

ANNO TERTIO

GEORGII IV. REGIS.

CAP. LXXXI.

An Act to amend the Laws relating to Bankrupts. [26th *July* 1822.]

WHEREAS it is expedient to provide by Law as herein-after is enacted: May it please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful to and for the Commissioners in any Commission of Bankrupt, or the major Part of them, by Writing under their Hands and Seals, to summon before them, at any Meeting or Meetings to be held under the Commission, after they have duly qualified, and before the Bankruptcy is found, all and every such Person and Persons as they shall be informed and believe can give any Account or Information concerning the Trading, or any Act or Acts of Bankruptcy committed by the Person or Persons against whom such Commission shall be issued; and also to require such Person or Persons so summoned to produce any Books of Account, Papers, Deeds, and Writings, and other Documents in the Custody, Possession, or Power of such Person or Persons, which may appear to such Commissioners, or the major Part of them, to be necessary to establish such Trading or Act or Acts of Bankruptcy; and in case the said Person or Persons so summoned to appear as aforesaid, shall refuse to come or shall not come before the said Commissioners at the Time appointed, having no lawful Impediment, such as shall be admitted and allowed by the said Commissioners, or the major Part of them, and made known to the said Commissioners at the Time of their Meeting, it shall be lawful for the said Commissioners, or for the major Part of them, by

Empowering Commissioners to summon Witnesses as to Trading and Act of Bankruptcy.

Books and Papers to be produced.

Persons refusing to attend may be apprehended.

Warrant under their Hands and Seals, and directed to such Person or Persons as to them, or the greater Part of them, shall be thought meet, to apprehend and arrest such Person or Persons, and to bring him, her, or them before the said Commissioners, or the major Part of them, to be examined as aforesaid; and upon his, her, or their refusing to come, to commit the Party so refusing to such Prison as the said Commissioners, or the major Part of them, shall think meet, there to remain without Bail or Mainprize until such Time as such Person or Persons so refusing to come shall submit him, her, or themselves to the said Commissioners; and upon the Appearance of the said Person or Persons, it shall be lawful for the said Commissioners, or the major Part of them, to examine him or them concerning the Trade of, or any Act or Acts of Bankruptcy committed by the Person or Persons against whom such Commission shall be issued, in the same Manner as they are now authorized to examine any Person present at any Meeting of the Commissioners; and in case any Person or Persons present at any such Meeting of the Commissioners shall refuse to be sworn, or being one of the People called *Quakers*, to take the solemn Affirmation by Law appointed for such People to take, or shall refuse to answer all or any such lawful Questions as by the said Commissioners, or the major Part of them, shall be put unto him, her, or them, touching the Trading of, or any Act or Acts of Bankruptcy committed by the Person or Persons against whom such Commission shall issue, as well by Word of Mouth as by Interrogatories in Writing, or shall refuse to sign and subscribe his, her, or their Examination taken down or reduced into Writing (not having a reasonable Objection either to the Wording thereof, or otherwise, to be allowed by the said Commissioners), or shall refuse to produce or shall not produce all and every Book of Account, Paper, Writing, and other Document in the Custody, Possession, or Power of such Person or Persons, which may appear to the Commissioners, or the major Part of them, to be necessary to establish the Trading of, or Act or Acts of Bankruptcy committed by the Person or Persons against whom such Commission shall issue, and which such Person or Persons was or were required to produce, and to the Production of which such Person or Persons shall not state any Objection which, in the Judgment of the Commissioners or the major Part of them, ought to be allowed as lawful Objections, it shall and may be lawful to and for the said Commissioners, or the major Part of them, by Warrant under their Hands and Seals, to commit him, her, or them to such Prison as the said Commissioners, or the major Part of them, shall think fit, there to remain without Bail or Mainprize until such Time as such Person or Persons shall submit him, her, or themselves to the said Commissioners to be sworn, and full Answer make to the Satisfaction of the said Commissioners to all such lawful Questions as shall be put to him, her, or them, and sign and subscribe such Examination, and produce all such Book and Books of Account, Papers, Deeds, Writings, and other Documents in his, her, or their Custody, Possession, or Power, as may appear to the said Commissioners, or the major Part of them, to be necessary to establish the Trading or Act or Acts of Bankruptcy committed by the Person or Persons against whom such Commission of Bankrupt shall be issued as aforesaid, and to the Production of which no such Objection as aforesaid has been allowed, according to the true Intent and Meaning of this Act.

Persons refusing to be examined, or to produce Books, &c. may be committed.

Payment of Costs to Witnesses at opening of Commission.

II. Provided also, and be it further enacted by the Authority aforesaid, That where any Witness or Witnesses is or are summoned to attend before the Commissioners in any Commission of Bankruptcy, at the Meeting appointed by them for opening such Commission, the necessary Expences shall be tendered to such Witness or Witnesses, in the same Manner as is now by Law required upon Service of a Subpœna to a Witness in any Action at Law.

Enabling Assignees to execute Powers previously vested in Bankrupts.

III. And be it further enacted by the Authority aforesaid, That all Powers vested in or belonging to any Bankrupt or Bankrupts, which he, she, or they might legally execute for his, her, or their own Benefit, (except the Right of Nomination to any Benefice with Cure of Souls, or Parochial Church or Chapelry then actually vacant), shall and may be executed and exercised by the Assignee or Assignees for the Benefit of the Creditors, in such and the same Manner, to all Intents and Purposes, as the Bankrupt himself could or might have executed or exercised the same.

Lord Chancellor may order Bankrupts to join in Conveyances.

IV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, upon a Petition presented to him or them by the Assignee or Assignees, or by a Purchaser under the Commission from the Assignee or Assignees, of any Part of the Bankrupt's Estate or Effects, to order the Bankrupt, at the Time of the Allowance of or after he has obtained his Certificate, to join in the Conveyance and Assurance of any Estate and Effects of such Bankrupt, according to the Tenor of any Order that shall be made therein upon such Petition; and if any such Bankrupt shall refuse or neglect to execute any such Deed or Conveyance within such Time and in such Manner as shall be directed by such Order so to be made as aforesaid, then such Bankrupt so refusing, declining, or neglecting to execute such Deed or Conveyance, and his Heirs, Executors, Administrators, and Assigns, and all and every Person claiming under him by virtue of any Act by him done from the Time he became Bankrupt, shall be for ever estopped from objecting to the Validity of such Deed or Conveyance; and such Deed or Conveyance shall, upon an Order made upon Petition by the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, be declared to be and as effectual to all Intents and Purposes whatsoever, both at Law and in Equity, as if it had been executed by the said Bankrupt.

Lord Chancellor may vacate Deeds of Bargains and Sales. 5 G. 2. c. 30.

V. Whereas by an Act passed in the Fifth Year of the Reign of His Majesty King *George* the Second, intituled *An Act to prevent the committing of Frauds by Bankrupts*, reciting, that it might be found necessary that as well Assignments of Bankrupts Estates then already made by Commissioners, as Assignments thereafter to be made pursuant to the Choice of Creditors, should be vacated, and a new Assignment or Assignments made of the Debts and Effects unreceived and not disposed of by the then Assignees to other Persons to be chosen by the Creditors; it was therefore enacted and declared, that it should and might be lawful to and for the Lord Chancellor, Lord Keeper, or Commissioners for the Custody of the Great Seal for the Time being, upon Petition of any Creditors, to make such Order therein as he or they should think just and reasonable; and in case a new

a new Assignment should be ordered as aforesaid, then that such Debts, Effects, and Estate of such Bankrupt should be thereby effectually and legally vested in such new Assignee or Assignees: And whereas Doubts have arisen whether the said Clause extends to authorize the vacating of Deeds of Bargain and Sale enrolled of the Lands, Tenements, and Hereditaments of Bankrupts, and it is deemed expedient that such Doubt should be removed: Be it therefore enacted and declared by the Authority aforesaid, That such Clause does extend to the vacating of any Deeds of Bargain and Sale enrolled of the Lands, Tenements, and Hereditaments of any Bankrupt, and that from Time to Time hereafter it shall and may be lawful to and for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Great Seal for the Time being, upon the Petition of any Creditors, to make such Order as he or they shall think just and reasonable, for the vacating of any Deed of Bargain and Sale of the Lands, Tenements, and Hereditaments, Freehold or Copyhold, of any Bankrupt or Bankrupts then remaining unsold and not conveyed; and the Inrolment thereof, without nevertheless in any Manner affecting the Title of any Purchaser under any Bargain and Sale prior to such Order being made, and without reviving any Estate previously barred, but the Title of every such prior Purchaser, and of all claiming under him, shall be good and valid to all Intents and Purposes whatever, in the same Manner as if no such Order had been made; and that the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Time being, may order the Commissioners, or the major Part of them, to execute a new Bargain and Sale of such Lands, Tenements, and Hereditaments as shall remain unsold or not conveyed to such Person or Persons, and in such Manner as to him or them may seem just; and that such Conveyance shall be good and valid to all Intents and Purposes whatsoever, without any Conveyance from any former Assignee or Assignees, or his or their Heirs or Assigns: Provided always, that the Order so made for vacating such Bargain and Sale shall be duly enrolled, together with the new Bargain and Sale made in pursuance of such Order.

A new Bargain and Sale may be executed.

Punishment of Perjury before Masters.

VI. And whereas Doubts have been suggested, whether any Person who wilfully and corruptly swears falsely in an Affidavit made before a Master in Chancery in any Matter of Bankruptcy, is liable to the Pains and Penalties now by Law inflicted for this Offence of wilful and corrupt Perjury, and which Doubts ought to be removed; be it therefore further declared and enacted by the Authority aforesaid, That every such Offender is liable to such Pains and Penalties; and that if any Person at any Time hereafter shall wilfully and corruptly swear falsely in any Affidavit or Deposition, (or, being of the People called *Quakers*, shall wilfully and corruptly affirm falsely), before any Master in Chancery in Ordinary or Extraordinary in any Matter of Bankruptcy, such Person, being convicted thereof by Indictment or Information, shall be liable to suffer the Pains and Penalties now in force against wilful and corrupt Perjury.

Making Office Copies Evidence in certain Cases.

VII. And be it further enacted by the Authority aforesaid, That on the Trial of any Suit or Action now commenced or brought, or to be commenced or brought, or of any Issue directed or which shall hereafter

after be directed to be tried, an Office Copy of any Bond, Affidavit, Certificate, Report, Exception, Letter of Attorney, or of any other original Instrument or Writing filed in the Office, or officially in the Custody or Possession of the Lord Chancellor's Secretary of Bankrupts for the Time being, shall be Evidence to be received of such Bond, Affidavit, Certificate, Report, Exception, Letter of Attorney, or other original Instrument or Writing respectively, without producing the Original, such Copy being upon proper Stamp, and proved by Oath on such Trial to be a true Copy; and in case any such Bond, Affidavit, Certificate, Report, Exception, Letter of Attorney, or other Writing, shall hereafter be produced on any such Trial, the Costs of producing the same shall not be allowed on Taxation of Costs in any such Suit or Action, unless it shall be made appear, to the Satisfaction of the Officer who shall tax such Costs, that from the Nature of the Case to be proved the Production of such Bond, Affidavit, Certificate, Report, Exception, Letter of Attorney, or other Writing on any such Trial was necessary, and not occasioned through any Neglect, Default, or Delay in obtaining such Office Copy thereof as aforesaid: Provided always, that nothing herein contained shall extend to authorize the receiving in Evidence of such Office Copy or to alter or affect any Evidence now required on the Trial of any Indictment or Prosecution for Felony or Perjury, or other Offence or Misdemeanor.

Joint Commissions may be issued against Two or more of the Partners in a Firm.

VIII. And be it further enacted by the Authority aforesaid, That any Creditor or Creditors whose Debt or Debts is or are of a Nature and Amount sufficient to entitle him, her, or them to petition for a Commission of Bankruptcy to be issued against all the Partners of any Firm, may petition for a Commission of Bankruptcy to be issued against Two or more Partners of such Firm; and that a Commission may be issued upon such Petition, which shall be valid at Law, to all Intents and Purposes whatsoever, notwithstanding it does not include all the Partners of which the Firm is composed.

To stay the Prosecution of a Second or other Commission.

IX. And be it further enacted by the Authority aforesaid, That if, after a Commission of Bankruptcy shall be issued against Two or more Members composing Part of a Firm, another Commission or other Commissions of Bankruptcy shall be issued against any One or more Members of such Firm not included in the Commission which first issued, such Second, Third, or other Commission shall be directed to the Commissioners to whom the First Commission was directed; and immediately after the Declaration of Bankruptcy under such Second, Third, or other Commission, the Commissioners or the major Part of them shall convey to the Assignee or Assignees chosen under the First Commission all the Estate, Real and Personal, of such Bankrupt or Bankrupts, in the same Manner as if such Commission had first issued; and from and after such Conveyance all separate Proceedings under such Second, Third, or other Commission shall be stayed, and it shall, without affecting the Validity of the First Commission, be annexed to and form Part of such First Commission: Provided always, that the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the Time being, may, if it to him or them appear necessary, direct that such Second, Third, or other Commission to be issued to any other Commissioners, or that such

such Commission shall proceed, either separately or in conjunction with such First Commission, in the same Manner as if such Second, Third, or other Commission had alone issued.

Joint Creditors of Three or more Partners may vote in the Choice of Assignees in certain Cases.

X. And be it further enacted by the Authority aforesaid, That in case a joint Creditor or joint Creditors of Three or more Persons being Partners shall be the petitioning Creditor or Creditors in a Commission of Bankruptcy issued against Two or more Persons being Partners, as well such joint Creditor as any other joint Creditor shall be permitted to vote in the Choice of Assignees, and to assent to or dissent from the Signature of the said Bankrupt's Certificate in respect of his, her, or their joint Debt or Debts; but neither the petitioning nor any other joint Creditor shall be permitted to receive any other Dividend out of the separate Estate of the said Bankrupt or Bankrupts until all the separate Creditors of the said Bankrupt or Bankrupts shall have received Twenty Shillings in the Pound on their respective Debts.

Assignees may use the Names of Partners in Suits.

XI. And be it further enacted by the Authority aforesaid, That after an Assignee or Assignees has or have been chosen under any Commission which may be issued against One or more Member or Members of a Firm, it shall and may be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal, by Order upon Petition presented to him or them, to permit and authorize the Assignee or Assignees of the Estate and Effects of any such Bankrupt or Bankrupts to commence or prosecute any Action or Actions, Suit or Suits, or other Proceedings at Law or Equity, in the Name or Names of such Assignee or Assignees and of the remaining Partner or Partners, against any Debtor or Debtors of the said Partnership, and shall and may recover and obtain such Judgment, Decree, or Order therein, in the same Manner as if such Action, Suit, or Proceeding was instituted with the Consent of such Partner or Partners whose Names shall be so used in such Action or Proceeding; and that if such Partner or Partners whose Names shall by such Order be so used shall attempt, by any Means whatsoever, to release the Debt or Demand for which such Action, Suit, or Proceeding is instituted, such Release shall be null and void to all Intents and Purposes whatsoever: Provided always, that the Partner or Partners whose Name or Names is or are used in pursuance of such Order, and by whom no Benefit is claimed by virtue of the said Proceedings, shall be indemnified against the Payment of any Costs in respect thereof; and provided also, that in all Cases it shall be lawful for such Partner or Partners whose Name or Names is or are so used, to apply by Petition to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, praying that he, she, or they may receive the Whole or such Part of the Proceeds of such Action, Suit, or Proceeding to which he, she, or they may be entitled, who shall thereupon make such Order as under all the Circumstances of the Case shall seem meet and just, and which shall be binding on all the Parties.

Indemnifying such Partners whose Names shall be used in Suits.

One Partner entitled may receive Al-

XII. And be it further enacted by the Authority aforesaid, That in all Commissions of Bankruptcy which shall hereafter issue against all

or any of the Members of any Partnership, under which any One or more of the Persons against whom the Commission shall issue shall obtain his, her, or their Certificate, and a sufficient Dividend be paid upon the joint Estate of the Firm, and the separate Estate of him, her, or them who has or have obtained such Certificate, he, she, or they shall be entitled to his, her, or their Allowance, notwithstanding no Allowance may be due to any One or more of his, her, or their Copartners.

Allowance before others not entitled.

XIII. And be it further enacted, That this Act shall not extend to those Parts of the United Kingdom called *Ireland* and *Scotland*.

Act not to extend to Ireland and Scotland.

XIV. And be it further enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken Notice of as such by all Judges, Justices, and others, without being specially pleaded.

Public Act.

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