



LAW COMMISSION OF INDIA

TWENTY-SIXTH REPORT REPORT ON INSOLVENCY LAWS

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**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 19th 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, 1964.

5. 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,
J. L. KAPUR.

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REPORT ON INSOLVENCY LAWS

1. The Law Commission has taken up the revision of the law of insolvency on a reference made to it by the Government of India.¹ Genesis of Report.

2. The law of insolvency in this country, like most other laws, owes its origin to English law. Before the British came to this country there was no indigenous law of insolvency in India². The common law in England did not deal with the subject of bankruptcy. The Bankruptcy Law was purely a creature of Statute³. The earlier Statutes passed in the 16th century and subsequent years contained 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. Historical Background.

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 its duration up to 1848 and also made certain amendments therein⁵.

¹Ministry of Law, under orders in File No. 22-V-50-L of the Legislative Section.

²Mulla, Law of Insolvency in India (1958), pages 1, 2, para. 2.

³Cf. Jowitt, Dictionary of English Law (1959) Vol. I, page 205, right.

⁴See Holdsworth, H.E.L. (1938), Vol. XI, pages 445-446 and Vol. VIII, pages 229-245.

⁵See 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 described¹⁻² as the "germ and nothing more than a germ of an insolvency law" and this criticism was regarded as applicable³ 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

¹See 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.

²See also Mulla (1958), page 19.

³See, *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:

Consolidation
of the two
Insolvency
Acts into
one.

"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.

Objects of
Insolvency
Law.

6. Under the Proviso to section 3(1) in the Provincial Act, the State Government is empowered to authorise subordinate 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

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—

- (i) providing an appeal direct to the High Court, and
- (ii) placing a limitation on the jurisdiction of subordinate courts.

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

- (i) 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 Court¹. 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. 7,917-8-0 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

¹*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. 3,052, 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.J. 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

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 by inflating or undervaluing their debts 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 debtor 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 complications.

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

¹See *Gulabrao v. Yadavrao*, (1958) 60 Bom. L.R. 505.

make an order that the insolvent's estate be administered in a summary manner¹. 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 administered 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 determining the jurisdiction of subordinate courts, the petitioning 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, recommend² 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:—

Insolvency jurisdiction of High Courts in Presidency Towns.

(i) the distinction in the administration of insolvency law between the Presidency-towns and the

¹Presidency Act, s. 106 and Provincial Act, s. 74.

²See Appendix I, clauses 97 and 116.

mo-fussil, 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 Courts² in relation to these towns.

Official
Assignees
and Official
Receivers.

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.³ 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 different⁴. Section 57 of that Act provides for the appointment of an Official Receiver. Such appointment is not

¹14th Report, Vol. I, page 511, para. 3.

²See Appendix I, clause 97.

³See s. 77, Presidency Act.

⁴See sections 56, 57, 58, Provincial Act.

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 mofussil to that obtaining in the Presidency-towns, and it would also facilitate the administration of estates in insolvency².

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 insolvent³:—

Jurisdiction
of Insolvency
Courts.

(i) transfers of property by the bankrupt made between the commencement of the bankruptcy and Claims arising in bankruptcy.

¹14th Report, Vol. I, page 512, para. 6 and page 514, para. 8.

²See Appendix I, clause 88.

³*Cf.* Mulla, Law of Insolvency in India, (1958), page 40.

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

(ii) 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;

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

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

(v) 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 Court¹, the ordinary civil courts had also jurisdiction over the same². 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 Court³. 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

¹Vide the observations of James L. J. in *ex parte Armitage*, 17 Ch. D. 13.

²Vide *Sharp v. McHenry*, 55 L.T. 747 and *Re Evelyn*, (1894) 2 Q.B. 302.

³Vide *Ellis v. Silber*, L. R. 8 Ch. App. 83 ; *Ex parte Dickin*, 8 Ch. D. 377 ; *Ex parte Musgrave*, 10 Ch. D. 94 ; *Ex parte Brown*, 11 Ch. D. 148 ; *Ex parte Fletcher*, 9 Ch. D. 381 ; *Ex parte Davies*, 19 Ch. D. 86.

⁴*Jnanendra Bala Devi v. Official Assignee*, I.L.R. 54 Cal. 251 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 Courts¹. 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 Act² 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 Court³ 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 case⁴ 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

¹*Naginlal Chunilal v. Official Assignee*, I.L.R. 35 Bom. 473 ; *Doraiappa Iyer v. Official Assignee*, 42 M.L.J. 41 ; *Official Assignee Madras v Official Assignee, Rangoon*, A.I.R. 1925 Mad. 141.

²Act 11 of 1927.

³*Official Assignee, Madras v. Narasimha Mudaliar*, I.L.R. 52 Mad. 717.

⁴*Chinnappa v. Official Assignee*, (1932) I.L.R. 55 Mad. 385 ; AIR 1932 Madras 167.

⁵*In re Balubhai Kallianchand*, A.I.R. 1942 Bom. 118 ; 44 Bom. L.R. 171 .

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*¹, and in the negative by the Calcutta High Court in *Nilmoni Chowdhury v. Durga Charan Chowdhury*². 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 Mulla³ 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 if small claims, not exceeding Rs. 5,000 in value against⁴ third parties are determined by the insolvency court.

Acts of
Insolvency.

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

¹*Bansidhar v. Kharagjit*, (1915), I.L.R. 37 All. 65.

²*Nilmoni Chowdhury v. Durga Charan Chowdhury*, (1918) 22 C.W.N. 702.

³Mulla, *Law of Insolvency in India*, (1958) page 24, para. 26.

⁴Appendix I, Clause 99.

under the decree or order and failure to do so amounts to an act of insolvency. It may be urged against such a provision, 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 1(1) (g) of the English Act has already been enacted both in the Presidency Act and in the Provincial Act¹. The Bombay amendment seems to have worked satisfactorily for about a quarter of a century and does not seem to have led to any abuse. In this connection reference may usefully be made to the recommendation made in an earlier report² of the Law Commission in the following terms:

“...the most effective way of instilling a healthy fear in the minds of dishonest judgment-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 amendment to the Presidency Towns Insolvency Act.”

We, therefore, recommend that the Bombay Amendment should form part of the general insolvency law in India.³

14. The Blagden Committee appointed to review the Bankruptcy Law in England has made far-reaching recommendations in respect of discharge of insolvents. The Committee has observed as follows⁴ :— Discharge.

“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 five 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, recommended⁵ that after the lapse of a period of two years from the conclusion of the public examination of an insolvent,

¹See the Bombay Insolvency Amendment Act, 1939 (15 of 1939).

²Third Report (Limitation Act) pp. 65-66, para. 171.

³See App. I, Clause 3(2).

⁴Report 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.

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 received¹ 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".

Relation
back.

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 23(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 re-iterated in section 28(7) of the Act of 1920.

17. The principle behind the doctrine of relation back is explained by Mulla as follows³ :—

"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

¹See 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 Act¹. The Bombay High Court in its objection made the following point² :—

“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 think³ 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 protected⁴.

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 Reputed ownership.

¹Mulla, Law of Insolvency in India, (1958) page 27, middle.

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

³See Appendix I, Clause 23.

⁴S. 57 of the Presidency Act and s. 55 of the Provincial Act.

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 nowadays give credit merely on the strength of the quantity of goods lying in the shop of the borrower. Mulla makes the following observations on the doctrine of reputed ownership:—

“The doctrine of reputed ownership has operated very harshly in several cases and has worked 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 India as a living clause the whole section should be recast. The section as it now stands is like a cheap Jack’s shop packed with a variety of clothes some of which are for mere show.”

In our opinion it is not possible to recast the clause without affecting the very fundamental principle on which the doctrine of reputed ownership is based. We, therefore, think that the better course would be to omit altogether from the new law the provisions relating to reputed ownership. We may point out, that the Blagden Committee has also recommended the abolition of the doctrine of reputed ownership². While omitting the provisions of reputed ownership³, we think that there should be some machinery by which persons who claim property in the possession of the insolvent may be able to establish their claim. We have, accordingly, added a new provision⁴ on the lines of section 50 of the Canadian Bankruptcy Act, which will enable a person claiming property in the possession of the insolvent, to lodge such claim before the Official 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 specified time, the property shall be deemed to have been relinquished in favour of the Official Assignee.

¹Mulla, Law of Insolvency in India, (1958) page 573, para. 578.

²Report of the Committee on Bankruptcy Law etc. Amendment (1957) Cmd. 221, page 37, para. 110.

³See Appendix I, clause 48.

⁴See Appendix I, clause 51.

19. In the case of a voluntary transfer, the burden of proving lack of consideration and good faith lies on the Official Assignee¹⁻⁶. In a Rangoon case under the Provincial Act, Page C.J. made the following observations⁷:—

Burden of Proof regarding voluntary transfers.

“There is no doubt that the effect of the ruling of the Judicial Committee (in 1931 P.C. 75 and 1934 P.C. 3) to the effect that in a proceeding under section 53 (Provincial Act), the onus lies upon the applicant to prove that the transfer was not made “in favour of a purchaser or an encumbrancer in good faith and for valuable consideration” has placed the Receivers and creditors in insolvency in a great difficulty. 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

¹*Official Receiver v. P. L. K. M. R. M. Chettyar Firm*, A.I.R. 1931 P.C. 75, 78 left-hand column—58 I.A. 115 (Lord Atkin) (appeal from Rangoon under the Provincial Act).

²*Official Assignee v. Khoo Saw Cheow*, A.I.R. 1930 P.C. 265 (Appeal from Straits Settlements, Penang) Lord Tomlin).

³*N. Subramaniya Iyer v. Official Receiver*, A.I.R. 1958 S.C. 1 ; (1958) S.C.R. 257.

⁴*Harry Pope v. Official Assignee*, A.I.R. 1934 P.C. 3, I.L.R. 12 Rangoon 105 ; 60 Ind. Appeals 362 P.C. (decision under Presidency Act).

⁵For previous law see *Official Assignee v. Sheikh Moiddeen*, A.I.R. 1927 Mad. 1013, 1014, right ; I.L.R. 50 Mad. 948 (Presidency Act).

⁶Mulla, Law of Insolvency in India (1958), pages 613-614.

⁷*H. Hagemister v. U. Po Cho*, A.I.R. 1935 Rangoon 53 I.L.R. 12 Rangoon 625 (Provincial Act).

⁸*U. Ohn Pe v. Fatima Bibi*, A.I.R. 1936 Rangoon 145, 146, left (Not reported in I.L.R.).

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 law¹ in respect of burden of proof laid down in the Indian Evidence Act, 1872.

Fraudulent preference.

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 creditor²⁻³. The Blagden Committee, in dealing with this question, has made the following observations⁴:—

“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

¹See Appendix I, Clause 54.

²Mulla, Law of Insolvency in India, (1958), page 630. *Feat v. Gresham Trust Ltd.*, (1934) A.C. 252, 262. (1934) A.E.R. 82.

³*Sime Derby and Co. v. Official Assignee etc.*, A.I.R. 1928 P.C. 77, right-hand column (From Straits Settlements, Singapore) (Lord Warrington of Clyffe);

Kasi v. Official Receiver, A.I.R. 1929 Madras 321; *Kashi Nath v. Official Receiver*, A.I.R. 1931 All. 142; *Dina Nath v. Labhu Ram*, A.I.R. 1932 Lah. 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.).

⁴Report, 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 an advantage over the other creditors. We appreciate the moral aspect exemplified in this view, 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 an "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 evidence¹. In this connection, we may

¹*Sime Derby & Co. v. Official Assignee* A.I.R. 1928 P.C. 77 ; *Peat v. Gresham Trust Ltd.* (1934) A.C. 262 ; (1934) A.E.R. 82.

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 different¹. Such a change would result in a certain amount of inconsistency in the law.

“Void” and
“voidable”

22. In sections 55 and 56 of the Presidency Act relating to avoidance of voluntary transfers and transfers by way of fraudulent preference, the word used is ‘void’. In section 53 of the Provincial Act dealing with voluntary transfer, the word used is ‘voidable’, while in section 54 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 true² 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 title³. In another English case⁴ 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 back.”

These two cases were considered in later cases⁵. In *Gunsbourg & Co. Ltd.*⁶ a doubt was cast whether the doctrine of relation back applies in cases where a settlement

¹See Appendix I, clause 55.

²Mulla, *Law of Insolvency in India*, (1958) page 614, para. 620, and Williams, 17th edition, p. 348.

³See *In re Brall, ex parte Norton* (1893) 2 Q.B. 381, Vaughan Williams J.

⁴*In re Carter and Kenderdine's Contract*, (1897) 1 Ch. 776 C.A.

⁵*In re Hart, ex parte Green* (1912) 3 K.B. 6 and *in re A. Gunsbourg & Co. Ltd.*, (1920) All. E.R. 492.

⁶*Gunsbourg & Co. 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'¹.

23. In section 44 of the English Bankruptcy Act, 1914, which deals with fraudulent preference, the period of three months was extended to six months by section 115(3) and (6) of the Companies Act, 1947. We recommend² that 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 insolvency petition. The existing provision in the Presidency Act relating to fraudulent preference which is restricted to three months does not, therefore, serve a very useful purpose. Period of
limitation in
case of
fraudulent
preferences.

24. Under section 57 of the Presidency Act, a *bona fide* transaction entered into with the insolvent before the date of the order of adjudication is protected if the person dealing with the insolvent has no notice of the presentation of the insolvency petition. The provision about notice of the presentation of the insolvency petition is not quite consistent with the doctrine of relation back as applicable under the Presidency Act. Mulla has pointed out this inconsistency, and has suggested³ an amendment of section 57 on the lines of section 45 of the English Act. We accept this suggestion. We also accept the suggestion⁴ that if such a change is made, it will be necessary to introduce into the Indian law the provisions of section 46 of the Bankruptcy Act, 1914. Bona fide
transactions.

25. We have considered the question whether any special protection should be granted to bankers on the lines of section 97 of the Australian Act. That section is in the following terms: Special
protection
to bankers.

“Any payment of money or delivery of any security or negotiable instrument made to or by the order 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 sequestration made against the debtor shall be valid as against the trustee.” Protection
to bankers.

¹See Appendix I, clauses 54-55.

²See Appendix I, clause 55.

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

⁴See Appendix I, clauses 57-58.

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 section¹ protecting *bona fide* transactions and the new provision proposed by us on the lines of section 46 of the English Bankruptcy Act, 1914.

Transferees
from donees.

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.² It has been held in a Nagpur case³ 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.

Copyright.

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 law⁴.

Second
bankruptcy.

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 Committee⁵. In paragraph 114 of the Report, the Committee have considered two solutions of the problem. We prefer the second solution,⁶ 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

¹See Appendix I, clauses 57-58.

²Mulla, Law of Insolvency in India, (1958) pages 620-621, para. 625.

³*Govind v. Sonba*, A.I.R. 1930 Nagpur 34.

⁴See Appendix I, clause 64.

⁵Report, (1957), Cmd. 221, pages 37-38, para. 114.

⁶See 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 from him of such property. In England¹, 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 Receiver². The Privy Council³ 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 just⁴.

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^{5,6}. 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

¹*Cohen v. Mitchell*, (1892) 2 Ch. 138. And see s. 38(a) and 47, English Act.

²Mulla, Law of Insolvency in India, (1958), page 509, para. 529 and page 520, para. 536.

³*Kala Chand v. Jagannath*, 54 I.A. 190 ; I.L.R. 54 Cal. 595 ; A.I.R. 1927 P.C. 108.

⁴ See Appendix I, clause 48(2).

⁵Observations of Kay, L.J. in *re New Land Development Association & Gray*, (1892) 2 Ch. 138. See also *Official Receiver v. Cook*, (1906) 2 Ch. 661.

⁶*Cf.* Williams on Bankruptcy, 17th edition, page 381, bottom.

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 creditors¹. The Privy Council has applied this principle in a case² 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 decisions³ 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 subject⁴. The High Court of Madras⁵ has held that the rule in *Cohen v. Mitchell* does not apply to immovable property. The contrary view⁶ has been taken by the Calcutta, Bombay and Allahabad High Courts. In a later case⁷ 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.

Priority of
debts.

30. Under section 33 of the English Bankruptcy Act, 1914, taxes due only for one year have priority over other debts. Under the two Indian Acts⁸, all debts due to the

¹*Troughton v. Gitley*, 25 F.R. 408 ; *Engelbach v. Nixon*, (1875) I.L.R. 10 C.P. 645.

²*Kerakoose v. Brooks*, 8 M.I.A. 339 ; *Ah Chone v. Mohamed*, A.I.R. 1939 Rangoon 186.

³*In re New Land Development Association & Gray*, (1892) 2 Ch. 138 ; *Official Receiver v. Cook*, (1906) 2 Ch. 661.

⁴See Mulla, Law of Insolvency in India, (1958) pages 513-514, para. 531.

⁵*Roslandson v. Champion*, (1894) I.L.R. 17 Madras 21. *Shri Ramulu v. Andalammal*, (1907) I.L.R. 30 Mad. 145.

⁶*Kristo Comul v. Suresh Chander* (1882) I.J.R. Cal. 556 ; *Fatima Bibi v. Fatima Bibi* (1892) I.L.R. 16 Bom. 452 ; *Chhote Lal v. Kedar Nath*, I.L.R. 46 All. 565 ; A.I.R. 1924 All. 703.

⁷*Kamala Bala Dasi v. Fanindra Chandra De*, I.L.R. (1947) 1 Cal. 394 (Das J.).

⁸Section 61(1), P.A., s. 49(1), P.T.A

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 law¹.

31. There are very few prosecutions under the insol- Penalties.
vency 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 Mulla² 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 accepted³.

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

¹Appendix I, clause 72.

²Mulla, Law of Insolvency in India, (1958), page 708, para. 72

³See Appendix I, clause 119 *et seq.*

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

Appendices. 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 require elucidation.

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

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

1. J. L. KAPUR-- <i>Chairman.</i>	}	<i>Members.</i>
2. K. G. DATAR.		
3. S. K. HIRANANDANI.		
4. S. P. SEN-VARMA.		
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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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

- Short title,
extent and
commence-
ment.
- [s. 1, P.A.]
Cf. s. 1,
P.T.A.]
- Definitions.
[New] 46th
meeting.
[s. 2 (1)(a),
part, P.A.]
- [s. 2(1)(a),
part, P.A.]
- [s. 2(1)(a),
part, P.A.]
- Cf. s. 1(2),
Eng. Bank-
ruptcy Act,
1914.
- [s. 2(1)(b),
P.A.]
1. (1) This Act may be called theInsolvency Act, 19——.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.
2. In this Act, unless the context otherwise requires,—
- (a) “court” means the court having jurisdiction under this Act;
- (b) “creditor” includes a decree-holder;
- (c) “debt” includes a judgment-debt;
- (d) “debtor” includes a judgment-debtor, and also any person, whether a citizen of India or not, who, at the time when any act of insolvency was committed by him,—
- (1) was personally present in the territories to which this Act extends; or
- (2) was ordinarily resident or had a place of residence in the said territories; or
- (3) was carrying on business in the said territories either personally or by means of an agent or manager; or
- (4) was a partner of a firm which carried on business in the said territories;
- (e) “district court” means the principal civil court of original jurisdiction in a district, but does not include a High Court in its ordinary original civil jurisdiction;

(f) "Official Assignee" includes a Deputy Official [New] Assignee;

(g) "prescribed" means prescribed by rules made [s. 2(1)(c), P.A.] under this Act;

(h) "property" includes any property over which [s. 2(1)(d), P.A.] or the profits of which any person has a disposing power which he may exercise for his own benefit;

(i) "secured creditor" means a person holding a [s. 2 (1)(e), P.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 [s. 2 (1)(f), P.A.] any interest in property and the creation or transfer of any charge upon property; and

(k) all words and expressions used but not defined [s. 2(2), P.A.] in this Act and defined in the Code of Civil Procedure, Cf. s. 3 (25), 1908, shall have the meanings respectively assigned to them in that Code. Navy Act, 1957 (62 of 1957). 5 of 1908.

Cf. s. 2, P.T.A.

CHAPTER II ACTS OF INSOLVENCY

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

Acts of insolvency.
[s. 6, main para., P.A.]

(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; [Cf. s. 9, main para. P.T.A.]

(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;

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

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

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

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

(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.

[New]

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, of 5 of 1908.

(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 payment of his debts;

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

[New]

(2) A debtor commits an act of insolvency if a creditor who has obtained a decree or order against him for the payment of a sum of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him an insolvency notice as provided hereunder and the debtor does not comply with such notice within the period specified therein:

As to set-off which could not be put forth.

Cf. s. 1(i)(g), English Act.

Provided that the debtor shall not be deemed to have committed an act of insolvency for not complying with the notice if he has a counter-claim or set-off which equals 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 extends, the leave of the court shall be first obtained before service of the notice.

[New]

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

(a) be in the prescribed form;

(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 of non-compliance with the notice.

(4) Such notice shall not be invalidated by reason only [New] 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.

Explanation.—For the purposes of this section, the act of an agent may be the act of the principal, even though the agent has no specific authority to commit the act. [s. 6, Expl., P.A.]
Cf. s. 9, Expl., P.T.A.

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

Explanation.—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, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and [s. 9(1), P.A.]
Cf. s. 12(1), P.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),
P.A.]
Cf. s. 12(2),
P.T.A.

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

Cf. s. 14,
Limitation
Act, 1963
(36 of 1963).

(3) In computing the period of three months referred to in clause (c) of sub-section (1), the time during which 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.

Explanation.—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),
Limitation
Act, 1963.

(c) "petitioner" includes any person from or through whom the petitioner derives his right to present the petition;

Cf. s. 2(h),
Limitation
Act, 1963.

(d) nothing shall be deemed to be done in good faith which is not done with due care and attention.

Conditions on
which deb-
tor may
petition.

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

[s. 10, P.A.]
Cf. s. 14,
P.T.A.

(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.

5 of 1908.

(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:—

Contents of
petition.
[s. 13 (1),
P.A.]
Cf. s. 15(1),
part, P.T.A.

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

(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;

(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; 5 of 1908.

(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),—

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

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

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

[s. 13 (2), P. A.] (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.

Verification of petition. [s. 12, P.A.] Cf. s. 13(1), P.T.A. 8. Every insolvency petition shall be verified in the prescribed manner.

[s. 12, P.A.] Cf. s. 13(1), P.T.A.

Appointment of interim receiver. [s. 20, P.A.] Cf. s. 16,

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

(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 of Civil Procedure, 1908, as the court may direct.

5 of 1908.

5 of 1908

10. (1) The procedure laid down in the Code of Civil Procedure, 1908, with respect to the admission of complaints, shall, so far as it is applicable, be followed in the case of insolvency petitions, by all courts other than the High Court. Admission of petitions. [s. 18, P.A.]

[s. 19, P.A.]

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

(3) Notice of the order under sub-section (2) shall be given, in such manner as may be prescribed,—

(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 fit, 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 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. Release of debtor. [s. 23, P.A.]

(2) The court may, at any time, order any person who has been released 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.

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 any creditor, make one or more of the following orders, namely:— Interim proceedings against the debtor. [s. 21, P.A.]

(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; 5 of 1908.

(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.

Protection
order before
adjudication.
[New]

13. (1) Any debtor for whose properties a receiver has been appointed under section 9 may apply to the court for protection, and the court may, on such application and if satisfied 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 respect of such debts and for such period as may be specified by the court, and may revoke, modify or renew the said order in such manner as it may think fit.

(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 modified 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.

14. (1) On the making of the order admitting his petition, the debtor shall—

Duties of debtors.
[s. 22, P.A. (part)]

(a) unless the court otherwise directs, produce all his books of accounts, and

Cf. s. 15 P.T.A.

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

failing which the court may dismiss his petition.

(2) After an order admitting a creditor's petition for adjudging the debtor to be an insolvent is made, the debtor shall produce all books of accounts whenever so required by the court or Official Assignee or special manager.

[s. 22, part, P.A.]

(3) On his adjudication as an insolvent, the debtor shall give such inventories of his property and such lists of his creditors and debtors and of the debts due to and from them, respectively, submit to such examination in respect 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.

[s. 22 P.A. (part)]

Cf. s. 33(1) and (2) P.T.A.

(4) The debtor shall, on.....adjudication as an insolvent, aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors.

[s. 28 (1), P.A.]

Cf. s. 33(3), P.T.A.

(5) On the making of an order of adjudication, the insolvent shall hand over to the Official Assignee his passport for leaving India, if any such passport has been issued to him and is in his possession.

[New]

15. (1) At the hearing of the debtor's petition, the court shall require proof that the debtor is entitled to present the petition:

Procedure at the hearing of the petition.

Provided that he shall for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the court that there are *prima facie* grounds for believing the same, and the court, if and when so satisfied, shall not be bound to hear any further evidence on the question of such inability.

[s. 24(1), P.A.]

Cf. s. 13(2), P.T.A. and 15(1), 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.

CHAPTER IV

ADJUDICATION

Order of adjudication

Order on creditor's petition.

[s. 25 (1), P.A.]

Cf. s. 13(4), P.T.A.

[s. 27 (1), part, P.A.]

Cf. s. 13(5), P.T.A.

16. (1) In the case of a petition by a creditor, where the court is not satisfied with the proof of his right to present the petition or the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the court shall dismiss the petition.

(2) 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—

[New]

Cf. s. 13(6), 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 of 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 such time as may be required for the trial of the question relating to the debt.

Cf. s. 13(7), P.T.A.

(4) Where proceedings are stayed under clause (b) of 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 debtor's petition.

[s. 25(2), P.A.]

[s. 27(1), part, P.A.]

Cf. s. 15(1), part, P.T.A.

Previously 33A.

17. (1) In the case of a petition presented by a debtor, the court shall dismiss the petition, if it is not satisfied of his right to present the petition.

(2) The court may make an order of adjudication if it is satisfied of the right of the debtor to present the petition

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.

Order to specify period for discharge.
[s. 27 (1), part, P.A.]

(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.

[s. 27(2), P.A.]

19. (1) On the making of an order of adjudication, the property of the insolvent wherever situate shall, subject to the provisions of section 48, vest in the Official Assignee and shall become divisible among the creditors, and 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.

Effect of an order of adjudication.
[s. 28 (2), part, P.A.]
Cf. s. 17, main para. P.T.A.

(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.

[New]

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

[New]

(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

[s. 28 (6), P.A.]
Cf. s. 17, proviso, P.T.A.

(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.

Stay of pending proceedings.
Cf. s. 18(1), P.T.A.
[New]

(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

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

[s. 29, P.A.] (3) Any court in which *suit or other* proceedings are
Cf. s. 18(3), pending against a debtor may, on proof that an order of ad-
 P.T.A. 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.

Suit by
 Official As-
 signee and
 insolvent's
 partners.
 [New]
Cf. s. 98,
 P.T.A. 21. (1) Where the person adjudged insolvent is a part-
 ner in a firm, the court may authorise the Official Assignee
 to continue or commence and carry on any suit or other pro-
 ceeding in his name and that of the partner of the insol-
 vent; 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.

Publication
 of order of
 adjudication.
 [s. 30, P.A.] 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 adjudica-
 tion, 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.

Cf. s. 20,
 P.T.A.

[New]
Cf. s. 116(2),
 P.T.A.]
Cf. s. 137,
 English Act
 read with
 s. 37.

(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.

Relation
 back¹ of
 insolvency.
 [s. 28 (7),
 P.A.]
Cf. s. 51,
 P.T.A.

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 in-
 solvency 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

¹The marginal note in s. 51, P.T.A. is "Relation of assignee's title."
 But it is considered that it should be changed to "Relation back of
 insolvency".

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 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.

Protection order after adjudication. [s. 31, P.A.] Cf. s. 25(1) 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 reason to believe—

Power to arrest after adjudication. [s. 32, P. A.] Cf. s. 34 (1), P.T.A.

(a) that the insolvent has absconded or is about 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 delaying possession being taken of it by the Official Assignee, or that he has concealed or is about to conceal or has destroyed or is about to destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of the insolvency,

order a warrant to issue for his arrest, and on his 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.

Redirection
of postal
articles.
Cf. s. 35,
P.T.A.
Cf. s. 13,
Canadian
Act.

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 Post Office Act, 1898, registered or unregistered, and money orders, addressed to the debtor at any place or places mentioned in the order for redirection, shall be redirected or delivered by the Postal authorities in the territories to which this Act extends to the Official Assignee, or otherwise as the court directs; and the same shall be done accordingly. 6 of 1898.

Cf. s. 24,
Engl. Act.

Insolvent's
schedule.
[New]
Cf. s. 24,
(1) P.T.A.

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.

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

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

Cf. s. 24(2),
P.T.A.

(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.

Meetings of
creditors.
[New]
Cf. s. 26,
P.T.A.

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

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

Public exam-
ination of
insolvent.
[New]
Cf. s. 27,
P.T.A.

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

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

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

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

(5) The Official Assignee shall take part in the examination of the insolvent; and for the purpose thereof, subject to such directions as the court may give, may be represented by a legal practitioner.

(6) The court may put such questions to the insolvent as it thinks fit.

(7) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him.

(8) Such notes of the examination as the court thinks proper shall be taken down in writing and shall be read either over to or by the insolvent and signed by him, and may thereafter be used in evidence against him and shall be open to the inspection of any creditor at all reasonable times.

*Cf. s. 18
R. 5, C.P.C.
s. 360, Cr.
P.C.*

(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 examination of the insolvent whenever it may deem fit to do so.

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

*Cf. Article
102, Consti-
tution, as to
"unsound
mind".*

Annulment of adjudication

30. (1) Where, in the opinion of the court, the debtor ought not have been adjudged insolvent, the court shall, on the application of any person interested, by order in writing, annul the adjudication.

*Power to
annul ad-
judication.
[s. 35, part,
P.A.]
Cf. s. 21(1),
part, P.T.A.*

(2) The court shall annul an adjudication on the application of the insolvent or of any other person interested, where it is proved to the satisfaction of the court that the debts of the insolvent provable in insolvency have been paid in full.

*[s. 35, part,
P.A.]
Cf. s. 21(1),
part, P.T.A.*

[s. 35, part, P.A.] (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.
Cf. s. 21(1), part, P.T.A.

[New] (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.

[New] (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.
[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.

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.

Proceedings on annulment.
 [s. 37 (1), P.A.]
Cf. s. 23(1), P.T.A.

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.

[s. 37 (2), P.A.] (2) Notice of every order annulling an adjudication shall be published in the Official Gazette and in such other manner as may be prescribed.
Cf. s. 23(3), P.T.A.

[New] (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 appointed under sub-section (1) may make or continue petitions under sections 54 and 55. ^[New]

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

(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. ^[New Cf. s.23 (2), P.T.A.]

CHAPTER V

COMPOSITIONS AND SCHEMES OF ARRANGEMENT

33. (1) An insolvent may, at any time after the making 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 arrangement of his affairs, and such proposal shall be submitted by the Official Assignee to a meeting of creditors. ^{Submission of proposal and acceptance by creditors. [s. 38(1), P.A.] Cf. s. 28(1), P.T.A.}

(2) The Official Assignee shall send to each creditor who 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. ^{[s. 38(2), part, P.A.] Cf. s.28(2), part, 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. ^{[s. 38 (3), P.A.] Cf. s. 28(3) P.T.A.}

(4) If on a consideration of the proposal a majority in number and three-fourths in value of all the creditors whose debts are proved, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors. ^{[s. 38(2), part P.A.] Cf. s. 28(2), P.T.A. part.}

(5) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter in the prescribed form addressed to the Official Assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect ^[s. 28(4), P.T.A.]

as if the creditor had been present and had voted at that meeting.

Approval of
proposal by
court.
[New]
Cf. s. 29(1),
P.T.A.

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.

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

(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.

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

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

[s. 38(4),
part, P.A.]
Cf. s. 29(3),
P.T.A.

(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.

[s. 38 (4),
part, P.A.]
Cf. s. 29(4),
P.T.A.

(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.

[s. 38(5),
P.A.]
Cf. s.29(5),
P.T.A.

(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 *naye paise* in the rupee on all the unsecured debts provable against the insolvent's estate.

[s. 38(6),
P.A.]
Cf. s. 29(6),
P.T.A.

(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.

[s. 38(7),
P.A.]
Cf. s. 29(7),
P.T.A.

(8) In any other case the court may either approve or refuse to approve the proposal.

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

35. (1) If the court approves the proposal, the terms shall be embodied in an order of the court, and 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.

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

(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

decrees in the Code of Civil Procedure, 1908, as if the composition or scheme were a decree containing such provisions.

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

36. (1) If default is made in the payment of any instalment due in pursuance of any composition or scheme approved under section 35 or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the Official Assignee but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme.

Power to re-adjudge debtor insolvent. [s. 40, earlier part, P.A.] Cf. s. 31(1), P.T.A.

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

[s. 40, latter part, P.A.] Cf. s. 31(2) P.T.A.

CHAPTER VI

DISCHARGE

37. (1) An insolvent may, at any time after the order of adjudication and shall, within the period specified by the court, apply to the court for an order of discharge, and the court shall fix 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.

Discharge. [s. 41 (1), P.A.] Cf. ss. 38(1) and 40, P.T.A.

(2) The court, after considering the objections of any creditor and the report of the Official Assignee as to the conduct and affairs of the insolvent, may—

[s. 41(2), P.A.] s. 38(2), P.T.A.

(a) subject to the provisions of section 38, grant or refuse an absolute order of discharge; or

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

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

[s. 42(3),
P.A.].
Cf. s. 39(3),
P.T.A.

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

Cases in which court must refuse an absolute discharge.

38. (1) The court shall, on proof of any of the facts hereinafter mentioned, either—

[s. 42(1),
part, P.A.]

(a) refuse the discharge; or

Cf. s. 39(1),
part and (2),
part, P.T.A.

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

(c) suspend the discharge until a dividend of not less than twenty-five *naye paise* in the rupee has been paid to the creditors; or

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

(2) The facts hereinbefore referred to are—

[s. 42(1),
part, P.A.]
Cf. s. 39(1),
part and (2),
part, P.T.A.

(a) that the insolvent's assets are not of a value equal to fifty *naye paise* in the rupee on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to fifty *naye 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;

(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;

As to "or"
see s. 39(1)
(f), P.T.A.

(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;

As to
"books"
see s. 39(1).
(j), P.T.A.

(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 unjustifiable 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.

45 of 1860.

(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.

[s. 42(2),
P.A.]
Cf. s. 39(4),
P.T.A.

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 does not 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.

Power to
annul ad-
judication for
failure to
apply for
discharge.
[s. 43(1),
P.A.]
Cf. s. 41,
part, P.T.A.

40. (1) Where the court refuses the discharge of the insolvent, it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

Renewal of
application
and variation
of terms of
order.
[New]

(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

Cf. s. 42,
P.T.A.

being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

Duty of discharged insolvent to assist in realisation of property.
[New]
Cf. s. 43,
P.T.A.

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

Effect of fraudulent settlements on discharge.
[New]
Cf. s. 44,
P.T.A.

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, of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the 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 in order to defeat or delay creditors, or was unjustifiable 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.

Effect of order of discharge.
[s. 44(1),
P.A.]
Cf. s. 45(1),
P.T.A.

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

(a) any debt due to the Government;

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

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

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

As to agreement, see s. 135(1)(c), Canadian Act.

[s. 44(2),
P.A.]
Cf. s. 45(2),
P.T.A.

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

(3) An order of discharge shall be conclusive evidence of the insolvency and of the validity of the proceedings therein. [New]
Cf. s. 45(3),
P.T.A.]

(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. [s. 44(3),
P.A.]
Cf. s. 45(4),
P.T.A.]

CHAPTER VII

ADMINISTRATION OF PROPERTY

Proof of debts

44. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency. Debts prov-
able 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 subsequently to the date of his so having notice. [New]
Cf. s. 46(2),
P.T.A.]
Cf. s. 30(2),
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 an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency. [s. 34(2),
P.A.]
Cf. s. 46(3),
P.T.A.]

(4) An estimate shall be made by the Official Assignee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value: [s. 33(1),
proviso, P.A.
and s. 34(1),
part, P.A.]
Cf. s. 46(4),
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 certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency.

Explanation 1.—For the purpose of this section, “liability” includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied [New]
Cf. s. 46,
Explanation,
P.T.A.]

engagement, agreement or undertaking to pay, or capable or resulting in the payment of, money, or money's worth, whether the payment is as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any contingency or contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

Explanation 2.—In this section, “available act of insolvency” has the same meaning as in section 57.

Mutual dealings and set-off.
[s. 46, P.A.]
Cf. s. 47, main para, P.T.A.

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:

[s. 47, proviso, P.T.A.]

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

Explanation.—In this section, “available act of insolvency” has the same meaning as in section 57.

Persons injured by disclaimer may prove.
[New]
Cf. s. 67, P.T.A.

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.

Proof of debts
[s. 33(1), main para, P.A.]
Cf. s. 48, P.T.A.

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

Description of insolvent's property divisible amongst creditors.
[s. 28(5), P.A.]
Cf. s. 52(1), P.T.A.

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;

(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;

5 of 1908.

(d) 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 vested in the insolvent at the commencement of the insolvency; [s. 28(2),
part, P.A.]
Cf. s. 52(2)
(a), earlier
part, P.T.A.]

(b)the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and [s. 28
P.A.]
Cf. s. 52(2),
(b), P.T.A.]

(c) any property which may be acquired by or devolve on the insolvent, after the commencement of the insolvency and before his discharge; and such property shall forthwith vest in the.....Official Assignee, and no dealings by the insolvent with that property during the insolvency shall be valid; [s. 28(4),
P.A.]
Cf. s. 52(2)
(a), later
part, P.T.A.]

Provided that where the insolvent has been carrying 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 fide* and for consideration, shall not be invalid merely by reason of the insolvency. [New]

49. (1) Where a second or subsequent order of adjudication is made against an insolvent, or where an order is made for the administration in insolvency of the estate of a deceased insolvent, then for the purposes of any proceedings consequent upon any such order, the Official Assignee in the last preceding insolvency shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the insolvent in that insolvency. Second or
subsequent
bankruptcy.
[New]
Cf. s. 39
of the Eng.
Act as
substituted
by Bank-
ruptcy
Amendment
Act, 1926,
modified.]

(2) In the event of a second or subsequent order of adjudication being made against an insolvent being followed 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 acquired 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

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.

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

(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.

Intimation
of after-
acquired
property.
[New]
As to after-
acquired
property
where dis-
charge is
conditioned,
see Mulla
(1958) page
394 and
Bombay
Rule 133
under P.T.A.

50. (1) 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.

51. (1) 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 proof of claim verified by affidavit giving the grounds on which the claim is based and sufficient particulars to enable the property to be identified.

Property in possession of insolvent [s. 28 (3), P.A.] modified. Cf. s. 52(2) (c), first add second proviso, P.T.A. modified. See s. 50, Canadian Act.

(2) The Official Assignee with whom a proof of claim is filed under sub-section (1) shall within fifteen days 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 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.

Cf. Order 21, R. 43, C.P.C.

(8) Nothing in this section shall be construed as extending the rights of any person other than the Official Assignee.

Effect of insolvency on antecedent transactions

Restrictions
on rights of
creditor
under execu-
tion.
[s. 51, P.A.]
Cf. s. 52,
P.T.A.

52. (1) Where execution of a decree or order has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the Official Assignee, except in respect of the assets realised in the course of the execution by sale or otherwise before the date of the admission of the insolvency petition.

(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
court exe-
cuting decree
or order as
to property.
[s. 52, P.A.]
Cf. s. 54,
P.T.A.
s. 41, Eng-
lish Act.

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
of voluntary
transfer.
[s. 53, P.A.]
Cf. s. 55,
P.T.A.

54. Any transfer of property, not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent 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 made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor 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.

Avoidance of preference in certain cases. [s. 54, P.A.] modified. Cf. s. 56, P.T.A.

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 that the Official Assignee has been requested and has refused to make such petition.

By whom petitions for avoidance may be made. [s. 54A, P.A.]

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

Protection of bona fide transactions. [s. 55, P.A.] Cf. s. 57, P.T.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 of insolvency at the date of the presentation of the petition on which the order of adjudication is made.

Cf. s. 167, English Act. [New]

Validity of certain payments to insolvent.
[New]
Cf. s. 46, English Act.

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 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*.

Recovery of property or proceeds thereof in case of void or voidable transactions.
[New]
Cf. s. 66, Canadian Act.

59. (1) Where a person has acquired property of the insolvent under a transaction that is void or under a voidable transaction that is set aside and has sold, 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.

(4) 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

Possession of property by Official Assignee.
[New]
Cf. s. 58(1), P.T.A.

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.

[s. 56(3), P.A.]
Cf. s. 58(2), 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. 5 of 1908.

(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the Official Assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not become insolvent. [New] Cf. s. 58(3), P.T.A.

(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. [New] Cf. s. 58(4), P.T.A.

(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 the Indian Penal Code, and shall be punishable accordingly. [New] Cf. s. 58(5), P.T.A.

45 of 1860.

61. (1) The court may grant a warrant to any prescribed 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 where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be. Seizure of property of insolvent. [New] Cf. s. 59, P.T.A.

(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. A appropriation of portion of pay or other income to creditors. [New] Cf. s. 60, P.T.A.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the Official Assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof. Cf. s. 60(1), proviso (i), C.P.C. See also s. 51, Eng. Act.

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, where such notice has been given, such person as aforesaid Inspection of goods pledged. [New] Cf. s. 59, Eng. Act.

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.

Copyright.
[New]
Cf. s. 52,
Canadian
Act.
See also s.
60, English
Act and
s. 110 Aus-
tralian Act.
As to
"copyright",
see ss.
13-14,
Copyright
Act, 1957.

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,

Disclaimer of onerous property. [New] Cf. s. 62, P.T.A.

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.

Disclaimer of leaseholds. [New] Cf. s. 63, P.T.A. Cf. s. 54(3), Eng. Act.

Power to call on Official Assignee to disclaim.
[New]
Cf. s. 64, P.T.A.

67. The Official Assignee shall not be entitled to disclaim 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 neglected to give notice that he disclaims the property; and in the case of a contract, if the Official Assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

Power for court to rescind contract.
[New]
Cf. s. 65, P.T.A.

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

Power for court to make vesting order in respect of disclaimed property.
[New]
Cf. s. 66, P.T.A.

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 respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose:

Provided that—

(a) where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the insolvent, whether as 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

(b) 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 security upon the property; and

(c) if there is no person claiming under the insolvent who has applied for and is willing to accept an order upon such terms, the court shall have

power to vest the insolvent's interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, encumbrances 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.

Power to require information regarding insolvent's property. [s. 59A (1), P.A.] Cf. s. 37(1), P.T.A.

(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).

5 of 1908.

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

[s. 59A (2), P.A.] Cf. s. 36(2), P.T.A.

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

[s. 59A (3), P.A.] Cf. s. 36(3), P.T.A.

(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.

[New]

[New] (6) If on his examination any such person admits, or
 Cf. s. 36(4), if the court under sub-section (5) decides, that he is in-
 P.T.A. debted 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.

[New] (7) If on his examination any such person admits,
 Cf. s. 36(5), or if the court under sub-section (5) decides, that he has
 P.T.A. in his possession any property belonging to the insolvent,
 the court may, on the application of the Official Assignee,
 order him to deliver to the Official Assignee that property,
 or any part thereof, at such time, in such manner and on
 such terms as to the court may seem just.

[New] (8) Orders made under sub-sections (6) and (7)
 Cf. s. 36(6), shall be executed in the same manner as decrees for the
 P.T.A. payment of money or for the delivery of property under
 the Code of Civil Procedure, 1908, respectively. 5 of 1908.

[New] (9) Any person making any payment or delivery in
 Cf. s. 36(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.

Power to issue com- 71. The court shall have the same powers to issue com-
 missions. missions and letters of request for the examination on com-
 Cf. s. 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. 5 of 1908.

Distribution of property

Priority of 72. (1) In the distribution of the property of the in-
 debts. solvent, there shall be paid in priority to all other debts—
 [s. 61, P.A.]
 Cf. s. 49,
 P.T.A.

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

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

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

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

(2) The debts specified in sub-section (1) shall rank
 equally between themselves, and shall be paid in full, un-
 less the property of the insolvent is insufficient to meet

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

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

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

(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 distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent. Rent due before adjudication. [New] Cf. s. 50, P.T.A.

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

Calculation
of dividends.
[s. 62, P.A.]
Cf. s. 71,
P.T.A.
Cf. s. 64,
Eng. Act.

75. (1) In the calculation and distribution of dividends, the Official Assignee shall retain under his control sufficient assets to meet—

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

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

(c) disputed proofs or claims; and

(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
creditor who
has proved
his debt
after declara-
tion of
dividend.
[s. 63, P.A.]
Cf. s. 72,
P.T.A.
S. 65, Eng-
lish Act.

76. Any creditor who has proved his debt after the declaration of any dividend or dividends shall be entitled to be paid, 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 money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final divi-
dend.
[s. 64, earlier
part, P.A.]
Cf. s. 73(1),
P.T.A.

77. (1) When the Official Assignee has realised all the property of the insolvent, or so much thereof as can, in his opinion, be realised without needlessly protracting the proceedings in insolvency, he shall, with the leave of the court, declare a final dividend; but before so doing, he shall give notice in 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.

[s. 64, latter
part, P.A.]
Cf. s. 73(2),
P.T.A.

(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.

No suit for
dividend.
[s. 65, P.A.]
Cf. s. 74,
P.T.A.

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 thereof, or to carry on the trade, if any, of the insolvent 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.

Management by and allowance to insolvent. [s. 66, P.A.] Cf. s. 75, P.T.A.

(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 as provided by this Act, and of the expenses of the proceedings taken thereunder.

Right of insolvent to surplus after payment in full.

Explanation.—In this section, “surplus” includes any property which has been acquired by or has devolved on the insolvent after the commencement of the insolvency and before his discharge and which has not been divided amongst his creditors.

[s. 67, P.A.] Cf. s. 76, P.T.A.

81. (1) Where the Official Assignee has, under his control, any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of the State Government, unless the court otherwise directs.

Credit to Government of unclaimed dividends. [New] Cf. s. 122, P.T.A.

(2) Any person claiming to be entitled to any monies paid to the account and credit of the State Government under sub-section (1), may apply to the court for an order for payment to him of the same; and the court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due:

s. 153 Eng. Act. Cf. s. 123, P.T.A.

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 officer 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 fit, authorise the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the insolvent's property by the Official Assignee:

Committee of inspection. [s. 67A, P.A.] Cf. ss. 88 and 89, P.T.A.

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

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

CHAPTER VIII

SUMMARY ADMINISTRATION

Summary
administra-
tion.
[s. 74, open-
ing lines,
P.A.]
Cf. s. 106(1),
opening
lines,
P.T.A.

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:—

[s. 74(i),
P.A. omitted]
[s. 74(ii),
P.A.]

(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; 5 of 1908.

[New]
Cf. s. 106
(1)(b),
P.T.A.
[s. 74(iii),
P.A. omit-
ted.]

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

[s. 74(iv),
P.A.]
Cf. s. 106
(1)(c), P.T.A.
As to
"where",
see P.T.A.

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

[s. 74(v),
P.A.]

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

[New]
Cf. s. 129(ii),
Eng. Act.

(v) 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;

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

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

[s. 74(vi),
P.A.]
Cf. s. 106(1)
(d), P.T.A.

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

(2) The court may, at any time, if it thinks fit, [s. 74, Pro-
 revoke an order for the summary administration of an in- viso, P.A.]
 solvent's estate, and thereafter the ordinary procedure pro- Cf. s. 106(2),
 vided for in this Act shall be followed in regard to the in- P.T.A.
 solvent's estate.

CHAPTER IX

ADMINISTRATION IN INSOLVENCY OF ESTATES OF DECEASED PERSONS

84. (1) Any creditor of a deceased debtor whose debt Administration in
 would have been sufficient to support an insolvency peti- insolvency
 tion 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 persons.
 business for the greater part of the six months immedi- [New]
 ately prior to his decease, a petition in the prescribed form Cf. s. 108,
 praying for an order for the administration of the estate P.T.A.
 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 administra- Vesting of
 tion of a deceased debtor's estate under section 84, the pro- estate and
 perty of the debtor shall vest in the Official Assignee, and mode of
 he shall forthwith proceed to realise and distribute the administration.
 same in accordance with the provisions of this Act. [New]
 Cf. s. 109,
 P.T.A.

(2) With the modification hereinafter mentioned, all the Cf. s. 155(4),
 provisions of this Act relating to the administration of the Australian
 property of an insolvent and to Official Assignee, shall, so Act.
 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.*

(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.

Payment or
transfer by
legal re-
presentative.
[New]
*Cf. s. 110,
P.T.A.*

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.

Saving of
Jurisdiction
of Adminis-
trator-
General.
[New]
*Cf. s. 111,
P.T.A.*

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

Official
Assignees.
[New]
*Cf. s. 77(1),
part, P.T.A.
Cf. Article
229, Consti-
tution.*

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.

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

(2) The Chief Justice of each High Court—

[s. 57 (1),
P.A.]

(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 by the name of the Official Assignee of.....(naming the particular place), and as such Official Assignee shall have a perpetual succession and an official seal, and may sue and be sued in his corporate name, and may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Official Assignee to be a corporation sole.
[New]
Cf. s. 83, part, P.T.A.
Cf. s. 77A, P.T.A., inserted in Bombay and Madras.
Cf. s. 76, Eng. Act.

(2) In all suits or proceedings by or against such Official Assignee, there shall be inserted after his official title the description "as Official Assignee of the property of....., an insolvent (naming the particular insolvent)".

[New]
Cf. s. 83, part, P.T.A.

90. An Official Assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

Power to administer oath.
Cf. s. 78, P.T.A.

91. (1) Subject to the provisions of this Act, the Official Assignee shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose—

Duties and powers of Official Assignee.
[s. 59, P.A.]
Cf. s. 68(1), P.T.A.

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

(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;

(ii) 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;

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

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

(vi) refer any dispute to arbitration, and compromise 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 advantageously be sold.

[New] Cf. s. 79(1), P.T.A. (2) The duties of an Official Assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(3) In particular, it shall be the duty of the Official Assignee—

[New] Cf. s. 79(2), P.T.A. (a) to investigate the conduct of the insolvent and to report to the court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the Indian Penal Code in connection with his insolvency or which would justify the court in refusing, suspending or qualifying an order for his discharge; 45 of 1860.

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

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

[New] Cf. s. 68(2), P.T.A. (4) The Official Assignee shall account to the court and pay over all monies and deal with all securities in such manner as is prescribed or as the court directs.

[New] Cf. s. 80, P.T.A. (5) The Official Assignee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors, showing in the list the amount of the debt due to each of the creditors.

Declaration and distribution of dividends. [New] Cf. s. 69, P.T.A. 92. (1) The Official Assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) The first dividend (if any) shall be declared and be distributed within one year after the adjudication, unless

the Official Assignee satisfies the court that there is sufficient reason for postponing the declaration to a later date.

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

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

(5) When the Official Assignee has declared a dividend; he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is 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. Discretionary powers and control thereof. Cf. s. 85, P.T.A.

(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. Control of court. Cf. s. 87, P.T.A.

(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.

Power to
appoint
special
manager.
[New]
Cf. s. 19,
P.T.A.

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

Delegation
of powers
to Official
Assignee.
[s. 80(1),
P.A.]

96. The High Court may direct that, in any matters in respect of which jurisdiction is given to any¹ court by this Act, the Official Assignee shall, subject to the directions of the court, have all or any of the 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

Courts hav-
ing jurisdic-
tion in in-
solvency.
[s. 3(1), P.A.]
Cf. s. 3,
P.T.A.

97. (1) The courts having jurisdiction in insolvency under this Act shall be—

- (a) in the Presidency-towns, the High Courts in 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.

[s. 3(2),
P.A.]

(2) For the purposes of this Act, a court of Small Causes shall be deemed to be subordinate to the district court.

Restrictions
on jurisdic-
tion.
[s. 11, main
para., P.A.]
Cf. s. 11,
P.T.A.

98. (1) The court shall not have jurisdiction to make an order of adjudication, unless—

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

¹For "the court", the words "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.

Explanation.—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, no court in the territories to which this Act extends shall have jurisdiction unless—

[New]
Cf. s. 4(1)
(d), English
Act.

(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.

(3) No objection as to the place of presentation shall be allowed by any appellate or revisional 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.

[s. 11, proviso, P.A.]

99. (1) Subject to the provisions of this Act, the court 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 in any case of insolvency coming within the cognizance of the court, or which the court may deem it necessary or proper to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:

Jurisdiction to decide questions.
[s. 4(1), P.A.]
Cf. s. 7, main para., P.T.A.

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,
P.T.A.
and Mulla's
comment
thereon
(p. 22 bot-
tom and
pp. 39—43,
50.)
Cf. s. 105
(1), proviso,
Eng. Act.

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 five thousand rupees.

[s. 4(2),
P.A.]

(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 final 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.

General
powers of
courts.
[s. 5(1),
P.A.]
Cf. s. 90(1),
P.T.A.

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.

[s. 5 (2),
P.A.]

(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.

Other
powers.
Cf. s. 90(4),
(5), (6) and
(7), P.T.A.

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 filing 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 fit 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 voce* 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 fit, and on the report of the Official Assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

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.

Powers of the High Court to control insolvency proceedings.
[New]
Cf. 18A,
P.T.A.

(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.

(3) 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.

Withdrawal of petition.
[s. 14, P.A.]
modified.
Cf. ss. 13(8)
and 15 (2),
P.T.A.,
modified.

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.

Consolidation of petitions.
[s. 15, P.A.]
Cf. s. 91,
P.T.A.

(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.

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

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:

Power to substitute petitioner in certain cases
[s. 16, P.A.]
Cf. s. 92,
P.T.A.

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.

[New]

Exemption of corporation, etc., from insolvency proceedings. [s. 8, P.A.]
Cf. s. 107, P.T.A.

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

Power to present petition against a partner. [New]
Cf. s. 95, P.T.A.

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.

Proceedings in partnership name or assumed name. [New]
Cf. s. 99, P.T.A.

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.

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.

(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 just.

Power to stay proceedings.
[New]
Cf. s. 94,
P.T.A.

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 made under this Act.

Special provisions with respect to High Courts having jurisdiction 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.

Cf. s. 6(1),
P.T.A.

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

Cf. s. 6(2),
P.T.A.

(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.

Cf. s. 6(3),
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.

Power to dismiss petitions against some respondents 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.

Continuance of proceedings on death of debtor.
[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.

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.

Warrants of
insolvency
courts.
[New]
Cf. s. 100,
P.T.A.

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.

5 of 1908.

(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

Appeal to
court against
Official As-
signee.
[s. 68, P.A.]
Cf. s. 86,
P.T.A.
and s. 101,
part, P.T.A.

115. 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.

Appeals
against orders
of district
courts and
subordinate
courts.
[s. 75, P.A.]

116. (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. 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 empowered 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 passed in such appeal except by leave of such Judge

Appeals against order passed by the High Court in insolvency. [New] Cf. s. 8(2)(a), P.T.A.

(2) Save as provided in sub-section (1), an appeal shall lie, at the instance of any person aggrieved by an order 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.

Cf. s. 8(2)(b), P.T.A.

(3) The period of limitation for an appeal under sub-section (1) shall be twenty days from the date of the order.

s. 101 part, P.T.A.

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

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

118. The court may review, rescind or vary any order made by it under its insolvency jurisdiction.

Review. [New] Cf. s. 8(1), P.T.A. and s. 108(1), English Act.

CHAPTER XIII

OFFENCES AND PENALTIES

Punishment
for certain
offences.
[s. 69, P.A.]
Cf. ss. 33 (4)
and 103,
P.T.A.
Cf. s. 154
(1)(1), Eng-
lish Act.

As to burden
of proof,
see English
Act.

Cf. s. 154
(1), (9), (10)
and (11),
English Act
mentioning
period also
before peti-
tion.

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

Cf. s. 154
(1), (6), Eng-
lish Act.
[New]

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

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 prevented 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 kept or caused to be kept false books;
or

(iii) has made false entries in, or withheld entries from, or wilfully altered or falsified, any 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—

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

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

Cf. s. 154
(1)(8), Eng-
lish Act.
[New]

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

Cf. s. 154
(1)(12), Eng-
lish Act.
[New]

(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 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

Cf. s. 154
(1)(13),
English Act.
[New]

(j) within twelve months next before the presentation of an insolvency petition by or against him, or after the presentation of an insolvency petition and 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

Cf. s. 154
(1)(14),
English Act.
[New]

(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 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

Cf. s. 154
(1)(15),
English Act.
[New]

(l) 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.

Cf. s. 154
(1)(16), Eng-
lish Act.
[New]

120. If any person who has been adjudged insolvent—

Frauds by
insolvents.

(a) in incurring any debt or liability has obtained credit under false pretences or by means of any other fraud; or

[New]
Cf. s. 156,
English Act.

(b) with intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his property, or has caused or connived at the levying of any execution against his property; or

(As to levy
of execution!
see 1926
Amendment)

(c) with intent to defraud his creditors, has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him;

Cf. s. 164,
Eng. Act.

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

Insolvent
guilty of
gambling.
[New]
Cf. s. 157,
Eng. Act.

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,—

Cf. s. 214(1),
Australian
Act.

(a) he has, within two years prior to the presentation of the insolvency petition, materially contributed 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:

As to punishment,
see s. 164,
English Act.

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.

(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.

Insolvent
failing to
keep proper
accounts.
[New]
Cf. ss. 158
and 164,
English 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: Cf. s. 158,
Canadian
Act.

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.¹

123. If any person who is adjudged insolvent, after the presentation of an insolvency petition by or against him, or within six months before such presentation, quits the territories to which this Act extends and takes with him, or attempts or makes preparations to quit those territories and take with him, any part of his property to the amount of three hundred rupees or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be punishable with imprisonment for a term which may extend to two years. Insolvent
absconding
with pro-
perty.
[New]
Cf. ss. 159
and 164,
English
Act.

¹. As to refusal to order discharge for failure to keep proper books, see Presidency Act, section 39(2) (b), etc.

False claim.
[New]
Cf. s. 160,
English
Act.
[New]

124. If any creditor, or any person claiming to be a creditor, in any insolvency proceedings, wilfully and with intent 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,¹ or with fine, or with both.

Undischarged insolvent obtaining credit.

125. Where an undischarged insolvent—

[s. 72(1),
P.A.]
Cf. s. 102,
P.T.A.

(a) 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

As to engaging in trade under old name, compare s. 155(b), English Act.

(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.

[New]

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.

Bar of prosecution without order of court.
[New]

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.

Procedure on charge of offence.
[s. 70, P.A.]
Cf. s. 104,
P.T.A.

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.

§ of 1

¹. As to offences under the I.P.C., see sections 206—210 and 421—424 of that Code.

(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 125, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Criminal liability after discharge or composition. [s. 71, P.A.] Cf. s. 105, P.T.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 Magistrate¹, or holding any civil judicial post.

Disqualifications of insolvent. [s. 73, P.A.] Cf. s. 103A, P.T.A. [Portion re local authority omitted.]

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

(a) shall be removed and shall cease if—

(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 a period 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

36 of 1963.

130. (1) The provisions of the Limitation Act, 1963, shall, unless the context otherwise requires, apply to appeals and applications under this Act, and for the purpose of section 12 of the said Act, a decision under this Act from which an appeal lies shall be deemed to be a decree.

Application of the provisions of Limitation Act. [s. 78 (1), P.A.]

(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 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

[s. 78 (2), P.A.] Cf. s. 101-A, P.T.A.

¹As 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.

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 provable but not proved under this Act.

Access to insolvent's books.
[New]
Cf. s. 124, P.T.A.

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, personally or by agent, any such books in the possession of the Official Assignee.

Fees and percentages.
[New]
Cf. s. 125, P.T.A.

132. Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.

Gazette to be evidence.
[New]
Cf. s. 116 (1), P.T.A.

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.

Liability of State Government.
[New]
Cf. s. 82, P.T.A. as amended in Bombay.

134. The State Government shall be liable to make good all sums required to discharge any liability which the Official Assignee may be liable to discharge, except when such liability is one to which neither the Official Assignee nor any of his officers has in any way contributed or which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted, and in either of these cases the Official Assignee shall not, nor shall the State Government, be subject to any liabilities.

Formal defect not to invalidate proceedings.
[New]
Cf. s. 118, P.T.A.

135. (1) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the court before which an objection is made to the proceeding is of 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.

Certain provisions to bind the Government.
[New]
Cf. s. 120, P.T.A.

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 any law for the time being in force relating to the relief of agricultural indebtedness.

of Savings regarding laws for the relief of agricultural debtors. [s. 82, P.A.]

138. (1) The Supreme Court, after consulting the High Courts, may make rules for carrying into effect the provisions of this Act.

Power to make rules. [s. 79, P.A.] Cf. ss. 112, 113 and 114, P.T.A. Cf. s. 643 (1), Companies Act, 1956.

(2) In particular, and without prejudice to the generality 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;

(b) the investment, whether separately or collectively, 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 taking possession of and realizing the estates of insolvent debtors;

(d) the receipts, payments and accounts of the Official Assignee;

(e) the audit of the accounts of the Official Assignee;

(f) the payment of the costs of the audit of his accounts out of the proceeds of the investments in his hands;

(g) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the Official Assignee under the direction of the court out of the proceeds aforesaid;

(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;

(l) the examination by the Official Assignee of the books and papers of account of undischarged insolvent debtors;

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

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

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

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

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

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

(s) 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;

(u) the form of insolvency notice and the manner in which it may be served;

(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 40;

(x) 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;

(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 (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 aforesaid, all rules made by any High Court on the matters referred to in this section and in force at the 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.

Cf. s. 643 (3), Companies Act, 1956.

3 of 1909.
5 of 1920.

139. (1) The Presidency-towns Insolvency Act, 1909, the Provincial Insolvency Act, 1920, any Provincial Act or State Act amending either of the said Act and any law 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 first day of November, 1956, were comprised in Part B States, and any law amending such corresponding law, are hereby repealed.

Repeal and savings. [New]

3 of 1909.
5 of 1920.

(2) Every person appointed as Official Assignee under 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.

Cf. s. 652, Companies Act, 1956.

Cf. the wording of s. 77 (3), P.T.A.

(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, 1920, or any law corresponding to either of the said Acts, 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. ^{3 of 1909.} ^{5 of 1920.}

Cf. s. 51
(2)(b),
Special
Marriage
Act, 1954.

(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, 1909, the Provincial Insolvency Act, 1920, or any such corresponding law, shall be dealt with and decided by that court as if this Act had not been passed. ^{3 of 1909.} ^{5 of 1920.}

(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 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. ^{3 of 1909.} ^{5 of 1920.}

Cf. s. 51
(3), Special
Marriage
Act, 1954.

(6) The provisions of sub-sections (2), (4) and (5) shall be without prejudice to—

(a) the provisions contained in section 6 of the General Clauses Act, 1897, which shall also apply to the repeal of the corresponding law as if such law had been an enactment; ^{10 of 1897.}

(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 FIRST SCHEDULE

(See section 28)

MEETING OF CREDITORS

1. The Official Assignee may at any time summon a Meeting of creditors, and shall do so whenever so directed by the court or by the creditors by resolution at any meeting or whenever requested in writing by one-fourth in the value of the creditors who have proved. Creditors. Cf. Sch. I, rule 1, P.T.A.
2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the Official Assignee. Summoning of meetings. Cf. Sch. I, rule 2, P.T.A.
3. (1) The notice of any meeting shall be sent not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter, as may be convenient. Notice of meetings. Cf. Sch. I, rule 3, P.T.A.
- (2) The Official Assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the Official Gazette.
4. (1) It shall be the duty of the insolvent to attend any meeting which the Official Assignee may, by notice, require him to attend, and any adjournment thereof. Duty of insolvent to attend if required. Cf. Sch. I, rule 4, P.T.A.
- (2) Such notice shall be either delivered to him personally or sent to him at his address by post at least seven days before the date fixed for the meeting.
5. The proceedings held and resolutions passed at any meeting shall, unless the court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him. Proceeding not to be avoided for non-receipt of notice. Cf. Sch. I, rule 5, P.T.A.
6. A certificate of the Official Assignee that the notice of any meeting has been duly given, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed. Proof of issue of notice. Cf. Sch. I, rule 6, P.T.A.
7. Where on the request of creditors the Official Assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements: Provided that the Costs of meeting. Cf. Sch. I, rule 7, P.T.A.

Official Assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

Chairman. 8. The Official Assignee shall be the Chairman of every meeting of creditors.
Cf. Sch. I, rule 8, P.T.A.

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

No vote in respect of certain debts. 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.
Cf. Sch. I, rule 10, P.T.A.

Secured creditor. 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.
Cf. Sch. I, rule 11, P.T.A.

(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.

Proof in respect of negotiable instruments. 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, instrument or security must, subject to any special order of the court made to the contrary, be produced to the Official Assignee before the proof can be admitted for voting.
Cf. Sch. I, rule 12, P.T.A.

Power to require creditor to give up security. 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.
Cf. Sch. I, rule 13, P.T.A.

Proof by partner. 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.
Cf. Sch. I, rule 14, P.T.A.

15. (1) The Official Assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court.

Power of Official Assignee 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.

Proxy.
Cf. 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.

Instrument of proxy.
Cf. Sch. I, rule 17, P.T.A.

18. (1) A creditor may give a general proxy to his attorney or to his manager or clerk, or any other person in his regular employment.

General proxy.
Cf. Sch. I, 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.

Proxy to be deposited one day before date of meeting.
Cf. Sch. I, rule 19, P.T.A.

20. A creditor may appoint the Official Assignee to act as his proxy.

Official Assignee as proxy.
Cf. Sch. I, rule 20, P.T.A.

21. The Official Assignee may adjourn the meeting from time to time and from place to place, and no notice of the adjournment shall be necessary.

Adjournment of meeting.
Cf. Sch. I, rule 21, P.T.A.

22. The Official Assignee shall draw up a minute of the proceedings at the meeting and shall sign the same.

Minute of proceedings.
Cf. Sch. I, rule 22, P.T.A.

THE SECOND SCHEDULE

(See section 47)

PROOF OF DEBTS

Proof in ordinary cases

- Time for lodging proof.
Cf. Sch. II, rule 1, P.T.A.
1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.
- Mode of lodging proof.
[s. 49 (1), P.A.]
Cf. Sch. II, rule 2, P.T.A.
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.
- Authority to make affidavit.
Cf. Sch. II, rule 3, P.T.A.
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.
- Contents of affidavit.
[s. 49 (2), P.A., part]
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.
- Cf.* Sch. II, rule 4, P.T.A.
- (2) The Official Assignee may at any time call for the production of the vouchers.
- 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).
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.
- Cost of proving debts.
Cf. Sch. II, rule 6, P.T.A.
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.

Right to see and examine proof.
Cf. Sch. II, rule 7,
P.T.A.

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

Deduction to be made from proof.
Cf. Sch. II, rule 8,
P.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.

Proof where security is realised.
[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.

Proof where security is surrendered.
[s. 47 (2),
P.A.]
Cf. Sch. II, 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, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

Proof in other cases.
[s. 47 (3),
P.A.]
Cf. Sch. II, rule 11,
P.T.A.

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

Valuation of security.
[s. 47 (4),
P.A.]
Cf. Sch. II, 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

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.

Amendment
of valuation.
Cf. Sch. II,
rule 13,
P.T.A.

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.

Refund of
excess re-
ceived.
Cf. Sch. II,
rule 14,
P.T.A.

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.

Amendment
where se-
curity
subsequently
realised.
[s. 47 (5),
P.A.]
Cf. Sch. II,
rule 15,
P.T.A.

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.

Exclusion
from shar-
ing in divi-
dend.
Cf. Sch. II,
rule 16,
P.T.A.
[s. 47 (6),
P.A.]

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

Limit of
receipt.
Cf. Sch. II,
rule 17,
P.T.A.

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 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 such person claiming to be a mortgagee as aforesaid, the court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, of dividends, interest or other proceeds received by such person, or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof, and the court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the court thinks fit, when and where, and by whom and in what way, the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the Official Assignee (unless it is otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application.

Inquiry into mortgage, etc.
Cf. Sch. II, rule 18, P.T.A.

(2) At any such sale the mortgagee may bid and purchase.

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

Conveyance.
Cf. Sch. II, rule 19, P.T.A.

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

Proceeds of sale.
Cf. Sch. II, rule 20, P.T.A.

(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.

¹The words "real or leasehold" before "estate" are omitted.

Proceedings on inquiry Cf. Sch. II, rule 21, 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

Periodical payments. Cf. Sch. II, rule 22, P.T.A. As to "accrued" Cf. s. 36, P.T.A. 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

Interest. [s. 48, P.A.] Cf. Sch. II, rule 23, P.T.A. 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*—

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

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

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

Debt payable at a future time

Debt payable in future. [s. 45, P.A.] Cf. Sch. II, rule 24, P.T.A. 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 the terms on which it was contracted.

Admission or rejection of proof

25. (1) The Official Assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it.

Admission or rejection of proof.
Cf. Sch. II, rule 25, P.T.A.

(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 the proof, expunge the proof or reduce its amount.

Court may expunge proof improperly received.
[s. 50, P.A., part]
Cf. Sch. II, rule 26, P.T.A.

27. The Court may also expunge or reduce a proof upon the application of a creditor if the Official Assignee declines to interfere in the matter, or in the case of a composition or scheme upon the application of the insolvent.

Power for court to expunge or reduce proof.
[s. 50, P.A., part.]
Cf. Sch. II, rule 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.

Proof by creditors before declaration of final dividends.
Cf. s. 33(3), P.A.

THE THIRD SCHEDULE

[See section 121(1) and 121(2)]

Decisions and orders from which an appeal lies to the High Court under section 121(2) [First Schedule, P.A.]

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.

¹As 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 avoidance ¹ 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.
. . . . .	. . . . .²
Second Schedule, Rules 26 and 27.	Order expunging the proof or reducing the amount.

¹As to "avoidance" of a voluntary transfer, see clause dealing with voluntary transfers.

²Section 115, P.A. is omitted in 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.—Williams on Bankruptcy, 17th Edition (1958).

APPENDIX II

NOTES ON CLAUSES

Clause 1

Part B States.—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 territories¹.

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.

¹See 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 question 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 clause¹.

“Debt”.—The definition of “debt” needs no comments.

“Debtor”.—The definition of “debtor” has been enlarged so as to include persons of foreign domicile. A full discussion will be found in the notes on another clause².

“District Court”.—Needs no comments.

“Official Assignee”.—Since the appointment of Deputy Official Assignees can be made³, this definition becomes necessary. It is unnecessary to say (as the Presidency Act does) that “acting” incumbents are included⁴.

“Prescribed”.—Needs no comments.

“Property”.—Needs no comments⁵.

“Secured creditors”.—The inclusive part has been taken from the Presidency Act, as useful.

“Transfer 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 section 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.

⁴Although 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 understood as referring to the Official Assignee.

⁵The meaning of “property” has been explained in a Supreme Court decision. See *Murti Lal v. Trustees of the Provident Fund, etc.* A.I.R. 1956 S.C. 336, 341, 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 (f).—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 included¹, 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 Mustaffa v. Madanlal*², 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 included³.

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 insolvency⁴. In

¹*Cf.* clauses 6 and 7, etc.

²(1931) I.L.R. 58 Cal. 624 ; A.I.R. 1931 Cal. 167. See Mulla (1958), page 124, para. 121-B.

³*Cf.* clauses 6 and 7, etc.

⁴See Williams, pages 31—42.

Bombay¹ provisions² 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

¹i.e., erstwhile Province of Bombay.

²For Bombay amendment, see Mulla (1958), page 135.

³Mulla (1958), pages 139-140, para. 136.

⁴*Kasturchand v. Dhanpat Singh*, 22 I.A. 162; I.L.R. 23 Cal. 26.

⁵I.L.R. 39 Mad. 693.

⁶See the criticism in Mulla (1958), page 142.

⁷A.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 himself¹. However, since the quoted words are 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 Act², 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. Baron*³, and that has been accepted as the law ever since, notwithstanding that successive statutes on bankruptcy had remained silent on the question⁴. That principle has been accepted in the law of this country⁵, vide *Kheta Mal v. Chuni Lal*⁶ and *Rukmani 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.

¹See Mulla (1958), page 139, para. 136.

²Mulla (1958), pages 149 and 185, deals with these sections generally.

³(1788) 2 T.R. 594.

⁴Williams, page 4.

⁵Mulla (1958), page 157.

⁶(1879) I.L.R. 2, All. 173.

⁷(1924) I.L.R. 48 Mad. 294.

Registration.—The three months' period for presentation 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 added⁴. 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 (C.P. 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

¹See case-law discussed in *Ramasubba v. Official Receiver*, A.I.R. 1963 Mysore 257 (September, 1963 Hegde J).

²Compare clauses 54, 55.

³See Mulla (1958), pages 162 and 163.

⁴*Cf.* clause 7.

was considered sufficient to entitle the debtor to move for relief under the Act. In view of the present financial conditions, there is no need to lower the limit of rupees five hundred.

Nor is it necessary to increase the figure of five hundred¹.

Clause 7

See sections 13(1), P.A. 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 clauses².
- (ii) In sub-clause (1), a provision has been added requiring particulars of all transfers, etc., made within 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 *Official*

¹Cf. 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 1117) 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.

¹See 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 Act¹.

The English rules² 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 elsewhere³.

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 provision⁴.

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.

³See notes to clause 22.

⁴High 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 Ahmed*¹, and *Nallagatti Goundan v. Ramana Goundan*². 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

General.—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 accounts⁶, 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.

¹14 C.W.N. 586.

²A.I.R. 1925 Mad. 170.

³See *Mulla* (1958), page 229.

⁴Clause 11.

⁵Clause 24.

⁶As to list of accounts, see clause 7.

⁷*Cf. Akhoy 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 Committee¹, 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 insolvency,—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' inability to pay debts should be proved (when the petition is by the debtor) is a point which presents some difficulty.

The first difficulty is created by the difference in the wording of the two Acts. In the Provincial Act, section

¹Committee 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 adjudication, etc. Now, when one turns to the section in the Presidency 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 Presidency Act, that a false allegation about inability entails the annulment of the adjudication¹ under section 21. As was observed in another case², a debtor petitioner's only justification for obtaining the benefit 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, C.P.C.

Sub-clause (1), proviso.—The question of inability to pay debts has already been discussed above⁴.

¹ See *Alamelu Mangatha Yarammal v. Balusami*, A.I.R. 1928, Madras 394, 395, right-hand, and 396.

² *Viswanatha v. Official Assignee*, A.I.R. 1930 Madras 544, 546, left-hand (Ramesam and Carnish JJ.).

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. Percival*¹ 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. Amrutrao*². 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 necessary³. 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 Bill⁴.

It may be noted that in an earlier Report⁵ 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 Act⁶ 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.

² 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. I, page 514, paragraph 9.

⁶ Cited in the 14th Report as the "Presidency Act" through slip.

Act¹. [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 Acts at present is as follows:—

Dispute as to debt.

Section 13(6) and (7) of the Presidency Act provides 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. There is nothing corresponding to it in the Provincial Act.

In *Gopikabai v. Chapsi*² 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 view³ has been taken by the Madras High Court in *Gangi Reddi v. Narasimha Reddi*⁴, and by the Nagpur High Court in *Deorao Raoji v. Ramji Baheraji*⁵ and *Shriram Latuji v. Saolaram Govind*⁶, and by the Lahore High Court in *Hukam Chand v. Ganga Ram*⁷⁻⁸. (In *Wazir Singh v. Janki Das*⁹, 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.

¹ See discussion below, "shall" and "may".

² (1935) I.L.R. 59 Bom. 161; A.I.R. 1935 Bom. 80.

³ See discussion in Mulla (1958), page 191, para. 198.

⁴ I.L.R. 1942 Madras 147; A.I.R. 1941 Madras 895.

⁵ I.L.R. 1953 Nag. 608; A.I.R. 1953 Nag. 189.

⁶ I.L.R. 1953 Nag. 625.

⁷ A.I.R. 1927 Lah. 111.

⁸ 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.

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 Betts*¹; *Re Otway*², or (2) where the petition is filed for other purposes than securing distribution of the assets, such as extorting money, *vide Re Larard*³. 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. Suryanarayana*⁴, 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 injuring the credit of the debtor. See also *Ex parte Harsukdas Balkishen Das*⁵. But in a case under the *Provincial Act—Chatrapat Singh v. Kharag Singh*⁶, 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 *ex debito justitiae* to have an order of adjudication when the conditions are satisfied⁷. (Further discussion)

Apparently, 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

¹ (1897) 1 Q.B. 50.

² (1895) 1 Q.B. 812.

³ Mar.s. 317.

⁴ I.L.R. 1944 Mad. 21; A.I.R. 1943 Mad. 355, applied in *Ramalinga v. Ratna*; A.I.R. 1963 Madras 181 (May issue).

⁵ A.I.R. 1924 Cal. 964.

⁶ (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.

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 also¹.

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 discussion² 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 rules³. 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. 171, last sentence.

² See 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.)¹

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 Bill², the appointment of an Official Assignee is obligatory throughout the territories to which the Act applies, and he is to occupy the position of existing Official Assignee in the Presidency Towns. Hence the clause follows section 17, Presidency Act, on this point.

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 under discussion will of course be the “property of the insolvent” as defined in another clause³, 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 28, Provincial Act, into several clauses in this draft.

Sub-clause (2).—This is new, and is intended to remove any doubts⁴ which may arise as to whether secured creditors who have enforced the security can take proceedings for recovery of the balance from the insolvent’s other property.

Sub-clause (3).—There has been some conflict of opinion 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*⁵, 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*⁶ that if objection 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. 351, where the conflict 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.

² See clause 88.

³ 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.

⁶ A.I.R. 1933 Mad. 917.

the preponderance of authority is in favour of the view that a proceeding taken without obtaining leave as required by the section is wholly incompetent and must be dismissed on that ground. Vide *Maya Ookeda v. Kuverji*¹, *Davood Mohideen Rowther v. Sahabdeen Sahib*² and *Narayana Iyer v. Kendan*³. In accordance with the view⁴, 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 possession, 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 Kshetry v. Phanindra Nath*⁵, and by the Allahabad High Court in *Moti Ram v. Rodwell*⁶. That is not the law in England nor under the Presidency Act, and there are no particular reasons why the law should be different under the Provincial Act⁷. It is proposed to deal with the topic dealt with in section 28(3), Provincial Act in a later clause⁸. Section 28(4) and (5) of the Provincial Act also will more appropriately be dealt with later⁹. This splitting up will avoid the confusion 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 Act¹⁰. 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*¹¹; *Ali Hussain v. Lakshminarain*¹², *Mahomed Roshan v. Gulam Mohinddin*¹³. The con-

¹ A.I.R. 1932 Bom. 338.

² I.L.R. 1937 Mad. 841; A.I.R. 1937 Madras 667.

³ I.L.R. 1938 Mad. 897.

⁴ Cf. the view of Mulla (1958), page 245.

⁵ A.I.R. 1923 Cal. 532.

⁶ A.I.R. 1923 All. 159. (Case of charge).

⁷ See also Mulla (1958), pages 29-30 and 532.

⁸ See clause 51.

⁹ See clause 48.

¹⁰ See Mulla (1958), pages 252-253.

¹¹ (1927) I.L.R. 49 All. 201.

¹² 54 All. 416; A.I.R. 1932 All. 188.

¹³ A.I.R. 1929 Bom. 135.

trary was held in *Alamelu Ammal v. Venkatarama Iyer*¹ and *Hitnarayan Singh v. Brij Nandana Singh*². The former view has been preferred and embodied in this sub-clause, as the grant of protection is a privilege to be granted or withheld at the court's discretion.

[It may be noted that while paragraph (a) of this sub-clause is confined to secured creditors, paragraph (b) (i.e., the added paragraph) will apply to all creditors, including unsecured creditors.]

[Stay of suits after adjudication.—Whether suits instituted after the order of adjudication could be *stayed* under these sections is a question on which the decisions are conflicting. 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 *Brownscombe v. Fair*³⁻⁴⁻⁵. In *Mahomed Haji Essack v. Abdul Rahiman*⁶, a suit instituted after adjudication was stayed under section 18(3) of the Presidency Act, following the decision in *Brownscombe v. Fair*, and that was in turn followed in *Bheraji Samarathji and Co. v. Vasant Rao Govindrao Prabhakar*⁷ and *Bhimaji Bhabhutmal v. Chunilal Jhaverchand*⁸. In *Maya Ookeda v. Kuverji*⁹ and in *Jehangir Cursetji v. Kastur Pannaji*¹⁰, however, it was held that such a suit was wholly incompetent and should be dismissed. In *Ghouse Khan v. Bala Subba Rowther*¹¹, 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*¹² and *Narayana Iyer v. Kenden*¹³, 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. Hira Nand*¹⁴. In *Haji Uman Sharif v. Jwala Prasad*¹⁵, it was held that if a suit is instituted after adjudication but in ignorance

¹ (1927) I.L.R. 50 Mad. 977.

² (1931) I.L.R. 10 Pat. 422.

³ 58 L.T. 85.

⁴ Mulla (1958) page 245.

⁵ Williams, page 73, speaks of "restraining" the proceedings.

⁶ (1917) I.L.R. 41 Bom. 312.

⁷ A.I.R. 1929 Bom. 398.

⁸ I.L.R. 57 Bom. 623; A.I.R. 1932 Bom. 344.

⁹ A.I.R. 1932 Bom. 338.

¹⁰ A.I.R. 1939 Bom. 344.

¹¹ (1928) I.L.R. 51 Mad. 833; A.I.R. 1927 Mad. 925.

¹² I.L.R. 1937 Mad. 841; A.I.R. 1937 Madras 667.

¹³ I.L.R. 1938 Mad. 897; A.I.R. 1938 Madras 643.

¹⁴ (1927) I.L.R. 8 Lah. 593; AIR 1928 Lahore 28.

¹⁵ A.I.R. 1924 Nag. 300.

of adjudication, the court can act under this section. In view of the provision proposed above¹—that a suit instituted without 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. Both these sections would apply in terms only to suits or proceedings which are pending at the date of *the order of adjudication*.

The Presidency Act uses the verb “may”, while the Provincial Act uses the verb “shall”. The former is better.

Stay of suits filed after adjudication.—This has been dealt with separately².

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. in *Learoyd’s case*⁵. 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) I.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 provision 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*¹⁻³. 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 a transferee is not without a remedy as he can appeal against the order of adjudication, he being undoubtedly a person "aggrieved" by it, but an appeal, having regard to its scope, cannot be substituted for a right to take part in proceedings and adduce evidence. Nor is the right to move for annulment of adjudication on the ground that the debtor should not have been adjudged insolvent an effective substitute for the right to take part in the trial, as the order of adjudication might be founded on several acts of insolvency.

In *Official Assignee of Madras v. O.R.M.O.R.S. Firm*⁴, it was held by the Madras High Court that a finding that the insolvent has committed a fraudulent preference would 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 Siddique Yousuf v. Official Assignee, Calcutta*⁵, 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. Gopala Krishniah*⁶. It reaffirmed the decision in *Official Assignee of Madras v. O.R.M.O.R.S. Firm*, and distinguished the decision in *Mahomed Siddique 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

¹ *Ex. parte Learoyd*, (1878), 10 Ch. D. 3.

² See discussion in Mulla (1958), pages 743 to 746, and page 178, para. 180.

³ Also see Williams, page 239 and page 485.

⁴ (1878) 10 Ch. D. 3.

⁵ (1927) I.L.R. 50 Mad. 541.

⁶ 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.

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.

Notice to transferee.

(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 elsewhere¹ 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 Act².

Sub-clause (1).—The words “every order of adjudication” 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

Relation back to what date.

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 elsewhere³.

As to the proviso, see discussion in Mulla⁴.

Clause 24

General.—See section 31, Provincial Act and section 25(1) to (4), Presidency Act.

Cognate provision.—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 decisions) to grant protection at that stage, this clause confers a general power in wide terms.

State debts.—This is discussed separately⁶.

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. 16-17.

⁴ Mulla (1958), pages 583-584, para. 591.

⁵ Clause 13.

⁶ Notes to clause 136.

Submission of Schedule.—Under section 25(1) and (5), Presidency Act, a person who has not submitted his schedule cannot apply for protection unless the court thinks it necessary to grant him protection in the interest 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 insolvency”.—Instead of the words “all the debts of the debtor or to any of them as the court may think proper”, occurring in section 31(12) of the Provincial 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, that section 25(2) of the Presidency Act uses the expression “mentioned in the Schedule”.] The word “such” has also been used for precision.

“Modified”.—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 Assignee¹ 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 draft², 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 Court³. 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

¹ 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.

² Clause 29(5).

³ See A.I.R. 1929 Cal. 44 (Rankin C.J.) (Presidency Act).

⁴ Civil Justice Committee, Report (1925), page 231, para. 14.

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 refinements have been omitted.

Omission of s 34 (2), Presidency Act.

Section 34(2) of the Presidency Act¹ 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 56 of the Presidency Act, (corresponding to section 54 of the Provincial Act)—does not come into operation except in respect of transactions entered into before the presentation of the insolvency petition², it is not understood what useful purpose would be served by section 34(2) of the Presidency Act, which can have application only after adjudication. It has, therefore, been omitted.

Clause 26

1. This corresponds to section 35 of the Presidency Act. (There is no such provision in the Provincial Act.)

2. 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

¹ A similar provision in the English Act is section 23(2), discussed in Williams, page 367, under section 44.

² Cf. Mulla (1958), page 643, para. 651.

calculation of the time-limit, but it is unnecessary to be so elaborate. It is considered unnecessary to use the 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 adjudication¹⁻².

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 schedule³.

5. In sub-clause (6), instead of the existing expression "expedient", the expression "fit" has been substituted, as it is considered more appropriate.

6. In sub-clause (8), "expedient" has been replaced by "fit". 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). Annulment,
discretionary
or man-
datory.

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).

¹See suggestion by Mulla (1958), page 24, para. 27.

²See also notes to clause 15.

³As to insolvent's schedule, see clause 27.

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 advertng to this difference in language, it was pointed out¹ 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. But² 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 *Chhatrapat Singh v. Kharag Singh*⁴, 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 mandatory⁵.

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 Commission⁶ to the effect that the court may be empowered to annul the adjudication in the cases mentioned in the sub-clause under discussion.

¹*Periakaruppan Chettiar v. Arumachalam Chettiar*, I.L.R. 1940 Mad. 441; A.I.R. 1940 Madras 375 (F.B.)

²Discussion 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. 11 ; 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.

⁶14th Report of the Law Commission (Reform of Judicial Administration), Vol I, page 514, para. 9, latter half.

Sub-clause (5).—Is taken from section 21(2) of the Presidency Act. There is nothing corresponding to it in the Provincial Act, but such a provision is considered necessary¹.

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 opinion² as to the status of an appointee under section 37, Provincial Act. In *Panna Lal v. Official Receiver*³, 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 Bir Singh v. The Official Receiver*⁴ and by the Nagpur High Court in *Sulaeman Latif v. Larman*⁵. The contrary view was taken in a Full Bench decision of the Madras High Court in *Veerayya v. Sreenivasa Rao*⁶, 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. Kishori Mohan*

¹Mulla (1958) (Edition)—page 313, para. 335, last four lines, expresses the view that the same principle will be applied under the Provincial Act.

²See Mulla (1958), page 329, and his suggestion to resolve the conflict at page 339.

³I.L.R. 53 All. 313.

⁴(1933) I.L.R. 11 Rang. 287.

⁵A.I.R. 1938 Nag. 312.

⁶(1935) I.L.R. 58 Mad. 908. F.B.

*Banerji*¹, *Abdul Latif v. Percival*², 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 Rao*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 considerations 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. Consistently with the views expressed on the question already discussed as to the status of the appointee, the High Courts of Rangoon and Nagpur have held⁶ 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 Official 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. With a view to settling this conflict, an express provision is proposed that proceedings already taken under sections 53 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

¹I.L.R. (1943) 1 Cal. 5.

²I.L.R. (1937) 1 Cal. 264.

³(1933) I.L.R. 60 Cal. 259.

⁴I.L.R. 25 Pat. 286 ; A.I.R. 1947 Pat. 339.

⁵A.I.R. 1944 Bom. 72.

⁶See A.I.R. 1933 Rang. 223 F.B. ;
A.I.R. 1938 Nag. 312.

⁷See A.I.R. 1930 Mad, 278 ;
A.I.R. 1944 Bom. 72 ;
A.I.R. 1941 Lah. 316.

the Official Receiver relevant to the realisation of 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.

Clause 33

1. This and the following three clauses¹ 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 40 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 under the 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* obligatory², 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.

¹Clauses 34 to 36.

²See clause 88.

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 manner¹.

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 rupee, under section 38(5) of the Provincial Act, it must be for the payment of not less than six annas in the rupee. 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.

¹It 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 stands¹ 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*² 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 already³. In other respects, it follows the Presidency Act.

¹See Williams, page 126.

²*Cf.* the suggestion made by Mulla (1958), page 370, para. 400.

³See "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. Grounds of refusal, etc.

In the paragraph relating to assets, the proportion of eight annas (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. is 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 that¹ the court should have a discretion in all cases.

Sub-clause (3)—*Report to be evidence.*—This provision (Report to be evidence) is relevant for the preceding clause also². 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 complete³.

As to “period of discharge”, see the provision proposed in the relevant clause which leaves it to the court⁴ to fix the period.

Section 43(2), Provincial Act, speaks of “re-commitment”. This is omitted, as the matter is covered by another clause⁵. The mention of that clause⁵ will cover section 41, last 11 words, read with section 23(2), Presidency Act, also. Omission of section 43(2), Provincial Act.

¹See “General” above.

²Clause 37.

³The discussion in Mulla (1958), page 326, para. 351, apparently is made with reference to the Provincial Act as it stood before 1950.

⁴See clauses 18 and 37.

⁵Clause 32.

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 Smith*²—decides that it does, but the contrary view has been held by the Madras High Court in *Gopalan v. Gopalan*³, which is a decision of a Full Bench, by the High Court of Calcutta in *Re Karim Mia*⁴ and by the Lahore High Court in *Ladha Ram v. Prabh Dial*⁵⁻⁶. The position may be first discussed under review. Section 108(1) of the English Act gives the court the power to review its order and rescind or vary it if it thinks it right to do so. This power is used for reviewing an order refusing discharge⁷⁻⁸. 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 Code⁹.

Review.
English law.

(iii) Presi-
dency Act.

Renewal.

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-hearing¹⁰.

(iv) Course
adopted.

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 framed¹¹ 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”

¹See Mulla (1958), page 387, para. 408.

²(1915) 32 I.C. 575.

³A.I.R. 1925 Mad. 915 (F.B.).

⁴A.I.R. 1931 Cal. 392.

⁵A.I.R. 1931 Lah. 672.

⁶See also *Mulchand v. Official Receiver*, (1930) I.L.R. 52 All. 385.

⁷*Re Tobias*, (1891) 1 Q.B. 463.

⁸See Williams, pages 139 and 481.

⁹See notes to clause 118.

¹⁰See Williams, page 139.

¹¹*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 duties¹.

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 Act. 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 Act.

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

¹As to revocation of discharge under this section, see Mulla (1958), page 398, para. 425.

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 Presidency and the English Acts on the one hand and the Provincial Act on the other, as explained below:—

(a) *Presidency 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 insolvency petition by or against the debtor *shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice*. 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 it*¹⁻².

This is also the law under the English Act. The hardship of this rule is, that the creditor can neither prove for the debt (arising after notice of bankruptcy) nor sue for it after the discharge of the debtor. He is thus totally without 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 provable², though the position is not quite certain³. 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 Bombay High Court in *Jamshedji v. Pestonji*⁴. The contrary view, however, was taken by a Full Bench of the Lahore High Court in *Kewal Kishan v. Special Official Receiver*⁵. There it was held, that the order of adjudication relates back, under section 28(7), Provincial Act, to the date of

¹Halsbury (3rd Edn.), Volume on Bankruptcy, page 465, para. 917 ; Williams (17th Edn.), page 187. Rangnekar J. in *Jamshedji v. Pestonji*, A.I.R. 1932 Bom. 511, 513.

²Mulla (1958), page 401, para. 431.

³E.g. see *Jamshedji v. Pestonji*, A.I.R. 1932 Bom. 511 (provable) and *Kewal Kishan v. Special Official Receiver*, A.I.R. 1939 Lahore 384 (Full Bench) (not provable).

⁴A.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 reading 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 *bona fide* 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.

(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 times¹. 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 insolvency².

Other
points on
sub-clauses.

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 fines owing to the Government, it has been decided³ 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

¹Mulla (1958), page 401, para. 431.

²Cf. the suggestion in Mulla (1958), page 28, para. 29.

³*Re Pascoe*, (1944) 1 All. Eng. Reports 593.

petition. As section 46 (2), Presidency Act has been adopted¹, the proviso has also been adopted, with one modification, namely, substitution of act of insolvency².

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 67, Presidency Act. There is no such provision in the Provincial Act.

Clause 47

General.—See section 48, Presidency-towns 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 Schedule³ 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 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

¹See notes to clause 44.

²*Cf.* clause 44.

³See Second Schedule.

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 below¹.

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 later².

Paragraph (b)—Is taken from section 52(2) (b), Presidency Act and section 28A of the Provincial Act³. 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 provisos 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 place⁵.

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 Act⁶, in this respect.

The Bill has adopted the law as laid down in the Provincial Act⁷.

Hire-purchase transactions.—In an earlier Report⁸ 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 provision⁹, it becomes unnecessary to incorporate any special provision on the subject.

¹See below—"Insolvency and Tenancies".

²Clause 48 (2)(c).

³As to s. 28A, see discussion in *R. M. Bhatt v. Mamilal*, A.I.R. 1959 Bom. 229 (J. C. Shah J.).

⁴See clause 51.

⁵See para. 18, body of the Report.

⁶*Cf. Mulla* (1958), pages 516, 520, 522.

⁷See for a detailed discussion the body of the Report, para. 29.

⁸20th Report, para. 10 (Hire-purchase).

⁹See clause 51.

1. The question of vesting of tenancies, particularly statutory tenancies, is considered below. Insolvency and tenancies.

2. Ordinarily speaking, all leases would be "property" and would, on the insolvency of the lessee, vest in the Official Assignee¹. 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*² 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

¹*Reeves 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.

³The 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).

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 the¹ *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* representative².)

6. The legal position of a statutory tenancy was lucidly explained in a Bombay case³. "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.

²See Megarry, Rent Restriction Acts (1961), page 156.

³*Kaliammal v. Dharamsey Jetha 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 more¹.

7. The following chart will show the difference between the two kinds of tenancies:—

Contractual tenancy	Statutory tenancy
1. Assignable subject to contract 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 ^{2,3}	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 ^{4,5} has also this effect in substance).
3. Vests in the Official Assignee, on insolvency ⁶ .	Does not vest in the Official Assignee ⁷ , on insolvency.
4. Continuous transmissibility	Transmissibility only by statute, and that also only once ⁸ . [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 tenant 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-

¹*Nihal Chand v. Shiv Narain*, A.I.R. 1958 Punjab 263, 265 (Mehar Singh J.).

²Megarry (1961), page 214.

³*Anwar Ali v. Jamini Lal*, I.L.R. (1939) 2 Cal. 254, 258 (Nasim Ali J.) (Case of monthly tenancy).

⁴Megarry, Rent Restriction Acts (1961), page 214, top and page 198.

⁵*Nehal Chand v. Shiv Narain*, A.I.R. 1958 Punjab 263, 265, left hand, middle (Mehar Singh J.) [Delhi and Ajmer Merwara Rent Act (19 of 1947)].

⁶Megarry, Rent Restriction Acts (1961), page 198, foot-note 77.

⁷Megarry, Rent Restriction Acts (1961), page 198, foot-note 85.

⁸Megarry, Rent Restriction Acts (1961), page 214, top.

ruptcy of the statutory tenant. Thus, in *Sutton v. Dorf*¹, 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.)

Alternative draft No. 1

"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."

Alternative draft No. 2

"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

¹See *Sutton v. Dorf*, (1932), A.E.R. Reprint 70 [K.B. Dvn.] (Acton and Talbot JJ.) approved in *Smith 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 Committee's Report¹⁻². The existing position is stated in Mulla³.

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 Law⁴.

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 ownership⁵—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

¹See English Committee's Report, page 38, para. 114.

² See detailed discussion in the body of the Report, para. 28.

³ Mulla (1958), page 517, para. 533.

⁴English Committee's Report, page 18, para. 47, latter half.

⁵ See also body of the Report, para. 18.

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*¹, differing from the decision in *Balarami Reddi v. Official Receiver*². 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 Rachman Singh*⁴; *Katyani Devi v. Haridas Addhya*⁵; *Motilal Dhannalal v. Nathu*⁶. The contrary view has been taken in *Guravaiah v. Rangiah*⁷; *Thiruvaray Mathu Pillai v. Official Receiver*⁸; *Chunilal Bhwanidas v. Vithal Balaji*⁹; and that seems to be correct, and has been adopted¹⁰. 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 Council¹¹ 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

¹I.L.R. 1942 Mad. 757 ; A.I.R. 1943 Madras 118.

²I.L.R. 1939 Mad. 343 ; A.I.R. 1939 Madras 291.

³ Cf. Mulla (1958), page 586, middle.

⁴I.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.

⁷I.L.R. 1942 Mad. 614 ; A.I.R. 1942 Mad. 415 (1).

⁸A.I.R. 1951 T.C. 193. (Discussed case-law).

⁹A.I.R. 1933 Nag. 28.

¹⁰ Cf. discussion in Mulla (1958), pages 251-252.

¹¹ *Raghunath Das v. Sundar Das*, (1915) I.L.R. 42 Calcutta 72, 83, P.C.

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 petition but before adjudication, the position is different. 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 titles of purchasers who had in the meantime purchased property *bona fide*. Sale before adjudication.

There is no reason why the clause under discussion should not apply to the execution of "orders". The necessary change has been made accordingly¹.

Sub-clause (4).—This has been placed at the end, as 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*².

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".

5. The provision has been made applicable to orders also³.

¹*Cf.* changes made in existing sections by clauses 6 and 53.

²*Cf.* Mulla (1958), page 598, para. 605.

³*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 preferred^{1-2,3} to that in the Provincial Act which uses “voidable”.

Main para.—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 insolvency⁴. This, however, is not convenient, and the clause under discussion, therefore, speaks of a “petition presented”, as in the Provincial Act.

Explanation.—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 preference⁵.

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”⁶. 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 Act⁷.

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*⁸; *Re Warran*⁹. 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

¹As to interpretation of “void”, see Mulla (1958), page 601, para. 608 and page 655, para. 665. But also see page 56.

²Also see Williams, Commentary on section 42(1).

³See discussion in body of the Report, para. 22.

⁴Mulla (1958), page 615, para. 621.

⁵See notes to clause 55.

⁶*Cf. Ramaswami Chettiar 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.

⁸(888) 58 L.T. 871.

⁹(1900) 2 Q.B. 138.

Act. It was, however, held in *Roderiques v. Ramaswami*¹, following the English authorities, that a surety is a creditor 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 months².

Explanation.—As pointed out in an earlier Report³, there is a conflict of views on the question whether, for deciding 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 insolvency 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 extended 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 voluntary transfers also⁵⁻⁶, 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 discussed⁷.

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 Chand*⁸ and by the Madras High Court in *Ananthanarayana Aiyar v. Sankaranarayana Ayyar*⁹. (There is no such provision in the Presidency Act¹⁰).

¹(1917) I.L.R. 40 Mad. 783 (F.B.)

² See discussion in the body of the Report, para. 23.

³6th Report of the Law Commission (Registration Act), page 29, paragraph 73.

⁴See Mulla (1958), page 638.

⁵See clause 54.

⁶*Cf.* Mulla (1958), page 163, para. 154, generally.

⁷See Mulla (1958), pages 65, 56, 146, 618, 603, for several points.

⁸A.I.R. 1921 Cal. 403.

⁹(1924) I.L.R. 47 Mad. 673.

¹⁰For the practice in Presidency Towns, see Mulla (1958), page 642, para. 647A.

2. Instead of the word "annulment", the word "avoidance" has been substituted¹.

Clause 57

General.—Compare and contrast section 55 of the Provincial Act and section 57, Presidency Act.

"*Good faith*".—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 clear².

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" in sections 94 and 95(1) of the Bankruptcy Act, 1869. In section 49 of the Bankruptcy Act, 1883, neither of these expressions was reproduced. But the marginal note continued the words "*bona fide*"³. It is this language that has been adopted in section 55 of the Provincial Act and section 57 of the Presidency Act⁴.

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 transaction will be protected under the section if it satisfies 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 insolvency 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 *Mercantile Bank of India Ltd. v. The Official Assignee*⁵, the creditor received a notice from the debtor's agent that the debtor was going to suspend payment and thereafter took possession of the debtor's goods pursuant to a letter previously given by him. The question was, whether this was protected by section 57 of the Presidency Act. It was found, that at that time no insolvency petition had been presented. Therefore the conditions specified in section 57 were

¹Cf. 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.

⁴Discussion in Mulla about history is at page 645, para. 653(i).

⁵(1916) 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 section¹⁻², 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 Act³. Hence it has been changed to notice of "available" act of insolvency⁴. (Compare section 45, proviso, English Act and section 167). The inconsistency in the existing section 57, Presidency Act has been noted in one decision also⁵.

Bona fide transferees from transferees

The question whether⁶ 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.

¹See discussion in Mulla (1958), page 650, para. 656.

²*Cf. Surya Kumar v. Bijay K. Hazra*, I.L.R. (1937) 1 Cal. 557, 566 (Lort-Williams J.).

³Mulla (1958), page 26, para. 29, page 28 (discussion as to protected transactions may be seen). Also see page 649, para. 656(3).

⁴See also body of the Report, para. 24.

⁵See *Surya Kumar v. Bijay K. Hazra*, I.L.R. (1937) 1 Cal. 557, 564 (Lort-Williams J.).

⁶*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 Act².

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 Williams⁴, 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*⁵.)

Since in the clause⁶ 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 omitted⁷. 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 followed⁸.

¹Clause 58.

²See also the body of the Report, paras. 24-25.

³Mulla (1958), page 28, para. 29.

⁴Williams, page 373, bottom.

⁵As to the existing law in India, see Mulla (1958), page 653, para. 660 and page 582, para. 588.

⁶See clause 57.

⁷Discussion in Mulla is at page 672, para. 686.

⁸*Cf.* Mulla (1958), page 671, 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 a 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 Act¹. 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 copyright 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.

¹For 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 Act¹.

(ii) The words “subject always to rules” are replaced² by “except in any cases which may be prescribed”. Compare section 54(3), English Act.

(iii) The word “either” has been placed *after* “claiming” and not *before* the word “claiming”, for the sake of grammar³.

(iv) Case of the sub-lessee or mortgagee *failing to apply* has been covered⁴.⁵

(v) Instead of “under-lessee”, the word “sub-lessee” is used, following the usage in India⁶.

(vi) Instead of the word “foregoing”, the exact provision has been referred to for precision⁷.

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 section⁸, section 59A, was inserted therein, reproducing sub-sections (1) to (3) of section 36, Presidency Act, with certain modifications.

(ii) The clause as drafted generally follows section 36, Presidency Act, but differs from it in one *important respect*. There has been a controversy in the High Courts,

¹In clause 65 (1).

²In clause 66.

³In clause 69 (1).

⁴In clause 69 (1), proviso.

⁵*Cf.* Report of Committee on Bankruptcy, etc., Law (1957), cmd. 221, para. 134.

⁶In clause 69 (1), proviso.

⁷In clause 69 (2).

⁸Section 59A was inserted after the Report of the Civil Justice Committee (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*¹ the Calcutta High Court held that the court could, acting under this section, issue summons against a person who could not be compelled to give evidence 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 conferred 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 Narayan Brahmwar*². In Madras, it has been held that while no witness could be compelled to give evidence if he satisfies 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 & Co.*³; *Re Viswanathan Chettiar*⁴, and *Re Murugappa Chetty & Co. v. Official Assignee of Madras*⁵. 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 36, 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 proposed⁶.

(iii) It should be mentioned that under section 59A(1), 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.*⁷; *Lakshmi v. Official Assignee of Madras*. A provision for the public examination of the insolvent is proposed in another clause⁸, and his private examination is dealt with in the clause under discussion.

¹A.I.R. 1923 Cal. 427.

²A.I.R. 1953 Bom. 19.

³54 M.L.J. 715; A.I.R. 1928 Mad. 890.

⁴(1948) 1 M.L.J. 241; A.I.R. 1948 Mad. 496.

⁵(1948) 1 M.L.J. 242.

⁶The proposed provision will clarify the position. Cf. Mulla (1958), page 31, last line and page 297, para. 312.

⁷(1893) 1 Ch. 686, 692.

⁸I.L.R. 1950 Mad. 895; A.I.R. 1950 Madras 410.

⁹See clause 129.

Incriminating questions—

On this topic, see discussion in Mulla¹.

(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 towns²) 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 the⁴ insolvent against a third person or *vice versa*⁵.

¹Mulla (1958), page 292, para. 307.

²As to Presidency towns, see clause 110(3)(e).

³See clause 70(5).

⁴See clause 99, and notes thereto.

⁵As to existing law, see Mulla (1958), pages 300—302, and page 22.

Sub-clauses (6) to (9).—These correspond to sub-sections (4) to (7) of section 36, Presidency Act¹, 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 provisions, 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 line³.

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 *Narcin Das v. Sahu Mihin Lal*⁴. 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

¹The provisions are discussed in Mulla (1958), page 22, page 24, para. 26, pages 300—302, page 311, para. 331 and page 671, para. 684.

²See clause 70 (5).

³See also body of the Report; para. 30.

⁴(1934) I.L.R. 56 All. 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 Ackerman*¹; *ex parte Brown*². It was, however, held in *Narain Das v. Sahu Mihin Lal*³ 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 contracts⁴. The *Explanation* is intended to give effect to this view⁵.

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 appropriate⁶.

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

¹(1808) 14 Ves. 604; 33 E.R. 653.

²(1812) 1 Rose 432.

³(1934) I.L.R. 56 All. 1041 ; A.I.R. 1934 All. 521.

⁴*Jethalal v. Lallubhai*, A.I.R. 1930 Bom. 380.

⁵It will remove doubts on the subject. *Cf.* Mulla (1958), pages 442-444 para. 480.

⁶*Cf.* clause 77 (2).

⁷Generally as to partners, see Mulla (1958), page 443, and also pages 94, 142, 155, 213, 476, 483, 562, 679, 692.

“realised by the Official Assignee” have been used¹⁻²⁻³.

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 appropriate⁴⁻⁵⁻⁶.

3. Instead of the existing negative wording “Any creditor 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 final dividend may be declared, under the Presidency 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 final dividend is declared. The difference in substance, is slight; but the language of the Presidency Act has been preferred to that of the Provincial 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 appropriate⁷.

Clause 78

This is based on section 65 of the Provincial Act. Following section 74 of the Presidency Act, two changes have been made:—

(i) 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

¹Cf. the Madras amendment to s. 71, Presidency Act.

²Cf. also clause 76.

³Cf. s. 122, P.T.A.

⁴Cf. clause 75.

⁵Cf. s. 72, Presidency Act, as amended in Madras.

⁶Cf. s. 122, P.T.A.

⁷Cf. clause 72.

money. Such a provision is harsh. In Madras and Bombay¹, 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 case². 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 Act.

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.

¹See the amendment to section 74, Presidency Act, made in Madras and Bombay.

²*Raghunath Kharkar v. Ganesh Kharkar*, (Supreme Court) decided on 2nd May, 1963 (C.A. No. 98 of 1962) (Judgment delivered by Wanchoo J.) in appeal from Bombay), A.I.R. 1964 S.C. 234 (Feb.).

³Generally as to effect of discharge, see Mulla (1958), pages 397, 398 687, 699.

⁴Section 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 fixed for the Presidency towns at five thousand rupees (instead of existing rupees 3,000 under the Presidency towns Act, 1909). For other places, it has been increased from rupees five 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 admission of a petition, falling within this section, the Official Assignee shall stand automatically appointed as receiver, with powers analogous to those of a receiver appointed by Court. It is also considered that publication of notices and framing of schedules should not be dispensed with by a mandatory provision in the Act. This involves omission of section 64 (i) 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 provided. The Presidency Act allows an appeal with the leave of the court of first 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:—

(i) 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.)

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 insolvent" 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 Act¹.

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 passed², 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 side³.

¹The existing position is discussed in Mulla (1958), page 720, para. 746.

²The Act is to come into force on a notified date.

³*Cf.* notes to clause 97.

The Official Assignee for those areas will be appointed by the Chief Justice of the High Courts¹. There is also a provision for the appointment of Deputy Official Assignees.

Sub-clause (1)(a).—Needs no further comments². 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”³ 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 Act⁴.

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 separately⁵.

¹The existing position is not uniform.

²See also article 229 of the Constitution.

³See clause 2—“Official Assignee”.

⁴For a detailed discussion, see the body of the Report, para. 9.

⁵See 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 proof¹. 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

¹Under 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 interpreted¹ 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 importance, the orders should be appealable. To make that clear, section 80(2) of the Provincial Act has been omitted²⁻³.

Clause 97

General.—In the Presidency Towns, insolvency jurisdiction will continue to be exercised by the High Courts on their original side⁴.

Original
jurisdiction
of High
Courts.

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 follows⁵ :—

Subordinate
Courts.

"We recommend that all civil Judicial officers may be invested with insolvency jurisdiction. Such powers have been conferred upon these officers in Bombay and Madras."

But this does not require a change in the Law. A detailed discussion as to jurisdiction of subordinate courts is unnecessary here⁶.

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) (d), English Act. The provision for firms is particularly useful in view of the proposed addition of a specific clause⁷ for adjudication of firms. Mention of "orders" (besides decrees) has been added.

¹Mulla (1958), pages 794-795, para. 844.

²This is one of the two courses suggested by Mulla (1958), pages 794-795, para. 844.

³As to delegation by *High Courts*, see clause 110.

⁴See 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.

⁶See discussion in the body of the Report, para. 6.

⁷See clause 108.

Explanation—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"¹. That definition and this sub-clause follow section 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 subject²⁻³, 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 Act⁴⁻⁶. 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 satisfied⁶.

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

¹See 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.

⁴See discussion in Mulla (1958), page 88, bottom.

⁵*Theophile v. Solicitor General*, 1950 A.C. 186.

⁶Williams, 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*¹; *Re French*²; and *Williams*³. 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 elsewhere⁴. Briefly speaking, the clause has been framed on the lines of section 105(1), English Act⁵, and the practice thereunder. A proviso has also been added empowering the court to refer complicated questions to civil courts.

English
practice
followed.

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 involved⁶.)

(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

Comparison
with existing
Acts.

¹(1885) 14 Q.B.D. 37.

²(1890) 24 Q.B.D. 63.

³*Williams* (17th edition), pages 460-461.

⁴See the body of the Report, paras. 10—12.

⁵See *Mulla* (1958), page 43, for a statement of the English practice.

⁶*Cf. Mulla* (1958), page 56.

section is confined to County Courts, the High Court also follows the same practice¹. 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 comments² 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 Act³.

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 Mulla⁴ 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 Court⁵ 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 specific 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 specifically 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.

⁵*Alagiri 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 Court². 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 fictitious, 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-

¹*Radhakrishna v. Official Receiver*, A.I.R. 1932 Calcutta 642, 646, right hand column and 648, right hand column.

²*Anwar 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 56¹. 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 Court². The question there involved was whether, regarding *benami* and fictitious 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

¹*Chittammal v. Ponnuswami*, (1926) I.L.R. 49 Madras 762; A.I.R. 1926 Madras 363.

²*Biseswar Chaudhuri v. Kanhai Singh*, I.L.R. 11 Patna 9 ; A.I.R. 1932 Patna 129.

³*Kantilal v. Rajni Kant*, I.L.R. 1942 Bom. 175 ; AIR 1942 Bom. 159, 160, right hand column ; (Broomfield and Wassoodew JJ).

⁴*Vinayak Shamrao v. Moreshwar Ganesh*, I.L.R. 1944 Nagpur 342 ; A.I.R. 1944 Nagpur 44 (Niyogi, Vivian Bose and Sen JJ.).

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 centres 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 improvement in wording should be attempted, has been considered. In the Madras case¹, 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 inter-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 jurisdiction to entertain under section 4 questions affecting transfers not falling under section 53².)

Power to sell properties.—It will be noticed that section 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-section 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. Section 4(3), Provincial Act has, therefore, been omitted.

Omission of section 4(3), Provincial Act.

Clause 100

This is based on section 5 of the Provincial Act. The corresponding provision in the Presidency Act is section 90(1).

¹*Alagirisubba v. Official Receiver*, (1931) I.L.R. 54 Madras 989 ; A.I.R. 1931 Madras 745, 746 left hand column (Reilly J.).

²See Mulla (1958), pages 61, 62, cases cited in foot-notes (j), (k) and (l).

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.

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 file. *Vide in re Manekchand*¹; *In re Naginlal Maganlal Jaichand*²; *Official Assignee of Madras v. Zamindar of Udayarpalayam*³; *Sarat Chandra Pal v. Barlow and Co.*⁴. 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 side⁵.

Receivers are not, under the scheme of the draft⁶, 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 Bom. 390.

²A.I.R. 1925 Bom. 543.

³A.I.R. 1926 Mad. 150.

⁴A.I.R. 1928 Cal. 782.

⁵See clause 97.

⁶See 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 adjudication¹.

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 part.—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*², 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 *In Re Maund*³⁻⁴, 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*⁵⁻⁶, 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

¹Cf. Mulla (1958), page 212, para. 228.

²21 Q.B.D. 21.

³(1895) 1 Q.B. 194.

⁴See also Williams, page 492.

⁵(1928) I.L.R. 51 Mad. 594.

⁶See 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. Venkatayya*¹, 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. Gangayya*, 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 Maund*².

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

General.—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

¹I.L.R. 1942 Mad. 316.

²(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 adopted¹. Similar provision is also proposed for petitions against persons carrying on business under an assumed name².

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 law³. The law in India is different. The Privy Council has held⁴ 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 insolvent⁵. 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 partnership⁶, 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 above⁷.

¹The insertion of a provision in the Provincial Act has been suggested by Mulla (1958), page 25, para. 28, page 96, para. 90.

²*Cf.* Order XXX, rule 10, C.P.C.

³Mulla (1958), page 90, para. 85; Williams, page 28.

⁴*Mohori Bibi v. Dharmodas*, (1930) I.L.R. 30 Cal. 539 (P.C.).

⁵Mulla (1958), page 89, para. 85, middle.

⁶Section 30, Indian Partnership Act.

⁷Notes under "General", above.

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 rules¹.

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.

Existing provision.

2. Omitting, 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.

Before adjudication applicability.

3. In decisions under the Provincial Act it has been held that section 17 applies both *before* and *after* adjudication. Thus, in a Calcutta case², 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.

²*Ramesh 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 case¹, 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 case², 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 below³.

4. Similarly, in the case of death, after adjudication also, section 17 applies⁴. It was on this basis that the Bombay High Court⁵ observed, that section 17 showed that the maxim “*actio personalis moritur cum persona*” had no application to insolvency proceeding, agreeing with the Allahabad view⁶ that an appeal against an appellate 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

¹*Indo-Burmah Trader's Bank v. Barada Charan*, A.I.R. 1944 Cal. 370, 371, left hand column (R-C Mitter and Sharpe JJ.).

²*M. P. Basappa v. Channappagowdas*, A.I.R. 1954 Mysore 189 (Vasudevamurthy J.).

³See notes to clause 112, para. 5.

⁴*Sripat Singh v. Prodyat Kumar*, (1921) I.L.R. 48 Cal. 87.

⁵*Kanti Lal v. Rajni Kant*, I.L.R. 1942 Bom. 175 ; A.I.R. 1942 Bom. 159, right hand column.

⁶*Piarey Lal v. Mohammad Salamatullah*, I.L.R. 1937 All. 616 ; A.I.R. 1937 All. 435.

⁷*Narain Singh v. Gurbaksh Singh*, I.L.R. 9 Lahore 306 ; A.I.R. 1928 Lahore 119.

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 case¹, (*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 held² that a debtor's appeal against adjudication upon the creditor'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 Insolvency Act" and "It was not therefore a question of liability 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 representatives 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 deceased; "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 adjudication may bind them.

Controversy summarised.

7. This resume of the case-law⁵ 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

¹*Attar Chand v. Mian Muhammad Mobin*, A.I.R. 1932 Lahore 121 ; I.L.R. 13 Lahore 396. (Harrison J.).

²*Bhagat Ram v. Firm Dhanpat Mal*, 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.).

³Mulla (1958), page 219, para. 231.

⁴*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).

⁵Notes to clause 112, paras. 1—6, above.

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 Court¹. 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.

"As if he were alive"

[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 clause under discussion.

Nature of order to be passed.

¹*Ramathai Anni v. Kannappa Mudaliar*, (1928) I.L.R. 51 Madras 495, 501 and 502 ; A.I.R. 1928 Madras 480.

²See notes on clauses, the Gazette of India, 1918, Part V, page 60.

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 “apply”, etc., have been replaced by “appeal”, etc.

3. The proviso is not found in the Presidency Act, but has been adopted, as a useful provision, from the Provincial Act.

Clause 116

General.

This corresponds to section 75 of the Provincial Act, but departs therefrom in one respect namely, the appeal

¹Cf. 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 maintainability 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 held¹, 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.

Hearing
without
grant of
leave.

The word "debtor" has been retained in this clause and preferred to "insolvent", to cover pre-adjudication orders. "Debtor".

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 unnecessary².

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 officer empowered under existing section 6, Presidency Act, the period of 20 days is taken from the existing provision (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 business is assigned, the clause provides for the same period as for Letters Patent Appeals⁴.

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 Provincial 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.

²See discussion in the body of the Report, para. 6.

³As to review of orders of an officer empowered under section 6, Presidency Act, see Mulla (1958), pages 737-738, para. 779.

⁴See Article 151, (Limitation Act, 1908) and Article 117 (Limitation Act, 1963).

on one of the conditions mentioned in Order 47, Rule 1, C.P.C.¹⁻². 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 Saran*⁴, 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 is⁵, 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.

²See *Chhaju Ram v. Neki*, I.L.R. 3 Lahore 27, P.C.

³As to the wide jurisdiction of the court, see—

(a) Mulla (1958), page 735 ;

(b) *Jivraj v. Gaganmal*, A.I.R. 1953 Bom. 430 ;

(c) *Thangavelu v. Chockalingam*, A.I.R. 1944 Madras 129.

⁴*Ganga Prasad v. Madhuri Saran*, A.I.R. 1927 All. 352, 353, right hand (Walsh, acting C. J. and Banerji J.).

⁵See also body of the Report, para. 31.

⁶*Cf.* suggestion in Mulla (1958), page 20, para. 25 and page 708, para. 729.

⁷*R. V. Governor of Brixton Prison, ex parte—Shure*, (1926) 1 K.B. 127.

⁸Williams, 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 provision treating some of the acts as contempt of court (occurring in the Presidency Act) has been *omitted*. Section 33
(4) Presidency Act,
omitted.

It has been stated that many buyers, particularly in the food-grains market, make purchases on credit with an ulterior motive of gain, and that they suddenly close down 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 increase 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 laws¹. Prevention
of mal-
practices by
traders.

Clause 120

This is a new provision (dealing with frauds by insolvents) 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 separate clause².

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 clause².

Clause 123

This is a new provision (Insolvent absconding with property) which follows the provision of the English Act, section 159.

¹The 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.

²Clause 126.

Clause 124

This is a new provision, which follows the English Act, section 160. A provision for fine 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 service 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 Act².

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 this 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 made⁴.

¹*Regina v. Fisher*, (1963) 2 W.L.R. 1137.

²See clause 127.

³The Presidency Act was amended as a result of the recommendation of the Civil Justice Committee, (1925), Report, page 233, para. 16.

⁴See clause 120, *et seq.*

One object of the procedure provided in section 104 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 clause² dealing with that offence.

References to other offences proposed to be added³ 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. Following⁵ 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, 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 Act⁶. (There is no corresponding provision in

¹See *Emperor v. Girish Chandra*, A.I.R. 1929, Calcutta 777 (Buckland J.).

²Clause 125.

³See clause 120, etc.

⁴As to appealable orders under the Presidency Act, see Mulla (1958), page 740, para. 785.

⁵See Williams, page 836, bottom, for the English provision, which is still in force.

⁶As to need for the existing section, see Mulla (1958), page 797, para. 846.

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 decrees¹.

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.

Exclusion of
Limitation
for suits by
Receiver.

There is one point to which attention might be invited. In the Report of the Law Commission on the Limitation Act, it has been suggested², that for a suit by the Official Receiver on behalf of the insolvent, a provision³ for exclusion of limitation of the period from petition to adjudication, etc., should be inserted.

This recommendation has already been implemented⁴.

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-

¹The discussions on the Bill leading to the 1920 Act do not disclose the reasons for mentioning only section 4.

²Third Report (Limitation Act), page 20, para. 45.

³Third Report (Limitation Act), App. I, page 78, clause 14 (3), gives a draft also.

⁴See Limitation Act, 1963, section 15(3).

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 provisions¹ relating to the Consolidated Fund.

It is considered unnecessary to add sections 82A, 82B and 82C inserted by the Bengal Amendment or sections 82A and 82B inserted by the Madras Amendment, where under the State Government is to bear the Official Assignee's expenses of litigation, etc., where the estate is insufficient 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 proceedings².

Section 82A,
etc.
(Bengal and
Madras
amendment).

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.

¹See article 266(1) of the Constitution.

²The Official Assignee can protect himself by obtaining indemnity from creditors. See Mulla (1958), page 804, para. 849.

2. *State debts.*—A question which has been discussed under this topic (under the Provincial Act) is whether section 31 (protection) applies to Crown debts¹. 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 insolvent².

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.

¹See *Aswin Kumar v. Dominion of India*, A.I.R. 1952. Cal. 251 (Harries C. J.) and *Akyab v. Raw Tun U*, I.L.R. 5 Rangoon 806 ; A.I.R. 1928 Rangoon 81, 83.

²Mulla (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 clause¹ 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 adopted².

As a provision for giving insolvency notice has been added³, 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 added⁴.

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.

¹Clause 108.

²This is thus consequential on clause 108.

³See clause 3(3).

⁴This is at present dealt with in section 76, Provincial Act. It is considered that it may be left to rules.

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(1)(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 Act¹.

Section
33 (3), P.A.

Rule 28.—Follows section 33(3), Provincial Act, to some extent. There is no such provision² in the Presidency 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 discussed whether a creditor is entitled to prove his claim after an order of discharge 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 disturb 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 courts³⁻⁴, and is the view taken in *Sivasubramania Pillai v. The ethiappa Pillai*⁵ and *Arjun Das v. Marchi Telinee*⁶. The contrary view has been taken by the Allahabad High Court in *Jagdamba Pande v. Ram Khelawan Upadiya*⁷ and by the Rangoon High Court in *Bank of Chettinad Ltd. v. Ko Tin*⁸, and is based on the language of section 64, Provincial Act. A creditor should

¹See Williams, page 558.

²As to practice in Presidency towns, see Mulla (1958), page 416, and para. 446 and also page 697, para. 707.

³*Vide* the judgment of Vaughan, Williams, L.J. in *Re Mc Murdo*, (1902) 2 Ch. 684, 699.

⁴Mulla (1958), page 697.

⁵(1924) I.L.R. 47 Mad. 120 ; A.I.R. 1924 Mad. 163.

⁶I.L.R. (1937) 1 Cal. 127 ; A.I.R. 1936 Cal. 434.

⁷I.L.R. 1942 All. 848.

⁸I.L.R. 14 Rang. 529 ; A.I.R. 1936 Rang. 393.

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 final dividend has been declared that his right must be held to cease. To make this clear beyond all controversy, for the words "before the discharge of the insolvent", words referring to the declaration of the final dividend have been substituted.

Section 33(3), Provincial Act, speaks of notice to the insolvent; but the insolvent should not have a right to contest the proof. That part has, therefore, been removed. The Official Assignee is the proper person to be heard¹.

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 summoned 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.

¹*Cf.* recommendation of the Civil Justice Committee (1925), Chapter 14, para. 21.

APPENDIX III

COMPARATIVE TABLES

TABLE A

Showing the provision in the Provincial Insolvency Act, 1920, and the corresponding provision, if any, in Appendix I.

Provision in the Provincial Insolvency Act, 1920	Corresponding provision in Appendix I
1	2
Section 1, P.A.	1
Section 2 (1)(a), part,—P.A. “creditor”	2, part
Section 2 (1)(a), part,—P.A. “debt”	2, part
Section 2 (1)(a), part,—P.A. “debtor”	2, part
Section 2 (1)(b),—P.A. “District Court”	2, part
Section 2 (1)(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 (1)(f)—P.A. “Transfer of property”	2, part
Section 2 (2), P.A.	2, part
Section 3 (1), P.A.	97 (1)
Section 3 (2), P.A.	97 (2)
Section 4 (1), P.A.	99 (1), main para.
Section 4 (2), P.A.	99 (2)
Section 4 (3), P.A.	Omitted ¹
Section 5 (1), P.A.	100 (1)

¹For reasons, see notes to clause 99.

Provision in the Provincial Insolvency Act, 1920	Corresponding provision in Appendix I
1	2
Section 5 (2), P.A.	100 (2)
Section 6, main para., P.A.	3 (1)
Section 6, <i>Explanation</i> , P.A.	3, <i>Explanation</i>
Section 7, P.A.	4
Section 8, P.A.	106
Section 9 (1), P.A.	5 (1)
Section 9 (2), P.A.	5 (2)
Section 10, P.A.	6
Section 11, main para. P.A.	98, part
Section 11, 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.	112
Section 18, P.A.	10, part
Section 19, P.A.	10, 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)

Provincial

Provision in the Provincial Insolvency Act, 1920	Corresponding provision in Appendix I
1	2
Section 22, part, P.A.	14 (3)
Section 23, P.A.	11
Section 24 (1), P.A.	15 (1)
Section 24 (2), P.A.	Omitted ¹
Section 24 (3), P.A.	Omitted ¹
Section 24 (4), P.A.	Omitted ¹
Section 25 (1), P.A.	16 (1)
Section 25 (2), P.A.	17 (1)
Section 26, P.A. (Award of Compensation)	Omitted ²
Section 27 (1), 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 (1), 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

¹For reasons, see notes to clause 15.

²Section 26, P.A., is omitted, as it is considered that the matter would be covered by the general provision applying the Civil Procedure Code. See s. 35A, C.P.C., inserted in 1922.

Provincial

Provision in the Provincial Insolvency Act, 1920	Corresponding provision 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 ¹
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 (1), P.A.	33(1)

¹See notes to clause 47.

Provincial

Provision in the Provincial Insolvency Act, 1920	Corresponding provision in Appendix I
1	2
Section 38 (2), part, P.A.	33(2)
Section 38 (2), part, P.A.	33 (4)
Section 38 (3), P.A.	33 (3)
Section 38 (4), part, P.A.	34 (4)
Section 38 (4), part, P.A.	34 (5)
Section 38 (5), P.A.	34 (6)
Section 38 (6), P.A.	34 (7)
Section 38 (7), P.A.	34 (8)
Section 39, P.A.	35 (1)
Section 40, earlier part, P.A.	36 (1)
Section 40, latter part, P.A.	36 (2)
Section 41 (1), P.A.	37 (1)
Section 41 (2), P.A.	37 (2)
Section 42 (1), part, P.A.	38 (1)
Section 42 (1), part, P.A.	38 (2)
Section 42 (2), P.A.	38 (3)
Section 42 (3), P.A.	37 (3)
Section 43 (1), P.A.	39
Section 43 (2), P.A.	Omitted ¹
Section 44 (1), P.A.	43 (1)
Section 44 (2), P.A.	43 (2)
Section 44 (3), P.A.	43 (4)

notes to clause 39.

Provincial

Provision in the Provincial Insolvency Act, 1920	Corresponding provision in Appendix I
1	2
Section 45, P.A.	Second Schedule, rule 24
Section 46, P.A.	45
Section 47 (1), P.A.	Second Schedule, rule 9
Section 47 (2), P.A.	Second Schedule, rule 10
Section 47 (3), P.A.	Second Schedule, rule 11
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 (1), 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 Act, 1920	Corresponding provision in Appendix I
1	2
Section 56(5), P.A.	Omitted as unnecessary
Section 57(1), P.A.	88, part.
Section 57(2), P.A.	Omitted as unnecessary
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 ¹
Section 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, P.A.	77 (2)
Section 65, P.A.	78
Section 66, P.A.	79
Section 67, P.A.	80
Section 67A, P.A.	82
Section 68, P.A.	115

¹Section 60, Provincial Insolvency Act, has been omitted, as section 68 of the Code of Civil Procedure, 1908, with which it is linked up, has been repealed.

Provincial

Provision in the Provincial Insolvency Act, 1920	Corresponding provision in Appendix I
1	2
Section 69, P.A.	119
Section 70, P.A.	127
Section 71, P.A.	128
Section 72(1), P.A.	125
Section 72(2), P.A.	Omitted ¹
Section 73, P.A.	129
Section 74, opening lines, P.A.	83(1), opening lines.
Section 74(i), P.A.	Omitted ²
Section 74(ii), P.A.	83(1)(i)
Section 74(iii), P.A.	Omitted ²
Section 74(iv), P.A.	83(1)(iii)
Section 74(v), P.A.	83(1)(iv)
Section 74(vi), P.A.	83 (vii)
Section 74, proviso, P.A.	83 (2)
Section 75, P.A.	116
Section 76, P.A. (Costs)	Omitted ³
Section 77, P.A.	113
Section 78(1), P.A.	130(1)
Section 78(2), P.A.	130(2)

¹See notes to clause 125.²See notes to clause 83.³Section 76, P.A., is omitted, as it is considered that the general provision applying C.P.C. would suffice. (See s. 35, C.P.C.)

Provincial

Provision in the Provincial Insolvency Act, 1920	Corresponding provision in Appendix I
1	2
Section 79, P.A.	138
Section 80(1), P.A.	96
Section 80(2), P.A.	Omitted ¹
Section 81, P.A.	Omitted as un- necessary
Section 82, P.A.	137
Section 83, P.A.	Omitted as unnecessary
First Schedule, P.A.	Third Schedule
Second Schedule, P.A.	Omitted ²

¹For reasons, see notes to clause 96.²In consequence of omission of section 81, Provincial Act.

TABLE B

Showing the provision in the Presidency-towns Insolvency Act, 1909, and the corresponding provision, if any, in Appendix I.

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision in Appendix I
1	2
Section 1, P.T.A.	1
Section 2, P.T.A.	2
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.	118
Section 8(2) (a), P.T.A.	117, part
Section 8(2) (b), P.T.A.	117, part
Section 9, main para., P.T.A.	3(1)
Section 9, Expl., P.T.A.	3, Expl.
Section 10, 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 Act, 1909	Corresponding 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 ¹
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

¹See notes to clause 10.

Presidency

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision in Appendix I
1	2
Section 19, P.T.A.	95
Section 20, P.T.A.	22
Section 21(1), P.T.A.	30(1)(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.	Omitted ¹
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)

¹For reasons see notes to clause 24.

Presidency

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision in Appendix 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.	Omitted ¹
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

¹For reasons see notes to clause 25.

Presidency

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision in Appendix I
1	2
Section 36 (5), P.T.A.	70 (5), part
Section 36 (6), P.T.A.	70 (8), part
Section 36 (7), P.T.A.	70 (9), part
Section 37, P.T.A.	71
Section 38 (1), P.T.A.	37 (1), part
Section 38 (2), P.T.A.	37 (2)
Section 39 (1), part, P.T.A.	38 (1), part
Section 39 (2), part, P.T.A.	38 (2), part
Section 39 (2), part, P.T.A.	38 (1), part
Section 39 (2), part, P.T.A.	38 (2), part
Section 39 (3), P.T.A.	37 (3)
Section 39 (4), P.T.A.	38 (3)
Section 40, P.T.A.	37 (1), part
Section 41, part, P.T.A.	39
Section 41, part (<i>i.e.</i> , last 11 words), P.T.A., read with section 23(2) (As to re-commitment).	Covered ¹ by clause 39
Section 42, P.T.A.	40
Section 43, P.T.A.	41
Section 44, P.T.A.	42
Section 45(1), P.T.A.	43(1)
Section 45(2), P.T.A.	43(2)
Section 45(3), P.T.A.	43 (3)

¹See notes to clause 39.

Presidency

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision in Appendix I
1	2
Section 45(4), P.T.A.	43 (4)
Section 46(1), P.T.A.	} 44
Section 46(2), P.T.A.	
Section 46(3), P.T.A.	
Section 46(4), P.T.A.	
Section 46, Expl., P.T.A.	
Section 47, main para, P.T.A.	} 45
Section 47, proviso, P.T.A.	
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
1	2
Section 56, P.T.A.	55
Section 57, P.T.A.	57
Section 58(1), P.T.A.	60(1)
Section 58(2), P.T.A.	60(2)
Section 58(3), P.T.A.	60(3)
Section 58(4), P.T.A.	60(4)
Section 58(5), P.T.A.	60(5)
Section 59, P.T.A.	61
Section 60, P.T.A.	62
Section 61, P.T.A.	Covered by clauses 88-89
Section 62, P.T.A.	65
Section 63, P.T.A.	66
Section 64, P.T.A.	67
Section 65, P.T.A.	68
Section 66, P.T.A.	69
Section 67, P.T.A.	46
Section 68(1), P.T.A.	91(1), part
Section 68(2), P.T.A.	91(4)
Section 69, P.T.A.	92
Section 70, P.T.A.	74
Section 71, P.T.A.	75
Section 72, P.T.A.	76

Presidency

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision in Appendix I
1	2
Section 73(1), P.T.A.	77(1), part
Section 73(2), P.T.A.	77(2)
Section 74, P.T.A.	78
Section 75, P.T.A.	79
Section 76, P.T.A.	80
Section 77(1), part, P.T.A.	88(1)(a)
Section 77(1), part, P.T.A.	88(1)(b)
Section 77(1A)(2)(3), P.T.A.	Omitted ¹
Section 78, P.T.A.	90
Section 79(1), P.T.A.	91, part
Section 79(2)(a), part, P.T.A.	91, part
Section 79(2)(a), part, P.T.A.	91, part
Section 79(2)(b), P.T.A.	91, part
Section 79(2)(c), P.T.A.	91, part
Section 80, P.T.A.	91, part
Section 81, P.T.A.	Omitted as unnecessary
Section 82, P.T.A.	134
Section 83, part, P.T.A.	89 (1)
Section 83, part, P.T.A.	89 (2)
Section 84, P.T.A.	Omitted as unnecessary
Section 85(2)(1), P.T.A.	93, part

¹See notes to clause 88.

Presidency

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision 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 ¹
Section 90(3), P.T.A.	Omitted ²
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.

² See notes to clause 15.

Presidency

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision in Appendix I
1	2
Section 101A, P.T.A.	130(2)
Section 102, P.T.A.	125(1)
Section 103, P.T.A.	119, part
Section 103A, P.T.A.	129
Section 104, P.T.A.	127
Section 105, P.T.A.	128
Section 106(1), opening lines, P.T.A.	83, opening lines
Section 106(1)(a), P.T.A.	83, part
Section 106(1)(b), P.T.A.	83, part
Section 106(1)(c), P.T.A.	83, part
Section 106(1)(d), P.T.A.	83, part
Section 106(1), proviso, P.T.A.	Omitted ¹
Section 106(2), P.T.A.	83(2)
Section 107, P.T.A.	106
Section 108, P.T.A.	84
Section 109, P.T.A.	85
Section 110, P.T.A.	86
Section 111, P.T.A.	87
Section 112, P.T.A.	138, part
Section 113, P.T.A.	138, part
Section 114, P.T.A.	138, part

¹See notes to clause 83.

Presidency

Provision in the Presidency-towns Insolvency Act, 1909	Corresponding provision in Appendix I
1	2
Section 115, P.T.A.	Omitted ¹
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.	136
Section 121, P.T.A.	Omitted as unnecessary
Section 122, 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.	113
Section 127, P.T.A.	Omitted as unnecessary
First Schedule, P.T.A.	First Schedule
Second Schedule, P.T.A.	Second Schedule

¹Section 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 Presidency-towns Insolvency Act, 1909 in the three High Courts

TABLE No. I.—BOMBAY

Adjudicated in	Total Nos.	Number of undischarged insolvents under the P.T.I. Act as on 31-12-62	Remarks		
			D.	R.	S.
1935	794	5	—	1	4
1936	853	7	—	—	7
1937	611	7	1	—	6
1938	434	7	—	2	5
1939	292	5	—	1	4
1940	342	5	3	2	—
1941	296	3	2	1	—
1942	188	1	1	—	—
1943	145	3	2	1	—
1944	152	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	153	3	—	3	—
1951	128	4	2	1	—
1952	176	6	3	1	—
1953	165	7	1	3	1
1954	160	5	3	1	1
1955	169	2	1	1	—
1956	133	9	1	—	—
1957	143	7	—	4	1
1958	107	2	—	1	1
1959	99	20	—	3	2
1960	135	48	—	2	2
1961	119	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 naye paise in the rupee has been paid to the creditors.

TABLE No. 2.—CALCUTTA

Year	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962
Total Number of undischarged insolvents under the Presidency-towns Insolvency Act as on	60	31	14	14	5	13	13	8	17	14	21	19	13	7	19	15	22	21	15	9	20	24	23
31-12-62 115	5	7	3	1	2	1	..	..	..	1	3	3	5	1	4	1	7	7	5	5	12	19	23
Number remaining undischarged																							

TABLE No. 3.—MADRAS

	Adjudicated in							Total
	1940 to 1956	1957	1958	1959	1960	1961	1962	
Number of undischarged insolvents under the Presidency-towns Insolvency Act (Act III of 1909) as on 31-12-1962	Nil	2	4	19	32	64	82	203