



ANNO QUADRAGESIMO QUINTO ET QUADRAGESIMO
SEXTO

VICTORIÆ REGINÆ.

A.D. 1882.

No. 276.

An Act to amend the Law of Insolvency.

[Assented to, November 17th, 1882.]

WHEREAS it is expedient to amend the law relating to Insol-
vency—Be it therefore Enacted by the Governor of the Province of South Australia, by and with the advice and consent of the Legislative Council and House of Assembly of the said province, in the present Parliament assembled, as follows:

Preamble.

1. This Act may be cited for all purposes as “The Insolvency Act, 1882,” and shall be incorporated and read together with “The Insolvent Act, 1860,” and all other enactments now in force and relating to Insolvency Law.

Short title of Act.

2. The Commissioner of the Court of Insolvency may at any time, and on such terms as he may think fit, order that any insolvency proceedings in any Local Court of Insolvency shall be removed to the Court of Insolvency; and upon such order being made the whole of the proceedings in the matter referred to, together with a copy of such order, shall be forthwith transmitted to the said Court of Insolvency, in pursuance of such order, and the same shall become records of the Court whereto the same shall be removed.

Commissioner of Court of Insolvency may remove proceedings from any Local Court of Insolvency to Court of Insolvency.

3. From and after the making of any such order, or of any order made under section 7, Act No. 195 of 1880, all functions, powers, and authorities vested in the Court of Insolvency, or the Local Court of Insolvency, as the case may be, shall become vested in the Court to which such proceedings shall be ordered to be removed, and all funds in the hands of the official Receiver, or any trustee or other officer of such Court, shall be forthwith transferred and paid over to the Official Receiver of the Court to which such proceedings shall be removed, subject to all just allowances.

After such removal all powers to be vested in Court to which proceedings removed, and all funds to be paid over to Receiver.

4. In

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Court may dispense with schedule as required by section 9, and notice under section 10 of Insolvency Act, 1881.

4. In any case in which, at the first public sitting under the Insolvency, it shall appear that the insolvent has not filed the schedule as required by section 9 of the Insolvency Act, 1881, or that the notice has not been given as required by section 10 of the said last-recited Act, it shall be lawful for the Court, if it shall think fit, to dispense with the said filing of the said schedule and the giving of the said notice, and allow the said insolvency to proceed in the same manner as such insolvency would have proceeded if such schedule had been filed and such notice duly given.

Repeal of part of section 6 of Insolvency Act, 1881, as refers to returns under executions.

5. So much of section 6 of the said Insolvency Act, 1881, as provides that execution issued against a debtor in any legal process for the purpose of obtaining payment of a judgment against him, if not less than Twenty Pounds, has been levied by seizure or sale of his goods, shall be read as if the words "seizure and sale" had been inserted in lieu of the words "seizure or sale."

Amending section 92 of Insolvent Act, 1860, on a bill of sale.

6. Section No. 92 of the Insolvent Act, 1860, shall not apply to or affect any duly registered bill of sale, the consideration for which shall have been an advance or loan made, or agreed to be made, at the time of the execution thereof, nor any bill of sale duly registered not less than ninety days before the date of the act of insolvency on which the insolvency petition against the grantor of the bill of sale shall be founded, nor shall the goods or chattels comprised in any such bill of sale as aforesaid in force at the time of the insolvency of the grantor be deemed to be in his possession, order, or disposition.

Repeal of sub-section 8 of section 11 of Insolvency Act, 1881.

7. Sub section 8 of section 11 of the Insolvency Act, 1881, is hereby repealed.

Order of Council made under Insolvency Act, 1881, shall annul adjudication of insolvency.

8. Every order of the Court made under section 11, sub-section 1, of the Insolvency Act, 1881, shall operate as an annulment of the adjudication of insolvency and dismissal of the petition for adjudication; and such order shall operate to all intents and purposes as if the same were a certificate of the first class, and shall be conclusive evidence of the proceedings in insolvency and the consent of the requisite creditors: Provided always that if the insolvent makes default in payment of any sum due by him in pursuance of a composition or scheme under the said section, the Court may, in its discretion, on application by the person to whom the sum is due, order that the insolvency be revived, and thereupon the insolvency, so far as the insolvent and any estate remaining vested in him and undisposed of at the time of such order of revivor is concerned, shall be revived and continue as if the composition or scheme had not been approved.

Insolvent to be released from all liability arising out of contract, whether liquidated or unliquidated.

9. All debts and liabilities, present or future, liquidated or unliquidated, certain or contingent, to which an insolvent shall be subject at the date of his adjudication, or to which he may become subject by reason of any obligation incurred previously to the date of the adjudication, shall be deemed to be debts or demands provable under his insolvency: Provided that nothing herein contained shall apply to demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise.

10. An

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10. An estimate shall be made, according to the Rules of Court for the time being in force, so far as the same may be applicable, and where they are not applicable, then at the discretion of the trustee, or, if there shall be no trustee, at the discretion of the Official Receiver, of the value of any debt or liability provable as aforesaid, and which, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

Estimates, &c., made by trustee.

11. Any person aggrieved by any estimate made by the trustee or Receiver as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect, and upon such order being made such debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable under this Act; but if the Court think that the value of the debt or liability is capable of being fairly estimated, it may direct such value to be assessed, with the consent of all the parties interested, before the Court itself without the intervention of a jury, or if such parties do not consent, then by a jury, either before the Court itself or some other competent Court, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be provable as a debt under the Insolvency Act.

Persons aggrieved by any estimate may appeal to Court.

12. Liability shall, for the purposes of this Act, include any compensation for work or labor done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur, or capable of occurring, before the certificate is awarded to the insolvent; and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of, money or money's worth, whether such payments be as respects amounts fixed or unliquidated and payable in one sum or by instalments, or periodical payments as respects time, present or future, certain or dependent, on any one contingency, or on two or more contingencies, as to mode of valuation capable of being ascertained by fixed rules or assessable only by a jury or as matter of opinion.

Definition of liability.

13. Sections 9, 10, 11, and 12 of this Act shall apply to deed of assignment under the provisions of Division vi. of the Insolvent Act, 1860.

Application of clauses of Act to Act of 1860.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.