

## New Zealand.

ANNO TRICESIMO

# VICTORIÆ REGINÆ.

No. 60.

ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Sections 26 27 28 29 39 and 40 of "Debtors and Creditors Act 1862" and 5th section of "Debtors and Creditors Act Amendment Act 1865" repealed.</li> <li>3. Moneys standing to the credit of Insolvent Estates Fund to be paid into Treasury.</li> <li>4. Estates to be deemed brought under administration.</li> <li>5. What estates chargeable with fees.</li> <li>6. Relief shall not be granted to a debtor until after expiration of such a period of not less than six months and not more than three years from final hearing as Court think fit if estate of debtor not sufficient to pay 6s. 8d. in the pound to each creditor unless creditors pass a resolution desiring that debtor should have relief.</li> <li>7. If within twelve months from final hearing it appears that estate of debtor is not sufficient</li> </ol> | <p>to pay 6s. 8d. in the pound to each creditor final order made at hearing may be cancelled and relief suspended for a period in discretion of Court not being less than six months and not longer than three years unless creditors pass a resolution desiring that order of relief should not be cancelled.</p> <ol style="list-style-type: none"> <li>8. If creditors at a meeting recommend it debtor's estate may be assigned to an Inspector jointly with other trustees or another trustee. Where estate does not exceed £500 Inspector shall be sequestrator.</li> <li>9. Judges of Supreme Court may fix remuneration to be paid to sequestrators and trustees.</li> <li>10. On failure of creditor to contribute to maintenance debtor to be discharged from custody.</li> <li>11. Governor in Council may confer full powers on District Judge.</li> <li>12. Interpretation.</li> </ol> |
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## AN ACT for further amending "The Debtors and Creditors Act 1862" and amending "The Debtors and Creditors Act Amendment Act 1865." Title. [8th October 1866.]

**BE IT DECLARED AND ENACTED** by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

I. The Short Title of this Act shall be "The Debtors and Creditors Acts Amendment Act 1866."

II. The twenty-sixth twenty-seventh twenty-eighth twenty-ninth thirty-ninth and fortieth sections of "The Debtors and Creditors Act 1862" and the fifth section of "The Debtors and Creditors Act Amendment Act 1865" are hereby repealed.

III. All moneys paid before the passing of this Act under the thirty-ninth section of "The Debtors and Creditors Act 1862" to the fund therein called the "Insolvent Estates Fund" and unexpended before the passing of this Act shall be paid over by the officer or person having the custody or control of the same to the Colonial Treasurer and shall thenceforward form a part of the fund created by the twenty-eighth section of the said Amendment Act and be dealt with and be charged with the like expenses as the said fund.

IV. It is hereby declared and enacted that in every case where any debtor has since the passing of said Act made and executed or shall hereafter make and execute any deed of assignment for the benefit of his creditors or any deed under the said Act whereby or in such wise as that creditors of such debtor not executing or assenting to such deed shall nevertheless be bound thereby and where before or after the passing of this Act upon or after any

Short Title.

Sections 26 27 28 29 39 and 40 of "Debtors and Creditors Act 1862" and 5th section of "Debtors and Creditors Act Amendment Act 1865" repealed.

Moneys standing to the credit of Insolvent Estates Fund to be paid into Treasury.

Estates to be deemed brought under administration.

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application under the said Act by petition to the Supreme Court or a Judge thereof by a debtor or by the creditors of any debtor the estate or effects of such debtor has been or shall be assigned for the benefit of his creditors by order of the said Court or any Judge thereof then in every such case the estate of such debtor shall be deemed to have been brought under administration under or through the said Act.

What estates chargeable with fees.

V. Every such estate brought under administration under the said Act before the thirtieth day of October one thousand eight hundred and sixty-five and undistributed on the thirtieth day of October one thousand eight hundred and sixty-five shall but only as to so much of the estate or effects as were then undistributed be deemed to have been and be liable to the payment of the fees specified in the Schedule to the said Amendment Act 1865.

Relief shall not be granted to a debtor until after expiration of such a period of not less than six months and not more than three years from final hearing as Court think fit if estate of debtor not sufficient to pay 6s. 8d. in the pound to each creditor unless creditors pass a resolution desiring that debtor should have relief.

VI. If at the final hearing of any petition presented before or after the passing of this Act it be made to appear to the Court that the estate and effects of any debtor by whom or in respect of whose estate and effects such petition shall have been presented are not of sufficient value to pay over and beyond the estimated costs of realization to each and every of the creditors of such debtor who shall have proved their debts six shillings and eightpence in the pound for every pound of every debt so proved relief under the said Act shall not be granted by the Court to such debtor until after the expiration of such time as the Court may order not exceeding three years and not being less than six months from the date of such order. Provided however that if at a meeting of creditors held before the final hearing and duly convened in accordance with the General Rules or Orders of the Judges of the Supreme Court regulating meetings of creditors for the time being in force at which meeting are present personally or by proxy a majority in number representing one half in value of the creditors of such debtor a resolution be adopted to the effect that the creditors are willing that the debtor should at once obtain relief under the said Act then it shall be lawful for the Court if it shall think fit to grant such relief at once or at such later time as in its discretion it shall think fit.

If within twelve months from final hearing it appears that estate of debtor is not sufficient to pay 6s. 8d. in the pound to each creditor final order made at hearing may be cancelled and relief suspended for a period in discretion of Court not being less than six months and not longer than three years unless creditors pass a resolution desiring that order of relief should not be cancelled.

VII. If at any time within twelve months after the final hearing of any petition presented before or after the passing of this Act by any debtor with or without concurring creditors or by the creditors of any debtor if on the application of any trustee of the estate or effects of such debtor or any creditor of such debtor or any Inspector in Bankruptcy it shall be made to appear to the Court that the value of the estate and effects of such debtor which have been by order of the Court conveyed or assigned to any person or persons appointed by the Court has not proved sufficient to pay (over and beyond what the Court shall find to be the actual and proper costs of realization) to each and every of the creditors of such debtor who shall have proved their debts a sum of six shillings and eightpence in the pound for every pound of every debt so proved such Court shall in the first instance make an order *ex parte* that unless on a day to be named therein the debtor appear and show cause why an order should not be made suspending any order made at the final hearing releasing or discharging or the effect whereof by "The Debtors and Creditors Act 1862" has been to release or discharge the debtor from the debts liabilities and engagements specified therein and such order shall be served upon such debtor personally or otherwise as the Court shall direct and if such debtor shall not appear at the day named and show sufficient cause why such order should not be made absolute the Court shall make an order absolute suspending such order aforesaid which

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released or discharged such debtor from the debts liabilities and engagements specified therein and such last-mentioned order shall not continue to have such effect and shall not have such effect until after the expiration of such time as the Court may order not exceeding three years and not being less than six months from the date of such last-mentioned order. Provided however that if at a meeting of creditors held at any time after the final hearing and before the making of such last-mentioned order and duly convened in accordance with the general rules or orders of the Supreme Court regulating meetings of creditors for the time being in force at which meeting are present a majority in number representing one half in value of the creditors of such debtor a resolution be adopted to the effect that the creditors are willing that the order of release and discharge should continue in force then it shall be lawful for the Court if it shall think fit to refuse to cancel the order of release and discharge.

VIII. If at any meeting of creditors duly convened in accordance with the general rules of the Judges of the Supreme Court regulating meetings of creditors held at any time after a petition shall have been presented under the said Act by any debtor for relief under the said Act or by the creditor of any debtor and before the final hearing of such petition a resolution be passed recommending that the estate and effects of such debtor should be assigned to one of the Inspectors in Bankruptcy appointed under the said Amendment Act as a trustee either alone or jointly with another trustee or other trustees then it shall be lawful for the Court to order that the estate and effects of such debtor shall be conveyed and assigned to such one of the Inspectors in Bankruptcy as it shall appoint either alone or jointly with another trustee or other trustees and whenever any petition shall be presented under the said Act by any debtor for relief or by the creditors of any debtor and it shall appear to the Court that the value of the estate and effects of the debtor does not exceed five hundred pounds over and above the estimated costs of realization one of the Inspectors in Bankruptcy shall be the person to whom interim sequestration shall be granted under the said Acts. Provided that when any Inspector in Bankruptcy is appointed interim sequestrator or trustee it shall not be necessary that such Inspector should find security for the performance of his duties as sequestrators or trustees.

IX. The Judges of the Supreme Court shall from time to time make rules or orders fixing the allowances to be paid out of the proceeds of the estate and effects of the debtor by way of remuneration to trustees and sequestrators appointed under the said Act and Inspectors when appointed to act as trustees or sequestrators for the performance of their duties as such trustees or sequestrators.

X. Whenever a detaining creditor or detaining creditors shall for the period of two weeks fail to pay for the maintenance of a debtor detained as a prisoner at his or their suit at the rate provided by section thirty-five of "The Debtors and Creditors Act 1862" upon affidavit thereof made by the warden or other officer in charge of the gaol in which such debtor shall so be detained being filed in the Supreme Court in the judicial district in which such gaol may be situated such debtor shall on application to the Court or to a Judge thereof be entitled to an order for his discharge from further custody at the suit of such detaining creditor or creditors. Provided that such order of discharge or such imprisonment so terminated shall not be deemed or taken to have extinguished the debt or debts of such creditor or creditors as aforesaid but solely to have extinguished the right of such creditor or creditors to take or detain in custody the body of such debtor in respect of such debt or debts.

If creditors at a meeting recommend it debtor's estate may be assigned to an Inspector jointly with other trustees or another trustee.

Where estate does not exceed £500 Inspector shall be sequestrator.

Judges of Supreme Court may fix remuneration to be paid to sequestrators and trustees.

On failure of creditor to contribute to maintenance debtor to be discharged from custody.

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Governor in Council  
may confer full  
powers on District  
Judge.

XI. It shall be lawful for the Governor by Order in Council from time to time to direct and declare that all or any of the powers by the said Acts or by either of them or by this Act vested in the Supreme Court or a Judge thereof and the jurisdiction and functions of the Supreme Court or of the Judges or of any Judge thereof under the said Acts or this Act may be exercised by the Judge of such District Court within his district or by a Resident Magistrate having extended jurisdiction as in such order shall be named.

Interpretation.

XII. Where used in this Act the term "the said Act" shall mean "The Debtors and Creditors Act 1862" and the term "the said Amendment Act" shall mean "The Debtors and Creditors Act Amendment Act 1865" and the term "the said Acts" shall mean "The Debtors and Creditors Act 1862" and "The Debtors and Creditors Act Amendment Act 1865."

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