



ANNO VICESIMO SECUNDO ET VICESIMO TERTIO

VICTORIÆ REGINÆ.

A.D. 1859.

No. 21.

An Act to amend the "Insolvent Act, 1857-8."

[Assented to, 1st September, 1859.]

WHEREAS it is expedient to define the tenure of the office of the Commissioner of Insolvency, and to provide for his removal from office and otherwise to amend the Insolvent Act, 1857-8: 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—

1. The Commissioner of Insolvency shall continue in his office during good behaviour: Provided that it shall be lawful for the Governor to remove such Commissioner upon the address of both Houses of Parliament.

2. Sections 88 and 153 of the said Act are hereby repealed.

3. In case it shall appear to the Court of Insolvency that any insolvent shall have contracted any of his debts without having any reasonable or probable expectation of payment at the time when the same were contracted, it shall be lawful for the said Court to order such insolvent to be imprisoned, at the suit of the assignees for the time being of his estate and effects, as judgment creditors, as in the said Act mentioned, for any period not exceeding six calendar months from the date of such order.

4. The petition mentioned in the 152nd section of the said Act, shall

Preamble.

Commissioner's tenure of office.

Repeal of sections 88 and 153 of Act No. 14, 1857-8.

Debts incurred without reasonable expectation of payment.

New form of petition provided.

To be signed by at least one-third in number and value of petitioner's creditors.

shall be in the form contained in the Schedule marked A to this Act annexed, and the signatures of at least one-third in number and value of the creditors of the petitioner shall be subscribed as assenting to the prayer of such petition, and such petition shall be filed, and the date of filing of such petition shall be endorsed thereon; and there shall be filed with such petition an affidavit in the form contained in the Schedule marked B, to this Act annexed; and no order shall be granted by the Court for the protection of the person and property of the petitioner, unless it shall be first satisfied that at least one-third in number and value of the creditors of the petitioner shall have given their assent to the prayer of such petition, and have subscribed their names thereto. And the said Court shall cause notice of the filing of any such petition to be forthwith inserted in the *South Australian Government Gazette*, and in some Adelaide newspaper.

Creditor may prove by agent.

5. Any creditor residing beyond the said Province may prove his debt by the oath of his agent: Provided that the proof shall be made in the name and on the behalf of the principal, and that the agent shall, in his deposition, swear that he is such agent.

Partially secured creditors to value security and prove for balance.

6. In any arrangement under the control of the Court, every creditor shall be accounted a creditor in value for, and may prove for such amount, only, as upon an account fairly stated, after allowing the value of mortgaged property and other available securities or lien, shall appear to be due to him: Provided that such creditor shall receive a dividend on such amount only as, after all such securities or lien shall have been realized, shall be found to be due to him; but no dividend shall be reserved for any such creditor for a longer period than twelve calendar months, without the consent of a majority in number and value of the creditors.

Short title.

7. This Act may be cited as "The Insolvent Law Amendment Act, 1859."

Commencement of Act.

8. This Act shall take effect from the passing thereof.

SCHEDULES REFERRED TO.

A

Form of Petition.

In the Court of Insolvency—

The humble petition of _____ of _____ sheweth—

That your petitioner hath made up and balanced the books of account kept by him in his trade or business, and being unable to meet his engagements, and desirous of laying the state of his affairs before his creditors generally, under the superintendence and control of this Honorable Court, and of submitting himself to the jurisdiction thereof, doth petition the Court, under the provision of the “Insolvent Act, 1857-8,” and of the “Insolvent Law Amendment Act, 1859.”

That, one-third at least, in number and value of the creditors of your petitioner are desirous and willing that your petitioner should be enabled to lay the state of his affairs before his creditors generally, and in the meantime that the person and property of your petitioner should be protected, as will appear by the consent, in writing, of such creditors, and their signatures set opposite to the sums of money owing by your petitioner to each of them respectively, and hereunder subscribed.

That the inability of your petitioner to meet his engagements arises from [here state grounds of inability].

Your petitioner therefore prays that his person and property may be protected from all process, and that such proposal as he may be able to make (or such modification thereof as by three-fifths in number and value of his creditors may be determined) may be carried into effect, under the superintendence and control of this Honorable Court.

And your petitioner will ever pray, &c.

Signed by the petitioner, in the presence of _____ (Signed) A.B.
 _____ a Prac- }
 tioner of the Supreme Court, in the matter of this petition. }

We, the undersigned, creditors of the above petitioner, A B., hereby certify our consent to the prayer of the above petition :—

	£
E.F.....	500
C.D.	250

Signed in the presence of the above _____ solicitor }
 in the matter of this petition, by the several persons, }
 creditors of the above petitioner, whose names are set }
 opposite to the amounts respectively due to them from }
 the above petitioner. }

B

Affidavit in support of Petition for arrangement.

In the Court of Insolvency—

_____, of _____, in the Province of South Australia, the petitioner named in the petition hereunto annexed, maketh oath and saith that the several allegations in the said petition are true, and that the several persons whose names are subscribed to such petition are creditors of the deponent to the amount set opposite their respective names, and that such several persons are desirous that he may be protected in his person and property, under the superintendence and control of this Honorable Court.

Sworn at _____, the _____ day of _____, before me.