THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909

ARRANGEMENT OF SECTIONS

PRELIMINARY

SECTIONS.

1. Short title and commencement.
2. Definitions.

PART I
CONSTITUTION AND POWERS OF COURT
Jurisdiction

3. Courts having jurisdiction in insolvency.
4. Jurisdiction to be exercised by a single Judge.
5. Exercise of jurisdiction in chambers.
6. Delegation of powers to officers to officers of Court.
7. Power of Court to decide all questions arising in insolvency.

Appeals

8. Appeals in insolvency.

PART II
PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE
Acts of insolvency

9. Acts of insolvency .

Order of adjudication

10. Power to adjudicate.
11. Restrictions on jurisdiction.
12. Conditions on which creditor may petition.
13. Proceedings and order on creditors petition.
14. Conditions on which debtor may petition.
15. Proceedings and order on debtors petition.
16. Discretionary powers as to appointment of inter in receiver.
17. Effect of order of adjudication.
18. Stay of proceedings.
18A. Control over insolvency proceedings in subordinate Courts.
19. Power to appoint special manager.
20. Advertisement of order of adjudication.

Annulment of adjudication

21. Power for Court to annul adjudication in certain cases.
22. Concurrent proceedings in Courts in India.
23. Proceedings on annulment.

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Proceedings consequent on order of adjudication

SECTIONS.

24. Insolvents schedule.
25. Protection order.
26. Meeting of creditors.
27. Public examination of the insolvent.

Composition and schemes of arrangement

28. Submission of proposal and acceptance by creditors.
29. Approval of proposal by Court.
30. Order on approval.
31. Power to re-adjudge debtor insolvent.
32. Limitation of effect of composition or scheme.

Control over person and property of insolvent

33. Duties of insolvent as to discovery and realization of property.
34. Arrest of insolvent.
35. Redirection of letters.
36. Discovery of Insolvents property.
37. Power to issue commissions.

Discharge of insolvent

38. Discharge of insolvent.
39. Cases in which the Court must refuse an absolute discharge.
40. Hearing of application for discharge.
41. Power to annul adjudication on failure to apply for discharge.
42. Renewal of application and variation of terms of order.
43. Duty of discharged insolvent to assist in realization of property.
44. Fraudulent settlements.
45. Effect of order of discharge.

PART III

ADMINISTRATION OF PROPERTY

Proof of debts

46. Debts provable in insolvency.
47. Mutual dealings and set-off.
48. Rules to proof of debts.
49. Priority of debts.
50. Rent due before adjudication.

Property available for payment of debts

51. Relation of assignees title.
52. Description of insolvents property divisible amongst creditors.

Effect of insolvency on antecedent transactions

53. Restriction of rights of creditor under execution.
54. Avoidance of voluntary transfer.
55. Duties of Court executing decree as to property taken in execution.
56. Avoidance of preference in certain cases.
57. Protection of bona fide transactions.

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Realization of property

SECTIONS

58. Possession of property by official assignee.
59. Seizure of property of insolvent.
60. Appropriation of portion of pay or other income to creditors.
61. Vesting and transfer of property.
62. Disclaimer of onerous property.
63. Disclaimer of leaseholds.
64. Power to call on official assignee to disclaim.
65. Power for Court to rescind contract.
66. Power for Court to make vesting order in respect of disclaimed property.
67. Persons injured by disclaimer may prove.
68. Duty and powers of official assignee as to realization.

Distribution of property

69. Declaration and distribution of dividends.
70. Joint and separate properties.
71. Calculation of dividends.
72. Right of creditor who has not proved debt before declaration of a dividend.
73. Final dividend.
74. No suit for dividend.
75. Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.
76. Right of insolvent so surplus.

PART IV
OFFICIAL ASSIGNEES

77. Appointment and removal of official assignees of insolvents estate.
78. Power to administer oath.
79. Duties as regards the insolvents conduct.
80. Duty to furnish list of creditors.
81. Remuneration.
82. Misfeasance.
83. Name under which to sue or be sued.
84. Office vacated by insolvency.
85. Discretionary powers and control thereof.
86. Appeal to Court.
87. Control of Court.

PART V
COMMITTEE OF INSPECTION

88. Committee of inspection.
89. Control of committee of inspection over official assignee.

PART VI
PROCEDURE

90. Power of the Court.
91. Consolidation of petitions.
92. Power to change carriage of petition.
93. Continuance of proceedings on death of debtor.
94. Power to stay proceedings.

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SECTIONS.

95. Power to present petition against a partner.
96. Power to dismiss petition against some respondents only.
97. Separate insolvency petitions against partners.
98. Suits by official assignee and insolvents partners.
99. Proceedings in partnership name.
100. Warrants of Insolvency Courts.

PART VII
LIMITATION

101. Limitation of appeals.
101A. Exclusion of time in computation of period of limitation in certain cases.

PART VIII
PENALTIES

102. Undischarged insolvent obtaining credit.
103. Punishment of insolvent for certain offences.
103A. Disqualifications of insolvent.
104. Procedure on charge under section 103.
105. Criminal liability after discharge or composition.

PART IX
SMALL INSOLVENCIES

106. Summary administration in small cases.

PART X
SPECIAL PROVISIONS

107. Exemption of corporation, etc., from insolvency proceedings.
108. Administration in insolvency of estate of person dying insolvent.
109. Vesting of estate and mode of administration.
110. Payments or transfer by legal representatives.
111. Saving of jurisdiction of Administrator-General.

PART XI
RULES

112. Rules.
113. Sanction to rules.
114. Publication of Rules.

PART XII
SUPPLEMENTAL

115. Exemption from duty of transfers, etc., under this Act.
116. The Gazette to be evidence.
117. Swearing of affidavits.
118. Formal defect not to invalidate proceedings.
119. Formal defect not to invalidate proceedings.
120. Certain provisions to bind the Government.
121. Certain provisions to bind the Government.
122. Lapse and credit to Government of unclaimed dividends.

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123. Claims to monies credited to Government under section 122.
124. Access to insolvents book.
125. Fees and percentages.
126. Courts to be auxiliary to each other.
127. Saving.
THE FIRST SCHEDULE .— MEETINGS OF CREDITORS.
THE SECOND SCHEDULE.— PROOF OF DEBTS.
THE THIRD SCHEDULE.— [*Repealed*.]

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THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909

[ACT NO. 3 OF 1909[1]]

[*12th March*, 1909.]

An Act to amend the Law of Insolvency in the Presidency towns [2]***

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency-towns [3]***;

It is hereby enacted as follows :—

PRELIMINARY

1. Short title and commencement.—(*1*) This Act may be called the Presidency-towns Insolvency Act, 1909.

(*2*) It shall come into force on the first day of January 1910.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "creditor" includes a decree-holder;

(*b*) "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor;

[4]* * * * * *

(*c*) "official assignee" includes an acting official assignee[5][and a deputy official assignee, whether permanent or acting];

(*d*) "prescribed" means prescribed by rules;

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;

(*f*) "rules" means rules made under this Act;

(*g*) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land;

(*h*) "the Court" means the Court exercising jurisdiction under this Act;[6]* * *

(*i*) "transfer of property" includes a transfer of any interest therein and any charge created thereon;

[7][(*j*) "States" means all the territories [8][which immediately before the 1st November, 1956, were comprised] within Part A States and Part C States.]

PART I

CONSTITUTION AND POWERS OF COURT

Jurisdiction

3. Courts having jurisdiction in insolvency.—The Courts having jurisdiction in insolvency under this Act shall be [9][the High Courts at Calcutta, Madras and Bombay].

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1. The Act has been amended in Bombay by Bom. Acts 20 of 1933 and 15 of 1939; in Bengal by Ben. Act 18 of 1936 ; and in Madras by Mad. Act 5 of 1943.
2. The words "and the town of Rangoon" omitted by the A.O. 1937.
3. The words "and the town of Karachi" omitted by the A.O.1948.The words "towns of Rangoon and Karachi" had been subs. for "town of Rangoon" by Act 9 of 1926, s.2, and the words "town of" had been subs. for "towns of Rangoon and" by the A.O.1937;
4. Cls. (*bb*) and (*bbb*), ins. by Act 9 of 1926, s.3, omitted by the A.O.1948.
5. Ins. by Act 10 of 1930, s.2.
6. The word "and" omitted by Act 58 of 1960, s.3 and Schdule II.
7. Cl.(*j*) ins. by the A.O.1950.
8. Subs. by the Adaptation of Laws (No.2) Order, 1956, for "for the time being comprised".
9. Subs. by the A.O.1948 for the original cls.(*a*) and (*b*) as amended by Act 9 of 1926, s.4, and the A.O.1937.

4. Jurisdiction to be exercised by a single Judge.—All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice [1]* * * shall, from time to time, assign a Judge for that purpose.

5. Exercise of jurisdiction in chambers.—Subject to the provisions of this Act and of rules, the Judge of a Court exercising jurisdiction in insolvency may exercise in chambers the whole or any part of his jurisdiction.

6. Delegation of powers to officers to officers of Court.— (*1*) The Chief Justice [1]* * * may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer in the exercise of the said powers shall be deemed the order or act of the Court.

(*2*) The powers referred to in sub-section (*1*) are the following, namely:—

(*a*) to hear insolvency petitions presented by debtors, and to make orders of adjudication thereon;

(*b*) to hold the public examination of insolvents;

(*c*) to make any order or exercise any jurisdiction which is prescribed as proper to be made or exercised in chambers;

(*d*) to hear and determine any unopposed or ex-parte application;

(*e*) to examine any person summoned by the Court under section 36.

(*3*) An officer appointed under this section shall not have power to commit for contempt of Court.

7. Power of Court to decide all questions arising in insolvency.— Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:

[2][Provided that, unless all the parties otherwise agree, the power hereby given shall, for the purpose of deciding any matter arising under section 36, be exercised only in the manner and to the extent provided in that section.]

Appeals

8. Appeals in insolvency.— (*1*) The Court may review, rescind or vary any order made by it under its insolvency jurisdiction.

(*2*) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely:—

(*a*) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency and no further appeal shall lie except by leave of such Judge;

(*b*) save as otherwise provided in clause (*a*), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

1. The words "or Judicial Commissioner" omitted by the A.O.1948.
2. Ins. by Act 19 of 1927, Section.2.

PART II

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE

ACTS OF INSOLVENCY

9. Acts of insolvency.—[1][(*1*)] A debtor commits an act of insolvency in each of the following cases, namely:—

(*a*) if, in the states or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(*b*) if, in the States or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(*c*) if, in the States or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

(*d*) if, with intent to defeat or delay his creditors,—

(*i*) he departs or remains out of the States,

(*ii*) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(*iii*) he secludes himself so as to deprive his creditors of the means of communicating with him;

(*e*) if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money;

(*f*) if he petitions to be adjudged an insolvent;

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.[2]

[3][(*2*) Without prejudice to the provisions of sub-section (*1*), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section(*3*) and the debtor does not comply with that notice within the period specified therin:

Provided that where a debtor makes an application under sub-section (*5*) for setting aside an insolvency notice—

(*a*) In a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub-section ; and

(*b*) In a case where such application is rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later:

Provided further that no insolvency notice shall be served on a debtor residing. whether permanently or temporarily, outside India, unless the creditor obtains the leave of the Court therfor.

(*3*) An insolvency notice under sub-section (*2*) shall—

(*a*) be in the prescribed form ;

(*b*) be served in the prescribed manner ;

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1. s. 9 re-numbered as sub-section (*I*) thereof by Act 28 of 1978, s.2 (w.e.f. 1-9-1979).
2. For cl.(*i*) and the proviso, applicable to Bombay only, *see* the Presidency-towns Insolvency and the Provincial Insolvency (Bombay Amendment) Act, 1939 (Bom.15 of 1939), s.2.
3. Ins. By Act 28 of 1978, s.2 (w.e.f.1-9-1979).

(*c*) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent;

(*d*) specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing, whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the Court granting leave for the service of such notice;

(*e*) state the consequences of non-compliance with the notice.

(*4*) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under the decree or order exceeds the amount actually due, unless the debtor, within the period specified in the insolvency notice for its compliance, gives notice to the creditor that the sum specified in the insolvency notice does not correctly represent the amount due under the decree or order:

Provided that if the debtor does not give any such notice as aforesaid, he shall be deemed to have complied with the insolvency notice if, within the period specified therein for its compliance , he takes such steps as would have constituted a compliance with the insolvency notice had the actual amount due been correctly specified therein.

(*5*) Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the Court to set aside the insolvency notice on any of the following grounds, namely:—

(*a*) that he has a counter-claim or set off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed;

(*b*) that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that—

(*i*) he has made an application before the competent authority under such law for the setting aside of the decree or order; or

(*ii*) the time allowed for the making of such application has not expired;

(*c*) that the decree or order is not executable under the provisions of any law referred to in clause (*b*) on the date of the application.]

Explanation. —For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.[1]

Order of adjudication

10. Power to adjudicate.— Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

11. Restrictions on jurisdiction.—The Court shall not have jurisdiction to make an order of adjudication, unless—

(*a*) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or

(*b*) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling-house or has carried on business either in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court; or

1. For s.9A, applicable to Bombay only, *see* the presidency-towns Insolvency and the Provincial insolvency (Bombay Amendment) Act,1939 (Bom. 15 of 1939), s.2.

(*c*) the debtor personally works for gain within those limits; or

(*d*) in the case of a petition by or against a firm of debtors the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits.

12. Conditions on which creditor may petition.—(*1*) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

[1][Provided that where the said period of three months referred to in clause (*c*) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court reopens].

(*2*) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

13. Proceedings and order on creditors petition.—(*1*) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts.

(*2*) At the hearing the Court shall require proof of—

(*a*) the debt of the petitioning creditor, and

(*b*) the act of insolvency, or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency.

(*3*) The Court may adjourn the hearing of the petition and order service thereof on the debtor.

(*4*) The Court shall dismiss the petition—

(*a*) if it is not satisfied with the proof of the facts referred to in sub-section (*2*); or

(*b*) if the debtor appears and satisfies the Court that he is able to pay his debts, or that he has not committed an act of insolvency or that for other sufficient cause no order ought to be made.

(*5*) The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if on a hearing adjourned under sub-section (*3*) the debtor does not appear and service of the petition on him is proved, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(*6*) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be require a for trial of the question relating to the debt.

(7) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(8) A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

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1. Added by Act 3 of 1950, s.2.

14. Conditions on which debtor may petition.—[1][(*1*)] A debtor shall not be entitled to present an insolvency petition unless—

(*a*) his debts amount to five hundred rupees, or

(*b*) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or

(*c*) an order of attachment in execution of such a decree has been made and is subsisting against his property.

[2][(*2*) A debtor in respect of whom an order of adjudication, whether made under this Act or under the Provincial Insolvency Act, 1920(5 of 1920), has been annulled owing to his failure to apply or to prosecute an application for his discharge shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.]

15. Proceedings and order on debtors petition.— (*1*) A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(*2*) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

[3][(*3*) On the making of the order admitting his petition a debtor shall—

(*a*) unless the Court otherwise directs, produce all his books of account, and

(*b*) file such lists of creditors and debtors and afford such assistance to the Court as may be prescribed,

failing which the Court may dismiss his petition.]

16. Discretionary powers as to appointment of inter in receiver.—The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before an order of adjudication is made, appoint the official assignee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the official assignee shall thereupon have such of the powers conferrable on a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908), as may be prescribed.

17. Effect of order of adjudication.—On the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose:

Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

18. Stay of proceedings.—(*1*) The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court or in any other Court subject to the superintendence of the Court.

(*2*) An order made under sub-section (*1*) may be served by sending a copy thereof, under the seal of the Court, by post to the address for service of the plaintiff or other party prosecuting such suit or

1. The original s.14 was renumbered as sub-section (*1*) of that section by Act 11 of 1927, s. 2.
2. Ins. by s.2, *ibid*.
3. Ins. by Act 19 of 1927, Section 3.

proceeding, and notice of such order shall be sent to the Court before which the suit or proceeding is pending.

(*3*) Any Court in which proceedings are pending against a debtor may, on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just.

[1][**18A. Control over insolvency proceedings in subordinate Courts.—** (*1*) The Court may, at any time after the presentation of an insolvency petition, stay any insolvency proceedings pending against the debtor in any Court subject to the superintendence of the Court, and may, at any time after the making of an order of adjudication, annul an adjudication against the debtor made by any such Court.

(*2*) Where an adjudication is annulled under sub-section (*1*), all sales and dispositions of property and payments duly made and all acts done by the Court whose order is annulled, or by the receiver appointed by it or other person acting under his authority, shall be valid, but the property vested in such Court or receiver shall vest in the official assignee, and the Court may make such direction in regard to the custody of such property as it thinks fit.

(*3*) Notice of the order annulling an adjudication under subsection (*1*) shall be published in the Official Gazette and in such other manner as may be prescribed.]

19. Power to appoint special manager.— (*1*) If in any case the Court, having regard to the nature of the debtor's estate or business or to the interests of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the official assignee, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the official assignee as may be entrusted to him by the official assignee or as the Court may direct.

(*2*) The special manager shall give security and furnish accounts in such manner as the Court may direct, and shall receive such remuneration as the Court may determine.

20. Advertisement of order of adjudication.—Notice of every order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made and the date of presentation of the petition, shall be published [2]* * * in the Official Gazette and in such other manner as may be prescribed.

Annulment of adjudication

21. Power for Court to annul adjudication in certain cases.—(*1*) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, [3][the Court shall, on the application of any person interested,] by order annul the adjudication [4][and the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (*2*) of section 14, not entitled to present such petition].

(*2*) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

22. Concurrent proceedings in Courts in India.— Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other [5][Court in India] whether within or without the States against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon.

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1. Ins. by Act 10 of 1930, s.3.
2. The words "in the Gazette of India and" rep. by the A.O.1937.
3. Subs. by Act 3 of 1950, s.3, for "the Court may, on the application of any person interested".
4. Ins. by Act 11 of 1927, s.3.
5. Subs. by the A.O.1950 for "British Court".

23. Proceedings on annulment.— (*1*) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order.

(*2*) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled as aforesaid, the Court may, if it thinks fit, recommit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so recommitted shall receive such debtor into his custody according to such recommitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order had not been made.

(*3*) Notice of the order annulling an adjudication shall be published [1]*** in the Official Gazette and in such other manner as may be prescribed.

24. Insolvents schedule.—(*1*) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed.

(*2*) The schedule shall be so submitted within the following times, namely:—

(*a*) if the order is made on the petition of the debtor, within thirty days from the date of the order,

(*b*) if the order is made on the petition of a creditor, within thirty days from the date of service of the order.

(*3*) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to the civil prison.

(*4*) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed.

25. Protection order.—(*1*) Any insolvent who shall have submitted his schedule as aforesaid may apply to the Court for protection, and the Court may, on such application, make an order for the protection of the insolvent from arrest or detention.

(*2*) A protection order may apply either to all the debts mentioned in the schedule or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct and may be revoked or renewed as the Court may think fit.

(*3*) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release:

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

(*4*) Any creditor shall be entitled to appear and oppose the grant of a protection order, but the insolvent shall be prima facie entitled to such order on production of a certificate signed by the official assignee that he has so far conformed to the provisions of this Act.

(*5*) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

26. Meeting of creditors.—(*1*) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the official assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof and generally as to the mode of dealing with the property of the insolvent.

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1. The words "in the Gazette of India and" rep. by the A.O.1937.

(*2*) With respect to the summoning of and proceedings at a meeting of creditors the rules in the First Schedule shall be observed.

27. Public examination of the insolvent.—(*1*) Where the Court makes an order of adjudication it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings and property.

(*2*) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(*3*) Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure.

(*4*) The official assignee shall take part in the examination of the insolvent; and for the purpose thereof, subject to such directions as the Court may give, may be represented by a legal practitioner.

(*5*) The Court may put such questions to the insolvent as it may think expedient.

(*6*) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over either to or by the insolvent and signed by him, and may thereafter be used in evidence against him and shall be open to the inspection of any creditor at all reasonable times.

(*7*) When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so.

(*8*) Where the insolvent is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, or is a woman who according to the customs and manners of the country ought not to be compelled to appear in public, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner and at such place as to the Court seems expedient.

Composition and schemes of arrangement

28. Submission of proposal and acceptance by creditors.—(*1*) An insolvent may at any time after the making of an order of adjudication submit a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the official assignee to a meeting of creditors.

(*2*) The official assignee shall send to each creditor who is mentioned in the schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon, and if on the consideration of such proposal the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(*3*) The insolvent may at the meeting amend the terms of his proposal if the amendment is in the opinion of the official assignee calculated to benefit the general body of creditors.

(*4*) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

29. Approval of proposal by Court.— (*1*) The insolvent or the official assignee may after the proposal is accepted by the creditors apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(*2*) Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until after the conclusion of the public examination of the

insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(*3*) The Court shall before approving the proposal hear a report of the official assignee as to the terms thereof and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor.

(*4*) Where the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(*5*) Where any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts provable against the debtor's estate.

(*6*) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

(*7*) In any other case the Court may either approve or refuse to approve the proposal.

30. Order on approval.— If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23, sub-sections (*1*) and (*3*), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and provable in insolvency.

(*2*) The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

31. Power to re-adjudge debtor insolvent.—(*1*) If default is made in the payment of any installment due in pursuance of any composition or scheme, approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the official assignee but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme.

(*2*) Where a debtor is re-adjudged insolvent under sub-section (*1*), all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

32. Limitation of effect of composition or scheme.— Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme.

Control over person and property of insolvent

33. Duties of insolvent as to discovery and realization of property.—(*1*) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit, to such examination and give such information as the meeting may require.

(*2*) The insolvent shall—

(*a*) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,

(*b*) submit to such examination in respect of his property or his creditors,

(*c*) wait at such times and places on the official assignee or special manager,

(*d*) execute such powers-of-attorney, transfers and instruments, and

(*e*) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors.

as may be required by the official assignee or special manager or may be prescribed or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested.

(*3*) The insolvent shall aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(*4*) If the insolvent willfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the official assignee of any part of his property, which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

34. Arrest of insolvent.—(*1*) The Court may, either of its own motion or at the instance of the official assignee or of any creditor, by warrant addressed to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested, and committed to the civil prison or if in prison to be detained until such time as the Court may order, under the following circumstances, namely:—

(*a*) if it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in insolvency against him; or

(*b*) if it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the official assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his insolvency; or

(*c*) if he removes any property in his possession above the value of fifty rupees without the leave of the official assignee.

(*2*) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

35. Redirection of letters.—Where the official assignee has been appointed interim receiver or an order of adjudication is made, the Court, on the application of the official assignee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, all post letters, whether registered or unregistered, parcels and money orders addressed to the debtor at any place or places mentioned in the order for redirection, shall be re-directed or delivered by the Postal authorities in the States, to the official assignee, or otherwise as the Court directs; and the same shall be done accordingly.

36. Discovery of Insolvents property.—(*1*) The Court may, on the application of the official assignee or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property; and the Court may require any such person to produce any documents in his custody or power refining to the insolvent, his dealings or property.

(*2*) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(*3*) The Court may examine any person so brought before it concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.

(*4*) [1][If on his examination any such person admits] that he is indebted to the insolvent, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(*5*) [1][If on his examination any such person admits] that he has in his possession any property belonging to the insolvent, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof at such time, in such manner and on such terms as to the Court may seem just.

(*6*) Orders made under sub-sections (*4*) and (*5*) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908 (5 of 1908), respectively.

(*7*) Any person making any payment or delivery in pursuance of an order made under sub-section (*4*) or sub-section (*5*) shall by such payment or delivery be discharged from all liability whatsoever in respect of such debt or property.

37. Power to issue commissions.—The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908 (5 of 1908).

Discharge of insolvent

38. Discharge of insolvent.— (*1*) An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court.

(*2*) On the hearing of the application, the Court shall take into consideration any report of the official assignee as to the insolvent's conduct and affairs, and, subject to the provisions of section 39, may—

(*a*) grant or refuse an absolute order of discharge, or

(*b*) suspend the operation of the order for a specified time, or

(*c*) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after acquired property.

39. Cases in which the Court must refuse an absolute discharge.— (*1*) The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections 421 to 424 of the Indian Penal Code,1860(45 of 1860), and shall, on proof of any of the facts hereinafter mentioned, either—

(*a*) refuse the discharge; or

(*b*) suspend the discharge for a specified time; or

(*c*) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors; or

(*d*) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the official assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts.

1. Subs. by Act 19 of 1927, s. 4, for " If, on the examination of any such person, the Court is satisfied".

(*2*) The facts hereinbefore referred to are—

(*a*) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of such value has arisen from circumstances for which he cannot justly be held responsible;

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(*c*) that the insolvent has continued to trade after knowing himself to be insolvent;

(*d*) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(*e*) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(*f*) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living or by gambling, or by culpable neglect of his business affairs;

(*g*) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him;

(*h*) that the insolvent has within three months preceding the time of presentation of the petition incurred unjustifiable expense by bringing a frivolous or vexatious suit;

(*i*) that the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(*j*) that the insolvent has concealed or removed his books or his property or any part thereof or has been guilty of any other fraud or fraudulent breach of trust.

(*3*) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

(*4*) On any application for discharge the report of the official assignee shall be prima facie evidence and the Court may presume the correctness of any statement contained therein.

40. Hearing of application for discharge.— Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor. At the hearing, the Court may put such questions to the insolvent and receive such evidence as it may think fit.

41. Power to annul adjudication on failure to apply for discharge.— If an insolvent does not appear on the day so appointed for hearing his application for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may for be prescribed, the Court, on the application of the official assignee or of a creditor or of its own motion, may annul the adjudication or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment.

42. Renewal of application and variation of terms of order.—(*1*) Where the Court refuses the discharge of the insolvent it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

(*2*) Where an order of discharge is made subject to conditions and at any time after the expiration of two years from the date of the order the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

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43. Duty of discharged insolvent to assist in realization of property.—A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realization and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

44. Fraudulent settlements.— In either of the following cases, that is to say :—

(*1*) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(*2*) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement.

45. Effect of order of discharge.— (*1*) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Government;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or

(*d*) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898(5 of 1908).

(*2*) Save as otherwise provided by sub-section (*1*), an order of discharge shall release the insolvent from all debts provable in insolvency.

(*3*) An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein.

(*4*) An order of discharge shall not release any person who at the date of the presentation of the petition was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

PART III

ADMINISTRATION OF PROPERTY

Proof of debts

46. Debts provable in insolvency.—(*1*) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency.

(*2*) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(*3*) Save as provided by sub-sections (*1*) and (*2*), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency.

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(*4*) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value:

Provided that if in his opinion the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency.

Explanation.—For the purposes of this section "liability" includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any contingency or contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

47. Mutual dealings and set-off.— Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively:

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

48. Rules as to proof of debts.— With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that Schedule shall be observed.

49. Priority of debts.— (*1*) In the distribution of the property of the insolvent there shall be paid in priority to all other debts —

(*a*) all debts due to the Government or to any local authority;

(*b*) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer; and

(*c*) rent due to a landlord from the insolvent: provided the amount payable under this clause shall not exceed one month's rent.

(*2*) The debts specified in sub-section (*1*) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(*3*) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (*1*) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(*4*) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(*5*) Subject to the provisions of this Act, all debts proved in insolvency shall be paid ratably according to the amounts of such debts respectively and without any preference.

(*6*) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency.

50. Rent due before adjudication.—After an order of adjudication has been made no distress for in rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or part to whom the rent may be due shall be entitled to prove in respect of such rent.

Property available for payment of debts

51. Relation of assignees title.—The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall deemed to have relation back to and to commence at—

(*a*) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or

(*b*) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition:

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

52. Description of insolvents property divisible amongst creditors.—(*1*) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely:—

(*a*) property held by the insolvent on trust for any other a person;

(*b*) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessel, and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and other necessaries as aforesaid, not exceeding three hundred rupees in the whole.

(*2*) Subject as aforesaid, the property of the insolvent shall comprise the following particulars namely:—

(*a*) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge;

(*b*) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and

(*c*) all goods being at the commencement of the insolvency in the possession, order or disposition of the insolvent, in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof:

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (*c*):

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (*c*) may prove for the value of such goods.

Effect of insolvency on antecedent transactions

53. Restriction of rights of creditor under execution.—(*1*) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realised in the course of the execution by sale or otherwise [1][before the date of the admission of the insolvency petition].

1. Subs. by Act 3 of 1950, s.4, for "before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor".

(*2*) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed.

(*3*) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.

54. Duties of Court executing decree as to property taken in execution.—Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof to notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the execution shall be a first charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

55. Avoidance of voluntary transfer.—Any transfer of property, not being a transfer made before any and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.

56. Avoidance of preference in certain cases.— (*1*) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee.

(*2*) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

57. Protection of *bona fide* transactions.—Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

(*a*) any payment by the insolvent to any of his creditors;

(*b*) any payment or delivery to the insolvent;

(*c*) any transfer by the insolvent for valuable consideration; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Realization of property

58. Possession of property by official assignee.— (*1*) The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other of parts of his property capable of manual delivery.

(*2*) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of Civil Procedure, 1908(5 of 1908), and the Court may on his application enforce such acquisition or retention accordingly.

(*3*) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not become insolvent.

(*4*) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the official assignee.

(*5*) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

59. Seizure of property of insolvent.— (*1*) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

(*2*) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer as aforesaid who may execute it according to its tenor.

60. Appropriation of portion of pay or other income to creditors.— (*1*) Where an insolvent is an officer of [1][the Indian Army or Navy], or an officer or clerk or otherwise employed or engaged in the civil service of the Government, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct.

(*2*) Where an insolvent is in the receipt of a salary or income other; than as aforesaid, the Court may, at any time after adjudication an from time to time, make such order as it thinks just for the payment to the official assignee, for distribution among the creditors of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

[2]**61. Vesting and transfer of property.—**The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever.

62. Disclaimer of onerous property.— (*1*) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property:

Provided that, where any such property has not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(*2*) The disclaimer shall operate to determine, as from the date thereof, the rights, interest and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the official assignee from liability, affect the rights or liabilities of any other person.

63. Disclaimer of leaseholds.— Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court; and the Court may, before or on granting such leave, require such notices to be given to persons interested,

1. Subs. by the A.O.1950 for "the Army or Navy or of the Royal Indian Navy ".
2. In the application of the Act to Bombay and Madras, this section has been repealed: *see* the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom.20 of 1933), s.11 and Sch. I and the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), s.2.

and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court thinks just.

64. Power to call on official assignee to disclaim.— The Official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application of in writing has been made to the official assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property; and in the case of a contract, if the official assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

65. Power for Court to rescind contract.— The Court may, on the application of any person who is, as against the official assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

66. Power for Court to make vesting order in respect of disclaimed property.— (*1*) The Court may, on the application of any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose:

Provided always, that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the insolvent.

(*2*) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

67. Persons injured by disclaimer may prove.— Any person injured by the operation of a disclaimer under by the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

68. Duty and powers of official assignee as to realization.— (*1*) Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent;

(*b*) give receipts for any money received by him;

and may, by leave of the Court, do all or any of the following things namely:—

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;

(*e*) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court;

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time or fully paid shares, debentures or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts or for the purpose of carrying on the business;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon;

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

[1](*2*) The official assignee shall account to the Court and pay over all monies and deal with all securities in such manner[2] as is prescribed or as the Court directs.

69. Declaration and distribution of dividends.— (*1*) The official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(*2*) The first dividend (if any) shall be declared and be distributed within [3][one year] after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(*3*) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(*4*) Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

(*5*) When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and, if required by any creditor, a statement in the prescribed form as to the particulars of the estate.

70. Joint and separate properties.—Where one partner in a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

71. Calculation of dividends.—(*1*) In the calculation and distribution of dividends, the official assignee shall retain [4][in his hands] sufficient assets to meet—

(*a*) debts provable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(*b*) debts provable in insolvency the subject of claims not yet determined;

(*c*) disputed proofs or claims; and

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1. In the application of the Act to Bombay, this sub-section has been repealed: *see* the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom.20 of 1933), s.11 and Sch.I .
2. For Madras, the words "as is laid down in this Act or" have been ins. here by the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), s.3.
3. Subs. by Act 3 of 1929, s. 2, for "six months".
4. For Madras, read: "under his control"—*see* the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), s.4.

(*d*) the expenses necessary for the administration of the estate or otherwise.

(*2*) Subject to the provisions of sub-section (*1*), all money [1][in hand] shall be distributed as dividends.

72. Right of creditor who has not proved debt before declaration of a dividend.— Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being [2][in the hands] of the official assignee any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

73. Final dividend.—(*1*) When the official assignee has realized all the properly of the insolvent, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in insolvency, he shall, with the leave of the Court, declare a final dividend; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him but not proved that, if they do not prove their claims, to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(*2*) After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

[3]**74. No suit for dividend.—** No suit for a dividend shall lie against the official assignee, but, where the official assignee refuses to pay any dividend, the Court may, on the application of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

75. Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.— (*1*) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carryon the trade (if any) of the insolvent, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct.

(*2*) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court.

76. Right of insolvent so surplus.— The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act and of the expenses of the proceedings taken thereunder.

PART IV

OFFICIAL ASSIGNEES

77. Appointment and removal of official assignees of insolvents estate.—[4][(*1*) (*a*) The Chief Justice of the High Court at Madras may from time to time appoint substantively or temporarily such persons as he thinks fit to the office of official assignee of insolvents' estates and such person or persons as he thinks fit to the office of the deputy official assignee for the said Court and may, with the concurrence of a majority

1. For Madras, read: "realized by the official assignee"—*see* the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), s.4.
2. For Madras, read: "under the control" *see* s.5, *ibid*.
3. s.74 has been amended in its application to Bombay and Madras by the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom.20 of 1933), s.2, and the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 1943), s.6.
4. Subs. by the A.O.1937 for the original sub-section (*1*) as amended by Act 9 of 1926, s.7, and Act 10 of 1930, s.4.In its application to Calcutta, s.77 had been previously amended by the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben.18 of 1936), s.3.In its application to Madras, this section has been amended by the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), s.7.

of the other Judges of the Court, remove the person for the time being holding any of the said offices for any cause appearing to the Court sufficient.

(*b*) The State Government of West Bengal shall, after consultation with, and with the concurrence of, the Chief Justice of the High Court at Calcutta, appoint substantively or temporarily a person to the office of official assignee of insolvents' estates for the said Court and may, after the like consultation and with the like concurrence, appoint substantively or temporarily a person or persons to the office of the deputy official assignee for the said Court.

(*c*) For the High Court at Bombay, the State Government of Bombay [1]* * * may from time to time appoint substantively or temporarily such person as the State Government thinks fit to the office of official assignee of insolvents' estates and such person or persons as the State Government thinks fit to the office of the deputy official assignee]

[2][(*1*A) Subject to rules made under section 112,[3] the deputy official assignee shall have all the powers and shall discharge all the duties and in exercise of such powers and in the discharge of such duties shall be subject to all the liabilities of the official assignee under this Act.]

(*2*) Every official assignee [3][and every deputy official assignee] shall give such security and shall be subject to such rules and shall act in such manner as may be prescribed.

[4](*3*) Not withstanding anything in sub-section (*1*), the persons substantively or temporarily holding the office of official assignee immediately before the commencement of this Act in the Courts for the relief of Insolvent Debtors at Calcutta, Madras and Bombay respectively under the [5]Indian Insolvency Act, 1848, [6]* * * shall, without further appointment for that purpose, become the official assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay [7]* * * respectively.[8]

78. Power to administer oath.— An official assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

79. Duties as regards the insolvents conduct.— (*1*) The duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(*2*) In particulars it shall be the duty of the official assignee —

(*a*) to investigate the conduct of the insolvent and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has whether there is reason to believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the Indian Penal Code in connection with his insolvency or which would justify the Court in refusing, suspending or qualifying an order for his discharge ;

(*b*) to make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed; and

(*c*) to take such part and give assistance in relation to the prosecution of any fraudulent insolvent as the Court may; direct or as may be prescribed.

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1. The words "and for the Court of the Judicial Commissioner of Sind, the Provincial Government of Sind" rep.by the A.O.1948.
2. Ins. by act 10 of 1930, s.4.
3. In Calcutta read “112A” for “112”: *see* the Presidency-towns Insolvency (Ben. Amendment) Act, 1936 (Ben.18 of 1936), s.3 (*b*).
4. This sub-section has been replaced by another in Calcutta: *see* s.3 (*c*), *ibid.*
5. Rep. by this Act.
6. The words “and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act, 1900” rep. by the A.O.1937.
7. The words “and in the Chief Court of Lower Burma” rep., *ibid*.
8. For s.77A, applicable to Bombay and Madras, see the Presidency-towns Insolvency (Bombay Amendment) act, 1933 (Bom.20 of 1933), s.3 and the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), s.8 respectively.

80. Duty to furnish list of creditors.— The official assignee shall, whenever required by any creditor so to do and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors.

[1]**81. Remuneration.—**(*1*) Such remuneration shall be paid to the official assignee as may be prescribed.

(*2*) No remuneration whatever beyond that referred to in sub section (*1*) shall be received by an official assignee as such.[1]

[1]**82. Misfeasance.—** The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise, and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission.[1]

[1]**83. Name under which to sue or be sued.—** The official assignee may sue and be sued by the name of "the official assignee of the property of , an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

[1]**84. Office vacated by insolvency.—** If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee.[1]

85. Discretionary powers and control thereof.— (*1*) Subject to the provisions of this Act and to the directions of the Court, the official assignee shall, in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

(*2*) The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved.

(*3*) The official assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

(*4*) Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

86. Appeal to Court.— If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the official assignee, he may at appeal to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

87. Control of Court.— (*1*) If any official assignee does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient.

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1. In the application of the Act to Madras, ss.81 and 83 have been repealed, *see* the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), ss.9 and 12.In the application of the Act to Bombay, s.84 has been repealed, see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom.20 of 1933), s.11.For ss.81, 81B, 82, 82A, 82B, 82C and 84A, as applicable to Calcutta, see the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben.18 of 1936), ss.4 to 7.For ss.82 and 83, as applicable to Bombay, see Bombay Act 20 of 1933, ss.4 and 5.For ss.82, 82A, 82B, 84 and 84A, as applicable to Madras, see Madras Act 5 of 1943, ss.11 and 14.

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(*2*) The Court may at any time require any official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

[1](*3*) The Court may also direct an investigation to be made of the books and vouchers of the official assignee.

PART V

COMMITTEE OF INSPECTION

88. Committee of inspection.—The Court may, if it so thinks fit, authorize the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection forth purpose of superintending the administration of the insolvent's property by the official assignee:

Provided that a creditor, who is appointed a member of a committee of inspection, shall not be qualified to act until he has proved.

89. Control of committee of inspection over official assignee.—The committee shall have such powers of control over the ton proceedings of the official assignee as may be prescribed.

PART VI

PROCEDURE

90. Power of the Court.— (*1*) In proceedings under this Act the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction:

Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act.

(*2*) Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court.

(*3*) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(*4*) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(*5*) Where by this Act or by rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose.

(*6*) Subject to rules, the Court may in any matter take the whole or any part of the evidence either viva voce or by interrogatories, or upon affidavit, or by commission.

(*7*) For the purpose of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

[2]* * * * *

91. Consolidation of petitions.— Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

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1. In the application of the Act to Bombay, this sub-section has been repealed, see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom.20 of 1933), s.11 and Sch.I.
2. Sub-section (*8*) rep. by the A.O.1948.

92. Power to change carriage of petition.—Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor , to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

93. Continuance of proceedings on death of debtor.—If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

94. Power to stay proceedings.—The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

95. Power to present petition against a partner.— Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

96. Power to dismiss petition against some respondents only.—Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

97. Separate insolvency petitions against partners.—Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

98. Suits by official assignee and insolvents partners.—(*1*) Where a partner in a firm is adjudged insolvent, the Court may authorize the official assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner; and any release by the partner of the debt or demand to which the proceeding relates shall be void.

(*2*) Where application for authority to continue or commence any suit or any other proceeding has been made under sub-section (*1*), notice of the application shall be given to the insolvent's partner, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

99. Proceedings in partnership name.—(*1*) Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm:

Provided that in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner and verified on oath or otherwise, as the Court may direct.

(*2*) In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner.

100. Warrants of Insolvency Courts.— (*1*) A warrant of arrest issued by the Court may be executed in the same manner and subject to the same conditions as a warrant of arrest issued under the Code of Criminal Procedure, 1898(5 of 1898), may be executed.

(*2*) A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (*1*), shall be in the form prescribed, and sections 77(*2*), 79, 82, 83, 84 and 102 of the said Code shall, so far as maybe, apply to the execution of such warrant.

(*3*) A search-warrant issued by the Court under section 59, sub-section(*2*), may be executed in the same manner and subject to the same conditions as a search-warrant for property supposed to be stolen may be executed under the said Code.

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PART VII

LIMITATION

101. Limitation of appeals.—The period of limitation for an appeal from any act or decision of the official assignee, or from an order made by an officer of the Court empowered under section 6, shall be twenty days from the date of such act, decision or order, as the case may be.[1]

[2][**101A. Exclusion of time in computation of period of limitation in certain cases.—** Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or other legal proceeding (other than a suit or legal proceeding in respect of which the leave of the Court was obtained under section 17) which might have been brought but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded:

Provided that nothing in this section shall apply to any suit or other legal proceeding in respect of a debt provable but not proved under this Act.]

PART VIII

PENALTIES

102. Undischarged insolvent obtaining credit.—An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

103. Punishment of insolvent for certain offences.—Any person adjudged insolvent who —

(*a*) fraudulently with the intent to conceal the state of his affairs or to defeat the objects of this Act, —

(*i*) has destroyed or otherwise willfully prevented or purposely withheld the production of any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(*ii*) has kept or caused to be kept false books, or

(*iii*) has made false entries in , or withheld entries from, or willfully altered or falsified, any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(*b*) fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors, —

(*i*) has discharged or concealed any debt due to or from him, or

(*ii*) has made away with , charged, mortgaged or concealed any part of his property of what kind so ever, shall on conviction be punishable with imprisonment for a term which may extend to two years.

[3][**103A. Disqualifications of insolvent .—** (*1*) Where a debtor is adjudged or read judged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from—

(*a*) being appointed or acting as a Magistrate;

(*b*) being elected to any office of any local authority where the appointment to such office is by election, or holding or exercising any such office to which no salary is attached; and

(*c*) being elected or sitting or voting as a member of any local authority.

(2) The disqualifications which an insolvent is subject to under this section shall be removed, and shall cease if—

1. For s.101A, applicable to Bombay only, *see* the Presidency-towns Insolvency (Bombay Amendment) Act, 1939 (Bom.15 of 1939), s.2.
2. Ins. by Act 3 of 1950, s. 5.
3. Ins. by Act 11 of 1920, s. 2.

(*a*) the order of adjudication is annulled under sub-section (*1*) of section 21, or

(*b*) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(*3*) The Court may grant or refuse such certificate as it thinks fit.]

[1] **[104. Procedure on charge under section 103.—**(*1*) Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in section 103 and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a Presidency Magistrate or a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898 (5 of 1898).

(*2*) Any complaint made by the Court under sub-section (*1*) may be signed by such officer of the Court as the Court may appoint in this behalf.]

105. Criminal liability after discharge or composition.— Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefore by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

PART IX

SMALL INSOLVENCIES

106. Summary administration in small cases.—(*1*) Where the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely:—

(*a*) no appeal shall lie from any order of the Court, except by leave of the Court;

(*b*) no examination of the insolvent shall be held except on the application of a creditor or the official assignee;

(*c*) the estate shall, where practicable, be distributed in a single dividend;

(*d*) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent.

(*2*) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

PART X

SPECIAL PROVISIONS

107. Exemption of corporation, etc., from insolvency proceedings.—No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

108. Administration in insolvency of estate of person dying insolvent.—(*1*) Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against the debtor, had he been alive, may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act.

1. Subs. by Act 9 of 1926, s. 9, for the original s. 104.

(*2*) Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

(*3*) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of justice for the administration of the deceased debtor's estate; but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last-mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

109. Vesting of estate and mode of administration.—(*1*) Upon an order being made for the administration of a deceased debtor's estate under section 108, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(*2*) With the modification hereinafter mentioned, all the provisions of Part III, relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act.

(*3*) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(*4*) If, on the administration of the deceased debtor's estate, any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

110. Payments or transfer by legal representatives.—(*1*) After notice of the presentation of a petition under section 108 no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee.

(*2*) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative or by a District Judge acting under the powers conferred on him by section 64 of the Administrator-General's Act, 1874 (2 of 1874), before the date of the order for administration.

111. Saving of jurisdiction of Administrator-General.—The provisions of sections 108, 109 and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator-General.

PART XI

RULES

[1]**112. Rules.—** (*1*) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

1. This section has been amended in its application to Bombay, Madras and Calcutta: see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom.20 of 1933), s.6; the Presidency-towns Insolvency (Bombay Amendment) Act, 1939 (Bom.15 of 1939), s.2; the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), s.15, and the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben.18 of 1936), s.8.

(*a*) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid;

(*b*) the investment, whether separately or collectively, of unclaimed dividends, balances and other sums appertaining to the estates of insolvent debtors whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;

(*c*) the proceedings of the official assignee in taking possession of and realising the estates of insolvent debtors;

[1]* * * * *

(*e*) the receipts, payments and accounts of the official assignee;

(*f*) the audit of the accounts of the official assignee;

(*g*) the payment [2]* * *of the costs of the audit of his accounts out of the proceeds of the investments in his hands;

(*h*) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid;

(*i*) the payment of any civil liability incurred by an official assignee acting under the order or direction of the Court;

(*j*) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;

(*k*) the intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates;

[3][(*kk*) filing of lists of creditors and debtors and the affording of assistance to the Court by a petitioning debtor;]

(*l*) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors;

(*m*) the service of notices in proceedings under this Act;

[4][(*mm*) the form of the insolvency notice under clause(*a*), and the manner in which such notice may be served under clause (*b*), of sub-section (*3*) of section 9;]

(*n*) the appointment, meetings and procedure of committees of inspection;

(*o*) the conduct of proceedings under this Act in the name of a firm;

(*p*) the forms to be used in proceedings under this Act;

(*q*) the procedure to be followed in the case of estates to be administered in a summary manner;

(*r*) the procedure to be followed in the case of estates of deceased persons to be administered under this Act;

[5][(*s*) the distribution of work between the official assignee and his deputy or deputies ;]

[6][and, in the case of the High Court at Madras, may also provide for and regulate the remuneration of the official assignee and the payment of the costs, charges and expenses of his establishment].[7]

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1. Cl. (*d*) rep. by the A.O.1937.
2. The words "of the remuneration of the official assignee, of the costs, charges and expenses of his establishment, and" rep., *ibid*.
3. Ins. by Act 19 of 1927, s.5.
4. Ins. by Act 28 of 1978, s. 2 (w.e.f. 1-9-1979).
5. Ins. by Act 10 of 1930, s.5.
6. Ins. by the A.O.1937.
7. For s.112A, applicable to Calcutta only, *see* the Presidency-towns Insolvency (Bengal Amendment) act, 1936 (Ben.18 of 1936), s.9.

[1][**113. Sanction to rules.—**Rules made under the provisions of this Part shall be subject to the previous sanction of the State Government.]

114. Publication of Rules.— Rules so made and sanctioned shall be published [2]* * *in the Official Gazette, [3]* * *and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act.

PART XII

SUPPLEMENTAL

115. Exemption from duty of transfers, etc., under this Act.—(*1*) Every transfer, mortgage, assignment, power-of attorney, proxy paper, certificate, affidavit, bond or other proceedings, of instrument or writing whatsoever before or under any order of the Court, and any copy thereof, shall be exempt from payment of any stamp or other duty whatsoever.

(*2*) No stamp-duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

116. The Gazette to be evidence.—(*1*) A copy of the Official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts to stated in the notice.

(*2*) A copy of the Official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

117. Swearing of affidavits.—Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn—

(*a*) in [4] [the States [5]* * *], before—

(*i*) any Court or Magistrate, or

(*ii*) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908; (5 of 1908)

(*b*) in England, before any person authorized to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the Judge of the Court or before a Justice of the peace for the county or place where it is sworn;

(*c*) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace; and

(*d*) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by [6][an Indian Consul or Political Agent] or by a notary public).

118. Formal defect not to invalidate proceedings.—(*1*) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(*2*) No defect or irregularity in the appointment of an official assignee or member of a committee of inspection shall vitiate any act done by him in good faith.

119. Formal defect not to invalidate proceedings.—Where an insolvent is a trustee within the Indian Trustee Act, 1866, (27 of 1866) section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it

1. Subs. by the A.O.1937 for the original s.113.
2. The words “in the Gazette of India or” rep. by the A.O.1937.
3. The words “as the case may be” rep., *ibid*.
4. Subs. by the A.O.1948.
5. The words “of India” omitted by the A.O.1950.
6. Subs. by the A.O.1950 for "a British Minister or British Consul or British Political Agent”.

appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

120. Certain provisions to bind the Government.— Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Government.

121. Certain provisions to bind the Government.— Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.[1]

[2]**122. Lapse and credit to Government of unclaimed dividends.—**Where the official assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of [3][the State Government], unless the Court otherwise directs.

123. Claims to monies credited to Government under section 122.—Any person claiming to be entitled to any monies paid to the account and credit of [3][the State Government] under section 122, may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due:

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of [3][the State Government], the Court shall cause a notice to be served on such officer as [4][the State Government] may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.[5]

124. Access to insolvents book.—(*1*) No person shall, as against the official assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon.

(*2*) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

125. Fees and percentages.—Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.[6]

126. Courts to be auxiliary to each other.—All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the Bankruptcy Act, 1883, and to section 50 of the Provincial Insolvency Act, 1907.[7]

127. Saving.—[8]***** ***** ***** *****

(*2*) [8]* * * The proceedings under an insolvency petition under the Indian Insolvency Act, 1848, pending at the commencement of this Act shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue, and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed.

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1. For s.121A, applicable to Bombay only, *see* the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s.7.
2. This section has been amended in its application to Bombay by s.8, *ibid*.
3. Subs. by the A.O.1937 for "the Govt. of India".
4. subs., *ibid.*, for " the G.G in C".
5. For ss.123A and 123B, applicable to Bombay only, *see* the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom.20 of 1933), s.10.
6. In its application to Calcutta and Madras, this section has been amended: see the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben.18 of 1936), s.11, and the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad.5 of 1943), s.16.
7. *See* now the Provincial Insolvency Act, 1920 (5 of 1920).
8. Sub-section (*1*) and the words "Notwithstanding the repeal effected by this Act," in sub-section (*2*) rep. by Act 10 of 1914, s.3 and Sch. II.

THE FIRST SCHEDULE

(*See* section 26)

MEETINGS OF CREDITORS

1. Meetings of creditors.—The official assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting or whenever requested in writing by one-fourth in value of the creditors who have proved.

2. Summoning of meetings.—Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the official assignee.

3. Notice of meetings.—The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter, as may be convenient. The official assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the Official Gazette.

4. Duty of insolvent to attend if required.—It shall be the duty of the insolvent to attend any meeting which the official assignee may, by notice, require him to attend, and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

5. Proceedings not to be avoided for non-receipt of notice.—The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him.

6. Proof of issue of notice.—A certificate of the official assignee that the notice of any meeting has been duly given shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

7. Costs of meeting.—Where on the request of creditors the official assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements: Provided that the official assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

8. Chairman.—The official assignee shall be the chairman of any meeting.

9. Right to vote.—A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.

10. No Vote in respect of certain debts.—A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

11. Secured creditor.—For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

12. Proof in respect of negotiable instruments.—Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument or security must, subject to any special order of the Court made to the contrary, be produced to the official assignee before the proof can be admitted for voting.

13. Power to require creditor to give up security.—It shall be competent to the official assignee, within twenty-eight days after a proof estimating the value of a security has been made use of in voting at

any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated.

14. Proof by partner.—If one partner in a firm is adjudged insolvent, any creditor to whom that partner is indebted jointly with the other partners in the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors and shall be entitled to vote thereat.

15. Power of official assignee to admit or reject proof.—The official assignee shall have power to admit or reject a proof for the purpose of voting but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

16. Proxy.—A creditor may vote either in person or by proxy.

17. Instrument of proxy.—Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee.

18. General proxy.—A creditor may give a general proxy to his attorney or to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. Proxy to be deposited one day before date of meeting.—proxy shall not be used unless it is deposited with the official assignee one clear day before the time appointed for the meeting at which it is to be used.

20. Official assignee as proxy.—A creditor may appoint the official assignee to act as his proxy.

21. Adjournment of meeting.—The official assignee may adjourn the meeting from time to time and from place to place, and no notice of the adjournment shall be necessary.

22. Minute of proceedings.—The official assignee shall draw up a minute of the proceeding at the meeting and shall sign the same.

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THE SECOND SCHEDULE

(*See* section 48)

PROOF OF DEBTS

Proofs in ordinary cases

1. Time for lodging proof.— Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.

2. Mode of lodging proof .—A proof may be lodged by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt.

3. Authority to make affidavit.—The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

4. Contents of affidavit.—The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee may at any time call for the production of the vouchers.

5. Affidavit to state if creditor holds security.—The affidavit shall state whether the creditor is or is not a secured creditor.

6. Cost of proving debts.—A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

7. Right to see and examine proof.—Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

8. Deduction to be made from proof.—A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by secured creditors

9. Proof where security realized.—If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

10. Proof where security is surrendered.—If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors, he may prove for his whole debt.

11. Proof in other cases.—If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. Valuation of security .—(*1*) Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value.

(*2*) If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase:

Provided that the creditor may at any time, by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Amendment of valuation.—Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the official assignee shall allow the amendment without application to the Court.

14. Refund of excess received.—Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend, any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. Amendment where security subsequently realized .—If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

16. Exclusion from sharing in dividend .—If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

17. Limit of receipt.—Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

Taking Accounts of property mortgaged, and of the sale thereof

18. Inquiry into mortgage, etc.—Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the official assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found till at such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, or dividends, interest or other proceeds received by such person, or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit, when and where, and by whom and in what way, the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the official assignee (unless it is otherwise ordered[1]) shall have the conduct of such sale; but it shall riot be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

19. Conveyance.—All proper parties shall join in the conveyance to the purchaser, as the Court directs.

20. Proceeds of sale.—The monies to arise from such sale shall be applied, in the first place, in payment of the costs, charges and expenses of and occasioned s by the application to the Court, and of such sale and the commission (if any) of the official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee, for principal, interest and costs, and the surplus of the sale monies(if any) shall then be paid to the official assignee. But if the monies to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

1. In the application of this rule to Calcutta, the words "for reasons to be recorded in writing" have been inserted here, see the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), s.12

21. Proceedings on inquiry .—For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs.

Periodical payments

22. Periodical payments.—When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment due grew from day to day.

Interest

23. Interest.—(*1*) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum-

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(*2*)Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Debt payable at a future time

24. Debt payable in future.—A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting there from only a rebate of interest at the rate of six per centum per annum, computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or rejection of proofs

25. Admission or rejection of proof.—The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

26. Court may expunge proof improperly received.—If the official assignee thinks that a proof has been improperly admitted, the Court may, on the application of the official assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

27. Power for Court to expunge or reduce proof.—The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter, or in the case of a composition or scheme upon the application of the insolvent.

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THE THIRD SCHEDULE.

[*Enactments repealed*.] *Rep. by the Repealing and Amending Act*, 1914 (10 *of* 1914), *s*.3 *and Sch. II.*

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