



WESTERN AUSTRALIA.

ANNO SEXTO

VICTORIÆ REGINÆ.

---

No. XI.

**An Act for the relief of Insolvent Debtors  
not in custody.**

**W**HEREAS it is expedient that the rights of creditors, and the property of debtors, should be protected from the injurious consequences of ill-advised and vexatious executions; and that the inducement which at present exists to some creditors to issue executions to the prejudice of the rights of others should be removed; and that

Any insolvent may petition the Civil Court for discharge from liabilities.

every facility should be afforded to debtors desirous to consult the the interest of all their creditors :—Be it therefore enacted by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that, from and after the passing of this Act, it shall be lawful for any person, or persons, or any public body, company, or trading firm or copartnership, to apply to the Civil Court of this Colony by petition in writing, setting forth that he, she, or they, is or are insolvent, and praying that he, she, or they may be declared insolvent by the Court, and that his, her, or their effects may be distributed for the benefit of his, her, or their creditors, and for a full and perfect discharge from all his, her, or their then existing debts and liabilities; which petition shall be subscribed by such petitioner or petitioners, and after presentation to the said Court, or to the Commissioner thereof at chambers, shall be filed therein of record.

Petitioner to give a schedule of liabilities and assets to be filed in the Court.

II. AND be it enacted, that with such petition shall in like manner be presented to the said Court a schedule, containing a full, true and particular account and description of all the persons to whom such petitioner shall then be indebted, or who to his knowledge or belief shall claim to be his creditors, together with the nature and amount of their debts and claims respectively; and the bona fide considerations of, or for, such debts and claims respectively; distinguishing admitted debts or claims from debts or claims disputed; with the additions and places of abode of all such creditors or persons claiming to be creditors respectively; and a full true, and particular account and discovery of all the estate and effects, real and personal, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, which such petitioner, or any person in trust for him, or for his use, or benefit, in any manner shall then be seized, or possessed of, or interested in, or entitled unto, either solely, or jointly with any other person, or persons, or which such petitioner or any person in trust for him, or for his benefit, either solely or jointly with any other person or persons, at the time of the presentation of such schedule shall have any power to dispose of, or charge for the benefit of him the said petitioner; together with a full, true and particular account of all debts then owing to such petitioner, or to any person in trust for him, or for his benefit, either solely, or jointly with any other person, and the names, additions, and places of abode of the persons from whom such debts shall be due, and which, and what part, or parts, of such estate and effects shall at the time of the presentation of such schedule be in any manner applicable to

the discharge of the demands of his creditors, or can be made available for their benefit; which Schedule shall be subscribed by the petitioner in the presence of two witnesses, and after the presentation thereof as aforesaid be by the petitioner filed in the said Court of Record, together with all Books, Papers, Deeds and Writings in any way relating to such Petitioner's estate or effects in his or her possession, custody or controul—Provided that in case it shall upon any examination or hearing as hereinafter mentioned appear, that any schedule is defective by reason of any unintentional mistake or omission therein, it shall be lawful for the Court to permit the same at the discretion of such Court to be thereupon forthwith amended, and that every creditor of the said insolvent shall be entitled to view the said schedule at all reasonable times, and to make extracts therefrom for his or her or their private use.

III. AND be it enacted, that thereupon, or as soon after as conveniently may be, a day and place shall be appointed by the said Court, or the said Commissioner at chambers, for the hearing of the matters of the said petition, and the said Court or Commissioner shall at the said time order notice to be given by the petitioner, or some person on his behalf, in one or more of the public newspapers, and in such other manner as the said Court or Commissioner may in each case think fit, to the several creditors of the petitioner, or their agents, of the presentation and filing of such petition and schedule, and of the day and place so appointed; and in the meantime, if it appear to the said Court to be expedient, it shall be lawful for the said Court or Commissioner to appoint some Officer of the Court, or other person, as and to be provisional assignee of the estate and effects of the said petitioner.

A day to be appointed for the hearing of the petition.

IV. AND be it enacted, that such petitioner shall, immediately after the presentation of such petition as aforesaid, duly execute a conveyance and assignment to the provisional assignee of the Court, in the form in the annexed schedule, of all the estate, right, title, interest, and trust of such petitioner in and to all the real and personal estate and effects of the said petitioner, both in this colony and elsewhere, and of all future estate, right, title, interest, and trust, of such petitioner in or to any real or personal estate or effects within this Colony or elsewhere, which such petitioner may purchase or which may revert, descend, be devised, or bequeathed, or come to him, or her, or become due to him or her before the day so appointed as aforesaid for hearing the matter of his or her petition, and of all debts due or growing due or to be due to him or her before the day

Debtor to execute assignment of property to provisional assignee.

Allowance to petitioner for sustenance between assignment and hearing.

last aforesaid, which conveyance and assignment, so executed as aforesaid, in form aforesaid, shall vest all the real and personal estate and effects of such petitioner, and all such future estate and effects as aforesaid, of every nature and kind whatsoever, and all such debts as aforesaid, in the said provisional assignee—Provided always that it shall be lawful for the said Court immediately after the execution of such conveyance and assignment to order and direct that the provisional or other assignee shall pay or allow to such debtor out of any assets which may come to the hands of such assignee under or by virtue of such conveyance or assignment such daily or other periodical sum as the Court in its discretion shall seem meet for the sustenance of such debtor and his family between the date of such order and the day appointed for hearing the matters of his petition.

Execution not to issue after execution of assignment for any debt in the schedule.

V. AND be it enacted, that from and after the due execution of such conveyance and assignment as aforesaid no process of execution shall issue against the property of the petitioner for, or in respect of, any debt or liability which shall have been included in such schedule, or amended schedule, as aforesaid, unless and until his petition be dismissed by the said Court as hereinafter mentioned, except such process as may issue by order of the said Court on any judgment to be entered up under any such warrant of attorney as hereinafter mentioned.

Provisional assignee to take possession, and, if ordered by the Court, to dispose of the property of the debtor.

VI. AND be it enacted, that it shall be lawful for the said provisional assignee to take possession himself, or by a messenger of the Court, or other person or persons, appointed by him, of all the real and personal estate and effects of every such petitioner; and, if the Court shall so order, to sell or otherwise dispose of such personal estate and effects, and out of the proceeds thereof to defray all such costs and expenses of taking possession and disposing of the same, as shall be allowed by the Court; and to account for the produce of such sale or disposition to the Court.

Provisional assignee may sue for and recover debts.

VII. AND be it enacted, that it shall be lawful for the said provisional assignee to sue in his own name, if the Court shall so order, for the recovering any estate, debts, effects, or rights of any such petitioner.

Property in hands of provisional assignee to be vested in his successor on resignation, &c.

VIII. AND be it enacted, that if such provisional assignee shall resign, or be removed from his office, such estates, monies, and effects, so vested in him by virtue of any such conveyance or assignments

as aforesaid, shall not remain in him, nor be vested in his assigns, heirs, executors or administrators, but shall in every such case go to, and be vested in, his successor in office appointed by the said Court.

IX. AND be it enacted, that, if upon the day appointed for the hearing of any such petition as aforesaid no creditor shall appear to oppose the same, it shall be lawful for the said Court to give the said petitioner (upon his or her swearing to the truth of his or her schedule) a full and perfect discharge from all the debts in the said schedule, and from all liability arising therefrom, or in its discretion to postpone the hearing of such application to a future period: or to dismiss such petition.

Proceedings on hearing where no creditor appears.

X. AND be it enacted, that if upon the day so appointed as aforesaid for hearing the matters of such petition it shall appear to the satisfaction of the Court that the petitioner is in fact insolvent, then the said Court shall declare him to be insolvent accordingly, and thereupon the said provisional assignee shall summon a meeting of the creditors of the said petitioner by notice in the Gazette and such other newspaper or newspapers as the said Court shall direct, for any day not less than one month nor more than three months from the day of such hearing as aforesaid to choose an assignee or assignees of the estate and effects of such insolvent by the votes of a majority in numbers and value of such creditors; or their lawful agents present at such meeting.

Notice of meeting of Creditors for choice of assignee.

XI. AND be it enacted, that the choice of an assignee or assignees at any such meeting as aforesaid shall have the effect of immediately transferring to and vesting in such assignee or assignees, subject to the orders of the Court, in trust for the creditors, and thereupon and thenceforth of divesting from the provisional assignee all and every the estate and effects, both real and personal, rights, duties, claims choses in action, and powers of such insolvent, previously vested in such provisional assignee, together with all deeds and writings respecting the same, and every such assignee or assignees during the term of his or their appointment shall have such and the like means of recovering, and disposing of, the said estate, effects and property, and of enforcing the said rights, claims, and interests, and of executing the said powers, in his, or their name, or names, as such assignee, or assignees; as the insolvent would, or might, have had if he had not been declared insolvent—Provided always, that it shall be lawful

General effect of appointment of assignees,

for the Court to direct such assignee or assignees to permit the insolvent to retain to his own use such of the wearing apparel, bedding, and other necessaries of such insolvent and his family, not exceeding in the whole the value of Fifty Pounds, as the said Court shall think fit, and all such articles so permitted to be retained, shall thenceforth be exempted from the operation of this Act, anything in this Act contained to the contrary notwithstanding.

Court to hear insolvent and creditors, and to examine witnesses, &c.

XII. AND be it enacted, that upon the day so appointed as aforesaid for hearing the matters of such petition and upon every or any day to which such hearing shall be adjourned, it shall be lawful for the insolvent and any of his creditors to be heard before the said Court, either in person or by counsel, in support of, or in opposition to, his petition, and the whole matter and substance of such petition shall, or may, be enquired into and examined by the said Court, or by any such creditor or creditors, as well respecting the claims of the creditors who shall be absent, as of those who shall be present, and it shall be lawful for the said Court upon any such hearing, or at any time within six months after the presentation of the insolvent's petition, upon the application in a summary form of any assignee or creditor of such insolvent, as often as occasion may require, to summon such insolvent, or his wife, or any other person who shall be known or suspected to have any of the estate or effects of such insolvent in his, or her possession or controul, or any person whom such assignee or creditor shall believe to be indebted to the insolvent, or to be capable of giving information to enable the said Court or the assignees more easily to discover, or obtain possession of, the estate and effects of such insolvent, or any person professing, or stated in the schedule, to be a creditor of such insolvent, and to examine the said insolvent, or his wife, or such other person as aforesaid, or such professed or stated creditor, before the said Court in the same way as any witness may be examined before the said Court in any action at law—Provided, that where any such person shall reside more than sixty miles from the place of the sitting of the said Court, or shall be incapable of attending by reason of sickness or infirmity, it shall be lawful for the said Court to permit interrogatories to be exhibited to such person for his or her examination and cross-examination upon oath before any person to be by the said Court for that purpose appointed.

Before adjudication petitioner to execute warrant of attorney to confess judgment for amount of debts

XIII. AND be it further enacted, that before any adjudication shall be made in the matter of any such petition, the said Court shall

require the petitioner to execute a Warrant of Attorney to authorize the entering up of a judgment against such petitioner in the said Court, in the name of the assignee or assignees of such petitioner or of such provisional assignee, if no other assignee shall have been appointed, and shall have accepted such office, for the amount of the debts stated in the schedule of such person to be due or claimed to be due from such petitioner, or as much thereof as shall appear at the time of executing such Warrant of Attorney to be due and unsatisfied, and the order of the said Court for entering up such judgment shall be a sufficient authority to the proper officer for entering up the same, and such judgment shall have the force of a recognizance, and if at any time it shall appear to the satisfaction of the said Court that such petitioner is of ability to pay such debts, or any part thereof, or that he or she is dead, leaving assets for that purpose, the said Court may permit execution to be taken out upon such judgment for such sum of money as under all the circumstances of the case the said Court shall order, such sum to be distributed rateably amongst the creditors of such petitioner, and such further proceedings shall and may be had upon such judgment as may seem fit to the discretion of the said Court from time to time, until the whole of the debts due to theseveral persons against whom such discharge shall have been obtained shall be fully paid and satisfied, together with such costs as the said Court shall think fit to award; and no *scire facias* shall be necessary to revive such judgment on account of any lapse of time, but execution shall at all times issue thereon by virtue of the order of the said Court—Provided always, that in case any such application shall appear to the said Court to be ill-founded and vexatious, it shall be lawful for the said Court not only to refuse to make any order on such application, but also to dismiss the same with such costs against the party or parties making the same as to the said Court shall appear reasonable, and the said costs shall be paid accordingly.

in schedule on which from time to time the Court can direct execution to be taken out.

XIV. AND be it enacted, that the real estate of any such petitioner either in possession, reversion, or expectancy, shall be sold at such time or times, in such mode or manner and at such place or places as shall be approved in writing under their hands by the major part in value of the creditors of such petitioner, who shall meet together on notice of such meeting published thirty days previous thereto in the Government Gazette and in some other newspaper published within this Colony.

Sale of petitioner's real estate, how, when and where.

Assignees to render accounts. Provision for appointing new assignees.

XV. AND be it enacted, that the assignee or assignees for the time being of every such insolvent shall once in every three months or oftener if the said Court shall so order render into the office of the Registrar of the said Court a just and true account in writing of all the effects, monies and property collected, received, or possessed by him, or them, as such assignee or assignees, and of the sale, disposal, appropriation, or distribution thereof respectively; and every such account shall be signed by the assignee, or assignees, so rendering the same, and be afterwards filed in the said Court of Record. And it shall be lawful for the said Court at any time, upon any application of, or complaint made in a summary way by the insolvent, or any person interested in the due distribution of such insolvent's estate or without any such application or complaint, to remove any assignee or assignees so appointed for neglect of duty in that or any other respect, and to appoint another, or other, assignee or assignees, in his or their place and stead, and also to appoint a new assignee or assignees in the place or stead of any assignee or assignees who may have died in the Colony or may be desirous to depart therefrom, or may become incapable to act from sickness or otherwise; and every such appointment shall have the effect of divesting from any assignee so displaced or replaced, and of vesting in such new assignee or assignees (together with the surviving or continuing assignee or assignees, if any) all and every the estate and effects both real and personal, rights, duties, claims, choses in action, and powers of such insolvent then remaining to be distributed under the provisions of this Act; and no action, suit, or proceeding, relative to the affairs of such insolvent's estate shall abate or be otherwise prejudiced, by reason of any such death, departure, or new appointment; but the same may be continued by, or in the name or names of the continuing or surviving assignee or assignees, or the assignee or assignees so newly appointed—Provided that if it shall at any time be made to appear that no further assets of the insolvent remain to be distributed or disposed of, or are likely to be collected, by any such assignee or assignees, then it shall be lawful for the said Court to audit and allow all such accounts of such assignee or assignees, and to grant to him or them thereupon his or their discharge in respect thereof.

Assignees removed, &c., failing to deliver up assets, &c., subject summarily to imprisonment.

XVI. AND be it enacted, that in case any such assignee so removed or replaced as aforesaid, or the heirs, executors, or administrators of any deceased assignee, or any of them shall not account

for and deliver up all the effects, monies, and property, books, papers, writings, deeds and evidences of, and belonging to the estate of any insolvent in his, her, or their hand or hands to the surviving or continuing or new assignee or assignees of such insolvent, in obedience to the order of the said Court made thereupon, and after service of a copy of such order, it shall and may be lawful for the said Court to order the person or persons so offending to be arrested and committed to any Common Gaol, there to remain without bail until such person or persons shall have complied with such order or until the said Court shall make order to the contrary.

XVII. PROVIDED always, and be it enacted, that if the majority in numbers and in value of the creditors of the insolvent shall, by writing under their hands attested respectively by two witnesses, consent absolutely to release and forego all claim to and interest in the future or after acquired property of such insolvent, then upon the production to the Court of such written consent, and upon affidavit at the same time made and filed by the insolvent that such consent was fairly obtained by him, and without any money or other consideration paid, or given, or to be paid, or given, or contract or security of any kind entered into by such insolvent, or, to the best of his knowledge and belief, by any other person, to persuade or induce any creditor to sign or give such consent, the Court shall direct the Warrant of Attorney (if any) executed by such petitioner to be given up to such petitioner, or his or her lawful representatives to be cancelled, and the judgment (if any) entered up thereon to be vacated; and that thenceforth every debt included in such schedule as aforesaid shall be and be deemed absolutely released and discharged to all intents and purposes whatsoever—Provided that no creditor signing such consent as aforesaid, whose debt is below Ten Pounds, shall be reckoned in number, but his debt shall only be computed in value—Provided further, that no damages recovered against any such insolvent in any action for Criminal Conversation, or Seduction, or Breach of Promise of Marriage, or for a Malicious Prosecution, or for Libel, Slander, or any other Malicious Injury, or any costs recovered in any such action, shall be deemed to be discharged by any such release as aforesaid, unless the party entitled to such damages or costs shall join in and sign such release.

XVIII. PROVIDED always, and be it enacted, that if at any time within twelve months after the making of any such order of discharge from liability as aforesaid, it shall, upon the application of

In what case insolvent's future property not to be liable.

In what cases order of discharge from liability may be revoked.

any creditor of the insolvent, appear to the satisfaction of the Court that such insolvent hath obtained such order of discharge by or through the means of any fraud, deceit, concealment, misrepresentation, or undue practice whatsoever, it shall be lawful for the Court to declare such order of discharge to be absolute, null and void, and thereupon and thenceforth it shall be lawful for every creditor of such insolvent to proceed against such insolvent, and against all his then unapplied, and all his future or after acquired property and effects, the same as if such order of discharge had never been obtained—Provided that in case any such application shall appear to the Court to be vexatious, or ill-founded, it shall be lawful for the Court in its discretion to dismiss the same with costs.

On satisfaction of scheduled debts, Court to direct re-assignment to petitioner.

XIX. AND be it enacted, that if any such petitioner as aforesaid shall execute such conveyance and assignment as aforesaid but shall fail to obtain such release or discharge from the Court or from his creditors as hereinbefore mentioned, and it shall be made to appear at any time thereafter to the satisfaction of the said Court that all the debts stated in the schedule of such petitioner have been paid or satisfied; it shall be lawful for the said Court on the application of such petitioner or his lawful representatives, to order and compel the assignee or assignees for the time being forthwith to execute a re-conveyance and re-assignment to such petitioner, his or her heirs, executors, administrators or assigns, of all property remaining in the possession or subject to the controul of such assignee or assignees by virtue of such conveyance and assignment or otherwise by virtue of his or their office of assignee or assignees, and in every such case the said Court shall direct the Warrant of Attorney (if any) executed by such insolvent to be given up to him to be cancelled and the judgment (if any) entered up thereon to be vacated.

Certain offences to be deemed felonies.

XX. AND be it enacted, that if any such insolvent or person praying to be discharged under the provisions of this Act shall wilfully embezzle, secrete, conceal, or omit to discover any part of his real or personal estate or effects above the value of two pounds, with intent to defraud his creditors or to diminish the funds or amount to be distributed amongst them, or shall knowingly and wilfully insert, or omit, or cause to be inserted or omitted, in his schedule any matter or thing whatsoever contrary to or for the purpose of concealing the truth, such insolvent or petitioner shall be deemed guilty of felony, and shall be liable to be imprisoned for any term

1842.

6th Vict. No. 11.

not exceeding three years, or to be transported for any term not exceeding seven years, as the Court shall think fit to order. And any such insolvent or petitioner or any other person who shall upon any occasion wilfully forswear himself in any oath taken under the provisions of this Act, shall suffer such punishment as by law may be inflicted for wilful and corrupt perjury. False swearing to be subject the penalties of perjury.

XXI. AND be it enacted, that in all cases in which no provision or no sufficient provision in that behalf is by this Act made, it shall be lawful for the said Court from time to time, upon any application in a summary way made for that purpose, or without any such application, to make and prescribe all such rules and orders, touching and concerning the discovery, collection, disposal, and distribution of the estate, debts, and effects of the insolvent, and the manner of proceeding before, or applying to, the said Court, under this Act, and likewise in respect of the several Fees payable by or to any person or persons, and otherwise for facilitating or more fully carrying into effect the objects of this Act, as to the said Court shall seem expedient, and such Rules and Orders from time to revoke and alter, as to the Court shall seem requisite; and all Rules and Orders so made and prescribed shall be of the same force and effect as if they had been inserted in this present Act; and the said Court shall in all cases whatsoever of application made to, or proceedings had, or taken, before, or by authority of, the said Court, have full power to award or refuse costs at its discretion, such costs to be paid out of the insolvent's estate or by and to such party or parties, as the Court shall in each case think fit to order. The Court may make rules and award costs.

XXII. PROVIDED always and be it enacted, that this Act shall not extend to or affect any debt or sum of money due to Her Majesty. Certain cases to which the Act is not to extend.

XXIII. AND be it enacted, that this Act may be amended or repealed by any Act to be passed during the present Session. Act may be amended.

JOHN HUTT.  
GOVERNOR.

*Passed the Council* }  
*21st July, 1842.* }

EDWARD C. SOUPER,  
Acting Clerk of the Council.

## SCHEDULE REFERRED TO BY THE ANNEXED ACT.

FORM OF CONVEYANCE AND ASSIGNMENT.

*This indenture made the \_\_\_\_\_ day \_\_\_\_\_ in the year of our Lord one thousand &c., between A B of \_\_\_\_\_ in the Colony of Western Australia \_\_\_\_\_ of the one part and C D, Provisional Assignee of the estate and effects of the said A B, in the said Colony, pursuant to an Act of Council passed in the sixth year of the reign of Her Majesty Queen Victoria in that behalf, of the other part. Whereas the said A B has this day filed his (or her) petition to the Civil Court, praying for his (or her) discharge from his (or her) existing debts and liabilities by virtue of the said Act. Now this indenture witnesseth that in obedience to the said Act he (or she) the said A B doth hereby convey, assign, transfer and set over unto the said C D, as such Provisional Assignee as aforesaid, his successors and assigns, all the estate, right, title, interest and trust of the said A B in and to all the real and personal estate and effects of the said A B both in the said Colony and elsewhere, together with all deeds, evidences, and writings touching and concerning the said estate and effects and all future estate, right, title, interest and trust of the said A B in and to all the real and personal estates and effects within the said Colony or elsewhere which the said A B may purchase, or which may revert, descend, be devised or bequeathed, or come to him (or her) or become due to him (or her) before the day appointed by the said Court for hearing the matters of his (or her) petition, together with all deeds, evidences, and writings touching and concerning the same, and all debts due or growing due to the said A B. To have, hold, receive, and take all and every the said estate and effects of the said A B, real and personal, vested and future of every nature and kind whatsoever, with their and every of their rights and appurtenances unto the said C D, his successors and assigns, according to the respective natures, properties, and tenures thereof. In trust nevertheless to and for the use, benefit and advantage of the creditors of the*

1842.

6th Vict. No. 11.

*said A B under the provisions of the said Act. Provided always that these presents are upon this express condition that in case the petition of the said A B shall be dismissed by the said Court, then these presents and the conveyance and assignment hereinbefore made shall from the dismissal of such petition be null and void to all intents and purposes.*

*In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.*

*Signed, sealed, and delivered }  
by the abovenamed A B and }  
C D in the presence of }*