



WESTERN AUSTRALIA.

ANNO VICESIMO VICTORIÆ REGINÆ.

No. X.

An Ordinance for giving relief to Insolvent Persons, and providing for the due collection, administration, and distribution of Insolvent Estates in Western Australia, and for the prevention of frauds affecting the same.

WHEREAS it is expedient and necessary to make provision for giving relief to such persons as, by misfortune and without ^{Preamble.} having been guilty of fraud or dishonesty, are or may become insolvent, and also to make provision for compelling such insolvent persons as may be unwilling to do so, to give up all their estate for the benefit of their creditors, and for the due collection, administration, and distribution of insolvents' estates within the colony of Western Australia, and for the prevention of frauds affecting the same;—Be

it therefore enacted, by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof:—

- Civil Court to be a Court of Insolvency, and Judge to be Commissioner of Insolvency, and may have officers.
- Official Assignee.
- Present officer of Civil Court may hold office under this Ordinance.
- Fees to be paid in insolvent proceedings.
- Costs to be allowed in insolvent proceedings.
- I. THAT the Civil Court of this colony shall be the Court of Insolvency, and the Commissioner of the said Court shall *ex officio* be the Commissioner of Insolvency for all the purposes of this Ordinance; and the said Civil Court shall also have such ministerial and other officers as shall be necessary for the purposes of this Ordinance, and one Official Assignee of Insolvents' estates, to be appointed by the Governor at a fixed salary; and such Official Assignee, before entering on his office, shall execute a bond, with two sufficient sureties, in an amount approved by the said Commissioner, for the faithful discharge of his duties, in such form as the said Commissioner shall direct: Provided, that in case the Official Assignee so appointed as aforesaid shall be dismissed from office, or be removed from his trust for misconduct or other sufficient cause, or resign, leave the colony, or die, it shall be lawful for the Governor to appoint another Official Assignee in his place, who shall thereupon succeed to all the rights, powers, duties, and liabilities of his predecessor, and shall and may continue actions and other proceedings commenced by his predecessor in manner approved by the said Commissioner: Provided, that the said Governor may appoint any person holding any office or situation in the said Civil Court, to perform any duty under this Ordinance, in conjunction with his ordinary duties in the said Civil Court.
- II. THAT the fees mentioned in the schedule marked A to this Ordinance annexed, shall be deemed and taken to be the fees receivable under this Ordinance by the said Commissioner of the Civil Court and by the said Official Assignee, which shall be by them respectively paid over to the Colonial Treasurer, to the use of Her Majesty, her heirs and successors, for the public uses of the said Colony and in support of the Government thereof; and that the costs mentioned in the schedule marked B to this Ordinance annexed, shall be deemed and taken to be the schedule of costs receivable under this Ordinance, and shall be allowed accordingly by the said Commissioner.
- III. THAT it shall and may be lawful for the Commissioner of

the Civil Court, upon the petition in writing of any person setting forth that he is insolvent, and desirous of surrendering his estate for the benefit of his creditors, either to direct such person to appear before him to be examined touching his said insolvency, or to receive such other proof thereof by affidavits of the said insolvent and others, as to the said Commissioner shall seem fit; and it shall and may be lawful for the said Commissioner, upon proof of the matters aforesaid to his satisfaction, to accept the surrender of such estate, and by order under his hand, to place the same under sequestration in the hands of the said Official Assignee.

Commissioner may accept surrender of estate of any person by petitioner declaring himself insolvent.

IV. THAT it shall in like manner be lawful for the said Commissioner, upon the like petition of any person legally vested with the administration of the estate of any person deceased, or with the estate of any other person, situate in the said colony, in trust for creditors, stating the insolvency of such estate, or upon the like petition stating the insolvency of the estate of any company trading or having any estate or effects within the said colony, made by the greater number of partners of the said company, who, at the time of presenting the petition, are within the said colony, to examine the petitioner or petitioners, or to take proof of the matters aforesaid in manner hereinbefore provided; and it shall be lawful for the said Commissioner, upon proof of the matters aforesaid to his satisfaction, to accept the surrender of any such estate, and to place the same under sequestration in manner aforesaid; and after the order for any such sequestration is made, the like proceedings shall and may be had and take place concerning such estates, and the persons in whom the administration thereof is legally vested, and the partner or partners of such company as are herein provided concerning other estates and other insolvents.

Surrender by persons vested with administration of estate of others.

V. THAT if any person, having any property, real or personal, within the said colony shall depart therefrom, or, being out of the said colony, shall remain absent therefrom, or shall depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or procure his goods, money, or chattels, to be attached, sequestered, or taken in execution, with intent to defeat, defraud, or delay his creditors in obtaining payment of their debts; or having against him the judgment or sentence of any competent Court, being

What shall be deemed acts of insolvency.

thereunto required, shall not satisfy the same; or shall not point out to the officer charged with the execution thereof, sufficient disposable property to satisfy the same; and if it shall appear, from the return made by such officer or his affidavit, that he has not found sufficient disposable property of such person to satisfy such judgment or sentence; or shall make, or cause to be made, in or out of said the colony, any fraudulent alienation, transfer, gift, surrender, delivery, mortgage, or pledge of any of his estate, goods, or effects, real or personal, or give or execute any fraudulent warrant of attorney or *cognovit actionem*, or confess any fraudulent judgment, whereby the same or any part thereof may be affected, shall be deemed thereby to have committed an act of insolvency.

Creditor making affidavit of debt and of having required payment, Court may summon debtor. VI. THAT if any creditor of any debtor shall file an affidavit in the said Civil Court of the truth of his debt, and of the delivery to such debtor personally of any account in writing of the particulars of his demand with a notice thereunder requiring immediate payment thereof, it shall be lawful for the said Commissioner to issue a summons calling upon such debtor to appear before such Court, and stating, in such summons, the purpose for which such debtor is called upon by such summons to appear as hereinafter provided.

Manner of proceeding upon summons of debtor by creditor. VII. THAT upon the appearance of any such debtor so summoned as aforesaid, it shall be lawful for such Court to require such debtor to state whether or not he admits the demand of such creditor so sworn as aforesaid, or any and what part thereof, and if such debtor shall admit such demand, or any part thereof, to reduce such admission into writing, and such admission, so reduced into writing, such debtor is hereby required to sign, and the same is thereupon to be filed in such Court; and it shall be lawful for such Court to allow such debtor, upon his said appearance, to make a deposition on oath, in writing under his hand, to be filed in such Court, that he verily believes he has a good defence upon the merits to the said demand, or to some and what part thereof, and enter into a bond with two sufficient sureties, to pay such sum as shall be recovered in any action which shall be brought for recovering the same and costs.

VIII. THAT if any such debtor, so summoned as aforesaid, shall not come before the said Court at the time appointed (having no lawful impediment made known to and proved to the satisfaction of the said Court at the said time, and allowed,) or if any such debtor, upon his appearance to such summons as aforesaid, or at any enlargement or adjournment thereof (as the case may be,) shall refuse to admit such demand, and shall not make a deposition and enter into a bond as aforesaid, then, and in either of such cases, if such debtor shall not, within ten days after present service of such summons, pay, secure, or compound such demand to the satisfaction of such creditor, or enter into a bond in such sum with two sufficient sureties as such Court shall approve, to pay such sum as shall be recovered in any action which shall be brought for recovering the same and costs, every such debtor shall be deemed to have committed an act of insolvency: Provided a petition shall be presented against such debtor within two months after filing the said affidavit.

Debtor not attending summons, or refusing to admit the demand, and not making deposition of belief of good defence thereto, and not paying or compounding within a certain time, or giving bond, to be deemed act of insolvency.

IX. THAT if such debtor, so summoned as aforesaid, upon his said appearance, shall sign an admission of such demand, and shall not within ten days after the filing of such admission, pay or tender and offer to pay to such creditor the amount of such demand, or secure or compound for the same to the satisfaction of the creditor, every such debtor shall be deemed to have committed an act of insolvency on the tenth day after the filing of such admission: Provided an order of sequestration shall be made against such debtor within two months from the filing of such affidavit.

Debtor signing admission of demand and not paying, securing or compounding within a certain time, an act of insolvency.

X. THAT if any such debtor, so summoned as aforesaid, shall, upon his said appearance, sign an admission for part only of such demand in manner aforesaid, and shall not make a deposition that he believes he has a good defence upon the merits to the residue of such demand, and enter into a bond with two sufficient sureties to pay the amount of any judgment which shall be recovered on any action brought for the recovery of the same, and costs, then, and in such case, if such debtor, as to the sum so admitted, shall not, within seven days next after the filing of such admission, pay or tender and offer to pay to such creditor the sum so admitted, and, as to the residue of such demand, shall not, within seven days after personal service of such summons, pay, secure,

Debtor admitting part only of a demand, and not making deposition of a good defence to the residue, and not paying, securing or compounding for sum admitted, and as to residue not paying or compounding, or giving bond, an act of insolvency.

or compound for the same to the satisfaction of such creditor, or enter into a bond in such sum, and with two sufficient sureties as such Court shall approve of, to pay such sum as shall be recovered in any action which shall have been brought, or shall thereafter be brought, for the recovery of the same, and costs, every such debtor shall be deemed to have committed an act of insolvency on the seventh day after service of such summons: Provided an order of sequestration shall be made against the said debtor within two months after filing of such affidavit.

Admission of debt signed elsewhere than in Court may be filed and have the same force as an admission signed by debtor on appearance in Court on summons.

XI. THAT an admission of any debt made after such summons as aforesaid, and signed by any such debtor, elsewhere than before such Court, may be filed in such Court, and shall be of the same force and effect, to all intents and purposes, as an admission signed by such debtor so summoned as aforesaid on his appearance in such Court.

What alienation, &c., fraudulent and void.

XII. THAT every alienation, transfer, gift, surrender, or delivery, mortgage, or pledge of any estate, goods, or effects, real or personal, or warrant of attorney, or *cognovit actionem*, or judgment confessed in the Civil Court office, made or done by any person who at the time is actually insolvent, or who, by any such alienation, transfer, gift, warrant of attorney, *cognovit actionem*, judgment confessed, surrender, delivery, mortgage or pledge, shall be rendered insolvent, to any person whatever without valuable consideration, shall be, and is hereby declared to be fraudulent and absolutely void: Provided, that nothing in this Ordinance contained shall extend to render fraudulent and void any conveyance or assignment by deed to a trustee or trustees of all a debtor's estate and effects whatsoever, for the benefit of all his creditors (to be named, if known, in a schedule annexed to such deed, with the amount due to them respectively,) if such deed shall be executed by such debtor and the trustee or trustees, and by the majority in number and value of such creditors: Provided, if the holder of an outstanding bill of exchange or promissory note is unknown, a description of such bill or note in such schedule shall be sufficient.

Exception of assignments in trust for creditors. Provision as to outstanding bills.

XIII. THAT all alienations, transfers, gifts, surrenders, mortgages, pledges, or deliveries of any estate, goods, or effects,

real or personal, made by any person after he has contracted any debt, and within twelve months preceding the commission of any act of insolvency by him, or the sequestration of his estate and effects as insolvent, or preceding any time at which it shall be made to appear by proof that he was actually insolvent, to any person whatsoever without valuable consideration, shall be and are hereby declared to be liable to be set aside on a summary application to and by order of the Civil Court, at the instance of any creditor of the said insolvent whose debt was contracted or the cause of whose debt had arisen prior to the making of such alienations, transfers, gifts, surrenders, or deliveries, in so far as such creditor would thereby be prevented from receiving the full amount of his said debt.

What alienations, &c., liable to be set aside at the instance of a creditor injured thereby.

XIV. THAT all alienations, transfers, gifts, surrenders, deliveries, mortgages or pledges of any estate, goods, or effects, real or personal, warrants of attorney, *cognovits actionem* and judgments entered up thereon, and judgments confessed in the Civil Court office, made by any person being insolvent, or in contemplation of surrendering his estate as insolvent, or knowing that legal proceedings for obtaining an order for the sequestration of his estate as insolvent have been commenced, or within sixty days preceding the making of any order for the sequestration of his estate as insolvent, and having the effect of preferring any then existing creditor to another, shall be and are hereby declared to be absolutely void.

What alienations, &c., having the effect to prefer one creditor to another, void.

XV. THAT if any person shall lawfully and *bond fide* purchase or acquire any of the estate, goods, or effects, real or personal, which have been alienated, transferred, given, surrendered, mortgaged, pledged, or delivered by any insolvent person, in the manner set forth in any of the three last preceding clauses of this Ordinance from any person to whom such estate, goods, or effects, have been so alienated, transferred, given, surrendered, mortgaged, pledged, or delivered by any true bargain or agreement, for a just and competent price, or in satisfaction of any lawful debt due to him, nothing contained in this Ordinance shall extend or be construed to annul or affect any right which any such person has lawfully and *bond fide* purchased or acquired in such estate, goods or effects, but in all such cases the persons to whom such estate, goods, or effects were alienated, transferred, given, surrendered, mortgaged, pledged, or delivered by the insolvent, shall be bound and obliged to pay the

Exception when any third party has purchased and acquired the goods and effects for a just price, or in satisfaction of a debt.

true value of all such estate, goods, and effects by them disposed of to a third party to or for behoof of such of the creditors of the insolvent as in virtue of the provisions of this Ordinance shall be entitled to have the alienations, transfers, gifts, surrenders, mortgages, pledges, or deliveries of such estate, goods, or effects by the insolvent declared to be void or set aside.

XVI. THAT all warrants of attorney and *cognovits actionem*, judgments confessed, alienations, transfers, gifts, surrenders, deliveries, mortgages, or pledges of any estate, goods, or effects, real or personal, made by any person, after an order of sequestration of his estate has been made, and before he shall have obtained his certificate in manner hereinafter mentioned, shall be and are hereby declared to be absolutely void.

Alienation after order of sequestration, void.

XVII. THAT all acquittances, surrenders, or discharges of any just debt, or of any security for any just debt, or other matter or thing, payment or delivery of which has not been actually and *bonâ fide* received, made by any person being insolvent, or in contemplation of surrendering his estate as insolvent, or knowing that legal proceedings for obtaining an order for sequestration of his estate as insolvent have been commenced, or after such order has been made, or within sixty days preceding the making of any such order, having the effect to deprive his creditors of the benefit of any debt or other matter or thing, shall be and are hereby declared to be absolutely void.

What acquittances, &c., of debts or security for same made by insolvent, void.

XVIII. THAT all payments made to any creditor by any person not compelled by legal process to make the same, and knowing himself to be insolvent, or in contemplation of surrendering his estate as insolvent, or knowing that legal proceedings for obtaining an order for sequestration of his estate as insolvent have been commenced, or that any such order has been made, shall be and are hereby declared to be fraudulent; but all payments really and *bonâ fide* made by any insolvent or by any person on his behalf to any creditor before any order made for the sequestration of his estate is known to the insolvent, or to such creditor, shall be valid; and all payments really and *bonâ fide* made to any insolvent, or to any person legally entitled to receive the same on his behalf, before any order is made for the sequestration of the estate of the insolvent, on his surrender thereof, or before sequestration of

What payments made by or to insolvent fraudulent, and when valid.

his estate has been adjudged at the instance of his creditors, shall be valid, provided such person so making payment to the insolvent, or to any person on his behalf, had not at the time of such payment, notice of any order for the sequestration of the estate of the insolvent having been made; but if any person shall so receive any payment hereinbefore declared to be a fraudulent payment from the insolvent, or if any person shall so make any payment to the insolvent, or to any person on his behalf, after an order for sequestration has been made on the surrender of the insolvent's estate, or after adjudication of sequestration at the instance of the insolvent's creditors, having, at the time of such payment, notice of any order for such sequestration having been made at the instance of the insolvent's creditors, provided such sequestration shall thereafter be adjudged in manner hereinafter mentioned, the person so receiving payment from the insolvent shall be bound and obliged to repay, for the benefit of the creditors of the insolvent, the sum so received by him; and the person so making such payment to the insolvent, or on his behalf, shall be liable again to pay for the benefit of the creditors of the insolvent, the sum so paid by him to the insolvent or to any person on his behalf.

XIX. THAT it shall and may be lawful for the said Commissioner of the Civil Court, upon petition made in writing against any person having committed any act of insolvency as aforesaid, by any creditor or creditors whose debt or debts amount to the value hereinafter provided, and setting forth the amount of the debt of such creditor, and the cause thereof, and the alleged act of insolvency, and praying that the estate of such person may be sequestrated, for the benefit of his creditors, upon proof thereof, to the satisfaction of the said Commissioner by the examination of the parties, or either of them, or otherwise, as the said Commissioner shall require, and provided there shall be produced to the said Commissioner, together with such petition, the affidavit, or affidavits, and certificate hereinafter required, by order under his hand, to place the estate of every such person, or persons, under sequestration, in the hands of the said Official Assignee, until the same shall, in manner hereinafter mentioned, be adjudged to be sequestered, or the said petition shall be discharged.

Sequestration upon petition of creditor against an insolvent person.

XX. THAT no estate shall be placed under sequestration, unless the debt of a single creditor petitioning that the same shall

Nature and amount of petitioning creditor's debt. be sequestered, shall amount to fifty pounds, or unless the debts of two, or more creditors so petitioning, shall jointly amount to seventy-five pounds; and every person who has given credit to another upon valuable consideration, for any such sum as aforesaid, payable at a certain time, which time shall not have arrived when the act of insolvency was committed, may so petition, or join in petitioning, as aforesaid, whether he shall have any security for the same or not.

Affidavit of petitioning creditor. XXI. THAT every petitioning creditor shall, before presenting any petition for having an estate placed under sequestration, make an affidavit in writing before any justice of the peace of the said colony, or the said Commissioner (which affidavit shall be filed with the proceedings in the estate), of the truth of his debt, and the cause thereof; and shall pay into the said Commissioner's hands, the sum of eight pounds, as hereinafter mentioned, and shall likewise give security, to the satisfaction of the said Commissioner, for the payment of the necessary fees and charges for the prosecution of the said sequestration; and the said Commissioner shall forthwith indorse on every such petition a certificate that such money has been paid, and that such security has been found, and shall sign the same.

Costs of sequestration. XXII. THAT the creditor or creditors on whose petition any order for sequestration shall be made, shall, at his or their own cost, prosecute all the proceedings in the said sequestration, until the adjudication and final determination in manner hereinafter mentioned; and the same having been first taxed and ascertained by the taxing officer of the said Civil Court, the said Official Assignee shall reimburse the said creditor or creditors out of the first money that shall be received; and the costs incurred under any sequestration after such adjudication and final determination aforesaid, shall in the first place, and before any other debt, be paid out of the free residue of the insolvent estate, when it shall be sufficient for the same: and when the said free residue shall be insufficient for the payment thereof, all the creditors who have proved debts against the insolvent estate shall be personally liable to the said Official Assignee for the same in proportion to such debts, and the said Official Assignee shall and may recover the same by summary application to, and by order of the said Civil Court.

XXIII. THAT any creditor or creditors of any company may in like manner as aforesaid, petition against all or any one or more of the partners of any such company, to have the estate of such company placed under sequestration; provided any such partner has committed an act of insolvency with intent or in such manner as to defraud the creditors of such company, or to defeat or to delay them in obtaining payment of the debts due by such company; or provided the sentence of any competent Court has been obtained against such company, and the partners thereof, being thereunto required, have not satisfied the same, or pointed out to the officer charged with the execution of such sentence, sufficient disposable property to satisfy the same; and provided it shall appear from the return made by such officer or his affidavit, that he has not found sufficient disposable property of such company to satisfy such sentence; and every order of sequestration issued on such petition shall be valid, although it do not include all the partners of the company; and after the order for sequestration of any such estate is made, the like proceedings shall and may be had and take place concerning such estate and such partner or partners as are herein provided to be had and take place concerning other estates and other insolvents: Provided always, that nothing herein contained shall extend, or be construed to extend, to prevent any creditor or creditors of any company from proceeding against any partner or the separate estate of any partner thereof in respect of debts due by such company in the same way in which it is herein provided that the creditor of any person may proceed against him and his estate in respect of debts due by such person in his individual capacity.

Sequestration of estate of company or partners.

XXIV. THAT every privilege and power given by this Ordinance to any creditor in respect of any debt due to him individually by any insolvent, and every liability or penalty imposed by this Ordinance on any such creditor, shall be and is hereby declared to be given to and imposed on the partner or partners of any company in respect of any debt due to such company by any insolvent: Provided always, that in reckoning the number of votes at any meeting of creditors, or the number of creditors who have signed any certificate of any insolvent, the partners of any company as aforesaid shall be entitled to only one vote, and shall be considered as one person.

Liabilities and privileges of partners of any company, or of others.

Partners only one vote.

XXV. THAT the party obtaining any order for sequestration shall forthwith lodge the same with the Sheriff of this colony at his office in Perth; and the Sheriff shall register the said order, and note thereon the day and hour of its production, and shall forthwith deliver, or cause the same to be delivered to the said Official Assignee, who shall cause the same to be notified in the most widely circulated newspapers of the colony; and every insolvent obtaining any order for sequestration shall also lodge with the said Official Assignee a list containing, to the best of his knowledge and belief, the names and places of abode of his several creditors.

Lodging with Sheriff order of sequestration and other proceedings.

XXVI. THAT the said Official Assignee, upon any estate being placed under sequestration in his hands, shall by his messenger, authorised by warrant under his hand, enter and seize and lay an attachment on the monies, securities for money, debts, estate, and effects, wheresoever or with whomsoever they shall be, and make an inventory thereof; and it shall be lawful for the insolvent, or any of the creditors, or for the agent of any of the creditors or of the insolvent, to accompany the messenger and to be present with him while making out the inventory aforesaid.

Attachment of the estate, and how to be made.

XXVII. THAT when any moveable property belonging to any insolvent estate is attached as aforesaid, in virtue of any order for the sequestration thereof, the messenger making such attachment shall leave with the person in whose possession any such property is attached, a copy of the said inventory, having subjoined thereto a notice that the property of the insolvent has been attached by the said messenger by virtue of an order for the sequestration thereof; and that any person who, knowing the same to have been so attached, shall dispose of, remove, retain, embezzle, conceal, or receive the same, or any part thereof, with intent to defeat the said attachment, shall be liable, on summary conviction of such offence before any two or more justices of the peace of the said colony to be imprisoned, with or without hard labour, for any period not exceeding three years: Provided that the said Official Assignee shall take such measures and give such directions for the safe custody of such property as to him shall seem fit.

Attachment of moveable property, how to be made, and penalty for defeating it.

XXVIII. THAT the said Official Assignee and Special Assignee appointed under this Ordinance, shall aid and assist in carrying this Ordinance and the provisions thereof into effect; and for

Official Assignee to aid under rule of Court.

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that purpose shall do and execute all such matters and things as they shall be required to do and execute by any rule or order of the said Civil Court by virtue of this Ordinance.

XXIX. THAT the Sheriff of this colony, either by himself or by his deputies, being thereunto required by the said Commissioner of the said Civil Court or the said Official Assignee, shall within the districts in which he or they shall be obliged to act in execution of process issued out of the said Civil Court, do and execute the duties directed by this Ordinance, or by any rule or order of the said Civil Court or the said Official Assignee in pursuance of this Ordinance, to be done and executed by a messenger; and shall receive to their own use for such service out of the assets of any insolvent estate as to which they may be so employed, such reasonable fees as are and shall be allowed by the said Civil Court for their service.

Sheriff or his deputies to execute duties of messengers.

XXX. THAT every petitioning creditor who shall duly obtain any order for placing the estate of his debtor under sequestration as aforesaid shall forthwith take out the process of the said Civil Court to summon the debtor that he appear before the said Court on a certain day, to be appointed by the said Commissioner making such order as to the said Commissioner shall seem meet, to shew cause why his estate should not, by sentence of the said Court, be adjudged to be sequestered for the benefit of his creditors; and the service of the said summons shall be made in the same manner as is or shall be by law provided for the service of any other summons of the said Court: Provided, that if any debtor has been twenty days absent from his usual place of residence or business within the said colony, copies of the said summons shall also be inserted in three successive public newspapers of the said colony.

Summons to debtor upon order of sequestration, and as to service thereof.

XXXI. THAT upon the day appointed for any person to shew cause why his estate should not be adjudged to be sequestered, it shall and may be lawful for the said Court to receive proof of the matters aforesaid, and to adjudge and finally determine thereon, whether the said person, having been thereto lawfully summoned, shall appear to the said summons or not, or, upon sufficient cause being shown to the satisfaction of the said Court, to delay the said adjudication and determination for any reasonable time at discretion; and if

Court to adjudge if order of sequestration is to be confirmed or otherwise, and effect thereof.

the petitioning creditor shall make default in appearing or proving his said debt, or the act of insolvency, to the satisfaction of the said Court, it shall and may be lawful for the said Court to supersede the said order for sequestration, and to dismiss the said petition, or to require further proof of the matters contained therein, as to the said Court shall seem fit; and whenever such petition shall be dismissed by the said Court, all questions affecting the estate of the person against whom it was presented, or any right of such person, or of his creditors or debtors, or the validity of any alienation, transfer, gift, surrender, delivery, mortgage, pledge, warrant of attorney, *cognovit actionem*, payment, acquittance, or discharge made by such person, or payment made to such person, shall be adjudged of and determined as if such petition had never been presented.

If petition unfounded or malicious.

XXXII. THAT if it shall appear to the said Court, upon such petition for sequestration, that the said petition was unfounded or vexatious or malicious, it shall be lawful for the said Court to allow the person against whom such petition was filed, on his application for the same, forthwith to prove any damage alleged to have been by him sustained thereby, and to award to such person such satisfaction for the said damage, not exceeding two hundred pounds, as the said Court shall deem fit, and compel payment thereof by summary process of execution in the nature of a *feri facias*, or leave the said party to his action for the said injury.

Sequestration revived by order of creditor, and effect of, though superseded as to original petitioning creditor.

XXXIII. THAT if, after any order has been made for the sequestration of any estate, the debt or debts of the petitioning creditor or creditors, be found insufficient to entitle such creditor or creditors to apply for and obtain such order for sequestration, or if such order shall be superseded in consequence of the consent or default of the petitioning creditor or creditors, or his or their collusion with the insolvent, it shall be lawful for the said Civil Court, upon the application of any other creditor or creditors whose debt or debts amount to the value hereinbefore provided, and have been incurred prior to the said order for sequestration, and who shall produce at the time of making such application the affidavit or affidavits, and the certificate hereinbefore required, to order that the said sequestration shall be revived and proceeded in as if it had been originally obtained on the petition of the creditor or creditors last mentioned; and thereafter the said sequestration shall be revived, with all the consequences and effects thereof, as if it had never been superseded.

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XXXIV. THAT if any person against whom any order for sequestration shall have been made shall pay any money to the person who obtained the same, or give or deliver to any such person any satisfaction or securities for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debt than he would be entitled to receive if the sequestration were proceeded in, and the estate distributed among the creditors thereof, according to their legal rights and preferences, such payment, gift, delivery, satisfaction, or security shall be a new act of insolvency; and every person so receiving such money, gift, delivery, satisfaction, or security, shall, in the event of the sequestration being afterwards proceeded in by any other creditor or creditors in manner hereinbefore mentioned, deliver up such security, and shall repay the said money, gift, or the full value thereof, to such person or persons as the said Court shall appoint, for the benefit of the creditors of such insolvent, and shall pay all the costs which shall be incurred by any other creditor in obtaining the revival of such sequestration.

As to payments and other securities from insolvent to petitioning creditor after order for sequestration.

XXXV. THAT further execution of any judgment or process against the person or estate of any insolvent, shall, after order for sequestration of such estate is lodged with the Sheriff for registration, be stayed; and it shall and may be lawful for the person having right to such judgment, to prove his debt and costs against the sequestered estate, and to take the benefit thereof, upon distribution of the said estate, rateably with the other creditors; and where any property has been attached by legal process for satisfaction of any judgment, and has not been sold, such property shall be placed under sequestration in the same manner as any other part of the insolvent estate.

Effect of the order of sequestration, upon judgments.

XXXVI. THAT no action shall be brought against any insolvent for any debt or demand proveable against his estate; and all proceedings in any action then pending shall, upon any order being made for the sequestration of such estate in virtue thereof, be stayed; and it shall and may be lawful for the plaintiff in such action to prove his debt, together with the taxed costs of it, then incurred against the sequestered estate, and to take the benefit thereof upon distribution of the said estate: Provided, however, that all actions pending against such insolvent for damages alleged to have been sustained from any injury or wrong, or breach of any contract committed by him (such damages being uncertain), or for the recovery of any

Effect of order of sequestration on actions against insolvent.

claim unliquidated as to its amount, and all proceedings therein, shall, upon any order being made for the sequestration of his estate, be stayed until the said Official Assignee shall have notice thereof; and thereupon the plaintiff in such action, after summoning the said Official Assignee to take up and defend the said action, may proceed to obtain the judgment of the Court thereon; and the said judgment, when recovered, together with taxed costs, shall be a debt proveable against the said estate.

Effect of order of sequestration on insolvent in custody under legal process. XXXVII. THAT any insolvent, who, at the time any order for the sequestration of his estate is lodged with the Sheriff for registration, shall be in custody of the said Sheriff, or of any gaoler or officer either under *mesne process*, or in execution on any judgment by virtue of the provisions of the Ordinance 20th Victoria, No. 9, for any debt or demand proveable under this Ordinance, shall be entitled to be, on the order of the said Commissioner, and shall be forthwith discharged out of custody in respect thereof, either absolutely or on such condition or conditions as such Commissioner shall think fit to impose.

Effect of order of sequestration upon action commenced by insolvent. XXXVIII. THAT all actions commenced by any person whose estate shall afterwards be placed under sequestration as insolvent for any debt or demand due to the said estate, and all proceedings therein, shall, upon the order of such sequestration being made, be stayed until the said Official Assignee shall make election to prosecute or discontinue the same; and the said Official Assignee shall be bound to make such election within four weeks after notice to that effect shall be served upon him by any defendant in any such action, or otherwise shall be deemed to have abandoned the same: Provided, that any insolvent person shall be permitted to continue in his own name and for his own benefit any action commenced by him previous to his insolvency for any personal injury or wrong done to himself or to any of his family.

Appointment by the Commissioner of two public meetings of creditors for proof of debts. XXXIX. THAT the Commissioner of the said Civil Court shall, after any estate has been placed under sequestration, upon surrender thereof as insolvent, or has been adjudged to be sequestered, forthwith cause notice thereof to be given in the public newspapers of this colony; and shall thereby appoint one or more public meetings of the creditors of the said estate, at such times and places as he shall deem most convenient for all parties concerned, for receiving proof of debts against the said estate, and generally arranging the

collection, administration and distribution thereof; and such publication shall be deemed notice thereof to all persons concerned: Provided always, that if it shall appear to the said Commissioner, before causing notice to be given as aforesaid, that the goods and effects of the insolvent available for payment of his debts are not above the value of £50, he shall specify the same in the said advertisement; and shall therein also give notice that, unless it shall be shown at the first meeting called as aforesaid, that the goods and effects of the insolvent exceed the said value of £50, the said Commissioner will summarily proceed to rank the debts which shall be proved at such meeting, according to their respective preferences, and to direct the proceeds of the insolvent estate to be forthwith distributed accordingly by the said Official Assignee; and in such case the said insolvent shall at such first meeting, attend before the creditors to account for his insolvency, and shall, being thereunto required, do and perform thereat all such other matters and things as are hereinafter required to be done or performed by him at any meeting of the creditors under the provisions of this Ordinance; and if at the said first meeting it shall still appear to the said Commissioner, that the available assets of the said estate do not exceed the amount of £50, it shall and may be lawful for the said Commissioner to rank the creditors who shall prove their debts at such meeting according to the legal order of their preference, and for the creditors to direct the said Official Assignee forthwith to collect, administer and distribute the estate of the said insolvent according to the order of ranking; and further, the said Commissioner shall do and perform at such meeting all matters and things required to be done for the final settlement of the said estate, and may adjourn any such meeting from time to time as often as he shall deem fit so to do; and the majority of creditors present at the said meeting shall then determine what part of the wearing apparel, bedding, household furniture and tools of trade of the insolvent shall be excepted from the sale of his moveable property, and shall be allowed to him; and shall also give to the said Official Assignee such directions as to the management of the said estate as to them shall seem fit; and no other meeting shall thereafter be holden, unless upon cause shewn the said Commissioner shall think fit to order the same: Provided that such meetings shall be holden in Perth before the said Commissioner, who shall take the votes of creditors and control the proceedings thereat.

Proof of debts.

XL. THAT every creditor shall prove his debt against the said estate by affidavit or otherwise to the satisfaction of the said Commissioner, who shall admit any debt or reject the same as not proved; and it shall and may be lawful for the said Commissioner finally to admit or reject any debt or to allow any action which may have been instituted for the proof or recovery of any such debt against the insolvent prior to the sequestration, and which has in consequence thereof been stayed, to be proceeded with after the said Official Assignee shall have been duly summoned to take up and defend such action; and if the plaintiff shall thereafter obtain judgment thereon, he shall be ranked on the insolvent estate for the amount of such judgment.

What debts proveable in cases of mutual credit.

XLI. THAT all debts due by any insolvent at the time of adjudication or surrender may be proved against his estate; and where there has been mutual credit given by the insolvent, and any other person, or where there are mutual debts between the insolvent and any other person upon which a set off can at law be pleaded on either side, the said Commissioner taking proof of the debt shall thereupon state the account between them, and shall set one debt or demand against the other; and what shall appear due on either side on the balance of such account, and no more, shall be allowed to be proved, or claimed, or paid on either side: Provided that the person claiming the benefit of such set off had not, when such credit was given, or when the cause of his debt accrued, notice of the said insolvency.

Debts payable at a future time proveable on a rebate of interest, and as to votes of such creditors.

XLII. THAT in all questions upon this Ordinance, every person to whom the insolvent was, at the time of the surrender or adjudication of sequestration of his estate, under legal obligation to pay money at a certain future time, shall be accounted a creditor *de presenti*, and shall be entitled to prove his debt for the amount of the money specified in the obligation; but in case the said debt shall not have become payable at any time when such creditor shall give any vote at any meeting of creditors in respect thereof or at the time of distributing the said estate, or of the payment of any dividend thereon, and shall not bear interest at a less rate than ten per centum per annum, the said debt shall be valued in voting, and such creditor shall receive payment thereof or a dividend thereon only after deduction thereout of a rebate of interest of ten per centum per annum, or of so much per centum per annum as shall

correspond with the difference between the rate of interest payable on such debt and the rate of ten per centum per annum, (as the case may be), to be computed from the time of voting, or the distribution of the estate, or payment of the dividend, to the time when such debt would have become payable according to the terms on which it was contracted.

XLIII. THAT any creditor who shall have or hold any security or lien upon any part of the insolvent's estate, shall, when he is the petitioning creditor, be obliged, on oath, in the affidavit accompanying the petition, and when he is not the petitioning creditor, in the affidavit produced by him at the time of proving his debt, to put a value upon such security so far as his debt may be thereby covered, and to deduct such value from the debt proved by him, and to give his vote in all matters respecting the insolvent estate as creditor only for the balance, which balance shall be specified in his affidavit without prejudice to such valuation being afterwards corrected, and without prejudice to the amount of such debt in other respects; and in case any creditor shall hold any security or lien for payment of his debt, obtained prior to the order for sequestration of the insolvent estate and not liable to be set aside by virtue of this Ordinance, upon any part of the said estate, the amount of value of such security or lien shall be deducted from his debt, and he shall only be ranked for, or receive payment of, or a dividend for, the balance, after such deduction; and if any dispute shall arise about the value of such security, the creditor or claimant shall upon oath put a value upon it, and the said Official Assignee shall then have an option either of taking an assignment of the security for the benefit of the creditors at large on payment of the value so estimated out of the first assets of the insolvent estate, or of reserving the full effect of it to the creditor himself; and in either case the creditor shall be ranked on the divisible fund for the balance of his debt so ascertained, together with the other creditors, such creditor being in no event entitled to draw more than the full payment of the debt: Provided, that no creditor who shall hold any security or lien shall be entitled to any preference or advantage in respect thereof, or to reckon as a part of his debt covered thereby any debt which shall have arisen or accrued to him subsequent to the order for sequestration.

Proof by creditor holding pledge or lien.

XLIV. THAT no person whose debt depends upon a contingency, or an uncertain condition, shall be entitled to petition or

As to proof of debts on a contingency or condition.

join in the petition for sequestration of any estate, or to vote in any of the proceedings herein specified, so long as the contingency shall not happen, or the condition shall not be performed: Provided always, that the creditor in any such debt contracted before the order for sequestration shall have been made, may, if he think fit, while the contingency or condition upon which such debt depends shall not have happened, or shall not have been performed, apply to the said Official Assignee, to set a value upon such debt; and the said Official Assignee is hereby required to ascertain the value thereof, and to admit such creditor to prove the amount so ascertained; and such creditor shall thereafter be entitled to vote, and to receive dividends or payments as in respect of a debt of the value of the amount so ascertained; and if such value shall not be ascertained before the contingency shall have happened or the condition shall have been performed, then such creditor may, after such contingency shall have happened, or such condition shall have been performed, prove in respect of such debt, and receive dividends or payments with the other creditors: Provided always, that when the creditor in any such debt or claim, the contingency of which shall not have happened, or the condition of which shall not have been performed, and the value of which shall not have been ascertained as aforesaid, shall enter a claim on the estate in respect of such debt, the said Official Assignee shall rank the claim as if the contingency had happened or the condition had been performed, and shall forthwith apply to the said Civil Court to make an order, and the said Court shall make an order for securing the dividend or sum which the claimant would have been entitled to draw until the contingency or condition upon which the debt depends shall happen or be performed, when the sum so secured shall be paid to the claimant or to the general creditors, as the case may be; and any interest which may in the mean time arise and be received thereupon, shall belong to and be paid to the other creditors.

XLV. THAT no distress for rent shall be made or levied or proceeded in after any order made for sequestration as aforesaid, but the landlord or party to whom the rent shall be due, shall be entitled to receive out of the assets of the estate so much rent as shall then be due, not exceeding six months' rent in the whole, and shall be allowed to come in as creditor and share rateably with the other creditors for the overplus.

Landlord to be entitled to six months' rent.

XLVI. THAT it shall be lawful for the said Official Assignee to pay any clerk or servant six months' salary or wages in full out of the insolvent estate, provided so much shall be actually and *bond fide* due at the time of the order for sequestration made. Wages of clerks, &c.

XLVII. THAT when by reason of the absence of any person from the colony or for any other cause appearing to the said Commissioner he shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same, it shall be lawful for the said Commissioner to allow such claim to be entered in the proceedings in the insolvent estate, and to give reasonable time for proving the same; and in the meantime to make such order for securing the amount thereof, in case the said claim shall be afterwards established, as the said Commissioner shall see fit. As to securing claimant's debts, which may eventually be established.

XLVIII. THAT the mode of settling interest upon claims shall be as follows:—the principal sum of each debt on which interest is chargeable, together with arrears of interest, if there be any due upon it at the time the order for sequestration was made, shall be accumulated at the date of such order, for the purpose of the claimant being ranked for and receiving payment of such accumulated sums together with the principal sums of such debts as do not bear interest, or from which there may be a rebate of interest, as not being payable until an after period; and the assets of an insolvent estate shall be applied, first, in payment according to the legal order of preference of all the preferent debts; and secondly, in payment of all the other accumulated sums so ranked, without allowing any interest upon them, from and after the date of the order for sequestration, if the said assets shall not be sufficient to discharge all the claims due by the insolvent estate; but if after discharging the whole of such claims there shall be any residue left of the sequestered estate, the creditors shall also be entitled to claim, out of such residue, any arrear of interest which may be due to them as arising since the date of the said order for sequestration upon the respective sums ranked as hereinbefore mentioned. Mode of settling interest upon claims.

XLIX. THAT any debt which was due, or the cause of which arose prior to the order for sequestration of any estate, may be proved at any meeting of creditors appointed before the said Com- Within what time and before whom debts are proveable, and effect thereof in dividend previously made.

missioner at any time before the final distribution of the estate ; and any creditor may, after the second meeting called by the said Commissioner in manner hereinbefore provided, at his own expense, call such meeting expressly for the purpose of proving his debt : Provided always, that when any debt is so proved, after any dividend has been paid to the creditors, such dividend shall not in any way be disturbed or affected by or in respect of any such debt ; but such creditor shall receive payment of his debt out of the future assets of the estate, in the same proportion as the other creditors shall have already received and shall afterwards receive payment ; and provided also that when any such debt is proved, after the plan of distribution of such estate has been confirmed, and in consequence of the proof of such debt, any alteration in the plan of distribution, or any further proceedings in the sequestration shall be rendered necessary, the creditor proving such debt shall be liable for all expenses which may be incurred in consequence of any such alteration or proceedings.

What creditors entitled to vote in number and what in value.

L. THAT in all cases of votes given by creditors under this Ordinance, when creditors are to be counted in number, no creditor whose debt is below Twenty-five pounds sterling, shall be reckoned in number, but the debt due to such creditor shall be computed in value ; and that in all cases in which any deduction is directed by the provisions of this Ordinance to be made from the amount of the debt of any creditor, the vote of such creditor shall still be counted in value to the extent of the balance remaining after such deduction : and such creditor shall also be reckoned in number, provided such balance amounts to Ten pounds and upwards.

Creditors may vote by agent.

LI. THAT in all cases where, under the provisions of this Ordinance, the creditors of any insolvent estate are required or entitled to meet, and to vote in any manner regarding such insolvent estate, any creditor so entitled may attend and vote at such meeting, personally or by agent authorised by any writing under the hand of the said creditor, or by any power of attorney to that effect duly executed, upon proof thereof to the satisfaction of the said Commissioner, or other person presiding at such meeting.

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LII. THAT after the passing of this Ordinance, it shall not be necessary for the creditors of any insolvent estate to elect any Trustee or Trade Assignee of such estate; but that in case they shall have and state any reasonable objection to the said Official Assignee, on account of his being related to the insolvent, or on account of any other cogent reason, and shall satisfy the said Commissioner thereof, the said Commissioner shall and may select from among the creditors, or otherwise, a fit and proper person to act as the Special Assignee, which said Special Assignee, after being so appointed by the said Commissioner, shall act in all things as if he were the said Official Assignee appointed under this Ordinance: Provided, that notice of the appointment of such Special Assignee, shall be duly published in one of the public papers.

LIII. THAT every appointment so made of any Special Assignee as aforesaid in and for any insolvent estate, shall, from the time of the making thereof, have the same effect in law of divesting from the said Official Assignee all the insolvent estate, rights and property of every kind, and of vesting the same in such Special Assignee, as by this Ordinance is (with respect to the vesting of an insolvent estate in the said Official Assignee) conferred on the said Commissioner's order for placing the estate under sequestration: Provided, that upon the appointment of any such Special Assignee as aforesaid, all and singular the powers, privileges, rights, duties and liabilities in all respects which by this Ordinance may attach or belong to or devolve upon, or which may be lawfully enjoyed or exercised by the said Official Assignee, shall in like manner, and to the same extent, attach and belong to and devolve upon and may be claimed, enjoyed, and exercised by the said Special Assignee of every insolvent estate sequestered in pursuance of this Ordinance.

LIV. THAT every Special Assignee so appointed by the said Commissioner on the application of the creditors, shall receive and be paid out of the assets of the said estate; a reasonable compensation for his care and diligence in the said trust, to be assessed by the said Commissioner.

Effect of order of sequestration upon the estate of insolvent.

LV. THAT every order made for placing any estate under sequestration as insolvent, shall, so soon as made, have the effect in law to divest the insolvent and all persons administering the whole or any part of his estate for his use and behoof, and to vest in the said Official Assignee for the uses and purposes of the sequestration all the present and future estate, real and personal, and every right, title and interest in and to any property, real or personal, wheresoever the same may be known or found, which shall belong or be due to or vested in such insolvent at the date of making such order, or which may thereafter be purchased or acquired by, or may revert, descend, or be devised or come to, the insolvent while the insolvent estate shall be under sequestration in the hands of the said Official Assignee, together with all deeds, vouchers, papers, and writings respecting the same; and after the said order for sequestration has been made, neither the insolvent nor any other person claiming through or under him, shall have the power to alienate, give, surrender, deliver, mortgage, pledge, or to recover or to release or discharge the same, or any part thereof; neither shall the same be attached by any person as the property of or belonging to the insolvent, so long as the said estate shall remain under sequestration.

Power of Official Assignee over property in the possession, order, and disposition of insolvent, and of which he is reputed owner.

LVI. THAT if any insolvent, at the time of any order made for placing his estate under sequestration, shall, by the consent and permission of the true owner thereof, have in his possession, order or disposition, any goods or chattels whereof he was reputed owner, or whereof he had taken on himself the sale, alienation, or disposition as owner, the said Official Assignee shall have power to sell and dispose of the same for the benefit of the creditors proving debts against the said estate: Provided, that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel or any share thereof made as a security for any debt or debts either by way of mortgage or assignment duly registered according to the provisions of any law in force for registering British vessels.

Action by or against Official Assignee.

LVII. THAT it shall and may be lawful for the said Official Assignee to take up and continue in his name, upon entering on the record a suggestion of insolvency, the process in any suit or action commenced for any debt or demand due to the estate before the issue of the said order for sequestration, or to discontinue the same,

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as he shall see fit; and also to commence any new suit or action for any debt or demand due to the estate of any insolvent person; and also, on entering a like suggestion, to defend any suit or action pending against the insolvent relating to or affecting the said estate; and in all such cases the insolvent shall be a competent witness for either party.

LVIII. THAT it shall and may be lawful for the said Official Assignee at any time to call a general meeting of the creditors, and to require their direction concerning the collection or sale of any part of the estate; and the said Official Assignee shall call such meeting whenever he is thereto required by one-fourth of the creditors in value, who have produced and proved their claims; and the said Official Assignee shall pursue the directions of the greater part in number and value of the creditors attending such meeting: Provided always, that ten days' notice at the least shall be given of every such meeting, and of the purpose thereof, in some public newspaper.

As to Official Assignee calling general meetings of creditors.

LIX. THAT at all public meetings of creditors, held under and by virtue of this Ordinance, other than those which it is herein provided shall be held before the said Commissioner, one of the creditors present shall, before any other business is proceeded in, be chosen by the greater part in number and value of the creditors present to preside at such meeting; and minutes of every such last-mentioned meeting shall be taken, subscribed, and authenticated by the creditor presiding at such meeting, in the presence of such meeting, and shall be by him transmitted to the said Commissioner, together with a copy of the public newspaper containing the notice of such meeting, to be annexed to the proceedings in the estate.

As to proceedings under and minutes of meetings of creditors when not before Commissioner.

LX. THAT it shall and may be lawful for the said Official Assignee to take legal advice from an attorney approved by the said Commissioner on any legal question affecting the insolvent estate or the administration thereof, and to employ an attorney for conducting and defending all actions and suits for or against the insolvent estate, and to charge against the insolvent estate all such costs as shall thereby be incurred, and shall be allowed upon taxation by the proper officer of the said Civil Court, subject to the review of the said Commissioner, upon complaint of the attorney so employed,

Employment by Official Assignee of Attorney.

or of any person having an interest in the due administration of the estate under sequestration ; and when it shall be made to appear to the said Civil Court that any attorney has improperly advised, commenced, conducted or defended any action or suit, or incurred any improper or unnecessary expense therein, with the purpose of thereby benefiting himself, and not with the *bond fide* purpose of thereby benefiting the insolvent estate, it shall and may be lawful for the said Court to order the whole or any part of the costs of such suit or action to be paid by such attorney, as the said Court shall think fit.

Employment by Official Assignee of insolvent or other person. LXI. THAT it shall and may be lawful for the said Official Assignee, if he shall see fit, to employ the insolvent, or any other person, in the gathering or preservation of any crops or produce, for any reasonable time necessary for the gathering and preservation thereof ; and also to leave the said insolvent, or to place any other person in the charge of any property, trade, or concern belonging to the insolvent estate, until the same shall be sold, disposed of, or wound up, and to make the said insolvent, or other person so employed, a reasonable allowance per diem for his labour.

Attendance, delivery of inventory, surrender at first meeting before Commissioner. LXII. THAT at the meeting for proof for debts, and at any adjournment thereof as aforesaid, the insolvent or legal administrator of any insolvent estate, shall attend before the creditors, to account for the said insolvency ; and shall, being thereto required by the creditors, lodge with the said Commissioner, to be by him delivered to the said Official Assignee, a true inventory of all such estate, and effects, real, and personal, wheresoever the same may be situated, and of all estates and effects in expectancy, or contingency, or to which the insolvent may have any eventual right, and all debts due to, and by him, to the best of his knowledge and belief, and all books of account, papers, writings, documents, bills, and vouchers relating to the said estate which are in his custody, or power ; and the said insolvent or administrator shall, upon being thereto required, surrender the said books, papers, writings, documents, bills and vouchers to the said Commissioner, to be by him delivered to the said Official Assignee.

Insolvent attempting to abscond, before distribution of estate, without consent of LXIII. THAT no insolvent shall remove out of the jurisdiction of the Civil Court, or to remote parts within this colony, (by which is intended parts beyond the limits which now are, or hereafter may be prescribed for location within the same), until after confirmation and

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allowance of the account, and plan of distribution of the estate of the said insolvent, as hereinafter mentioned, except with the consent in writing, of three-fourths in number, and value of creditors, who have proved debts against the estate, certified to the said Commissioner, or unless such insolvent shall have obtained his certificate, and the allowance thereof, as hereinafter is mentioned; and any Justice of the Peace shall and may, upon the information on oath of the said Official Assignee, or a creditor, or other person, that any insolvent is about to remove, or is making preparation to remove out of the jurisdiction of the said Court, or to remote parts within the colony as aforesaid, contrary to this Ordinance, grant a warrant for the apprehension of such insolvent, and cause such insolvent to be brought before himself, or any other Justice or Justices of the Peace; and any Justice or Justices before whom the insolvent shall be brought, shall and may inquire into the matters of the said information, and either commit the insolvent to any of Her Majesty's gaols until he shall be discharged in due course of law, or discharge him out of custody, according as he or they shall find such information to be well founded, or not; and every such commitment shall be and remain in full force and effect until the insolvent shall either find security in such manner and to such amount as shall be ordered by the said Commissioner of the said Civil Court, in that behalf, that he will not go out of the jurisdiction of the said Civil Court, or to such remote parts within the colony aforesaid, contrary to this Ordinance, or shall be otherwise discharged by the said Civil Court according to law.

LXIV. THAT it shall and may be lawful for the said Civil Court, upon the application of the said Official Assignee, whenever and so often as he shall see fit, to summon any insolvent before the said Civil Court, if the said Court shall see fit so to order, whether the said insolvent shall have obtained his certificate and allowance thereof or not; and it shall be lawful for such Court to examine him upon oath touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret alienation, transfer, surrender, delivery, or concealment of his estate or effects, real or personal, and to cause his examination to be reduced to writing, and signed by him, and annexed to the proceedings in the said estate.

LXV. THAT if any insolvent, being lawfully summoned, as

Warrant for apprehension of insolvent not appearing.

aforesaid, to appear before the said Civil Court, shall not, at the time and place appointed in the summons for his appearance, come before such Court (having no lawful impediment at such time made known to and allowed by such Court,) it shall be lawful for such Court to grant a warrant authorising any officer of the law, or other person, to apprehend such insolvent, and forthwith to bring him before such Court, or to lodge him in any prison, therein to be detained until the time which such Court as aforesaid shall have appointed anew, on the application of the said Official Assignee, for his examination; and the gaoler of every such prison shall cause him to be brought before such Court at the time and place specified in such warrant; and every insolvent who shall abscond or conceal himself within this colony, with the purpose and intent to evade being served with such summons, or having been so summoned, shall so abscond or conceal himself, with intent to evade appearing at any such examination to which he was summoned, or to prevent any warrant hereinbefore mentioned from being executed upon him, or who shall remove out of the jurisdiction of the Civil Court, or to remote parts within the colony, contrary to this Ordinance, shall be deemed guilty of a misdemeanour, and shall, on conviction thereof, suffer penal servitude for any period not exceeding four years, or imprisonment, with or without hard labour, for any period not exceeding two years.

In what cases insolvent under examination may be committed.

LXVI. THAT if any insolvent shall, at the meeting for proof of debts of creditors, or any adjournment thereof, held as aforesaid, being thereunto required, refuse to lodge a true inventory of his estate and effects, or to surrender the books, papers, writings, documents, wills, or vouchers relating to his estate as aforesaid, or shall, at his examination before the said Court, refuse to be sworn, or shall refuse to answer any lawful question put to him by such Court touching any of the matters aforesaid, or shall refuse to sign or subscribe his examination so reduced into writing as aforesaid, (not having any lawful objection allowed by such Court,) it shall be lawful for such Court, by warrant, to commit him to such prison as such Court shall think fit, there to remain, without bail, until he submit to do the matters aforesaid, or to be sworn, or to make answer to such lawful questions as shall by the said Court be put to him, or sign and subscribe such examination as aforesaid.

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LXVII. THAT after surrender or adjudication of sequestration of any estate as insolvent, it shall and may be lawful for the said Civil Court, upon the application of the said Official Assignee, to summon before the said Court the wife of the insolvent, or any other person known or suspected to have in his or her possession any of the estate of the insolvent, or to be indebted to the insolvent, or whom the said Court may see reason to believe capable of giving information concerning the trade, dealing, or estate of such insolvent, or any information material to the full disclosure thereof; and also to require such person to produce any books, papers, deeds, writings, or other documents in his or her custody which may appear necessary to the verification or disclosure of any of the matters aforesaid; and it shall and may be lawful for the said Civil Court to examine every such person on oath concerning the trade, dealings, or estate of such insolvent, and to cause his or her examination to be reduced to writing, and signed by him or her, and annexed to the said proceedings; and if any such person shall, on being lawfully summoned to appear to be examined, fail so to appear (having no lawful impediment made known to the said Court before whom such person is summoned at such time and allowed), it shall be lawful for such Court to grant a warrant authorising and directing any officer of the law or other person to apprehend the person so summoned and failing to appear, and to bring the said person before such Court, or to lodge the said person in any prison, therein to be detained until the time which such Court shall, on the application of the said Official Assignee, have appointed anew for his or her examination; and the gaoler of any such prison shall cause such person to be brought before such Court at the time and place specified in such warrant; and if any such person so summoned or brought before such Court for examination shall refuse to be sworn, or shall refuse to answer any lawful questions put by such Court touching any of the matters aforesaid, or shall refuse to sign his or her examination so reduced into writing as aforesaid (not having any lawful objection allowed by the said Court,) or shall not, being thereunto required, produce any books, papers, deeds, writings, or other documents in his or her custody or power relating to any of the matters aforesaid, and to the production of which he or she shall not state any objection allowed by the said Court, it shall be lawful for such Court by a warrant to commit him or her to such prison as it shall think fit, there to remain, without bail, until such person shall submit to be sworn or make answers to all such

Wife or any person may be summoned for examination before Court or Commissioner.

lawful questions as shall by such Court be put, or sign such examination, or produce such books, papers, deeds, writings or other documents as aforesaid in his or her custody or power, to the production of which no such objection as aforesaid shall be allowed; and if any such person, having been sworn, shall, at such examination, wilfully make any false answer to any lawful question put by such Court, such person shall be deemed guilty of the crime of perjury, and on conviction thereof shall suffer any punishment by law provided for such crime.

Expenses to be tendered to person summoned. LXVIII. THAT the insolvent and every other person summoned before the said Civil Court to be examined or give evidence or make disclosure of the trade, dealing, estate, or effects of any insolvent under or by virtue of this Ordinance, shall have his or her necessary expenses tendered to him by the said Official Assignee, in like manner as is by law required respecting a witness in any civil suit.

As to discharge from prison by Court or Commissioner of person under commitment. LXIX. THAT if any person whatsoever be committed by the said Commissioner for refusing to answer any question, the said Commissioner shall in his warrant of commitment specify every such question; and if any person so committed as aforesaid shall make any application to the said Civil Court in order to be discharged from such commitment, and there shall not appear to the Court any insufficiency or informality in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for such Court, and such Court is hereby required to recommit such person to the same prison, there to remain until he shall conform as aforesaid, unless it be shewn to such Court by the party committed that he has fully answered all lawful questions put to him on his examination aforesaid, or if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such Court that he had a sufficient reason for the same: Provided that such Court shall, if required thereto by the party committed, consider the whole examination of such party whereof any such question was a part, and if it shall appear from the whole examination that the answer or answers of the party committed, is or are satisfactory, such Court shall and may order the party so committed to be discharged.

LXX. THAT if any insolvent, whose estate shall be surrendered or be adjudged to be sequestrated as insolvent shall, whether before or after sequestration, have alienated, transferred, given, surrendered, delivered, mortgaged, or pledged, or have embezzled, concealed, retained, or removed any part of his estate, monies, effects, or credits, real or personal, to the value of forty shillings at any one time, or at different times to the value of ten pounds, or have concealed, removed, retained, destroyed, falsified, or mutilated any book of account, paper, writing, document, bill, or voucher relating thereto, with intent to defraud his creditors, or shall have contracted any debt fraudulently or by means of any false pretence or representation, or if any such insolvent shall at the second meeting of his creditors, or any adjournment thereof, holden before the said Commissioner, wilfully lodge any inventory containing any false statement of his estate or effects, real or personal, or any part thereof, or with respect to any debt due to or by him, or shall produce any false or pretended book of accounts, paper, writing, document, bill, or voucher, or any book of accounts, paper, writing, document, bill, or voucher on which any erasure, alteration, or false statement has been made, or caused to be made by him, or with his knowledge, with intent to defraud his creditors, or if any such insolvent shall, at any time when examined in manner aforesaid before the said Court or Commissioner, wilfully make any false answer to any lawful question then put to him, with intent to defraud his creditors, he shall be deemed guilty of the crime of fraudulent insolvency, and, on conviction thereof, shall suffer penal servitude for any period not exceeding eight years, or imprisonment, with or without hard labour, for any period not exceeding three years.

What shall be considered fraudulent insolvency, and the punishment thereof.

LXXI. THAT if any person shall receive or accept any alienation, transfer, gift, surrender, delivery, mortgage, or pledge made by any insolvent, of any part of his estate, monies, or securities for money, effects, or credits, with intent to defraud the creditors of the insolvent, knowing at the time the same to be fraudulently made, such person shall, on conviction thereof, suffer penal servitude for any period not exceeding eight years, or imprisonment, with or without hard labour, for any period not exceeding three years.

As to offence of knowingly receiving any fraudulent alienation, &c., from insolvent.

LXXII. THAT if any person shall dispose of or remove, conceal, embezzle, or receive any moveable property, monies, or securities for money belonging to any insolvent estate which has or have been attached

As to offence of removing, embezzling, &c., any property under attachment.

attached by virtue of any order for the sequestration thereof, knowing the same to have been so attached, and with intent to defeat the said attachment, or shall hinder or obstruct the messenger or other person authorised to make the same, such person shall, on conviction thereof, suffer imprisonment, with or without hard labour, for any period not exceeding three years.

Warrant to search for concealed property of any insolvent.

LXXIII. THAT in all cases where, on application of the said Official Assignee or creditor of any insolvent estate, it shall be made to appear on oath to the satisfaction of any Justice of the Peace that there is reason to suspect or believe that property of any insolvent is concealed in any house or other place not belonging to the insolvent, it shall and may be lawful for the said Justice to grant a warrant to search for and take the said property; which warrant shall be executed in like manner as is by law allowed in execution of a search warrant for property reputed to be stolen and concealed; and any property of the insolvent so found shall forthwith be delivered to the said Official Assignee, or to any person appointed by the said Commissioner or the said Official Assignee to receive the same.

Time and mode of appointing third meeting of creditors.

LXXIV. THAT it shall be lawful for the said Commissioner, and he is hereby required to appoint a third meeting of the creditors of the insolvent, to be holden before himself, at such time, not less than fourteen days, or more than twenty-eight days after the date of such appointment, and at such place as he shall deem most expedient for all parties concerned, for the purpose of receiving the report of the said Official Assignee as to the condition of the insolvent estate, and for giving directions to the said Official Assignee as to the management thereof; and the said Official Assignee shall give notice of the time and place at which, and of the purposes for which such meeting is to be held.

Trustees may compound or submit to arbitration upon notice thereof.

LXXV. THAT it shall and may be lawful for the said Official Assignee to compound with any debtor to the insolvent estate, and take any reasonable part of the debt in discharge of the whole (being thereto authorised by the said Commissioner), or to give a reasonable time or take security for the payment of such debt, or to submit any dispute between him and any person concerning or affecting the said estate, to the determination of arbitrators to be chosen by the said Official Assignee, and the party with whom he shall have

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such dispute; and the award of such arbitrators shall be binding on all the creditors.

LXXVI. THAT the said Official Assignee shall, subject to the directions of the creditors, given in the manner hereinbefore provided, forthwith proceed to make sale of the property belonging to the said estate, real and personal, giving due notice thereof in the public papers, and also such other notice as they shall think fit: Provided that from the sale of the said personal property shall be excepted, until the creditors shall determine thereon, the wearing apparel, bedding, tools of trade, and household furniture of the insolvent and his family.

As to sale by Official Assignee, condition of sale, &c.

LXXVII. THAT for the better protection of purchasers and others, it is declared and enacted that the same title to property, whether land or chattels, belonging to or forming part of any insolvent estate, whether legal or equitable, and whether in possession or reversion only, or expectancy, shall or may be conveyed or transferred in fee, or otherwise, as the case may be, to any purchaser, mortgagee or other person, by the said Official Assignee, for the time being, as the insolvent himself had or was by law entitled or able to convey or transfer immediately before the sequestration of the said estate; and it shall not be essential to the validity of any such conveyance or transfer (so far as it affects the right of any person to execute the same as Official Assignee) to prove more than the fact of his appointment; that at the time of the execution of the instrument he had not been removed from office; and that there was then no Assignee in or of the estate other than the said Official Assignee executing the same; of which several facts the certificate of the said Commissioner indorsed on such instrument of transfer shall be conclusive evidence.

Title conveyed by Official Assignee.

LXXVIII. THAT as often as it shall be deemed requisite to sell any portion of an insolvent's land, then being subject to any judgment, a certificate under the hand of the Commissioner of the said Civil Court, that the Official Assignee is authorised to sell such land for the benefit of such insolvent's creditors, shall have the effect of a certificate of satisfaction of all and every such judgment or judgments, and shall be received, entered and recorded by the Registrar of Deeds in like manner as a certificate of satisfaction under the provisions of the Registration Ordinance, 19th Victoria, No. 14; and

Insolvent's lands subject to judgment to be transferred by Assignee free from judgment.

that a certificate obtained by an insolvent under the provisions of this Ordinance shall also have the effect of a certificate of satisfaction of all judgments, as to which such certificate shall be a discharge under this Ordinance, and that a copy of such certificate, authenticated under the hand of the Official Assignee, shall be received, entered and recorded by the said Registrar of Deeds in like manner as a certificate of satisfaction under the said Ordinance, 19th Victoria, No. 14.

As to wearing apparel, tools, &c., of insolvent.

LXXIX. THAT it shall and may be lawful for the said Official Assignee, with the consent of the greater part in number and value of the creditors who shall have proved their debts, present at any meeting, whereof and of the purpose of which twenty-eight days' notice shall have been given in the public papers, to permit the said insolvent to retain for his own use the whole or such part of his wearing apparel, bedding, household furniture, and tools of trade excepted from the sale of his personal property, as the said creditors shall agree to allow to the said insolvent.

As to Official Assignee paying in and drawing money from the bank.

LXXX. THAT the said Official Assignee of any insolvent estate shall, as soon as he shall receive any sum of money exceeding twenty pounds belonging to the said estate, open an account with the bank in this colony approved by the said Commissioner in the name of the insolvent estate, and such sum and every other sum exceeding twenty pounds so received by him shall be forthwith paid into such bank, to be placed to the credit of such account; and all cheques or orders for payment of any such money out of the said bank shall be signed by the said Official Assignee.

Penalty upon Official Assignee for misconduct.

LXXXI. THAT any Official Assignee who shall retain in his hands any sum of money exceeding twenty pounds sterling, part of an insolvent estate, longer than until the first day after his receiving the same, upon which it shall be possible for him to pay the said sum, or cause it to be paid into the said bank, and who shall not have any just and lawful cause for so retaining the same, or shall employ for his own benefit any sum of money part of an insolvent estate, shall forfeit and pay, for the benefit of the said estate, double the amount of the sum so retained or employed; and the said sum, so forfeited, shall be deducted out of any claim the said Official Assignee may have against the said estate, and the surplus, if any, shall be recovered by action to be brought by

any creditor appointed for that purpose by the said Commissioner on behalf of himself and the other creditors.

LXXXII. THAT the said Official Assignee shall keep an account, wherein he shall forthwith enter all property of the insolvent received by him, and all payments made by him, on account of the insolvent estate, which account every creditor who shall have proved, may inspect at all reasonable times.

Accounts of the Official Assignee.

LXXXIII. THAT if any insolvent shall have entered into any agreement for the purchase or exchange of any estate or interest in any real property, it shall and may be lawful for the said Official Assignee either to abide by, execute, and sue for performance of such agreement, or abandon the same; and if the said Official Assignee shall not (upon being thereto required) elect whether he will abide by and execute such agreement as aforesaid, or abandon the same, the vendor or person having made such agreement as aforesaid, or any one legally claiming under him, shall be entitled to apply to the said Commissioner, who may thereupon order the said Official Assignee to deliver up any such agreement and the possession of the premises to the vendor or person so agreeing as aforesaid, or any one claiming under him, or may make such other order therein as the said Commissioner shall think fit: Provided that nothing herein contained shall prevent such vendor or person having made such agreement as aforesaid from suing the said Official Assignee and recovering judgment against the insolvent estate, for any damage which he shall prove to have been by him sustained by the non-fulfilment on the part of the insolvent of any such agreement, or shall deprive the said Official Assignee of his legal defence against such suit.

Powers of Official Assignee in respect of agreements entered into by insolvent for purchase or exchange of real property.

LXXXIV. THAT any insolvent entitled to a lease, or agreement for a lease, if the said Official Assignee accept the same, shall not be liable to pay rent accruing after the order of sequestration, or to be sued in respect of any non-observance or non-performance of any conditions, covenants or agreements therein contained; and if the said Official Assignee decline the same, shall not be liable as aforesaid, in case he deliver up such lease or agreement to the lessor or person agreeing to grant a lease within fourteen days after he shall have had notice that the said Official Assignee shall have declined as aforesaid; and if the said Official Assignee, shall not, upon being

Insolvent entitled to lease or agreement for lease when liable for rent or covenant, and remedy of lessor, &c., when Official Assignee refuse to accept, &c.

thereto required, elect either to accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, shall be entitled to apply to the said Commissioner of the Civil Court, who shall order the said Official Assignee to deliver up such lease or agreement and possession of the premises, or make such order therein as he shall think fit.

Time and mode of offering composition by the insolvent or on his behalf, and proceedings thereon.

LXXXV. THAT if at the third public meeting of the creditors appointed by the said Commissioner aforesaid, or at any subsequent meeting of the creditors assembled together by advertisement in the public papers, the insolvent, or any person on his behalf, shall make an offer of composition or security for composition, which the greater part of the creditors in number and value assembled at such meeting shall agree to accept, the said Official Assignee shall forthwith call another meeting for the purpose of deciding upon such offer, whereof at least twenty-one days' notice shall be given by advertisement in the public papers, specifying the time, place, and purpose of such meeting; and if at such second meeting, three-fourths in number and value of the creditors then present shall also agree to accept such offer, or amended offer, then, upon such acceptance being testified by them in writing to the Civil Court, and upon oath of the insolvent that the same hath not been procured by him, or any one on his behalf, to his knowledge or belief, by any fraudulent or undue means or influence, it shall and may be lawful for the said Court to release the said estate from sequestration.

Account and plan of distribution, and when to be laid by Official Assignee before the Court.

LXXXVI. THAT the said Official Assignee of any insolvent estate shall, as soon as may be, and not later than four months after the issue of order for sequestration, unless upon application to the said Civil Court, upon sufficient cause to the satisfaction of the said Court, further time be given for that purpose, frame and lay before the said Commissioner an exact account of the balance of the said estate, containing the proceeds of all sales and debts then collected, and an account of all debts still outstanding, and an inventory of all property and effects still unsold, and also all debts due by the said estate, and shall form a plan for the distribution of the assets of the said estate, specifying, first, such creditors as are entitled to any preference in the order of their legal preference, and, secondly, the

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concurrent creditors, and the balance remaining for division amongst them.

LXXXVII. THAT as soon as the said Commissioner shall receive from the said Official Assignee any such account of the estate and plan for distribution, the same shall be open in the office of the said Court for the inspection of the creditors during a reasonable time, to be appointed by the said Commissioner, not being less than fourteen days from the advertisement thereof, according to the distance of the residence of any creditor who has proved a debt against the said estate, and the said Official Assignee shall cause notice thereof to be given in the public papers.

As to inspection and notice thereof.

LXXXVIII. THAT it shall and may be lawful for the insolvent, or any party interested in the estate under sequestration, and for any creditor who may consider himself aggrieved by the said plan of distribution, within the time aforesaid, to enter his objection in writing with the said Commissioner, stating the ground thereof; and also it shall and may be lawful for the Civil Court to permit such objection to be entered at any time before the final confirmation of the said plan, upon sufficient cause to be shown to the said Court, and upon such terms as the said Court shall impose.

As to objections of creditors thereon.

LXXXIX. THAT any person as aforesaid objecting to the said account or plan of distribution, shall apply to the said Civil Court, calling upon the said Official Assignee, and also upon the party whose interest might be affected thereby, to shew cause why the said plan should not be altered or amended, as the case may be; and thereupon it shall and may be lawful for the said Court, upon hearing the said parties, to make such order thereon as to the said Court shall seem fit: Provided, that whenever any alteration or amendment shall be ordered in the said plan whereby the interest of any party who has not made appearance in the said Court shall be affected, the same shall again be open for inspection of the creditors, and notice thereof shall be given as aforesaid.

As to proceedings before the Court thereon.

XC. THAT it shall and may be lawful for the said Official Assignee, after the expiration of the time appointed for inspection of the said account and plan of distribution, and no objection being entered thereto, or, if any objection has been stated, after the Court has made order thereon as aforesaid, to apply to the said

As to confirmation by the Court, and effect thereof.

Civil Court, praying that the said plan may be allowed and confirmed by the Court; and thereupon it shall and may be lawful for the said Court to allow and confirm the same; and such allowance and confirmation shall have the effect of a final judgment of the said Court as between the insolvent and the creditors of such insolvent respectively, and as to the amount of any debt therein specified against such creditors as shall afterwards be admitted by the said Court in manner hereinbefore provided, to prove their debts and rank upon the same estate, at any time before the final distribution thereof.

As to distribution of estate. XCI. THAT after confirmation and allowance of the said account and plan of distribution, the said Official Assignee shall, upon the demand of the said creditors, distribute the said estate according thereto; and the remedy of any creditor to obtain payment of any dividend due to him shall be during the continuance in office of the said Official Assignee, by application to the said Commissioner of the Civil Court and the order of the said Commissioner thereon.

Time and mode of insolvent obtaining certificate, and allowance thereof by the Court. XCII. THAT any insolvent may, after the third public meeting of his creditors, called by the said Commissioner as aforesaid, and after his examination (if any has been applied for and ordered as aforesaid) apply to his creditors for a certificate, testifying their consent to the discharge of the insolvent being granted by the Court, in manner hereinafter mentioned; and every insolvent who shall have obtained such certificate, signed by three-fourths in number and value of the creditors, who have proved debts against his estate, and who shall make oath in writing that such consent and certificate were obtained without fraud, and without his having used any undue means or influence, or having made any secret compromise with his creditors in order to obtain their consent and certificate, may apply to the said Civil Court to have his certificate allowed: Provided, that at least four weeks' notice of the day on which such application is to be made shall have been given by advertisement in the public papers; and if no objection shall be made thereto by any of the creditors of the insolvent, the said Court shall make an order allowing such certificate; but if any objection shall be made by any creditor, the said Court shall judge and determine thereon, and shall refuse or suspend the said certificate, or allow the same, absolutely or conditionally, as the

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justice of the case shall require : Provided always, that where, in consequence of the goods and effects of the insolvent being under the value of Fifty pounds, the proceedings in such case directed by this Ordinance shall have taken place, it shall be lawful for such insolvent at any time, not being less than two months after the said first meeting, to apply to his creditors for a certificate as aforesaid.

XCIII. THAT if any insolvent shall have committed any act herein declared to amount to the crime of fraudulent insolvency, or shall, after surrender of his estate or in contemplation of insolvency, or after notice of any order for sequestration of his estate, have destroyed, altered, mutilated or falsified, or caused to be destroyed, altered, mutilated or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entries in any book of accounts or other document, with intent to defraud his creditors, or if any person shall have proved a false debt against the estate of any insolvent, such insolvent, being privy thereto, or afterwards knowing the same, shall not have disclosed the same to the said Official Assignee within one month after such knowledge, such insolvent shall not be entitled to his certificate or allowance; and any certificate and allowance which such insolvent may have obtained shall be null and void.

In what cases insolvent not entitled to certificate, and, if obtained, when void.

XCIV. THAT any contract or security made or given by any insolvent or other person to or in trust for any creditor, or for securing the payment of any money due by such insolvent at his insolvency as a consideration or with intent to persuade such creditor to agree to accept any offer of composition or security for composition, or consent to sign such certificate, shall be and is hereby declared to be fraudulent and void; and the money thereby secured or agreed to be paid shall not be recoverable.

Contracts, &c., to persuade creditors to compound, or to sign certificate, void.

XCV. THAT every such certificate, when allowed by the said Civil Court, shall have the effect to discharge the insolvent from all debts (save and except debts of the nature hereinafter specified) due by him at the time his estate was surrendered or adjudged to be sequestrated, and from all claims and demands proved or hereby proveable against his estate; but no such certificate and allowance thereof shall have effect to release or discharge

Effect of certificate, and allowance thereof.

any person who was partner with such insolvent at the time of his insolvency, or who was then jointly bound, or who had made any joint contract with such insolvent: Provided always, that no such certificate as aforesaid shall discharge the insolvent obtaining the same from damages previously recovered against him for seduction, adultery, or defamation.

When insolvent Official Assignee not discharged as to his future effects. XCVI. THAT any Official Assignee becoming insolvent, and being indebted to the estate of which he was Official Assignee, in respect of any sum of money improperly retained or employed by him, if he shall obtain his certificate and allowance thereof, shall not be discharged thereby as to his future effects in respect of the said debt.

Mode of pleading certificate, and of obtaining discharge from imprisonment thereon. XCVII. THAT any insolvent who, after his certificate has been allowed, shall have any action brought against him for any debt, claim, or demand due by him at the time his estate was surrendered or adjudged to be sequestrated, proved or hereby made proveable against his estate, may plead in general, that the cause of action accrued before he surrendered his estate, or the same was sequestrated as aforesaid, and may give this Ordinance and the special matter in evidence; and such insolvent's certificate and allowance thereof shall be sufficient evidence of the insolvency, surrender, or adjudication and other proceedings precedent to the obtaining the said certificate and allowance thereof; and if any such insolvent shall be taken in execution or detained in prison for such debt, claim, or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for the said Commissioner of the Civil Court, on proof by such insolvent of his certificate and allowance thereof, to order any gaoler or officer who shall have the said insolvent in custody by virtue of the said execution to discharge him without exacting any fee from the defendant, and the said gaoler or officer shall be, and is hereby indemnified for so doing.

As to imprisonment of uncertificated insolvent, and proceedings thereon. XCVIII. THAT at any time after the plan of distribution of any insolvent estate has been confirmed in manner hereinbefore mentioned, or after the distribution of the said estate has been directed to be made under the provisions of this Ordinance, and before the insolvent shall have obtained his certificate and allowance thereof, it shall and may be lawful for the said Official Assignee

or any creditor of the said estate, to apply to the said Civil Court for an order of the said Court for the imprisonment of the said insolvent until satisfaction of his debt or lawful discharge therefrom: Provided the said insolvent shall first have been duly summoned to appear before such Court on the day whereon the said application shall be made, to shew cause why such order should not be made; and thereupon, and upon proof to the satisfaction of the said Court that the said estate is not sufficient to discharge the debts proved or proveable against the said estate as aforesaid, and that the insolvent hath reasonable means of discharging the same, or some part thereof, it shall and may be lawful for the said Court to grant the said order, absolutely or conditionally, or to refuse the same, as to the said Court shall seem just and reasonable: Provided that when the application shall be made by one or more creditors, and the said Court shall suspend the same upon the condition of the insolvent paying any sum of money, periodically or otherwise, such payment shall be made to the said Official Assignee or the said Commissioner, as the case may be, for the benefit of all the creditors.

XCIX. THAT the said Commissioner shall cause to be entered of record all proceedings relating to insolvency under this Ordinance, and shall have custody of all papers; and the insolvent and any creditor who has proved shall and may inspect the same, and take copies thereof; and all extracts of such proceedings, signed by the said Commissioner, shall be evidence. <sup>Record of proceed-
ings.</sup>

C. THAT the said Commissioner shall from time to time, as he may think fit, make all such rules, orders, and regulations for carrying this Ordinance into effect, and also touching the form and manner of proceeding, as to him shall seem fit; and also from time to time to rescind, alter, or vary such rules, orders, and regulations, and forms of proceeding, and make others in their place. ^{Rules, &c.}

CI. THAT in all suits or actions, and in all informations under this Ordinance, proof of the adjudication or order of sequestration by the production thereof, or of any office copy thereof, under the hand of the said Commissioner, shall be sufficient to prove that any party became or was insolvent, or that his estate was surrendered or sequestered as insolvent, or ordered or adjudged to be sequestered. ^{Proofs.}

Repeal of No. 6, of 1843, and No. 11, of 1849. CII. THAT the several Ordinances of this colony, No. 6, of 1843, and No. 11, of 1849, shall be, and the same are hereby respectively repealed.

Deposit of £8 towards expenses by petitioning creditor. CIII. THAT for the purpose of defraying the expenses of this Ordinance, every creditor who shall present a petition under this Ordinance, shall, before the said Court shall issue any order for sequestration thereon, pay into the hands of such Commissioner, who shall hand the same over to the Colonial Treasurer for the general purposes of Government, the sum of eight pounds; and the said Official Assignee shall, out of the monies coming to his hands from the insolvent estate, repay the said sum of eight pounds to the said creditor, and charge the same in the accounts of the estate.

Ordinance to extend to aliens, denizens, and women. CIV. THAT this Ordinance shall extend to aliens, denizens, and women; and the words herein purporting the singular number, or the masculine gender, shall include several matters as well as one matter, and several persons as well as one person, and females as well as males.

Short title. CV. THAT this Ordinance may be cited as the "Insolvent Ordinance of 1856."

Ordinance not to come into operation until confirmed. CVI. THAT this Ordinance shall not come into operation until it shall have received the Royal confirmation, nor until such confirmation shall have been notified by the Governor for the time being by proclamation or other public notice.

A. E. KENNEDY,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council this }
6th day of November, 1856. }*

HENRY WAKEFORD,
Clerk of the Council.

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SCHEDULES OF FEES AND COSTS REFERRED TO.**A.**

<i>Commissioner,—</i>	£	s.	d.
On hearing petition	1	1	0
Filing petition and schedule.. .. .	0	2	6
Affidavit or witness sworn	0	1	0
Order of discharge	0	2	6
Other orders or summons	0	1	0
Written examination, per folio of 72 words	0	0	3
Office copies, per folio of 72 words	0	0	9
Presiding at each meeting of creditors	1	1	0
<i>Official Assignee,—</i>			
Five per cent. on receipts of monies.			
Attendance before court, and at creditors' meetings.. .. .	0	10	0
Other moderate charges on special approval of Commissioner.			

B.

<i>Attorneys or Solicitors,—</i>	£	s.	d.
Instructions for petition	0	6	8
Instructions, if more than ten creditors	0	13	4
Instructions to present petition	0	3	4
For order of sequestration	0	3	4
Attending Commissioner on any motion	0	6	8
All other attendances	0	3	4
Instructions for special affidavits	0	6	8
Drawing and copying petition	0	3	6
Insolvent's schedule, per folio of 72 words... .. .	0	1	0
Common affidavits, orders, notices, and advertisements	0	3	4
Drawing and engrossing special affidavits, per folio of 72 words	0	1	0
Service of notices, &c., in town	0	2	6
Letters, absolutely necessary, per letter	0	2	6
Solicitor's fee for attending Court	0	10	6
Barrister's fee (if employed).. .. .	1	1	0
And any other moderate costs, on special approval of Commissioner.			