

Repeal 185 of 1880, S. 4  
385 of 186, S. 5



ANNO TRICESIMO TERTIO

# VICTORIÆ REGINÆ.

A.D. 1870.

No. 3.

*An Act to further amend the Insolvent Act, 1860.*

[Assented to, 16th June, 1870.]

**W**HEREAS it is expedient to further amend "The Insolvent Act, 1860"—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:—

Preamble.

1. This Act may be cited as the "Insolvent Further Amendment Act, 1870," and shall commence and take effect from and after the passing hereof.

Short title of Act.

2. Except so far as the same is inconsistent with, or altered by this Act, "The Insolvent Act, 1860," and "The Insolvent Amendment Act, 1867," shall be incorporated and read herewith as forming one Act.

Incorporation of Act with unrepealed part of "The Insolvent Act, 1860," and "The Insolvent Amendment Act, 1867."

3. This Act shall be divided into three parts.

Division of Act.

4. Sections 14, 15, 16, 34, 43, 45, and 177 of "The Insolvent Act, 1860," and so much of the said Act as relates to, and so far only as the same relates to the petition of a debtor other than a debtor in actual custody for debt in any gaol for adjudication of insolvency against himself, and the proceedings on and after such petition, are hereby repealed.

Repeal of Sections 14, 15, 16, 34, 43, 45, and 177 of No. 16, 1860.

PART I.—As to the appellate jurisdiction of the Supreme Court.

PART I.  
*Appeals to  
Supreme Court.*

5. If any insolvent, trustee, creditor, debtor, or any person claiming

Appeal to Supreme Court from determina-

*Insolvent Further Amendment Act, 1870.***PART I.**

tion of Court or Commissioner.

Appeal to be entered within twenty-one days.

Costs of appeal.

Appeals to be in accordance with the rules in force for time being.

Power of Supreme Court to rescind, vary, reverse, or confirm order of Court of Insolvency or of Commissioner, or may require Court of Insolvency to rehear whole matter.

Power to order costs.

**PART II.**  
*Arrangements by deed.*

Deed under Division VI. of the Insolvent Act, 1860, an act of insolvency after ten days, unless assented

claiming to be a creditor, or any person who shall have appeared and submitted to the jurisdiction of the Court of Insolvency, or who shall be affected by any order, determination, or direction of the said Court or the Commissioner, shall be dissatisfied with any order, determination, or direction of the Court or the Commissioner, in respect of a matter of fact or of law, or of the admission or rejection of any evidence, the person so dissatisfied may appeal from the same to the said Supreme Court: Provided that, if no such appeal shall be entered within twenty-one days from the date of any order, determination, or direction of the Court or the Commissioner, and be thereafter duly prosecuted, every such order, determination, or direction shall be final; and every appeal shall be subject to such regulation, in regard to security for costs, as shall, by any general rule or order, to be made in pursuance of "The Insolvent Act, 1860," be directed, and until such rule or order be made, subject to the direction of the said Supreme Court in each particular case.

6. All appeals from any order, determination, or direction of the Court or Commissioner shall be brought on, and conducted in conformity to such general rules as shall for that purpose from time to time be made by the Judges of the Supreme Court, or any two of them, and until such general rules be made in conformity with the direction of the Supreme Court in each particular case.

7. The said Supreme Court, on the hearing of any such appeal, shall have power, to rescind, vary, reverse, or confirm any order, determination, or direction made by the Court of Insolvency, or by the Commissioner, as the said Supreme Court shall think just, and shall have power to give such decision in the matter appealed from, as ought, in the opinion of the Supreme Court, to have been given by the Court of Insolvency or the Commissioner (as the case may be), and the said Supreme Court may adjourn any appeal for further consideration, and, in the meantime, refer any matter to the Commissioner for amendment, or require the Commissioner to report on any matter, in respect of which the said Supreme Court may require further information, or where the said Supreme Court shall be of opinion that it cannot do complete justice, it may require the Court of Insolvency to rehear the whole matter; and the said Supreme Court shall have power to order the costs of any appeal to be paid by either party, or part thereof by one party and part by another party, or of directing that the whole, or some part thereof, shall be paid out of the estate of the insolvent, in the matter of whose insolvency the appeal has been brought.

**PART II.**—As to arrangements between debtors and their creditors by deed.

8. A deed for the benefit of creditors, made and executed, or purporting to be made and executed, by a debtor, and to take effect under Division VI. of "The Insolvent Act, 1860," shall, at any time

*Insolvent Further Amendment Act, 1870.*

## PART II.

time after the expiration of ten days from the execution of such deed by the debtor, if such deed has not, in the meantime, been assented to by the requisite majority of the creditors of such debtor, be deemed to be an act of insolvency, and to have been committed by such debtor at the time of his executing such deed.

to by requisite majority of creditors.

9. Notwithstanding anything in "The Insolvent Act, 1860" contained, a deed for the benefit of creditors made and executed, or purporting to be made and executed, by a debtor, and to take effect under Division VI. of the said Act, shall, after the expiration of ten days from the execution thereof, be null and void, unless such deed shall be expressed to be made "in pursuance of Division VI. of the Insolvent Act, 1860;" and unless and until such deed shall have been executed by the Trustee or Trustees therein named within the time, and attested in the manner provided by Section 173 of "The Insolvent Act, 1860," and shall have been assented to by the requisite majority of creditors, and unless such assents shall have been obtained within ten days from the execution thereof by the debtor, and unless at the foot or end of the schedules required by the 174th Section of "The Insolvent Act, 1860" there shall be a declaration by the debtor verifying the contents of such schedules, which declaration shall be in the form or to the effect contained in the Schedule A to this Act annexed.

Deed to have no effect unless purporting to be executed under Division VI and in manner provided by Section 175 of "The Insolvent Act, 1860."

10. Any debtor, having executed such deed as before mentioned, who shall during the period of ten days from the execution thereof be arrested at the suit of any creditor by virtue of any process against the person of such debtor shall, on production of a protection order as provided for by the said Insolvent Act, 1860, be freed from such arrest.

Debtor executing deed free from arrest.

11. Notwithstanding anything in the Insolvent Act, 1860, or this Act contained, it shall not be lawful for the trustee or trustees thereof to realize, make sale, or otherwise dispose of any portion of the debtor's property, except property of a perishable nature, assigned by such deed, within the said period of ten days from the debtor's execution thereof, but such deed shall within such period have, and shall be deemed to have the effect only of protecting the debtor's person (except as aforesaid) and the estate so assigned for the said period of ten days, for the benefit of the creditors of such debtor, and if the requisite majority of creditors as hereinbefore provided shall have executed or assented to such deed, within the period aforesaid, the same, or a like majority in number and value of the creditors of such debtor shall have power at any time thereafter to substitute and appoint any other trustee or trustees in the place of the trustee or trustees appointed by such deed in the first instance, which substitution and appointment may be in form or to the effect contained in Schedule C to this Act, and such substitution and appointment shall, without any other conveyance or assignment, vest in the trustee or trustees therein named all and singular the property, of whatever kind or wheresoever situate, of the debtor having executed

Powers and appointment of trustees.

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PART II.

executed such deed in like manner as is provided by clause 179 of the Insolvent Act, 1860, and the trustee or trustees so substituted and appointed as aforesaid shall be liable, in all respects, to the provisions of this Act, and of the "Insolvent Act, 1860," in the same manner as if such last-mentioned trustee or trustees had been appointed by the original deed.

Sales under execution to be by auction.

12. Whenever an execution issued out of any Court is executed upon the goods and chattels of a debtor, such goods and chattels shall, in case of a sale thereof, be sold by public auction, and not by bill of sale or private contract, and, unless such goods shall be of a perishable nature, at least five days' public notice of such sale shall be given.

Sheriff or bailiff receiving notice of deed to retain proceeds of execution, or pay same into Court.

13. If, during the period of ten days after the debtor's execution of such deed as before-mentioned, and before such deed shall have been assented to by the requisite majority of creditors, the goods and chattels of such debtor shall be seized or sold by virtue of any sequestration, execution, or other process, at the suit of any creditor, the sheriff or bailiff charged with the execution of such process shall, after notice of such deed, retain the net proceeds of such execution in his hands, or shall pay the same into the Court out of which such process shall have issued, and the creditor at whose suit such process shall have issued shall not be entitled to the proceeds thereof, or any part thereof, until the expiration of the said period of ten days, when, if such deed has then been assented to by the requisite majority of such creditors, the proceeds shall be paid to the Trustees of such deed as part of the general estate of the debtor, or may be recovered by such Trustees on summary application to the Court in which the same has been paid, and on proof of the requisites in that behalf.

And if deed executed by requisite majority, proceeds to go to Trustees or be recovered on summary application.

Trustees to file copy of deed, schedules, and declarations within fourteen days.

14. The Trustees of any such deed as before mentioned, having executed the same shall, within fourteen days from the execution of such deed by the debtor, file with the Registrar of the Court of Insolvency, a true copy of such deed, with the schedules and declarations thereto, and all assents and declarations relating thereto, which shall be open to public inspection.

Assenting creditors to sign deed, or assent thereto in writing, and declare as to amount of his debt, &c.

15. No creditor shall be reckoned in the computation of the requisite majority of assenting creditors, unless his assent to such deed shall be evidenced by his signature thereto, or by an assent thereto in writing under his hand, and unless such signature or assent be accompanied by a declaration made by such creditor, verifying the amount of his debt, the nature of the securities or liens, if any held for the same, and the estimated value of such securities or liens, and the amount of any cross account or set off due from the creditor to the debtor, which declaration shall be in such one of the forms contained in Schedule B, to this Act annexed, as shall be applicable to the case, or to the like effect: Provided that any one partner of a firm of creditors may sign or assent to such deed on behalf of the firm,

Provision as to partners making declaration.

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firm, and may make the declaration by this section required to be made, verifying the several matters hereinbefore required to be verified; and any agent, duly authorized in that behalf, may sign or assent to such deed on behalf of a creditor, and may make the declaration, by this clause required to be made, verifying the several matters hereinbefore required to be verified; and such partner or agent shall, in such declaration, state that he is such partner or agent duly authorized, as the case may be, and such statement shall be made in such of the forms contained in the said Schedule B as shall be applicable to the case, or to the like effect.

16. In the construction of this Act, and for all purposes connected therewith, the requisite majority of creditors of any debtor shall be held and deemed to be three-fourths in value, and one half in number, of such creditors: Provided that every creditor in respect hereof shall be accounted a creditor for value in respect of such amount only as upon an account fairly stated, after allowing the value of securities or liens held by the creditor, and the amount of any debt or set off owing from such creditor to the debtor shall appear to be the balance due to such creditor: Provided also, that no creditor whose debt shall not amount to Five Pounds shall be reckoned in number, but such debt shall be computed in value only.

Requisite majority of creditors to be three-fourths.

Creditors under £10 not to be reckoned in number, but in value only.

17. Any person stating himself in writing to be a creditor of the debtor executing such deed, as before mentioned, shall be entitled personally, or by his attorney or agent, at all reasonable times on application to the Trustees of such deed, or one of them, their attorney, or agent, or at the place where such deed may be lying for inspection and execution, to inspect such deed and the schedules thereof, and the assents of creditors, and all declarations by, and accounts furnished by creditors, and any books, accounts, papers, or documents relating to the estate and effects of the debtor which may be in the custody, control, possession, or power of the Trustees, and may make copies of or take extracts therefrom, respectively.

Creditors entitled to inspect deed at all times.

18. Any creditor, whether he shall have assented to such deed as aforesaid or not, may upon making affidavit that he suspects a debtor having executed such deed as before mentioned has not fully disclosed his estate and effects, or had, within two calendar months prior to the execution of such deed, made a fraudulent preference to any creditor, or that such debtor or any Trustee of such deed has concealed, or is making away with, or improperly, or fraudulently dealing with the estate or effects of the debtor, or any part thereof, cause the debtor or Trustee, at any time after the execution of the deed by such debtor or Trustee, as the case may be, to appear and be examined in the Insolvent Court before the Commissioner of Insolvency: Provided, that nothing in this section contained, shall take away or abridge any jurisdiction or authority belonging to the Court of Insolvency independently hereof.

Debtor suspected of not fully disclosing his estate, or Trustee improperly dealing with estate may be brought before Commissioner.

19. Every declaration by this Act authorized, directed, or required to be made, shall be in writing, signed by the person making the  
D same

Declarations to be made before a practitioner of the Supreme

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## PART II.

Court, a Justice of the Peace, or Clerk of Local Court.

Declarations to be *prima facie* evidence.

False declaration a misdemeanor, punishment same as in perjury.

Debtor concealing or embezzling any of his estate, &c.

Trustee concealing or embezzling estate, &c.

In criminal proceedings, production of deed, &c., conclusive evidence, notwithstanding any alleged defect.

Forms in Schedule may be altered, &c.

same, and may be taken and made by or before a practitioner of the Supreme Court, Justice of the Peace, or Clerk of the Local Court, who, and each of whom, are hereby required and authorized to take the same and attest such declaration when made, and in and by such attestation it shall be stated whether the person taking the same is a practitioner of the Supreme Court, Justice of the Peace, or Clerk of the Local Court, as the case may be, and every such declaration so made and taken shall in all Courts, and on all occasions, be deemed *prima facie* evidence of the truth of the matters therein declared to.

20. Any person who shall in any declaration authorized, directed, or required by this Act, wilfully and corruptly state and declare anything which shall be false, shall be guilty of a misdemeanor, and being convicted thereof shall be liable in all respects to the penalties and punishments by law provided for wilful and corrupt perjury.

21. If any debtor, having executed such deed as before mentioned or who shall thereafter execute such deed, shall remove, conceal, or embezzle any part of his estate or effects to the value of Ten Pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors under such deed, every such debtor shall be deemed guilty of a misdemeanor, and be liable to imprisonment, with or without hard labor, for any term not exceeding three years.

22. If any Trustee, under any such deed as before-mentioned, having executed such deed, shall remove, conceal, or embezzle any part of the estate of the debtor coming to his hands, possession, or control as such Trustee, or by virtue of such deed, or any books of account, papers, or writings relating thereto, with intent to defraud the creditors of such debtor, every such Trustee shall be deemed guilty of a misdemeanor, and be liable to imprisonment, with or without hard labor, for any term not exceeding three years.

23. In any criminal proceeding instituted by or under this Act, the production or proof of a deed purporting or expressed to be made in pursuance of Division VI. of "The Insolvent Act, 1860;" and proof that the same was executed by the debtor shall be *prima facie* evidence of such deed and the contents thereof for all purposes of such criminal proceeding, notwithstanding any alleged defect in such deed or non-compliance with the provisions of this Act or of "The Insolvent Act, 1860," and any information, summons, indictment, conviction, warrant, or other process shall be deemed to contain a sufficient description of the alleged offence, if such offence be therein described in the words of this Act, with such additions or variations as the circumstances of the case may require.

24. The form given in the Schedules to this Act annexed, may be altered or adapted to meet the circumstances of any particular case, and any directions in such Schedule contained, shall be incorporated with, and form portion of this Act, as if expressly enacted herein.

PART III.

*Insolvent Further Amendment Act, 1870.*

PART III.—As to proceedings to obtain Adjudication of Insolvency:

25. The amount of the debt of any creditor petitioning for adjudication of insolvency shall be as follows, that is to say the single debt of such creditor, or of two or more persons being partners so petitioning, shall amount to Twenty Pounds, and the debt of two creditors so petitioning shall amount to Thirty Pounds, and the debt of three or more persons so petitioning shall amount to Fifty Pounds, and every person who has given credit upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when the debtor committed an act of insolvency, may so petition, or join in petitioning, whether he shall have held any security in writing for such sum or not.

26. Nothing in this Act contained shall extend to or affect any appeal from the Court of Insolvency now pending or any proceedings instituted or pending in the Court of Insolvency, or any deed executed by any debtor, prior to the coming in force of this Act.

27. This Act may be altered, amended, or repealed by any Act passed in the present Session of Parliament.

## PART III.

*Proceedings to obtain Adjudication of Insolvency.*

Petitioning creditor's debt, single creditor (or two being partners), £20; two creditors, £30; three or more, £50.

Creditors holding security or not may join in petitioning.

Not to affect proceedings pending.

Act may be amended during present Session.

In the name and on behalf of the Queen I hereby assent to this Act.

JAMES FERGUSSON, Governor.

*Insolvent Further Amendment Act, 1870.*

SCHEDULES REFERRED TO.

[NOTE.—The figures in brackets in the different forms refer to the directions at foot thereof respectively.]

A

*Declaration by Debtor verifying Schedules.*

“Insolvent Further Amendment Act, 1870.”

SOUTH AUSTRALIA, } In the matter of the deed hereto annexed, made in pursuance  
*To wit.* } of Division VI. of “The Insolvent Act, 1860,” whereby  
 [1] conveys and assigns his estate and effects to [2] as  
 Trustee, for the benefit of his creditors, which deed is dated the [3] day  
 of 187 .

I, [1] of [4] hereby declare as follows, that is to say:—

1. The foregoing schedule [5] contains a true and particular account of all the property (except certain articles of household furniture, wearing apparel, and like necessaries of myself and my family, as are hereunder specified, and as I claim to retain) of which I am possessed, or of which any person or persons in trust for me is or are possessed, or to which I, or any such person or persons on my behalf, am, is, or are entitled legally or equitably in possession, reversion, or expectancy, so far as I am able to set forth the same, and in all respects to the best of my knowledge, or means of knowledge, information, or belief.

2. The foregoing schedule [5] contains the names of my several creditors, and the amounts respectively due to such creditors, to the best of my knowledge, or means of knowledge, information, or belief.

3. The excepted articles mentioned and referred to in the first paragraph of this declaration, and which I claim to retain, are set forth hereunder as follows: [6]

4. Such excepted articles, as mentioned in the last paragraph hereof, do not exceed in value the sum of Thirty Pounds.

[10]

Declared at [7] this [8] day of 187 ,  
 before me, the undersigned, a [9] of the said Province. [11]

*Directions to be observed in the use of the foregoing Form.*

The blanks are to be filled up as follows:—

- |   |   |   |
|---|---|---|
| 1. Name of debtor.<br>2. Names of Trustees.<br>3. Date of deed.<br>4. Residence and occupation of debtor.<br>5. Distinguishing mark, or other reference, to identify schedule referred to.<br>6. List of articles retained. | } | 7. Place where declaration taken.<br>8. Date when declaration taken.<br>9. Practitioner of the Supreme Court, Justice of the Peace, or Clerk of Local Court, as the case may be.<br>10. Signature of debtor declaring.<br>11. Signature of person taking declaration. |
|---|---|---|

B

*Declaration by Creditor signing or assenting to Deed, without Security.*

“Insolvent Further Amendment Act, 1870.”

SOUTH AUSTRALIA, } In the matter of the deed made in pursuance of Division VI. of  
*To wit.* } “The Insolvent Act, 1860,” whereby [1] of  
 [2] conveys and assigns his estate and effects to [3] as  
 Trustees for the benefit of his creditors, which deed is dated the [4] day  
 of 187 .

Sec. 9

Sec. 15



*Insolvent Further Amendment Act, 1870.*

I, [5] of [6] hereby declare as follows, that is to say:—

1. I am a creditor upon the estate of the above-named debtor, [1] and claim to assent to the above-mentioned deed.

2. The said debtor is justly and truly indebted to me in the sum of [7] being for [8]

3. I hold no security of any kind whatever for all or any part of the debt so owing to me from the said debtor as aforesaid, nor have I any lien therefor, nor am I indebted to the said debtor, or to his estate, in any amount whatever.

Declared at [10] this [11] day of [9] 187  
before me, the undersigned, a [12] of the said Province.

[13]

*Declaration by Creditor signing or assenting to Deed with Security or Set-off.*

“Insolvent Further Amendment Act, 1870.”

SOUTH AUSTRALIA, } In the matter of the deed made in pursuance of Division VI.  
To wit. } of “The Insolvent Act, 1860,” whereby [1] of  
[2] conveys and assigns his estate and effects to [3] as  
Trustees for the benefit of his creditors, which deed is dated the [4] day  
of 1870.

Sec. 15.

I, [5] of [6] hereby declare as follows, that is to say:—

1. I am a creditor upon the estate of the above-named debtor [1] and claim to assent to the above-mentioned deed.

2. The said debtor is justly and truly indebted to me in the sum of [14] being for [8]

3. The only securities or liens of any kind or description held by me for all or any portion of the amount due to me from the said debtor, and the natures of such securities or liens so held by me, and the value thereof respectively, are as follows, that is to say [15]

4. I am not indebted to the estate of the said debtor in any sum of money whatever other than the sum of [16] being for [17]

5. I am entitled to account, as a creditor, for value on the estate of the said debtor in respect of the sum of £ [18] being such amount as upon an account fairly stated, and allowing the value of the securities and liens so held by me as aforesaid, and all sums of money owing by me to the estate of the said debtor, is the balance due to me in respect thereof.

Declared at [10] this [11] day of 187, before me the undersigned a [12] of the said Province.

[13]

*Directions to be observed in the use of the foregoing Forms.*

In the case of the declarant being a partner, the form must be altered accordingly, and the declarant must declare that he is such partner, and the full names and residences of other members of the firm.

In the case of the declarant being an agent, the form must be altered accordingly, and the declarant must insert at the commencement of his declaration the following additional paragraph thereof:—

1. I am an agent for [insert name, residence, and description of creditor] a creditor upon the estate of the abovenamed debtor, and am duly authorized by the said creditor to execute the above-mentioned deed.

The blanks in the above forms are to be filled up as follows:

- |  |   |
|--|---|
| 1. Name of debtor.   | 12. Practitioner of the Supreme Court, Justice of the Peace, or Clerk of the Local Court, as the case may be. |
| 2. Residence and occupation of debtor.                         | 13. Signature of person taking declaration.   |
| 3. Names of trustees.  | 14. Gross amount due to creditor without allowing for securities or contra account.                           |
| 4. Date of deed.   | 15. Particulars of securities and liens, and other particulars as mentioned in declaration.                   |
| 5. Name of declarant.  | 16. Amount of contra account due.   |
| 6. Residence and occupation of declarant.                      | 17. Particulars of contra account.  |
| 7. Amount due to creditor where no security or contra account. | 18. Balance in respect of which creditor claims against the estate.   |
| 8. Particulars in respect of which amount is due to creditor.  |   |
| 9. Signature of declarant.                                     |   |
| 10. Place where declaration taken.                             |   |
| 11. Date when declaration taken.                               |   |

C.

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*Insolvent Further Amendment Act, 1870.*


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## C

This indenture made the            day of            , 187    , between the several persons and bodies corporate, whose names and seals are subscribed and set at the foot hereof, being severally creditors in their own right, or in copartnership, or being agents or attorneys of creditors of the within-named (hereinafter called the said parties hereto of the first part),            of the one part, and            of            , of the other part: Whereas the said parties hereto of the first part are desirous of appointing            to be trustee or trustees of            in the place of            under indenture of assignment, bearing date the            day of            : Now this indenture witnesseth, that in exercise of the power for this purpose by the "Insolvent Amendment Act, 1870" given to the said parties hereto of the first part, and of every other power in anywise enabling them in that behalf, they, the said parties hereto of the first part, do hereby substitute and appoint the said            to be a trustee (or trustees, as the case may be), in the place of the said            , for the purposes of the said recited indenture. In witness, &c.

Signed, sealed, &c.