



ANNO TRICESIMO NONO ET QUADRAGESIMO

VICTORIÆ REGINÆ.

A.D. 1876.

No. 54.

An Act to amend the "Insolvent Further Amendment Act, 1870."

[Assented to, 17th November, 1876.]

WHEREAS it is expedient to amend the "Insolvent Further Amendment Act, 1870"—Be it therefore Enacted by the Governor of the Province of South Australia, by and with the advice and consent of the Legislative Council and House of Assembly of the said Province, in Parliament assembled, as follows: Preamble.

1. Except so far as the same are hereby repealed, and except so far as the same are inconsistent herewith or altered hereby, "The Insolvent Act, 1860," "The Insolvent Amendment Act, 1867," and the "Insolvent Further Amendment Act, 1870," shall be incorporated herewith, and read and construed together as forming one Act. Incorporation.

2. So much of section 4 of the "Insolvent Further Amendment Act, 1870" as repeals section 34 of "The Insolvent Act, 1860," and section 9 of the said the "Insolvent Further Amendment Act, 1870," are hereby repealed, and the said section 34 of the said "The Insolvent Act, 1860," is hereby revived. Repeal.

3. Notwithstanding anything contained in the said "Insolvent Further Amendment Act, 1870," no deed for the benefit of creditors made and executed, or purporting to be made and executed by a debtor, and to take effect under Division vi. of "The Insolvent Act, 1860," shall be null and void by reason of non-compliance with all or any of the provisions of the said Acts or either of them; but such deed Deeds under Division vi. of "The Insolvent Act, 1860," to be voidable but not void.

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deed may for any such non-compliance be declared fraudulent and void as against the assignees in insolvency upon an application to the Court of Insolvency under section 175 of the said "The Insolvent Act, 1860."

Majority of creditors
how computed.

4. In computing the requisite majority of creditors of any debtor executing any such deed, no creditor who is not resident in the said Province, or who has not resident therein a known duly authorized agent, shall be reckoned either in number or value until after the expiration of six calendar months from the date of the execution of any such deed.

Court not bound by
technical objections.

5. In considering any application to declare any such deed fraudulent and void, or in considering any application under the next succeeding section, the Court of Insolvency shall not make any such declaration or abstain from granting any such certificate merely because all or any of the declarations required to be made by the debtor or by the creditors of the debtor under the said "Insolvent Further Amendment Act, 1870," do not contain all the particulars required by the said Act, if the Court shall be of opinion that any omission or irregularity in any such declaration was not wilful and material.

Trustees may obtain
certificate from Court
of Insolvency that
deed is valid.

6. The trustees of any such deed may at any time apply to the Court of Insolvency to appoint a meeting, of which meeting the trustees shall give at least nine days' notice to the creditors of the debtor whose names appear in the schedule to the deed, by the like means and in like manner as is required to be given by the Official Assignee before the last examination of an insolvent; and at such meeting the Court shall proceed to inquire whether such deed has been duly made and executed under the provisions of Division VI. of "The Insolvent Act, 1860," and has been duly signed or assented to by three-fourths in value and one-half in number of such creditors; and whether the provisions of "The Insolvent Act, 1860," and of the "Insolvent Further Amendment Act, 1870," as amended by this Act and affecting the validity of the said deed have been complied with; and if at such meeting the Court finds such deed duly executed and assented to, the Court shall thereupon grant a certificate in the form contained in Schedule A to this Act, and such certificate shall thereafter in all Courts be conclusive evidence of the due execution and validity of the said deed.

Trustees entitled to
be registered as pro-
prietors of land under
"Real Property Act,
1861."

7. Upon production of the certificate in the last clause mentioned the trustees of any such deed shall be entitled to be registered as proprietors of any land or any estate or interest therein the property of the debtor, which may be under the provisions of the "Real Property Act, 1861," on the said trustees producing, and, if necessary, surrendering the certificate of title of any such land, or any estate or interest therein.

Commission payable
to trustees, how fixed.

8. The trustees of any such deed may take and retain for their own

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own use, out of the moneys which may come to their hands, as a remuneration for their care and trouble in and about the execution of the trusts thereof, such a sum of money or percentage as may be fixed by such deed in that behalf, or if not fixed, as may be allowed by the Commissioner of Insolvency: Provided that where the amount is fixed by the deed, such amount shall be approved by the Commissioner of Insolvency.

9. This Act shall be considered retrospective, and shall be held to apply to all deeds purporting or expressed to be made in pursuance of Division VI., of "The Insolvent Act, 1860," executed before the passing hereof, except deeds as to the validity of which judicial proceedings may have been heretofore taken, and except deeds in respect of which any such proceedings may be taken before the thirty-first day of December, one thousand eight hundred and seventy-six.

Act retrospective,
except in certain
cases.

In the name and on behalf of Her Majesty, I hereby
assent to this Bill.

A. MUSGRAVE, Governor.

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SCHEDULE A.

[*Court of Insolvency.*]

In the matter of the Deed of Arrangement of _____ of
 in the said Province.
 At the Local Court House, Victoria-square, Adelaide, the _____ day of
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WHEREAS, by deed dated the _____ day of _____ 18
 the above-named debtor, _____ conveyed and assigned all his estate
 and effects to trustees for the benefit of his creditors: And whereas this Court sat
 this day to inquire whether such deed was duly made and executed under the
 provisions of Division VI. of "The Insolvent Act, 1860," and was duly signed or
 assented to by three-fourths in value and one-half in number of the creditors of the
 said debtor, and whether the provisions of "The Insolvent Act, 1860," and "The
 Insolvent Further Amendment Act, 1870," affecting the validity of the said deed,
 have been complied with: This Court doth find that the said deed was duly made
 and executed, and was duly assented to by three-fourths in value and one-half in
 number of the creditors of the said _____, and that all the
 provisions of the said recited Acts, as amended by "An Act to amend the 'Insolvent
 Further Amendment Act, 1870,'" affecting the validity of the said deed have been
 duly complied with.

By the Court,
 (L.S.) _____ C. D.,
 Commissioner.