

NEW ZEALAND.



VICTORIÆ REGINÆ.

ANNO VICESIMO TERTIO

No.

ANALYSIS:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>Title.</li> <li>Preamble.</li> <li>1. Short Title.</li> <li>2. Petition.</li> <li>3. Temporary protection from arrest.</li> <li>4. First meeting to be convened and notice thereof.</li> <li>5. Judge to appoint President.</li> <li>6. If proposal accepted as modified, second meeting to be convened and notice.</li> <li>7. Resolution to be in writing and signed.</li> <li>8. Confirmation and effect of resolution.</li> <li>9. Not to prevent arrest under Judge's order.</li> <li>10. Property to vest in Trustees.</li> </ul> | <ul style="list-style-type: none"> <li>11. Trustee to account every six months.</li> <li>12. Trustee to be officer of Court and liable to obey rules and orders.</li> <li>13. Power to examine Petitioner and Witnesses, and commit for falsehood.</li> <li>14. Power to convene special meetings.</li> <li>15. Certificate and release to the Trustees.</li> <li>16. Certificate to petition and effect thereof.</li> <li>17. Power to make rules.</li> <li>18. Incorporation of sections from Insolvent Act.</li> <li>19. Registration of resolution and certificate.</li> <li>20. Signed copies to be evidence.</li> <li>21. Interpretation clause.</li> </ul> |
|--|---|

**AN ACT for facilitating Compositions between Debtors and their Creditors.** Title.

**WHEREAS** it is expedient that amicable modes of arrangement and Composition between Debtors and their Creditors should be facilitated, and that means should be provided for carrying the same into effect, Preamble.

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

I. The Short Title of this Act shall be "The Debtors' and Creditors' Composition Act, 1860." Short Title.

II. It shall be lawful for any Debtor who is unable to meet his engagements with the concurrence of one third at the least in number and value of his Creditors, (testified by their signing his petition) to present to the Supreme Court for the division or district within which such Debtor shall reside a petition setting forth in schedules thereto a full account of his debts and the consideration thereof, and the names, residences, and occupations of Petition.

*at the district court in absence of the Supreme Court.*

his Creditors, and also a full account of his estate and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to or claimed by him, and of all property of what kind soever held in trust for him, and also setting forth that he is unable to meet his engagements with his Creditors, and the true cause of such inability, and also setting forth such proposal as he is able to make for the future payment or the compromise of such debts or engagements, and that one third in number and value of his Creditors have assented to such proposal, and praying that such proposal (or such modification thereof as by the majority of his Creditors should be determined) should be carried into effect under the superintendence of the said Court, and that he, the said petitioning Debtor, should in the meantime be protected from arrest by the order of the said Court.

Temporary protection from arrest.

III. It shall be lawful for the Judge upon the examination of such petition as aforesaid, to grant to such petitioning Debtor a temporary and limited protection from arrest, and such petitioning Debtor shall be accordingly free from arrest for such time, and within such limits and conditions as shall be specified in the said protection, and it shall be lawful for the Judge to require such petitioning Debtor to give bail for his appearance at the said several meetings of his Creditors, and every petitioning Debtor shall have such protection from arrest when going to, remaining in, and returning from his necessary attendance upon the said Judge, or the said meetings of Creditors as is enjoyed by any party or witness attending any Court of record: Provided that such last mentioned protection from arrest shall not extend to the debt of any Creditor who is not named, or whose debt is not *bona fide* set forth and specified in the said petition.

Clause 13 of Insolvent Bill to be inserted

First meeting to be convened and notice thereof.

IV. Upon the presentation of such petition the Judge to whom same shall be presented shall privately examine into the matter of the said petition, and for that purpose shall have power to examine upon Oath such petitioning Debtor, and any Creditor concurring in his petition, and any Witness produced by such petitioning Debtor; and if the Judge shall be satisfied of the truth of the several matters alleged in such petition, and that the debts of the petitioning Debtor have not been contracted by reason of any manner of fraud or breach of trust, or without reasonable probability at the time of contracting the same of being able to pay the same, or by reason of any judgment in any prosecution for any breach of the revenue laws, or in any action for ~~breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest or malicious trespass~~; and that such petitioning Debtor has made a full disclosure of his debts and credits, estate and effects, and is desirous of making a *bona fide* arrangement with all his creditors, and that his proposal to that effect is fair and reasonable and proper to be carried into execution under the direction of the said Court, it shall be lawful for such Judge to direct that a meeting of all the Creditors of such petitioning Debtor should be convened at such time and place as the said Judge shall appoint, notice of which shall be given ~~in writing~~ <sup>at residence</sup> to every such Creditor who shall reside within the Colony of New Zealand, ~~and to the agent, receiver, or attorney (if any residing within~~ <sup>to the actual address</sup>

in writing of which

in upon such notice

said Colony) of every such Creditor who shall reside elsewhere than within such Colony not less than ~~seven or more than twenty-eight days before the same is held~~, and such notice shall also, if the Judge shall so direct, be published in such Gazette or Newspaper as the Judge shall for that purpose appoint.

V. The Judge shall appoint a fit and proper person, being a Registrar or Deputy Registrar of the said Court, or one of the principal Creditors of the said petitioning Debtor, to preside at such meeting of Creditors, and to report the resolutions thereof to the said Judge.

Judge to appoint president.

VI. If ~~at such meeting of Creditors~~ the major part in number and value or  $\frac{2}{3}$  in value or  $\frac{3}{4}$  in number whose debts exceed ~~\_\_\_\_\_ Pounds of those who shall be present~~ by themselves or their attorneys or agents at such meeting shall assent to the proposal of such petitioning Debtor, or to any modification thereof, the President of such meeting shall appoint another meeting of the Creditors of such petitioning Debtor, to be held not earlier than seven nor later than twenty-eight days from such first meeting, of which second meeting and of the purpose thereof notice in writing shall be given to every Creditor who was not present by himself or his agent at such first meeting \_\_\_\_\_ clear days at least before the day appointed for such second meeting: Provided, however, that the judge may, if he shall think fit, order in any special case that such service of such notice as shall be in said order mentioned shall be deemed good service of such notice.

If proposal accepted as modified, second meeting to be convened and notice.

*of creditors for sum exceeding £ 20*

VII. If ~~at such second meeting of Creditors~~ ~~three fifths in number and value of all the Creditors present, or nine tenths in value or nine tenths in number, whose debts shall exceed Twenty Pounds~~ shall agree to accept such arrangement or composition as was assented to at the said first meeting of Creditors, and shall reduce the terms thereof into writing and sign the same, such resolution or agreement subject to such confirmation as is hereinafter enacted shall thenceforth be binding and of full force as well against the said petitioning Debtor as against all persons who were Creditors of the said petitioning Debtor at the date of his said petition, ~~and who had notice of the said several meetings of Creditors~~: Provided, however, that such resolution or agreement shall not be valid unless one full third in number and value of all the Creditors of such petitioning Debtor were present at such second meeting, either in person or by an authorized agent.

Resolution to be in writing and signed.

*The major part in number and value of creditors present at such second meeting*

*and two thirds in number and value of the whole creditors shall then or within ten days thereafter sign the said resolution or agreement*

VIII. Within fifteen days next after the passing of such resolution or agreement the same shall be submitted to the Judge acting in the matter of the said petition, who, if he shall think the same reasonable, and proper to be executed under the direction of the said Court, shall cause the same to be filed and entered of record therein, and shall grant to such petitioning Debtor a certificate of such filing, and shall from time to time endorse on such certificate his protection of such petitioning Debtor from arrest, and such petitioning Debtor shall be free from arrest at the suit of any person being a Creditor at the date of his said petition ~~and having had such second notice or~~

Confirmation and effect of resolution.

~~notice as aforesaid~~ and it shall not be lawful for any officer to arrest such petitioning Debtor at the suit or any such Creditor for any debt which shall be *bona fide* set forth and specified in such petition: Provided, however, that no such protection shall be valid against any Creditor whose debt is not *bona fide* set forth in the said petition, or whose debt has been contracted by reason of any manner of fraud or breach of trust.

Not to prevent arrest under Judge's order.

IX. Nothing herein contained shall prevent the said petitioner from being arrested or held to bail, under the authority of any Judge's order for that purpose, in like manner as may now by law be done notwithstanding any protection which may be granted under the authority of this Act: Provided that any affidavit or affirmation filed for the purpose of obtaining such order shall state the filing of such petition, the date of such filing, and the time appointed for such meeting of Creditors, and in case such meetings of Creditors shall have been held, the times of such meeting or meetings and the resolution or resolutions come to thereat respectively, and whether the same shall have been confirmed in manner aforesaid, and the date of such confirmation.

*If any trustee or trustees shall be appointed by any resolution or agreement as aforesaid then*

*Property to vest in Trustee as fully as such deed without any deed*

Property to vest in Trustee.

X. From and after the filing of such resolution and ~~or agreement as aforesaid~~, all the estate and effects of such petitioning Debtor shall vest in the <sup>Trustee</sup> ~~Trustee~~ ~~by virtue of such resolution, and without any deed as fully as if such Trustee were an Assignee, under any Act for the relief of Insolvent Debtors for the time being in force in New Zealand, and every such Trustee may sue and be sued as if he were such Assignee.~~ *estate and effects were forthwith vested in such petitioning Debtor*

Trustee to account every six months.

XI. Every such Trustee as aforesaid, shall once at least in every six months, or oftener if the said Judge, or any two or more of the Creditors of such petitioning Debtor, whose debts amount to one-tenth of the amount of the debts of such petitioning Debtor require it, produce to the said Judge upon oath or solemn affirmation a full and true account of all monies, property, and effects, of such petitioning Debtor, which have come to his hands, and of the disposal thereof, and the Judge, or the Registrar or deputy Registrar of the Court, if the same shall be referred to him by the Judge, shall examine the same and shall certify the result of such examination, and shall if need be order payment to the Creditors of such petitioning Debtor, according to the terms of such resolution or agreement as aforesaid.

Trustee to be officer of Court and liable to obey rules and orders.

XII. Every Trustee who shall be appointed by any such resolution or agreement as aforesaid, and shall accept such office or consent to act as such Trustee, shall be deemed to be an officer of the said Court, and liable as such to the control thereof, and every such Trustee shall be liable to such rules and regulations as the Court shall from time to time make, in relation to Assignees under any Act for the relief of insolvent Debtors for the time being in force in New Zealand, so far as the same shall be applicable to such Trustees from the nature of the duties imposed on them, either by the resolution or agreement whereby he may have been appointed, or by any order of the Judge made in the matter of such petition.

XIII. If it shall at any time appear to the said Judge, on the representation of such Trustee as aforesaid, or of any two Creditors as aforesaid, that such petitioning Debtor has not made a true discovery of his estate and effects, or has not duly accounted for any subsequently acquired property (if required by the true intent and meaning of the said resolution or agreement), or has wilfully made any false return of Creditors or of the debts due to such Creditors respectively, it shall be lawful for the Judge to summon before him such petitioning Debtor, and any other person whom he shall believe capable of giving any information touching such matters, and also to require any person so summoned to produce any books, papers, deeds, ~~and~~ writings, and other documents in the custody, power, or possession of such person as may appear to the Judge necessary for the due administration of justice in the matter of such petition, and to examine such petitioning Debtor and other person or persons upon oath, by word of mouth or interrogations in writing touching the same, ~~and such summons and examination shall be enforced in such manner, as is provided by the Act for relief of insolvent Debtors in the like case;~~ and if upon such examination it shall be proved to the satisfaction of the Judge, that such petitioning Debtor has been guilty of any fraudulent suppression, or mis-statement of any of the matters aforesaid, it shall be lawful for such Judge to commit such petitioning Debtor to prison for such period as he shall think fit, not exceeding twelve calendar months.

Power to examine  
Petitioner and Wis-  
nesses, and commit  
for falsehood.

XIV. In case any difficulty shall arise in the execution of the said resolution or agreement, it shall be lawful for the Judge to cause a special meeting of the Creditors of such petitioning Debtor to be assembled ~~in like manner as is hereinbefore provided for the second meeting of Creditors,~~ and the resolution of the majority of the Creditors present at such special meeting, to confirm, alter, or annul the whole or any part of the said resolution or agreement, or to direct the Trustee in such difficulty shall be as valid as if it had been part of the original resolution or agreement: Provided, however, that if one-third in number and value of the Creditors of such petitioning Debtor do not attend such special meeting, the resolution thereof shall not be valid unless the same shall be approved and confirmed by the said Judge.

Power to convene  
special meetings.

XV. So soon as the said resolution or agreement shall have been carried into effect, and the Creditors of the said petitioning Debtor shall have been satisfied according to the tenor of the same, the said Judge shall cause a meeting of the said Creditors to be held before him, of which meeting notice shall be given at the least twenty-one days previous to the day appointed for holding the same, which notice shall be published in the Government Gazette and in some Newspaper circulating in the district where the said petitioning Debtor resided at the time of filing his said petition, and in such further or other manner as the Judge may direct; and on being satisfied that the Trustee has fully performed his trust, shall give to such Trustee a certificate thereof under his hand and the Seal of the said Court; and such certificate shall be a full release and

Certificate and release  
to the Trustees.

If no provision for remuneration of ~~the~~ a Trustee  
be made in the aforesaid resolution or Agreement.

in the aforesaid resolution  
or Agreement <sup>that</sup> Appoint  
or failing such appointment  
such ~~case~~ as

acquittance to the said Trustee, both in law and equity, for all matters done by him as such Trustee: Provided always, that it shall be lawful for such Trustee to receive for his services in the execution of his said trust, over and above his necessary and proper expenses therein, such sum of money as the major part in number and value of the Creditors assembled at such last mentioned meeting shall appoint subject to the approval and allowance of the said Judge.

Certificate to petition  
and effect thereof.

XVI. At such last mentioned meeting the Judge shall give to such petitioning Debtor a certificate under his hand and the Seal of the said Court of the filing of the said petition, and of the resolution or agreement of the Creditors of the said petitioning Debtor, and that the said resolution or agreement has been fully carried into effect, and to which certificate shall be annexed a schedule of the Creditors of the said petitioning Debtor, and of the nature and amount of their respective debts; and such certificate shall thenceforth operate to all intents and purposes as a release and discharge to the said petitioning Debtor from all and every the debts and demands ~~therein~~ set forth: Pro- <sup>in such</sup> ~~vided~~ <sup>of the</sup> that no debt herein excepted from the operation of this Act shall be barred by the said certificate, and such certificate shall operate to revest in the said petitioning Debtor all such property, estate, and effects, and rights, as by virtue hereof shall have been vested in the said Trustee, and shall not have been sold or disposed of pursuant to the terms of such resolution or agreement.

Power to make rules.

XVII. For the better carrying into effect the several purposes of this Act, it shall be lawful for the Supreme Court from time to time to make such rules, regulations, and orders as the said Court shall think fit: Provided that nothing contained in such rules, regulations, or orders shall be repugnant to the several provisions of this Act or any of them.

Incorporation of sec-  
tions from Insolvent  
Act.

~~XVIII. Whereas an Act has been passed in this present session of the General Assembly of New Zealand intituled "An Act for the relief of Insolvent Debtors," be it further enacted that the several sections in the said Act numbered 5, 6, 13, 21, 25, and 26, shall, for the purposes of this Act mutatis mutandis be deemed and taken to be part of this present Act, and shall be read and construed therewith as fully to all intents and purposes as if the same were herein repealed and enacted, save only so far as same respectively are affected by the interpretation clause hereinafter contained.~~

Registration of reso-  
lution and certificate.

XIX. In case any Trustee shall be appointed under the provisions of this Act, in whom any land, or any estate or interest in land, shall, by virtue of the provisions of this Act become vested as aforesaid, the resolution appointing such Trustee, and also the certificate herein before provided to be granted to the petitioner, (in case any such land or estate or interest in land shall by virtue thereof revest in the said petitioner), may be registered under the provisions of any Ordinance or Act for the time being in force for the registration of deeds or instruments affecting real property or titles thereto. And the memorial of such resolution shall

state the date of the filing of such petition, and the date of such resolution and the date of the confirmation thereof, and shall also set forth a short description of the lands and premises which, by virtue of such resolution shall have become vested in such trustee describing particularly the situation, boundaries, and measurement, with such other particulars respecting the same as would be necessary or usual in a deed of conveyance or assignment thereof, and the memorial of such certificate shall state all the foregoing particulars, and also the date of such certificate, but shall omit any mention of any lands or premises which do not by virtue thereof revert in the petitioner.

XX. Any petition presented under the provisions of this Act, and any proceeding, resolution, or certificate in the matter of such petition, purporting to be signed by a Judge of the Supreme Court, or a copy of such petition, resolution, certificate, or other proceeding purporting to be so signed, shall in all cases be receivable in evidence of such proceedings having respectively taken place.

Signed copies to be evidence.

XXI. In the construction of this Act, and of the said several sections of the said recited Act incorporated herewith, the word "Petitioner" and the word "Person," as applied to such Petitioner shall extend to, and include, two or more persons being partners in trade, and the word "Assignee" shall be understood to mean "Trustee." And this Act shall be construed beneficially to Creditors, and if any doubts shall arise in the construction thereof, it shall be construed by analogy to the laws in force at the end of this present session of the General Assembly of New Zealand, relating to insolvent Debtors and the practice thereof, and the word "property" shall mean and include all the real and personal estate and effects of the petitioning Debtor within the Colony of New Zealand or elsewhere, and all the future estate, right, title, or interest of such petitioning Debtor, in or to any such real or personal estate, which such petitioning Debtor may purchase, or which may revert, descend, be devised or bequeathed, or come to him before the date of such resolution or agreement.

Interpretation clause.