

Provincial Insolvency Act, 1920

5 of 1920

[25th February, 1920]

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STATEMENT OF OBJECTS AND REASONS "The object of this Bill is to amend the Provincial Insolvency Act, 1907 (III of 1907), which contains the Law of Insolvency in force in British India outside the Presidency towns and the town of Rangoon. The Act came into force on the 1st January, 1908, and since then with the exception of a few unimportant amendments made in 1914, it has not been amended. Ten years' experience of the practical working of the Act has brought to light many defects which have from time to time provoked criticism from most of the local Governments and not a few of the Judges who have had to administer its provisions. Numerous suggestions for the amendment of the Act on various points have also been received from time to time from the commercial communities and members of the legal profession. The chief indictment of the Act is that it lends itself to the protection of fraudulent debtors, that it subjects an undischarged insolvent to

little or no practical inconvenience, and that its provisions for the punishment of fraudulent insolvents are not effective in practice. One of the principal defects in the existing law arises from the fact that the conduct of debtor in many cases never comes under the scrutiny of the Court. The stage at which the misconduct of the debtor should come before the Court and at which most of the provisions affecting a fraudulent insolvent would operate, is when he applies for his discharge. But there is nothing in the Act which requires him to apply for his discharge, and in practice such applications are rare. To remedy this unsatisfactory state of the law, it is proposed to include in the Act provisions which will compel an insolvent to apply to the Court within a prescribed period for his discharge or to lose the protection afforded by the insolvency proceedings. The Court will have power to extend the prescribed period and, when the adjudication order is annulled owing to the failure of the insolvent to apply in time for his discharge, a fresh petition on the same facts will be barred. These proposed changes are affected by the proviso to proposed new section 6-C in clause 4 of the Bill, new sub-section (I-A)(ii) in clause 10, the amendments in clause 11(1), (3) and (4), and the amendments in clause 20. It is now settled law that under the Act, as it stands, it is not open to the Court to reject the petition of a debtor on the ground that the application is an abuse of the law. While admitting that the object of an insolvency law is to deal with all insolvents, whether honest or not and that no applicant who is in fact insolvent should be liable to have his petition dismissed in limine, it seems reasonable that the Court should have discretion as to the amount of protection to be afforded to a petitioning debtor in each individual case, the debtor being required to show that he is in fact unable to pay his debts. and that he has not concealed his property. These changes in the existing law are effected by the amendment in Cls. 9 and 10(2) and clause 12, which inserts a new section 16-A as to protection orders on the lines of S.25 of the Presidency-Towns Insolvency Act, 1909. A further defect in the Act is the absence of provisions sufficiently defining the power of Courts to decide questions of law and fact arising in insolvency proceedings. In certain cases, e.g., those mentioned in Ss. 18(3), 36 and 37, the Court is empowered to pass orders, and section 47 defines the general powers of the Court in regard to proceedings under the Act, but nowhere is a general power conferred on the Court to deal with and decide important questions of law and fact (e.g., a question of title to property) which may arise in the insolvency proceedings. This question has recently been the subject of conflicting decisions in the Allahabad and the Calcutta High Courts. In Nilmoni Choudhury v. Durga Chai-ai Choudhury (22 C.W.N. 704), the Calcutta High Court dissenting from the Allahabad High Court held that the Insolvency Court has no such power, and that a question of title to the property should be tried in a separate suit. It is obviously desirable that this conflict between the two High Courts should be terminated and having regard to the prevalence of benami transactions in India and the importance of arming Courts with adequate powers for the speedy realisation of assets in the interests of creditors, the Government of India are of opinion that the Court should be given full power to decide all questions raised in insolvency proceedings. Clause 3 of the Bill accordingly enacts a provision on the lines of s.7 of the Presidency Towns Insolvency Act. Proceedings instituted against fraudulent insolvents are frequently infructuous. This is largely due to the lack of precision in the Act as to the procedure to be adopted by the Court which desires to take action. The wording of sub-section (2) of section 43 is unduly vague, regard being had to the fact that it constitutes a criminal offence, and experience has shown that it frequently creates difficulties. It is proposed that the penal provisions of existing section 43 should be amended on the lines of S.103 of the Presidency Towns Insolvency Act, and that the procedure to be followed on a charge should be defined on the lines of section 104 of that Act. It is proposed to embody these provisions in the two separate sections 43A and 43-B inserted by Cl. 19 of the Bill, which also inserts a new section 43-C containing provisions similar to those of S.105 of the Presidency-Towns Insolvency Act. It seems desirable to make it clear that a dishonest insolvent who has been guilty of an offence under the Act can be proceeded against even after he has obtained his discharge, or after a composition submitted by him has been accepted. A summary administration of petty insolvencies is, now largely governed by rules made by the High Courts under section 51 (2)(c) of the Act, but it seems desirable that the Act itself should contain more detailed provisions than at present. and that further simplification of procedure should be effected. It is proposed therefore that, in addition to any further modifications to be made by rules, section 48 should contain certain definite provisions, and it is thought that, if these changes are made, it would be well to confine summary administration to cases where the assets do not exceed Rs. 200 instead of the existing limit of Rs. 500, and to reserve a discretion to the Court to direct the ordinary procedure to be followed in cases where it thinks such a course desirable. These amendments will, it is hoped, go far to check the abuses rendered possible by the defects in the existing law....." - Gaz. of Ind.. 1918, Part V, page 63. Amending Act 28 of 1978 The difficulties experienced by a

litigant in India in executing even a simple money decree have been commented upon by the Privy Council as well as by the Law Commission and the Export Committee on Legal Aid. The Law Commission in its Third Report on Limitation Act, 1908 has recommended that the most effective way of instilling a healthy fear in the mind of the dishonest judgment-debtor 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 amendment made to the Presidency-towns Insolvency Act, 1909 in Bombay. This recommendation was reiterated by the Law Commission in its Twenty-sixty Report on Insolvency Laws. 2. The Export Committee on Legal Aid was also of the view that the above recommendation of the Law Commission should be implemented immediately without waiting for the enactment of a comprehensive law of insolvency. 3. It is, therefore, proposed to amend the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 to add a new act of insolvency namely, that a debtor has not complied with the insolvency notice served on him by a creditor, who has obtained a decree or order against him for the payment of money, within the period specified in the notice. If the amount shown in the insolvency notice is not correct, it would be invalidated if the debtor gives notice to the creditor disputing the amount. The debtor can, however, apply to the Court to have the insolvency notice set aside on the ground, among others, that he is entitled to have the decree reopened under any law relating to relief of indebtedness or that the decree is not executable under any such law. The Bill seeks to achieve the above objects.-S.O.R. - Gaz. of Ind., 16-3-1978, Pt. II, section 2, Ext., p. 188.

PART 1 CONSTITUTION AND POWERS OF COURT

1. Short title and extent :-

(1) This Act may be called The Provincial Insolvency Act, 1920.

(2) It extends to ¹[the whole of India except ² [the territories which, immediately before the 1st November, 1956, were comprised in Part B States] and the Scheduled Districts.

1. Substituted for the words "all the Provinces of India except" by A.L.O., 1950 (26-1-1950).

2. Substituted for the words "Part B States" by 3 A.L.O., 1956(1-11-1956).

2. Definitions :-

(1) In this Act, unless there is anything repugnant in the subject or context,-

(a) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor;

(b) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns ¹ [* * *];

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

(d) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;

(e) "secured creditors" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor; and

(f) "transfer of property" includes a transfer of any interest in property and the creation of a charge upon property.

(2) Words and expressions used in this Act and defined in the Code of Civil Procedure, 1908, and not hereinbefore defined shall have the same meanings as those respectively attributed to them by the said Code.

1. The last portion of this clause was as follows- "the town of Rangoon and the limits of the Ordinary original civil jurisdiction of the Court of the Judicial Commissioner of Sind as defined in section 2 of the Presidency-towns Insolvency Act, 1909." The first four words were omitted by A.O., 1937 and the remainder as amended by Act 34 of 1926; section 2 and Sch. was omitted by A.C.A.O., 1948.

3. Insolvency jurisdiction :-

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

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

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

(1) Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or 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 expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything 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 debtor and the debtors estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them.

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub-section (1). but has reason to believe that the debtor has a saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit.

5. General powers of Courts :-

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

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

PART 2 PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE Acts of insolvency

6. Acts of insolvency :-

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

(a) if, in ²[India] or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally:

(b) if, in ²[India] 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 ²[India] or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as fraudulent preference if he were adjudged an insolvent:

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

(i) he departs or remains out of ⁵[the territories to which this Act extends],

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

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

(e) if any of his property has been sold in execution of the decree of any Court for the payment of money;

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

(g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend. payment of his debts; or

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

⁶ [(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein :

Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice-

(a) in a case where such application is allowed by the District Court, he shall not be deemed to have committed an act of insolvency under this sub-section; and

(b) in a case where such application is rejected by the District Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later: Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the District Court therefor

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

(a) be in the prescribed form;

(b) be served in the prescribed manner:

(c) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent:

(d) specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the District Court granting leave for the service of such notice;

(e) state the consequences of non-compliance with the notice.

(4) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under the decree or order exceeds the amount actually due, unless the debtor, within the period specified in the insolvency notice for its compliance, gives notice to the creditor that the sum specified in the insolvency notice does not correctly represent the amount due under the decree or order: Provided that if the debtor does not give any such notice as aforesaid, he shall be deemed to have complied with the insolvency notice if, within the period specified therein for its compliance, he takes such steps as would have constituted a compliance with the insolvency notice had the actual amount due been correctly specified therein.

(5) Any person served with an insolvency notice may within the period specified therein for its compliance, apply to the District Court to set aside the insolvency notice on any of the following grounds, namely:-

(a) that he has a counter-claim or set-off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed;

(b) that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that-

(i) he has made an application before the competent authority under such law for the setting aside of the decree or order: or

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

(c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.].

1. Section 6 renumbered as sub-section (1) by the Insolvency Laws (Amendment) Act. 1978 (28 of 1978), section 3(1-9-1979).

2. Substituted for the words "the Provinces" by A.L.O., 1950(26-1-1950). .

5. Substituted for words "Part A States and Part C States" by 3 A.L.O., 1956 (1-11-56).

6. Inserted, by the Insolvency Laws (Amendment) Act. 1978 (28 of 1978), section 3(1-9-1979).

7. Petition and adjudication :-

. .- 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.

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

. .- 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.

9. Conditions on which creditor may petition. :-

. -

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

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition : ¹ [Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court reopens.]

(2) If the petitioner's 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

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1. Added by the Insolvency Law (Amendment) Act, 1950 (3 of 1950), Section 6 (.18-2-1950).

10. Conditions on which debtor may petition :-

(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 of any Court for the payment of money; or
- (c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(2) A debtor in respect of whom an order of adjudication "[whether made under Presidency- towns Insolvency Act, 1909, or under this Act has been annulled, owing to his failure to apply, or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be. or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.]

11. Court to which petition shall be presented :-

Every insolvency petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works for gain, or if he has been arrested or imprisoned, where he is in custody: Provided that no objection as to the place of presentation shall be allowed by any Court in the exercise of appellate or revisional jurisdiction 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. OBJECTS AND REASONS "Section 6(2) of the Act of 1907 lays down where an insolvency petition is to be presented, but does not contain any saving in the event of the petition being presented in the wrong Court. The point was raised in Madho Pershad v. Walton (18 CWN 1050), where the insolvent successfully presented an appeal on the ground that the petition had been presented in the wrong court. The proposed proviso is intended to stop this loophole in the existing law."--S.O.R.

12. Verification of petition :-

Every insolvency petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

13. Contents of petition :-

. .-

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

- (a) a statement that the debtor is unable to pay his debts;
 - (b) the place where he ordinarily resides or 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 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 insofar as it includes 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 decree;
 - (f) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent, and (where such a 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.
- (2) 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; and
 - (b) the amount and particulars of his or their pecuniary claim, or claims against such debtor

14. Withdrawal of petitions :-

. .- No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

15. Consolidation of petitions :-

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

16. Power to change carriage of proceedings :-

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

17. Continuance of proceedings on death of debtor :-

. .- 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 so far as may be necessary for the realisation and distribution of the property of the debtor,

18. Procedure for admission of petition :-

. .- The procedure laid down in the Code of Civil Procedure, 1908 . with respect to the admission of petitions, shall, so far as it is applicable, be followed in the case of insolvency petitions.

19. Procedure on admission of petition :-

(1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing

the petition

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(2) Notice of the order under sub-section (1) shall be given to creditors in such manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

20. Appointment of interim receiver :-

The Court when making an order admitting the petition may, and where the debtor is the petitioner ordinarily shall, appoint an interim receiver of the property of the debtor or of any part thereof, and may direct him to take immediate possession thereof or of any part thereof, and the interim receiver shall thereupon have such of the powers conferrable on a receiver appointed under the Code of Civil Procedure, 1908 , as the Court may direct. If an interim receiver is not so appointed, the Court may make such appointment at any subsequent time before adjudication, and the provisions of ¹ [this section] shall apply accordingly.

1. Substituted for the words "this sub-section" by the Repealing and Amending Act, 1939 (34 of 1939). Section 2 and Schedule 1.

21. Interim proceedings against debtor :-

. .- 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 :-

(1) 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;

(2) 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;

(3) 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 an order under clause (2) or clause (3) shall not be made 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.

22. Duties of debtors :-

. .- The debtor shall on the making of an order admitting the petition produce all books of account, and shall at any time thereafter 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 receiver, execute such instruments, and generally do all such acts and things in relation to his property as may be required by the Court or receiver, or as may be prescribed.

23. Release of debtor :-

. .-

(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 of any Court for the payment of money, order his release on such terms as to security as may be reasonable and necessary.

(2) The Court may at any time order any person who has been released under this section to be re-

arrested and re-committed to the custody from which he was released.

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

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24. Procedure at hearing :-

. . -

(1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof of the following matters, namely:-

(a) that the creditor or the debtor, as the case may be, is entitled to present the petition : Provided that, where the debtor is the petitioner, 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 thereon;

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

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the Judge, and shall form part of the record of the case.

25. Dismissal of petition :-

(1) In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of 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) 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.

26. Award of compensation :-

(1) Where a petition presented by a creditor is dismissed under sub-section (1) of Section 25 , and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realised as if it were a fine.

(2) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon .

27. Order of adjudication :-

(1) If the Court does not dismiss the petition, it shall make an order of adjudication, and shall specify in such order the period within which the debtor shall apply for his discharge.

(2) The Court may, if sufficient cause is shown, extend the period within which the debtor shall apply for his discharge, and in that case shall publish notice of the order in such manner as it thinks fit.

28. Effect of an order of adjudication :-

(1) On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors.

(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, 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 under this Act shall during the 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.

(3) For the purposes of sub-section (2), all goods being at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of sub-section (2) shall apply in respect thereof.

(5) The property of the insolvent for the purposes of this section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, 1908 (5 of 1908), or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(6) Nothing in this section shall 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 it if this section had not been passed.

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

28A. Insolvents property to comprise certain capacity :-

The property of the insolvent shall comprise and shall always be deemed to have comprised also 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: Provided that nothing in this section shall affect any sale, mortgage or other transfer of the property of the insolvent by a Court or receiver or the Collector acting under section 60 made before the commencement of the Provincial Insolvency (Amendment) Act, 1948 (25 of 1948), which has been the subject of a final decision by a competent Court: Provided further that the property of the insolvent shall not be deemed by reason of anything contained in this section to comprise his capacity referred to in this section in respect of any such sale, mortgage or other transfer of property made in the State of Madras after the 26th day of July, 1942, and before the commencement of the Provincial Insolvency (Amendment) Act, 1948 (25 of 1948)]. State Amendment Tamil Nadu.-After section 28A, insert the following section, namely:- "28B. Section 28A to apply to the merged territory of Pudukottai from 1st April, 1949 with certain modification.-Section 28A, shall, with effect on and from the 1st day of April, 1949, be deemed to have applied to the merged territory of Pudukottai, subject to the following modifications, namely:-

(i) in the first and second provisos, for the words, brackets and figures before the commencement of the Provincial Insolvency (Amendment) Act, 1948, the words and figures before the 7th day of May 1947 shall be substituted;

(ii) in the second Proviso, for the figures, letters and words 28th day of July 1942, the figures, letters and words 29th day of August 1944 shall be substituted". [Vide Tamil Nadu Act 8 of 1953, sec. 2 (w.e.f. 27-5-1953).] COMMENTS Power of Official Receiver In a case, where the father in a joint Hindu Family is adjudicated as an insolvent, the Official Receiver will have the control over the entire joint family property and he is also entitled to collect rents etc. in order to clarify the debts which are not incurred for illegal purposes; Official Receiver v. P.L. Devarajan Chettiar, AIR 1949 Mad 216. Property used by insolvent Under section 28A if the father is adjudged as an insolvent, he can use his property which vests in the Official Receiver, to clear his debts. He can use joint family property for this, provided his debts are not incurred for illegal purposes; Nageswaraswami v. Viswasundara Rao, AIR 1953 SC 370.

29. Stay of pending proceedings :-

Any Court in which a suit or other proceeding is pending against a debtor shall, on proof that an order of adjudication has been made against him under this Act, either stay the proceedings, or allow it to continue on such terms as such Court may impose.

30. Publication of order of adjudication :-

Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication, the period within which the debtor 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.

31. Protection order :-

(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.

(2) A protection order may apply either to all the debts of the debtor, or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(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 the adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a protection order. State Amendment Uttar Pradesh.-In section 31,-in sub-section (2),-

(i) for the words "revoked or renewed", substitute the words "revoked, modified or renewed";

(ii) Insert the following proviso, namely:- "Provided that a protection order shall not apply to any debt referred to in sub-section (1) of section 44".

(iii) In sub-section (3), in the proviso, for the word "revoked" substitute the words "revoked or modified". [Vide Uttar Pradesh Act 53 of 1976 sec. 2 (w.e.f. 10-12-1976).] COMMENTS Protection order: When made Where the debt has been incurred after the adjudication order, then under section 31 protection order can be made; S. Smith v. Dunichand, AIR 1933 Lah 261. When the adjudication order has been passed, only then the order for protection can be made; Mariam Bibi v. A.E. Motala, AIR 1932 Rang 51. When protection order not made If there is no protection order and if no adjudication had taken place, the creditor can move an application for the debtors arrest; Hari Ram v. Sri Krishan Ram, AIR 1927 All 418.

32. Power to arrest after adjudication :-

At any time after an order of adjudication has been made, the Court may, if it has reason to believe on the application of any creditor or the receiver, that the debtor has absconded or departed from the local limits of its jurisdiction with intent to avoid any obligation which has been, or might be, imposed on him by or under this Act, order a warrant to issue for his arrest, and on his appearing or being brought before it, may, if satisfied that he was absconding or had departed with such intent, order his release on such terms as to security as may be reasonable or necessary, or if such security is not furnished, direct that he shall be detained in the civil prison for a period which may extend to three months.

33. Schedule of creditors :-

(1) When an order of adjudication has been made under this Act, all persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts: Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debts shall not be included in the schedule.

(2) A copy of every such schedule shall be pasted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the 1[receiver] and the other creditors who have proved their debts, and hearing their objections (if any), shall comply with or reject the

application.

34. Debts provable under the Act :-

(1) Debts which have been excluded from the schedule on the ground that their value is incapable of being fairly estimated and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall not be provable under this Act.

(2) Save as provided by sub-section (1), 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 under this Act.

35. Power to annul adjudication of insolvency :-

Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, the Court shall, on the application of the debtor, or of any other person interested, by order in writing, annul the adjudication 1[and the Court may, of its own motion or on an application made by the receiver or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of section 10, not entitled to present such petition.]- Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, the Court shall, on the application of the debtor, or of any other person interested, by order in writing, annul the adjudication 1[and the Court may, of its own motion or on an application made by the receiver or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of section 10, not entitled to present such petition.]"

36. Power to cancel one of the concurrent orders of adjudication :-

If, in any case in which an order of adjudication has been made, it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court 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 stay all proceedings thereon.

37. Proceedings on annulment :-

(1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts therefore done, by the Court or receiver, 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, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

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

38. Compositions and schemes of arrangement :-

(1) Where a debtor, after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal, and shall issue a notice to all creditors in such manner as may be prescribed.

(2) If, on the consideration of the proposal, a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

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

(4) Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, 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.

(5) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtors discharge, the Court shall refuse to approve the proposal unless

it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtors estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

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

39. Order of approval :-

If the Court approves the proposal, the terms shall be embodied in an order of the Court, and 1[***] the order of adjudication shall be annulled, and the provisions of section 37 shall apply, and the composition or scheme shall be binding on all the creditors 2[so far as relates to any debt due to them from the debtor and provable under this Act].-If the Court approves the proposal, the terms shall be embodied in an order of the Court, and 1[***] the order of adjudication shall be annulled, and the provisions of section 37 shall apply, and the composition or scheme shall be binding on all the creditors 2[so far as relates to any debt due to them from the debtor and provable under this Act]."

40. Power to re-adjudge debtor insolvent :-

If default is made in the payment of any instalment due in pursuance of the composition or scheme, 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, re-adjudge the debtor insolvent and annul the composition or scheme 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. When a debtor is re-adjudged insolvent under this section, all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

41. Discharge :-

(1) A debtor 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, and any objections which may be made thereto.

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

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

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

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

42. Cases in which Court must refuse an absolute discharge :-

(1) The Court shall refuse to grant an absolute order of discharge under section 41 on proof of any of the following facts, namely:-

(a) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas 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 under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

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

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

business affairs;

(g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become 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 property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(2) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(3) The powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised concurrently. State Amendment Andhra Pradesh.-In section 42, in sub-section (1), in clause (a), for the words "eight annas in the rupee" in both the places where they occur, substitute the words "fifty paise in the rupee". [Vide Andhra Pradesh Act 23 of 1965, sec. 7 (w.e.f. 1-6-1966).]

COMMENTS Report of Official Receiver Where the Official Receivers report is in favour of the discharge of the insolvent, it is for the creditors to prove that the report is contrary to the existing facts; Tara Singh v. Sarmukh Singh, AIR 1933 Lah 812. Scope Section 42 covers the transfer made by a person fraudulently, before he is adjudged as an insolvent and if such transfers are made within the prescribed period, then the discharge order can be refused. Thus, if the creditors point towards these fraudulent transfers, the onus to prove the same will be on them; Abdul Sattar v. Dinajpur Trading and Banking Co., AIR 1939 Cal 490.

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

(1) If the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or if the debtor does not apply for an order of discharge within the period specified by the Court, 1[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 37 shall apply].-(1) If the debtor 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 debtor does not apply for an order of discharge within the period specified by the Court, 1[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 37 shall apply]."

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled under sub-section (1), the Court may, if it thinks fit, re-commit the debtor to his former custody, and the officer-in-charge of the prison to whose custody such debtor is so re-committed, shall receive such debtor into his custody according to such re-commitment, 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 no order of adjudication had been made.

44. Effect of order of discharge :-

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

(a) any debt due to the Government;

(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 order for maintenance made under section 488 of the Code of Criminal Procedure, 1898 (5 of 1898).1 tc" (d) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898 (5 of 1898).1"

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

(3) 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 for him. State Amendment Uttar Pradesh.-In section 44, in sub-section (1), in clause (d), substitute the following clauses, namely:- "(d) any liability under any assessment for maintenance or under any decree or order for maintenance passed under any law for the time being in force; or

(e) any debt or liability the amount due in respect of which is recoverable from him as arrears of land revenue under the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 or under any other law for the time being in force". [Vide Uttar Pradesh Act 53 of 1976, sec. 3 (w.e.f. 10-12-1976).] COMMENTS Discharge Co-debtor A co-debtor will not be discharged if a debtor is discharged for the same debt; Parasurama Mudaliar v. B. Ramanathan, AIR 1981 Mad 33. Liability of surety Under section 44(3), surety is liable even after the insolvent is discharged from liability; Thakar Dass v. Phagwa, AIR 1936 Pesh 150. Property not to be re-vested The property is not reverted once the discharge order is passed; Khem Chand v. Heman Das, AIR 1937 Sind 306. Provable debt Only provable debts can be penalised under section 44(2). Provable debts should not be in existence after the order of discharge has been made and before the said order is made. It should be there when the adjudication order was made; Kathu v. A.I.Q. Raja Jang, AIR 1949 Lah 167. Receiver The receiver does not become functus officio, if an order of discharge is made under section 44(2); Jubilee Bank v. Santimoyee Debi, AIR 1950 Cal 487. When court can sell property of insolvent The Insolvency Court can sell the property of the insolvent even after the discharge order. The property can be sold on creditors application; Suka v. Ram Chandra Shankar Mohar, AIR 1937 Nag 171. When surety cannot recover the amount A surety cannot recover the amount paid by him to the creditor, towards the satisfaction of debts of the insolvent, once the insolvent is discharged from all the liabilities; Nalliya Goundan v. Marappa Goundan, AIR 1942 Mad 745.

PART 3 ADMINISTRATION OF PROPERTY

45. Debt payable at a future time :-

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 application of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

46. Mutual dealings and set-off. :-

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

47. Secured creditors :-

- (1) Where a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.
- (2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.
- (3) Where a secured creditor does not either realize or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, 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.
- (4) Where a security is so valued, the Court may at any time before realization redeem it on payment to the creditor of the assessed value.
- (5) Where a creditor, after having valued his security, subsequently realizes it, the net amount realized 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.
- (6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all shares, in any dividend.

48. Interest :-

- (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged all insolvent, and which is provable under this Act, the creditor may pray 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 under this Act 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 debtors estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

49. Mode of proof :-

(1) A debt may be proved under this Act by delivering or sending by post in a registered letter, to the Court an affidavit verifying the debt.

(2) 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. The Court may at any time call for the production of the vouchers

50. Disallowance and reduction of entries in schedule :-

(1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter or, in the case of a composition or scheme, upon the application of the debtor.

51. Restriction of rights of creditor under execution :-

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

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

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

52. Duties of Courts executing decree as to property taken in execution :-

Where execution of a decree has been issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been admitted, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

53. Avoidance of voluntary transfer :-

Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrancer 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 voidable as against the receiver and may be annulled by the Court.

54. Avoidance of preference in certain cases :-

(1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver, and shall be annulled

by the Court.

(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 of the insolvent

54A. By whom petitions for annulment may be made :-

A petition for the annulment of any transfer under Section 53, or of any transfer, payment, obligation or judicial proceeding under Section 54, may be made by the receiver or, with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and this refused to make such petition.

55. Protection of bona fide transactions :-

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

- (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 such person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

56. Appointment of receiver :-

(1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

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

- (a) Require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and
 - (b) By general or special order, fix the amount to be paid as remuneration for the
- (3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid, is from the possession or custody thereof :

Provided that nothing in that section shall be deemed to authorize the Court to remove from the possession or custody of property any person whom the insolvent has not a present right to remove.

(4) Where a receiver appointed under this section-

- (a) Fails to submit his accounts at such periods and in such forms as the Court directs, or
- (b) Fails to pay the balance due from him thereon as the Court directs, or
- (c) Occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

(5) The provisions of this section shall apply, so far as may be, to interim receivers appointed under Section 20.

57. Power to appoint Official Receivers :-

(1) The State Government may appoint such persons as it thinks fit (to be called "Official Receivers") to be receivers under this Act within such local limits as it may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purpose of every order appointing a receiver or an interim receiver issued by any such Court, unless the Court for special reasons otherwise, directs.

(3) Any sum payable under clause (b) of subsection (2) of Section 56 in respect of the services of an Official Receiver shall be credited to such fund as the State Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the Said fund or otherwise as the State Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

58. Powers of Court if no receiver appointed :-

Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act.

59. Duties and powers of receiver :-

Subject to the provisions of this Act, the receiver shall, with all convenient speed, realize the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may-

- (a) Sell all or any part of the property of the insolvent;
- (b) Give receipts for any money received by him; and may by leave of the Court, do all or any of the following things, namely;
- (c) Carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;
- (d) Institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;
- (e) Employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court;
- (f) Accept at the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit;
- (g) Mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;
- (h) Refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon; and
- (i) 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.

59A. Power to require information regarding the insolvent's property :-

(1) The Court, if specially empowered in this behalf by all order of the State Government, or any officer of the Court so empowered by a like order, may on the application of the receiver or any creditor who has proved his debts, at any time after all order of adjudication has been made, summons before it in the prescribed manner any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court or such officer, as the case may be, may deem capable of giving information respecting the insolvent or his dealings or property, and the Court or such officer may require any such person to produce any documents in his custody or power relating to the insolvent or to his dealings or property.

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

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

60. Special provisions in regard to immovable property :-

(1) In any local area in which a declaration has been made under Section 68 of the Code of Civil Procedure, 1908 (5 of 1908), and is in force, no sale of immovable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver; but, after the other property of the insolvent has been realized, the Court shall ascertain-

- (a) The amount required to satisfy the debts proved under this Act after deducting the monies already received;
- (b) The immovable property of the insolvent remaining unsold; and
- (c) The encumbrances (if any) existing thereon; and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by paragraphs 2 to 10 of the Third Schedule to the said Code as he thinks fit, and subject to the provisions of those paragraphs so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

(2) Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immovable property; and any such provision shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

61. Priority of debts :-

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

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

(b) All salary or wages, not exceeding twenty rupees in all, 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.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in subsection (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. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts entered in the schedule shall be paid ratably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum on all debts entered in the schedule.

62. Calculation of dividends :-

(1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet-

(a) Debts provable under this Act and appearing, from the insolvents 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 proof.

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

(c) Disputed proof or claims; and

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

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

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

Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the receiver, 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.

64. Final dividend :-

When the receiver has realized all the property of the insolvent or so much thereof as can, in the opinion of the Court, be realized without needlessly protracting the receivership, he shall declare a final dividend; but before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claim within the time limited by the notice, he will proceed to make a final dividend without regard to their claims. 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 entered in the schedule without regard to the claims of any other persons.

65. No suit for dividend :-

No suit for a dividend shall lie against the receiver; but where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

66. Management by and allowance to insolvent :-

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

(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.

67. Right of insolvent to surplus :-

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

67A. Committee of Inspection :-

(1) The Court may, if it, thinks fit, authorise the creditors who have proved their debts to appoint a committee of inspection for the purpose of superintending the administration of the insolvents property by the receiver.

(2) The persons appointed to a committee of inspection shall be creditors who have proved their debts or persons holding general powers of attorney from such creditors.

(3) The committee of inspection shall have such powers of control over the proceeding of the receiver as may be prescribed

68. Appeals to Court against Receiver :-

If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply 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 application under this section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of.

PART 4 PENALTIES

69. Offences by debtors :-

If a debtor, whether before or after the making of an order of adjudication,-

(a) wilfully fails to perform the duties imposed on him by section 22 or to deliver up possession of any part of his property which is divisible among his creditors under this Act, and which is for the time being in his possession or under his control to the Court or to any person authorized by the Court to take possession of it, or

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

(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, or

(c) fraudulently with intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors,-

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

(ii) has made away with, charged, mortgaged or concealed any part of his property of any kind whatsoever, he shall be punishable on conviction ¹ [* * *] with imprisonment which may extend to one year. [P.I., 1907 - Section 43(2); P.T.I., 1909 - Section 103.]

1. Substituted for the original sub-section by A. 0., 1937 (1-4-1937).

70. Procedure on charge under section 69 :-

[Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in section 69 and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a 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.]

71. Criminal liability after discharge or composition :-

.-"Where an insolvent has been guilty of any of the offences specified in Section 69, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

72. Undischarged insolvent obtaining credit :-

(1) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months or with Fine or with both

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate: and may bind over any person to appear and give evidence on such trial

73. Disqualification of insolvent :-

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

(a) being appointed or acting as a Magistrate:

(b) being elected to any office of any local authority where the appointment to such office is by election or holding or exercising any such office to which no salary is attached: and

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

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

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

(b) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(3) The Court may grant or refuse such certificate as it thinks fit, but any order of refusal shall be subject to appeal.

PART 5 SUMMARY ADMINISTRATION

74. Summary administration :-

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 five hundred rupees, the Court may make an order that the debtors estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely :-

(i) unless the Court otherwise directs, no notice required under this Act shall be published in the Official Gazette;

(ii) on the admission of a petition by a debtor, the property of the debtor shall vest in the Court as a receiver

;

(iii) at the hearing of the petition, the Court shall inquire into the debts and assets of the debtor and determine the same by order in writing, and it shall not be necessary to frame a schedule under the provisions of section 33 ;

(iv) the property of the debtor shall be realised with all reasonable despatch and thereafter, when practicable, distributed in a single dividend:

(v) the debtor shall apply for his discharge within six months from the date of adjudication; and

(vi) such other modifications as may be prescribed with the view of saving expense and simplifying procedure: Provided that the Court may at any time direct that the ordinary procedure provided for in this Act shall be followed in regard to the debtors estate, and thereafter the Act shall have effect accordingly.

PART 6 APPEALS

75. Appeals :-

(1) The debtor, any creditor, the receiver 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 to the District Court, and the order of 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 : 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 4 may appeal to the High Court on any of the grounds mentioned in sub-section (1) of Section 101 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 Schedule I, 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 District Court or of the High Court.

(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.

PART 7 MISCELLANEOUS

76. Costs :-

The costs of any proceeding under this Act, including the costs of maintaining a debtor in the civil prison, shall subject to any rules made under this Act, be in the discretion of the Court in which the proceeding is had.

77. Courts to be auxiliary to each other :-

..- 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.

78. Limitation :-

(1) The provisions of sections 5 and 12 of the Indian Limitation Act, 1908 shall apply to appeals and applications under this Act. and for the purpose of the said section 12 , a decision under section 4 shall be deemed to be a decree

(2) Where an order of adjudication has been annulled under this Act. in computing the period of limitation prescribed for any suit or application for the execution of a decree (other than an application in respect of which the leave of the Court was obtained under sub-section (2) of section 28) which might have been brought or made but for the making of an order of adjudication under

this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded: Provided that nothing in this section shall apply to a suit or application in respect of a debt prov- able.but not proved under this Act.

79. Power to make rules :-

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

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

²[(a) the form of the insolvency notice under clause (a), and the manner in which such notice may be served under clause (b), of sub-section (3) of section 6 ;]

²[(aa)]. for the appointment and remuneration of receivers (other than Official Receivers), the audit of the account of all receivers and the costs of such audit,

(b) for meetings of creditors,

(c) for the procedure to be followed where the debtor is a firm, ⁴[*]

(d) for the procedure to be followed in the case of estates to be administered in a summary manner.

⁵[and

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

(3) All rules made under this section shall be published ⁶[***] in the Official Gazette, ⁷ [***] and shall, on such publication, have effect as if enacted in this Act.

1. Substituted for the original sub-section by A. O., 1937 (1-4-1937).

2. S. 79(2)(a) renumbered as (aa) and cl. (a) inserted before renumbered cl. (aa) by the Insolvency Laws (Amend- ment)Act, 1978 (28 of 1978), section 3 (1-9-1979).

4. The words "as the case may be" were omitted, by A. O., 1937(1-4-1937).

5. Inserted, by the Provincial Insolvency (Amendment) Act, 1926 (39 of 1926), section 6.

6. The words "in the Gazette of India or" were omitted by A. O., 1937(1-4-1937).

7. The word "and" was omitted by the Provincial Insolvency (Amendment) Act, 1926 (39 of 1926), section 6

80. Delegation of powers to Official Receivers :-

(1) The High Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, the Official Receiver shall, subject to the directions of the Court, have all or any of the follow- ing powers, namely:- ¹[* * * * *]

(b) to frame schedules and to admit or reject proofs of creditors: ¹ [* * * * *]

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

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

(2) Subject to the appeal to the Court provided for by section 68 , any order made or act done by the Official Receiver in the exercise of the said powers shall be deemed the order or act of the Court.

1. Clauses (a), (c) and (d) were omitted by the Provincial Insolvency (Amendment) Act, 1926 (39 of 1926). sec- tion 7

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

:-

Any State Government ¹ [* * *] may, by notification in the Official Gazette, declare that any of the provisions of this Act specified in Schedule II shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Act in any part of the territories administered by such State Gov- ernment.

1. The words and figures "or S. 8 of the Lower Burma Courts Act, 1900" were omitted by the Repealing and Amending Act, 1930 (8 of 1930), section 3 and schedule II.

82. Savings :-

..-Nothing in this Act shall-

(a) affect the Presidency-towns Insolvency Act, 1909, ¹ [* * *] or

(b) apply to cases to which Chapter IV of the Dekkhan Agriculturists Relief Act, 1879, is applica- ble.

1. The words "with the previous sanction of the Governor-General in Council" were omitted by the Devolution Act. 1920 (38 of 1920), section 2 and sch. 1.

83. Repeals :-

..- ¹ [* * *]

(2) Where in any enactment or instrument in force at the date of the commencement of this Act, reference is made to Chapter XX (Of Insolvent Judgment-Debtors) of the Code of Civil Procedure, 1877, or to any section of either of those Chapters, such refer ence shall, so far as may be practicable, be construed as applying to this Act or to the corresponding section thereof.

1. Sub-section (1) was omitted by the Repealing Act, 1927 (12 of 1927), Section 2 and schedule.

SCHEDULE 1

DECISIONS AND ORDERS FROM WHICH AN APPEAL LIES TO THE HIGH COURT UNDER SECTION 75(2)

[See section 75(2)]

Section	Nature	of	decision	or	order
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4	Decision of questions of title, priority, etc., arising in insolvency.	25	Order dismissing a petition.	26	Order awarding compensation.
27	Order of adjudication.	33	Orders regarding entries in the schedule.	35	Order annulling adjudication.
37	Order declaring the conditions on which the debtors property shall revert to him on annulment of adjudication.	41	Order on application for discharge.	50	Order disallowing or reducing entries in the schedule.
53	Order annulling a voluntary transfer.	54	Decision that a transfer of property is a preference in favour of a creditor.	a[* * * * *]	

SCHEDULE 2

PROVISIONS OF THE ACT APPLICATION OF WHICH MAY BE BARRED BY STATE GOVERNMENTS

(S e e section 81)

Provisions	of	the	Act	Subject
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Section \ 26 \ \ \ \	Award of compensation.	28.	sub-section (3).	\ \ Reputed property of an insolvent.
34 \ \ \ \	Debts provable under the Act.	38 \ 39 \ \ \ \	Compositions and schemes of arrangement.	40 \ 42, sub-sections (1) \ and (2) \ \
\	Obligation to refuse absolute discharge.	45 \ 46 \ 47 \ \ \ \	Method of proof of debts.	48 \ 49 \ 50 \ 51 \ 52 \ 53 \ \ \ \
\	Effect of insolvency on antecedent transactions.	54 \ 55 \ 61	[except clause (a) of \ sub-section (1) and \ sub-section (4).]	\

(1)	\	\	\	\	(2)
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62 \ 63 \	Dividends.	64 \ 65 \ 66 \ \ \ \	Management by an allowance to insolvent.	72 \ \ \ \	Penalty for obtaining of credit insolvent.
b			y undischarged		