



ANNO SEPTIMO ET OCTAVO

VICTORIÆ REGINÆ.

No. 5.---1844.

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.

IN ORDINANCE to amend 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."

*Assented to
20 11. 1844.*

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" power is given to His Excellency the Governor as soon as it should be found necessary so to do from time to time there-
to appoint fit and discreet persons to be Commissioners of Insolvency for the purposes of the said Ordinance in the manner therein

Recital of Ordinance
of 5 Vict., No. 1.

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therein mentioned and power is also thereby given to the Judge or Chief Justice in certain cases 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: And whereas it is considered that in the present state of the Province one Commissioner will be sufficient for the purposes of the said Ordinance and that it is expedient to amend the same in other respects:

Power given to the Governor to appoint and to the Judge to issue fiats to one or more person or persons to be Commissioners of Insolvency where by the recited Ordinance the Governor had power to appoint or the Judge to issue fiats to Commissioners.

I. 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 where by the said recited Ordinance power is given to the Governor to appoint persons to be Commissioners it shall be lawful for the Governor to appoint one or more fit and discreet person or persons to be Commissioner or Commissioners of Insolvency for the purposes of the said Act and that where power is by the said Ordinance given to the said Judge or Chief Justice to issue a fiat to two or more persons to act as Commissioners in any individual case of Insolvency it shall be lawful for the Judge or Chief Justice to issue a fiat to one or more persons to be named in such fiat to act as Commissioners in any one individual case of insolvency and such one Commissioner whether appointed by the Governor or by the Judge or Chief Justice shall have the same power and authority for the purposes of the said Ordinance in all respects as is by the said Ordinance given to any two or more persons appointed to act as Commissioners by virtue thereof.

The restriction that a single Commissioner shall not act in certain cases shall be deemed to apply only to cases where more than one Commissioner is appointed.

Commissioner or Commissioners may make rules.

II. And be it Enacted That so much of the said recited Ordinance as provides that no single Commissioner shall act in certain cases shall be deemed and taken to apply only to cases where more than one person may be appointed to act as Commissioners.

III. And be it Enacted That in all cases in which no provision or no sufficient provision is in that behalf made it shall be lawful for the said Commissioner or Commissioners from time to time either upon application in a summary way made for that purpose or without any such application to make all such orders in any particular case concerning the examination of witnesses or of an insolvent or insolvents the proof of debts the collection and distribution of the debts and effects of the insolvent and the manner of proceeding before or applying to such Commissioner or Commissioners and otherwise for facilitating or more fully carrying into effect any of the purposes hereof as to such Commissioner or Commissioners shall seem expedient: Provided always that all such rules and orders shall be concurred in by all the said Commissioner if more than one: Provided also that such rules and orders shall

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noways be inconsistent with the provisions of this or the recited Ordinance or with any general rules and orders now or hereafter to be made by the Judge or Judges of the Supreme Court in pursuance of the recited Ordinance.

IV. And be it Enacted That in case of the temporary illness of the Judge or Chief Justice or of his absence within the Province at any greater distance from Adelaide than ten miles it shall be lawful for the Governor to appoint by writing under his hand some other person to issue fiats of insolvency under this and the said recited Ordinance in the place of such Judge or Chief Justice and all fiats issued by the person so to be appointed shall during the illness or absence of the Judge or Chief Justice have the same power and effect as if issued by the Judge or Chief Justice in whose place such person may be appointed to act in this behalf.

Power given to Governor to appoint persons to issue fiats during the illness or absence of the Judge or Chief Justice.

V. And be it Enacted That in any case where a fiat of insolvency might under the powers of the recited Ordinance or of this Ordinance be lawfully issued on the petition of any creditor of an insolvent such fiat may lawfully be issued on the petition of the Manager of any Company or Society consisting of more than six persons or of the general agent of any creditor residing out of the Province although such agent shall not be authorised to act in such particular matter such manager or agent making the affidavit required by the said recited Ordinance to be made on the issuing of a fiat.

Power to issue fiat on the petition of Managers of Companies or of agents of persons residing out of the Province.

VI. And be it Enacted That in any case of a petition for the issue of a fiat in insolvency the bond now required to be given to the Official Assignee by the petitioning creditor conditioned for proving his debt and for proving the party to have committed an act of insolvency at the time of issuing such fiat and for proceeding upon such fiat may be dispensed with and in such case it shall be lawful to issue the fiat without any such bond having been given.

Petitioning creditor's bond may be dispensed with.

VII. And be it Enacted That upon the adjudication of insolvency of any person the adjudication of the Judge or Commissioner as the case may be shall have the effect of vesting as well the wearing apparel bedding and other necessaries of the insolvent and his family and the working tools and implements of such insolvent as well as all other the real and personal estate of such insolvent in the Official and other Assignees in the manner in the said Ordinance mentioned but it shall be lawful for the Official Assignee or for the Official and other Assignee or Assignees if any upon the final hearing of the insolvent and unless the Commissioner acting in

Vesting order to have the effect of vesting all the property of the insolvent without exception in the Official and other Assignees.

Power for Assignees on the final hearing of insolvent to re-assign to him the wearing apparel of himself and family &c. not exceeding in value £20.

in such case shall otherwise order such Assignee or Assignees are hereby required by writing under his or their hand or hands to re-assign to the insolvent 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 twenty pounds: Provided always that it shall be lawful for the Official and other Assignees to permit any insolvent and his family to have the use of their wearing apparel bedding and other necessaries and working tools and implements to the value aforesaid until such final hearing shall be had.

All debts to be proved.

VIII. And be it Enacted That notwithstanding any thing contained in the said Ordinance to the contrary no debt which may be due from any insolvent against whom a fiat shall hereafter issue shall be deemed a valid and subsisting debt so as to enable the person to whom the same may be due to be reckoned as a creditor of the insolvent for the purpose of receiving a dividend or otherwise until such debt shall have been proved upon oath to the satisfaction of the Acting Commissioner at one of the public meetings to be appointed in the matter of the insolvency or at some other meeting to be by the Commissioner specially appointed.

Insolvent may be examined in actions brought to recover debts due to his estate.

IX. And be it Enacted That in any action which may be brought by the Assignee of any insolvent for the recovery of any debt due to his estate it shall be lawful for the Court in which such action shall be brought to permit the insolvent to be examined as a witness on behalf of the Assignee any law or usage to the contrary notwithstanding.

Further fund towards paying the expence of carrying this Ordinance and the recited Ordinance into execution.

X. And be it Enacted That for providing a fund towards paying the expenses of carrying this and the recited Ordinance into execution there shall be paid by the Official Assignee out of the net produce of the estate of each imprisoned insolvent debtor against whom a fiat shall issue on his own petition or on the petition of his detaining creditor after all other costs and charges of working the fiat shall have been satisfied ten per cent. on the amount of such net produce so that such payment shall not in the whole exceed the sum of ten pounds in respect of any one estate.

Three months' wages or salary may be ordered to be paid to servant or clerk in full not exceeding thirty pounds.

XI. And be it Enacted That when any insolvent under a fiat issued after the commencement of this Act shall have been indebted at the time of issuing the fiat against him to any servant or clerk of such insolvent in respect of wages or salary of such servant or clerk it shall be lawful for the Commissioner authorized to act in the prosecution of such fiat upon proof thereof to order so much

as shall be due as aforesaid not exceeding three months wages or salary and not exceeding thirty pounds to be paid to such servant or clerk out of the estate of such insolvent and such servant or clerk shall be at liberty to prove under the fiat for any sum exceeding such last mentioned amount.

XII. And be it Enacted That when any insolvent under a fiat issued after the commencement of this Ordinance shall have been indebted at the time of issuing the fiat against him to any laborer or workman of such insolvent in respect of the wages or labor of such laborer or workman it shall be lawful for the Commissioner authorized to act in the prosecution of such fiat upon proof thereof to order so much as shall be so due as aforesaid but not exceeding forty shillings to be paid to such laborer or workman out of the estate of such insolvent and such laborer or workman shall be at liberty to prove under the fiat for any sum exceeding such last mentioned amount.

Wages to workmen or laborer not exceeding forty shillings may be ordered to be paid in full.

XIII. And be it Enacted That if any plaintiff shall recover judgment in any personal action for the recovery of any debt or money demand in any of Her Majesty's Courts of Record against any person 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 against such judgment and such person shall not within fourteen days after notice in writing personally served upon him requiring immediate payment of such judgment debt pay secure or compound for the same to the satisfaction of such plaintiff he 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 in the meantime be 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.

Any person not paying securing or compounding for a judgment debt upon which the plaintiff might sue out execution within fourteen days after notice requiring payment commits an act of insolvency.

XIV. 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 person ordering him to pay any sum of money and such person shall disobey such decree or order the same having been duly served upon him the person entitled to receive such sum under such decree or order or interested in enforcing payment thereof pursuant thereto may apply to the Court by which the same shall

And also any person disobeying an order of Court of Equity or order in insolvency or lunacy for payment of money after service of an order on a day fixed for payment by the last-mentioned order.

have been pronounced to fix a preremptory day for the payment of such money which shall accordingly be fixed by an order for that purpose and if the person against whom such order or decree is made being personally served with such last mentioned order fourteen days before the day therein appointed for payment of such money shall neglect to pay the same he shall be deemed to have committed an act of insolvency on the fifteenth day after the service of such order.

Search warrant may be granted by Commissioner.

XV. And be it Enacted That in all cases in which it shall be made to appear to the satisfaction of the Commissioner authorised to act in the prosecution of any fiat in insolvency that there is reason to suspect and believe that property of any insolvent is concealed in any house premises or other place not belonging to such Insolvent such Commissioner is hereby directed and authorized to grant a search warrant to any person appointed by such Commissioner and it shall be lawful for such person to execute such warrant according to the tenor thereof and such person shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen or concealed.

To exempt Official Assignee from personal liability in certain cases.

XVI. And be it Enacted That no Official Assignee shall be deemed personally responsible or liable for any Act done by him or by his order or authority in the execution of his duty as such Official Assignee by reason of the Petitioning Creditor's debt and act of insolvency upon which the adjudication of insolvency shall have been grounded or of either of such matters being insufficient to support such adjudication.

Allowance of percentage to Official Assignee.

XVII. And be it Enacted That it shall be lawful for the Commissioner named in any fiat of insolvency to allow to the Official Assignee acting under such fiat so much per cent. on the net amount of all moneys received and duly accounted for by him as to such Commissioner shall seem reasonable regard being had to the amount of the Insolvent's property and to the trouble of the Official Assignee in getting in the same so nevertheless that such allowance shall not exceed five per cent. on the net amount of all moneys received and duly accounted for by such Official Assignee.

For removing doubts as to the validity of certificates signed and allowed by the Judge.

XVIII. And whereas provision is made by the recited Ordinance for granting to every Insolvent who shall have duly and in all things conformed to the laws in force concerning insolvents at the time of issuing the fiat with respect to him a certificate of conformity signed and allowed in the manner mentioned in the Statute made and passed in the sixth year of His late Majesty King George the

the Fourth intituled "An Act to amend the Laws relating to Bankrupts," and it is 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: And whereas since the passing of the said Ordinance many fiats have been issued under which persons have been declared insolvent and under which the powers by the said Ordinance given to Commissioners have been exercised by the Judge of the Supreme Court alone no Commissioners having been appointed by virtue of the provisions of the said Ordinance and doubts may arise as to the effect of certificates made signed and allowed by the Judge alone: And whereas doubts may also arise as to the manner of calculating the proportion in number and value of the creditors by whom certificates ought to be signed in cases of fiats issued before the passing of this Ordinance: Be it therefore Enacted That every certificate of conformity which may have been heretofore or which may at any time hereafter be made signed and allowed by the Judge of the Supreme Court only under any fiat of insolvency heretofore issued whether such fiat shall have been issued on the petition of the Insolvent himself or on the petition of any creditor or creditors of such Insolvent in cases where no Commissioners shall have been named in the fiat under which the same may be granted shall be of the same force and effect as a certificate certified by Commissioners and allowed by the Judge of the Supreme Court: And that where it is provided in the said Statute that a certificate shall be signed by any proportion in number and value of the creditors who shall have proved debts under the commission such proportion shall be calculated on the number and value of creditors named in the Schedule filed by the Insolvent in the manner directed by the said Ordinance.

XIX. And be it Enacted That any person declared insolvent after the passing of this Ordinance either on his own petition or on the petition of a creditor who shall have in all things conformed himself to the laws in force concerning Insolvents at the time of issuing the fiat in insolvency against him shall be discharged from all debts due by him when he became insolvent and inserted in his Schedule and from all claims and demands made proveable under the fiat and inserted in his Schedule in case he shall obtain a certificate of such conformity so signed and allowed and subject to such provisions as hereinafter mentioned and no certificate of such conformity by any such insolvent shall release or discharge such Insolvent from such debts claims or demands unless such certificate shall be obtained
allowed

Insolvent may be discharged by certificate of conformity in manner hereinafter described.

Discharge of Insolvent not to release or discharge a partner or person bound.

Insolvent not to be entitled to certificate if he has lost certain amounts by gaming or concealed or destroyed books &c. or made fraudulent entries or concealed any property or permitted fictitious debts to be proved.

Mode of obtaining certificate of conformity.

allowed and confirmed according to such provisions: Provided always that no such certificate shall release or discharge any person who was a partner with such Insolvent at the time of his insolvency or was then jointly bound or had made any joint contract with such Insolvent: And provided also that nothing herein contained shall affect the validity of any certificate already granted or which may hereafter be granted and allowed according to the provision of the recited Ordinance in respect of any person declared insolvent previous to the passing hereof.

XX. Provided always and be it Enacted That no Insolvent shall be entitled to the certificate under this Ordinance and that any such certificate if obtained shall be void if such Insolvent shall have lost by any sort of wagering or gaming in one day twenty pounds or within one year next preceding his insolvency two hundred pounds or if he shall within one year next preceding his insolvency have lost two hundred pounds by any contract for the purchase or sale of any Government or other stock where such contract was not to be performed within one week after the contract or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract or if such Insolvent shall after an act of insolvency or in contemplation of Insolvency or with intent to defeat the object of this or any other Statute relating to Insolvents have concealed destroyed altered mutilated or falsified or caused to be concealed destroyed altered mutilated or falsified any of his books papers writings or securities or made or been privy to the making any false or fraudulent entry in any book of account or other document with intent to defraud his creditors or shall have concealed any part of his property or if any person having proved a false debt under the fiat such Insolvent being privy thereto or afterwards knowing the same shall not have disclosed the same to his Assignees within one month after such knowledge.

XXI. And be it Enacted That it shall be lawful for the Commissioner authorised to act in the prosecution of any fiat in insolvency hereafter to be issued on the application of the Insolvent named in such fiat to appoint a public sitting for the allowance of such certificate to the Insolvent named in such fiat whereof and of the purport whereof twenty-one days' notice shall be given in the *South Australian Government Gazette* and to the Official Assignee and at such sitting any of the creditors of such Insolvent may be heard against the allowance of such certificate but it shall not be requisite for such certificate to be signed by any of the creditors of such Insolvent and such Commissioner having regard to the conformity of the Insolvent to the laws relating to Insolvents and to the

the conduct of the Insolvent before as well as after his insolvency shall judge of any objection against allowing such certificate and either find the Insolvent entitled thereto and allow the same or refuse or suspend the allowance thereof or annex such conditions thereto as the justice of the case may require.

XXII. Provided always that no certificate shall be such discharge unless such Commissioner shall in writing under hand and seal certify to the Supreme Court that such Insolvent has made a full discovery of his estates and effects and in all things conformed as aforesaid and that there does not appear any reason to doubt the truth or fulness of such discovery and unless the Insolvent make oath in writing that such certificate was obtained fairly and without fraud and unless the allowance of such certificate shall after such oath be confirmed by the Supreme Court against which confirmation any of the creditors of the Insolvent may be heard before such Court.

Certificate not to be a discharge unless the Court certify a full conformity.

XXIII. And be it Enacted That any contract or security made or given by any Insolvent or other person unto or in trust for any creditor or for securing the payment of any money due by such Insolvent at the time of his insolvency as a consideration or with intent to persuade such creditor to forbear opposing or to consent to the allowance or confirmation of such certificate shall be void and the money thereby secured or agreed to be paid shall not be recoverable and the party sued on such contract or security may plead the general issue and give this Ordinance and the special matter in evidence.

Contracts or securities to induce creditors to forbear opposition to be void.

XXIV. And be it Enacted That if any creditor of an Insolvent shall obtain any sum of money or any goods chattels or security for money from any person as an inducement for forbearing to oppose or for consenting to the allowance or confirmation of the certificate of such Insolvent every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money goods chattels or security so obtained as the case may be to be recovered as hereinafter provided.

Penalty for obtaining money goods &c. as an inducement to forbear opposition &c.

XXV. And be it Enacted That any Insolvent who shall after such certificate shall have been confirmed be arrested or have any action brought against him for any debt claim or demand proveable under the fiat against such Insolvent shall be discharged upon entering

Insolvent having obtained his certificate free from arrest.

Certificate to be evidence of the insolvency.

Insolvent in execution may be ordered to be discharged.

Insolvent not liable to pay debt discharged by certificate unless promise be in writing.

Recovery and application of forfeitures.

For removing doubts as to the applicability of the Statutes of 6 Geo. IV. c. 116 and of 1 and 2 Wm. IV. c. 56 to fiats under this Ordinance.

entering an appearance and may plead in general that the cause of action accrued before he became insolvent and may give this Ordinance and the special matter in evidence and such Insolvent's certificate and the confirmation thereof shall be sufficient evidence of the insolvency fiat and other proceedings precedent to the obtaining such certificate and if any such Insolvent shall be taken in execution or detained in prison for such claim debt or demand where judgment has been obtained for the confirmation of his certificate it shall be lawful for any Judge of the Court wherein judgment has been so obtained on such Insolvent producing his certificate to order any officer who shall have such Insolvent in custody by virtue of such execution to discharge such Insolvent without exacting any fee and such officer shall be hereby indemnified for so doing.

XXVI. And be it Enacted That no Insolvent after such certificate shall have been confirmed shall be liable to pay or satisfy any debt claim or demand from which he shall have been discharged by virtue of such certificate or any part of such claim debt or demand upon any contract promise or agreement made or to be made after the suing out of the fiat unless such contract promise or agreement be made in writing signed by the Insolvent or by some person thereto lawfully authorized in writing by such Insolvent.

XXVII. And be it Enacted That all sums of money forfeited under this or the said recited Ordinance may be sued for by the Assignees of the estate and effects of any Insolvent in the Supreme Court of this Province and the money so recovered the charges of suit being deducted shall be divided among the creditors.

XXVIII. And to prevent doubts as to the application to this Ordinance of the powers and provisions of the Statutes passed in the sixth year of the reign of His late Majesty King George the Fourth and intitled "An Act to amend the Law relating to Bankruptcy, and of the Statute passed in the second year of the Reign of His late Majesty King William the Fourth intitled "An Act to establish a Court of Bankruptcy:" Be it Enacted That all the powers and provisions of the said Statutes shall extend and be construed to extend in every respect as far as the same may be applicable to this Ordinance and to fiats issued in pursuance thereof and to all proceedings under the same and to all Judges Commissioners Insolvents Witnesses Messengers and other persons concerned therein or in any way affected thereby to all intents and purposes whatsoever in

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the same manner as if every such fiat were a Commission of Bankruptcy under the first-mentioned Statute or a fiat under the last-mentioned Statute save and except as may be herein or in the recited Ordinance otherwise directed or as may be inconsistent with the provisions of this or of the recited Ordinance or with any rules and regulations made or to be made in pursuance thereof.

GEORGE GREY,
Governor and Commander-in-Chief.

*Passed the Legislative Council, this Twenty-
Eighth day of February, 1844.*

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