



ANNO TRICESIMO PRIMO

VICTORIÆ REGINÆ.

A.D. 1867.

No. 13.

An Act to amend the Insolvent Act, 1860.

[Assented to, 19th December, 1867.]

WHEREAS it is expedient to amend "The Insolvent Act, 1860"—Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows: Preamble.

1. This Act may be cited as "The Insolvent Amendment Act, 1867." Short Title.

2. Except in so far as the same is inconsistent with this Act, "The Insolvent Act, 1860," shall be incorporated and read herewith as forming one Act. Incorporation.

3. During the temporary absence of the Official Assignee from illness, leave of absence, or other reasonable cause, the Commissioner shall, by writing under his hand and seal, nominate some person to act as the deputy of such Official Assignee; and the person so nominated shall, on giving such security as the Commissioner of Insolvency may direct and after his nomination has been confirmed by the Governor, have and exercise all the powers of such Official Assignee. During temporary absence of Official Assignee, Commissioner may appoint deputy.

4. Any petition for adjudication of insolvency, whether presented by a creditor or by a debtor, may be attested either by the Official Assignee or by a practitioner of the Supreme Court. Petition for adjudication may be attested by practitioner of Supreme Court.

5. Any

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Any debtor imprisoned in any gaol may petition in *forma pauperis*.

5. Any debtor in actual custody for debt in any gaol in the said Province may petition for adjudication in *forma pauperis*, in the mode prescribed by the forty-sixth and forty-seventh sections of the Insolvent Act, 1860, and the notice by such sections required to be given may be attested by the keeper of the gaol in which such debtor is confined.

Recognizances may be taken before any Special Magistrate.

6. Any surety proposing to enter into a recognizance as provided by the sixtieth section of the said Act, may enter into and acknowledge the same before any Special Magistrate, and the same shall thereupon be of the like validity, force, and effect, as if such recognizance had been duly entered into before the Court itself, and the form of recognizance contained in the Schedule Q, to the said Act, may be altered accordingly.

Insolvent to be examined without being sworn, on making declaration.

7. Notwithstanding the one hundred and twenty-first section of the "Insolvent Act, 1860," every insolvent may be examined without having been sworn, on signing a declaration in the form T, in the Schedule to such Act; and notice to the insolvent, as required by the said section, shall be deemed sufficient if entered in a book to be kept by the Official Assignee, to be called the Opposition Book, three days at least before any sitting or adjourned sitting for the last examination of the insolvent: Provided that where any last examination shall be adjourned for any special purpose, to be mentioned in the minute of adjournment, no matters shall be considered at such adjourned hearing other than those mentioned in such minute.

Notice of opposition, how to be entered.

Trade assignee may be appointed at subsequent meeting.

8. If no trade assignee shall have been chosen and appointed at the first public sitting under the insolvency or at some adjournment thereof, it shall be lawful but not obligatory on the Court to permit an assignee to be chosen and appointed at some subsequent public meeting under the insolvency.

Special messenger may be appointed in certain cases.

9. The Court may appoint a special messenger in any insolvency, to act in such matters as may be referred to him, whenever by reason of distance or other sufficient cause it shall not be deemed advisable that the messenger of the Court shall so act; in which case the messenger of the Court shall not be entitled to act therein.

Insolvent in custody on order or attachment for payment of money, &c., may be discharged.

10. If any insolvent at the time fixed for his surrendering, or at any time thereafter, shall be in prison or in custody on civil process of any Court of Common Law or Equity, having been arrested or committed to prison for debt, or upon any attachment, or order, or commitment for, or respecting the non-payment of money, or for contempt of any Court, and from which imprisonment he might be discharged upon payment of money, the Court shall have full power to order the immediate release of such insolvent from custody in the like manner as is provided by the fifty-seventh section of the said Insolvent Act, 1860, in respect to insolvents in custody for debt or damages, and the form of warrant contained in the Schedule N to the said Act may be altered so as to meet

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meet the circumstances of any such case; and in the construction of the fifty-ninth section of the said Act, the words "The warrant of the Court for his release from custody at the suit of any creditor," shall be taken to mean and include any warrant issued under the provisions herein contained.

11. In any case in which the Court of Insolvency shall, in consequence of the opposition of any creditor, or at the instance of any creditor, remit any question of law by way of special case to the Supreme Court, there shall be stated in such special case the name or names of the creditor or creditors at whose instance, or in consequence of whose opposition such special case has been remitted to the Supreme Court as aforesaid, and such creditor or creditors shall be deemed to be a party or parties to, and shall conduct such special case before the Supreme Court, and the Supreme Court shall have the same power in respect to the costs of such special case as is provided in respect to appeals by clause 16 of the Insolvent Act of 1860.

Costs in special case.

12. In all cases in which the insolvent is liable to pay any rent or other payment falling due at fixed or stated periods, and the adjudication of insolvency shall happen at any time other than one of such fixed or stated periods, it shall be lawful for the person entitled to such rent or other payment, to prove for a proportionate part thereof, up to the day of the adjudication of insolvency in such manner as if the said rent or payment were due from day to day, and not at such fixed or stated periods as aforesaid.

Proof for proportionate part of rent, and other payments falling due at fixed periods. 24 & 25 Vic., c. 134, s. 150.

13. If any insolvent shall have contracted before the filing of a petition for adjudication any debt payable by way of instalments, the creditor may prove for the amount of such instalments remaining unpaid at the time of such petition.

Proof in case of debt payable by instalments. 24 & 25 Vic., c. 134, s. 151.

14. If any debtor shall at the time of adjudication, be liable upon any bill of exchange or promissory note in respect of distinct contracts as member of two or more firms, carrying on separate and distinct trades, and having distinct estates to be wound up in insolvency, or as a sole trader and also as the member of the firm, the circumstances that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividend in respect of such distinct contracts against the estates respectively liable upon such contracts.

Proof in respect of distinct contracts. 24 & 25 Vic., c. 134, s. 152.

15. If any insolvent shall, at the time of adjudication, be liable, by reason of any contract or promise, to a demand in the nature of damages which have not been and cannot be otherwise liquidated or ascertained, it shall be lawful for the Court of Insolvency to direct such damages to be assessed by a jury in a Court of Law, and to give all necessary directions for such purpose; and the amount of damage when assessed, shall be provable as if a debt due at the time

Proof in respect of unliquidated damages. 24 & 25 Vic. c. 134, s. 153.

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time of the insolvency: Provided that, in case all necessary parties agree, the Court shall have power to assess such damages without reference to a Court of Law.

Notices to be in
Gazette.

16. Anything in the Insolvent Act of 1860, to the contrary, notwithstanding, it shall not be necessary to publish any notice or advertisement in any newspaper, but all notices and advertisements required by the said Insolvent Act of 1860, or this Act, to be published in any newspaper, shall be deemed to be sufficiently published if inserted in the *South Australian Government Gazette*.

Official Assignee to
publish accounts.

17. The Official Assignee shall, on or before the 1st day of March in every year, publish in the *South Australian Government Gazette*, an account made up to the 31st December preceding, in the form in the Schedule to this Act, of all estates in insolvency that have during the year ending on such 31st December been in any way in or before the Court of Insolvency, and the trustees of any estate being wound up under the arrangement clauses of the said Insolvent Act of 1860, shall, within one calendar month after demand, furnish to the Official Assignee an account of such estate, in the form of the said Schedule to this Act.

One year's rates may
be paid in full.

18. The Court, out of the estate and effects of the insolvent, shall order payment of all such rates as may be due from him to the Commissioner of Waterworks, or to any Corporation or District Council at the time of his being adjudicated an insolvent: Provided such rates have become due during the twelve months immediately preceding the insolvency.

In the name and on behalf of the Queen I hereby assent to
this Act.

D. DALY, Governor.

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SCHEDULE REFERRED TO.

Name of Insolvent.	Date of Insolvency.	Messenger's Costs.*	Accountant's Costs.*	Maintenance or other allowance paid to Insolvent.*	Total Expenses paid out of Estate in respect to the Insolvency.*	Total Liabilities.	Total Assets.	
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
Total Amount Collected.	Total Amount Collected during Year.	Total Amount payable to Creditors.	Amount of Dividend, and when declared.	Amount of Dividend paid during Year.	Total Amount Divided.	Amount of Assets Uncollected.	Balance in Hand.	Remarks.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	

* Items marked with an asterisk are required only as to insolvencies that have occurred during the year. The date of execution of a deed of arrangement to be considered the date of insolvency, and the names of the trustees to be given.