

## No. IV.

An Act to prevent the waste of the Property of Debtors under process of Law. [22nd September, 1843.]

DEBTORS' PROPERTY  
PROTECTION.

**W**HEREAS it is expedient that the waste of property of debtors now and for some time past effected under process of law be restrained until public confidence shall revive and property be again saleable at its fair value Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the passing of this Act any person resident in the said Colony who is desirous of obtaining time for

Preamble.  
Time may be given to any debtor for payment of his debts by the execution of a letter of license by three-fourths in

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number and value of his creditors. for the payment of his debts may draw up a statement of his assets and liabilities and verify the same on oath before any Commissioner of the Supreme Court of the said Colony for taking affidavits who is hereby authorized to administer the same in the form in the Schedule to this Act appended marked A and if a majority consisting of not less than three-fourths in number and value of such person's creditors shall on inspection of such verified statement duly execute a letter of license to him for any time they may think fit not exceeding the duration of this Act in the form or to the tenor and effect of the Schedule hereto appended marked B such letter of license shall be binding not only on those actually executing the same but also on all other the creditors of the person in whose favour it shall be made as fully and effectually as if such last mentioned creditors had executed it themselves Provided nevertheless that no such letter of license shall be of any effect until the verified statement on inspection of which the same shall have been executed with a certificate endorsed thereon in the form in the Schedule to this Act appended marked C and signed by all the creditors who have signed such letter of license shall be filed of record in the said Supreme Court nor shall any such letter of license be held to bind any creditor not executing the same unless notice of its existence in the form in the Schedule hereto appended marked D shall be served either upon him if he resides within the said Colony or upon his authorized agent or attorney if he resides out of the said Colony and unless such notice shall be published in the *New South Wales Government Gazette* or if such debtor be resident in the District of Port Phillip in some public newspaper published in the Town of Melbourne Provided always that any creditor residing in the said Colony may authorize any person by writing under his hand to execute in his name such letter of license and sign such certificate and the agent or attorney of any creditor residing out of said Colony duly appointed to act generally on his behalf may in the name of his principal execute such letter of license and sign such certificate.

Book debts and debts of a like nature to bear interest during such license.

2. And whereas among the debts appearing in such verified statement there may be book debts and such others as by law would not bear interest and it is expedient and equitable that all debts should be put on an equal footing Be it enacted That all book debts and other debts of that nature shall bear interest during the continuance of such letter of license in the same way as all other debts provided for in such letter of license.

Debtor to call general meeting of his creditors and submit verified statement of his assets and liabilities before obtaining such license.

3. And be it enacted That before any such letter of license shall be granted it shall be incumbent on every such debtor to call a general meeting of his creditors in order to lay before them such verified statement as aforesaid and the names of the aforesaid majority of creditors in number and value shall be signed to such letter of license at such meeting or within thirty days after the same shall be held Provided always that any creditor residing in the said Colony may authorize any person to attend at such meeting on his behalf and to vote thereat and the agent or attorney of any creditor resident out of the Colony duly appointed as such may attend such meeting and vote thereat on behalf of such creditor Provided also that seven days' notice at the least shall be given of every such meeting in the *Government Gazette* or if such debtor be resident in the District of Port Phillip in some public newspaper published in the Town of Melbourne.

Who shall be deemed creditors.

4. And be it enacted That no person shall be accounted as a creditor for the purposes of this Act who shall owe a debt to such debtor equal to or larger than the amount entered against his name in such verified statement as a creditor and that any creditor owing a smaller

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smaller debt to such debtor than the amount entered against his name in such verified statement shall vote and sign for the balance only.

5. And be it enacted That such letter of license shall on or before the expiration of the said thirty days be filed of record in the Supreme Court of New South Wales with the said verified statement and shall be there open to inspection on payment of the sum of one shilling and be capable with the said verified statement of being referred to in all proceedings in the said Court in the same manner as pleadings may now be. Provided always that on the order of a Judge of the said Court corrections in or additions to the said letter of license and verified statement may be made after the filing thereof.

Letter of license to be filed of record.

6. And be it enacted That if any creditor after having become so bound as aforesaid by such letter of license shall contrary to its intent issue any process or fail to stay proceedings on any process already issued out of any Court in the said Colony for the recovery of any sum mentioned in the verified statement on which such letter of license shall have been granted it shall be lawful for the debtor against whom such process shall have been issued to apply on affidavit either to the Supreme Court in the term time or to a Judge thereof in vacation for a rule *nisi* or an order calling upon the creditor issuing such process to shew cause why such process if issued after the debtor issuing the same shall have become bound by such letter of license as aforesaid and all proceedings had thereon should not be set aside and all further proceedings stayed thereon or why such proceedings taken in any process previously issued by a creditor after he shall have become so bound as aforesaid should not be set aside and such Court or Judge is hereby directed to order such process to be set aside and further proceeding to be stayed thereon or such proceedings to be set aside accordingly as the case may be and to award costs of the application on its being made appear on affidavit that the creditor issuing such process or proceeding on such process already issued as aforesaid was before issuing such process or taking such proceeding on process already issued bound by such letter of license as aforesaid. Provided nevertheless that nothing herein shall be construed to prevent any creditor in cases of difference if he considers the amount of his claim is incorrectly inserted in or improperly omitted from such verified statement to sue for the same in any competent Court in the said Colony and in the event of his obtaining a verdict for any amount where his claim was entirely omitted in such verified statement or for any amount greater than the sum set out in such verified statement where any sum shall be specified therein then he shall not enter up judgment on the same but shall be entitled to have the amount of such verdict with taxed costs up to the time of procuring the verdict inserted in such verified statement and if upon such total sum being so inserted in any such verified statement it shall appear that such majority in number and value of the creditors then appearing thereon shall not have executed the letter of license granted on inspection of such verified statement such letter of license shall be deemed to be void unless within thirty days from the time of the verified statement being so amended as aforesaid such letter of license shall be executed by as many creditors as will then make up the three-fourths in number and in value in which case it shall bind the party obtaining such verdict as aforesaid in the same way as the other creditors. Provided further that if any debtor after his verified statement shall have been filed as aforesaid shall procure any one or more of his creditors besides those who shall have already executed his letter of license to execute the same such execution shall be valid and shall notwithstanding the creditor or creditors so executing shall not sign the certificate hereinbefore mentioned have the same

Remedy of debtor against creditor issuing out process for recovery of any debt mentioned in verified statement.

Proviso where claim omitted or incorrectly inserted in verified statement.

Proviso where creditors execute after debtor shall have filed verified statement.

effect

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effect as though such creditor or creditors had executed such letter of license and certificate as hereinbefore provided but no such subsequent execution shall be binding on the rest of the creditors in any case where an addition to the original list of liabilities in the verified statement as aforesaid shall have rendered such execution necessary to make up the requisite amount in number and value unless notice thereof in the form in the Schedule hereto appended marked E shall be before the expiration of the thirty days aforesaid or at any time before they commence to run left at the residence of such of the creditors as reside in the said Colony or at the residence of the authorized agents or attorneys of such creditors as reside out of the said Colony or unless such notice shall within the like time be published in the *New South Wales Government Gazette*.

Provision for inadvertent omission of any debt in verified statement.

7. And whereas a debtor may through inadvertence omit to insert in his verified statement the name of some creditor whose debt he does not intend to dispute Be it therefore enacted That it shall be lawful for such debtor at any time after his verified statement shall have been filed as aforesaid to insert the name and the amount of the debt of such creditor so omitted in his said verified statement such insertion to be witnessed by the Chief Clerk or other officer appointed for that purpose by the Judges of the said Supreme Court and such debt and inadvertence shall at the time of such insertion be verified and accounted for by affidavit to be filed with and attached to his verified statement and such addition so made to such verified statement shall have the same effect in all respects as is hereinbefore provided for those cases where the amount of verdict and costs in any disputed matter shall be inserted in such verified statement.

Provision where verdicts obtained against debtor for causes other than liquidated damages.

8. And whereas cases may arise where verdicts may be recovered against a debtor so obtaining a letter of license as aforesaid for other causes than liquidated damages Be it therefore enacted That such verdicts if founded on causes of action existing before the date of such letter of license shall with taxed costs up to the time of pronouncing the same be dealt with and have the same effect as hereinbefore provided for verdicts in the case of disputed claims where such verdicts shall be for a sum not entered in such verified statement as aforesaid or for a greater sum than the one entered in such verified statement as aforesaid.

Provision where letter of license shall have become void.

9. And be it enacted That in the event of any such letter of license becoming void as aforesaid by the insertion in the verified statement of any debt and costs recovered as aforesaid or by any addition made thereto by any debtor as aforesaid of any debt inadvertently omitted then no separate judgment shall be entered up against the debtor in whose favour such letter of license shall have been granted by any of his creditors for their individual debt but it shall be competent for the said Supreme Court in term time or any Judge thereof in vacation on the motion of any creditor and on affidavit of the circumstances to order a judgment to be signed in the name of the principal creditor for the whole amount of the debts specified in such verified statement with the costs of the application and to order a writ of *feri facias* to be issued thereon and lodged forthwith with the Sheriff of the said Colony or his lawful deputy with a copy of the verified statement of the debtor against whom such writ shall be issued and the said Sheriff or his deputy shall thereupon cause a levy to be made of all the property of the said debtor and shall proceed to dispose thereof as such majority in number and value of the creditors of such debtor shall require by notice in writing to be served on him for that purpose or in default of such notice within one month from the time of the writ being lodged then in such manner as any Judge of the said Court shall by order under his hand direct and the proceeds realized shall be divided rateably among all

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all the creditors mentioned in the said verified statement Provided that nothing herein contained shall be construed to prevent any creditor after such division from proceeding separately against such debtor in any manner he may think fit for any amount that may then remain due to him and provided further that no creditor shall be entitled to receive any part of the money realized on such levy from the said Sheriff unless he shall first place or cause to be placed in the hands of the said Sheriff an affidavit sworn by him or some credible person on his behalf other than the debtor himself before some Commissioner of the said Supreme Court for taking affidavits shewing the amount of his debt and how it was incurred all which affidavits the said Sheriff is hereby directed to file in the said Supreme Court there to be placed with the original verified statement.

10. And be it enacted That it shall be lawful for any one or more of the creditors inserted in any such verified statement as aforesaid at any time after the execution of any such letter of license upon giving one month's notice in writing under his or their hands to the debtor who shall have obtained such letter of license to cause him to lay before him or them an exact statement of his affairs at that time and of what he has been doing with his assets since he obtained his letter of license and also to inspect his personal property and if such debtor shall neglect or refuse to give such statement or allow such inspection it shall be lawful for any of his said creditors to apply on affidavit of the circumstances to the Supreme Court in term time or to a Judge thereof in vacation for a rule *nisi* or a Judge's summons calling upon the debtor so neglecting or refusing to shew cause why his letter of license should not be adjudged to be void and it shall be declared by such Court or Judge to void accordingly unless on hearing the matter reason be shewn to the satisfaction of such Court or Judge for such neglect or refusal and in the event of such letter of license being then declared void proceedings shall be taken in all respects thereafter as is hereinbefore provided in the event of a letter of license being declared void.

Debtor may at any time be called on by creditors to lay a statement of his affairs before them.

11. And be it enacted That if any of the creditors of any debtor who shall have obtained such letter of license as aforesaid shall discover after the execution thereof that any false entries or material omissions have been made in such verified statement as aforesaid or that the debtor to whom such letter of license has been granted is making away with any of his effects whether the same be enumerated or not in such verified statement or that he is taking steps to defraud his said creditors of the proceeds thereof or to lessen in any way his means of paying his creditors their just debts or that he intends and is taking or has taken steps to leave the Colony it shall be lawful for the said Court in term time or for a Judge thereof in vacation on application supported by affidavit to the above effect to grant a rule *nisi* or a Judge's summons calling upon such debtor to shew cause why his letter of license should not be declared void and such Court or Judge is hereby empowered to declare such letter of license void if it shall appear to the satisfaction of the said Court or Judge that the said debtor is guilty of any of the above acts and such Court or Judge is also empowered on affidavit of belief and the ground of such belief that such debtor is about to leave the said Colony in addition to granting the rule *nisi* or summons as aforesaid to issue a writ of *capias ad respondendum* in such form as such Court or Judge may prescribe to take the said debtor and hold him over in sufficient bail not to leave the said Colony until he is discharged from his debts by due course of law and if the said Court or Judge shall on hearing the matters aforesaid declare such letter of license as aforesaid to be void such Court or

Provision where false entries or material omissions have been made in verified statement or where debtor takes steps to defraud his creditors or to leave the Colony.

Judge

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Judge shall and may order judgment to be entered up in the name of the principal creditor as before provided for and proceedings shall be taken thereon in all respects as is hereinbefore enacted in the case where judgment is authorized to be entered up in the name of the principal creditor.

Provision where names of persons have been improperly inserted as creditors in verified statement.

12. And be it enacted That it shall be lawful for any creditor whose name shall have been inserted in or added to any such verified statement filed as aforesaid if he shall be of opinion that the name of any person signing any such letter of license as aforesaid is improperly inserted as a creditor in the verified statement on inspection of which such letter of license shall have been granted or is inserted therein for a greater amount than is due to him to apply to the said Supreme Court in term time or to a Judge thereof in vacation upon affidavit of the circumstances for a rule or order which such Court or Judge is hereby empowered to issue directing such person so suspected of being improperly inserted in such verified statement to file in the office of the said Supreme Court an affidavit stating that the sum for which his name was inserted in such verified statement was due at the time it was so inserted as well as how the same became due and copies of such rule or order shall be served personally on the debtor who filed such verified statement as well as upon the person ordered to file such affidavit and if within one week after such rule or order shall have been so served where the person directed to file such affidavit resides in the City of Sydney or Town of Melbourne in the said Colony or within thirty days where he resides in any other part of the said Colony such affidavit shall not be filed in obedience to such rule or order then it shall be lawful for the creditor at whose instance such rule or order may have been issued on affidavit of the circumstances to apply to the said Supreme Court in term time or to a Judge thereof in vacation for an order to strike the name of that person out of the verified statement on which such license may have been granted and if the requisite number of creditors shall not then appear to have executed the letter of license then to declare the same to be void which such Court or Judge is hereby directed and required to do and when any such letter of license shall be so ordered to be void all proceedings to be thereafter taken against the debtor who may have obtained the same shall be similar in every respect to those hereinbefore directed in the case of a letter of license becoming void and in every case where a person's name shall be ordered by the said Court or Judge to be erased from any such verified statement for not filing such affidavit as aforesaid it shall be lawful for such Court or Judge further to order such person to pay all the costs incurred by the creditor making the application for procuring such person's name so to be erased.

Limiting levy or poundage money chargeable on writs of *fi. fa.* under this Act.

13. And be it enacted That no levy or poundage money beyond the actual expense of the levy shall be chargeable on any writs of *fi. fa.* issued under this Act until a sale of the whole or some portion of the effects levied on and then only on the actual amount realized and that in all such cases there shall be chargeable only one-fourth of the fees now chargeable by the Sheriff on sales made by him.

Application of certain terms used herein.

14. And be it enacted That whenever any debtor resident within the District of Port Phillip shall file his verified statement and obtain a license under this Act and in all matters and things to be done in the said district under and by virtue of the same the words "Supreme Court" "Judge" "Office" "Chief Clerk" or "Commissioner" of the Supreme Court respectively and "Sheriff of the Colony" as often as they occur in any of the provisions of this Act shall be respectively held to mean the Supreme Court Resident Judge Office Chief Clerk or Commissioner of the Supreme Court at Melbourne and Deputy Sheriff of the said District of Port Phillip.

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15. And be it enacted That no creditor signing any such letter of license shall thereby be held to release except during the continuance of such letter of license the liability of any drawer or endorser of any bill of exchange or promissory note held by such creditor and upon which the debtor obtaining such letter of license shall be primarily liable as acceptor or maker thereof respectively Provided always that in all cases where any creditor not signing any such letter of license is nevertheless bound thereby the remedy of every such creditor against any drawer or endorser of any such bill of exchange or promissory note shall not be suspended or affected in any way whatever.

Continued liability of drawer or endorser of any promissory note or bill of exchange held by any creditor signing such letter of license.

16. And be it enacted That any person wilfully making a false affirmation or wilfully taking a false oath in any case where he shall be required to make an affirmation or take an oath under this Act shall be deemed guilty of perjury and shall be punished accordingly.

Punishment for false affirmation or oath.

17. And be it enacted That this Act shall be in force for two years and from thence until the end of the next Session of the said Legislative Council.

Continuance of Act.

SCHEDULES REFERRED TO.

A.

I A. B. [*here state place of abode and calling*] do hereby swear [*or affirm if a Quaker or Moravian*] that the statement hereto annexed is to the best of my belief true in every item entry and particular thereof and that no material entry item or particular has been omitted by me which ought to have been made or inserted therein for the information of my creditors and so as to give them a full and true account of the present state of my affairs and lastly that the said statement is to the best of my knowledge and belief in every respect a full true faithful and particular account of all my debts credits effects and estate of every description real and personal—So help me God.

Sworn (or affirmed) before me at }  
 this day of A.D. }

A. B.

B.

Know all men by these presents that we the undersigned being a majority consisting of not less than three-fourths in number and value of the creditors of A. B. [*here state place of residence and trade calling or profession of the party to whom this letter of license is to be given*] do hereby give him time of payment for the respective debts set opposite our respective names hereunder written as follows that is to say shillings in the pound on each of our said respective debts to be paid to us respectively with interest thereon after the rate of per cent. on the day of A.D. other shillings in the pound [*here state the other instalments as agreed upon making the full sum of twenty shillings in the pound with interest as aforesaid and then continue*] all of which said respective sums and all the sums specified in the verified statement a copy of which is annexed with interest thereon as aforesaid the said A. B. hereby covenants and agrees to pay to his several undersigned creditors and to all other his creditors named in his said verified statement as the said sums respectively fall due otherwise this letter of license to be thenceforth null and void Provided that this letter of license shall not bind any creditor executing it until it shall be signed by the three-fourths in number and value of the said A. B.'s creditors as specified in the said statement In witness whereof we have hereunto set our respective hands and seals this

Signed sealed and delivered }  
 in the presence of } C. D. [amount] (L.S.)  
 E. F. [amount] (L.S.)

C.

We the undersigned being not less than three-fourths in number and in value of the creditors of the within named A. B. do hereby certify that the within is the verified statement on perusing which we signed the letter of license of the said A. B.

Dated this day of A.D.

C. D.  
 E. F.

D.

