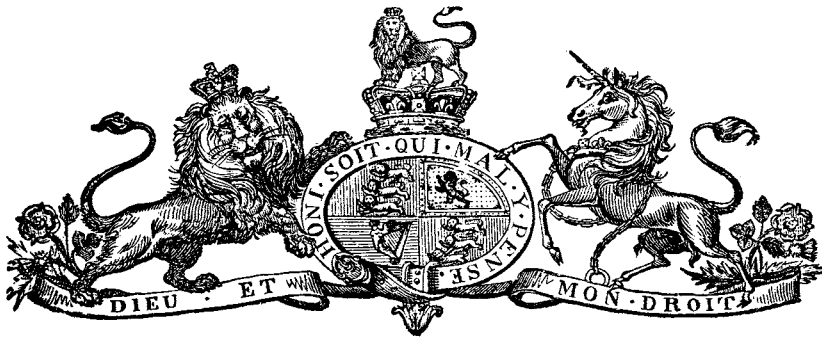


T A S M A N I A.



1859.

ANNO VICESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 25.



AN ACT to amend the Laws relating to Insolvency. [23 September, 1859.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 The jurisdiction of the Commissioner of Insolvent Estates for *Hobart Town* shall extend to the Southern Electoral Districts, and the jurisdiction of the Commissioner of Insolvent Estates for *Launceston* shall extend to the Northern Electoral Districts, as such Districts are now defined by *The Electoral Act*. Jurisdiction of Commissioners.

2 The Fees heretofore payable to the Commissioners of Insolvent Estates by virtue of the Laws in force relating to Insolvency shall no longer be received by such Commissioners for their own use, but shall continue to be paid to such Commissioners, and shall be accounted for and paid by them to the Colonial Treasurer monthly, or at such other periods as the Governor directs, and shall form part of the General Revenue; and the said Commissioners shall be remunerated for their services by Salaries to be paid out of such funds as may be provided by Parliament for the purpose, and such Salaries shall be in lieu of all Fees and emoluments whatever. Commissioners to be paid by Salary and not by Fees.

3 In case any Insolvent fails, without lawful impediment, to attend at the time and place appointed by the Commissioner for any Meeting If Insolvent fails to attend any

meeting of
Creditors he may
be apprehended.

of the Creditors of such Insolvent before he has obtained his final discharge, the Commissioner may cause such Insolvent to be apprehended and brought before him, and, if necessary, detained in prison till he can be brought before him, in like manner as the Commissioner is authorised to proceed by Section 69 of *The Insolvent Estates Act* in the case of a person duly summoned and not appearing.

Any person not
fully answering to
satisfaction of
Commissioner
may be committed.

4 If any person on his Examination before the Commissioner does not fully answer any lawful question to the satisfaction of the Commissioner, not having any lawful objection allowed by the Commissioner, it shall be lawful for the Commissioner by Warrant to commit such person to such Prison as the Commissioner thinks fit, there to remain without bail until he submits himself to be sworn, and full answer makes to the satisfaction of the Commissioner to all such lawful questions as may be put.

Warrant of Com-
mittal for unsatis-
factory answering
need not specify
questions.

5 In any Warrant of Commitment of any person by the Commissioner for not fully answering any question to the satisfaction of the Commissioner it shall not be necessary to set forth or specify any such question, nor any part of the Examination of the person so committed, but it shall be sufficient to refer in the said Warrant to the Examination of the person as remaining among the proceedings in the Insolvency in the custody of the Commissioner, and to specify in the said Warrant the precise date of the Examination so referred to; provided, however, that every such question shall be specified in the Examination of the person committed remaining among such proceedings, and so referred to as aforesaid; and provided also, that a Copy of the said Examination so referred to shall be delivered personally to the person committed within Forty-eight hours next after his actual committal to Prison; and in default of the said Copy being delivered the person committed shall be discharged from custody, either by the Court or Judge before whom such person may be brought by *Habeas corpus*, with such Costs, if any, as the said Court or Judge may deem just; and, save as herein above provided, no person shall be discharged from such custody for mere matter of form, but upon the merits only.

Copy of the
Examination to be
furnished to the
person committed.

On *Habeas corpus*
Judge or Court
may inspect the
whole Examina-
tion.

6 If any person so committed for unsatisfactory answering sues forth any Writ of *Habeas corpus* in order to be discharged from such commitment, it shall be lawful for the Court or Judge before whom such person is brought to inspect and consider the whole of the Examination of such person so referred to as aforesaid; and if it appears from the whole Examination that the answers of the person committed are satisfactory, such Court or Judge shall and may order the person so committed to be discharged.

Examination of
Insolvent not
limited to 12
months before
Insolvency.

7 Upon every examination of the Insolvent under the Laws in force relating to Insolvency, it shall be lawful for the Commissioner, or any Creditor or Assignee, to put such questions to the Insolvent touching all matters relating to his trade, dealings, estate, or other matters, as the Commissioner may be of opinion that it is fit to enquire into for the purposes of such Laws; and Section 27 of *The Insolvent Estates Act* shall be construed and applied as if the words "within Twelve months preceding" were omitted therefrom, to the intent that the inquiry authorised by the said Section may be carried back to such period preceding the time of filing the Petition or committing the act of Insolvency as the Commissioner may think proper for the purposes aforesaid.

8 The Assignees of every Insolvent Estate shall, on or before the 31st day of *January* in every year, deliver to the Commissioner a Statement in writing, in the form (No. 1) in the Schedule, showing the particulars in such form mentioned in respect of every Estate which has been under their charge during the preceding year; and the Commissioner shall compile a Return from all such Statements, and from the records and documents in his custody relating to each Insolvency, in the form (No. 2) in the Schedule showing the particulars in such form mentioned, and shall publish such Return in the *Gazette* before the end of the month of *February* then next.

Assignees to make annual statements showing state of all Insolvencies.

Commissioner to publish Return.

9 If the Assignees of any Insolvent Estate fail to deliver such Statement in manner and within the time hereinbefore provided, the Commissioner shall summon such Assignees, and may make an order requiring them to make out and deliver such Statement within such time as the Commissioner may think fit to appoint.

Commissioner may order Assignees to make Statement.

10 The Assignees of every Insolvent Estate shall be subject to the orders of the Commissioner in their conduct as Assignees, and it shall be lawful for the Commissioner at all times to summon the Assignees and examine them, and require them to pay all moneys, and produce and deliver over all books, papers, deeds, writings, and other documents which may have come to their possession or custody as such Assignees, as the Commissioner may think fit to order.

Assignees subject to orders of Commissioner.

11 The Commissioner shall, whenever he thinks fit, at a public Sitting, of which due notice shall be given, audit the Accounts of the Assignees; and at such Sitting the Assignees shall deliver upon oath a true statement in writing of the affairs of the estate, setting forth all money received by them respectively, and when and on what account, and how the same has been employed, and all debts outstanding, and property remaining unsold, and such other particulars as the Commissioner may direct; and the Commissioner shall examine such statement, and ascertain what balances have been from time to time in the hands of such Assignees respectively, and with what sums the Assignees are properly chargeable; and it shall be lawful for the Commissioner to examine the Assignees upon oath touching such Accounts, and to make therein all just allowances.

Appointment of Sitting for audit of Assignees' accounts.

12 The Commissioner is hereby directed to appoint such Sitting for the audit of the Accounts of the Assignees in each Insolvency within One year after the filing of the Petition in such Insolvency.

Audit within a year after Insolvency.

13 The Commissioner shall, whenever he thinks fit, appoint a public Sitting, whereof due notice shall be given, to make a dividend, and may at such Sitting direct such part of the net produce of the estate as he may think fit to be forthwith divided, and make an order for dividend accordingly; and the Assignees shall forthwith make such dividend.

Sitting for and mode of making dividend.

14 The Commissioner may appoint the same Sitting for the audit and dividend.

Same Sitting may be for both.

15 The notice for the appointment of a Sitting for audit or dividend shall be given by publication thereof in the *Gazette*, and in One newspaper published in *Hobart Town* and One newspaper published in *Launceston*, at least Ten days previously to the holding of such Sitting.

How notice published.

Final dividend within 18 months unless suits depending or property unsold.

16 If the estate has not been wholly divided upon the First dividend, the Commissioner shall, within Eighteen months after the filing of the Petition, appoint a public Sitting to make a Second dividend, of which such notice shall be given as the Commissioner directs, and at such Sitting shall order the balance in hand to be forthwith divided; and such Second dividend shall be final, unless any suit is depending, or any part of the estate is not sold or disposed of, or unless some other estate or effects afterwards come to the Assignees, in which case they shall, as soon as may be, convert such estate and effects into money, and within Two months after the same is so converted the same shall also be divided in manner aforesaid.

Outstanding debts may be sold by Assignees after certain time.

17 If there are any outstanding debts or other property belonging to the estate of the Insolvent which cannot in the opinion of the Commissioner be collected and received without unreasonable or inconvenient delay, it shall be lawful for the Assignees, under the direction of the Commissioner, to sell and assign such debts and other property by public auction, unless otherwise ordered by the Commissioner; and any person to whom any of such debts may be so sold or assigned may sue for the same in his own name as fully as the Assignees might have done.

No action for dividend. Remedy by order of Commissioner.

18 No action for any dividend shall be brought against any Assignee, but if the Assignee refuses to pay any such dividend the Commissioner may order payment thereof, with interest for the time it has been withheld, and may also order the costs of the application.

Repeal of Secs. 62 and 63 of 3 Vict. No. 1.

19 Sections 62 and 63 of *The Insolvent Estates Act* are hereby repealed, excepting as to Insolvencies declared before the commencement of this Act.

On application of Creditor foregoing provisions as to audit and dividend applicable to Insolvencies before this Act.

20 With regard to any Insolvency declared before the commencement of this Act, in which the estate has not been finally wound up, the Commissioner shall, upon the application of any Creditor who has proved his debt under such Insolvency, cause the Accounts of the Assignees to be audited and a dividend to be made in manner aforesaid, and the aforesaid provisions shall be applicable in respect of such audit and dividend; and as to any Insolvency in which such application is made, and the Accounts of the Assignees are so directed to be audited, the provisions of Sections 62 and 63 of *The Insolvent Estates Act* shall not continue to be applicable.

The following offences by Insolvent:

21 In respect of any person declared insolvent after the commencement of this Act, if it appears to the satisfaction of the Commissioner that any such Insolvent has committed any of the offences following; that is to say,

Destroying or withholding books, &c.;

1. If the Insolvent has fraudulently with intent to conceal the state of his affairs, or to defeat the objects of any of the Laws relating to Insolvency, destroyed, or otherwise wilfully prevented or purposely withheld the production of, any book, paper, deed, writing, or other document relating to his trade, dealings, or estate;

False entries in books, &c.;

2. If the Insolvent, with the like intent, has kept or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified any book, paper, deed, writing, or other document relating to his trade, dealings, or estate;

3. If the Insolvent has wilfully, and with the intent to conceal the true state of his affairs, omitted to keep proper books of account, or wilfully, and with intent to conceal the true state of his affairs, has kept his books imperfectly, carelessly, and negligently ; Omitting to keep books, or keeping them carelessly ;
4. If the Insolvent has contracted any of his debts by any manner of fraud or misrepresentation, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of paying the same, or by any manner of fraud or misrepresentation, or by means of false pretences, has obtained the forbearance of any of his debts by any of his Creditors ; Contracting debts by false pretences ;
5. If the Insolvent has fraudulently, with intent of diminishing the sum to be divided among his Creditors, or of giving an undue preference to any of the said Creditors, discharged or concealed any debt due to or from the said Insolvent, or made away with, charged, mortgaged, or concealed any part of his property, of what kind soever, either before or after the filing of the Petition of Insolvency ; Fraudulent preference, &c. ;
6. If the Insolvent, under his Insolvency, or at any meeting of his Creditors within Three months next preceding the filing of the Petition of Insolvency, has attempted to account for any of his property by fictitious losses or expenses ; Accounting for property by fictitious losses ;
7. If the Insolvent has put any of his Creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any suit for the recovery of any debt or demand provable under his Insolvency, or is indebted in costs incurred in any action or suit so vexatiously brought or defended ; Vexatiously defending action ;
8. If the Insolvent, at any time within One year next preceding the filing of the Petition of Insolvency, has lost by any sort of gaming or wagering in one day Ten Pounds, or within such year One hundred Pounds ; Gambling ;

the Commissioner is hereby authorised, whether the Insolvent has applied for an Order of discharge or not, and whether the making of such Order of discharge is opposed or not, to make an Order postponing the discharge of the Insolvent for any period not exceeding Two years from the day of making such Order of postponement, and to adjudge the Insolvent to be imprisoned, with or without hard labour, for the whole or any part of such period, and to issue his Warrant accordingly. Punishable by imprisonment for Two years.

22 As to all Insolvencies which may be declared after the commencement of this Act, Section 93 of *The Insolvent Estates Act* shall be repealed, and the next preceding Section shall be deemed to be substituted for the said Section 93. Preceding Section substituted for Sec. 93 of 3 Vict. No. 1.

23 If any person disobeys any Order duly made by the Commissioner for enforcing any of the purposes and provisions of this Act or any of the Laws relating to Insolvency, the Commissioner may by Warrant under his hand commit the person so offending to Prison, there to remain until the Commissioner or the Supreme Court, or any Judge of the said Court makes order to the contrary. Persons disobeying Order of Commissioner may be committed.

24 Whenever, under this Act or any of the Laws relating to Insolvency, the Commissioner adjudges to be imprisoned, or commits, any person who is then present before him, the Commissioner is hereby authorised verbally to direct such person to be apprehended and detained Commissioner on adjudication of imprisonment may commit

verbally till
Warrant prepared.

in custody, without Warrant, for such reasonable time as may be necessary to enable him to prepare the requisite Warrant, which he shall prepare and issue without unnecessary delay; and the person so apprehended shall, upon the issue of the Warrant, be deemed to have been apprehended and in custody by virtue of such Warrant, notwithstanding that the Warrant may not be directed to the person who apprehended such person upon the verbal direction of the Commissioner.

Requisites of
Warrants.

25 The provisions of *The Insolvent Estates Amendment Act, No. 3*, relating to the form and requisites of Warrants of Commitment, shall be applicable to all Warrants issued under the provisions of this Act.

Forms of Warrant
in Schedule.

26 The Forms of Warrant in the Schedule (Nos. 3, 4, 5, 6, and 7) are given as examples for the assistance and guidance of the Commissioners, and all Warrants issued by them by virtue of any of the Laws relating to Insolvency may be in like form or to the like effect; and such Warrants shall be sufficient.

Votes of Creditors.

27 Section 52 of *The Insolvent Estates Act* is hereby repealed, and in lieu thereof the following enactment shall be substituted:—

At every Meeting of Creditors under any of the Laws relating to Insolvency the decision, by a majority of votes, of the Creditors present at such Meeting, either in person or by agent holding written authority in that behalf, shall be deemed and taken for the purposes of such Laws to be the decision of all the Creditors of the Insolvent; and at any such Meeting every Creditor shall have a number of votes proportioned to the amount of his debt according to the following scale:—

<i>Amount of Debt.</i>	<i>Number of Votes.</i>
Not exceeding £50	1
Exceeding £50 and not exceeding £100	2
Exceeding £100 and not exceeding £150	3
Exceeding £150 and not exceeding £200	4
Exceeding £200 and not exceeding £250	5
Exceeding £250 and not exceeding £300	6
Exceeding £300	7

Provided, that no Creditor whose debt is less than Ten Pounds shall have any vote at any such Meeting, and that the several members of a copartnership or several persons possessing any joint representative character shall, for the purposes of this Section, be considered as a single Creditor only.

Provision for
omission to elect
permanent As-
signees at first
Meeting.

28 In case no election of permanent Assignees is made at the first Meeting of Creditors, or at a Meeting held for that purpose by adjournment, under the 44th Section of *The Insolvent Estates Act*, it shall be lawful for the Creditors, at a Special Meeting called for that purpose, to elect permanent Assignees of the estate and effects of any Insolvent.

Creditors accept-
ing compositions
to prove their
debts.

29 No person shall be deemed a Creditor of an Insolvent for the purpose of accepting an offer of composition which shall be binding upon the other Creditors of the Insolvent, under the provisions contained in Sections 59 and 60 of *The Insolvent Estates Act*, whose debt has not been duly proved and allowed under the Insolvency by the Commissioner.

30 No Distress for rent made after a Declaration of Insolvency upon the goods or effects of any Insolvent shall be available for more than One year's rent accrued prior to the day of the filing of the Petition of Insolvency, but the Landlord or person to whom the rent is due shall be allowed to prove as a Creditor for the overplus of the rent due, and for which the Distress is not available. Distress available for only One year's rent.

31 Nothing contained in Section 80 of *The Insolvent Estates Act* shall extend to any goods *bonâ fide* in the possession of the Insolvent as Factor, whether the true owner of such goods is resident in the Colony or not. Goods in possession of Insolvent as Factor not to pass to Assignees.

32 No appeal to the Supreme Court against any decision of the Commissioner shall be entertained unless notice in writing under the hand of the Appellant or his Attorney of the intention to appeal has been given to the Commissioner, and to the Assignees, within Fourteen days after the decision has been pronounced. Notice of Appeal to Supreme Court.

33 This Act and all other Acts in force relating to Insolvency, except in so far as the said Acts or any of them are or is altered by this Act or any of the said Acts, shall be read and construed together as one Act. This Act and other Insolvent Acts to be read together.

34 This Act shall commence and take effect on the First day of *October*, 1859. Commencement of Act.

35 In referring to this Act it shall be sufficient to use the expression *The Insolvent Estates Amendment Act, No. 4.* Short title.

No. 3.

WARRANT of Commitment of Insolvent or other Party for unsatisfactory answering.

In the Matter of } WHEREAS *A.B.*, [the said Insolvent], was, on the [*Tenth*]
 the Insolvency } day of [*March*, 1860], duly sworn and examined in this
 of [*A.B.*] } matter, as by the Examination of the said [*A.B.*] now
 among the proceedings in this matter remaining in my custody will appear:
 And whereas the answers of the said [*A.B.*], as now so appearing in said
 Examination, are unsatisfactory: These are therefore to authorise and require you,
 immediately upon the receipt hereof, to take into your custody the said [*A.B.*] and him
 safely convey to Her Majesty's Gaol at [*Hobart Town*] and him there deliver to the
 Keeper of the said Gaol, who is hereby authorised and required to receive the said
 [*A. B.*] into his custody there, and him safely keep and detain, without bail, until I,
 the said Commissioner, or the Supreme Court, or any Judge of the said Court, make
 an order to the contrary, and for so doing this shall be your sufficient Warrant.

Given under my hand this [*Tenth*] day of [*March*, 1860].

F.B.

Commissioner of Insolvent Estates for [*Hobart Town*].

To [*G.H.*] and to all Constables
 in *Tasmania*, and to the
 Keeper of the said Gaol.

No. 4.

WARRANT for refusing to be sworn or to answer.

In the Matter of } WHEREAS [*E.F.*] of } being present at an
 the Insolvency } Examination before me in this matter on this [*Tenth*] day of
 of [*A.B.*] } [*March*, 1860], was required to submit to be duly sworn and
 examined, pursuant to the Laws relating to Insolvency, but the said [*E.F.*] ther. and
 there refused to be sworn [or refused to answer lawful questions put to him by me
 touching a matter proper to be enquired into]: These are therefore to authorise and
 require you to whom this Warrant is directed, immediately upon receipt hereof to take
 into your custody the said [*E.F.*] and him safely to convey to Her Majesty's Gaol at
 [*Hobart Town*] and him there to deliver to the Keeper of the said Gaol, who is hereby
 authorised and required to receive the said [*E.F.*] into his custody there, and him safely
 keep and detain, without bail, until he shall submit himself to be sworn before me, and
 full answers make to my satisfaction to such questions as shall be propounded to him.

Given under my hand this [*Tenth*] day of [*March*, 1860].

F.B.

Commissioner of Insolvent Estates for [*Hobart Town*].

To [*G.H.*] and to all Constables
 in *Tasmania*, and to the
 Keeper of the said Gaol.

No. 5.

WARRANT of Commitment for Contempt to Commissioner.

In the Matter of } WHEREAS at a Sitting in this matter duly holden before me on the
 the Insolvency } [*Tenth*] day of [*March*, 1860], [*E.F.*, &c.] was guilty of Con-
 of [*A.B.*] } tempt to me: These are therefore to authorise and require you to
 whom this Warrant is directed, immediately upon the receipt thereof to take into your
 custody the said [*E.F.*], and him safely convey to Her Majesty's Gaol at [*Hobart*
Town] and him there to deliver to the Keeper of the said Gaol, who is hereby authorised
 and required to receive the said [*E.F.*] into his custody, and him safely detain and
 keep until further order.

Given under my hand this [*Tenth*] day of [*March*, 1860].

F.B.

Commissioner of Insolvent Estates for [*Hobart Town*].

To [*G.H.*] and to all Constables
 in *Tasmania*, and to the
 Keeper of the said Gaol.

No. 6.

WARRANT against Persons disobeying any Order of the Commissioner.

In the Matter of } WHEREAS by my Order in this matter bearing date the [Tenth] day
 the Insolvency } of [March, 1860] it was ordered that [*&c. &c. as in the Order*]:
 of [A.B.] } And whereas it is now proved, that after the making of the said
 Order, that is to say, on the [Fourth] day of [April, 1860] a copy of the said Order
 was duly served on the said [A.B.] personally; but the said [A.B.] has not as yet
 obeyed the said Order: These are therefore to require and authorise you, immediately
 upon receipt hereof, to take into your custody the Body of the said [A.B.] and him
 safely to convey to Her Majesty's Gaol at [Hobart Town] and him there to deliver to
 the Keeper of the said Gaol, who is hereby required and authorised to receive the said
 [A.B.] into his custody, and him safely to keep and detain, without bail, until I, the
 said Commissioner, or the Supreme Court, or any Judge of the said Court, make an
 Order to the contrary, and for so doing this shall be your sufficient Warrant.

Given under my hand this [Fifth] day of [April, 1860].

F.B.

Commissioner of Insolvent Estates for [Hobart Town].

To [G.H.] and to all Constables
 in Tasmania, and to the
 Keeper of the said Gaol

No. 7.

WARRANT of Commitment of an Insolvent adjudged to Imprisonment on Postponement of Discharge.

In the Matter of } WHEREAS, upon the Examinations and Proceedings in this
 the Insolvency } Matter, it appears to me that [A.B.] the Insolvent has [*set forth*
 of [A.B.] } *substance of offence, as for instance*—has fraudulently, with intent
 to conceal the state of his affairs, destroyed certain books relating to his trade, or has
 contracted certain of his debts by means of false pretences, and in like manner in other
cases]; and I did on the [Tenth] day of [March, 1860] make an order postponing
 the discharge of the said Insolvent for [Eighteen months] from the said [Tenth] day of
 [March], and did adjudge the said Insolvent to be imprisoned during [the whole of]
 such period: These are therefore to require and authorise you to whom this Warrant
 is directed, immediately on receipt hereof, to take into your custody the said [A.B.]
 and him safely to convey to Her Majesty's Gaol at [Hobart Town] and him there
 deliver to the Keeper of the said Gaol, who is hereby required and authorised to receive
 the said [A.B.] into his custody, and him safely to keep and detain in the said Gaol
 [and there keep him to hard labour] for the said period of [Eighteen months] from the
 said [Tenth] day of [March, 1860], and for so doing this shall be your sufficient Warrant.

Given under my hand this [Tenth] day of [March, 1860].

F.B.

Commissioner of Insolvent Estates for [Hobart Town].

To [G.H.] and to all Constables
 in Tasmania, and to the Keeper
 of the said Gaol.