



ANNO QUINTO

VICTORIÆ REGINÆ.

No. 1.

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.

*Amended by
No 5-1844
No 9-1845
No 11-1845.*

WHEREAS there are divers persons now confined in the Gaol of this Province and others may from time to time be imprisoned therein for debt and it is expedient and necessary to make provision for the relief of such of them as are willing to surrender all their estate and effects for the benefit of their creditors and also to make provision for compelling such insolvent persons as may be unwilling to do so to give up all their estate for the benefit of their creditors and also to provide generally for the administration of the estates of insolvent persons—

BE IT THEREFORE ENACTED by HIS EXCELLENCY GEORGE GREY, ESQUIRE, Governor and Commander-in-Chief of Her Majesty's Province of South Australia by and with the advice and consent of the Legislative Council thereof That the Supreme Court of this Province shall be a Court of Insolvency and shall have a Commissioner or Commissioners to be from time to time appointed as hereinafter mentioned and shall also have such ministerial and other officers as shall be necessary for the purposes of this Act and one or more official assignee or assignees of insolvents' estates as may be found necessary which ministerial and other officer or officers and assignee or assignees shall be appointed by the Judge or Chief Justice of the Supreme Court with the approbation of His Excellency the Governor and with such reasonable remuneration as may be fixed by the said Judge or Chief Justice with the like consent Provided that it shall be lawful for the said Judge or Chief Justice to appoint any person or persons holding any office or situation in the Supreme Court to perform any duty under this Act in conjunction with his or their ordinary duties in the Supreme Court.

Supreme Court to be a Court of Insolvency, and may have Commissioners and officers.

Official Assignees.

II. And be it Enacted That it shall be lawful for His Excellency the Governor as soon as it shall be found necessary so to do and from time to time thereafter to appoint so many fit and discreet persons to be Commissioners of

Power to appoint Commissioners.

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of Insolvency for the purposes of this Act and either to appoint such persons generally to be Commissioners of Insolvency for this Province or within such districts thereof as may from time to time be thought fit and also from time to time to alter and subdivide such districts as occasion may require and to grant to such Commissioners such remuneration either by salaries or otherwise as the Lords Commissioners of Her Majesty's Treasury may from time to time direct Provided that until such Commissioners shall be appointed it shall be lawful for the said Judge or Chief Justice to issue a fiat to any two or more persons to be named in such fiat to act as Commissioners in any individual case of insolvency Provided also that in case any matter of insolvency shall arise in any place not being within any district for which Commissioners may have been particularly appointed or not within a reasonable distance of the place of abode of any Commissioner who may have been appointed or in case of the absence or illness of any Commissioner it shall in like manner be lawful for the said Judge or Chief Justice to issue a fiat to two or more fit persons to act as Commissioners in such individual case Provided also that in any case of insolvency depending in the said Court before Commissioners shall have been appointed by the Governor under the powers given to him by this Act it shall be lawful for the Court or any Judge thereof instead of appointing Commissioners to make a special order referring any matter relating to such petition to any fit person or persons to report thereon to the Court and such person or persons shall for the purposes of such reference have the same powers as to the administration of oaths the compelling the attendance of witnesses the production of books and papers and otherwise as any Commissioners to be appointed under this Act might lawfully exercise And the said Court is hereby authorised to allow to the Commissioners or persons to be specially appointed by the Court or Judge as aforesaid such remuneration for their trouble not exceeding three guineas each per day as the said Court with the approbation of the Governor for the time being may think fit.

Power to refer any matter specially to persons other than Commissioners.

All proceedings to commence by petition.

III. And be it Enacted That all proceedings under this Act whether such proceedings are on the part of debtors or creditors shall be commenced by petition to the said Judge or Judges any one of whom may by a fiat under his hand authorise the prosecution of such petition and the proceedings thereunder may be had either before the Supreme Court or any Judge thereof or before Commissioners to be appointed in pursuance of this Act Provided that no more than two Commissioners shall in any case act together and that only one Commissioner shall act in cases where more than one Commissioner is not required by this Act unless the Court or Judge shall think fit otherwise specially to direct.

Powers given to Commissioners may be exercised by a Judge.

IV. Provided also that in all cases in which power is given by this Act to Commissioners or any one Commissioner to act such power may both before and after the appointment of Commissioners as aforesaid in like manner be exercised by any Judge or Judges of the Supreme Court as occasion may require and that where the acts of any Judge would if done by one Commissioner be subject to be referred to other Commissioners such reference shall be made to the Judges generally if more than one.

Court of Review.

V. And be it Enacted That the said Supreme Court shall and may be a Court of Review and the Judge or Judges thereof shall have superintendence and control in all matters of insolvency and shall have power jurisdiction and authority to hear and determine order and allow all such matters in cases of insolvency under this Act as the Lord Chancellor of England or the Judges or any of the Judges of the Court of Review established by virtue of an Act of Parliament made and passed in the first and second years of His late Majesty King William the Fourth entitled "An Act to establish a Court

Court of Bankruptcy" usually do or lawfully may hear and determine order and allow in matters of bankruptcy except as may be herein otherwise expressly provided.

VI. And be it Enacted That all matters to be heard and determined in the said Court may be brought on by way of petition motion or special case according to the rules and regulations to be established as hereinafter provided and it shall be lawful for the said Court to direct any issue of fact arising therein to be tried by a Jury before the Judge or one of the Judges thereof and for that end to issue process to compel the attendance of jurors and witnesses and to enforce the orders and decrees of the said Court and generally to exercise all the powers vested for such purposes in the Supreme Court of this Province or in any of Her Majesty's Courts of Record at Westminster.

Mode of proceeding before the Court.

VII. And be it Enacted That all enrolled Practitioners of the Supreme Court may without further admission practise and plead in the Court hereby established and before the Commissioners thereof but that no other person shall be allowed so to practise for others except in districts or places where there shall not be a number of enrolled practitioners sufficient for that purpose.

Practitioners of Supreme Court may practise in the Court and before the Commissioners.

VIII. And be it Enacted That the Judge or Judges of the said Court shall have power from time to time to make general rules and orders for regulating the practice of the said Court and before the Commissioners the allowance and taxation of costs the sittings and proceedings of the Judges Commissioners and Assignees and the conduct of the other officers and of the practitioners therein and the fees to be taken by the officers and ministers of the Court Provided that such rules and orders shall be subject to be disallowed by Her Majesty and upon such disallowance being signified through the Governor such rules and orders shall become void and of no effect: Provided also that until such general rules and orders can be made it shall be lawful for the Court to make such rules and orders as may be deemed expedient in each particular case.

Powers of Judge to make rules for regulating the practice of the Court and before Commissioners.

IX. And be it Enacted That every Commissioner before he shall be capable of acting in the execution of any of the powers and authorities given by this Act shall take an oath to the effect of Schedule A which oath shall be taken before a Judge of the Supreme Court or before some Commissioner authorised by such Judge to administer the same which authority may be contained in the fiat to such Commissioners and the several Commissioners named in any one fiat may be authorised to administer the said oath to each other Provided that Commissioners appointed to act generally and not in one particular case only need not take the said oath more than once And provided that the oath hereby required to be taken by Commissioners need not be taken by persons to whom any matter may be specially referred to report thereon as aforesaid.

Oath to be taken by Commissioner.

X. And be it Enacted That in every matter of insolvency prosecuted in the said Court it shall be lawful for any one Commissioner to perform and execute all the powers duties and authorities by this Act expressly or by reference or implication vested in all the said Commissioners provided that no single Commissioner shall have power to commit any Insolvent or other person examined before him except to the Sheriff or other officer for safe custody to be brought before two other Commissioners or before himself and another Commissioner within three days after such commitment nor to discharge either finally or on sureties given any prisoner whose discharge shall be opposed by any creditor nor to allow the proof of any debt which shall be opposed by the insolvent or by the assignee or assignees of the insolvent estate

One Commissioner may act except in certain cases.

estate nor to allow the certificate hereinafter mentioned of any Insolvent but in all such matters at least two Commissioners shall concur and to that end the matter in dispute shall be adjourned and the other Commissioner or Commissioners shall forthwith have notice to attend on the day of adjournment.

Imprisoned debtors may petition Court to be discharged.

XI. And be it Enacted That from and after the passing of this Act it shall be lawful for any person who shall be in actual custody within the gaol of this Province or within any gaol or prison in this Province for the imprisonment of debtors to be hereafter erected upon any process whatsoever for or by reason of any debt damages cost sum or sums of money or for or by reason of any contempt of any Court for nonpayment of any sum of money or costs at any time within fourteen days after the passing of this Act if such person shall be in custody at the passing thereof or if not then in custody within fourteen days after the commencement of his imprisonment or afterwards if the Court shall think it reasonable to permit the same to apply by petition in a summary way to the Supreme Court for relief under this Act and in such petition shall be stated the time and place of the first arrest of such prisoner in the cause or causes wherein he shall then be detained and the time of his commitment to the prison where he shall then be confined and if such prisoner shall not have been in the same custody from the time of such first arrest then the means and manner by which the change of custody of such prisoner has taken place and also the name or names of the person or persons at whose suit or prosecution such prisoner shall at the time of presenting such petition be detained in custody and the amount of the debt or debts sum or sums of money and of such costs as aforesaid so far as the amount of such costs is ascertained for which he shall be so detained and such prisoner shall in such petition state whether such prisoner has given notice to the keeper of the gaol or prison in which he shall be confined of his intention to present the said petition which notice the said prisoner is hereby required to give in writing to the keeper of such gaol or prison And such prisoner shall in such petition state that he is willing that all his real and personal estate and effects shall be vested in the official Assignee for the time being of the estates and effects of insolvent debtors according to the provisions of this Act and shall pray to be discharged from custody and also to be discharged both as to his person and estate from all debts and demands for which he shall be then in custody and also from all debts due by him when he became insolvent and from all claims and demands proveable under the fiat to be issued in pursuance of such petition which petition shall be subscribed by the said prisoner and shall forthwith be filed in the said Court and the presenting such petition by such prisoner shall be deemed an act of insolvency committed by him on the first day of his imprisonment for any debt remaining unsatisfied at the time of filing such petition and upon the filing such petition it shall be lawful for any Judge of the said Court to issue his fiat authorising the petitioner to prosecute his petition.

The presenting of petition by prisoner to be deemed an act of insolvency.

Petition by detaining creditors.

Prisoner not paying or satisfying debt within twenty-one days after his committal to prison deemed to have committed an act of insolvency.

XII. And be it Enacted That if any prisoner who at the time appointed for the commencement of this Act shall have been committed to any prison or gaol and charged in execution for any debt damages or costs or sum or sums of money or committed for any contempt as aforesaid shall not within twenty-one days next after the time appointed for the commencement of this Act pay or make lawful satisfaction for such debts damages costs sum and sums of money or if any prisoner after the time appointed for the commencement of this Act shall be committed to any prison or gaol and charged in execution for any debt or damages or any costs or sum or sums of money or committed for or by reason of any such contempt as aforesaid and shall not within twenty-one days next after his being so committed or charged in execution pay or make lawful satisfaction for such debt damages costs sum or sums of money such prisoner shall in either of such cases be deemed to have committed

mitted an act of insolvency on the first day of his imprisonment for any debt or other matter remaining unsatisfied at the expiration of such twenty-one days and it shall be lawful for any such detaining creditor or creditors or person or persons entitled to such money as aforesaid to apply by petition in a summary way to the said Court for an order vesting the real and personal estate and effects of such prisoner in the official assignee of the said Court according to the provisions of this Act and such petition shall be signed by the party or parties so applying and in such petition shall be stated the time and place of commitment or charge in execution of such prisoner at the suit of the party or parties so applying and the amount of the debt or sum of money for which such prisoner shall have been so committed or charged in execution and such petition shall be supported by such evidence by affidavit or otherwise of the truth of the matters therein stated as the said Court shall think fit to require and upon the filing of such petition with the affidavit in support thereof as aforesaid it shall and may be lawful for any Judge of the said Court to issue a fiat authorising the petitioner to prosecute his petition.

XIII. And be it Enacted That if any debtor shall after the passing of this Act depart from this Province or being out of this Province shall remain absent therefrom or fraudulently procure his money goods or chattels to be taken in execution or make or cause to be made any fraudulent grant conveyance or assignment of any of his lands or tenements or any fraudulent gift delivery assignment or transfer of any of his goods or chattels with intent in any of such cases to defeat or delay his creditors or if he shall be in prison twenty-one days consecutively charged with debt although the original cause of such debtors' imprisonment may not have been for debt and although he may not have been charged with any one debt during the whole of such time or if being in prison or in custody for debt he shall escape thereout or if any debtor shall abscond or keep out of the way to avoid being taken or served with the process of the Supreme Court such absconding or keeping out of the way being made known to the Court by the return of the Sheriff on a writ of summons or capias that the debtor named therein is not to be found and if such return shall be accompanied by the affidavit of the Bailiff or person authorised by the Sheriff to serve such writ shewing that diligent search hath been made after such debtor and diligent endeavours made to take him or to serve him with a copy of such writ as the case may be but that such debtor cannot be found and that he believes such debtor has absconded or that he wilfully keeps himself concealed within his dwelling house or elsewhere in order to avoid being taken or served with such process such return and affidavit being made at least seven days after the delivery of the writ to the Sheriff or at such later period as the Supreme Court by any general rule of Court shall think fit to allow or if such debtor shall execute any conveyance or assignment by deed of all his estate and effects for the benefit of his creditors he shall in any of such cases be deemed to have committed an act of insolvency And if any debtor shall file in the Supreme Court a declaration in writing signed by such debtor and attested by a practitioner of the Supreme Court that he is insolvent or unable to meet his engagements every such declaration shall after being inserted in the Government Gazette of this Province be an act of insolvency committed by such person at the time when such declaration was filed And the printer of such Gazette is hereby required to insert the said declaration on delivery to him of a memorandum thereof under the hand of the chief clerk or other officer of the Supreme Court Provided always that no fiat shall issue against any debtor not in prison for debt unless it be issued within two calendar months next after the commission of some act of insolvency committed by him unless in the case of fraud or concealment and in no case later than six calendar months after such act of insolvency Provided also that every act of insolvency by lying in prison or escaping therefrom or keeping himself out of the way to avoid being served with

Other acts of insolvency—
Departing the Province or remaining absent therefrom.
Fraudulently procuring his goods to be taken in execution.
Making a fraudulent grant, &c. of his lands or transfer of his goods, with intent to defeat or delay creditors.
Lying in prison.
Escaping from prison
Absconding to avoid service of process.

Assigning all his property for the benefit of his creditors.
Declaration of insolvency.

Provide as to time within which fiat may issue.

with process shall be deemed to have been committed on the first day of the continued imprisonment of such debtor for debt or on the first day of the concealment or absconding of such debtor as the case may be.

On what creditors petition fiat may issue against debtors at large.

Amount of petitioning creditors' debt.

Amount of bond.

Adjudication and order for vesting estate of insolvent in official assignee.

XIV. And be it Enacted That it shall be lawful for any creditor or two or more creditors (then in actual partnership) of any debtor whose debt shall amount to fifty pounds or upwards or for two several creditors whose debts shall amount to seventy-five pounds or upwards or for three several creditors whose debts shall amount to one hundred pounds or upwards or for any number of creditors to the amount of not less than twenty pounds each whose debts shall amount to two hundred pounds or upwards to apply by petition to the said Court stating the amount of the debt or debts due to him or them by such debtor and the consideration thereof and shewing that such debtor has committed an act of insolvency within the meaning of this Act and the truth of such petition being verified by affidavits or affirmation before a Judge or some Commissioner authorised to administer oaths in the Supreme Court and upon such petitioning creditor or creditors giving bond to the chief-clerk or other officer of the Supreme Court in such penalty and with such condition as is after mentioned it shall be lawful for any Judge of the said Court to issue fiat authorising the petitioner or petitioners to proceed in the matter of such petition provided that this enactment as to the amount of the petitioning creditor's debt and the bond to be entered into as aforesaid shall not apply to any detaining creditor hereinbefore mentioned And be it Enacted that such bond shall be taken in a penal sum of double the amount of the debt claimed to be due to the petitioning creditor and shall be conditioned for proving his debt as well before the Supreme Court or Commissioners as upon a trial at law in case the same be contested and also for proving the party against whom the fiat is prayed to have committed an act of insolvency at the time the fiat is sued out and to proceed on such commission and if such debt or debts shall not be really due or if after such fiat sued out it be not proved that the party had committed an act of insolvency at the time of the issuing of the fiat and it shall appear that such fiat was sued out fraudulently or maliciously the Judge or Judges may upon petition of the party against whom the fiat is sued out examine into the same either summarily or by directing any matter relating thereto to be tried by a jury as may be thought fit and necessary and may order satisfaction to be made to him or them for the damage by him or them sustained and for the better recovery thereof may order such bond to be assigned to the party so petitioning who may sue for the same in his or their name or names.

XV. And be it Enacted That upon the issuing of every such fiat the said Court or any Judge or the Commissioners named therein as the case may be shall examine into the matter of such petition and may if they think fit but not otherwise summon or cause to be brought before them the debtor named therein and any other person whom they may believe capable of giving any information concerning the matter of such petition or concerning the dealings of or any act of insolvency of such debtor or the debt of the petitioning creditor as the case may require and may require any person so summoned to produce any books papers deeds and writings and other documents in the possession custody or power of such person which may appear to them necessary to the due examination of such matters and may examine any such person upon oath or affirmation by word of mouth or interrogatories in writing concerning the matters aforesaid and the Commissioners may upon the examination of the prisoner's petition in case of a petition by a prisoner or in case of a petition by a creditor upon proof made before them of the petitioning creditor's debt and of the act or acts of insolvency of such debtor thereupon adjudge such debtor to be insolvent and forthwith order that all the real and personal estate and effects of the debtor at the time he so became insolvent and both within

within this Province and without except the wearing apparel bedding and other necessaries of the insolvent and his family and the working tools and implements of such insolvent not exceeding in the whole the value of thirty pounds and all the future estate right title and interest of such debtor in or to any real or personal estate and effects within this Province or abroad which such debtor may purchase or which may revert descend be devised or bequeathed or come to him before he shall obtain his certificate in manner aftermentioned and all debts due or growing due to such debtor or to be due to him before his obtaining his certificate as aforesaid shall be vested in the official assignee named in such order and such order when so made shall without any conveyance vest all the real and personal estate and effects of such debtor present and future and all such debts as aforesaid in the said official assignee by virtue of his appointment and as often as any other assignee or assignees shall be appointed to act with such official assignee as after mentioned the said estate and effects shall vest in the said last mentioned assignee jointly with such official assignee and so from time to time as often as any assignee official or other shall die or be lawfully removed and a new assignee duly appointed all such real and personal estate as was then vested in such deceased or removed assignee shall by virtue of such appointment vest in the new assignee either alone or jointly with the existing assignees as the case may require without any deed of assignment for that purpose Provided always that in case the petition of any prisoner shall be dismissed by the said Court or Commissioners the vesting order made in pursuance of such petition shall from and after such dismissal be null and void to all intents and purposes.

Order to have the effect of vesting estate in official assignee and in other assignees from time to time

Proviso for making order void if prisoner's petition is dismissed.

XVI. And be it Enacted That from and after the vesting of the estate and effects of the insolvent debtor in the official assignee as aforesaid all such and the like proceedings shall be had with respect to the choice and appointment of other assignees and the proof of debts due from the insolvent and with respect to the sale and collection of the real and personal estate and effects of the insolvent and the dividing the same amongst his several creditors and generally all such and the like proceedings shall and may be had by creditors and assignees respectively in the administration of such estate and effects as would and might be had by creditors and assignees in England under and by virtue of a fiat issued in pursuance of the said Act entitled "An Act to establish a Court of Bankruptcy" or as nearly as may be and all the powers and provisions of the said Act and of the Act passed in the sixth year of His late Majesty King George the Fourth entitled "An Act to amend the Law relating to Bankrupts" shall extend and be construed to extend in every respect as far as the same may be applicable to this Act and to fiats issued in pursuance thereof and to all proceedings under the same and to all Judges Commissioners Insolvents or other persons concerned therein or in any way affected thereby to all intents and purposes whatsoever as if every such fiat were a fiat under the said recited Act or a Commission of Bankruptcy under the Great Seal of the United Kingdom of Great Britain and Ireland before the passing of the said Act save and except as may be herein otherwise directed or as may be inconsistent with this Act or with any rules and regulations to be made in pursuance hereof.

The like proceedings to be had with respect to the administration of the estates of insolvents under this act, as would be had in the case of bankruptcy in England.

XVII. And for the protection of purchasers Be it Enacted That all conveyances by any insolvent bona fide made and executed before the date and issuing of the fiat against such insolvent shall be valid notwithstanding any prior act of insolvency by him committed provided the person or persons to whom such insolvent so conveyed had not at the time of such conveyance notice of any prior act of insolvency by him committed.

For protection of purchasers against secret acts of insolvency.

And

Purchases from insolvent not to be impeached unless fiat is sued out within two months after act of insolvency:

XVIII. And be it Enacted that no purchase from any insolvent *bona fide* and for valuable consideration when the purchaser had notice at the time of such purchase of an act of insolvency by such insolvent committed shall be impeached by reason thereof unless the fiat against such insolvent shall have been sued out within two calendar months after such act of insolvency.

For the protection of persons contracting or dealing with insolvent before the suing out of fiat, and not having notice of prior act of insolvency.

XIX. And for the further protection of persons dealing with insolvent before the issuing of any fiat against them Be it Enacted That all contracts dealings and transactions by and with any insolvent really and *bona fide* made and entered into before the date and issuing of the fiat against him and all executions and attachments against the lands or tenements or goods and chattels of such insolvent *bona fide* executed or levied before the date and issuing of the fiat shall be deemed to be valid notwithstanding any prior act of insolvency by such insolvent committed provided the person or persons so dealing with such insolvent or at whose suit or on whose account such execution or attachment shall have issued had not at the time of such contract dealing or transaction or at the time of executing or levying such execution or attachment notice of any prior act of insolvency by him committed Provided also that nothing herein contained shall be deemed or taken to give validity to any payment made by any insolvent being a fraudulent preference of any creditor or creditors of such insolvent or to any execution founded on a judgment on a warrant of attorney or cognovit given by any insolvent by way of such fraudulent preference.

Power to summon insolvent & other persons from time to time, and to administer oaths.

XX. And be it Enacted That it shall be lawful for the said Court or the Commissioners or any Commissioner from time to time and as often as to them shall seem necessary to summon before them and examine the insolvent or any other person or persons upon oath or affirmation as to any matters respecting which the said Court or Commissioners or any of them have power to enquire by virtue of this Act and that it shall be lawful for the said Court and Commissioners where it shall be deemed proper so to do to receive evidence by affidavit or written affirmation and such affidavit or written affirmation may be made before any Judge or Commissioner acting under this Act or before any Commissioner appointed by the Supreme Court for taking affidavits therein and that any person who shall wilfully and falsely swear or affirm either before the said Court or Commissioners or any Commissioner in any such matter as aforesaid shall be deemed guilty of wilful and corrupt perjury and be liable to the punishment and infamy to which persons guilty of wilful and corrupt perjury are by the law of England now subject.

Power to discharge prisoner on sureties given and to require insolvent at large to give sureties for appearance.

XXI. And be it Enacted That after such adjudication as aforesaid it shall be lawful for the said Commissioners if they shall think fit to do so and give such notice to the detaining creditor or creditors of the said insolvent as the said Commissioners shall deem proper to direct such insolvent if a prisoner to be discharged out of custody on his finding two sufficient sureties to enter into a recognizance to the official assignee in such sum as the said Commissioners shall think fit and subject to such conditions as after mentioned and if such insolvent shall be at large the Commissioners may summon or cause him to be brought before them and require him to enter into his own recognizance in such sum as they may think fit and subject to such conditions as after mentioned or the Commissioners may on the request in writing of any creditor accompanied by an affidavit showing reasonable ground to believe that such insolvent is about to depart out of the jurisdiction of the Court or to a distant part of the Province by their warrant cause him to be brought before them to shew cause why he should not enter into a recognizance with such sureties as aforesaid and on the insolvent appearing or being brought before

before them they may if they think fit order him to enter into such recognizance or find such sureties and in default of his so doing may by their warrant commit him to prison until he shall so do or until he shall have passed his final examination after mentioned and every such recognizance shall be subject to a condition that such insolvent shall duly appear at the time and place fixed for the hearing of such insolvent and at every adjourned hearing and shall abide by the final judgment of the said Commissioners and on such other terms (if any) as the said Court shall think fit to impose and after such recognizance shall be perfected the Commissioners may issue a warrant to the gaoler ordering him to discharge such insolvent if then in custody and the insolvent shall be free from arrest or imprisonment by any creditor whose debt shall have accrued before or at the time of the filing of the petition by or against such insolvent until the time appointed for the next attendance of such insolvent before the Commissioners and for such further time if any as the Commissioners shall by indorsement on such order from time to time appoint except in the case of a petitioning prisoner who shall be liable to be taken in execution by any creditor whose debt shall have been omitted in such prisoner's schedule and in case any insolvent so discharged out of custody shall not duly appear at the time and place fixed for the hearing or any adjourned hearing of such insolvent (not being prevented by illness or other lawful impediment to be allowed by the Court) the recognizance so entered into shall be forfeited and the amount secured thereby shall be recoverable in a summary way by a distress and sale of the goods and chattels of such sureties as the Commissioners shall by their order direct and the amount so recovered shall be applied for the benefit of the creditors of such insolvent in like manner as if the same were a part of his estate and effects and the said Commissioners may also issue a warrant authorising any person or persons to be therein named to apprehend and arrest such insolvent and deliver him into the custody of the gaoler or keeper named in such warrant and such gaoler or keeper is hereby required to receive and keep such prisoner who if he was discharged from custody on finding such sureties as aforesaid shall be committed to the same custody from which he was discharged and all detainers which were in force against him at the time of his discharge or which shall have been since duly lodged against him shall thereupon be deemed to be in force. Provided further that any insolvent so discharged out of custody as aforesaid shall on his appearing before the said Court or Commissioners be deemed and considered for the purposes of this Act in the custody in which he was at the time he was so discharged.

XXII. And be it Enacted That it shall not be necessary for any creditor whose debts shall be inserted in any insolvent's schedule to give any proof of the same being due unless the same shall be objected to by the official assignee or by some creditor of which objection notice shall be given in the Government Gazette of this Province signed by the official assignee and which notice the said official assignee is required to give on being requested so to do by some creditor of the insolvent and on being paid by such creditor the sum of two shillings and sixpence over and above the price of such advertisement and such notice having been given the debt so objected to shall not be deemed a valid and subsisting debt until proof shall be made of the same being due to the satisfaction of the Court or Commissioners.

Debts of creditors mentioned in insolvent's schedule to be taken as due without being proved, unless objected to.

XXIII. And be it Enacted That the said Court or the Commissioners shall from to time appoint days for the surrender of the insolvent if at large and for the proof of debts the examination of the insolvent and of his schedule the choice of assignees and other matters relating either to the discharge of the insolvent or to the administration of his estate of each of which days such notice as the Court by any general or special rule or order may direct shall be given by advertisement in the Government Gazette and such adjournments

The Court of Commissioners to appoint times for the surrender of the insolvent if at large, and for the proof of debts, the examination of the insolvent and his

schedule, the
choice of assign-
ees, &c.

journments may from time to time be made as occasion shall require. Provided that it shall not be incumbent on the Court or Commissioners to appoint assignees other than the official assignee in any case where from the small amount of the debts proved it shall appear to the Court or Commissioners unnecessary so to do. Provided also that it shall be lawful for the said Court upon the application of any insolvent if the Court shall think fit to enlarge the time for the surrender of any insolvent and the surrender of the insolvent within the enlarged time shall have the same effect as a surrender within the time originally appointed for such surrender.

Penalty on persons wilfully concealing any property of the insolvent.

XXIV. And be it Enacted That any person wilfully concealing any real or personal estate of the insolvent and who shall not within forty-two days after the issuing the fiat discover such estate to one or more of the Commissioners or assignees shall forfeit the sum of one hundred pounds and double the value of the estate concealed and any person who shall after the time allowed to the insolvent to surrender voluntarily discover to one or more of the Commissioners or assignees any part of such insolvent's estate not before come to the knowledge of the assignees shall be allowed five per centum thereupon and such further reward as the major part in value of the creditors at any meeting called for that purpose shall think fit to be paid out of the estate recovered on such discovery.

Punishment of insolvent refusing to surrender.

In person
XXV. And be it Enacted that where any person shall be declared insolvent under a fiat issued against him by virtue of this Act and notice thereof shall be given by advertisement in the Government Gazette of this province and by leaving a copy thereof at the last place of abode of such insolvent if the same is known and if such insolvent is at large and shall wilfully neglect or refuse to surrender himself to the Court or Commissioners before three of the clock of the day and at the place to be named in such notice such day being at least thirty days after the giving such notice or if any insolvent being duly brought before the Court or Commissioners shall wilfully refuse to surrender himself to such Court or Commissioners or wilfully refuse to sign or subscribe such surrender or to submit to be examined from time to time upon oath or being a Quaker or Moravian upon affirmation or if any such insolvent shall not within the time appointed for such purpose deliver in such schedule as aforesaid or shall wilfully and fraudulently omit in his said schedule any effects or property whatsoever to the value of ten pounds or if any such insolvent shall not upon such examination deliver up to the Commissioners all such part of his estate and all books papers and writings relating thereunto as may be in his possession custody or power except such wearing apparel bedding and other necessaries of such insolvent and his family and the working tools and implements of such insolvent as aforesaid or if any such insolvent shall unlawfully remove conceal or embezzle any part of such estate to the value of ten pounds or upwards or any books of accounts papers or writings relating thereto with intent to defraud his creditors every such insolvent shall be deemed guilty of felony and be liable to be transported for fifteen years or for such term not less than seven years as the Court before which he shall be convicted shall adjudge or to be imprisoned only or to be imprisoned and kept to hard labor in any common gaol penitentiary or house of correction for any term not exceeding three years and in case of a conviction for perjury such insolvent shall in addition to such punishment as aforesaid be deemed infamous.

After vesting order made, the insolvent to deliver in a schedule of his debts, property, &c.

XXVI. And be it Enacted That in all cases where no cause shall appear to the contrary it shall be lawful for the said Court or Commissioners according as to them shall seem fit to adjudge that such insolvent prisoner shall be so discharged and so entitled as aforesaid forthwith or so soon as such insolvent shall have been in custody at the suit of one or more of the persons

persons as to whose debts and claims such discharge is so adjudicated for such period or periods not exceeding three calendar months in the whole as the said Court or Commissioners shall direct to be computed from the making of such vesting order as aforesaid.

XXVII. And be it Enacted That every insolvent whose estate may by such order as aforesaid be vested in the official assignee of the said Court shall within the space of fourteen days next after the making of such vesting order or in case the same shall not have been made on his own petition then within fourteen days next after notice in writing of such order having been made shall have been given to him or within such further time as the said Commissioners or the said Court shall think reasonable deliver in to the said Court a schedule containing a full and fair description of such insolvent as to his name or names trade or trades profession or professions together with the last usual place of abode of such insolvent and the place or places where he has resided during the time when his debts were contracted and also a full and true description of all debts due or growing due from such insolvent at the time of making such order and of all and every person and persons to whom such insolvent shall be indebted or who to his knowledge or belief shall claim to be his creditors together with the nature and amount of such debts and claims respectively distinguishing such as shall be admitted from such as shall be disputed by such insolvent and also a full true and perfect account of all the estate and effects of such insolvent real and personal in possession reversion remainder or expectancy and also of all places of benefit or advantage held by such insolvent whether the emoluments of the same arise from fixed salaries or from fees or otherwise and also of all pensions or allowances of the said insolvent in possession or reversion or held by any other person or persons for or on his behalf or of and from which the said insolvent derives or may derive any manner of benefit or advantage and also of all right and powers of any nature or kind whatsoever which such insolvent or any other person or persons in trust for him or for his own benefit or advantage in any manner whatsoever shall be seized or possessed of or interested in or entitled unto or which such insolvent or any other person or persons in trust for him or for his benefit shall have any power to dispose of charge or exercise for his benefit or advantage together with a full true and perfect account of all the debts at the time of making such order due or growing due to such insolvent or to any person or persons in trust for him or for his benefit or advantage either solely or jointly with any other person or persons and the names and places of abode of the several persons from whom such debts shall be due or growing due and of the witnesses who can prove such debts so far as such insolvent can set forth the same and the said schedule shall also contain a balance sheet of so much of the receipts and expenditures of such insolvent and of the items composing the same as shall be at any time required by the said Court or Commissioners in that behalf and also shall fully and truly describe the wearing apparel bedding and other necessaries of such insolvent and his or her family and the working tools and implements of such insolvent not exceeding in the whole the value of thirty pounds which may be excepted by such insolvent from the operation of this act together with the values of each excepted article respectively and the said schedule shall be subscribed by such insolvent and verified by the oath or affirmation of the insolvent if the Commissioners shall so require and shall forthwith be filed in the said Court together with all books papers and writings in any way relating to such insolvent's estate or effects in his or her possession or under his or her custody or control.

Commissioners may adjudge discharge to be forthwith or not later than three calendar months from the filing of the petition.

XXVIII. And be it Enacted That in case it shall appear to the said Court or Commissioners that such insolvent has fraudulently with intent to conceal the state of his affairs or to defeat the objects of this Act destroyed or wilfully kept

In certain cases, discharge, &c. to be at any period not later than three years.

Destroying or withholding papers. Keeping false books, making false entries, or falsifying books.

kept or caused to be kept false books or in any manner altered or falsified any such books papers or writings or that such prisoner has fraudulently with the intent to diminish the sum to be divided among his creditors or of giving an undue preference to any of the said creditors fraudulently discharged or concealed any debt due to or from the said insolvent or fraudulently made away with charged mortgaged or concealed any part of his property of what kind soever either before or after the commencement of his or her imprisonment or the issuing of the fiat then it shall be lawful for the said Commissioners to adjudge that such insolvent prisoner shall be so discharged and so entitled as aforesaid so soon as he shall have been in custody at the suit of some one or more of the persons as to whose debts or claims such discharge is so adjudicated for such period or periods not exceeding three years in the whole as the said Commissioners shall direct to be computed as aforesaid.

In other cases the discharge, &c. to be at any period not later than two years. Contracting debts fraudulently. False pretences. Without expectation of payment. Or by false pretences obtaining forbearance. Put his creditors to expenses by vexatious delay to suit, &c. Or be indebted for damages for crim. con., seduction, libel, &c. Malicious trespass

XXIX. And be it Enacted That in case it shall appear to the said Commissioners that such insolvent prisoner shall have contracted any of his or her debts fraudulently or by means of a breach of trust or by means of false pretences or without having had any reasonable or probable expectation at the time when contracted of paying the same or shall have fraudulently or by means of false pretences obtained the forbearance of any of his debts by any of his creditors or shall have put any of his creditors to any unnecessary expense by any vexatious or frivolous defence or delay to any suit for recovering any debt or sum of money due from such prisoner or shall be indebted for damages recovered in any action for criminal conversation with the wife or for seducing the daughter or servant of the plaintiff in such action or for breach of promise of marriage made to the plaintiff in such action or for damages recovered in any action for a malicious prosecution or for a libel or for a slander or in any other action for a malicious injury done to the plaintiff therein or in any action of tort or trespass to the person or property of the plaintiff therein when it shall appear to the satisfaction of the said Commissioners that the injury complained of was malicious then it shall be lawful for such Commissioners to adjudge that such prisoner shall be so discharged and so entitled as aforesaid forthwith except as to such debt or debts sum or sums of money or damages as above mentioned and as to such debt or debts sum or sums of money or damages to adjudge that such prisoner shall be so discharged and so entitled as aforesaid so soon as he shall have been in custody at the suit of the person or persons who shall be creditor or creditors for the same respectively for a period or periods not exceeding two years in the whole as the said Commissioners shall direct to be computed as aforesaid.

Power to order maintenance.

XXX. And be it Enacted That in every case where any prisoner shall upon the adjudication of the Court be liable to further imprisonment at the suit of his creditor or creditors or any or either of them it shall be lawful at any time for the Court if it shall see fit but not otherwise on the application of such prisoner to order the creditor or creditors at whose suit he shall be so imprisoned to pay to such prisoner such sum of money not exceeding seven shillings by the week in the whole at such time and in such manner and in such proportions as the Court shall direct and that on failure of payment thereof as directed by the Court the Court shall order the prisoner to be forthwith discharged from custody at the suit of the creditor or creditors so failing to pay the same.

Costs of prisoner to be paid out of his estate.

XXXI. And be it further Enacted That where any imprisoned debtor shall have been necessarily maintained wholly or in part at the public expense during any part of his imprisonment it shall be lawful for the official assignee and he is hereby required out of the money which shall come to his hands from the estate of the insolvent to pay such sum of money as the costs of such maintenance shall amount to to the Governor of the Gaol wherein such prisoner

prisoner shall be confined provided that no allowance whatever shall be made by the Governor of the Gaol to any prisoner who shall wilfully neglect to petition the Court for relief from imprisonment for twenty-one days after his first-continued imprisonment for debt.

XXXII. And be it 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 entitled "An Act to amend the Laws relating to Bankrupts" provided that where in the said Statute it is directed that the Commissioners shall certify to the Lord Chancellor they shall in such case certify to the Judge or Chief Justice of the Supreme Court and where it is directed that such certificate shall be allowed by the Lord Chancellor it shall in such case be allowed by the said Judge or Chief Justice provided also that the granting such certificate and the effect thereof shall be subject to the same provisions restrictions and limitations as are contained in the said Act passed in the sixth year of the reign of King George the Fourth entitled "An Act to amend the Law relating to Bankrupts."

Certificate.

XXXIII. And be it Enacted That every insolvent who shall have obtained his certificate shall be allowed out of the produce of his estate such sums in proportion to the amount per pound which such produce shall pay to his creditors as are mentioned in the said Statute passed in the sixth year of the reign of King George the Fourth entitled "An Act to amend the Law relating to Bankrupts" and such allowance shall be made over and above and exclusive of the wearing apparel bedding and other necessaries of the insolvent and his family and the working tools and implements of the insolvent specified in his Schedule as excepted not exceeding in the whole the value of thirty pounds.

Allowance to insolvent who shall have obtained his certificate.

XXXIV And with respect to the construction of this Act Be it Enacted That this Act shall extend to aliens denizens and women both to make them subject thereto and to entitle them to all the benefits given thereby and that where this Statute hath words importing the singular number or the masculine gender only it shall be understood to include several matters as well as one matter and several persons as well as one person and females as well as males and bodies corporate as well as individuals unless it be herein otherwise especially provided or there be something in the subject or context repugnant to such construction.

As to the construction of this Act.

XXXV. And whereas it is the intention of this Act to bring into operation in this Province the several Acts of Parliament relating to bankrupts and insolvent debtors hereinafter mentioned except so far as such Acts may be inconsistent herewith and with the rules and regulations to be made in pursuance hereof and it is possible that some omissions inaccuracies and discrepancies may be found to arise in carrying such intention into effect Be it therefore Enacted That all proceedings previous to or relating to the declaring any person to be insolvent except upon his own petition or upon the petition of a detaining creditor and all proceedings relating to the administration of the estate and effects of any insolvent or to the protection of the future estate and effects of such insolvent by means of a certificate of conformity or to the protection of his person after his surrender shall as far as practicable be regulated and all questions arising thereout be determined by

In what cases proceedings under this Act are to be regulated by reference to the English Bankrupt Act, of the 6th Geo. IV, c. 16. & the 1st & 2nd Wm. IV, c. 56, and in what cases by the English Insolvent Debtors' Act 7th Geo. IV, c. 57.

reference

reference to the several Acts of Parliament next hereinafter mentioned viz An Act made and passed in the sixth year of His late Majesty King George the Fourth entitled "An Act to amend the Laws relating to Bankrupts" and an Act of Parliament made and passed in the first and second years of His late Majesty King William the Fourth entitled "An Act to establish a Court of Bankruptcy" and that all proceedings relating to the discharge of any imprisoned insolvent debtor from custody and to the right of creditors to be heard in opposition to such discharge and to the costs and expences of the insolvent in regard to his schedule and the costs and expences as well of the insolvent as of other persons in attending the Court or the Commissioners and generally all proceedings directly or incidentally relating to the personal discharge of any insolvent shall as far as practicable be regulated and all questions arising relating thereunto be determined by reference to the Act of Parliament made and passed in the seventh year of His late Majesty King George the Fourth entitled "An Act to amend and consolidate the Laws relating to Insolvent Debtors in England."

Fund towards paying the expences of carrying this Act into execution.

XXXVI. And for raising a fund towards paying the expences which may be incurred in carrying this Act into execution be it Enacted That every person other than an imprisoned debtor or detaining creditor upon whose petition any fiat shall issue under this Act shall before the issuing such fiat pay into the hands of the Clerk of the Supreme Court the sum of ten pounds to be paid by the said Clerk to the Colonial Treasurer of this province at the end of the current quarter of a year together with other money to be then paid by him.

Power of appeal.

XXXVII. And be it Enacted That in every case in which there might be an appeal from the decision of a Court of Bankruptcy or Insolvency in England there shall under the like circumstances be a power of appeal from the decision of the said Court to the Court of Appeals in this Province and to Her Majesty in Council in conformity with the provisions and subject to the limitations and restrictions contained in the Act for establishing the Supreme Court of this Province.

Commencement of Act.

XXXVIII. And be it Enacted That so far as respects the relief of imprisoned insolvent debtors on their own petitions and the issuing of fiats on the petition of detaining creditors and all proceedings thereunder in manner aforesaid this Act shall commence forthwith and that so far as respects fiats to be issued on the petition of other persons than imprisoned insolvent debtors or their detaining creditors and the acts of insolvency on which such last-mentioned fiats may issue this Act shall commence on the first day of August next Provided that no fiat shall issue on any act of insolvency not wholly begun and completed after the said first day of August next.

GEORGE GREY,
Governor of South Australia.

*Passed the Legislative Council the Twenty-second day of
June, One Thousand Eight Hundred and Forty-one. }*

A. M. MUNDY,
Clerk of Council.

SCHEDULE A, REFERRED TO IN THIS ACT.

I, A. B. do swear that I will faithfully impartially and honestly according to the best of my skill and knowledge execute the several powers and trusts imposed in me as a Commissioner [as the case may be] of the Court of Insolvency of this Province [or in case of a Commissioner appointed for a particular case] as a Commissioner under a Fiat of Insolvency issued on the petition of A. B. a prisoner [or against A. B. on the petition of C. D. claiming to be a creditor of the said A. B. as the case may be] and that without favor or affection prejudice or malice. So help me God.

8th 1841 - 4th Victoria

Impounding of Cattle -

Repealed by Act. 3-1847.

1841 - 5th Victoria

11
c. Insolvent Debtors

Repealed by Act. 14-1857-8