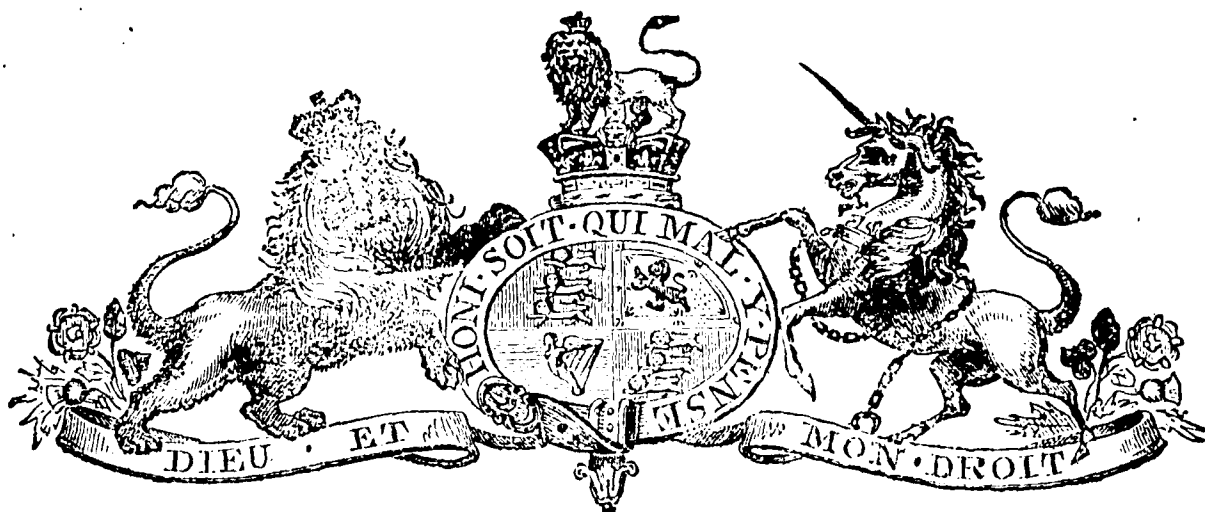


VICTORIA.



ANNO TERTIO

EDWARDI SEPTIMI REGIS.

No. 1836.

An Act to amend the Law relating to Insolvency.

[6th April, 1903.]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Insolvency Act* 1903, and shall be read and construed as one with the *Insolvency Act* 1890 (hereinafter called the Principal Act), and this Act and the Principal Act and any Act amending the said Act or this Act may be cited together as the *Insolvency Acts*.

Short title and construction.

2. Whenever an Order *Nisi* under Part IV. of the Principal Act is discharged or allowed to lapse the creditor on whose petition such Order *Nisi* was made shall pay to and for the use and benefit of the assignee in whose hands the estate had been placed a fee of Five pounds and such further sum as a judge of the Supreme Court shall direct for or towards any expenses which may have been actually and properly incurred by the assignee.

Fee payable to assignee where Order *Nisi* discharged.

3. The

S. 9 of Principal Act to apply to deed of arrangement.

3. The provisions of section nine of the Principal Act shall be deemed and taken to apply *mutatis mutandis* to proceedings in respect of estates trustees and creditors respectively under deeds of arrangement.

Amendment of s. 54 of No. 1102.

4. For section fifty-four of the Principal Act there shall be substituted the following section, namely:—

Assignees' remuneration.

54. The assignees shall be remunerated in the manner following (that is to say):—

Interim management.

(I.) The court or judge shall allow to the assignee all such costs charges and expenses for the interim management of the estate as it or he thinks fit.

Payment by trustee to assignee.

(II.) Where a trustee is elected by the creditors or appointed by the committee of inspection such trustee before obtaining the order confirming his appointment as trustee shall satisfy the court that he has paid to the assignee for his own use and benefit the sum of Five pounds, and where the gross assets in the estate are sworn by the insolvent to exceed Two hundred pounds in value that he has deposited with the Chief Clerk a further sum of Five pounds; and as soon as the gross assets realized exceed Two hundred pounds the Chief Clerk shall pay such Five pounds to the assignee; but if the estate when fully realized does not exceed Two hundred pounds, then the Chief Clerk shall return such Five pounds to the trustee. Provided also that if the gross assets in the estate although sworn by the insolvent not to exceed Two hundred pounds realize an amount in excess of that sum then the trustee shall pay to the assignee an additional sum of Five pounds.

Fixing remuneration by resolution of creditors.

(III.) If no trustee be elected or appointed the assignee shall receive for his own use and benefit such remuneration as the creditors shall at a meeting decide or failing such meeting as the court awards and such remuneration shall except where the assets do not exceed Fifty pounds when a stated sum may be fixed be in the nature of a commission or percentage on the net amount realized and available for payment and application under section one hundred and twenty-three of the *Insolvency Act* 1890.

Amendment of s. 66 of No. 1102.

5. In section sixty-six of the Principal Act for the words "who may execute" there shall be substituted the words "authorizing him to break open and enter such house or place for the purpose of executing."

Amendment of s. 99 of No. 1102.

6. In section ninety-nine of the Principal Act after the word "payment" there shall be inserted the words "of all taxed costs charges allowances and expenses and remuneration to the trustee and."

7. Notwithstanding

7. Notwithstanding anything contained in section fifteen of the *Insolvency Act 1897* no summons or other process issued at the instance or on behalf of the Official Accountant against any assignee or trustee shall be made returnable except in the district and at the place where the records in the matter are filed unless on account of unavoidable urgency or the advisability of a prompt hearing a judge shall on an *ex parte* application of the Official Accountant indorse on the summons or process leave that it may be returnable at some other place.

Summons issued at instance of Official Accountant against assignee to be returnable at place where records filed.

8. Notwithstanding anything contained in sub-section (2) of section seventeen of the *Insolvency Act 1897* unless otherwise directed by the court it shall not be necessary for any assignee who is appointed a trustee to give security in respect of such office of trustee in any particular matter if the instrument of security given by him as assignee expressly includes any office of trustee under the *Insolvency Acts* held or to be held by such assignee.

As to security of assignees who are appointed trustees. No. 1102 s. 52.

9. In section twenty of the *Insolvency Act 1897* after the word "fixed" there shall be inserted the words "from time to time," and for the word "distribution" there shall be substituted the words "payment and application under section one hundred and twenty-three of the *Insolvency Act 1890*."

Amendment of s. 20 of No. 1513.

10. In sub-section (3) of section twenty-seven of the *Insolvency Act 1897* the words "and shall not allow any costs for preparing or taxing the same" are hereby repealed.

Amendment of s. 27 of No. 1513.

11. Notwithstanding anything contained in section twenty-seven of the *Insolvency Act 1897* it shall not be necessary for bills and charges amounting to less than Five pounds to be taxed by the Chief Clerk unless so required by the Official Accountant.

Taxation of bills under Five pounds.

12. In sub-section (2) of section seventy-four of the *Insolvency Act 1897* the words "(b) a deed of agreement for a composition" are hereby repealed.

Amendment of sub-s. (2) of s. 74 of No. 1513.

13. In sub-sections (1) and (3) of section seventy-eight of the *Insolvency Act 1897* for the word "Ten" wherever occurring there shall be substituted the word "Five."

Amendment of sub-ss. (1) and (3) of s. 78 of No. 1513.

14. Nothing contained in section eighty-three of the *Insolvency Act 1897* shall be deemed to require a trustee under deed of arrangement to keep or furnish any accounts reports or statements excepting such as trustees under deeds of arrangement are expressly required to keep and furnish under this amending Act; but this section shall not be construed so as to limit the powers of the court to require or direct any such trustee to furnish any information statement or account in regard to any particular estate in such manner as the court may deem fit.

S. 83 of No. 1513 not to operate so as to require accounts except as expressly provided.

15. Section eighty-nine of the *Insolvency Act 1897* is hereby repealed.

Repeal of s. 89 of No. 1513.

16. In

Amendment of s. 93
of No. 1513.

16. In section ninety-three of the *Insolvency Act* 1897 after the word "all" there shall be inserted the words "costs charges allowances and expenses and remuneration of the assignee and trustee have been paid and all."

Amendment of
s. 115 of No. 1513.

17. In section one hundred and fifteen of the *Insolvency Act* 1897 the words "or under a deed of arrangement under this Act" are hereby repealed.

Trustee under a
deed of arrange-
ment to keep cash
book.

Schedule.

Trustee under deed
of arrangement to
transmit copy cash
book to Official
Accountant.

When estate fully
realized accounts
to be sent in.

Certificate as to
audit.

Where no receipts
or payments
affidavit to be
forwarded.

Account to
accompany notice
of final dividend.

18. (1) Every trustee under a deed of arrangement shall keep such books of account as are necessary or proper to be kept for the purpose of recording or disclosing all the transactions of the business of the estate or debtor in case such business is carried on under the deed, and shall also keep a book to be called the "Cash Book" in the form of the Schedule to this Act or to the like effect, in which he shall enter each receipt and payment made to and by him in such detail as will explain its nature, and such cash book must record the actual date on which all moneys are received and paid respectively.

(2) Every trustee under a deed of arrangement shall at the expiration of six months from the date of such deed and at the expiration of every succeeding six months thereafter transmit to the Official Accountant for audit by him a copy in duplicate (verified by the affidavit of such trustee) of the cash book for such period together with the vouchers for all payments and allocations for taxable charges. The trustee shall also furnish the Official Accountant with all such further information whether in writing or otherwise as the Official Accountant may require for the purpose of auditing such account.

(3) When the estate has been finally realized and distributed the trustee shall forthwith transmit the accounts mentioned in sub-section (2) although the six months shall not have expired.

(4) When the trustee's account has been audited the Official Accountant shall certify that the account has been duly passed, and thereupon one copy of the cash book bearing a like certificate shall be transmitted to the Chief Clerk who shall file the same with the proceedings in the estate.

(5) Where since the date of the deed or since the period up to which the last preceding audit of accounts shall have been made a trustee has not received or paid any sum of money on account of the estate, he shall at the period when he is required to transmit the copy of the cash book as aforesaid forward to the Official Accountant an affidavit of no receipts or payments in the like form as nearly as may be as is provided in the case of a trustee in insolvency.

(6) When the trustee under any deed of arrangement has declared a final dividend he shall send to each creditor who has proved together with the notice of such final dividend a statement of the receipts and expenditure of and in such estate.

19. No

19. No distress for rent shall be made levied or proceeded in after the execution of any deed of arrangement whereby the debtor shall convey or assign all his property for the benefit of all his creditors; and the provisions of section one hundred and seventeen of the *Insolvency Act 1897* shall be deemed to apply *mutatis mutandis* to all claims for rent due or accruing due at the date of execution of any such deed. This section shall be read as if it were included in Part VI. of the *Insolvency Act 1897*.

Distress for rent not to be proceeded with against assigned estate.

20. Sub-section (2) of section one hundred and eleven of the *Insolvency Act 1897* shall not be deemed to apply to examinations under section one hundred and thirty-five of the Principal Act.

Sub-s. (2) of s. 111 of No. 1513 not to apply to examinations summary.

21. Where a trustee is in doubt as to the legality or propriety of any payment or expenditure not exceeding Twenty pounds which he may contemplate making or incurring or which may be demanded of him, he may request the opinion of the Official Accountant thereon and the Official Accountant shall with all convenient speed furnish such trustee with his opinion in writing accordingly. Such trustee shall not thereafter be liable to be surcharged or held responsible in respect of any payment or expenditure made or incurred in conformity with such opinion if such trustee shall have fully disclosed to the Official Accountant all facts material to be known in relation to the matter submitted.

Trustees may obtain opinion of Official Accountant.

22. Every clerk or servant or labourer or workman who shall have been in the employment of the insolvent at the date of his executing a deed of arrangement which has been superseded by insolvency shall be deemed to have the same rights and be treated in the same manner as if the order of sequestration were dated back to the date of the said deed of arrangement.

Effect of insolvency on certain preferential debts.
Comp. No. 1102
s. 115 (ii.).

23. No distress for interest or annuity by any mortgagee or annuitant under the Transfer of Land Acts shall be made levied or proceeded in after sequestration or liquidation by arrangement or execution by a debtor of a deed of arrangement under the *Insolvency Act 1897*, but the mortgagee or annuitant shall be allowed to come in as a creditor and share rateably with the other creditors for interest or annuity due and payable at the date of such sequestration liquidation or deed of arrangement.

No distress for interest or annuity under Transfer of Land Acts to be made after sequestration &c.

24. Notwithstanding anything contained in the *Insolvency Acts 1890 and 1897* it shall not be lawful for the assignee or trustee of any estate to take the affidavit of proof of debt of any creditor in such estate unless such assignee or trustee be a Commissioner for taking Affidavits in the Supreme Court or a Commissioner for Affidavits.

Assignee or trustee not to take affidavit of proof of debt unless a Commissioner for taking Affidavits &c.

SCHEDULE.

SCHEDULE.

Section 18.

CASH BOOK (*Pro formâ*). NAME OF BANK.

<i>Dr.</i>				<i>Cr.</i>				
Date.	—	Receipts.	Bank.	Date.	—	Cheque No.	Disbursements.	Bank.
		£ s. d.	£ s. d.				£ s. d.	£ s. d.
1900. Aug. 14	To Cash received from assignor ...	5 0 0		1900. Aug. 20	By Allowance assignor	1	20 0 0	20 0 0
	Balance assignor's bank account ...	39 14 6		" 30	" Taxed costs, E. Smith	2	17 9 0	17 9 0
			44 14 6	Sep. 10	" Salary, &c., stock-taker ...	3	25 0 0	25 0 0
" 15	Deposit on tender sale of stock in trade ...	35 0 0		" 10	" Rent and taxes ...	4	35 0 0	35 0 0
	Balance of sale of stock in trade, per Tyler and Co. ...	316 18 0		" 20	" Advertising, petties, postages ...	5	8 10 0	8 10 0
			351 18 0	" 30	" Trustee's commission	6	28 2 9	28 2 9
" 20	Proceeds of household furniture ...	57 10 0		Oct. 20	" Dividend—First and final—			
			57 10 0		Smith £250 0 0	7	...	250 0 0
" 30	Book debt, J. Brown	4 15 0			Brown 100 0 0	8	...	100 0 0
	" E. Smith	6 10 0			Johnson 43 15 9	9	...	43 15 9
			11 5 0		Robinson 20 0 0	10	...	20 0 0
Oct. 10	Proceeds of sale by tender of balance book debts, P. J. Robinson ...	97 10 0	97 10 0		Jackson 10 0 0	11	...	10 0 0
			562 17 6		Black 5 0 0	12	...	5 0 0
							428 15 9	
								562 17 6

MELBOURNE:
By Authority: ROBT. S. BRAIN, Government Printer.