

ANNO QUARTO
GULIELMI IV. REGIS.

No. 17.

*By His Excellency Colonel GEORGE ARTHUR Lieutenant
Governor of the Island of Van Diemen's Land and its De-
pendencies with the advice of the Legislative Council.*

*AN ACT for the relief of Insolvent Debtors now in Cus-
tody for Debt.*

WHEREAS there are several persons now under imprisonment in this Island for debt and it is expedient to make provision under proper restrictions for the relief of those persons after they shall have been so under imprisonment three months or upwards upon their appearing to be insolvent and to be willing to deliver up all their effects for the benefit of their creditors.

BE IT THEREFORE ENACTED by His Excellency Colonel George Arthur Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that any person who at the time of the passing of this Act shall be under imprisonment for debt whether in execution or on mesne process and may (after he shall have been under such imprisonment for a period of

Preamble.

Persons imprisoned three months or upwards may apply to the court by petition to be declared insolvent.

three months or upwards) apply to the Supreme Court of Van Diemen's Land by petition in writing setting forth the Gaol wherein he shall be then confined the date when he was first detained in custody the name of the party by whom and the cause and amount for which he shall at the time of presenting such petition be detained and that he the said petitioner is insolvent and praying that he may be declared insolvent by the Court and that his effects may be distributed for the benefit of his creditors and that he may upon surrendering the same be discharged from such imprisonment according to the provisions of this Act which petition shall be subscribed by the prisoner and after presentation thereof to one of the Judges of the said Court and an order thereon obtained as next mentioned be filed in the said Court of Record.

A schedule to be also filed and what schedule is to contain.

II.—AND BE IT ENACTED that with such petition or within fourteen days after its presentation the petitioner shall in like manner present to the said Court or one of the Judges thereof a schedule containing a full true and particular account and description of all the persons to whom such petitioner shall then be indebted or who to his knowledge or belief shall claim to be his creditors together with the nature and amount of their debts and claims respectively and the bona fide considerations of or for such debts and claims respectively distinguishing admitted debts or claims from debts or claims disputed with the additions and places of abode of all such creditors or persons claiming to be creditors respectively and a full true and particular account and discovery of all the estate and effects real and personal in possession reversion remainder or expectancy of every nature and kind whatsoever which such petitioner or any person in trust for him or for his use or benefit in any manner shall have been or shall be seized or possessed of or interested in or entitled unto either solely or jointly with any other person or persons or which such petitioner or any person in trust for him or for his benefit either solely or jointly with any other person or persons at the time of his first imprisonment or at any time since shall have had or at the time of the presentation of such schedule shall have any power to dispose of or charge for the benefit of him the said petitioner together with a full true and particular account of all debts at those times respectively owing to such petitioner or to any person in trust for him or for his benefit either solely or jointly with any other person and the names additions and places of abode of the persons from whom such debts shall be or have been due and in what manner all or any part of such estate or effects real or personal have been applied or disposed of since the time of such petitioners first imprisonment and which or what part of such estate or effects or any of them shall have been in any manner conveyed assigned disposed of charged or encumbered in any manner whatsoever and when and in what manner and for what consideration and to whom and for whose benefit in particular and which and what part or parts of such estate and effects shall at the time of the presentation of such schedule be in any manner applicable to the discharge of the demands of his creditors or can be made available for their benefit which schedule shall be subscribed by the petitioner in the presence of two witnesses and after the presentation thereof as aforesaid be by the petitioner filed in the said Court of Record. PROVI-

DED that in case it shall upon any examination or hearing as hereinafter mentioned appear that any such schedule is defective by reason of any unintentional mistake or omission therein it shall be lawful for the Court or sitting Judge to permit the same at the discretion of such Court or Judge to be thereupon either forthwith amended or to cause the petitioner to be remanded for the purpose of his thereafter presenting an amended schedule.

III.—AND BE IT ENACTED that thereupon or as soon after as conveniently may be a day and place shall be appointed by the said Court or by the Judge to whom such petition and schedule shall have been presented for the hearing of the matters of the said petition and the said Court or Judge shall at the same time order notice to be given by the petitioner or some person on his behalf by advertisement in one or more of the public newspapers and in such other manner as the said Court or Judge may in each case think fit to the several creditors of the petitioner or their agents of the presentation and filing of such petition and schedule and of the day and place so appointed and in the meantime if it appear to the said Court or Judge to be expedient it shall be lawful for the said Court or Judge to appoint some officer of the Court or other person as and to be assignee of the estate and effects of the said petitioner either permanently or provisionally only as to the said Court or Judge shall seem proper.

IV.—AND BE IT ENACTED that upon the day so appointed for the hearing of such petition and upon every or any day or days to which the matter may from time to time be adjourned it shall be lawful for the Court or for either of the Judges thereof until the making of the order of discharge hereinafter mentioned to cause the petitioner to be brought before it or before one of the said Judges by an order or orders made for that purpose and to be examined upon oath touching the truth of the several matters contained in his said petition and schedule and touching such other matters in respect of his insolvency or alleged insolvency as the said Court or Judge may think material or proper to be enquired into. PROVIDED ALWAYS that if upon any such hearing it shall appear to the satisfaction of the said Court or Judge that the prisoner is in fact insolvent then the Court or Judge shall declare him to be insolvent accordingly and shall thereupon nominate and appoint one or more of his creditors as to the said Court or Judge may seem proper as and to be the assignee or assignees of the estate and effects of such insolvent in trust for all the creditors of such insolvent under the provisions of this Act.

V.—AND BE IT ENACTED that every such appointment and every other appointment by the said Court or either of the Judges thereof of any assignee or assignees under this Act shall have the effect of immediately transferring to and vesting in such assignee or assignees subject to the orders of the Court in trust for the creditors and thereupon and thenceforth of divesting from any assignee or assignees (if any) who shall have been previously appointed all and every the estate and effect both real and personal rights duties claims choses in action interests powers and property whatsoever which at the time of the presentation of the said petition shall have belonged or from thence un-

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

Proceeding upon the hearing.

General effect of appointment of assignees.

til the making of the order of discharge hereinafter mentioned shall belong to such insolvent either solely or jointly with any other person or in or to which at those times he shall have been or shall be in any manner interested or entitled in reversion remainder or expectancy together with all deeds and writings respecting the same and every such assignee or assignees during the term of his or their appointment shall have such and the like means of collecting recovering and disposing of the said estate effects and property and of enforcing the said rights claims and interests and of executing the said powers in his or their name or names as such assignee or assignees as the insolvent himself would or might have had if he had not been declared insolvent. PROVIDED ALWAYS that it shall be lawful for such assignee or assignees to permit the insolvent to retain to his own use such of the wearing apparel bedding and other necessaries of such insolvent and his family not exceeding in the whole the value of twenty pounds as such assignee or assignees shall think fit and all such articles so permitted to be retained shall thenceforth be exempted from the operation of this Act any thing in this Act contained to the contrary notwithstanding.

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

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

Assignees to render accounts. Provision for appointing new assignees.

VII.—AND BE IT ENACTED that the assignee or assignees for the time being of every such insolvent shall once in every three months render into the office of the Registrar of the said Court a just and true account in writing of all the effects monies and property collected

received or possessed by him or them as such assignee or assignees and of the sale disposal appropriation or distribution thereof respectively and every such account shall be signed by the assignee or assignees so rendering the same and be afterwards filed in the said Court of record and it shall be lawful for the said Court or for any Judge thereof at any time upon any application of or complaint made in a summary way by the insolvent or any person interested in the due distribution of such insolvent's estate or without any such application or complaint to remove any assignee or assignees so appointed for neglect of duty in that or any other respect and to appoint another or other assignee or assignees in his or their place and stead and also to appoint a new assignee or new assignees in the place and stead of any assignee or assignees who may have died or departed from the colony and no action suit or proceeding relative to the affairs of such insolvent's estate shall abate or be otherwise prejudiced by reason of any such death departure or new appointment but the same may be continued by or in the name or names of the surviving or continuing assignee or assignees or the assignee or assignees so newly appointed PROVIDED that if it shall at any time be made to appear that no further assets of the insolvent remain to be distributed or disposed of or are likely to be collected by any such assignee or assignees then it shall be lawful for the said Court or any Judge thereof to audit and allow all such accounts of such assignee or assignees and to grant to him or them thereupon his or their discharge in respect thereof.

VIII.—AND BE IT ENACTED that if upon any such hearing as aforesaid it shall appear to the satisfaction of the Court or sitting Judge that the insolvent hath made a full and true discovery disclosure and surrender of all his estate and effects and if he shall in all other respects touching the matters of his petition and schedule have conformed himself to the orders of the Court or the Judge or Judges before whom he shall from time to time have been examined as aforesaid then the said Court or sitting Judge shall cause such insolvent to execute before the said Court or Judge a warrant of Attorney authorizing the entering up of a judgment against such insolvent in the said Court at the suit of his assignee or assignees for the amount of the debts which shall appear to be then due by such insolvent and upon such warrant of attorney being duly executed the said Court or Judge shall (except in the cases next hereinafter mentioned) make an order for the immediate discharge of such insolvent from his imprisonment which order of discharge when made shall exempt the person of such insolvent from all further or future imprisonment or arrest at the suit of any creditor named in the schedule of such insolvent for or in respect of any debt or sum of money which shall be therein admitted to be due to such creditor which shall be included in or secured by such warrant of attorney.

IX.—PROVIDED ALWAYS AND BE IT ENACTED that in case it shall appear to the Court or sitting Judge that the insolvent hath contracted any debt fraudulently or by means of any breach of trust or false pretence or without having had any reasonable or probable expectation at the time when the debt was contracted of paying

When the Court shall grant an order for discharge of insolvent.

Court may in certain cases postpone the order of discharge.

the same or hath put any of his creditors to unnecessary expense by any vexatious or frivolous defence or delay in any suit for recovering any such debt or hath purposely destroyed or wilfully prevented or withheld the production of any book paper or writing subject to investigation and proper to have been produced or investigated under the provisions of this Act for the purpose of more clearly elucidating his affairs or hath kept or caused to be kept any false book of accounts or made any false entry in or withheld any entry from or wilfully falsified any book of accounts or hath given any undue preference to any of his creditors then or in any such case it shall be lawful for the said Court or Judge in his or its discretion according to the nature of the case to postpone the making of such order of discharge as aforesaid for any period not exceeding three years from the time of the presentation of such insolvent's petition.

How far the after acquired property of the insolvent to remain liable.

X.—AND BE IT ENACTED that judgment may at any time be entered up against the insolvent by virtue of such warrant of attorney as aforesaid which judgment shall have the force and effect of a recognition and whenever it shall appear to the said Court that the insolvent is of ability to pay the amount of the debts for which such warrant of attorney shall have been so given or any part thereof or that he is dead leaving assets for that purpose the Court may upon the application in a summary way of the assignee or assignees of such insolvent for the time being permit execution to be taken out upon such judgment against any estates or property which may have been acquired by such insolvent after his discharge for such sum of money as under all the circumstances of the case the Court shall think it expedient to order such sum to be distributed rateably amongst the creditors and so from time to time according to the discretion of the Court until the whole of the debts secured by or included in such warrant of attorney shall be fully satisfied together with such costs as the Court shall think proper, and no *scire jacias* shall be necessary to revive such judgment. PROVIDED that in case any such application shall appear to the Court to be vexatious or ill-founded it shall be lawful for the Court in its discretion to dismiss the same with costs.

Every estate (man) entered by a creditor and not an assignee

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

XI.—PROVIDED ALWAYS AND BE IT ENACTED that if at any time within three months after the making of any such order of discharge as aforesaid the majority in number and in value of the creditors of the insolvent shall by writing under their hands attested respectively by two witnesses consent absolutely to release and forego all claim to and interest in the future or after acquired property of such insolvent then upon the production to the Court of such written consent and upon affidavit at the same time made and filed by the insolvent that such consent was fairly obtained by him and without any money or other consideration paid or given or to be paid or given or contract or security of any kind entered into by such insolvent or to the best of his knowledge and belief by any other person to persuade or induce any creditor to sign or give such consent the Court shall direct the warrant of attorney executed by such insolvent to be given up to him to be cancelled and the judgment (if any) entered upon thereon to be vacated and thenceforth every debt included in or secured by such warrant of attorney or judgment shall be and be deemed

absolutely released and discharged to all intents and purposes whatsoever PROVIDED that no creditor signing such consent as aforesaid whose debt is below twenty pounds shall be reckoned in number but his debt only shall be computed in value.

XII.—PROVIDED ALWAYS AND BE IT ENACTED that if at any time within twelve months after the making of any such order of discharge as aforesaid it shall upon the application of any creditor of the insolvent appear to the satisfaction of the Court that such insolvent hath obtained such order of discharge by or through the means of any fraud deceit concealment misrepresentation or undue practice whatsoever it shall be lawful for the Court to declare such order of discharge to be absolutely null and void and thereupon and thenceforth it shall be lawful for every creditor of such insolvent to proceed against such insolvent and against all his then unapplied and all his future or after acquired property and effects the same as if such order of discharge had never been obtained and any creditor at whose suit such insolvent shall have been detained in custody at the time of the making of such order of discharge may apply to the Court to remand such insolvent again into custody on the original process from which he shall have been so discharged and the said Court shall have power to remand such insolvent accordingly by a warrant to be made and issued by the Court for that purpose which warrant shall be a sufficient authority for the arrest and detention of such insolvent upon such original process the same in all respects as if no such order of discharge had been made PROVIDED that in case any such application shall appear to the Court to be vexatious or ill-founded it shall be lawful for the Court in its discretion to dismiss the same with costs.

XIII.—AND BE IT ENACTED that if any such insolvent or person praying to be declared insolvent under the provisions of this Act shall wilfully embezzle secrete conceal or omit to discover any part of his real or personal estate or effects above the value of two pounds with intent to defraud his creditors or to diminish the funds or amount to be distributed amongst them or shall knowingly and wilfully insert or omit or cause to be inserted or omitted in his schedule any matter or thing whatsoever contrary to or for the purpose of concealing the truth such insolvent or petitioner shall be deemed guilty of felony and shall be liable to be imprisoned for any term not exceeding three years or to be transported for any term not exceeding seven years as the Court shall think fit to order And any such insolvent or petitioner or any other person who shall upon any occasion wilfully forswear himself in any oath taken under the provision of this Act shall suffer such punishment as by law may be inflicted for wilful and corrupt perjury.

XIV.—AND BE IT ENACTED that in all cases in which no provision or no sufficient provision in that behalf is by this Act made it shall be lawful for the said Supreme Court from time to time upon any application in a summary way made for that purpose or without any such application to make and prescribe all such rules and orders touching and concerning the discovery collection disposal and distri-

In what cases order of discharge may be revoked.

Certain offences to be deemed felonies

False swearing to be subject to the penalties of perjury.

The Court may make rules and award costs.

bution of the estate debts and effects of the insolvent and the manner of proceeding before or applying to the said Court or Judges under this Act and otherwise for facilitating or more fully carrying into effect the objects of this Act as to the Court shall seem expedient and such rules and orders from time to time to revoke or alter as to the Court shall appear to be requisite and all rules and orders so made and prescribed shall be of the same force and effect as if they had been inserted in this present Act And the said Court and each of the Judges thereof shall in all cases whatsoever of applications made to or proceedings had or taken before or by authority of the said Court or any Judge thereof have full power to award or refuse costs at its or his discretion such costs to be paid out of the insolvent's estate or by and to such party or parties as the Court or Judge shall in each case think fit to order.

Certain cases to which the Act is not to extend.

XV.—PROVIDED ALWAYS AND BE IT ENACTED that this Act shall not extend to or affect any debt or sum of money due to His Majesty or to any damages recovered in any action for Criminal Conversation or Seduction or Breach of Promise of Marriage or for a Malicious Prosecution or for Libel Slander or any other Malicious injury or to any costs recovered in any such action.

GEORGE ARTHUR,

Passed the Legislative Council
this fourth day of January one
thousand eight hundred and
thirty-four.

JOHN MONTAGU,
Clerk of the Council.