



1845.

No. 11.

By His Excellency GEORGE GREY, Esquire, Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies, and Vice-Admiral of the same, by and with the advice and consent of the Legislative Council.

AN ORDINANCE for further amending an Ordinance of the Governor and Council of this Province, intituled "An Act for giving relief to Imprisoned Insolvent Debtors, and to make provision for the administration of the Estates of Insolvent Debtors in South Australia."

WHEREAS by an Ordinance of the Governor and Council of this Province, passed on the twenty-second day of June, one thousand eight hundred and forty-one, intituled "An Act for giving relief to Imprisoned Insolvent Debtors, and to make provision for the administration of the Estates of Insolvent Debtors in South Australia," it is amongst other things enacted, that every person declared insolvent, either on his own petition or on the petition of any creditor, who shall have duly and in all things conformed to the laws in force concerning insolvents at the time of issuing the fiat against him, shall be discharged from all debts due by him when he became insolvent, and from all claims and demands proveable under the fiat and inserted in his Schedule, in case he shall obtain a certificate of such conformity, signed and allowed and verified upon oath in the manner mentioned in the Statute made and passed in the sixth year of His late Majesty King George the Fourth, intituled "An Act to amend the Laws relating to Bankrupts," which Statute requires a certificate of conformity to be signed by a certain proportion of the creditors of a bankrupt:

Recited Ordinance, 1841, No. 1, as to granting certificates of conformity in the manner mentioned in 6 G. 4, c. 16, which requires certificate to be signed by a certain proportion of creditors.

And whereas by an Ordinance of the Governor and Council of this Province, passed on the twenty-eighth day of February, one thousand eight hundred and forty-four, for amending the first recited Ordinance, provision is amongst other things made for granting to any person declared insolvent after the passing of the now reciting Ordinance,

And recites Ordinance 1844, No. 5, respecting granting certificates of conformity.

Ordinance, either on his own petition or on the petition of a creditor, who shall in all things have conformed himself to the laws in force concerning insolvents at the time of issuing the fiat of insolvency against him, a certificate of such conformity to be signed and allowed, and subject to such provisions as are therein mentioned, and it is declared that it shall not be requisite for such certificate to be signed by any of the creditors of such insolvent:

Recites the difficulty experienced by persons declared insolvent under the first-recited Ordinance in procuring certificates signed by creditors as required by 6 G. 4, c. 16.

And whereas after the passing of the first-recited Ordinance, and before the passing of the last-recited Ordinance, many persons were declared insolvent, either on their own petition or on the petition of creditors, which persons have conformed to the laws in force concerning insolvents at the time of issuing the respective fiats against them, but few of such persons have been able to obtain certificates of conformity, signed by the proportion of creditors, and allowed and verified upon oath in the manner mentioned in the said Statute passed in the sixth year of His late Majesty King George the Fourth, owing in some cases to the obduracy of creditors, and in others to the poverty of debtors, and the difficulty of obtaining and verifying the signatures of creditors to such certificates, and it is therefore deemed reasonable and expedient to give to the provisions of the last-recited Ordinance respecting certificates a retrospective operation:

Enacts that the provisions of the second-recited Ordinance passed in 1844, respecting certificates of conformity, shall extend to all persons declared insolvent since the passing of the first-recited Ordinance (22nd June, 1841).

Be it therefore Enacted, by His Excellency the Governor of South Australia, by and with the advice and consent of the Legislative Council thereof, That so much of the said last-recited Ordinance passed in the year one thousand eight hundred and forty-four, as relates to the granting or allowance of certificates of conformity, shall be deemed to extend to and include every person declared insolvent either on his own petition or on the petition of a creditor, since the passing of the first-mentioned Ordinance, who shall have in all things conformed himself to the laws in force concerning insolvents at the time of issuing the fiat of insolvency against him, and that all the enactments of the said last-recited Ordinance relating to the method of obtaining certificates, and to their effect and the protection given thereby, and the method of pleading the same, and the causes for rendering the same void, and to contracts or securities made or given with intent to persuade creditors to forbear opposing or to consent to the allowance of certificates, and to contracts, promises, or agreements by insolvents for paying debts from which they shall have been discharged, and all enactments relating directly or indirectly to certificates of conformity, shall be construed as if such enactments had been originally made to extend to all persons duly declared insolvent in this Province before the passing of the said last-recited Ordinance, and except that where by the last-recited Ordinance it is provided that certificates of conformity shall be allowed by the Commissioner, and confirmed by the Supreme Court, it is hereby declared that all certificates of conformity granted to persons declared insolvent under fiats issued before the passing of the last-recited Ordinance shall and may be allowed by the Judge of the Supreme Court, and being so allowed shall be good without further confirmation.

But certificates in respect of fiats issued before the passing of the last-recited Ordinance to be allowed by the Judge.

II. Provided always and be it Enacted, That no certificate of conformity to be hereafter allowed as aforesaid to any debtor declared insolvent before the passing of the said Ordinance made in the year one thousand eight hundred and forty-four, shall be available against any creditors residing out of this Province, until the expiration of the times following, that is to say—as to creditors residing in New South Wales or Van Diemen's Land, until six calendar months after the application by the insolvent for such certificate shall have been published in the *Government Gazette*; and as to creditors residing elsewhere out of this Province, not until eighteen months after the publication of such application shall have been made as aforesaid; and if within the respective times aforesaid, any such creditor shall cause notice in writing to be given to the insolvent, or to be left at his usual place of abode, if such be known, and if not, shall cause such notice to be inserted in the *Government Gazette*, of the intention of such creditors to oppose the final allowance of such certificate, then upon good cause being shewn by any such creditors, at a time to be fixed upon by the Judge, it shall be lawful for the Judge to order that the allowance of such certificate shall be annulled, or that the allowance thereof shall be suspended for such time as he shall think fit; and upon such order as last aforesaid being made, the certificate shall become void and of no effect, or it shall be suspended, as the case may require: Provided always, that if no cause shall be shewn for annulling or suspending a certificate within the respective times hereby allowed for that purpose, such certificate shall relate to and have effect from the time of the allowance thereof; and that until the expiration of the time hereby allowed for creditors to oppose the allowance of a certificate, such certificate so allowed shall, in the meantime, be available against all creditors residing within the jurisdiction of the Court, and also against every creditor residing out of the jurisdiction of the Court, who shall have opposed the allowance of such certificate, either by himself or some agent specially authorized in that behalf.

Certificate not to be available against creditors residing in New South Wales or Van Diemen's Land, until six calendar months after the publication of insolvent's application for certificate in the *Government Gazette*; and as to creditors residing elsewhere out of the Province, not until eighteen months after such publication.

III. And be it Enacted, That it shall be lawful for the now Commissioner of Insolvency, or for any Commissioner of the said Court, to be hereafter appointed under the powers of the hereinbefore recited Ordinances, or either of them, to do and perform all such matters and things as may hereafter be required to be done under any fiat of insolvency which may have been granted since the passing of the first-recited Ordinance, whether such matters and things relate to the auditing the accounts of official or other assignees, the ordering dividends to be made, or otherwise howsoever, as he might have done if he had been named in such fiat as the Commissioner before whom the matters thereof were to be prosecuted, save and except only the granting or allowing of certificates of conformity to persons declared insolvent before the passing of the second-recited Ordinance.

Power for the Commissioner to do all things under any fiat issued since the passing of Ordinance of 22nd June, 1841, as he might have done if he had been named in such fiat, except granting certificates to persons declared insolvent before passing Ordinance of 28th February, 1844.

IV. And be it Enacted, That if within seven days after the publication in the *Government Gazette* of such declaration of insolvency by a debtor, as is mentioned in the first-recited Ordinance, passed in the

If within seven days after publication of a declaration of insolvency, a creditor does not sue out a fiat, the

debtor making the declaration may petition the Court for relief, whereupon a fiat may issue.

The same proceedings to be had as upon a fiat issued at the suit of a creditor.

Insolvent to annex to petition a statement of his effects.

Mistake in name or in statement of debts in Schedule, without fraud, not to prejudice insolvent.

To remove doubts as to the effect of orders heretofore made for the discharge of imprisoned insolvent debtors.

the year one thousand eight hundred and forty-one, some creditor shall not sue out a fiat of insolvency against the debtor making such declaration, it shall be lawful for such debtor not being in custody, at any time within fourteen days after the publication of such declaration, or within such further time, not exceeding two calendar months, as the Court may see fit, on good cause shown, to allow, and in case a fiat shall not in the meantime be sued out against him by some creditor, to present a petition to the Supreme Court, stating that he is unable to meet his engagements, and is desirous that all his real and personal estate and effects shall be vested in the Official Assignee of the estates and effects of insolvent debtors, according to the provisions of the Ordinances respecting insolvent debtors, and praying to have the benefit of such Ordinances, which petition shall be subscribed by such petitioner; and upon the presenting of such petition, it shall be lawful for any Judge of the Supreme Court, or in case of his illness or absence for such person as the Governor may think fit to appoint by writing under his hand for that purpose, to issue a fiat authorizing the petitioner to prosecute his petition; and, thereupon such proceedings shall and may be had, and with the like effect with respect to declaring the said petitioner to be insolvent, and with respect to the vesting his estate and effects in the Official and other Assignees, and with respect to the proof of debts, the protection of the person of the insolvent from arrest, and the allowance of a certificate of conformity, and generally in all other respects as if the petitioner had been declared insolvent upon a fiat issued at the suit of a creditor. And be it Enacted, That the same fees of Court upon the allowance of a fiat under this clause, and upon the proceedings consequent thereon, shall be payable as in the case of a fiat issued on the petition of an imprisoned insolvent debtor.

V. And be it further Enacted, That to every petition by an insolvent debtor for relief, either under this or any former Ordinance, there shall be annexed a statement of all the real and personal estate of such petitioner, according to a form to be prescribed by the said Court.

VI. And whereas it may sometimes happen that the Christian name or surname of a creditor or debtor of such insolvent may be mistaken or imperfectly or erroneously spelt in his schedule, or that a debt of or a claim upon a balance due from such insolvent may be specified in his schedule so sworn to as aforesaid, at an amount which is not exactly the actual amount thereof, without any fraud or evil intention on the part of the insolvent, be it Enacted, That in such cases the said insolvent shall be entitled to all the benefit and protection of this and former Ordinances for the relief of insolvent debtors.

VII. And whereas many imprisoned insolvent debtors have petitioned the Supreme Court for relief under the provisions of the said first-recited Ordinance, and orders have in divers cases been made

made whereby the petitioners have been ordered to be discharged from custody, and have been declared entitled to the relief prayed for by them respectively, either absolutely or subject to certain conditions in the said orders mentioned respectively; and doubts have been expressed as to the effect of such orders, be it therefore Enacted, That all such orders as last aforesaid for the discharge of imprisoned insolvent debtors as shall have been heretofore, or shall be hereafter lawfully made, shall have such and the like effect only as if they had been orders made in England for the relief of imprisoned insolvent debtors, under and by virtue of the Act of Parliament passed in the seventh year of His late Majesty King George the Fourth, intituled "An Act to amend and consolidate the Laws for the relief of Insolvent Debtors in England:" Provided that nothing in this clause contained shall be construed to apply to certificates of conformity granted or to be hereafter granted to imprisoned insolvent debtors.

VIII. And in order to prevent the inconvenience which may arise from any defect in any of the proceedings previous to or under a fiat, be it Enacted, That it shall be lawful for the Commissioner, with respect to any proceedings before him, or for the said Court, or any Judge thereof, with respect to any proceedings previous to or under a fiat, upon application for such purpose, to cause such proceedings to be amended in such manner as circumstances may require, and upon such terms as to costs or otherwise as the Court, Judge, or Commissioner respectively may think just and proper.

Power of Court, &c.,
to amend proceedings.

IX. And whereas the twenty-fifth and twenty-seventh sections are misplaced in the first-recited Ordinance, be it Enacted, That the said Ordinance shall be read and construed as if the twenty-seventh section had been placed before the twenty-fifth section therein.

For rectifying mistake as to placing
25th and 27th sections
in first-recited Ordinance.

X. And whereas by the present law respecting insolvent debtors the Commissioner is authorized to grant to every insolvent debtor at large against whom a fiat of insolvency may have issued, a protection from arrest and imprisonment from the time of his surrender to the time of his final examination, but such protection ceases on the insolvent passing his final examination; and it is deemed expedient to grant to such insolvent protection of his person between the time of his passing his final examination and the time of his obtaining his certificate of conformity, be it Enacted, That it shall be lawful for the Judge or Commissioner before whom the proceedings on any fiat may have been had or may be hereafter had (as the case may require) to grant to every insolvent protection from arrest for such further time after the passing of his final examination, or after his application for a certificate of conformity, as to him shall seem fit: Provided that such Judge or Commissioner shall in no case be bound to grant such protection to any person he may think undeserving of the same.

For protection of persons from arrest between the time of their final examination and the time of their obtaining their certificates.

XI. And

Reported by No. 14 / 57.8

6

XI. And be it Enacted, That this Ordinance shall commence and take effect from and after the passing hereof.

G. GREY,
Governor and Commander-in-Chief.

*Passed the Legislative Council, this eighteenth
day of July, one thousand eight hundred
and forty-five.*

W. L. O'HALLORAN,
Clerk of Council.