

No. XIV.

INSOLVENCY.

An Act to remove difficulties in the disposal administration and distribution of Insolvent Estates. [31st October, 1846.]

Preamble.

5 Vic. No. 17.

7 Vic. No. 19.

8 Vic. No. 15.

Order of Judge here-
tofore made or here-
after to be made shall
have effect of vesting
in official assignee
the real and personal
estate of an insol-
vent.

WHEREAS an Act was passed in the fifth year of the reign of Her present Majesty intituled "*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*" And whereas another Act was passed in the seventh year of the reign of Her present Majesty intituled "*An Act to amend an Act intituled 'An Act for giving relief to Insolvent Persons and providing for the administration of Insolvent Estates and to abolish Imprisonment for Debt'*" And whereas another Act was passed in the eighth year of the reign of Her present Majesty intituled "*An Act to amend the Act passed in the fifth year of Her Majesty's reign for the relief of Insolvent Debtors and also the Act lately passed for amending the same and abolishing Imprisonment for Debt*" And whereas it is expedient for facilitating the sale and realization of the estates of insolvent persons by the assignees and trustees thereof and for lessening the expense of conveyances on such sales and for removing doubts as to the estate and interest conveyed by such assignees and trustees and as to the powers possessed by such assignees and trustees that the said recited Acts should be amended Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That every order heretofore made or hereafter to be made by any Judge appointing any person to be official assignee of and for any estate placed or to be placed under sequestration shall be deemed to have had and after the passing of this Act shall have the effect of vesting in such official assignee absolutely or for such estate and interest as the insolvent had therein all the real and personal property of the insolvent which belonged to was vested in or was due to such insolvent or to which he was in any manner entitled at the time when the order for placing his or her estate under sequestration was made and also all the real and personal

Insolvency.

personal estate which since such last mentioned order hath been shall have been or shall be purchased by or which hath or shall have reverted descended or come to or which shall revert descend or come to the insolvent during the continuance of such sequestration and before such insolvent hath or shall have obtained or shall obtain his or her certificate and allowance thereof as in the said recited Acts is provided.

2. And be it enacted That the order of the Court heretofore made or hereafter to be made confirming the election of any assignee heretofore elected or hereafter to be elected by the creditors of any insolvent estate shall be deemed to have divested and shall divest the official assignee and shall be deemed to have vested and shall vest in such official assignee jointly with such confirmed assignee as aforesaid all the real and personal property of such insolvent which shall so be deemed to have vested or which shall vest in such official assignee upon his appointment as aforesaid and for such estate and interest and that the order confirming the election of any such assignee as aforesaid or any copy thereof signed by the Chief Commissioner in and for all parts of the Colony not comprehending the District of Port Phillip and certified by such Commissioner to be a copy thereof shall be received and taken by all Courts of Justice in the said Colony as conclusive evidence that such assignee has been duly elected.

Order of Court confirming election of assignee shall divest official assignee and vest in said assignees jointly.

3. And be it enacted That all deeds now executed or which shall after the passing of this Act be executed by the official assignee for the time being of any insolvent estate or by the assignee for the time being elected by the creditors and confirmed by the Court as aforesaid and by the official assignee for the time being or by any trustees or a trustee for the time being whose election has been confirmed or by the trustees or trustee for the time being appointed provisionally purporting to convey assign release or assure any part of the real or personal property of an insolvent to any purchaser or purchasers mortgagee or mortgagees or other person or persons in fee simple or for other less estate or interest shall be and be deemed to have been from the time of the date or execution thereof valid and effectual both at Law and in Equity for conveying assigning releasing and assuring such real and personal property in fee simple or for other less estate and interest in such deed mentioned or expressed to be conveyed assigned released or assured to the purchaser or purchasers mortgagee or mortgagees or other persons or person and that such purchaser or purchasers mortgagee or mortgagees or other person or persons and every person or persons claiming under him or them shall be deemed to have been relieved and shall after the passing of this Act be relieved from inquiring or ascertaining whether the advertisements have been or shall have been inserted and meetings of creditors called or direction of creditors obtained as in the said Acts provided notwithstanding the same have not been or shall not have been or shall not be inserted called or obtained and that any person who hath dealt or contracted with or taken any conveyance or other assurance from any assignee or assignees for the time being or trustee or trustees for the time being as aforesaid of any insolvent estate or shall deal or contract with or take any conveyance or other assurance from any assignee or assignees or trustee or trustees for the time being as aforesaid of any insolvent estate shall be deemed not to have been bound and shall not be bound to inquire into or ascertain the power or authority of such assignee or assignees or trustee or trustees for the time being as aforesaid with respect to such dealing contracting conveyance or assurance as aforesaid but that such assignee or assignees or trustee or trustees for the time being as aforesaid shall for the purposes aforesaid and as between him or them and such person or persons as aforesaid be deemed and considered to have

Deeds executed by official or elected assignee to be deemed effectual to convey

and purchasers relieved from the effect of omissions.

Insolvency.

but assignees not
exonerated.

been and shall be deemed and considered as beneficial owners of the real and personal property of the insolvent Provided always that nothing in this Act contained shall be construed to exonerate any such official assignee confirmed trustee or assignee for the time being as aforesaid or trustee for the time being appointed provisionally as aforesaid from any liability for the unobservance or nonperformance of his or their duty as such assignee or trustee as aforesaid.

As to priority of
rights of mortgagees.

4. And be it enacted That any mortgagee or mortgagees or incumbrancer or incumbrancers or any person or persons claiming by from through or under him or them who hath or have taken or who shall take a release conveyance or other assurance of the equity of redemption or other estate or interest of any official assignee for the time being or official and confirmed assignees for the time being or confirmed trustee or trustees for the time being or trustee or trustees for the time being appointed provisionally shall not thereby be deprived of any right or benefit which such mortgagee or mortgagees or incumbrancer or incumbrancers or such person or persons claiming by from through or under him or them would have had if such release conveyance or other assurance had not been made and that any subsequent mortgagee or mortgagees or incumbrancer or incumbrancers or any person or persons claiming by from through under or in trust for him or them shall not be entitled to enforce his or their mortgage or mortgages or incumbrance or incumbrances as against the mortgaged estate or prior mortgagee or mortgagees or person or persons claiming or to claim through him or them without first giving full effect both at Law and in Equity to the claim of such prior mortgagee or mortgagees incumbrancer or incumbrancers or person or persons claiming by from through or under him or them who hath taken or shall hereafter take a release conveyance or other assurance as aforesaid to the full amount of his and their principal and interest and other monies in and by such prior mortgage or mortgages incumbrance or incumbrances expressed or intended to be secured.

Order of Court shall
have effect of re-
vesting his estate in
insolvent when
released from seques-
tration.

5. And be it enacted That any order of the Supreme Court aforesaid whereby the estate of any insolvent shall be ordered to be released from sequestration shall be deemed to have had and shall have the effect of re-vesting in the insolvent all the real and personal property of the insolvent undisposed of which by virtue of any of the said recited Acts or this Act was vested or shall be vested in any assignee or assignees trustee or trustees of any insolvent estate in the same manner as if his estate had never been placed under sequestration.

Agent of absent
creditor to act as
creditor could if
present.

6. And be it enacted That the duly authorized agent of any creditor residing without the jurisdiction of the Supreme Court of the said Colony shall have authority to do all acts matters and things authorized to be done by any creditor of an insolvent estate under and by virtue of this Act or of the said recited Acts or any of them as fully and effectually as such creditor could or might have done if personally present.

RIDER.

Court may suspend
or grant certificate
in certain cases.

And whereas by the secondly hereinbefore recited Act the Chief Commissioner is authorized and directed in certain cases to refuse the insolvent his certificate Be it enacted That in all cases where under the provisions of the said Act the said Chief Commissioner either at Sydney or Melbourne shall have refused or shall hereafter refuse to grant the insolvent his certificate and the decision of the Chief Commissioner shall have been confirmed on appeal by the Supreme Court it shall be lawful for the said Supreme Court on application

Disqualifications for Election.

cation to be made by the insolvent and at the request of the majority in number of the creditors who shall have proved in his estate from time to time to alter and to vary the said decision and to suspend the said certificate for such period as to the said Court shall seem reasonable and just and then grant the same Provided that no such application shall be made until after two years shall have elapsed from the date of such refusal by the Chief Commissioner.
