

Law Commission Report
Insolvency Laws

LAW COMMISSION OF INDIA

TWENTY-SIXTH REPORT
REPORT ON INSOLVENCY LAWS

February, 1964

GOVERNMENT OF INDIA
MINISTRY OF LAW

Confidential

CHAIRMAN,
LAW COMMISSION.
5, Jorbagh, New Delhi--3,
March 23, 1964.
Shri Asoke Kumar Sen,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Twenty-sixth Report of the Law Commission on Insolvency Laws.

2. This subject was referred by the Government to the Law Commission and was taken up by the previous Law Commission for consideration. A draft Bill with notes on Clauses was prepared by Mr. Justice T. L. Venkatarama Aiyar, Chairman of that Commission. It was circulated in April, 1961 to State Governments, High Courts and other interested persons and bodies for their comments.

3. The Commission held meetings to consider the draft Report with the comments received. The first meeting was held on the 2nd to 5th August, 1963 and the subsequent meetings were held on the 29th to 31st August, 1963, 16th to 18th September, 1963, 26th September to 1st October, 1963 and 21st and 22nd October, 1963. In the light of the discussions held at those meetings, the Bill and notes were revised and a draft Report was prepared.

4. The draft Bill and the Report were finalised at the meetings held on 23rd to 28th December, 1963 and 6th to 10th January,

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My colleagues and I wish to record our appreciation of the

assistance we have received from Mr. P. M. Bakshi, our Joint Secretary and Draftsman, in the preparation of this Report.

Yours sincerely,
L. L. KAPUR.

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INSOLVENCY LAWS . . ' ' G ' f l. The Law Commission has taken up the revision of R; 'g:1:° the law
of insolvency on a reference made to it by the Government of India.'

2. The law of insolvency in this country, like most Historical other laws, owes its origin to English
law. _Before the Background- British came to this country there was no indigenous law of
insolvency in India' ~'. The common law in England did not deal with the subject of bankruptcy. The
Bankruptcy Law was purely a creature of Statute-9. The earlier Sta- tutes passed in the.16th century
and subsequent years con- tained only rudimentary provisions as to bankruptcy.

The important statutes on the subject are the Bankruptcy Acts⁴ passed by the British Parliament in
1849, 1869, 1883 and 1914.

In India, the necessity for an insolvency law was first felt in the three Presidency-towns of Calcutta,
Bombay and Madras where the British carried on their trade. The earliest rudiments of insolvency
legislation can be traced to sections 23 and 24 of the Government of India Act, 1800 (39 and 40 Geo.
III c. 79), which conferred insolvency jurisdiction on the Supreme Court at Fort William and Madras

and the Recorder's Court at Bombay. These courts were empowered to make rules and orders for granting relief to insolvent debtors on the lines intended by the Act of the British Parliament called the Lord's Act passed in 1759 (32 Geo. II c. 28).

The next step was taken in 1828 when Statute 9 (Geo. IV c. 73) was passed, which can be said to be the beginning of the special insolvency legislation in India. Under this Act, the first insolvency courts for relief of insolvent debtors were established in the Presidency-towns. Although the insolvency court was presided over by a Judge of the Supreme Court, it had a distinct and separate existence. The insolvency court was to sit and dispose of insolvency matters as often as was necessary. But the court at Calcutta was to sit at least once a month. The Act of 1828 was originally intended to remain in force for a period of four years. but subsequent legislation extended duration up to 1848 and also made certain amendments therein .

}Ministry of Law, under orders in File No. 22-V-50-L of the Legislative Section.

2Mulla, Law of Insolvency in India (1958), pages I, 2, para. 2, 3Cf. Jowitt, Dictionary of English Law (1959) Vol. 1, page 205, right.

'See Holdsworth, H.E.L. (1938), Vol. XI, pages 445-446 and Vol. VIII, pages 229-245.

'See Mulla, Law of Insolvency in India (1958), page 16, A further step in the development of insolvency law was taken in 1848 when the Indian Insolvency Act, 1848 (11 and 12 Vict. c. 21) was passed. The Act preserved the distinction between traders and non-traders in certain respects on the lines of the corresponding Bankruptcy statutes then in force in England. It continued the courts for the relief of insolvent debtors established by the Act of 1828 in the Presidency-towns. The Indian High Courts Act, 1861 (24 and 25 Vic. c. 104) abolished the Supreme Courts in the Presidency-towns and in their place the present High Courts were set up. The insolvency jurisdiction in the Presidency-towns was thus transferred from the Supreme Court to the High Court.

The provisions of the Indian Insolvency Act, 1848, were, however, found to be inadequate to meet the changing

-conditions. In the seventies Sir James Fitzjames Stephen proposed an Insolvency Bill for the whole of India modelled on the Bankruptcy laws then in force in England. But this proposal was dropped, as the conditions in the mofussil were not favourable for a comprehensive legislation on the subject. The Act of 1848 was in force in the Presidency-towns until the enactment in 1909 of the present Presidency-towns Insolvency Act, 1909.

3. While there was special insolvency legislation for the Presidency-towns, there was no insolvency law in the mofussil. The main reason for this difference was the absence of any flourishing trade and commerce in the mofussil. In the mofussil for a considerable period the ordinary principle of distributing the sale proceeds pro-rata; among decree-holders after satisfaction in full of the amount due to the attaching decree-holder seems to have prevailed. (See the Civil Procedure Code of 1859). The first attempt to introduce insolvency law in the mofussil was made in 1877. Some rules

were incorporated in Chapter 20 of the Code of Civil Procedure, 1877, which conferred jurisdiction on the district courts to entertain insolvency petitions and grant orders of discharge. These rules were re-enacted with certain modifications in Chapter 20 of the Code of Civil Procedure, 1882. The provisions in the Civil Procedure Code of 1859 were described as the "germ and nothing more than a germ of an insolvency law" and this criticism was regarded as applicable to the subsequent codes also. They could be made use of

by those debtors only who were arrested or imprisoned in the execution of a decree for money or against whose property an order of attachment was passed in execution of such a decree. In other words, the provisions were limited to cases in which legal proceedings were instituted and 'See Lord Hobhouse's observations cited in the speech of Sir Erle Richard on leave for introduction of the Bill which led to the Provincial Act of 1907.

³See also Mulla (1958), page 19.

"See, *ibid.*

judgment obtained. Creditors of a debtor were not entitled to file an insolvency petition. These defects were removed by the Provincial Insolvency Act, 1907 (3 of 1907). This Act created a special insolvency jurisdiction laying down the conditions under which a debtor could be adjudicated on his own petition or on a petition by a creditor. The Act of 1907 was repealed by the Provincial Insolvency Act, 1920 (5 of 1920) which is the Act now in force in the mofussil.

4. The Hon'ble Sir H. Erle Richards while moving the Bill in the Council which led to the enactment of the Presidency-towns Insolvency Act, 1909, stated:

"The difference in the conditions between the Presidency-towns and the mofussil makes it inexpedient to have one uniform Act for the whole of India at the present time but there will be little difficulty in bringing the two Acts into complete agreement if it be thought wise to do so in the future."

This view was expressed more than half a century ago. The difference in the conditions between the Presidency-towns and the mofussil which led to the enactment of two separate insolvency Acts has now largely disappeared. India is being rapidly industrialised and with the implementation of the Five Year Plans, trade and commerce has spread into many other towns besides the Presidency-towns of Bombay, Calcutta and Madras. Time is, therefore, ripe for consolidating the two insolvency Acts and having one uniform law of insolvency for the whole of India, including the territories comprised in the former Part B States to which neither the Presidency nor the Provincial Act at present applies.

5. Insolvency law has a two-fold purpose--(i) to give relief to the debtor from the harassment of his creditors whose claims he is unable to meet, and (ii) to provide a machinery by which creditors who are not secured in the payment of their debts are to be satisfied. It is based on the Roman principle *cessio bonorum*, that is to say, surrender by the debtor of all his goods for the benefit of his

creditors in return for immunity from court process. Broadly speaking, the existing insolvency law contained in the Presidency-towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 is sound in principle and has worked satisfactorily in practice. Apart from combining the two Acts, there is, therefore, little scope for any substantial change in the law. '

6. Under the Proviso to section 3(1) in the Provincial Act, the State Government is empowered to authorise sub-ordinate courts to exercise insolvency jurisdiction. Where a subordinate court exercises such jurisdiction, an appeal lies under section 75 of that Act to the District Court. We feel that in View of the serious consequences which flow Consolidation of the two Insolvency Acts into one.

Objects of Insolvency Law.

Insolvency jurisdiction of subordi-

nate courts and appeals.

from a person being adjudicated insolvent and the complicated questions of law and fact which usually arise in insolvency matters, appeals in such cases should lie to the High Court. There are two ways of achieving this object--

(1') providing an appeal direct to the High Court, and

(ii) placing a limitation on the jurisdiction of sub-ordinate courts.

The second course involves the difficulty of finding a satisfactory method of limiting the jurisdiction. Two tests can be applied for this purpose--

(2') the quantum of debts of the insolvent, and

(ii) the value of the property of the insolvent distributable among his creditors.

There is one basic objection to adopting the first test. The idea of limiting the jurisdiction is that at least in large insolvencies an appeal should lie to the High Court. A question accordingly arises, what is a large insolvency? Is an insolvency where the debts of the insolvent amount to one lakh of rupees but the insolvent's property is worth only Rs. 2,000 a large insolvency? In such a case the stakes are not high. The creditors will at the most get a dividend of two naye paise in the rupee and no complicated questions of title, etc. are likely to arise in view of the negligible value of the property of the insolvent. Apart from this basic objection, there are also some practical difficulties. One practical difficulty is pointed out in a case of the Rangoon High Court'. The petitioning creditor in that case filed an insolvency petition in the district court alleging that the debt due to him from the respondent amounted to Rs. 15,947-1-9. Under a notification issued under the proviso to section 3 of the Provincial Insolvency Act, 1920 which at that time applied to Burma, the district court had jurisdiction if the amount of debts exceeded Rs. 15,000 while if the amount of debts was less than

Rs. 15,000 the Assistant District Court had jurisdiction. The debt due to the petitioning creditor was alleged to consist of two items--(1) Rs. 8,029-9-9 due on three promissory notes, and (2) the sum of Rs. 7,917-8--D due under a registered mortgage. It, however, appeared from the petition that on the date of the petition a mortgage suit in respect of the second item was pending. In these circumstances the district judge refrained from taking further steps in the proceedings until the result of the mortgage suit was known. After the mortgage suit was dismissed, the amount of the petitioning creditor's debt was reduced to Rs. 8,029-9-9. The district judge, accordingly, transferred the proceedings to the Assistant District Court. An 'S.P.K. Chettyar Firm V. S. Dutt (1936), I.L.R. 14 Rangoon, 280 ; AIR 1936 Rangoon 223.

adjudication order was passed by the Assistant District Court. Subsequently, it appeared that the total debts of which proof was submitted in the insolvency amounted to Rs. 15,707. An application, however, was made by the Receiver in insolvency that certain debts alleged to be due by the insolvent to the petitioning creditor might not be admitted. The application of the Receiver was dismissed by the Assistant District Court. Against the order dismissing the application the Receiver appealed to the district court. On appeal, the District Judge reduced the amount of the debts which ought to be admitted by Rs. 3052, thereby reducing the total amount of debts of which proof was admitted to a figure less than Rs. 15,000. The Assistant District Court had further held that it had no jurisdiction in the matter inasmuch as the debts of the insolvent exceeded Rs. 15,000. On appeal from the order, the District Court, in the events that happened, namely, that the debts of which proof was admitted amounted to less than Rs. 15,000, allowed the appeal and held that the Assistant District Court had jurisdiction. Page C.J. while delivering judgment on the case made the following observations:--

"The mere recital of the nature of the proceedings that have taken place and the orders that the Assistant District Court and the District Court were compelled to pass in the circumstances discloses a situation full of humour though for those concerned in insolvency proceedings the humour is grim."

While construing the notification in question Page C..l. further observed :-

"The effect of accepting this construction of notifications 37 and 207 is that the court may or may not possess jurisdiction to hear an insolvency proceeding at any particular time according to the amount of the debts of the insolvent that at that particular time may appear to be outstanding. The present case is a simple but cogent illustration of the situation that results from the issue of these notifications, and, if the Court were at liberty to express an opinion upon a matter of policy, it would appear advisable that steps should be taken by amending either the Burma Courts Act or the Provincial Insolvency Act in order that an end should be put to the present impasse".

Dunkley J. who concurred in the judgment made the following observations:--

"Debts of the insolvent must clearly mean the debts admitted or proved in the proceedings; the expression cannot include secured or doubtful debts which may or may not become provable at some subsequent stage; for, if so, the jurisdiction of the Assistant District Court will always remain

in doubt 'by insisting or undervaluing their in every insolvency case. It is urged that the effect of this construction of the expression is that in any particular case the Assistant District Court may have jurisdiction at one time and not at another, and that in consequence several transfers of the case between the District Court and the Assistant District Court with their attendant evils of prolonged duration and uncertainty, may occur. I agree that this is so, and that in an insolvency case uncertainty as to the court having 'original jurisdiction is most unfortunate as it entails uncertainty as to the court to which appeals lie; but it is impossible to devise any form of notification which will entirely remove this uncertainty, and if I may make the suggestion, in my opinion the only satisfactory method of meeting the difficulty is by an amendment of the Burma Courts Act, to make all appeals, of whatever kind, from the Assistant District Court lie direct to the High Court".

It is true that the difficulty pointed out by the Rangoon High Court could perhaps be met by a suitable wording of the notification. Instead of the word 'debts' the words 'alleged debts' may be used'. But then the creditors could choose their forum and the debtor will have no voice in the matter. Apart from the difficulty pointed out by the Rangoon High Court there is a further difficulty. A petitioning creditor will, for the purpose of jurisdiction of the court, have to state in his petition the aggregate amount of debts due from the debtor. Will he be in a position to do so? The debts which are due from a debtor will be known only to the debtor himself. The law, therefore, requires the debtor and not the petitioning creditor to file a schedule of creditors. In a vast country like India, the creditors of a debtor may be spread over a number of places, and it will not, therefore, be possible for the petitioning creditor to know who are the other creditors of the deb-

tor and much less the amount of their debts. In the absence of such information a petitioning creditor would not know in what court to file the petition. Application of the first test, therefore, gives rise to several complica-

tions.

The second test relating to the value of the property of the insolvent distributable among his creditors has been adopted in relation to summary administration of small insolvencies. But in the case of summary administration of an insolvency no question of jurisdiction arises. After a petition is admitted, the court if it is satisfied by affidavit or otherwise that the property of the insolvent does not exceed a particular value may 'See *Gulabrao v. Yadavrao*, (1958) 60 Bom. L.R. 505.

'x make an order that the insolvent's estate be administered in a summary manner. The value of the insolvent's property is relevant only for the purpose of determining the manner in which the insolvent's estate is to be adminis-

tered and not for the purpose of the jurisdiction of the-

court in which the petition for insolvency is to be presented. If this test is adopted for the purpose of deter-

mining the jurisdiction of subordinate courts, the petition-

ing creditor will be faced with the same difficulty which he will experience if the first test is adopted. It will be difficult for him to ascertain the value of the property of the insolvent at the time of the presentation of the petition. For these reasons, it appears to us that the second course, though desirable in some respects, is not practicable. We, therefore, recommend-9 the adoption of the first course, that is to say, that an appeal should lie direct to the High Court from certain decisions and orders of a subordinate court exercising insolvency jurisdiction. In this connection, we may refer to s. 4A. of the Guardian and Wards Act, 1890, under which the High Court is empowered to delegate jurisdiction to subordinate courts. Under section 47 of that Act, when a case is decided by a subordinate court in exercise of its delegated jurisdiction, an appeal lies to the High Court. We appreciate that our recommendation has the drawback, that even in a small matter an appeal will lie to the High Court. We, therefore, propose that an appeal to the High Court should lie in important matters only, e.g., adjudication, avoidance of transfers etc. We may point out that, if there is no delegation of jurisdiction to subordinate courts, an appeal against certain decisions and orders at present lies to the High Court. [Section 75 (2) read with Schedule I of the Provincial Act]. We recommend that only in these cases an appeal should lie to the High Court. In all other cases an appeal should lie to the District Court.

7. In the Presidency-towns of Bombay, Calcutta and Madras, insolvency jurisdiction is at present exercised by the High Court on its original side. An important question which arises for consideration is whether, in view of the consolidation of the two Acts, insolvency jurisdiction of the High Court in the Presidency-towns should be retained. The main argument in favour of retention of the jurisdiction is, that trade and commerce in these towns is much more developed than in the mofussil and that it is, therefore, desirable that administration of insolvency law in the Presidency-towns should be entrusted to the highest judicial authority. The arguments against the retention of the jurisdiction of the High Court in the Presidency-towns are the following:----

(i) the distinction in the administration of insolvency law between the Presidency-towns and the 'Presidency Act, s. 106 and Provincial Act, s. 74. "See Appendix I, clauses 97 and 116.

Insolvency jurisdiction of High Courts in Presidency.-

Towns.

Official Assignees and Official Receivers.

mofussil, even if justified in the past on account of the difference between commercial conditions, can no longer be maintained in view of the general progress in commerce and industry all over the country;

(ii) except in respect of a few matters, there is no material difference in the substantive law as enacted in the two Acts;

(iii) a substantial part of the original jurisdiction of the High Court in the Presidency-towns has already been transferred to the City Civil Court.

8. In an earlier report¹, the Law Commission has made the following observations on the subject:---

"It is to be noticed that the insolvency jurisdiction in the Presidency-towns has been conferred exclusively upon the High Court. As entrustment of this jurisdiction to the High Court is necessary in the interests of the better administration of the insolvency law, we are of the opinion that such exclusive jurisdiction should continue even though the two Acts are consolidated into one".

We respectfully agree with this View. The High Courts in Bombay, Madras and Calcutta have been exercising insolvency jurisdiction for over a century. Public opinion in these towns is in favour of the retention of the jurisdiction of the High Court. When a person is adjudged an insolvent the adjudication affects his status and reputation. It is, therefore, important that such adjudication should be made by the highest Court in large commercial towns like Bombay, Calcutta and Madras. It is true, that apart from Bombay, Calcutta and Madras there are many other towns which from a commercial point of view are no less important than the former Presidency-towns, e.g., Delhi, Ahmedabad, Amritsar, Kanpur, Patna, Asansol, Nagpur, Hyderabad, Bangalore. etc. As however, in relation to these towns the High Courts do not exercise original jurisdiction, it would not be practicable to confer insolvency jurisdiction on these High Courts in relation to these towns.

9. The Presidency Act provides for the appointment in each of the Presidency-towns of Bombay, Madras and Calcutta of an officer called the Official Assignee, in Whom all the property of the insolvent is Vested." The Official Assignee is constituted a corporation sole in Bombay and Madras by local amendments. (See s. 77A, Presidency Act). The scheme of the Provincial Act is different'. Section 57 of that Act provides for the appointment of an Official Receiver. Such appointment is not 114th Report, Vol. 1, page 511, para. 3. "See Appendix 1, Clause 97.

"Sec s. 77, Presidency Act.

'See sections 56, 57, 58, Provincial Act.

9 obligatory. Under section 28(2) 'of the Act, on the making of an order of adjudication the property of the insolvent vests either in the court or in a receiver. Where an Official Receiver has not been appointed, the Court generally appoints, ad hoc for each insolvency a member of the Bar or a ministerial officer of the court to discharge the functions of the receiver. The defects of this ' system have been pointed out in an earlier Report of the Law Commission¹. In that Report, it has been stated that in the States of Madras and Andhra Pradesh Where Official Receivers are appointed for an entire area the results have been more satisfactory. Under s. 58 of the Provincial Act, where no receiver is appointed the property vests in the Court. But the vesting of the property in the court is not convenient and may lead to complications. We are, therefore, of the opinion that the system of vesting the insolvent's estate in the Court and leaving it to the court to appoint a receiver ad hoc should be abolished. We think that in this respect the provisions of the Presidency Act are better, and should apply throughout India. This change would assimilate the position in the

more useful to that obtaining in the Presidency-towns, and it would also facilitate the administration of estates in insolvency?

10. At the outset, it will be useful to set out briefly the evolution of the jurisdiction of insolvency courts. Before the Bankruptcy Act, 1869, Bankruptcy Court in England had no jurisdiction to decide questions of title in which third persons were interested, unless they submitted to the jurisdiction of the Bankruptcy Court. (Vide section 12 of the Bankruptcy Act, 1849). Section 72 of the Bankruptcy Act, 1869, conferred jurisdiction on the Bankruptcy Court to decide all questions, whatsoever, for doing justice to the parties and for effectively administering the estates of bankrupts. That section was couched in such wide terms that the Bankruptcy Court could exercise jurisdiction to decide all questions of title in which the rights of third parties were involved. In construing this section, the courts, however, drew a distinction between claims

arising in bankruptcy and claims not arising in bankruptcy. The former comprised transactions which could not be impeached but for the special provisions of the Bankruptcy Act. The right of the trustee in bankruptcy in those claims rests on a title superior to that of the bankrupt. The following are some of the matters in which the trustee in bankruptcy is said to have a higher title than the insolvent:--

(t) transfers of property by the bankrupt made between the commencement of the bankruptcy and "J_4th Report, Vol. 1, page 52, para. 6 and a e I . 8. 'see Appendix 1, Clause 88. p g 5 4' para 'i Cf.:l(\ /iulla, Law of Insolvency in India, (1958), page 40.

Jurisdiction of Insolven-

cy Courts.

Claims arising-

ing in bankruptcy-

1) From the date of the order of adjudication which come within the jurisdiction of the Bankruptcy Court by virtue of the doctrine of relation back;

(it) possession by the bankrupt of goods of other persons to which the Trustee in bankruptcy is entitled by operation of the doctrine of reputed ownership;

(iti) transfers within two years of the bankruptcy and not made in good faith and for valuable consideration; 1

(iv) transfers by way of fraudulent preference in favour of creditors;

(12) transfers which are in themselves acts of bankruptcy.

Claims not arising in bankruptcy are those claims against third parties in respect of which the Trustee in Bankruptcy has no superior title than the bankrupt himself and which he can enforce against such parties only under the ordinary law and in the ordinary courts. As regards claims arising in bankruptcy the Courts in England held that though they should normally be tried by the Bankruptcy Court', the ordinary civil courts had also jurisdiction over the same. As regards claims not arising in bankruptcy the Courts in England took the View that they should be tried by the ordinary courts unless the parties thereto submitted to the jurisdiction of the Bankruptcy Court? This was the position under section 72 of the Bankruptcy Act, 1869. The Bankruptcy Act, 1869 was replaced by the Bankruptcy Act, 1883, and section 102 of the latter Act was with certain modifications a re-enactment of section 72 of the former Act. In 1914 a new Bankruptcy law was enacted which repealed the Act of 1883. Section 105 of the Act of 1914 corresponds to section 102 of the Act of 1883. Judicial decisions³ under the Bankruptcy Acts of 1883 and 1914 reaffirmed the principles which had been laid down in the construction of section 72 of the Act of 1869.

11. The relevant provisions of the two Indian Acts are section 7 of the Presidency Act and section 4 of the Provincial Act. Although the language of section 7 of the Presidency Act is quite general, the Calcutta High Court⁴ held that the Insolvency Court should decline to decide the observations of James L. J. in *ex parte Armitage*, 17 Ch. . 13.

"*Vide Sharp v. McHenry*, 55 L.T. 747 and *Re Evelyn*, (1894) 2 Q.B.

302. ³*Vide Ellis v. S'z'lber*, L. R. 8 Ch. App. 83 ; *Ex pane Dickiri*, 8 Ch D. 377 ; *Ex pane Musgrawe*, 10 Ch. D. 94 ; *Ex pane Brown*, II Ch. D. :48; *Ex parte Fletcher*, 9 Ch. D. 381 ; *Ex parte Dames*, 19 Ch. D. 86. J 'Jnanendra Bala Devi v. Official Assignee, I.L.R. 54 Cal. » '£51' A.I.R. 1926 Cal. 597. 'entertain claims against third parties which do not arise in insolvency. A similar View was taken under the Provincial Act by a majority of the High Courts'. The Madras High Court, however, took the View that the Insolvency Court had jurisdiction under section 7 of the Presidency Act to decide all questions between the Official Assignee and strangers, even though the latter did not submit to the jurisdiction of the Insolvency Court. The conflict was set at rest by the amending Act" of 1927 which inserted a proviso to section 7 of the Presidency Act and also amended sub-sections (4) and (5) of section 36 of that Act. The net result of these amendments was that where proceedings were taken against a stranger under section 36 of the Act and he denied the claim of the insolvent, the Insolvency Court had no jurisdiction to decide the claim. In other words, the view of the Calcutta and Bombay High Courts which was in accordance with the English practice was preferred to that of the Madras High Court. Subsequent to the amendment of 1927, a question arose whether the Insolvency Court could entertain claims against a stranger where the stranger had not been examined under section 36. It was held by the Madras High Court" that the proviso to section 7 introduced by the amending Act of 1927 restricted the jurisdiction of the Insolvency Court only in those cases where there had been examination under section 36, and that when there was no such examination, the language of section 7 was wide enough to confer the necessary jurisdiction on the High Court. In another Madras case' it was further held, that even when there was an examination under section 36, the jurisdiction of the Court to decide matters outside the scope of inquiry under that section was not barred by the proviso to section 7. The Bombay High Court took the view⁵ that though the proviso to the section applied only when there was examination under section 36, even

when there was no such examination the court should in the exercise of its discretion decline to entertain a claim against a stranger unless he submitted to its jurisdiction.

The Provincial Act of 1907 did not contain any provision corresponding to section 7 of the Presidency Act. There was, accordingly, a conflict of opinion as to whether *Chum'la v. Official Assignee*, I.L.R. 35 Born. 473 ; *Doraz'appa Iyer v. Official Assignee*, 42 NILJ. 41 ; *Official Assignee Aladras v. Official Assignee*, Rangoon, A.I.R. 1925 Mad. 14}.

Act II of 1927.

Official Assignee, Madras v. Narasimha Mudaliar, I.L.R. 52 Mad. 717-

Chimzappu V. Official Assignee, (1932) I.L.R. 55 Mad. 385 ; AIR 1932 Madras 167.

In *re Balulhai Kallz'anchand*, A.I.R. 1942 Born. 118 ; 44 Born. L.R. I .

42 MofL---2 Acts of Insolvency.

a disputed claim against a stranger could be tried by the Insolvency Court. The question was answered in the affirmative by the Allahabad High Court in *Bansidhar v. Kharagjit'*, and in the negative by the Calcutta High Court in *Nilmoni Chowdhury v. Durga Charan Chowdhury*. It was to set at rest this conflict that section 4 of the Provincial Act of 1920 was enacted. This section gives effect to the view of the Allahabad High Court and confers jurisdiction on the insolvency court to adjudicate claims against third parties. It will be observed, that on the language of section 4, the Insolvency Court is empowered to decide question of title against a stranger even when the stranger disputes that title and does not submit to the jurisdiction of the insolvency court. To this extent section 4 differs from section 7 and section 36 (4) and (5) of the Presidency Act.

12. We have carefully considered this matter, and we think that having regard to general legal principles, the provisions of section 7 of the Presidency Act are to be preferred to the provisions of section 4 of the Provincial Act. We are fortified in our opinion by the view expressed by Mulla" that the provisions of section 4 of the Provincial Act should be brought in line with the provisions of section 7 of the Presidency Act. Insolvency jurisdiction is a special jurisdiction, and such jurisdiction should not be extended beyond what is strictly necessary for the purpose of administering the insolvency law. Third parties are strangers to an insolvency, and they should not be dragged to the insolvency court against their will. To give an illustration, if A is adjudged insolvent by a court in Delhi and A has a claim against B, who ordinarily resides in Trivandrum, it will be great hardship upon B if the Official Assignee could enforce his claim against B in the insolvency court in Delhi. Moreover, if the insolvency court is given jurisdiction in respect of claims against third parties, the Official Assignee could enforce such claims without payment of any court fee. We, however, see no harm in small claims, not exceeding Rs. 5,000 in value against third parties are determined by the insolvency court.

13. We propose that a new act of insolvency on the lines of section 1(1) (g) of the English Bankruptcy Act, 1914 should find a place in the revised law. Under the English Act it is open to a person who has obtained a decree or order for the payment of money to give notice to the debtor, calling upon him to pay up the amount due *Bansz'dhar V. Kharagjit*, (1915), I.L.R. 37 All. 65.

"*Nz'Znzoni Chawdlmry V. Durga Charan Chozvdlzury*, (1918)

702. °Mulla, Law of Insolvency in India, (1958) page 24, para. 26. 4Appendix 1, Clause 99.

22 C.\V.N.

under the decree or order and failure to do so amounts to an act of insolvency. It may be urged against such a 'p1'o- vision, that it is liable to be abused by scheming creditors and may be used for ulterior purposes. But in Bombay a provision based on section 1tl) (g) of the ED811511 Act has already been enacted both in the Presidency Act and in the Provincial Actl. The Bombay amendment S'3€'m3 to have worked satisfactorily for about a quarter of a ceI:1- tury and does not seem to have led to any abuse. In this connection reference may usefully be made to the recom- mendation made in an earlier report? of the Law Com- mission in the following terms:

.the most C-□ective way of instilling a healthy fear in the minds of dishonest _iudgment--debtors would be to enable the Court to adjudicate him an insolvent if he does not pay the decretal amount after notice by the decree-holder, by specifying a period within which it should be paid, on the lines of the Bombay amend- ment to the Presidency Towns Insolvency Act."

We. therefore. recommend that the Bombay Amendment should form part of the general insolvency law in India.-5

14. The Blagden Committee appointed to review the Discharge, Bankruptcy Law in England has made far-reaching re- commendations in respect of discharge of insolvents. The 'Committee has observed as follows" :--

"The most unsatisfactory feature of the existing system is the fact that, Whether or not any bankrupt obtains his discharge, depends, in the first instance, upon whether or not he makes application therefor, and this has led to the position that only one in every four or □ve of all bankrupts ever in _ fact does apply for his discharge. We are of opinion that the question of Whether a bankrupt should be discharged and, if so, under what terms, is of such vital importance that a decision with regard thereto ought to be made by court in every case. Discharge should never depend upon the debtor making an application to the Court, a step which we consider to be quite irrelevant to the proper consideration of the issue."

15. The Blagden Committee has, therefore, recom- mended5 that after the lapse of a period of two years from the conclusion of the public examination of an insolvent, 'See the Bombay Insolvency Amendment Act, 1939 (I5 of 1939}. "Third Report (Limitation Act) pp. 65-66, para. I7I. "See App. I, Clause 3(2) ' 'Report of the Committee on Bankruptcy Law Amendment etc. /1957) Cmd. 221, page

20, para. 54. \ 5Report of the Committee on Bankruptcy Law etc. Amendment (1957) 'Cmd. 221, page 22, para. 60.

Relation back.

the insolvent should automatically be discharged unless the Court of its own motion or on the application of the Official Receiver, Trustee or creditor has entered a caveat against the bankrupt's discharge. So far as we have been able to gather, the recommendations made by the Blagden Committee have not yet been implemented in England. We have given careful consideration to this recommendation of the Committee, and we are of the opinion that the conditions in this country are different from those prevailing in England. The figures we have received' from the High Courts of Bombay, Madras and Calcutta disclose that generally an insolvent does not unduly delay making an application for a discharge. We, therefore, think that no change in the Indian law on the lines proposed by the Blagden Committee is necessary'.

16. On the question as to the date from which an order of adjudication should take effect, there is difference between the law as enacted in section 37(1) of the Bankruptcy Act, 1914 and section 51 of the Presidency Act on the one hand, and that embodied in section 28(7) of the Provincial Act on the other. Under the English law, the order of adjudication relates back to the date of the act of insolvency and to the earliest of such acts if there is more than one. That is also the law under section 51 of the Presidency Act. But the Provincial Act has made deliberate departure from this position and enacts that the order shall relate back to the date of the presentation of the petition. Such a provision was first enacted in the Provincial Insolvency Act, 1907 (3 of 1907). The reason for the departure from the English law was stated in the Legislative Council in the following words:--

"The English doctrine that it may have the effect of avoiding certain questionable transactions is a departure from the general rule that a decree or order relates back only to the commencement of the list".

On this reasoning, it was enacted that the order should relate back only to the date of the petition, and that position was reiterated in section 28(7) of the Act of 1920.

17. The principle behind the doctrine of relation back is explained by Mulla as follows:--

"It is not uncommon for debtors on the eve of insolvency to transfer their property to others to defraud their creditors. Justice to the creditors requires that such transfers should not be allowed to stand and it is for this purpose that the title of the Official Assignee or Receiver is made to relate back to 'See APP. IV.

2Appendix I, Clauses 18 and 37.

3Mulla, Law of Insolvency in India, (1958) page 574.

a date earlier than the date of the order or adjudication."

Having this principle in mind, we think that in the conditions prevailing in this country the provisions of the Presidency Act in this respect are better suited to achieve the object in view than those of the Provincial Act. Insolvency law is intended for an honest debtor. But unfortunately several dishonest debtors take advantage of the insolvency law in this country for the purpose of getting rid of their debts and at the same time concealing a substantial part of their property from the creditors. Relation back of insolvency to the date of the presentation of the petition does not serve any useful purpose, because it is rarely that an insolvent dishonestly transfers his property after the presentation of the petition. Mulla has observed, that the provisions of the Provincial Act on this subject are open to objection on the ground that they afford protection to a large number of transactions entered into by the debtor on the eve of insolvency to the detriment of his creditors. In the Presidency Act as originally introduced in the Legislature, it was provided that insolvency should relate back to the date of the presentation of the petition. But on the representations made by the High Courts of Calcutta and Bombay, the relevant provision was altered in the Select Committee on the lines of the English Act'. The Bombay High Court in its objection made the following points:--

"The title of the Official Assignee should be made to relate back to the act of insolvency because in the case of many traders' insolvencies, the insolvent has been contemplating the possibility of adjudication order for several months before it is actually made and has been making preparations for disposing of his property to guard against such a contingency. His preparations would to a large extent be frustrated if the title of the Official Assignee is related back as it does under the English Act."

We think that these observations have considerable force and have as much validity now as they had when the 1909 Act was being enacted. We may point out that in actual practice, the doctrine of relation back as enunciated in the Presidency Act does not work any hardship, because bona fide transactions are always protected'.

18. The doctrine of reputed ownership embodied in section 52(2) (c), Presidency Act, and section 28(3), Provincial Act, applies only when an insolvent is not the true owner. Mulla, Law of Insolvency in India, (1958) page 27, middle.

2See the Report of the Select Committee for the 1909 Act and Appendix thereto.

"See Appendix I, Clause 23.

'S. 57 of the Presidency Act and s. 55 of the Provincial Act.

Reputed ownership.

owner of the goods in his possession. It is highly immoral and inequitable that the true owner should lose his title to the goods merely because for some presumably good reason he allows his goods to remain in the possession of the insolvent. In the present economic conditions, the doctrine of reputed ownership appears to be outmoded and should in our opinion be abolished. The

doctrine is based on the assumption that the true owner of the goods, by allowing the goods to remain in the apparent ownership of the insolvent, enables the insolvent to obtain false credit. Credit is at present obtained through banks. and banks usually insist upon the pledge of goods or some other security before allowing credit. Few persons now- a--days give credit merely on the strength of the quantity of goods lying in the shop of the borrower. Muila makes the following observations on the doctrine of reputed own- e.rsh:2p'- 1--

113"" the doctrine O very l.:«u'sh1y in several cases and has workecl greater evil than good. It is not recognised in several systems of bankruptcy law. If, however, that clause is to stand in the Statute Book of Ind'a as a living clause the whole section should be recast. The section as it now stands is like a cheap Ja':k's shop packed wi;h a variety of clothes some of which are for mere show."

In our ~:-pinion it is not possible to recast the clruse with- out affecting the very fundamental principle on whicli the doctrine of reputed ownership is based. Ve. thercfzire. think that the better course would be to omit altoge . from the new law the provisions relating to r:'put~::1 own«'*rsh'1p. We may point out, that the Blaeden Com- mittee has also recommended the abolition of the doctrine of reputed ownership". While omitting the provisions of reputed ownership", we think that there lshould be some machinery by which persons who claim pi'ope:t_v in the possession of the insolvent may be able to establish their claim. We have, accordingly, added a new D1'ovisio'-".4 r-n the lines of section 50 of the Canadian Bankruptcy Act. which will enable a person claiming property in the'posses- sion of the insolvent, to lodge such claim before the OfTir.2al Assignee. If the Official Assignee does not accept the claim, provision is made for an appeal to the court. If no claim is made within a speci ed time, the pronerty shall be deemed to have been relinquished in favour of the Official Assignee, 1Mu1la, Law of Insolvency in India, (1958) page 573, para. 578.

"Report of the Committee on Bankruptcy Law etc. Amendment (1957) Cmd. 221, page 37, para. 110.

3Sce Appendix I, clause 48.

'See Appendix I, clause 51.

I Burden of

19. In the case of _a voluntary transfer. Fhe Ifmden o f _ proving laclc of consideration and good faith liles Fol: til;1f;r°\$mg"e Of cial Assigneeel-°. In a Rangoon "\$59 "lg er t9 nSI;___" _ voluntary cial Act, Page C.J. made the following o serva io . mnsfem "There is no doubt that the effect of the rullng Of the Judicial Committee (in 1931 75 and 193/) PC3-

3) to the effect that in a proceeding under section 5 (Provincial Act), the onus hes upon thewappllcant t9 prove that the transfer was not_ made 111. f3V011f Of a purchaser or an encumbrancer in good faith and fog valuable consideration' has placed the Receivers an creditors in insolvency in a great di culty. In 99 cases out of 100 in which proceedings are taken 'under section 53 of the Act, the Receiver knows nothing of the transaction which is impeached and is called upon to prove the negative in connection with a matter of which he cannot be expected to have any

'personal knowledge. I should have thought that in an application under section 53 of the Provincial Insolvency Act, it would have been the intention of the Legislature when once a transfer of property by the debtor is proved within two years of the presentation of the petition that the transferee should have been called upon to prove that he was a purchaser in good faith etc."

In another Rangoon case⁸ under section 55 of the Presidency Act, Page C.J. re-iterated the same view. We have given careful consideration to these observations but we think that the burden of proof should not be shifted to the transferee. The period of two years during which a voluntary transfer may be impeached is a long period. During this period the insolvent must have entered into a large number of transactions many of which would be bona fide. It is only a few transactions that may be tainted with fraud. If the burden of proof is placed on the transferee, it will work great hardship on bona fide transferees for 10¹⁰ Official Receiver V. P. L.K. M. R. XVI. Chettyar Firm, A.I.R. 1931 P.C. 15, 781 left-hand column--58 I.A. 115 (Lord Atkin) (appeal from Rangoon under the Provincial Act).

20¹⁰ Official Assignee V. Klzoo Saw Cheow, A.I.R. 1930 P.C. 265 (Appeal from Straits Settlements, Penang) Lord Tomlin).

3N. Subramardya Iyer V. Official Receiver, A.I.R. 1958 S.C. 1 ; (1958) S.C.R. 257.

'Harry Pope v. Official Assignee, A.I.R. 1934 P.C. 3, LL R. 12 18:1:iti)goon 105; 60 Ind. Appeals 362 P.C. (decision under Presidency 5For previous law see Official Assignee v. Shaikh A/_Ioiddeen, A.I.R. 1927 Mad. 1013, 1014, right 5 I.L.R. 50 Mad. 948 (Presidency Act). 'Mulla, Law of Insolvency in India (1958), pages 613-614.

7H. Hagemister v. U. Po Cho A.I.R. 1935 R I.L.R. Rangoon 625 (Provincial Act). 'angoon 53 12 tpo11gi. Fatima Bibi, A.I.R. 1936 Rangoon 145, 146, left (No:

Fraudulent preference.

value. Moreover, the normal rules relating to burden of proof are clearly laid down in Chapter VII of the Indian Evidence Act. Section 101 of that Act enacts that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Section 102 enacts that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. These are salutary rules, and should not be lightly changed. We, therefore, think that no sufficient grounds exist for changing the law' in respect of burden of proof laid down in the Indian Evidence Act, 1872.

20. So far as transfers by way of fraudulent preference are concerned, the Official Assignee has to prove that the dominant intention of the insolvent was to prefer the particular creditor"-3. The Blagden Committee, in dealing With this question, has made the following observations'*:---

"117. Such evidence (regarding intention) may exist in an admission made by the bankrupt in the course of his public examination or otherwise, but that evidence is not admissible against the

respondent to the motion. If the bankrupt is called as a witness it is most unlikely that he will admit his intent to prefer, which, apart from defeating that intent, might render him liable to a charge of having made an undue preference if he wished to obtain his discharge. A further difficulty in the way of a successful claim against the person preferred is the fact that any evidence of intention to prefer may be rendered nugatory if the preferred creditor can show that he was threatening the bankrupt with proceedings or otherwise using pressure to obtain payment. Such evidence can often be adduced, and advantage may be taken of this rule by a debtor in order to protect the creditor he wished to prefer by stating that the creditor was in fact pressing him and threatening him with proceedings if he were not paid."

"118. It has been represented to us that the effect of the law last referred to is fundamentally wrong, and that pressure by a creditor, far from enabling him to 'See Appendix 1, Clause 54.

"Mul1a, Law of Insolvency in India, (1958), page 630. Fear v. Gresham Trust Ltd., (1934) A.C. 252, 262. (1934) A.E.R. 82.

_ 3Sz'me Derby and Co. v. Official Assignee etc., A.I.R. 1928 P.C. 77, right-hand column (From Straits Settlements, Singapore) (Lord Warrington of Ecclesdale);

Kasi v. Official Receiver, A.I.R. 1929 Madras 321 5 Kashz' Nath v. Official Receiver, A.I.R. 1931 All. 142 ; Dina Nath v. Labhu Ram, A.I.R. 1932 Lab. 321 (Addison J) ; Gopal v. Balli Rao, A.I.R. 1937 Nag. 117 (Pollock J.) ; Official Receiver v. Vempati Venkayya, A.I.R. 1941 Madras 796, right-hand column (Patanjali Sastri J.).

'Report, page 39, para. 117-119.

retain the payment made to him, should have the opposite effect of rendering the payment void as against the trustee in bankruptcy, so that the creditor exercising pressure should not, by so doing, Obtain advantage over the other creditors. We appreciate the moral aspect exemplified in this case, but we cannot agree that a creditor who looks after his own interests before a bankruptcy to the extent of pressing his debtor to pay the debt owing should not obtain the benefit of his diligence."

"119. We do, however, recognise that the State of the law as it is at present is far from satisfactory, the principal reason being the difficulty of proof. We accordingly suggest that (in addition to new provisions allowing the transcript of the notes of the public examination to be used in evidence under certain conditions) there should be not only a voidable preference, as at present, at any time Within six months before presentation of a bankruptcy petition, but that there should also be a "absolute preference" after the presentation of a petition or during a period of twenty-one days prior thereto. This absolute preference would be void against the trustee in the bankruptcy if, in fact, the payment or transfer did prefer a creditor, without any onus resting upon the trustee to prove intent to prefer."

21. Section 95 of the Australian Bankruptcy Act provides that every conveyance, etc., by any person unable to pay his debts as it becomes due from his own money, in favour of any creditor or of any person in trust for any creditor having the effect of giving that creditor, etc, preference, priority or advantage over the other creditors shall be void. These words substitute an objective test for the subjective test. If there has in fact been a preference, the question of intention is immaterial. The corresponding provisions of section 64(2) of the Canadian Act proceed on slightly different lines. The Canadian Act provides that where any such conveyance, etc., has the effect of giving any creditor a preference over other creditors or over any one or more of them, it shall be presumed prima facie to have been made, etc., with a View to giving such creditor a preference over other creditors, Whether or not it was made voluntarily or under pressure and that evidence of pressure shall not be receivable or availed to support such transaction. We have considered the recommendation of the Blagden Committee and the relevant provisions of the Australian and Canadian Acts, but we think that no change is called for in our law. It is true that it is very seldom that there is direct evidence regarding fraudulent intention of the insolvent. But the court can infer such intention from the circumstances attending the transfer as established by the evidence'. In this connection, we may refer to *Sim Derby & Co. v. Official Assignee* A.I.R. 1928 RC. 77 ; *Pat v. Gresham Trust Ltd.* (1934) AC. 262 3 (1934) A.E.R. 82. e " Void " and " voidable "

refer to illustration (a) to section 106 of the Indian Evidence Act, 1872, Which provides that when a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him. In actual practice it should not be difficult for the Official Assignee to prove certain facts from which the necessary inference about intention may be drawn. Shifting the burden of proof on the transferee would give rise to another difficulty. A transfer by way of fraudulent preference is also an act of insolvency As an act of insolvency the burden of proof lies on the creditor. We see no reason why as a fraudulent preference the rule regarding burden of proof should be different'. Such a change would result in a certain amount of inconsistency in the law.

23. In section 55 and 56 of the Presidency Act relating to voluntary transfers and transfers by way of fraudulent preference, the word used is 'void'. In section 53 of the Indian Act dealing with voluntary transfer, the word used is 'voidable', while in section 5-1 dealing with fraudulent preferences, the word used is 'void'. The question for consideration is whether in the new law the word 'void' or 'voidable' should be used. It is true that the word 'void' has been construed as 'voidable'. The object of using the word 'void' instead of 'voidable', as observed in an English case, seems to be to make it clear that the title of the trustee could not be avoided by anything done between the date of bankruptcy and the declaration of the trustee's title". In another English case the point is explained in the following words:-- "On one side it is said void ab initio----void from the date of settlement. Where do you find that? The words are not there. There are other Words which point in the contrary direction and these are the words 'void against the trustee in the bankruptcy'. What do they mean? They mean void as against the trustee in the bankruptcy from the date of the accrual of his title or in other words, void from the date of the act of bankruptcy to which the title of the trustee relates These two cases were considered in later cases? In *Gunsbourg & Co. Ltd.*" a doubt was cast whether the doctrine of relation back applies in cases where a settlement See Appendix I, clause 55.

WiiH?r4n'S1:13I:7{Ea':d\$foG:1?1':18<iy in India, (1958) page 614, para. 620, and "See In re Brall, ex. parte Norton (1893) 2 Q.B. 381, Vaughan Williams 'In re Carter and Kenderdz'ne's Contract, (1897) 1 Ch. 776 C.A.

a 5;";z.f'%:32o\$tt:*'t.3'22?'9*" 3 6 re A °G""3bWTg 5*' o7- Ltd» (1920) A.E.R. 492--(1920) 2 B.K.426.

is declared void as against the trustee. But the View taken in earlier cases has not been overruled. In any case the word 'void' has not in practice given rise to any difficulty, and as explained above has been used with a definite object. We, therefore, think that the word 'void' is to be preferred to 'Voidable'.

23. In section 44 of the English Bankruptcy Act, 1914, Py'Fiod_of _ which deals with fraudulent preference, the period of 1C';:'a"";" 'I' three months was extended to six months by section 115(3) fraudulent and (6) of the Companies Act, 1947. We recommend' that preferences. in the new law a similar change should be made. Fraudulent preference is one of the acts of insolvency. in view of the doctrine of relation back, a transaction which amounts to fraudulent preference will, qua an act of insolvency be liable to; be impeached if it has taken place within three months of the insolvent's act. The existing; ' ' in the Presidency Act re7.aLin_c§ to fFi%l,l(iLii ; which is restricted to, months does; not serve a very little; =ful purposes«:..

2-1. Under section 37 of the Presidency Act. ' < Bona475 transaction entered ' with the insolvent before the order of adjudication is protected in dealing with the insolvent has priority of the insolvency petition. The provisions ' ' of the presentation of the insolvency petition. >et,=t"v consistent with the doctrine of relation back; under the Presidency Act. Mulla has suggested out consistency, and has suggested an amendment :>f s' 57 on the lines of section 45 of the English Act this suggestion. We also accept the so' such a change is made. it will be necessary into the Indian law the provisions: of section 37 of the Bankruptcy Act, 1914.

2.5. We have therefore recommended the following special provision, 4 be granted to be via, 1 of section 97 of the Administration Art. The following terms:

Special protection

5. to bankers.

"Any payment of money, or delivery of negotiable instrument made in or by me or direction of a debtor by his banker in good faith before the making, or without negligence on the part of the banker after the making, of the order of set-off made against the debtor shall be valid as against the trustee."

to bankers, see Appendix I, clauses 54-55.

3See Appendix I, clause 55.

3Mulla, Law of Insolvency in India, (1958) pages 27, 28.

'See Appendix I, clauses 57-58.

'Transferees from donees.

- Copyright.

Second

- bankruptcy.

While there may be no objection to protecting bankers in respect of transactions entered into in good faith before adjudication, we think the extension of the protection in the absence of negligence to transactions after adjudication may be liable to be abused. It is to be noticed that in this country banking business is not only done by regular banks but also by private firms. In our opinion the interests of bankers are sufficiently safeguarded by the section' protecting bona fide transactions and the new provision proposed by us on the lines of section 46 of the English Bankruptcy Act, 1914.

26. Under the existing law, the position of transferees from donees where the original transaction with the donee is declared void, is not quite clear? It has been held in a Nagpur case" that the provisions of section 53 of the Provincial Act apply only to transfers by the insolvent and not to transfers by the transferees from the insolvent. In this connection, we think that the provisions of section 66 of the Canadian Act are suitable and may be adopted. That section, while protecting the rights of bona fide transferees for value empowers the Official Assignee to recover property of the bankrupt which has been acquired under a transaction that is void or the value or sale proceeds in the hands of the transferee.

27. The existing law does not contain any provision relating to the property of the insolvent consisting of works in which copyright subsists. Section 52 -of the Canadian Act contains useful provisions on this subject. That section enacts that subject to certain conditions, the author's manuscripts and any copyright assigned to a publisher, etc., shall on the publisher, etc., becoming bankrupt revert to the author. We recommend that a provision on the lines of the Canadian Act may be incorporated in the new law'.

28. The existing law does not provide for a contingency where a person who has become insolvent is again adjudged insolvent before he is discharged in the first insolvency. In this connection. we may refer to section 39 of the English Bankruptcy Act. 1914 and the modification suggested in that section by the Blagden Committee". In paragraph 114 of the Report, the Committee have considered two solutions of the problem. We prefer the second solution," under which the assets in the second or subsequent insolvency will first be applied towards payment to the creditors of such insolvency of a dividend up to the amount of any 'See Appendix I, clauses 57-58.

"Mulla, Law of Insolvency in India, (1958) pages 620-62x, para. 625. 'Gom'nd v. Sonba, A.I.R. 1930 Nagpur 34.

"See Appendix I, clause 64.

'Report, (1957), Cmd. 221, pages 37-38, para. 114.

°See Appendix I, clause 49.

dividend that has been paid to the creditors in the former insolvency, but when both the insolvencies reach equality' as regards dividend paid, any further assets available will be distributed pro rata to the creditors in both the insolvencies. In our opinion, the "administrative complications" referred to in the Report of the Blagden Committee (which, incidentally, are not specified in that Report) may not be insurmountable, and should not stand in the way of this solution which seems just and fair to the creditors of both the insolvencies.

29. There is difference between section 52(2)(a') of the Presidency Act and section 28(2) of the Provincial Act as to the character and title of the insolvent over after-acquired property and the rights of transferees therein of such property. In England, the law is, that it is only when the Official Assignee intervenes that such property vests in him. It follows, that any dealing by the insolvent with the property before the Official Assignee actually intervenes will be valid if it is bona fide and for consideration. The law in the Presidency Act is the same as in England. Under the Provincial Act, however, such property vests "forthwith" in the Official Receiver? The Privy Council* has accordingly held that the doctrine in *Cohen v. Mitchell* has no application to cases governed by the Provincial Act. The result is that under that Act any dealing with the after-acquired property by the insolvent would confer no title whatsoever on the transferee. The question for consideration is which of these two rules should be adopted. We are of the opinion, that the law as laid down in the Provincial Act should be adopted as it is both logical and just".

It is conceivable that such law may work hardship in cases Where an insolvent who is carrying on business with the knowledge of the Official Assignee transfers property acquired by him in the course of such business to a person who purchases it in good faith and for valuable consideration. It seems that the rule in *Cohen v. Mitchell* was originally evolved for giving protection to such persons. Though the rule is now applied without limitation to all after-acquired property, in practice it is largely used with reference to transfers of property in the ordinary course of business. *Cohen v. Mitchell*, (1892) 2 Ch. 138. And see 38(a) and 47, English 2 Mulla, Law of Insolvency in India, (1958), page 509, para. 52, and page 520, para. 536.

KaZa Chand v. fagarmarh, 54 I.A. 190 1927 P.C. 108.

" See Appendix I, clause 48(2).

5Observations of *Ka i, L. v. V r L d D, v y .* ' 59'C 11, (1892) 2 Ch. 1338. *gecmalsr: i);ficz'ala* "Recei.,:io'm'é1;o;,1m§§';'3'g§ 2 . 66! . ' ' 'Cf. Williams on Bankruptcy, 17th edition, page 381,

bot-tom_ 5 I.L.R. 54 Cal. 595 3 A.I.R. After-

acquired property.

.i.'rt'ority of iebts.

of business. The rule is allied in principle to another rule equally well-established, under which where an insolvent is permitted by the Official Receiver to carry on business, creditors of the insolvent in that business are, as regards the assets of that business, entitled to priority over other creditors'. The Privy Council has applied this principle in a case arising under the Indian Insolvency Act, 1848. We are, accordingly, of the opinion that while the law should be enacted in terms of section 28(4) of the Provincial Act, an exception should be made in favour of transferees of after-acquired property in the ordinary course of business.

In this view there is no need to consider the question whether the rule in *Cohen v. Mitchell* should be applied to immovable property. Before the Bankruptcy Act of 1914, it had been held in England in a series of decisions that the rule had no application to real property. But this exception was swept away by the Act of 1914, and under section 47 of that Act real property was also brought within the rule. The decisions of the Indian Courts are not uniform on this subject'. The High Court of Madras has held that the rule in *Cohen v. Mitchell* does not apply to immovable property. The contrary view has been taken by the Calcutta, Bombay and Allahabad High Courts. In a later case the Calcutta High Court has taken the view that the rule in *Cohen v. Mitchell* does not apply to immovable property. If after-acquired property vests in the Official Receiver at the time of acquisition and the insolvent has in consequence no title which he could transfer, it would make no difference whether the property transferred is movable or immovable. If the property which is dealt with by the insolvent falls within the exception, as one acquired in the ordinary course of business. then the transfer will be valid whether the property is movable or immovable.

30. Under section 3 of the English Bankruptcy Act, 1914. taxes due only for one year have priority over other debts. Under the two Indian Acts". all debts due to the

- *Enrclbach V. l'xmz*, (1875) I.L.R.

l'ol>V'lfo7l V. Gitley, 25 RR. 408 10 C.P. 6.15.

'Kera1eo0.ce V. Brooks.

1939 Rangoon 186.

3In re l'c-to Lana' D'l'E]o]7EP! A.<rnz'z7ti'on (5-' Gray, (1892) 2 Ch. 138 ; Official Receiver V. Cook, /1906) 2 Ch. 661.

'Sec Mulla. Law of Insolvency in India. (1958) pages 513-514, para. 531. 5Rn-zclarzdsorz v. Clzam1.vz'mz. (1894) I.L.R. 17 Madras 21. Sim' Ramulu 8 M.L.A. 339 : Ah Charm v.

V. Andi:/amma/, (1907) I.L.R. 30 Mad. 145. "Kristo Cmmzl \'. Suresh (Thunder (1882) I.I R' Cal. 556 ; Fatima 35.17; V "l*:"»11 'ii/vi (IQI.-2': I.L.I'<. 1:': Born :52 ; Chhotc La! v.Kedar M217, I.L.R. 46 All. 565 ; A.I.R. 1924 All. 703. 7KamaZa Bald Dasi v. Fanindra Chandra De, I.L.R.

394 (Das 1-).

"Section 61(1), P.A., s. 49(1), P.T.A (1947) I Cal' zliolzmned, A.I.R.

Government, which include taxes, take precedence over other debts. We think that in the conditions prevailing in this country the preference of debts due to Government should not be whittled down. We considered the question whether any preference should be given to small creditors. But in View of the difficulty of defining a small creditor and where to draw the line, we think that no such provision, although desirable, is feasible. We also examined the question whether priority should be given to payments to be made under the Workmen's Compensation Act, 1923, the Employees' State Insurance Act. 1948, and the sums due to an employee from a Provident Fund etc, as provided in section 530 of the Companies Act, 1956. In our opinion there is a great deal of difference between the liquidation of a company and the insolvency of an individual. Companies do business on a very large scale, while an insolvent may be a small trader. We think that under the Insolvency law, the list of preferential creditors should be as small as possible. We, therefore, do not recommend any change on these matters in the existing law'.

31. There are very few prosecutions under the insol-- Penalties.

insolvency law in this country. The reason perhaps is that it is difficult to prove the guilty intention of an insolvent which is a necessary ingredient of every insolvency offence. In this connection the following observations made by Mulla are relevant:---

"In England all that the prosecution has to prove is the act. or omission complained of. and the onus rests upon the debtor to prove that he had no intent to defraud or that he did not mean to conceal the state of his affairs or to defeat the law. This proceeds on the principle that the debtor is in a position to know all facts which go to prove his innocence and it is, therefore, for him to prove those facts. This, it is submitted, is a sound principle, and it is in accordance with the provisions of section 106 of the Indian Evidence Act. 1872. That section says that. when any fact is especially within the knowledge of any person the burden of proving that fact is upon him. The same rule, it is submitted, should be applied to insolvency offences in India. But it is a matter for the Legislature."

We recommend that this suggestion may be accepted?

Some offences in the English Bankruptcy Act of 1914 are not included in the Indian Acts. We recommend that the penal provisions in the new law should be enacted on the lines of sections 154 to 160 of the English Act. We have also taken this opportunity of further enlarging the Appendix I, clause 72. --' "Mulla, Law of Insolvency in India, (1958), page 708, para, 72 "See Appendix I, clause 119 et seq.

Appendices.

list of insolvency offences by borrowing some provisions from the Australian and Canadian Bankruptcy Acts.

32. In order to give a concrete shape to our recommendations We have, in Appendix I, shown them in the form of a draft Bill.

Appendix II contains Notes on Clauses, elucidating, with reference to the clauses in Appendix I, the points that they raise.

Appendix III contains comparative tables showing the sections in the existing Acts and the corresponding provisions in the proposed Bill.

Appendix IV gives figures of periods of discharge of insolvents; the Presidency-towns.

1 J. L. ELLIS, Chairman. W 2 G. DATAR. I

3. S. K. HIRANAN'DANI. >3

4. S P. SEN-VARMA. Members.

5. NIREN DE.

6. T. K. TOPE.

P. M. BAKSHI, Joint Secretary and Draftsman.

NEW DELHI;

The 21st February, 1964.

EXPLANATION OF ABBREVIATIONS USED IN APPENDIX I P.A.=The Provincial Insolvency Act, 1920. P.T.A.=The Presidency Towns Insolvency Act, 1909.

APPENDIX I PROPOSALS AS SHOWN IN THE FORM OF A DRAFT BILL (This is a tentative draft only) Notes:--(i) Corresponding sections of the existing Acts are noted in the margin.

(ii) Provisions not occurring in the Provincial Insolvency Act, 1920. have been described as "New".

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THIRD SCHEDULE.» Dcc;~.£or-s-, and Orders 1';-onxxvImich an appeal lies to

-'he Higzh Court. etc. THE INSOLVENCY BILL. 196 A Bill to consolidate and amend the laws relating to insolvency.

BE it enacted by Parliament in theYear of the Republic of India as follows:---- CHAPTER I
PRELIMINARY shontme, 1. (1) This Act may be called theInso1Vency extent and Act,
19-----.

COI'IIfI1€"!1C€-

IIICIIIL [s_ I'],_A_] (2) It extends to the whole of India except the State of Cf, s, 1, Jammu and Kashmir.

P.T.A.

(3) It shall come into force on such date as the Central Government may, by noti□ation in the Of□ial Gazette, appoint in this behalf.

De□initions_ 2. In this Act, unless the context otherwise requires,- [New] 46th (a) "court" means the court having jurisdiction m^{oo}""g- under this Act;

[S- 2 (I)(a).

part, P.A.]

(b) "creditor" includes a decree-holder; [s. 2(1)(a), (c) "debt" includes a judgment--debt; part, P.A.]
'[s. 2(1)(a), (cl) "debtor" includes a judgment-debtor, and P3": P-A-l also any person, whether a citizen of India or not, who, at the time when any act of insolvency was committed by him,----

Cf_ s_ [(2), (1) was personally present in the territories to Eng. gank- which this Act extends; or
?;§:,C_y ct' (2) was ordinarily resident or had a place of residence in the said territories; or (3) was carrying on business in the said terri- tories either personally or by means of an agent or manager; or (4) was a partner of a □m which carried on business in the said territories;

[3, 2(1)(b) , (e) "district court" means the principal civil court A- of original jurisdiction in a district, but does not in- clude a High Court in its ordinary original civil juris-

diction;

(f) "Oi□ial Assignee" includes a Deputy O□ia1[N^o] Assignee;

. A .)o.

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

«property»: includes any property over or the proceeds of which any person has a disposing power which he may exercise for his own benefit;

(i) "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as the security for a debt due to him from the debtor and includes a landlord who, under any enactment for the time being in force, has a charge on land for the rent of that land;

(j) "transfer of property" includes a transfer of any interest in property and the creation or transfer of any charge upon property; and

(k) all words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908, shall have the meanings respectively assigned to them in that Code.

(l) all words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908, shall have the meanings respectively assigned to them in that Code.

1908, shall have the meanings respectively assigned to them in that Code.

CHAPTER II ACTS OF INSOLVENCY

3. (1) A debtor commits an act of insolvency in each of the following cases, namely:--

(a) if, in the territories to which this Act extends 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 said territories 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 said territories or in any place outside India, he makes any transfer of his property or of any part thereof, which would, under this Act, be void as a fraudulent preference if he were adjudged an insolvent;

(d) if, in the State of Jammu and Kashmir, he makes any transfer of his property or of any part thereof, which would, under this Act or under any law corresponding to this Act for the time being in force in that State, be void as a fraudulent preference if he were adjudged an insolvent;

[New] As to set-off?

which could not be paid

forth.

Cf-S- I(t7Cg), hnglish Act.

[New]

(e) it, with intent to defeat or delay his credi- tors,-

(i) he departs or remains out of the said territories;

(it) he departs from his dwelling-house or usual place of business or otherwise absents him- self;

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

(f) if any of his property has 'been sold or has been under attachment for a period not less than twenty-one days, in execution of the decree or order of any court for the payment of money.

EacpZaination.----For the purposes of this clause, where the debtor is a partner in a firm, an order; charging his interest under sub-rule (2) of rule 49 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908, shall be deemed to be an order of attachment,

(g) if he petitions to be adjudged an insolvent under the provisions of this Act;

(h) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend pay- ment of his debts;

(ii) if he is imprisoned in execution of the decree or order of any court for the payment of money.

(2) A debtor commits an act of insolvency if a creditor who has Qibtained a decree or order against him for the payniegn. of a sum of money (being a decree or order VVlll=.:'l'} has become □hal and the execution whereof has not been stayed). has served on him an insolvency nritice as p3:ov;de-d hereunder and the debtor does not comply with such notice vfthin the period speci□ed therein:

Provided tha: the debtor shall not be deeme:'=_ to have committed an act of insolvency for not complying wi<h the notice if he has a counter-claim or set--ofi° which €c;u:t7.s or exceeds the sum remaining due under the decree' or order, and which he could not lawfully set up in the suit or proceeding in which the decree or order was made against him :

Provided further that Where the insolvency notice is to be served outside the territories to which this Act ex- tends, the leave of the court shall be □st obtained before service of the notice.

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

(a) be in the prescribed form;

5 of 1908.

(b) be served in the prescribed manner;

(C) specify for its compliance a period not less than one month after service, or, if it is to be served outside the territories to which this Act extends, then such period as may be allowed by the order of the court granting leave for the issue of such notice;

(d) require the debtor to pay the amount due under the decree or order, or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent, within the period to be specified therein, which shall be not less than one month from the date of the service thereof, or less than the period allowed under clause (c) of this sub-section. as the case may be;

(e) state the consequences with the notice.

(4) Such notice shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor, within the period allowed for payment, gives notice to the creditor that he disputes the validity of the notice on the ground of such mis-statement; but if the debtor does not give such notice, he shall be deemed to have complied with the insolvency notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

of non-compliance E;1r:planatto.n.--For the purposes of this section, the act of an agent may be the act of the principal, even though the agent has no specified authority to commit the act.

CHAPTER III INSOLVENCY PETITIONS

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

Ex-planation.--The presentation of a petition by the debtor Shall be deemed to be an act of insolvency within the meaning of the section, and on such petition the court may make an order of adjudication.

5. (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, [New] [s. 6, Expl., .A.] Cf. s. 9, Exp1.,P.T. A.

Petition of insolvency.

[s. 7, P.A.] Cf. s. 10, P.T.A.

Conditions on which cre-

ditor may petition.

or, if two or more creditors join in the petition, the [S- 9(1), P.A] aggregate amount of debts owing amounts to ₹ve hundred rupees, and to such creditors, I f. s. 12(1) , .T.A.

(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:

Provided that where the said period of three months referred to in clause (c) expires on a day when the court is closed, the insolvency petition may be presented on the day on which the court re-opens.

[New] Explanation.----For the purposes of clause (C), where the act of insolvency is constituted by a transaction which is required to be made by a registered instrument under any law for the time being in force, and the transaction is made by such registered instrument, the date of registration of the instrument shall be deemed to be the date on which the act of insolvency has occurred.

[s. 9 (2), (2) If the petitioning creditor is a secured creditor, P-A he shall in his petition either state that he is willing to re- (1;7;I.' :A 12(2)' linquish his security for the benefit of the creditors in the ' ' ' event of the debtor being adjudged insolvent, or give an estimate of the value of the security; in the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an un-

secured creditor.

C17 9- 1.4» (3) In computing the period of three months referred to in clause (c) of sub-section (1), the time during which (35 'of 1953), the petitioner has been prosecuting with due diligence another insolvency proceeding, whether in a court of first instance or of appeal or revision, against the debtor shall be excluded, where the proceeding is based on the same act of insolvency and is prosecuted in good faith in a court which, from defect of jurisdiction, is unable to entertain it.

Ea.-planatz'on.---For the purposes of sub-section (3)--

(a) in excluding the time during which a former insolvency proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a petitioner resisting an appeal shall be deemed to be prosecuting a proceeding;

Cf. s. 2_(a), (c) "petitioner" includes any person from or Limitation through whom the petitioner derives his right to present the petition; Act' 1963'

Cf. s. 202), ((1) nothing shall be deemed to be done in good faith which is not done with due care and attention.

6. (1) A debtor shall not be entitled to present an insolvency petition unless he is unable to pay his debts and-

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

(b) he is under arrest or imprisonment in execution of the decree or order of any court for the payment of money; or

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

Explanation---For the purposes of this clause, where the debtor is a partner in a firm, an order charging his interest under sub-rule (2) of rule 49 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908, shall be deemed to be an order of attachment.

(2) A debtor in respect of whom an order of adjudication 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.

(3) The court shall not grant leave under sub-section (2) unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

7. (1) Every insolvency petition presented by a debtor shall contain the following particulars, namely:--

(a) a statement that the debtor is unable to pay his debts; Cf-S- 15(1):

part, P.T.A,-

(b) the place where he ordinarily resides, carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody;

(c) the court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree or order in respect of which any such order has been made;

(d) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by, him;

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

(i) a specification of the value of all such property not consisting of money;

[New] [S- 13 (2), P. A].

Verification of petition.

'1 s. 12, P.A.] Cf. s. 13(1), P.T.A.

Appointment of interim receiver.

[s. 20, P.A.] ~Cf. s. 16,

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

(iii) a declaration of his willingness to place at the disposal of the court all such property, save in so far as it includes such particulars (not being his books of accounts) as are exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree;

(f) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent, and (where such petition has been filed) ,---

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

(ii) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether any previous adjudication has been annulled and, if so, the grounds therefor;

(g) particulars of all transfers of property made by the debtor within the period of two years immediately preceding the date of the presentation of the petition, and the manner in which the money or other consideration (if any) received for such transfer was 'applied by the debtor.

(2) The debtor shall, along with his petition, produce a list of the books of accounts relating to his affairs.

(3) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (b) of sub-section (1), and shall also specify-

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

(b) the amount and particulars of his or their pecuniary claim or claims against such debtor; and

(c) when the debtor is not a citizen of India, particulars sufficient to show how the court has jurisdiction.

8. Every insolvency petition shall be verified in the prescribed manner.

9. The court----

(a) if it is shown to be necessary for the protection of the estate, may at any time before adjudication, appoint, and 5 of 5 of 1908.

5 of 1908 [s. [9, P.A.]

(b) when the debtor is the petitioner, shall appoint, the Official Assignee as the interim receiver of the property of the debtor or of any part thereof, and may direct him to take immediate possession of the same, and the interim receiver shall thereupon have such of the powers conferable on a receiver appointed ;under the Code or Civil Procedure, 1908, as the court may direct. Admission of petitions.

[s. 18, P.A.]

10. (1) The procedure laid down in the Code of Civil Procedure. 1908, with respect to the admission of plaints, shall, so far as it is applicable, be followed in the case of insolvency petitions, by all courts other than the High Court.

(2) Where an insolvency petition is admitted, the court shall make an order fixing a date for hearing the petition.

(3) Notice of be given, in such

(a) to creditors;

(b) where the petition is grounded on an act of insolvency constituted by any transfer of property made by the debtor to any person, then to such transferee; and

(c) to such other persons. if any, as the court may think being persons having an interest in the proceedings.

(4) Where the debtor is not the petitioner, notice of the order under sub-section (2) shall be served on him in the manner provided for the service of summons.

(5) The provisions of this section do not apply to the High Court. '

11. (1) At the time of making an order admitting the petition or at any subsequent time before adjudication, the court may, if the debtor is under arrest or imprisonment [S- 23'P-A-l

ment in execution of the decree or order of any court for the payment of money, order his release on such terms as to security as may be reasonable and necessary.

(2) The court may, at any time, order any person who has been arrested under this section to be re-arrested and recommitted to the custody from which he was released.

(3) At the time of making an order under this section, the court shall record in writing its reasons therefor.

the order under sub-section (2) shall be in such manner as may be prescribed,

12. At the time of making an order admitting the petition or at any subsequent time before adjudication the court may, either of its own motion or on the application of the debtor,

of any creditor, make one or more of the following orders, [s. 21, P.A.] namely:---

(a) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison;

(b) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree;

(c) order a warrant to issue with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary:

Provided that no order shall be made under clause

(a) or clause (b) unless the court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the court,--

(i) has absconded or has departed from the local limits of the jurisdiction of the court, or is about to abscond or to depart from such limits, or is remaining outside them, or

(ii) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

13. (1) Any debtor for whose properties a receiver has;

order_bcf_ore been appointed under section 9 may apply to the court for 3dl11d!°3U°n- protection, and the court may, on such application and it [New] satisfi ed that the receiver has been put in possession of all the properties, make an order for the protection of the debtor from arrest or detention in the civil prison, in res- pect of such debts and for such period as may be speci ed by the court, and may revoke, modify or renew the said order in such manner as it may think i.

2) A protection order under this section shall protect the debtor from being arrested or detained in prison for any debt to which such order applies, and any debtor arrested or detained contrary to the terms of such an order shall be entitled to his release:

Provided that no such order shall operate to prejudice the rights of any creditor in the event of such order being revoked or modi ed or the debtor not being adjudged insolvent.

(3) Any creditor shall be entitled to appear and oppose» the grant of a protection order under this section.

5 of 1908.

14. (1) On the making of the order admitting his peti- {d3e1l1)tti(=)Srsof tion, the debtor shall--- [s_ 22,'P_A_ ((1) unless the court otherwise directs, produce all (pmn his books of accounts, and Cf. s. 15 (1)) file such lists of creditors and afford such P-T-A assistance to the court as may be prescribed, failing which the coiut may dismiss his petition.

(2) After an order admitting a creditor's petition for [s. 22, pm, adjudging the debtor to be an insolvent is made, the debtor P-A-l shall produce all books of accounts whenever so re- quired by the court or Official Assignee or special manager.

(3) On his adjudication as an insolvent, the debtor shall 22 P.A. give such inventories of his property and such lists of his "01 creditors and debtors and of the debts due to and from C]; s_ 33(1) them, respectively, submit to such examination in respect and(2)1>_T,A, of his property or his creditors, attend at such times before the court or Official Assignee or special manager, execute such instruments and generally do all such acts and things in relation to his property as may be required by the court or Official Assignee or special manager, or as may be prescribed.

(4) The debtor shall, onadjudication as an [S- 23(1), insolvent, aid to the utmost of his power in the realisation ' ' of his property and the distribution of the proceeds among C,-_ s_ 33(3), his creditors. P.T.A.

(5) On the making of an order of adjudication, the [New] insolvent shall hand over to the Ofi al Assignee his pass- port for leaving India, if any such passport has been issued to him and is in his possession.

15. (1) At the hearing of the debtor's petition, the Pmccdu,-em court shall require proof that the debtor is entitled to pre- the hcfiring sent the petition: g£);h'o'-'P'o'1' Provided that he shall

... for the purpose of proving his inability to pay his debts, be required to furnish P.A.] ' only such proof as to satisfy the court that there are prima facie grounds for believing the same, and the court, if and if 3(2)' when so satisfied, shall not be bound to hear any further evidence on the question of such inability. P.T.A. part.

(2) At the hearing of the creditor's petition, the court shall require proof of the following matters, namely:--

(a) that the creditor is entitled to present the petition;

(b) that the debtor, if he does not appear, has been served with notice of the order admitting the petition; and (c) that the debtor has committed the act of insolvency alleged against him, or, if more than one act of insolvency is alleged against him in the petition, some one of the acts of insolvency so alleged. ' o CHAPTER. IV Awunrexxrrrr Order on Order of adjudication, 16. (1) In the case of a petition by a creditor, where petition. the court is not satisfied with the proof of his right to present the petition or the service on the debtor of notice of insolvency, the court may, if it is satisfied that the debtor is not a person who is unable to pay his debts, or that for any other sufficient reason the order ought to be made, the court shall dismiss the petition. P.A.] 1"

cf. 3. 13(5), (2) The court may make an order of adjudication if it is satisfied with the proof above referred to.

(3) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting the petition against him, the court may--

P-T-A' (a) decide the question whether the debtor is indebted to the petitioner or whether he is indebted to such an amount as would justify the petitioner in presenting the petition, as the case may be; or

(b) on such security (if any) being given as the court may require for payment to the petitioner; any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, stay all proceedings on the petition for so long a time as may be required for the trial of the question, relating to the debt.

f.f.I."A'3(7)' (4) Where proceedings are stayed under clause (b) ' ' ' sub-section (3), the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it, thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

Order on . 11. I) In the case of a petition presented by a debtor, the court shall dismiss the petition, if it is not satisfied that the debtor is unable to pay his debts, or that for any other sufficient reason the order ought to be made, the court shall dismiss the petition. P.A.] 1"

debtor to part, P.T.A- the petition x'

Previously 33A.

W .

18. (1) Where the court makes an order of adjudication, it may specify in such order or in any subsequent order the period within which the debtor shall apply for his discharge.

(2) The court may, upon an application being made before the expiry of the period fixed under sub-section (1) and upon sufficient cause being shown, extend the period within which the debtor shall apply for his discharge, and if the period is so extended, shall publish notice of the order in such manner as it thinks fit.

19. (1) On the making of an order of adjudication, the property of the insolvent wherever situated shall, subject to the provisions of section 48, vest in the Official Assignee and shall become divisible among the creditors. §, thereafter except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the court and on such terms as the court may impose.

(2) An application under rule 6 of Order XXXIV in the First Schedule to the Code of Civil Procedure, 1908, shall be governed by the provisions of sub-section (1) in the same manner as an application for execution by an unsecured creditor against the property of the insolvent.

(3) Any suit or other legal proceeding commenced without obtaining leave under sub-section (1) shall be dismissed.

(4) Nothing in this section shall-

(a) affect the power of any secured creditor to realise or otherwise deal with his security, in the same manner as he would have been entitled to realise or deal with if this section had not been enacted, or

(b) bar a creditor from taking, subject to any order which may be passed under section 24, any proceedings against the person of the debtor which are permitted under the law.

20. (1) A High Court exercising jurisdiction under this Act 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 High Court or in any other Court subject to the superintendence of the High Court: (2)* An order made under sub-section (1) may be served by sending a copy thereof, under the seal of the High Court, by post to the address for service of the plaintiff or Order to specify Period for discharge.

Is. 27 (1), part, P.A.] [s- 27(2), P.A.] Effect of an order of adjudication.

[s. 28 (2), part, P.A.] s. 17, _ main para.

P.T.A.

[New] [New] s. 28 (6), .A.] If Cf. s_ - 17, proviso, P.T.A.

Stay _of pend_mg pro-

ceedings. 1 C]. s. 18(r), P.T.A.

[NW] [New] Cf. s. 18(2).

P.T.A.

[s. 29, P.A.] Cf. s. 18(3), P.T.A.

Publication of order of adjudication.

[s. 30, P.A.] Cf. s. 20, P.T.A.

[NW] Cf. s. 116(2), PT.A.] CY- S; 137, English Act read with s. 37.

Relation back' of insolvency.

[s- 28 (7), P.A.] Cf. s. 51, P.T.A.

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 suit or other proceedings are pending against a debtor may, on proof that an order of adjudication has been made against him under this Act, either stay the suits or proceedings or allow them to continue on such terms as it may think just.

21. (1) Where the person adjudged insolvent is a partner in a firm, the court may authorise the Official Assignee to continue or commence and carry on any suit or other proceeding in his name and that of the partner of the insolvent; and any release by the partner of the insolvent of the debt or demand to which the proceeding relates shall be void.

(2) Where an application for authority to continue or commence any suit or other proceeding has been made under sub-section (1), notice of the application shall be given to the partner of the

insolvent, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the" proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the court directs.

22. (1) Notice of every order of adjudication stating the name, address and description of the insolvent, the date of the presentation of the petition, the date of the adjudication, the period Within which the insolvent shall apply for his discharge, and the court by which the adjudication is made, shall be published in the Official Gazette and in such other manner as may be prescribed.

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

23. The insolvency of a 'debtor, Whether the same takes place on the debtor's own petition or on 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 The marginal note in s. 51, P.T.A. is But it is considered that it should be insolvency".

"Relation of assignee's title."

changed to "Relation back of the acts of insolvency proved to have committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition:

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

Proceedings consequent on order of adjudication

24. (1) Any insolvent in respect of whom an order of Protection adjudication has been made 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. to (4), P.T.A.

(2) A protection order may apply either to all the debts of the insolvent provable in insolvency or to such of them as the court may think proper, and may commence and take effect at and for such time as the court may direct, and may be revoked, modified or renewed as the court may think fit.

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

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

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

25. At any time after an order of adjudication has been made, the court either of its own initiation or on the application of any creditor or the Official Assignee may, if it has [s, '32_p, (:A_'] reason to believe--- Cf. s. 34 (1),

(a) that the insolvent has absconded or is about P'T'A' to abscond with a view to avoiding examination in respect of his affairs or otherwise avoidings, delaying or embarrassing proceedings in insolvency against him, or

(b) that the insolvent has departed or is about to depart from the local limits of its jurisdiction, with a View to avoiding any obligation which has been or might be imposed on him by or under this Act, or

(c) that the insolvent has removed or is about to remove his property with a View to preventing or de- laying possession being taken of it by the Official As- signee, or that he has concealed or is about to conceal or has destroyed or is about to destroy any of his pro- perty or any books, documents or writings which might be of use to his creditors in the course of the insol-

VenCy, s Redirection of postal articles.

C}. s. 35, P.T.A.

Cf. s. 13, Canadian Act.

Cf. 5. 24.

Engi. Act.

Insolvent's schedule.

[New] Cf. s. 24, (1) P.T.A.

Cf. s. 24, P.T,A.

Cf- 3- 24(2), P.T.A.

Meetings of creditors.

[New] Cf. 26, P.T.A.

Public exa-

mination of it insolvent.

[New] Cf. s. 27, P.T.A.

order a warrant to issue for his arrest, and on 1115 appearing or being brought before it, may, if satisfied about the facts mentioned in clause (a), (b) or (c), order his release on such terms as to security as may be reasonable or necessary, or, if such security is not furnished, direct that he shall be detained in the civil prison for a period which may extend to three months.

26. Where the Official Assignee has been appointed interim receiver or any order of adjudication is made, the court, on the application of the Official Assignee, may, from time to time, order that for such time, not exceeding three months, as the court thinks fit, all postal articles as defined in clause (vi) of Section 2 of the Indian Telegraph Act, 1898, registered or unregistered, and money orders, addressed to the debtor at any place or places mentioned in the order for service, direction, signature of the debtor, or otherwise as the court directs; and the same shall be done accordingly.

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

(2) The schedule shall be submitted within such period as may be fixed by the court or extended by it from time to time.

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

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

28. (1) After the commencement of the Insolvency Act, 1985, on the application of a creditor or of the Official Assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof and generally as to the dealing with the property of the insolvent.

(2) With respect to the summoning of and proceedings ' f2. meeting of creditors the rules in the First Schedule all be observed.

23. (7) Where the court makes an order of adjudication, it shall hold a public sitting on a day to be appointed by the court, of which notice shall be given to creditors in the prescribed irianriw'. for the examination of the iT3'§F.\1\g}1'1l_, and the insolvent shall attend thereat, and shall be exa- mined as to his conduct, dealings and property.

6 of 189\$ (2) The examination be held as soon as convenien- tly may' be after the expiration of the time for the □ing of the i'nsolvent's schedule.

(3) The court may adjourn the examination from time to time.' v -

(4) Any creditor who has "tendered a proof, or a legal . practitioner on hisbehalf, may question the insolvent con- cerning his affairs and the causes of his failure.

(5) The O□ial Assignee shall take part in the exami- nation of the insolvent; and for the purpose thereof, sub- ject to such directions as court 'may give, may be re- presented by a legal practitioner.

(6) The court may put such questions to the insolvent as it thinks □. L ____ (7) The insolvent shall be examined upon oath, and it shall be his d□ly to answer' all such questions as the court may put or allow to, be put to him.

(8) Such. notes of the examination as the court thinks Cf. s.18 proper shall be taken down in writing and shall be read R-S2 C-IE'; either over to or by the insolvent and signed by him, and f;g5° " may thereafter be used in evidence against him and shall ' ' be open to the inspection oi any creditor at all reasonable times. . _ .L, 3:} (9) Where the court is of opinion that the affairs of the insolvent have been sufficiently investigated; it shall, by order, declare that his examination is concluded, but such order shall not preclude the court from directing further gxamination of the insolvent whenever it may deem □ to o so. -

(10) Where the insolvent is of unsound mind or suffers Cf_ A,-ucxe from any such mental or physical a□iction or disability as Io2, Consti- in the opinion of _the court makes him un□ to attend his E, ""°°= 3Sd'o public examination, or is a woman who according to the m□gm customs and manners of the country ought not to be com-- ' pelled to appear in public, the court may make an order dispensing with such examination, or directing that the in- solvent be examined on such terms in such manner and at such place as to the court seems □.

Annulment of adjudication

30. (1) Where, in the :0 minions, of the court, the debtor Power to ought not have been adjn ' insolvent, the court shall, .3Tm."1 .'*d' on the application of _?anS{"□erson interested, by order in ""d'o*"o"" writing, annul the adjudication. E-A3? Part' Cf. s. 21(1), (2) The court shall annul an adjudication on the appli- Pan' ETA' cation of the insolvent or of any other person interested,

where it is proved to the satisfaction of the court that the insolvent has been paid in full. . .

[S- 35: part:

P A . .] Cf. s. 21(1), part, P.T.A.

[New] [New] [s. 21 (2), P.T.A.] Power to cancel one of concurrent orders of adjudication.

[s. 36, P.A.] Cf. s. 22, P.T.A.

Proceedings on annulment.

[s. 37 (I), P.A.] Cf. s. 23(1), P.T.A.

[s. 37 (2), P.A.

Cf. s. 23(3), P.T.A.

[New] (3) The court may, of its own motion or on an application made by the Official Assignee or any creditor, annul an adjudication, where the adjudication was made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of section 6, not entitled to present such petition.

(4) The court may, of its own motion or on application made by the Official Assignee or any creditor, annul an adjudication where it is proved to the satisfaction of the court that the insolvent has-

(a) kept false books of account or suppressed books of, account; or -

(b) suppressed or fraudulently disposed of his assets or any part thereof; or

(c) without reasonable cause failed to comply with any of the obligations imposed upon him by or under this Act.

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

considered as paid in full if paid into court.

31. Where it is proved to the satisfaction of the court that insolvency proceedings are pending in any other court in the territories to which this Act extends against the same debtor, and that the property of the debtor can be more conveniently distributed by such other court, the court may annul the adjudication or may stay all proceedings thereon.

32. (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the court or by the Official Assignee or other person acting under his authority, shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the court may appoint by the order of annulment or any subsequent order, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions, if any, as the court may, by order in writing, declare.

(2) Notice of every order annulling an adjudication shall be published in the Official Gazette and in such other manner as may be prescribed.

(3) The person appointed under sub-section (1) shall have power to realise the properties vested in him and to distribute the realisations among the creditors in accordance with the provisions of this Act, and for that purpose may exercise all powers which the Official Assignee may exercise under sub-section (1) of section 91.

(4) For the purposes of sub-section (3), the person [New] appointed under sub-section (1) may make or continue petitions under sections 54 and 55.

(5) The exercise of powers under sub-sections (3) and [New] (4) shall be subject to the orders of the court in that behalf.

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

CHAPTER V COMPOSITIONS AND SCHEMES or ARRANGEMENT

33. (1) An insolvent may, at any time after the making Submission of an order of adjudication, submit, to the Official Assignee in the prescribed form, a proposal for a composition in satisfaction of his debts or a proposal for a scheme of creditors arrangement of his affairs, and such proposal shall be submitted by the Official Assignee to a meeting of creditors. Cf S_28(1) P.T.A.

(2) The Official Assignee shall send to each creditor who [S- 38(2), is mentioned in the insolvent's schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon. P.T.A.

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

body of creditors.

(4) If on a consideration of the proposal a majority in [S-38(2)]

number and three-fourths in value of all the creditors whose debts are proved, resolve to accept the proposal, the proposal shall be deemed to be duly accepted by the creditors. part.

(5) Any creditor who has proved his debt may assent [S- 23(4): 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 Approval of proposal by court.

[S- 29(1) P.T.A. New] 67- s. 29(2).

P.T.A.

P.T.A.

[New] Cf. s. 29(2), part, P.T.A.

[S- 38(4), part, P.A.] Cf. s. 29(3), {S- 38 (4), part, P.A.

of- 3- 29(4).

P.T.A.

if. 38(5).

[S- 29(5), P.T.A.

[S- 38(6), P.A.

Cf. s. 29(6), P.T.A.

ls. 38(7), P.A.

Cf. s- 29(7), P.T.A.

Order on [s. 39, RIAJ Cf. s. 30(1), P.T.A.

[New] Cf. s. 30(2), P.T.A.

modified.

-as if _the creditor had been present and had voted at that meeting. _

34. (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 in the prescribed manner to each creditor who has proved.

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

be heard by the notwithstanding creditors. have voted for the (3) Any creditor who has proved may court in opposition to the application, that he may, at a meeting of acceptance of the proposal.

(4) The court shall, before approving the proposal, hear a report of the Official Assignee as to the terms of the proposal and as to the conduct of the insolvent, and consider any objections which may be made by or on behalf of any creditor.

(5) Where the court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal.

(*6) Where any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the insolvent's discharge, the court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than twenty-five per cent in the rupee on all the unsecured debts provable against the insolvent's estate.

(7) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent. ' (8) In any other case the court may either approve or refuse to approve the proposal. '

35. (1) If the court approves the proposal, shall be embodied in an order of the court, (1 the order of adjudication shall be annulled, and the provisions of section 32 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, on application by any person interested, be enforced by the court in the manner provided for the execution of the decrees in the Code of Civil Procedure, 1908, as if the com-

sions.

position or scheme were a decree containing such provi-

composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability. Which, under the provisions of this Act, the in-

Notwithstanding the acceptance and approval of a local government. 8. 32, A.

if, would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition.

36. (1) default is made in the payment of any instalment due in of any composition or scheme re-adjudged under section 35 or if it appears to the court that the composition or scheme cannot proceed without injustice, 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 provisions of the Act 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 in pursuance of the composition or scheme.

(2) a debtor is re-adjudged insolvent under [s. 40, latter sub-section (1), all debts provable in other respects which Part, P.A.] have before the date of such re-adjudication shall be provable in the insolvency. ' ' ' CHAPTER VI DISCHARGE

37. (1) An insolvent may, at any time after the order of adjudication and shall, within the period specified by [s. 41 (1), the court, apply to the court for an order of discharge, and the court shall give a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application; but save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded.

(2), the objections of any creditor, the Official Assignee as to the conduct of the insolvent, may refuse to grant or refuse an absolute order of discharge; or to vary the operation of the order for a specified period or -

' an order of discharge subject to any condition with respect to any earnings or income which may become due to the insolvent, or with respect to his after-acquired property.

£)S.42(3), (3) The powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised currently.

Cases in 38. (I) The court shall, on proof of any of the facts which hereinafter mentioned either--- must refuse ' an absolute discharge.

s. 2 I , + ' -

gar: (P.)A'] (a) refuse .he discharge, or Cf. s. 39(1), (1)) suspend the discharge for a speci ed time; pan and (2), or part, P.T.A.

(c) suspend the discharge until a dividend of not less than twenty-five paise in the rupee has been paid to the creditors; o:' (cl) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the Official Assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the court may direct; but in that case the decree shall not be executed without leave of the court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts.

(2) The facts hereinbefore referred to are---- [S- 42(1), (a) that the insolvent's assets are not of a value 5;"; P-P2-ll equal to fifty paise in the rupee on the amount paid 533(2): of his unsecured liabilities, unless he satisfies the part, P_T.A_ court that the fact that the assets are not of a value equal to fifty paise in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

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

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

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

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

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

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

(h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(i) 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;

(j) 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;

(k) that the insolvent has, within three months preceding the date of the presentation of the petition, incurred unnecessary expense by bringing any frivolous or vexatious suit;

(l) that the insolvent has committed any offence under this Act or under sections 421 to 424 of the Indian Penal Code.

(3) For the purposes of section 37 and of this section, the report of the Official Assignee shall be deemed to be evidence, and the court may presume the correctness of any statement contained therein.

39. If the insolvent does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the court may direct, or if the insolvent fails to apply for an order of discharge within the period specified by the court, the court may annul the order of adjudication or make such other order as it may think fit, and if the adjudication is so annulled, the provisions of section 32 shall apply.

part, P.T.A.

§9. (1) Where the court refuses the discharge of an 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 satisfies the court that there is no reasonable probability of his assets becoming sufficient to pay his debts, the court may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

see s. 39(1)

(f), P.T.A.

As to Power to for of the Renewal of "Duty of

-discharged insolvent to assist in realisation of P1'oP€1TY-

[New] Cf. s. 43, P.T.A.

E□ect of fraudulent settlements

-on discharge.

E□ect of order of discharge.

E» 44(1).

.A.] Cf- 5- 45(1), P.T.A'.

As to agree-

ment, see s.

Ias(I)(c).

Canadian Act.

Elg. 44(2), C}A%] 45(2) aria. ' being in a position to comply with the terms of such, order, the court ma modify the terms of the order, or at 5 any substituted or er, in such manner and upon such conditions as it may think □. '

41. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the Official Assignee r may require in the realisation and distribution of such of his property as is vested in the" Official Assignee, and if, he fails to do so, the court, may, if it thinks □, revoke. his discharge, but 'without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

42. In either of the following cases that is to say,----

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

(b) in the case of any covenant or contract made in consideration of marriage for the future ' settlement, on or for the settler's wife or children, any money or property wherein he had not at the"

date of his marriage any estate or interest (not money or property of or in right of his wife);

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

43. (1) An order of discharge shall not release the solvent from-----

(a) any debt due to the Government; or

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

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

(d) any liability under an agreement for tenancy or under any decree or order for maintenance passed under any law for the time being in force.

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

(3) An order of discharge shall be conclusive evidence of the validity of the proceedings in insolvency and of the validity of the claims of creditors.

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

CHAPTER VII ADMINISTRATION OF PROPERTY Proof of debts Debts prov-

44. (1) Demands in the nature of unliquidated damages payable in arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency. [s. 34(1), part, P.A.] Cf. s. 46(1), P.T.A.

(2) A person having notice of any available act of insolvency committed by the debtor shall not prove for any debt or liability contracted by the debtor subsequent to the date of his so having notice. English Act.

(3) Save as provided by sub-sections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged bankrupt are

insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such -adjudication, shall be deemed to be debts provable in insolvency.

(4) An estimate shall be made by the Official Assignee [S- 33(1), of the value of any debt or liability provable as aforesaid, and S 34(1) which by reason of its being subject to any contingency pm, 'p_A_] ' or contingencies or for any other reason, does not bear a Cf. s. 46(4), certain value: P-T-A Provided that if, in his opinion, the value of the debt or liability is incapable of being fairly estimated, he shall issue a certi□ate to that effect, and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency.

Explanation I.--For the purpose of this section, "liabi- [New] lity" includes any compe-nsation for work or labour done, git' 45: any obligation or possibility of an obligation to pay money P_'5l9_;ITa"o"" or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, Whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied 42 MofL--5 proviso, P.A.

Mutual dealings and set-off.

[s. 46, P.A.] Cf._ s. 47, main para, P .A.

[3- 47: pro' viso, P.T.A.] Persons in-

iured by disclaimer may prove.

[New] Cf. s. 67, P.T.A.

Proof of debts [s- 330), mam para, P.A] Cf. s.

P.T ' 48, .A.

Description of insol-

vent's pro-

perty divisi-

ble amongst creditors.

[s- 28(5), P.A Cf. 's. 52(1), P.T.A.

engagement, agreement or undertaking to pay, or capable o1' resulting in the payment of, money, or money's worth, whether the payment is as respects amount, □xed or un- liquidated; 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.

Explanation 2.--In this section, "available act of insolvency" has the same meaning as in section 57.

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

Provided that a person shall not be entitled under this section to the benefit of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of any «available act. of insolvency committed by the insolvent.

Explanation.--In this section, "available act of insol-

vency" has the same meaning as in section 57.

46. Any person injured by the operation of a disclaimer under sections 65 to 69 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.

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

Property of the insolvent

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

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

(b) policies of life insurance or endowment in respect of the insolvent's own life, except to the extent of a charge on the policies in respect of the amount of the premium paid on the policies during the two years next preceding the order of adjudication;

5 of 1908.

(c) the right of a tenant to remain in or to retain possession of any premises to which any law with respect to the control of rents and eviction applies for the time being;

((1) any property (not being books of account) which is exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force, from liability to attachment and sale in

execution of decree.

(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 [S- 28(2), vested_ in the insolvent at the commencement of the 93" PA] . Cf. ;2E2) insolvency; ((1), sea□e, part, P.T.A.

(b)the capacity to exercise and to take [\$.23 proceedings for exercising all such powers in or over P.A.] or in respect of property as might have been exercised Cf- 5- S2 by the insolvent for his own bene□ at the commence- o" "T" ment of his insolvency or before his discharge; and (2), A.

(c) -any property which may be acquired by or [s. 28(4), devolve on the insolvent, after the commencement of P-A-l the insolvency and before his discharge; and such pro- \$,'m5:r(2) perty shall forthwith vest in theO□ici-al Assig- part, P.T.A.

nee, and no dealings by the insolvent with that pro- perty during the insolvency shall be valid:

Provided that where the insolvent has been carrying [New] on a trade or business with the permission of the court under section 79, a transfer by the insolvent of properties acquired in the course of that trade or business, in favour of a person who takes the same bona □le and for consider- ation, shall not be invalid merely by reason of the insol- vency.

49. (1) Where a second or subsequent order of adjudi- second o, cation is made against an insolvent, or where an order is subsequent made for the administration in insolvency of the estate of ban1<fuPtCY-

a deceased insolvent, then for the purposes of any proceed-[cw] in the last preceding insolvency shall be deemed to be a Act as ings consequent upon any such order, the Of□ial Assignee GAE; %9ng_ creditor in respect of any unsatis□ed balance of the debts Sub-"ti""o provable against the property of the insolvent in that in- nfptcy solvency.

(2) In the event of a second or subsequent order adjudication being made against an insolvent being follow- ed by an order adjudging him insolvent, or in the event of an order being made for the administration in insolvency of the estate of a deceased insolvent, any property acquir- ed by him since he was last adjudged insolvent, which at the date when the subsequent 'petition was presented had not been distributed amongst the creditors in such last preceding insolvency, shall (subject to any disposition Amendment Act, 1926, Of modi□ed.

Cf. English Committee Report, page 38, para. 114.

Intimation of after-

acquired property.

[New] As to after-

acquired D1'oP€T'~'Y, where (118-

charge is conditioned, see Mulla (1958) Page 394 and Bombay Rule 133 under P.T.A.

thereof made by the Official Assignee in that insolvency without knowledge of the presentation of the subsequent petition) vest in the Official Assignee in the subsequent insolvency or administration in insolvency, as the case may be.

(3) Where the Official Assignee in any insolvency receives notice of a subsequent petition in insolvency against the insolvent or after his decease of a petition for the administration of his estate in insolvency, the Official Assignee shall hold any property then in his possession which has been acquired by the insolvent since he was adjudged insolvent until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication, or an order for the administration of the estate in insolvency is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the Official Assignee in the subsequent insolvency or administration in insolvency, as the case may be.

(4) Out of the assets available in the second or subsequent insolvency or proceeding for the administration of the estate of a deceased insolvent, the creditors in the second or subsequent insolvency or proceeding shall first be paid a dividend of as many naye paise in the rupee as is equal to the percentage of dividend paid to the creditors in the first or earlier insolvency from the assets of the first or earlier insolvency, before the Official Assignee acting in the first or earlier insolvency is paid any dividend in insolvency is made, he shall transfer all such property or proceeding for the administration of the estate of the deceased insolvent.

50. (I) Where after adjudication any property is acquired by or devolves on the insolvent after adjudication, the insolvent shall, within one month of such acquisition or devolution send an intimation in writing to the Official Assignee of such acquisition or devolution in the prescribed form and giving the prescribed particulars.

(2) The provisions of this section shall not apply to----

(a) salary;

(b) property specified in sub-section (1) of section 48;

(c) property acquired in the course of business by the insolvent, where such business is carried on by him with the permission of the court under section 79;

(d) any goods the value whereof does not exceed one hundred rupees.

to the claimant or give notice in writing to the claimant that the claim is disputed with his reasons therefor, and, unless the claimant appeals therefrom to the court within thirty days after the sending of the notice of dispute, he shall be deemed to have abandoned or relinquished all his right to or interest in the property to the Official Assignee who thereupon may sell or dispose of the property free

-of any lien, right, title or interest of the claimant thereon or therein.

(3) The onus of establishing a claim to or in property under this section shall lie on the claimant.

(4) The Official Assignee may give notice in writing to any person to prove his claim to or in any such property or interest as is referred to in sub-section (1), and, unless that person files with the Official Assignee a proof of claim in the prescribed form within thirty days after the sending of the notice, the Official Assignee may thereupon with the leave of the court sell or dispose of the property free of any lien, right, title or interest of that person thereon or therein.

(5) No proceedings shall be instituted to establish a claim to, or to recover any right or interest in, any property in the possession of an insolvent at the time of the insolvency, except as provided in this section.

(6) The Official Assignee shall have a power to take possession of any such property or interest as is referred to in sub-section (1), notwithstanding that a claim there to may be or has been filed under this section.

(7) Where the property referred to in sub-section (1) is movable property subject to speedy and natural decay, or where the expense of looking after it is likely to exceed its value, the Official Assignee may sell it at once, notwithstanding that a claim thereto may be or has been filed under this section.

standing that a claim thereto may be or has been filed under this section.

(8) Nothing in this section shall be construed as ex-

tending the rights of any person other than the Official Assignee. « p .

51. (I) Where a person claims any property, or interest therein, in the possession of the insolvent, at the time of the insolvency, he shall file with the Official Assignee a [3, 23 (3),_ proof of claim verified by affidavit giving the grounds on P.A.]mod1- which the claim is based and sufficient particulars to enable the property to be identified. (o); ,-,5. add second ro-

(2) The Official Assignee with whom a proof of claim is deposited under sub-section (1) shall within fifteen days modified thereafter or within 15 days after the first meeting of creditors, whichever is the later, either admit the claim and deliver

possession of the property Cf. Order 21, R. 43, Effect of insolvency on antecedent transactions Restrictions 52. (1) Where execution of a decree or order has been issued against the property of a debtor, no person shall under execution be entitled to the benefit of the execution against the Official Assignee, except in respect of the assets realised in the course of the execution by sale or otherwise before the date of the admission of the insolvency petition.

P.T.A (2) Where execution of a decree or order has issued against the property of the debtor but the assets have not been realised in full by the date of admission of the insolvency petition, or where after that date a sale is held in execution of a decree or order against the debtor, the costs incurred by the creditor in respect of the execution shall be a first charge on the assets realised in course of the execution.

(3) A person who in good faith purchases the property of a debtor under a sale in execution of a decree or order shall acquire a good title to it against the Official Assignee, if such sale is held before the making of an order of adjudication.

(4) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree or order is executed.

Duties of 53. Where execution of a decree or order 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 or order that an insolvency petition by or against the debtor has been admitted, the court executing the decree or order shall, on application by any person direct that-- (a) pending disposal of the proceedings on the insolvency petition the sale shall be stayed; and

(b) if the debtor is adjudicated insolvent, the property, if in the possession of the court, shall be delivered to the Official Assignee;

but the costs of the execution shall be a first charge on the property so delivered, and the Official Assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance 54. Any transfer of property, not being a transfer made of voluntary before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be void against the Official Assignee.

[New] Explanation.--For the purposes of this section, in the case of a transfer which is required to be made by a registered instrument under any law for the time being in force, and which is made by such a registered instrument, the date of registration of the instrument shall be deemed to be the date of the transfer.

55. (1) Every transfer of property, every payment avoidance of 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 [s. 54, P.A.] of any creditor or surety with the view of giving that creditor or surety preference over the other creditors, shall, if such person is adjudged insolvent, on a petition presented within six months after the date thereof, be deemed fraudulent and void against the Official Assignee.

Explanation.--For the purposes of this section, in the case of a transaction which is required to be made by a registered instrument under any law for the time being in force, and which is made by such a registered instrument, the date of registration of the instrument shall be deemed to be the date of the transaction.

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

56. A petition for the avoidance of any transfer under section 54, or of any transfer, payment, obligation or judicial proceeding under section 55, may be made by the Official Assignee or, with the leave of the court, by any creditor who has proved his debt and who satisfies the court [S. 54A, that the Official Assignee has been requested and has refused to make such petition.

57. Subject to the foregoing provisions with respect to Protection of the effect of insolvency on execution and with respect to 37: "Effects the avoidance of certain transfers and preferences, nothing "Said" in this Act shall invalidate in the case of an insolvency----- [cs'}_5s5_'§7',A']

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

(b) any payment or delivery to the insolvent;

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

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

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with Whom such transaction takes place acts in good faith and has not at the time of the transaction notice of any available act of insolvency committed by the insolvent before that time.

Explanation.----In this section, "available act of insolvency" means any act of insolvency available for petition EnglishA'- of insolvency at the date of the presentation of the petition ""1 on which the order of adjudication is made.

Validity of 58. A payment of money or delivery of property to a person subsequently adjudged insolvent, or to a person claiming by assignment from him, shall, notwithstanding [New] anything in this Act, be a good discharge to the person paying the money or delivering the

property, if the payment or delivery is made before the actual date on which the order of adjudication is made and without notice of the presentation of an insolvency petition, and is either pursuant to the ordinary course of business or otherwise bona fide.

Section 59. (1) Where a person has acquired property of the insolvent under a transaction that is void or under this section in a voidable transaction that is set aside and has sold, case of void disposed of, realised or collected the property or any part thereof, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the Official Assignee.

(2) The Official Assignee may recover the property or the value thereof or the money or proceeds therefrom from the person who acquired it from the insolvent or from any other person to whom he may have resold, transferred or paid, over the proceeds of the property as fully and effectually as the Official Assignee could have recovered the property if it had not been so sold, disposed of, realised or collected.

(3) Notwithstanding sub-section (1), where any person to whom the property has been sold or disposed of has paid or given therefor in good faith adequate valuable consideration, he is not subject to the operation of this section, but the recourse of the Official Assignee shall be solely against the person entering into the transaction with the insolvent for recovery of the consideration so paid or given or the value thereof.

(j) Where the consideration payable for or upon any sale or resale of such property or any part thereof remains unsatisfied, the Official Assignee is subrogated to the rights of the vendor to compel payment or satisfaction.

Realisation of property 60. (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 his property capable of manual delivery.

P.T.A.

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

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

(4) Where any part of the property of the insolvent consists of actionable claims, such claims shall be deemed to have been duly transferred to the Official Assignee.

(5) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the Official Assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the Official Assignee; and if he fails so to do, he shall be deemed to be guilty of an offence under section 188 of 45 of 1860- the Indian Penal Code, and shall be punishable accordingly.

ly.

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

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

62. (1) Where an insolvent is a person belonging to the Armed forces of the Union or a servant of the Government or of a railway company or local authority, the Official Assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the court may direct.

(2) Where an insolvent is in the receipt of a salary or P-T-A 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.

63. Where any goods of an insolvent are held by any person by way of pledge, pawn, or other security, it shall be lawful for the Official Assignee, after giving notice in writing of his intention to do so, to inspect the goods and [New] Where such notice has been given, such person as aforesaid.

[New] Cf. s. 52, Canadian Act.

See also s.

60, English Act and s. 110 Australian Act.

As to "H" copyright see ss.

13'147_ Copyright Act, 1957.

shall not be entitled to realise his security until he has given the Official Assignee a reasonable opportunity of inspecting the goods and of exercising his right of redemption, if he thinks fit to do so.

64. (1) Notwithstanding anything in this Act or in any other law, the author's manuscripts of and copyright in any work or any interest in such copyright assigned to a publisher, printer, firm or person becoming insolvent shall-

(a) if the work covered by such copyright has not been published and put on the market at the time of the insolvency and no expense has been incurred in connection therewith, thereupon revert and be delivered to the author or his heirs, and any contract between the author or his heirs and such insolvent shall then terminate and be void;

(b) if the work covered by such copyright has in whole or in part been put into type and expenses have been incurred by the insolvent, revert and be delivered to the author on payment of the expenses so incurred and the product of such expenses shall also be delivered to the author or his heirs and any contract between the author or his heirs and the insolvent shall then terminate and be void; but if the author does not exercise his rights under this clause within six months of the date of the insolvency, the Official Assignee may carry out the contract;

(c) if the Official Assignee at the expiration of six months from the date of the insolvency decides not to carry out the contract, revert without expense to the author and any contract between the author or his heirs and such insolvent shall then terminate and be void.

(2) Where, at the time of the insolvency the work was published and put on the market, the Official Assignee is entitled to sell, or authorise the sale or reproduction of, any copies of the published work, or to perform or authorise the performance of the said work, but there shall be paid to the author or his heirs such sums by way of royalties or share of the profits as would have been payable by the insolvent; and the Official Assignee is not, without the written consent of the author or his heirs, entitled to assign the copyright or transfer the interest or to grant any interest therein by licence or otherwise, except upon terms that will guarantee to the author or his heirs payment by way of royalties or share of the profits at a rate not less than that which such insolvent was liable to pay, any contract between the author or his heirs and such insolvent shall then terminate and be void, except as to the disposal, under this sub-section, of copies of the said Work published and put on the market before the insolvency.

(3) The Official Assignee shall offer in writing to the author or his heirs the right to purchase the manufactured or marketable copies of the copyright Work comprised in the estate of the insolvent at such price and upon such terms and conditions as the Official Assignee may deem fair and proper before disposing of such manufactured and marketable copies in the manner laid down in this section. ' ' | Disclaimer of property and rescission of contracts

65. (1) Where any part of the property of an insolvent consists of--

(i) land of any tenure burdened with onerous covenants;

(ii) shares or stocks in companies;

(iii) unprofitable contracts; or

(iv) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the Official Assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent or within such extended period as may be allowed by the court, disclaim the property:

Provided that where any such property has not come to the knowledge of the Official Assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof, or within such extended period as may be allowed by the court.

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

66. The Official Assignee shall not be entitled to disclaim any leasehold interest without the leave of the court, except in any cases which may be prescribed; and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the court thinks just.

Power to call on Official Assignee to disclaim.

[New] Cf. s. 64, P.T.A.

Power for court to rescind contract.

Power for court to F3 make vesting order in respect of disclaimed property.

[New] Cf. s. 66, P.T.A.

67. The Official Assignee shall not be entitled to dis- claim any property in pursuance of section 65 in any case Where an application in writing has been made to the Official Assignee by any person interested in the property requiring him to decide whether he will disclaim, and the Official Assignee has for a period of twenty--eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neg- lected to give notice that he disclaims the property; and in the case of a contract, -if the Official Assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deem- ed to have adopted it.

68. The court may, on the application of any person who is, as against the Official Assignee, entitled to the bene- fit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may -seem equitable, and any damages pay- able under the order to any such person may be proved by him as a debt under the insolvency.

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

Provided that----

(a) Where the property disclaimed is of a lease- hold nature, the court shall not make a vesting order in favour of any person claiming under the insolvent, whether as sub--lessee or as mortgagee, except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed; and ('o) any sub--lessee or mortgagee failing to apply for or declining to accept a vesting order upon such terms shall be excluded from all interest in and se- curity upon the property; and

(c) if there is no person claiming under the in- solvent who has applied for and is willing to accept an order upon such terms, the court shall have 5 of 1908.

power to vest the insolvent's interest in the property in any person liable either personally or in a repre- sentative character, and either alone or jointly with' the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, en- cumbrances and interests created

therein by the insolvent.' (2) The court may, if it thinks fit, modify the terms prescribed by the proviso to sub-section (1) so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

Information regarding property

70. (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 the prescribed manner 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 or his dealings or property; and the court may require any such person to produce any documents in his custody or power relating to the insolvent or his dealings or property.

(2) Notwithstanding anything contained in rule 19 of Order 16 in the First Schedule to the Code of Civil Procedure, 1908, a person residing at any place in the territories to which this Act extends may be summoned under sub-section (1).

(3) If any person summoned under sub-section (1), after having been tendered a reasonable sum, refuses to come «before the courtat the time appointed, or refuses to produce any such document, having no lawful impediment made known to and allowed by the court, the court.may, by warrant, cause him to be apprehended and brought up for examination.

(4) The courtmay examine any person so brought before it concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.' (5) If the person summoned under sub-section (1) denies that he owes any money to the insolvent or that he is in possession of any property belonging to the insolvent, the court may, in its discretion, and subject to the provisions of the proviso to section 99, decide the dispute.

Power to require information regarding insolvent's property.

[s. 59A (1), Cf. s. 37(1), P.T.A.

i--' 59A (2), P.A.] Cf. s. 36(2), P.T.A.

[s- 59A (3), i-?:'Ei;.36'3"

[New] {New} (6) If on his examination any such person admits, or 'gf:I.5A35(4)= if the court under sub-section (5) decides, that he is in- ' ' ' indebted to the insolvent, the court may, on the application of the Official Assignee order him to pay to the Official Assignee, at such time and in such manner as to the court may seem just, the amount in which he is indebted, or any part thereof, either in full

discharge of the whole amount or not, as the court thinks fit, with or without costs of the examination.

[N"-Wl (7) If on his examination any such person admits, gf-'I-SA36(5)' or if the court under su=b-section (5) decides, that he has ' ' ' in his ossession an ro ert belon in to the insolvent, P Y P P Y S 8 , the court may, on the application of the Official Assignee, order him to deliver to the Official Assignee that property, or any part thereof, at such time, in such manner and on such terms as to the court may seem just. [New] (8) Orders made under sub--sections (6) and (7) Cf SA 35(6)' shall be executed in the same manner as decrees for the ' ' ' payment of money or for the delivery of property under the Code of Civil Procedure, 1908, respectively. [New] (9) Any person making any payment or delivery in 57- 5-35(7)> pursuance of the order made under sub-section (6) or P'T'A' sub-section (7) shall, by such payment or delivery, be discharged from all liability whatsoever in respect of any such debt or property.

.P°""°r 'O 71. The court shall have the same powers to issue com- ',,;Si"S':,O°,.;I_n' missions and letters of request for the examination on com- Cf, 3, 37, mission or otherwise of any person liable to examination P-T-A- under section '70 as it has for the examination of witnesses under the Code of Civil Procedure, 1908. Distribution of property gggfgy Of 72. (1) In the distribution of the property of the in-

[S_ 6,'p_A_] solvent, 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 wagesof any clerk, servant or labo-urer, in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer; and

(c) rent due to a landlord from the insolvent:

Provided that the amount payable under this clause shall not exceed one month's rent.

(2) The debts speci ed in suib-section (I) shall rank equally between themselves, and shall be paid in full, un- less the property of the insolvent is insu cient to meet 5 of 1908.

5 of I908.

them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such 'sums as maybe necessary for the expenses of administration or otherwise, the debts speci ed in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is suffi- cie-nt to meet them.

(4) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

(5) Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and Where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership.

Explanation.--Where the debtor is adjudged insolvent on a petition presented by the holder of a decree obtained against a partner of the firm, the decree shall, for the purposes of sub-section (4) and of this sub-section, be treated as a separate debt of that partner, notwithstanding that it is passed on a debt on which a decree could have been passed against the firm.

(6) 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.

(7) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent

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

73. After an order of adjudication has been made no Rent due distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order is annulled, but the landlord or party to whom the rent is due shall be entitled to prove in respect of such P.T.A. rent.

74. Where one partner in a firm is adjudged insolvent Joint and several creditors to whom the insolvent is indebted separately jointly with the other partners in the firm properties 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. (1) In the calculation and distribution of dividends, the Official Assignee shall retain under his control sufficient

[s. 62, P.A.] .

(f_s_7,, cient assets to meet---

E,-T-A-6 (a) debts provable in insolvency and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(b) debts provable in insolvency the subject of claims not yet determined; (C) disputed proofs or claims; and

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

(2) Subject to the provisions of sub-section (1), all money realised by the Official Assignee shall be distributed as dividends.

Right of 76. Any creditor who has placed his claim in the list of claims filed with the Official Assignee before the date of the meeting of the creditors for the purpose of the distribution of the assets of the insolvent shall be entitled to receive, out of any money for the time being under the control of the Official Assignee, any dividend or dividends which he may have failed to receive, before that date, out of any money 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.

76. Any creditor who has placed his claim in the list of claims filed with the Official Assignee before the date of the meeting of the creditors for the purpose of the distribution of the assets of the insolvent shall be entitled to receive, out of any money for the time being under the control of the Official Assignee, any dividend or dividends which he may have failed to receive, before that date, out of any money 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.

76. Any creditor who has placed his claim in the list of claims filed with the Official Assignee before the date of the meeting of the creditors for the purpose of the distribution of the assets of the insolvent shall be entitled to receive, out of any money for the time being under the control of the Official Assignee, any dividend or dividends which he may have failed to receive, before that date, out of any money 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.

lish Act.

77. (1) When the Official Assignee has realised all the assets of the insolvent, or so much thereof as can, in his opinion, be realised without needlessly protracting the proceedings in insolvency, he shall, with the leave of the court, declare a final dividend; but before so doing, he shall give notice in the manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims, to the satisfaction of the court, within the time limited by the notice, he shall proceed to make a final dividend without regard to their claims.

(2) After the expiration of the time so limited, or, if the court, on application by any such claimant, grants him further time for establishing his claim, then, on the expiration of such 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.

78. 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 any creditor who is aggrieved by such refusal, order him to pay such dividend and interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

79. (1) The court may, on the application of the Official Assignee, appoint the insolvent himself to superintend the management of the property of the insolvent or of any part insolvent thereof, or to carry on the trade, if any, of the insolvent [s. 66, P.A.] for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the court may direct.

(1) The court may, on the application of the Official Assignee, appoint the insolvent himself to superintend the management of the property of the insolvent or of any part insolvent thereof, or to carry on the trade, if any, of the insolvent [s. 66, P.A.] for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the court may direct.

(2) The court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself 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.

80. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors with interest \$5r'I□1'l':"affer as provided by this Act, and of the expenses of the pro-payment in ceedings taken thereunder. full.

. 6 , P.A.].

Eacplation.--In this section, "surplus" includes any [(3. Z 76.

property which has been acquired by or has devolved on P-T-A the insolvent after the commencement of the insolvency and before his discharge and which has not been divided amongst his creditors.

81. (1) Where the Official Assignee has, under his con- Credit to trol, any dividend which has remained unclaimed for %°°°"l"T°°;:i □teen years from the date of declaration or such less \$;iv}',;e°,,j,';f period as may be prescribed, he shall pay the same to the [New] account and credit of the State Government, unless the Cf- 8- I22, court otherwise directs. P'T'A' (2) Any person claiming to be entitled to any monies s. 153 Eng. paid to the account and credit of the State Government Act- under sub-section (1), may apply to the court for an order Cf 5' 123' for payment to him of the same; and the court, if satis□ed ' ' ' that the person claiming is entitled, shall make an order for payment to him of the sum due:

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

82. (1) The court may, if it so thinks □, authorise the Committee creditors who have proved to appoint from among the cre-- o,finSP<=C- ditors or holders of general proxies or general powers-of-Fo116' A attorney from such creditors, a committee of inspection for pS_'A7 ' the purpose of superintending the administration of the Cf. ss. 88 insolvent's property by the Of□ial Assignee: and 39:

Provided that a creditor, who is appointed a member P'T'A' of a committee of inspection, shall not be quali□ed to act until he has proved.

42 M of L-6 Summary administra-

tion.

[S- 74, open-

ing lines, P.A.] Cf. s. 106(1), opening lines, P.T.A.

Is. 74<z'>._ P.A. omitted] [S- 74(11):

P.A.] [New] Cf. s. 106 (I)(b), P.T.A. .

[s. 74(m), P.A. omit-

ted.] [s- 74(iv), P.A.] Cf. s. 106 (1)(c), P.T.A.

As to "where ", see P.T.A.

[S- 74(7)), P.A.] [New] Cf. s. 129(iz'), Eng. Act.

[New] Cf. s. 106 (I)(a>, P.T.A.

[s- 74(vo, P A.] C}. s. 106 (I)

(d), P.T.A.

(2) The committee shall have such powers of control over the proceedings of the Official Assignee as may be prescribed.

CHAPTER VIII SUMMARY ADMINISTRATION

83. (1) When a petition is presented by or against_ a debtor, if the court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value---

(a) in Presidency Towns, five thousand rupees or such other less amount as may be prescribed, and

(b) elsewhere, two thousand rupees, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely:----

(i) on the admission of a petition by a debtor, the Official Assignee shall forthwith become the receiver of the properties of the debtor, with such of the powers conferable on a receiver appointed under the Code of Civil Procedure, 1908, as the court may direct;

(it) no examination of the insolvent shall be held except on the application of a creditor or the Official Assignee; '

(iii) the property of the insolvent shall be realised with all reasonable dispatch and there- after, where practicable, distributed in a single dividend;

(iv) the insolvent shall apply for his discharge within six months from the date of adjudication;

(12) there shall be no committee of inspection, but the Official Assignee may, with the sanction of the court, do all things which may be done by the Official Assignee with the permission of the committee of inspection;

(vi) no appeal shall lie from any order of the court, except by leave of the appellate court; and

(vii) such other modifications as may be prescribed with the view of saving expense and simplifying procedure.

5 of 1908.

(2) The court may, at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate, and thereafter the ordinary procedure provided for in this Act shall be followed in regard to the insolvent's estate.

CHAPTER IX ADMINISTRATION IN INSOLVENCY or ESTATES or DECEASED PERSONS

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

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

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

85. (1) Upon an order being made for the administration of a deceased debtor's estate under section 84, the property of the debtor shall vest in the Official Assignee, and he shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act. [New] s. 109, P.T.A.

(2) With the modification hereinafter mentioned, all the provisions of this Act relating to the administration of the property of an insolvent and to Official Assignee, 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.

Cf. S. 155 (4A). Aus-

tralian Act.

Payment or transfer by legal re-

presentative.

[New] Cf. 3. no, P.T.A.

Saving of Jurisdiction of Adminis-

trator-

General.

[New] Cf. s. III, P.T.A.

Official Assignees.

[New] Cf. s. 77(1), part, P.T.A.

Cf. Article 229, Consti-

tution.

Cf. s. 77(1), part, P.T.A.

(3) The provisions of sections 52 to 59 and section 70 shall, so far as they are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act, and for the purpose of application of the said provisions to such case, references in the said provisions to an insolvency petition shall be construed as references to a petition under section 84.

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

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

86. (1) After notice of the presentation of a petition under section 84, no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the Official Assignee.

(2) Save as aforesaid, nothing in section 84 or section 85 or 'this section shall invalidate any payment made or act or thing done in good faith by the legal representative.

87. The provisions of sections 84, 85 and 86 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator-General,
CHAPTER X OFFICIAL ASSIGNEES AND SPECIAL MANAGERS

88. (1) The Chief Justice of each of the High Courts at Bombay, Calcutta and Madras---

(a) shall appoint an officer called the Official Assignee, who shall have and exercise all the jurisdiction and powers conferred on Official Assignees under this Act within the local limits of the ordinary original civil jurisdiction of that High Court;

(b) may appoint such persons as he thinks fit as Deputy Official Assignees, to discharge, within the local limits of the ordinary original civil jurisdiction of that High Court, such functions of the Official Assignee as may be defined by such Chief Justice.

(2) The Chief Justice of each High Court-- {8-A517 (I),

(a) shall appoint, for each district outside the Presidency-towns, an officer called the Official Assignee, who shall have and exercise all the jurisdiction and powers conferred on the Official Assignee under this Act within the local limits of that district;

(b) may appoint such persons as he thinks fit to be Deputy Official Assignees, to discharge, within the local limits of any district outside the Presidency-towns such functions of the Official Assignee as may be defined by the Chief Justice.

89. (1) The Official Assignee shall be a corporation sole Official by the name of the Official Assignee of(naming Qmgnee 'O the particular place), and as such Official Assignee shall be: §§f\$ _ o"" have a perpetual succession and an official seal, and may [New] sue and be sued in his corporate name, and may hold pro- Cf- 5- 83, perty of every description, make contracts, enter into any 53"" P-r%A- engagements binding on himself and his successors in p{: '1~,SA_77 ' office, and do all other acts necessary or expedient to be inserted in done in the execution of his office. Bombay and Madras.

Cf. s. 76, Eng. Act.

(2) In all suits or proceedings by or against such Official [New] Assignee, there shall be inserted after his official title the 97- 3- 83» description "as Official Assignee of the property of, pan' P'T'A' an insolvent (naming the particular insolvent)".

90. An Official Assignee may, for the purpose of afda- PoWf=f.to vits verifying proofs, petitions or other proceedings under adrnlsm this Act, administer oaths. git,' 8 p:'T.A.7'

91. (1) Subject. to the provisions of this Act, the Official Duties and ASSIEHEB Shall, with all convenient speed, realise the pro- powers of perty of the debtor and distribute dividends among the QfCi31A5' signee.

creditors entitled thereto, and for that purpose-- [3 59 PA]

(a) may sell all or any part of the property of the (1§'f--'FsA68(I)' insolvent; A ' ' ' ' (b) may give receipts for any money received by him; and

(c) may, by leave of the court, do all or any of the following things, namely:-- '

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

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

(iii) employ a legal _ practitioner or other agent to take any proceedings or do any business which may be sanctioned by the court; -

(to) 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, de- bentures or debenture stock in any limited com- pany, subject to such stipulations as to security and otherwise as the court thinks fit;

(1)) mortgage or pledge any part of the pro- perty of the insolvent for the purpose of raising money for the payment of his debts, or for the purpose of carrying on the business;

(vi) refer any dispute to arbitration, and coin- promise all debts, claims and liabilities, on such terms as may be agreed upon; and

(vii) divide in its existing form amongst the creditors, according to its estimated value, any property which_ from its peculiar nature or other special circumstances, cannot readily or advan- tageously be sold.

[New] / (2) The duties of an Official Assignee shall have rela- gf,-l,SA79\1)a tion to the conduct of the insolvent as well as to the admin- ' ' istration of his estate.

A (3) In particular, it shall be the duty of the Olcial ssignee----

gfewl (□(a) to investigate the conduct of the insolvent and P_:1._3A_79 'I' t.o report to the court upon any application for dis- charge, stating whethenthere is reason to believe that the insolvent has committed any act which constitutes an olfence under this Act or under sections 421 to 424 or the Indian Penal Code in connection with his in- solvency or which would justify the court in refusing, suspending or qualifying an order for his discharge;

(b) to make such other reports concerning the CoI1d11C'C 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, 68(2), V(4) The Official Assignee shall account to the court and P_'jj'_A. P33 OVEI' all monies and deal with all securities in such [New] manner as is prescribed or as the court directs. Cf_ s_ 80, (3) The O□cial Assignee shall, whenever required by PT-A- any °r9d1t9F 50 'Eo <30, and on payment by the creditor of :h?iSI.;:T€SfCI:□ed fee,_ furnish and send to the creditor by post th d E 9 C1"9d1to1"S, Showing in the list the amount of e e t due to each of the CI'edltoI'S_ D I ' . .

an§°§§:g?é1u_ S 93. (1) The O□cial A__ssignee shall, with all convenient non of pee , declare and distribute dividends amongst the ere- dlyidcnds. ditors who have proved their debts l 6W] ' C,f..6, 2}Th□d"d ' P_T?A_ 9 distgibuteg "fifthi n1V1 end (If any) shall be declared and be One year after the adjudication, unless 45 of 1860.

the Official Assignee satis□s the court thatt therletii 21:31:- cient reason for postponing the declaration o a a e .

(3) Subsequent dividends shall, in the absence ofbsluf□g cient reason to the contrary, be declared and oe paya e a 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 Olcial Assignee has declared a diViCi£'!_1d} he shall send to each creditor who has proved a nOt1C€ showing the amount of the dividend, and when and how it is provable, and, if

required by any creditor, a statement in the prescribed form as to the particulars of the estate.

93. (1) Subject to the provisions of this Act and to the directions of the court, the Official Assignee shall in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

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

(3) The Official Assignee may apply to the court for directions in relation to any particular matter arising under the insolvency.

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

94. (1) If any Official Assignee does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or if any complaint is made to the court by any creditor in regard thereto, the court shall inquire 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 inquiry 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) The court may also direct an investigation to be made of the books and vouchers of the Official Assignee.

Discretion-

ary powers and control thereof.

Cf. s. 85, P.T.A.

Control of court.

Cf. s. 87, P.T.A.

Power to 95. (1) If in any case the court, having regard to the nature of the debtor's estate or business or to the interests manager of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the Official Assignee, the court may appoint a manager thereof accordingly to act for such time as the court may authorise, and to have such powers of the Official Assignee as may be entrusted to him by the said

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.

96. The High Court may direct that, in any matters in respect of which jurisdiction is Assignee, given to any court by this Act, the Official Assignee shall, [S- 80(1). subject to the directions of the court, have all or any of the PA] following powers, namely:---

(a) to frame schemes:

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

(c) to hear and determine any unopposed or ex parte application.

CHAPTER XI JURISDICTION AND PROCEDURE _Cou.rts.ha_v- 97. (1) The courts having jurisdiction in insolvency under this Act shall be- On 11 In-

solvency. (a) in the Presidency-towns, the High Courts in I7,CS- 3(1) J'-Ac] the exercise of their ordinary original civil jurisdiction, and

(b) in other places, the district courts:

Provided that the State Government may, by notification in the Official Gazette, invest any court subordinate to a district court with jurisdiction in any class of cases, and any court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the district court under this Act.

[. 3(,;_ (2) For the purposes of this Act, a court of Small P.A.] Causes shall be deemed to be subordinate to the district court.

Restrictions 98. (1) The court shall not have jurisdiction to make 3" l'"i3di° an order of adjudication, unless--

011. [s. II, main (a) the debtor is at the time of the presentation E;r=1s., £1'!-A-] of the insolvency petition, imprisoned in execution of P."r.. 'A.. ' {For "the court", theiwnrds "any court" have been used, to avoid the interpretation that article "the" refers to ' High Courts'.

the decree or order 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 original jurisdiction; or

(b) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling house or has carried on business either in person or through

an agent within the limits of the original civil jurisdiction of the court; or

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

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

Ex-planation.--In this sub-section, "original jurisdiction", in relation to High Courts, means ordinary original jurisdiction.

(2) Where the debtor is not a citizen of India, in the territories to which this Act extends jurisdiction unless--

(a) the debtor, Within one year before the date of the presentation of the petition, had ordinarily resided or had a dwelling-house or place of business or had carried on business personally or by means of an agent or manager, within the said territories; or

(b) a firm of which the debtor is, or within the said one year has been, a partner, has carried on business by means of a partner or partners or an agent or manager within the said territories.

no court (3) No objection as to the place of [New] shall have Cf- 5- 40)

(d) , English Act.

[s. II, pro-

presentation shall be allowed by any appellate or re- viso,P.A.] visional court unless such objection was taken in the court by which the petition was heard at the earliest possible opportunity, and unless there has been a consequent failure of justice.

99. (1) Subject to the provisions of this Act, the court Jurisdiction shall have full power to decide all questions whether of title or of priority or of any nature whatsoever, and whether involving matters of law or of fact, which may arise to decide questions.

[S~ 4(1), P.A.] in any case of insolvency coming within the cognizance Cf.' s. 7, of the court, or which the court may deem it necessary or mam para-a proper to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:

Provided that where the matter in dispute involves the determination of complicated questions of fact or law, the court may refer the parties to a civil court for adjudication of the same:

[New] Cf. s. 7, proviso, .T.A.

and Mulla's comment thereon , (p. 22 bot-

tom and PP- 39-43:

50.) Cf. s. 105 (I), proviso, Eng. Act.

[s- 4(2), P.A.] General powers of courts.

[S- 5(1), P.A.] Cf. s. 90(1), P.T.A.

{S- 5 (2), P.A.] Other powers.

Cf. s. 90(4).

(5), (6) and (7), P.T.A.

Provided, further, that the jurisdiction hereby given shall not be exercised for the purpose of adjudicating upon any claim not arising out of the insolvency, unless all parties to the proceeding consent thereto or the money, money's worth, or right in dispute does not, in the opinion of the court, exceed in value \square ve thousand rupees.

(2) Subject to the provisions of this Act, and notwithstanding anything contained in any other law for the time being in force, every such decision shall be \square hal and binding for all purposes as between, on the one hand, the insolvent and the insolvent's estate and, on the other hand, all claimants against him or against it and all persons claiming through or under them or any of them.

100. (1) Subject to the provisions of this Act, the court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of its original civil jurisdiction.

(2) Subject as aforesaid, High Courts and district courts, in regard to proceedings under this Act in courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

101. (1) 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.

(2) Where by this Act or by rules made under this Act the time for doing any act or thing (other than the \square ling of an appeal)¹ is limited, the court may extend the time either before or after the expiration thereof, upon such terms, if any, as the court thinks \square to impose.

(3) Subject to rules made under this Act, the Court may in any matter take the whole or any part of the evidence either viva ¹¹⁰⁰² or by interrogatories, or upon affidavit, or by commission.

(4) For the purpose of approving a composition or scheme by joint debtors the court may, if it thinks \square , and on the report of the Official Assignee that it is expedient so to do, dispense with the public

examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

1 As to appeals see clause corresponding to s. 78. Provincial Act.

102. (1) A High Court exercising jurisdiction under this Act may, at any time after the presentation of an insolvency petition, stay any insolvency proceedings pending against the debtor in any court subject to the superintendence of that High Court, and may, at any time after the making of an order of adjudication annul an adjudication against the debtor made by any such court.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made and all acts done by the court whose order is annulled, or by the Official Assignee or other person acting under his authority, shall be valid, but the property vested in such Assignee shall vest in the Official Assignee appointed by the High Court for the territorial limits of its ordinary original civil jurisdiction, and the High Court may make such direction in regard to the custody of such property as it thinks fit.

(5) Notice of an order annulling an adjudication under sub-section (1) shall be published in the Official Gazette and in such other manner as may be prescribed.

103. No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the court, and no such leave shall be granted after an order of adjudication has been made.

104. (1) Where two or more insolvency petitions are presented against the same debtor or where separate petitions are presented against joint debtors, or where joint debtors present separate petitions, the court may consolidate the proceedings or any of them, on such terms as the court thinks fit.

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

105. Where in the case of a petition presented by a creditor the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor:

Provided that no such order for substitution shall be made if the original petition was not maintainable and the application for substitution is made more than three months after the date of the act of insolvency on which the original petition was based.

Powers of the High Court to control in-

solvency proceedings.---

\\ithdrawal of petition.

[s. 14, P.A.] modi ed.

Cf. ss. 13(8) and 15 (2), P.T.A., modi ed.

Consolida-

tion of petitions.

[s. 15, P.A.] Cf. s. 91, P.T.A.

[New] Cf. s. 97, .T.A.

Power to substitute petitioner in certain cases [s. :6, P.A.1.

Cf. s. 92, P.T.A.

[New] Exemption of corporation, etc., from insolvency proceedings.

[s. 8, P.A.] Cf. s. 107, P.T.A.

Power to present petition against a partner.

[New] Cf. s. 95, P.T.A.

Proceedings in partner-

ship name or assumed name.

[New] Cf. s. 99, P.T.A.

Cf. Calcutta rule 151 under the Presidency Act.

English rule 285 ;

Madras rules under the Presidency Act, Order V, rule 5, and Bombay rule 154(1), under the Presidency Act.

106. Subject to the provisions of section 108, no insol- vency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

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

108. (1) Any two or more persons, being partners, may take proceedings or be proceeded against under this Act in the name of the firm:

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

(2) Where a minor has been admitted to the benefits of partnership in a firm, an order of adjudication made against the firm shall bind his share but shall not affect any other property of the minor, nor shall the minor be deemed to have been adjudged insolvent.

(3) An order of adjudication made against a firm shall operate as if it were an order of adjudication made against each of the persons who, at the date of the order, is a partner in that firm. (4) Any person carrying on business in a name or style other than his own may be proceeded against under this Act in such name or style:

Provided that in that case the court may, on application by any person interested, order the real name of such person to be disclosed in such manner and verified on oath or otherwise as the court may direct.

109. The court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the court thinks fit.

110. (1) Where the court having jurisdiction in insolvency under this Act is a High Court in its ordinary original civil jurisdiction, the manner in which such jurisdiction may be exercised may be provided for by rules having jurisdiction

made under this Act in insolvency.

[New] Cf. ss. 4 and 5, P.T.A.

(2) The Chief Justice may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the High Court by this Act, an officer of the court appointed by him in this behalf shall have all or any of the powers mentioned in sub-section (3); and any order made or act done by such officer in the exercise of the said powers shall be deemed to be the order or act of the Court.

(3) The powers referred to in sub-section (2) are the powers of the High Court, namely:-- (a) to hear insolvency petitions presented by debtors, and to make orders of adjudication thereon;

(b) to hold the public examination of insolvents;

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

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

(e) to examine any person summoned by the court under section 70.

(4) An officer appointed under sub-section (2) shall, not have power to commit for contempt of court. P-T-A

111. Where there are more respondents than one to a petition, the court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

pondents only.

[New] Cf. s. 96, P.T.A.

112. If a debtor by or against whom an insolvency petition has been presented dies, before or after adjudication, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive. Cf. s. 17, P.A.] Cf. s. 93, P.T.A.

Courts to be auxiliary to each other.

[s. 77, P.A.] Cf. s. 126, P.T.A.

Warrants of insolvency courts.

[New] Cf. s. 100, P.T.A.

Appeal to court against Official Assignee.

signec.

[s. 68, P.A.] Cf. s. 86, P.T.A.

and s. 101, part, P.T.A.

Appeals against orders of district Courts and subordinate courts.

{ s. 75, P.A.]

113. All courts having jurisdiction in insolvency - and the officers of such courts, respectively, shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a court seeking 'aid with a request to another of the said courts shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such courts could exercise in regard to similar matters within their respective jurisdictions.

114. (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 Civil Procedure, 1908, may be executed.

(2) A warrant to seize any part of the property of any insolvent issued by the court under sub-section (1) of section 61 shall be in the form prescribed and may be executed in the same manner and subject to the same conditions as a warrant of attachment of movable property issued under the said Code may be executed.

(3) A search-warrant issued by the court under sub-section (2) of section 61 may be executed in such manner and subject to such conditions as may be prescribed.

CHAPTER XII APPEAL AND REVIEW 1155. 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:

Provided that no appeal under this section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of.

115. (1) The debtor, any creditor, the Official Assignee or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction by a court subordinate to a district court may appeal----

(a) to the High Court, if the decision or order is specified in the Third Schedule, or

(b) to the district court, in any other case;

and the order of the High Court or the district court upon such appeal shall be final:

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the district court was according to law, may call for the case and pass such order with respect thereto as it thinks fit:

5 of 1908.

5 of 1908.

*.Provided, further, that any such person aggrieved by a decision of the district court on appeal from a decision of a subordinate court under section 99 may appeal to the High Court on any of the grounds mentioned in sub-section (1) of section 100 of the Code of Civil Procedure, 1908.

(2) Any such person aggrieved by any such decision or order of a district court as is specified in the Third Schedule, come to or made otherwise than in appeal from an order made by a subordinate court, may appeal to the High Court.

(3) Any such person aggrieved by any other order made by a district court otherwise than in appeal from an order made by a subordinate court may appeal to the High Court by leave of the High Court; and in every case in which the High Court admits such appeal, such leave shall be deemed to have been granted.

(4) The periods of limitation for appeals to the district court and to the High Court under this section shall be thirty days and ninety days, respectively.

117. (1) An appeal shall, at the instance of any person aggrieved by an order made by an officer of the court authorized under sub-section (2) of section 110, lie to the Judge assigned for the transaction and disposal of matters in insolvency, and no appeal shall lie against the order of the Judge.

the Judge passed in such appeal except by leave of such Judge (a, 1).T.A.

(2) Save as provided in sub-section (1), an appeal shall lie, at the instance of any person aggrieved by an order 'T.A' made by a Judge of the High Court in the exercise of the jurisdiction conferred by this Act, in the same way and subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of that Court.

(3) The period of limitation for an appeal under sub- s. 101 part, section (1) shall be twenty days from the date of the order. P-T-A-

(4) The period of limitation for an appeal under sub- Cf. s. 101, section (2) shall be the same as that for appeals against P-T-A- judgments of a Judge of the High Court passed in the exercise of the ordinary original civil jurisdiction of that court .

118. The court may review, rescind or vary any order Review made by it under its insolvency jurisdiction. [New] ' Cf. s. 8(1), P.T.A.

and s. 108 (I), English Act.

Punishment for certain offences.

[s. 69, P.A.] Cf. ss. 33 (4) and 103, P.T.A.

Cf. s. 154 (I)(I), Eng-
lish Act.

As to burden of proof, see English Act. ~ Cf. s. 154 (I), (9), (Io) and (1 1), English Act mentioning period also before peti-

tion.

Cf. s. 154 (I), (4) and (5) English Act men-
tioning also period before presentation.

Cf. s. 154 (I),(6), Eng-
lish Act.

[New] Cf. s. 154 (J), (7), Eng-
lish Act.

[New] CHAPTER XIII OFFENCES AND PENALTIES

119. Any person adjudged insolvent who-

(a) whether before or after the making of the order of adjudication wilfully fails to perform the duties imposed on him by section 14, or

(b)' wilfully'fails to deliver up possession of any part of his property which is divisible among the creditors under this Act and which is for the time being in his possession or under his control to the Official Assignee or to any person authorised by him to take possession of it, unless he proves that he had no intent to defraud; or

(c) whether before or after the making of the order of adjudication--

(i) has destroyed or otherwise wilfully pre- vented or purposely withheld the production of any document relating to such of his affairs as are subject to investigation under this Act, or

(ii) has k.ept or caused to be kept false books; or ,

(iii) has made false entries in, or withheld entries from, or wilfully altered or falsi ed, any document relating to such of his affairs as are subject to investigation under this Act;

and is unable to prove that he had no intent to conceal the state of his affairs or to defeat the objects of this Act; or

(d) whether before or after the making of the order of adjudication--

(1') 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 any kind whatsoever; and is unable to prove that he has no intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors; or

(e) makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud; or

(f) knowing or believing that a false debt has been proved by any person under the insolvency, fails for the period of a month to inform the Official Assignee thereof; or

(g) after the presentation of an insolvency petition by or against him, prevents the production of any book, document, paper, or writing affecting or relating [New] to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law; or

(h) after the presentation of an insolvency petition by or against him, or at any meeting of his creditors within twelve months next before such presentation, [New] ' attempts to account for any part of his property by fictitious losses or expenses; or

(i) within twelve months next before the presentation of an insolvency petition by or against him, or after the presentation of an insolvency petition and [New], ' before the making of the order of adjudication, by any ' false representation or other fraud, has obtained any property on credit and has not paid for the same; or (3') within twelve months next before the presentation of an insolvency petition by or against him, or after the presentation of an insolvency petition and [New] before the making of an order of adjudication, obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud; or

(k) Within twelve months next before the presentation of an insolvency petition by or against him, or after the presentation of an insolvency petition and [NEW] ' before the making of the order of adjudication, pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud; or (Z) is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his insolvency; shall be punishable with imprisonment for a term

which may extend to two years.

120. If any person who has been adjudged insolvent---- Frauds by insolvents.

(a) in incurring any debt or liability has obtained [New] credit under false pretences or by means of any Cf. s. 155, other fraud; or English Act.

(b) with intent to defraud his creditors or any (As to levy of them, has made or caused to be made any gift or 'of 'x''''ti' transfer of. or charge on, his property, or has caused §f§,,9,,',f,,,,,, 01' Connived at the levying of any execution against his property; or 42 M of L--7 Cf. s. 164, Eng. Act.

Insolvent guilty of gambling.

[New] Cf. s. 157, Eng. Act.

Cf. s. 2_I4(I), Australian Act.

As to pu-

nishment, see s. 164, English Act.

Insolvent failing to keep proper accounts.

[New] and 16 English Act.

(c) with intent to de[ra]ud his creditors, has concealed or removed any part of his property since, or within two months before, the date of any unsatisf[ac]ed judgment or order for payment of money obtained against him;

he shall be punishable with imprisonment for a term which may extend to two years. -

121. (1) Any person who has been adjudged insolvent shall be guilty of an offence, if, having been engaged in any trade or business, and having outstanding at the date of the order of adjudication any debts contracted in the course and for the purposes of such trade or business,-

(a) he has, within two years prior to the presen-

tation of the insolvency petition, materially contri-

. buted to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or '

(b) he has, between the date of the presentation of the petition and the date of the order of adjudication, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or

(c) on being required by the Official Assignee at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the insolvency petition, or between that date and the date of the order of adjudication, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused at the time when he entered into the speculations shall be taken into consideration.

(2) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years. A (3) A prosecution shall not be instituted against any person under this section where the order of adjudication is made within two years from the commencement of this Act.

122. (1) Any person who has been adjudged insolvent shall be guilty of an offence if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the insolvency petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the order of adjudication, or has not preserved all books of account so kept:

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section--

— (a) if his unsecured liabilities at the date of the order of adjudication did not exceed, in the case of a person who has not on any previous occasion been adjudged insolvent or made a composition or arrangement with his creditors, seven thousand and five hundred rupees, or in any other case one thousand and five hundred rupees; or

(b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years.

(3) A prosecution shall not be instituted against any person under this section where the order of adjudication is made within two years from the commencement of this Act.

(4) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of annual stock-takings, and (except in the

case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified}

123. If any person who is adjudged insolvent, after the Insowem presentation of an insolvency petition by or against him, or absconding within six months before such presentation, quits the Wm' Pm' territories to which this Act extends and takes with him, Fg. or attempts or makes preparations to quit those territories Cf, ss_ 159 and take with him, any part of his property to the amount and _I64, of three hundred rupees or upwards, which ought by law Enfhsh to be divided amongst his creditors, he shall (unless he C' i proves that he had no intent to defraud) be punishable with imprisonment for a term which may extend to two years.

1. As to refusal to order discharge for failure to keep proper books, see Presidency Act, section 39(2) (b), etc. False claim.

[Ni-'Wl Cf. s. 160, English Act.

[New] Undischarg-

ed insolvent obtaining credit.

9. 72(1), .A.] Cf. s. 102, P.T.A.

As to engaging in trade under old name, compare s. 1550!).

English Act.

[New] Bar of prosecution without order of court.

[New] Procedure on charge of offence.

[s. 70, P.A.] Cf. s. 104, P.T.A.

124. If any creditor, or any person claiming to be a creditor, in any insolvency proceedings, wilfully and with ' , - tent to defraud, makes any false claim, or any proof, declaration or statement of account, which is untrue in any material particular, he shall be punishable with imprisonment for a term which may extend to two years,' or with he, or with both.

125. Where an undischarged insolvent--

(CL) obtains credit to the extent of two hundred rupees or upwards from any person without informing such person that he is an undischarged insolvent; or

(b) engages in any trade or business under a name other than that under which he was adjudged insolvent, without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudged insolvent;

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

Explanation.-----A person receiving money for goods to be delivered or services to be rendered by him in future shall, for the purposes of this section, be deemed to be obtaining credit.

126.--No prosecution for any of the offences referred to in sections 119 to 125 shall be instituted except-

(a) upon a complaint of the court under section 127, or

(b) otherwise by an order of the court. '

127. (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 119, 120, 121, 122, 123 or 125 and appearing to have been committed by the insolvent, or into any offence referred to in section 124 and appearing to have been committed by any creditor, the court may record a finding to that effect and make a complaint of the offence in writing to a Presidency Magistrate or a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898.

1. As to offences under the I.P.C., see sections 206--209 and 421-424 of that Code.

gof 36 of 1963.

O I (2) Any, complaint made by the court under sub-section (1) may be signed by such officer of the court as the court may appoint in this behalf.

128. Where an insolvent has been guilty of any of the offences specified in sections 119 to 121 or section 129, he after discharge shall not be exempt from being proceeded against there-

charge or for by reason that he has obtained his discharge or that a composition.

composition or scheme of arrangement has been accepted or approved. 'A'

129. (1) Where a debtor is adjudged or re-adjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from being appointed or acting as a Magistrate, or holding any civil judicial post. Cf.

[s 73, P.A.] s. 103A, P.T.A.

(2) The disqualifications to which an insolvent is subject under' this section-- 10°81 811-

(a) shall be removed and shall cease if---- thorny omitted.]

(i) the order of adjudication is annulled under section 30, or

(ii) 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;

(b) shall, in any event, cease to have effect on the expiry of five years from the date on which an order of absolute discharge is passed or an order of discharge becomes absolute, or such shorter period as the court may fix in any particular case.

(3) The court may grant or refuse any certificate under sub-clause (ii) of clause (a) of sub-section (2) as it thinks fit, but any order of refusal shall be subject to appeal. , CHAPTER XIV MISCELLANEOUS

130. (1) The provisions of the Limitation Act, 1963, shall, unless the context otherwise requires, apply to of the. appeals and applications under this Act, and for the purpose of section 12 of the said Act, a decision under this Act of /Lmnt" from which an appeal lies shall be deemed to be a decree.

tion Act.

[s- 78 (I), (2) Where an order of adjudication has been annulled ' ' under this Act, in computing the period of limitation prescribed for any suit or other legal proceeding [other than a P.A.] ' suit or other legal proceeding in respect of which the leave of the court was obtained under sub-section (1) of section 19] which might have been brought but for the making 'As to provisions in England, see section 32 of the 1883 Act (still in force); and section 9 of the 1890 Act (still in force) and section 26(4), 1914 Act; Williams (17th Edn.) pages 835-837 and page 137.

Access to insolvent's books.

[New] Cf. s. 124, P.T.A.

Fees and percentages.

[New] Cf. s. 125, P.T.A.

Gazette to be evidence.

[New] Cf: s. 116 (I), P.T.A.

Liability of State Government.

as amended in Bom-

bay.

Formal defect not to invalidate proceedings.

[New] Certain provisions to bind the [CI]&>vernment.

cw] Cf. s. 120, P.T.A.

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

Provided that nothing in this sub-section shall apply to a suit or other legal proceeding in respect of a debt prov- able but not proved under this Act.

131. (1) No person shall, as against the Official Assignee, be entitled to withhold the 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, per- sonally or by agent, any such books in the possession of the Official Assignee.

132. Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be pres- cribed.

133. 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.

134. The State Government shall be liable to make good all sums required to discharge any liability which the O□- cial Assignee may be liable to discharge, except when such liability is one to which neither the Official Assignee nor any of his of□ers has in any way contributed or which , neither henor any of his of□ers could, by the exercise of reasonable diligence, have averted, and in either g□ these cases the Official Assignee shall not, nor shall the State Government, be subject to any liabilities.

135. (1) No proceeding in insolvency shall be invalidat- ed by any formal defect or by any irregularity unless the court before which an objection is made to the proceeding is of the opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court.

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

136. Save as herein provided, the provisions of this Act relating to the remedies against the person or 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.

137. Nothing in this Act shall affect the provisions of Savings any law for the time being in force relating to the relief of fggfggg agricultural indebtedness. the relief of agricul-

turist debtors.

[s. 82, P.A.]

138. (1) The Supreme Court, after consulting the High power to Courts, may make rules for carrying into effect the provi- make rules. sions of this Act. 7398'. Pl'fz',] I13 and n4, 1'.T.A.

Cf. s. 643 (1), Com-

panies Act, 1956.

(2) In particular, and without prejudice to the genera- lity of the foregoing provision, 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;

(1)) the investment, whether separately or collec- tively, or unclaimed dividends, balances and other sums appertaining to the estates of insolvent debtors, and the application of the proceeds of such investment;

(c) the proceedings of the Official Assignee in tak- ing possession of and realizing the estates of insolvent debtors;

(d) the receipts, payments and accounts of the Oi cial Assignee;

(e) the audit of the accounts of the Of cial Assig- nee;

(f) the payment of the costs of the audit of his lalccounts out of the proceeds of the investments in his i ands;

(g) the. payment of the costs incurred in the pro- secution of fraudulent debtors and in legal proceedings taken by the Of cial Assignee under the direction of the court out of the proceeds aforesaid;

- (h) the payment of any civil liability incurred by an Official Assignee acting under the order or direction of the court;
- (i) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;
- (j) the intervention of the Official Assignee at the hearing of applications and matters relating to insolvent debtors and their estates;
- (k) the filing of lists of creditors and debtors and the affording of assistance to the court by a petitioning debtor;
- (Z) 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;
- (11) the appointment, meetings and procedure of committees of inspection;
- (o) the conduct of proceedings under this Act in the name of a firm;
- (p) the forms to be used in proceedings under this Act;
- (q) the procedure to be followed in the case of estates to be administered in a summary manner;
- (1') the procedure to be followed in the case of estates of deceased persons to be administered under this Act;
- (3) the distribution of Work between the Official Assignee and the deputy or deputies;
- (t) the procedure to be followed by the High Court in exercise of its insolvency jurisdiction, where it has such jurisdiction under this Act;
- (11,) the form of insolvency notice and the manner in which it may be served; a
- (v) the manner of publication of the notice of an order annulling adjudication, under sub-section (2) of section 32;
- (w) the time after which and the circumstances in which permission for renewing an application for discharge may be granted under sub-section (1) of section 32;

(ac) the cases in which the Official Assignee may disclaim any lease-hold interest without the leave of the court under section 66;

(y) the manner of giving notice under sub-section (1) of section 77, and sub-section (2) of section 106;

of 1909.

of 1920.

V19) 3 of 1909.

2:.

5 of 1920.

(z) the rate of interest under section 78;

(aa) the period after which the Official Assignee shall pay an unclaimed dividend to the account and credit of the State Government under sub-section (1) of section 81;

(bb) the duties of the Official Assignee in respect of the matters referred to in clauses (b) and

(c) of sub-section (3) of section 91 and in sub-section

\ tion (4) of that section;

(cc) the payment of costs of maintaining a debtor in the civil prison;

(dd) the manner in which and the conditions subject to which a search-warrant may be executed under sub-section (3) of section 114»;

(ee) any other matter which is to be or may be prescribed.

(3) All rules made under this Act shall be published in the Official Gazette.

(4) Until rules are made by the Supreme Court as Cf. s. 643 aforesaid, all rules made by any High Court on the (3),_Cog1- matters referred to in this section and in force at the 'I'g';'6°_S Ct' commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force in the High Court and in courts subordinate thereto.

139. (1) The Presidency-towns Insolvency Act, 1909, Repeal and the Provincial Insolvency Act, 1920, any Provincial Act savings-

or State Act amending either of the said Act and any law [NW] corresponding to the Presidency-towns Insolvency Act, 1909 or to the Provincial Insolvency Act, 1920, in force in any part of the territories which, immediately before the 1st day of November, 1956, were comprised in Part B States, and any law amending such corresponding law, are hereby repealed.

(2) Every person appointed as Official Assignee under Cf. s. 652, the Presidency-towns Insolvency Act, 1909, or as any corresponding officer under any law corresponding thereto, or as Official Receiver under the Provincial Insolvency Act, 1920, or as any corresponding officer under any law corresponding thereto, and holding such office immediately before the commencement of this Act, may, without further appointment for that purpose, act as the Official Assignee under this Act also, for the local limits for which he was appointed, until an Official Assignee is appointed under this Act for those limits. RT'

-Cf. s.

(3), Special Cf. s. 51 (2)0):

Special Marriage Act: 1954-

SI age Act, 1954.

(3) Where an Official Assignee is appointed Under this Act for any local limits under this Act, he may, subject to any orders of the appointing authority to the contrary, also act as the Official Assignee or the Official Receiver, or corresponding officer, as the case may be, for those local limits for the purposes of all proceedings arising out of any insolvency petition presented before the commencement of this Act under the Presidency-towns Insolvency Act, 1909, the Provincial Insolvency Act, 3 of 1909. 1920, or any law corresponding to either of the said Acts, 5 of 1939- if, for the time being, there is no person appointed under such Act or law and holding office as the Official Assignee, Official Receiver or corresponding officer, as the case may be.

(4) All proceedings arising out of any insolvency petition presented before the commencement of this Act in any court under the Presidency-towns Insolvency Act, 3 of 1909. 1909, the Provincial Insolvency Act, 1920, or any such 5 Of 1920. corresponding law, shall be dealt with and decided by that court as if this Act had not been passed.

(5) Without prejudice to the generality of the provisions of sub-section (4), an Official Assignee appointed under the Presidency-towns Insolvency Act, 1909 or 3 of 1909, under any law corresponding thereto or an Official Receiver or other person appointed as a receiver under the Provincial Insolvency Act, 1920, or under any law corresponding thereto, may, in relation to proceedings arising out of any insolvency petition presented before the commencement of this Act, have and exercise all such jurisdiction and powers as he could if this Act had not been passed.

(6) The provisions of sub-sections (3).

shall be without prejudice to---

(4) and (5)

(a) the provisions contained in section 6 of the General Clauses Act, 1897, which shall also apply to 10 of 1397 the repeal of the corresponding law as if such law had been an enactment;

(b) the provisions contained in section 24 of the said Act, which shall also apply to the repeal of "the corresponding law as if such law had been a Central Act.

THE FIR/ST SCHEDULE (See section 28) MEETING OF CREDITORS

1. The Official Assignee may at any time summon a meeting of meeting of creditors, and shall do so whenever so directed by the court or by the creditors by resolution at any rule 1°, ' ' meeting or whenever requested in writing by one- P_T_A_ fourth in the value of the creditors who have proved.

2. Meetings shall be summoned by sending notice of S11mm0I}ing the time and place thereof to each creditor at the 'of m°°""'o'S' . . . C . S h. I, address given in his proof, or, if he has not proved, at nfezcs the address given in the insolvent's schedule, or such P.T.A. other address as may be known to the Of□cial Asaignee.

3. (1) The notice of any meeting shall be sent not less Notice of than seven days before the day appointed for the meet- meetings-

ing and may be delivered personally or sent by prepaid E{1'es3°,h' 1' post letter, as may be convenient. P_T,A.

(2) The Of□cial Assignee may, if he thinks □, also publish the time and place of any meeting in any local newspaper or in the Of□cial Gazette.

4. (1) It shall be the duty of the insolvent to attend Duty of any meeting which the Of□cial Assignee may, by notice, insolvent require him to attend, and any adjournment thereof. Fo a"°'.d if required.

Cf. Sch. 1, rule 4, ' P.T.A.

(2) Such notice shall be either delivered to him per- sonally or sent to him at his address by post at least seven days before the date □xed for the meeting.

5. The proceedings held and resolutions passed at any Proceeding meeting shall, unless the court otherwise orders, be valid n°'.° be notwithstanding that any creditor has not received the aV°'d°d f°r . . nor.-receipt notice sent to him. of notice.

Cf. Sch. I, rule 5, P.T.A.

6. A certificate of the Official Assignee that the notice Proof of of any meeting has been duly given, shall be sufficient issue of evidence of such notice having been duly sent to the "person to whom the same was addressed. (',.;{1'eS6°h' 1' P.T.A.

person to whom the same was addressed. (',.;{1'eS6°h' 1' P.T.A.

7. Where on the request of creditors the Official Costs of Assignee summons a meeting, there shall be deposited m°°""8- with the written request the sum of ₹ve rupees for Cfj Sch' I' every twenty creditors for the costs of summoning the l>ll'§.A. meeting, including all disbursements: Provided that the Chairman.

Cf. Sch. I, rule 8, P.T.A.

Right to vote.

Cf. Sch. 1, rule 9, P.T.A.

No vote in respect of . certain debts.

Cf. Sch. I, rule 10, P.T.A.

Secured creditor.

Cf. Sch. I, rule II, P.T.A.

Proof in respect of negotiable instruments.

Cf. Sch. I, rule 12, P.T.A.

Power to require creditor to give up security.

Cf. Sch. 1, rule 13, P.T.A.

Proof by partner.

Cf. Sch. I, rule 14, P.T.A.

O□cial Assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover. the costs .and expenses of the meeting.

8. The O□cial Assignee shall be the Chairman of every meeting of creditors.

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

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

11. (1) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security.

(2) If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

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

13. It shall be competent to the Official Assignee, within twenty-eight days after a proof estimating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated.

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

instru-

15. (1) The Official Assignee shall have power to power of admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. to admit or reject proof.

Cf. Sch. I, rule 15, P.T.A.

(2) If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

16. A creditor may vote either in person or by proxy. See, e.g., Sch. I Rule 16, P.T.A.

17. Every instrument of proxy shall be in the prescribed form and shall be issued by the Official Assignee. See, e.g., Sch. I rule 17, P.T.A.

18. (1) A creditor may give a general proxy to his General attorney or to his manager or clerk, or any other person engaged in his regular employment. rule 18, P.T.A.

(2) In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A proxy shall not be used unless it is deposited with the Official Assignee one clear day before the time appointed for the meeting at which it is to be used. before am of meeting.

Cf. Sch. I, rule 19, P.T.A.

20. A creditor may appoint the Official Assignee to Official act as his proxy. Assignee as proxy.

Cf. Sch. 1, rule 20, P.T.A.

21. The Official Assignee may adjourn the meeting Adjournment from time to time and from place to place, and no notice of meeting.

of the adjournment shall be necessary. Cr.';1-es2°xh- L P.T.A.'

22. The Official Assignee shall draw up a minute of Minute of the proceedings at the meeting and shall sign the same. FC'§,°°§:g1n§S- rule 22; ' P.T.A.

Time for lodging proof.

Cf. Sch. II, rule I, P.T.A.

Mode of lodging proof.

[8- 49 (I), P.A Cf. 'Sch. 11, rule 2, P.T.A.

Authority to make affidavit.

Cf. Sch. II, rule 3, P.T.A.

Contents of affidavit.

[S- 49 (2), P.A., part] Of. Sch. II, rule 4, P.T.A.

Affidavit to state if creditor holds security [s- 49 (2), P.A., Part] Cf. Sch. II, rule 5, P.T.A.

and Second Sch., rule 5, English Act as amended in 1926 (Williams, page 558)-

Cost of proving debts.

THE SECOND SCHEDULE (See section 47) PROOF or DEBTS Proof in ordinary cases

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

2. A proof may be lodged by delivering or sending by post in a registered letter to the Official Assignee an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself or by some person authorised by or on behalf of the creditor; if made by a person so authorised, it shall state his authority and means of knowledge.

4. (1) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated.

(2) The Official Assignee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor; and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the Official Assignee for the general benefit of the creditors unless the court on application is satisfied that the omission has arisen from inadvertence, and in that case the court may allow the affidavit to be amended on such terms as to the repayment of any dividend or otherwise as the court may consider to be just.

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

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times. Cf. Sch. II, rule 7, P.T.A.

~ ' ' ' f h l l deduct from D d ' his debt (ar l (ld' c11' EaC1) < I: le1 rdis1c) < ; i \ 1g I111sg lllleogh zlls nzb t be compelled Eoeblel t slg gafi i _ ' . In .

to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. 1'-T-A-

Proof by secured creditors

9. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised. r [s_ 47 (1), P.A.] Cf. Sch. II, rule 9, P.T.A.

10. If a secured creditor surrenders his security to the Official Assignee for the general benefit of the creditors, he may prove for his whole debt. / [S_ 47 (2), P.A. Cf. 'Sch. 11,, rule 10, P.T.A.

11. If a secured creditor does not either realise or surrender his security, he shall, before ranking for the dividend, state in his proof the particulars of his security, {f'A47 (3)=

the date when it was given and the value at which he (if 'Sch_n, assesses it, and shall be entitled to receive a dividend only rule 11, in respect of the balance due to him after deducting the P.T.A- value so assessed. '

12. (1) Where a security is so valued the Official Valuation of Assignee may at any time redeem it on payment to the security- creditor of the assessed value. {FA47 (4)' Cf. 'Sch. 11, rule 12, P.T.A.

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

Provided that the creditor may at any time, by notice in Writing, require the 'Official Assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the Official Amendment of valuation.

Cf. Sch. II, rule 13, P.T.A.

Refund of ' EXCESS IC-

ceived.

Cf. Sch. II, rule 14, P.T.A.

Amendment where se-

curity subsequently realised.

[s- 47 (5), P A C}. 'Sch. 11, rule 15, P.T.A.

Exclusion from shar-

ing in divi-

dend.

Cf. Sch. II, rule 16, P.T.A.

Is. 47 (6), P.A.] Limit of receipt.

Cf. Sch. II, rule 17., P.T.A.

Assignee does not, Within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the Official Assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

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

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

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

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

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than one hundred naye paise in the rupee and interest as provided by this Act.

Taking accounts of property mortgaged, and of the sale thereof

18. (1) Upon application by any person claiming to be Inquiry in" a mortgagee of any part of the insolvent's estate¹ and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the Official Assignee with the consent of P.T.A. such person claiming to be a mortgagee as aforesaid, the court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the court shall direct such accounts and inquiry-

ries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, of dividends, interest or other pro-

ceeds received by such person, or by any other person by his order or for his use in case he has been in possession of the property over which the mort-

gage extends, or any part thereof, and the court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the court thinks fit, when and where, and by whom and in What way, the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the Official Assignee (un-

less it is otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mort-

gagee to make such application.

(2) At any such sale the mortgagee may bid and purchase.

19. All proper parties shall join in the conveyance to Conveyance.

the purchaser, as the court directs. Cf- 3011- 11> rule 19, P.T.A.

20. (1) The monies to arise from such sale shall be Proceeds of applied, in the first place, in payment of the costs, charges and expenses of and occasioned by the application to the court, and of such sale and the commission (if any) of the official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee, for principal, interest and costs, and the surplus of the sale monies (if any) shall then be paid to the Official Assignee.

(2) But if the monies to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably With the other creditors, but so as not to disturb any dividend then already declared.

"The words " real or leasehold " before " estate " are omitted.

42 M of L--8 Proceedings on inquiry Cf. Sch. II, rule 21, P.T.A.

Periodical payments.

Cf. Sch. 11, rule 22, P.T.A.

As to " accrued "

Cf. s. 36, P.T.A.

Interest.

[s- 48, P.A.] Cf. Sch. II, rule 23, P.T.A.

Debt payable in future.

[s. 45, P.A.] Cf. Sch. II, rule 24, P.T.A.

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

Periodical payments

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

Interest

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

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

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

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

Debt payable at a future time

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

to the Admission or rejection of proof

25. (1) The Official Assignee shall examine every proof lodged and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence. Cf. Sch. II, rule 25, support of it. (2) If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

26. If the Official Assignee thinks that a proof has been improperly admitted, the court may, on the application of the Official Assignee, after notice to the creditor who made properly the proof, expunge the proof or reduce its amount. S. 27, part] Cfl. Scgi. II, C 2, i>'r.A.

27. The Court may also expunge or reduce a proof upon Power for the application of a creditor if the Official Assignee declines to interfere in the matter, or in the case of a compound proof.

position or scheme upon the application of the insolvent. S. 27, part.

Cfl. Sch. II, ru 6 27, P.T.A.

28. Any creditor of the insolvent may, at any time before the declaration of the final dividend under section 77, tender proof of his debt and apply to the court for an order directing his proof to be admitted in respect of any debt which is provable under this Act and in respect of which a proof has not been tendered; and the court, after causing notice to be served on the Official Assignee and the other creditors who have proved their debts, and after hearing their objections, if any, shall allow or reject the application.

THE THIRD SCHEDULE [See section 121(1) and 121(2)] [First Schedule] Decisions and orders from which an appeal lies to the High Court under section 121(2) Section Nature of decision or order Section 16 . . . Order dismissing a petition. Section 18 . . . Order of adjudication. Section 30 . . . Order annulling adjudication. Section 32 . . . Order declaring the conditions on which the insolvent's property shall revert to him on annulment of adjudication.

Section 37 . . . Order on application for discharge.

'As to orders under the clause corresponding to existing section 33, provincial Act, the orders will now be passed by the Official Assignee, and not by the court.

Section Nature of decision or order Section 54 . . . Order for avoidance¹ of a voluntary transfer.

Section 55 . . . Decision that transfer of property is a preference in favour of a creditor.

Section 70 . . . Decision of a dispute as to whether the person summoned owes any money to the insolvent or is in possession of any property belonging to the insolvent.

Section 99 . . . Decision of questions arising in insolvency.

Second Schedule, Rules 26 Order expunging the proof or reducing the and 27. amount.

'As to " avoidance " of a voluntary transfer, see clause dealing with voluntary transfers.

'Section II5, P.A. is omitted the Bill. Hence orders awarding compensation are not mentioned in this Schedule.

EXPLANATION OF ABBREVIATIONS USED IN THE NOTES P.A. or Provincial Act.--The Provincial Insolvency Act, 1920.

P.T.A. or Presidency Act.--The Presidency-towns Insolvency Act, 1909.

Mulla.--Mulla, Law of Insolvency in India.

Williams.----Williarns on Bankruptcy, 17th Edition (1958).

APPENDIX II Notes ON CLAUSES Clause 1 Part B .S'tates.----The new Act will apply to the Whole of India except the State of Jammu and Kashmir. The existing Provincial Insolvency Act, 1920, does not extend to territories which were comprised in Part B States before the 1st November, 1956. But there is no reason why the Act should not apply to those territories'.

Scheduled districts.----The Provincial Insolvency Act, 1920, does not extend to areas formerly known as "scheduled districts". It is, however, unnecessary to make any such exception, initially, in the new Act. The legislative practice, which is in conformity with the intentions of the framers of the Constitution, is not to make any such exception in Acts of Parliament. There is, however, a power under the Constitution to exclude the application of Acts to certain areas. So far as tribal areas in Assam are concerned, the Governor can, under paragraph 12(1) (b) of the Sixth Schedule to the Constitution, notify that the Act will not apply to any autonomous district or region, or will apply subject to modifications. Similarly, so far as scheduled areas in other States are concerned, the Governor can, under paragraph 5(1) of the Fifth Schedule to the Constitution, notify that a particular "Act of Parliament" will not apply to a scheduled area, or will apply subject to modifications.

'See body of the Report, para. 4.

Goa, etc.----As to Goa, Pondicherry, Nagaland, etc., if it- is intended to exclude the application of the Act, the ques- tion may be considered by Government.

Clause 2 "Court".--Needs no comments.

"Creditor".----No comments needed. As to "sureties", the subject has been discussed in the notes on another clause'.

"Debt".--The deñition of "debt" needs no comments. "Debtor".--The deñition of "debtor" has been en- larged so as to include persons of foreign domicile. A full discussion will be found in the notes on another clause'~'.

"District Court".---Needs no comments. "Oñcial Assignee".--Since the appointment of Deputy Oñcial Assignees can be made³, this deñition becomes necessary. It is unnecessary to say (as the Presidency Act does) that "acting" incumbents are included*.

"Prescribed".--Needs no comments.

"P7'operty".--Needs no comments'.

"Secured creditors".--The inclusive part has been taken from the Presidency Act, as .usefu1_ 'filltransfer of Property".----The only change made is the addition of the Words "or transfer" after "creation". This addition has been made to cover cases of transfer of charge.

Last para.-

(Other words, }Needs no comments. etc.) Clause 3 General.----This follows section 6, Provincial Act and sec- tion 9, Presidency Act.

Sub-clause (1)--

Paragraph (a).----Needs no comments Paragraph (b).--Needs no comments.

¹See notes to clause 55.

²See notes to clause 98.

³See clause 88.

'Although the expression adopted in the Bill is "Official Assignee", yet in the Notes on clauses the expression "Official Receiver" has also. been used, having regard to existing nomenclature; but this should be under- stood as referring to the Official Assignee.

5The meaning of "property" has been explained in a Supreme Court decision. See *Mum Lal v. Trustees of the Provident Fund, etc.* A.I.R. 1956. S.C. 336, 34:, para. 21.

Paragraphs (c) and (d).----The existing wording in section 6(1) (c) of the Provincial Act and section 9(1) (c) of the Presidency Act is~"if he makes any transfer which would under this or any other enactment for the time being in force" be void as a fraudulent preference. The reference to "other enactment" was mainly intended, it seems, for the sister Act. That is to say, the Presidency Act by these Words referred to the Provincial Act, and vice versa. Perhaps the laws in force in other parts of India where neither of the two Acts is in force (for example, the area of an erstwhile Indian State) would also be covered (though the definition of "enactment" in the General Clauses Act, 1897, is not specific on this point, because it is an inclusive definition.) Anyway, it is considered that these words should be retained in an altered form to cover clearly cases of a transaction regarded as a fraudulent preference under the Insolvency Law in Jammu and Kashmir also. The necessary change has been made accordingly. For clarity, the matter has been dealt with in two paragraphs.

Paragraph (e).----Needs no comments.

Paragraph (j").----Section 6(e) of the Provincial Act enacts that it is an act of insolvency if any property has been sold in execution of the decree of any court. The corresponding provision in the Presidency Act, section 9(e), provides further that it is an act of insolvency if the property has been under attachment for a period of 21 days. That has been adopted as useful. Further, "orders" for the payment of money have also been included', since they should receive the same treatment as decrees as regards attachment and arrest.

Another question which arises on this clause is, whether an order charging a partner's share under Order 21, Rule 49, Code of Civil Procedure. is "attachment" within this clause. It was held in *Gulam Mustafa V. Madanlal*", that it is not. It is true that an order under Order 21, rule 49, is different from an attachment; but, for the present purpose, the effect of both is the same. Hence an Explanation on the subject is added.

Paragraph (1).----"Orders" have been included.

Sub-clause (2).--Is mainly based on section 1(1) (g) of the (English) Bankruptcy Act, 1914. Under this section, it would be open to a person who has obtained a decree or order for the payment of money to give notice to the debtor calling upon him to pay the amount due thereunder, and failure to do so would itself be an act of insolvency'. In 'Cf. clauses 6 and 7, etc. '(1930 I.L.R. 58 Cal. 624 , - A.I.R. 1931 Cal. 167. See Mulla (1958), page 124, para. 121-B.

"Cf. clauses 6 and 7, etc. 'See Williams, pages 31_42, Bombay provisions" based on the English Act have been introduced both in the Presidency Act and in the Provincial Act, by the Bombay Insolvency Amendment Act (Bombay Act 15 of 1939).

If the notice is to be served outside India, leave of the court must be obtained and the period for compliance of the notice should be fixed by the court. The provision (contained in the English Act)

has been embodied here. If the notice is to be served within India, the period will not be less than one month. Having regard to conditions in India, a minimum period of one month seems to be appropriate.

Sub-clauses (3) and (4).--Contain detailed provisions as to insolvency notice.

Clause 3, Explanation Explanation-The Explanation (found in the existing Acts also) is departure from the English Law. Under that law the act of bankruptcy must be personal to the debtor, and therefore there can be no adjudication founded merely on the act of the agent³. It has been pointed out by the Privy Council⁴ that the position of Gumashta who carries on business on behalf of the proprietor may not strictly be that of a mere manager or agent, and that he may be entrusted with such large powers of management as to virtually assimilate his position to that of an owner, and that therefore a proprietor may be adjudicated on an act of insolvency committed by him. It is this view that is embodied in the Explanation to section 9 of the Presidency Act and section 6 of the Provincial Act. Both of them provide that an act of insolvency committed by an agent may be the act of the principal. This does not, of course, mean that every act of the agent must be treated as act of the principal. That appears to have been assumed in *Kalianji v. The Bank of Madras*⁵, which has been commented upon by Mulla⁶. Whether it should be treated as an act of the principal must depend upon the authority of the agent and the nature of the business, vide *John V. The Oriental Government Security Life Assurance Co*⁷.

It should be noted that in the Explanation to section 9 of the Presidency Act there occur the following words: "even though the agent has no specific authority to commit the act". This is not found in the Explanation to section 6 of the Provincial Act. The effect of the Explanation will be the same whether those words were there i.e., erstwhile Province of Bombay.

¹For Bombay amendment, see Mulla (1958), page 135.

²Mulla (1953), pages 139-140, para. 136.

³*Kaxturchand v. Dhanpat Singh*, 22 I.A. 162; I.L.R. 23 Cal. 26. I.L.R. 39 Mad. 693.

⁴See the criticism in Mulla (1958), page 142.

⁵A.I.R. 1929 Mad. 347.

or not, because if there is specific authority by the principal to the agent to commit the act, then it becomes the act of the principal himself. However, since the quoted words were useful by way of emphasis, they have been retained.

Clause 4 The language of section 10 of the Presidency Act has been followed. This is better than section 7 of the Provincial Act. Compare section 6 of the English Act.

The Explanation (which occurs in the existing section also) might appear to be a repetition of the provision in section 6(f) of the Provincial Act and section 9(f) of the Presidency Act", under which a debtor commits an act of insolvency if he petitions to be adjudged an insolvent. Apparently, however, the real object of the Explanation is to provide that in the case of a petition by a debtor, the existence of the antecedent act of insolvency is not necessary. The Explanation, to this extent, clarifies the main paragraph. It is not necessary to disturb the Explanation, which does not seem to have caused any difficulty.

Clause 5 Sub-clause (1).--Follows existing section 9(1) of the Provincial Act, as amended in 1950 and section 12(1), Presidency Act. Language of the latter Act has been followed.

Sub-clause (2).----Follows section 9(2) of the Provincial Act. [Compare section 12 (2) of the Presidency Act].

Transactions assented to by creditors.---It was decided in England as early as the 18th century that a creditor who assented to a deed of arrangement was precluded from relying on it as an act of bankruptcy, vide *Bamford v. Baile*³, and that has been accepted as the law ever since, notwithstanding that successive statutes on bankruptcy.

had remained silent on the question'. That principle has been accepted in the law of this country", vide *Kheta Mal v. Chuni Lal*⁴ and *Rulmani Ammal v. Rajagopala*⁷. The question whether an express provision enacting this principle and extending it to all transactions, written or oral, to which the creditor has consented, should be embodied has been considered. It is felt that it is unnecessary to do so.

'See Mulla (1958), page 139, para. 136. 2Mulla(1958), pages 149 and 185, deals with these sections generally. 3(1788) 2 T.R. 594.

'Williams, page 4.

"Mulla (1958), page 157.

-(1879) I.L.R. 2, All. 173.

'-(1924) I.L.R. 48 Mad. 294.

Registration,-----The three months' period for presenta-

tion of the petition is to be counted from registration where the act of insolvency is constituted by an instrument requiring registration¹⁻². That has been clarified in View of the uncertainty prevailing on the subject.

Sub-clause (3).----Is new. It is framed on substantially the same lines as section 14 (1), Limitation Act, 1963. The present³ position is that no extension of time is allowed on the ground of the period

spent in an unsuccessful insolvency proceeding previously prosecuted in a wrong court. It is considered that such a relaxation should be allowed. It, however, appears unnecessary to allow this relaxation for defects other than want of jurisdiction.

Clause 6 General.—See section 10, Provincial Act, and section 14, Presidency Act.

Sub-clause (1).—Does not need any comments. In paragraphs (b) and (c) after "decree", a reference to "order" has been added'. An Explanation regarding orders charging a partner's interest has also been added.

Sub-clauses (2) and (3).—The words "whether made under the Presidency-towns Insolvency Act or under this Act" have been omitted, since both the Acts have been combined in this Bill. The opening portion of sub-clause (3) has been re-drafted slightly for clarity.

There are two amendments to this section made by the Provincial Legislatures, which should be mentioned. One is the Punjab Relief of Indebtedness Act, 1934 (Punjab Act 7 of 1934). That Act, while fixing the limit under section 74 for summary administration at rupees two thousand, enacted a new clause, clause (aa) in section 10, providing that it was an act of insolvency if the debts of the debtor amounted to not less than rupees two hundred and fifty, and the debtor was entitled to an order for summary administration. It is considered that the question whether there is an act of insolvency or not should not depend on the size of his assets. The other amendment was made in 1936, by the Legislature of the Central Provinces, which enacted the Provincial Insolvency (CP. and Berar Amendment) Act, 1936, whereby the minimum of rupees five hundred in clause (1) (a) was reduced to rupees two hundred. The reason for this amendment would appear to be that in the stringent financial conditions which were then prevailing, rupees two hundred 'See case-law discussed in *Ramasubba v. Official Receiver*, A.I.R. 1963 Mysore 257 (September, 1963 Hcgde J).

²Compare clauses 54, 55. , ³See Muila(1958), pages 162 and 163. 'Cf. clause 7.

was considered sufficient to entitle the debtor to move for relief under the Act. In view of the present financial con-

ditions, there is no need to lower the limit of rupees five hundred.

Nor is it necessary to increase the figure of five hundred'.

Clause 7 See sections 13 (1), RA. and 15(1) P.T.A. The following points may be noted:--

(i) In sub-clause (1) (c), after decree, "order" has been added, as in other clauses".

(ii) In sub-clause (1), a provision has been added requiring particulars of all transfers, etc., made with-

in two years. This will assist the court in its scrutiny of such transfers.

(iii) Sub-clause (2) has been added to require the debtor to produce a list³ of books of account along with the petition. This will facilitate scrutiny at later stages.

(iv) In sub-clause (3), the addition of paragraph

(c) is consequential on the provision⁴ regarding jurisdiction against foreigners.

Clause 8 This deals with the verification of petitions and corresponds somewhat to section 12(1) of the Provincial Act. In the Presidency Act, section 13(1) is confined to creditors' petitions; as regards debtors' petitions, the matter is {under the Presidency Act) governed by rules⁵: The proposed provision has been framed in such manner as to allow the mode of verification to be dealt with by rules.

Clause 9 General.--This deals with the appointment of interim receivers, and follows section 20 of the Provincial Act which corresponds to section 16, Presidency Act.

1. Modification in Provincial Act.--The Provincial Act provides for the appointment of a receiver generally, but the clause provides for the appointment of an Official⁶ Cf. the discussion in the English Committee's Report (1957), Cmd 221, page 10, para. 16.

²Cf. clause 6, etc. ³As to production of accounts, see clause 14.

⁴See clause 98.

⁵For example, Bombay rule 54 (Mulla, page 117) requires attestation.

Calcutta rule 68 (Mulla, page 1064) also requires attestation. Madras Order III, rule 4, requires verification in the manner prescribed by the High Court's rules for plaints.

Receiver as a receiver. Under the Provincial Act, the properties of the insolvent would, on adjudication, vest in the court or in the Official Receiver. That Act does not provide that there should be an Official Receiver in each and every area, and that the properties of the insolvent should vest in him and no other person. Since it has been provided¹ that there should be an Official Assignee for every area and that on adjudication the property should vest in him, there is no reason why the Official Assignee himself should not be appointed interim receiver pending adjudication. Before adjudication the status of the Official Assignee will be that of a receiver under Order 40. Rule 1, Civil Procedure Code, and the properties of the debtor would not vest in him, and his position is only that of a manager of those properties. It is only when there is an order of adjudication that they will vest in him. It seems desirable that the person who is to act as interim receiver should be the person in whom the properties should vest if the petition results in an order of adjudication. It has accordingly been provided that the Official Assignee must be the interim receiver.

2. The Presidency Act, section 16, says that an order under this section may be made "if it is shown to be necessary for the protection of the estate". This express limitation is not found in the Provincial Act, but has been retained.

3. The Presidency Act gives such powers to the interim Receiver "as may be prescribed". The Provincial Act gives such powers "as the court may direct". The language of the Provincial Act is better, since it gives a discretion to the court to deal with each individual case according to its requirements, and has been preferred.

4. The Provincial Act uses the words "when making an order admitting the petition". There is also a power to make the appointment subsequently before adjudication. This is slightly narrow, inasmuch as, before the admission of the petition the appointment cannot be made. The Presidency Act empowers the court to make an order "at any time after the presentation of the insolvency petition and before an order of adjudication is made". It is considered that the provision in the Presidency Act should be preferred, but the Words "after the presentation of the insolvency petition" are thought to be unnecessary and have been omitted.

5. The words "immediate possession thereof or of any part thereof" have been replaced by "immediate possession of the same". The words "the same", it is considered, should suffice for all situations covered by the existing wording.

'See clause 88.

Clause 10 Sub-clause (1).--Follows section 18 of the Provincial Act.

Sub-clauses (2), (3) and (4).--Deal With the' topic dealt with in section 19 of the Provincial Act. There is no similar elaborate provision in the Presidency Act regarding notice to be given before adjudication. . [There is a short provision in section 13 (3) which implies that the giving of notice is not obligatory] The matter is dealt with elaborately in the rules under the Presidency Act.

The English rules" are to the effect that where the petition is filed by the debtor, the receiving order is made forthwith, and where the petition is filed by a creditor, notice is given to the debtor.

It is considered that so far as courts other than High Courts are concerned, notice should be obligatory in terms of the clause as drafted.

Giving of notice.--This has been discussed above.

Notice to transferees.---Provision for notice to transferees has been added. The subject has been discussed elsewhere.

Interested persons.--Provision empowering notice to be given to interested persons has been added.

Sub-clause (5)--High Courts.--High Courts have been excluded from the scope of this provision'.

Clause 11 This has been taken from section 23 of the Provincial Act. There is nothing corresponding to it in the Presidency Act, but it appears to be a useful provision worth incorporating.

Clause 12 This corresponds to section 21 of the Provincial Act (there being nothing corresponding to it in the Presidency Act). The paragraphs have been put as (a), (b), (c) instead of as (1), (2), (3).

-Clause 13 This is new. At present, section 31 of the Provincial Act vests in the court a power to grant protection only ¹See Calcutta Rule 74 (Mulla, 1958, page 1065). Bombay Rules 59A and 60 and Rules 84 and 84A (Mulla, pages 1118 and 1121); and Madras Rules, Order III, rule 13 (and rule 9, relating to transferees).

²See Bankruptcy Rules, 1952, rules 162, 163, 164 reproduced in, Williams (17th Edn.), page 633.

"See notes to clause 22.

'High Courts will be governed by rules.

after the debtor is adjudged insolvent. Under section 23 of that Act the Court can release the debtor, but only if the debtor is actually under arrest or imprisonment. There is no provision in the Act for granting protection to the debtor before he is adjudged insolvent, if in fact he is not under arrest. There are decisions in which the courts, acting in exercise of their inherent jurisdiction, have granted interim protection even before adjudication when the debtor was not under arrest. Vide Abdul Razah V. Basiruddin Ahmed¹, and Nallagatti. Goundan V. Ramona Gozuzdan². The correctness of these decisions has been doubted³, but it is considered that there should be power in the courts to grant protection in cases which do not fall 'within section 23 of the Provincial Act, and this clause provides for that.

While an earlier clause⁴ which corresponds to section 23 of the Provincial Act confers a power on the court to grant protection when the debtor is under arrest even before adjudication, the clause under discussion authorises the court to pass such order even when he is not actually under arrest.

It will be noticed that the scope of this clause is (different from that of section 31 of the Provincial Act, which has been reproduced in a subsequent clause⁵).

Clause 14 Gene:-'al.--This follows section 22 of the Provincial Act and sections 15 (3), 33(1) and 33(2) of the Presidency Act. An attempt has, however, been made to re-draft the provision so as to deal separately with---

(i) duty to produce accounts", and

(ii) other duties.

As regards (i), again, the clause deals separately with

(a) debtor's petition [following the provision in the Presidency Act, section 15(3)] and (b) creditor's petition. In the former case, the debtor should primarily be under a duty to produce accounts, failing which the petition may be dismissed as under the Presidency Act; in the latter case.

the duty should be to produce accounts whenever required by the court, etc.7.

Duty to file lists of creditors, etc., should, in the case of

-debtor's petition, arise on admission of petition.

14 C.W.N. 586.

2A.I.R. 1925 Mad. 170.

"See Mulla(1958), page 229.

'Clause 11.

'Clause 24.

5As to list of accounts, see clause 7.

"Cf. *Alexander Chand v. Emp.*, A.I.R. 1934, Calcutta 409, 410 (D.B.).

Cf. section 15(3). Presidency Act. The other duties should arise only on adjudication, as in section 33, Presidency Act.

Necessary changes have been made.

Mention of "special manager" has been added as in the Presidency Act.

Sub-clauses (1) and (2).----Need no further comments. Sub-clauses (3) and (4) .--Need no further comments.

Sub-clause (5).--A provision requiring the insolvent to hand over his passport has been added. This does not appear in either of the existing Acts. But a recommendation to this effect has been made by the English Committee, and such a provision might usefully be adopted.

Clause 15 General.----This follows section 24(1) of the Provincial Act and sections 13 (2) and 15(1) of the Presidency Act. But the provision has been re-drafted to achieve clarity.

Scheme of re-draft.--The re-draft is intended to state separately the position as regarding hearing of a--

(i) debtor's petition; and

(ii) creditor's petition.

Some of the circumstances to be inquired into on a creditor's petition--for example, proof of the act of insol- 'vency,--are not applicable to a debtor's petition, and have accordingly been omitted.

It will be noted that, except for the point discussed below regarding proof of inability to pay debts, the re--draft does not differ in substance from the propositions embodied in the following provisions of the two Acts:--

Provincial Act (for debtor's petition)--section 24(1) read with section 10(1).

Provincial Act (for debtor's petition)--section 15(1) read with section 14(1).

Provincial Act (for creditor's petition)--section 24(1) read with section 9(1).

Presidency Act (for creditor's petition) --section 13 (2) read with section 12(1).

Inability to pay debts.--How far the debtors' in- ability to pay debts should be proved (when the peti- tion is by the debtor) is a point which presents some difficulty.

The first dif□ulty is created by the difference in the wording of the two Acts. In the "Provincia1 Act, section 'Committee on Bankruptcy Law Amendment, etc. (1957), cmd. 221,. page 17, para. 47.

10 (opening lines), expressly provides that the debtor cannot present a petition unless he is unable to pay his debts; and section 24(1) (a) requires proof of the debtor's being entitled to present the petition. But the provisions in the Presidency Act are not so direct. Section 15 (1) of that Act does require that the debtor's petition shall "allege" that the debtor is unable to pay his debts. But the same section, when dealing with proof, merely says that "if the debtor proves that he is entitled to present the petition", the court may make an order of adjudica- tion, etc. Now, when one turns to the section in the Pre- sidency Act dealing with the subject of the debtor being "entitled to present a petition", one finds that section 14(1) does not mention the requirement of inability to pay debts. The question that arises is, whether the inability, etc., has to be "be proved" at the hearing under the Presidency Act. It seems that the answer should be in the affirmative for cases under the Presidency Act also. It has been held under the Presi- dency Act, that a false allegation about inability entails the annulment of the adjudication' under section 21. As was observed in another case, a debtor petitioner's only justi□ation for obtaining the bene□ of Insolvency Acts is his inability to pay his debts. A clear provision on the subject would be useful.

The second difficulty is created by the proviso to section 24(1) (a) of the Provincial Act. Inability to pay debts has been made a condition precedent to the presentation of the petition in section 10 of the Provincial Act, and this change was made in 1920 deliberately (departing from the old Provincial

Act of 1907, section 11) to prevent abuse by debtors filing petitions to avoid liability from arrest in execution. Mulla has observed³ that this has not resulted in any practical benefit to the creditors. At the same time, he has not suggested the deletion of the proviso which limits the scope of the inquiry by the court for this condition. It is considered that since the proviso does not impose an absolute limitation, the section in the Provincial Act. need not be disturbed on this point.

Sub-clause (1).--Deals with the case of petition by debtor. No further comments are needed. Mention of adjourned date is omitted, as unnecessary. See O.17, Sub-clause (1), proviso.--The question of inability to pay debts has already been discussed above'.

'Sec Alamelu A/Iangatha Yammal v. Balusamz', A.I.R. 1928, Madras 394, 395, 1-187, and 396.

2 Viszvanatha v. Official Assignee, 'A.I.R. 1930 Madras 544, 546, 1-187 (Ramesam and Carnish J.).

3 Mulla (1958), page 200, paragraph 209. 4 See notes to clause 15, "Inability to pay debts".

Sub-clause (2) .-----Deals with the creditor's petition.

Omission of section 24(2), P.A.--Section 24(2) of the "Provincial Act provides that the court shall also examine the debtor if he is present. It was held in Gangadas V. Percivall that this provision is mandatory, and an order of adjudication made without examination of the debtor was bad. The contrary was held in Sitaram v. Amrut-rao". It has, however, been proposed to omit this sub-section altogether, as it is considered that a public examination of the debtor at that stage is not necessary'. Both under the English Act and under the scheme of the Presidency Act, the public examination of the debtor takes place after adjudication, and that procedure has been adopted for all the courts under the Bill'.

It may be noted that in an earlier Report' the Law Commission recommended the acceptance of the suggestion that there should be a provision in the Provincial Act for the public examination of the insolvent after the adjudication order is made, and that the examination of a debtor under section 24 of the Provincial Act" before the order for adjudication is premature, as there is hardly any material on which the debtor could be examined at that stage.

'Omission of section 24(3), P.A. and section 90 (3), P.T.A.

Provisions regarding adjournment are omitted, as covered by Order 17, C.P.C.

Omission of section 24(4), P.T.A.

Section 24(4) of the Provincial Act dealing with the making of the memorandum of the substance of the evidence has been omitted, as it is considered that such a detailed provision need not be made in the Act.

Clause 16 General.--This deals with disposal of a petition filed by the creditor.

Sub--clause (1).--This corresponds to section 25(1), Provincial Act, section 13 (4), Presidency Act.

Sub-clause (2).--This corresponds to section 27 (1), part, Provincial Act, section 13(5), Presidency Act. The words "may make" have been used, following the Presidency 1 A.I.R. 1927 Cal. 32.

'3 I.L.R. 1939 Nag. 463.

' '3 Cf. suggestion in Mulla (1958), pages 24-25 and 27.

'4 See clause 29.

5 14th Report of the Law Commission (Reform of Judicial Administration), Vol. 1, page 514, paragraph 9.

° Cited in the 14th Report as the "Presidency Act" through slip.

42 MofL--9 Dispute as to debt.

Act'. [This is a departure from section 27(1) of the Provincial Act, which uses the word "shall".] Section 13 (5) of the Presidency Act contains the words "unless in its opinion the petition ought to have been presented before some other court", etc. These have not been adopted, because under the provisions of the Civil Procedure Code, a court has powers to return a plaint, etc., wrongly presented to that court.

Sub-clause (3).--This deals with the procedure to be adopted when the debtor denies the debt--either its existence or amount. The position under the two present is as follows:--

Section 13(6) and (7) of the Presidency Act provides' Acts at that if there is a dispute as to the truth of the debt or about its quantum, the insolvency court might stay its hands until the debt is established in appropriate proceedings.

cial Act.

In *Gopikabai v. Chaps*? it was held by the Bombay High Court that even under the Provincial Act the insolvency court had the power to stay the proceeding and refer the matter for adjudication to a civil court. The contrary view" has been taken by the Madras High Court in *Gangi Reddi v. Narasimha Reddi*', and by the Nagpur High Court in *Deorao Raoji v. Ramji Baheraji*' and *Shriram Latuji v. Saolaram Govind*", and by the Lahore High Court in *Hukam Chand v. Ganga Ram*"-3. (In *Wazir Singh v. Janki Das*°, the' Lahore High Court has held that when a question is raised as to whether a property alleged to have been fraudulently alienated by the debtor belongs to him or not,

the insolvency court must decide the question and should not refer it to the Civil Court.) The question is which View should be adopted. On the one hand, if the insolvency court is made powerless to decide the dispute, the proceedings may be delayed. On the other hand, where there is a bona fide dispute, there is a possibility that the insolvency court may be used by a scheming creditor as a weapon to harass the debtor. It is considered that the insolvency court should have a discretion in the matter, and should determine which of the following two courses should be adopted, namely,-

(a) deciding the question of debt; or

(b) staying the proceedings pending trial of that question, provided the debtor furnishes security to the court's satisfaction.

See discussion below, "shall" and "may". (1935) I.L.R. 59 Born. 161; A.I.R. 1935 Born. 80. See discussion in Mulla (1958), page 191, para. 198.

I.L.R. 1942 Madras 147; A.I.R. 1941 Madras 895. I. 1953 Nag. 608; A.I.R. 1953 Nag. 189. I. 1953 Nag. 625.

1927 Lah. III.

See also A.K.R.M.C.T. Chetty Firm v. Maung Aung. A.I.R. 1923 Rangoon 21.

9 A.I.R. 1926 Lahore 679.

There is nothing corresponding to it in the Provincial

The sub-clause has been drafted on these lines.

Sub-clause (4) .----This is linked up with stay of proceedings for deciding the question of debt.

"Shall" and "may".--Under the English law, it has been held that though an order of adjudication will ordinarily be made when the conditions mentioned in the section are satisfied, there might be special grounds for declining to pass such an order, as for example, (1) when there are no assets to be distributed, vide *Re Bettel*; *Re Otway*, or (2) where the petition is filed for other purposes than securing distribution of the assets, such as extorting money, vide *Re Larard*". These principles have been followed by the High Courts in India in deciding petitions under section 13 (4) (b) of the Presidency Act. In *Nagiah v. Suresh Chandra Aiyar*, the creditor's petition was dismissed on the ground that the motive behind the petition was not payment of the debt which could be obtained out of the fund in court, but in juring the credit of the debtor. See also *Ex parte Harsukdas Balkishen Das*". But in a case under the Provincial Act---*Chattapat Singh V. Kharag Singh*", the question arose whether an insolvency petition could be dismissed on the ground that it was an abuse of the process of court even though all the statutory conditions had been fulfilled. It was held by the Privy Council, in reversal of the decision of the Calcutta High Court, that the debtor had a right ear debito

justitiae to have an order of adjudication when the conditions are satisfied?

while under the Presidency Act, the court has a discretion in all cases, under the Provincial Act it has no discretion in the case of a debtor's petition, though perhaps it has in a creditor's petition under the wording "sufficient cause" in section 25(1).

Now the question is whether the court should have discretion in the matter of passing an order of adjudication or not. On the word "shall", in section 27(1) of the Provincial Act, the court will have no discretion. If the word "may" is substituted for the word "shall", then the court will have a discretion. It is desirable that the courts should be given discretion to pass an order of adjudication or not. The normal rule will undoubtedly be that when the conditions are satisfied, the order of adjudication would be made, and it is only when exceptional circumstances exist that the (1897) 1 Q.B. 50.

(1895) 1 Q.B. 812.

5 Mans. 317.

' I.L.R. 1944 M d. 2 ; A.I.R. M d. 1 ' d ' R ' Rama; A.I.R. 1963 Madras 181 (Maylitzge). a 355' app X m amalga V.

5 A.I.R. 1924 Cal. 964.

' (1916) 44 I.A. 11; (1917) I.L.R. 44 Cal. 535 P.C.

7 See also Mulla (1958), page 171, para. 166, page 173, para. 167, page 181, para. 181 and pages 207-208, para. 223.

Apparently, (Further discussion) court would decline to pass such an order. The courts can be trusted to exercise their discretion in accordance with the well-settled practice.

Clause 17 General.-----This deals with disposal of a petition filed by a debtor.

Sub-clause (1).--This follows section 25 (2) of the Provincial Act. The proposition is not embodied in so many words in section 15(1) of the Presidency Act. But, obviously, where the debtor is not entitled to present the insolvency petition, the petition must be dismissed under that Act also'.

Sub-clause (2) .----This follows section 27(1), part, of the Provincial Act and section 15(1), part, of the Presidency Act. The order of adjudication is to be made only if the court is satisfied of the right of the debtor to present the petition. This proposition, embodied in a negative form in the Provincial Act, section 25 (2), is put in a positive form as in the Presidency Act, section 15(1).

"Shall." and "may".----See discussion" on clause dealing with creditor's petition.

Wrong court.--Section 15(1) of the Presidency Act contains the words "unless in its opinion the petition ought to have been presented before some other court", etc. These have been omitted, as under the Civil Procedure Code, return of a plaint, etc., for presentation to the proper court is provided for.

Clause 18 General.--This corresponds to section 27(1), part and section 27(2), P.A.

Sub-clause (1).--Under the Presidency Act, the period for applying for discharge is prescribed by the rules'. Under the Provincial Act the period has to be specified in the order of adjudication. It is, however, possible that the court might through oversight omit to mention the period in the adjudication order, and to meet such cases, the court should have a power to specify the period in a subsequent order. Necessary provision has been made.

Sub-clause (2).--It is desirable that the power to extend the period should be limited to cases where an application for extension is made within the time (originally) limited 1 See Mulla (1958), page 175, para. vi, last sentence.

" Sec notes to clause 16.

3 See Mulla (1958), page 322, para. 350, foot-note. See Bombay Rule 136 (18 months) and Calcutta Rule 142A (18 months), Mulla, pages 1128 and 1074. In Madras, Order VIII, Rule 2, mentions 18 months or such other period as the court may fix.

for applying for discharge. The necessary change has been made. (At present, extension can be granted even after expiry of the original period)' Clause 19 General.----See section 28(2), Provincial Act, and section 17, Presidency Act.

Sub-clause (1) .----This incorporates sub-section (2) of section 28 of the Provincial Act, with this modification that, whereas under that section, the vesting is in the court or in the Receiver, under the clause, the vesting is to be in the Official Assignee. The reason for this change is, that under the scheme of this Bill', the appointment of an Official Assignee is obligatory throughout the territories to which the Act applies. and he is to occupy the position of Official Assignee throughout the Presidency Towns. Hence Clause follows section 17, Presidency Act, on this point.

(9) Uo.

In section 17 of the Presidency Act, the words 'wherever situate' have been used. That has been adopted.

The property to vest under the clause will of course be the "property of the insolvent" as defined in another clause", and hence the words "subject to have been inserted to make it clear. This has become necessary in view of the break-up of section 29, Provincial Act, into several clauses in this draft.

Sub--clause (2).--This 's new, and is intended to remove any doubts⁴ which may arise as to whether secured credi- tor: who have enforced the security can take proceedings for recovery of the balance from the insolvent's other pro- perty.

Sub-clause (3) .----There has been some conflict of opinicn as to whether the provision for obtaining leave of the court before proceedings are taken is a condition precedent to the maintainability of those proceedings, or whether such leave could be obtained after the proceedings are commenced. In *Nazir Ahmad v. People's Bank of Northern India*", it was held that a suit instituted without leave of the Court could not be treated as a nullity on that account. (It was also observed in *Satyamma v. Official Receiver*" that if Objec- tion as to the want of leave is not taken at the earliest opportunity, it must be deemed to have been waived.) But ¹ The subject has been discussed by Mulla (1958) at pages 324-326, para. 3,5I, _where thecon□ct of decisions on the subject is also noted." His suggestion is for providing that the court's power should be limited to cases where the application is made before expiry.

⁵ See clause 88.

' See clause 48.

⁴ The discussion in Mulla (1958) is at page 259.

⁵ I.L.R. 1942 Lah. 517,- A.I.R. 1942 Lahore 289 F.B. ' A.I.R. 1933 Mad. 917.

the preponderance of authority is in favour of the view that a proceeding taken without obtaining leave as requir- ed by the section is wholly incompetent and must be dis- missed on that ground. Vide *Maya Ookeda v. Kuverjil*, *Davood Mohideen Rowther v. Sahabdeen Sahib?* and *Narayana Iyer v. Kendarv'*. In accordance with the view', it has been provided that a proceeding commenced without obtaining leave shall be dismissed.

Section 28 (3) ---Provincial Act.---Under section ' .28 (3) of the Provincial Act, goods which are in the possession of the debtor on the date of the presentation of the petition under the circumstances mentioned therein are divisible among the creditors of the insolvent.

Section 28(6) of the Provincial Act provides that nothing in that section shall affect the rights of secured creditors. On the terms of section 28(6), therefore, if the owner of the goods mortgages them but continues in posses- sion, section 28(3) will have no application and the right of the mortgagees will prevail. That is the view taken by the High Court of Calcutta in *Shamaldas Kshettry V. Pharzin- dra Nath*", and by the Allahabad High Court in *Mott Ram V. Rodwells*. That is not the law in England nor under the Presidency Act, and there are no particular reasons why the law should be diiferent under the Provincial Act⁷. It is proposed to deal with the topic dealt with in section 28 (3), Provincial Act in a later clause". Section 28 (4) and (5) of the Provincial Act also will more appropriately be dealt with later". This splitting up will avoid the confu- sion caused by existing section 28.

Sub-clause (4) .--Section 28(6) of the Provincial Act is reproduced in this sub--clause, with one addition which is intended to settle the conflict of decisions, as to whether proceedings against the person of the insolvent are or are not barred under section 28 (2) of the Provincial Act". Some decisions hold that such proceedings are not barred, and can be taken without the leave of the court. Vide *Hariram v. Sri Krishna Ram*"; *Ali Hussain v. Lakshmi*- 'narairL'2, *Mahomed Roshan V. Gulam Mohinddin*". The con-

1 A.I.R. 1932 Born. 338.

' I.L.R. 1937 Mad. 841; A.I.R. 1937 Madras 667. 3 I.L.R. 1938 Mad. 897.

' Cf. the view of Mulla (1958), page 245.

5 A.I.R. 1923 Cal. 532.

° A.I.R. 1923 All. 159. (Case of charge).

" See also Mulla (1958), pages 29-30 and 532. 3 See clause 51.

9 See clause 48.

"" See Mulla (1958), pages 252-253.

1' (1927) I.L.R. 49 All. 201.

1' 54 A11. 416; A.I.R. 1932 All. 188.

" A.I.R. 1929 Bom. 135.

'trary was held in *Alamelu Ammal v. Venkatarama Iyer*l and *Hitnarayan Singh v. Brig*" *Nandmtst SW9h*'- The for' mer View has been preferred and embodied in this sub- clause, as the grant of protection 1S a_ privilege to be grant- ed or withheld at the court's discretion.

[It may be noted that While paragraph (a) of this sub- clause is con_ firmed to secured creditors, paragraph (b) (2..e., the added paragraph) will apply to all creditors, including unsecured creditors] [Stay of suits after adjudication.--Whether suits insti- tuted after the order of adjudication could he stayed under these sections is a question on which the decisions are con- _ flicting. Under the corresponding provisions of the English Statutes, it has been held that the court has the power to stay proceedings commenced after an order of adjudication (had been made. Vide *Brownscomhe v. Fai*'7""--4-". In *Maho- med Haji Essack v. Abdul Rahtman*", a suit insti- tuted after adjudication was stayed under section 18(3) of the Presidency Act, following the decision in *Brow-nscombe v. Fair*, and that was in turn followed in *Bheraji Samarathji and Co. v. Vasantrao Govindrao Pra- bhakar*7 and *Bhimaji Bhabhutmal v. Chunilal Jhavewm chand*". In *Maya Ookeda v. Kuverji*" and in *Jahangir Cur- setj-L V. Kastur Pannajil*", however, it was held that such a suit was wholly incompetent and

should be dismissed. In *Ghouse Khan v. Bola Subba Rowther*", it was observed that a suit instituted after the order of adjudication might be continued under section 29 of the Provincial Act, but "in *Davood Mohideen Rowther V. Sahabdeen Sabbib*" and *Naraycma Iyer v. Kenden*", it was held that such a suit was not maintainable, and that the court had no power under section 29 to grant leave to continue the suit. That was also the view taken in *Pannulal V. Him Nand*". In *Ho712'. Uman Shari)' v. Jwala Prasad*", it was held that if a suit is instituted after adjudication but in ignorance 1 (1927) I.L.R. so Mad. 977.

2 (1931) I.L.R. 10 Fat. 422.

3 58 L.T. 85.

4 Mulla (1958) page 245.

5 Williams, page 73, speaks of "restraining" the proceedings. ' (1917) I.L.R. 41 Bom. 312.

7 A.i.R. 1929 Bom. 398.

'3 I.L.R. 57 Bom. 623; A.I.R. 1932 Bom. 344.

9 A.I.R. 1932 Bom. 338.

""vA.I.R. 1939 Born. 344.

11 (1928) I.L.R. 51 Mad. 833; A.I.R. 1927 Mad. 925. *2 I.L.R. 1937 Mad. 841; A.I.R. 1937 Madras 667.

19 I.L.R. 1938 Mad. 897; A.I.R. 1938 Madras 643.

14 (1927) I.L.R. 8 Lah. 593; AIR 1928 Lahore 28.

" A.I.R. 1924 Nag. 300.

of adjudication, the court can act under this section. In view of the provision proposed above'---that a suit insti- tuted w_ithout leave shall be dismissed,----this question can no longer arise.] Clause 20 Sub-clauses (1) and (2).--Correspond to section 18(1) (2), Presidency Act. There is no such provision in the Provincial Act.

Sub--clause (3).--Follows section 18 (3), Presidency Act, corresponding to section 29 of the Provincial Act. The wording suit or other proceeding has been adopted. Bot these sections would apply in terms only to suits or pro- ceedings Which are pending at the date of the order of adjudication.

The Presidency Act uses the verb "may", while the Provincial Act uses "shall". The former is better.

Stay of suits filed after adjudication.----This has been dealt with separately?

Clause 21 This is not found in the Provincial Act, but has been adopted as a useful provision from the Presidency Act, section 98.

Clause 22 General.----This is based on section 30 of the Provincial Act and sections 20 and 116(2) of the Presidency Act.

Conclusiveness of order.-- (a) Section 116(2) of the Presidency Act contains a special provision that "a copy of the Official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made and of its date". This is based on section 132 of the (English) Bankruptcy Act, 1883, replaced by section 137 of the Act of 1914. There is no similar provision in the Provincial Act³⁻⁴. The reason behind the English provision has been very lucidly explained by James L. J. Learoyd's case⁵. A man cannot be duly adjudged a bankrupt unless he has committed an act of bankruptcy. That is the "great requisite of all", and that is why the determination is "conclusive".

(b) The provision gives rise to a serious question as regards the rights of transferees from the insolvent, where 1 Clause 19(3).

² See notes to clause 19.

³ The Supreme Court has in *Ramaswami v. Official Receiver*, (1960) 1, S.C.R. 616, 641 decided that the English Rule does not apply in the mofussil.

⁴ See also discussion in *Kehar Singh v. Raghbir*, A.I.R. 1960 Punjab 24. ⁵ Cf. Mulla (1958), page 743.

those transfers from the foundation on which an order of adjudication is made. It has been held by the English courts, on a construction of the corresponding provisions of the English statutes, that if a debtor is adjudged insolvent on a finding that a transfer by him is an act of insolvency, as, for example, a fraudulent preference, that finding will be conclusive and binding on the transferee, and that he will thereafter be precluded for ever from raising the question as to whether in fact the transfer is an act of insolvency, vide *ex parte Learoyd*¹⁻¹. This view must clearly entail great hardship on the transferee who is not a party to the insolvency petition, and who has no opportunity of being heard on the merits of his transfer. It has been stated in justification of the law as laid down in *ex parte Learoyd*¹ that the transferee is not without remedy: as he can appeal against the order of adjudication, he is entitled to a writ of certiorari if "aggrieved"²; it, but an appeal, regard to its scope, cannot be substituted for a writ to take part in proceedings and adduce evidence. Nor the right to move for annulment of adjudication on the ground that the debtor should not have been adjudged insolvent is an effective substitute for the right to take part in the trial as the order of adjudication might be set aside³ on several grounds of insolvency.

In *Official Assignee of V. O.R.M.O.R. v. V. O.R.M.O.R.*, it was held by the Madras High Court that a finding that the insolvent has committed a fraudulent preference will not be binding on the transferee if he was not a party to the order of adjudication, and that when the proceedings were taken by the Official Assignee to impugn the transfer as a fraudulent preference, it was open to the transferee to plead that the transaction was not hit by the section. The court declined to follow the decision in *ex parte Learoyd*. However, the point came up for consideration before the Privy Council in *Mahomed Sidrique Yousuf v. Official Assignee, Calcutta*, and therein the decision in *ex parte Learoyd* was followed, and it was held that a third person was bound by the finding in the adjudication order. The Madras High Court had again occasion to consider the same question in *Official Receiver V. GopalaKrishna*. It re-affirmed the decision in *Official Assignee of Madras v. O.R.M.O.R.S. Firm*, and distinguished the decision in *Mahomed Stddique Yousuf v. Official Assignee, Calcutta*, on the ground that it arose under the Presidency Act and that there being no provision in the Provincial Act similar to Ex. parte Learoyd, (1878), 10 Ch. D. 3.

180 2 See discussion in Mulla (1958), pages 743 to 745, and page 175; para Also see Williams, page 239 and page 485.

4 (1878) 10 Ch. D. 3.

5 (1927) I.L.R. 50 Mad. 541.

° 70 I.A. 93; I.L.R. (1943) 2 Cal. 517 P.C.; A.I.R. 1943 P.C. 130. 7 I.L.R. 1945 Mad. 541; A.I.R. 1945 Madras 66.

Notice to the transferee.

Relation : back to what date.

to section 116(2) of the Presidency Act, the order of adjudication was not conclusive so far as the transferee is concerned on the question whether the transfer was hit by the Act.

(c) It cannot be denied that transferees would be put to a hardship if they are barred by an order passed without hearing them. To avoid this hardship, a provision has been made elsewhere for giving notice to the transferee. With this safeguard, there does not appear to be any objection to the adoption of section 116 (2) of the Presidency Act?

Sub-clause (1).----The words "every order of adjudica-

tion" used in the Presidency Act, are better than the words "an order of adjudication" in the Provincial Act, and have been adopted.

The Presidency Act requires the date of presentation of the petition also to be mentioned. This is a useful provision. and has been adopted.

Sub--clause (2) .-----Needs no further comments.

Clause 23 This follows section 28 (7), P.A. and section 51, P.T.A.

The question as to when an order of adjudication should take effect has been discussed elsewhere".

As to the proviso, see discussion in Mulla'.

Clause 24 Geneml.----See section 31, Provincial Act and section 25(1) to (4), Presidency Act.

Cognate p*rovtsion.---It will be noticed that while this clause confers a power on the court to grant protection after adjudication, an earlier clause⁵ confers a power to grant protection prior to the adjudication. Further, while the exercise of the power under that clause is subject to various conditions and that clause is only a recognition of the inherent power of the court (recognised by the deci- sions) to grant protection at that stage, this clause con- fers a general power in wide terms.

State debts.--This is discussed separately'.

¹ See clause 10.

² Mulla has suggested adoption of the English rule. See Mulla (1958), page (viii) and discussion at page 179, para. 180, page 195, para. 207 and pages

--' 743-749, para. 788-

³ See discussion in the body of the Report, paras. I6-I7. ⁴ Mulla (1958), pages 583-584, para. 591. "' Clause I3.

« ⁶ Notes to clause 136.

Submission of Schedule.--Under section 25 (1) and (5), Presidency Act, a person who hasnot submitted his sche- dule cannot apply for protection unless the court thinks it necessary to grant him protection in the in- terest of the creditors. No such restriction appears to be called for, and hence the provision in the Presidency Act has not been incorporated in the clause under discussion.

"Provable in insolven.cy".---Instead of the word-s "all the debts of the debtor or to any of them as the court may think proper", occurring in section 31 (12) of the Provin- cial Act, the words "debts provable in insolvency. . . . _or to such of them" have been used. The words "provable in insolvency" will secure precision. [It may be noted, ⁹ that section 25(2) of the Presidency Act uses the expression "mentioned In the Schedule".] The WoTd "such" has also been used for precision».

"Modi□ed".--Power to modify has been added.

Certificate by Official Assignee.----Section 25 (4), latter part, of the Presidency Act provides that the insolvent should be prima facie entitled to a protection order on production of a certificate signed by the Official Assignee' that "he has so far conformed to the provisions of this Act". This part of the sub-section in question has been omitted, because the real enquiry by the Official Assignee will, under the draft'-', begin only after the adjudication, and therefore the Official Receiver would not be in a position to give such certificate soon after adjudication.

Discretion of court.----The grant of a protection order is a matter of discretion of the Court'. The Civil Justice Committee was unable to recommend any change in the provision⁴ (though it noted that it may be anomalous that an insolvent complying with the requirements of insolvency law may yet be liable to go to jail "for indefinite times").

Clause 25 This corresponds to section 32 of the Provincial Act and section 34(1), Presidency Act. The latter has been mainly followed.

The section of the Presidency Act is a bit wider than that in the Provincial Act, because it allows the court to issue the warrant of arrest not only where the insolvent has absconded but also for removal, etc., of property. An attempt has been made in the clause under discussion to ' Mulla (1958), page 276, para. 279, expresses the view that even under the Provincial Act, the report of the Official Receiver will be taken into account.

3 Clause 29(5).⁵ See A.I.R. 1929 Cal. 44 (Rankin CJ.) (Presidency Act). ' Civil Justice Committee, Report (1925), page 231, para. 14.

Omission of s_34 (2), Presidency Act.

combine the useful features of both the Acts. Accordingly, power to issue the warrant will, under the clause, be available where a person has absconded (or is about to abscond as in the Presidency Act) or has departed (as in the Provincial Act) or is about to depart from the court's jurisdiction or has removed or is about to remove his property as in the Presidency Act or has concealed or is about to conceal or has destroyed property (as in the Presidency Act) or is about to destroy property, A few unnecessary rephrasings have been omitted.

Section 34(2) of the Presidency Act' provides that no payment for compensation made or security given after arrest under this section shall be exempted from the provisions of the Act relating to fraudulent preferences. Since, however, the section relating to fraudulent preferences----section 34 of the Presidency Act, (corresponding to section 51 of the Provincial Act)----does not come into operation except in respect of transactions entered into before the presentation or the insolvency petition', it is not clear what useful purpose would be served by section 33(2) of the Presidency Act, which can have application only after the adjudication. It has, therefore, been omitted.

Clause 26

1. This corresponds to section 35 of the Presidency Act. P S Y ('I'-'were is no such provision in the Provincial Act.) Instead of "post letters" and "parcels" the expression "postal articles" used in the Indian Post Office Act, (1898) has been adopted, as comprehensive.

3. The words "from time to time" (not usually used) have been retained, as in the context their removal would create doubts, in view of the subsequent words "not exceeding three months".

Clause 27 General.--This deals with the "Insolvent's Schedule", and follows section 24, Presidency Act. There is no such provision in the Provincial Act.

Sub-clause (1).--This follows section 24(1) of the Presidency Act. There is nothing corresponding to it in the Provincial Act, but it has been adopted as a useful provision.

Sub-clause (2).----The time within which the schedule is to be submitted, has been specified here. Section 24 (2) of the Presidency Act makes a detailed provision about the time. A similar provision in the English Act is section 23(2), discussed in Williams, page 367, under section 44. 3 Cf. Mulla (1958), page 643, para. 651.

be calculation of the time-limit, but it is unnecessary to 'Ch so elaborate. It is considered unnecessary to use word "so" before the word "submitted".

Sub-clause (3) .--Section 24(3) of the Presidency Act empowers the court to commit the insolvent to CIVIL prison for failure to file the schedule. This has been considered to be a useful provision for application to the whole of India, and has been adopted.

Sub-clause (4) .--This follows section 24 (4) , of the Presidency Act.

Clause 28 This corresponds to section 26 of the Presidency Act. There is no such provision in the Provincial Act. It has been adopted as useful.

Clause 29

1. This is based on section 27 of the Presidency Act. There is nothing corresponding to it in the Provincial Act, but it has been adopted as a useful provision.

2. Sub-clause (3), which provides for adjournment of the examination, is not found in the Presidency Act, but has been inserted as a useful provision. "

3. Public examination, it should be noted, should be held after adjudication'-'-'.

4. Following section 27 (2), Presidency Act, it has been provided that the examination will be held as soon as possible after expiry of the time for filing the insolvent's schedule'.

5. In sub-clause (6), instead of the existing expression "expedient", the expression "□" has been substituted, as it is considered more appropriate.

6. In sub--clause (8), "expedient" has been replaced by "□". The expression "lunatic" has been replaced by "of unsound mind", following article 102 of the Constitution.

Clause 30 Sub-clauses (1), (2) and (3).--1. These correspond to section 21(1) of the Presidency Act (which corresponds to section 35 of the Provincial Act).

2. Section 21 of the Presidency Act, and section 35, Provincial Act, as originally enacted, were different. Additions were made in both the Acts by section 5 of the Insolvency (Amendment) Act, 1927 (11 of 1927).

'See suggestion by Mulla (1958), page 24, para. 27. 'See also notes to clause 15.

'As to insolvent's schedule, see clause 27.

Annulment, discretionary or man-

datory.

3. But as regards cases in which a "debtor" ought not to have been adjudged or where his debts were paid in full, there still remained a fundamental difference between the Presidency Act and the Provincial Act, in that while under the former Act the Court "may" annul the adjudication, under the latter it "shall" annul it on the grounds set out therein; and advertent to this difference in language, it was pointed out that under the Provincial Act the court had no discretion in the matter (except in certain cases) while under the Presidency Act, the court had a discretion in all cases. But the Amendment of 1950 substituted the word "shall" for the word "may" in the first portion of section 21(1) of the Presidency Act, thus assimilating the position under the Presidency Act to that under the Provincial Act.

4. The question whether the law should be re-enacted in terms of the sections as they have stood since the amendment of 1950, has been considered. Under the English law, it has been generally held that annulment is a matter of discretion³, and that such an order should not be passed even if all the debts of the insolvent have been paid in full, if his conduct had been mala fide. (It may be mentioned that one of the grounds given for maintaining the distinction between the Provincial Act and the Presidency Act, was that the Privy Council had held in *Chhailal Singh v. Kharag Singh* that the court was bound to adjudicate a person as insolvent if the statutory conditions were satisfied, and that it had no discretion in the matter. On this point, the Bill now follows the scheme of the Presidency Act). It is considered unnecessary to disturb the law as it exists. It may be noted that the English Committee has (in substance) recommended that the annulment should be mandatory".

5. After the word "insolvent", the words "provable in insolvency" have been added, to define the debts that must have been paid in full.

Sub-clause (4).--Is new and is intended to implement the recommendation made in an earlier Report of the Law Commission" to the effect that the court may be empowered to annul the adjudication in the cases mentioned in the sub-clause under discussion.

'Periakaruppan Chettiar v. Arzmachalam Chetziar, I.L.R. 1943 Mad. 441; A.I.R. 1940 Madras 375 (F.B.) 'Discussion in Mulla (1958), page 316, paras. 339-340 is with reference to previous law.

3See Williams, page 148 and foot-note 60. 444 I.A. II ; I.L.R. 44 Cal. 535 ; A.I.R. 1916 P.C. 64 (P.C.).

5Report of the Committee on Bankruptcy Law, etc., (1957) cmd. 221: page 49, paras. 145-146.

14th Report of the Law Commission (Reform of Judicial Administration), Vol I, page 514, para. 9, latter half.

Sub-clause (5).--Is taken from section 2-1(2) of the Presidency Act. There is nothing corresponding to it in the Provincial Act, but such a provision is considered ne-

cessary'.

Clause 31 The language of section 22, Presidency Act has been followed. The corresponding section in the Provincial Act is section 36.

Clause 32 General.--This is based on section 37 of the Provincial Act [and section 23(1), (2) and (3) of the Presidency Act].

Sub-clauses (1) and (2).--Do not need any further comment. In sub-clause (1), the Words "or other person acting under his authority" have been taken from the Presidency Act, as useful. The words "such terms", etc., occurring in the Presidency Act have been omitted, as the word "conditions" will suffice. It has also been made clear that the appointment can be made by a subsequent order. (The question of retrospective effect of subsequent appointment, it is considered, need not be dealt with).

Sub-clauses (3) to (5).--These are new. There has been a conflict of judicial opinion as to the status of an appointee under section 37, Provincial Act. In *Panna Lat 12. Official Receiver*", the High Court of Allahabad has held that the purpose of vesting of assets under this section was not distribution among creditors, under the Act, but making them available to the creditors in the ordinary process of courts. The same View has been taken by the Rangoon High Court in *Jaing Btr Singlz v. The Official Receiver*' and by the Nagpur High Court in *S'ulaemari. Latif v. La.t'mart*". The contrary View was taken in a Full Bench decision of the Madras High Court in *Veerayya v. Sreenivasa Rao* wherein it was held that the properties of the insolvent are vested in an appointee under section 37 for the purpose of distribution among the general body of creditors and that the court has power to issue appropriate directions to him for that purpose. The same View has been taken (i) by the

Calcutta High Court in *Baikuntha Nath Haldar V. Kislori. Mohan 'Mulla (1958) (Editioi_i)--_page .313, para.'* 335, last four lines, expresses the view that the same principle will be applied under the Provincial Act.

'See Mulla (1958), page 329, and his suggestion to resolve the conflict at P386 339-

"I.L.R. 53 All. 313.

'(1933) I.L.R. 11 Rang. 287.

5A.I.R. 1938 Nag. 312.

'(1935) I.L.R. 58 Mad. 908. F.B.

Banerji, Abdul Latif v. Percival"-', and in *re Kashablal Dhar*³, (ii) by the Patna High Court in *Atmakur Rama Rao v. Digamber Rath*⁴; and (iii) by the Bombay High Court in *Jagannath v. Babu Ra*⁵. The clause adopts the latter view, as being more just.

A connected question on which there has been the same divergence of judicial opinion is, whether the appointee under section 37 of the Provincial Act can commence or continue proceedings with reference to the estate of the quondam insolvent. As regards properties which actually vest in him by reason of the order under this section, he is clearly entitled both to institute fresh proceedings and to continue those which are pending. But different con- siderations arise as regards properties which have been alienated by the insolvent. Until an order is made under section 53 or section 54 of the Provincial Act annulling a transfer, the properties vest not in the insolvent, but in the alienee, and therefore they cannot vest in the appointee under section 37 of the Provincial Act. He cannot, therefore, commence fresh proceedings for annulling transfers under section 53 or section 54 of the Provincial Act. Where, however, proceedings under those sections have been commenced by the Official Receiver and are pending at the date of the annulment of the adjudication, the question has been discussed whether the appointee under section 37 of the Provincial Act can continue them. Con- sistently with the views expressed on the question already discussed as to the status of the appointee, the High Courts of Rangoon and Nagpur have held" that the proceedings abate on the annulment of adjudication and could not be continued by the appointee, while the High Courts of Madras, Bombay and Lahore⁷ have taken the view that the institution of the proceedings by the Of- ficial Receiver is an act which is within the saving provision of section 37(1) of the Provincial Act, and that therefore they could be continued by the appointee for the benefit of creditors. VWith a view to settling this cc-nfhict, an express provision is proposed that proceedings already taken under sections and 54 of the Provincial Act may be continued by the appointee.

To make the provision as comprehensive as possible, it is provided that the appointee shall have all powers of 'I.L.R. (X943) I Cal. 5.

2I.L.R. (1937) I Cal. 264.

3(1933) I.L.R. 60 Cal. 259.

I.L.R. 25 Fat. 286 ; A.I.R. 1947 Fat. 339. 5A.I.R. 1944 Born. 72.

'Sec A.I.R. 1933 Rang. 223 F.B.;

A.I.R. 1938 Nag. 312.

A I R. 1930 Mad, 278 ;

A.I.R. 1944 Born. 72 ;

A.I.R. 1941 Lah. 316.

the Official Receiver relevant to the property and distribution of the estate.

Sub-clause (6) .--Is taken from section 23 (2) of the Presidency Act. It is not found in the Provincial Act. [Section 43 (2) of the Provincial Act deals With. a different situation.] It has been adopted as a useful provision.

realisation of the Clause 33

1. This and the following three clauses' deal with the topic of composition and schemes of arrangement. 'The statutory provisions bearing on this subject are sections 28 to 32 of the Presidency Act, and sections 38 to 49 of the Provincial Act. While both these groups of sections contain the same provisions in substance, they differ on the procedure to be adopted for the acceptance of a composition or scheme. Under the Presidency Act, it is the Official Assignee that has in the first instance seisin of the matter, and it is he that has to arrange for a meeting of the creditors. If the conditions laid down in section 28 of the Presidency Act are satisfied, then the matter comes before the court under section 29 of that Act; section 30 of that Act provides for the composition or scheme being accepted by the court, and section 31 for its annulment. Section 32 states the effect in law of the acceptance and approval of a composition or scheme. ' Under the Provincial Act. however, it is the court that has the entire seisin of the matter. It is the court that under section 38 calls for a meeting of creditors and under section 39 makes an order if the requisite conditions are satisfied. The effect in law of a composition or a scheme is also set out in section 39. Section 40 of the Provincial Act provides for annulment of the composition or scheme.

2. The difference in procedure between the two groups of sections is due to the fact, that whereas Presidency Act there will be an Official Assignee who can deal with the matter in the first instance, under the Provincial Act there may or may not be an Official Receiver, and the matter has therefore necessarily to go to the Court. As it is proposed to make the appointment of an Official Assignee obligatory', there is no reason why the provision of the Presidency Act should not be made generally applicable to all the courts.

3.. This clause is based on section 28(1) to (4) of the Presidency Act, and section 38(1) to (3) of the Provincial Act.

'Clauses 34 to 36.

"See clause 88.

42 MofL--10 Presidency Act.

Provincia I under the -

4. In sub-clause (4), the words "a majority" have been preferred to "the majority" occurring in the Presidency Act. Compare article 368 of the Constitution.

5. Portion dealing with approval has been placed after the portion dealing with amendment, for the reason that approval is with reference to the proposal as amended.

6. The words "legal practitioner" have been preferred to "pleader".

Clause 34 General.--The clause follows section 29(1) to (7), P.T.A. and section 38 (4) to (7), P.A.

Sub-clause (1).--A provision has been added that the notice will be given in the prescribed manner.

Sub-clauses (2) to (5).--Need no further comments.

Sub-clause (6) .--It may be noted that while under section 29 (5) of the Presidency Act, security has to be given for the payment of not less than four annas in 6 months (A rupee, under section 38 (5) of the Provincial Act, it is to be for the payment of not less than six annas in the month). Adopting the provision in the Presidency Act, the clause substitutes 25 nP. for six annas.

Clause 35 General.--This corresponds to sections 30 and 32, Presidency Act and section 39, Provincial Act.

Sub-clause (1).--Is based on section 30 of the Presidency Act (which corresponds to section 39 of the Provincial Act).

Sub-clause (2).--There is nothing in the Provincial Act, corresponding to section 30(2) of the Presidency Act, which provides that the provisions of the composition or scheme may be enforced on application to the court. This is adopted as a useful provision, and amplified by providing that the enforcement should be in the manner provided for the execution of decrees. There is a further provision in section 30 (2) of the Presidency Act that the disobedience of an order made "on the application shall be deemed to be a contempt of court. As the clause will apply not merely to the High Courts in the Presidency Towns, but to all the courts, it has been omitted.

Sub--clause (3) .-----Follows section 32, P.T.A.

Clause 36 General.--See section 40, Provincial Act and section 31, Presidency Act.

'It is suggested that the notice should be published in newspapers, (besides any other mode of publication that may be suitable).

Sub-clause (1).--The words "on application", etc., and the mention of vesting of the property have been added on the lines of the Presidency Act.

Sub-clause (2).--Needs no further comments.

Clause 37 General.--This clause has been taken from section 41 and section 42(3) of the Provincial Act and sections 38/ and 40, Presidency Act.

Sub-clause (1).--Concluding portion beginning with the words "but save where the public examination" has been taken from section 38(1) of the Presidency Act. As to hearing, see below.

Sub-clause (2).--The words "subject to. . . this section" in existing section 41 (2) of the Provincial Act are not accurate. Actually, it is the next section--section 42 of the Provincial Act--which controls the discretion of the court, and hence the provision should be made subject to the next section. This has been made clear.

The effect of the next section--i.e., section 42 of the Provincial Act--is that in the cases mentioned in that section, the court cannot grant an absolute discharge. But the court's discretion to grant a discharge with suspended operation or with condition is not affected. To make this clear, the words "subject to" have been placed not at the beginning of sub-clause (2) in the draft, but in paragraph (a) of that sub-clause, so that they will control only the grant of an absolute order of discharge.

"Hearing"--The provision in section 38(1), latter part, Presidency Act, about hearing in open court, has been omitted as unnecessary.

In the Presidency Act, section 40, second sentence, there is a provision that at the hearing the court may put such questions as it thinks fit to the insolvent and record evidence also. It is considered unnecessary to have this elaborate provision, since all these things are implied in the expression "hearing".

Clause 38 General-1. This clause deals with the powers of the court to grant or refuse discharge. ' The corresponding provision in the Presidency Act is section 39, and in the Provincial Act. section 42.

2. Under the Presidency Act, the court is bound to refuse discharge when the insolvent has committed any offence under the Insolvency Act or under sections 421 to 424 of the Indian Penal

Code. Then follows the provision that on proof of certain facts the court may pass one of the four orders mentioned in section 39(1). [Section 39(2) of the Presidency Act sets out those facts] Thus, under the Presidency Act, there is a distinction between cases where the Court has no option but to dismiss an application for discharge, and cases in which there is a discretion to pass one of the four orders mentioned in section 39(1).

Section 41 (2) of the Provincial Act provides that the court may pass one of the three kinds of orders mentioned therein, and section 42(1) sets out the circumstances in which the court must refuse an absolute discharge. Under the scheme of the Provincial Act, the court is not bound in any case to dismiss an application for discharge. While it must refuse absolute discharge when the circumstances mentioned in section 42(1) are established, it has nevertheless power to pass other kinds of orders under section 41(2) in those cases.

3. Where, however, the court has a discretion, the manner of exercising the discretion is described more elaborately in the Presidency Act, which enumerates the various possible orders.

4. The question is whether the distinction made in section 39 of the Presidency Act between cases where discharge must be refused and cases in which the court may pass any one of the orders mentioned in the section should be maintained. In England, section 48 of the Bankruptcy Act, 1869, gave a discretion to the court to grant or refuse discharge. Then came section 28 of the Bankruptcy Act, 1883, and it provided that the court should refuse discharge in any case where the insolvent has committed certain offences. Subsequent legislation in England has departed from the provision enacted in section 28 of the Bankruptcy Act, 1883. Section 8 of the Bankruptcy Act, 1890, provided that the court must refuse discharge in cases where the bankrupt has committed any felony or misdemeanour unless for special reasons, the court otherwise determines. This was substantially reproduced in section 26 of the Bankruptcy Act, 1914, but it was amended in the year 1926, and the section as it now stands leaves it to the court to pass any one of the four kinds of orders mentioned therein even when the bankrupt has committed any misdemeanour or felony connected with his bankruptcy. Section 39 of the Presidency Act substantially reproduces the law as enacted in section 28 of the Bankruptcy Act, 1883, while section 42 of the Provincial Act is nearer to section 26 of the Bankruptcy Act, 1914, as it now stands. It is considered that in all cases, the court should have a discretion to pass any of the various orders enumerated in section 39 (1), Presidency Act. Compare section 26(2), proviso, English Act. Necessary change has been made.

Sub-clause (1) --See points mentioned already". In other respects, it follows the Presidency Act.

¹See Williams, page 126.

¹-Cf. the suggestion made by Mulla (1958), page 370, para. 400. "See " General" above.

Sub-clause (2)--A paragraph has been inserted corresponding to section 42(1) (h) of the Provincial Insolvency Act, there being nothing corresponding to it in the Presidency Act. Paragraphs have also been inserted which correspond to clauses (g), (h) and (o) in section 39 of the Presidency Act, there being nothing corresponding to them in section 42 of the Provincial Act.

In the paragraph relating to assets, the proportion .01 eight ann:-is (50 nP.) has been adopted from the Provincial Act, in preference to four annas mentioned in section 39 (2)

(a) of the Presidency Act. The proposition of 50nP. 15 more suitable in the Mofussil (which will constitute the larger part of the territories to which the Bill will extend).

It has been suggested that the paragraph relating to trading by the insolvent, should be made subject to the provisions of section 66 of the Provincial Act, under which the court can appoint the insolvent to carry on his trade for the benefit of the creditors. No such clarification seems

-to be necessary, because the various acts mentioned in this clause relate to a stage prior to the insolvency and not subsequent to the insolvency.

As to offences under I.P.C., section 39 (1), P.T.A. bars discharge in such cases, but it is considered that the court should have a discretion in all cases.

1' Sub-clause (3)--Report to be evidence.--This provision (Report to be evidence) is relevant for the preceding clause also. That has been made clear.

Section 39 (4) of the Presidency Act says that the report shall be "prima facie" evidence. This has not been adopted, as it has been considered sufficient to provide that the report shall be evidence.

Clause 39 This follows section 43(1) of the Provincial Act (compare section 41 of the Presidency Act). The former is adopted as being more complete?

As to "period of discharge", see the provision proposed in the relevant clause which leaves it to the court to fix the period.

Grounds of refusal, etc. Section 43 (2), Provincial Act, speaks of "re-commitment-Omission of merit"; This is omitted, as the matter is covered by another clause. The mention of that clause will cover section 41, last 11 words, read with section 23(2), Presidency Act, also.

'See " General " above.

2Clause 37.

. 'The discussion in Mulla (1958), page 326, para. 351, apparently is made with reference to the Provincial Act as it stood before 1950. 'See clauses 18 and 37.

'Clause 32.

section 43(2), Provincial Act.

Review.

English law.

(iii) Presi-

dency Act.

Renewal.

(iv) Course adopted.

Clause 40 This follows section 42 of the Presidency Act, there being nothing corresponding to it in the Provincial Act. There is some doubt¹ as to whether the dismissal of an application for discharge under section 42 of the Provincial Act operates as a bar to a subsequent application by the insolvent for discharge. A Sind case---Re Henry Robert Sm²th³--- decides that it does, but the contrary view has been held by the Madras High Court in Gopalan V. Gopalani', which is a decision of a Full Bench, by the High Court of Calcutta in Re Karim Mia' and by the Lahore High Court in Ladhia Rani v. Pmbh Dial"-". The position may be first discussed under review. Section 108(1) of the English Act gives the court the power to refile its order and rescind or vary it if it thinks it right to do so. This power is used for reviewing an order refusing discharge^{7--*}. Section 8(1) of the Presidency Act corresponds to section 108(1) of the Bankruptcy Act, 1914, and under that section, the court has the same power to review an order refusing discharge. There is no provision in the Provincial Act corresponding to section 8(1) of the Presidency Act, and a power to review can, therefore, be exercised by courts under that Act only in accordance with Order 47, Rule 1 of the Civil Procedure Code".

There is another provision bearing on this question. Section 42 of the Presidency Act provides that when the court refuses discharge, it may permit the insolvent to renew the application. This power is recognised by the authorities in England also, which hold that the court itself might, when refusing to grant discharge, reserve liberty to the insolvent to apply again,--though the more convenient course is to refuse it altogether and use the power of re-hearing".

It is considered that a power in terms of section 42(1) of the Presidency Act should be conferred on all the courts, and this clause has been framed" with that object. Section 42 (2) of the Presidency Act gives the court power to vary an order, and that has also been adopted in this clause. The words "shall satisfy" have been replaced by "satisfies"

'See Mulla (1958), page 387, para. 408. 20915) 32 I-o 575.

'A.I.R. 1925 Mad. 915 (F.B.).

4A.I.R. 1931 Cal. 392.

5A.I.R. 1931 Lah. 672.

'See also *A/Iulchand v. Official Receiver*, (1930) I.L.R. 52 All. 385. 7*Re Tobias*, (1891) I Q.B. 463.

"See Williams, pages 139 and 481.

9See notes to clause 118.

"See Williams, page 139.

"Cf. Mulla (1958), page 387, para. 408.

----Which is more in consonance with modern legislative practice.

Clause 41 This is taken from section 43, Presidency Act. There is nothing corresponding to it in the Provincial Act. It has been adopted as a useful provision, as necessary to ensure proper compliance by the insolvent with his statutory duties'.

The mention of "contempt of court", has been omitted as the new Act will apply to the mofussil also.

Clause 42 This is taken from section 44 of the Presidency Act. There is nothing corresponding to it in the Provincial AACL It has been adopted as a useful provision.

Clause 43 General.---This clause follows section 44 of the Provincial Act, and section 45, Presidency Act.

Sub-clause (1)--In paragraph (d), maintenance under agreements has been added on the lines of section 135(1)

(c), Canadian Act. Further, maintenance under a decree passed under any law for the time being in force has been added.

Sub-clause (2)--The Provincial Act uses the words "provable under this Act", while the Presidency Act uses the words "provable in insolvency". The two are same in substance.

Sub-clause (3) --Has been added on the lines of section 45 (3) of the Presidency Act, as a useful provision.

Sub-clause (4) --The words "or in the nature of a surety" have been added on the lines of section 45(4) of the Presidency Act. It may be that even without these words, the result would be the same. But lest their omission should throw a doubt on the question, they have been retained, Clause 44

1. General.----This corresponds to section 33 (1), proviso, and section 34 of the Provincial Act and section 46, Presidency A.ct.

2. Debts incurred before adjudication with notice, etc. — An important point which arises is the question of debts incurred before adjudication with notice of presentation of petition. The question to be determined is, whether such 'As to revocation 393: Paf3- 425-

of discharge under this section, see Mulla (1958), page debts should be provable in insolvency and should be extinguished on the discharge of the insolvent. ' There is a sharp contrast on this point between the Pre- sidency and the English Acts on the one hand and the Pro- vincial Act on the other, as explained below:----

(a) Preside;-icy Act, section 46 (2), and Bankruptcy Act, section 30(2) Under section 45 of the Presidency Act, an order of discharge releases the insolvent from all debts contracted before adjudication. Section 46 (2) of that Act enacts that a person having notice of the presentation of any insol- vency 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. The result is, that the debt itself is provable and extinguished on discharge, but at the same time, the creditor is under a personal disability to prove itl-2.

This is also the law under the English Act. The hardship of this rule is, that the creditor can neither prove for the debt (arisng after notice of bankruptcy) nor sue for it after the discharge of the debtor. He is thus totally with- out a remedy.

(b) Section 33(1), proviso and section 34 of the Provincial Act On the other hand, under the Provincial Act, all debts incurred up to adjudication seem to be provable, though the position is not quite certain? Though the Provincial Act, section 34, is silent on this topic, yet, in the absence of a provision similar to the one contained in the Presidency Act, it is a plausible view to take that under that section all debts and liabilities contracted up to the date of the order of adjudication could be proved, and that those debts (i.e., even debts incurred after the petition) will also stand released by the order of discharge. That would, appear to be the construction placed upon the section by the Bom- bay High Court in Jamshedji V. Pestonji⁴. The contrary view, however, was taken by a Full Bench of the Lahore High Court in Kewal Kishan v. Special Official Receiver⁵. There it was held, that the order of adjudication relates back, under section 28 (7), Provincial Act, to the date Of _ fHalsbury (3rd Edn.), Volume on Bankruptcy, __ page 465," para. 917 __; Williams (17th Edn.), page 187. Rangnekar J. in jamshedji v. Pestonjz, A.I.R. 1932 Bom. 511, 513.

2Mulla (1958), page 401, para. 431.

3E.g. see jamshedji v. Peszonji, A.I.R. 1932 Bom. 511 (provable) and KewalKi5han v. Special O□cial Receiver, A.I.R. 1939 Lahore 384 (Full Bench) (not provable).

'A.I.R. 1932 Bom. 511.

5I.L.R. 1940 Lah. 50 ; A.I.R. 1939 Lahore 384 (F.B.) the presentation of the petition, and that on a correct read- ing of section 28(7), and section 34 it IS only debts which are contracted before the date of the presentation of 'the petition that are provable under the Act. The principle behind this

view is, that the insolvent is as from the date of petition "dead". A hardship arising on the Lahore View is, that there is no provision saving debts contracted before by a person without knowledge of the presentation of the petition. -

3. The question is which of these rival provisions should be adopted. There are certain other possible alternatives also.

4. Following possible courses can be considered:--

(i) The first course is, that all debts contracted after the presentation of the petition should be left out of insolvency proceedings, that is to say, neither they will be provable in insolvency nor would an order of discharge release the debtor from his liability in respect of them.

(ii) The second course is, that the date of the order of adjudication may be taken as the determining factor, so that (irrespective of notice) debts contracted after the presentation of the petition and before adjudication would be provable in insolvency and would stand released by the order of discharge.

(iii) The third course is, that, while loans advanced or dealings had by third persons without notice of the presentation of the petition should be provable in insolvency, those which are incurred with notice of the presentation of the petition should not be "provable". (Here discharge will not extinguish the debt.)

(iv) The fourth course is, that debts incurred with notice of presentation should be neither available in insolvency nor available after discharge.

5. (i) The first course is logical; but it leaves out a large number of debts, and hence may work hardship.

(ii) The second is also logical, and appears to have been adopted in the Provincial Act. But it may be criticised as defective, inasmuch as it regards notice as irrelevant, and may encourage fraud. '

(iii) A question can be asked why the third course should not be preferred and why a person advancing money with notice of insolvency should have a right to prove for the debt. The second course is based on the principle that the presentation of an insolvency petition does not deprive a person of his capacity to contract and therefore debts contracted by him should be enforceable. But if it is to be rejected, it is to be considered whether (iii) should be adopted or (iv) should be incorporated.

Other points on sub-clauses.

(iv) The fourth course, which follows section 46(2), Presidency Act and the English Act seems to be the best, and has been adopted. It might appear to be harsh, as involving the consequence that the debts become unavailable at all times. But it is considered, that there is no reason Why a person

advancing money with notice of the act of insolvency should be empowered to sue upon such loans if the debtor becomes insolvent.

While thus adopting the fourth course, the proposed provision has substituted notice of act of insolvency in place of "presentation of petition" occurring in section 46(2), Presidency Act, as the relation back is to the act of insolvency.

Sub-clauses (1) and (2)--Need no further comments.

Sub-clause (3)--Needs no further comments.

Sub-clause (4)---Power to certify has been given to the Official Assignee as in the Presidency Act (instead of the court as in the Provincial Act). , Meaning of "debt"--"Debt" includes 'those owing to the Government, it has been decided?' in England, under section 30 (3) of the English Act.

Explanation 1----Definition of "liability".----This follows section 46 of the Presidency Act, Explanation, defining "liability" in an exhaustive manner to include certain kinds of obligations. There is no such provision in the Provincial Act.

Explanation 2.-----Is necessary, as the expression "available act of insolvency" has been used in the clause.

Clause 45 Main para.--This is based on section 47 of the Presidency Act; compare section 46, Provincial Act.

Proviso.--Section 47 of the Presidency Act contains a proviso that no set-off will be allowed when the credit had been given with notice of the presentation of insolvency petition. (The Provincial Act has no such provision). As there can be no set-off in respect of a credit which the creditor is not entitled to prove under the Act, section 47, consistently with section 46(2), excludes credits given with notice of the presentation of insolvency 'Mulla (1958), page 401, para. 431. 'Cf. the suggestion in Mulla (1958), page 28, para. 29. "Re Pascoe, (1944) 1 All. Eng. Reports 593.

petition. As section 46 (2), Presidency Act has been adopted', the proviso has also been adopted, without modification, namely, substitution of act of insolvency".

On the lines of section 31 of the (English) Bankruptcy Act, 1914, the words "mutual dealings" have been amplified by using the words "mutual credits, mutual debts or other mutual dealings".

Explanation.--Needs no comments.

Clause 46 This follows section 46, Presidency Act. There is no such provision in the Provincial Act.

Clause 47 General.--See section 48, Presidency Act, section 33(1), Provincial Act. The detailed provisions as to mode of proof of debt and rights of various creditors and connected

matters will be dealt with in a Schedule' as in the Presidency Act.

This scheme will cover the main paragraph of section 33(1), Provincial Act, in substance.

Section 33(2), Provincial Act, omitted.----Section 33(2), Provincial Act (Pasting of schedule of debts on court house) has been omitted, as unnecessary. It is a matter of detail, which can be dealt with in the rules' if necessary.

Clause 48 General.----This clause deals with properties which are i or are not divisible among the creditors, and, following the scheme of section 52 of the Presidency Act, it is in two parts, sub-clause (1) describing properties which are not divisible among the creditors. and sub-clause (2) describing those which are.

Sub-clause (1).--Section 28 (5) of the Provincial Insolvency Act, which corresponds to section 52(1), Presidency Act, differs from it in two respects:--

(i) It does not exclude properties held in trust by the insolvent. But, under the general law, the result would be the same as in the Presidency Act. Such properties have been excluded to avoid any doubt.

(ii) It does not enumerate, as does section 52(1) (b) of the Presidency Act, the articles which do not pass on to the Official Receiver, but generally provides that whatever is not attachable under section 60 'See notes to clause 44.

"Cf. clause 44.

"See Second Schedule.

After-

acquired property.

of the Civil Procedure Code will not vest in the court. This has been adopted as more comprehensive, The Presidency Act imposes in this respect a limit of rupees 300 in the Whole, which appears to be unnecessary.

Insurance policies have been excluded, following section 91(b) Australian Act.

Tenancies.--This is discussed below.

Sub-clause (2).--This sets out the properties which are divisible among the creditors, Paragraph (a) --Corresponds to section 28(2), earlier part, of the Provincial Act, and follows section 52(2) (a) of the Presidency Act, but omits therefrom after-acquired properties, for which there is a separate provision later.

Paragraph (b)--Is taken from section 52(2) (b), Presidency Act and section 28A of the Provincial Act-- Paragraph (c) corresponds to section 28 (4) of the Provincial Act, and follows Section 52(2) (a), latter part, Presidency Act.

Section 28A of the Provincial Act contains two provisions which have been omitted in the draft, as they are obsolete now.

Reputed ownership.---The doctrine of reputed ownership is proposed to be abolished and a new provision⁴ is recommended in its place.

Paragraph (c)--This deals with after-acquired property. There is difference between section 52 (2) (a) of the Presidency Act and section 28(4) of the Provincial Act", in this respect.

The Bill has adopted the law Provincial Act⁷.

Hire purchase transactions.--In an earlier Reports of the Law Commission, a recommendation had been made to exclude goods taken under hire-purchase from the doctrine of reputed ownership.

As the doctrine is being replaced by a different provision", it becomes unnecessary to incorporate any special provision on the subject.

as laid down in the 'See below-----" insolvency and Tenancies ".

²Clause 48 (2)(c).

"As to s. 28A, see discussion in R. M. Bhat v. J'larzz'Ial, A.I.R. 1959 Born. 229 (J. C. Shah I.).

'See clause 51. .

⁵See para. 18, body of the Report.

³Cf. Mulla (1958), pages 516, 520, 522. ⁷See for a detailed discussion the body of the Report, para. 29.

⁹20th Report, para. 10 (Hire--purchase). 'See clause 51.

1. The question of vesting of tenancies, particularly statutory tenancies, is considered below.

2. Ordinarily speaking, all leases would be "property" and would, on the insolvency of the lessee, vest in the Official Assignee'. The question has been raised whether an exception should not be made for tenancies to which the Rent Control Act of the State concerned applies. The following points require consideration:----

(i) Whether the exemption should apply to all premises wherever situated, or whether it should be confined to those areas where some legislation in the nature of Rent Control Act is in force;

(ii) If it is to be confined to areas where the Rent Control Act is in force, the next question is, whether it should apply to all kinds of leases or whether it should be confined to those leases where the tenancy is purely statutory, i.e. where, after determination of the tenancy, the tenant continues only by virtue of the Rent Control Act.

(iii) whether, (if it is to be applied to all areas in which Rent Control Act is in force) should it cover all premises, or only premises of a certain area, value or rent?

After careful consideration, it is felt that the provision should apply to all tenancies in respect of premises to which the Rent Control Act applies, irrespective of area, value or rent.

3. The Rent Control Acts do not appear to contain any express provision barring the attachment of tenancies to which those Acts apply. There are, however, provisions prohibiting the tenant from sub-letting the premises or assigning or transferring? in any other manner his interest therein (subject to certain exceptions not relevant for the purpose) 3. Unauthorised sub-letting or assigning, etc., is a ground justifying the landlord's claim for recovery of possession under, for example, section 13(1) (e) of the Bombay Act and section 14(1) (b) of the Delhi Act.

4. The definition of "statutory tenant" in the English Act may be noted here.

Section 49(1) of the (English) Housing Repairs and Rents Act, 1954 (2 and 3 Eliz. 2, c. 53) gives the following definition:--

"statutory tenant" means a tenant [as defined in section 12(1) (g) of the Act of 1920] who retains 'Ree-vex v. Davies, (1921) 2 K.B. 486, (C.A.).

2See, for example, section 15 of the Bombay Act and section 16(3) of the Delhi Act.

'The Bombay Act is the Bombay Rents, Hotels and Lodging Houses Rates Control Act, 1947 (Bombay Act 57 of 1947). The Delhi Act is the Delhi Rent Control Act, 1958 (59 of 1958).

Insolvency and tenan-

cies.

possession by virtue of the Rent Acts and not as being entitled to a tenancy, and "statutory tenancy" shall be construed accordingly.

The definition of "landlord" and "tenant" in the English Act of 1920 is as follows:----

"The expression "landlord" also includes in relation to any dwelling-house any person, other than a tenant, who is or would but for this Act be entitled to possession of the dwelling-house and the expressions "tenant" and "tenancy" include sub-tenant and sub-tenancy and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or where a tenant dying intestate leaves no such widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the country court.'.

5. It is considered that the protection should not be confined to purely statutory tenancies as defined in the English Act. "

(It has been held in England that a statutory tenancy under the Rent Acts normally arises when a tenant under a lease or other contractual tenancy within the Act holds over, i.e. remains in possession after the expiration of the contractual tenancy. Another case of statutory tenancy is the one where—without any formal termination of the tenancy, a contractual tenant dies leaving a widow or other relative resident with him, who does not take as his personal representative?)

6. The legal position of a statutory tenancy was lucidly explained in a Bombay case'. "The plaintiff Was entitled to terminate under the ordinary rules of law the contract which had been established between him and the defendants by the consent decree, and on August 31, 1922, when the plaintiff's notice expired, that tenancy terminated. Had it not been for the Rent Act, the defendants would have been bound to vacate; but under its provisions they might remain in possession, and under section 9 no order for the recovery of possession of the premises could be made so long as they paid or were ready and Willing to pay rent to the full extent allowable by the Act, and perform the conditions of the tenancy. I presume that would mean the conditions of the tenancy existing between the parties before the agreement terminated, which would be continued to that extent by virtue of those words if the tenant remained in possession under the Act".

1Megarry, Rent Restriction Acts (1961), page 156. 3See Megarry, Rent Restriction Acts (1961), page 156.

3Kali'anmal v. Dharamveji and Co. A.I.R. 1924 Bombay 330, 331, right hand and 332, left hand (Macleod C. J. and Crump J.) [Under Bombay Rent War, Restrictions Act, 1918 (2 of 1918)].

The statutory tenant's right is a "personal" right to remain in possession of the property, and no more.

7. The following chart will show the difference between the two kinds of tenancies:--

Contractual tenancy	Statutory tenancy
I. Assignable subject to contract where there to the contrary.	Not assignable (except where there is a statutory provision, as in section 17 of the English Act of 1957--Rent Act, 1957,--5 and 6 Eliz. 2 Ch. 25).

2. Vests in the heirs on death '~-3 Does not vest in the heirs, in the absence of specific provision in the Act. (The English Act of 1957, section 17, provides for such vesting in certain cases. The definition of "tenant" in the English Act of 1920, section 12 and certain Acts in India '-5 has also this effect in substance).

3. Vests in the Official Assignee, Does not vest in the Official Assignee", on insolvency". on insolvency.

4. Continuous transmissibility . Transmissibility only by statute, and that also only once". [Double transmissibility may be specially provided for as in section 17 of the (English) Rent Act of 1957,--5 and 6 Eliz. 2 Ch. 25].

8. In England it has been held that a statutory tenancy created by the Rent Restrictions Act confers in the statutory tenancy only a personal right to possession, and therefore it is not "property" within section 167 of the Bankruptcy Act, 1914 so as to vest in the trustee in the bank-

. 1Nz'hal Chand v. Shiv Narain, A.I.R. 1958 Punjab 263, 265 (Mehar Singh J.).

"Megarry (1961), page 214.

3Anwar Ali v. Janzini Lal, I.L.R. (1939) 2 Cal. 254, 258 (Nasim Ali J.) (Case of monthly tenancy).

"Megarry, Rent Restriction Acts (1961), page 214, top and page 198.

5Nz'hal Chand v. Sin'-v Narain, A.I.R. 1958 Punjab 263, 265, 131} hand),] middle (Mehar Singh J.) [Delhi and Ajmer Merwara Rent Act (19 of 1947 -

'Megarry, Rent Restriction Acts (1961), page 198, foot-note 77. 7Megarry, Rent Restriction Acts (1961), page 198, foot-note 85. °Megarry, Rent Restriction Acts (1961), page 214, top.

ruptcy of the statutory tenant. Thus, in Sutton V. Dorfl, the plaintiff claimed possession from the defendant of premises which were let by the plaintiff to the defendant for a period of 3 years from a certain date. At the end of the term, he continued in possession as a statutory tenant. In 1930, he was adjudicated a bankrupt and, in 1931 the trustee disclaimed the tenancy under section 54 of the Bankruptcy Act, 1914. The judge made an order of possession, holding the statutory tenancy to be "property". The defendant appealed. It was held, after a discussion of case-law, that the right of the statutory tenant was purely personal right. The case-law had made it clear that it could not be-

(i) assigned;

(ii) sublet; or

(iii) transmitted by will.

It was true, that on death intestate, the tenant's widow or some other member of the family residing with him had a right to continue in possession, under section 12(1) (g) of the Act of 1920; but that was only due to the express statutory provision--the definition of "tenant" which included such person.

(The drafts given below Were also considered, but the draft appearing in the Bill was preferred.)
 "the interest of a tenant in, or the right of a tenant to retain possession of any premises, being premises to which any law relating to the control of rents and of eviction therefrom applies for the time being."

"the interest of a tenant in any premises to which any law providing for the control of rents and of eviction therefrom applies for the time being, or the right of a tenant as defined in any such law to retain possession of any premises by virtue of any such law."

Clause 49 This is a new provision, intended to deal with the case of a second or subsequent bankruptcy. It mainly follows section 39 of the English Act; but one modification has been made, to provide that from the assets available in the second insolvency the creditors in the second insolvency shall first be paid dividend equivalent to the dividend paid to the creditors of the first insolvency from the 'See Sutton v. Dorf, (1932), A.E.R. Reprint 70 [K.B. Dvn.] (Acton and Talbot JJ.) approved in Smzth v. Odder (1949) W. N. 249 (Court of Appeal); see Williams, Bankruptcy (17th Edn.), page 295, foot-note; 70. — assets of the first insolvency. This adopts the second alternative discussed in the English Committees Report-3. The existing position is stated in Mulia3.

Clause 50 This is a new provision -requiring the insolvent to intimate to the Official Assignee particulars of after-'acquired property. Cf, the recommendation of the English Committee on Bankruptcy Law'.

Exception has been made for suitable cases.

Clause 51 This provision, dealing with property in the possession of the insolvent, is intended to take the place of the existing provisions relating to reputed ownership--section 28 (3), P.A. and section 52 (2) (c), P.T.A. It has, in substance, been taken from section 50 of the Canadian Act, except that the time limit of 15 days (after sending of the notice) (appearing in the Canadian Act) has been replaced by 30 days. It has also been considered desirable to insert a specific provision authorising the Official Assignee to take possession of property to which the section applies, pending determination of the claim of the third person. The wording "property under this section" or "property referred to in sub-section (1)" used in the Canadian Act has been replaced by more precise words.

A provision authorising the Official Assignee to seize the property (in the case of movable property subject to speedy and natural decay) has been added.

Clause 52 General.--This is based generally on section 51 of the Provincial Act, the corresponding provision in the Presidency Act being section 53.

Sub-clause (1).--Needs no special comments. "Orders" have been added.

Sub-clause (2).----This is new, and provides that when' an execution has issued but the assets have not been realised before the day of the admission of the petition the decree-holder should have a first charge for the costs incurred by him in the execution. Under sections 51 and 52 of the Provincial Act (as they now stand), the position shortly is, that when a creditor executes his decree, if assets have been realised before the date of the admission 'See English Committee's Report, page 38, para. II4.

2 See detailed discussion in the body of the Report, para. 28. " Mulla (1958), page 517, para. 533.

'English Committee's Report, page 18, para. 47, latter half_ 5 See also body of the Report, para. 18.

42 M of L----11 of the petition, they will wholly be available to him, under section 51; if no sale has taken place before the petition is admitted, then, under section 52; the court, if informed of the petition, is to take possession of the property sought to be sold and put it in the possession of the receiver, the execution creditor, however, being given a charge for the costs of the suit in which the decree was passed, and of the execution. But where the sale has already taken place in execution of the decree before the date of admission of the petition but assets have not been realised in full before the date of the admission of the petition, the case remains uncovered. Similarly, where the property is sold subsequent to the admission of the petition, but the court is not notified and a move made to stay the sale, the case is uncovered. In both the cases, there is no provision giving the creditor a charge for the costs incurred in the execution. This is rather harsh. There is no reason why the execution creditor, at whose instance the property has been brought to sale, should not be given a charge for his costs. That was the view taken in *Official Receiver v. Sambasiva Aiyar*, differing from the decision in *Balammi Reddi v. Official Receiver*? The Bill has adopted the former view as just³.

Sub-clause (3).--In place of the words "in all cases", the Words "if such sale is held before the making of an order of adjudication" have been introduced. It was held in some cases, on the strength of the Words "in all cases". that a sale held even after adjudication would pass good title to a bona fide purchaser. See *Khurshid Ali v. Thakur Rachmram Singh*⁴; *Katycmi Devi v. Haridas Addhya*"; *Motilal Dhannalal v. Nathuc*. The contrary View has been taken in *Guravaiah v. Rangiah*⁷; *Thiruvarya Mathu Pillai v. Official Receiver*"; *Chunilal Bhwanidag v. Vithal Bala*⁷ⁱ"; and that seems to be correct, and has been adopted". The order of adjudication vests the title in the Official Receiver, and a sale thereafter of the "right", title and interest, of the debtor should convey no title.

It may be noted that the Privy Council" has held that an attachment in execution does not invalidate an alienation by operation of law effected by a vesting order under the Indian Insolvency Act, 1848, and that after such vesting 11.L.R. 1942 Mad. 757 ; A.I.R. 1943 Madras 118. "I.L.R. 1939 Mad. 343 ; A.I.R. 1939 Madras 291.

3. Cf. Mulla (1958), page 586, middle.

4 I.L.R. 1949 All. 508 ; A.I.R. 1949 All. 660. 553 C.W.N. 304.

6 I.L.R. 1942 Nag. 377 ; A.I.R. 1942 Nag. 414. 7 I.L.R. 1942 Mad. 614 ; A.I.R. 1942 Mad. 415 (1).
3 A.I.R. 1951 T.C. 193. (Discussed case-law).

"A.I.R. 1933 Nag. 28.

1°. Cf. discussion in Mulla (1958), pages 251-252.

PC". Raghunath Das v. Sundar Das, (1915) I.L.R. 42 Calcutta 72, 83, order the judgment-debtor has no right, title or interest which could be sold to or vested in an auction-purchaser, and consequently the auction purchaser in execution would not acquire any title to the property.

Where the sale takes place after presentation of the Sale before petition but before adjudication, the position is different. adjudication It is only by virtue of the doctrine of relation back that the debtor ceases to have title, and it is but right that the retrospective operation of the order should not affect sales of purchasers who had in the meantime purchased property bona fide. 'There is no reason why the clause under discussion should not apply to the execution of "orders". The necessary change has been made accordingly'.

Sub-clause (4).---This has been placed at the end, 35 it is in the nature of a saving. The Provincial Act speaks of "the decree" and "creditor" while the Presidency Act speaks of "debtor". The former is more precise and has been adopted.

Clause 53

1. This follows section 54 of the Presidency Act, the corresponding provision in the Provincial Act being section

52.

2. There is one point of difference between the two Acts. While under the Presidency Act the decree-holder is given a charge only for costs of the execution which becomes infructuous, the Provincial Act gives him a charge for the costs of the suit also in which the decree was passed. There appears to be no justification for this. There are no grounds for giving a charge for costs of the suit to a decree-holder who moves for execution, while denying it to other decree-holders. The clause accordingly confines the charge to the costs of the execution.

3. It has been made clear that until adjudication the court will stay the proceedings. This is necessary, because the Official Receiver does not, speaking generally, come on the scene until the actual adjudication. Consequently, it has also been provided that the assets will be delivered on adjudication?

4. The words "court shall, on application" have been replaced by more elaborate wording, "court executing the decree or order shall, on application by any person interested".¹ 310% The provision has, been made applicable to orders.

'Cf. changes made in existing sections by clauses 6 and 7. :Cf- M11113 (1958), page 59_8, para. 605. 53 Cf. changes made in existing section by clauses 6 and 52.

Clause 54 General.----This deals with voluntary transfers and corresponds to section 55, Presidency Act and section 53 of the Provincial Act. Section 55 of the Presidency Act makes such transfers "void", and its language has been preferred¹ to 'that in the Provincial Act which uses "voidable".

Under section 55 of the Presidency Act, the period of two years is to be counted up to the date of the adjudication. Read with the doctrine of relation back, this would mean the date of the act of insolvency'. This, however, is not convenient, and the clause under discussion, therefore, speaks of a "petition presented", as in the Provincial Act.

Ex-planation.--In the case of a document which is registered, the period should be counted from the date of registration. For reasons, see the notes to the clause relating to avoidance of preference'.

Clause 55 General.--This deals with fraudulent preferences, and corresponds to section 54 of the Provincial Act and section 56 of the Presidency Act.

"Void".--The Provincial Act treats the transfers under this clause as "void". So does the Presidency Act. But the Provincial Act also says that they "shall" be annulled by the "court"----a provision not found in the Presidency Act. It is not considered necessary to depart from the language used in the Presidency Act.

Surety.----In England, it had been held under the Bankruptcy Act of 1883, that a payment by the debtor to a surety for a debt was not a fraudulent preference, vide *Re Mills*; *Re Warran*. The law was altered in the Bankruptcy Act of 1914, which provided in section 44(1) that the payment to a surety by the debtor was also a fraudulent preference. Section 55 of the Presidency Act, 1909, followed the language of English Act of 1883, and section 54 of the Provincial Act, 1920, followed that of section 55 of the Presidency Act. As to interpretation of "void", see Mulla (1958), page 601, para_ 608 and page 655, para. 665. But also see page 56.

Also see Williams, Commentary on section 42(1).

'See discussion in body of the Report, para. 22.

'Mulla (1958), page 6:5, para. 621.

See notes to clause 55.

"Of. Ramaswanam v. Chezriar v. Official Receiver, (1960) 1 S.C.R. 616;

A. I. R. 1960 S.C. 70 ; (1960) S. C, J, 128.

7See the body of the Report, paras. 20-21.

"(\$88) 58 L.T. 87x.

90900) 2 Q.B. 138.

Act. It was, however, held in Roderigues v. Ramaswamil, following the English authorities. that a surety is a credi- tor for the purposes of the section. Necessary change has been made to include surety.

Period.--The period of three months has been increased to six months".

Explariationi.----As pointed out in an earlier Report³, there is a conflict of views on the question whether, for decid- ing a fraudulent preference under the Insolvency law, the transfer should be deemed to have been made on the date of the instrument or on the date of the registration. It was observed there, that the matter should be dealt with by an amendment of the relevant provisions of the insol- vency law. It is proposed that the period should be counted from the date of registration⁴. This will make for more efficient working of the insolvency law, by giving an ex- tended period and defeating any move on the part of an insolvent to avoid the provisions relating to fraudulent preference by postponing registration. It is considered that the principle should apply to the section relating to volun- tary transfers also"--", though the cases where the result would be different must be very few, in view of the limits within which documents are ordinarily required to be registered (sections 23-26, Registration Act).

Transfers falling under section 53, Transfer of Property Act--

These need not be discussed?

Clause 56

1. This follows section 54--A of the Provincial Act which was introduced by the Amending Act (39 of .1926). The section gives effect to the View taken by the Calcutta High Court in Re Surajmull Mungle Chands and by the Madras High Court in Anarithanarayaria Aiyar V, Sarikm-a.. riaiyana A1/yarn (There is no such provision in the Pre-- sidency Act").

1(1977) I.L.R. 40 Mad. 783 (F.B.) 2 See discussion in the body of the Report, para. 23. 73 36th Report of the Law Commission (Registration Act), page 29, paragraph 'See Mulla (1958), page 538_ 5See clause 54.

°Cf- M11113 (1958): P3g€ 153: para. 154, generally.

¹See Mulla (1958), pages 65, 56, 146, 6:8, 603, for several points_ 9A.I.R. 1921 Cal. 403.

[°](r924) I.L.R. 47 Mad. 673.

¹⁰F h . . P .

647A. or t e practice in residency Towns, see Mulla (1958), page 542, para.

2. Instead of the word "annulment", the word "avoid- ance" has been substituted'.

Clause 57 Geneml.--Compare and contrast section 55 of the Pro- vincial Act and section 57, Presidency Act.

"Good fa2'th".--The word "bona fide" appear in the marginal note to the section in both the Presidency and Provincial Acts. Though the words do not occur in the body of the section, it is considered that the transaction to be protected, must be entered into in good faith (apart from want of notice as provided under the proviso). That has been made clear".

The history of the provision in English law is this. Section 133 of the Bankruptcy Act, 1849, contained the words "bona fide". They were replaced by the words "in good faith" sections 94 and 95(1) of the Bankruptcy Act, 1869. In section 49 of the Bankruptcy Act, 1883, nei- ther of these expressions was reproduced. But the margi- nal note continued the words "bona fide"". It is this langu- age that has been adopted in section 55 of the Provincial Act and section 57 of the Presidency Act*.

Strictly speaking, the words occurring in a marginal note should not be used for the purpose of controlling the interpretation which would be proper on the language of the section itself. It should, therefore, follow that a tran- saction will be protected under the section if it satis- fies the two conditions specified in. the proviso, namely, that it takes place before the date of the order of adjudication and the person with whom the transaction takes place has not, at that time, notice of the presentation of an insolven- Cy petition. The question whether a transaction will be protected under this section when it lacks bona fides even though the two conditions specified therein be satisfied has been the subject of judicial decisions. In the Mercan- tile Bank of India Ltd. v. The Official Asstgnee", the creditor received a notice from the debtor's agent that the debtor was going to suspend payment and thereafter took posses- sion of the debtor's goods pursuant to a letter previously given by him. The question was, whether this was pro- tected by section 57 of the Presidency Act. It was found, that at that time no insolvency petition had been present- ed. Therefore the conditions speci- ed in section 57 were 'Cf. clauses 54 and 55.

²See also body of the Report, para. 24.

³Whether good faith is required in England is slightly doubtful at present. See Williams, pages 245, 366, 370 and Re Seymour, (1937) Ch. 668 ; (1937) 3 A.E.R. 449.

'Discussion in Mulla about history is at page 645, para. 653(1). 50916) I.L.R. 39 Madras 250.

satisfied. But the court, nevertheless, held that the transaction was not protected, because, having regard to the notice received from the debtor's agent, the action of the creditor could not be said to be bona fide as that was notice to him that an act of insolvency was being committed. Adverting to the contention that the words "bona fide" did not occur in the body of the section, the court pointed out, that on the corresponding provision of the English statute it had been held in a series of authorities in England that bona fides also should be established before protection under that section could be claimed; and (following those authorities) it was held that the transaction was not protected by section 57, for the reason that it was not bona fide. This decision has been criticised as not warranted by the language of the section'-3, but there can be no doubt that the conclusion reached therein is just and equitable and in accordance with the principle on which Insolvency Law is based. To remove doubts and uncertainties, the words "in good faith" have been inserted. Notice of "petition" or "act of insolvency"

The proviso to section 57, Presidency Act, speaks of the transaction having been entered into without notice of presentation of the "petition". This is inconsistent with the scheme of relation back as adopted in that Act". Hence it has been changed to notice of "available" act of insolvency'. (Compare section 45, proviso, English Act and section 167). The inconsistency in the existing section 57, Presidency Act has been noted in one decision also".

Bona fide transferees from transferees The question whether" the protection should be extended to a transferee taking property bona fide from a transferee (Where the intermediate transferee did not act in good faith) has been considered. It is, however, not thought proper to make such a provision, «as it would be illogical to protect a subsequent transferee, when the intermediate transferee (from Whom he derived title) is not protected.

Opening words.--_The elaborate wording in section 57, Presidency Act and in section 55, Provincial Act, referring to the "foregoing" provisions relating to the effect, etc., has been retained.

'See discussion in Mulla (1958); Page 550: ID3fa- 556-

(Lor:?.7i\$;1;lrT312\$z]K.)zfm v. Bzjay K. Hazra, I.L.R. (1937) I Cal. 557, 566 3Mulla (1958), page 26, para. 29, page 28 (discussion as to protected transactions may be seen). Also see page 649, para. 656(3). 'See also body of the Report, para. 24.

(LO;\$%;i]iSi':3IsaJI<')nmar v. Bzjay K. Hazra, I.L.R. (1937) I Cal. 557, 564 °Cf- Mulla (1958), page 656 top, para. 665, (Regarding transferees from donees, see page 620, para. 625.).

Bankers.--The question of granting protection to bankers on the lines of section 97, Australian Act [and section 47(1), last para., English Act] has been considered, but no such further protection appears to be necessary, in addition to that conferred by the new clause1 corresponding to section 46, English Act'-'.

Clause 58 This is «a new provision, which follows section 46 of the English Act, and is intended to protect payments, etc., made to an insolvent without notice of presentation of the petition. The insertion of such a provision has been suggested by Mulla³. The suggestion has been accepted, as such protection seems to be needed. (The English section was first introduced, as pointed out by Williams', to remedy the dilemma of a defendant to a money claim who has notice of an act of bankruptcy, and generally to prevent such notice from "paralysing" persons dealing with the debtor in the ordinary course of business or otherwise bona fide?) Since in the clause dealing with protected transactions, want of notice of act of insolvency has been substituted in place of want of notice of presentation, etc., this change is necessary.

Clause 59 This is a new provision, suggested by section 66 of the Canadian Act.

Clause 60 General.--This follows, in general, section 58, Presidency Act. Compare section 56 (3), Provincial Act.

Sub--clause (1).--Needs no further comments.

Sub-clause (2).---There is a provision in section 56(3), proviso, Provincial Act barring removal from possession of "any person whom the insolvent has not a present right so to remove". It does not appear in the Presidency Act, and has therefore been omitted? The sub--clause covers section 56(3), main para., Provincial Act and section 58 (2), Presidency Act. The latter is better, and has been mainly followed".

¹Clause 58.

⁹See also the body of the Report, paras. 24-25. ³Mulla (1958), page 28, para. 29.

'Williams, page 373, bottom.

'As to the existing law in India, see Mulla (1958), page 653, para. 660 and page 582, para. 588.

'See clause 57.

⁷Discussion,--{gin Mulla is at page 672, para. 686. "Cf. Mulla (1958), page 67:, para. 684.

Sub-clause (3).--Needs no further comments.

Sub-clause (4).--The words "things in action" used in the Presidency Act have been replaced by "actionable claims", (being the expression used in the Transfer of Property Act).

Sub-clause (5).----The mention of "contempt of court" appearing in the Presidency Act, has been replaced by 3 reference to section 188, I.P.C. as the new Act will apply to the Mofussil also.

Clause 61 This is based on section 59 of the Presidency Act. There is nothing corresponding to it in the Provincial Act. It has been adopted as a useful provision. The mention of police officers, though found in the Presidency Act, has been omitted, as it is considered that such warrants should be executed only by the prescribed officers.

Clause 62 This follows section 60 of the Presidency Act. There is no such provision in the Provincial Act. Certain verbal changes have been made to bring the section up-to-date and to apply it to persons mentioned, in section 60(1), proviso (i), Civil Procedure Code.

Clause 63 This provision regarding goods pledged is a new one, and follows section 59 of the English Act. See also section 48, Canadian Act.

Clause 64 General.--This clause relating to copyright is new and has been added on the lines of section 52 of the Canadian Act. Compare also section 60 of the English Act, and section 110, Australian Act, which are not so elaborate.

Sub-clause (1), opening part.--For the words "the author's manuscript and any copyright or any interest in a copyright" (occurring in the Canadian Act), the clause substitutes the words "author's manuscripts of and copy-right in any work or any interest in such copyright", as it is considered that, for precision.--(i) "copyright" should be followed by words denoting that the copyright is in a work, and (ii) the word "manuscripts" should be similarly qualified. Further, the words "in whole or in part" have been omitted, as unnecessary.

"Agreement".--The words "agreement" after "contract" appearing in the Canadian Act is omitted, as unnecessary.

Sub-clause (1) (a), (b).--The word "original" occurring in the Canadian Act is omitted, as unnecessary.

'For a discussion of the existing position, see Mulla (1958), paras. 540- 540A.

Clauses 65 to 69 General.--These clauses provide for disclaimer of title by the Official Assignee. They follow sections 62 to 66 of the Presidency Act, which are in turn based on section 55 of the (English) Bankruptcy Act, 1883, since replaced by section 54 of the Bankruptcy Act, 1914. There is nothing corresponding to them in the Provincial Act, but it is considered that such provisions should be applicable to the whole of India.

Detailed points.--(i) Power to extend the period for selling has been added, and items to be disclaimed have been mentioned one by one, as in section 535, Companies Act, and section 104, Australian Act'.

(ii) The words "subject always to rules" are replaced' by "except in any cases which may be prescribed". Compare section 54 (3), English Act.

(iii) The word "either" has been placed after "claim- ing" and not before the word "claiming", for the sake of grammar³.

(iv) Case of the sub-lessee or mortgagee failing to apply has been covered'-⁵.

(v) Instead of "under-lessee", the word "sub-lessee" is used, following the usage in India?

(vi) Instead of the word "foregoing", the exact provi- sion has been referred to for precision^l.

Clause 70 Sub-clauses (1) to (4).--(i) They are based mainly on section 36 of the Presidency Act. There was nothing corresponding to them in the Provincial Act, as originally enacted. By section 4 of the Provincial Insolvency (Amendment) Act (Act 39 of 1926) a new section", section 59A, was inserted therein, reproducing sub-sections (1) to (3) of section 36, Presidency Act, with certain modi- ca- tions.

(ii) The clause as drafted generally follows section 36, Presidency Act, but differs from it in one important res- pect. There has been a controversy in the High Courts, lln clause 65(1).

²In clause 66.

'In clause 69 (I).

'In clause 69 (I), proviso.

⁵Cf. Report of Committee on Bankruptcy, etc., Law (1957), cmd. 221:

para. 134.

'In clause 69(1), proviso.

⁷In clause 69 (2).

"Section 59A was inserted after the Report of the Civil Justice Com- mittee (1925), pages 232-233, paragraph 15.

as to whether a summons could be issued under this section to a witness who lives beyond the local limits of the court's original jurisdiction. In *Dinaram Somani V. Bhim Bahadur Singh*' the Calcutta High Court held that the court could, acting under this section, is-sue summons against a person who could not be compelled to give evi- dence under Order 16, Rule 19, Code of Civil Procedure, because section 36 deals with discovery of property and not with taking of testimony, and the jurisdiction confer- red by the section is not, by reason of the proviso to section 90(1). Presidency Act, controlled by the provisions of the Civil Procedure Code. See also *Re Pushkar Na?-ayan Brahinwai*'-. In Madras. it has been held that while no witness could be compelled to give evidence if he satis- es the requirements of Order 16. Rule 19, C.P.C., he could be compelled to produce

documents, as documents could be produced by him through any other person. Vide *Re Abdul, Rahim Saheb & Cos'*: *Re Viswanathan Cliettiar* and *Re Murugappcz Chetty & Co. v. Official Assignee of Madras*'. In View of the provision in section 37, Presidency Act, that "the court shall have the same powers to issue commissions for the examination of any person liable for examination under section as it has for the examination of the witnesses under the Code of Civil Procedure, 1908," it is desirable to make express provision, if the wider View is to be accepted. It is considered that the limitation in Order 16, Rule 19, C.P.C. should not apply to courts under this Act. Necessary provision has been proposed".

(iii) It should be mentioned that under section 59A(I), Provincial Act, unlike section 36. Presidency Act. the examination can be only of third persons, but not of the insolvent himself. There is no reason why the scope of the section should be so limited. There is a distinction between an examination under section 27 of the Presidency Act and one under section 36 of the Act, the former is a public examination, and the latter a private one, in the nature of a secret proceeding taken with a View 'to eliciting information. Vide *Learoyd v. Halifax Joint Stock Banking Co.*; *Halalslimi V. Official Assignee of Madras*'. A provision for the public examination of the insolvent is proposed in another clause", and his private examination is dealt with in the clause under discussion.

1A.I.R. 1923 Cal. 427.

2A.I.R. 1953 Born. 19.

354 M.L.J. 715; A.I.R. 1928 Mad. 890. 40948) 1 M.L.J. 241, - A.I.R. 1948 Mad. 496. 5(1948) 1 M.L.J. 242.

"The proposed provision will clarify the position. Cf. Mulla (1958), page 31, last line and page 297, para. 312.

7(1983) 1 Ch. 686, 692.

3I.L.R. 1950 Mad. 895 ; A.I.R. 1950 Madras 410. "See clause 129.

Incriminating questions----

On this topic, see discussion in Mulla.

(iv) Section 59A, Provincial Act, limits the power to examine under that section to courts (or officers) specially authorised. It is considered that all the insolvency courts should have this power. Necessary change has been made.

(v) It is necessary to refer to one point--the authority which can exercise this power. Under section 36 of the Presidency Act, it is the court acting on the application of the Official Assignee that can summon and examine witnesses; but under section 6(2) (e) of the Presidency Act, this power could

be delegated. In the Provincial Act, section 59A confers this power on any court or officer of the court specially empowered by the State Government to summon and examine witnesses. It is now proposed, first, that this power should not be delegated (except as regards examining) the witnesses in Presidency towns?) to any officer, but should be exercised by the court itself, and, secondly, that this power should be conferred upon all the courts. The reason for this change is that under the clause as now drafted³, when there is a dispute as to the debt or title to the property, the disputes may (subject to certain restrictions) be determined by the insolvency court and need not be referred for determination to a suit. If the insolvency court decides to hear the dispute, then the application is to be treated as a suit and tried as a suit and the order to be passed as a decree and would also be appealable as a decree. Having regard to this scheme, the power to summon and examine, etc., should not be exercised by any authority other than the courts (except in Presidency towns, to the extent mentioned above).

Under sub-clause (3), the objection regarding production of a document has to be made to and allowed by the court. The Presidency Act makes the provision more elaborate, by adding that the objection may be made at the time of the court's sitting. No such elaboration seems to be necessary.

Sub-clause (5).--This is new. There should be a power in the court to decide the dispute. It has been framed in conformity with the recommendation relating to decision of claims of the insolvent against a third person or vice versa".

¹Mulla (1958), page 292, para. 307.

²As to Presidency towns, see clause 110(3) (e).

³See clause 70(5).

'See clause 99, and notes thereto.

~'As to existing law, see Mulla (1958), pages 300-302, and page 22.

Sub-clauses (6) to (9).--These correspond to subsections (4) to (7) of section 36, Presidency Act, with this important difference that whereas under the Presidency Act, the jurisdiction to pass an order is limited to cases where the claim is admitted, the proposed clause, conformably to what is provided above², adds the case where the court decides the matter under its powers. Thus, the position is that the insolvency court can hold an enquiry, and make an order under sub-clauses (6) and (7), even though the claim is disputed.

The word "just" has been used in sub-clause (6) instead of the word "expedient" appearing in the Presidency Act, as the former is considered more appropriate. Compare sub-clause (7) also.

Clause '71 This corresponds to section 37 of the Presidency Act. There is no such provision in the Provincial Act.

Clause 72 General.--This follows section 61 of the Provincial Act (which corresponds to section 49 of the Presidency Act).

Small creditors.--It has been considered unnecessary to give any priority to small creditors as it would not be easy to draw a line'.

Workmen's Compensation, etc.--It is unnecessary to add a provision for priority to payments due under Workmen's Compensation Act, etc., as in section 530, Companies Act.

Sub-clause (1).--The language of paragraph (b) follows that of section 49(1) (b), Presidency Act, and the pecuniary limit is also what is laid down therein. Paragraph (c) has also been taken from the Presidency Act. There is no corresponding provision in the Provincial Act regarding rent. But it has been adopted as a useful provision.

Sub-clauses (2) and (3).--No special comments are needed.

Sub-clauses (4) and (5).--Need no special comments.

Explanation.--The Explanation is new, and has been introduced in view of the decision in *Narain Das v. Sahu*. In England, it has been held that when a creditor of a firm chooses to obtain a decree against a partner thereof, and not against the firm or all the partners, that 'The provisions are discussed in Mulla (1958), page 22, page 24, para. 26, pages 300-302, page 311, para. 331 and page 671, para. 684. See clause 70(5).

"See also body of the Report; para. 30. '(1934) I.L.R. 56 A11. 1041.

must be dealt with, for the purpose of this rule, as a separate debt of the partner, and not as a joint debt of the firm. Vide *ex parte Ackermans*, *ex parte Brown*". It was, however, held in *Narain Das v. Sahu*. It is held that this exception cannot be engrafted on the language of section 61(4). Provincial Act, and the rule of English law embodied in the above decisions cannot be applied to cases arising under that section. Once the principle is accepted that partnership property and partnership debts should be treated as distinct from the separate property and separate debts of a partner, it should logically follow that a creditor who obtains a decree against an individual partner (when he could have obtained one against the firm) and follows it up by obtaining an order adjudicating that partner, must be held to have elected to treat his debt as a separate debt of the partner and not as a partnership debt. The reason for adopting such a rule is all the greater, as the doctrine of election has been accepted as part of the insolvency law in this country, with reference to distinct as distinguished from joint contracts". The Explanation is intended to give effect to this view.

Sub-clauses (5) and (6).----The words "entered in the schedule" have been replaced by "proved in insolvency" (on the lines of the Presidency Act), as more appropriate".

Clause 73 This corresponds to section 50 of the Presidency Act. 'There is no such provision in the Provincial Act.

Clause '74 This does not occur in the Provincial Act, but has been taken from section 70, Presidency Act, as a useful provision⁷.

Clause 75 This is based on section 62 of the Provincial Act (which corresponds to section 71 of the Presidency Act).

in -sub-clause (1), the words "in his hands" have been replaced by "under his control", which are wider and more appropriate. Consequently, in sub-clause (2), the words 10808) 14 Ves. 604; 33 ER. 653.

K1812) 1 Rose 432.

2 (1934) I.L.R. 56 All. 1041 ; A.I.R. 1934 All. 521. 'jiethalal v. Lallublzaz', A.I.R. 1930 Bom. 380.

51: will remove doubts on the subject. Cf. Mulla (1958), pages 442-444 para. 480.

"Cf. clause 77 (2).

7Generally as to partners, see Mulla (1958), page 443, and also pages 94: 142, :55, 2x3, 476, 483, 562, 679, 692-

"realised by the Official Assignee" have been used'-2-'o.

Clause 76

1. This is based on section 63 of the Provincial Act (which corresponds to section 72 of the Presidency Act).

2. The words "in the hands" have been substituted by the words "under the control" as more appropriatet--".

3. Instead of the existing negative Wording "Any cre- ditor who has not proved his debt before", the positive wording "Any creditor who has proved his debt after" has been preferred.

Clause 77 This is based on section 64 of the Provincial Act and section 73 of the Presidency Act. It may be noted that While under the Provincial Act, it is the court that has to decide (when all the properties have not been realised), whether a ÷hal dividend may be declared, under the Pre- sidency Act, it is the Official Assignee who has to come to a decision on the question, but leave of the court has to be obtained before the ÷hal dividend is declared. The difference in substance, is slight; but the language of the Presidency Act has been preferred to that of the Provin- cial Act.

In sub--clause (2), the words "entered in the schedule" have been replaced by "proved their debts" (as in the Presidency Act) as more appropriate'.

Clause 78 This is based on section 65 of the Provincial Act. Following section 74 of the Presidency Act, two changes have been made:----

(1') Instead of "entered in the schedule", the words "aggrieved by such refusal" have been used, as more appropriate.

(ii) The rates have been left to be prescribed.

Further, there is no reason why the Official Assignee should pay the interest on the demand out of his own 'Cf. the Madras amendment to s. 71, Presidency Act. 2Cf. also clause 76.

"Cf. s. 122, P.T.A.

'Cf. clause 75.

~"Cf. s. 72, Presidency Act, as amended in Madras. "Cf. s. 122, P.T.A.

7Cf. clause 72.

money. Such a provision is harsh. In Madras and Bombay, the Presidency Act has been amended so as to remove this personal liability, and there is no reason why the amendment should not be made applicable to the Whole of India. Necessary changes have been made accordingly.

Clause 79 This is based on section 66 of the Provincial Act, which corresponds to section 75 of the Presidency Act. The clause differs from the former in requiring an application of the Official Assignee--a requirement which has been inserted as a useful safeguard. It differs from the latter in this, that it is the court and not the Official Assignee that has to make the appointment.

The Presidency Act makes this power "subject to such conditions and limitations as may be prescribed". But this restriction has not been adopted, as it is unnecessary and not found in the Provincial Act.

Clause 80

1. The main paragraph is based on section 67 of the Provincial Act (corresponding to section 76 of the Presidency Act).

2. For an exhaustive discussion of the scope of this section, see a recent Supreme Court case? One of the points made in the Supreme Court case was, that property (whether movable or immovable) which devolves on the insolvent after his becoming insolvent and before discharge is also included in the "surplus" of which the section speaks. The Explanation seeks to codify the position on that

point³.

Clause 81 Sub-clause (1).--Is based on section 122, Presidency Sub-clause (2).--Is based on section 123, Presidency Act.

Clause 82 This is based on sections 88 and 89 of the Presidency Act (Which correspond to section 67A of the Provincial Act). The language of the Presidency Act has been followed⁴.

'See the amendment to section 74, Presidency Act, made in Madras and Bombay.

²Raghunath Kharkar v. Ganesh Kharkar, (Supreme Court) decided on 2nd May, 1963 (C.A. No. 98 of 1962) (Judgment delivered by Wanchoo J.) n appeal from Bombay), A.I.R. 1964 S.C. 234 (Feb.).

"Generally as to effect of discharge, see Mulla (1958), pages 397, 398 687, 699.

'Section 67A was inserted as a result of the recommendation made in the Report of the Civil Justice Committee (1935), Chapter 14, para. 19.

Clause 83 General.--This is based on section 74 of the Provincial Act and also on section 106 of the Presidency Act. The jurisdiction for summary administration has been ☐ed for the Presidency towns at ☐ve thousand rupees (instead of existing rupees 3,000 under the Presidency towns Act, 1909). For other places. it has been increased from rupees ☐ve hundred to two thousand. These changes have been made in View of fall in the value of money.

Special points--

Sub-clause (1).--It has been provided that on the ad- mission of a petition, falling within this section, the Offi- cial Assignee shall stand automatically appointed as receiver, with powers analogous to those of a receiver appointed by Court. It is also considered that publica- tion of notices and framing of schedules should not be dis- pensed with by a mandatory provision in the Act. This involves omission of section 64(1) and (iii), Provincial Act. The provision regarding committee of inspection has been taken from section 129(ii) of the (English) Bankruptcy Act, 1914, as a useful provision, It is considered that an appeal with the leave of the Appellate Court should be allowed. That has been pro- vided. The Presidency Act allows an appeal with the leave of the court of ☐st instance, but in India generally leave obtained is that of Appellate Court.

Sub-clause (2).----As regards revocation of the order, opportunity has been taken to combine the language both of the Presidency Act and of the Provincial Act, so as to make two points clear:--

(2) the court can revoke the order for summary administration at any stage, and

(ii) from the date on which order is revoked, the normal provisions will come into operation.

Omission of section 196(1), proviso, Presidency Act Section 106(1), proviso, of the Presidency Act bars the modification of the provisions relating to discharge. It is considered that no such restriction is necessary. It has, therefore, been omitted. It is better to leave the matter to the rule-making body.

Clause 84

1. This is based on section 108, Presidency Act. (There is nothing corresponding to it in the Provincial Act.) 42 M of L-12
2. In sub-clause (1), the words "had been alive" have been replaced by "if the debtor had been alive" for clarity.
3. The marginal note has been slightly changed, as it is considered that the existing words "persons dying in- solvent" are not apt.

Clause 85

1. This is based on section 109 of the Presidency Act. There is nothing corresponding to it in the Provincial Act. It has been adopted as a useful provision.
2. Provisions regarding Official Assignees, and power to require information regarding insolvent's property and effect of insolvency on antecedent transactions, etc., should apply in relation to the mode of administration in insolvency of estates of deceased persons. Necessary change has been made. Compare section 155 (4) and (4A.) of the Australian Act. As to examination of witnesses, compare also section 130 (5), English Act'.

Clause 86 This is based on section 110 of the Presidency Act. The existing section refers to section 64 of the Administrator General's Act, 1874. That Act of 1874 was repealed by the Administrator-General's Act, 1913, Where the corresponding section was section 54, whereunder the District Judge could take charge of the property of deceased persons in specified cases. But now the Administrators- General Act. 1963 (45 of 1963) has been passed, and it contains no corresponding provision. Hence the reference is omitted.

Clause 87 This is based on section 111 of the Presidency Act.

Clause 88 General.-----This deals with appointment of Official Assignees and Deputy Official Assignees in Presidency towns as well as in the Mofussil. It corresponds to section 77(1), Presidency Act, and section 57(1), Provincial Act. The clause proceeds on the footing that under this Act, the High Courts in the three Presidency towns will continue to exercise insolvency jurisdiction on their original side".

'The existing position is discussed in Mulla (1958), page 720, para. 746. 2The Act is to come into force on a notified date. "Cf. notes to clause 97.

The Official Assignee for those areas will be appointed by the Chief Justice of the High Courts'. There is also a provision for the appointment of Deputy Official Assignees.

Sub-clause (1)(a).----Needs no further comments? Power to remove and power to make an acting appointment need not be expressly mentioned. See sections 16-17, General Clauses Act. It is also considered unnecessary to have the words "substantively or temporarily", which occur in the Presidency Act.

Sub-clause (1) (b).--Needs no further comments. Omission of section. 77 (1A), etc., Presidency Act Section 77(1A), Presidency Act, relating to powers of Deputy Official Assignees, has been omitted as unnecessary. The definition of "Official Assignee" includes a Deputy, and that definition, it is considered, should suffice to give him all powers, etc., of the Official Assignee.

Section 77 (2), Presidency Act, relating to security, etc., has been omitted. Such matters may be left to the rules.

Section 77 (3), Presidency Act, is a transitional provision and has therefore been omitted.

Sub-clause (2).--This provides that Official Assignee shall be appointed for every district, thus marking a departure from the law as now contained in the Provincial Act".

The appointment will be by the Chief Justice of the High Court.

Appointment of Deputies is also provided for. Clause 89 Sub-clause (1).----Follows section 83, part, Presidency Act. As to "corporation sole", compare section 77A, Presidency Act, as inserted in Bombay and Madras.

Sub-clause (2).----Follows section 83, part, Provincial Act.

Clause 90 This corresponds to section 78 of the Presidency Act.

Clause 91 Sub-clause (1).--Follows section 59, Provincial Act and Presidency Act. Distribution of demands is treated separately".

"The existing position is not uniform.

"See also article 229 of the Constitution.

"See clause 2--"Official Assignee".

'For a detailed discussion, see the body of the Report, para. 9. 'See clause 92.

The words "legal practitioner" appearing in the 'Presidency Act have been preferred (as more appropriate) to the word "pleader" appearing in the Provincial Act.

The mention of acceptance of fully paid-up shares and debentures has been added as in section 68 (1) (f) of the Presidency Act, as a useful provision. The mention of carrying on business has been added (as in the Presidency Act) in the paragraph relating to mortgage, etc. Sub-clause (2).--Follows the Presidency Act, section 79(1).

Sub-clause (3).--Follows section 79(2), Presidency Act.

Sub-clause (4).--Follows section 68(2), Presidency Act.

Sub-clause (5).--This is not found in the Provincial Act, but has been taken from section 80 of the Presidency Act as a useful provision.

Clause 92 This deals with the declaration and distribution of dividends. In the Provincial Act the matter is dealt with in a very brief way in section 59. But section 69 of the Presidency-towns Insolvency Act deals with it in an elaborate manner and that provision is considered suitable for the whole of India.

Clause 93 This reproduces the provisions of section 85 of the Presidency Act, which have been found useful for incorporation in the new law. There is no such provision in the Provincial Act.

Clause 94 This corresponds to section 87 of the Presidency Act. (There is no such provision in the Provincial Act.) Clause 95 This is not found in the Provincial Act and is based upon section 19 of the Presidency Act. It has been adopted as a useful provision.

Clause 96 This follows section 80(1), Provincial Act with the omission of mention of power to admit or reject proof'. The requirement of previous sanction of the State Government, is omitted as unnecessary.

Section 80 (2) of the Provincial Act provides that subject to appeal to the court under section 68, any 'Under the Second Schedule, the power to admit, etc., proof is to vest in the Official Assignee.

order made or act done by the Official Receiver in the exercise of the said powers shall be deemed to be the order or act of the Court.The words "subject to appeal", etc., have been interpreted' to mean that even from orders under these delegated powers, an appeal lies to the court.

The juxtaposition of the words "shall be deemed 'to be the order of the court" with the words "subject to", etc., however, creates a wrong impression. In view of the fact that the matters on which the order can be passed under the clause in question are of great import-

ance, the orders should be appealable. To make that clear, section 80(2) of the Provincial Act has been omitted.

Clause 97 General.--In the Presidency Towns, insolvency jurisdiction will continue to be exercised by the High Courts on their original side'.

Sub-clause (1).--Combines section 3(1), P.A. and section 3, P.T.A. As to the proviso, reference may be made to observations contained in an earlier Report of the Law Commission as follows' :--

"We recommend that all civil Judicial may be invested with insolvency jurisdiction. powers have been conferred upon these of Courts Bombay and Madras."

of Courts Such in But this does not require a change in the Law. A detailed discussion as to jurisdiction of subordinate courts is unnecessary here".

Sub--clause (2).--Follows section 3(2), P.A.

Clause 98 Sub--clause (1).--This follows section 11 of the Presidency Act, which is more precise and detailed than section 11, main paragraph of the Provincial Act. Cf. section 6(1) ((1), English Act. The provision for firms is particularly useful in view of the proposed addition of a specific clause for adjudication of firms. Mention of "orders" (besides decrees) has been added.

'Mulla (1958), pages 794-795, para. 844. 2This is one of the two courses suggested by Mulla (1958), pages 794-795, para. 844.

"As to delegation by High Courts, see clause IIO. 'See discussion in the body of the Report, paras. 7-8.

514th Report of the Law Commission (Reform of Judicial Administration), Volume I, page 272, para. 15.

'See discussion in the body of the Report, para. 6. 7See clause xo8.

Original jurisdiction of High Courts.

Subordinate Courts.

ExpZanation--is required for High Court.

Sub-clause (2).--This deals with the jurisdiction of Indian Courts in regard to persons who are not citizens of India. It must be taken along with the definition of "debtor". That definition and this sub-clause follow sec--

tion 1(2) and section 4(1) (d) of the English Act. Under the rules of private international law (as administered in England) an order of adjudication of a person as insolvent can be passed only by the courts of the State of which he was a subject'-"', since it affects his status. An exception, however, has been recognised to this rule when the debtor, though a foreigner, has been residing or carrying on business in England--in which case English courts have jurisdiction to make an order of adjudication. It is this exception that is embodied in sections 1(2) and 4(1) (d) of the English Act'-". It will be noticed, that the two provisions aforesaid relate to two different aspects of the

question. Section 1(2) of the English Act has reference to the status of the debtor when he commits an act of insolvency, and section 4(1) (d) of the English Act has reference to the conditions which must be fulfilled before the creditor can take proceedings against the debtor. It has been observed, that these provisions are cumulative, and that before a person who is a subject of a foreign country is adjudged insolvent, both of them ought to be satisfied".

There is nothing corresponding to these provisions either in the Presidency Act or in the Provincial Act, and that is probably due to the fact that there was no question of any Indian citizenship during the British regime; but now that India is a sovereign State, it is desirable that the law should be comprehensive and provide, conformably to the rules of private international law stated above, for the adjudication of foreigners who become debtors in this country. The definition of "debtor"⁷ as proposed corresponds to section 1(2) of the English Act, and has reference to the status of the foreign subject at the time when the act of insolvency is committed, while the sub-clause now under discussion has reference to the conditions under which proceedings can be taken by a creditor, and corresponds to section 4(1) (d) of the English Act. It may be noted, that while the sub-clause should, if the scheme of the English Act is strictly followed, be incorporated in the 'See clause 2, "debtor" '.

²See Dicey, Conflict of Laws (1958), page 670, Rule 131.

³See also Bloom Cooper--Bankruptcy in Private International Law (1954), page 46-

"See discussion in Mulla (1958), page 88, bottom.

⁵Theophile v. Solicitor General, 1950 A.C. 186.

'Williams, page 55, and page 3.

⁷Clause 2----" debtor".

clause relating to the conditions on which a creditor may file a petition, it has been considered that, under the scheme of the present Act, such a provision might more properly be brought within this clause.

Sub-clause (3).--This is based on the proviso to section 11 of the Provincial Act. There is nothing corresponding to it in the Presidency Act. Section 98 (3) of the English Bankruptcy Act, 1914, which provides for the court in which bankruptcy petition has to be presented, also enacts that nothing in that section will invalidate a proceeding by reason of its being taken in a wrong court. It was accordingly held that a proceeding taken in a wrong court could be transferred to the proper court, but not when it is wilful, vide *ex parte May*; *Re French*; and *Williams*". The provision in section 11 of the Provincial Act is in consonance with the principle enacted in section 21 of the Civil Procedure Code, and it has been adopted.

Clause 99 General.—This clause covers the ground traversed by section 4 of the Provincial Act and section 7 of the Presidency Act. The principal topic dealt with is, jurisdiction of the insolvency court to decide questions of titles, etc., when they are in dispute.

Jurisdiction.—The principal question of jurisdiction has been dealt with elsewhere'. Briefly speaking, the clause has been framed on the lines of section 105(1), English Act", and the practice thereunder. A proviso has also been added empowering the court to refer complicated questions to civil courts.

The position under the clause will be as follows:—

(i) where the Official Assignee claims by a higher title than the insolvent, the insolvency court will have full power to decide all questions. (But its jurisdiction will not be exclusive, and in a proper case the matter may be left to the ordinary courts, e.g., where the value of the property at stake is a large one or questions of character are involved".)

(ii) Where the Official Assignee claims only by the same right as the insolvent, the insolvency court will have no jurisdiction as against a stranger, unless the stranger submits to the jurisdiction or the amount involved is small. The restriction appears in the English Act also. Though the restriction in the English 1(1885) 14 Q.B.D. 37.

2(1890) 24 Q.B.D. 63.

"Williams (17th edition), pages 460-461.

'See the body of the Report, paras. 10-12.

'See Mulla (1958), page 43, for a statement of the English practice 'Cf. Mulla (1958), page 56.

English practice followed.

Comparison with existing Acts.

1978 section is confined to County Courts, the High Court also follows the same practice'. The draft is, in substance, the same as section 7 of the Presidency Act, with the difference that the proviso to that section has been re-drafted, after considering Mulla's comments" pointing out a defect therein.

It may also be noted that even as regards matters where in the Official Assignee has higher title, the better view under the Presidency Act is that the jurisdiction of the insolvency court is not exclusive under the Presidency Act".

As regards the Provincial Act, though the proviso barring the trial of issues against third parties is not there in section 4, it may be noted that Mulla* has suggested that such a proviso should be

inserted in the Provincial Act also.

Sub-clause (2).--For "expedient" the clause substitutes "proper" as more apt.

"Subject to the provisions of this Act".-- (a) Section 4 of the Provincial Act and section 7 of the Presidency Act begin with the words "Subject to the provisions of this Act". These are followed by a provision which empowers the court to decide all questions, whether of fact or of law, whether of title or of priority, etc. The exact meaning and scope of the words in quotations has become a matter of some controversy. At least, four interpretations have been placed on these words:----

(i) According to one view, these words mean "excluding questions otherwise provided for by the provisions of this Act". Thus it was held by the Madras High Court¹ that a question under section 53, was outside the scope of section 4 and, therefore, section 75, allowing a second appeal in respect of a decision under section 4, did not apply to the determination of a question under section 53. According to this interpretation, the Words in question indicate an intention not to affect the special provisions contained in the other parts of the Act and to make it clear that the section is intended to provide for matters arising in insolvency not specially provided for elsewhere in the Act. (One of the points made... in the Madras decision was that in respect of matters under section 53, the Court's jurisdiction was exclusive and was not, therefore, governed by section 4.) ¹Mulla (1958), page 58, para. 62-C, end. See also Williams, page 468.

²Mulla (1958), page 22, bottom.

³Mulla (1958), page 56.

⁴Mulla (1958), pages 24, 67, 68.

⁵Alagiri¹ Subba V. Official Receiver, I.L.R. 54 Madras 989 ; A.I.R.

1931 Madras 745, 746, right hand column and 749, right hand column.

(ii) Another interpretation is that put in a Calcutta case¹. The question in that case was, whether under section 4 of the Provincial Act, the insolvency court could deal with question of title as between the Official Receiver and strangers. The answer given by the court was in the affirmative, holding that the quoted words restricted the Court's power only to this extent, that it may not be exercised in any such manner as would be in conflict with any provision of the Act. In other words, by the use of these words, "no limitation has been imposed upon the authority of a provincial court of insolvency to entertain and decide questions of title arising out of insolvency proceedings". (The Court also added, that this jurisdiction was not exclusive and that the Court should ordinarily decline to go into questions of title against strangers where the Receiver claimed no higher right than the insolvent; but what was stressed was that, if the Court in its discretion chose to determine the question, the decision was not bad on the ground of want of jurisdiction.) By way of illustration the Court observed, that one of the provisions to which section 4 is subject is section 56 (3). The court could not direct any person to deliver up property in his possession to the Official Receiver,

unless the insolvent himself was entitled to immediate possession. .

(iii) The third interpretation is that placed by the Allahabad High Court". It was argued in that case, that the words in quotations were intended to limit the jurisdiction of the insolvency court in respect of transfers alleged to be fraudulent and collusive, so that the insolvency court could not try the matter if the case did not fall within the four corners of section 53 of the Provincial Act. It was held by the majority, that this argument was not correct, and that an insolvency court could try a question of title raised on the basis of a transfer which took place more than two years prior to the adjudication. Accordingly, it was not obligatory on the receiver to seek his remedy by a regular civil suit based on section 53 of the Transfer of Property Act. The Court held, that the words in quotations were used only to limit the power, for example, in cases governed by the proviso to section 56 (Dalal J.). King J. hinted that these words might refer to the "rules of procedure and appeal laid down in the Act itself". Further, they doubtless refer to the special rules laid down in sections 51 to 55 of the Pro-

1Radha/erishna v. Official Receiver, A.I.R. 1932 Calcutta 642, 646, right hand column and 648, right hand column. 2Anwar Khan v. Muhammad Khan, (1929) I.L.R. 51 Allahabad 550, 557 (Dalal J.), 573 (King J. ; dissenting judgment of Sen J. discusses the point at page 565.

vincial Act "meaning that the court should follow those rules whenever they are applicable. They may also refer to section 81 under which the State Government could bar the application of many provisions of the Act. They might also refer to section 56 (3)." This majority interpretation is not in conflict with

(ii) above, and cites an illustration of a Madras case relating to section 56. However, the dissenting judgment of Sen J. illustrates the difficulties which were felt by the Court. According to him, the opening words of section 4 have been deliberately used by the Legislature to indicate and define the extent of the jurisdiction intended to be conferred on the insolvency court. "The quoted words", he said, "ought to be construed in their natural and grammatical sense and ought not to be narrowed down to a mere right of appeal".

(iv) A fourth interpretation is that placed in a case decided by the Patna High Court? The question there involved was whether, regarding benami and collusive transfers effected more than two years before the insolvency, the insolvency court had jurisdiction. The answer given by the Court was in the affirmative. According to the Court, "section 4 is controlled by section 53 only in respect of transfers made by the insolvents". Section 53 deals with a real transfer whereby title had passed to the transferee. Since the transactions in issue were alleged to be no transfers at all, section 53 had no application. The contention that the words in quotations indicated that the Court was bound by the limitations imposed by section 53 was rejected as not sound.

(Compare the Bombay case on the subject³, which decides that a second appeal does not lie against an appellate order setting aside an adjudication, as such an order is not one under section 4.) To state the matter more clearly, as laid down in a Nagpur case⁴, if sections 53 and 54 of the Insolvency Act are to be taken advantage of, the rule of two years or three months will apply. If they are not to

be taken advantage of. then, though the remedies can be pursued under the ordinary law, still they can be pursued in the Insolvency Court also (the Insolvency Court, of course, having power to refer the parties to a civil suit on the 1Chz'ttammal v. Ponnuszwami, (1926) I.L.R. 49 Madras 762; A.I.R. 1926 Madras 363.

2Bz'seswar Chaudhuri v.Kanhai Singh, I.L.R. II Patna 9 ; A.I.R. 1932 Patna 129.

"Kantilal v. Rajni Kant, I.L.R. 1942 Born. 175 ; AIR 1942 Born. 159, 160, right hand column ; (Broomfield and Wassoodcw JD.

'Vimzyak Shamrao v. Moreswar Ganesh, I.L.R. 1944 Nagpur 342 ,- A.I.R. 1944 Nagpur 44 (Niyogi, Vivian Bose and Sen J].).

ground of expediency). As regards the words "subject to", etc., the court pointed out, that "section 4 travels much wider than the small class of litigation which ce_ntr_es round fraudulent transfers, and so does the Provincial Insolvency Act. All that these words mean is that where the Act otherwise provides the Insolvency Court is not to act as a civil court. For example, attachment of the insolvent's property is not necessary. It all vests in the receiver or the Court automatically So also as regards appeals and revisions. And so forth."

(b) In view of the difference of opinion among the various High Courts the question whether an improve- ment in wording should be attempted, has been consider- ed. In the Madras easel, the Court observed that the words in question "do not appear to be very happy words". It is, however, considered unnecessary to recommend any change. The shades of meaning attaching to these words cannot be covered by other phraseology.

(NoTE:--The particular narrow question as to the in- Ker-relationship of sections 4 and 53 of the Provincial Act is itself not of much importance, since the majority of the courts have held, that the insolvency court has jurisdic- tion to entertain under section 4 questions affecting trans- fers not falling under section 533.) Power to sell properttes.--It will be noticed that sec- tion 4(3) of the Provincial Act provides for the sale of the property of the debtor when the court has reason to believe that he has a saleable interest in it. This sub-sec- tion will have application only when there is a dispute as to the title of the debtor. The question is, whether it is expedient to provide for a sale under these circumstances. The purchaser in such a sale cannot be expected to pay anything like a reasonable price for the property, as in effect it will be the purchasing of litigation and it is against the policy of the law to countenance such sales. The only reason for such a provision might be, that it will help a speedy administration of the estate. It is also felt that that is hardly a sufficient reason for authorising such a sale. The interests of the creditors would be protected by postponing the declaration of the final dividend until the title of the insolvent has been finally decided. Sec- tion 4(3), Provincial Act has, therefore, been omitted.

Clause 100 This is based on section 5 of the Provincial Act. The corresponding provision in the Presidency Act is section 90(1).

¹Alagz'risubba v. Official Receiver, (1931) I.L_.R. 54 Madras 989, ' A.I.R. 1931 Madras 745, 746 left hand column (Reilly J.).

(I) "See Mulla (1958), pages 61, 62, cases cited in foot-notes (j), (k) and Omission of section 4(3), Provincial Act.

The proviso to section 90(1) of the Presidency Act says that the general provision that the court will have the like powers, etc., as in its original jurisdiction is not to limit in any way the jurisdiction conferred on the court under the Act. What this presumably means is, that any extra powers given by the other provisions of the Act are not to be prejudiced by the general provision referring to the Code of Civil Procedure.

The Provincial Act uses the words "subject to the provisions of this Act"; and it is considered that these words would save any other power given by the other provisions of the Act, and would, thus, have the same effect as the proviso in the Presidency Act. For this reason, the language of the Provincial Act has been adopted.

age of the Provincial Act has been adopted.

Clause 101 This corresponds to section 90, sub-sections (4), (5), (6) and (7), Presidency Act.

Clause 102 This is not found in the Provincial Act, and is based on section 18A of the Presidency Act. That section was introduced by section 3 of the Amending Act (10 of 1930) to remedy an evil which had become rampant in Bengal. Fraudulent debtors in Calcutta got themselves adjudicated in the mofussil courts through petitions presented by friendly creditors, so as to avoid effective investigation by the High Court, and it has been held in a number of cases that the High Court on its original side had no power to transfer those proceedings to its \square e. Vide in re Manekchand'; In re Naginlal Maganlal Jaichard'-'; Official Assignee of Madras v. Zamirtdar of Udayarpalayam"; Sarat Chandra Pal v. Barlow and Cox'. It is to remedy this evil that section 18A was enacted. This provision has been included in this draft as the High Courts in the Presidency Towns will continue to have jurisdiction to entertain insolvency petitions on its original side'.

Receivers are not, under the scheme of the draft", appointed by the court on ad hoc basis, but are permanent officers, and the property vests in them and never in the Court. In view of this position, necessary verbal changes have been made in the clause.

¹A.I.R. 1922 Born. 390.

²A.I.R. 1925 Born. 543.

"A.I.R. 1926 Mad. 150.

"A.I.R. 1928 Cal. 782.

'See clause 97.

'See clause 88.

Clause 103 See section 14, P.A. and sections 13(8) and 15(2), P.T.A.

It has been made clear, that an order permitting withdrawal cannot be made after adjudication.

Clause 104 Sub-clause (1).--This topic is dealt with in section 15 of the Provincial Act, and section 91 of the Presidency Act. The latter section provides also for consolidation of separate petitions presented by joint debtors. (There is nothing corresponding to this in section 15 of the Provincial Act.) It has been incorporated in this clause.

Sub-clause (2).--Sub-clause (2) is based on section 97 Of the Presidency Act (There is no such provision in the Provincial Act). ' Clause 105 General.--This is based on section 16 of the Provincial Act and section 92 of the Presidency Act.

Opening paragraph.--Has been re-drafted to make it clear that it applies to creditor's petition only.

Proviso.--The proviso is new and has been added as useful provision. The corresponding provision in the English Bankruptcy Act, 1914, is section 111. A question which arises for decision under this section is whether a substitution can be ordered thereunder, if the original petition was incompetent. In *Re Maugham* the petitioning creditors were found to have assented to the deed of assignment which was relied on as an act of insolvency, and the petition was accordingly dismissed as incompetent. A petition was thereafter presented by other creditors (who had not assented to the deed) to revive the proceedings and to continue them, and that was dismissed, as not maintainable. In *Re Maund**, the debts due to the petitioning creditors did not come up to the statutory amount. Three months after the act of insolvency, the creditors who had the requisite qualification applied to continue the petition, but that was refused. In *Venkata. v. Gangayya*-'5, the application for substitution was made by a creditor whose claim was alive on the date of the original petition, but became time barred on the date of the application. It was held, that he was entitled to be 'Cf. Mulla (1958), page 212, para. 228. 221 Q.B.D. 21.

30895) 1 Q.B. 194.

'See also Williams, page 492.

50928) I.L.R. 51 Mad. 594.

"See also Mulla (1958), page 215.

substituted. In the course of the judgment, the court referred to the decision in *In Re Maund* and observed, "In *Re Maund* the original petition was filed by a creditor not entitled to file it. It was not a valid petition. It was sought to be amended by the addition of other petitioners. The court held that this could not be done. This decision does not touch the present case". In *Venkataratnam V. Il/€.'ll' ~"..'7.l-t7.:lj?_(,lCLL*, it was held that even if the creditor who filed the petition should turn

out not to have been qualified to do so, that cannot prevent another creditor from being substituted and taking advantage of the debt and the act of insolvency mentioned in the petition. This decision purports to follow the principle enunciated in *Venkata v. Gcmgayya*, but (in view of the observations already referred to) does not appear to be correct. It being a well-established principle of insolvency law that no petition for adjudication should be entertained after the expiry of a specified period from the date of the act of insolvency, it would be inconsistent with that principle to hold that a substitution can be ordered when an independent petition on that date would be barred, simply because there was at that time pending a petition which was incompetent under the law. The proviso is intended to settle the law as laid down in *In Re Maimdz*.

Clause 106 This is based upon section 8 of the Provincial Act. (Compare section 107 of the Presidency Act.) The clause has been made "subject" to the clause regarding adjudication of firms, to avoid the possible interpretation that a petition cannot be presented against a firm which is an "association". It may be noted that a firm can be registered under the Partnership Act.

Clause 107 This is based on section 95 of the Presidency Act. There is nothing corresponding to it in the Provincial Act. It has been incorporated as a useful provision.

Clause 108 Gen'l. This is based mainly on section 99 of the Presidency Act. There is nothing corresponding to it in the Provincial Act. Section 79(2) (c) of the Provincial Act does provide for framing of the rules to be followed "where the debtor is a firm": there is, however, in that Act no substantive provision authorising adjudication of firms. Under the law it is only a person that can be adjudicated, and a firm is not a person but a compendious name for describing all the persons who are partners of it. *L.R. 1942 Mad. 316*.

"(1895) 1 Q.B. 194.

'the firm. There are circumstances under which all the partners of the firm might have rendered themselves personally liable to be adjudicated insolvent, and it is only as a matter of convenience that a petition to adjudicate the firm which in substance means all the partners is allowed. Section 99 of the Presidency Act is not concerned with the conditions under which different partners can be adjudicated on a single petition. It assumes that they could be adjudicated, and merely provides that instead of filing a petition against each of the partners, there can be one petition against the firm. It is considered that this provision, which is well-known both under the (English) Bankruptcy Act and under the Presidency Act, should be adopted'. Similar provision is also proposed for petitions against persons carrying on business under an assumed name'.

Sub-clause (1).--Needs no further comments. Sub-clause (2).--May be explained as follows:---

In England the law is, that even an infant can be adjudicated insolvent where he contracts a debt which is enforceable in law". The law in India is different. The Privy Council has held that a minor's contract is void and no decree can be passed thereon. It, therefore, follows, that under the Indian

law a minor can never become a debtor and cannot, therefore, be adjudged insolvent". When the minor purports to enter into a contract of partnership, that contract again, so far as he is concerned, is void. Therefore, it might be argued that there is no need for this sub-clause.

But a minor in India can be admitted to the benefits of partnership", and a provision for defining his liability if the firm is adjudged insolvent is desirable. The object of this sub-clause is to make it clear that while the minor's share will be available to the creditors of the insolvent firm, his personal property will not be liable, and he shall not be deemed to have been adjudicated insolvent. This latter clarification is also considered to be desirable.

Sub-clause (3).--Provides that adjudication of a firm has the effect of adjudication of each partner. It has been taken from similar provisions occurring in rules under the P.T.A. and under the English Act.

Sub-clause (4).----See notes above".

¹The insertion of a provision in the Provincial Act has been suggested by Mulla (1958), page 25, para. 28, page 96, para. 90.

"Cf. Order XXX, rule 10, C.P.C.

³Mulla (1958), page 90, para. 85 ; Williams, page 28.

; *Mohorzi Bazar v. Dharmodas*, (1930) 1 L.R. 30 Cal. 539 (RC). Mulla (1958), page 89, para. 85, middle.

"Section 30, Indian Partnership Act.

⁷Notes under " General", above.

Existing provision.

Before adjudication applicability.

Clause 109 This has been taken from section 94 of the Presidency Act. There is nothing corresponding to it in the Provincial Act. Being a useful provision, it appears to be worth incorporating, Clause 110 The clause follows the existing sections 4, 5 and 6 in the Presidency Act. (including delegation of powers), except that detailed matters as to exercise of jurisdiction have been left to rules.

Clause 111 This is based on section 96 of the Presidency Act. The Provincial Act has no provision corresponding to this, and it may be said that without this clause, the position would be the same under the general law. But it is desirable that this provision should, by way of abundant caution, be enacted for all areas.

Clause 112 General.--This corresponds to section 17 of the Provincial Act and section 93 of the Presidency Act (subject to certain special points discussed below). The subject-matter is the continuation of proceedings on the death of debtor.

Effect of death

1. An important point which arises in this connection is, whether the existing language in the Presidency and Provincial Acts as to the effect of deaths on pending insolvency proceedings is clear enough. and, if not, whether any changes are needed.

2. Ornitting. for the present. the difference in the last few words between the Presidency and Provincial Acts, it may be noted that both the Acts (section 93 of the Presidency Act and section 17 of the Provincial Act) provide that "if a debtor by or against Whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders. be continued"

Section 112 of the English Act and section 36 of the Australian Act are also in the same terms.

3. In decisions under the Provincial Act it has been held that section 17 applies both before and after adjudication. Thus, in a Calcutta case¹ a creditor made an application for a debtor being declared insolvent and the 1As to appeals from the officer empowered under this clause, and review, see Mulla (1958), pages 737-738, para. 779, and page 739, para. 782. 2Ramesh Chandra v. Charu Chandra, A.I.R. 1930 Calcutta 590.

debtor dies before the adjudication. The court ordered the proceedings to be continued in the presence of the heirs of the deceased, who were to be brought on the record for realisation, etc., of the assets. In another Calcutta case², a creditor presented an application (for adjudging the debtor as insolvent) to the court of the District Judge, Chittagong, which court refused to adjudicate him on the preliminary ground that the petition was filed beyond three months. An appeal against this order was filed before the High Court but during its pendency, the creditor died and his legal heirs were brought on the record. The question was raised whether the proceedings for adjudicating the debtor as insolvent could continue after his death. The court answered it in the affirmative, relying upon section 17, and observed:

"But the matter of realisation and distribution of the property of the debtor cannot be conducted unless there is a person in whom the property is vested, and the property of the debtor would vest in the receiver only on adjudication. Section 17 therefore by necessary implication authorises the court to pass an adjudication order even after the death of the debtor". As has been pointed out in a recent Mysore case³, the reason why an adjudication can be passed even after death is that proceedings relating to the realisation, etc., cannot be conducted unless there is person in whom the property is vested; and such vesting cannot take place without adjudication. So far as death before adjudication is concerned, the only uncertainty is that resulting from the Lahore case of Attar Chand, discussed below".

4. Similarly, in the case of death, after adjudication also, section 17 applies'. It was on this basis that the Bombay High Court' observed, that section 17 showed that the maxim "actio personalis moritur cum persona" had no application to insolvency proceeding, agreeing with the Allahabad view" that an appeal against an appel-* late order setting aside the adjudication of an insolvent did not abate on the death of the insolvent during the pendency of the appeal in the High Court.

5. In an early case⁷ (Narain Singh), the Lahore High Court had held, that where a debtor is adjudged insolvent on 1Indo-Burmah Trader': Bank v. Barada Charan, A.I.R. 1944 Cal. 370, 371, left hand column (R-C Mitter and Sharpe JJ.).

"M. P. Basappa v. Charmappagowdas, A.I.R. 1954 Mysore 189 (Vasu' devamurthy J.).

'See notes to clause I12, para. 5.

'Sripat Singh v. Prodyat Kumar, (1921) I.L.R. 48 Cal. 87.

"Kantz' L.L.R" K, I.L.R. B. -

159, right har(ldvcoluLI?1'1111. am 1942 om I75 , AIR 1942 Boml °Pz'arey Lal v. Mohammad Salamatullah, I.L.R. 1937 All. 616 ; A.I.R. 1937 All. 435.

"Narain Singh v. Gurbaksh Singh, I.L.R. 9 Lahore 306 ; A.I.R. 1928 Lahore 119.

42 M of L--l3 Controversy summarised.

his own petition and the creditors appeal from the order of adjudication and the debtor dies pending the appeal, the appeal abates on his death because the right to sue does not survive. In another case', (Attar Chand) it held, that where a creditor's petition is dismissed and, during the pendency of the appeal, the debtor dies, the sons could not be impleaded as legal representatives and the appeal abated. But in a later Full Bench case it held' that a debtor's appeal against adjudication upon the cre- ditor's petition did not abate on the death of the debtor. (This Full Bench case expressly over-rules the earlier case of Narain Singh and has been supported by Mulla³). It tries to distinguish the other case of Attar Chand on the ground that in that case "-...successful party had been absolved from all manner of liability under the In- solvency Act" and "It was not therefore a question of lia- bility surviving in consequence of an adjudication, but of the right of the creditors to re surrect the case against the representatives".

6. The second point is as to whether non-abatement is conditional on actual impleading of the legal representa- tives of the debtor. It has been pointed out in one case⁴ that under section 17 the court has discretion to continue the proceedings and for that purpose to bring the legal representatives on record, if necessary, in place of the de- ceased; "in such cases the question of limitation and the application of article 177 of the Limitation Act would not arise as the provisions of Order 22, Civil Procedure Code do not apply". Of course, if the debtor dies before the adjudication, his legal representatives will practically for all purposes have to be made parties so that the ad- judication

may bind them.

7. This resume of the case-law" above shows that the controversy now survives only in relation to the Lahore High Court, and that too in respect of cases (like Attar Chand) where adjudication has been refused and an appeal filed against it. Now, if the correct rule is that the debtor's adjudication is not a matter personal to him but affects his property, which would, but for the adjudication, devolve on his heirs, it is not easy to see why this rule should not apply in cases where the court refuses to 1Attar Chand V'. 11[an A/Iuhanmzad .Mob:'n, A.I.R. I.L.R. 13 Lahore 396. (Harrison J.).

2Bhagat Ram v. Firm Dhanpat Alal, A.I.R. 1942 Lahore 211, 212 right hand, 213 ; I.L.R. 1942 Lahore 746 (F.B.) (Tek Chand, Monroe and Muhammad Munir, JJ.).

"Mulla (1958), page 219, para. 231.

'Ram Dayal v. Shankar Lal, I.L.R. 1952 Hyd. 196 ; A.I.R. 1952 Hyd. 80 F.B. (Sripat Rao, Qamar Hassan and Srinivas Chari JJ.). (On corresponding provision in the Hyderabad Act).

'Notes to clause 112, paras. 1-6, above.

1932 Lahore 121;

adjudicate. It would, therefore, be advisable to make it clear that the provisions of the section apply both before and after adjudication.

8. The next point is about the difference in wording between the two Acts. The Presidency Act, following the English Act, uses the words "as if he were alive", while the Provincial Act uses the expression "so far as may be necessary, etc.". The reason for the difference in language has been explained by the Madras High Court. As pointed out there, the words "as if he were alive" were avoided because, taken literally, they would mean, for example, that an application for discharge must be made by the debtor under section 43 of the Provincial Act within the time mentioned therein. It was pointed out, that there were other provisions in the Act regarding conduct of the insolvent. After death, all that is necessary is to see that the assets are realised and distributed, and the court is not interested after his death in considering his conduct except as regards fraudulent preference and fraudulent transfer. In actual practice the words "as if he were alive" have not led to any difficulty under the Presidency Act. Hence those words have been adopted.

[In the notes on clauses appended to the Bill which led to the Provincial, etc., Act, 1920, the reasons were given in these words:--

"Clause 5 amends section 10 to make it clear that the object of continuing proceedings on the death of the debtor is for the purpose only of realising and distributing his property-'.'"] A suggestion has been made that where an insolvent dies after adjudication, the law should authorise the court to pass an order of discharge, leaving the proceedings for realisation and distribution of the property to continue so long as is necessary. It is stated that this is necessary in order to terminate the

insolvency proceedings, as otherwise those proceedings will continue indefinitely and have to be shown as pending proceedings in the statement which is put up by the Official Assignee periodically. (It appears that in the case of the death of the insolvent, it is not regarded as correct to pass an order of annulment, because annulment implies usually that there is some default in the debtor. Where the insolvent has died, no question of default by him can be raised.) It is, however, considered, that this is not a matter which requires a statutory provision. So far as the power to continue the proceedings is concerned, that is amply provided for by the the clause under discussion.

1Ramathai Anni V. Karmiappa Mudaliar, (1928) I.L.R. 51 Madras 495, 501 and 502 ; A.I.R. 1928 Madras 480. 'See notes on clauses, the Gazette of India, 1918, Part V, page 60.

"As if he were alive"

Nature of order to be passed.

General.

Clause 113 This is based on section 77 of the Provincial Act (which is more specific than section 126 of the Presidency Act).

Clause 114 Sub-clause (1).--This has been taken from section 100(1) of the Presidency Act, with the alteration that the Warrant will be executed in the manner prescribed by the Civil Procedure Code (and not in the manner prescribed by the Criminal Procedure Code as provided in the Presidency Act). This alteration has been made in view of the fact that insolvency proceedings are more in the nature of civil than of criminal proceedings. (There is no such provision in the Provincial Act, but it has been adopted as useful).

Sub-clause (2).---This has been suggested by section 100(2) of the Presidency Act. It is considered that instead of providing (as the Presidency Act does) that a warrant to seize property shall be governed by the provisions of the Criminal Procedure Code, it is more appropriate to provide that the warrant will be executed as a warrant for attachment of movable property in the Civil Procedure Code. The provision does not appear in the Provincial Act, but has been adopted as a useful one.

Sub-clause (3).---This has been taken from section 100 (3) of the Presidency Act, with the alteration that the manner of execution has been left to be prescribed (instead of providing that the Criminal Procedure Code will apply). The provision does not appear in the Provincial Act, but appears to be a useful one.

Clause 115

1. This is based on section 68 of the Provincial Act [the corresponding provision in the Presidency Act being section 101 (part and section 86)].

2. As a proceeding under this section is an appeal (and not an application), the Words "app1y", etc., have been re- placed by "appeal", etc.

3. The proviso is not found in the Presidency Act, but has been adopted, as a useful provision, from the Provin- cial Act.

Clause 116 This corresponds to section 75 of the Provincial Act, but departs therefrom in one respect namely, the appeal 'Cf. Mulla (1958),page 790, para. 834.

will be to the High Court from certain orders of courts subordinate to district courts.

A question has also sometimes arisen as to the main- tainability of an appeal where it has been entertained by the High Court without an express order granting leave under section 75 (3). The authorities have mostly held, that it is not a condition precedent to the maintainability of an appeal under this section that leave should have been obtained before it is preferred, and that, accordingly, when the appeal has been admitted it could be construed as involving the granting of the leave. To avoid any further controversy, it has been made clear that such leave shall be deemed to have been granted when the appeal has been admitted.

The word "debtor" has been retained in this clause and preferred to "insolvent", to cover pre-adjudication orders.

Sub-section (3) of section 75, Provincial Act, provides in certain cases for an appeal to the High Court by leave of the District Court or the High Court. The provision for leave of the District Court has been omitted as unnecessary?

Clause 117 This is in general intended to conform to the practice in the original³ side of the High Court in the Presidency towns, and follows section 8(2), Presidency Act and (in part) section 101, Presidency Act.

Sub-clause (3).--As to appeals from decisions of the o□cer empowered under existing section 6, Presidency Act, the period of 20 days is taken from the existing pro- vision (section 101, Presidency Act), and it has been also provided that it will run from the date of the order.

Sub-clause (4) .--As to the period of limitation from appeals of the orders of a Judge to whom insolvency busi- ness is assigned, the clause provides for the same period as for Letters Patent Appeals'.

Clause 118 Section 8(1) of the Presidency Act provides generally for a power in court to review, rescind or vary any order made by it. There is no similar provision in the Provin- cial Act, and in consequence, an application for review of an order passed by an Insolvency court under that Act can be reviewed, by force of section 5 of the Act, only ¹See discussion in Mulla (1958), pages 779-780, para. 825. ³See discussion in the body of the Report, para. 6.

"As to review of orders of an officer empowered under section 6, Presidency Act, see M11113 (1958), pages 737-738, para- 779-

4See Article 151, (Limitation Act, 1908) and Article II7 (Limitation Act, 1963).

Hearing without grant of leave.

"Debtor" .

on one of the conditions mentioned in Order 47, Rule 1, C.P.C.1-''. The provision in the Presidency Act has been adopted, as comprehensive.

It may be added that the jurisdiction to review under the Presidency Act is very wide³.

Clause 119 General-----This clause, dealing with some of the major offences under insolvency laws, is wider than section 69 of the Provincial Act and sections 33 (4) and 103 of the Presidency Act, and covers many offences not mentioned in those sections or mentioned briefly therein. It has been widened on the lines of section 154 of the English Act, which is more elaborate.

"Before or after".----The words "whether before or after making of an order of adjudication" are, as observed in *Ganga Prasad v. Madhuri Sarani*, peculiar to India, because in the English Legislation, penalties are confined to conduct after presentation of the petition. It was noted there, that the general language "before the making of an order" is sufficiently wide to cover almost any distance of time. But, it was also noted, the definition of the specified acts complained of narrowed down the generality of the provisions, so as to confine offences strictly to matters affecting the investigation of the insolvent's affairs under the Act, the duties to be performed by him under the Act, the distribution of his property or money between the creditors, and the concealment or making away with property, or falsification of his books, with the intention of defeating the objects of the Act. The provision, it was also observed, was a special provision for cases in this country.

Burden of proof.--Apart from adding certain offences, the clause also departs from the existing section in throwing the burden of proof on the insolvent. While under the existing law the burden is on the prosecution, the position under the clause is, that once the act or omission complained of is made out, the burden of proving that such act or omission was done without the relevant intent is on the insolvent. This is the law⁶ under section 154 of the English Act⁷⁻⁸.

¹See also Mulla (1958), pages 385-386, para. 408. 'See *Chhaju Ram v. Neki*, I.L.R. 3 Lahore 27, P.C.

"As to the wide jurisdiction of the court, see--

(a) Mulla (1958). page 735 ;

(b) *Jwra; v. Gaganmal*, A.I.R. 1953 Born. 430 ;

(c) Thangavelu v. Chockalingam, A.I.R. 1944 Madras 129.

'Ganga Pr sad v. Madh ' S A.I.R. All. ' h h d (Walsh, acting aC. J. and I:2i'r11erj(in_'Ia.gI., 1927 352, 353, mg t an 'See also body of the Report, para. 31.

'Cf. suggetion in Mulla (1958), page 20, para. 25 and page 708, para. 729. "R. V. Governor of Brixton Prison, exparte--Shure, (1926) I K.B. 127. 'Williams, pages 528 and 529.

Other changes.----The period of imprisonment has been extended to two years as in the Presidency Act (instead of one year as in Provincial Act), as these are serious offences. The words "on conviction" have been omitted as unnecessary.

As the new Act will apply to the mofussil also, the (35C§f;i3_3 provision treating some of the acts as contempt of court dency Act, (occurring in the Presidency Act) has been omitted. omitted, It has been stated that many buyers, particularly in §;eI'T'1ea'fi°"

the food-grains market, make purchases on credit with an practices by ulterior motive of gain, and that they suddenly close down traders, their business without meeting their financial obligations to the sellers. Quite often, it is said, they fraudulently dispose of their property and defeat their creditors. In this connection, the question whether an increase in the penalties for bankruptcy offences is called for has been examined. But it is considered, that no such in- crease is necessary. The problem can be dealt with by rigorous enforcement of the law wherever such cases are brought to light and by instituting prosecutions under the penal sections of the Insolvency lawsl.

Clause 120 This is a new provision (dealing with frauds by insol- vents) and follows the provisions of the English Act, section 156.

Clause 121 This is a new provision (gambling by insolvent) which follows the provisions of the English Act, section 157.

As to sanction of the court for prosecution, see sepa- rate clause'.

Clause 122 This is a new provision (failure to keep proper accounts) which follows the provision of the English Act, in section 158.

As to sanction of court for prosecution, see separate clause?

Clause 123 This is a new provision (Insolvent absconding with property) which follows the provision of the English Act, section 159.

'The question whether any changes in sections 421 and 422 of the Indian Penal Code or section 53 of the Transfer of Property Act, etc., are necessary, in this context, IS not being considered here.

"Clause I26.

Clause 124 This is a new provision, which follows the English Act, section 160. A provision for [he has been added, as this is an offence which can be committed by a creditor.

Clause 125 This follows section 72 of the Provincial Act and section 102 of the Presidency Act, with the following changes (compare also section 155, English Act) :---

(i) Instead of rupees fifty, rupees two hundred has been substituted in View of the fall in the value of money. '

(ii) The case of a person receiving money on a promise to render's'erv'ice or to deliver goods in future has been covered. In a recent case before the House of Lords¹ this was held not to fall within the words "obtaining credit" occurring in the corresponding section 155 of the English Act. It has been considered desirable to cover such cases.

(iii) Case of the insolvent carrying on business under the old name has been added, as in section 155(b) of the English Act.

(iv) The provision in section 72(2) of the Provincial Act to the effect that where the offence under this section has been committed, the court may send the cases for trial to the nearest Magistrate, etc., after preliminary inquiry, has been omitted. This will be taken care of by the separate clause corresponding to section '70, Provincial Act'.

Clause 126 This is new. It is considered necessary to make an- express provision to the effect that a prosecution for offences under the new law should not be instituted except by complaint of the (Insolvency) court, or by its order. It is also considered, that the requirement should continue to apply even after the insolvency proceedings have terminated.

Clause 127 This follows section 70 of the Provincial Act and section 104 of the Presidency Act³. A reference to the new section regarding offences proposed to be added has been made'.

\ 'Regina v. Fisher, (1963) 2 W.L.R. II37.

'See clause 127.

'The Presidency Act was amended as a result of the recommendation of the Civil Justice Committee, (1925), Report, page 233, para. 16.

'See clause 120, et seq.

One object of the procedure _provided in section 1.04 of the Presidency Act is to avoid the necessity of trial by the Insolvency Judge; the other object is to bring the procedure in conformity with section 476, Cr. P. C1.

Clause 128 This is based on section 71 of the Provincial Act (which corresponds to section 105 of the Presidency Act).

In the Provincial Act, the offence of an undischarged insolvent obtaining credit is not mentioned in this section, while the Presidency Act mentions it. It is considered that prosecution for such offences should not be barred by the discharge of the insolvent in the meantime. The clause has, therefore, been altered by adding a reference to the clause" dealing with that offence.

References to other offences proposed to be added" have also been added.

Clause 129

1. This is mainly based on section 73, Provincial Act (which corresponds to section 103A, Presidency Act).

2. The existing disqualifications extend only to appointment, etc., as a Magistrate. It is, however, considered that insolvents should be disqualified from holding civil judicial posts also. The necessary change has been made.

3. Portions relating to membership of local authority have been omitted. The matter should be left to be dealt with by State legislation as it falls within the State List.

4. The provision for appeal has been retained (though not found in the Presidency Act), as a useful provision⁴.

5. Following" section 9, Bankruptcy Act, 1890, a provision to the effect that the disqualification shall cease at the end of five years from discharge has been added. Further, c'the court has been given a power to specify a shorter period.

Clause 130 Sub-clause (1).--This corresponds to section 78 of the Provincial Act". (There is no corresponding provision in I) 'See Emperor v. Girish Chandra, A.I.R. 1929, Calcutta 777 (Buckland 'Clause 125.

'See clause 120, etc. 'As to appealable orders under the Presidency Act, see Mulla (1958), page 740, para. 785.

'See Williams, page 836, bottom, for the English provision, which is still in force.

846 .°As to need for the existing section, see Mulla (1958), page 797, para, xclusion of Limitation for suits by Receiver.

the Presidency Act, but it has been adopted as a useful provision.) It departs from the Provincial Act in two respects:--

(i) Not only sections 5 and 12 of the Limitation Act, but all sections have been made applicable. It is considered that there is no reason why only some should be mentioned.

(ii) Under the existing section, only decisions under section 4, Provincial Act, are deemed to be decrees. Instead of this, all appealable decisions will be deemed to be decrees.

Sub-clause (2).----Follows section 78(2) of the Provincial Act and section 101A of the Presidency Act. The wording in the Provincial Act is----"suit or application for execution", while the wording in the Presidency Act is "suit or other legal proceeding". The wording in the Presidency Act is more precise and comprehensive, and is in harmony with the wording in the provisions relating to grant of leave for suit. etc.--section 28 of the Provincial Act and section 17 of the Presidency Act. It has, therefore, been preferred.

There is one point to which attention might be invited. In the Report of the Law Commission on the Limitation Act, it has been suggested, that for a suit by the Official Receiver on behalf of the insolvent, a provision for exclusion of limitation of the period from petition to adjudication, etc., should be inserted.

This recommendation has already been implemented'.

Clause 131 This has been taken from section 124 of the Presidency Act. There is nothing corresponding to it in the Provincial Act, but there is no reason why it should not be incorporated.

Clause 132 This is taken from section 125 of the Presidency Act. It does not appear in the Provincial Act, but has been adopted, being a useful provision.

Clause 133 This has been adopted from the Presidency Act, section 116(1), as a useful provision, though there is no corresponding provision in the Provincial Act. The Word "in-

'The discussions on the Bill leading to the 1920 Act do not disclose the reasons for mentioning only section 4.

'Third Report (Limitation Act), page 20, para. 45. 'Third Report (Limitation Act), App. I, page 78, clause 14 (3), gives a draft also.

'See Limitation Act, 1963, section 15(3).

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serted" appears in the Presidency Act and has been retained. As an alternative the word "issued" can be used.

Clause 134 This deals with liability for misfeasance.

Section 82 of the Presidency Act provides that the court shall cause the Official Assignee to account for any misfeasance, etc., and may require him to make good any loss which the insolvent's estate may have sustained by reason thereof. It is considered, however, that the amendment made by the State of Bombay to this section makes a provision which is better. Under that amendment, the State Government is liable to make good all sums which the Official Assignee is liable to discharge. Thus, (i) the positive proposition making the State Government liable is enacted, and (ii) a negative proposition is enacted, namely, that where neither the Official Assignee nor his officers have contributed to the liability and none of them is guilty of negligence, then neither the Official Assignee nor the State Government is liable.

Incidentally, the adoption of this provision will bring the law in symmetry with similar provisions in the other statutes dealing with corporation sole. See, for example, section 39 of the Administrator-General's Act, 1913, now section 38, Administrators-General Act, 1963.

The words "revenues of" (the State Government) used in the Bombay amendment have not been adopted, in view of the constitutional provisions relating to the Consolidated Fund.

It is considered unnecessary to add sections 82A, 82B and 82C inserted by the Bengal Amendment or sections 83 and 82A and 82B inserted by the Madras Amendment, where the State Government is to bear the Official Assignee's expenses of litigation, etc., where the estate is insolvent to bear the expenses. Except in so far as the matter falls under the clause as adopted, the revenue of the State need not be made liable for costs of such proceedings.

Clause 135 This is based upon section 118 of the Presidency Act. There is no similar section in the Provincial Act. It has been adopted as useful.

Clause 136

1. This mainly follows, section 120 of the Presidency Act.

'See article 266(1) of the Constitution.

'The Official Assignee can protect himself by obtaining relief from creditors. See Mulla (1958), page 804, para. 849. mg m emmty mm

2. State debts.--A question which has been discussed under this topic (under the Provincial Act) is whether section, 31 (protection) applies to Crown debts. Two principles are well-settled. (i) The Crown is not bound by any statute unless it is so expressly provided by the statute. (ii) Crown debts have priority. Section 44(1) of the Provincial Act and section 45(1) of the Presidency Act provide that the order of discharge does not release the insolvent from any debt due to the Government, and section 61 of the Provincial Act enacts that debts due to the Government shall be paid in priority. These provisions show that the Government is to be subject to the Act, for otherwise there was no need for such provisions. Section 120 of the Presidency Act provides that certain provisions of the

Act are binding on the Government, and priority of debts and effect of discharge are among them. That means that the Act is not generally applicable to Crown debts. (There is nothing corresponding to section 120 in the Provincial Act.) In this state of the law, the section for protection may not, in the Presidency towns, apply to debts due to the State. It is, however, considered that the provision for protection should apply to them; and hence the clause under discussion (corresponding to section 120, Presidency Act) enlarges its scope so as to include remedies against the person of the insolvent'. ' Section 137 Section 82 of the Provincial Act provides that nothing in the Act shall affect the Presidency Act or apply to cases to which Chapter IV of the Dekhan Agriculturists Relief Act, 1879_ is applicable. The Dekhan Agriculturists, etc., Act was repealed in the erstwhile State of Bombay by the Bombay Agricultural Debtors Relief Act, 1947 (Bombay Act 28 of 1947), section 56 as amended. Hence very little remains of the Act when the provisions peculiar to the (old) State of Bombay are omitted. However, since there are laws relating to the relief of agricultural indebtedness in almost all the States (see entry 30 of the State List in the Seventh Schedule to the Constitution), it is desirable to save the provisions of such laws. Necessary changes have been made accordingly.

The omission of the reference' to the Presidency Act need not be explained.

Clause 138 General.--This is based on section 79 of the Provincial Act, and sections 112, 113 and 114 of the Presidency Act.

'_See Aswin Kumar v. Dominion of India, A.I.R. 1952. Cal. 251 (Harries C. I.) and Akyab v. Raw Tun U, I.L.R. 5 Rangoon 806 ; A.I.R. 1928 Rangoon 81, 83.

fM1_11la (1958), page 304, middle, takes the view that section 31, Provincial Act, Applies to State debts.

Supreme Court.--It is considered that, in order to achieve uniformity in the rules, the rules should be made by the Supreme Court (after consulting the High Courts) instead of by the High Courts as at present. Compare section 643, Companies Act. Necessary change has been proposed.' Sub-clause (1).--Needs no further comments.

Sub-clause (2).----Consequential changes have been made.

Section 79(2) (c) of the Provincial Act speaks of the procedure to be followed where the debtor is a firm. As to such cases, a separate clause contains a specific provision, and hence the language of section 112 (2).(C), Presidency Act----"conduct of proceedings under this Act in the name of a firm"---will suffice and has been adopted?

As a provision for giving insolvency notice has been addedz', power has been given to make rules as to the form and manner of giving such notice. Compare section 79(2) (aa) of the Provincial Act as amended in Bombay by Bombay Act 15 of 1939. Power to make rules regarding costs of maintaining the debtor in prison is added".

Sub-clause (3).----Follows modern legislative practice, by omitting the words "as if enacted in this Act", etc. Sub-clause (4).--Compare section 643(3), Companies Act, saving existing rules.

Clause 139 This is a repeal clause. It has been considered desirable to repeal local Amending Acts also, expressly.

Elaborate savings provisions for old insolvencies, as well as transitional provisions, have been considered necessary and are embodied in the clause.

First Schedule

1. Deals with procedure at meetings and follows the First Schedule to the Presidency Act. There are no such detailed provisions in the Provincial Act.

2. In rule 8, the words "any meeting" have been replaced by "every meeting of creditors", for precision.

3. In rule 4(1), the period of notice is raised from 3 to 7 days, as the existing period is rather short.

4. In rule 12, for "security", the words "in respect of any security" are substituted, for precision.

'Clause 108.

'This is thus consequential on clause 108.

'See. clause 3(3).

. 'This is at present dealt with in section 76, Provincial Act. It is considered that it may be left to rules.

Section 33 (3), EA.

Second Schedule General.--This is based on the Presidency Act, Second Schedule. Contrast section 33(1), main para, Provincial Act. Under that section, it is the court that has to frame the Schedule. Under section 80(l)(b) of that Act, that is a matter which can be delegated to the Official Receiver, in which case it is he who has to decide whether the debt should be included in the Schedule or not, his decision being subject to appeal to the court under section 68 of the Act. The question whether, now that the appointment of an Official Receiver is obligatory, the work of framing the Schedule should not be entrusted in the first instance to him has been considered and it has been decided to adopt the scheme in the Presidency Act.

Rules 1--27.--Follow the Presidency Act. Rule 5 is elaborated as in the English Act.

Rule 28.----FolloWs section 33(3), Provincial Act, to some extent. There is no such provision' in the Presi- dency Act.

Section 33(3) of the Provincial Act provides that a creditor may tender proof of his debt at any time before the discharge of the insolvent. On the language of this section, the question has been discus.sed whether a credi- tor is entitled to prove his claim after an order of dis- charge has been made. One view is, that so long as there are assets available for distribution in an insolvency, the creditor is entitled to come in and prove his debt, that he cannot disturb dividends already made, but that he is entitled to come in and prove his debt, that he cannot dis- turb dividends already made, but that he is entitled to participate in the future dividends and in the distribution of these dividends he is entitled to be paid an amount equal to what had been paid to the other creditors who had proved their debts. That is the law as laid down in the English courts"-', and is the View taken in Sivasubmr mania Pillai v. The ethiappa Pillat' and Arjun Das V. Marchi Telinee". The contrary view has been taken by the Allahabad High Court in Jagdamba Pcmde v. Ram Khelawan Upadiyai and by the Rangoon High Court in Bank of Chettinad Ltd. V. Ko Tin". and is based on the language of section 64, Provincial Act. A creditor should 'See Williams, page 558. v 2As to practice in Presidency towns, see Mulla (1958), page 416, and para. 446 and also page 697, para. 707.

3Vz'de the judgment of Vaughan, Williams, L.]. in Re Mo A/Iurdo, 2 Ch. 684, 699.

"Muila (1958), page 697.

5(1924) I.L.R. 47 Mad. 120 ; A.I.R. 1924 Mad. I63. °I.L.R. (1937) I Cal. 127 ,- A.I.R. I936 Cal. 434. 7I.L.R. I942 All. 848.

3I.L.R. 14 Rang. 529 ; A.I.R. 1936 Rang. 393.

(I902) be allowed to prove the debt and share in the distribution so long as there are any assets remaining to be distributed. It is only when a □hal dividend has been declared that his right must be held to cease. To make this clear be- yond all controversy, for the Words "before the discharge of the insolvent", words referring to the declaration of the □hal dividend have been substituted.

Section 33(3), Provincial Act, speaks of notice to the insolvent; but the insolvent should not have a right to con- test the proof. That part has, therefore, been removed. The Of□ial Assignee is the proper person to be heard? .

Third Schedule

1. This deals with orders which are appealable to the High Courts, and follows the Schedule to the Provincial Act. There is no such Schedule in the Presidency Act, which is confined to High Courts.

2. Decision of a dispute as to whether a person suin- moned is indebted, etc., to the insolvent or is in possession of property of the insolvent is made appealable, as such decisions decide rights of third parties.

'Cf. recommendation of the Civil Justice Committee (1925), Chapter 14, para. 21.

APPENDIX [11 COMPARATIVE TABLES TABLE A Showing the provisions in the Provincial Insolvency Act, 1920, and the corresponding provision, if any, in Appendix 1.

Provision in the Provincial Insolvency Corresponding Act, 1920 provision in Appendix I 1 2 Section I, P.A. 1 Section 2 (1)(a), p£1rt,-----P.A. " creditor" . . 2, part Section 2 (I)(a), part, --P.A. " debt" . . 2, part Section 2 (1)(a), part, w--P.A. "debtor" . . 2, part Section 2 (I)(b),----P.A. "District Court" . . 2. part Section 2 (I)(c) »P.A. " prescribed " . . 2. part Section 2 (1)(d) «--P.A. " property " . . 2. part Section 2 (1)(c', ~P.A. " secured creditor " . . 2. part Section 2 (I)(f) ~P.A. " Transfer of property" . 2. part Section 2 (2), P.A. 2, part Section 3 (1), RA. . . . , . 97 (1) Section 3 (2), P.A. 97 (2.) Section 4 (I), P.A. 99 (1). main para. Section 4 (2), P.A. 99 (2) Section 4 (3), P.A. Omittedl Section 5 (1), RA. 100(1) 'For reasons, see notes to clause 99.

Provincial Provision in the Provincial Insolvency Corresponding Act, 1920 provision in Appendix I

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Section 5 (2), P.A. 100 (2) Section 6, main para., P.A. . 3 (1) Section 6, Explanation, P.A. 3, Explanation Section 7, P.A. 4 Section 8, P.A. 106 Section 9 (I), P.A. 5 (1) Section 9 (2), P.A. 5 (2) Section 10, P.A. 6 Section II, main para. P.A. 98, part Section II, proviso, P.A. 98, part Section 12, P.A. 8 Section 13(1), P.A. 7, part Section 13(2), P.A. 7, part Section 14, P.A. 103 Section 15, P.A. 104(1) Section 16, P.A. 105 Section 17, P.A. II2 Section 18, P.A. 10, part Section 19, P.A. . IO, part Section 20, P.A. 9 Section 21, P.A. . 12 Section 22, part, P.A. 14(1) Section 22, part, P.A. 14 (2) 42 M of Law--14.

Provincial Provision in the Provincial Insolvency Corresponding Act, 1920 provision in Appendix I I 2 -- -

Section 22, part, P.A. . 14(3) Section 23, P.A. II Section 24(1), P.A. 15 (1) Section 24(2), P.A. Omittedl Section 24 (3), P.A. Omitted' Section 24(4), P.A. Omitted' Section 25(1), P.A. 16(1) Section 25 (2.), P.A. 17(1) Section 26, P.A. (Award of Compensation)' Omitted' Section 27 (I), part, P.A. 18 (1), part Section 27 (1), part, P.A. 16(2) Section 27(1), part, P.A. 17(2) Section 27(1), part, P.A. 18(2) Section 27 (2), P.A. 18(2) Section 28 (I), P.A. 14 (4) Section 28 (2), part, P.A. 19, part Section 28 (2), part, P.A. 48(2), part Section 28 (3), P.A. 51 Section 28 (4), P.A. 48(2), part 'For reasons, see notes to clause 15.

"Section 26, P.A., is omitted, as it is considered that the matter would be covered by the general provision applying the Civil Procedure Code.

1922.

See s. 35A, C.P.C., inserted in Provincial Provision in the Provincial Insolvency Corresponding Act, 1920 pI'oV1S10I1 in Appendix I 1 2 _ Section 28 (5), P.A. 48 (1) Section 28 (6), P.A. 19, part Section

28 (7), P.A. 23 Section 28A, P.A. 48 (2), part Section 29, P.A. . 20(3) Section 30, P.A. 22 Section 31, P.A. 24 Section 32, P.A. 25 Section 33 (1), main para., P.A. . 47 Section 33 (1), proviso, P.A. 44 (4), part Section 33(2), P.A. Omitted' Section 33 (3), P.A. Second Schedule, rule 28 Section 34(1), part, P.A. 44 (1) Section 34 (1), part, P.A. 44(4), part Section 34(2), P.A. 44 (3) Section 35, part, P.A. 30(1) Section 35, part, P.A. 30(2) Section 35, part, P.A. 30(3) Section 36, P.A. 31 Section 37 (1), P.A. 32 (1) Section 37 (2), P.A. 32(2) Section 38 (I), P.A. 33(1) 'See notes to clause 47.

Provincial Provision in the Provincial Insolvency Act, 1920 Corresponding provision in Appendix I
Section 38 (2), part, P.A.

Section 38 (2), part, P.A.

Section 38 (3), PA.

Section 38(4), part, P.A.

Section 38 (4), part, P.A.

Section 38(5), P.A.

Section 38 (6), PA.

Section 38 (7), RA.

Section 39, RA. .

Section 40, earlier part, P.A.

Section 40, latter part, P.A.

Section 41 (1), PA.

Section 41 (2), P.A.

Section 42(1), part, P.A.

Section 42(1), part, P.A.

Section 42 (2), PA.

Section 42 (3), P.A.

Section 43 (1), RA.

Section 43 (2), RA.

Section 44(1), P.A.

Section 44 (2), RA.

Section 44 (3), PA.

33(2) 33 (4) 33 (3) 34 (4) 34 (5) 34 (6) 34 (7) 34 (8) 35 (I) 36 (I) 36 (2) 37 (I) 37 (2) 38 (I) 38 (2) 38 (3) 37 (3) Omitted 43 (I) 43 (2) 43 (4) notes to clause 39.

Provincial Provision in the Provincial Insolvency Corresponding Act, 1920 provision in Appendix I
 " " -7" ' 2 Section 45, P.A. ' Second Schedule, rule 24 Section 46, P.A. 45 Section 47
 (I), P.A. Second Schedule, rule 9 Section 47 (2), P.A. Second Schedule, rule 10 Section
 47(3), P.A. Second Schedule, rule II Section 47 (4), P.A. Second Schedule, rule 12
 Section 47 (5), P.A. Second Schedule, rule 15 Section 47 (6), P.A. Second Schedule,
 rule 16 Section 48, P.A. Second Schedule, rule 23 Section 49 (I), P.A. Second Schedule,
 rule 2 Section 49 (2), part, P.A. Second Schedule, rules 4 and 5 Section 50, part, P.A.
 Second Schedule, rules 26-27 Section 51, P.A. 52 Section 52, P.A. . 53 Section 53, P.A.
 54 Section 54, P.A. 55 Section 54A, P.A. 56 Section 55, P.A. 57 Section 56(1),
 P.A. Omitted as _ unnecessary Section 56(2), P.A. Omitted as . unnecessary Section 56
 (3), P.A. 60(2) Section 56 (4), P.A. Omitted as unnecessary Provincial Provision in the
 Provincial Insolvency' Corresponding Act, 1920 provision in Appendix I I 2 Section 56(5), P.A.
 . Omitted as unnecessary Section 57(1), P.A. 88, part. Section 57(2), P.A. Omitted as ,
 gmmeccessary Section 57(3), P.A. Omitted as unnecessary Section 57(4), P.A. Omitted
 as unnecessary Section 58, P.A. Omitted as unnecessary Section 59, P.A. 91, part
 Section 59A(1), P.A. 70, part Section 59A(2), P.A. 70, part Section 59A(3), P.A.
 70, part Section 60, P.A. Omitted 61, P.A. 72 Section 62, P.A. 75 Section 63, P.A. 76 Section
 64, earlier part, P.A. 77(1) Section 64, latter part, PA.' 77 (2) Section 65, P.A. 78 Section 66, RA. 79
 Section 67, RA. 80 Section 67A, P.A.' 82 Section 68, P.A. 115 'Secfon 60 Provincial Insolvency Act _ .
 _ of 'civil P';-ocedure, 1908, with Wh1ch'lt 13 linked up.

has been omitted, as section 68 of the Code has been repealed.

Provincial Provision in the Provincial Insolvency Corresponding Act, 1920 ' provision in Appendix I
 _____ I _ 2 _____ Section 69, RA. 119 Section 70, P.A. 127 Section 71, RA. . .
 . . . 128 Section 72(1), P.A. 125 Section 72(2), P.A. Omitted' Section 73, P.A. 129
 Section 74, opening lines, P.A. 83(1), opening Section 74(1), P.A. Om1iil::i2 Section
 74(ii), P.A. 83(I)(i) Section 74(iii), P.A. Omitted? Section 74(iz2), P.A.'
 83(1)(iz'i) Section 74(2)), P.A. 83(1)(z'v) Section 74(2):'), P.A. 83 (vii) Section 74,
 proviso, P.A. 83 (2) Section 75, P.A. 116 Section 76, P.A. (Costs) Omitted" Section
 77, P.A. 113 Section 78(1), P.A. 130(1) Section 78(2), P.A. 130(2) 'See notes to
 clause 125.

'See notes to clause 83.

"Section 76, P.A., is omitted, as it is considered that the al ' ' 1 ' c.1>.c. would succeed. (See s. 35, c.1>.c.) e gem pmmon app ymg Provincial Provision in the Provincial Insolvency Section 79, P.A.

Section 80(1), P.A.

Section 80(2), P.A.

Section 81, RA.

Section 82, RA.

Section 83, P.A.

First Schedule, P.A.

Act, 1920 Second Schedule, P.A.

Corresponding provision in Appendix I Omitted?' Omitted as un-

necessary Omitted as unnecessary Third Schedule Omitted?

1For reasons, See notes to clause 96.

31:1 consequence of omission of section 81, Provincial Act.

TABLE B Showing the provz'sz'on in the Presidency-towns Insolvency Act, 1909, and the corresponding provision, zf any, 271 Appendix I.

Provision in the Presidency-towns Insolvency Correcoiiding Act, 1909 provision in Appendix I 1 2
Section 1, P.T.A. 1 Section 2, P.T.A.

L) Section 3, P.T.A. 97 Section 4, P.T.A. 110(1), part Section 5, P.T.A. 110(1),
part Section 6(1), P.T.A. 110(2) Section 6(2), P.T.A. 110(3) Section 6(3), P.T.A.
110(4) Section 7, main para., P.T.A. 99 (1), main para.

Section 7, proviso, P.T.A. 99(1), second proviso.

Section 8(1), P.T.A. 119 Section 8(2) (a), P.T.A. 117, part Section 8(2) (6), P.T.A.'
117, part Section 9, main para., P.T.A. 3(1) Section 9, Exp1., P.T.A. 3, Expl. Section IO,
P.T.A. 4 Section 11, P.T.A. 98, part Section 12 (1), P.T.A. , , 5(1) Section 12(2), P.T.A. . .
. . . 5(2) Presidency Provision in the Presidency-towns. Insolvency Corresponding Act, 1909
provision in Appendix I 1 2 .Section 13(1), P.T.A. 8 :Section 13(2), P.T.A. 15, part Section 13(3),

P.T.A. Omitted' Section 13(4), P.T.A. 16(1) Section 13(5), P.T.A. 16(2) Section 13(6), P.T.A. 16(3) Section 13 (7), P.T.A. 16 (4) Section 13(8), P.T.A. 103, part Section 14, P.T.A. 6 Section 15(1), part, P.T.A. . 15, part Section 15(1), part, P.T.A. . 7(1) Section 15(1), part, P.T.A. . 17(2) Section 15(2), P.T.A. 103, part Section 15(3), P.T.A. 14(1), part Section 16, P.T.A. 9 Section 17, main para., P.T.A. 19, part Section 17, proviso, P.T.A. 19, part Section 18(1), P.T.A. 20, part Section 18 (2), P.T.A. 20 (2), part Section 18 (3), P.T.A. 20, part Section 18--A, P.T.A. . 102 lsee notes to clause 10.

Presidency Provision in the Presidency-towns Insolvency Corresponding Act, 1909 provision in Appendix I I 2 Section 19, P.T.A. 95 .Section 20, P.T.A. 22 Section 21(1), P.T.A. . . . 30(I)(2)(3) Section 21(2), P.T.A. . 30(5) Section 22, P.T.A. 31 Section 23 (1), P.T.A. . 32(1) Section 23(2), P.T.A. 32 (6) Section 23(3), P.T.A. 32(2) Section 24(1), P.T.A. 27 (1) Section 24(2), P.T.A. 27(2) Section 24(3), P.T.A. 27 (3) Section 24(4), P.T.A. 27 (4) .Section 25(1) to (4), P.T.A. 24 Section 25(5); P.T.A. Omittedl Section 26, P.T.A. 28 (Section 27, P.T.A. 29 Section 28(1), P.T.A. 33(1), part Section 28(2), P.T.A.' 33 (2) and 33(4) Section 28(3), P.T.A. 33 (3) Section 28(4), P.T.A. 33 (5) Section 29(1), P.T.A. 34 (1) Section 29(2), P.T.A., part . 34 (2) 'For reasons see notes to clause 24.

Presidency Provision in the Presidency--towns Insolvency Corres_p_ondi_ng "" '9"9 §'§§§i§ii'\$'x"i 1-- -- 2 Section 29(2), part, P.T.A. . 34(3) Section 29(3), P.T.A. 34(4) Section 29(4), P.T.A. 34(5) Section 29(5), P.T.A. 34(6) Section 29(6), P.T.A. 34(7) Section 29(7), P.T.A. 34(8) Section 30(1), P.T.A. 35(1) Section 30(2), P.T.A. 35(2) Section 31(1), P.T.A. 36(1) Section 31(2), P.T.A. 36(2) Section 32, P.T.A. 35(3) Section 33(1), P.T.A. 14(3), part Section 33(2), P.T.A. 14(3), part Section 33(3), P.T.A. 14(4) Section 33(4), P.T.A. 119 Section 34(1), P.T.A. 25 Section 34(2), P.T.A. Omittedl Section 35, P.T.A. 26 Section 36(1), P.T.A. 70, part Section 36(2), P.T.A. 70(3), part Section 36(3), P.T.A. 70(4), part Section 36(4), P.T.A. 70(6), part 'For reasons see notes to clause 25.

Presidency Provision in the Presidency--towns Insolvency Corre_spond_ing Act, 1909 provision In Appendix I ____ I 2 Section 36 (5), P.T.A. 70 (5), part Section 36 (6), P.T.A.

Section 36 (7), P.T.A.

Section 37, P.T.A.

Section 38 (1), P.T.A.

Section 38 (2), P.T.A.

Section 39(1), part, P.T.A.

Section 39 (2), part, P.T.A.

Section 39(2), part, P.T.A.

Section 39 (2), part, P.T.A.

Section 39 (3), P.T.A.

Section 39 (4), P.T.A.

Section 40, P.T.A.

Section 41, part, P.T.A.

Section 41, part (z'.e., last II words), P.T.A., read with section 23(2) (As to re-commitment).

Section 42, P.T.A.

Section 43, P.T.A.

Section 44, P.T.A.

Section 45(1), P.T.A.' Section 45(2), P.T.A. .

Section 45(3), P.T.A.' 70 (8), part 70 (9), pm 37 (1), part 37 (2) 38 (1), part 38(2), part 38 (1), part 38(2), part 37 (3) 38 (3) 37 (1), part Covered' by clause 39 4 I 43(1) 43(2) 43 (3) 1See notes to clause 39.

Presidency Provision in the Presidency-towns Insolvency Corresponding Act, 1909 provision in Appendix I 1 2 Section 45(4), P.T.A. 43 (4) Section 46(1), P.T.A.) Section 46(2), P.T.A.

Section 46(3), P.T.A. 44 Section 46(4), P.T.A.

Section 46, Exp1., P.T.A.

Section 47, main para , P.T.A.

Section 47, proviso, P.T.A. . }45 Section 48, P.T.A. 47 Section 49, P.T.A. 72 Section 50, P.T.A. 73 Section 51, P.T.A. 23 Section 52(1), P.T.A. 48 (1) Section 52 (2) (a), earlier part, P.T.A. 48 (2)(a) Section 52 (2)(a), latter part, P.T.A. 48 (2)(c) Section 52 (2)(b), P.T.A. 48 (2)(b) Section 52 (2) (c), P.T.A. 51 Section 52 (2), 1st proviso, P .T.A. Omitted. Section 52 (2), 2nd proviso, P.T.A. Omitted. Section 53, P.T.A. 52 Section 54, P.T.A. 53 Section 55, P.T.A. 54 Presidency ..._. Provision in the Presidency-towns Insolvency Act, 1909 Corresponding provision in Appendix I Section 56, P.T.A.

Section 57: P.T.A.

Section 58(1), P.T.A.

Section 58(2), P.T.A.

Section 58(3), P.T.A.

Section 58(4), P.T.A.

Section 58(5), P.T.A.

Section 59, P.T.A.

Section 60, P.T.A.

Section 61, P.T.A.

Section 62, P.T.A.

Section 63, P.T.A.

Section 64, P.T.A.

Section 65, P.T.A.

Section 66, P.T.A.

Section 67, P.T.A.

Section 68(1), P.T.A.

Section 68(2), P.T.A.

Section 69, P.T.A.

Section 70, P.T.A.

Section 71, P.T.A.

Section 72, P.T.A.

60(1) 60(2) 60(3) 60(4) 60(5) Covered by clauses 88-89 91(1), part 91(4) Presidency Provision in the Presidenc_v--towns Insolvency Act, 1909 Section 73(1), P.T.A.

Section 73(2), P.T.A.

Section 74, P.T.A.

Section 75, P.T.A.

Section 76, P.T.A.

Section 77(1), part, P.T.A. .

'Section 77(1), part, P.T.A. .

Section 77(1A)(2)(3), P.T.A. .

Section 78, P.T.A.

Section 79(1), P.T.A.

Section 79(2)(a), part, P.T.A.

Section 79(2)(a), part, P.T.A.

Section 79(2)(b), P.T.A.

Section 79(2)(c), P.T.A.

Section 80, P.T.A.

Section 81, P.T.A.

Section 82, P.T.A.

Section 83, part, P.T.A.

Section 83, part, P.T.A.

Section 84, P.T.A.

Section 85(2)(1), P.T.A.

Corresponding provision in Appendix I 77(1), part 77(2) 88(I)(a) 88(I)(b) Omitted' 9I, part 91, part 91, part 91, part 91, part 91, part Omitted as un --

necessary I34 89 (I) 89 (2) Omitted as un-

necessary 93: Part 'See notes to clause 88.

Presidency Provision in the Presidency-towns Insolvency Corresponding Act, 1909 pI'oV1Slon in Appendix I 1 - 2 . _ Section 85(3)(4), P.T.A. 93, part Section 86, P.T.A. 115 Section 87, P.T.A. 94 Section 88, P.T.A. 82, part Section 89, P.T.A. 82, part Section 90(1),

P.T.A. 100 Section 90(2), P.T.A. (Costs) Omitted' Section 90(3), P.T.A. Omitted' Section 90(4) to 90(7), P.T.A. 101 Section 91, P.T.A. 104(1) Section 92, P.T.A. 105 Section 93, P.T.A. ' 112 Section 94, P.T.A. 109 Section 95, P.T.A. 107 Section 96, P.T.A. 111 Section 97, P.T.A. 104(2) Section 98, P.T.A. 21 Section 99, P.T.A. 108 Section 100, P.T.A. 114 Section 101, part, P.T.A. 115 Section 101, part, P.T.A. 117(3)(4) 1 Section 90 (2), P. T. A., is omitted as it is considered that the general provisions as to procedure would suffice to cover costs also. .

'See notes to clause 15.

[illegible]

Io2, P.T.A.

io3, P.T.A.

103A, P.T.A.

104, P.T.A.

105, P.T.A.

106(1), opening lines, P.T.A. .

Io6(I)(a), P.T.A.

Io6(1)(b), P.T.A.

106(1)(c), P.T.A.

106(1)(a'), P.T.A.

106(1), proviso, P.T.A.

106(2), P.T.A.

107, P.T.A.

108, P.T.A.

109, P.T.A.

no, P.T.A.

111, P.T.A.

112, P.T.A.

113, P.T.A.

114, P.T.A.

130(2) 125(1) .119, part [29 83, opcnin g lines 83, part 83, part 83, part 83, part Omitted' 83(2) Io6 138, part 138, part 138, part 'See notes to ciause 83.

Presidency Provision in the Presidency-towns Insolvency Corre_s1_3onding Act, I909 p1'OV1S10n in Appendix I ' *1 2 Section 115, P.T.A. Omitted' Section 116(1), P.T.A. 133 Section 116(2), P.T.A. 22, part Section 117, P.T.A. Omitted as unnecessary Section 118, P.T.A. 135 Section 119, P.T.A. Omitted as unnecessary Section 120, P.T.A. I36 Section 121, P.T.A. Omitted as unnecessary Section 12.2, P.T.A. 81(1) Section 123, P.T.A. 81(2) Section 124, P.T.A. 131 Section 125, P.T.A. 132 Section 126, P.T.A. I13 Section 127, P.T.A. Omitted as unnecessary First Schedule, P.T.A.

Second Schedule, P.T.A.

First Schedule Second Schedule 'Section 115, P. T. A., relates to stamp and appears to fall mostly under State List, entry 63.

APPENDIX IV Number of undischarged insolvents under the Presz'dency--zowns Insolvency Act, 1909 in the three High Courts TABLE NO. I . --BOMBAY Number of undis-

Adjudicated in Total charged insolvents Remarks Nos. under the P.T.I.

Act as on 3 1-12-62 D R. S 1935 - - - - 794 5 '7 I 4 1936 8 53 7 -- A 7 1937 61 1 7 1 -- 6 I938 - - - ~ 434 7 ' 2 5 1939 292 5 -- 1 4 1940 342 5 3 2 --

I941 296 3 2 I ~-

I942 188 I 1 -- --

1943 I45 3 2 1 A 1944 1 52 1 1 -- --

1945 145 1 - 1 --

1946 139 4 -- 4 --

1947 177 6 3 3 --

1948 144 3 -- 3 ---

1949 139 5 1 3 --

1950 1 53 3 -- 3 --

1951 128 4 2 1 ---

1952 176 6 3 1 --

1953 165 7 I 3 1 1954 160 5 3 I 1 1955 169 2 1 r a 1956 13 3 9 1 -- --

1957 - - - - I 43 7 7 4 I 1958 107 2 -- 1 1 1959 99 20 -- 3 2 1960 135 48 -- 2 2 1961 1 19 57 ~ - - - -

1962 134 98 - - - - -

D--Insolvents dead after the passing of the order of adjudication.

R--Insolvents' discharge refused, but not applied for renewal of discharge under Section 42(1) of the said Act.

S----Discharge suspended until a dividend of not less than twenty-five paise in the rupee has been paid to the creditors.

T A B L E N o . 2 . - - C A L C U T T A " " 1 3 0 1 / \ I Z I 7 T o t a l
9r'€r2.1\$§*+'ér"9r'<?°3r\$9»-2%-'R.3§'.2%'u?°-9»9u°»E»%' uI:1I:j1ir;1§)e;rgc;t;1Year
29a~2:sçsç9.929.29.2=2:e:29a*99'§esç insolvents ---- ----

under the PtesidenIcy- Nggngier 60 31 14 I4 5 13 13 8 17 14 21 19 13 7 19 15 22 21 15 9 20 24 232
owns n-- a)u -

Solvency cated Actason 31-12-62Numjbe.r573121 13351417755121923

----- remammg 115 undischar-

ged TABLE No. 3.--MADRAS Adjudicated in 1960 1961 I 1962 Total J ' I 1940 to I956
I957"I958'I959 Number of undischarged insolvents under the Nil 2 4 19 32 64 82 203 Presidency-

towns In-

solvency Act (Act III of 1909) as on 31-12-1962 GMGIPND--TSS--42 M of Law (1979)--9-I-65--I,850