereof have in his possession order or disposition any goods or chattels whereof he was reputed owner or whereof he had taken upon himself the sale alteration or disposition as owner the trustee shall have power to sell and dispose of the same for the benefit of the creditors proving debts against the said estate Provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel or any share thereof made as or security for any debt or debts either by way of mortgage or assignment duly registered according to the provisions of any law in force for the registering of vessels.

56. And be it enacted That it shall and may be lawful for the trustee or trustees to take up and continue in his or their own name or names upon entering on the record a suggestion of the insolvency the process in any suit or action commenced for any debt or demand due to the estate before their appointment or to discontinue the same as he or they shall see fit and also to commence any new suit or action for any debt or demand due to the estate of any insolvent person and also on entering a like suggestion to defend any suit or action pending against the insolvent relating to or affecting the said estate and in all such cases the insolvent shall be a competent witness for either party.

57. And be it enacted That it shall and may be lawful for the Supreme Court on cause shewn by the Chief Commissioner or by any person interested in the due administration of the insolvent estate to remove any trustee or trustees for insolvency or for any misconduct in the said trust or on account of absence from this Colony and thereupon and as often as any trustee shall die it shall and may be lawful for the said Court to order a new trustee to be elected and the same proceedings shall be had thereon as on the original election of trustees and it shall and may be lawful for the said Court in the mean time to make such order as may be necessary or expedient for the preservation of the insolvent estate until such new trustee shall be elected and confirmed.

58. And be it enacted That whenever on the death or removal of any trustee any new trustee shall be elected and confirmed in manner hereinbefore provided the order confirming the appointment of such new trustee shall have the effect in law to vest in the new trustee the whole insolvent estate present or future as hereinbefore particularly described and every power right title privilege and remedy vested in or competent to the former trustee as trustee before his death or removal as fully and to the same extent as the same was vested in the former trustee by the order made for confirming his appointment

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in manner aforesaid Provided always that the death or removal of any trustee shall not affect the validity or force of any lawful act done by him as trustee prior to his death or removal.

Actions may be continued by new trustees.

59. And be it enacted That whenever a trustee shall die or a new trustee shall be chosen no suit or action relative to the insolvent estate shall be thereby abated but the Court in which any such suit or action is depending or any Judge thereof may upon the suggestion of such death or removal or that a new trustee has been chosen and confirmed allow the name of the surviving or new trustee or trustees to be substituted in the place of the former and the said suit or action shall proceed as if such surviving or new trustee or trustees had originally commenced or defended the same.

Notice by trustees of their appointment.

60. And be it enacted That every trustee on being confirmed shall forthwith cause notice of the sequestration and of his appointment to be given by advertisement in the *Government Gazette* and the Chief Commissioner shall cause notice of every order made for the removal of any trustee to be given by advertisement in the *Government Gazette*.

As to trustees calling general meetings of creditors.

61. And be it enacted That it shall and may be lawful for any trustee or trustees at any time to call a general meeting of the creditors and to require their direction concerning the collection or sale of any part of the estate and the trustee or trustees shall call such meeting whenever they are thereto required by one-fourth of the creditors in value who have produced and proved their claims and the said trustees shall pursue the directions of the greater part in number and value of the creditors attending such meeting Provided always that twenty-eight days' notice at the least shall be given of every such meeting and of the purpose thereof in the *Government Gazette*.

As to proceedings under and minutes of meetings of creditors when not before Commissioners.

62. And be it enacted That at all public meetings of creditors held under and by virtue of this Act other than those which it is herein provided shall be held before a Commissioner one of the creditors present shall before any other business is proceeded in be chosen by the greater part in number and value of the creditors present to preside at such meeting and minutes of every such last-mentioned meeting shall be subscribed and authenticated by the creditor presiding at such meeting in the presence of the said meeting and shall be by him transmitted to the Chief Commissioner together with a copy of the *Gazette* containing the notice of such meeting to be annexed to the proceedings in the estate.

Employment by trustees of attorneys.

63. And be it enacted That it shall and may be lawful for the trustees to take legal advice on any legal question affecting the insolvent estate or the administration thereof and to employ an attorney for the conducting and defending all actions and suits for or against the insolvent estate and to charge against the insolvent estate all such fees as shall thereby be incurred and shall be allowed upon taxation by the proper officer of the Supreme Court subject to the review of the Supreme Court or any Judge thereof upon the complaint of the attorney so employed or of any person having an interest in the due administration of the estate under sequestration and when it shall be made to appear to the Supreme Court or any Judge thereof that any attorney has improperly advised commenced conducted or defended any such action or suit or incurred any improper or unnecessary expense therein with the purpose of thereby benefiting himself and not with the *bonâ fide* purpose of thereby benefiting the insolvent estate it shall and may be lawful for the said Court or Judge to order the whole or any part of the costs of such suit or action to be paid by such attorney as the said Court or Judge shall think fit.

Employment by trustees of insolvent or other person about the estate.

64. And be it enacted That it shall and may be lawful for the said trustee or trustees if they shall see fit to employ the insolvent or any

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any other person in the gathering and preservation of any crops or produce for any reasonable time necessary for the gathering and preservation thereof and also to leave the said insolvent or to place any other person in the charge of any property manufactory or concern belonging to the insolvent estate until the same shall be sold disposed of or wound up and to make to the said insolvent or other person so employed a reasonable allowance per diem for his labor.

65. And be it enacted That at the meeting for electing trustees and at any adjournment thereof as aforesaid the insolvent or legal administrator of any insolvent estate shall attend before the creditors to account for the said insolvency and shall being thereunto required by the creditors lodge with the Commissioner to be by him delivered to the trustee or trustees when confirmed a true inventory of the whole of such estate and effects real and personal wheresoever the same may be situated and of all estates and effects in expectancy or contingency or to which the insolvent may have any eventual right and all debts due to and by him to the best of his knowledge and belief and all books of accounts papers writings documents bills and vouchers relating to the said estate which are in his custody or power and the said insolvent or administrator shall upon being thereunto required surrender the said books papers writings documents bills and vouchers to the Commissioner to be by him delivered to the trustee or trustees when confirmed.

66. And be it enacted That no insolvent shall remove out of the jurisdiction of the Supreme Court or to remote parts within this Colony by which is intended parts beyond the limits which now are or hereafter may be prescribed for location within the same until after confirmation and allowance of the account and plan of distribution of the estate of such insolvent as hereinafter mentioned except with the consent in writing of three-fourths in number and value of the creditors who have proved debts against his estate certified to the Chief Commissioner or such insolvent shall have obtained his certificate and the allowance thereof as hereinafter mentioned and any of the Justices of the Peace shall and may upon the information on oath of any trustee or creditor or other person that any insolvent is about to remove or is making preparations to remove out of the jurisdiction of the said Court or to remote parts within this Colony as aforesaid contrary to this Act grant a warrant for the apprehension of such insolvent and cause such insolvent to be brought before himself or any other Justice or Justices of the Peace and any Justice or Justices before whom the insolvent shall be brought shall and may inquire into the matters of the said information and either commit the insolvent to any of Her Majesty's gaols until he shall be discharged in due course of law or discharge him out of custody according as he or they shall find such information to be well founded or not and every such commitment shall be and remain in full force and effect until the insolvent shall either find security in such manner and to such amount as shall be ordered by any Judge of the Supreme Court in that behalf that he will not go out of the jurisdiction of the said Court or to such remote parts within the Colony as aforesaid contrary to this Act or shall be otherwise discharged by the Supreme Court or any Judge thereof according to law.

67. And be it enacted That it shall and may be lawful for the Supreme Court or any Judge thereof upon the application of the trustee or trustees whenever and so often as they shall see fit to summon any insolvent before the Supreme Court or any Commissioner if the said Judge shall see fit so to order whether the said insolvent shall have obtained his certificate and allowance thereof or not and it shall be lawful for such Court or Commissioner to examine upon oath touching all

Attendance delivery
of inventory and
surrender by insol-
vent at the meeting
for electing trustees.

Insolvent attempting
to remove out of the
jurisdiction of the
Court before distri-
bution of his estate
and without consent
of creditors or certi-
ficate to be appre-
hended and
committed to prison.

Examination of
insolvent before
the Court of
Commissioner.

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all matters relating to his trade dealings or estate or which may tend to disclose any secret alienation transfer surrender delivery or concealment of his estate or effects real or personal and to cause his examination to be reduced to writing and signed by him and annexed to the proceedings in the said estate.

Warrant for apprehension of insolvent for not appearing.

68. And be it enacted That if any insolvent being lawfully summoned as aforesaid to appear before the Supreme Court or any Commissioner shall not at the time and place appointed in the summons for his appearance come before such Court or Commissioner (having no lawful impediment at such time made known to and allowed by such Court or Commissioner) it shall be lawful for such Court or such Commissioner under his hand to grant a warrant authorizing any officer of the law or other person to apprehend such insolvent and forthwith to bring him before such Court or Commissioner or to lodge him in any prison therein to be detained until the time which such Court or Commissioner as aforesaid shall have appointed anew on the application of the trustee or trustees for his examination and the gaoler of every such prison shall cause him to be brought before such Court or Commissioner at the time and place specified in such warrant and every insolvent who shall abscond or conceal himself within this Colony with the purpose and intent to evade being served with such summons or having been so summoned shall so abscond or conceal himself with intent to evade appearing at any such examination to which he was summoned or to prevent any warrant hereinbefore mentioned from being executed upon him or who shall remove out of the jurisdiction of the Supreme Court or to remote parts within the Colony contrary to this Act shall be deemed guilty of a misdemeanor and shall on conviction thereof suffer transportation for any period not exceeding seven years or imprisonment with or without hard labor for any period not exceeding three years.

Offence and punishment for absconding &c.

In what cases the insolvent under examination may be committed.

69. And be it enacted That if any insolvent shall at the second meeting of his creditors or any adjournment thereof held as aforesaid being thereunto required refuse to lodge a true inventory of his estate and effects or to surrender the books papers writings documents bills or vouchers relating to his estate as aforesaid or shall at his examination before the Court or any Commissioner before-mentioned refuse to be sworn or shall refuse to answer any lawful question put to him by such Court or Commissioner touching any of the matters aforesaid or shall refuse to sign or subscribe his examination so reduced into writing as aforesaid (not having any lawful objection allowed by such Court or Commissioner) it shall be lawful for such Court or Commissioner by warrant under his hand to commit him to such prison as they shall think fit there to remain without bail until he submit to do the matters aforesaid or to be sworn or make answer to such lawful questions as shall by them be put to him or sign and subscribe such examination as aforesaid.

Wife or any person may be summoned for examination before Court or Commissioner.

70. And be it enacted That after surrender or adjudication of sequestration of any estate as insolvent it shall and may be lawful for the Supreme Court or any Judge thereof upon the application of the said trustee or trustees to summon before the said Court or any Commissioner the wife of the insolvent or any other person known or suspected to have in possession any of the estate of the insolvent or to be indebted to the insolvent or whom the said Court or Commissioner may see reason to believe capable of giving information concerning the person trade dealing or estate of such insolvent or any information material to the full disclosure thereof and also to require such person to produce any books papers deeds writings or other documents in his or her custody which may appear necessary to the verification or disclosure of any of the matters aforesaid and it shall and

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and may be lawful for the Supreme Court or Commissioner to examine every such person upon oath concerning the person trade dealings or estate of such insolvent and to cause his or her examination to be reduced to writing and signed by him or her and annexed to the said proceedings and if any such person shall upon being lawfully summoned to appear to be examined fail so to appear (having no lawful impediment made known to the Court or Commissioner before whom such person is summoned at such time and allowed by them) it shall be lawful for such Court or Commissioner to grant a warrant authorizing and directing any officer of the law or other person to apprehend the person so summoned and failing to appear and to bring the said person before such Court or Commissioner or to lodge the said person in any prison therein to be detained until the time which such Court or Commissioner shall on the application of the trustee or trustees have appointed anew for his or her examination and the gaoler of any such prison shall cause such person to be brought before such Court or Commissioner at the time and place specified in such warrant and if any such person so summoned or brought before such Court or Commissioner for examination shall refuse to be sworn or shall refuse to answer any lawful question put by such Court or Commissioner touching any of the matters aforesaid or shall refuse to sign his or her examination so reduced into writing as aforesaid (not having any lawful objection allowed by such Court or Commissioner) or shall not being thereunto required produce any books papers deeds writings or other documents in his or her custody or power relating to any of the matters aforesaid and to the production of which he or she shall not state any objection allowed by them it shall be lawful for such Court or Commissioner by a warrant to commit him or her to such prison as they shall think fit there to remain without bail until such person shall submit to be sworn or make answers to all such lawful questions as shall by such Court or Commissioner be put or sign such examination or produce such books papers deeds writings or other documents as aforesaid in his or her custody or power to the production of which no such objection as aforesaid shall be allowed and if any such person having been sworn shall at such examination wilfully make any false answer to any lawful question put by such Court or Commissioner such person shall be deemed guilty of the crime of perjury and on conviction thereof shall suffer any punishment provided by law for such crime.

71. And be it enacted That the insolvent and every other person summoned before the Supreme Court or any Commissioner to be examined or give evidence or make disclosure of the trade dealing estate or effects of any insolvent under or by virtue of this Act shall have his necessary expenses tendered to him by the trustee or trustees of such insolvent estate in like manner as is by law required upon service of a subpoena to a witness in any civil suit.

72. And be it enacted That if any person whatsoever be committed by any Commissioner for refusing to answer any question the said Commissioner shall in his warrant of commitment specify every such question and if any person so committed as aforesaid shall make any application to the Supreme Court or any Judge thereof in order to be discharged from such commitment and there shall not appear to the Court or Judge any insufficiency or informality in the form of the warrant whereby such person was committed by reason whereof he might be discharged it shall be lawful for such Court or Judge and such Court or Judge is hereby required to re-commit such person to the same prison there to remain until he shall conform as aforesaid unless it be shewn to such Court or Judge by the party committed that he has fully answered all lawful questions put to him on his examination

Expenses to be tendered to persons summoned.

As to discharge from prison by Court or Judge of person under commitment.

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examination aforesaid or if such person was committed for refusing to be sworn or for not signing his examination unless it shall appear to such Court or Judge that he had a sufficient reason for the same Provided that such Court or Judge shall if required thereto by the party committed consider the whole examination of such party whereof any such question was a part and if it shall appear from the whole examination that the answer or answers of the party committed is or are satisfactory such Court or Judge shall and may order the party so committed to be discharged.

What shall be fraudulent insolvency and the punishment thereof.

73. And be it enacted That if any insolvent whose estate shall be surrendered or adjudged to be sequestered as insolvent shall whether before or after sequestration have alienated transferred given surrendered delivered mortgaged or pledged or have embezzled concealed retained or removed any part of his estate monies effects or credits to the value of forty shillings at any one time or at different times to the value of ten pounds or have concealed removed retained destroyed falsified or mutilated any book of account paper writing document bill or voucher relating thereto with intent to defraud his creditors or shall have contracted any debt fraudulently or by means of any false pretence or representation or if any such insolvent shall at the second meeting of his creditors or any adjournment thereof holden before any Commissioner wilfully lodge any inventory containing any false statement of his estate or effects or any part thereof or with respect to any debt due to or by him or shall produce any false or pretended book of accounts paper writing document bill or voucher or any book of account paper writ document bill or voucher on which any erasure alteration or false statement has been made or caused to be made by him or with his knowledge with intent to defraud his creditors or if any such insolvent shall at any time when examined in manner aforesaid before the Court or Commissioner wilfully make any false answer to any lawful question then put to him with intent to defraud his creditors he shall be deemed guilty of the crime of fraudulent insolvency and on conviction thereof shall suffer transportation for fifteen years or for any shorter period not less than five or imprisonment with or without hard labor for any period not exceeding three years.

As to offence of knowingly receiving any fraudulent alienation &c. from insolvent.

74. And be it enacted That if any person shall receive or accept any alienation transfer gift surrender delivery mortgage or pledge made by any insolvent of any part of his estate monies or securities for money effects or credits with intent to defraud the creditors of the insolvent knowing at the time the same to be fraudulently made such person shall on conviction thereof suffer transportation for fifteen years or for any period not less than five or imprisonment with or without hard labor for any period not exceeding three years.

As to offence of removing embezzling &c. any property under attachment.

75. And be it enacted That if any person shall dispose of remove retain conceal embezzle or receive any moveable property monies or securities for money belonging to any insolvent estate which has or have been attached by virtue of any order for the sequestration thereof knowing the same to have been so attached and with intent to defeat the said attachment or shall hinder or obstruct or endeavour to hinder or obstruct the messenger or other person authorized to make the same such person shall on conviction thereof suffer imprisonment with or without hard labor for any period not exceeding three years.

Warrant to search for concealed property of any insolvent.

76. And be it enacted That in all cases where on the application of the Chief Commissioner or any trustee or creditor of any insolvent estate it shall be made to appear on oath to the satisfaction of any Justice of the Peace that there is reason to suspect or believe that property of any insolvent is concealed in any house or other place not belonging to the insolvent it shall and may be lawful for the said

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Justice to grant a warrant to search for and take the said property which warrant shall be executed in like manner as is by law allowed in execution of a search warrant for property reputed to be stolen and concealed and any property of the insolvent so found shall forthwith be delivered if no trustee or trustees have hitherto been confirmed to the Chief Commissioner or otherwise to the trustee or trustees who have been confirmed or to any person appointed by the said Chief Commissioner or trustee or trustees to receive the same.

77. And be it enacted That it shall be lawful for the Chief Commissioner and he is hereby required so soon as the trustee or trustees chosen at the second meeting of the creditors of any insolvent estate in manner aforesaid have been confirmed forthwith to appoint the third meeting of the creditors of the insolvent to be holden before himself or any District Commissioner at such time not less than twenty-eight days or more than fifty-six days thereafter and at such place as he shall deem most expedient for all parties concerned for the purpose of receiving proof of debts and for receiving the report of the trustee or trustees as to the condition of the insolvent estate and for giving directions to the trustee or trustees as to the management thereof and the said trustee or trustees shall give notice of the time and place at which and of the purposes for which such meeting is to be held in the same advertisement in the *Government Gazette* in which notice is hereinbefore required to be given by them to the creditors of their confirmation as trustee or trustees.

78. And be it enacted That it shall and may be lawful for the trustee or trustees to compound with any debtor to the insolvent estate and take any reasonable part of the debt in discharge of the whole (being thereto authorized by the Chief Commissioner) or to give a reasonable time or take security for the payment of such debt or to submit any dispute between them and any person concerning or affecting the said estate to the determination of arbitrators to be chosen by the trustee or trustees and the party with whom they shall have such dispute and the award of such arbitrators shall be binding on all the creditors.

79. And be it enacted That the trustee or trustees after being confirmed as aforesaid shall subject to the directions of the creditors given in the manner hereinbefore provided forthwith proceed to make sale of the property belonging to the said estate real and personal giving due notice thereof in the *Government Gazette* and also such other notice as they shall think fit Provided that from the sale of the said personal property shall be excepted until the creditors shall determine thereon the wearing apparel bedding tools of trade and household furniture of the insolvent and his family.

80. And be it enacted That it shall and may be lawful for the said trustee or trustees with the consent of the greater part in number and value of the creditors who shall have proved their debts present at any meeting whereof and of the purpose of which twenty-eight days' notice shall have been given in the *Government Gazette* to permit the said insolvent to retain for his own use the whole or such part of his wearing apparel bedding household furniture and tools of trade excepted from the sale of his personal property as the said creditors shall agree to allow to the said insolvent.

81. And be it enacted That the trustee or trustees of any insolvent estate shall as soon as he or they shall receive any sum of money exceeding twenty pounds belonging to the said estate open an account with one of the banks in this Colony in the name of the insolvent estate and such sum and every other sum exceeding twenty pounds so received by them shall be forthwith paid into such bank to be placed to the credit of such account and all cheques or orders for payment

Time and mode of
appointing third
meeting of creditors.

Trustees may com-
pound or submit to
arbitration upon
notice thereof.

As to sale of estate
by trustees condition
of sale &c.

As to wearing ap-
parel tools &c. of
insolvent.

As to trustees
paying in and
drawing out money
from the bank.

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payment of any such money out of the said bank shall truly express the name of the person in whose favour it was drawn and shall be signed by all the trustees or by one of them for himself and co-trustees or when there are more than three trustees then by two of them.

Penalty upon trustee retaining or employing money belonging to the estate.

82. And be it enacted That any trustee who shall retain in his hands any sum of money exceeding twenty pounds sterling part of any insolvent estate longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid into one of the said banks and who shall not have any just and lawful cause for so retaining the same or shall employ for his own benefit any sum of money part of any insolvent estate shall forfeit and pay for the benefit of the said estate double the amount of the sum so retained or employed and the said sum so forfeited shall be deducted out of any claim the said trustee may have against the said estate and the surplus if any shall be recovered by action to be brought by his co-trustees or if there be no other trustee by the Chief Commissioner on behalf of the creditors.

Accounts of the trustees.

83. And be it enacted That the trustee or trustees shall keep an account wherein they shall forthwith enter all property of the insolvent received by them and all payments made by them on account of the insolvent estate which account every creditor who shall have proved may inspect at all reasonable times.

Powers of trustees in respect of agreements entered into by insolvent for purchase or exchange of real property.

84. And be it enacted That if any insolvent shall have entered into any agreement for the purchase or exchange of any estate or interest in any real property it shall and may be lawful for the trustee or trustees of such insolvent either to abide by execute and sue for performance of such agreement or abandon the same and if the said trustees shall not (upon being thereto required) elect whether they will abide by and execute such agreement or abandon the same the vendor or person having made such agreement as aforesaid or any one legally claiming under him shall be entitled to apply to any Judge of the Supreme Court who may thereupon order the said trustee to deliver up any such agreement and the possession of the premises to the vendor or person so agreeing as aforesaid or any one claiming under him or may make such other order therein as the said Judge shall think fit Provided that nothing herein contained shall prevent such vendor or person having made such agreement as aforesaid from suing the trustee or trustees and recovering judgment against the insolvent estate for any damage which he shall prove to have been by him sustained by the non-fulfilment on the part of the insolvent of any such agreement or shall deprive the said trustee or trustees of their legal defence against such suit.

Insolvent entitled to lease or agreement for lease when liable for rent or covenant and remedy of lessor &c. when trustees refuse to accept &c.

85. And be it enacted That any insolvent entitled to a lease or agreement for a lease if the trustee or trustees accept the same shall not be liable to pay rent accruing after the order of sequestration or to be sued in respect of any non-observance or non-performance of any conditions covenants or agreements therein contained and if the trustee or trustees decline the same shall not be liable as aforesaid in case he deliver up such lease or agreement to the lessor or person agreeing to grant a lease within fourteen days after he shall have had notice that the trustee or trustees shall have declined as aforesaid and if the trustee or trustees shall not upon being thereto required elect either to accept or decline such lease or agreement for a lease the lessor or person so agreeing as aforesaid or any person entitled under such lessor or person so agreeing shall be entitled to apply to any Judge of the Supreme Court who shall order the trustee or trustees to deliver up such lease or agreement and possession of the premises or may make such order therein as he shall think fit.

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86. And be it enacted That if at the third public meeting of the creditors appointed by the Chief Commissioner as aforesaid or at any subsequent meeting of the creditors assembled together by advertisement in the *Government Gazette* the insolvent or any person on his behalf shall make an offer of composition or security for composition which the greater part of the creditors in number and value assembled at such meeting shall agree to accept the trustee or trustees shall forthwith call another meeting for the purpose of deciding upon such offer whereof at least forty-two days' notice shall be given by advertisement in the *Government Gazette* specifying the time place and purpose of such meeting and if at such second meeting three-fourths in number and value of the creditors then present shall also agree to accept such offer or any amended offer then upon such acceptance being testified by them in writing to the Supreme Court and upon oath of the insolvent that the same hath not been procured by him or any one in his behalf to his knowledge or belief by any fraudulent or undue means or influence it shall and may be lawful for the said Court to release the said estate from sequestration.

87. And be it enacted That the trustee or trustees of any insolvent estate shall as soon as may be and not later than six months after their appointment—unless upon application to the Supreme Court or a Judge thereof upon sufficient cause to the satisfaction of the said Court or Judge further time be given for that purpose—frame and lay before the Chief Commissioner an exact account of the balance of the said estate containing the proceeds of all sales and debts then collected and an account of all debts still outstanding and an inventory of all property and effects still unsold and also all debts due by the said estate and shall form a plan for distribution of the assets of the said estate specifying first such creditors as are entitled to any preference in the order of their legal preference and secondly the concurrent creditors and the balance remaining for division amongst them.

88. And be it enacted That as soon as the Chief Commissioner shall receive from the trustee or trustees any such account of the estate and plan for distribution the same shall lie open in his office for the inspection of the creditors a reasonable time to be appointed by the Chief Commissioner not being less than fourteen days from the advertisement thereof according to the distance of the residence of any creditor who has proved a debt against the said estate and the said trustee or trustees shall cause notice thereof to be given in the *Government Gazette*.

89. And be it enacted That it shall and may be lawful for the insolvent or any party interested in the estate under sequestration and for any creditor who may conceive himself aggrieved by the said plan of distribution within the time aforesaid to enter his objection in writing with the Chief Commissioner stating the grounds thereof and also it shall and may be lawful for the Supreme Court or any Judge thereof to permit such objection to be entered at any time before the final confirmation of the said plan upon sufficient cause to be shewn to the satisfaction of the said Court or Judge and upon such terms as the said Court or Judge shall impose.

90. And be it enacted That any person as aforesaid objecting to the said account or plan of distribution shall apply to the Supreme Court calling upon the trustees and also upon the party whose interest might be affected thereby to shew cause why the said plan should not be altered or amended as the case may be and thereupon it shall and may be lawful for the said Court upon hearing the said parties to make such order thereon as to the said Court shall seem fit Provided that whenever any alteration or amendment shall be ordered in the said plan whereby the interest of any party who has not made appear-

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ance in the said Court shall be affected the same shall again lie open for inspection of the creditors and notice thereof shall be given as aforesaid.

**As to confirmation
by the Court and
effect thereof.**

91. And be it enacted That it shall and may be lawful for the trustee or trustees after the expiration of the time appointed for the inspection of the said account and plan of distribution and no objection being entered thereto or if any objection has been stated after the Court has made order thereon as aforesaid to apply to the Supreme Court praying that the said plan may be allowed and confirmed by the Court and thereupon it shall and may be lawful for the said Court to allow and confirm the same and such allowance and confirmation shall have the effect of a final judgment of the said Court as between the insolvent and the creditors of such insolvent respectively and as to the amount of any debt therein specified except against such creditors as shall afterwards be admitted by the said Court in manner hereinbefore provided to prove their debts and rank upon the same estate at any time before the final distribution thereof.

**As to distribution of
estate.**

92. And be it enacted That after confirmation and allowance of the said account and plan of distribution the trustees shall upon the demand of the said creditors distribute the said estate according thereto and the remedy of any creditor to obtain payment of any dividend due to him shall be during the continuance in office of the said trustee or trustees by application to any Judge of the Supreme Court and the order of the said Judge thereon.

**As to resignation
and discharge of
trustees.**

93. And be it enacted That if any trustee desire to resign his office it shall be lawful for such trustee to apply to the Supreme Court or a Judge thereof for leave to resign his office or to surrender the said trust to the Chief Commissioner as to any future estate or effects which may be acquired by the insolvent before he shall obtain his certificate and allowance thereof and to be discharged and acquitted of the said trust and if no valid objection be stated and if the Court or Judge be satisfied that the trustee has complied with the regulations of this Act so far as regards him his application may be granted by the said Court or Judge but if any objection be stated thereto the Court or Judge shall proceed to determine the same in a summary manner and shall make such order thereon as they shall think fit and if the application of the trustee for leave to resign be granted the said Court or Judge shall thereupon make such order as they or he shall see fit for the preservation and administration of the estate until a new trustee be chosen and confirmed and for the discharge and acquittance of the said trustee and for the security and payment of any unclaimed dividends to the parties entitled to the same and respecting any future estate or effects which may be acquired by the insolvent before he shall obtain his certificate and allowance thereof Provided always that no order of the said Court or Judge allowing the said trustee to resign shall prevent the trustee thereafter chosen and confirmed in his stead from calling upon him to account for any part of his conduct as trustee prior to his resignation And provided always that before making any application for leave to resign the trustee shall make out a full statement of his accounts and of the situation of the insolvent estate and shall call a meeting of the creditors to consider the same of which meeting at least twenty-eight days' notice shall be given by advertisement in the *Government Gazette* intimating the purpose of the meeting and also that the aforesaid statement will in the meantime lie open for their inspection in the office of the Chief Commissioner.

**Time and mode of
insolvent obtaining
certificate and allow-
ance thereof by the
Court.**

94. And be it enacted That any insolvent may after the third public meeting of his creditors called by the Chief Commissioner as aforesaid and after his examination (if any has been applied for and ordered

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ordered as aforesaid) apply to his creditors for a certificate testifying their consent to the discharge of the insolvent being granted by the Court in manner hereinafter mentioned and every insolvent who shall have obtained such certificate signed by three-fourths in number and value of the creditors who have proved debts against his estate and who shall make oath in writing that such consent and certificate were obtained without fraud and without his having used any undue means or influence or having made any secret compromise with his creditors in order to obtain their consent and certificate may apply to the Supreme Court to have his certificate allowed. Provided that at least six weeks' notice of the day on which such application is to be made shall have been given by advertisement in the *Government Gazette* and if no objection be made thereto by any of the creditors of the insolvent the said Court shall make an order allowing such certificate but if any objection shall be made by any creditor the said Court shall judge and determine thereon and shall refuse or suspend the said certificate or allow the same absolutely or conditionally as the justice of the case shall require. Provided always that where in consequence of the goods and effects of the insolvent being under the value of one hundred pounds the proceedings in such case directed by this Act shall have taken place it shall be lawful for such insolvent at any time not being less than three months after the said first meeting to apply to his creditors for a certificate as aforesaid.

95. And be it enacted That if any insolvent shall have committed any act herein declared to amount to the crime of fraudulent insolvency or shall after surrender of his estate or in contemplation of insolvency or after notice of any order for sequestration of his estate have destroyed altered mutilated or falsified or caused to be destroyed altered mutilated or falsified any of his books papers writings or securities or made or been privy to the making of any false or fraudulent entries in any book of accounts or other document with intent to defraud his creditors or if any person shall have proved a false debt against the estate of any insolvent such insolvent being privy thereto or afterwards knowing the same shall not have disclosed the same to his trustees within one month after such knowledge such insolvent shall not be entitled to his certificate or allowance and any certificate and allowance which such insolvent may have obtained shall be null and void.

96. And be it enacted That any contract or security made or given by any insolvent or other person for or in trust for any creditor or for securing the payment of any money due by such insolvent at his insolvency as a consideration or with intent to persuade such creditor to agree to accept any offer of composition or security for composition or consent to sign such certificate shall be and is hereby declared to be fraudulent and void and the money thereby secured or agreed to be paid shall not be recoverable.

97. And be it enacted That every such certificate when allowed by the Supreme Court shall have the effect to discharge the insolvent from all debts due by him at the time his estate was surrendered or adjudged to be sequestrated and from all claims and demands proved or hereby made proveable against his estate but no such certificate and allowance thereof shall have effect to release or discharge any person who was partner with such insolvent at the time of his insolvency or who was then jointly bound or who had made any joint contract with such insolvent.

98. And be it enacted That any trustee becoming insolvent and being indebted to the estate of which he was trustee in respect of any sum of money improperly retained or employed by him if he shall

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shall obtain his certificate and allowance thereof shall not be discharged thereby as to his future effects in respect of the said debt.

Mode of pleading certificate and of obtaining discharge from imprisonment thereon.

99. And be it enacted That any insolvent who after his certificate has been allowed shall have any action brought against him for any debt claim or demand due by him at the time his estate was surrendered or adjudged to be sequestrated proved or hereby made proveable against his estate may plead in general that the cause of action accrued before he surrendered his estate or the same was sequestrated as aforesaid and may give this Act and the special matter in evidence and such insolvent's certificate and allowance thereof shall be sufficient evidence of the insolvency surrender or adjudication and other proceedings precedent to the obtaining the said certificate and allowance thereof and if any such insolvent shall be taken in execution or detained in prison for such debt claim or demand where judgment has been obtained before the allowance of his certificate it shall be lawful for any Judge of the Supreme Court on proof by such insolvent of his certificate and allowance thereof to order any gaoler or officer who shall have the said insolvent in custody by virtue of the said execution to discharge him without exacting any fee from the defendant and the said gaoler or officer shall be and is hereby indemnified for so doing.

As to imprisonment of uncertificated insolvents and proceedings thereon.

100. And be it enacted That at any time or times after the plan of distribution of any insolvent estate has been confirmed in manner hereinbefore mentioned or after the distribution of the said estate has been directed to be made under the provisions of this Act and before the insolvent shall have obtained his certificate and allowance thereof it shall and may be lawful for the trustees or any creditor of the said estate to apply to the Supreme Court for an order of the said Court for the imprisonment of the said insolvent until satisfaction of his debt or lawful discharge therefrom Provided the said insolvent shall first have been duly summoned to appear before such Court on the day whereon the said application shall be made to shew cause why such order should not be made and thereupon and upon proof to the satisfaction of the said Court that the said estate is not sufficient to discharge the debts proved or proveable against the said estate as aforesaid and that the insolvent hath reasonable means of discharging the same or some part thereof it shall and may be lawful for the Court to grant the said order absolutely or conditionally or to refuse the same as to the said Court shall seem just and reasonable Provided that when the application shall be made by one or more creditors and the said Court shall suspend the same upon the condition of the insolvent paying any sum of money periodically or otherwise such payment shall be made to the trustees or to the Chief Commissioner as the case may be for the benefit of all the creditors.

As to records of proceedings under this Act.

101. And be it enacted That the Chief Commissioner shall enter of record and have the custody of all proceedings relating to any insolvency under and by virtue of this Act and the insolvent or any creditor who has proved shall at all reasonable times have inspection of the same and be permitted to take extracts or copies therefrom at his own expense and extracts of such proceedings signed by the said Commissioner shall be received as evidence in all Courts of Justice within the Colony.

Special Commissioner upon illness &c. of any Commissioner.

102. And be it enacted That whenever it shall be made to appear to the Supreme Court or any Judge thereof that the Chief or other Commissioner as the case may be is prevented by illness or any unavoidable cause from holding any meeting which under the provisions of this Act is required to be held before any Commissioner it shall and may be lawful for the said Court or Judge to appoint a Commissioner for the special purpose of holding such meeting who shall

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shall have for the purpose of such meeting the same powers and authorities as are by this Act given to any Commissioner in the like case.

103. And be it enacted That it shall and may be lawful for the Court to make rules &c. Judges of the Supreme Court at Sydney and for the Resident Judge at Port Phillip from time to time as they shall think fit to make such rules orders and regulations for carrying this Act into effect and also touching the form and manner of proceeding and the fees to be taken for any thing done under the same as to them shall seem fit.

104. And be it enacted and declared That for all the purposes Supreme Court to be holden by and before one or more Judges. of this Act the Supreme Court shall and may be holden at Sydney by and before any one or more of the Judges of the said Court and at Port Phillip by and before the Resident Judge there.

105. And be it enacted and declared That in every case where Application of the Act to the cases of insolvents resident at Port Phillip. any insolvent shall be resident within the limits within which the Resident Judge at Port Phillip has or shall have jurisdiction the words "Chief Commissioner" used in this Act shall be construed to mean and apply to the Chief Commissioner of Insolvent Estates resident at Port Phillip and that where by this Act any matter or thing relating to the person or estate of any such insolvent is required to be inserted in the *Government Gazette* the same shall also be in like manner inserted in some public newspaper published at Port Phillip.

106. And be it enacted and declared That in every case where Application of the words "Chief Commissioner" used in the Act. any insolvent shall be resident in any other part of the Colony than within the limits within which the Resident Judge at Port Phillip has or shall have jurisdiction the words "Chief Commissioner" used in this Act shall be construed to mean and apply to the Chief Commissioner of Insolvent Estates resident at Sydney.

107. And be it enacted That in all suits or actions and in all Proof of insolvency in any action or other proceeding. indictments or informations under this Act where it shall be necessary to allege or prove that any party became or was insolvent or that his estate was surrendered or sequestrated as insolvent or ordered or adjudged to be so sequestrated it shall be sufficient merely to allege that such party being insolvent within the meaning of this Act his estate was ordered or adjudged to be sequestrated without setting forth such adjudication or any order for such sequestration or setting forth or proving any petition presented in the matter of the insolvency or any petitioning creditor's debt or meeting of creditors or other proceeding under this Act and proof of such adjudication or order by the production thereof or of any office copy thereof under the hand of the Judge or Officer signing the same shall (on proof of such signature and of the identity of the party therein named as insolvent) be sufficient for the purposes of such allegation.

108. And be it enacted That this Act shall be in full force and effect on the first day of February next from and after which day an Act of the Governor of this Colony with the advice of the Legislative Council made in the second year of the reign of Her Majesty Queen Victoria intituled "An Act to revive and continue for a limited time "an Act passed in the second year of the reign of His late Majesty King William the Fourth intituled 'An Act for the relief of Debtors in execution for Debts which they are unable to pay' and to make certain amendments therein" and also an Act of His Excellency the Governor and Legislative Council passed in the fourth year of the reign of Her present Majesty intituled "An Act to revive and continue for a limited time an Act passed in the second year of the reign of Her present Majesty for the relief of Debtors in execution for Debts which they are unable to pay and to make certain amendments therein" shall be and the same are hereby repealed.