



WESTERN AUSTRALIA.  
ANNO VICESIMO SEPTIMO  
VICTORIÆ REGINÆ.

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No. XX.

AN ORDINANCE to amend "The Insolvent Ordinance of 1856."

[ 22nd July, 1863.]

**W**HEREAS it is expedient to amend the provisions of "The Insolvent Ordinance of 1856," whereby the granting of a Certificate or Order of Discharge is made to depend on the consent of the creditors of the Insolvent; and also, further to provide for the punishment of the Insolvent who shall be proved to have improperly or unjustifiably contracted any debt: Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

1. At or after the third meeting of creditors called by the Commissioner of the Court of Insolvency, as directed by the recited Ordinance, and after the examination of the Insolvent (if any has been applied for and ordered) the Insolvent may apply for a Certificate and Order of Discharge, and thereupon the Commissioner shall appoint a public sitting of the Court for the purpose of consid-

Commissioner to appoint sitting for considering question of granting Certificate.

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ering the question of granting to the Insolvent such Certificate and Order; and three weeks notice of such sitting shall be given by advertisement in the public newspapers or in the Government Gazette; but the Court shall have power to enlarge the time appointed for such sitting and to adjourn the same.

Court may direct that Insolvent be prosecuted for misdemeanor.

2. If on the hearing of any application for a Certificate and Order of Discharge, or at any other sitting of the Court the Assignee or any creditor shall allege, and if with or without such allegation the Court shall be of opinion, that there is ground for charging the insolvent with acts or conduct amounting to a misdemeanor, it shall be competent to the Court to direct that the Insolvent be indicted and prosecuted in one of the ordinary Courts of criminal justice.

Rules as to granting orders of Certificate and Discharge, and to punish for misconduct.

3. If the Insolvent shall not be accused of acts amounting to misdemeanor or if he shall have been accused and acquitted; but in either case there shall be made, or shall appear to the Court to exist, objections to the granting of an immediate Certificate and Discharge, the court shall proceed to consider the conduct of the Insolvent before and after the sequestration, and the manner and circumstances in and under which his debts have been contracted; and if the court shall be of opinion that the Insolvent has carried on trade by means of fictitious capital, or that he could not have had at the time when any of his debts were contracted any reasonable or probable ground or expectation of being able to pay the same, or that, if a trader, he has, with intent to conceal the true state of his affairs, wilfully omitted to keep proper books of account, or, whether trader or not, that his Insolvency is attributable to rash and hazardous speculation, or unjustifiable extravagance in living, or that he has put any of his creditors to unnecessary expense by frivolous or vexatious defence to any action or suit to recover any debt or money due from him, or that any person has proved a false debt against the estate of such insolvent, and that such insolvent was privy thereto or afterwards knew thereof and did not disclose the same to the Assignee, the court may either refuse an order for Certificate and Discharge, or may suspend the same from taking effect for such time as the court may think fit, or may grant an order of Certificate and discharge subject to any condition or conditions touching any salary, pay, emoluments, or income which may afterwards become due to the Insolvent, and touching after acquired property of the Insolvent, or may sentence the Insolvent to be imprisoned for any period not exceeding one year from the date of such sentence: Provided always, that no person shall be liable by virtue of this Ordinance to any criminal proceeding or penalty in respect of any matter which may have occurred before the passing of this Ordinance to which he would not have been liable if this Ordinance had not passed.

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4. Any contract, covenant, or security made or given by an Insolvent or other person, with, to, or in trust for any creditor, for securing the payment of any money as a consideration or with intent to persuade the creditor to forbear opposing the order of Certificate and Discharge, or to forbear urging any charge of misconduct against the Insolvent, shall be void, and any money thereby secured or agreed to be paid shall not be recoverable, and the party sued on any such contract or security may plead in general that the cause of action accrued pending proceedings in Insolvency, and may give this Ordinance and the special matter in evidence: Provided always, that no such security, if a negotiable security, shall be void as against a bonâ fide holder thereof for value without notice of the consideration for which it was given.

Contract or security with intent to induce creditor to forbear opposition void.

Proviso.

5. If any creditor of an Insolvent shall obtain any sum of money, or any goods, chattels, or security for money, from any person, as an inducement for forbearing to oppose, or for consenting to the allowance of the Certificate and Discharge of such Insolvent, or to forbear to charge him with misconduct, every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, goods, chattels, or security so obtained.

Obtaining money, goods, &c., as an inducement to forbear opposition, or to consent to allowance of discharge, penalty for.

6. The 92nd, 93rd and 94th sections of "The Insolvent Ordinance of 1856," and all other parts of the said Ordinance which are inconsistent with this Ordinance are hereby repealed.

92-94 sec. of former Ordinance, 20 Vict. No. 10 repealed.

7. This Ordinance shall be construed, together with so much of "The Insolvent Ordinance of 1856" as remains unrepealed as one Ordinance, and may for all purposes be cited as "The Insolvent Ordinance, 1863."

Short Title.

J. S. HAMPTON,

GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council,  
this 22nd day of July, 1863.*

G. E. HAMPTON,

*Clerk of the Council.*

L. S.