

THE PROVINCIAL INSOLVENCY ACT, 1920

ACT No. 5 OF 1920 [25th February, 1920.]

An Act to consolidate and amend the Law relating to Insolvency 1 a
having jurisdiction outside the Presidency

2.WHEREAS it is expedient to

administered by Courts having jurisdiction outside the Presidency

enacted as follows:--

1. Short title and extent.-

(1) This Act may be called the Provincial Insolvency Act,

(2) It extends to 3[the whole of India except 4[the territories which,
1st November, 1956 , were comprised in Part B

2. Definitions.-

(1) In this Act, unless there is anything repugnant

(a)" creditor" includes a decree

includes a judgment- debtor;

(b) " District Court" means the principal Civil Court of original
jurisdiction in

outside the local limits for the time being of the Presidency

(c) " prescribed" means prescribed by rules made under this Act;

(d) " property" includes any property over which or the profits of
which any

disposing power which he may exercise

999999. Extended to Laccadive, Minicoy and Amindivi Islands (w. e. f.
1. 10.

8 of 1965, s. 3 and Sch. Extend to the Union territory of

Schedule. Extended to and brought

Reg. 6 of 1963, s.2 and Sch. 1. Amended in Himachal Pradesh by H. P.
Act 31 of 1969.

Repealed in its application to the Malabar District by Kerala Act 18 of 1957.

Extended to the whole of Madhya Pr

Repealed in its application to Bellary District by Mysore Act 14 of

1. The words" in the Provinces of India" omitted by the A. O. 1950. 2. The

town of Karachi" rep. by the A. O. 1948. In t

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as administered by Courts

Presidency- towns

consolidate and amend the law relating to insolvency 1 as

Presidency- towns 2; It is hereby

1920 .

immediately before the

States] and] the Scheduled Districts.

in the subject or context,-

decree- holder," debt" includes a judgment- debt,

Presidency- towns5[;

for his own benefit;

67): vide Reg.

Pondicherry by Act 26 1968, s. 3 and

into force in Dadra and Nagar Haveli (w. e. f. 1. 7. 65), by

Pradesh by M. P. Act 23 of 1958 (when

1955.

words" and the

the long title the word" Karachi" had been subs.

1

s and" debtor"

any area

person has a

adesh notified).

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by the A. O. 1937 for" Rangoon". In the

subs. by the A. O. 1937 for" towns of Rangoon and Karachi" which
had been subs. by Act 9

of 1926, s. 11, for" town of Rang

India except". 4. Subs. by the Adaptation of Laws (No. 3) Order, 1956,

The following had been subs. by Act 9 of 1926, s. 11,

the town of Rangoon and the limits of

the Judicial Commissioner of Sind as defined in section 2 of the
Presidency

Insolvency Act, 1909 ". The first four words rep. by the A. O. 1937 and
the

amended by Act 34 of 1926, s. 2 and Sch. rep. by the A. O.1948.

(e) " secured creditor" means a person holding a mortgage, charge or
lien

the debtor or any part thereof as a security for a debt due

(f) " transfer of property" includes a transfer of any interest in
property and

any charge upon property.

(2) Words and expressions used in this Act and defined in the Code of
Civil

(5 of 1908), and not hereinbefore defined shall ha

attributed to them by the said Code.

PART I CONSTITUTION AND POWERS OF COURT

3. Insolvency jurisdiction.-

(1) The District Courts shall be the Courts having jurisdiction under
this Act:

the State Government may, by notification in the Official
subordinate to a District Court with jurisdiction in
invested shall within the local limits of
District Court under this Act.

(2) For the purposes of this Act, a Court of Small Causes shall be
deemed to
to the District Court.

4. Power of Court to decide all questions arising in insolvency

(1) Subject to the provisions of this
questions whether of title or priority, or of any nature whatsoever,
matters of law or of fact, which may arise in any case

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preamble the words" town of Karachi" had been
Rangoon". 3. Subs. by the A. O. 1950 for" all the Provinces
for" Part B States". 5.

for" and of the town of Rangoon":
the ordinary original civil jurisdiction of the Court of
on the property of
to him from the debtor; and

nsfer the creation of

Procedure, 1908

have the same meanings as those respectively

Gazette, invest any Court

any class of cases, and any Court so

its jurisdiction have concurrent jurisdiction with

be subordinate

insolvency.-

Act, the Court shall have full power to

and whether involving
of insolvency coming within the

2

oon". of

Rangoon":--"

Presidency- towns

remainder as

Provided that

the

decide all

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cognizance of the Court, or which the Court

the purpose of doing complete justice or making a complete
distribution of property in any

such case.

(2) Subject to the provisions of this Act and notwithstanding
anything

law for the time being in force, every such decision

as between, on the one hand, the

claimants against him or it and all persons claiming throu

(3) Where the Court does not deem it expedient or necessary to
decide any

nature referred to in sub- section (1), but has reason to

interest in any property, the Court

manner and subject to such conditions as it may think fit.

5. General powers of Courts.-

(1) Subject to the provisions of this Act, the Court, in regard to
proceedings

shall have the same powers and shall follow the same

exercise of original civil jurisdiction.

(2) Subject as aforesaid, High Courts and District Courts, in regard to

Act in Courts subordinate to them, shall h

procedure as they respectively have

PART II PROCEEDINGS FROM ACT OF

6. Acts of insolvency.- 1[

(1)] A debtor commits an act of insolvency in ea

(a) if, in 2[India] or elsewhere, he makes a transfer of all or substantially all

a third person for the benefit of his creditors generally;

(b) if, in 2[India] or elsewhere, he makes a transfer of

with intent to defeat or delay his creditors;

(c) if, in 2[India] or elsewhere, he makes any transfer of his property, or of

which would, under this or any other enactment for the

fraudulent preference if he were adjudged

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

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r may deem it expedient or necessary to decide for

contained in an

shall be final and binding for all purposes

debtor and the debtor' s estate and, on the other hand, all

through or under them or any of them.

question of the

believe that the debtor has a saleable

may without further inquiry sell such interest in such

under this Act,

procedure as it has and follows in the

proceedings under this
have the same powers and shall follow the same
and follow in regard to civil suits.

INSOLVENCY TO DISCHARGE

each of the following cases, namely:

his property to

his property or of any part thereof

any part thereof,

time being in force, be void as a

an insolvent;

creditors,--

3

any other

gh namely:--

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(i) he departs or remains out of 3[the territories to which this Act extends],

(ii) he departs from his dwelling

himself,

(iii) he secludes himself so as to deprive his creditors of the means of

him;

(e) if any of his property has been sold in execution of the decree of
any

payment of money;

(f) if he petitions to be adjudged an insolvent under the provisions of
this

1. S. 6 re- numbered as sub- section (1) thereof by Act 28 of 1978, s. 3
(w.

2. Subs. by the A. O. 1950, for" the Provinces". 3. Subs.

Order, 1956, for" Part A States and Part C

(g) if he gives notice to any of his creditors that he has suspended, or that

suspend, payment of his debts; or

(h) if he is imprisoned in execution of the decre

(2) 2[Without prejudice to the provisions of sub

insolvency if a creditor, who has obtained a decree or

money (being a decree or order which

been stayed), has served on him a notice (hereafter in this section referred to as the

insolvency notice) as provided in sub

notice within the period specified therein: Provided that

under sub- section (5) for setting aside

(a) in a case where such application is allowed by the District Court, he shall

to have committed an act of insolvency under this subsection;

(b) in a case where such application is rejected by the District Court, he shall

have committed an act of insolvency under this sub

application or the expiry of the period

whichever is later: Provided further that no insolvency notice shall be served on a debtor

residing, whether permanently or temporarily, outside India, unless the

leave of the District Court therefor.

(3) An insolvency notice under sub

(a) be in the prescribed form;

(b) be served in the prescribed manner;

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dwelling- house or usual place of business or otherwise absents

communicating with

Act;

e. f. 1

by the Adaptation of Laws (No. 3)

States".

he is about to

decree of any Court for the payment of money. 1[

sub- section (1), a debtor commits an act of

order against him for the payment of

er has become final and the execution whereof has not

sub- section (3) and the debtor does not comply with that

where a debtor makes an application

an insolvency notice--

not be deemed

and

sub- section on the date of rejection of the

specified in the insolvency notice for its compliance,

creditor obtains

sub- section (2) shall--

4

Court for the

1- 9- 1979).

aptation be deemed to

the

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(c) specify the amount due under the decree

or to furnish security for the payment of such amount to

agent;

1. In the application of the Act to Bombay, a new cl. (i) has been ins.

towns Insolvency and the Provincial Insolvency (

of 1939), s. 3. 2. Ins. by Act 28 of 1978,

(d) specify for its compliance a period of not less than one month after its

debtor or, if it is to be served on a debtor residing

outside India, such period (being not less than

the District Court granting leave for the service of such notice;

(e) state the consequences of non

(4) No insolvency notice shall be deemed to be invalid by reason only that

therein as the amount due under the decree or order

the debtor, within the period specified in the insolvency notice

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

any such notice as aforesaid, he shall be dee

if, within the period specified therein for its compliance, he takes such steps as would have

constituted a compliance with the insolvency notice had the actual amount due been

correctly specified therein.

(5) Any person served with an insolven

its compliance, apply to the District Court to set aside

following grounds, namely:--

(a) that he has a counter- claim or set

of the amount due under the decree or order and

time being in force, prefer in the

(b) that he is entitled to have the decree or order set aside under any law

relief of indebtedness and that--

(i) he has made an application before the competent authority under such

aside of the decree or order; or

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

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or order and require the debtor to pay t

the satisfaction of the creditor or his

Here by the Presidency

Bombay Amendment) Act, 1939 (Bom. 15

s. 3 (w. e. f. 1- 9- 1979).

service on the

residing, whether permanently or temporarily,

one month) as may be specified by the order of

non- compliance with the notice.

the sum specified

exceeds the amount actually due, unless

for its compliance, gives

debtor does not give

deemed to have complied with the insolvency notice

insolvency notice may, within the period specified therein for

the insolvency notice on any of the

set- off against the creditor which is equal to or is in excess

which he could not, under any law for the

suit or proceeding in which the decree or order was passed;

providing for the
law for the setting

5

the same

Presidency-

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(c) that the decree or order is not executable under the provisions of
any

clause (b) on the date of the application.]

Explanation.-- For the purposes of this section the act o

the act of the principal. 1[Petition

7. Petition and adjudication.-

commits an act of insolvency, an insolvency petition may be

by the debtor, and the Court may on such

of adjudication) adjudging him an insolvent.

Explanation.-- The presentation of a petition by

insolvency within the meaning of this

order of adjudication.

8. Exemption of corporation, etc., from insolvency proceedings

shall be presented against any corporation or against any

under any enactment for the time being

9. Conditions on which creditor may petition

(1) A creditor shall not be entitled to present an insolvency petition
against a

(a) the debt owing by the debtor to the creditor, or, if two or more

petition, the aggregate amount of debts owing to such creditors,

rupees, and

(b) the debt is a liquidated sum payable either immediately or at some

and

(c) the act of insolvency on which

before the presentation of the petition: 2[Provided that

referred to in clause (c) expires on a

1. In the application of the Act to Bombay, a new sec

Presidency- towns Insolvency and the Provincial Insolvency

1939 (Bom. 15 of 1939), s. 3. 2. Added by Act3 of 1950, s. 6,

insolvency petition may be presented on the day on

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law referred to in

of an agent may be

Subject to the conditions specified in this Act, if

presented either by a creditor or

, petition make an order (hereinafter called an order

the debtor shall be deemed an act of

section, and on such petition the Court may make an

proceedings.- No insolvency petition

association or company registered

in force.

petition.-

debtor unless

creditors

amounts to five hundred

certain future time,

the petition is grounded has occurred within three months

where the said period of three months

day when
section 6A has been ins
(Bombay Amendment) Act,
the Court is closed, the
which the Court re- opens.]

6

a debtor
n, unless--
join in the
tion here by the

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(2) If the petitioning creditor is a secured creditor, he shall in his
petition

is willing to relinquish his security for the benefit of the

being adjudged insolvent, or give an

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

10. Conditions on which debtor may petition

(1) A debtor shall not be entitled to present an insolvency petition,
unless he

his debts and--

(a) his debts amount to 1[five hundred rupees; or 2[

(b) he is under arrest or imprisonment i

payment of money; or

(c) an order of attachment in execution of such a decree has been
made,

against his property.

(2) A debtor in respect of whom an order of adjudication 3[whether made

Presidency- towns Insolvency Act, 1909 (3 of 1909), or under this

owing to his failure to apply, or to prosecute an

entitled to present an insolvency

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

application, as the case may be, or that t

from those contained in the petition

11. Court to which petition shall be presented

presented to a Court having jurisdiction under this Act in any local

ordinarily resides or carries on business, or

arrested or imprisoned, where he is in custody: Provided that no objection as to the place of

presentment shall be allowed by any Court in the exercise of appellate or revisional

jurisdiction unless such objection was taken in the Court by which the1. In the C. P., read"

two hundred rupees", see the Provincial Insolvency (C.

1936), s. 2. 2. In the application of

by the Punjab Relief of Indebtedness Act, 1934 (Pun. 7 of 1934), s. 3.

3. Subs. by Act 11

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either state that he

creditors in the event of the debtor

estimate of the value of the security. In the latter case, he

unsecured creditor.

petition.-

is unable to pay
in execution of the decree of any Court for the
and is subsisting,
Act] has been annulled,
application for his discharge, shall not be
petition without the leave of the Court by which the order of
prosecuting his
the petition is founded on facts substantially different
on which the order of adjudication was made.
presented.- Every insolvency petition
area in which the debtor
personally works for gain, or if he has been
P. Amendment) Act, 1936 (C.

the Act to the Punjab, a new clause (aa) has been ins. here

7

under the

shall be

P. 2 of

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of 1927, s. 4, for" made under this Act".

opportunity, and unless there has

12. Verification of petition.- Every insolvency petition shall be in
writing and

signed and verified in the manner prescribed by the Code of Civil

), for signing and verifying plaints.

13. Contents of petition.-

(1) Every insolvency petition presented by a debtor shall contain the

namely:--

(a) a statement that the debtor is unable to pay his debts

(b) the place where he ordinarily resides or carries on business or personally

or, if he has been arrested or imprisoned, the place where he

(c) the Court (if any) by whose order he has been arrested or imprisoned, or

order has been made for the attachment of his property,

in respect of which any such order

(d) the amount and particulars of all pecuniary claims against him, together

and residences of his creditors so far as they are known to,

reasonable care and diligence be ascertained by,

(e) the amount and particulars of all his property, together with

(i) a specification of the value of all such property

(ii) the place or places at which any such property is to be found; and

(iii) a declaration of his willingness to place at the disposal of the Court all

save in so far as it includes such particulars (not being his

by the Code of Civil Procedure, 1908 , (5

being in force from liability to attachment and sale in execution of a decree;

(f) a statement whether the debtor has on any previo

adjudged an insolvent, and (where such a petition has been

(i) if such petition has been dismissed, the reasons for such dismissal, or

(ii) if the debtor has been adjudged an insolvent, concise particulars of the

including a statement whether any previous adjudication has

grounds therefor.

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petition was heard at the earliest possible
been a consequent failure of justice.
Procedure, 1908 (5 of 1908
following particulars,
debts;
works for gain,
is in custody;
together with particulars of the decree
has been made;
with the names
dences or can by the exercise of
him;
with--
not consisting of money;
such property
books of account) as are exempted
of 1908), or by any other enactment for the time
previous occasion filed a petition to be
filed)--
been annulled and, if so, the
8
rd shall be
by which an
oks insolvency,
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(2) Every insolvency petition presented by a creditor or creditors
shall set
particulars regarding the debtor specified in c

specify--

(a) the act of insolvency committed by such debtor, together with the date

and

(b) the amount and particulars of his or their pecuniary claim or claims

against such debtor.

14. Withdrawal of petitions.- No petition, whether presented by a debtor or

shall be withdrawn without the leave of the Court.

15. Consolidation of petitions.

against the same debtor, or where

Court may consolidate the proceedings

16. Power to change carriage of proceedings.

due diligence on his petition, the Court may substitute as

whom the debtor may be indebted in the

petitioning creditor.

17. Continuance of proceedings on death of debtor.

insolvency petition has been presented dies, the

Court otherwise orders, be continued so far as may be necessary for the realisation and

distribution of the property of the debtor.

18. Procedure for admission of petition

Procedure, 1908 (5 of 1908), with respect to the admission of applicable, be followed in the case of insolvency

19. Procedure on admission of petition.

(1) Where an insolvency petition is admitted, the Court shall make an order

hearing the petition.

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clause (b) of subsection (1), and shall also

of its commission;

by a creditor,

petitions.- Where two or more insolvency petitions are

separate petitions are presented against joint debtors, the

or any of them, on such terms as the Court thinks fit.

proceedings.- Where the petitioner does not

e petitioner any other creditor to

amount required by this Act in the case of a

debtor.- If a debtor by or against whom an

proceedings in the matter shall, unless the

e petition.- The procedure laid down in the Code of Civil

plaints, shall, so far as it is

petitions.

on petition.-

fixing a date for

9

forth the

presented

proceed with

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(2) Notice of the order under sub

may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under subsection

(1) shall be served on him in the manner provided for the service of

20. Appointment of interim receiver.

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petition may, and where the debtor is the petitioner ordinarily
receiver of the property of the debtor or of any part
immediate possession thereof or of any
have such of the powers conferrable on a receiver appointed under
the Code of Civil
Procedure, 1908 (5 of 1908), as the Court may direct. If an interim
receiver
appointed, the Court may make such appointment at any
and the provisions of 1[this section]

21. Interim proceedings against debtor.

At the time of making an order
adjudication the Court may either of its own motion or
make one or more of the following orders, namely:
(1) order the debtor to give reasonable security for his appearance
until final
upon the petition, and direct that, in default of giving such
civil prison;
(2) order the attachment by actual seizure of the whole or any part of
the
possession or under the control of the debtor, other than
of account) as are exempted by the
other enactment for the time being in force from liability to
attachment and sale in execution
of a decree;
(3) order a warrant to issue with or without bail for the arrest of the
debtor,
that he be detained in the civil prison until the disposal of
on such terms as to security as may be
under clause (2) or clause (3) shall not be made unless t

with intent to defeat or delay his creditors or to avoid any process of the Court,

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sub- section (1) shall be given to creditors in such manner as he summons.

receiver.- The Court when making an order

shall, appoint an interim

thereof, and may direct him to take

part thereof, and the interim receiver shall thereupon

subsequent time before adjudic

shall apply accordingly.

debtor.-

admitting the petition or at any subsequent time before

on the application of any creditor

namely:--

orders are made

security, he shall be detained in the

property in the

such particulars (not being his books

Code of Civil Procedure, 1908 (5 of 1908), or by any

and di

the petition, or that he be released

reasonable and necessary: Provided that an order

the Court is satisfied that the debtor,

Court,--

10

admitting the

is not so

adjudication,

direct either

he --

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(i) has absconded or has departed from the local limits of the jurisdiction of

about to abscond or to depart from s

(ii) has failed to disclose or has concealed, destroyed, transferred or limits, or is about to

1.Subs. by Act 34 of 1939, s. 2 and Sch. I, for" this sub

remove from such limits, any documents likely

the hearing, or any part of his property other than such particulars as aforesaid.

22. Duties of debtors.- The debtor shall on the making of an order admitting

produce all books of account, and shall at any time thereafter

property, and such lists of his creditors and

respectively, submit to such examination in respect of his

such times before the Court or receiver, execute such instruments, and generally do all

acts and things in relation to his property as may be required by the may be prescribed.

23. Release of debtor.-

(1) At the time of making an order admitting the petition or at any adjudication, the Court may, if the debtor is under decree of any Court for the payment of money, order his as may be reasonable and necessary.

(2) The Court may at any time order any person who has been released

be re- arrested and re- committed to the custody from

(3) At the time of making any order under this section, the Court shall

reasons therefor.

24. Procedure at hearing.-

(1) On the day fixed for the hearing of the petition, or on any subsequent

hearing may be adjourned, the Court sha

(a) that the creditor or the debtor, as the case may be, is entitled to present

Provided that, where the debtor is the petitioner, he shall, for

inability to pay his debts, be required to furnish

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the Court, or is

such limits, or is remaining outside them, or

removed from such

sub- section". conceal, destroy, transfer or

to be of use to his creditors in the course of

give such inventories of his

debtors and of the debts due to and from them,

property or his creditors, attend at

Court or receiver, or as

subsequent time before

arrest or imprisonment in execution of the

release on such terms as to security

under this section to

which he was released.

record in writing its

day to which the

shall require proof of the following matters, namely:

the purpose of proving his

only such proof as to satisfy the Court that

11

the petition

such

namely:--

the petition:

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there are prima facie grounds for

shall not be bound to hear any further evidence thereon;

(b) that the debtor, if he does not appear on a petition presented by a

with notice of the order admitting the petition; and

(c) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is

property in the presence of such creditors as appear

have the right to question the debtor

(3) The Court shall, if sufficient cause is shown, grant time to the debtor

produce any evidence which appears to it to be necessary

petition.

(4) A memorandum of the substance of the examination of the debtor and of

evidence given shall be made by the Judge, and

25. Dismissal of petition.-

(1) In the case of a petition presented by a creditor, where the Court is not

proof of his right to present the petition or of the service

admitting the petition, or of the alleged

is able to pay his debts, or that for any other sufficient cause no order ought to be made, the

Court shall dismiss the petition.

(2) In the case of a petition presented by a debtor, the Court shall dismiss

not satisfied of his right to present the petition.

26. Award of compensation.-

(1) Where a petition presented by a creditor is dismissed under sub

and the Court is satisfied that the petition was frivolous or

application of the debtor, award against

thousand rupees, as it deems a reasonable compensation to the debtor

injury occasioned to him by the petition and the proceedings thereon, and such

be realised as if it were a fine.

(2) An award under this section shall bar any suit for compensation in

and the proceedings thereon. Order of adjudication

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believing the same and the Court, if and when so satisfied,

creditor, has been served

present, as to his conduct, dealings and

at the hearing, and the creditors shall

thereon.

or to any creditor to

for the proper disposal of the

any other oral

shall form part of the record of the case.
satisfied with the
on the debtor of notice
act of insolvency, or is satisfied by the debtor that he
e the petition if it is
sub- section (1) of sectio
vexatious, the Court may, on the
such creditor such amount, not exceeding one
for the expense or
respect of such petition
gs 12
of the order
section 25,
amount may

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27. Order of adjudication.-

(1) If the Court does not dismiss the petition, it shall make an order
of

specify in such order the period within which the

(2) The Court may, if sufficient cause is shown, extend the period
within

shall apply for his discharge, and in that case shall publish
as it thinks fit.

28. Effect of an order of adjudication.

(1) On the making of an order of adjudication, the insolvent shall aid
to the

power in the realisation of his property and the distribution of
creditors.

(2) On the making of an order of adjudication, the whole of the property of

shall vest in the Court or in a receiver as hereinafter provided,

among the creditors, and thereafter, except as

insolvent is indebted in respect of any debt provable u

of the insolvency proceedings have any remedy against the property of the

respect of the debt, or commence any suit or other legal

the Court and on such terms as the

(3) For the purposes of sub- section (2), all goods being at the date of the

petition on which the order is made, in the possession,

his trade or business, by the consent

circumstances that he is the reputed owner thereof, shall be deemed to be the property of the

insolvent.

(4) All property which is acquired by or devolves on the insolvent after the

of adjudication and before his discharge shall forthwith vest

provisions of sub- section (2) shall apply in

(5) The property of the insolvent for the purposes of this section shall not

property (not being books of account) which is exempted by the

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adjudication, and shall

debtor shall apply for his discharge.

which the debtor

notice of the order in such manner

adjudication.-

the proceeds among his

and shall become divisible
provided by this Act, no creditor to whom the
under this Act shall during the pendency
proceeding, except with the leave of
Court may impose.
presentation of the
order or disposition of the insolvent in
and permission of the true owner, under such
date of an order
in the Court or receiver, and the
respect thereof.

ks Code of Civil Procedure,

13

utmost of his
the insolvent
nder insolvent in
include any

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1908 (5 of 1908), or by any other enactment for
attachment and sale in execution of a

(6) Nothing in this section shall affect the power of
otherwise deal with his security, in the same manner as he would
or deal with it if this section had not been

(7) An order of adjudication shall relate back to, and take effect from,
presentation of the petition on which it is made.

28A. 1[Insolvent' s property to comprise certain capacity
shall comprise and shall always be deemed to have comprised

and to take proceedings for exercising all such
might have been exercised by the insolvent for his own benefit at the
commencement of his
insolvency or before his discharge:
this section shall affect any sale, mortgage or other
a Court or receiver or the Collector acting under section 60 made
before the commencement
of the Provincial Insolvency (Amendment) Act, 1948
subject of a final decision by a competent Court: Provided further
that
insolvent shall not be deemed by reason of anything
capacity referred to in this section
property made in the State of Madras after the 28th day of July, 1942
, and before the
commencement of the Provincial Insolvency (Amendment) Act, 1948
(25 of

29. Stay of pending proceeding

Any Court in which a suit or other
an order of adjudication has been made against him under this Act,
either stay the
or allow it to continue on such terms as such Court

30. Publication of order of adjudication

Notice of an order of adjudication
the date of the adjudication, the period within which the debtor shall
apply for his discharge,
Solutions LLP
the time being in force from liability to
decree.
any secured creditor to
have been entitled to realise

passed
the
capacity.- The property of
also the capacity to exercise
powers in or over or in respect of property as
1. Ins. by Act 25 of 1948, s. 2. Provided that nothing in
transfer of the property of the insolvent by
(25 of 1948), which has been
the property of the
contained in this section to comprise his
in respect of any such sale, mortgage or other transfer of
1948)]

proceeding.-
proceeding is pending against a debtor shall, on proof that
may impose.
adjudication.-
stating the name, address and description of the insolvent,
14
realise or
date of the
the insolvent
the
r proceeding,
Intelligent Legal Risk Management
and the Court by which the adjudication is made, shall be published
in the
and in such other manner as may be prescribed. Proceedings
adjudication

31. Protection order.-

(1) Any insolvent in respect of whom an order of adj
the Court for protection, and the Court may on such
protection of the insolvent from arrest or

(2) A protection order may apply either to all the debts of the debtor,
or to

Court may think proper, and may commence and take
may direct, and may be revoked or

(3) A protection order shall protect the insolvent from being arrested
or

any debt to which such order applies, and any

terms of such an order shall be entitled to his release: Provided that
no such order shall

operate to prejudice the rights of any creditor i
adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a

32. Power to arrest after adjudication

At any time after an order of adjudication has been m

believe on the application of any creditor or the receiver that the
debtor has absconded

departed from the local limits of its jurisdiction with intent to avoid
any

been, or might be, imposed on him by or under this

arrest, and on his appearing or being

absconding or had departed with such intent, order his release on
such terms as to security as

may be reasonable or necessary, or if such security is not furnished,
direct that he

detained in the civil prison for a period which may extend to three

33. Schedule of creditors.-

(1) When an order of adjudication has been made under this Act, all persons who claim to be creditors of the insolvent in respect of debts tender proof of their respective debts by

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Official Gazette

consequent on order of

adjudication has been made may apply to

application make an order for the

detention.

any of them as the

effect at and for such time as the Court

renewed as the Court may think fit.

detained in prison for

insolvent arrested or detained contrary to the

in the event of such order being revoked

protection order.

adjudication.-

made, the Court may, if it has reason to

obligation which has

Act, order a warrant to issue for his

brought before it, may, if satisfied that he was

able months.

persons

provable under this Act shall

producing evidence of the amount and particulars

15

n or the

or

shall be

persons alleging

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thereof, and the Court shall, by order, determine the p

be creditors of the insolvent in respect of such debts, and the amount
of such

respectively, and shall frame a schedule of such persons and debts:

Provided that, if, in the opinion of the Court, the value of any

estimated, the Court may make an order to that

included in the schedule.

(2) A copy of every such schedule shall be posted in the Court

(3) Any creditor of the insolvent

tender proof of his debt and apply to the Court for an order

in the schedule as a creditor in respect of

the schedule, and the Court, after causing notice to be served on the
1[receiver] and the

other creditors who have proved their debts, and hearing their
objections (if any),

comply with or reject the application.

34. Debts provable under the Act.

(1) Debts which have been excluded from the schedule on the ground
that

incapable of being fairly estimated and demands in the nature

arising otherwise than by reason of a contract or a

this Act. 1. Subs. by Act 39 of 1926, s. 2, for" insolvent".

(2) save as provided by sub- section (1), all debts and liabilities;
present or

contingent, to which the debtor is subject when he is

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 under this Act.

adjudication.

35. Power to annul adjudication of insolvency.

Where, in the opinion of the Court, a debtor ought not to h

where it is proved to the satisfaction of the Court that the debts of the insolvent have

paid in full, the Court shall, on the application of the debtor, or of any

by order in writing, annul the adjudication 1[and

application made by the receiver or

of a debtor who was, by reason of the provisions of s

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persons who have proved themselves to

debt is incapable of being fairly

effect, and thereupon the debt shall not be

Court- house.

may, at any time before the discharge of the insolvent,

directing his name to be entered

any debt provable under this Act, and not entered in

Act.-

s their value is

of unliquidated damages

breach of trust shall not be provable u

future, certain or

adjudged an insolvent, or to which he

Annulment of

insolvency.-

have been adjudged insolvent, or

other person interested,

the Court may, of its own motion or on

any creditor, annul any adjudication made on the petition

sub- section (2) of section 10, not

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ersons debts,

shall

under

ave been

Intelligent Legal Risk Management

entitled to present such petition].

36. Power to cancel one of concurrent orders of adjudication.

If, in any case in which an order of adjudication has been made, it shall be proved to the

Court by which such order was

Court against the same debtor, and that the property of

distributed by such other Court, the

thereon.

37. Proceedings on annulment.

(1) Where an adjudication is annulled, all sales and dispositions of property

duly made, and all acts theretofore done, by the Court or

as aforesaid, the property of the debto

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 conditions (if any) as the

order in writing, declare.

(2) Notice of every order annulling an adjudication shall be published in the

and in such other manner as may be published in the Official manner as may be prescribed. Compositions and

38. Compositions and schemes of arrangement.

(1) Where a debtor, after the making of an order of adjudication, submits a

composition in satisfaction of his debts, or a proposal for a affairs, the1. Ins. by Act 11 of 1927, s. 5.

Court shall fix a date for the consideration of the proposal, and shall issue a

creditors in such manner as may be prescribed.

(2) If, on the consideration of the proposal, a majority in number and three

of all the creditors whose debts are proved and who are resolve to accept the proposal, the same

(3) The debtor may at the meeting amend the terms of his the opinion of the Court, calculated to benefit the general Solutions LLP

adjudication.-

made that insolvency proceedings are pending in another

the debtor can be more conveniently

Court may annul the adjudication or stay all proceedings annulment.-

and payments

receiver, shall be valid; but, subject

debtor who was adjudged insolvent shall vest in such person

Court may, by

Official Gazette

Gazette and in such other

schemes of arrangement

arrangement.-

proposal for a

scheme of arrangement of his

ns. fourths

present in person or by pleader,

shall be deemed to be duly accepted by the creditors.

proposal if the amendment is, in

body of creditors.

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notice to all

in value

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(4) Where the Court is of opinion, after hearing the report of the receiver, if

been appointed, and after considering any objecti

any creditor, that the terms of the proposal

the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved on proof o

suspend or attach conditions to the debtor' s discharge, the

proposal unless it provides reasonable

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

payment in priority to other debts of all debts directed to

property of an insolvent.

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

.

39. Order on approval.-

If the Court approves the proposal, the terms shall

1[the order of adjudication shall

the composition or scheme shall be binding on all the creditors 2[so far as

due to them from the debtor and provable under this

.

40. Power to re- adjudge debtor in

instalment due in pursuance of the composition or scheme,

1. The words" the Court shall frame a schedule in accordance with the

33" rep. by Act 10 of 1935, s. 2. 2. Subs. by s. 2 ibid.,"

relates to any debts entered therein".

injustice or undue delay, or that the approval of the Court was obtained by fraud, the Cou

may, if it thinks fit, re- adjudge the debtor insolvent and annul the

without prejudice to the validity of any transfer

done under or in pursuance of the

insolvent under this section, all debts provable in other respects which have been contracted

before the date of such re- adjudication shall be provable in the insolvency.

41. Discharge.-

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a receiver has

objections which may be made by or on behalf of

are not reasonable or are not calculated to benefit
of which the Court would be required either to refuse,
Court shall refuse to approve the
security for payment of not less than six annas in the
not provide for the
be so paid in the distribution of the
proposal
be embodied in an order of the Court, and
It be annulled, and the provisions of section 37 shall apply,
relates to any debt
Act]
insolvent.- If default is made in the payment of any
or if it appears to the Court
provisions of section
5, entered in the said schedule so far as
that the composition or scheme cannot proceed without
composition or scheme but
or payment duly made or of anything duly
composition or scheme. When a debtor is re
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ons nd
Court
re- adjudged
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(1) A debtor may, at any time after the
specified by the Court, apply to the Court for an order of
day, notice whereof shall be given in

application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after consulting any creditor and, where a receiver has been appointed, the

(a) grant or refuse an absolute order

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

(c) grant an order or discharge subject to any conditions with respect to any

income which may afterwards become due to the insolvent, or acquired property.

42. Cases in which Court must refuse an absolute discharge

(1) The Court shall refuse to grant an absolute order of discharge under

of any of the following facts, namely:

(a) that the insolvent's assets

amount of his unsecured liabilities, unless he satisfies the Court are not of a value equal to eight annas in the

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

the business carried on by him and as sufficiently

financial position within the three

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

(d) that the insolvent has contracted any debt provable under this Act

time of contracting it any reasonable or probable

proving which shall lie on him) that he

(e) that the insolvent has failed to account satisfactorily for any loss of

deficiency of assets to meet his liabilities;

(f) that the insolvent has brought on, or contributed to, his insolvency by

speculations, or by unjustifiable extravagance in living,

neglect of his business affairs;

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order of adjudication and shall, within the period

discharge, and the Court shall fix a

such manner as may be prescribed, for hearing such

considering the objections of

report of the receiver--

order of discharge; or

with respect to his a

discharge.-

section 41 on proof

namely:--

are not of a value equal to eight annas in the

that the fact that the assets

rupee on the amount of his unsecured liabilities

usual and proper in

disclose his business transactions an

years immediately preceding his insolvency;

insolvent;

without having

ground of expectation (the burden of

would be able to pay it;

assets or for any

iciency rash and hazardous

or by gambling, or by culpable

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--

earnings or

after

rupee on the

and

at the

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(g) that the insolvent has, within three months preceding the date of the

petition, when unable to pay his debts as they became

of his creditors;

(h) that the insolvent has on any previous occa

composition or arrangement with his creditors;

(i) that the insolvent has concealed or removed his property or any part

guilty of any other fraud or fraudulent breach of trust.

(2) For the purposes of this section, the report of the receiver shall be

and the Court may presume the correctness of any

(3) The powers of suspending, and of attaching conditions to, an insolvent's

be exercised concurrently.

43. Adjudication to be annulled on failure to apply for discharge.

(1) If the debtor does not appear on the day fixed for hearing his application

on such subsequent day as the Court may direct, or if the

of discharge within the period specified

adjudication or make such other order as it may think fit, and if the adjudication is so

annulled, the provisions of section 37 shall apply].

(2) Where a debtor has been released from custody under the provisions of

order of adjudication is annulled under

adjudication shall be annulled, and the provisions of section 37 shall ap

sub- section (1), the Court may, if it thinks fit, re

and the officer in charge of the prison to whose custody

receive such debtor into his custody

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 no order of

been made.

44. Effect of order of discharge.

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

(a) any debt due to the Government;

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presentation of the

due, given an undue preference to any

occasion been adjudged an insolvent or made a

thereof, or has been

oses deemed to be evidence;

statement contained therein.

discharge may

discharge.-

for discharge or

debtor does not apply for an order
by the Court, 1[the Court may annul the order of
this Act and the
1. Subs. by Act 3 of 1950, s. 7, for" the order of
apply accordingly".
re- commit the debtor to his former custody,
such debtor is so re- committed shall
according to such re- commitment, and thereupon all
adjudication had
discharge.-

from--

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ply

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(b) any debt or liability incurred by means of any fraud or fraudulent
breach

he was a party;

(c) any debt or liability in respect of which he has obtained for
bearance by

which he was a party; or

(d) any liability under an order for maintenance made under section
488 of

Criminal Procedure, 1898 (5 of 1898).

(2) Save as otherwise provided

insolvent from all debts provable under this Act.

(3) An order of discharge shall not release any person who, at the
date of

the petition, was a partner or coany

joint contract with him or any person who was surety for him.

PART III ADMINISTRATION OF

Method of proof of debts.

45. Debt payable at a future time.

A creditor may prove for a debt not

were payable presently, and may receive dividends equally with the other creditors,

the refrom only a rebate of interest at the rate of six per centum

the declaration of a dividend to the time when

according to the terms on which it

46. Mutual dealings and set- off.

Where there have been mutual dealings

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

be set off against any sum due from the other party, and the

more, shall be claimed or paid on either side

47. Secured creditors.-

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of trust to which

by sub- section (1), an order of discharge shall release the

the presentation of

-trustee with the insolvent, or was jointly bound or had made

PROPERTY

time.-

payable when the debtor is adjudged an insolvent as if it

per annum computed from

on the debt would have become payable,

was contracted.

off.-

between an insolvent and a creditor proving or

balance of the account, and no

respectively.

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any fraud to

the Code of

deducting

party shall

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(1) Where a secured creditor realises his security, he may prove for the

after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benefit

he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his

being entitled to have his debt entered in the

security, and the value at which he assesses it, and shall b

in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises

realised shall be substituted for the amount of any

and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this

excluded from all share in any divi

48. Interest.-

(1) On any debt or sum certain whereon interest is not reserved or agreed

overdue when the debtor is adjudged an insolvent, and

creditor may prove for interest at a rate

(a) if the debt or sum is payable by virtue of a written instrument at a time when such debt or sum was payable to the date

(b) if the debt or sum is payable otherwise, from made giving the debtor notice that interest will be claimed the time of payment to the date of such

(2) Where a debt which has been proved under this Act includes in consideration in lieu of interest, the interest or consideration dividend, be calculated at a rate not exceeding six to the right of a creditor to receive

which he may be entitled after all the debts proved have been paid in full.

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balance due to him,

reditor of the creditors,

security, he shall, before

schedule, state in his proof the particulars of his

be entitled to receive a dividend

d, realisation redeem it on

it, the net amount

valuation previously made by the creditor,

section, he shall be
dividend.
for, and which is
which is provable under this Act, the
not exceeding six per centum per annum--
certain time, from the
of such adjudication; or.
the time when a demand in writing has been
from the date of the demand until
adjudication.
interest or any pecuniary
shall, for the purposes of
per centum per annum, without prejudice
out of the debtor' s estate any higher rate of interest to
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hedule, e only

--

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49. Mode of proof.-

(1) A debt may be proved under this Act by delivering, or sending by
post in

letter, to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account
showing the

debt, and shall specify the vouchers (if any) by which the

Court may at any time call for the

50. Disallowance and reduction of entries in schedule.

(1) Where the receiver thinks that a debt has been improperly entered in the

Court may, on the application of the receiver and after notice

(if any) as the Court thinks necessary,

(2) The Court may also, after like inquiry, expunge an entry or reduce the

upon the application of a creditor where no

declines to interfere in the matter or,

application of the debtor

Effect of insolvency on antecedent transactions

51. Restriction of rights of creditor u

(1) Where execution of a decree has issued against the property of a debtor,

be entitled to the benefit of the execution against the

realised in the course of the execution

the petition.

(2) Nothing in this section shall affect the rights of a secured creditor in

property against which the decree is executed.

(3) A person who in good faith purchases the property of a

shall in all cases acquire a good title to it against the

52. Duties of Court executing decree as to property taken in execution.

Where execution of a decree has issued against any property of a debtor

execution and before the sale thereof

Solutions LLP

rt particulars of the

same can be substantiated. The

production of the vouchers.

schedule.-
to the creditor, and such inquiry
expunge such entry or reduce the amount of the debt.
amount of a debt
receiver has been appointed, or where the receiver
in the case of a composition or scheme, upon
under execution.-
no person shall
receiver except in respect of assets
by sale or otherwise before the date of the admission of
respect of the
debtor under a sale in execution
receiver.
execution.-
which is
notice is given to the Court executing the decree that an
23
a registered
schedule, the
or, upon the
herwise saleable in
Intelligent Legal Risk Management
insolvency petition by or against the debtor has been admitted, the
Court shall, on
application, direct the property, if in the possession of the C
receiver, but the costs of the suit in which the decree was made and
of the
a first charge on the property so delivered, and the

adequate part thereof for the purpose of

53. Avoidance of voluntary transfer.

Any transfer of property not being a

made in favour of a purchaser or incumbrancer in good faith and for valuable consideration

shall, if the transferor is adjudged insolvent 1[on a petition presented] within two

the date of the transfer, be voidable as against the receiver and

54. Avoidance of preference in certain cases.

(1) Every transfer of property, every payment made, every obligation judicial proceeding taken or suffered by any person

due from his own money in favour

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

against the receiver, and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith

consideration has acquired a title through or under a

54A. 2[By whom petitions for annulment may be made

A petition for the annulment of any transfer under

obligation or judicial proceeding under section 54, may be made by the

leave of the Court, by any creditor who has proved his

the receiver has been requested and

55. Protection of bona fide transactions.

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Court, to be delivered to the

execution shall be

receiver may sell the property or an

satisfying the charge.

transfer.-

transfer made before and in consideration of marriage or

may be annulled by the Court.

cases.-

incurred, and every

unable to pay his debts as they become

of any creditor, with a view of giving that creditor a

and for valuable

creditor of the insolvent.

made.-

section 53, or of any transfer, payment,

receiver or, with the

debt and who satisfies the Court that

ed has refused to make such petition.]

transactions.-

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ourt, years after

and void as

Intelligent Legal Risk Management

Subject to the foregoing provisions

execution, and with respect to the avoidance of certain transfers and
pre

this Act shall invalidate in the case of an insolvency

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

(b) any payment or delivery to the insolvent;

1. Ins. by Act 10 of 1930, s. 6. 2. Ins. by Act 39 of 1926, s. 3.

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(c) any transfer by the insolvent for valuable consideration; or
(d) any contract or dealing by or with the insolvent for valuable
any such transaction takes place before 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. Realisation of
property

56. Appointment of receiver.-

(1) The Court may, at the time of the order of adjudication, or at
a receiver for the property of the insolvent, and such
receiver.

(2) Subject to such conditions as may be prescribed, the Court may

(a) require the receiver to give such security as it th
receive in respect of the property; and

(b) by general or special order, fix the amount to be paid as
remuneration

the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person in
whose

custody any such property as aforesaid is from the possession

that nothing in this section shall be deemed to

possession or custody of property

remove.

(4) Where a receiver appointed under this section

(a) fails to submit his accounts at such periods and in such form as
the Court

(b) fails to pay the balance due fr

(c) occasions loss to the property by his wilful default or gross
negligence,

direct his property to be attached and sold, and may apply

balance found to be due from him or any
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of this Act with respect to the effect of insolvency on an
preferences, nothing in
insolvency--
consideration: Provided that
date of the order of adjudication, and that the
any time afterwards, appoint
property shall thereupon vest in such
may--
thinks fit duly to account for what he shall
for the services of
or custody thereof: Provided
authorize the Court to remove from the
ody any person whom the insolvent has not a present right so to
section--
directs, or
from him thereon as the Court directs, or
the Court may
the proceeds to make good any
loss so occasioned by him.
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ferences, possession or
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(5) The provisions of this section shall apply, so far as may be, to
interim
under section 20.

57. Power to appoint Official Receivers.

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(1) The State Government may appoint such persons as it
Receivers") to be receivers under this Act within such local

(2) Where any Official Receiver has been so appointed for the local
limits of

of any Court having jurisdiction unde
every order appointing a receiver or an
Court for special reasons otherwise directs.

(3) Any sum payable under clause (b) of sub
services of an Official Receiver shall be credited to such fund
direct.

(4) Every Official Receiver shall receive such remuneration out of the
said

as the State Government may fix in
fixed shall be received by the Official

58. Powers of Court if no receiver appointed.

Where no receiver is appointed, the Court shall have all the rights of,
and may exercise al

powers conferred on, a receiver under this Act.

59. Duties and powers of receiver

with all convenient speed, realise the property of the debtor
the creditors entitled thereto, and for that

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

(b) give receipts for any money received by him; and may, by leave of
the

any of the following things, namely:

(c) carry on the business of the insolvent so far as may be necessary
for the

winding up of the same;

(d) institute, defend or continue any suit or other legal proceeding
relating

the insolvent;

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receivers appointed

Receivers.-

thinks fit (to be called" Official

limits as it may prescribe.

the jurisdiction

under this Act, he shall be the receiver for the purpose of

interim receiver issued by any such Court, unless the

sub- section (2) of section 56 in respect of the

as the State Government may

fund or otherwise

this behalf, and no remuneration whatever beyond that so

Receiver as such.

appointed.-

receiver.- Subject to the provisions of this Act, the receiver shall,

and distribute dividends among

purpose may--

Court, do all or

namely:--

ness to the property of

26

all the

beneficial

Intelligent Legal Risk Management

(e) employ a pleader or other agent to take any proc

sanctioned by the Court;

(f) accept as the consideration for the sale of any property of the insolvent a

payable at a future time subject to such stipulations as to
thinks fit;

(g) mortgage or pledge any part of the property of the insolvent for the

money for the payment of his debts;

(h) refer any dispute to arbitration, and compromise all debts, claims and

terms as may be agreed upon; and

(i) divide in its existing form amongst the creditors, according to its property which, from its peculiar nature or other advantageously be sold.

59A. 1[Power to require informatio

(1) The Court, if specially empowered in this behalf by an order of the State

any officer of the Court so empowered by a like order, may,
or any creditor who has proved h

made, summon before it in the prescribed manner any person known or suspected to have in

his possession any property belonging to the insolvent, or supposed to be

insolvent, or any person whom the Court or such officer, as
capable of giving information respecting the

Court or such officer may require any such person to produce any documents in his custody

or power relating to the insolvent or to his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable

before the Court or such officer at the time appointed,

document, having no lawful impediment

officer, the Court or such officer may, by warrant, cause him to be apprehended and brought

up for examination.

(3) The Court or such officer may examine any person so brought before it

the insolvent, his dealings or property, and such person

practitioner.]

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proceedings or do any business which may be

sum of money

security and otherwise as the Court

purpose of raising

liabilities, on such

estimated value, any

special circumstances, cannot readily or

information regarding insolvent's property.-

Government, or

on the application of the receiver

his debt, at any time after an order of adjudication has been

indebted to the

y the case may be, may deem

insolvent or his dealings or property, and the

sum, refuses to come

or refuses to produce any such

ing made known to and allowed by the Court or such

or him concerning

may be represented by a legal

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60. Special provisions in regard to immovable property

(1) In any local area in which a declaration has been made under section 68

Civil Procedure, 1908 (5 of 1908), and is in force, no sale of

revenue to the Government or held or let for

receiver; but, after the other property of the insolvent has be

ascertain—

(a) the amount required to satisfy the debts proved under this Act after

already received;

(b) the immovable property of the insolvent remaining unsold; and

(c) the incumbrances (if any) existing

forward a statement to the Collector containing the particulars

Collector shall proceed to raise the amount so

conferred on him by paragraphs 2 to 10 of the Third Schedule to the said Code as he thinks

fit, and subject to the provisions of those paragraphs so far as they are

hold at the disposal of the Court all sums that may

powers.

(2) Nothing in this Act shall be deemed to affect any provisions of any

being in force prohibiting or restricting the execution

property; and any such provisions

adjudication made under this Act as if it were such a decree or order

1[. Distribution of

Property.

61. Priority of debts.-

(1) In the distribution of the property of the insolvent, there shall be paid in

other debts--

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

(b) all salary or wages, not exceeding twenty rupees in all, of any clerk,

respect of services rendered to the insolvent during

presentation of the petition.

(2) The debts specified in sub- section (1) shall rank equally between

paid in full, unless the property of the insolvent is

they shall abate in equal proportions

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property.-

of the Code of

immovable property paying

agricultural purposes shall be made by the

been realised, the Court shall

deducting the monies

thereon; 1. Ins. by Act 39 of 1926, s. 4.

aforesaid; and thereupon the

required by the exercise of such of the powers

applicable, and shall

come to his hands by the exercise

enactment for the time

of decrees or orders against immovable

shall be deemed to apply to the enforcement of an order of

prior

servant or labourer in

four months before the date of the
themselves, and shall be
insufficient to meet them, in which case
ate between themselves.

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en and shall
of such
priority to all
efore

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(3) Subject to the retention of such sums as may be necessary for the
administration or otherwise, the debts specified in sub
(1) shall be discharged forthwith in so far as the property of t
them.

(4) In the case of partners, the partnership property shall be
applicable in

payment of the partnership debts, and the separate
applicable in the first instance in payment

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

the application of the Act to the Punjab, a new sub

Provincial Insolvency (Punjab Amendment) Act,

separate property in proportion to the rights and interests o
property.

(5) Subject to the provisions of this Act, all debts entered in the
schedule

rateably according to the amounts of such debts respectively

(6) Where there is any surplus a
payment of interest from the date on which the debtor is
six per centum per annum on all debts

62. Calculation of dividends.-

(1) In the calculation of dividends, the receiver shall retain in his
hands

meet--

(a) debts provable under this Act and appearing, from the insolvent's
otherwise, to be due to persons resident in places so distant
communication they have not had sufficient

(b) debts provable under this Act, the subject of claims not yet
determined;

(c) disputed proofs or claims; and

(d) the expenses necessary for the administration of the

(2) Subject to the provisions of sub
dividends.

63. Right of creditor who has not proved debt before declaration of a Solutions LLP

sub- section

the insolvent is sufficient to meet

the first instance in

property of each partner shall be

of his separate debts. Where there is a surplus of

sub- section (3) has been added here by the

1939 (Pun. 3 of 1939), s. 2. the respective

of each partner in the partnership

and without any preference.

after payment of the foregoing debts, it shall

adjudged an insolvent at the rate of
entered in the schedule.

he sufficient assets to
statements or
that in the ordinary course of
time to tender their proofs;
the estate or otherwise.

sub- section (1), all money in hand shall be distributed as
dividend.

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expenses of
part of 1. In
shall be paid
be applied in
rdinary dividend.-

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Any creditor who has not proved his debt
shall be entitled to be paid, out of any money for
any dividend or dividends which
to the payment of any future dividend or dividends; but he shall not
be entitled to disturb
the distribution of any dividend declared before his debt was proved
by
participated therein.

64. Final dividend.-

When the receiver has realised all the pr
the opinion of the Court, be realised

declare a final dividend; but before so doing, he shall give notice in manner prescribed to

persons whose claims to be creditors have been notified but not proved,

prove their claims within the time limited by the notice,

dividend without regard to their claims. After the expiration of the time

Court, on application by any such claimant, grants him

then on the expiration of such further

among the creditors entered in the schedule without rega

65. No suit for dividend.-

No suit for a dividend shall lie against the receiver;

dividend, the Court may, on the

order him to pay it, and also to pay out of his own money interest thereon for the time that it

is withheld, and the costs of the application.

66. Management by and allowance to insolvent.

(1) The Court may appoint the insolvent himself to superintend

property of the insolvent or of any part thereof, or to

insolvent for the benefit of the creditors,

property in such manner and on such terms as t

(2) The Court may, from time to time, make such allowance as it may think

insolvent out of his property for the support of himself and his

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before the declaration of any dividend or dividends

the time being in the hands of the receiver,

he may have failed to receive before that money is applied

reason that he has not

property of the insolvent or so much thereof as can, in
without needlessly protracting the receivership, he shall
ose that if they do not
he will proceed to make a
so limited
further time for establishing his claim,
time, the property of the insolvent shall be divided
regard to the claims of any other persons.
but where the receiver refuses to pay any
application of any creditor who is entered in the schedule,
insolvent.-

the management of the
carry on the trade (if any) of the
and in any other respect to aid in administering the
the Court may direct.

family, or in consideration of

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ting the

final

limited, or if the

rd just to the

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his services if he is engaged in winding up his
time, be varied or determined by the Court.

67. Right of insolvent to surplus.

The insolvent shall be entitled to any
with interest as provided by this Act, a

thereunder.

67A. 1[Committee of inspection

(1) The Court may, if it thinks fit, authorize the creditors who have proved

appoint a committee of inspection for the purpose of insolvent' s property by the receiver.

(2) The persons appointed to a committee of inspection shall be creditors

their debts or persons holding general powers

(3) The committee of inspection shall have such powers of control over the

the receiver as may be prescribed.] Appeal to Court against

68. Appeal to Court against receiver.

If the insolvent or any of the creditors

of the receiver, he may apply to

confirm, reverse or modify the act or decision

thinks just: Provided that no application under this

expiration of twenty- one days from the date of the act or decision complained of.

PART IV PENALTIES.

69. Offences by debtors.-

If a debtor, whether before or after the making of

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estate; but any such allowance may, at any

surplus.-

surplus remaining after payment in full of his creditors

rovided and of the expenses of the proceedings taken

inspection.-

their debts to

superintending the administration of the

who have proved

powers- of- attorney from such creditors.

nspection proceedings of

receiver.

receiver.-

or any other person is aggrieved by any act or decision

1. Ins. by Act 39 of 1926. s. 5. the Court, and the Court may

complained of, and make such order as it

section shall be entertained after the

an order of adjudication,--

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e; nd e

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(a) wilfully fails to perform the duties imposed on him by section 22
or to

possession of any part of his property which is divisible among his

and which is for the time being in his possession or

person authorized by the Court to

(b) fraudulently with intent to conceal the state of his affairs or to
defeat the

Act,--

(i) has destroyed or otherwise wilfully prevented or purposely
withheld the

document relating to such of his affairs as are subject to

(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

document relating to such of his affairs as are subject to

(c) fraudulently with intent to diminish the sum to be divided among his

an undue preference to any of his creditors,

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

(ii) has made away with, charged, mortgaged or concealed any part of his

kind whatsoever, he shall be punishable on conviction 1[

extend to one year.

1. The words "by the Court" rep. by Act 12 of 1927, s. 2 and Sch.

70. 1[Procedure on charge under section 69

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 se

been committed by the insolvent, the Court may record a finding to

complaint of the offence in writing to a Magistrate of

such Magistrate shall deal with such

Criminal Procedure, 1898 , (5 of 1898).]

71. Criminal liability after discharge or composition.

Where an insolvent has been guilty of any of the offences specified in section 69, he shall not

be exempt from being proceeded against therefor by reason that he has

or that a composition or scheme of arrangement has

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creditors under this Act,

under his control to the Court or to any

take possession of it, or

objects of this

production of any

investigation under this Act, or
investigation under this Act, or
creditors or to give
creditors,--
oncealed property of any
with imprisonment which may
69.-
section 69 and appearing
that effect and make a
the first class having jurisdiction, and
complaint in the manner laid down in the Code of
composition.-
m obtained his discharge
been accepted or approved.

32

deliver up
ourt falsified any
ction to have
mplaint

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72. Undischarged insolvent obtaining credit

(1) An undischarged insolvent obtaining credit to t
any person without informing such person that he is an
conviction by a Magistrate, be punishable
six months, or with fine or with both.

(2) Where the Court has reason to believe that an undischarged
insolvent

offence referred to in sub- section (1), the Court, after

may be necessary, may send the case

may send the accused in custody or take sufficient security for his appearance before such

Magistrate; and may bind over any person to appear and give evidence on

73. Disqualifications of insolvent

(1) Where a debtor is adjudged or re

the provisions of this section, be disqualified from

(a) being appointed or acting as a Magistrate;

(b) being elected to any office of any local authority where the by election or holding or exercising any such office to which

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

1. Subs. by Act 9 of 1926, s. 11, as amended by Act 10 of 1927, original section.

(2) The disqualifications which an insolvent is subject to under this section

and shall cease if--

(a) the order of adjudication is annulled under section 35, or

(b) he obtains from the Court an order of discharge, whether absolute or

certificate that his insolvency was caused by misfortune

(3) The Court may grant or refuse such certificate as it thinks fit, but any

shall be subject to appeal.

PART V SUMMARY ADMINISTRATION

74. Summary administration.-

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credit.-

the extent of fifty rupees or upwards from

undischarged insolvent shall, on
with imprisonment for a term which may extend to
has committed the
making any preliminary inquiry that
for trial to the nearest Magistrate of the first class, and
such trial.
insolvent.-
re- adjudged insolvent under this Act, he shall, subject to
from--
appointment to such office is
no salary is attached; and
s. 3 and Sch. II, for the
shall be removed,
t conditional, with a
without any misconduct on his part.

order of refusal

33

strate

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When a petition is presented by or against a
otherwise that the property of the debtor is not likely to exceed in
1[, the Court may make an order that the debtor' s estate be
administered in a summary
manner, and thereupon the provisions of this Act shall be subject to
the
modifications, namely:--
(i) unless the Court otherwise di
the Official Gazette;

(ii) on the admission of a petition by a debtor, the property of the debtor

Court as a receiver;

(iii) at the hearing of the petition, the Court shall

debtor and determine the same by order in writing, and it shall

schedule under the provisions of section 33;

(iv) the property of the debtor shall be realised with all reasonable despatc

when practicable, distributed in a single dividend;

(v) the debtor shall apply for his discharge within six months from the date

and

(vi) such other modifications as may be prescribed with the view of saving

simplifying procedure: Provided that the Court may at any time

procedure provided for in this Act shall be followed in

thereafter the Act shall have effect

1. In Punjab read" two thousand rupees", see the Punjab Relief of (Pun. 7 of 1934), s. 4.

PART VI APPEALS

75. Appeals.-

(1) The debtor, any creditor, the receiver of any other person aggrieved by a

to or an order made in the exercise of in

District Court may appeal to the District Court,

appeal shall be final: Provided that the High court, for the purpose of satisfying itself that an

order made in any appeal decided by the District Court was according to law, may call for

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debtor, if the Court is satisfied by affidavit or
value five hundred rupees
directs, no notice required under this Act shall be published in
shall vest in the
inquire into the debts and
not be necessary to frame a
despatch and thereafter,
of adjudication;
direct that the ordinary
regard to the debtor' s estate, and
accordingly.
ousand Indebtedness Act, 1934
decision come
insolvency jurisdiction by a Court subordinate to a
and the order of the District Court upon such
34
following
assets of the
expense and
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the case and pass such order with respect thereto as it thinks fit:
Provided,
such person aggrieved by a decision of the District Court on
subordinate Court under section 4 may appeal to
mentioned in sub- section (1) of
).
(2) Any such person aggrieved by any such decision or order of a
specified in Schedule I, come to or made otherwise than in

subordinate Court, may appeal to the High

(3) Any such person aggrieved by any other order made by a District Court

appeal from an order made by a subordinate Court may

the District Court or of the High Court.

(4) The periods of limitation for appeals to the District Court and to the High

section shall be thirty days and ninety days, respectively.

PART VII MISCELLANEOUS PART VII MISCELLANEOUS

76. Costs.- The costs of any proceeding under this Act, including the costs of

debtor in the civil prison, shall, subject to any rules made

of the Court in which the proceeding is

77. Courts to be auxiliary to each other.

All Courts having jurisdiction in

shall severally act in aid of and be auxiliary to each o

order of a Court seeking aid with a request to another of the said Courts

sufficient to enable the latter Court to exercise, in regard to

such jurisdiction as either of such Courts

their respective jurisdictions.

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further, that any

appeal from a decision

the High Court on any of the grounds

section 100 of the Code of Civil Procedure, 1908 , (5 of 1908

District

appeal from an order made by a

Court.

otherwise than in
eal appeal to the High Court by leave of
Court under this
maintaining a
under this Act, be in the discretion
had.
other.-
insolvency and the officers of such Courts, respectively,
other in all matters of insolvency, and an
shall be deemed
the matters directed by the order,
er could exercise in regard to similar matters within

35

of a

Court as is

ther

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78. Limitation.-

(1) The provisions of sections 5 and 12 of the Indian Limitation Act,
1908 (9

apply to appeals and applications under t

decision under section 4 shall be deemed

(2) Where an order of adjudication has been annulled under this Act,
in

of limitation prescribed for any suit or

suit or application in respect of which

(2) of section 28] which might have been brought or made but for the
making of an order of

adjudication under this Act, the period from the date of the order of
of the order of annulment shall be excluded:

to a suit or application in respect of a debt provable but not proved
under this

79. Power to make rules.- 1[

(1) The High Court may, with the previous sanction of the State
carrying into effect the provisions of this Act.]

(2) In particular and without prejudice to the generality of the
foregoing

may provide--

(a) 2[the form of the insolvency notice under clause (a), and the
manner in

may be served under clause (b), of sub

(aa) 3[for the appointment and remuneration of receivers (other t
audit of the accounts of all receivers and the costs of

(b) for meetings of creditors,

(c) for the procedure to be followed where the debtor is a firm, 5[

(d) for the procedure to be followed in the case of estat

manner, 6[and

(e) for any matter which is to be or may be prescribed.]

(3) All rules made under this section shall be published 7[in the
Official

on such publication, have effect as if enacted in

1. Subs. by the A. O. 1937, for the original sub

f. 1- 9- 1979). 3. Cl. (a) re- lettered as cl. (aa) thereof by

the application of the Act to Bombay, a

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of 1908), shall

this Act, and for the purpose of the said section 12, a

to be a decree.

computing the period

application for the execution of a decree[other than a

the leave of the Court was obtained under sub

adjudication to the date

Provided that nothing in this section shall apply

Act.

Government, make rules for

powe

which such notice

sub- section (3) of section 6,]

than Official Receivers), the

such audit, 4[

estates to be administered in a summary

gazette, 8[and shall,

this Act.

sub- section. 2. Ins. by Act 28 of 1978, s. 3 (w. e.

s. 3, ibid. (w. e. f. 1- 9-

new cl. (aa) has been ins. here by the Presidency

36

sub- section

power, such rules

- 1979). 4. In

PresidencyIntelligent

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towns Insolvency and the Provincial Insolvency (Bombay

Amendment) Act, 1939 (Bom. 15

of 1939), s. 3. 5. The word " and " rep. by Act 39 of 1926, s. 6. 6. Ins. by s. 6, ibid. 7.

The words " in the Gazette of India or " rep. by the A. O. 1937. 8. The words "

be," rep., ibid.

80. Delegation of powers to Official Receivers

(1) The High Court, with the like sanction, may from time to time direct that,

in respect of which jurisdiction is given to the Court by this

subject to the directions of the Court, have all

(b) to frame schedules and to admit or reject proofs of creditors; 1[

(e) to make interim orders in any case of urgency; and

(f) to hear and determine any unopposed or ex

(2) Subject to the appeal to the Court provided for by section 68, any order

by the Official Receiver in the exercise of the said pow

the Court.

81. Power of State Government to bar application of certain provisions to

Courts.-

Any State Government 2[may, by notification in the Official provisions of this Act specified in Schedule

any Court or Courts having jurisdiction under this Act in any part of the territories

administered by such State Government.

82. Savings.- Nothing in this Act shall

(a) affect the Presidency- towns Insolvency Act, 1909 (3 of 1909); 3[or

(b) apply to cases to which Chapter IV of the Dekkhan Agriculturists Relief

1879), is applicable.

83. Repeals. 4[

(2) Where in any enactment or instrument in force at the date

Act, reference is made to Chapter XX (Of Insolvent

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as the case may

Receivers.-

in any matters

Act, the Official Receiver shall,

or any of the following powers, namely:

erim ex- parte application.

made or act done

powers shall be deemed the order or act of

Gazette, declare that any of the

It shall not apply to insolvency proceedings in

shall--

Act, 1879 (17 of

of the commencement of this

Judgment- debtors) of the Code of Civil

37

namely:-- 1[

certain

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Procedure, 1877 (10 of 1877), or of

any section of either of those Chapters, such

construed as applying to this Act or to the corresponding section thereof.

1. Cls. (a), (c) and (d) rep. by Act 39 of 1926, s. 7.

2. The words" with the previous sanction of the G. G. in C." rep. by Act
3

Sch. I.

3. The words and figures" or s. 8 of the Lower Burma Courts Act,
1900" rep.

1930, s. 3 and Sch. II. 4. Sub- section (1) rep. by Act 12 of

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the Code of Civil Procedure, 1882 (14 of 1882), or to

reference shall, so far as may be practicable, be

38 of 1920, s. 2 and

1927, s. 2 and Sch.

38

8 by Act 8 of