

# New Zealand.

ANNO VICESIMO NONO

## VICTORIÆ REGINÆ.

No. 46.

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## **AN ACT for amending "The Debtors and Creditors Act 1862." [30th October 1865.]**

**WHEREAS** it is expedient to amend "The Debtors and Creditors Act 1862"

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

I. The Short Title of this Act shall be "The Debtors and Creditors Act Amendment Act 1865."

II. All proceedings under the said Act shall be deemed to be proceedings in bankruptcy. Every debtor whose estate shall be brought under administration under the said Act shall be deemed to be a bankrupt and every estate brought under the operation of the said Act shall be deemed to be a sequestrated estate. This Act shall have retrospective effect and shall apply as well to all estates heretofore as well as to estates hereafter to be sequestrated and to all sequestrators and trustees heretofore appointed as well as to all who may be hereafter appointed.

III. The terms trustee or trustees in this Act shall include every trustee of an estate brought under the operation of the said Act and of this Act whether he shall act or be appointed under order of the Court or under any deed of assignment arrangement or conveyance authorized to be made or entered into or protected by the provisions of the said Act.

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Court or Judge may discharge debtor in custody.

IV. Notwithstanding anything in the said Act contained it shall be lawful for the Supreme Court or a Judge thereof upon the hearing of any petition under the said Act to order a debtor in custody to be discharged subject to such conditions as to the Court or such Judge shall seem fit.

Powers of Judge of Supreme Court may be exercised by Judge of District Court.

V. It shall be lawful for the Governor by Order in Council from time to time to direct and declare that all or any of the powers by the said Act or this Act vested in a Judge of the Supreme Court may be exercised by the Judge of a District Court within his judicial district subject to such reservations and with such right of appeal to the Supreme Court as shall in such order be expressed and the Governor in Council may from time to time vary or rescind any such order.

Inspector in bankruptcy to be appointed

VI. It shall be lawful for the Governor from time to time to appoint a person or several persons to be an inspector or inspectors in bankruptcy either for the whole Colony or for any district or districts or part or parts thereof and the Governor may from time to time remove any such inspector and every inspector shall be subject to such rules and regulations for the conduct of the business of his office as the Governor in Council shall from time to time direct. The Governor may fix such salaries as may be necessary to be paid to any inspector under this Act and such salaries so fixed shall be payable out of the funds to be provided under the twenty-eighth section of this Act.

Inspector to keep books and accounts.

VII. Every inspector under this Act shall keep such books and accounts as shall be necessary or as the Governor shall direct for showing the true state of affairs of every estate in bankruptcy under his care and shall keep the same open for inspection by and make such returns to the Governor the Supreme Court and otherwise as shall by any such regulations be required.

Order for sequestration may be declared a vesting order. Effect of such order.

VIII. Every order for the sequestration of a debtor's estate under the said Act may declare that such order shall be a vesting order and the effect of every order so declared to be a vesting order shall be immediately if made upon the petition of the debtor and if made upon the petition of a creditor then upon the filing of an affidavit of service of notice of the petition on the debtor to vest absolutely all the real and personal estate whether legal or equitable including all choses in action of such debtor in the sequestrator *ad interim* and upon the appointment of a trustee or trustees then in the trustee or trustees as effectually as if the same had been duly conveyed assigned or transferred by such debtor to such sequestrator or trustee or trustees and in the case of choses in action so as effectually to enable the sequestrator or trustee or trustees as the case may be to maintain actions suits and proceedings respecting the same in his or their name or names and every such order declared to be a vesting order shall have relation back to the presentation of the petition or the filing of the affidavit as the case may be and shall be sufficient authority without any further or other order or warrant to and it shall be the duty of the sequestrator or trustee or trustees named therein to seize and if necessary to remove the property of the bankrupt and for that purpose if necessary to break open any house shop warehouse door trunk or chest of any bankrupt where such bankrupt or any of his property is or is supposed to be and if the bankrupt is in prison or custody to seize and remove any property of the bankrupt (necessary wearing apparel only excepted) in the custody or possession of such bankrupt or of any other person in any prison or place where such bankrupt may be and every such order shall without further or other order protect the debtor from arrest otherwise than under a Judge's order and if the debtor shall be in prison or custody he may apply

Such order retrospective.

And protective of debtor.

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summarily to the Court or a Judge thereof for his discharge and the Court or Judge may discharge such debtor or otherwise deal with the application as the justice of the case may require Notwithstanding anything in the said Act or in this Act contained it shall be lawful for the Court or Judge to grant refuse or suspend the order of discharge of a debtor as he may think fit.

Court or Judge may discharge debtor or refuse or suspend discharge.

IX. In the case of a creditor's petition the debtor may within forty days after notice of the petition filed give seven clear days' notice to the petitioning creditor of his intention specifying the grounds of his intended application in such notice to apply on a certain day and may on such day apply accordingly to the said Court or a Judge thereof to take the petition off the file and to annul all proceedings under the same and the Court or Judge may upon hearing the debtor and petitioning creditor if the Court or Judge shall think fit order the petition to be taken off the file and the proceedings to be annulled accordingly And the effect of such order shall be to annul such proceedings accordingly And such order shall have the effect of re-vesting all real and personal estate including such choses in action as aforesaid in the debtor as effectually as if no petition had been filed but without prejudice to any acts transactions matters or things done meantime in pursuance of such petition or any order or proceedings thereupon.

Provision for debtor applying to Court to take petition off file and annul proceedings.

Effect of order to annul.

X. It shall be the duty of every Registrar of the Supreme Court immediately upon every sequestration or order upon petition under the said Act forthwith to furnish or cause to be furnished to the Inspector in Bankruptcy for the Colony or the district as the case may be full particulars relating to such sequestration or order and the estate to which the same relates and from time to time as occasion shall require to furnish like particulars to such inspector so as to supply such inspector with full information of all matters and things whatever relating to such estate.

Duties of Registrars of Supreme Court.

XI. Every sequestrator and trustee shall within such time and in such manner as the inspector may from time to time prescribe in that behalf render to such inspector full and exact statements of all accounts transactions matters and things whatsoever in any way relating to the sequestrated estate and shall from time to time produce vouchers for his accounts and shall attend the inspector with the same at such times as shall be appointed by him in that behalf and do all other acts whatsoever which shall from time to time be prescribed in that behalf either by the inspector or by any general regulations so as to explain to the inspector all matters and things whatsoever in any wise relating to the sequestered estate or the conduct of the debtor or anything in any way relating thereto.

Accounts to be rendered by sequestrator and trustees.

XII. Every sequestrator and trustee under the said Act shall deposit all moneys which he shall receive on account of every estate in such bank as the majority of the creditors in number and value present at any meeting shall appoint and in default of such appointment in such bank as shall be appointed by the Governor in Council and such moneys shall be deposited in the name of the sequestrator or trustee in his official character and in each estate there shall be a separate account and such account shall be intituled "In the estate of A. B. a bankrupt C. D. sequestrator."

Moneys to be deposited in bank.

XIII. If a sequestrator or trustee shall keep in his hands any sum exceeding twenty-five pounds belonging to the estate for more than ten days at any one time he shall pay interest to the creditors at the rate of twenty per centum per annum on the excess of such sum above twenty-five pounds for such time as the same shall be in his

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hands beyond ten days and if the money has been kept otherwise than inadvertently the sequestrator or trustee shall upon petition by any creditor or upon the report of the inspector be dismissed from his office and shall have no claim to remuneration and the Supreme Court shall have power upon such petition or report as aforesaid summarily or otherwise to dismiss such sequestrator or trustee.

Sequestrators and trustees. Trustees within meaning of Act cited.

XIV. Every sequestrator and trustee shall be deemed to be a trustee within the meaning of "The Fraudulent Trustees Act 1860" and if any sequestrator or trustee shall for the space of one week after requisition in writing by the inspector fail to pay any moneys which may have come to his hands in manner required by this Act he shall be deemed to have appropriated the same to his own use with intent to defraud and shall be guilty of a misdemeanor and shall be liable to such punishment as may by "The Fraudulent Trustees Act 1860" be inflicted on a person found guilty of a misdemeanor under the said mentioned Act.

Duty of inspector as to sequestrators and trustees.

XV. The inspector shall take cognizance of the conduct of all sequestrators and trustees and in the event of their not faithfully performing their duties and duly observing all rules and regulations which they may be from time to time bound to observe and perform or in the event of any complaint being made to him by any creditor in reference thereto he shall inquire into the same and if not satisfied with the explanation given he shall report thereon to the Supreme Court or a Judge thereof and such Court or Judge shall after hearing the sequestrator or trustee and investigating the matter have power to remove such sequestrator or trustee from his office or otherwise deal with him or cause him to be dealt with according to law.

Powers of inspector.

XVI. The inspector shall have power either on the application of one or more of the creditors or of his own motion to require the production by the debtor or by the sequestrator or trustee of all books accounts vouchers and documents whatever which he may think necessary or proper and to direct that a meeting of creditors shall be called or of his own authority to call such meeting to take any measures into consideration that he may think necessary or proper for the preservation or management of the estate or for the more speedy realizing and dividing of the funds or the winding up of the estate.

Powers of inspector.

XVII. The inspector shall have power from time to time to summon and compel the attendance of the debtor before him for the purpose of giving explanations and informations as to the state of his affairs or of any matter or transaction whatever relating thereto and he may summon and compel the attendance of witnesses before him and may compel the production of papers deeds books and accounts for the like purpose and he may examine the debtor sequestrators trustees and witnesses upon oath.

Duty of inspector.

XVIII. Every inspector shall at all times when requisite report to the Supreme Court or a Judge thereof any disobedience by a debtor sequestrator or trustee of any requisition or order and generally any matter that he may deem necessary for the due discharge of his office to bring before the Court and it shall be competent for the Court to deal summarily with the matter reported.

Provision for illness or absence of inspector.

XIX. In case of the illness or temporary absence of any inspector the Governor may appoint any qualified person to discharge the duties of the office for the time being and he may also appoint a person to be the deputy of any inspector to discharge his duties during such illness or temporary absence as aforesaid.

Moneys to be paid into bank by persons receiving them.

XX. All moneys whatever recovered received or realized in respect of any sequestered estate shall be paid into such bank as shall be

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appointed as aforesaid in respect of such estate and no attorney solicitor agent or person employed or appointed to recover or receive or who shall recover or receive any moneys whatever on account of any such estate or the sale or realization of such estate or any part thereof shall retain such moneys in his hands either on account of any alleged lien for costs expenses or otherwise and in case any such attorney solicitor agent or person shall for the space of one week after receipt of any such moneys being required in writing by the sequestrator trustee or inspector to pay over such moneys fail to pay over such moneys accordingly every such attorney solicitor agent or person shall be chargeable with interest on such moneys after the rate of twenty per centum per annum and if he shall make default in payment of such moneys for the space of one calendar month he shall be deemed to be a fraudulent trustee and shall be liable to be dealt with accordingly.

XXI. Provided nevertheless that it shall be the duty of the sequestrator or trustee out of any moneys recovered or received by any such attorney solicitor agent or other person as aforesaid in the first instance to pay and satisfy all costs charges and expenses reasonably incurred by such attorney solicitor agent or other person in and about the recovery and receipt of such moneys or what would be properly payable to such attorney solicitor or agent thereout such costs charges and expenses to be first either approved by the inspector or taxed by the proper taxing officer of the Supreme Court.

Provision as to costs of attorneys &c.

XXII. In the administration of every sequestered estate the following claims of creditors shall have priority over all other claims that is to say—landlord's rent not exceeding one year's rent domestic servants and labourers whether agricultural or otherwise and clerks with salaries not exceeding one hundred and fifty pounds per annum to an extent not exceeding half a year's wages or salary.

Priority of certain debts.

XXIII. The Court or Judge may out of any debtor's estate order a reasonable allowance to be made to such debtor for the necessary maintenance of himself and family until the first meeting of his creditors such allowance not in any case to exceed three guineas a week.

Allowance to debtor.

XXIV. In the case of any sequestrator or trustee dying or desiring to be discharged from his trust or refusing or neglecting or becoming incapable to act or if he shall be dismissed from his office the Court shall have power at any time and from time to time to appoint some other person in his place and the effect of every such appointment shall be to vest the real and personal estate of the debtor including such choses in action as aforesaid in such newly appointed person with all powers and as effectually as the same were before vested in the sequestrator or trustee so dying desiring to be discharged refusing or neglecting as aforesaid or being dismissed as aforesaid and so on *toties quoties*.

Provision for case of sequestrator or trustee dying &c.

XXV. The Governor in Council may from time to time frame regulations for the conduct of business under the said Act or this Act by Registrars of the Supreme Court sequestrators trustees inspectors receivers attorneys and solicitors agents auctioneers and other persons employed in the management or winding up of sequestered estates and may impose penalties on persons disobeying such regulations not exceeding one hundred pounds for each offence and all registrars sequestrators trustees and inspectors and all receivers attorneys solicitors agents and auctioneers employed as aforesaid shall be bound to do observe and perform all matters and things whatever enjoined and required by such regulations and the Governor may from time to time rescind alter or vary any such regulations.

Governor may frame regulations.

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Penalties recoverable summarily. XXVI. All penalties enforced by such regulations may be recovered summarily in the manner provided by "The Justices of the Peace Act 1858."

Governor may appoint clerks. XXVII. The Governor may from time to time appoint and from time to time as occasion shall require may remove clerks and other officers necessary for the proper management and administration of the office of inspector under this Act and of all business relating to sequestered estates.

Salaries how payable. XXVIII. In addition to the fees payable under "The Debtors and Creditors Act 1862" and for the purpose of forming a fund for payment of salaries of inspectors and of costs and expenses under this Act there shall be paid out of every estate brought under administration through the provisions of this Act the fees specified in the Schedule to this Act which fees shall be paid to the Colonial Treasury and be kept in a separate account.

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SCHEDULE.

Where the gross assets do not exceed £500 five per centum on the amount.

Where the gross assets exceed £500 five per centum on the first £500 and all above £500 two per centum.