

ACT M OF 1909

(THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909.)

CONTENTS

PRELIMINARY.

SECTION.

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 of Court.
7. Powers 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 creditor's petition. M. Conditions
on which debtor may petition.
15. Proceedings and order on debtor's petition.
16. Discretionary powers as to appointment of interim receiver.
17. Effect of order of adjudication.

SECTION. *The Presidency-towns Insolvency Act, 1909.*

[Act in 18. Slay 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.

Proceedings consequent on order of adjudication.

24. Insolvent's schedule.

25. Protection order.

26. Meetings 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 insolvent's 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.

SECTION,

- 46- Debts provable in insolvency.
- 47. Mutual dealings and set-off.
- 48. Rules as to proof of debts.
- 49. Priority of debts.
- 50. Rent due before adjudication.
Property available for payment of debts.
- 51. Relation of assignee's title.
- 52. Description of insolvent's property divisible amongst creditors.
Effect of insolvency on antecedent transactions.
- 53. Restriction of rights of creditor under execution.
- 54. Duties of Court executing decree as to property taken in execution.
- 55. Avoidance of voluntary transfer,
- 56. Avoidance of preference in certain cases.
- 57. Protection of *bona fide* transactions.
Realization of property.
- 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.

SECTION.

578

[Act in

The Presidency-towns Insolvency Act, 1909.

- 72. Right of creditor who has not proved debt before declaration of 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 to surplus.

PART IV

OFFICIAL ASSIGNEES.

- 77. Appointment and removal of official assignees of insolvent's estate.
- 78. Power to administer oath.
- 79. Duties as regards the insolvent's conduct.
- 80. Duty to furnish list of creditors,
- 81. Administrative control over official assignee and deputy official assignee,
- 81A. Salary, allowances, pension and conditions of service of official assignee and deputy official assignee. 81B. Establishment of official assignee.
- 82. Misfeasance.
- 82A. Liability of State Government for costs in legal proceedings, etc.
- 82B. Certain liabilities not to be incurred without the express direction of the Court.
- 82C. Sums paid under section 82A or section 82B to be realised from the estate of the insolvent.
- 83. Name under which to sue or be sued.
- 84. Office vacated by insolvency.
- 84A. Account of official assignee, investments and proceeds of investments.
- 85. Discretionary powers and control thereof.
- 86. Appeals 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. Powers 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. %
- 95. Power to present petition against a partner.
- 96. Power to dismiss petition against some respondents only.
- 97. Separate insolvency petitions against partners.

- 99. Proceedings in partnership name,
- 100. Warrants of Insolvency Courts.

PART vn

LIMITATION.

- 101. Limitation of appeals,
- 101 A. 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.

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

PART XI

RULES.

- 107.
- Rules. 108.
- Power of State Government to make rules. 109.
- Sanction to rules. 107.
- Publication of rules. 111.

112.

112

A.

113.

114.

PART **XII**
SUPPLEMENTAL.

SECTION.

- 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- Application of Trustee Act to insolvency of trustee. [20. Certain provisions to bind the Government,
- 121. Saving for existing rights of audience.
- 122. Lapse and credit to Government of unclaimed dividends.
- 123. Claims to monies credited to Government under section **122**,
- 124. Access to insolvent's books.
- 125. Fees and percentages.
- 126. Courts to be auxiliary to each other.
- 127. Saving.

THE FIRST SCHEDULE. δ MEETINGS OF CREDITORS. THE SECOND SCHEDULE.

δ PROOF OF DEBTS.

THE THIRD SCHEDULE. δ [Repealed.]

(Preliminary.—Part 1.—Constitution and powers of Court.— Sections 3—5.)

582

The Presidency-towns Insolvency Act, 1909.

- (c) "Official assignee" includes an acting official assignee "[and a deputy official assignee, whether permanent or acting];
- (d) "prescribed" means prescribed by rules;
- (e) "properly" 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;
- (i) "transfer of property" includes a transfer of any interest therein and any charge created thereon;
- (j) "States" means all the territories, 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. The Courts having jurisdiction in insolvency under this Act shall be [the High Courts at Calcutta, Madras and Bombay],

4. 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 shall, from time to time, assign a Judge for that purpose.

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

Courts having jurisdiction in insolvency.

Jurisdiction to be exercised by a single Judge.

Exercise of jurisdiction in chambers.

Clauses and (bbb), which were inserted by s. 3 of the Insolvency (Amendment) Act, 1926 (IX of 1926), were omitted by para. 3 and the First Schedule to the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1956.

Added by s. 2 of the Insolvency Law (Amendment) Act, 1930 (X of 1930). The word "and" was omitted by s. 3 and the Second Schedule to the Repealing and Amending Act, 1960 (LVIII of 1960).

Clause (j) was inserted by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

¹ Substituted for the words "for the time being comprised" by para. 3 and the Schedule of the Adaptation of Laws (No. 2) Order, 1956.

Substituted by para. 3 and the First Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, as amended by s. 4 of the Insolvency (Amendment) Act, 1926 (IX of 1926) and para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

The words "Judicial Commissioner" were first substituted for the words "Chief Judge" in ss. 4 and 6 (f) by ss. 5 and 6, respectively, of the Insolvency (Amendment) Act, 1926 (IX of 1926). Thereafter the words "or Judicial Commissioner" were omitted by para. 3 and the First Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

(Part I.—Constitution and Powers of Court—Sections 6—8.)

6. (a) The Chief Justice¹ may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by (his Act, an officer of (he 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;
 - (ib) 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.
- (J) An officer appointed under this section shall not have

power to commit for contempt of Court.

7. Subject to the provisions of this Act, the Court shall have full power to decide all questions or 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 :

- 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.

S. (7) 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

¹The words "Judicial Commissioner" were first substituted for the words "Chief Judge" in ss. 4 and 6(/) by ss. 5 and 6, respectively, of the Insolvency (Amendment) Act, 1926 (IX of 1926). Thereafter the words "or Judicial Commissioner" were omitted by para. 3 and the First Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948,

² Added by s. 2 of the Presidency-towns Insolvency (Amendment) Act, 1927 (XIX of 1927).

Delegation
of powers to
officers of
Court,

Powers of
Court to decide
all questions
arising in
insolvency.

Appeals in
insolvency.

(Part I).—Proceedings from act of Insolvency to Discharge,—
Section 9.)

from an order made by a Judge in the exercise of (the ordinary original civil jurisdiction of the Court.

PART II

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

Acts of insolvency.

Acts of
insolvency.

9. (7) A debtor commits an act of insolvency in each of the following cases, namely:

- (a) if, in ¹ [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, ⁵ [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, - [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;
 - (i) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;
- (g) if he is imprisoned in execution of the decree of any Court for the payment of money.

¹ Section 9 was renumbered as sub-section (7) of that section by s. 2(a) of the Insolvency Laws (Amendment) Act, 1973 (Act XXVIII of 1973) which was thereafter repealed by s. 2 and Sch. 1 of the Repealing and Amending Act, 1988 (Act XIX of 1988).

The words "the Provinces" were first substituted for the words "British India" by para. 3 (2) of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. Thereafter the word "States" was substituted for the word "Provinces" by para. A (1) of the Adaptation of Laws Order, 1950.

Sub-sections (2), (j), (j) and (j) were inserted by s. 2 (o) of the Insolvency Laws (Amendment) Act, 1973 (Act XXVIII of 1973) which were thereafter repealed by s. 2. Sch. 1 of the Repealing and Amending Act, 1988 (Act XIX of 1988).

(Part 11— Proceedings from act of Insolvency to Discharge-
Section 9.)

¹ (2) Without prejudice to [the provisions of sub-section (7), 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 (J) and the debtor does not comply with that notice within the period specified (herein:

Provided that where a debtor makes an application under subsection (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 therefor.

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

- (a) be in the prescribed form;
- (b) be served in the prescribed manner;
- (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

(Pari II.—Proceedings from act of Insolvency so Discharge- Section 10.)

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 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 ground, 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.

Order of adjudication.

10. 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.

¹See foot-note 1 on page 585. *ante*.

(Part II— Proceedings from act of Insolvency to Discharge- Sections 11—13.)

11. The Court shall not have jurisdiction to make an order of adjudication, unless
- (n) the debtor is, ^{of 1909} ~~at the time of the presentation of the insolvency petition,~~ ^{The Presidency towns Insolvency Act, 1909} 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
- (h) 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
- (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. (f) 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
- (ib) 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:

Restrictions on jurisdiction.

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 re-opens.

(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.

Conditions on which creditor may petition.

13. (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.

Proceedings and order on creditor's petition.

¹Amended by s. 2 of the Insolvency Law (Amendment) Act, 1950 (III of 1950).

[Act III

(Pan II.-Proceedings from act of Insolvency to Discharge.- Section 14.)

(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.

(J) The Court may adjourn the hearing of the petition and order service thereon 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
- (c) 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 (J) 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.

(d) 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 required 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.

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

14. 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.

¹The original section 14 was re-numbered as sub-section (7) of that section by s. 2 of the Insolvency (Amendment) Act. [927 (XI of 1927).

(Part II—Proceedings from act of Insolvency to Discharge- Sections 15-17.)

¹ [(2)] A debtor in respect of whom an order of adjudication, v of 1920. whether made under this Act or under the Provincial Insolvency Act, 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. (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 it 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 [(2)] 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. 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 conferable on a receiver appointed

v of 1908. under the Code of Civil Procedure, 1908, as may be prescribed.

17. On the making of an order of adjudication, the property of the insolvent wherever situated 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:

Proceeding triggers order on debtor's petition.

Discretionary powers as to appointment of interim receiver.

Effect of order of adjudication.

¹Added by s. 2 of the Insolvency (Amendment) Act, 1927 [XI of 1927], - Added by s. 3 of the Presidency-towns Insolvency (Amendment) Act, 1927 (XIX of 1927).

(Part II.—Proceedings from act of Insolvency to Discharge.— Sections 18-19.)

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. (7) 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,

Stay of
proceedings,

(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 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.

¹18A. (7) 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.

Control over
insolvency
proceedings
in subordi-
nate Courts.

(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 persons 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.

(J) Notice of the order annulling an adjudication under subsection (7) shall be published in the ¹ [Official Gazette] and in such other manner as may be prescribed.

Power to ap-
point special
manager.

19. (7) 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.

¹Ins. b>'s. 3 of the Insolvency Law (Amendment) Act. 1930 (X of 1930). Substituted for the words "(ecal official Gazette" by para. A (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Part II.-Proceedings from act of Insolvency to Discharge. - Sections 20-23.)

20. Notice of every order of adjudication, slating 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 published¹ * * * in the² [Official Gazette] and in such other manner as may be prescribed.

Advertisement of order of adjudication.

Annulment of Adjudication.

21. (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 * [the Court shall, on the application of any person interested,] by order annul the adjudication¹ [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.]

Power for Court to annul adjudication in certain cases.

(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. Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other¹ [Court in India] whether within or without⁶ [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.

23. (J) 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.

Concurrence of proceedings in Courts in India.

¹The words "in the Gazette of India and" were omitted by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. *Sec foot-note 2 on page 590. ante.

Proceedings on annulment.

²Subs. by s. 3 of the Insolvency Law (Amendment) Act, 1950 (III of 1950), s. 3, for the words "The Court may, on the application of any person interested.". ³Added by s. 3 of the Insolvency (Amendment) Act, 1927 (XI of 1927). ⁴Substituted for the words "British Court" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

*Sec foot-note 2 on page 584-. ante.

(Part II—Proceedings from act of Insolvency to Discharge- Sections 24, 25.)

(2) Where a debtor has been released from custody under the provisions of this Act and the order or 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.

(J) Notice of the order annulling an adjudication shall be published ^{l * * *} in **Lhe** - [Official Gazette] and in such other manner as may be prescribed.
Proceedings consequent on order of adjudication.

24. (!) 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:—

Insolvent's
schedule.

(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.

(5) 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. (!) 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,

Protection
order.

(j) 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:

¹ See foot-note 1 on page 591, ante. ² See foot-note 2 on page 590. *time.*

of 3909.]

*f Part II.—Proceedings from act of Insolvency to Discharge.—
Sections 26, 27.)*

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.

(I) 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,

(J) 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. (1) At any time after the making of an order of adjudication Meetings of against an insolvent, the Court, on the application of a creditor or of creditors, 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.

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

27. (7) Where the Court makes an order of adjudication it shall hold a public examination on a day to be appointed by the Court, of which ^{the insolvent} - 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,

(J) 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.

(Pari II—Proceedings from act of Insolvency to Discharge.— Sections 28, 29.)

(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 if 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 at id schemes of arrangement.

28. (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. (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.

Submission
or proposal
and accep-
tance by
creditors.

Approval of
proposal by
Court.

(Part II.—Proceedings from act of Insolvency to Discharge— Sections 30, 31.)

(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 debtors' 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. (1) 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-section (1) and (J), 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. (1) If default is made in the payment of any instalment 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 (7), all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

Power to re-
adjudge debtor
insolvent,

f Pari II.—Proceedings from act of Insolvency to Discharge.— Sections 32—34.)

32. 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.

Limitation of effect or composition or scheme.

Control over person and property of insolvent.

33. (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meetings 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 as 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,

Duties of insolvent as to discovery and realization of property-

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 realisation of his property and the distribution of the proceeds among his creditors.

(4) If the insolvent wilfully 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. (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

Arrest of insolvent.

of 1909.]

*(Part 11.—Proceedings from act of Insolvency to Discharge,—
Sections 35, 36.)*

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. 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- (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 relating 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 sisting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

¹See Table 2 on page 584, *ante*.

(Part 11.—Proceedings from act of Insolvency to Discharge.— Sections 37, 38.)

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

Discharge of Insolvent.

38. (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

Power to
issue;
commissi
onS-

v of

¹Substituted by s. 4 of the Presidency-towns Insolvency (Amendment) Act, 1927 (XIX of 1927). for "If, on the examination of any such person, the Court is satisfied",
Discharge of
insolvent

(*Pari fl*—Proceedings from act of Insolvency to Discharge.—
Section 39.)

- (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. (1) The Court shall refuse the discharge in all cases where Cases in the insolvent has committed any offence under this Act, or under ^{which the} ^{XLV of} sections 421 to 424 of the Indian Penal Code, and shall, on proof of ^{REFUSC} ^

1860. any of the facts hereinafter mentioned, either

absolute
discharge,

- (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.

(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;

CPart II.—Proceedings from act of Insolvency to Discharge — Sections 40—
42.)

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

Hearing of
application
for
discharge,

41. If an insolvent does not appear on the day so appointed for hearing his applications for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may 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.

Power to annul
adjudication on
failure to apply
for discharge.

42. (I) 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.

Renewal of
application and
variation of terms
of order.

(Part II.—Proceedings from act of Insolvency to Discharge.— Sections 43—45.)

(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 order, or of any substituted order, in such manner and upon such conditions as it may think fit.

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realisation 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,

Duly of discharged insolvent assist in realization of properly.

44. 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

Fraudulent settlements.

(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 arrangements 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. (1) An order of discharge shall not release the insolvent from in

(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

Effect of order or discharge.

*Substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, (1950).

(Pari III.—Administration of Property.—Section 46.)

{d} any liability under an order for maintenance made under section 488 of the 'Code of Criminal Procedure, 1898. vof]898,

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

(5) 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.

Debts pro-
vable in in-
solvency,

46. (V) 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.

(J) Save as provided by sub-sections (7) 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.

(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

(Part III.—Administration of Property.—Sections 47—49.)

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. 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 :

Mutual
dealings
and
set-off.

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. 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.

Rules as to
proof of
debts.

49. (J) **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;

(ib) 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

Priority or
debts.

(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.

(5) 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.

¹See foot-note 1 on page 601, *ante*.

(Part III.—Administration of Property.—Sections 50—52.)

{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 rateably 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 insolvency.

50. After an order of adjudication has been made no distress for 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 party to whom the rent may be due shall be entitled to prove in respect of such rent.

"Rent due
before ad-
judication.

Property available for payment of debts.

51. 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 be deemed to have relation back to and to commence at

Relation of
assignee's
title.

(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 date of the petitioning creditor.

52. (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 person;

Description
of insolvent's
property
divisible
amongst
creditors.

(Part III.—Administration of Property.—Sections 53, 54.)

(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. (7) 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 realized in the course of the execution by sale or otherwise [before the date of the admission or the insolvency petition],

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

(J) 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. Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor,

Restric-
tion or
rights of
creditor
under
exe-
cution.

*Substituted for the words "before the date of the order of adjudication and before he had notice or [the presentation of any insolvency petition by or against the debtor", by s. 4 of the Insolvency Law (Amendment) Act, 1950 (III of 1950).

Dunes of
Court exe-
cuting de-
cree as (o
property
taken in
execution-

(Part III.—Administration of Property.—Sections 55—58.)

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. Any transfer of property, not being a transfer made before 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. (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. 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 insolvent

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

(Pari III.—Administration of Property.—Sections 59, 60.)

(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, and the Court may on his application enforce such acquisition or retention accordingly.

(J) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property consisting 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. (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. (1) Where an insolvent is an officer of the [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 receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just

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²See footnote 1 on page 601. u/ne.

(Part 111.—Administration of Property.—Sections 61-64.)

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.

Vesting and
transfer of
property.

<1. 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.

Disclaimer of
onerous
property.

62. (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.

Disclaimer of
leaseholds.

63. 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, 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.

Power to call
on official
assignee to
disclaim.

64. The official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application 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

(Pari III.—Administration of Property.—Sections 65, 66.)

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. 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.

Power for Court
to rescind
contract.

66. (7) 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:

Power for Court
(a make vesting
order in respect
of disclaimed
property.

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)

(Part 111—Administration of Property.—Sections 67-69.)

as if the lease had comprised only the property comprised in the vesting order.

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

Persons injured by disclaimer may prove.

68. (1) Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realize the property of the insolvent. and for the purpose may-

Duty and powers of official assignee to realize-

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

(J) 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 or for the payment of his debts or for the purpose of carrying on the business;

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

(0) 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.

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

Distribution of property.

69. (7) The official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

Declaration and distribution of dividends,

(Pari passu, —Administration of Property.—Sections 70—72.)

(2) The first dividend (if any) shall be declared and be distributed within [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,

(J) 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 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. Where one partner in a firm, is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with 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. (7) In the calculation and distribution of dividends, the official assignee shall retain 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 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
- (d) the expenses necessary for the administration of the estate or otherwise.

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

72. 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 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 div-

Joint
and
separate
proceedings.

Calculation
of
dividends.

Right of
creditor
who has
not
proved
debt
before
declaration
of a
dividend.

¹ Substituted for the words "six months" by s. 2 of the Presidency-towns Insolvency (Amendment) Act, 1929 (III of 1929),

(Part III.—Administration of Property.—Sections 73—76.)

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.

Final dividend.

73. (7) When the official assignee has realised all the property of the insolvent, or so much thereof as can, in his opinion, be realised 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 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.

No suit for dividend.

74. 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.

Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.

75. (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 carry on 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,

Right of insolvent to surplus.

76. 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—Section 77.)

PART IV
OFFICIAL ASSIGNEES.

77. (1) The ² [State Government] shall, after consultation with and with the concurrence of the Chief Justice, appoint substantively or temporarily a person to the office of official assignee of insolvent's estates for the High Court ³ [at Calcutta] and may, after the like consultation and with the like concurrence, appoint, substantively or temporarily, a person or persons to the office of deputy official assignee for the said Court.

Appointment or
official
assignee and
deputy official
assignee of
insolvent's
estates.

⁴(M) Subject to rules made under section ⁵[112A], 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 ^J[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.

¹Substituted for the original sub-section by s. 5 (a) of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

The sub-section which was substituted is as follows, namely:—

"CO (a) The Chief Justice of the High Court at Madras may from time to time appoint substantively or temporarily such person as he thinks fit to the office of official assignee of insolvent's 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 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 or the High Court at Calcutta, appoint substantively or temporarily a person to the office of official assignee of insolvent's 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, may from time to time appoint substantively or temporarily such person as the [State] Government thinks fit to the office of official assignee of insolvent's estates and such person or persons as the [State] Government thinks fit to the office of the deputy official assignee."

The words "Provincial Government" were first substituted for the word "Local Government" by para. 4 (i) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the word "State" was substituted for the words "Provincial" by para. 4 (i) of the Adaptation of Laws Order, 1950.

²Substituted for the words "at Fort William" by para. 3 and the Eleventh Schedule to the Adaptation of Laws Order, 1950.

³Inserted by s. 4 of the Insolvency Law (Amendment) Act, 1930 (X of 1930).

⁴Substituted for "112" by s. 3 (6) of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

(Part IV.—Official Assignees.—Sections 78—80.)

¹ (5) Notwithstanding anything contained in sub-section (7), the person substantively or temporarily holding the office of official assignee under this Act for the High Court - [at Calcutta] immediately before the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, shall, without further appointment for that purpose, become the official assignee substantive or temporary, as the case may be, as if appointed by the ³ [State Government] under subsection (1).

Ben. Ad.
XVIII of
1936.

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

Power to
administer
oath.

79. (7) 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 Particular it shall be the duty of the official assignee—

Duties as
regards the
insolvent's
conduct.

- (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 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 such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct or as may be proscribed.

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IH60.

80. 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.

Duties to
furnish list
of creditors.

(Part IV.—Official Assignees. Sections 81—82.)

81. The official assignee and any deputy official assignee shall, in the discharge of their functions under this Act, be under (he administrative control of the - [State Government] except in so far as they are required by or under this Act to act under the control or direction of the High Court.

81A. The salary, allowances, pension and conditions of service of the official assignee, and of any deputy official assignee shall be such as may be proscribed by rules made under the Government of India Act, and such salary, allowances and pension shall be paid by the ³ [State Government].

81B. (J) The ¹ [State Government] may determine the number, designations and grades of officers and servants (other than employees who are paid by the day) whom the official assignee may employ for the purposes of this Act and the amount and nature of the salary, allowances and other remuneration to be paid to each such officer and servant.

(2) The conditions of service of the officers and servants of the official assignee shall be prescribed by the ² [State Government], (i) The salaries, allowances and other remuneration of the officers and servants of the official assignee and all other costs, charges and expenses of his establishment shall be paid by the -[State Government].

82. [(1)]¹ 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.

(2) The revenues of the ² [State Government] shall be liable to make good all sums which the official assignee is required by order of the Court to pay under sub-section (1) in respect of any misfeasance, neglect or omission which occurred after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936.

³ (3) Nothing in sub-section (2) shall prevent the ⁵ [State Government]

Administrative control over official assignee and deputy official assignee. Salary, allowance, pension and conditions of service of official assignee and deputy official assignee.

Establishment of official assignee.

Misfeasance.

Ben. Act XVIII 1936. 3 No remuneration whatever beyond that referred to in sub-section (1) shall be received by an official assignee as such."

¹ See footnote 2 on page 613, ante.

² Substituted for the original sub-section by s. 3 (c) of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

The sub-section which was substituted is as follows, namely:— "(J) Notwithstanding anything in sub-section (I), 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 Indian Insolvency Act, 1943, 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 respectively."

³ See footnote 3 on page 613, ante.

⁴ See footnote 2 on page 613, ante.

Section 82 was re-numbered as sub-section (1) of that section and after that section as so re-numbered sub-sections (2) and (3) were added by s. 5 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

Sections 82A, 82B and 82C were inserted by s. 6 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

⁵ See footnote 2 on page 613, ante.

Section 84A, was inserted by s. 7 of the Presidency-towns Insolvency (Bengal Amendment)

from recovering any sum paid by the ³ [State Government]
(Part IV.—Official Assignees.—Sections 82A—84A.)

under the sub-section from the person who was holding the office of official assignee when the misfeasance, neglect or omission occurred.

'82A. Where the official assignee has incurred, whether before or after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, in the matter of insolvency-

(a) any costs in legal proceedings taken by him under the direction of the Court, or

(b) any civil liability, *bona fide* in the discharge of his duties, the revenues of the ¹ [State Government] shall be liable for the payment of such costs or liability, in so far as the assets realized by the official assignee in respect of such insolvency are insufficient to meet such costs or liability.

'82B. Where an insolvent's estate has no available assets, the official assignee shall not incur any costs, charges or expenses in respect of such estate without the express direction of the Court, but the Court on the application of the official assignee may empower him to spend an amount specified by the Court in payment of any costs, charges and expenses of or in connection with the realization or administration of the estate of the insolvent, and the revenues of the ¹ [State Government] shall be liable for the payment of such amount.

¹82C. Any sum paid out of the revenues of the ² [State Government] under section 82A or section 82B in respect of an insolvent's estate shall be repaid to the ¹ [State Government] by the official assignee out of any assets of the estate which may subsequently become available, in priority to all other claims and charges on such assets other than fees and percentages chargeable by the official assignee under this Act.

83. The official assignee may sue and be sued by the name of "the official assignee of the properly of ¹, 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,

84. If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee.

³84A. (1) The official assignee shall maintain an account in the prescribed manner and shall pay into such account, after making any prescribed deduction-

- (a) all monies received by him in the realization of insolvent's estates and
- (b) any other sums that may be prescribed.

(2) Subject to the control of the ¹ [State Government], whenever the cash balance standing to the credit of the said account is, in the

Liability or
State Govern-
ment for
costs in legal
proceedings,
etc.

Certain
liabilities not to
be incurred
without the
express
direction of the
Court.

Sums paid
under section
82A or section
82B to be reali-
zed (from the
estate of the
insolvent. Name
under which to
sue or be sued.

Office vacated
by insolvency.

Account of
official as-
signee. in
investments
and proceeds
of in-
vestment.

(Part IV.—Official Assignees — Section 55.)

opinion of the official assignee in excess of the amount which is required for the time being to meet demands in respect of insolvents' estates, or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee shall invest such excess in the prescribed manner.

(3) Subject to the control of the ⁶ [State Government], whenever any part of the money so invested is, in the opinion of the official assignee, required to meet any demands in respect of insolvents' estates, or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee may realize such part of the said investments as may be necessary, and shall credit the proceeds of such realisation to the said account,

(4) The official assignee shall transfer and pay to such authority and in such manner and at such times as may be prescribed in this behalf the proceeds of such investments, and the same shall be carried to the account and credit of the ¹ [State Government].

(J) The provisions of sub-section (4) shall apply to the balance of the proceeds, accumulated before the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, of the investments made by the official assignee of sums received by him in the realization of insolvents' estates, whether such balance or any part thereof has been invested or not.

(6) Subject to the provisions of sub-section (5), the provisions of sub-sections (1), (2) and (5) shall apply to all monies in the hands of the official assignee at the date of the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, and to all investments made by him before that date.

85. (7) 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.

Discre-
L JO
nary
powers
and
control
[hereof.

⁶See footnote 2 on page 613, *ante*.

(Part IV.—Official Assignees.—Sections 86, 87.—Part V,— Committee of Inspection.—Sections 88, 89.)

(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.

Appeal to

"

g6. 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 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.

Control of
Coun.

87. (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.

(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.

(J) The Court may also direct an investigation to be made of the books and vouchers of the official assignee.

PART V
COMMITTEE OF INSPECTION.

Committee
of inspec-
tion.

88. The Court may, if it so thinks fit, authorize the creditor 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 for the 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. The committee shall have such powers of control over the proceedings of the official assignee as may be prescribed.

Control of
committee
of inspec-
tion over
official
assignee.

{Part VI.—Procedare.—Sections 90, 91.)

PART VI

PROCEDURE,

90. (1) In proceedings under this Act the Court shall have the Powers of like powers and follow the like procedure as it has and follows in the ^{the Court} 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.

(J) 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.

I * * * * *

91. 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 of them on such terms as the Court thinks fit.

consolidation of proceedings, any

¹ Sub-section (A) was omitted by para. 3 (1) and the Schedule of the Indian Independence (Adaptation of General Acts and Ordinances) Order, 1943.

(Pari VI,—Procedure.—Sections 92—98.)

92. 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. 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. 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. 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. 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. 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. (7) Where a partner in a firm is adjudged insolvent, the Court may authorise 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 (J), 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.

Powers to change carriage of petition.

Continuance of proceedings on death of debtor.

Power to stay proceedings.

Power to present petition against a partner.

Power to dismiss petition against some respondents only.

Separate insolvency petition against partners.

Suits by official assignee and insolvent's partners.

(Part VI.—Procedure.—Sections 99, 100.—Part VII.—Limitation.— Sections 101, 101A.)

99. (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 :

Proceedings in
partnership name.
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. (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, 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 (7), shall be in the form prescribed, and sections 77 (2), 79, 82, 83, 84 and 102 of the Code shall, so far as may be, apply to the execution of such warrant.

(5) 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.

Warrants of
Insolvency
Courts.

**PART VII
LIMITATION**

101. 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.

Limitation of
appeals.

101A. 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

Exclusion of time in
computation of period of
limitation in certain cases.

(Part VIII.—Penalties.—Sections 102, 103.)

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.

Undischarged in-
solvent obtaining
credit.

102. 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.

Punishment or
insolvent for certain
offences.

103. Any person adjudged insolvent who

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

(i) has destroyed or otherwise wilfully 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 wilfully 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, or

(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 soever,

shall on conviction be punishable with imprisonment for a term which may extend to two years.

(Part VIII.—Penalties.—Sections 103A-105.)

¹103A. (7) Where a debtor is adjudged or readjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from

- (a) being appointed or acting as 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.

Disqualifications of insolvent.

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

- (a) the order of adjudication is annulled under sub-section (1) of section 2J, 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.

(J) The Court may grant or refuse such certificate as it thinks fits.

²104. (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.

Procedure of charge under section 103.

(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. 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 therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Act V of 1909.

Criminal liability after discharge or composition.

(Port *fX*.—*Small Insolvencies*.—*Section 106*.—*Part X*.—*Special Provisions*. —
Sections 107, 108.)

PART IX

SMALL INSOLVENCIES.

106. (7) 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 :

Summary
adminis-
tration in
small
cases.

- (ia) 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. 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.

Exemption of
corpora-
tion,
etc., from
insolvency
proceeding.

108. (7) 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 deceased debtor under this Act,

Administration in
insolvency of
estate of person
dying insolvent.

(Part X.—Special Provisions.—Sections 109, 110.)

(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 an 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. (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.

Vesting of
estate and
mode of ad-
ministration.

(J) 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. (1) After notice of the presentation of a petition under section 108 and payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself

Payments or
transfer by
legal repre-
sentatives.

(Part X.—Special Provisions.—Section III.— Part XI.— Rules.—Section 12.)

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, before the date of the order of administration.

111. 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.

n of
1874.

Saving of
jurisdiction
of Adminis-
trator-
General.

PART XI
RULES.

112. (1) The Courts having jurisdiction under this Act may from time to time make rules⁷ [except in regard to those matters to which section 112A applies.]

Rules.

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

(A) the fees and percentages⁸ (other than fees and percentages chargeable by the official assignee) 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;

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

[Clause (d) was omitted by para. 2 and the Sch. of the Govt. of India (Adaptation of Indian Laws) Supplementary Order, 1937.]
(Part XI.—Rules.—Section 12A.)

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

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

(-fat) filing of lists of creditors and debtors and the affording of assistance to the Court by a petitioning debtor; (0) 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;³ (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;

⁷ Inserted by s. (o) of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Bin. Act XVth of 1936)

⁸ Inserted by s. B(i) (i), *ibid.*

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

[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.]

⁵112A, (J) The ⁶[State Government] may make rules for carrying into effect the objects of this Act in regard to those functions or the official assignee which are discharged under the administrative control of the ⁶[State Government].

Power of
State Gov-
ernment to
make rules.

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

(a) the fees and percentages to be charged by the official assignee for and in respect of proceedings under this Act and the manner in which the same are to be collected and

(Part XI.—Rules.—Sections 153, 114.)

accounted for;

- (b) the receipts, payments and accounts of the official assignee;
 - (c) the audit of the accounts of the official assignee;
 - (d) the security to be given by the official assignee and his deputy or deputies;
 - (e) the distribution of work between the official assignee and his deputy or deputies;
- if) the conditions of service of the officers and servants of the **official assignee;**

Exemption from duty of transfers, etc., under this Act.

- (g) the payment by the ⁹ [State Government] of sums under subsection (2) of section 82, or under section 82A or section 82B; (i) the repayment by the official assignee of sums under section 82C;

The Gaicde to be evidence

- (0) the maintenance of an account by the official assignee under subsection (1) of section 84 A and the payments to be made into such account;

- (/) the investment of sums by the official assignee under subsection (2) of section 34A and the realization of such investments;

Swearing or affidavits.

- (k) the transfer and payment by the official assignee of the proceeds of investments to the authority referred to in subsection (4) of section 84A, and (i) the transfer and payment by the official assignee of fees and percentages, and of commission or other remuneration, to the authority referred to in section 125.

(5) Rules made under this section shall be published in the ¹ [Official Gazette] and shall thereupon have the same force and effect as if they had been enacted in this Act.

³113. Rules made under the provisions⁴ [of section 112] shall be subject to the previous sanction of the ¹ [State Government.]

114. Rules so made and sanctioned shall be published ~~*****~~ in the ¹ [Official Gazette], 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.—Sections 115-117.) **PART xn**
SUPPLEMENTAL.

⁹Substituted for the former s. by pom. 3 and the First Schedule, itij.

¹Substituted for the words "of his Put" by s. 10 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

²The words "in the Gazette of India" were omitted by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

"The words "as the case may be" were omitted, *ibid*.

"The words "the Provinces of India" were first substituted for the words "British India" by para. 3 (J) and the Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. Thereafter the word "States" was substituted for the word "Provinces" by para. 4(1) of the Adaptation of Laws Order, 1950, and the words "of India" were omitted by para. 3 and the First Schedule of that Order.

³Substituted for the words "a British Minister or British Consul or Political Agent" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

115. U) Every transfer, mortgage, assignment, power-of-attorney, proxy paper, certificate, affidavit, bond or other proceedings, 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. (1) A copy of the *Official Gazette* containing any notice inserted in pursuance of this Act shall be evidence of the facts 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. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn

- (a) in [the States], before
(i) any Court or Magistrate, or
(ii) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 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 country 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, by² [an Indian Consul or Political Agent] or by a notary public).

(Part XII.—Supplemental.—Sections 113-123.)

Formal defect not to invalidate proceedings.

118. (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.

Application of Trustee Act to insolvency trustee.

119. Where an insolvent is a trustee within the Indian Trustee Act, 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 appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

120. 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].

Certain provisions to bind the Government.

121. 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.

Savings for existing rights or audience.

122. 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 ² [the State Government], unless the Court otherwise directs.

Lapse and credit to Government or unclaimed dividends.

123. Any person claiming to be entitled to any monies paid to the account and credit of [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 :

Claims to monies credited to Government under section 122.

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of ² [the State Government], the Court shall cause a notice to be served on such

(Part XII—Supplemental.—Sections 124-127.)

officer as if [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.

124. (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 [hereon.

Access to insolvent's books.

(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 all reasonable times, personally or by agent, any such books in the possession of the official assignee,

125. - (1) Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.

Fees and percentages

(2) The official assignee shall transfer and pay to such authority and in such manner and at such times as may be prescribed in this behalf all fees and percentages received by him after the commencement of the Presidency-insolvency (Bengal Amendment) Act, 1936, and the same shall be carried to the account and credit of the [State Government),

Ben Act XV of 1936.

(5) Any percentages or commission or other remuneration received by the official assignee if appointed as a trustee in a composition or as agent of another official assignee shall be similarly so transferred and paid by him.

126. 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, 1907⁴;

46 and 47 Vict., c. 52.

127. s * * * * *

Cons to the auxiliary (2) * * * * *

Meetings of Creditors.

and 12 of the Indian Insolvency Act, 1848, pending at the commencement of this Act, c. 21. Act shall, except so far as any provision of (his 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.

Saving.

Summoning of meetings.

(The First Schedule.—Meetings of Creditors.—rules J-8.) THE FIRST SCHEDULE

Notice of meetings

(iSee section 26.)

MEETINGS OF CREDITORS.

1. 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.

Duty of insolvent to attend if required.

2. 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.

Proceedings not to be avoided for non-receipt of notice. Proof of issue of notice.

3. 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

Costs of meeting.

of any meeting in local newspaper or in the ¹⁰ [Official Gazette].

4. 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 [hereof. 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. 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. 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. 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. The official assignee shall be the chairman of any meeting.

¹⁰ Substituted for the words "local Official Gazette" by para. 4 (c) of the Adaptation of Laws Order, 1950.

(The First Schedule.—Meetings of Creditors.—rules 9-17.)

9. 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.

Right to vote.

10. 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.

No vote in respect of certain debts.

11. 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.

Secured creditor.

12. 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. 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.

Proof in respect of negotiable instruments.

14. 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. 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.

Power to require creditor to give up security.

Proof by partner.

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

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

Power of official assignee to admit or reject proof.

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Proxy.

Instrument of proxy.

(The First Schedule.—Meetings of Creditors.—rules 18-22.— The Second Schedule,—Proof of Debts.—rules i-6.)

18. 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 slate the relation in which Lhe person to act thereunder slands to the creditor.

General proxy.

19. A proxy shall not be used unless il is deposited with the official assignee one car day before the tim& appointed for the meeting at which it is to be used.

Proxy to be deposited one day before due or marling.

20. A creditor may appoint the official assignee lo acl as proxy.

Official assignee as proiy. Adjournment of meeting.

21. The official assignee may adjourn the meeting from lime to time and from placc to place, and no notice of the adjournment shall be neccessary.

22. The official assignee shall draw up a minute of the proceedings al the meeting and shall sign the same.

THE SECOND SCHEDULE

(iSee section 48)

Minute of proceedings.

PROOK OF DEBTS *Proofs in ordinary cases*

1. Every creditor shall lodge the proof of his debt as soon as may be afier the making of an order of adjudication.

2. A proof may be lodged by delivering or sending by posl in a registered letter to the official assignee an affidavit verifying the debt.

3. 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.

Time for lodging proof.

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

Mode of lodging proof.

5. The affidavit shall slate whether the creditor is or is not a secured creditor.

Authorily in make affidavit.

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

Comenb of affi davit.

Affidavit io siaic ir creditor holds security. Cost of proving debts.

(The Second Schedule.—Proof of Debts.—rules 7—} 3.)

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

Right to see and examine proof.

8. 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.

Deduction to be made from proof.

Proof by secured creditors

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

10. 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.

Proof where security realized.

11. 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.

Proof where security is surrendered.

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

Proof in other cases.

(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:

Valuation of security.

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 redemptions 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.

Amendment of valuation.

13. 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

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(The Second Schedule.—Proof of Debts.—rules 14-18.)

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.

Refund of excess received.

14. 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. 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 realised 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.

Amendment where security subsequently realized.

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

17. 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.

Exclusion from sharing in dividend. Limit of receipt.

Taking accounts of properly mortgaged, and of the sale thereof

Inquiry into mortgage, etc.

18. 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 that 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

(The Second Schedule.—Proof of Debts.—rules 19-23.)

there ought to be a sale, shall (Erect 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 ¹¹ [(unless it is otherwise ordered for reasons to be recorded in writing)] shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application, At any such sale the mortgagee may bid and purchase.

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

20. The monies to arise from such sale shall be applied, in the Proceeds of sale, first place, in payment of the costs, charges and expenses of and occasioned 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.

21. For the better taking of such inquiries and accounts and Proceedings on making a title to [the purchaser, all parties may be examined by the inquiry. 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. 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.

Periodical payments

Interest

23. (V) On any debt or sum certain whereon interest is not interest, 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*—

(c) if the debt or sum is payable by virtue of a written instalment at a certain time, from the time when such debt

¹¹ Substituted for the words and brackets "(unless it is otherwise ordered)" by s. 12 of The Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVII of 1936).

(The Second Schedule.—Proof of Debts.—rules 24-27.— The Third Schedule.)

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. A creditor may prove a debt payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting (herefrom 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. 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. 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. 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.

Admission or rejection of proof.

THE THIRD SCHEDULE.—[Enactments repealed.]—Rep. by s. J and Sch. H of the Repealing and Amending Act, 1914 (X of 1914.)

"The words "the Royal Indian Navy" were first substituted for the words "His Majesty's Royal Indian Marine Service" by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the words "the Indian Army or Navy" were substituted for the words "the Army or Navy or of the Royal Indian Navy" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

Court may expunge proof improperly received.

These sections were substituted for original s. 81 by s. 4 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

The section which was substituted is as follows, namely:—

"81. (1) Such remuneration shall be paid to the official assignee as may be prescribed.

Power for Court to expunge or reduce proof.

¹ Inserted by s. 7 of the Presidency-towns Insolvency (Amendment) Act, 1920 (XI of 1920).

-Substituted by s. 9 of the Insolvency (Amendment) Act, 1926 (IX of 1926).

³ Clauses (ii), (c), (M, if), (A), (D and J Or) were omitted by s. 8 (b)(ii), *ibid*. The clauses which were amended are as follows, namely:—

"(ii) 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

(M) the remuneration of the official assignee;

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

(/) the audit of the accounts of the official assignee;

(p) the payment of the remuneration of the official assignee, of the costs, charges and expenses of his establishment, and of the costs of the audit of his accounts out of the proceeds or 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:

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

(i) the distribution or otherwise between the official assignee and his deputy or deputies;"

¹ See footnote 3 on page 626, *nine*.

¹ Inserted by s. 5 of the Presidency-towns Insolvency (Amendment) Act, 1927 (XIX of 1927).

Clause (mm) was inserted by s. 2(b) of the Insolvency Laws (Amendment Act,

1978 (Act 28 of 1978).

Inserted by para. 2 and the Schedule of the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

Section 112A was inserted by s. 9 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act. XVII of 1936).

⁶ See footnote 2 on page 613, *ante*.

¹ See footnote 2 on page 613, *tunc*.

Substituted for the words "local official Gazette" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937.

¹ Substituted for the word "Crown" by para. 4 (f) of the Adaptation of Laws Order, 1950.

The words "the Provincial Government" were first substituted for the words "the Government of India" by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Slate" was substituted for the word "Provincial" by para. 4 (f) of the Adaptation of Laws Order, 1950.

The words "the Provincial Government" were substituted for the words "The Governor-General of India" by para. 3. And the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Slate" was substituted for the word "Provincial" by para. 4 (f) of the Adaptation of Laws Order, 1950.

Section 125 v.¹ as re-numbered as sub-section (J) of that section and after that section, as so re-numbered, sub-section (2) and (3) were added by s. 11 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVI of 1936). ² See footnote 2 on page 613, *ante*.

³ See now the Provincial Insolvency Act, 1920 (V of 1920).

⁴ Sub-section (f) and the words "Notwithstanding the repeal effected by this Act." in sub-section (2) were repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

642
[Act in

The Presidency-towns Insolvency Act. 1909.