

ANNO SECUNDO
 VICTORIÆ REGINÆ,

No. 29.

*By His Excellency, SIR JOHN FRANKLIN, Knight
 Commander of the Royal Hanoverian Guelphic
 Order, Knight of the Greek Order of the Redeemer,
 and a Captain in Her Majesty's Royal Navy,
 Lieutenant-Governor of the Island of Van
 Diemen's Land and its Dependencies, with the
 advice of the Legislative Council.*

*AN ACT for the further amendment of the Law
 of Debtor and Creditor.*

WHEREAS it is expedient to make certain alterations on the Act of this Island intitled "An Act to provide for the distribution of Insolvent Estates and for the amendment in other respects of the Law of Debtor and Creditor." PREAMBLE.

I.—BE IT THEREFORE ENACTED by His Excellency Sir John Franklin Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that it shall be lawful for the Lieutenant-Governor for the time being from time to time to appoint such and so many persons to be Commissioners under this Act as he shall think proper. Lieutenant-Governor to
appoint commissioners.

Commissioners to have the same power as to insolvencies as a judge of the supreme court.

II.—AND BE IT ENACTED that every such Commissioner shall have so far as relates to Insolvencies the same powers and authorities as any one Judge of the Supreme Court of Van Diemen's Land has or may have under the said Act.

Future proceedings in insolvencies now declared to be before a commissioner.

III.—AND BE IT ENACTED that all future proceedings in those Insolvencies in which any proceedings have already taken place shall be carried on by and before the Commissioners appointed at Hobart Town and Launceston respectively under this Act.

Remuneration to commissioners.

IV.—AND BE IT ENACTED that the Commissioner shall for every meeting receive and be paid the fee of twenty shillings from the estate of the insolvent which sum shall be paid by the provisional or permanent assignee or assignees from the first assets which shall come to his or their hands—*Provided* that where any special meeting shall be called by any creditor or creditors such fee shall be paid by the person or persons calling the same before any proceedings at such meeting shall take place.

Meetings for proof of debts

V.—AND BE IT ENACTED that the Commissioner may after the first meeting of Creditors appoint not more than two general meetings of creditors for the proof of debts and that as well in Insolvencies already declared as in future Insolvencies—*Provided* that not less than ten days' notice of any such meeting shall be given in one Hobart Town and one Launceston paper.

Debts not to be proved in the manner provided by 6 W. 4, No. 10.

VI.—AND BE IT ENACTED that debts due to any creditor under any insolvency shall not hereafter be proved in the manner provided by the said Act nor shall any certificate that a creditor has proved his debt to the satisfaction of a Judge of the Supreme Court or of the Master thereof or of any Commissioner or other Officer be in any case necessary.

Debts how proved.

VII.—AND BE IT ENACTED that all debts that are or shall be due to any creditor under any insolvency heretofore declared and which have not been proved in the manner provided by the said Act and all debts that shall be due to any creditor under any insolvency hereafter to be declared shall be proved before the Commissioner by the creditor's own affidavit or otherwise and that such affidavit may be in the form of schedule A to this Act annexed—*Provided* that it shall be lawful for the Commissioner to examine upon oath either *vis à voce* or by interrogatories in writing every person claiming to prove a debt or to require such further proof and to examine such other persons in relation thereto as such Commissioner shall think fit.

Expunging of debts by commissioner.

VIII.—AND BE IT ENACTED that whenever it shall appear to the provisional or permanent assignee or assignees under the insolvency or to two or more creditors who have each proved debts to the amount of Twenty Pounds or upwards that any debt proved under the insolvency is not justly due either in whole or in part such assignee or assignees or creditors may make representation thereof to the Commissioner and it

shall be lawful for the said Commissioner to summon before him and examine upon oath any person who shall have so proved as aforesaid together with any person whose evidence may appear to the Commissioner to be material either in support of or in opposition to any such debt and if the said Commissioner upon the evidence given on both sides or (if the person who shall have so proved as aforesaid shall not attend to be examined having been first duly summoned or notice having been left at his last place of abode) upon the evidence adduced by such assignee or assignees or creditors as aforesaid shall be of opinion that such debt is not due either wholly or in part the said Commissioner shall be at liberty to expunge the same either wholly or in part from the proceedings—*Provided* that such assignee or assignees or creditors requiring such investigation shall before it is instituted sign an undertaking to be filed with the proceedings to pay such costs as the Commissioner shall adjudge to the creditor who has proved such debt as aforesaid—*Provided also* that either party may appeal to the said Court against the determination of the Commissioner and that it shall be lawful for the said Court to entertain such appeal and make all necessary orders in the matter and finally to admit or reject any such debt on a summary application.

Costs.

Appeal.

IX.—AND BE IT ENACTED that any person who has or shall have given credit to any person now or hereafter declared insolvent upon valuable consideration for any money or other matter or thing whatsoever which shall not have become payable when the insolvency was or shall be declared and whether such credit shall have been given upon any bill bond note or other negotiable security or not shall be entitled to prove such debt bill bond note or other security as if the same was payable presently and receive dividends equally with the other creditors deducting only thereout a rebate of interest for what he shall so receive at the rate of ten per centum to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted.

Proof of debts not payable at the time of insolvency.

X.—AND BE IT ENACTED that any person who at the time of any declaration of insolvency made or to be made was or shall be surety or liable for any debt of the insolvent or bail for the insolvent either to the sheriff or to the action if he shall have paid the debt or any part thereof in discharge of the whole debt (although he may have paid the same after the declaration of insolvency) if the creditor shall have proved his debt under the insolvency shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the said insolvency which such creditor doth or may possess or is or would be entitled to in respect of such proof or if the creditor shall not have proved under the insolvency such surety or person liable or bail shall be entitled to prove his demand in respect of such payment as a debt under the insolvency not disturbing the former dividends and may receive dividends with the other creditors although he may have become surety liable or bail as aforesaid after an act of insolvency committed by such insolvent—*Provided* that such person had not when he became such surety or bail or so liable as aforesaid notice of any act of insolvency by such insolvent committed.

Proof by sureties and bail.

Proof of bottomry and
respondentia.

Bonds and policies of
insurance.

XI.—AND BE IT ENACTED that the obligee in any bottomry or respondentia bond and the assured in any policy of insurance made upon good and valuable consideration shall be admitted to claim and after the loss or contingency shall have happened to prove his debt or demand in respect thereof and receive dividends with the other creditors as if the loss or contingency had happened before the declaration of insolvency and that the person effecting any policy of insurance upon ships or goods with any person as a subscriber or underwriter becoming insolvent shall be entitled to prove any loss to which such insolvent shall be liable in respect of such subscription although the person so effecting such policy was not beneficially interested in such ships or goods in case the person or persons so interested is not or are not in the colony.

Proof of contingent debts.

XII.—AND BE IT ENACTED that if any insolvent hath or before the declaration of insolvency shall have contracted any debt payable upon a contingency which shall not have happened before the declaration of such insolvency the person with whom such debt has been or shall be contracted may if he think fit apply to the commissioner to set a value upon such debt and the commissioner is hereby required to ascertain the value thereof and to admit such person to prove the amount so ascertained and to receive dividends thereon or if such value shall not be so ascertained before the contingency shall have happened then such person may after such contingency shall have happened prove in respect of such debt and receive dividend with the other creditors not disturbing any former dividends—*Provided* such person had not when such debt was contracted notice of any act of insolvency by such insolvent committed.

When conveyance to trustees for benefit of creditors not to be deemed an act of insolvency.

XIII.—AND BE IT ENACTED that where any debtor shall execute any conveyance or assignment by deed to a trustee or trustees of all the estate and effects of such debtor for the benefit of all his creditors the execution of such deed shall not be deemed an Act of Insolvency—*Provided* that such deed shall be executed by every such trustee within ten days and by three fourths in number and value of the creditors of such debtor within two calendar months after the execution thereof by the said debtor and that the execution by such debtor and by every such trustee be attested by an attorney of the said Supreme Court and that notice be given within fourteen days after the execution thereof by such debtor in the Hobart Town Gazette and one Hobart Town and one Launceston newspaper and such notice shall contain the name and place of abode respectively of every such trustee.

Debtor to annex to his petition a schedule of property.

XIV.—AND BE IT ENACTED that every debtor presenting a petition to be declared insolvent shall annex thereto a schedule containing a particular account of all the estate and effects both real and personal then belonging and of all debts then due to him either solely or jointly with any other person or persons or in or to which he shall then be in any manner interested or entitled.

Power to imprison on postponing discharge.

XV.—AND BE IT ENACTED that whenever any insolvent shall apply for an order of discharge under the provisions of the said Act and the court judge or commissioner before whom such application shall be heard

shall postpone the making of such order of discharge it shall be lawful for such court judge or commissioner to order such insolvent to be imprisoned for the period for which such postponement shall be ordered—*Provided always* that no such postponement shall in any case be for a longer period than twelve months.

XVI.—AND BE IT ENACTED that whenever it shall by or on behalf of any two or more creditors under the insolvency who have each proved debts to the amount of twenty pounds or upwards be made to appear to the commissioner under the insolvency that the insolvent hath committed any of the acts in respect of which such order of discharge as aforesaid may be postponed under the provisions of the said Act in Council it shall be lawful for such commissioner (although no application shall have been made by the insolvent for an order of discharge) to order such insolvent to be imprisoned for any period not exceeding twelve months from the time of such order being made—*Provided* that not more than one such order of imprisonment shall be made in any insolvency and that not less than ten days' previous notice of the application for such order shall be given to the insolvent and that every such order if made by a commissioner or the refusal of a commissioner to make such order shall be subject to an appeal to the decision of the Supreme Court of this Island.

Similar power on application of a creditor although no discharge applied for by insolvent.

Appeal.

XVII.—AND BE IT ENACTED that upon any order of imprisonment being made as aforesaid it shall be lawful for the court judge or commissioner making such order to issue a warrant authorising any person to apprehend the insolvent and to lodge him in prison accordingly.

Warrants to apprehend.

XVIII.—AND BE IT ENACTED that it shall not be lawful for any person who has been or shall be declared insolvent to depart from this colony until he shall obtain the order of discharge provided for by the said act and that it shall be lawful for the said commissioner under the insolvency to grant a warrant under his hand authorising any person to apprehend such insolvent upon oath being made to his satisfaction by or on behalf of any creditor of the said insolvent to the amount of Twenty Pounds (whether such creditor shall or shall not have then proved his debt under the insolvency) that the deponent believes and that in his opinion there is sufficient reason to believe that such insolvent is about shortly to depart from the colony.

Insolvent not to depart the colony without discharge.

May be apprehended.

XIX.—AND BE IT ENACTED that upon such insolvent being apprehended under such warrant he shall be forthwith lodged in prison therein to be detained subject to the provisions of the said Act until he shall obtain the said order of discharge under the said Act.

And committed until discharge obtained.

XX.—AND BE IT ENACTED that the several provisions of this Act so far as the same can be applied and in particular such provisions as relate to the several debts that may be proved or claimed shall be applied to insolvencies already declared as well as to future insolvencies.

Provisions of this Act to be applied to insolvencies already declared.

Power to justices of the peace to take affidavits to be used in any proceedings in the supreme court and in insolvencies.

Perjury.

XXI.—AND BE IT ENACTED that all justices of the peace in and for the Island of Van Diemen's Land and its Dependencies now or hereafter to be appointed shall be and they are hereby authorised to take affidavits to be used in any proceedings in the Supreme Court of Van Diemen's Land or in any proceedings under any insolvency now or hereafter to be declared in the same manner as if every such justice was a commissioner of the said court and that any person wilfully forswearing himself in any affidavit so to be taken shall be deemed guilty of wilful and corrupt perjury in the same manner as if such affidavit had been taken by the said Supreme Court or any judge thereof.

JOHN FRANKLIN

Passed the Legislative Council
this twenty-eighth day of November one thousand eight hundred and thirty-eight.

ADAM TURNBULL,
Clerk of the Councils.

Adhered to by the Lieutenant-Governor in Council this twenty-ninth day of December one thousand eight hundred and thirty-eight.

ADAM TURNBULL,
Clerk of the Councils.

SCHEDULE A.

In the matter of the Insolvency of A. B. C. D. of [insert place of residence and trade or profession] maketh oath and saith that the above named A. B. was on the [date of declaration of Insolvency] and still is guilty and truly indebted to this defendant in the sum of [here insert the amount and particulars of the claim stating the consideration given if the claim be on a bill of exchange or promissory note] and this deponent further saith that the said A. B. has no set-off against the said sum of _____ as far as this deponent knows and believes and that this deponent has no security for the said sum of _____ or any part thereof [if the creditor has any security he must add the nature of such security.]