

THE PRESIDENCY- TOWNS INSOLVENCY ACT, 1909

ACT NO. 3 OF 1909 1 [12th March, 1909.]

An Act to amend the Law of Insolvency in the Presidency

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency

3;It is hereby enacted as follows:

PRELIMINARY

1. Short title and commencement.

(1) This Act may be called the Presidency

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

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

(a) " creditor" includes a decree-

(b) " debt" includes a judgment-

(c) " official assignee" includes an acting official assignee 5[and a deputy official assignee,

whether parmanent or acting];

(d) " prescribed" means prescribed by rules;

(e) " property" includes any property over which or the profits of which any person has a

disposing power which he may exercise for his own benefit;

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

(g) " secured creditor" includes a landlord who under any enactment for the time being in

force has a charge on land for the rent of that land;

1. The Act has been amended in Bombay by Bom. Acts 20 of 1933 and 15 of 1939; in Bengal

by Ben. Act 18 of 1936; and in Madras by Mad. Act 5 of 1943. 2. The words" and the town

of Rangoon" rep. by the A. O. 1937. 3. The words" and the town of Karachi" rep. by the A.

O. 1948. The words" towns of Rangoon and Karachi" had been subs. for" town of Rangoon"

by Act 9 of 1926, s. 2, and the words" town of" had been subs. for" towns of Rangoon and"

by the A. O. 1937. 4. Cls. (bb) and (bbb), ins. by Act 9 of 1926, s. 3, rep. by the A. O. 194

5. Ins. by Act 10 of 1930, s. 2.

Presidency- Towns 2

follows:--

commencement.-

Presidency- towns Insolvency Act, 1909 .

holder;

debt, and" debtor" includes a judgment- debtor; 4[

les" ded ords" 1

Presidency- towns

context,-

1948.

(h) " the Court" means the Court exercising jurisdiction under this Act; 1[

(i) " transfer of property" includes a tran

thereon;

(j) 2[" States" means all the territories 3[which immediately before the 1st November, 1956

, were comprised] within Part A States and Part C States.]

PART I CONSTITUTION AND POWERS OF COURT JURISDICTION

3. Courts having jurisdiction in insolvency.

under this Act shall be 4[the High Courts at Calcutta, Madras and Bombay].

4. Jurisdiction to be exercised by a

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 5[shall, from time to time,

assign a Judge for that purpose.

5. Exercise of Jurisdiction in chambers

the Judge of a Court exercising jurisdiction in insolvency may exercise in chambers the

whole or any part of his jurisdiction.

6. Delegation of powers to officers of Court.

(1) The Chief Justice 5[may, from time to time, direct that, in any

jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this

behalf shall have all or any of the powers in this section mentioned; and any order made or

act done by such officer in the exercis

the Court.

(2) The powers referred to in sub

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

thereon;

(b) to hold the public examination of insolvents;

1. The word" and" omitted by Act 58 of 1960, s. 3 and Sch. II.

1950. 3. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for" for the time being

transfer of any interest therein and any charge created

insolvency.- The Courts having jurisdiction in insolvency
single Judge.- All matters in respect of which
chambers.- Subject to the provisions of this Act and of rules,
Court.-
matters in respect of which
exercise of the said powers shall be deemed the order or act of
sub- section (1) are the following, namely:--

2. Cl. (j) ins. by the A. O.

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comprised". 4. Subs. by the A. O. 1948, for the original cls. (a) and (b)
as amended by Act 9

of 1926, s. 4, and the A. O. 1937. 5. The words

1948.

(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

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

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

Court.

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

of this Act, the Court shall have full power to decide all questions of
priorities, and all other

questions whatsoever, whether of law or fact, which may arise in any
case of insolvency

coming within the cognizance of the Court, or which the Court may
deem it expedient or

necessary to decide for the purpose of doing complete justice or making a complete

distribution of property in any such case: 1[Provided that, unless all the parties otherwise

agree, the power hereby given shall, for the purpose of deciding any matter ar

section 36, be exercised only in the manner and to the extent provided in that section.]

Appeals

8. Appeals in insolvency.-

(1) The Court may review, rescind or vary any order made by it under its insolvency

jurisdiction.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to

appeal as follows, namely:--

(a) an appeal from an order made by an officer of the Court empowered under section 6 shall

lie to the Judge assigned under section 4 for the transaction and disposal of matters in

insolvency and no further appeal shall lie except by leave of such Judge;

(b) save as otherwise provided in clause (a), an appeal from an order made by a Judge in the

exercise of the jurisdiction conferred by this Act shall lie

the same provisions as an appeal from an order made by a Judge in the exercise of the

ordinary original civil jurisdiction of the Court.

words" or Judicial Commissioner" rep. by the A. O.

ex- parte application;

insolvency.- Subject to the provisions

er in the same way and be subject to

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" arising under

1. Ins. by Act 19 of 1927, s. 2.

PART II PROCEEDINGS FROM ACT OF INSOLVENCY TO DIS OF INSOLVENCY

9. Acts of insolvency.- 1[

(1)] A debtor commits an act of insolvency in each of the following cases, namely;

(a) if, in the States or elsewhere, he makes a transfer of all or substantially all his property to

a third person for the benefit of his creditors generally;

(b) if, in the States or elsewhere, he makes a transfer of his property or of any part thereof

with intent to defeat or delay his creditors;

(c) if, in the States or elsewhere, he makes any transfer

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

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 be

days in execution of the decree of any Court for the payment of money;

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

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

suspend, payment of his debts;

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

(2) 3[Without prejudice to the provisions of sub

insolvency if a creditor, who has obtained a decree

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)

DISCHARGE ACTS

of his property or of any part thereof,

creditors,--

dwelling- house or usual place of business or otherwise absents

been sold or attached for a period of not less than twenty

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

decree or order against him for the payment of

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CHARGE namely;--

otherwise en twenty- one

e

1. S. 9 re- numbered as sub- section (1) thereof by Act 28 of 1978, s. 2 (w. e. f. 1

2. For cl. (i) and the proviso, applicable to Bombay only, see the Presidency

Insolvency and the Provincial Insolvency (Bombay Amendment) Act,
1939 (Bom. 15 of 1939

), s. 2. 3. Ins. by Act 28 of 1978, s. 2 (w. e. f. 1

as provided in sub- section (3) and the debtor does not comply with
that notice within the

period specified therein: Provided that where a debtor makes an
application under sub

section (5) for setting aside an insolvency notice

(a) in a case where such application is allowed by the Court, he shall
not be deemed to have

committed an act of insolvency under this sub

(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

application or the expiry of the period specif

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

(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

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

(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

any such notice as aforesaid, he shall be deemed to have complied with the insolvency notice

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ing notice--

sub- section; and

sub- section on the date of rejection of the

specified in the insolvency notice for its compliance,

sub- section (2) shall--

creditor or his

non- compliance with the notice.

or, 5

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subin

ied does not give

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

constituted a compliance with the insolvency notice had th 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 insolve grounds, namely:--

(a) that he has a counter- claim or set off against the creditor which is equal to or is in excess

of the amount due under the decree or order and

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 an 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.

act of an agent may be the act of the principal, even though the agent have no specific

authority to commit the act. 1[

1. For s. 9A, applicable to Bombay only, se

Provincial Insolvency (Bombay Amendment) Act, 1939 (Bom. 15 of 1939), s. 2.

ORDER OF ADJUDICATION

10. Power to adjudicate.- Subject to the conditions specified

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 (hereafter called an order of

adjudication) adjudging him an insolvent. E

debtor shall be deemed an act of insolvency within the meaning of this section, and on such

petition the Court may make an order of adjudication.

11. Restrictions on jurisdiction

adjudication, unless--

the actual amount due been correctly

insolvency notice on any of the following

which he could not, under any law for the

any law providing for the

se Explanation.-- For the purposes of this section, the

see the Presidency- towns Insolvency and the

in this Act, if a debtor commits

Explanation.-- The presentation of a petition by the

strictions jurisdiction.- The Court shall not have jurisdiction to make an order of

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(a) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in

execution of the decree of a Court for the payment of money in any prison to which debtors

are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or

(b) the debtor, within a year before the date of the presentation of the insolvency petition, has

ordinarily resided or had a dwelling

through an agent within the limits of the ordinary original civil jurisdiction of t

(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 c

within a year before the date of the presentation of the insolvency petition within those limits.

12. Conditions on which creditor may petition

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

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

petition, the aggregate amount of debts owing to such creditors, amounts to five hundred

rupees, and

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

and

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

before the presentation of the petition:

1[Provided that where the said period of three months referred to in clause (

day when the Court is closed, the insolvency petition may be presented on the day on which

the Court reopens].

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

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

after deducting the value so estimated in the same way as if he were an unsecured creditor.

13. Proceedings and order on creditor's petition

(1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his

behalf having knowledge of the facts.

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

execution dwelling-house or has carried on business either in person or

the Court; or

carried on business

petition.-

c) expires on a

either state that he is

creditor to the extent of the balance of the debt due to him

petition.-

e of--

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he arrived unless--

or

(a) the debt of the petitioning creditor, and

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

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

(4) The Court shall dismiss the petition

(a) if it is not satisfied with the proof of the facts referred to in sub

(b) if the debtor appears and satisfies the Court that he is able to pay his debts, or that he has

not committed an act of insolvency or that for other sufficient cause no order ought to be

made.

(5) The Court may make an order of adjudication if it is satisfied with the proof above

referred to, or if on a hearing adjourned under sub

service of the petition on him is proved, unless in its opinion the petition ought to have

presented before some other Court having insolvency jurisdiction.

(6) Where the debtor appears on the petition and denies that he is indebted to the petitioner,

or that he is indebted to such an amount

against him, the Court, on such security (if any) being given as the Court may

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

the petition on which proceedings have been stayed as aforesaid.

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

Court.

14. Conditions on which debtor may petition

(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

alleged in the petition,

petition--

sub- section (2); or

ake sub- section (3) the debtor does not appear and

as would justify the petitioner in presenting a petition

thereupon dismiss, on such terms as it thinks just,

petition.- 1[

unless--

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ereupon the

(c) an order of attachment in execution of such a decree has been made and is subsisting

against his property.

(2) 2[A debtor in respect of whom an

under the Provincial Insolvency Act, 1920 (5 of 1920), has been annulled owing to his

failure to apply or to prosecute an application for his discharge shall not be entitled to present

an insolvency petition without the leave of the Court by which the order of adjudication was

annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was

prevented by any reasonable cause from presenting or prosecuting his application, as t

may be, or that petition is founded on facts substantially different from those contained in the

petition on which the order of adjudication was made.]

15. Proceedings and order on debtor' s petiti

(1) A debtor' s petition shall allege that the debtor is unable to pay his debts, and, if the debtor

proves that he is entitled to present the petition, the Court may thereupon make an order of

adjudication, unless in its opinion the petition ought to have been presented before some

other Court having insolvency jurisdiction.

1. The original s. 14 was renumbered as sub

2. 2. Ins. by s. 2, ibid.

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

Court.

(3) 1[On the making of the order admitting his petition, a

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

(b) file such lists of creditors and debtors and afford such

prescribed, failing which the Court may dismiss his petition.]

16. Discretionary powers as to appointment of interim receiver

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

take immediate possession thereof or any part thereof, and the official assignee shall

thereupon have such of the powers

Civil Procedure, 1908 (5 of 1908), as may be prescribed.

order of adjudication, whether made under this Act or

tition petition.-

cation, sub- section (1) of that section by Act 11 of 1927, s.

debtor shall--

assistance to the Court as may be

receiver.- The Court may, if it is

ary confer able on a receiver appointed under the Code of

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the case

direct him to

17. Effect of order of adjudication

of the insolvent wherever situate shall vest in the official assignee and shall become divisible

among his creditors, and thereafter, except as directed by this Act, no creditor to whom the

insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency

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

respect of the debt or shall commence any suit or other legal proceeding except with the leave

of the Court and on such terms as the Court may impose: Provided that this section shall not

affect the power of any secured creditor to realize or otherwise

same manner as he would have been entitled to realize or deal with it if this section had not

been passed.

18. Stay of proceedings.-

(1) The Court may, at any time after the making of an order of adjudication, stay any suit or

other proceeding pending against the insolvent before any Judge or Judges of the Court or in

any other Court subject to the superintendence of the

(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

1. Ins. by Act 19 of 1927, s. 3.

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

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.

18A. 1[Control over insolvency proceedings in subordinate Courts

(1) The Court may, at any time after the presentation of an insolvency petition, stay any

insolvency proceedings pending against the debtor in any Court subj

superintendence of the Court, and may, at any time after the making of an order of

adjudication, annul an adjudication against the debtor made by any such Court.

(2) Where an adjudication is ann

property and payments duly made and all acts done by the Court whose order is annulled, or

by the receiver appointed by it or other person acting under his authority, shall be valid, but

adjudication.- On the making of an order of adjudication, the property

ors, deal with his security in the

Court.

a debtor may, on proof that an order

Courts.-

annulled under sub- section (1), all sales and dispositions of

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in

subject to the

the property vested in such Court or receiver shall vest in the official assignee, and the Court

may make such direction in regard to the custody of such property as it thinks fit.

(3) Notice of the order annulling

the Official Gazette and in such other manner as may be prescribed.]

19. Power to appoint special manager

(1) If in any case the Court, having regard to the nature of the debtor's estate or business or to

the interests of the creditors generally, is of opinion that a special manager of the estate or

business ought to be appointed to assist the

manager thereof accordingly to act for such time as the Court may authorize, and to have

such powers of the official assignee as may be entrusted to him by the official assignee or as

the Court may direct.

(2) The special manager shall give security and furnish accounts in such manner as the Court

may direct, and shall receive such remuneration as the Court may determine.

20. Advertisement of order of adjudication

the name, address and description of the insolvent, the date of the adjudication,

1. Ins. by Act 10 of 1930, s. 3.

the Court by which the adjudication i

be published 1[in the Official Gazette and in such other manner as may be prescribed.

Annulment of adjudication

21. Power for Court to annul adjudication in certain cases

(1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent,

or where it is proved to the satisfaction of the Court that the debts of the inso

full, 2[the Court shall, on the application of any person interested,] by order annul the

adjudication 3[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
reason of the provisions of sub-
section (1) of section 14, not entitled to present such
petition].

(2) For the purposes of this section, any debt disputed by a debtor
in full, if the debtor enters into a bond, in such sum and with such
sureties as the Court

may annul an adjudication under sub- section (1) shall be published in
the Official Gazette of India.

official assignee, the Court may appoint a
committee of inspection. - Notice of every order of adjudication, stating
the date of presentation of the petition, shall
be made and the date of presentation of the petition, shall
be made in all cases.

insolvent are paid in
full on the petition of a debtor who was, by
sub- section (2) of section 14, not entitled to present such
petition shall be considered as paid in full.

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insolvent

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
the debtor shall be considered as paid in full if paid into Court.

22. Concurrent proceedings in Courts in India

the Court that insolvency proceedings are pending in any other 4[
Court in India] whether

within or without the States against the same debtor and that the
property of the debtor can be

more conveniently distributed by such other Court, the Court may annul

may stay all proceedings thereon.

23. Proceedings on annulment.

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

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.

1. The words" in the Gazette of India and" rep. by the A. O. 1937. 2. Subs. by Act 3 of 1950,

s. 3, for" the Court may, on the application of any person interested". 3. Ins. by Act 11 of

1927, s. 3. 4. Subs. by the A. O. 1950, for" British Court".

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

order of adjudication is annulled as aforesaid, the Court may, if it thinks fit, recommit the

debtor to his former custody, and the jailor or keeper of t

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 s

as if such order had not been made.

(3) Notice of the order annulling an adjudication shall be published 1[in the Official Gazette

and in such other manner as may be prescribed. Proceedings consequent on order of

adjudication

24. Insolvent' s schedule.-

to a creditor who cannot be found or cannot

India.- Where it is proved to the satisfaction of

the adjudication or

annulment.-

property and payments

the Court may appoint, or, in default of any such

the prison to whose custody such

shall be deemed to be still in force against him

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(1) Where an order of adjudication is made against a de

the Court a schedule verified by affidavit, in such form and containing such particulars of and

in relation to his affairs as may be prescribed.

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

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

order,

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

service of the order.

(3) If the insolvent fails, without reaso

section, the Court may, on the application of the official assignee or of any creditor, make an

order for his committal to the civil prison.

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official

assignee may, at the expense of the estate, cause such a schedule to be prepared in manner

prescribed.

25. Protection order.-

(1) Any insolvent who shall have submitted his schedule as aforesaid may apply to the Court

for protection, and the Court may, on such application, make an order for the protection of

the insolvent from arrest or detention.

(2) A protection order may apply either to all the debts mentioned in the schedule or to any of

them as the Court may think proper, and

1. The words" in the Gazette of India and" rep

may commence and take effect at and for such time as the Court may direct, and may be

revoked or renewed as the Court may think fit.

(3) A protection order shall protect the insolvent

any debt to which such order shall apply, and any insolvent arrested or detained contrary to

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

operate to prejudice the right of any creditor in the event of such order being revoked or the

adjudication annulled.

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

insolvent shall be prima facie entitled to such order on production of a certificate signed by

the official assignee that he has so far conformed to the provisions of this Act.

debtor, he shall prepare and submit to

namely:--

reasonable excuse, to comply with the requirements of this

m rep. by the A. O. 1937.

from being arrested or detained in prison for

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btor, nable

(5) The Court may make a protection order

it thinks it necessary to do so in the interests of the creditors.

26. Meetings of creditors.-

(1) At any time after the making of an order of adjudication against an insolvent, the Court,

on the application of a creditor or of the official assignee, may direct that a meeting of

creditors shall be held to consider the circumstances of the insolvency and th

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 credito

the First Schedule shall be observed.

27. Public examination of the insolvent

(1) Where the Court makes an order of adjudication it

be appointed by the Court, of which notice shall be given to creditors in the prescribed

manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall

be examined as to his conduct, dealings and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the

time for the filing of the insolvent's schedule.

(3) Any creditor who has tendered a proof or a legal practitioner on his behalf may question

the insolvent concerning his affairs and the causes of his failure.

(4) The official assignee shall take part in the examination of the insolvent; and for the

purpose thereof, subject to such directions as the Court may give, may be represented by a

legal practitioner.

(5) The Court may put such questi

(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 no

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

(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 ord

before an insolvent has submitted his schedule if

creditors the rules in

insolvent.-

shall hold a public sitting on a day to

l questions to the insolvent as it may think expedient.

notes of the examination as

at all reasonable times.

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the insolvent' s

rs ons tes order shall

not preclude the Court from directing further examination of the insolvent whenever it may

deem fit to do so.

(8) Where the insolvent is a lunatic or suffers from any such mental or physical

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 dispe

examination, or directing that the insolvent be examined on such terms, in such manner and

at such place as to the Court seems expedient. Composition and schemes of arrangement

28. Submission of proposal and acceptance by creditors

(1) An insolvent may at any time after the making of an order of adjudication submit a

proposal for a composition in satisfaction of his debts or a proposal for

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

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 th

the opinion of the official assignee calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a

letter, in the prescribed form, addressed to

the official assignee so as to be received by him not later than the day preceding the meeting,

and any such assent or dissent shall have effect as if the creditor had been present and had

voted at the meeting.

29. Approval of proposal by Court.

(1) The insolvent or the official assignee may after the proposal is accepted by the creditors

apply to the Court to approve it, and notice of the time appointed for hearing the application

shall be given to each creditor who has proved.

dispensing with such

on creditors.-

creditor who is mentioned in the schedule, or who

e the amendment is in

Court.-

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affliction or

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(2) Except where an estate is being summarily administered or special leave of the Court ha

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 cr

for the acceptance of the proposal.

(3) The Court shall before approving the proposal hear a report of the official assignee as to

the terms thereof and as to the conduct of the insolve

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 bo

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 Cou

refuse, suspend or attach conditions to the debtor' s discharge, the Court shall refuse to

approve the proposal unless it provides reasonable security for payment of not less than four

annas in the rupee on all the unsecured

(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 out of the property of an insolvent.

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

30. Order on approval.-

(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

sections (1) and (3), shall thereupon apply, and the composition or scheme shall be binding

on all the creditors so far as relates to any debt due to them from the insolvent and provable

in insolvency.

(2) The provisions of the composition or scheme may be enforced by the Court on

application by any person interested, and any disobedience of an order of the Court made on

the application shall be deemed a contempt of Court.

31. Power to re- adjudge debtor insolvent

creditors have voted

insolvent and any objections which may be

brought by the body of creditors or in any case in which the Court is

satisfied that the Court would be required either to

declare the debtor insolvent and the debts provable against the debtor's estate.

shall be paid in the distribution of the

property of the insolvent.-

has

editors nt dy rt id subsections

(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 t

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

other respects which have been contracted before the date of such re provable in the insolvency.

32. Limitation of effect of composition or scheme

approval of a composition or scheme, the composition or scheme shall not be binding on any

creditor so far as regards a debt or liability from which, under the provisions of this Act, the

insolvent would not be discharged by an order of discharge in insolvency, unless the creditor

assents to the composition or scheme. Control over person and property of ins

33. Duties of insolvent as to discovery and realization of property.

(1) Every insolvent shall, unless prevented by sickness or other sufficient

meeting of his creditors which the official assignee may require him to attend, and shall

submit, to such examination and give such information as the meeting may require.

(2) The insolvent shall--

(a) give such inventory of his property, such list of his creditors and debtors, and of the debts

due to and from them respectively,

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

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

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

(e) generally do all such acts and things in relation to his property and the distribution of the

proceeds amongst his creditors, as may b

manager or may be prescribed or be directed by the Court by any special order or orders

to the Court that the composition or scheme

nd sub- section (1), all debts provable in

re- adjudication shall be

scheme.- Notwithstanding the acceptance and

insolvent

property.-

cause, attend any

be required by the official assignee or special

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made in reference to any particular case, or made on the occasion of any special application

by the official assignee or special manager, or any creditor or person interested.

(3) The insolvent shall aid, to the utmost of his power, in the realization of his property and

the distribution of the proceeds among his creditors.

(4) If the insolvent 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. Arrest of insolvent.-

(1) The Court may, either of its own motion or at the instance of the official assignee or of

any creditor, by warrant addressed to any police

cause an insolvent to be arrested, and committed to the civil prison or if in prison to be

detained until such time as the Court may order, under the following circumstances, namely:

-

(a) if it appears to the Court that there is probable reason for believing that he has absconded

or is about to abscond with a view of avoiding examination in respect of his affairs, or of

otherwise avoiding, delaying or embarrassi

(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 possessi

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 cour

(c) if he removes any property in his possession above the value of fifty rupees without the

leave of the official assignee.

(2) No payment or composition made or security given after arrest made under this section

shall be exempt from the provisions of this Act relating to fraudulent preferences.

35. Redirection of letters.- Where the official assignee has been appointed interim receiver

or an order of adjudication is made, the Court, on the application of the official assignee,

may, from time to time, order that for such time, not exceeding three months, as the Court

police- officer or prescribed officer of the Court,

embarrassing proceedings in insolvency against him; or

possession being taken of it by the

course of his insolvency; or

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namely:-

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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 o

otherwise as the Court directs; and the same shall be done accordingly.

36. Discovery of insolvent' s property.

(1) The Court may, on the application of the official assignee or of any creditor who has

proved his debt, at any time after an order of adjudication has been made, summon before it

in such manner as may be prescribed the insolvent or any person known or suspected to have

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

insolvent, or any person whom the Court may deem capable of giving information respecting

the insolvent, his dealings or property; and the Court may require any such

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 sitting and allowed

by it, the Court may, by warrant, cause him to be apprehended and brought up for

examination.

(3) The Court may examine any person so brought before it concerning the insolvent, his

dealings or property, and such person may be represented by a legal practitioner.

(4) 1[If on his examination any such person admits] that he is indebted to the insolvent, the

Court may, on the application of the official assignee, order him to pay to the official

assignee, at such time and in such manner as

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.

1. Subs. by Act 19 of 1927, s. 4, for" If, on the satisfied".

(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

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.

official assignee, or

property.-

n person to produce

to the Court seems expedient, the amount in

examination of any such person, the Court is

application of the official assignee,

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fficial

(6) Orders made under sub- sections (4) and (5) shall be executed in the same manner as

decrees for the payment of money or for the delivery of property under the Code of Civil

Procedure, 1908 (5 of 1908), respectively.

(7) Any person making any payment or delivery in pursuance of an order made under sub

section (4) or sub- section (5) shall by such payment or delivery be discharged from all

liability whatsoever in respect of such debt or property.

37. Power to issue commissions.

commissions and letters of request for the examination on commission or otherwise of any

person liable to examination under section 36 as it has for the examination of witnesses under

the Code of Civil Procedure, 1908 (5 of 1908). Discharge of insolvent

38. Discharge of insolvent.-

(1) An insolvent may, at any time after the order of adjudication, apply to the

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

concluded. The application shall be heard in open Court.

(2) On the hearing of the application, the Court shall take into consideration any report of the

official assignee as to the insolvent' s conduct and affairs, and, subject to the provisions of

section 39, may--

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

(b) suspend the operation of the order for a specified time, or
(c) grant an order of discharge subject to any conditions with respect to any earnings or
income which may afterwards become due to the insolvent, or
acquired property.

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

39. Cases in which the Court must refuse an

commissions.- The Court shall have the same powers to issue
re, after such examination has been
end or with respect to his after
absolute discharge.-

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subsection

Court for an

r r after-

(1) The Court shall refuse the discharge in all cases where the insolvent has committed any

offence under this Act, or under section 421 to 424 of the Indian Penal Code (45 of 1860),

and shall, on proof of any of the facts hereinafter mentioned, either

(a) refuse the discharge; or

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

(c) suspend the discharge until a dividend of not less than four annas in the rupee has been

paid to the creditors; or

(d) require the insolvent as a con
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
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
financial position within the three years immediately preceding his
insolvency;

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

(d) that the insolvent has contracted any debt provable under this
Act without having at the
time of contracting it any reasonable or probable ground of
expectation (the burden of

proving which shall lie on him) that he would be able to pay it;

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

deficiency of assets to meet his liabilities;

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

speculations or by unjustifiable extravagance in living or by gambling, or by culpable neglect

of his business affairs;

either--

condition of his discharge to consent to a decree being passed

r the Court, which

are--

lue and as sufficiently disclose his business transactions and

himself to be insolvent;

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elf

(g) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or

vexatious defence to any suit properly brought against him;

(h) that the insolvent has within three months preceding the time of presentation of the

petition incurred unjustifiable expense by bringing a frivolous or vexatious suit;

(i) that the insolvent has within three months preceding the date of the presentation of the

petition, when unable to pay his debts as they become due, given an undue preference to any

of his creditors;

(j) that the insolvent has concealed or removed his books or his property or any part thereof

or has been guilty of any other fraud or fraudulent breach of trust.

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

exercised concurrently.

(4) On any application for discharge the report of the official assignee shall be prima facie

evidence and the Court may presume the correctness of any statement contained therein.

40. Hearing of application for discharge.

day for hearing the application for discharge

sent one month at least before the day so appointed to each creditor who has proved, and the

Court may hear the official assignee and may also hear any creditor. At the hearing, the Court

may put such questions to the insolvent and receive such evidence as it may think fit.

41. Power to annul adjudication on failure to apply for discharge

not appear on the day so appointed for hearing h

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.

42. Renewal of application and variation of terms of order.

(1) Where the Court refuses the discharge of the insolvent it may, after such time and in such

circumstances as may be prescribed, permit him to renew his application.

(2) Where an order of discharge is made subject to conditions and at any time after the

expiration of two years from the date of the order the insolvent shall satisfy the Court that

ng urt discharge.- Notice of the appointment by the Court of the

shall be published in the prescribed manner and

ns discharge.- If an insolvent does

his application for discharge or if an insolvent

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there is no reasonable probability of his being in a position to comply with the terms of such

order, the Court may modify the terms of the order, or of any substituted order, in such

manner and upon such conditions as it may think fit.

43. Duty of discharged insolvent to assist in realization of property.

insolvent shall, notwithstanding his discharge, give such assistance as the official assignee

may require in the realization and distribution of such of his proper

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

but before its revocation.

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

(1) in the case of a settlement made before and in consideration of marriage where the settlor

is not at the time of making the settlement able to pay all his debts without the aid of the

property comprised in the settlement; or

(2) in the case of any covenant or contract made in consideration of marriage for the future

settlement on or for the settlor's wife or children of any money or property wherein he

not at the date of his marriage any estate or interest (not being money or property of or in

right of his wife); if the settlor is adjudged insolvent or compounds or arranges with his

creditors, and it appears to the Court that the settlement, covenant

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 conditio

45. Effect of order of discharge.

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

(a) any debt due to the Government;

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

he was a party; or

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to

which he was a party; or

robability property.- A discharged

property as is vested in the
or thing duly done subsequent to the discharge,
say:--
or contract was made in
conditions or refuse to approve a composition or arrangement.
discharge.-
from--
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(d) any liability under an order for mai

Criminal Procedure, 1898 (5 of 1898).

(2) Save as otherwise provided by sub

insolvent from all debts provable in insolvency.

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

of the proceedings therein.

(4) An order of discharge shall not release any person who at the
date of the presentation of

the petition was a partner or coany

joint contract with him, or any person who was surety or in the n

PART III ADMINISTRATION OF PROPERTY PROOF OF DEBTS

46. Debts provable in insolvency.

(1) Demands in the nature of unliquidated

contract or breach of trust shall not be provable in insolvency.

(2) A person having notice of the presentation of any insolvency
petition by or against the

debtor shall not prove for any debt or liability contracted by the debtor subsequently to the

date of his so having notice.

(3) Save as provided by sub- sections (1) and (2), all debts and liabilities, pres

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 de

(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 s

provable in insolvency. Explanation.

compensation for work or labour done, any obligation or possibility of an obligation to pay

money or money' s worth on the brea

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

maintenance made under section 488 of the Code of

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

rovable rder trustee with the insolvent or was jointly bound or had made

any nature of a surety for him.

insolvency.-

damages arising otherwise than by reason of a

but debts provable in insolvency.

ingencies, shall be deemed to be a debt not

Explanation.-- For the purposes of this section "liability" includes any

breach of any express or implied covenant, contract,

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aintenance f present or future,

bts hall ch

any express or implied engagement, agreement or undertaking to
pay, or capable of resulting

in the payment of, money or money' s worth, whether the payment is,
as respects amount,

fixed or unliquidated; as respects time, present or future, certain or
dependent on any

contingency or contingencies; as to mode of valuation, capable of
being ascertained by fixed

rules, or as matter of opinion.

47. Mutual dealings and setinsolvent

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

the balance of the account, and no more, shall be claimed or paid on
either side respectively:

Provided that a person shall not be entitled under this section to
claim the benef

off against the property of an insolvent in any case where he had at the time of giving credit

to the insolvent notice of the presentation of any insolvency petition by or against him.

48. Rules as to proof of debts.-

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

49. Priority of debts.-

(1) In the distribution of the property of the insolvent there shall be paid in priority to all

other debts--

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

(b) all salary or wages of any clerk, servant or labourer in respect of services rendered to

insolvent during four months before the date of the presentation of the petition, not exceeding

three hundred rupees for each such clerk, and one hundred rupees for each such servant or

labourer; and

(c) rent due to a landlord from the insolvent: provided the amount payable under this clause

shall not exceed one month's rent.

(2) The debts specified in subbe

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.

ied ency off.- Where there have been mutual dealings between an

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

With respect to the mode of proving debts, the right of proof

observed.

section (1) shall rank equally between themselves, and shall
be 25

benefits of any setoff
the
selves,

(3) Subject to the retention o

administration or otherwise, the debts specified in sub

forthwith in so far as the property of the insolvent is sufficient to
meet them.

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

payment of the partnership debts, and the separate property of each
partner shall be

applicable in the first instance in payment of his

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 whic

six per centum per annum on all debts proved in the insolvency.

50. Rent due before adjudication.

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. Property available for

51. Relation of assignee' s title.

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

(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 insolv

that no insolvency petition or order of adjudication shall be rendered invalid by reason of any

act of insolvency committed anterior to the debt of the petitioning creditor.

of such sums as may be necessary for the expenses of

sub- section (1) shall be discharged

separate debts. Where there is a surplus of

te which the debtor is adjudged an insolvent at the rate of

adjudication.- After an order of adjudication has been made no

payment of debts

title.- The insolvency of a debtor, whether the same takes place

at--

insolvency petition: Provided

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52. Description of insolvent' s property divisible amongst creditors.

(1) The property of the insolvent divisible amongst his creditors, and in this Act referred to

as the property of the insolvent, shall not

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

(b) the tools (if any) of his trade and

and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and

other necessities 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 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 insolven

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 grow

business shall not be deemed goods within the meaning of clause (c): Provided also that the

true owner of any goods which have become divisible among the creditors of the insolvent

under the provisions of clause (c) may prove for the value of such goods.

EFFECT OF INSOLVENCY ON ANTECEDENT TRANSACTIONS

53. Restriction of rights of creditor under execution.

(1) Where execution of a decree has issued against the property of a debtor, no person shall

be entitled to the benefit of the execution against the official assignee, except in respect of

assets realised in the course of the execution by sale or otherwise 1[before the date of the

admission of the insolvency petition].

(2) Nothing in this section shall affect the right of a secured creditor in respect of pr

against which a decree is executed.

scription creditors.-

comprise the following particulars, namely:

the necessary wearing apparel, bedding, cooking vessel,

at the commencement of

ect insolvency in the possession, order or

growing due to the insolvent in the course of his trade or

execution.-

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namely:--

cy ing property

(3) A person who in good faith purchases the property of a debtor under a sale in execution

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

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

Where execution of a decree has issued against any property of a debtor which is saleable in

execution, and before the sale thereof notice is given to the Court executing the decree that an

order of adjudication has been made against the debtor, the Court shall, on application, direct

the property, if in the possession of the Court, to be delivered to the official assignee, but

costs of the execution shall be a first charge on the property so delivered, and the official

assignee may sell the property or an adequate part thereof for the purpose of satisfying the

charge.

55. Avoidance of voluntary transfer.

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 adjudg

two years after the date of the transfer, be void against the official assignee.

56. Avoidance of preference in certain cases.

(1) Every transfer of property, every payment made, every obligation incurred, and every

judicial proceeding taken or suffered by any person unable to pay his debts as they become

due from his own money in favour of any creditor, with a view of giving that cre

ference over the other creditor, 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.

1. Subs. by Act 3 of 1950, s. 4, for" before the date of the order of adjudic

had notice of the presentation of any insolvency petition by or against the debtor".

57. Protection of bona fide transactions.

to the effect of insolvency on an execution and with respect to the avoidance of certain

transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency

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

assignee.

execution.-

transfer.- Any transfer of property, not being a transfer made

adjudged insolvent within

adjudication and before he

transactions.- Subject to the foregoing provisions with respect

fect ent 28

the

ed creditor a
ation insolvency--

- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration; or
- (d) any contract or dealing by or with the insolvent for valuable consideration: Provided that

any such transaction takes place before the date of the order of adjudication and that the

person with whom such transaction takes place has not at the time notice of the presentation

of any insolvency petition by or against the debtor. Realization of property

58. Possession of property by official assignee.

(1) The official assignee shall, as soon as may be, take possession of the deeds, books and

documents of the insolvent and all other parts of the property capable of manual delivery.

(2) The official assignee shall, in relation to and for the purpose of acquiring or retaining

possession of the property of the insolvent, be in the same position as if he were a receiver of

the property appointed under the Cod

may on his application enforce such acquisition or retention accordingly.

(3) Where any part of the property of the insolvent consists of stock, share

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 in

(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,

insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of

Court, and shall be punishable accordingly on the application of the official assignee.

59. Seizure of property of insolvent.

(1) The Court may grant a warrant to any prescribed officer of the Court or any police

officer above the rank of a constable to se

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.

assignee.-

Code of Civil Procedure, 1908 (5 of 1908), and the Court

shares in ships, shares,

insolvent.

which he is not by law entitled to retain as against the

insolvent.-

seize any part of the property of an insolvent in the

ding 29

e s policeize

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is

concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a

search- warrant to any such officer as aforesaid who may execute it according to its tenor.

60. Appropriation of portion of pay or othe

(1) Where an insolvent is an officer of 1[the Indian Army or Navy], or an officer or clerk or

otherwise employed or engaged in the civil service of the Government, the official

shall receive for distribution amongst the creditors so much of the insolvent' s pay or salary

liable to attachment in execution of a decree as the Court may direct.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the

Court may, at any time after adjudication and from time to time, make such order as it thinks

just for the payment to the official assignee, for distribution among the creditors of so much

of such salary or income as may be liable to attachment in execution of a decree, or of any

portion thereof.

61. 2[Vesting and transfer of property.

official assignee to official assignee, and shall vest in the official assignee for the time being

during his continuance in office, without any transfer whatever.

62. Disclaimer of onerous property.

(1) Where any part of the property of an insolvent consists of land of any tenure burdened

with onerous covenants, of shares or stocks in companies, of
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, notwithstan
have taken

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

other income to creditors.-
uch property.- The property of the insolvent shall pass from
property.-
unprofitable contracts, or of any
notwithstanding that he may have endeavoured to sell or
ncy 30
assignee
ding

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 kno

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 res

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 liabil

63. Disclaimer of lease- holds.-

the official assignee shall not be entitled to disclaim any leasehold interest

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 im

the tenancy, as the Court thinks just.

64. Power to call on official assignee to disclaim.

entitled to disclaim any property

in writing has been made to the official assignee by any person interested in the property

requiring him to decide whether he will disclaim, and the official assignee has for a period of

twenty- eight days after the receipt of the application, or such extended period as may be

allowed by the Court, declined or neglected to give notice that he disclaims the property; and

in the case of a contract, if the official assignee, after such application as

within the said period or extended period disclaim the contract, he shall be deemed to have

adopted it.

65. Power for Court to rescind contract.

who is, as against the official assignee, entitled to the benefit or subject to the burden of a

knowledge of the

inter respect of the property

liabilities of any other person.

- Subject always to such rules as may be made in this behalf,

without the leave

improvements and other matters arising out of

disclaim.- The Official assignee shall not be

in pursuance of section 62 in any case where an application

aforesaid, does not

contract.- The Court may, on the application of any person

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wledge pect provements he

contract made with the insolvent, make an order rescinding the contract on such terms as to

payment by or to either party of

otherwise, as to the Court may seem equitable, and any damages payable under the order to

any such person may be proved by him as a debt under the insolvency.

66. Power for Court to make vesting order in respect of disclaimed property.

(1) The Court may, on the application of any person either claiming any interest in any

disclaimed property, or under any liability not discharge by this Act in respect of any

disclaimed property, and on hearing such persons as it thinks fit, make an order for

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 t

vesting order being made, the property comprised therein shall vest accordingly in the person

therein named in that behalf without any transfer for the purpose: Provided always, that,

where the property disclaimed is of a leaseh

order in favour of any person claiming under the insolvent, whether as under

mortgagee except upon the terms of making such person subject to the same liabilities and

obligation 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

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

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 h

insolvency petition was filed, and (if the case so requires) as if the lease had comprised only

the property comprised in the vesting order.

ther damages for the non-performance of the contract, or

thinks just; and on any such

leasehold nature, the Court shall not make a vesting

undermortgagee

under-lessee or mortgagee declining to

e character, and either

him at the date when the

32

property.-

the

hinks old - lessee or as

im

67. Persons injured by disclaimer may

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 the same as a debt under the insolvency.

68. Duty and powers of official assignee as to realization.

(1) Subject to the provisions of this Act, the official assignee shall, with all convenient

speed, realize the property of the insolvent, and for that purpose may

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

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

any of the following things, namely:

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

winding up on the same;

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

the insolvent;

(e) employ a legal practitioner or other agent to take any proceedings or do any business

which may be sanctioned by the Court;

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

payable at a future time or fully paid shares, debentures or debenture stock in any limited

company subject to such stipulations as to security and otherwise as the Court thinks fit;

(g) mortgage or pledge any par

money for the payment of his debts or for the purpose of carrying on the business;

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

terms as may be agreed upon;

(i) divide in its existing form amongst the creditors, according to its estimated value, any

property which, from its peculiar nature or

advantageously be sold.

(2) 1[The official assignee shall account to the Court and pay over all monies and deal with

all securities in such manner 2[as is

1. In the application of the Act to Bombay, this sub

Presidency- towns Insolvency (Bombay Amendment) Act, 1933
(Bom. 20 of 1933), s. 11

and Sch. I. 2. For Madras, the words" as is lai

the Presidency- towns Insolvency (Madras Amendment) Act, 1943
(Mad. 5 of 1943), s. 3.

prove.- Any person injured by the operation of a

may--

r namely:--

itioner part of the property of the insolvent for the purpose of raising

debts, claims and liabilities, on such

other special circumstances, cannot readily or

prescribed or as the Court directs.

sub- section has been repealed: see the

laid down in this Act or" have been ins. here by

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DISTRIBUTION OF PROPERTY

69. Declaration and distribution of dividends.

(1) The official assignee shall, with all convenient speed, declare and distribute dividends

amongst the creditors who have proved their debts.

(2) The first dividend (if any) shall be declared and be distributed within 1[one year] after

the adjudication, unless the official assignee satisfies the Court that there is sufficient reason

for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be

declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend, the official assignee shall cause notice of his intention to do

so to be published in the prescribed manner, and shall also send reasonable notice thereof to

each creditor mentioned in the insolvent' s schedule who has not proved his debt.

(5) When the official assignee has declared a dividend, he shall send to each creditor who

has proved a notice showing the amount of the dividend, and when and how it is payable,

and, if required by any creditor, a statement in the prescribed form as to the particulars of the

estate.

70. Joint and separate properties.

(1) Where one partner in a firm is

indebted jointly with the other partners in the firm or any of them shall not receive any

dividend out of the separate property of the insolvent until all the separate creditors have

received the full amount of their respective debts.

71. Calculation of dividends.-

(1) In the calculation and distribution of dividends, the official assignee shall retain

hands] sufficient assets to meet--

(a) debts provable in insolvency and appearing from the insolvent's statements or otherwise

to be due to persons resident in places so distant that in the

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.

dividends.-

itor, properties.-

adjudged insolvent, a creditor to whom the insolvent is

--

ordinary course of communication

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2[in his

1. Subs. by Act 3 of 1929, s. 2, for " six months". 2. For Madras, read:" under h

see the Presidency- towns Insolvency (Madras Amendment)

(2) Subject to the provisions of sub

dividends.

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

creditor who has not proved his debt before the declaration of any dividend or dividends shall

be entitled to be paid out of any money for the time being 2[in the hands] of the official

assignee any dividend or dividends which he may have failed to r

applied to the payment of any future dividend or dividends, but he shall not be entitled to

disturb the distribution of any dividend declared before his debt was proved by reason that he

has not participated therein.

73. Final dividend.-

(1) When the official assignee has realized all the property of the insolvent, or so much

thereof as can, in his opinion, be realized without needlessly protracting the proceedings in

insolvency, he shall, with the leave of the Court, declare a final dividend;

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

dividend without regard to their claims.

(2) bnAfter 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.

74. No suit for dividend.- No suit for a dividend shall lie against the official assignee, but,

where the official assignee refuses to pay any dividend, the Court may, on the application of

the creditor who is aggrieved by such refus

own money interest thereon at such rate as may be prescribed for the time that it is withheld,

and the costs of the application.

Act, 1943 (Mad. 5 of 1943), s.

sub- section (1), all money 1[in hand] shall be distributed as

receive, before that money is

but, before so

notice, he will proceed to make a final

After r refusal, order him to pay it, and also to pay out of his

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his control"--

4.

dividend.- Any

eeceive, al,

75. Power to allow insolvent to manage property, and allowance to insolvent for

maintenance or service.-

(1) Subject to such conditions and limitations as may be prescribed, the official assignee may

appoint the insolvent himself to superintend the management of the property of the insolvent

or of any part thereof, or to carry on the trade (if any) of the insolvent,

1. For Madras, read:" realized by the official assignee"

Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 4. 2.
For Madras, read:"

under the control"-- see s. 5, ibid. 3. S. 74 has been amended in its
application to Bombay and

Madras by the Presidency- towns Insolvency (Bombay Amendment)
Act, 1933 (Bom. 20 of

1933), s. 2 and the Presidencyof

1943), s. 6.

for the benefit of his creditors, and in any other respect to aid in
administering the property in

such manner and on such terms as the official assignee may direct.

(2) Subject as aforesaid, the Court may, from time to time, make such
allowance as it thinks

just to the insolvent out of his property, for the support of the
insolvent and his family, or in

consideration of his services, if he is engaged in winding up his
estate, but any such

allowance may at any time be varied or determined by the Court.

76. Right of insolvent to surplus

after payment in full of his creditors, with interest, as provided by
this Act and of the

expenses of the proceedings taken thereunder.

PART IV OFFICIAL ASSIGNEES

77. Appointment and removal of official assignees of insolvent' s
estate.

(1) (a) The Chief Justice of the High Court at Madras may from time
to time appoint

substantively or temporarily such persons as he thinks fit

insolvents' estates and such person or persons as he thinks fit to the
office of the deputy

official assignee for the said Court and may, with the concurrence of a majority of the other

Judges of the Court, remove the

any cause appearing to the Court sufficient.

imself assignee"-- see the Presidency

ent) towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5

surplus.- The insolvent shall be entitled to any surplus remaining estate.-

to the office of official assignee of

person for the time being holding any of the said offices for

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(b) The State Government of West Bengal shall, after consultation with, and with the

concurrence of, the Chief Justice of the High Court at Calcutta, appoint substantively or

temporarily a person to the office of official assignee of insolvents' estates for the said Court

and may, after the like consultation and with the like concurrence, appoint subs

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 2[may from time to

time appoint substantively or temporarily such person as the State Government thinks fit to

the office of official assignee of insolvents' estates and such person or persons

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

7, and Act 10 of 1930, s. 4. In its application to Calcutta, s. 77 had been previously amended

by the Presidency- towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), s. 3.

In its application to Madras, this section has been amended by the Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 7. 2. The words" and for

the Court of the Judicial Commissioner of Sind, the Provincial Government of Sind" rep. by

the A. O. 1948.

as the State Government thinks fit to the o

(1A) 1[Subject to rules made under section 112, 2[the deputy official assignee shall have all

the powers and shall discharge all the duties and in exercise of such discharge of such duties shall be subject to all the liabilities of the official assignee under this

Act.]

(2) Every official assignee 1[and every deputy official assignee] shall give

shall be subject to such rules and shall act in such manner as may be prescribed.

(3) 3[Notwithstanding anything in sub

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 4[Indian Insolvency Act, 1848 , 11 and 12 Vict., c. 21. 5[shall, without

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 6[

respectively. 7[

78. Power to administer oath.

verifying proofs, petitions or other proceedings under this Act,
administer oaths.

oint sub- section (1) as amended by Act 9 of 1926,

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office of the deputy official assignee.]

such powers and in the

such security and

sub- section (1), the persons substantively or temporarily

e oath.- An official assignee may, for the purpose of affidavits

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substantively or

s.

Presidency- towns

h further

79. Duties as regards the insolvent

(1) The duties of an official assignee shall have relation to the
conduct of the insolvent as

well as to the administration of his estate.

(2) In particular it shall be the duty of the official assignee

(a) to investigate the conduct of the insolvent and to report to the
Court upon any application

for discharge, stating whether there is re

act which constitutes an offence under

1. Ins. by Act 10 of 1930, s. 4. 2. In Calcutta read" 112A" for" 112": see
the Presidency

towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936),
s. 3 (b

section has been replaced by another in Calcutta: see s. 3 (c), ibid. 4.
Rep. by this Act. 5. The

words" and in the Chief Court of Lower Burma under that Act as
applied by the Lower

Burma Courts Act, 1900" rep. by the A. O. 1937. 6. The wor

Lower Burma" rep., ibid. 7. For s. 77A, applicable to Bombay and
Madras, see the

Presidency- towns Insolvency (Bombay Amendment) Act, 1933
(Bom. 20 of 1933), s. 3 and

the Presidency- towns Insolvency (Madras Amendment) Act, 1
respectively.

this Act or under sections 421 to 424 of the Indian Penal Code (45 of
1860), 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 prescribed.

80. Duty to furnish list of creditors.

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.

81. Remuneration.-

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

insolvent' s conduct.-

assignee--

reason to believe that the insolvent has committed any

b). 3. This sub

words" and in the Chief Court of

1943 (Mad. 5 of 1943), s. 8

creditors.- The official assignee shall, whenever required by any

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ason Presidency-

). subsection

ds" 943

(2) No remuneration whatever beyond that referred to in sub

an official assignee as such. 1[

82. Misfeasance.- The Court shall call the official assignee to account for any misfeasance,

neglect or omission which may appear in his accounts or otherwise, and may require the

official assignee to make good any loss which the estate of the insolvent may have sustained

by reason of the misfeasance, neglect or omission. 1[

83. Name under which to sue or be sued.

name of" the official assignee of the property of, an insolvent," inserting the name of the

insolvent, and by that name may hold property of every description, make contracts, enter

into any engagements binding on himself and his successors in office,
and do all other acts

necessary or expedient to be done in the execution of his office.

84. Office vacated by insolvency.

assignee, he shall thereby vacate the office of official assignee. 1[

1. In the application of the Act to Madras, ss. 81 and 83 have been
repealed, see the

Presidency- towns Insolvency (Madras Amendment) Act, 1943 (Mad.
5 of 1943), ss.

12. In the application of the Act to Bombay, s. 84 has been repealed,
see the Presidency

towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933
) , s. 11. For ss. 81,

81B, 82, 82A, 82B, 82C and 84A, as applicable to Calcutta, see the
Preside

Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), ss. 4 to
7. For ss. 82 and 83,

as applicable to Bombay, see Bombay Act 20 of 1933, ss. 4 and 5. For
ss. 82, 82A, 82B, 84

and 84A, as applicable to Madras, see Madras Act 5 of 1943, ss.

85. Discretionary powers and control thereof.

(1) Subject to the provisions of this Act and to the directions of the
Court, the official

assignee shall, in the administration of the property of the insolvent
and in the distribution

thereof amongst his creditors, have regard to any resolution that may
be passed by the

creditors at a meeting.

(2) The official assignee may, from time to time, summon meetings of
the creditors for the

purpose of ascertaining their wishes, and it shall be his duty to
summon meetings at such

sub- section (1) shall be received by

f sued.- The official assignee may sue and be sued by the

ding insolvency.- If an order of adjudication is made against an
official

11 and 14.

thereof.-

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9 and

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times as the creditors, by resolution at any meeting, or the Court may
dire

requested in writing to do so by one

(3) The official assignee may apply to the Court for directions in
relation to any particular

matter arising under the insolvency.

(4) Subject to the provisions of this Act, the official assignee shall use
his own discretion in

the management of the estate and its distribution among the
creditors.

86. Appeal to Court.- If the insolvent or any of the creditors or any
other person is aggrieved

by any act or decision of the official assignee, he may appeal to the
Court, and the Court may

confirm, reverse or modify the act or decision complained of, and
make such order as it

thinks just.

87. Control of Court.-

(1) If any official assignee does not

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.

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

the official assignee.

PART V COMMITTEE OF INSPECTION

88. Committee of inspection.- The Court may, if it so thinks fit,
authorize the creditors who

have proved to appoint from among the creditors or holders of

1. In the application of the Act to Bombay, this sub

Presidency- towns Insolvency (Bombay Amendment) Act, 1933
(Bom. 20 of 1933), s. 11

and Sch. I. general proxies or general powers

of inspection for the purpose of superintending the administration of
the insolvent' s property

direct, or whenever

one- fourth in value of the creditors who have proved.

faithfully perform his duties and duly observe all the

all ncy sub- section has been repealed, see the

powers- of- attorney from such creditors, a commit

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ct, committee

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 prove

89. Control of committee of inspection over official assignee.

such powers of control over the proceedings of the official assignee as may be prescribed.

PART VI PROCEDURE

90. Powers of the Court.-

(1) In proceedings under this Act the Court shall have the like powers and follow the like

procedure as it has and follows in the

Provided that nothing in this sub

the Court under this Act.

(2) Subject to the provisions of this Act and rules, the costs of and incidental to any

proceeding in the Court shall be in the discretion of the Court.

(3) The Court may at any time adjourn any proceedings before it upon such

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

attending the examination by illness or absence abroad. 1[

1. Sub- section (8) rep. by the A. O. 1948.

91. Consolidation of petitions.

against the same debtor or against joint debtors, or where joint debtors file separate petitions,

proved.

The committee shall have

exercise of its ordinary original civil jurisdiction:

sub- section shall in any way limit the jurisdiction conferred on

s terms, if any, as

he is unavoidably prevented from

petitions.- Where two or more insolvency petitions are presented

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the Court may consolidate the proceedings or any of them on such terms as the Court thinks

fit.

92. Power to change carriage of petition.

diligence on his petition, the Court may substitute as petitioner any other creditor to whom

the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

93. Continuance of proceedings on death of debtor.

insolvency petition has been presented dies, the pr
Court otherwise orders, be continued as if he were alive.

94. Power to stay proceedings.-

order staying the proceedings under an insolvency petition, either altogether or for a limited

time, on such terms and subject to such conditions as the Court thinks just.

95. Power to present petition against a partner

entitle him to present an insolvency petition against all the partners in a firm may present a

petition against any one or more partners in the firm without including the others.

96. Power to dismiss petition against some respondents only.

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

97. Separate insolvency petitions against partners.

been made on an insolvency petition against or by one partner in a firm, any other

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 and

98. Suits by official assignee and insolvent's partners.

(1) Where a partner in a firm is adjudged insolvent, the C

assignee to continue or commence and carry on any suit or other proceeding in his name and

petition.- Where the petitioner does not proceed with due

debtor.- If a debtor by or against whom an

proceedings in the matter shall, unless the

- The Court may, at any time, for sufficient reason, make an

partner.- Any creditor whose debt is sufficient to

only.- Where there are more

against the other or others of them.

partners.- Where an order of adjudication has

under the petitions as it thinks just.

partners.-

Court may authorize the official

42

ceedings t insolvency

er ourt

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

notice of the application shall be given to the insolvent' s partner,

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

99. Proceedings in partnership name.

(1) Any two or more persons, being partners, or any person carrying on

partnership name, may take proceedings or be proceeded against under this Act in the name

of the firm: Provided that in that case the Court may, on application by any person interested,

order the names of the persons who are partners in th

carrying on business under a partnership name, to be disclosed in such manner and verified

on oath or otherwise, as the Court may direct.

(2) In the case of a firm in which one partner is an infant, an adjudication order may be

made against the firm other than the infant partner.

100. Warrants of Insolvency Courts.

(1) A warrant of arrest issued by the Court may be executed in the same manner and subject

to the same conditions as a warrant of arrest issued under the Code of Criminal Procedure,

1898 (5 of 1898), may be executed.

(2) A warrant to seize any part of the property of an insolvent, issued by the Court under

section 59, sub- section (1), shall be in the form prescribed, and sections 77 (2), 79, 82, 83, 84

and 102 of the said Code shall, so far as may be, appl

(3) A search- warrant issued by the Court under section 59, sub

executed in the same manner and subject to the same conditions as a search

property supposed to be stolen may be executed under the said Code.

PART VII LIMITATION

sub- section (1),
and he may show cause
in respect thereof as the Court directs.
name.-
business under a
the firm, or the name of the person
Courts.-
apply to the execution of such warrant.

sub- section (2), may be

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e y search- warrant for

101. Limitation of appeals.- The period of limitation for an appeal
from any act or decision

of the official assignee, or from an order made by an officer of the
Court empowered under

section 6, shall be twenty days from the date of such act, decision or
order, as the case may

be. 1[

1. For s. 101A, applicable to Bombay only, see the Presidency
Amendment) Act, 1939 (Bom. 15 of 1939), s. 2.

101A. 1[Exclusion of time in computation of period of limitation in
certain cases.

Where an order of adjudication has been annulled under this Act, i

limitation prescribed for any suit or other legal proceeding (other
than a suit or legal

proceeding in respect of which the leave of the Court was obtained
under section 17) which

might have been brought but for the making of an o

period from the date of the order of adjudication to the date of the order of annulment shall be

excluded: Provided that nothing in this section shall apply to any suit or other legal

proceeding in respect of a debt provable but not proved under this Act.]

PART VIII PENALTIES

102. Undischarged insolvent obtaining credit.

to the extent of fifty rupees or upwards from any

he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with

imprisonment for a term which may extend to six months, or with fine, or with both.

103. Punishment of insolvent for certain offences.

(a) fraudulently with the intent to conceal the state of his affairs

this Act,--

(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

Act, or

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

Presidency- towns Insolvency

in computing the period of

order of adjudication under this Act, the

credit.- An undischarged insolvent obtaining credit

person without informing such person that

offences.- Any person adjudged insolvent who

or to defeat the objects of

to investigation under this

(Bombay

cases.-

n rder who--

(iii) has made false entries in, or withheld entries from, or

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

giving an undue preference to any of the said creditors,

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

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

kind soever,

1. Ins. by Act 3 of 1950, s. 5. shall on conviction be punishable with imprisonment for a term

which may extend to two years.

103A. 1[Disqualifications of insolvent

(1) Where a debtor is adjudged or readjudged insolvent under this Act, he shall, subject to

the provisions of this section, be disqualified

(a) being appointed or acting as a Magistrate;

(b) being elected to any office of any local authority where the appointment to such office is

by election, or holding or exercising any such office to which no salary is attached; and

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

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

and shall cease if--

(a) the order of adjudication is annulled under sub

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

certificate that his insolvency was caused by misfortune without any misconduct on his part.

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

104. 2[Procedure on charge under section 103.

(1) Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary,

that there is ground for inquiring into any offence referred to in section 103 and appearing to

have been committed by the insolvent, the Court may record a finding to that effect and make

a complaint of the offence in writing to a Presidency Magistrate or a Magistrate of the first

class having jurisdiction, and such Magistrate shall deal with such complaint in t

laid down in the Code of Criminal Procedure, 1898 (5 of 1898).

wilfully altered or falsified, any

amongst his creditors or of

creditors,--

insolvent.-

from--

sub- section (1) of section 21, or

103.-

mitted 45

the manner

(2) Any complaint made by the Court under sub

of the Court as the Court may appoint in

105. Criminal liability after discharge or composition.

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.

1. Ins. by Act 11 of 1920, s. 2. 2. Subs. by Act 9 of 1926, s. 9, for the original s. 104.

PART IX SMALL INSOLVENCIES

106. Summary administration in small cases.

(1) Where the Court is satisfied by affidavit or otherwise, or the official assignee reports to

the Court, that the property of an insolvent is not likely to exceed in value three thousand

rupees or such other less amount as may be prescribed, the Court may make an order that the

insolvent's estate be administered in a summary manner, and thereupon

Act shall be subject to the following modifications, namely:

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

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

official assignee;

(c) the estate shall, where practicable, be distributed in a single divi

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

simplifying procedure: Provided that nothing in this section shall permit the modification of

the provisions of this Act relating to the discharge of the insolvent.

(2) The Court may at any time, if it thinks fit, revoke an order for the summary

administration of an insolvent' s estate.

PART X SPECIAL PROVISIONS

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

petition shall be presented against any corporation or against any association or company

registered under any enactment for

108. Administration in insolvency of estate of person dying insolvent.

sub- section (1) may be signed by such officer

this behalf.]

composition.- Where an insolvent has been guilty

oceeded cases.-

the provisions of this

namely:--

dividend;

his proceedings.- No insolvency

the time being in force.

insolvent.-

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(1) Any creditor of a deceased debtor whose debt would have been sufficient to support an

insolvency petition against the debtor, had he been alive, may present to the Court within the

limits of whose ordinary original civil jurisdiction the debtor resided or

for the greater part of the six months immediately prior to his decease, a petition in the

prescribed form praying for an order for the administration of the estate of the deceased

debtor under this Act.

(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

of the debts owing by the deceased, make an order for the administration in insolvency of the

deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

(3) A petition for administration under this section shall not be presented to the Court after

proceedings have been commenced in any Court of justice for the administration of the

deceased debtor's estate; but that Court may in that case

insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in

insolvency under this Act, and thereupon the last

the administration of the estate of the d

as under an administration order made on the petition of a creditor.

109. Vesting of estate and mode of administration.

(1) Upon an order being made for the administration of a deceased debtor's estate under

section 108, the property of the debtor shall vest in the official assignee of the Court, and he

shall forthwith proceed to realize and distribute the same in accordance with the provisions of

this Act.

(2) With the modification hereinafter mentioned, all the provisions of Part III, relating to the

administration of the property of an insolvent, shall, so far as the same are applicable, apply

to the case of such administration order in like manner as to an order of adjudication under

this Act.

(3) In the administration of the property of the deceased debtor under an order of

administration, the official assignee shall have regard to any claims by the legal

representative of the deceased debtor to payment of the proper funeral and testamentary

expenses incurred by him in and about the debtor' s estate; and those claims shall be deemed

carried on business

will be sufficient for the payment

case, on proof that the estate is

last- mentioned Court may make an order for

deceased debtor, and the like consequences shall ensue

administration.-

eed 47

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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 such surplus shall be paid over to the legal representative of the deceased debtor' s estate, or dealt with in such other manner as may be prescribed.

110. Payments or transfer by legal representatives.

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

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

111. Saving of jurisdiction of Administrator

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

PART XI RULES

112. 1[Rules.-

(1) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of

(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 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;

Act in case of insolvency,

representatives.-

representative or by a District

Administrator- General.- The provisions of sections 108,

Administrator- General.

this Act.

centages 48

between

representative Administrator- General'

(b) the investment, whether separately or

other sums appertaining to the estates of insolvent debtors whether adjudicated insolvent

under this or any former enactment; and the application of the proceeds of such investment;

(c) the proceedings of the official assignee in taking possession of and realising the estates of

insolvent debtors; 2[

(e) the receipts, payments and accounts of the official

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

(g) the payment 3[of the costs of the audit of his accounts out of the proceeds of the

investments in his hands;

1. This section has been amended in its application to Bombay, Madras and Calcutta: see

i. the Presidency- towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20

of 1933), s. 6;

ii. the Presidency- towns Insolvency (Bombay Amendment) Act of 1939), s. 2;

iii. the Presidency- towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of

1943), s. 15; and

iv. the Presidency- towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18

of 1936), s. 8. 2. Cl. (d) rep. by the A. O. 1937. 3.

v. The words" of the remuneration of the official assignee, of the costs, charges

and expenses of his establishment, and" rep., ibid.

(h) the payment of the costs incurred in the prosecution of fraudulent

proceedings taken by the official assignee under the direction of the Court out of the proceeds

aforesaid;

(i) the payment of any civil liability incurred by an official assignee acti

direction of the Court;

(j) the proceedings to be taken in connection with proposals for composition and schemes of

arrangement with the creditors of insolvent debtors;

(k) the intervention of the official assignee at the hearing of applications and matters relating

to insolvent debtors and their estates;

(kk) 1[filing of lists of creditors and debtors and the affording of assistance to the Court by a

petitioning debtor;]

collectively, or unclaimed dividends, balances and

assignee;

Act, 1939 (Bom. 15

e debtors and in legal

acting under the order or

editors 49

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(l) the examination by the official assignee of the books and papers of account of

undischarged insolvent debtors;

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

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

notice may be served under clause (b), of sub

(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

manner;

(r) the procedure to be followed in the case of estates of deceased persons to be administered

under this Act;

1. Ins. by Act 19 of 1927, s. 5. 2. Ins. by Act 28 of 1978, s. 2 (w. e. f. 1

(s) 1[the distribution of work between the official assignee and his deputy or deputies;] 2[

and, in the case of the High Court at Madras, may also

remuneration of the official assignee and the payment of the costs, charges and expenses of

his establishment]. 3[

113. 4[Sanction to rules.- Rules made under the provisions to the previous sanction of the State Government.]

1. Ins. by Act 10 of 1930, s. 5. 2. Ins. by the A. O. 1937. 3. For s. 112A, applicable to

Calcutta only, see the Presidency

18 of 1936), s. 9. 4. Subs. by the A. O. 1937, for the original s. 113.

114. Publication of rules.- Rules so made and sanctioned shall be published 1[in the

Official Gazette, 2[and shall thereupon ha

proceedings under this Act in the Court which made them as if they had been enacted in this

Act.

PART XII SUPPLEMENTAL

ce sub- section (3) of section 9;]

the case of estates to be administered in a summary

. 1- 9- 1979).

provide for and regulate the

of this Part shall be subject

Presidency- towns Insolvency (Bengal Amendment) Act, 1936 (Ben

have the same force and effect with regard to

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Ben.

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115. Exemption from duty of transfers,

(1) Every transfer, mortgage, assignment, power

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. The Gazette to be evidence.

(1) A copy of the Official Gazette containing any notice inserted in
pursuance of this Act

shall be evidence of the facts stated in the notice.

(2) A copy of the Official Gazette containing any notice of an ord

conclusive evidence of the order having been duly made, and of its
date.

117. Swearing of affidavits.- Any affidavit may be used in a Court
having jurisdiction

under this Act if it is sworn--

(a) in 3[the States 4[], before--

(i) any Court or Magistrate, or

(ii) any officer or other person appointed to administer oaths under
the Code of civil

Procedure, 1908 (5 of 1908);

(b) in England, before any person authorized to administer oaths in
His Majesty' s High

Court of Justice, or in the Court of Chancery of the County Palatine of
Lancaster, or before

any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized

in writing in that behalf by the Judge of the Court or before a Justice of the peace for

county or place where it is sworn;

1. The words" in the Gazette of India or" rep. by the A. O. 1937. 2. The words" as the case

may be" rep., ibid. 3. Subs. by the A. O. 1948. 4. The words" of India" omitted by the A. O.

1950.

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

etc., under this Act.

power- of- attorney, proxy paper, certificate,

der evidence.-

order of adjudication shall be

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er the

(d) in any other place, before a Magistrate or Justice of the Peace or other person

administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or

qualified as aforesaid, by 1[an Indian Consul or Political Agent] or by a notary public).

118. Formal defect not to invalidate proceedings.

(1) No proceeding in insolvency shall be invalidated by any formal defect or by any

irregularity, unless the Court before which an objection is made to t

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

committee of inspection shall vitiate any act done by him in good faith.

119. Application of Trustee Act to insolvency of trustee.

within the Indian Trustee Act, 1866 (27 of 1866), section 35 of that Act shall have effect so

as to authorize the appointment of a new trustee in substitution for the insolvent (whether

voluntarily resigning or not), if it appears expedient

and of any other Act relative thereto, shall have effect accordingly.

120. Certain provisions to bind the Government.

of this Act relating to the remedies against the property of a debtor, the priorities of debts, the

effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the

Government.

121. Savings for existing rights of audience.

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

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. 2[

122. 3[Lapse and credit to Government of unclaim

assignee has under his control any dividend which has remained unclaimed for fifteen years

from the

proceedings.-

the proceeding is of

the appointment of an official assignee or member of a

trustee.- Where an insolvent

to do so, and all provisions of that Act,

Government.- Save as herein provided, the provisions

audience.- Nothing in this Act, or in any transfer of

unclaimed dividends.- Where the official

52

qualified to

he insolvent is a trustee

deemed to

1. Subs. by the A. O. 1950 for" a British Minister or British Consul or British Political

Agent". 2. For s. 121A, applicable to Bombay only, see the Presidency

(Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 7. 3. This section has been amended

in its application to Bombay by s. 8, *ibid.*

date of declaration or such less period as may be prescribed

account and credit of 1[the State Government], unless the Court otherwise directs.

123. Claims to monies credited to Government under section 122.

to be entitled to any monies paid to the account and credit of 1[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

of the sum due: Provided that, before making an order for the payment of a sum which has

been carried to the account and credit of 1[the State Government], the Court shall cause a

notice to be served on such officer as 2[the State Gov

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. 3[

124. Access to insolvent' s book

(1) No person shall, as against the official assignee, be entitled to withhold possession of the

books of accounts belonging to the insolvent or to set up any lien thereon.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of

such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent,

any such books in the possession of the official assignee.

125. Fees and percentages.- Such fees and percentages shall be charged for and in respect of

proceedings under this Act as may be prescribed. 4[

126. Courts to be auxiliary to each other.

shall make such orders and do such things as may be necessary to give effect to section 118

of the Bankruptcy Act, 1883 (46 and 47 Vict., c. 52), and to section 50 of the Provincial

Insolvency Act, 1907 (3 of 1907). 5[

Presidency- towns Insolvency

prescribed, he shall pay the same to the

122.- Any person claiming

e for payment to him

Government] may appoint in this behalf,

books.-

n other.- All Courts having jurisdiction under this Act

83 53

, ernment]

1. Subs. by the A. O. 1937, for" the Govt. of India". 2. Subs., ibid., for" the G. G. in C.". 3.

For ss. 123A and 123B, applicable to Bombay only, see th

(Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 10. 4. In its application to Calcutta

and Madras, this section has been amended: see the Presidency

Amendment) Act, 1936 (Ben. 18 of 1936), s. 11,

(Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 16. 5. See now the Provincial

Insolvency Act, 1920 (5 of 1920).

127. Saving. 1[

(2) The proceedings under an insolvency petition under the Indian Insolvency Act, 1848 (11

and 12 Vict., c. 21), pending at the comencement of this Act shall, except so far as any

provision of this Act is expressly applied to pending proceed

provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this

Act had not been passed.