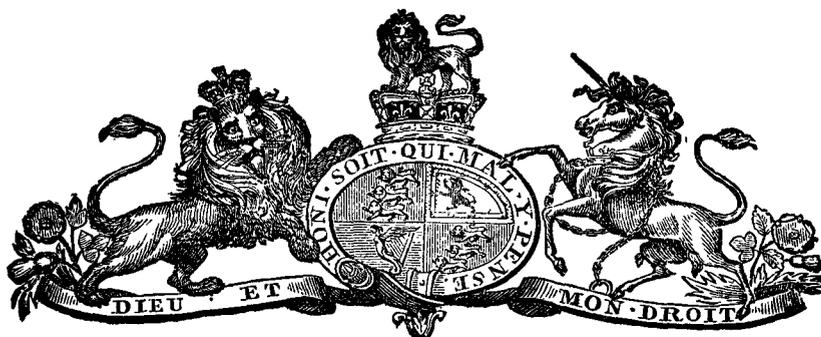


## NEW ZEALAND.



QUADRAGESIMO SECUNDO  
**VICTORIÆ REGINÆ.**  
 No. 10.

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## ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Repeal clause.</li> <li>3. Interpretation.</li> <li>4. Punishment of fraudulent debtors.</li> <li>5. Penalty for absconding with property.</li> <li>6. Penalty on fraudulently obtaining credit, &amp;c.</li> <li>7. False claim, &amp;c., a misdemeanour.</li> <li>8. Debts incurred by fraud.</li> </ol> | <ol style="list-style-type: none"> <li>9. Order by Court for prosecution on report of trustee.</li> <li>10. Expenses of prosecutions.</li> <li>11. Application of Vexatious Indictments Act to offences under this Act.</li> <li>12. Substance of offence in indictment to be sufficient.</li> <li>13. Court may refuse discharge if proper books have not been kept.</li> <li>14. Sub-debtors deemed to be bailees.</li> </ol> |
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AN ACT for the Punishment of Fraudulent Debtors, Title.  
 and for other Purposes.

[23rd September, 1878.]

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

1. The Short Title of this Act shall be “The Fraudulent Debtors Act, 1878.” Short Title.

2. “The Fraudulent Debtors Act, 1875,” and “The Fraudulent Debtors Act 1875 Amendment Act, 1876,” are hereby repealed, but this repeal shall not affect the past operation of the said repealed Acts, or the validity or invalidity of anything done or suffered, or any right title or obligation or liability accrued, before the commencement of this Act by or under such Acts; nor shall this Act interfere with the institution or prosecution of any proceeding in respect of any offence committed, or any penalty punishment or forfeiture incurred, against or under any such repealed Acts; and the said Acts shall remain in force so far as regards any person whose estate is liquidated or in course of liquidation under “The Debtors and Creditors Act, 1875,” and any debtor whose estate has come under the operation of “The Debtors and Creditors Act, 1876.” Repeal clause.

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## Interpretation.

**3.** In the interpretation of this Act, if not inconsistent with the context, the words and expressions following shall have the meaning hereby assigned to them, that is to say,—

“Debtor” means any person who shall come under the operation of “The Debtors and Creditors Act, 1876,” and includes any debtor who shall file a deed of arrangement under the one hundred and twenty-eighth section of the last-mentioned Act.

“Commencement of bankruptcy” means the date of filing of the declaration of insolvency referred to in section twenty-two of “The Debtors and Creditors Act, 1876,” or the date on which the Court makes the adjudication referred to in section thirty-five of that Act.

“Commencement of arrangement” means the date of the filing of a deed of arrangement made under the authority of section one hundred and twenty-eight of “The Debtors and Creditors Act, 1876.”

“Trustee” means any person administering any debtor’s estate for the benefit of his creditors, and includes the Registrar of the Supreme Court, or the Clerk of the District Court, or the deputy for the time being of such Registrar or Clerk, and any trustee or inspector under any deed of arrangement filed under the one hundred and twenty-eighth section of “The Debtors and Creditors Act, 1876.”

## Punishment of fraudulent debtors.

**4.** Any debtor shall, in each of the cases following, be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour, that is to say,—

(1.) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud.

(2.) If he does not deliver up to the trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud.

(3.) If he does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud.

(4.) If, after the commencement of the bankruptcy, or after the commencement of the arrangement, or within four months next before such commencement, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied he had no intent to defraud.

(5.) If, after the commencement of the bankruptcy, or after the commencement of the arrangement, or within four months next before such commencement, he fraudulently removes any part of his property of the value of ten pounds or upwards.

(6.) If he makes any material omission in any statement

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*Fraudulent Debtors.*

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- relating to his affairs, unless the jury is satisfied that he had no intent to defraud.
- (7.) If, knowing or believing that a false debt has been proved by any person under the bankruptcy, or under any deed of arrangement made under the one hundred and twenty-eighth section of "The Debtors and Creditors Act, 1876," he fail for the period of a month to inform the trustee thereof.
  - (8.) If, after the commencement of the bankruptcy, or the commencement of the arrangement, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.
  - (9.) If, after the commencement of the bankruptcy, or the commencement of the arrangement, or within four months next before such commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.
  - (10.) If, after the commencement of the bankruptcy, or after the commencement of the arrangement, or within four months next before such commencement, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.
  - (11.) If, after the commencement of the bankruptcy, or after the commencement of the arrangement, or within four months next before such commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission, in any document affecting or relating to his property or affairs.
  - (12.) If, after the commencement of the bankruptcy, or after the commencement of the arrangement, or at any meeting of his creditors within four months next before such commencement, he attempts to account for any part of his property by fictitious losses or expenses.
  - (13.) If, within four months next before the commencement of the bankruptcy, or next before the commencement of the arrangement, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same.
  - (14.) If, within four months next before the commencement of the bankruptcy, or next before the commencement of the arrangement, under the false pretence of carrying on business and dealing in the ordinary course of trade, he obtains any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud.
  - (15.) If, within four months next before the commencement of the bankruptcy, or next before the commencement of the arrangement, he pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud.

*Fraudulent Debtors.*

(16.) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy, or to any deed of arrangement under the one hundred and twenty-eighth section of "The Debtors and Creditors Act, 1876."

Penalty for absconding with property.

5. If any debtor, after the commencement of the bankruptcy, or after the commencement of the arrangement, or within four months before such commencement, quits New Zealand and takes with him, or attempts or makes preparation for quitting New Zealand and for taking with him, any part of his property to the amount of twenty pounds or upwards which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony, punishable with imprisonment for any term not exceeding two years, with or without hard labour.

Penalty on fraudulently obtaining credit, &c.

6. Any person shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any term not exceeding one year, with or without hard labour, that is to say,—

- (1.) If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud :
- (2.) If he has, with intent to defraud his creditors or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property :
- (3.) If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

False claim, &c., a misdemeanour.

7. If any creditor in any bankruptcy under "The Debtors and Creditors Act, 1876," or under any deed of arrangement under that Act, wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanour, punishable with imprisonment not exceeding one year, with or without hard labour.

Debts incurred by fraud.

8. A debtor shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof before the commencement of the bankruptcy, or commencement of the arrangement, he obtained forbearance, by any fraud, provided the defrauded creditor has not assented to the bankruptcy or deed of arrangement as aforesaid, otherwise than by proving his debt and accepting dividends.

Order by Court for prosecution on report of trustee.

9. Where any trustee in any bankruptcy or under a deed of arrangement as aforesaid reports to any Court exercising jurisdiction in bankruptcy that in his opinion a debtor has been guilty of any offence under this Act, or where the Court is satisfied, upon the representation of any creditor or trustee in the bankruptcy, or under any deed of arrangement as aforesaid, that there is ground to believe that the debtor has been guilty of any offence under this Act, the Court shall, if it appears to the Court that there is a reasonable probability that the debtor may be convicted, order the trustee to prosecute the debtor for such offence.

Expenses of prosecutions.

10. Where the prosecution of a debtor under this Act is ordered by any Court, then, on the production of the order of the Court, the prosecution shall be conducted by some barrister or solicitor appointed by the trustee for the purpose, and all the expenses of the prosecution shall be allowed and paid out of the debtor's estate, and if such estate be insufficient such expenses shall be allowed and paid as expenses of prosecutions out of any moneys appropriated by the General Assembly for criminal prosecutions.

*Fraudulent Debtors.*

11. Every misdemeanour under this Act shall be deemed to be an offence within and subject to the provisions of "The Vexatious Indictments Act, 1870;" and when any person is charged with any such offence before any Justice or Justices, such Justice or Justices shall take into consideration any evidence adduced before him or them tending to show that the act charged was not committed with a guilty intent.

Application of Vexatious Indictments Act to offences under this Act.

12. In an indictment for an offence under this Act it shall be sufficient to set forth the substance of the offence charged, in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any declaration of insolvency, or any debt, or any act upon which proceedings have been or might have been taken to obtain adjudication under "The Debtors and Creditors Act, 1876," or any deed of arrangement under the one hundred and twenty-eighth section of that Act, or any proceedings in, or order, warrant, or document of, any Court acting under "The Debtors and Creditors Act, 1876."

Substance of offence in indictment to be sufficient.

13. If any debtor shall fail to keep books of account setting forth truthfully the state of his business transactions, it shall be lawful for the Court having jurisdiction in the bankruptcy, or for a Judge thereof, to refuse to grant such a debtor a discharge, notwithstanding that the certificate mentioned in section seventy-nine of "The Debtors and Creditors Act, 1876," has been granted.

Court may refuse discharge if proper books have not been kept.

14. Every debtor and other person who shall be in possession of the whole or any part of the estate of any debtor after the said estate shall have become vested in the trustee thereof shall, with respect to the estate so in his possession, be deemed to be a bailee within the meaning of "The Larceny Act, 1867."

Sub-debtors deemed to be bailees.

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