

NEW ZEALAND.

ANNO VICESIMO SEXTO.

VICTORIÆ REGINÆ.

No. 37.

ANALYSIS.

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Title.

An Act for relief of Debtors and for the better security of Creditors.

[15th September, 1862.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows :—

Short Title.

I. The Short Title of this Act shall be "The Debtors and Creditors Act 1862."

Ordinance repealed

II. An Ordinance passed in the year 1844 in the 3rd Session of the Legislative Council of the Colony of New Zealand intituled "An Ordinance for the relief of persons Imprisoned for Debt," and "The Imprisonment for Debt Ordinance Amendment Act, 1861," are hereby respectively repealed.

III. It shall be lawful for any Debtor who shall have been taken in execution under any process issuing from the Supreme Court or from any Court of inferior jurisdiction for any

Debtor under Execution may petition under Act.

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debt or sum of money to apply by petition to a Judge of the Supreme Court for discharge from custody and for relief according to the provisions of this Act.

Debtor may petition for sequestration.

IV. It shall be lawful for any Debtor not being a prisoner in custody with the concurrence of one or more Creditor or Creditors to the extent of not less than Fifty Pounds in the whole to apply by Petition to a Judge of the Supreme Court for sequestration of his estate for the benefit of his Creditors and for relief according to the provisions of this Act.

What Petition shall state.

V. The Petition by any Debtor who shall be in custody as aforesaid shall state the time of the prisoner's committal to prison and the name or names of the person or persons at whose suit he shall be detained in custody and the debts or sums of money for which he shall be so detained and that he hath caused notice in writing of his intention to present such Petition to be personally served on such detaining Creditors as aforesaid or their Attorneys or Agents which notice shall be served accordingly. The Petition whether by any Debtor in custody or by any Debtor not in custody shall also set forth either in its body or by way of Schedule a full true and particular account of all the Petitioner's debts liabilities and engagements and the respective amounts thereof as nearly as may be and to whom owing with the names places of abode and descriptions of the persons to whom owing and the respective considerations for the same. And also of all monies due to or payable to him from any person or persons or on any account whatsoever and of all income whereof he shall be in receipt from any office place or employment whatever and of all real and personal estate and effects whatsoever of or to which he shall be possessed or entitled in possession reversion remainder or expectancy or of which he shall have power to dispose and all such other particulars as shall from time to time by any rule or order in that behalf be directed for the purpose of enabling the Court to judge as to the state circumstances and condition of the Petitioner. The Petition shall be subscribed by the Petitioner and shall be forthwith filed in the Court for the District within which such Debtor shall be confined or shall have resided or carried on business.

When a Creditor may petition.

VI. If any Debtor being taken in execution for any debt shall remain in custody for three days and shall fail within that period to satisfy such debt or to lodge in Court such security for the same as to the Court in its discretion shall seem sufficient or if any Debtor not being in custody shall fail to satisfy any debt and costs for which judgment shall have been recovered in the Supreme Court or any inferior Court of Judicature in the Colony and which judgment shall not be under appeal and shall fail to lodge in Court such security for the same as to the Court in its discretion shall appear sufficient within fourteen days after the recovery of such judgment or if any Debtor shall within fourteen days before the filing of the Petition hereinafter mentioned have absented himself from his usual place of business or abode in such manner as shall reasonably imply the intention to

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defeat or delay the just demand of any Creditor or to avoid the service of any summons to appear in answer to any action or suit before the Supreme or any inferior Court of Judicature or if any Debtor shall with intent to defeat or defraud his Creditors suffer any of his real or personal estate to be taken in execution or other legal process or shall at any time knowing that he is at the time unable to meet his engagements fraudulently and with intent to prevent the same being divided among the general body of his Creditors have made away with mortgaged encumbered or charged any part of his property of what kind soever or if being a trader he shall at any time pawn pledge or dispose of otherwise than by *bond fide* transactions in the ordinary way of his trade any of his goods or chattels which have been obtained on credit and remain unpaid for it shall be lawful for any Creditor or Creditors of such person to the extent of not less than Fifty Pounds to apply by Petition to any Judge of the Supreme Court setting forth in such Petition any of the above recited causes and the particulars of the debt or debts due and owing to him or them and praying for the sequestration and session of the estate of such Debtor for the benefit of the Creditors generally in the manner provided by this Act. The Petition shall be subscribed by the Petitioner or Petitioners and shall be forthwith filed in the Court for the District in which such person shall have resided or carried on business.

VII. Any Petition by Debtor or by Creditor as hereinbefore provided may be presented at any sitting of the Supreme Court or before a Judge in chambers and every petitioning Debtor or Creditor shall specify by affidavit the allegations contained in such Petition and every petitioning Creditor shall produce such vouchers statements of accounts or other evidence as to the Court shall appear necessary in support of his claim.

Petition shall be sworn to and vouched.

VIII. The Court shall sit for the dispatch of all business accruing under the provisions of this Act at such places and on such days as the Judge presiding in such Court shall from time to time by notice in the *Government Gazette* of the Province in which the Court shall be held appoint. Provided that applications and hearings except for a final hearing may be made to or before a Judge in Chambers.

Sitting of Court.

IX. When any application shall be made by Petition by Debtor or Creditor in the manner herein provided it shall be lawful for the Court on being satisfied of the truth of the matters contained in such Petition to appoint a day for the hearing of such Petition of which notice shall be given by advertisement not less than fourteen days before the day so appointed in the *Government Gazette* of the Province within which proceedings are taken and in at least one local newspaper. In the case of a Petition by a Debtor such Debtor shall immediately after filing his Petition cause notice thereof to be given by letter to every Creditor whose name shall appear in the Petition or in the Schedule attached thereto and such notice shall be delivered or addressed by post to the address

Appointment and notice of hearing.

Debtors and Creditors.

of every such Creditor not less than fourteen days before the day appointed for hearing. In the case of a Petition by a Creditor or Creditors it shall be lawful for the Court to grant a rule either *nisi* or absolute as the Court shall think fit calling upon the Debtor to appear in person before the Court in the place appointed for hearing the Petition and afterwards at such time and from time to time as the Court shall think fit in order that such other proceedings shall be taken as are herein provided.

Proc edure on hearing

X. Every Debtor who shall have filed a Petition in the manner herein provided or who shall be ordered by rule of Court in the manner hereinbefore provided to appear at the hearing of a Petition by a Creditor or Creditors shall attend or be brought up on the day appointed for the hearing of such Petition and the Court shall on such day or on any subsequent day which shall be appointed in that behalf examine such Debtor on Oath as to the truth of the matters contained in the Petition and as to all other matters requisite for enabling the Court to ascertain the true state and condition of the Debtor's affairs and his conduct and circumstances so far as may be material for the purpose of this Act and the Debtor shall attend from time to time on such days and times for the purpose of such examination until the final hearing as the Court shall appoint. And upon consideration of the matters aforesaid it shall be lawful for the Court to make such Order or several Orders and either at one time or from time to time as to the Court shall seem fit for the relief of such Debtor and for releasing and discharging such Debtor and his Estate from all or any of the debts liabilities or engagements specified in such Petition or any part or parts thereof and the Court may by any such Order order and direct the Debtor to cede and deliver convey and assign all his estate and effects or any part thereof to such person or persons as to the Court shall seem fit which person or persons may be recommended by the Creditors but which recommendation it shall not be obligatory on the Court to adopt. Such conveyance and assignment to contain all requisite powers for enabling some person or persons named therein to recover and receive debts monies goods chattels estate and effects in any way belonging to or due and payable to the Debtor or any of such debts or monies goods chattels estate or effects in particular upon such trusts with such powers subject to such conditions and in such manner as to the Court shall seem fit for the purpose of selling disposing of getting in and receiving or otherwise realizing such estate monies goods chattels and effects and thereout of satisfying all costs charges and expenses incurred by order of the Court or incidental to the execution of such trusts and all fees of Court and such other sums of money as shall be ordered by the Court and subject thereto for the purpose of such a just distribution and administration of such estate and effects between and amongst and for the benefit of all or any of the Creditors of the Debtor by way of *pro rata* distribution subject to existing legal priorities or otherwise and inclusive or exclusive of any creditors of the Debtor either in whole

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or in part and generally in such manner in all respects as the Court in the fullest and most absolute discretion may think fit and shall in and by any such order direct And if the Debtor after any such order made shall not within such time as shall be limited in that behalf by such order make such cession and delivery conveyance and assignment and give such power as aforesaid or in the first instance if the Court shall think fit the Court may order the Registrar of the Court or such other person as the Court shall in that behalf appoint in the name and on behalf of the Debtor to make and execute such cession and delivery conveyance and assignment and to execute such power and to make and execute all necessary acts deeds and instruments whatsoever for vesting the estate and effects of such Debtor in the person or persons appointed by the Court upon the Trusts and in manner aforesaid And all such acts deeds and instruments done and executed under such last mentioned order shall be as effectual as if done or executed by such Debtor And upon compliance by the Debtor with the terms of such order the effect thereof shall be to release and discharge the Debtor from any debts liabilities and engagements specified therein and from liability in respect thereof but so far only and to such extent and at such time and in such manner and upon such terms and conditions as shall be specified in such order and every such order shall be published in the *Government Gazette* of the Colony and also of the Province in which the Petition is heard.

XI. The Court may from time to time adjourn the hearing of any Application or Petition under this Act to any time or place which it shall think fit and may examine the Applicant or Petitioner upon Oath as to the matters stated in the Application or Petition and any Creditor or person claiming to be a Creditor of the Applicant or Petitioner may attend any hearing of such Application or Petition and may either by himself or Counsel be heard in opposition thereto and by leave of the Court may examine the Applicant or Petitioner and any Witnesses which the Court shall think fit and may by such leave as aforesaid produce and read to the Court any letters or documents whatever in any way relating to the affairs of the Applicant or Petitioner and the Court shall have power to summon and compel the attendance of Witnesses and the production of such books papers or writings as to it shall seem fit.

Adjournment of Hearing &c.

XII. If upon the day appointed for the hearing of any Petition by a Debtor the Petitioning Debtor shall not appear or if such Petitioning Debtor shall fail to issue the required notices to Creditors or otherwise fail to comply with the requirements of this Act it shall be lawful for any Creditor of such Debtor to take up and prosecute such proceedings and thereafter such proceedings shall be conducted in the same manner as if the Petition had in the first instance been made by a Creditor.

In absence &c. of Debtor Creditor may prosecute proceedings

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Service of Orders.

XIII. Any rule or order of Court under this Act may be served either personally or by being left at the last or most usual place of abode of the person to be served or if he shall have no such place of abode then by being published once at least in some local newspaper circulated in the Province in which the Court shall be held.

Court shall exercise powers notwithstanding death or absence of Debtor.

XIV. In case any Debtor shall pending any proceedings under this Act die or in case any Debtor after notice of proceedings shall leave the Province in which he shall have resided at the commencement of such proceedings or in case he shall fail to attend at any time or place when and at which he was bound to attend pursuant to the provisions of this Act or shall refuse to submit to examination or to obey any order of Court the Court may notwithstanding such death absence failure refusal or neglect forthwith exercise all powers hereby vested in the Court of conveying assigning disposing of and otherwise dealing with the estate and effects of such Debtor.

Court may discharge Debtor.

XV. The Court upon full compliance by a Debtor with the terms of any order of Court made in that behalf or in accordance therewith may order the Debtor to be discharged from custody and he shall be discharged accordingly and it shall be the duty of all Sheriffs and Gaolers to obey such order.

Effect of Order of Discharge.

XVI. Any order of the Court under this Act discharging a Debtor from any Debts claims or demands shall have the effect of discharging him from the same and if thereafter he shall be arrested or if any action shall be brought against him for any such debt claim or demand he shall be discharged upon entering an appearance and may plead that the cause of action arose in respect of a debt claim or demand from which he had been discharged under this Act and may give this Act and the special matter in evidence and the order of discharge shall be sufficient evidence of all proceedings precedent thereto.

Court may issue interim sequestration.

XVII. In the case of a Petition of either Debtor or Creditor under this Act at any time after the making or filing of such Petition it shall be lawful for the Debtor or for any Creditor of such Debtor to apply to the Court for an *ad interim* order of sequestration of the estate and effects of the Debtor and the Court may in its discretion either make or refuse to make such order accordingly and may by any such order direct that the estate and effects of the Debtor or any part thereof shall be taken and held by such person or persons in such manner for such time and otherwise in all respects as the Court shall from time to time direct subject to such further order of the Court as may be made under or in pursuance of the provisions of this Act And every such *ad interim* order of sequestration may be published in the *Government Gazette* of the Province or in some local newspaper circulated in the Province where such sequestration

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shall take place and from and after such publication all dealings with and dispositions of the estate and effects of the Debtor so ordered to be sequestered shall be deemed to be fraudulent and void as against any Trustee afterwards appointed under the provisions of this Act. And the person or persons authorised in any such order may enter into take possession of and retain the estate and effects so ordered to be sequestered as aforesaid subject to the direction of the Court. And every such order of sequestration may be registered by any person appointed in that behalf by the Court in any Register of Deeds or Register of Land as against any land affected thereby. Provided that nothing in this Act contained shall prejudice any *bonâ fide* purchaser of any goods chattels or effects of the Debtor for valuable consideration and without express notice of such sequestration and no such sequestration of goods chattels or effects shall have any force or effect until possession shall have been taken under the same nor as regards real estate until such sequestration shall be registered as aforesaid.

XVIII. In the case of a Petition either of any Debtor or of any Creditor under this Act at any time after the making or filing of the Petition the Debtor may apply to the Court or to a Judge at Chambers for an *ad interim* order of protection which order the Court or such Judge may in his discretion grant accordingly. And the effect of every such order shall be to protect the person and estate of the Debtor from arrest execution or other legal process for such time and in such manner and upon such terms and conditions as the Court shall direct and as shall in and by such order be expressed and all Sheriffs Bailiffs and other persons shall obey such order accordingly. And all proceedings in contravention of such order may be stayed or set aside by the Court or a Judge in Chambers or in case of proceedings in a Court of inferior jurisdiction by the presiding Judge or Magistrate of such Court upon summary application.

Court may grant interim protection.

XIX. If in any proceedings under this Act it shall appear to the Court expedient and for the benefit of the estate of a Debtor that the same shall be wound up under inspection or that the trade or business of a Debtor shall be carried on wholly or in part or that the final closing of such trade or business shall be suspended for any defined period of time the Court may upon the recommendation of the Creditors at any meeting to be convened in pursuance of this Act make an order accordingly and such estate trade or business shall thereupon be managed wound up carried on suspended or finally closed in accordance with such order.

Business may be wound up under inspection.

XX. If upon any hearing or examination of a Debtor under this Act it shall be made to appear to the satisfaction of the Court in such manner as the Court shall think fit that three-fourths in number and one-third in value or three-fourths in value and one-third in number of the Creditors within the Colony of any Debtor are desirous that the Estate

When certain Creditors concur Court may sanction Deed of Arrangement and take other steps.

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of such Debtor shall be wound up under a Deed of Arrangement Composition or otherwise the Court shall order all further proceedings under this Act to be stayed for such a period as the Court shall think fit and in such case the Debtor or any Creditor of the Estate may at any time within the period during which the proceedings are so stayed produce to the Court a Deed of Arrangement or Composition signed by or on behalf of three-fourths in number and one-third in value or three-fourths in value and one-third in number of Creditors in the Colony of such Debtor and the Court may consider the same and may examine on Oath the Debtor and any of the Creditors who may desire to be heard in support of or in opposition to the Deed and may make such other enquiry as it may think necessary and if the Court shall be satisfied that the Deed has been duly entered into and executed and that its terms are reasonable and calculated to benefit the general body of the Creditors within the Colony under the Estate it shall by Order make a declaration of the complete execution of the Deed and direct the same to be registered in the Supreme Court and shall also cancel any former Orders as to it shall seem fit touching the Debtor or the Debtors Estate and such Deed shall thereafter be as binding on any Creditor who has not executed the Deed as if he had executed it provided such Deed is registered as aforesaid.

Court may order winding up subject to Deed of Arrangement.

XXI. In every such last-mentioned case the Court may if it shall think fit make such Order and direction for the winding up of the Debtors Estate under and in accordance with such Deed of Arrangement or Composition but subject to such Order and directions as the Court shall from time to time make in that behalf.

In such cases Trustees shall remain subject to Act.

XXII. In every such last-mentioned case the Trustees and all other persons concerned in the management and winding up of such Estate shall be subject to the same provisions of this Act as are applicable to Trustees and persons concerned in the management and winding up of Estates under the provisions of this Act.

Deeds of Arrangement under conditions specified shall bind all Creditors.

XXIII. Every Deed or Instrument made or entered into between a Debtor and his Creditors or any of them or a Trustee on their behalf relating to the Debts or Liabilities of the Debtor and his release therefrom or the Distribution Inspection Management and winding up of his Estate or any such matters shall be as valid and effectual and binding on all the Creditors of such Debtor as if they were parties to and had duly executed the same provided the following conditions be observed that is to say

1. A Majority in Number representing Three-Fourths in value of the Creditors of such Debtor whose Debts shall respectively amount to Ten Pounds and upwards shall before or after the Execution thereof by the Debtor in writing assent to or approve of such Deed or Instrument.

Debtors and Creditors.

2. If a Trustee or Trustees be appointed by such Deed or Instrument such Trustee or Trustees shall execute the same.

3. The Execution of such Deed or Instrument by the Debtor shall be attested by an Attorney or Solicitor.

4. Within Twenty Eight days from the day of the Execution of such Deed or Instrument by the Debtor the same shall be produced and left with the Registrar or Deputy Registrar of the Supreme Court for the District for the purpose of being registered.

5. Together with such Deed or Instrument there shall be delivered to such Registrar an Affidavit by the Debtor or some person able to depose thereto or a Certificate by the Trustee or Trustees that a Majority in Number representing Three-Fourths in value of the Creditors of the Debtor whose Debts amount to Ten Pounds or upwards have in writing assented to or approved of such Deed or Instrument and also stating the Amount in Value of the Property and Credits of the Debtor comprised in such Deed.

6. Immediately on the Execution thereof by the Debtor possession of all the Property comprised therein of which the Debtor can give or order possession shall be given to the Trustees.

XXIV. The Court may in its discretion allow to any opposing Creditor the costs of opposition to be added to such Creditors debt or liability against the Applicants or Petitioners estate.

When costs may be allowed.

XXV. Lists of persons applying for relief under this Act shall be published in the *Government Gazette* of the Province in which the application is made.

List of Petitions shall be gazetted.

XXVI. The Governor may by warrant under his hand appoint persons of Mercantile experience resident in the Colony to be Mercantile Assessors under this Act and may from time to time remove such persons or any of them.

Appointment of Mercantile Assessors.

XXVII. If upon the hearing of any Petition or upon any enquiry or proceeding arising out of or in relation thereto the Court shall desire to be assisted or advised by a Mercantile Assessor or Assessors upon any question matter or thing whatsoever in any way relating to the conduct of the Petitioner the state of his accounts or affairs or of any particular account or affair the nature of the arrangement proper to be made with or for the benefit of the Petitioner's Creditors the terms and conditions of any order to be made by the Court or upon any other matter or thing whatsoever in any way relating to or arising

Powers and Duties of Assessors.

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out of the Petition or any proceedings thereupon it shall be lawful for the Court to summon and require the attendance of any one or more Mercantile Assessor or Assessors named in such summons at any time or place to be named in such summons and every Mercantile Assessor so summoned shall obey such summons and shall be bound to attend the Court from time to time as may be ordered by the Court until discharged and to advise and assist the Court in reference to the matters aforesaid in such manner as the Court shall require. And for that purpose the Court may refer to such Mercantile Assessor or Assessors any accounts books or papers whatsoever and may call on and require such Mercantile Assessor or Assessor to make a report to the Court upon any specific question matter or thing which may be referred to them. And such Mercantile Assessor or Assessors shall in executing the duties so imposed on them have power to examine the Petitioner and witnesses on Oath and to call for the production of books papers and accounts and to conduct their enquiries at such times and in such manner as to them shall seem fit.

Procedure on summoning Assessors.

XXVIII. Before the Court shall summon any Mercantile Assessor or Assessors under the last section the Registrar of the Court shall cause notice of the intended appointment to be given to the Debtor and to any opposing Creditor and such Debtor or opposing Creditor may at any time within three days after such notice by notice in writing to such Registrar challenge peremptorily such Mercantile Assessor or Assessors and so on for two successive appointments and the Debtor or opposing Creditor may further apply to the Court shewing cause why any other Mercantile Assessor or Assessors should not be summoned as aforesaid and the Court may either grant or may refuse such application.

Fees payable to Assessors.

XXIX. The Court may order such reasonable fees and allowances to be paid to such Mercantile Assessor or Assessors as to the Court shall seem fit not exceeding three guineas per day for every days attendance or occupation about such business.

Sale &c. by Prisoners must have consent of Court.

XXX. No Sale Mortgage Delivery or Disposition whatsoever of any real or personal Estate of any Prisoner in custody shall be of any force or effect whatever unless the same shall be made with the consent of the Court or such person or persons as the Court shall in that behalf from time to time appoint and no such consent shall be given unless it shall appear to the Court or to such person or persons that the same is made *bonâ fide* and is not meant to defeat the Prisoners just Creditors or to give undue preference or with any other fraudulent intent whatever.

Fraudulent &c. assignments void.

XXXI. If any Debtor who shall become subject to the provisions of this Act shall being in Insolvent circumstances convey assign transfer charge deliver or make over either voluntarily or

Debtors and Creditors.

fraudulently any security for money Bond Bill Note money property goods or effects or real or personal estate whatsoever to any Creditor or Creditors or to any other person or persons every such transaction shall be fraudulent and void as against any Trustee to whom the estate and effects of such Debtor shall be conveyed or assigned under any order of Court made under this Act Provided such transactions shall have taken place within three months next before such order made Provided that nothing in this Act contained shall prejudice or affect any *bond fide* purchaser for valuable consideration without notice of fraud.

XXXII. Every act Deed Disposition or Delivery of real or personal Estate goods chattels or effects whatsoever made by any Prisoner in custody contrary to the provisions of this Act shall be void and of no effect.

Certain Deeds &c. invalid.

XXXIII. Every Trustee appointed under this Act shall have the same power of recovering and receiving any debts monies goods chattels and Estate disposed of by a Prisoner in custody contrary to the provisions of this Act as effectually as if no such disposition thereof had taken place.

Trustee may recover in certain cases.

XXXIV. Where a person in custody shall be maintained at the public charge there shall be paid out of the estate and effects of such prisoner so long as he shall be so detained and so far as such estate and effects will extend the sum of five shillings per week for his maintenance and the same shall be paid to the Keeper of the Gaol towards the maintenance of the Prisoner and accounted for by him accordingly And the Court shall in any order relating to the estate and effects of the Prisoner under this Act make provision for payment of such sums accordingly in preference to any other debt or liability whatsoever.

When maintenance of Prisoner payable out of Estate.

XXXV. A detaining Creditor shall pay at the rate of five shillings per week for the maintenance of a Prisoner detained at his suit and failing such payment the Court may order the Prisoner to be discharged The money so paid to be applied in reimbursement of the cost of maintaining the Prisoner.

When maintenance payable by Creditor.

XXXVI. Where there shall be several detaining Creditors they shall contribute equally towards the maintenance of the Prisoner at the before mentioned rate On failure of a detaining Creditor to make such payment the Debtor shall be discharged from custody as regards the Debt due to the Creditor so failing to make such payment.

Creditors to contribute equally.

XXXVII. Meetings of Creditors of any Debtor who shall come or be brought under the provisions of this Act may be from time to time convened and held by or under the direction of the Court or in accordance with any rules or orders to be made by the Court and which the Court is hereby empowered to make in that behalf for the purpose of con-

Meetings of Creditors.

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sidering questions matters and things relating to the estate and affairs of such Debtor And the proceedings of such meetings shall be regulated in such manner as may be appointed by any such rule or order as aforesaid and such meetings shall have power to make recommendations to the Court touching any such questions matters or things which recommendations shall have such force and effect and shall be obligatory or not on the Court as may in and by such rules and orders as aforesaid be from time to time provided.

Court may employ
and pay Officers.

XXXVIII. For the purpose of carrying into execution the provisions of this Act the Court shall have power to employ from time to time Receivers Agents Clerks and Accountants and may allow the Mercantile Assessors to employ Clerks and Accountants and may incur other reasonable costs and expenses incidental to the carrying into execution the provisions of this Act.

Insolvent Estates
Fund constituted.

XXXIX. For the purpose of forming a fund for payment of costs and expenses under this Act there shall be paid out of every estate brought under Administration through the provisions of this Act a sum of one shilling in the pound to be computed upon the gross amount of all monies recovered and received from such estate and effects which money shall be paid in to the Supreme Court to the credit of a fund to be called "The Insolvent Estates Fund."

Mode of accounting
therefor.

XL. All payments authorized by the Court to be made under this Act shall be paid out of "The Insolvent Estates Fund" or if there shall be no monies applicable from such fund then by the Colonial Treasurer upon an order of the Court to that effect out of the General Revenue of the Colony by way of advance to such fund and to be repaid when and as the state of such fund shall admit by an order of the Court upon application of the Colonial Treasurer.

Offences incurring re-
fusal of Relief.

XLI. If any person shall have been guilty of any of the following acts deeds neglects or defaults that is to say if he shall have contracted any of his 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 such debts by any of his Creditors or shall have put any of his Creditors to unnecessary expense by any vexatious or frivolous defence or delay to any suit for recovering any such debts or shall be imprisoned or liable for damages recovered in any action for criminal conversation seduction or breach of promise of marriage or for damages recovered in any action for a malicious prosecution or for libel or for slander or in any other action for a malicious injury or shall have falsified any books of accounts or being a trader shall have conducted his business or kept his accounts with gross negligence or who shall have fraudulently concealed or misrepresented the state of his

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affairs or (with intent to diminish his means of paying and satisfying his Creditors or any of them) shall have fraudulently discharged or concealed any debt due or growing due to him or to any person in trust for him or made away with or assigned transferred charged delivered or made over any of his estate or effects before or after the commencement of his imprisonment or shall have been guilty of any fraud or misconduct whatsoever in reference to the management or disposition of his estate or the contracting of any unsatisfied debts liabilities or engagements he shall not be entitled to relief under this Act until after the expiration of such time as the Court may order not exceeding one year from the date of his first imprisonment.

XLIII. From and after the passing of this Act any Debtor who shall become subject to the provisions of this Act and who shall do any of the acts or things following with intent to defraud or defeat the rights of his Creditors shall be guilty of a misdemeanour and shall be liable at the discretion of the Court before which he shall be convicted to punishment by imprisonment for not more than three years or to any greater punishment attaching to the offence by any existing law :

Certain offences declared Misdemeanors.

1. If he shall not upon the service of any Rule calling upon him to appear before the Supreme Court having no lawful impediment allowed by the Court appear before such Court according to such Rule and submit to be examined from time to time.

2. If he shall not upon his examination fully and truly discover to the best of his knowledge and belief all his property real and personal inclusive of his rights and credits and all other particulars required to be disclosed by the provisions of this Act.

3. If within two months previous to the service of any such Rule he shall with intent to defraud his Creditors remove conceal or embezzle any part of his property to the value of ten pounds or upwards.

4. If in case of any person having to his knowledge or belief proved a false debt under proceedings taken under this Act he shall fail to disclose the same to the Court or to a Trustee or other person appointed to manage the Estate within one month after the same coming to his knowledge or belief.

5. If he shall with intent to defraud wilfully and fraudulently omit from his Petition or Schedule any effects or property whatsoever.

6. If he shall after the Petition is presented with intent to conceal the state of his affairs or to defeat the object of this law conceal prevent or withhold the production of any book deed paper or writing relating to his property dealings or affairs.

7. If he shall after the Petition is presented or within three months next before with intent to conceal the state of his affairs or to defeat the objects of the law part with conceal destroy alter mutilate or falsify

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or cause to be concealed destroyed altered mutilated or falsified any book paper writing or security or document relating to his property trade dealings or affairs or make or be privy to the making of any false or fraudulent entry or statement in or omission from any book paper document or writing relating thereto.

8. If within the like time he shall knowing that he is at the time unable to meet his engagements fraudulently and with intent to diminish the sum to be divided amongst the general body of his Creditors have made away with mortgaged encumbered or charged any part of his property of what kind soever or if he shall conceal from the Court or from the Trustee or person concerned in the management of the Estate any debt due to or from him.

9. If he shall either to the Court or at any meeting of his Creditors within three months next preceding the presentation of the Petition have attempted to account for any of his property by fictitious losses or expenses.

10. If he shall within three months next before the presentation of the Petition under the false color and pretence of carrying on business and dealing in the ordinary course of trade have obtained on credit from any person any goods or chattels with intent to defraud.

11. If he shall with intent to defraud his Creditors within three months next before the presentation of the Petition have pawned pledged or disposed of otherwise than by *bond fide* transactions in the ordinary way of his trade any of his goods or chattels which have been obtained on credit and remain unpaid for.

Act not to extend to
Crown Debts &c.

XLIII. This Act shall not extend to discharge any Debtor with respect to any debt due to Her Majesty or Her Successors or to any debt or penalty with which he shall stand charged at the suit of the Crown or of any person for any offence committed against any Act or Ordinance in force within this Colony relative to any branch of the Public Revenue or at the suit of any Sheriff or other Public Officer upon any Bail Bond entered into for the appearance of any person prosecuted for any such offence unless His Excellency the Governor shall certify under his hand his consent that such person may apply to take the benefit of this Act.

Court to make Rules
of Procedure.

XLIV. The Judges of the Court shall from time to time make Rules and Orders for ascertaining the amounts and value of all claims of Creditors under this Act for the purposes of this Act and otherwise for regulating proceedings under this Act and may from time to time alter and rescind the same.

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XLV. Notice of such Rules and Orders and of all alterations and rescindings thereof shall be published in the *Government Gazette* of the Colony. Rules to be published.

XLVI. All Trustees Receivers Agents Accountants and other persons from time to time acting under or in execution of the provisions of this Act or any Conveyance or Assignment made in pursuance thereof shall for the time they shall so act and so far as they shall so act be deemed to be Officers of the Court and shall be subject to and shall obey such orders as the Court shall from time to time make. Trustees and others declared Officers of Court.

XLVII. The Judges of the Supreme Court shall settle and may from time to time alter a Table of Fees to be paid by Petitioners Creditors and other persons and a scale of allowances to Witnesses and other allowances in respect of proceedings under this Act which Table of Fees and Allowances and all alterations thereof being allowed by the Governor in Council shall be payable accordingly. Court to settle Fees.

XLVIII. The Judge of the Supreme Court in any District may by an Instrument under his hand to be registered in the Registry of the Supreme Court for such District delegate to any person qualified as hereinafter mentioned the powers hereby created of exercising the jurisdiction and functions of the Supreme Court under this Act and the person to whom such Delegation shall be made may exercise such Jurisdiction accordingly as effectually as a Judge of the Supreme Court. Judge may delegate powers.

XLIX. The person to whom such Delegation shall be made shall be a Barrister or Solicitor of the Supreme Court who have practised in the Superior Courts at Westminster or in the Supreme Court of New Zealand for the period of three years before such Delegation or a Resident Magistrate who shall have performed the duties of Resident Magistrate for three years at least. Who may hold delegation.

L. No such Delegation of powers shall continue in force for any longer period than one year. Duration of Delegation.

LI. No such Delegation shall be of any force or effect until the same shall have been approved of by the Governor in Council and shall have been registered as aforesaid. Delegation subject to Governor's approval.

LII. The term "Court" in this Act shall mean the Supreme Court of the Colony exercising Jurisdiction in a separate District The term "Creditor" shall mean also any two or more persons being partners and Incorporated and Joint Stock Companies. Interpretation.

LIII. This Act shall not come into operation until a day to be fixed by the Governor by Proclamation to be published in the *Government Gazette*. Commencement of Act.