

No. VIII.

INSOLVENCY.

An Act to amend the Laws relating to Insolvency. [26th December, 1861.]

Preamble.

WHEREAS it is expedient to amend the Law relating to Insolvency and the administration thereof in manner hereinafter contained. Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Certain payments before insolvency protected.

Exceptions.

1. Every payment heretofore or hereafter made by any person before the sequestration of his estate under the Act fifth Victoria number seventeen to any creditor for or on account of any just debt due at the time of payment shall except only in the cases hereinafter mentioned be and be deemed to have been a valid payment anything in the said Act notwithstanding.

2. Provided that such creditor or the person receiving payment on his behalf shall not at the time of payment have known that the debtor was then insolvent—or was by such payment rendered insolvent—or that he then contemplated the surrender of his estate as insolvent—or that proceedings for causing his estate to be sequestrated had been commenced—or that the payment was a voluntary preference of such creditor to other creditors. And notice to the creditor or person so receiving payment of any such matter by whomsoever given if in accordance with the fact shall be equivalent to and be deemed knowledge in such creditor or person.

Retrospective operation of Act.

3. Provided also that nothing in this Act shall extend to any suit or action already determined or commenced before the first day of September one thousand eight hundred and sixty-one and pending at the passing of this Act or shall affect any matter or question therein.

Transfer of certain jurisdiction to Chief Commissioner.

4. The Chief Commissioner of Insolvent Estates sitting in Insolvency shall have all the authority and powers of a Judge of a Court of Record and the powers and jurisdiction now vested in and exercised by the Supreme Court or any Judge thereof in or in respect of certain matters in Insolvency that is to say—the sequestration of estates—the release of estates from sequestration—the directing and prosecuting of the examinations of insolvents and witnesses and ordering and enforcing the production of books and papers—the ordering of the payment of dividends and of other moneys belonging to

Insolvency.

to insolvent estates—the ordering of payments by an insolvent becoming able to satisfy his creditors wholly or in part—the approval of accounts—and the confirmation of plans of distribution—shall be and the same are hereby transferred to and vested in the Chief Commissioner of Insolvent Estates Subject nevertheless to appeal to the Supreme Court in such manner and upon such terms as the Judges by any general rules made by them shall direct.

5. It shall no longer be necessary that the granting suspending or refusing by the Chief Commissioner of a certificate to any insolvent shall be confirmed by the Supreme Court in the first instance but every such grant suspension or refusal by the said Commissioner shall take effect from the date thereof unless reversed or altered by the Supreme Court upon appeal And every such appeal shall be within twenty-one days and shall be subject to any general rules made as aforesaid.

6. The Official Assignees in Insolvency shall be in all respects as such Assignees under the control and direction of the Chief Commissioner And if at any time it shall appear to such Commissioner that any Official Assignee has improperly or unnecessarily incurred costs charges or expenses in any matter affecting an insolvent estate or its administration he may disallow the same as against the estate Subject nevertheless to appeal to the Supreme Court by the Official Assignee or any other person interested in the question in such manner and upon such terms as may be provided by any general rules made as aforesaid.

7. All sales in Insolvency effected by or by the order of any Official Assignee shall unless the Chief Commissioner shall in any case otherwise direct be by public auction of which six days public notice at the least shall be given And no sale by private contract shall be complete until approved under the hand of the Chief Commissioner.

8. The Governor shall with the advice of the Executive Council appoint a fit person to be “Registrar in Insolvency” who shall also be the Accountant of the Court and shall be under the control and direction of the Chief Commissioner And it shall be the duty of such Registrar to preserve the records and keep the books and accounts of the Insolvency Department—to tax all costs incurred in Insolvency proceedings—to audit and report to the Chief Commissioner upon the accounts and plans of distribution of the Official Assignees and to attend to such other matters relating to Insolvency as may be required of him by the Chief Commissioner subject in all cases of taxation to review by the Chief Commissioner upon application for that purpose.

9. The Chief Commissioner in any insolvent estate in which he shall see fit may order meetings of creditors to be held and the proof of debts thereat to take place before the Registrar subject to review by himself as aforesaid And the Chief Commissioner may authorize the calling and holding of any meeting of creditors in any estate for any purpose at the instance of the Assignee therein or of any three creditors upon such day or after the expiration of such time as he may think fit.

10. The Chief Commissioner may cause the insolvent in any estate and also all persons required as witnesses therein from time to time to be summoned and examined either before himself or some other Commissioner in Insolvency and may issue summonses for that purpose on the application of the Official Assignee or of any creditor or without any such application And obedience to any such summons may be enforced and non-compliance therewith be punished by him in like manner as provided by the sixty-eighth and two following sections of the Act fifth Victoria number seventeen with respect to parties summoned by the Supreme Court or a Judge.

Certificates of insolvents need not be confirmed &c. by Supreme Court.

Power to disallow improper charges.

Registrar in Insolvency.

Commissioner may authorize meetings and proof of debts before Registrar.

Examination of insolvent and witnesses.

Tobacco Duties.

Insolvents not filing
Schedule &c. when
required.

11. Whenever an insolvent shall have been required by or in pursuance of any general rule to file or deliver a schedule of his assets and liabilities or a statement of property disposed of by him within sixty days before sequestration or a supplementary schedule shewing his transactions for six or twelve months before sequestration he may be proceeded against for not complying with any such requisition by attachment as for contempt of a rule of Court.

Creditors' Assignee.

12. The person who may be elected Assignee by the creditors in any insolvent estate need not be a creditor.

Short title.

13. This Act shall be styled and may be cited as the "Insolvency Laws Amendment Act of 1861."
