

No. XIX.

COMPANIES WINDING
UP.

An Act for facilitating the winding up of Joint Stock Companies unable to meet their pecuniary engagements. [17th September, 1847.]

Preamble.

If any joint stock company commit an act of insolvency the estate of the company may be placed under sequestration upon petition of any creditor.

WHEREAS it is expedient to extend the remedies of creditors against the property of incorporated and joint stock companies when unable to meet their pecuniary engagements and to facilitate the winding up of their concerns Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That if any incorporated or joint stock company now or hereafter subsisting or carrying on any trade or business within the Colony of New South Wales shall commit any act which by this Act is to be deemed an act of insolvency on the part of such company or body the estate of such company or body shall and may be placed under sequestration by the name or style of the said company or body upon the petition of any creditor or creditors of such company or body (whether a member or members thereof or not) to such amount as is by the law of the said Colony requisite to constitute a sufficient petitioning creditor's debt in the same manner in all respects as if the same were the estate of an individual or ordinary partnership and the Supreme Court and the several Judges thereof as well as the Resident Judge at Port Phillip and all persons acting under any such order or adjudication for the sequestration of such estate shall and may proceed thereon in like manner as against other insolvent estates subject always to the provisions hereinafter made Provided always that the insolvency of any such company or body in its corporate or associated capacity (as the case may be) shall not be construed to be an act of insolvency of any member of such company or body in his individual capacity.

Proviso.

Sequestration and other orders to be served on the Secretary or a Director of such company.

2. And be it enacted That the order for the sequestration of the estate of any such company or body and the adjudication thereof and all other orders and directions of the said Court and Judges and of the Chief and other Commissioners of Insolvent Estates shall be served on the person who was at the date of the original order of sequestration a Chief Clerk or Secretary of such company or body or (if there be no such person) on any person who was at such date a Director thereof personally or by leaving the same at the head office for the time being of such company or body.

Declaration of inability to meet engagements by Board of Directors to be an act of insolvency.

3. And be it enacted That if any such company or body shall by virtue of a resolution to be duly passed in that behalf at a Board of Directors of such company or body duly summoned for that purpose file or cause to be filed in the office of the Chief Commissioner of Insolvent Estates at Sydney or Melbourne in the said Colony as the case may be a declaration in writing in the form specified in Schedule A No. 1 hereunto annexed that the said company or body is unable to meet its engagements and also a minute of such resolution in the form specified in the Schedule A No. 2 such declaration and minute of resolution being respectively under the common seal of such company or body and if such company or body have no common seal then signed by the Chairman of the Board of the Directors who was present at the passing of such resolution and in either case such declaration and minute of resolution being respectively attested by the Attorney or Solicitor of the said company or body for the time being every such company or body shall be deemed thereby to have committed an act of insolvency at the time of filing such declaration and thereupon the

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the President or Chairman of the said company or body or the person or persons in whom the estate and effects of the said company or body shall then be vested as Trustees or otherwise on behalf of the said company or body shall be at liberty to cause the said estate and effects to be surrendered as insolvent into the hands of the Official Assignee in the same manner as any individual or private firm now may or shall hereafter be empowered so to surrender his or their estate as insolvent under or by virtue of the present or any future Insolvent Law of the Colony and such proceedings shall be thereupon had as in the case of a surrender by such individual or private firm except as otherwise provided in and by this Act.

4. And be it enacted That if any plaintiff shall recover judgment in any action personal for the recovery of any debt or money demand in any Court of Record within the said Colony against any such company or body or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body and shall be in a situation to sue out execution upon such judgment and there be nothing due from such plaintiff by way of set-off or which may be legally set off against such judgment and such company or body shall not within fourteen days after notice in writing served upon the said company or body by service of the same on a Chief Clerk or Secretary or Registrar of the said company or body or (if there be no officer of such denomination) on any Director of the said company or body personally or by the same having been left at the head office for the time being of such company or body requiring immediate payment of such judgment debt pay secure or compound for the same to the satisfaction of such plaintiff such company or body shall be deemed to have committed an act of insolvency on the fifteenth day after service of such notice Provided always that if such execution shall be in the meantime suspended or restrained by any rule order or proceeding of any Court of Justice having jurisdiction in that behalf no further proceeding shall be had on such notice but that it shall be lawful nevertheless for such plaintiff when he shall again be in a situation to sue out execution on such judgment to proceed again by notice in manner before directed.

5. And be it enacted That if any decree or order shall be pronounced in any cause depending in any Court of Equity or any order shall be made in any matter of insolvency or lunacy against any such company or body or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body ordering any sum of money to be paid by such company or body and such company or body shall disobey such decree or order the same having been served upon such company or body by service of the same on a Chief Clerk or Secretary or Registrar of the said company or body or (if there be no officer of such denomination) on any Director of the said company or body personally or by the same having been left at the head office for the time being of such company or body the person entitled to receive such sum under such decree or order or interested in enforcing the payment thereof pursuant thereto may apply to the Court by which the same shall have been pronounced to fix a peremptory day for the payment of such money which shall accordingly be fixed by an order for that purpose and if such company or body being served in manner aforesaid with such last mentioned order fourteen days before the day therein appointed for payment of such money shall neglect to pay the same such company or body shall be deemed to have committed an act of insolvency on the fifteenth day after the service of such order.

6. And be it enacted That it shall be lawful for the assignees of the estate and effects of any such company or body to maintain any action to

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recover a debt and any person may claim against company any debt due on the balance of accounts.

Member's share not to be set off against a demand which the assignees of an insolvent company may have against such member.

Action by a creditor of a company so far as concerns his recourse against the person or property of an individual member thereof not to prejudice or affect his right to petition for the sequestration of the estate of such company.

Remedy against co-partners reserved.

No execution to issue against a member until claim against company proved nor after appointment of receiver without leave of the Court.

Proof of debt against company equivalent to a judgment decree or order of record.

Law and practice in insolvency to extend to this Act and to orders and adjudications of sequestration issued by virtue thereof except as otherwise directed by this Act.

Court or Judge may order the Directors of a company adjudged insolvent to prepare

action suit or other proceeding against any person or persons (whether a member or members of such company or body or not) to recover any debt or demand on behalf of the said company or body against such person or persons and for any person or persons to prove or claim against the estate of such company or body such debt or demand as may be due to him or them (whether a member or members of such company or body or not) on the balance of accounts between him or them and the said company or body.

7. Provided always and be it enacted That no claim or demand which any member of any such company or body may have in respect of his share of the capital or joint stock thereof or of any dividends interest profits or bonus payable or apportionable in respect of such share shall be capable of being set off either at Law or in Equity against any demand which the assignees of the estate and effects of such company or body may have against such member on account of any other matter or thing whatsoever but all proceedings in respect of such matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock or of any dividends interest profits or bonus payable or apportionable in respect thereof.

8. And be it enacted That no action suit or other proceeding by any creditor or creditors of any such company or body shall so far as concerns or may be necessary for the recourse of such creditor or creditors against the person property or effects of any member or members thereof for the time being or any former member or members thereof be deemed to prejudice or in any manner affect the right of such creditor or creditors to petition for and procure the sequestration of the estate of such company or body or his or their right to prove or claim against the estate of such company or body any debt or demand remaining unsatisfied and that no such sequestration or proof or proceeding thereunder shall be deemed to prejudice or in any manner affect the right of any creditor or creditors of such company or body to institute or maintain any action suit or other proceeding so far as concerns or may be necessary for the recourse of such creditor or creditors against the person property or effects of any member or members thereof for the time being or any former member or members thereof Provided always that nothing herein contained shall prevent remedy against copartners Provided also that no execution in respect of any debt or demand proveable against the estate of any such company or body adjudged insolvent shall be issued against the person property or effects of any member or members for the time being of such company or body or any former member or members thereof until after such debt or demand shall have been proved against such estate nor shall any such execution be issued after the appointment of a receiver in manner hereinafter mentioned without leave of the Supreme Court at Sydney or Resident Judge at Port Phillip.

9. And be it enacted That proof of any debt against the estate of any such company or body as aforesaid adjudged insolvent shall be and be deemed to be equivalent to a judgment decree or order of record in any action suit or other proceeding against any such company or body.

10. And be it enacted That the law and practice in insolvency now in force in the said Colony shall extend so far as the same may be applicable to this Act and to orders and adjudications of sequestration issued or made by virtue of this Act and to all proceedings under such orders and adjudications save and except as may be otherwise directed by this Act.

11. And be it enacted That it shall be lawful for the said Supreme Court or any Judge thereof or the Resident Judge at Port Phillip at any time after the advertisement of the sequestration of the estate

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estate of any such company or body as by law is required to order that the persons who were at the date of such sequestration Directors of such company or body or such of them as such Court or Judge in its or his discretion shall think fit or if there be no Directors then such members of the company as such Court or Judge in its or his discretion shall think fit shall prepare such balance sheet and accounts and in such form as such Court or Judge shall direct and shall subscribe such balance sheet and accounts and file the same in the office of the Chief Commissioner of Insolvent Estates at Sydney or Melbourne as the case may require and deliver a copy thereof to the Official Assignee ten days at least before the second meeting under such sequestration and such balance sheet and accounts before such second meeting may be amended from time to time as occasion shall require and such Court or Judge shall direct and such persons shall make oath of the truth of such balance sheet and accounts whenever they shall be duly required so to do and such Court or Judge may from time to time make such allowance out of the estate of such company or body for the preparation of such balance sheet and accounts and to such person or persons as such Court or Judge shall think fit.

and file a balance sheet and accounts and to make oath of the truth thereof and order allowance out of the estate for the preparation thereof.

12. And be it enacted That every such person ordered as aforesaid to prepare such balance sheet and accounts shall be under the like obligation to submit to be examined before any Chief or other Commissioner of Insolvent Estates from time to time upon oath and to make a full and true discovery of the estate and effects of such company or body and shall incur such danger or penalty for not coming before such Chief or other Commissioner or for refusing to be sworn and examined or for not fully answering to the satisfaction of the said Chief or other Commissioner or for refusing to sign or subscribe his examination or for not delivering up all such part of the estate of such company or body and all books papers and writings relating thereto as shall be in his possession custody or power or for removing concealing or embezzling any part of such estate to the value of ten pounds or upwards or any books of account papers or writings relating thereto with intent to defraud the creditors of such company or body as is now by the law in force concerning insolvents provided as to an insolvent for not conforming to the like requisitions for the discovery of and in relation to the estate and effects of such insolvent.

Persons ordered to prepare such balance sheet and accounts to be under the like penalty as an insolvent for not conforming to the requisition for the discovery of and in relation to the effects of such insolvent.

13. And be it enacted That it shall be lawful for the said Supreme Court or any Judge thereof or the Resident Judge at Port Phillip after any petition for the sequestration of the estate of any such company or body shall have been made and before adjudication to summon before such Court or Judge or any Chief or other Commissioner of Insolvent Estates any person (whether a member of such company or body or not) whom such Court or Judge shall believe capable of giving any information concerning the commercial dealings or trading of or any act or acts of insolvency within the meaning of this Act committed by such company or body and also to require such person so summoned to produce any books papers deeds writings and other documents in the custody possession or power of such person which may appear to such Court or Judge to be necessary to establish such dealings trading or act or acts of insolvency and it shall be lawful for such Court or Judge or such Chief or other Commissioner to examine every such person on oath by word of mouth or interrogatories in writing concerning the dealings or trade of or any act or acts of insolvency within the meaning of this Act committed by such company or body and it shall also be lawful for such Court or Judge after adjudication to summon before it or before any such Chief or other Commissioner any person (whether a member of such company or body or not) known or suspected to have any of the estate of such company

The Court or any Judge thereof may summon any person whether a member of the company or not to give evidence as to the trading and any act of insolvency of a company or any person suspected to have property of the company in his possession or to be indebted to the company &c. and compel him to produce books &c.

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or body in his possession or who is supposed to be indebted to such estate or any person (whether a member of such company or body or not) whom such Court believes capable of giving information concerning any person or persons who was or were a member or members of such company or body at or before the date of the order of sequestration or concerning the trade dealings or estate of such company or body or concerning any act or acts of insolvency within the meaning of this Act committed by such company or body or any information material to the full disclosure of the dealings of such company or body and it shall be lawful for such Court or Judge or any such Chief or other Commissioner to examine in manner aforesaid every such person so summoned concerning the person of any such member or concerning the trade dealings or estate of such company or body and also to require every such person so summoned to produce any books papers deeds writings or other documents in his custody possession or power which may appear to such Court necessary to the verification of the deposition of such person or to the full disclosure of any of the matters which such Court or Judge or Chief or other Commissioner is authorized to inquire into and every such person so summoned shall incur such danger or penalty for not coming before the Court or Judge or Chief or other Commissioner of Insolvent Estates or for refusing to be sworn and examined or for not fully answering to the satisfaction of such Court or Judge or Chief or other Commissioner or for refusing to sign or subscribe his examination or for refusing to produce or for not producing any such book paper deed writing or document as is now provided against persons summoned to be examined under any order or adjudication for the sequestration of the estate of any private individual or firm.

Costs where person summoned to attend before the Court or a Judge thereof or before the Commissioner.

14. And be it enacted That where any person who at or before the date of an order for the sequestration of the estate of any such company or body was a member of such company or body shall be summoned to attend before the Supreme Court or any Judge thereof or the Resident Judge at Port Phillip or before any Chief or other Commissioner of Insolvent Estates every such person shall have such costs and charges only (if any) as such Court Judge or Commissioner in its or his discretion shall think fit.

Penalty on concealing any part of the estate of an insolvent company and reward for disclosing any part thereof.

15. And be it enacted That if any person whatsoever not being a person so ordered as aforesaid to prepare such balance sheet and accounts shall wilfully conceal any real or personal estate of any such company or body and shall not within thirty days after the public notification of the order for the sequestration of the estate of such company or body discover such estate to the Chief or other Commissioner authorized to act in the prosecution of the order of sequestration or to the assignees every such person shall forfeit the sum of one hundred pounds and double the value of the estate so concealed and any person other than a person having been a member of such company or body who shall after the second meeting under such sequestration voluntarily discover to such Court or to the assignees any part of the estate of such company or body not before come to the knowledge of the assignees shall be allowed five pounds per centum thereupon and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit to be paid out of the estate recovered on such discovery.

Punishment for disobeying any rule or order of the Court or any Judge thereof.

16. And it is hereby declared and enacted That if any person shall disobey any rule or order of the Supreme Court or any Judge thereof or Resident Judge at Port Phillip duly made by such Court or Judge for enforcing any of the purposes and provisions of this Act or of any other Act relating to bankruptcy or insolvency now or hereafter to

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to be in force or made or entered into by consent of such person for carrying into effect any of such purposes or provisions it shall and may be lawful for such Court or Judge by warrant under hand and seal to commit the person so offending to the common gaol of any county city or place where he shall be found or where he shall usually reside there to remain without bail or mainprize until such person shall have fulfilled the duty required by such rule or order or until such Court or Judge shall make order to the contrary.

17. And be it enacted That it shall be lawful for the Chief or other Commissioner authorized to act in the prosecution of any such sequestration to direct the assignees of the estate and effects of any such company or body to apply to the Supreme Court at Sydney or Melbourne as the case may require by petition in a summary way to the Chief and other Judges at Sydney or to the Resident Judge at Port Phillip praying that all such orders and directions may be given as shall be necessary for the final winding up and settling the affairs of such company or body and to compel a just contribution from all the members thereof towards the full payment of all its debts and liabilities and of the costs of winding up and finally settling the said affairs and that upon the hearing of such petition it shall be lawful for the said Supreme Court at Sydney or the Resident Judge at Melbourne as the case may be to refer it to the Chief Commissioner of Insolvent Estates at either of such places respectively as the case may be to take all such accounts and make all such inquiries as shall be required for the purpose of ascertaining what sum of money in the whole and what sums of money as proportionate parts of the whole or what sum or sums of money from time to time on account will (having regard to the deed of settlement of such company and the calls contributions debts or demands actually paid by the several and respective members thereof and also having regard to any proceedings in the Insolvent Court) be necessary and proper to be raised by calls or contributions from the respective members of such company or body for the payment and satisfaction of all the debts and liabilities thereof and also of all the costs of winding up and settling the affairs of the said company or body and that the said Supreme Court at Sydney or the Resident Judge at Melbourne as the case may be upon confirmation of the said Chief Commissioner's report made upon any such reference or upon making such reference or otherwise may order the payment of the several and respective sums of money which by such report are found necessary and proper to be paid and may appoint a receiver to collect and receive such sums of money and to pay the same into some bank in the name and to the account of the said Chief Commissioner of Insolvent Estates to the credit of such company or body and may upon the petition of such assignees order such sums of money to be paid in or towards satisfaction of the debts which by the proceedings in insolvency shall have been found to be due to the creditors of such company or body and all persons having claims and demands thereon and also in satisfaction of costs or may order such receiver to pay such sums of money in satisfaction of such debts claims and demands and costs in the first instance.

18. And be it enacted That if it shall appear that any individual members of any company or body whose estate shall have been placed under sequestration have claims against each other in respect of the affairs or transactions of such company or body it shall be lawful for the said Supreme Court at Sydney or the Resident Judge at Melbourne as the case may require upon the petition of any member of such company or body alleging that he hath any such claims against any other member of the said company or body to make all such orders as shall be just for the purpose of finally settling and determining

The Court may make order in individual claims of members in respect of the transactions of the company.

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determining such claims and may order the payment of such sum of money (if any) as shall appear to be due in respect of any such claim.

The Judges of the Supreme Court to make rules and orders as to the form and mode of proceeding for settling and enforcing contribution to be made by members of company &c. and such rules and orders to be laid before the Legislative Council for approval.

19. And whereas the law is defective in the means of making the members of joint stock companies contributaries for paying their debts in full and in the means of giving relief where execution may have been had in respect of a debt due from any such company against one or a very few members thereof and also in the means of adjusting the rights of the members of any such company amongst themselves and finally winding up the affairs thereof Be it enacted That it shall be lawful for the Judges of the Supreme Court of the Colony or the Resident Judge at Port Phillip (as the case may be) from time to time and as often as circumstances shall require to make and prescribe such rules and orders touching and concerning the form and mode of proceeding to be had and taken in the Supreme Court at Sydney or Melbourne as aforesaid or by the Chief or other Commissioner of Insolvent Estates at either of such places (as the case may be) for settling and enforcing the contribution to be paid by any member or members for the time being of any such company or any former member or members thereof or any real or personal representative or other person liable in that behalf and the practice to be observed by such Court or Commissioner in or relating to such proceeding or any matters incident thereto and the form and mode of proceeding to be had and taken before any Commissioner or officer of such Court primarily or by reference from such Court in any matter for or relating to contribution as shall from time to time seem necessary and proper for the advancement of justice in such cases and for adjusting and determining the rights and equities of the parties concerned and for suing for and getting in the assets and for ascertaining and discharging the liabilities of such companies and requiring the creditors thereof to claim their debts and finally winding up the affairs thereof with as little delay expense and uncertainty as possible Provided always that such rules and orders shall be laid before the Legislative Council of the Colony within one month from the making thereof if the Legislative Council be then sitting or if the Council be not then sitting within one month from the commencement of the then next Session thereof and every rule and order so made shall be binding and obligatory and be of like force and effect as if the provisions contained therein had been expressly enacted by the Governor and Legislative Council of the Colony.

Not to affect Charters
of Incorporation.

20. Provided always and be it declared and enacted That nothing herein contained shall be construed or taken to alter amend or repeal any provision of any Charter of Incorporation created by Letters Patent under the Great Seal of Great Britain or by any Act of Parliament.

SCHEDULE REFERRED TO.**SCHEDULE A. No. 1.**

Declaration of Insolvency by Incorporated or Associated Commercial or Trading Company.
By virtue of a Resolution duly passed in that behalf on the day of at a Board of Directors of [here state the name or style of the Company] duly summoned for that purpose it is hereby declared That the said Company [or Society &c. as the case may be] is unable to meet its engagements.

Dated this day of in the year
(Common Seal of the Company or if the Company have no Common Seal the Signature of the Chairman of the Board of Directors who was present at the passing of the Resolution.)

Witness G. H. Attorney [or Solicitor]
of the Court of and Attorney [or Solicitor]
of the said Company and attesting witness to the execution thereof as such Attorney [or Solicitor].

Jurors and Juries Consolidation.

A. No. 2.

Minute of Resolution of a Board of Directors of Incorporated or Associated Commercial or Trading Company authorizing a Declaration of Insolvency.

A RESOLUTION was duly passed on the day of at a Board of Directors of [here state the name and style of the Company] duly summoned for that purpose That the said Company was then unable to meet its engagements and that a Declaration of Insolvency should be forthwith filed in the Office of the Chief Commissioner of Insolvent Estates at in the form directed by the Act in that case made and provided.

(Common Seal of the Company or if the Company have no Common Seal the Signature of the Chairman of the Board of Directors who was present at the passing of the Resolution.)

Witness G. H. Attorney [or Solicitor]
of the Court of and Attorney [or Solicitor]
of the said Company and attesting witness to the
execution thereof as such Attorney [or Solicitor].
