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INSOLVENCY ACT

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1929 Ed.
c. 180
1953 Ed.
c. 43

19 of 1902

An Act to consolidate and amend the Laws relating to Insolvency.

[25TH JULY, 1900]

PRELIMINARY

Short title. **1.** This Act may be cited as the Insolvency Act.

Interpretation. **2.** In this Act—

“assignee” means the assignee in insolvency of a debtor's estate;

“available act of insolvency” means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the receiving order is made;

c. 3:02 “the Court” means the High Court in its civil jurisdiction;

“debt provable in insolvency” or “provable debt” includes any debt or liability by this Act made provable in insolvency;

“debtor” includes anyone, whether a Commonwealth citizen or not, who at the time when any act of insolvency was done or suffered by him, was personally present in Guyana, or ordinarily resided or had a place or residence therein, or was carrying on business therein personally, or by means of an agent, attorney, or manager, or was a member of a firm or partnership which carried on business therein;

“the Full Court” means the Full Court of the High Court;

“gazetted” means published in the *Gazette*;

“general rules” includes forms;

“goods” includes all movable property;

“insolvency” and “insolvent” include bankruptcy and bankrupt;

“judge” means any judge of the Court and includes the Chief Justice;

“marshal” includes any officer charged with the execution of a writ or other process;

“ordinary resolution” means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

“prescribed” means prescribed by general rules within the meaning of this Act;

“property” includes money, goods, things in action, land, and every description of property, whether movable or immovable, and whether situate in Guyana or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

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“the Registrar” means the Registrar of the Supreme Court, and includes any sworn clerk and notary public, and any assistant sworn clerk in the registry;

“the registry” means the registry of the Supreme Court and includes any branch thereof in any county of Guyana;

“resolution” means ordinary resolution;

“secured creditor” means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof, which by the law of Guyana is valid against creditors as a security for a debt due to him from the debtor;

“settlement” includes any ante-nuptial contract;

“special resolution” means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution.

PART I

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE

Acts of Insolvency

When debtor commits act of insolvency.

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

(a) in Guyana or elsewhere, he makes any conveyance or assignment of his property for the benefit of his creditors generally; or

(b) in Guyana or elsewhere, he makes any conveyance, gift, delivery, or transfer of his property, or any part thereof, which is fraudulent as against his creditors or any of them; or

(c) in Guyana or elsewhere, he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would, under this or any other Act for

the time being in force, be void as a fraudulent preference if he were adjudged insolvent; or

(d) with intent to defeat or delay his creditors, he does any of the following things, namely, departs out of Guyana, or, being out of Guyana, remains out of Guyana, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house; or

(e) execution issued against him has been levied by seizure of any of his property under process in execution, in an action in any court, or in any civil proceedings in court, and he allows that property to remain in execution for seven days without taking steps to have the execution set aside and the property released:

Provided that, where the proprietor or owner of a plantation on which there are forty acres under cultivation or the proprietor or owner of any other immovable property is proceeded against without naming him, the seizure and sale in execution of that plantation or immovable property shall not be deemed an act of insolvency by the proprietor or owner; or

(f) anyone has obtained, or is for the time being entitled to enforce a final judgment against him for any amount, and, execution thereon not having been stayed, has served on him, in Guyana or, by leave of the court, elsewhere, an insolvency notice under this Act, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice, if the service is effected in Guyana, and, if the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off, or cross demand, which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained; or

(g) he files in the registry a declaration of his inability to pay his debts or presents an insolvency petition against himself; or

(h) he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts, or, intimates, in any one period of seven days, to three or more of his creditors that he is unable to pay his debts in full, or suspends payment of his debts.

(2) An insolvency notice under this Act shall be in the prescribed form, and shall state the consequences of non-compliance therewith and be served in the prescribed manner.

Receiving Order

Jurisdiction to make receiving order.

4. Subject to the conditions hereinafter specified, if a debtor commits an act of insolvency, the Court on an insolvency petition being presented, either by a creditor or by the debtor, may make an order, in this Act called a receiving order, for the protection of the estate.

Conditions on which creditors may petition for receiving order.
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5. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) the debt owing by the debtor to the petitioning creditor or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to two hundred and fifty dollars; 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; and

(d) the debtor is domiciled in Guyana, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business in Guyana, or has carried on business in Guyana, personally or by means of an agent or manager, or is, or within the said period has been, a member of a firm or

partnership of persons which has carried on business in Guyana by means of a partner or partners, or an agent, attorney or manager.

(2) If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up 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 his security; and 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 manner as if he were an unsecured creditor.

6. A creditor shall be entitled to present a petition against any debtor, being a trader, if any act which would have been an act of insolvency if committed by the debtor in person is committed by any attorney or manager carrying on business in Guyana in the name of the debtor, provided that act comes within the ordinary scope of the business carried on in Guyana by the manager or attorney in the name of the debtor.

Petition against trader-debtor in act of insolvency committed by his attorney or manager.

7. Where a married woman has been adjudged insolvent, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him to his wife for the purposes of her trade or business until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

When husband creditor.

8. Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated insolvent, the assignment shall be void against the assignee unless the assignment has been passed by way of mortgage or executed in the Deeds Registry by way of transfer and assignment:

Avoidance of general assignments of book-debts unless registered.

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due from specified debtors, or of debts growing due under specified contracts.

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petition.

9. (1) A creditor's petition shall be verified by an affidavit of the creditor or of some person on his behalf having knowledge of the facts, and shall be served in the prescribed manner.

(2) At the hearing, the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of insolvency, or, if more than one act of insolvency is alleged in the petition, of some one of the alleged acts of insolvency, and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

(3) If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the service of the petition, or of the act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

(4) Where the act of insolvency relied on is non-compliance with an insolvency notice to pay, secure, or compound for, a judgment debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment.

(5) Where the debtor appears on the petition, and denies that he is indebted to the petitioner or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on the security (if any) being given which the Court requires for payment to the petitioner of any debt established against the debtor in due course of law and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for the time required for trial of the question relating to the debt.

(6) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on any terms it thinks just, the petition in which proceedings have been stayed as aforesaid.

(7) Where it appears to the Court that the petition has been presented without reasonable and probable cause, the Court may order the petitioner to pay to the person against whom the petition is presented a sum by way of damages that will compensate that person for the injury and inconvenience occasioned by the presentment of the petition.

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

10. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of insolvency without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order.

Proceedings and order on debtor's petition.

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

11. On the making of a receiving order, the Official Receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in insolvency shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, except with the leave of the Court and on the terms the Court imposes:

Effect of receiving order.

Provided that this enactment shall not affect the power of any creditor who is secured on any ship or vessel, or any share therein, to realise or deal with his security in the same way as he would have been entitled to realise or deal with his security if this provision had not been enacted.

12. (1) The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before a receiving order is made, appoint the Official Receiver to be interim receiver of the property of the debtor or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

Discretionary powers as to appointment of receiver and stay of proceedings against debtor.

(2) The Court may, at any time after the presentation of an insolvency petition, stay any action, execution, or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor, may, on proof that an insolvency petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on any terms it thinks just.

(3) On the presentation of an insolvency petition, or at any time thereafter until a receiving order is made, the petitioning creditor, or any creditor entitled to present an insolvency petition, may apply to the Court for an order that the Official Receiver be appointed to make an inventory of the property of the debtor, and, if the affidavit of the petitioning creditor under section 9 avers that that step is necessary for the protection of the estate, the Court shall forthwith make the order and may at any time vary or cancel it.

Service of order staying proceedings.

13. Where the Court makes an order staying any action or other proceeding aforesaid, or staying proceedings generally, the order may be served by sending a copy thereof, by prepaid post letter, to the address of the plaintiff or other party prosecuting that action or other proceeding.

Power to the Official Receiver to appoint special manager of debtor's estate or business.

14. (1) The Official Receiver may, at any time after a receiving order is made, or after he is appointed interim receiver, on the application of any creditor or creditors, if he is satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than himself, appoint a manager thereof accordingly, to act until such time as he deems fit, or an assignee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted by him to the special manager.

(2) The special manager shall give security and account in the manner directed by the Official Receiver.

(3) The special manager shall receive the remuneration which the creditors by resolution at any ordinary meeting, determine, or, in default of that resolution, which is prescribed.

15. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and published in one newspaper in the prescribed manner.

Notice of receiving order.

Proceedings consequent on Order

16. (1) As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor shall be adjudged insolvent, and generally as to the mode of dealing with a debtor's property.

First and other meetings of creditors.

(2) With respect to the summoning of, and proceedings at, the first and other meetings of creditors, the rules contained in the First Schedule shall be observed.

First Schedule.

17. (1) Where a receiving order is made against a debtor, he shall make out and submit to the Official Receiver a statement of, and in relation to, his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, and residences, of his creditors, the securities held by them respectively, and the dates when the securities were respectively given, and any further or other information prescribed, or required by the Official Receiver.

Debtor's statement of affairs.

(2) The statement shall be so submitted within the following times:

- (a) if the order is made on the petition of the debtor, within three days from the date of the order; and
- (b) if the order is made on the petition of a creditor, within seven days from the date of the order:

Provided that—

(i) the Official Receiver may, in either case, for special reasons extend the time for any further period not exceeding ten days; and

(ii) the Court may, for special reasons, further extend the time for any necessary period.

(3) If the debtor fails, without reasonable excuse, to comply with the requirements of this section, the Court may on the application of the Official Receiver, or of any creditor, adjudge him insolvent.

(4) Anyone stating himself in writing to be a creditor of the insolvent may, either personally or by his agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom on paying the prescribed fee; and anyone untruthfully so stating himself to be a creditor shall be guilty of a contempt of court and be punishable accordingly on the application of the Official Receiver or assignee.

Public Examination of Debtor

Public
examination of
debtor.

18. (1) Where the Court makes a receiving order, it shall hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

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

(4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The Official Receiver shall take part in the examination of the debtor, and for the purpose thereof, if specially authorised by the Court, may employ a barrister or solicitor, or both.

(6) If an assignee is appointed before the conclusion of the examination, he may take part therein.

(7) The Court may put any questions to the debtor it thinks expedient.

(8) The debtor shall be examined upon oath, and it shall be his duty to answer all the questions the Court may put or allow to be put to him.

(9) Notes of the examination that the Court thinks proper shall be taken down in writing and read over by or to and signed by the debtor, and may thereafter be used in evidence against him; and the notes shall be open to the inspection of any creditor at all reasonable times, on payment of the prescribed fee.

(10) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but that order shall not be made until after the day appointed for the first meeting of creditors.

(11) Where the debtor is a lunatic or suffers from any mental or physical affliction or disability making him in the opinion of the Court, unfit to attend his public examination, the Court may make an order dispensing with that examination or directing that the debtor be examined on the terms, in the manner, and at the place to the Court seeming expedient.

Composition or Scheme of Arrangement

19. (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of affairs, he shall, within seven days of submitting his statement of affairs, or within the time thereafter fixed by the Official Receiver, lodge with the Official Receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors and setting out particulars of any sureties or securities proposed.

Compositions and schemes of arrangement.

(2) In that case the Official Receiver shall hold a meeting of creditors before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon, and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, the proposal shall be deemed to be duly accepted by the creditors and, when approved by the Court, shall be binding on all the creditors.

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

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the Official Receiver so as to be received by him not later than the day preceding the meeting, and the assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

(5) The debtor or the Official Receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(6) The application shall not be heard until after the conclusion of the public examination of the debtor; and any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he has, at a meeting of creditors, voted for the acceptance of the proposal.

(7) The Court shall, before approving the proposal, hear a report of the Official Receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(8) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or whenever the Court is required where the debtor is adjudged insolvent to refuse his discharge, the Court shall refuse to approve the proposal.

(9) If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged insolvent, the Court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than thirty-five cents in the dollar on all the unsecured debts provable against the debtor's estate.

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

(11) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of court.

(12) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in insolvency, but shall not release the debtor from any liability under any judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to the extent and under the conditions expressly ordered by the Court in respect of that liability.

(13) A certificate of the Official Receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(14) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of court.

(15) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the Official Receiver or the assignee, or by any creditor, adjudge the debtor insolvent, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme, and where a debtor is adjudged insolvent under this subsection, any debt provable in other respects which has been contracted before the adjudication shall be provable in the insolvency.

(16) If under or in pursuance of a composition or scheme an assignee is appointed to administer the debtor's property or manage his business or to distribute the composition, section 28 and sections 71 to 87 (inclusive) shall apply as if the assignee were an assignee in insolvency and as if the terms "insolvency," "insolvent," and "order of adjudication," included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme.

(17) Part III, so far as the nature of the case and the terms of the composition or scheme admit, shall apply thereto, the same interpretation being given to the words "assignee," "insolvency," "insolvent," and "order of adjudication," as in the last preceding subsection.

(18) 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.

(19) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged insolvent.

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

Saving from effects of acceptance of composition of certain debts.

Adjudication of Insolvency

21. (1) At the time of making a receiving order, or at any time thereafter, the Court, on the application of the debtor, may adjudge him insolvent; the application may be made orally and without notice.

Power to adjudge debtor insolvent.

(2) Where a receiving order is made against a debtor, the following provisions shall have effect:

(a) if no creditors attend at the time and place appointed for the first meeting of creditors or any adjournment thereof, or if sufficient creditors do not attend thereat to form a quorum; or

(b) if the creditors, at the first meeting of creditors or any adjournment thereof, by ordinary resolution, resolve that the debtor be adjudged insolvent, or pass no resolution; or

(c) if a composition or scheme is not accepted and approved in pursuance of this Act within twenty-one days after the conclusion of the examination of the debtor or any further time allowed by the Court; or

(d) if the Official Receiver satisfies the Court that the debtor does not intend to propose a composition or scheme, or that the debtor has absconded, or is wilfully keeping out of the jurisdiction of the Court in order to avoid examination in respect of his affairs, or otherwise to avoid, delay, or embarrass proceedings in insolvency against him,

the Court, on the application either of a creditor or of the Official Receiver, shall forthwith adjudge the debtor insolvent, and thereupon the property of the insolvent shall become divisible among his creditors and shall vest in an assignee.

(3) Notice of every order adjudging a debtor insolvent, stating the name, address, and description of the insolvent and the date of the adjudication, shall be gazetted and published in a newspaper in the prescribed manner.

(4) The date of the order shall, for the purposes of this Act, be the date of the adjudication.

Appointment
of assignee.

22. (1) Where the debtor is adjudged insolvent, or the creditors have resolved that he be adjudged insolvent, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of assignee of the property of the insolvent, or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned, but it shall not be obligatory on the creditors to appoint an assignee, and, where none is appointed, the Official Receiver shall act as assignee.

(2) The person so appointed shall give security in manner prescribed to the satisfaction of the Official Receiver, and the Official Receiver, if satisfied with the security, shall certify that the appointment has been duly made, unless he objects to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed has been previously removed from the office of assignee of an insolvent's property for misconduct or neglect of duty, or is not fit to act as assignee, or that that person's connection with, or relation to, the insolvent, or the insolvent's estate, or any particular creditor, makes it difficult for the person to act with impartiality in the interests of the creditors generally:

Provided that when the Official Receiver does not approve of the security or makes any objection aforesaid he shall, if so requested by a majority in value of the creditors, notify the non-approval or objection to the Court, and thereupon the Court may decide on its validity.

(3) The appointment of an assignee shall take effect as from the date of the certificate.

(4) The Official Receiver shall not, except as by this Act provided, be the assignee of the property of the insolvent.

(5) If an assignee is not appointed by the creditors within four weeks from the date of adjudication, or if negotiations for a composition or scheme are pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept or of the Court to approve the composition or scheme, the Official Receiver shall continue to be the assignee of the property of the insolvent:

Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may at any subsequent time if they think fit appoint an assignee, and, on the appointment being made and certified, the person appointed shall become assignee in the place of the Official Receiver.

23. (1) The creditors qualified to vote may by resolution appoint, if they so desire, at their first or any subsequent meeting, from among the creditors or the holders of general proxies or general powers of attorney from any creditors, a committee of inspection for the purpose of superintending the administration of the insolvent's property by the assignee:

Appointment and powers of committee of inspection.

Provided that a creditor or his attorney who is appointed a member of the committee of inspection shall not be qualified to act until that creditor has proved his debt and the proof has been admitted.

(2) The committee of inspection shall consist of not more than five nor less than three persons.

(3) The committee of inspection shall meet at the times appointed by them from time to time, and, failing the appointment, at least once a month; and the assignee, or any member of the committee, may also call a meeting of the committee as and when he thinks necessary.

(4) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present at the meeting.

(5) Any member of the committee may resign his office by notice in writing signed by him and delivered to the assignee.

(6) If a member of the committee becomes insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

(7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

(8) On a vacancy occurring in the office of a member of the committee, the assignee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy.

(9) The continuing members of the committee, provided there are not less than two of them, may act notwithstanding any vacancy in their body; and where the number of members of the committee is for the time being less than five, the creditors may increase that number so that it does not exceed five.

(10) If there is no committee of inspection, any act or thing, or any direction or permission, by this Act authorised or required to be done or given by the committee, may be done or given by the Court on the application of the assignee.

(11) If there is a committee of inspection, the assignee may, by notice in writing, require the committee of inspection to meet, at a time and place to be specified, and express the opinion of the committee on any matter mentioned in the notice which requires the direction or permission or consent of the committee; and if the members of the committee do not meet at the time and place appointed and express the

opinion of the committee, the assignee may take any action in the matter appearing to him to be just, and shall be deemed to have obtained the direction or permission or consent of the committee of inspection to that action. The notice shall be posted to each member of the committee not less than four clear days before the day of meeting.

24. (1) Where a debtor is adjudged insolvent the creditors, if they think fit at any time after the adjudication, by a resolution passed by a majority in number and three-fourths in value of all the creditors who have proved, may resolve to entertain a proposal of the debtor for a composition in satisfaction of the debts due to them under the insolvency, or for a scheme of arrangement of the insolvent's affairs, and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

Power to accept composition or scheme after adjudication of insolvency.

(2) If the Court approves the composition or scheme it may make an order annulling the insolvency and vesting the property of the insolvent in him or in another person appointed by the Court, on the terms and subject to the conditions (if any) declared by the Court.

(3) If default is made in 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, if it thinks fit, on application by any person interested, may adjudge the debtor insolvent and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, thereunder or in pursuance thereof; and where a debtor is adjudged insolvent under this subsection, all debts provable in other respects which have been contracted before the date of the adjudication shall be provable in the insolvency.

Control over Person and Property of Debtor

25. (1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to the examination and give the information required by the meeting.

Duties of debtor as to discovery and realisation of property.

(2) He shall give an inventory of his property, a list of his creditors and debtors, and of the debts due to and from them respectively, submit to examination in respect of his property or his creditors, attend other meetings of his creditors, wait at times on the Official Receiver, special manager, or assignee, execute powers of attorney, conveyances, deeds, and instruments, and generally do all acts and things in relation to his property and the distribution of the proceeds amongst his creditors, which is or are reasonably required by the Official Receiver, special manager, or assignee, or prescribed by general rules, or directed by the Court by any special order or orders made in reference to any particular case or made on the occasion of any special application by the Official Receiver, special manager, assignee, or any creditor or person interested.

(3) If adjudged insolvent, he shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors.

(4) A debtor who wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property divisible amongst his creditors under this Act and for the time being in his possession or under his control to the Official Receiver, or to the assignee, or to anyone authorised by the Court to take possession of it, in addition to any other punishment to which he may be liable, shall be guilty of a contempt of court and be punishable accordingly.

Arrest of
debtor in
certain
circumstances.
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26. (1) The Court, by warrant addressed to the Registrar or any marshal, constable, or prescribed officer of the Court, may cause a debtor to be arrested and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed until the time ordered by the Court in the following circumstances:

(a) if, after an insolvency notice has been issued under this Act, or after presentation of an insolvency petition by or against him, it appears to the Court that there is probable reason for believing that he has absconded, or is about to abscond, with a view of avoiding payment of the debt in respect of which the insolvency notice was issued, or of

avoiding service of an insolvency petition, or of avoiding appearance thereto, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in insolvency against him; or

(b) if, after presentation of an insolvency petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the Official Receiver or assignee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or any books, documents, or writings which might be of use to his creditors in the course of his insolvency; or

(c) if, after service of an insolvency petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of twenty-five dollars, without the leave of the Official Receiver or assignee; or

(d) if, without good cause shown, he fails to attend any examination ordered by the Court:

Provided that no arrest upon an insolvency notice shall be valid and protected unless the debtor, before or at the time of his arrest, has been or is served with that notice.

(2) No payment or composition made or security given after an arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

27. Where a receiving order is made against a debtor, the Court, on the application of the Official Receiver or assignee, may from time to time order that for a time (not exceeding three months) the Court thinks fit, post letters addressed to the debtor at any place or places mentioned in the order for redirection shall be redirected, sent, or delivered by the Postmaster General, or the officers acting under him, to the Official Receiver or assignee, or otherwise as the Court directs, and that shall be done accordingly.

Redirection of debtor's letters.

Discovery of
debtor's
property.

28. (1) The Court, on the application of the Official Receiver or assignee, at any time after a receiving order has been made against a debtor, may summon before it the debtor or his wife, or anyone known or suspected to have in his possession any of the estate or effects belonging to the debtor or supposed to be indebted to the debtor, or anyone whom the Court deems capable of giving information respecting the debtor, his dealings or property, and the Court may require that person to produce any documents in his custody or power relating to the debtor, his dealings or property.

(2) If anyone so summoned, after having been tendered a reasonable sum for his travelling expenses and attendance, refuses to come before the Court at the time appointed, or refuses to produce any of the documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may by warrant cause him to be apprehended and brought up for examination.

(3) The Court may examine upon oath, either by word of mouth or by written interrogatories, anyone so brought before it concerning the debtor, his dealings, or his property.

(4) If anyone, on examination before the Court, admits that he is indebted to the debtor, the Court, on the application of the Official Receiver or assignee, may order him to pay to the Official Receiver or assignee, at any time and in any manner to the Court seeming expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

(5) If anyone, on examination before the Court, admits that he has in his possession any property belonging to the debtor, the Court, on the application of the Official Receiver or assignee, may order him to deliver it or any part of it to the Official Receiver or assignee at any time, and in any manner, and on any terms to the Court seeming just.

(6) The Court may if it thinks fit order that anyone who, if in Guyana, would be liable to be brought before it under this section, shall be examined in any place out of Guyana.

Discharge of Insolvent

29. (1) An insolvent, at any time after being adjudged insolvent, may apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the insolvent is concluded, and it shall be heard in open court.

Order of
discharge.

(2) On the hearing of the application the Court shall take into consideration a report of the Official Receiver as to the insolvent's conduct and affairs (including a report as to the insolvent's conduct during the proceedings under his insolvency), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or 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:

Provided that the Court shall refuse the discharge in all cases where the insolvent has committed any misdemeanour under sections 213 to 216 (inclusive) of the Criminal Law (Offences) Act, or any other misdemeanour connected with his insolvency, or any felony connected with his insolvency, unless for special reasons the Court otherwise determines, and shall, on proof of any of the facts hereinafter mentioned, either—

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- (a) refuse the discharge; or
- (b) suspend the discharge for a period of not less than two years; or
- (c) suspend the discharge until a dividend of not less than fifty cents in the dollar has been paid to the creditors; or
- (d) require the insolvent, as a condition of his discharge, to consent to judgment being entered against him by the Official Receiver or assignee, as the case may be, for any balance or part of any balance of the debts provable under the insolvency not satisfied at the date of the discharge, that balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in any manner and subject to any conditions

directed by the Court; but execution shall not be issued on the judgment without leave of the Court, which may be given on proof that the insolvent has since his discharge acquired property or income available towards payment of his debts:

Provided that if, at any time after the expiration of two years from the date of any order made under this section, the insolvent satisfies the Court that there is no reasonable probability of his being in a position to comply with the terms of the order, the Court may modify the terms of the order, or of any substituted order, in the manner and on the conditions it thinks fit.

(3) The facts hereinbefore referred to are that the insolvent—

(a) has not assets of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that they are not of that value has arisen from circumstances for which he cannot justly be held responsible;

(b) has omitted to keep the books of account usual and proper in the business carried on by him and sufficiently disclosing his business transactions and financial position for the three years immediately preceding his insolvency;

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

(d) has contracted any debt provable in the insolvency without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;

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

(f) 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) has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;

(h) within three months preceding the date of the receiving order has—

(i) incurred unjustifiable expense by bringing a frivolous or vexatious action; or

(ii) when unable to pay his debts as they become due, given an undue preference to any of his creditors; or

(iii) incurred liabilities with a view of making his assets equal to fifty cents on the dollar on the amount of his unsecured liabilities;

(i) has on any previous occasion been adjudged insolvent, or made a composition or arrangement with his creditors;

(j) has been guilty of any fraud or fraudulent breach of trust.

(4) For the purposes of this section an insolvent's assets shall be deemed of a value equal to fifty cents in the dollar on the amount of his unsecured liabilities when the Court is satisfied that the property of the insolvent has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to that value, and a report by the Official Receiver or the assignee shall be *prima facie* evidence of the amount of those liabilities.

(5) For the purposes of this section the report of the Official Receiver shall be *prima facie* evidence of the statements therein contained.

(6) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court may hear the Official Receiver and the assignee (if any) and may also hear any creditor, and at the hearing may put any questions to the debtor and receive any evidence it thinks fit.

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

(8) A discharged insolvent shall, notwithstanding his discharge, give any assistance the assignee requires in the realisation and distribution of his property which is vested in the assignee, and if he fails to do so he shall be guilty of a contempt of court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payments duly made or thing duly done subsequent to the discharge but before its revocation.

(9) Where the insolvent is discharged subject to the condition that judgment shall be entered against him under this section or subject to any other conditions as to his after-acquired property or income, it shall be his duty, until the judgment or condition is satisfied, from time to time to give any information required by the Official Receiver or assignee with respect to his after-acquired property or income, and not less than once a year to file with the Official Receiver or assignee a statement showing the particulars of any property or income which he has acquired subsequent to his discharge.

Fraudulent
settlement.

30. In either of the following cases, that is to say—

(a) in the case of a settlement made before and in consideration of marriage, where the settlor is not, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement;
or

(b) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not, at the date of his marriage, any estate or interest (not being money or property of or in right of his wife),

if the settlor is adjudged insolvent, or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant, or contract, was made in order to defeat or delay creditors or was unjustifiable, having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of

discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement as the case may be, in like manner as when the debtor has been guilty of fraud.

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

Effect of order of discharge.

(a) any debt on a recognisance, or from any debt with which the insolvent may be chargeable at the suit of the State, or any person, for any offence against a written law relating to any branch of the public revenue, or at the suit of a public officer on a bail bond entered into for the appearance of any person prosecuted for that offence; and he shall not be discharged from those excepted debts unless the Attorney-General certifies in writing his consent to his being discharged therefrom; or

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

(c) any debt or liability whereof he has obtained forbearance by any fraud to which he was party; or

(d) any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to that extent and under those conditions which the Court expressly orders in respect of that liability.

(2) An order of discharge—

(a) shall release the insolvent from all other debts provable in insolvency;

(b) shall be conclusive evidence of the insolvency and of the validity of the proceedings therein; and in any proceedings instituted against an insolvent who has obtained an order of discharge in respect of any debt from which he is released by the order, he may plead that the cause of action occurred before his discharge and give this Act and the special matter in evidence;

(c) shall not release anyone who, at the date of the receiving order, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint

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Insolvency

contract with him, or anyone who was surety or in the nature of a surety for him.

Power to the Court to annul adjudication in certain cases.

32. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court, that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order, annul the adjudication.

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Official Receiver, assignee, or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in the person whom the Court appoints, or, in default of that appointment, revert to the debtor for all his estate or interest therein, on such terms and subject to such conditions, if any, as the Court declares by order.

(3) Notice of the order annulling an adjudication shall forthwith be gazetted and published in a newspaper.

Meaning of payment in full.

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

PART II

DISQUALIFICATIONS OF INSOLVENT

Disqualifications of insolvent.

33. (1) Where a debtor is adjudged insolvent, he shall, subject to this Act, be disqualified for being—

- (a) appointed or acting as a justice of the peace; or
- (b) elected to, or holding, or exercising the office of mayor or town councillor, or member of a village council; or

(c) elected to, or holding, or exercising the office of member of any sanitary authority.

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

- (a) the adjudication of insolvency against him is annulled; or
- (b) he obtains from the Court his discharge with a certificate to the effect that his insolvency was caused by misfortune without any misconduct on his part.

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

(4) No disqualification arising under this section shall exceed a period of five years from the date of any discharge which has been granted or may hereafter be granted under this Act.

34. If a person is adjudged insolvent whilst holding the office of mayor, town councillor, or member of a village council, or sanitary authority, his office shall thereupon become vacant. Vacating office.

PART III

ADMINISTRATION OF PROPERTY

Proof of Debts

35. (1) Demands in the nature of unliquidated damages arising from tort, or otherwise than by reason of a contract, promise, or breach of duty or breach of trust, shall not be provable in insolvency. Debts provable insolvency.

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

(3) Except as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he becomes subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in insolvency.

(4) An estimate shall be made by the assignee of the value of any debt or liability provable as aforesaid, which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(5) Anyone aggrieved by any estimate made by the assignee as aforesaid may appeal to the Court.

(6) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in insolvency.

(7) Where the liability of the debtor depends on questions of fact or of law which are in dispute, the assignee may state those questions in writing to the Court, and the Court shall thereupon proceed to determine the questions in the prescribed manner.

(8) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in insolvency.

(9) "Liability", for the purposes of this Act, includes—

- (a) any compensation for work or labour done;
- (b) any obligation or possibility of an obligation to pay money or money's worth (other than an obligation arising from tort where the amount of damages is still unliquidated) on the breach of any express or implied covenant, contract,

agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor;

(c) generally, any express or implied engagement, agreement, or undertaking to pay, or any obligation to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; and, as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

36. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order is made under this Act, and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of those 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; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of insolvency committed by the debtor and available against him.

Counter-claims.

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

Rules as to proof of debts. Second Schedule.

38. (1) Any existing law or Act to the contrary notwithstanding, any secured creditor may, with the consent of the assignee, and the approval of the Official Receiver if he is not assignee, but without any order of the Court being obtained, realise any movable property upon which his security exists, if the property is unaffected by any other security, by selling it at public auction or by tender, after a notice of the intended sale or calling for tenders has been inserted in the *Gazette* and one newspaper for three successive Saturdays.

Secured creditors.

(2) The assignee, with the approval of the Official Receiver if he is not assignee, if more creditors than one hold securities affecting the same property, or if he deems it inexpedient to consent under the preceding subsection, or the Official Receiver withholds his approval, shall, without any order of the Court being necessary, realise that property by selling it at public auction or by tender, after notice of the intended sale or calling for tenders has been inserted in the *Gazette* and one newspaper for three successive Saturdays, and shall distribute the proceeds of sale in accordance with the next ensuing section after making the payments thereout in that section specified.

(3) The assignee, with the approval of the Official Receiver if he is not assignee, may, with leave of the Court, convey or assign the property to any secured creditor having a claim thereon, and may set off wholly or in part, as the case may be, the claim of that creditor against the purchase money thereof.

(4) A secured creditor who is dissatisfied with any intended action of the assignee, or with any action of the Official Receiver, in dealing with the property in respect of which security is given, may apply to the Court to issue directions to the assignee in respect of the rights of the secured creditor and the manner of dealing with the property.

Priority of
debts.
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4 of 1972
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39. (1) In the distribution of the assets of an insolvent at any time being distributed, the assignee, after paying thereout the expenses properly incurred in realising them or in carrying on the plantation or business from which they are obtained, all fees and commissions relating thereto, and any costs, charges and expenses payment whereof is prescribed or allowed by the Court, shall pay thereout in the order hereinafter specified the following debts or those of them or that part of any of them not previously paid:

(a) all taxes, imposts, dues, debts and sums of money, other than fines or penalties due to the State or public corporation established by written law for the purpose of administering a public utility undertaking at the date of the receiving order (other than sums payable by instalments and secured under any Act by preferent lien on the assets then being distributed

or on the plantation or business from the sale or carrying on of which they have been obtained), that have become due and payable within twelve months next before the date of the receiving order;

(b) all sums due and payable to the State at the date of the receiving order (including sums due in respect of immigration) forming part of a sum payable by instalments, and secured under any Act by a preferent lien on the assets then being distributed, or the plantation or business from the sale or carrying on of which they have been obtained, whether that lien affects the assets, plantation, or business, alone or also affects other property of the insolvent;

(c) all rates, for which the assets, plantation or business may be liable and leivable, due at the date of the receiving order, and which have become due and payable within the rating year in which the receiving order has been made;

(d) if the assets were obtained from the sale or carrying on of any plantation or business, salaries of the servants of the plantation, including the engineer if employed at a salary, or of the clerks employed in the business for the three months preceding the receiving order;

(e) legal mortgages and special conventional mortgages, affecting the assets then being distributed, or the plantation or business from the sale or carrying on of which they have been obtained (whether those mortgages affect the assets, plantation, or business, alone or also affect other property of the insolvent), the mortgages ranking between themselves in accordance with the priority given to each by the existing law, and in default of any different rule of law as to priority according to the order of their dates of origin and including, in the case of special conventional mortgages, all costs properly incurred in proceedings taken for foreclosing them;

(f) all wages or salary of any manager employed on any mining claim, woodcutting, or balata bleeding business, and all wages of any labourer or workmen employed thereon in respect of services rendered to the insolvent during four months before the date of the receiving order, and all wages

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of salesmen in retail provision shops, and menial and other servants, in respect of services rendered the insolvent for the two months before that date;

(g) general conventional mortgages according to the order of their dates;

c. 36:01

(h) contributions payable pursuant to the National Insurance and Social Security Act;

(i) all other debts not hereinbefore mentioned, including, wherever part only of any debt or claim is entitled, under the provisions hereinbefore contained, to priority of payment out of the assets then being distributed or any other undistributed assets, the remainder of that debt or claim, and all those debts shall be paid *pari passu*.

(2) Where any mortgage affects not only the assets at any time being distributed or the plantation or business from the sale or carrying on of which they have been obtained, but also other property of the insolvent, and those assets and the other property affected thereby are together more than sufficient to pay the mortgage in full, and the mortgage has priority over or ranks equally with any mortgage affecting only the assets, plantation, or business, the holder of the last mentioned mortgage shall be entitled to stand in the place of the holder of the first mentioned mortgage in respect of the other property to the extent to which the payment of the first mentioned mortgage debt has exhausted the assets.

(3) If the property of the insolvent is insufficient to pay in full the debts mentioned in the foregoing paragraph (f), those debts shall rank equally between themselves and abate in equal proportions between themselves.

(4) In this section the term “legal mortgages” means the lien of—

(a) the husband or wife of an insolvent who has executed an antenuptial contract, on all the insolvent’s property in respect of the property secured by that contract in cases where the provisions relating to those contracts hereinafter contained have been complied with;

(b) any person who has been under the guardianship or curatorship of an insolvent, and of the heir of that person, on all the insolvent's property in respect of maladministration or neglect of the estate of that person;

(c) the children of an insolvent by a deceased wife to whom he was married in community of goods, on all his property in respect of so much of the property held in community during the marriage as devolved on them on their deceased parent's death;

(d) a landlord, on any growing crop or movables which are at the date of the receiving order on property rented from him by the insolvent in respect of arrears of rent due from the insolvent for the six months next before the date of the receiving order;

(e) a legatee as a security for his legacy, on property to which the insolvent has succeeded as heir under a will.

(5) No contract for the sale of any interest in immovable property, or for any charge or incumbrance on any immovable property, and no conventional mortgage shall be of any force or give any right of preference which has not been completed by transport or mortgage duly passed before the Court or a judge; except that the creditor may claim under his contract as a concurrent creditor against the debtor's estate.

(6) No married person shall, in the case of his or her spouse's insolvency, be entitled to claim as a creditor of his or her spouse's estate by reason of an antenuptial agreement entered into between the spouses, unless—

(a) the contract, if made after the commencement of this Act, has been made in writing and duly deposited in the Deeds Registry, or recorded therein, within three months after the execution thereof, or, if made before the commencement of this Act, has been reduced to writing (if not so made) and duly deposited in the Deeds Registry, or recorded therein, not later than three months after that commencement;

(b) the money or other property affected by the contract, and belonging to the claimant at the date of the execution thereof, has been clearly specified in the contract, or an inventory annexed thereto, at that date, or, in case of any contract made before the commencement of this Act, and not having that specification therein or any inventory annexed thereto, in an inventory deposited or recorded not later than three months after that commencement; and

(c) a statutory declaration by two or more independent witnesses, testifying to the facts that—

(i) the property specified in the contract, or inventory to the contract, is, or was, at the date of the contract, the property of the spouse to whose marriage the contract relates;

(ii) the property was at that date actually transferred; and

(iii) the value of the property is correctly specified in the contract or inventory, has been duly deposited in the Deeds Registry, or recorded therein, together with the inventory, or, in cases where a contract having that specification therein has, or a contract and inventory have, been recorded before the commencement of this Act, not later than three months after that commencement.

(7) No married person, in the case of his or her spouses' insolvency, shall be entitled by reason of an antenuptial agreement entered into between the spouses to any preferent claim on his or her estate for any money or other property acquired by him or her during the marriage, unless an inventory thereof and a statutory declaration by two or more independent witnesses, verifying the fact that that property still exists and how it has been acquired by him or her, are deposited or recorded in the Deeds Registry within two months after the acquisition thereof, and before any loan thereof to the husband or wife, but his or her claim in respect thereof shall rank concurrently with the claims of all other unsecured creditors on his estate.

(8) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of six per cent per annum on all debts proved in the insolvency.

(9) (a) In the case of partners, the joint estate shall be applicable, in the first instance, in payment of their joint debts, and the separate estate of each partner shall be applicable, in the first instance, in payment of his separate debts.

(b) If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate.

(c) If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(10) Nothing in this section shall alter the effect of section 5 of the Partnership Act, or prejudice the provisions of any Act for the time being in force relating to friendly societies.

c. 89:02

40. (1) Where, at the time of the presentation of the insolvency petition, anyone is apprenticed or is an articulated clerk to the insolvent, the adjudication of insolvency shall, if either the insolvent or the apprentice or clerk gives notice in writing to the assignee to that effect, be a complete discharge of the apprenticeship agreement or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the insolvent as a fee, the assignee may, on the application of the apprentice or clerk, or of some person on his behalf, pay the sum which the assignee, subject to an appeal to the Court, thinks reasonable, out of the insolvent's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf and to the time during which he served with the insolvent under the apprenticeship agreement or articles before the commencement of the insolvency, and to the other circumstances of the case.

Preferential claim in case of apprenticeship.

(2) Where it appears expedient to the assignee, he may on the application of any apprentice or articed clerk, or anyone acting on behalf of the apprentice or articed clerk, instead of acting under the preceding provisions of this section, transfer the apprenticeship agreement or articles of agreement to some other person.

Property available for Payment of Debts

Relation back of assignee's title.

41. The insolvency of a debtor, whether it takes place on the debtor's own petition or on that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of insolvency being committed on which a receiving order is made against him, or, if he is proved to have committed more acts of insolvency than one, to have relation back to, and to commence at, the time of the first of the acts of insolvency proved to have been committed by him within three months next preceding the date of the presentation of the insolvency petition; but no insolvency petition, receiving order, or adjudication shall be rendered invalid by reason of any act of insolvency anterior to the debt of the petitioning creditor.

Description of property divisible amongst creditors.

42. The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise—

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

(b) the tools, if any, of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding ninety-six dollars in the whole;

but it shall comprise—

(i) all property belonging to or vested in the insolvent at the commencement of the insolvency, or acquired by or devolving on him before his discharge;

(ii) the capacity to exercise and to take proceedings for exercising all such powers in, or over, or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and

(iii) all goods being, at the commencement of the insolvency, in the possession, order, or disposition of the insolvent in his trade or business by the consent and permission of the true owner, in such circumstances that he is the reputed owner of them:

Provided that—

(a) things in action, other than debts due or growing due to the insolvent in the course of his trade or business, shall not be deemed goods within the meaning of this section; and

(b) nothing in this section shall affect the rights of infants or persons under disability.

Effect of Insolvency on antecedent Transactions

43. (1) Where a creditor has issued execution against the property of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the Official Receiver or the assignee unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any insolvency petition by or against the debtor, or of the commission of any available act of insolvency by the debtor.

Restriction of rights of creditor in execution.

(2) For the purposes of this Act, an execution against property is completed by seizure and sale, and an attachment of a debt is completed by receipt of the debt.

(3) An execution levied by a seizure and sale of the property of a debtor is not invalid by reason only of its being an act of insolvency, and a person who purchases the property in good faith under a sale by the marshal or bailiff shall in all cases acquire a good title to the property against the assignee.

Duty of marshal in respect of property taken in execution by creditor. [36 of 1929]

44. (1) Where any property of a debtor is taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the marshal that a receiving order has been made against the debtor, the marshal or bailiff shall abstain from a sale thereof and, on request, deliver the property levied on (so far as it is capable of delivery), and any money seized or received in part satisfaction of the execution to the Official Receiver or assignee, but the cost of the execution, shall be a first charge on the property or money so levied on or delivered, and the Official Receiver or assignee may sell the property, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment of the Court for a sum exceeding one hundred dollars, the property of a debtor is sold, or money is paid in order to avoid sale, the marshal shall deduct and pay the costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and, if within that time notice is served on him of an insolvency petition having been presented against or by the debtor, and a receiving order is made thereon or on any other petition of which the marshal has notice, the marshal shall pay the balance to the Official Receiver or (as the case may be) to the assignee, who shall be entitled to retain it as against the execution creditor.

Effect of insolvency on certain settlements. [19 of 1990]

45. (1) Any settlement of property, not being a settlement made—

- (a) before and in consideration of marriage, or
- (b) in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or
- (c) on or for the husband or wife or children of the settlor of property which has accrued to the settlor after marriage in right of the wife or husband,

shall, if the settlor becomes insolvent within two years after the date of the settlement, be void against the assignee, and shall, if the settlor becomes insolvent at any subsequent time within ten years after the date of the settlement, be void against the assignee, unless the parties claiming under the settlement can prove that the settlor was, at the time

of making the settlement, able to pay all his or her debts without the aid of the property comprised in the settlement, and that the interest of the settlor in that property passed under the settlement on the execution thereof.

(2) Any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's husband or wife or children of any money or property wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of the settlor's husband or wife, shall, on the settlor becoming insolvent before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the assignee:

Provided that if the money or property has been actually transferred or paid in contemplation of insolvency, the husband, the wife or the children shall not be entitled to retain it against the assignee, unless they or the parties claiming under them can prove that the settlor was, at the time of making the covenant or contract, able to pay his or her debts in full, but they shall nevertheless be entitled to claim in respect of the covenant or contract concurrently with the other creditors, unless it appears to the Court that the covenant or contract was made in order to defeat and delay creditors or was unjustifiable, having regard to the state of the settlor's affairs at the time when the covenant or contract was entered into, and that the settlor's husband or wife had notice, from the circumstances or otherwise, that that was the case.

(3) Every settlement of any property made in contemplation of insolvency or with intent to delay, hinder, defeat, or defraud creditors, shall be void against any assignee and against every person who, or any of whose remedies for the recovery of his debt, are or may be in any wise disturbed, hindered, delayed, defeated or defrauded, any pretence, colour or feigned consideration to the contrary notwithstanding:

Provided that this subsection shall not affect the validity of any settlement made in good faith and for valuable consideration in favour of any person not having at the date thereof any manner of notice or knowledge of its having been made in contemplation of insolvency or with any such intent as aforesaid.

(4) Where a settlement, covenant, or contract is void under this section against the assignee, the assignee shall have and exercise all necessary rights and powers for acquiring title to and possession of the money or property affected or purporting to be affected by the settlement, covenant, or contract.

(5) “Settlement”, for the purposes of this section, includes any conveyance or transfer of property or money.

Avoidance of preferences.

46. (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered, by anyone unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving that creditor a preference over the other creditors, shall, if he who makes, takes, pays, or suffers, the act is adjudged insolvent on an insolvency petition presented within three months after the date of that act, be deemed fraudulent and void as against the assignee.

(2) The fact that the debtor was pressed by his creditors shall not prevent the transaction being void, but in that case the Court, if it considers the insolvent’s conduct was excusable, may direct that the transaction shall not affect his discharge.

(3) This section shall not affect the rights of anyone making title in good faith and for valuable consideration through or under a creditor of the insolvent.

Protection of transaction in good faith without notice.

47. Subject to the preceding provisions of this Act with respect to the effect of insolvency on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate, in case of an insolvency—

- (a) any payment by the insolvent to any of his creditors; or
- (b) any payment or delivery to the insolvent; or
- (c) any conveyance or assignment by the insolvent for valuable consideration; or
- (d) any contract, dealing, or transaction by or with the insolvent for valuable consideration:

Provided that both the following conditions are complied with, namely—

- (i) the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and
- (ii) the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into has not, at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of insolvency committed by the insolvent before that time.

Realisation of Property

48. (1) The assignee shall, as soon as may be, take possession of the deeds, books, and documents of the insolvent, all other parts of his property capable of manual delivery, and the other property of the insolvent.

Possession of property by the assignee.

(2) The assignee, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, shall be in the same position as if he were a receiver of the property appointed by the Court, and the Court may on his application enforce the acquisition or retention accordingly.

(3) (a) the Official Receiver, on taking possession of any property, shall, by himself or by any person authorised by him in writing, make a full and articulate inventory of the property.

(b) The inventory shall be made in the presence of one witness, and shall be signed by the person making it and by the witness.

(c) The debtor or person giving up or delivering the property shall be bound to sign the inventory, or state in writing thereon the particulars in which it is incorrect, in default whereof the Official Receiver shall apply to the Court for an order to compel him to do so.

(d) The inventory shall be deposited as of record in the Registrar's office.

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

(5) Where any part of the property of the insolvent consists of things in action, those things shall be deemed to have been duly assigned to the assignee.

(6) Any treasurer or other officer, or any banker, attorney, or agent of an insolvent, shall pay and deliver to the assignee, all money and securities in his possession or power, as that officer, banker, attorney, or agent, which he is not by law entitled to retain as against the insolvent or the assignee; and if he does not, he shall be guilty of a contempt of court and may be punished accordingly on the application of the assignee.

Seizure of property of insolvent.

49. Anyone acting under warrant of the Court may seize any part of the property of an insolvent in the custody or possession of the insolvent, or of any other person, and with a view to that seizure, may break open any house, building, or room of the insolvent where he is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may if it thinks fit grant a search warrant to the Registrar or any marshal or any constable, who may execute it according to its tenor.

50. (1) Where an insolvent is an officer or clerk, or otherwise employed or engaged in the public service, the assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary as the Court, on the application of the assignee, with the consent of the Minister responsible for the public service directs, but before making any order under this subsection, the Court shall communicate with the said Minister as to the amount, time, and manner of the payment to the assignee, and shall obtain the written statement of the said Minister that he consents to the terms of that payment.

Appropriation of portion of pay or salary of insolvent to creditors.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, or is entitled to any pay or pension, or to any compensation, gratuity, or allowance, granted by the State, the Court, on the application of the assignee, shall from time to time make any order it thinks just for the payment of that salary, income, pay, pension, compensation, gratuity or allowance, or of any part thereof, to the assignee to be applied by him in the manner directed by the Court.

(3) Nothing in this section shall take away or abridge any power vested in any person or authority to dismiss an insolvent, or to declare the pension allowance of any insolvent to be forfeited.

51. (1) Until an assignee is appointed, the Official Receiver shall be the assignee for the purpose of this Act, and immediately on a debtor being adjudged insolvent the property of the insolvent shall vest in the assignee.

Vesting and transfer of property.

(2) On the appointment of an assignee, the property shall forthwith pass to and vest in the assignee appointed.

(3) The property of the insolvent shall pass from assignee to assignee, including under that term the Official Receiver when he fills the office of assignee, and shall vest in the assignee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

52. (1) Where any part of the property of the insolvent consists of lands of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other

Disclaimer of onerous property.

unsaleable property or property not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to this section, may, by writing signed by him, at any time within six months after the date of the receiving order, or at any time with leave of the Court, disclaim the property:

Provided that where the property has not come to the knowledge of the assignee within one month after that date, he may disclaim the property at any time within six months after he first became aware thereof.

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

(3) The assignee shall not be entitled to disclaim a lease without the leave of the Court, except in any case prescribed by general rules, and the Court, before or on granting the leave, may require any notices to be given to persons interested, and impose any terms as a condition of granting leave, and make any orders, with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, which the Court thinks just.

(4) The assignee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to him by anyone interested in the property requiring him to decide whether he will disclaim or not, and he has, for a period of twenty-eight days after the receipt of the application, or any extended period allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in case of a

contract, if he, after the application aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The Court, on the application of anyone who is, as against the assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, may make an order rescinding the contract, on terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, to the Court seeming equitable, and any damages payable under the order to that person may be proved by him as a debt under the insolvency.

(6) The Court, on application by anyone either claiming an interest in disclaimed property, or under any liability not discharged by this Act in respect of disclaimed property, and on hearing the persons whom it thinks fit, may make an order for the vesting of the property in, or delivery thereof to, anyone entitled thereto, or to whom it seems just that it should be delivered by way of compensation for the liability aforesaid, or any person on his behalf and for his benefit and on the terms the Court thinks just; and, on the vesting order being made, the movable property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose, and the Registrar is hereby directed to pass the necessary conveyances of any immovable property:

Provided that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of anyone claiming under the insolvent as underlessee except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those whereto the insolvent was subject under the lease in respect of the property at the date when the insolvency petition was filed; or

(b) (if the Court thinks fit) subject only to the same liabilities and obligations as if the lease had been assigned to him at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any underlessee declining to accept a vesting order upon those terms shall be excluded from all interest in the property; and, if there is no one claiming under the insolvent willing to accept an order upon those terms, the Court may vest the insolvent's estate and interest in the property in anyone liable, either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances, and interests created therein by the insolvent.

(7) Anyone injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the insolvent to the extent of the injury, and may accordingly prove the injury as a debt under the insolvency.

Powers of the assignee to deal with property.

53. Subject to this Act and to any general rules, the assignee may do all or any of the following things:

(a) sell all or any part of the property of the insolvent (including the goodwill of the business (if any) and the book-debts due or growing due to the insolvent), by public sale or by tender, with power to transfer the whole thereof to any person or company, or to sell them in parcels;

(b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(c) prove, rank, claim, and draw a dividend in respect of any debt due to the insolvent; and

(d) exercise any powers the capacity to exercise which is vested in the assignee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.

Powers exercisable with permission of committee of inspection.

54. (1) The assignee, with the permission of the committee of inspection, may do all or any of the following things:

(a) carry on the business of the insolvent, so far as may be necessary for beneficially winding it up;

(b) bring, institute, or defend any action or other legal proceeding relating to the property of the insolvent;

(c) employ a solicitor or other agent to take any proceedings or do any business sanctioned by the committee of inspection;

(d) accept, as the consideration for the sale of any property of the insolvent, a sum of money payable at a future time, subject to any stipulations as to security and otherwise the committee thinks fit;

(e) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;

(f) refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the insolvent and anyone who has incurred any liability to the insolvent, on the receipt of the sums, payable at the times, and generally on the terms, which are agreed;

(g) make any compromise or other arrangement thought expedient—

(i) with creditors, or persons claiming to be creditors, in respect of any debts provable under the insolvency; or

(ii) with respect to any claim arising out of or incidental to the property of the insolvent made or capable of being made on the assignee by anyone, or by the assignee on anyone; and

(h) 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 be readily or advantageously sold.

(2) The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases:

Provided that—

(a) the assignee shall not carry on any business of the insolvent except with the permission of the committee of inspection expressly given, or, in the absence of the committee, with the consent of the Court, and shall not carry on any plantation in cultivation except with the permission of the committee of inspection expressly given if one is appointed, and of the Court; and

(b) every plantation in cultivation shall, while it remains under the administration of the assignee, be conducted in the prescribed manner and subject to the directions of the Court.

Distribution of Property

Declaration and distribution of dividend.

55. (1) Subject to the retention of any sums necessary for the costs of administration or otherwise, the assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) The first dividend (if any) shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the assignee satisfies the committee of inspection or the Court that there is sufficient reason for postponing the declaration to a later date.

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

(4) No dividend, except a final dividend, shall be declared of less amount than one cent in the dollar; and where the amount finally to be divided will give less than one-quarter of one cent in the dollar, no dividend shall be declared and the administration shall be closed.

(5) Before declaring a dividend the assignee shall publish, in the prescribed manner, a notice of his intention to do so, and shall also send a reasonable notice thereof to each creditor mentioned in the insolvent's statement who has not proved his debt.

(6) When the assignee has declared a dividend, he shall publish a notice stating the amount of the dividend and when and how it is payable, and shall prepare for the inspection of creditors a statement in the prescribed form as to the particulars of the estate.

56. (1) Where one partner of a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

Joint and separate dividends.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties, subject to any order to the contrary made by the Court on the application of anyone interested, shall be declared together; and the expenses of and incidental to those dividends shall be fairly apportioned by the assignee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

57. (1) In the calculation and distribution of a dividend, the assignee shall make provision for debts provable in insolvency appearing from the insolvent's statements, or otherwise, to be due to persons resident in places so distant from Guyana that, in the ordinary course of communication, they have not had sufficient time to tender their proofs or to establish the proofs if disputed, and also for debts provable in insolvency the subject of claims not yet determined.

Provision for creditors residing at a distance.

(2) He shall also make provision for disputed proofs or claims and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

58. 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 assignee, any dividend or dividends he has failed to receive before that money is applied to the

Right of creditor who does not prove debt before declaration of dividend.

payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend.

59. (1) When the assignee has realised all the property of the insolvent, or so much thereof as, in the joint opinion of himself and the committee of inspection, can be realised without needlessly protracting the assigneeship, he shall declare a final dividend, but, before doing so, he shall give notice in the prescribed manner to those whose claims to be creditors have been notified to him but not established to his satisfaction, that, if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court on application by any aforesaid claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts without regard to the claims of any other person.

No action for dividend.

60. No action for a dividend shall lie against the assignee, but if he refuses to pay any dividend the Court if it thinks fit may 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.

Procedure where property is withheld under claim of right.

61. (1) Where the assignee claims property belonging to the insolvent and possession thereof is refused or withheld by anyone under a *bona fide* claim of right which raises any question of law or of fact, the assignee may apply in the prescribed manner to the Court, and the Court may either order that the property be immediately delivered to the assignee or, when the question cannot be properly decided in a summary way, that a suit be instituted in the ordinary manner.

(2) When property is so withheld as aforesaid, and the circumstances appear to the Court to require immediate steps to be taken to preserve the property, the Court may make an interim order authorising the assignee to take possession thereof until further order.

62. When anyone lays claim to property in the custody or possession of the assignee he may apply to the Court in the prescribed manner to issue directions to the assignee.

Procedure where property is claimed by third person.

63. (1) The assignee with the permission of the committee of inspection, may appoint the insolvent himself to superintend the management of his property or of any part thereof, or to carry on his trade (if any) for the benefit of his creditors, and in any other respect to aid in administering the property in the manner and on the terms directed by the assignee.

Employment of and allowance to insolvent for maintenance.

(2) The assignee, with the permission of the committee of inspection, may from time to time make any allowance the assignee thinks just to the insolvent out of his property for his support, and that of his family, or in consideration of his services if the assignee is engaged in winding up his estate, and shall report the amount of the allowance to the Court, but the allowance may be reduced by the Court on the application of any creditor.

64. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the insolvency petition.

Right of insolvent to surplus.

PART IV

GENERAL DUTIES OF THE OFFICIAL RECEIVER IN INSOLVENCY

65. Where a receiving order is made, or he is appointed interim receiver, the Official Receiver shall immediately take possession of the debtor's property.

Possession by Official Receiver.

66. (1) The duties of the Official Receiver shall have relation both to the conduct of the debtor and the administration of his estate.

Status of Official Receiver.

(2) The Official Receiver may, for the purpose of affidavit verifying proofs, petitions, or other proceedings under this Act, administer oaths; and he may also take declarations verifying proofs.

LAWS OF GUYANA

(3) All sections of this Act referring to an assignee, unless the context otherwise requires or the Act otherwise provides, shall include the Official Receiver when acting as assignee.

(4) An assignee shall supply the Official Receiver with the information and give him the access to, and facilities for, inspecting the insolvent's books and documents and, generally, give him the aid requisite for enabling him to perform his duties under this Act.

Duties as regards debtor's conduct.

67. As regards the debtor, it shall be the duty of the Official Receiver—

(a) to investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under any Act for the time being in force providing for the punishment of fraudulent debtors, or under this Act, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge;

(b) to make any other reports concerning the conduct of the debtor directed by the Court.

Duty as regards administration of estate.

68. (1) As regards the estate of a debtor it shall be the duty of the Official Receiver—

(a) pending the appointment of an assignee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;

(b) to authorise a special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary to do so;

(c) to summon and preside at the first meeting of creditors;

(d) to issue forms of proxy for use at the meetings of creditors;

(e) to report to the creditors as to any proposal made by the debtor with respect to the mode of liquidating his affairs;

(f) to advertise the receiving order, the date of the first meeting of creditors and of the debtor's public examination, and any other matters necessary to be advertised;

(g) to act as assignee during any vacancy in the office of assignee:

Provided that where the debtor cannot himself prepare a proper statement of affairs, the Official Receiver may, subject to any prescribed conditions and at the expense of the estate, employ some person or persons to assist the debtor in the preparation of that statement.

(2) For the purpose of his duties as interim receiver or manager the Official Receiver shall have all powers necessary to protect the estate as if it vested in him, but shall as far as practicable consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, except as provided by the proviso to the preceding subsection, unless the Court otherwise orders, incur any expense beyond that requisite for the protection of the debtor's property or the disposing of perishable goods.

69. The Official Receiver may apply to the Court in the prescribed manner for directions in relation to any matter arising in insolvency.

Right to apply to the Court for directions.

PART V

OFFICERS AND ASSIGNEES IN INSOLVENCY

Officers

70. (1) The Registrar, with the consent of the Chancellor, may appoint any officer in the registry to perform his duties under this Act or any general rules.

Appointment of certain officers.

(2) The officer entitled the Official Receiver under the Official Receiver Act, shall be the Official Receiver under this Act.

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Official name under Appointment

Official name
of assignee.

71. (1) The official name of an assignee in insolvency shall be “the assignee of the property of...an insolvent”, (inserting the name of the insolvent), and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

(2) The creditors, if they think fit, may appoint more persons than one to the office of assignee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the assignee is to be done by all or any one or more of those persons; but all those persons are in this Act included under the term “assignee”, and shall be joint holders of the property of the debtor.

(3) The creditors may also appoint persons to act as assignees in succession in the event of one or more of those first named declining to accept the office of assignee, or failing to give security, or their appointment being disapproved by the Official Receiver.

Remuneration and Costs

Remuneration
of assignee.

72. (1) Where the creditors appoint anyone to be assignee of a debtor’s estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or if the creditors so resolve by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised by him after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the debtor satisfies the Court that the remuneration is unnecessarily large, the Court shall fix the amount of the remuneration.

(3) The vote of the assignee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the assignee.

(4) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the debtor's estate or to the creditors in respect of any expenses which the remuneration is expressed to cover.

(5) Where an assignee so appointed acts without any remuneration he shall be allowed out of the insolvent's estate any proper expenses incurred by him in or about the proceedings of the insolvency, which the creditors, with the sanction of the Official Receiver, approve.

(6) An assignee shall not, in any circumstances whatever, make any arrangement for or accept from the debtor, or any solicitor, auctioneer, or any other person employed about an insolvency, any gift, remuneration, or pecuniary or other consideration or benefit whatever, beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or assignee, to the debtor or insolvent, or to any solicitor or other person employed about an insolvency.

73. (1) Where an assignee or manager receives remuneration for his services in that character, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties required by this Act or general rules to be performed by himself.

Allowance and
taxation of
costs.

(2) Where the assignee is a solicitor, he may contract that the remuneration for his services as assignee shall include all professional services.

(3) (a) All bills and charges of barristers, solicitors, managers, accountants, auctioneers, brokers, and other persons, not being assignees, shall be taxed by the Registrar or

prescribed officer, and no payments in respect thereof shall be allowed in the assignee's account without proof of the taxation having been made.

(b) The Registrar or prescribed officer shall satisfy himself before passing the bills and charges, that the employment of the barristers, solicitors, and other persons, in respect of the particular matters out of which the charges arise, has been duly sanctioned.

(c) The sanction required under this section for the employment of barristers, solicitors, or other persons, must be obtained before the employment, except in cases of urgency, when it must be shown that no undue delay took place in obtaining the sanction.

(4) Everyone aforesaid shall, on request by the assignee (which the assignee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and if he fails to do so within seven days after receipt of the request, or any further time the Court, on application, may grant, the assignee shall declare and distribute the dividend without regard to any claim by him, and thereupon his claim shall be forfeited, as well against the assignee personally as against the estate.

Vacation of office of assignee by insolvency.

74. If a receiving order is made against an assignee he shall thereby vacate his office of assignee.

Removal of assignee.

75. (1) The creditors may by ordinary resolution, at a meeting specially called for that purpose of which seven days' notice has been given, remove an assignee appointed by them; and at the same or any subsequent meeting may appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of assignee.

(2) If the Official Receiver is of opinion—

(a) that an assignee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Act; or

(b) that he is, by reason of lunacy, or continued sickness or absence, incapable of performing his duties; or

(c) that his connection with or relation to the insolvent or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally, or where that assignee in any other matter has been removed from office on the ground of misconduct, the Official Receiver may remove him from his office; but if the creditors by ordinary resolution disapprove of his removal, he or they may appeal against it to the Court.

76. (1) If a vacancy occurs in the office of an assignee, the creditors in a general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

When vacancy in office of assignee.

(2) The Official Receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling the vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the Official Receiver shall become assignee; but in that case the creditors or committee of inspection shall have the same power of appointing an assignee as in the case of a first appointment.

(4) During any vacancy in the office of assignee, the Official Receiver shall act as assignee.

Powers and Duties of Assignee

77. (1) An account called "the Insolvency Estates Account" shall be kept by the Official Receiver with the Accountant General, and all moneys received by the Official Receiver as assignee or from assignees shall be paid to that account.

Insolvency estates account.

(2) Every assignee shall, in the prescribed manner and at the prescribed times, pay the money received by him to the insolvency estates account at the Official Receiver's office, and the Official Receiver shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(3) No commission shall be payable to the Official Receiver on moneys received by an assignee and paid into a bank as hereinafter provided, but the Official Receiver shall at the prescribed times, and in any event not less than once in every six months, examine the banking account of the assignee and call the assignee to account for any misfeasance or neglect in connection therewith, and for each examination the prescribed fee shall be paid.

Mode of
keeping bank
account.

78. (1) Where a committee of inspection is appointed, if it appears to the committee that, for the purpose of carrying on the debtor's business or of obtaining advances, or because of the probable amount of the cash balance, or if the committee satisfies the Official Receiver that for any other reason it is for the advantage of the creditors that the assignee should have an account with a bank, the Official Receiver may, on the application of the committee, authorise the assignee to make his payments into and out of a bank selected by the committee.

(2) The account shall be opened and kept by the assignee in the name of the debtor's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

(3) The assignee shall make his payments into and out of the bank in the prescribed manner.

(4) Subject to any general rules relating to small insolvencies under Part VII, where the debtor, at the date of the receiving order, has an account at a bank, that account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Official Receiver, for the safety of the account or other sufficient cause, withdraws it.

(5) If an assignee at any time retains for more than ten days a sum exceeding two hundred and forty dollars or any other amount which the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent *per annum*, and shall have no claim for remuneration, and may be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of money standing to the credit of the insolvency estates account shall be made by the Official Receiver in the prescribed manner.

79. No assignee in an insolvency or under any composition or scheme of arrangement shall pay any sums received by him as assignee into his private banking account.

Prohibition of assignee paying into private account.
Duty of assignee to account to the Registrar.

80. (1) Every assignee shall, at the prescribed times, but not less than once in each period of six months during his tenure of office, send to the Registrar an account of his receipts and payments as assignee.

(2) The accounts shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) (a) On receipt of the account with the books, documents, and vouchers, the Registrar shall forthwith cause due notice thereof to be published for four successive Wednesdays, calling upon all persons interested to examine the same and to state their objections, if any, in writing, within one month from the date when the notice was first published.

(b) The account and the books, documents, and vouchers shall be open during office hours to the inspection of all persons interested in the estate for that period, without the payment of any fee.

(c) Anyone interested objecting to the account shall state his objection in writing, and may file it in the registry without the payment of any fee; and after the expiration of the period aforesaid the Registrar shall place before the accountant to the Court the account books, documents, and vouchers, in the order in which they have been deposited with him, and the objections thereto, if any; and, if any document or voucher is found deficient or wanting, the accountant shall give notice thereof in writing to the assignee, who shall be bound, within fourteen days after the receipt of that notice, to furnish the document or voucher required, or show sufficient cause to the contrary, on pain, in

default thereof, of having the items which are unvouched or unsupported struck out of his account.

(d) The accountant shall thereupon examine the account, together with the inventory and statement of affairs filed by the insolvent, and shall ascertain if the assets of the estate which ought to have been collected have been so collected, and shall either certify the account as correct, or shall report to the Court thereupon, specifying any objections he has thereto; and, thereafter, upon a day to be fixed for that purpose, of which notice shall be given in the *Gazette*, the account shall be submitted for approval to a judge, in the presence of the assignee and of the accountant, and of any parties concerned desiring to attend.

(e) The judge, upon examining the account and after hearing parties and taking evidence, if he thinks fit to do so, shall have full power and authority to approve and pass the account, or to order it to be altered and amended in any manner he deems just, or to reserve any question that arises for the consideration of the Full Court.

(4) When the account has been passed, one copy thereof shall be kept and filed by the Court and shall be open to the inspection of any creditor, or of the debtor, or of any person interested, on payment of the prescribed fee.

Receipts, Payments, Accounts, Audit

Duty of assignee to furnish list of creditors.

81. (1) The assignee shall, whenever required by any creditor to do so, and on payment by the creditor of the prescribed fee, furnish and transmit to him by post a list of the creditors, showing therein the amount of the debt due to each creditor.

(2) Any creditor, with the concurrence of one-sixth of the creditors (including himself) may at any time call upon the assignee or Official Receiver to furnish and transmit to the creditors a statement of the accounts up to the date of the notice, and the assignee or Official Receiver shall, upon receipt of the notice, furnish and transmit that statement:

Provided that the person at whose instance the accounts are furnished shall deposit with the assignee or Official Receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, that sum to be repaid to him out of the estate if the creditors or the Court so direct.

82. The assignee shall keep, in the prescribed manner, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of any other prescribed matters, and any creditor of the insolvent, subject to the control of the Court, may personally or by his agent inspect any of those books.

Duty of assignee to keep proper books.

83. (1) Every assignee shall from time to time, when thereto required by the Official Receiver, and not less than once in every year during the time he continues to act, transmit to the Official Receiver a statement showing the proceedings in the insolvency up to the date of the statement, containing the prescribed particulars and made out in the prescribed form.

Annual statement by assignee.

(2) The Official Receiver shall cause the statement so transmitted to be examined, and shall call the assignee to account for any misfeasance, neglect, or omission appearing on the statement, or in his accounts or otherwise, and may require the assignee to make good any loss sustained by the estate of the insolvent by reason of that misfeasance, neglect, or omission.

(3) Where the Official Receiver is himself the assignee, he shall submit a similar statement to the Court, and the Court shall, in the prescribed manner, cause the functions of the Official Receiver under the preceding subsection to be performed by any of its officers.

Control over Assignee

84. (1) Subject to this Act, the assignee shall, in the administration of the property of the insolvent, and in the distribution thereof among his creditors, have regard to any directions given by resolution of the creditors at any general meeting, or by the committee of inspection (if

Control and discretionary powers of assignee.

any); and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The assignee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at any times when the creditors, by resolution, either at the meeting appointing the assignee or otherwise, direct, or whenever requested in writing to do so by one-fourth in value of the creditors.

(3) The assignee shall also summon a meeting of creditors within fourteen days after being requested to do so by any creditor with the concurrence of one-sixth in value of the creditors, including the one making the request:

Provided that the person at whose instance the meeting is summoned shall deposit with the assignee a sum sufficient to pay the costs of summoning the meeting, that sum to be repaid to him out of the estate if the creditors or the Court so direct.

(4) The assignee may apply to the Court, in the prescribed manner, for directions in relation to any particular matter arising under the insolvency.

(5) Subject to this Act, the assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to the Court against assignee.

85. The insolvent or any of the creditors, or any other person, aggrieved by any act or decision of the assignee, may apply to the Court, and the Court may confirm, reverse, or modify the act or decision of which complaint is made and make any order in the premises it thinks fit.

Control of assignee by Official Receiver.

86. (1) The Official Receiver shall take cognizance of the conduct of assignees, and, in the event of any assignee not faithfully performing his duties and duly observing all the requirements imposed on him

by Act, rules, or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the Official Receiver by any creditor in regard thereto, the Official Receiver shall inquire into the matter and take any action thereon he deems expedient.

(2) The Official Receiver may at any time require any assignee to answer any inquiry made in relation to any insolvency in which the assignee is engaged, and may, if he thinks fit, apply to the Court to examine upon oath the assignee or any other person concerning the insolvency.

(3) The Official Receiver may appoint any person to make an investigation of the books and vouchers of the assignee.

Vacation of Office by Assignee

87. (1) When the assignee has realised all the property of the insolvent, or so much thereof as can, in his opinion, be realised without needlessly protracting the assigneeship, and has distributed a final dividend, (if any), or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Court, on his application, shall cause a report by the accountant to the Court on his accounts to be prepared, and the Court shall take into consideration the report and any objection urged by any creditor or person interested against the release of the assignee, and shall grant or withhold the release accordingly.

Release of
assignee.

(2) Where the release of an assignee is withheld, the Court may, on the application of any creditor or person interested, make any order it thinks just, charging the assignee with the consequences of any act or default that he has done or made contrary to his duty.

(3) An order of the Court releasing the assignee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the insolvent, or otherwise in relation to his conduct as assignee, but the order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) The foregoing provisions of this section shall apply to the Official Receiver when he is, or is acting as, assignee, and when the Official Receiver has been released under those provisions he shall continue to act as assignee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

(5) Where the assignee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the property of the insolvent shall vest in the Official Receiver.

(6) Where on the release of an assignee the Official Receiver is, or is acting as, assignee, no liability shall attach to him personally in respect of any act done or default made or liability incurred by any prior assignee.

PART VI

JURISDICTION, PROCEDURE AND POWERS OF COURTS

Jurisdiction to be exercised by judge.

88. Subject to this Act and to general rules, the jurisdiction of the Court may be exercised by any judge of the Court and may be exercised in chambers.

Power of Court to decide questions.

89. (1) The Court shall have full power to decide all questions of priorities, and all other questions whatever, whether of law or of fact, arising in any case of insolvency and coming within the cognizance of the Court, or which the Court deems it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in the insolvency.

(2) Where default is made by an assignee, debtor, or other person in obeying any order or direction given by the Official Receiver or any other officer appointed under any power conferred by this Act, the Court may, on the application of the Official Receiver or other duly authorised person, order the defaulting assignee, debtor, or person to

comply with the order or direction so given; and the Court may also, if it thinks fit, on the application, make an immediate order for the committal of the defaulting assignee, debtor, or other person:

Provided that the power given by this subsection shall be deemed to be in addition to, and not in substitution for, any other right or remedy in respect of the default.

90. Where the right to any movable property of a perishable description, or any animal, in the possession or custody of the Official Receiver or assignee is in dispute, the Court may after reasonable notice to the party claiming it order the immediate sale of the property or animal, and the net proceeds of the sale shall represent the subject of the dispute to all intents and purposes, or may make any other order it thinks fit.

Order for sale of disputed property.

91. (1) Subject to this Act and to general rules, the costs of and incidental to any proceeding in court under this Act shall be in the discretion of the Court.

General powers of the Court.

(2) The Court may at any time adjourn any proceedings before it, upon any terms it thinks fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Act, upon any terms it thinks fit to impose.

(4) Where, by this Act or by general rules, the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon any terms it thinks fit to impose.

(5) Subject to any general rules, the Court may in any matter take the whole of any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or by commission abroad.

(6) For the purpose of approving a composition or scheme by joint debtors, the Court may if it thinks fit, and on the report of the Official Receiver that it is expedient to do so, dispense with the public examination of one of the joint debtors unavoidably prevented from attending the examination by illness or absence abroad.

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(7) Subject to general rules, the Full Court and the Court may dispose of all matters in insolvency during vacation or non-session of the Court.

(8) The Court may at any time review, rescind, or vary, any order made by it under its insolvency jurisdiction.

Consolidation of two or more petitions.

92. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on any terms it thinks fit to impose.

Substitution of petitioner.

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

Proceedings to continue when debtor dies.

94. 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 as if he were alive.

Staying proceedings.

95. The Court, for sufficient reason, may at any time make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on any terms and subject to any conditions the Court thinks just.

Petitions against partners.

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

Dismissal of petition as to one or more respondents.

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

When more than one petition, same assignee to be appointed.

98. Where a receiving order has been made on an insolvency petition against or by one member of a partnership, and any other insolvency petition against or by a member of the same partnership is filed in the Court, unless the Court otherwise directs, the same assignee or receiver shall be appointed as has been appointed in respect of the

property of the first-mentioned member of the partnership; and the Court may give directions for consolidating the proceedings under the petitions as it thinks just.

99. Where a member of a partnership is adjudged insolvent or where a receiving order is made, the Court may authorise the assignee to commence and prosecute any action in the names of the assignee and of the insolvent's partner; and any release by that partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of his action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.

Procedure in case of partner being insolvent.

100. Where an insolvent is a contractor, or where a receiving order is made against a debtor who is a contractor, in respect of any contract jointly with any person or persons, that person or those persons may sue or be sued in respect of the contract without the joinder of the insolvent.

Insolvent contractor.

101. Any two or more persons who are partners, or anyone carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in that case the Court may, on application by anyone interested, order the names of the persons who are partners in the firm or the name of that person to be disclosed in the manner, and verified upon oath or otherwise, directed by the Court.

Action by or against partners.

WARRANTS OF COURT

102. A search warrant issued by the Court for the discovery of any property of a debtor may be executed in the prescribed manner, or in the same manner and with the same privileges as a search warrant for property supposed to be stolen may be executed according to law.

Execution of search warrant.

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Liability of person opposing the Official Receiver, etc.

103. Everyone who opposes or hinders the Official Receiver or an assignee or manager in the performance of his duty under this Act shall be guilty of a contempt of court.

Committal to prison.

104. Where the Court commits anyone to prison, the commitment may be to any convenient prison the Court thinks expedient.

PART VII

SUPPLEMENTAL PROVISIONS

Application of Act

Summary administration in small cases.

105. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the Official Receiver reports to the Court, that the property of the debtor is not likely to exceed in value fifteen hundred dollars, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:

(a) if the debtor is adjudged insolvent the Official Receiver shall be the assignee;

(b) there shall be no committee of inspection, but the Official Receiver may do all things which may be done by the assignee with the permission of the committee of inspection;

(c) other modifications may be made in the provisions of this Act as prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the examination and discharge of the debtor:

Provided that the creditors may at any time by special resolution resolve that an assignee be appointed, and thereupon the matter shall proceed as if an order for summary administration had not been made.

106. (1) Where a judgment has been obtained in any court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding two thousand dollars, inclusive of the debt for which the judgment is obtained, the Court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to the extent to the Court, in the circumstances of the case, appearing to be practicable, and subject to any conditions as to his future earnings or income the Court thinks just.

Order for
administration
of debtor's
estate on
judgment.
[4 of 1972]

(2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed five hundred dollars, but in that case the Court may, if it thinks fit, set aside the order.

(3) When the order is made, no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to the Court, except with the leave of the Court and on the terms which the Court imposes; and all proceedings pending against the debtor in respect of that debt shall be stayed, but the costs already incurred by the creditor may, on application to the Court, be added to the debt notified.

(4) If the debtor makes default in payment of any instalment payable in pursuance of an order under this section, he shall be deemed, unless the contrary is proved, to have had, since the date of the order, the means to pay the sum in respect of which he has made default and to have refused or neglected to pay it.

(5) The order shall be carried into effect in the prescribed manner.

(6) Money paid under the order and the proceeds of sale of any goods sold by the Official Receiver, after deducting all expenses of seizure and sale and fees, shall be appropriated, first, in satisfaction of the costs of the plaintiff in the action, next, in satisfaction of the costs of administration, and then in liquidation of debts in accordance with the order.

(7) Notice of the application for the order shall be sent to the Official Receiver, and, when the order is made, the Official Receiver shall publish a notice in the *Gazette* and in one newspaper, calling on all persons who claim to be creditors in respect of debts contracted before the date of the order to prove their debts within twenty-one days from the date of the first publication of that notice.

(8) Any creditor of the debtor, on proof of the debt before the Official Receiver, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(9) Any creditor may, in the prescribed manner, object to any debt scheduled or to the manner in which payment is directed to be made by instalments.

(10) Anyone who, after the date of the order, becomes a creditor of the debtor, shall on proof of his debt before the Official Receiver, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(11) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided and the costs of the plaintiff and of the administration, the order shall be superseded and the debtor shall be discharged from his debts to the scheduled creditors.

(12) Nothing in this section contained shall protect the debtor from proceedings for the recovery of any debt contracted by him after the date of the order; and where any judgment for the payment of money is obtained against the debtor during the subsistence of the order, the Court may, if it thinks fit, on the application of the Official Receiver or any creditor of the debtor, rescind the order, adjudge the debtor insolvent, and make all consequential orders appearing just.

(13) During the subsistence of the order, no transport passed, or mortgage executed, by the debtor shall be of any force or validity unless the Official Receiver or the person having the conduct of the

order consents in writing to the transport or mortgage being passed or executed; and no advertisement of any intended transport or mortgage by the debtor shall be made by the Registrar until that consent in writing has been deposited in his office.

107. A receiving order shall not be made against any corporation or against any partnership, or association, or company registered under the Companies Act.

Exclusion of partnerships and companies. c. 89:01 Person dying insolvent.

108. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against that debtor, had he been alive, may present to the Court a petition, in the prescribed form, praying for an order for the administration of the estate of the deceased debtor, according to the law of insolvency.

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

(3) An executor or administrator may at any time apply for and obtain an order of administration under this section.

(4) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the Official Receiver as assignee and he shall forthwith proceed to realise and distribute it in accordance with this Act.

(5) With the modifications hereinafter mentioned, all the provisions of Part III relating to the administration of the property of an insolvent shall, so far as they are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(6) In the administration of the property of the deceased debtor under an order of administration, the Official Receiver shall have regard to any claim by the representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and to any claim for payment for medical attendance on and medicine for the deceased debtor for the four months preceding his decease, and those claims shall be deemed a preferential debt under the order and be payable in full out of the debtor's estate in priority to all other debts.

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

(8) Notice to the heir or executor of a deceased debtor of the presentation by a creditor of a petition under this section shall, if an order for administration is made thereon, be deemed to be equivalent to notice of an act of insolvency, and after the notice no payment or transfer of property made by the heir or executor shall operate as a discharge to him as between himself and the Official Receiver, but, except as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done in good faith by the heir or executor before the date of the order for administration.

(9) In any case of administration in insolvency under this section the creditors of the deceased debtor shall have the same powers as to appointment of an assignee and committee of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in insolvency, and the provisions of this Act relating to assignees and committees of inspection shall apply to assignees and committees of inspection appointed under the power conferred by this subsection.

(10) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in insolvency.

(11) “Creditor” in this section means one or more creditors qualified to present an insolvency petition as in this Act provided.

General Rules

109. (1) The Insolvency Rules, 1901, and the scale of fees and percentages in insolvency matters made and prescribed by the Court of Policy on the 5th September, 1901, shall be construed and have effect as if they respectively had been made and prescribed under and in accordance with this Act.

Rules and scale made and prescribed in 1901.

(2) The authority empowered to make rules of court regulating the practice and procedure of the Court may from time to time make general rules for carrying into effect the objects of this Act, and also for carrying into effect the Debtors’ Act.

Making of general rules. [O. 37/1966A] c. 6:04

(3) Any copy of the rules purporting to have been printed for the Government of Guyana, shall be *prima facie* evidence in all courts and for all purposes of their due making and tenor.

Fees, Expenditure and Returns

110. The Minister, subject to negative resolution of the National Assembly, may from time to time prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act, and may direct by whom and in what manner they are to be collected and accounted for, and to what account they shall be paid.

Fees.

Evidence

111. (1) A copy of the *Gazette* containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice.

Evidence of notice.

(2) The production of a copy of the *Gazette* containing any notice of a receiving order, or of an order adjudging a debtor insolvent, or of an order of administration under section 108, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Evidence of proceedings at meetings of creditors.

112. (1) A minute of proceedings at a meeting of creditors or of a committee of inspection under this Act, signed, at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors or of a committee of inspection in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Evidence of proceedings in insolvency.

113. (1) Any petition or copy of a petition in insolvency, any order or certificate or copy of an order or certificate made by the Court, any instrument or copy of an instrument, affidavit, or document made or used in the course of any insolvency proceedings, or other proceedings had under this Act, shall, if it appears to be sealed with the seal of the Court, or purports to be signed by any judge thereof, or is certified as a true copy by the Registrar be receivable in evidence in all legal proceedings whatever.

(2) Any copy of a document filed in the office of the Official Receiver shall, if it appears to be sealed with the seal of the Official Receiver, be receivable in evidence in all legal proceedings whatever.

Swearing of affidavits.

114. Subject to general rules, any affidavit to be used in the Court may be sworn before anyone authorised to administer oaths, or, in the case of a person who is out of Guyana, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified, if residing out of Guyana, to be a magistrate or justice of the peace, or qualified as aforesaid, by a diplomatic agent or consular officer of Guyana, or by a notary public).

Deposition of deceased witness.

115. In case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein testified.

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- 116.** For matters in insolvency the Court shall have a seal describing the Court with the word “insolvency” added, and judicial notice shall be taken of the seal, and of the signature of any judge or of the Registrar, in all legal proceedings. Seal of the Court.
- 117.** The Official Receiver for matters in insolvency shall have a seal, which must be approved by the Chancellor, and judicial notice shall be taken of the seal in all legal proceedings. Seal of the Official Receiver.
- 118.** A certificate of the Official Receiver that a person has been appointed assignee under this Act shall be conclusive evidence of the appointment. Certificate of appointment of assignee.
- 119.** Where by this Act an appeal to the Court is given against any decision of the Official Receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made. Appeal from the Official Receiver.
- 120.** All documents purporting to be orders, directions, permissions, or certificates made, given, or issued by the Official Receiver, and to be sealed with the seal of the Official Receiver, shall be received in evidence, and deemed to be those orders, directions, permissions, or certificates, without further proof, unless the contrary is shown. Proceedings of the Official Receiver.

Miscellaneous

- 121.** (1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceedings, then, in the computation of that limited time, it shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest, on the last day of that limited time as so computed, unless the last day is a public holiday or a day on which the office of the Registrar is closed, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified. Computation of time. [4 of 1972]

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(2) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be a public holiday or a day on which the office of the Registrar is closed, the act or proceeding shall be considered as done, or taken in due time, if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

Service of notices.

122. All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith.

Formal defect not to invalidate proceedings.

123. (1) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.

(2) No defect or irregularity in the appointment or election of an assignee, receiver or member of a committee of inspection shall vitiate any act done by him in good faith.

Acting of corporation, firm or persons under disability.

124. For all or any of the purposes of this Act, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, a lunatic may act by his committee or *curator bonis*, and an infant may act by his guardian, but no infant shall be adjudged insolvent.

Insolvency Estates Account

Account to be kept by Official Receiver.

125. (1) An account called the Insolvency Estates Account (and hereinafter called "the account") shall be kept by the Official Receiver with the Accountant General, to which the moneys mentioned in section 55(4), section 77 and the next ensuing section shall be paid.

(2) The Official Receiver may apply to the Minister responsible for finance for payment out of any moneys standing at the credit of the account of any amount required for the purpose of advances for the use

of any estates, and the said Minister may direct that the sum required shall be paid to the Official Receiver by the Accountant General from those moneys.

(3) Where the Official Receiver obtains those advances, he shall, as soon as they have been recovered by him under this Act or the rules made under it, repay them to the account, and if the advance has been unpaid for more than one month, interest thereon shall be payable out of the estate from the date of the advance to the repayment thereof, at the rate of six per cent *per annum* on every complete dollar for every completed month.

(4) The Official Receiver shall keep a separate book showing every amount drawn by him from the account, and every payment made by him to the account, and the account shall be audited by the Director of Audit once in every quarter.

(5) Nothing in this section or Act contained shall authorise the Official Receiver to incur, without the express directions of the Court, or the personal security of some creditor, any expense in relation to the estate of the debtor against whom a receiving order has been made, but who has no available assets.

Unclaimed Dividends

126. (1) Where the assignee, under any insolvency, composition, or scheme pursuant to this Act, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, the assignee has in his hands or under his control any unclaimed or undistributed moneys arising from the property of the debtor, he shall forthwith pay the same to the account in manner provided in section 77, and the Accountant General shall deliver to the Official Receiver a receipt for the money so paid, which shall be an effectual discharge to him in respect thereof.

Unclaimed
dividends and
moneys.

(2) Anyone claiming to be entitled to any moneys paid into the account pursuant to this section may, within ten years from the date when they were so paid in, apply to the Minister responsible for finance for payment of them to him.

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(3) The Minister responsible for finance, if satisfied of the correctness of the claim, may authorise the Accountant General to pay out the amount claimed, or any portion to which the right is established.

(4) The Minister responsible for finance, if not satisfied of the correctness of the claim, may authorise and require the claimant to establish his claim in due course of law, and the Accountant General shall make any defence he may be advised.

(5) If any of the moneys remain unclaimed for the period of ten years immediately following the date when they were so paid in as aforesaid, all right, title, and interest of every person in and to them shall be barred, and they shall be transferred from the account to the credit of the fee fund.

The State

Provisions
which bind the
State.

127. Except as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the State.

Solicitors

Solicitor's
right of
audience.
c. 12:20

128. All solicitors shall have the right of audience in all proceedings under the Debtors Act, or this Act, or any Act amending either of them, which are heard and determined before a judge of the Court, but in no proceedings under the said Acts heard and determined by the Full Court.

Application of
Insolvency
Ordinance,
1884.

129. Where there is no provision in this Act relating to similar proceedings, the provisions of the Insolvency Ordinance, 1884, shall, notwithstanding its repeal, apply as if this Act had not been passed.

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FIRST SCHEDULE

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MEETINGS OF CREDITORS

Time of first meeting.

- 1.** The first meeting of creditors shall be summoned for a day not later than twenty-one days after the date of the receiving order, unless the Official Receiver for any special reason deems it expedient that the meeting be summoned for a later day.

Time of first meeting.
- 2.** The Official Receiver shall summon the meeting by giving not less than six days' notice of the time and place thereof in the *Gazette* and in one newspaper. The notice shall also require all persons claiming to be creditors to prove their debts before the meeting.

Notification of meeting.
- 3.** The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the first meeting of creditors, but the proceedings at the first meeting shall not be invalidated by reason of that notice not having been sent or received before the meeting.

Giving notice to creditors.
- 4.** The meeting shall be held at the place, in the opinion of the Official Receiver, most convenient for the majority of the creditors, and the statement of affairs (if any) shall be laid before the meeting.

Place of meeting.
- 5.** The Official Receiver or the assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or so requested in writing by one-fourth in value of the creditors.

Power to summon other meetings.
- 6.** Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the debtor's statement of affairs, or another address known to the person summoning the meeting.

Mode of summoning other meetings.
- 7.** The Official Receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be the person whom the meeting by resolution appoints.

Chairman of meetings.

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Persons entitled to vote as creditors.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in insolvency to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

No right to vote in respect of unliquidated debt.

9. A creditor shall not vote at a meeting in respect of any unliquidated or contingent debt, or of any debt the value of which is not ascertained.

Right of voting of secured creditor.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court, on application, is satisfied that the omission to value the security has arisen from inadvertence.

Right of voting in respect of debt secured by bill of exchange.

11. A creditor shall not vote in respect of any debt on, or secured by, a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and, for the purposes of voting but not for the purposes of dividend, to deduct it from his proof.

Power to require secured creditor voting to give up security.

12. It shall be competent to the Official Receiver or the assignee, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated, with an addition thereto of twenty per cent:

Provided that, where a creditor has put a value on the security, he may, at any time before he has been required to give up the security as aforesaid, correct the valuation by a new proof, and deduct the new value from his debt, but in that case the addition of twenty per cent shall not be made if the Official Receiver or assignee requires the security to be given up.

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13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of the creditors, and shall be entitled to vote thereat.

Voting in case of insolvent partner.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Powers of chairman with regard to votes.

15. A creditor may vote either in person or by proxy.

Mode of voting.

16. (1) Every instrument of proxy shall be in the prescribed form, and shall be signed by the creditor in the presence of two witnesses, and may be obtained from the Official Receiver, or after the appointment of an assignee, from the assignee. If any insertion therein is not in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of any commissioner to administer oaths to affidavits, the name of the person making the insertion shall be stated.

Form of proxy.

(2) Neither the name nor the description of the Official Receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is sent.

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In that case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

General proxy.

18. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:

Special proxy.

(a) for or against any specific proposal for a composition or scheme of arrangement;

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(b) for or against the appointment of any specified person as assignee at a specified rate or remuneration or as member of the committee of inspection, or for or against the continuance in office of any specified person, as assignee or member of a committee of inspection;

(c) on all questions relating to any matter, other than those above referred to, arising at any specified meeting or adjournment thereof.

Deposit of proxy before use.

19. A proxy shall not be used unless it is deposited with the Official Receiver or assignee three hours before the meeting at which it is to be used.

Case of assignee soliciting proxies.

20. Where it appears, to the satisfaction of the Court, that any solicitation has been used by or on behalf of an assignee or receiver in obtaining proxies or in procuring the assigneeship or receivership, except by the direction of a meeting of creditors, the Court may, if it thinks fit, order that no remuneration shall be allowed to the person by whom or on whose behalf the solicitation has been exercised, notwithstanding any resolution of the committee of inspection, or of the creditors to the contrary.

Power to appoint the Official Receiver as proxy.
Power to adjourn meeting.

21. A creditor may appoint the Official Receiver to act in the prescribed manner as his general or special proxy.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

Quorum at meeting.

23. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors, if their number does not exceed three.

Adjournment in default of quorum.

24. If, within half-an-hour from the time appointed for the meeting, a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week, at the same

time and place, or to another day appointed by the chairman, not being less than seven or more than twenty-one days.

25. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book to be kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

Minutes of meetings.

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner, or his employer in a position to receive any remuneration out of the estate of the debtor, otherwise than as a creditor rateably with the other creditors of the debtor:

Prohibition of proxy voting in favour of remuneration for himself.

Provided that, where any person holds special proxies to vote for the appointment of himself as assignee, he may use those proxies and vote accordingly.

SECOND SCHEDULE

PROOF OF DEBTS

Proof in ordinary Cases

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

Time of proving.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the Official Receiver, or, if an assignee has been appointed, to the assignee, an affidavit verifying the debt.

Mode of proof.

3. The affidavit may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

Person to make affidavit.

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Particulars of affidavit. **4.** 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 statement can be substantiated. The Official Receiver or the assignee may at any time call for the production of the vouchers.

Particulars as to security. **5.** The affidavit shall state whether the creditor is or is not a secured creditor.

Cost of proof. **6.** A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

Right to see other proofs. **7.** Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times, on payment of the prescribed fee.

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

Proof by Secured Creditors

Proof for balance of debt. **9.** If the security held by a secured creditor has been realised, he may prove for the balance due to him, after deducting the amount received by him on account of his debt out of the proceeds of the realisation.

Proof for whole debt. **10.** If a secured creditor surrenders his security to the Official Receiver or the assignee for the general benefit of the creditors, he may prove for his whole debt.

Particulars of proof of secured debt. **11.** If a secured creditor does not surrender his security and his security has not been realised, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

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

Powers of dealing with security.

(2) If the assignee is dissatisfied with the value at which a security is assessed, he may proceed to offer for sale the property comprised in any security so valued at the times and on the terms and conditions agreed on between the creditor and the assignee, or, in default of that agreement, which the Court directs. If the sale is by public auction or tender, the creditor, or assignee on behalf of the estate, may bid or tender and purchase:

Provided that the creditor may at any time, by notice in writing, require the assignee to consent to the security being realised, or to realise the security, and if the assignee does not within three months after receiving the notice, give his consent or take the necessary steps, the creditor may apply to the Court for directions to be issued to the assignee.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing, to the satisfaction of the assignee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but the amendment shall be made at the cost of the creditor and upon such terms as the Court orders, unless the assignee allows the amendment without application to the Court.

Amendment of valuation of security.

14. Where a valuation has been amended in accordance with the foregoing rule the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid, out of any money for the time being available, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

Consequences of amendment.

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Realisation of security.

15. If, after a creditor has valued his security, it is subsequently realised, the amount received by him in respect thereof 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.

Effect of non-compliance by secured creditor.

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

Maximum amount to be received by creditor.

17. A creditor shall in no case receive more than one hundred cents in the dollar, and interest as provided by this Act.

Proof in respect of Distinct Contracts

Case of debtor liable in several capacities.

18. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as a member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts against the properties respectively liable on the contracts.

Periodical Payments

Proof for proportionate sums.

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order, as if the rent or payment grew due from day to day.

Interest

Proof for interest.

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in the insolvency, the creditor may prove for interest at a rate not exceeding four per cent per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a

written instrument at a certain time, and, if payable otherwise, then from the time when the 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.

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

Interest on debt.

Debt payable at a future Time

22. A creditor may prove for a debt not payable when the debtor committed an act of insolvency as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of six per cent *per annum* computed from the declaration of a dividend, to the time when the debt would have become payable, according to the terms on which it was contracted.

Conditions of proving for debt not payable.

Admission or Rejection of Proofs

23. The assignee shall examine every proof and the grounds of the debt, and in writing, admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

Examination of an decision on proof.

24. If the creditor is dissatisfied with the decision of the assignee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

Appeal against decision.

25. (1) If the assignee thinks that a proof has been improperly admitted, the Court may, on the application of the assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Expunging proof.

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(2) The Court may also expunge or reduce a proof, on the application of a creditor, if the assignee declines to interfere in the matter, or, in the case of a composition or scheme, on the application of the debtor.

Powers of
Official
Receiver
before
appointment of
assignee.

26. The Official Receiver, before the appointment of an assignee, shall have all the powers of an assignee with respect to the examination, admission or rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.
