

CHAPTER 103

INSOLVENTS

Ordinances AN ORDINANCE TO PROVIDE FOR THE DUE COLLECTION, ADMINISTRATION, AND
 Nos 7 of 1853, DISTRIBUTION OF INSOLVENT ESTATES.
 24 of 1884.

[2nd July. 1854.]

Short title. 1. This Ordinance may be cited as the Insolvency Ordinance. '

Cessio bonorum abolished.

2. It shall not be lawful for any person to obtain from any court within Sri Lanka, or for any such court to grant to any person, the benefit or relief of cession of goods and property commonly called the *cessio bonorum*, as heretofore known to and allowed by the Roman-Dutch law in force within Sri Lanka:

Provided that nothing herein contained shall be deemed or taken to affect in any way the estate or condition of any person to whom before the commencement of this Ordinance the said benefit or relief shall have been duly granted, which estate shall be administered, and which condition shall be judged of, as if this Ordinance had not been enacted.

Judges may make rules.

3. The Judges of the Supreme Court may from time to time make such rules and orders as they may think fit for the better carrying of this Ordinance into effect, and generally for regulating the practice of the District Court and the forms of proceedings under this Ordinance in all insolvency matters not provided for in this Ordinance.:

Provided that such rules and orders shall not be inconsistent with or repugnant to the provisions of this Ordinance, and that no such rules or orders shall be of any force or effect until they shall have been laid before Parliament and notified in the Gazette in manner provided in Article 136 of the Constitution.

4. The several District Courts throughout Sri Lanka shall be courts for the administration of insolvent estates under this Ordinance, and shall be auxiliary to each other for proof of debts and for the examination of persons or witnesses in all matters under this Ordinance, or for any or either of such purposes :

District Courts to be auxiliary to each other for proof of debts and taking examinations.

Provided that all such examinations shall be taken down in writing, and shall be transmitted to the court in which the petition for sequestration is being prosecuted, and shall be annexed to and form part of the proceedings in the matter to which the same shall relate, and that no such examination shall be taken without the request in writing of the Judge of the District Court before whom the matter is being prosecuted.

5. All decisions and orders of the District Courts made under the authority of this Ordinance shall be subject to an appeal to the Court of Appeal.

Appeals to Court of Appeal.

ACTS OF INSOLVENCY IN GENERAL

7.* If any person residing in Sri Lanka or having any property, real or personal, therein, shall depart therefrom, or being out of Sri Lanka shall remain abroad, or shall depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested or taken in execution for any debt not due, or yield himself to prison, or procure himself to be arrested or taken in execution, or his goods, money, lands, or other property to be attached, sequestered, or taken in execution, or make or cause to be made, either in Sri Lanka

Acts of insolvency.

* Section 6 is omitted from this Edition, as the procedure relating to appeals is now regulated by the Civil Procedure Code.

or elsewhere, any fraudulent grant, conveyance, or mortgage of any of his lands or goods, or make or cause to be made any fraudulent gift, delivery, or transfer of any of his goods or other property, every such person doing, suffering, procuring, executing, permitting, making, or causing to be made any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of insolvency.

Conveyance by a person of all his property to trustees not an act of insolvency, unless petition for sequestration is filed within three months.

8. If any person shall execute any conveyance or assignment by deed of all his property to a trustee or trustees for the benefit of all the creditors of such person, the execution of such deed shall not be deemed an act of insolvency, unless a petition for sequestration of the estate of such person be filed within three months from the execution thereof:

Provided such deed shall be executed by every such trustee within fifteen days after the execution thereof by such first-mentioned person, and notice thereof be given within one month after the execution thereof by such first-mentioned person in the Gazette and in some newspaper published in Colombo; and such notice shall contain the date and execution of such deed and the name and place of abode of every such trustee.

Lying in prison for twenty-one days, and escaping out of prison, acts of insolvency.

9. If any person having been arrested or committed to prison for debt or on any attachment for non-payment of money shall, upon such or any other arrest or commitment for debt or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause shall lie in prison for twenty-one days after any writ of execution issued against him and not discharged, every such person shall thereby be deemed to have committed an act of insolvency; or if any such person having been arrested, committed, or detained for debt shall escape out of prison or custody, every such person shall be deemed to have thereby committed an act of insolvency from the time of such arrest, commitment, or detention.

Filing declaration of insolvency an act of insolvency.

10. If any person residing in Sri Lanka shall file in the District Court of the district in which he shall have resided or carried on business for six months next immediately preceding a declaration in writing in the

form A in the Schedule signed by such person and attested by an attorney-at-law, or some other witness, that he is unable to meet his engagements, every such person shall be deemed thereby to have committed an act of insolvency at the time of filing such declaration, provided a petition for sequestration of his estate shall be filed by or against such person within two months from the filing of such declaration.

11. If any person, after the filing of any petition for sequestration of his estate, shall pay money to the petitioning creditor, or give or deliver to such petitioning creditor any satisfaction or security for his debt or any part thereof, whereby such petitioning creditor may receive more for every ten rupees in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction or security shall be an act of insolvency; and if adjudication that such estate be sequestered shall have been made upon such petition, the court may either declare such adjudication to be valid, and direct the same to be proceeded in, or may order it to be annulled, and a petition or new petition for sequestration may be filed, and such petition or new petition may be supported either by proof of such last-mentioned or any other act of insolvency.

Compounding with petitioning creditor an act of insolvency

12. If any plaintiff shall recover judgment in any action for the recovery of any debt or money demand in any court in Sri Lanka against any person residing within the same, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set-off against such judgment, and the defendant shall not within thirty days after notice in writing personally served upon such defendant requiring immediate payment of such judgment-debt, pay, secure, or compound for the same to the satisfaction of such plaintiff, every such defendant shall be deemed to have committed an act of insolvency on the thirty-first day after service of such notice:

Defendant not paying, securing, or compounding for a judgment debt within thirty days after notice an act of insolvency.

Provided that if such execution shall in the meantime be suspended or restrained by any rule, order, or proceeding of any court having jurisdiction in that behalf, no further proceeding shall be had on such notice, but it shall be lawful nevertheless for such

plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner aforesaid;

Provided also that if the defendant appeals against such judgment no such notice shall be given, or if given no further proceeding shall be had thereon pending such appeal.

Person disobeying order of court for payment of money after service of peremptory order an act of insolvency.

13. If any decree or order shall be pronounced in any cause depending in any court or any order shall be made in any matter of insolvency against any person residing in Sri Lanka, ordering such person to pay any sum of money, and such person shall disobey such decree or order, the same having been personally served upon him, and no appeal against the same shall be pending, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may make an *ex parte* application to the court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such debtor, being personally served with such last-mentioned order thirty days before the day therein appointed for payment of such money, shall neglect to pay the same, every such debtor shall be deemed to have committed an act of insolvency on the thirty-first day after the service of such order.

Notice of acts of insolvency to agents of corporate bodies, &c.

14. If any accredited agent of any body corporate or public company shall have had notice of any act of insolvency, such body corporate or company shall be deemed to have had such notice.

No person liable upon an act of insolvency committed more than twelve months before petition.

15. No person shall be liable to be adjudged insolvent by reason of any act of insolvency committed more than twelve months prior to the filing of any petition for sequestration of his estate; and no adjudication of insolvency shall be deemed invalid by reason of any act of insolvency prior to the debt of the petitioning creditor, provided there be a sufficient act of insolvency subsequent to such debt.

PROCEEDINGS BEFORE THE ESTATE OF ANY PERSON IS ADJUDGED INSOLVENT

16. Proceedings to obtain the sequestration of the estate of any person as insolvent shall be by petition to the District Court of the district in which the debtor shall have resided or carried on business for six months next immediately preceding the time of filing such petition, except where otherwise in this Ordinance specially provided (such petition, if presented by a creditor, being in the form B in the Schedule, and the truth thereof verified by the affidavit of the petitioner in the form C in the Schedule; and if presented by a person against himself under section 20, being in the form D in the Schedule, and the truth thereof and of the matters required to be stated in the list annexed to such petition verified by the affidavit of such person in the form C in the Schedule); and every such petition shall be filed of record and prosecuted as directed by this Ordinance; and from and after the filing of such petition the said court shall have full power and authority to take such order and direction with the body of the insolvent as mentioned in this Ordinance, as also with all his property, real and personal, which he shall have in his own right before he became insolvent, as also with all such interest in any such property as such insolvent may lawfully part with, and with all his money, fees, annuities, goods, wares, merchandise, and debts, wheresoever they may be found or known, and to make or order sale thereof in manner herein mentioned, or otherwise order the same for satisfaction and payment of the creditors of such insolvent.

Proceedings to originate by petition

17. Provided that the Court of Appeal shall have power, whenever such court may deem it expedient, to order any petition against or by any person for the sequestration of his estate, to be prosecuted in any District Court with or without reference to the district in which such person resided or carried on business, and whether or not such person has resided or carried on his business for six months preceding the filing of such petition, and whether or not such person has carried on his business for that time in any particular district; or to consolidate the proceedings or any part thereof under two or more

Court of Appeal may direct petition to be prosecuted in any District Court., &c.

petitions for the sequestration of such estate, or to transfer any petition for such sequestration and the proceedings thereunder, and the prosecution or the further prosecution thereof, from any one District Court to any other District Court, and the court to which any such transfer shall be made shall have and exercise full jurisdiction therein; and any such order by the Court of Appeal may be in such of the forms E, F, or G in the Schedule as may be adapted to the case, or to the like effect.

property, and an inventory of the same, and of the debts owing to him, with their dates, as nearly as such dates can be stated, and the names of his debtors, and the nature of the securities (if any) which he has for such debts:

Petitioning creditor's debt:

18. The amount of the debt of any creditor petitioning for sequestration of the estate of any person as insolvent shall be as follows: that is to say, the single debt of such creditor, or of two or more persons being partners, so petitioning shall amount to five hundred rupees or upwards; and the debt of two creditors so petitioning shall amount to seven hundred rupees or upwards; and the debt of three or more creditors so petitioning shall amount to one thousand rupees or upwards; and every person who has given credit to any person upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such person committed an act of insolvency, may so petition or join in petitioning, whether he shall have had any security in writing for such sum or not.

though payable at a future time, and security given.

Provided that unless such person shall forthwith after the filing of his petition, and before adjudication of insolvency thereunder, make it appear to the satisfaction of the court that his available estate is sufficient to pay his creditors at least two rupees and fifty cents for every ten rupees, clear of all charges (to be estimated by the court) of prosecuting the petition, such petition shall be dismissed, and no further petition shall be filed by such person in the same district without the leave of the court first obtained for that purpose; and the adjudication on any further petition shall be subject to the like condition as aforesaid as to the available estate of the petitioner;

Petition by public officer of certain co-partnership.

19. A petition for sequestration as insolvent of the estate of any person indebted in the amount aforesaid to any co-partnership, duly authorized to sue and be sued in the name of a public officer of such co-partnership, may be filed by such public officer as the nominal petitioner for and on behalf of such co-partnership.

Provided, however, that it shall be lawful for any person, whatever the amount of his available estate, who shall be in actual custody within the walls of any prison in Sri Lanka, upon any writ of execution against his person, or other like process, for or by reason of any debt, damages, or costs, at any time after twenty-one days from the commencement of the actual custody of such prisoner, to file a declaration of insolvency, and to petition for the sequestration as an insolvent of his own estate.

So also may an insolvent prisoner.

Person may petition against himself.

20. Any person may petition for the sequestration as insolvent of his own estate ; and there shall be annexed to such petition a list containing a full and true account of the petitioner's debts, and the claims against him, with the names of his creditors and claimants and the dates of contracting the debts and claims severally, as near as such dates can be stated, the nature of the debts and claims and securities (if any) given for the same, and whether the same are disputed; and also a true account of the nature and amount of the petitioner's

21. If the petitioning creditor in any petition for sequestration of his debtor's estate as insolvent shall not proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as shall be allowed by the court, the court may at any time within fourteen days then next following, upon the application of any other creditor to the amount required to constitute a petitioning creditor, proceed to adjudicate on such petition, upon the proof of the debt of such second-mentioned creditor and of the other requisites to support such petition (except the debt of the petitioning creditor); but if neither the petitioner nor any other creditor shall, within such fourteen days or within such extended time as may be granted by

If adjudication be not obtained within three days after petition, any other creditor may proceed on it.

the court for that purpose, apply to the court to adjudicate upon such petition, no further proceeding shall be taken thereon.

to such person as the court shall think fit, whereby such Fiscal or other person shall have authority to arrest the person against whom such petition shall have been filed, and also to seize his books, papers, moneys, securities for moneys, goods, and effects, wheresoever he or they may be found, and him and them safely keep until the expiration of the time allowed for adjudication on such petition, or until such person shall be adjudged insolvent under such petition, and be thereon dealt with according to this Ordinance:

Petitions may be presented against one or more partners in a firm ; and petitions against two or more may be dismissed as to one without affecting the others.

22. Any creditor whose debt is sufficient to entitle him to petition for the sequestration as insolvent of the estate of all the partners of any firm may petition for such sequestration against one or more partners of such firm, and every such petition shall be valid, although it does not include all the partners of the firm; and in every petition for sequestration against two or more persons the court may dismiss the same as to one or more of such persons, and the validity of such petition shall not be thereby affected as to any person as to whom such petition is not ordered to be dismissed, nor shall any such person's certificate be thereby affected.

Provided that any person arrested upon any such warrant or any person whose books, papers, moneys, securities for moneys, goods, or effects have been seized under any such warrant, may apply at any time after such arrest or seizure to the court for an order or rule on the petitioning creditor to show cause why the person arrested should not be discharged out of custody, or why his books, papers, moneys, securities for moneys, goods, and effects should not be delivered up to him; and it shall be lawful for such court to make absolute or discharge such order or rule.

Person so arrested may apply to the court for his discharge.

If one member of a firm be insolvent, a petition against the others shall be filed in the same court.

23. After a petition for sequestration filed against or by one or more member or members of a firm, any petition for sequestration against or by any other member of such firm shall be filed and prosecuted in the court in which the first petition was prosecuted; and immediately after the adjudication under such other petition all the estate, real and personal, of any such insolvent shall vest in the assignee, if any, under the first petition; and thereafter all separate proceedings under such other petition shall be stayed and such petition shall without affecting the validity of the first petition, be annexed to and form part of the same :

25. The court, before adjudication, may summon before it any person whom such court shall believe capable of giving any information . concerning any act of insolvency committed by the person against whom any petition for the sequestration of his estate as insolvent has been filed, and may require any person so summoned to produce any books, papers, deeds, writings, and other documents in his custody, possession, or power which may appear to the court to be necessary to establish such act of insolvency ; and it shall be lawful for the court to examine any such person upon oath by word of mouth, or interrogatories in writing, concerning such act of insolvency ; and such court, before or at the time of adjudication, may examine the person by or against whom any such petition has been presented, or any other person, as to the probable value of the property of such first-mentioned person available for the payment of his debts.

Court, before adjudication, may summon witnesses to prove act of insolvency

Provided that the Court of Appeal may direct that such other petition shall be filed and prosecuted in any other District Court, or be proceeded in, either separately or in conjunction with the first petition.

After petition filed, if the insolvent be about to quit Sri Lanka or to remove or conceal his goods, he may be arrested and his goods seized.

24. Whenever -any petition for sequestration as insolvent of the estate of any person shall have been filed against any person, and it shall be proved to the satisfaction of the court in which such petition has been filed that there is probable cause for believing that such person is about to quit Sri Lanka, or to remove or conceal any of his goods with intent to defraud his creditors, unless he be forthwith apprehended, it shall be lawful for the court to issue a warrant, directed to the Fiscal, or

ADJUDICATION OF THE ESTATE OF ANY PERSON AS INSOLVENT, AND THE PROCEEDINGS FOR SECURING THE PROPERTY AND SURRENDER OF THE INSOLVENT

Adjudication, and upon what proof.

26. The District Court, under a petition filed by a creditor shall, upon proof of the petitioning creditor's debt and of the act of insolvency of the person against whom such petition is filed, adjudge such person insolvent; or if in case of the failure of the petitioning creditor to proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as may be allowed by the court, another creditor shall apply for adjudication upon such petition, then upon such application, and proof of such creditor's debt, and of the act of insolvency of the person against whom such petition is filed, the court shall adjudge such person insolvent; and under a petition filed by any person against himself the court, upon the application of such person, and upon proof of the filing a declaration of insolvency, and of the sufficiency of his available estate to the extent required by this Ordinance, or upon proof of the filing of such declaration of insolvency, and that such person has been in actual custody within the walls of a prison for debt for more than twenty-one days, shall adjudge such person insolvent.

Attachment upon the estate and how to be made.

27. Forthwith, after any person shall be adjudged insolvent, the District Court shall issue to the Fiscal an order (in the form H in the Schedule) placing the estate of the insolvent under sequestration in his hands, and such Fiscal shall enter and lay an attachment on the estate, under inventory thereof; and when the same shall be sequestered upon the petition of any creditor the said Fiscal shall be accompanied by the petitioning creditor, or someone authorized by him, on behalf of himself and the other creditors of the said estate; and when the said estate shall be sequestered upon the petition of any insolvent against himself, it shall be lawful for any of the creditors, or for the agent of any of the creditors, of the insolvent to accompany the Fiscal and to be present with him while making out the inventory aforesaid.

28. When any personal property belonging to any insolvent is attached as aforesaid in virtue of any order for the sequestration thereof, the Fiscal making such attachment shall leave with the person in whose possession any such property is attached a copy of the said inventory, having subjoined thereto a notice in the Sinhala language, and also, if he does not understand Sinhala, in the language spoken by such person, that the property therein specified has been attached by the said Fiscal, by virtue of an order of the court for the sequestration thereof; and any person who knowing the same to have been so attached, shall dispose of, remove, conceal, or receive the same, or any part thereof, with intent to defeat the said attachment, shall be liable on conviction of such offence to be transported for any period not exceeding seven years, or to be imprisoned, with or without hard labour, for any period not exceeding five years ;

Attachment of personal property how to be made and as to penalty for defeating the same.

Provided that it shall be lawful for such Fiscal to secure on the premises, by sealing up in any room or repository, any articles which in the discharge of his duty it shall seem to him expedient so to secure, causing no unnecessary hindrance or inconvenience to any party by so doing, or to leave some person on the premises in charge thereof; and the said Fiscal shall forthwith report his execution of the said attachment to the said court, and the court may give such directions for the safe custody of the said property as shall seem fit.

29. If, after adjudication of insolvency, the debt of the petitioning creditor be found by the court to be insufficient to support such adjudication, it shall be lawful for the court, upon the application of any other creditor having proved any debt sufficient to support an adjudication, to order the petition for sequestration to be proceeded in, and it shall by such order be deemed valid, which order may be in the form I in the Schedule, or to the like effect.

if petitioning creditor's debt insufficient court may proceed upon the application of any other creditor.

30. Before notice of any adjudication of insolvency shall be given in the Gazette, and at or before the time of putting in execution any order of sequestration which shall have been granted upon such adjudication, a duplicate of such adjudication shall be served on the person adjudged insolvent, personally or by leaving the same at the usual or last known place of abode or place

Insolvent to have notice of adjudication and to be allowed a certain time to show cause against it before advertisement

of business of such person; and such person shall be allowed seven days, or such extended time not exceeding fourteen days in the whole as the court shall think fit, from the service of such duplicate, to show cause to the court against the validity of such adjudication; and if such person shall within such time show to the satisfaction of the court that the petitioning creditor's debt, and the act of insolvency upon which such adjudication has been grounded, or either of such matters, are insufficient to support such adjudication, and upon such showing no other creditor's debt and act of insolvency sufficient to support such adjudication or such of the said last-mentioned matters as shall be requisite to support such adjudication in lieu of the petitioning creditor's debt and act of insolvency, or either of such matters which shall be deemed insufficient in that behalf, as the case may be, shall be proved to the satisfaction of the court, the court shall thereupon order (in the form K in the Schedule or to the like effect) such adjudication to be annulled, and the same shall by such order be annulled accordingly ; but if at the expiration of the said time no cause shall have been shown to the satisfaction of the court for the annulling of such adjudication, the court shall forthwith, after the expiration of such time, cause notice of such adjudication to be given in the said Gazette, and shall thereby appoint two public sittings of the court for the insolvent to surrender and conform, the last of which sittings shall be on a day not less than thirty days and not exceeding sixty days from such advertisement in the Gazette, and shall be the day limited for such surrender; and copies and translations of such advertisement shall also be affixed on the wall of the District Court and of the nearest kachcheri:

Provided that the court shall have power from time to time to enlarge the time for the insolvent surrendering himself for such time as the court shall think fit, so as every such order be made six days at least before the day on which such insolvent was to surrender himself: and also from time to time to adjourn either of the said sittings if the court shall deem it necessary to do so;

Provided also that if any person so adjudged insolvent shall, before the expiration of the time allowed for showing cause, surrender himself and give his consent, testified in writing under his hand, to such adjudication being advertised, the court after such consent so given shall forthwith cause the notice of adjudication to be advertised, and appoint the sittings for the insolvent to surrender and conform.

31. Forthwith after the insertion of the notice of adjudication in the Gazette, or, if the insolvent before the expiration of the time allowed for showing cause against the adjudication surrender himself and give consent to such insertion, forthwith after such surrender, the insolvent shall (if thereto required by the court) deliver up to the court upon oath all books of account, papers, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person ; and every insolvent not in prison or custody shall at all times after such surrender attend the assignees, upon every reasonable notice in writing for that purpose given by them to him or left at his usual or last known place of abode, and shall assist such assignees in making out the accounts of his estate; and such insolvent after he shall have surrendered may, at all seasonable times before the expiration of such time as shall be allowed to him to finish his examination, inspect his books, papers, and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him ; and every such insolvent after he shall have obtained his certificate shall, upon demand in writing given to him or left at his usual or last known place of abode, attend the assignees to settle any accounts between his estate and any debtor to or creditor thereof, or attend any court to give evidence touching the same, or do any act necessary for getting in or protecting the said estate, for which *attendance he shall be paid by the assignees out of his estate such sum not exceeding five rupees per day, as they shall deem reasonable.

32. In all cases where it shall be made to appear to the satisfaction of the District Court that there is reason to suspect and

Adjudication may, with insolvent's consent, be advertised before the time for showing cause.

Insolvent to deliver up his books of account to the court upon oath;

to attend assignees;

to be at liberty to inspect books, &c.:

after allowance of certificate to attend assignees in settling accounts.

Allowance for attendance.

Search warrants in what cases

believe that any property of any insolvent is concealed in any house or other place not belonging to such insolvent, the court may grant a search warrant to the Fiscal or other person appointed by the court, and it shall be lawful for such Fiscal or other person to execute such warrant according to the tenor thereof; and such Fiscal or other person shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen, and every such search warrant shall be in the form L in the Schedule, or to the like effect.

No action against persons for acting under warrant of the court without demand of copy of warrant.

33. No action shall be brought against any Fiscal or other person appointed by the court for anything done in obedience to any warrant of the court, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such Fiscal or other person by the party intending to bring such action, or by his registered attorney or agent, in writing, signed by the party demanding the same, and unless the same hath been refused or neglected for six days after such demand; and if after such demand, and compliance therewith, any action be brought against such Fiscal or person so appointed, without making the petitioning creditor defendant, if living, the court at the trial of such action, on the production and proof of such warrant, shall give judgment for the defendant, notwithstanding any defect of jurisdiction in the court by which such warrant shall have been granted; and if such action be brought against the petitioning creditor and the Fiscal or person so appointed, the court shall, on proof of such warrant, give judgment for such Fiscal or person so appointed, notwithstanding any such defect of jurisdiction; and if the judgment shall be given against the petitioning creditor, the plaintiff shall recover his costs against him, to be taxed so as to include such costs as the plaintiff is liable to pay to the Fiscal or person so appointed as aforesaid.

Proof in such actions that defendant is petitioning creditor sufficient to render him liable.

34. In any such action brought against the petitioning creditor, either alone or jointly with any Fiscal or other person so appointed by the court, for anything done in obedience to the warrant of the court, proof by the plaintiff in such action that the defendant or defendants or any of them is

or are petitioning creditor or creditors shall be sufficient for the purpose of making such defendant or defendants liable in the same manner and to the same extent as if the act complained of in such action had been done or committed by such defendant or defendants.

35. It shall be lawful for any Fiscal, acting under warrant of the court, to break open any house, chamber, shop, warehouse, door, trunk, or chest of any insolvent where such insolvent or any of his property shall be reputed to be, and seize upon the body or property of such insolvent; and if the insolvent be in prison or in custody, it shall be lawful for the Fiscal to seize any property of the insolvent (his necessary wearing apparel only excepted) in the custody or possession of such insolvent, or of any other person, in any prison or place where such insolvent is in custody.

Fiscal may break open the insolvents doors, &c., and seize upon his body or property

36. If the insolvent be not in prison or custody at the date of the adjudication, he shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the time by this Ordinance limited for such surrender, and for such further time as shall be allowed him for finishing his examination, and for such time after finishing his examination until his certificate be allowed, as the court shall from time to time by endorsement upon the summons of such insolvent, or by writing under the hand of the Judge of such court, think fit to appoint; and whenever any insolvent is in prison or in custody under any process, attachment, execution, commitment, or sentence, the court may by warrant directed to the person in whose custody he is confined cause him to be brought before it at any sitting, either public or private, and if he be desirous to surrender, he shall be so brought up and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the court for bringing up such insolvent; and where any person who has been adjudged insolvent, and has surrendered and obtained his protection from arrest, is in prison or in custody for debt at the time of his obtaining such protection, the court may, except in the cases next hereinafter mentioned, order his immediate release, either absolutely or upon such conditions as it shall think fit:

Insolvent not in custody to be free from arrest in coming to surrender, &c.

If in custody, he may be brought up to be examined or to surrender, &c.; and if for debt, the court may, except in certain cases, order his release

Provided that the court shall not order such release where it shall appear by any judgment, order, commitment, or sentence under which the insolvent is in prison or in custody, or by the record or entry of any such judgment, order, commitment, or sentence, and the pleadings or proceedings previously thereto, that he is in prison or in custody for any debt contracted by fraud or breach of trust, or by reason of any prosecution against him whereby he had been convicted of any offence, or for any debt contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, or maliciously filing or prosecuting a petition for sequestration of the estate of any person as insolvent, unless it shall appear to the satisfaction of the court that the insolvent shall at the time of this Ordinance coming into operation, or at any time thereafter, have been in prison or custody under or by reason of any such judgment, order, commitment, or sentence as aforesaid for a period of or exceeding one year;

Court may order release of insolvent if in custody for debt contracted by fraud, &c., when detained for more than one year.

Provided also that such release shall in no wise affect any rights of the creditor at whose suit the insolvent may be in prison or in custody against the insolvent, except the right of detaining him in prison or in custody whilst protected from imprisonment by order of the court.

If arrested, to be discharged on producing protection.

37. If any insolvent shall be arrested for debt in coming to surrender, or shall after his surrender and while protected by order of the court be so arrested, he shall, on producing such protection to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such insolvent after he shall have shown such protection to him, except for so long as shall be necessary for obtaining a copy of the same, such officer shall forfeit to such insolvent, for his own use, the sum of fifty rupees for every day he shall detain such insolvent, to be recovered by action in any competent court in the name of such insolvent, with costs of suit.

38. The petitioning creditor shall, at his own cost, file and prosecute his petition until the choice of assignees by the creditors; and the court shall at or after the sitting for such choice make order for the payment thereof out of the estate of the insolvent.

Petitioning creditor to proceed at his own cost until choice of assignees.

39. No petition for sequestration of the estate of any person as insolvent shall be dismissed, nor any adjudication thereon reversed, by reason only that the petition, or adjudication, or act of insolvency has been concerted or agreed upon between the insolvent, his registered attorney or agent, or any of them, and any creditor or other person.

No objection to petition for sequestration, that the act of insolvency was concerted.

40. If any person shall die after he has been adjudged insolvent, the court may proceed in the matter of such insolvency as if such insolvent were living.

Court may proceed notwithstanding death of insolvent.

41. The court may summon any insolvent before it, whether such insolvent shall have obtained his certificate or not; and in case he shall not come at the time appointed by the court (having no lawful impediment made known to and allowed by the court at such time), it shall be lawful for the court, by warrant, to authorize and direct the Fiscal, or any person the court shall think fit, to apprehend and arrest such insolvent and bring him before the court; and upon the appearance of such insolvent, or if such insolvent be present at any sitting of the court, it shall be lawful for the court to examine or to permit the examination by the creditors of such insolvent after he shall have made and signed a declaration in the form M in the Schedule, either by word of mouth or on interrogatories in writing, touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance, or concealment of his lands, goods, money, or debts, and to reduce his answers into writing, which examination, so reduced into writing, the said insolvent shall sign.

Court may summon and examine insolvent.

42. It shall be lawful for the court to summon before it the wife of any insolvent, and to examine her, or to permit her examination by the creditors of such insolvent, after she shall have made and signed a declaration in the form M in the

Court may summon and examine the insolvent's wife.

Schedule, either by word of mouth or interrogatories in writing, for the finding out and discovery of the property of such insolvent concealed, kept, or disposed of by such wife in her own person or by her own act, or by any other person, and she shall incur such danger or penalty for not coming before the court, or for refusing to make and sign such declaration and to be examined, or to sign her examination, or for not fully answering to the satisfaction of the court, as is hereinafter provided.

direct the Fiscal, or other person therein named for that purpose, to apprehend and arrest such person and bring him before the court for examination.

45. Where it shall be shown by affidavit to the satisfaction of the court that any person to whom any such summons is directed as aforesaid is keeping out of the way and cannot be personally served therewith, and that due pains have been taken to effect such personal service, it shall be lawful for the court to order by endorsement upon the summons that the delivery of a copy of such summons to the wife or servant, or some adult inmate of the house or family of the person at his usual or last known place of abode or business, and explaining the purport thereof to such wife, servant, or inmate, shall be equivalent to personal service; and in every such case the service of such summons in pursuance of such order shall be and be deemed and taken to be of the same force and effect to all intents and purposes as if the party to whom such summons was directed had been personally served therewith.

Service of summons where person keeps out of the way.

If insolvent keep out of the way, or be about to quit Sri Lanka, &c., warrant.

43. If in any case it shall be proved to the satisfaction of the court that any insolvent is keeping out of the way and cannot be personally served with a summons, and that due pains have been taken to effect such personal service, or that there is probable cause for believing that he is about to quit Sri Lanka, or to remove or conceal any of his goods or effects, unless he be forthwith apprehended, it shall be lawful for such court, by warrant, to authorize and direct the Fiscal, or any person it shall think fit, to apprehend and arrest such insolvent, and bring him before the court to be examined in like manner as if he appeared upon a summons.

46. Upon the appearance of any person summoned or brought before the court upon any warrant as aforesaid, or if any person be present at any sitting of the court, it shall be lawful for the court to examine or to permit the examination by the creditors of every such person upon oath, either by word of mouth or by interrogatories in writing, concerning the person, trade, dealings, or estate of any insolvent, or concerning any act of insolvency by any insolvent committed, and to reduce into writing the answers of every such person; and such answers so reduced into writing such person examined is hereby required to sign.

Power to examine persons summoned or present at any sitting.

Court may summon person suspected of having insolvent's property, &c.

44. After any person has been adjudged insolvent it shall be lawful for the District Court to summon before it any person known or suspected to have any of the estate of the insolvent in his possession, or who is supposed to be indebted to the insolvent, or any person the court may believe capable of giving information concerning the person, trade, dealings, or estate of the insolvent, or concerning any act of insolvency committed by him, or any information material to the full disclosure of his dealings ; and the court may require such person to produce any books, papers, deeds, writings, or other documents in his custody or power which may appear to the court necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the court is authorized to inquire into; and if such person so summoned as aforesaid shall not come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), it shall be lawful for the court by warrant to authorize and

47. If any such person examined as last aforesaid shall, in and by his examination signed as aforesaid, and also in and by a separate writing in the form N in the Schedule, admit that he is indebted to the insolvent in any sum of money upon the balance of accounts, it shall be lawful for the court, if it think fit, to order (in the form O in the Schedule, or to the like effect) that such person shall forthwith, or at such time and in such manner as to the court may seem expedient, pay the amount so

Court may order payment of debts admitted to be due to the estate:

and if they fail to attend, warrant.

admitted, in full discharge thereof, to the assignees, together with the costs of and incident to the summons of such person, if the court think fit to award costs, or the court may, if it think fit, in the said form O, order the assignees to pay the costs of the person summoned out of the estate of the insolvent; and every such order shall have the effect of a judgment in the said court, and may be enforced accordingly:

such order to have effect of judgment

Provided always that no such order shall be made unless such party has been informed by the Judge of the effect of such admission before the same is signed as aforesaid;

Provided also, that if part only of the sum actually due be so admitted, or if the court make an order for part only of the sum admitted, the residue may be recoverable in the same manner in all respects as if no such admission or order had been made.

Court may order letters addressed to insolvent to be redirected or delivered to assignees, &c.

48. The District Court may order that for 3 period of three months from the date of any such Order all Post letters directed or addressed to any insolvent at the place of which he shall be described in the petition for sequestration of his 'estatè' as insolvent, shall be redirected, readdressed, sent, or delivered by the Postmaster-General, or the officers acting under him, to the assignees named in such order; and upon notice by transmission of a duplicate of any such order to the Postmaster-General, or the officers acting under him, by the assignees or other person named in such order, of the making of such order, it shall be lawful for the Postmaster-General, or such officers as aforesaid, to readdress, redirect, send, or deliver all such post letters to the assignees named in such order accordingly; and the court may, upon any application to be made for that purpose, renew any such order for a like or for any other less period as often as may be necessary.

POWER OF THE DISTRICT COURT OVER CERTAIN DESCRIPTIONS OF PROPERTY

Goods in the possession, order, or disposition of the insolvent to be deemed his propety

49. If any insolvent, at the time he commits the act of insolvency, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or effects whereof he was reputed owner, or whereof he had taken

upon him the sale or disposition as owner, the court shall have power to order the same to be sold or disposed of for the benefit of the creditors of the insolvent:

Provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt, either by way of mortgage or assignment, duly registered according to the provisions of the Merchant Shipping Act.

Assignments of vessels under the Merchant Shipping Act.

50. But if there shall be found among the insolvent's property at the time of its seizure any wares, goods, or merchandise consigned to him for the special purpose of being sold by him on commission, or intrusted in his hands for any specific purpose, and which evidently are the property of the consignor or person so intrusting, notice thereof shall be transmitted to the owners as soon as possible, in order that they may take the necessary measures to secure their property, and the same shall be carefully preserved, and shall be delivered over to the lawful owners.

Consigned goods, &c., to be given up to the owner.

51. If any person adjudged insolvent under this Ordinance shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed, assigned, or transferred to any of his children, or to any other person, any real or personal property whatsoever, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or into any other person's name, such first-mentioned person being at the time of making any such conveyance, assignment, transfer, or delivery insolvent, the court shall have power to order any such property to be sold and disposed of for the benefit of the creditors under the insolvency; and every such sale shall be valid against the insolvent and such children and persons, and against all persons claiming under him.

Conveyances, &c., by insolvent without valuable consideration, void.

52. No seizure or detention of the goods of any insolvent for rent made after an act of insolvency, and whether before or after the filing of the petition for sequestration of his estate, shall be available for more than one year's rent accrued prior to the day of the filing of such petition, but the landlord or person to whom the rent shall be due

Seizure of goods for rent not to be available for more than one year's rent due; the landlord to prove for the residue.

shall be allowed to come in as creditor for the overplus of the rent due, and for which the goods seized shall not be available.

TRANSACTIONS WITH THE INSOLVENT, AND EXECUTIONS AGAINST HIS PROPERTY UP TO THE TIME OF THE FILING OF THE PETITION FOR SEQUESTRATION OF HIS ESTATE AS INSOLVENT, OR WITHIN A LIMITED TIME PREVIOUSLY THERETO

Where insolvent is a trustee, the court may order conveyance or assignment to another trustee.

53. If any insolvent shall as trustee be seized, possessed of, or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any funds or annuities, or any of the stock of any public company in Sri Lanka, it shall be lawful for the court, on the petition of the person entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, funds, or annuities to such person as the said court shall think fit, upon the same trusts as the said estate, interest, funds, or annuities were subject to before the insolvency, or such of them as shall be then subsisting and capable of taking effect, and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof as the said court shall direct.

56. All payments really and bona fide made by any insolvent, or by any person on his behalf, before the filing of a petition for sequestration of his estate as insolvent to any creditor of such insolvent, and all payments really and bona fide made to any insolvent before the filing of such petition, and all conveyances by any insolvent bona fide made and executed before the filing of such petition, and all contracts, dealings, and transactions by and with any insolvent really and bona fide made and entered into before the filing of such petition, and all executions and attachments against the lands of any insolvent bona fide executed by seizure, and all executions and attachments against the goods and effects of any insolvent bona fide executed and levied by seizure and sale before the date of the filing of such petition, shall be deemed to be valid notwithstanding any prior act of insolvency by such insolvent committed, provided the person so dealing with or paying to or being paid by such insolvent, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such payment, conveyance, contract, dealing, or transaction, or at the time of such executing or levying such execution or attachment, or at the time of making any sale thereunder, notice of any prior act of insolvency by him committed:

Payment by insolvent,

conveyances by him;

contracts and dealings with him,

and executions

in what cases valid, if no notice of act of insolvency;

Title to property sold not to be impeached unless insolvency disputed within a certain time.

54. No title to any real or personal estate sold under any insolvency shall be impeached by the insolvent, or any person claiming under him, in respect of any defect in the petition for sequestration or in any of the proceedings under the same, unless the insolvent shall, within the time allowed by this Ordinance, have commenced proceedings to dispute, dismiss, or annul the petition or adjudication thereunder, and duly prosecuted the same.

The court, after adjudication, may order any agent of the insolvent to deliver over all moneys, &c.

55. After the adjudication of insolvency in any case shall have been advertised in the Gazette, it shall be lawful for the court to order any treasurer or other officer, or any banker, attorney, registered attorney or other agent of the insolvent, to pay and deliver over to the assignees, to the credit of the estate of such insolvent, all moneys or securities for moneys in his custody, possession, or power as such officer or agent, and which he is not by law entitled to retain against the insolvent or his assignees,

Provided always that nothing herein contained shall be deemed or taken to give validity to any payment, or to any delivery or transfer of any goods or effects made by any insolvent being a fraudulent preference of any creditor of such insolvent, or to any conveyance or mortgage made or given by any insolvent by way of fraudulent preference of any creditor of such insolvent, or to any execution founded on a judgment on a power of attorney to confess judgment, or consent to a judgment given by any insolvent by way of fraudulent preference.

but not to extend to Fraudulent preferences, &c.

Bona fide purchases not to be impeached by notice of act of insolvency, unless petition be filed within twelve months after the act of insolvency.

57. No purchase from any insolvent bona fide and for valuable consideration where the purchaser had notice at the time of such purchase of an act of insolvency by such insolvent committed, shall be impeached by reason thereof, unless a petition for sequestration of the estate of such insolvent shall have been filed within twelve months after such act of insolvency.

Fraudulent preferences according to the law of England to be deemed such in like cases within Sri Lanka.

58. Every transaction, dealing, transfer, delivery, alienation, mortgage, pledge, or payment by any insolvent to or with any creditor of such insolvent, or to or with any other person, which by the law of England at the corresponding period would be and be deemed to be a fraudulent preference of one creditor before other creditors in any proceeding in bankruptcy, or in any suit or action, shall, in the like case arising within Sri Lanka be and be deemed to be a fraudulent preference according to the true intent and meaning of this Ordinance.

Certain powers of attorney to confess judgment and consents to judgments, given within two months of filing petition to be null and void.

59. Every power of attorney to confess judgment* in any personal action given by any insolvent after the commencement of this Ordinance, and within two months of the filing of a petition for sequestration of his estate by or against such insolvent, and being for or in respect of (wholly or in part) an antecedent debt or money demand, and every consent to a judgment given by any insolvent at any time after the commencement of this Ordinance, and within two months of the filing of any such petition, in any action commenced by collusion with the insolvent, and not adversely or purporting to have been given in an action, but having been in fact given before the commencement of any action against the insolvent, such insolvent being unable to meet his engagements at the time of giving such power of attorney* or consent (as the case may be), shall be deemed and taken to be null and void, whether the same shall have been given by such insolvent in contemplation of the sequestration of his estate as insolvent or not.

*Sections 31 and 32 of the Civil Procedure Code relating to warrants and powers of attorney to confess judgment are repealed by Law No. 20 of 1977.

STAMPS

60. No deed, conveyance, assignment, admission, or other assurance of or to or relating solely to any lands, or to any mortgage, charge, or other incumbrance upon, or any estate, right, or interest of and in any lands, or personal estate, being the estate of or belonging to any insolvent, or part or parcel thereof, and which after the execution of such deed, conveyance, assignment, or assurance respectively shall either be or remain the estate and property of such insolvent or of the assignees appointed or chosen under any insolvency, and no power of attorney, order, certificate of conformity, affidavit, or other instrument or writing whatsoever relating solely to the estate or effects of any insolvent, or to any part thereof, or to any proceedings under any insolvency, and no affidavit, bond, or other proceeding under this Ordinance relating solely to insolvency matters, shall be liable to any stamp duty, save and except such stamp duty as is provided in Part V of Schedule A of the Stamp Ordinance.

Deeds and other instruments relating to insolvency not liable to stamp duty.

61. The provisions contained in the Ordinance for the time being in force relating to stamps shall (so far as the same are applicable and consistent with the provisions of this Ordinance), in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under and by virtue of this Ordinance, and shall be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively.

Provisions of Stamp Ordinance to extend to stamps under this Ordinance.

APPOINTMENT BY THE COURT OF PROVISIONAL ASSIGNEES

62. It shall be lawful for the District Court, on cause shown by any person interested in the due administration of the insolvent estate at any time after the adjudication of insolvency, by order of

As to appointment by court of provisional assignee.

court to appoint one or more fit person or persons to be assignee or assignees of any insolvent estate provisionally and until the creditors of the said estate shall have made choice of assignees.

rejection or removal a new choice and appointment of another assignee shall be made in like manner.

Removal of provisional assignee.

63. Provisional assignees may be removed at the meeting of creditors for the choice of assignees if the said creditors shall think fit, or may then be chosen as assignees, but shall and may, until so removed, act in the collection, administration, and distribution of the said estate in all respects the same as assignees elected by the creditors are by this Ordinance authorized or required to do.

67. If one or more of the partners of a firm be adjudged insolvent, any creditor to whom the insolvent is indebted jointly with the other partners of the firm, or any of them, shall be entitled to prove his debt for the purpose only of voting in the choice of assignees and of being heard against the allowance of the insolvent's certificate, or of either of such purposes; but such creditors shall not receive any dividend out of the separate estate of the insolvent until all the separate creditors shall have received the full amount of their respective debts.

Joint creditor entitled to prove under separate estate for the purpose of voting in the choice of assignees.

Provisional assignee not to sell property without authority of court.

64. No such provisional assignees shall proceed to make sale of any part of the said estate without the authority for that purpose of the said court first had and obtained.

68. In no case shall it be competent for the creditors to elect as assignee the insolvent himself, nor any person related to the insolvent by consanguinity or affinity within the fourth degree, nor any minor, nor any attorney-at-law, nor any person not resident within Sri Lanka, nor any person having an interest opposed to the general interest of the creditors in the insolvent estate, nor any person declared to be incapable of being elected by virtue of the provisions in the next succeeding section contained.

Who incompetent to be appointed assignee.

Effect of appointment of provisional assignee.

65. Every order of court appointing provisional assignees shall, so soon as made, have the effect in law to vest in such provisional assignees for the uses and purposes of the sequestration, and until their removal, all the present and future estate of the insolvent, real and personal, as fully and completely to all intents and purposes as the said estate is by virtue of sections 70 and 71 of this Ordinance vested in the assignees chosen by the creditors.

CHOICE OF ASSIGNEES, AND THEIR RIGHTS AND DUTIES

Assignees when and how chosen.

66. At the first public sitting appointed by the court under any insolvency, or at any adjournment thereof, assignees of the insolvent's estate and effects shall and may be chosen and appointed; and all creditors who have proved debts to the amount of one hundred rupees and upwards shall be entitled to vote in such choice; and also any person authorized by letter of attorney from any such creditor, upon proof of the execution thereof, either by affidavit or by oath before the court viva voce; and the choice and appointment shall be made by the major part in value of the creditor so entitled to vote:

69. If any person elected as assignee shall be proved to the satisfaction of the District Court to have, either directly or indirectly, given or promised to give to any creditor of the insolvent any species of valuable consideration whatsoever, in order to obtain the vote of such creditor at the choice of assignees, or to have agreed to secure and make good to any creditor some certain sum or dividend in discharge or diminution of his debt, upon condition or in order that such creditor should give his vote to such assignee, or to have offered or agreed, in case any creditor of the insolvent should consent to vote for such assignee, to abstain from opening up or investigating some previous transactions between such creditor and the insolvent which were, or were supposed to be, of questionable validity, or to have contrived or been privy to any plan or arrangement by which debts or securities really belonging to some one or more persons have been divided amongst a greater number of persons for the purpose

Acts of assignee entitling the court to set election aside and declare offender disqualified.

Court may reject or remove any person chosen as unfit

Provided that the court shall have power to reject any person so chosen who shall appear to such court unfit to be an assignee, or to remove any assignee; and upon such

merely of increasing the number of votes at the election for assignees and thereby influencing the same, or to have undertaken to share with any creditor of the insolvent, in return for his vote, the commission or remuneration to be awarded to him as such assignee, the court shall declare such assignee to have forfeited the office of such assignee in regard to the insolvent estate for which he shall have been elected, and to be incapable of being again elected thereto; and it shall be lawful for such court, if it should so think fit, to further declare that the person so offending shall be incapable of being elected an assignee under the provisions of this Ordinance for and during his natural life, or for such period as such court shall determine and adjudge ; and any person interested in the due administration of the insolvent estate may apply by motion to such court to declare any such assignee to have forfeited his office by reason of any such misconduct as aforesaid ; and as often as a vacancy in the office of assignee shall be created by any such forfeiture, the court declaring the same shall order a new assignee to be chosen by the creditors, and the same proceedings shall be had thereon as on the original election of assignees.

70. When any person shall have been adjudged an insolvent, all his personal estate and effects, present and future, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained his certificate, and all debts due or to be due to him, wheresoever the same may be found or known, and the property, right, and interest in such debts, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the insolvent, by virtue of their appointment; and after such appointment neither the insolvent nor any person claiming through or under him shall have power to recover the same, nor to make any release or discharge thereof; but such assignees shall have like remedy to recover the same in their own names as the insolvent himself might have had if he had not been adjudged insolvent.

71. When any person shall have been adjudged an insolvent, all lands in Sri Lanka to which any insolvent is entitled, and all interest to which such insolvent is entitled in any such lands, and of which he

might according to the laws of Sri Lanka have disposed, and all such lands in Sri Lanka as he shall purchase, or as shall descend, be devised, revert to, or come to such insolvent before he shall have obtained his certificate, and all deeds, papers, and writings respecting the same, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors'of the insolvent, by virtue of their appointment, without any deed of conveyance for that purpose, and as often as any such assignee shall die or be lawfully removed or displaced, and a new assignee shall be duly appointed, such of the aforesaid real estate as shall remain unsold or unconveyed, shall, by virtue of such appointment, vest in the new assignee, either alone or jointly with the existing assignees, as the case may require, without any conveyance for that purpose.

72. If the assignees of the estate and effects of any insolvent having or being entitled to any land under a conveyance to him, or under an agreement for any such conveyance, subject to any perpetual yearly rent reserved by such conveyance or agreement, or having or being entitled to any lease or agreement for a lease, shall elect to take such land, or the benefit of such conveyance or agreement, or such lease or agreement for a lease, as the case may be, the insolvent shall not be liable to pay any rent accruing after the filing of the petition for sequestration of his estate against him, or to be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements in any such conveyance or agreement, or lease or agreement for a lease; and if the assignees shall decline to take such land, or the benefit of such conveyance or agreement or lease or agreement for lease, the insolvent shall not be liable if, within fourteen days after he shall have had notice that the assignees have declined, he shall deliver up such conveyance or agreement or lease or agreement for lease to the person then entitled to the rent, or having so agreed to lease, as the case may be; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such land or conveyance or agreement for conveyance, or such lease or agreement for a lease, any person entitled to such rent, or having so conveyed or agreed to convey, or leased or agreed to

Insolvent not liable to rents or covenants in conveyances, leases, &c., if assignees accept the same.

How if assignees decline.

How assignees compelled to elect.

Movable property to vest in assignees.

Immovable property to vest in assignees.

lease, or any person claiming under him, shall be entitled to apply to the District Court, and the District Court may order them to elect and deliver up such conveyance or agreement for conveyance or lease, or agreement for lease, in case they shall decline the same, and the possession of the premises, or may make such other order therein as it shall think fit.

Assignees how compelled to elect whether they will abide by or decline agreement for the purchase of land.

73. If any insolvent shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees shall not (upon being thereto required) elect whether they will abide by and execute such agreement or abandon the same, may apply to the District Court, and the court may thereupon order them to deliver up the agreement and the possession of the premises to the vendor or person claiming under him, or may make such other order therein as such court shall think fit.

Assignees may execute power vested in the insolvent.

74. All powers vested in any insolvent which he might legally execute for his own benefit may be executed by the assignees for the benefit of the creditors in such manner as the insolvent might have executed the same.

Court may order insolvent to join in conveyances.

75. It shall be lawful for the District Court, upon the application of the assignees or of any purchaser from them of any part of the insolvent's estate, if such insolvent shall not try the validity of the adjudication, or if there shall have been a judgment establishing its validity, to order the insolvent to join in any conveyance of such estate or any part thereof; and if he shall not execute any such conveyance within the time directed by the order, such insolvent and all persons claiming under him shall be stopped from objecting to the validity of such conveyance, and all estate, right, or title which such insolvent had therein shall be as effectually barred by such order as if such conveyance had been executed by him.

Property mortgaged or pledged may be redeemed by the assignees.

76. If any insolvent shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of

money or other performance, according to such condition, as fully as the insolvent might have done, and after such tender, payment, or performance such real or personal estate may be sold and disposed of for the benefit of the creditors.

77. In every case the assignees may, with the approbation of the District Court, appoint the insolvent himself to superintend the management of the estate or to carry on the trade of such insolvent for behoof of the creditors, and in all or any other respects they may think fit to aid them in administering the insolvent's estate and effects, in such manner and on such terms as they may think best for the benefit of the persons interested in the estate.

Assignees may appoint the insolvent to manage the estate.

78. The assignees shall be subject to the orders of the District Court in their conduct as assignees; and it shall be lawful for the court at all times to summon the assignees, and require them to produce all books, papers, deeds, writings, and other documents relating to the insolvency in their possession, and to direct them to pay and deliver over to the court all moneys, books, papers, deeds, writings, and other documents which may have come to their possession or custody as such assignees.

Assignees to subject to orders of the court.

79. If any person adjudged insolvent shall at the time of the adjudication of insolvency be a member of a firm, it shall be lawful for the District Court to authorize the assignees, upon their application to commence or prosecute any action in the name of such assignees and of the remaining partner against any debtor of the partnership, and such judgment, decree, or order may be obtained therein as if such action had been instituted with the consent of such partner, and if such partner shall execute any release of the debt or demand for which such action is instituted such release shall be void :

Where one of firm is insolvent, the court may authorize action in name of the assignee; and of the other partner.

Provided that every such partner shall have notice given him of such application, and be at liberty to show cause against it, and if no benefit be claimed by him by virtue of the said proceedings shall be "indemnified against the payment of any costs in respect of such action in such manner as the court may direct; and it shall be lawful for such court, upon the application of such partner, to direct that he may receive so much of the proceeds of such action as such court shall direct.

Partner to have notice, and may show cause.

As to sale of estates by assignees, conditions of sale, &c.

80. The assignees shall, subject to the directions of the creditors given at any meeting of such creditors, forthwith proceed to make sale of all the property belonging to the insolvent, real and personal, giving due notice thereof in the Gazette, and also such other notice as they shall think fit:

Provided that from the sale of the said personal property shall be excepted, until the creditors shall determine thereon, the wearing apparel, bedding, household furniture, and tools of trade of the insolvent and his family ; and

Provided that the sale of all real property shall take place in such manner and under such conditions as shall be determined on by the greater part in number and value of the creditors present at any meeting duly summoned;

Provided, however, that such conditions shall be subject to the approval or disapproval of the District Court on the application of any person interested therein.

As to wearing apparel, tools, &c., of insolvent.

81. It shall be lawful for the assignees, with the consent of the greater part in number and value of the creditors who shall have proved their debts present at any meeting of creditors whereof, and of the purpose of which ten days' notice shall have been given in the Gazette, to permit the insolvent to retain, for his own use, the whole or such part of his wearing apparel, bedding, household furniture and tools of trade excepted from the sale of his personal property, as the said creditors shall agree to allow to the said insolvent:

Provided that every such permission shall be subject to the approval or disapproval of the District Court on the application of any person interested in the due administration of the estate.

Assignees, with leave of the court, may bring or defend actions;

82. The assignees, with the leave of the District Court first obtained, upon application to such court, but not otherwise, may commence, prosecute, or defend any action which the insolvent might have commenced and prosecuted or defended, and in such case the costs to which they may be put in respect of such action shall be allowed out of the proceeds of the estate and effects of the insolvent; and with like leave of the court, after notice to the creditors, and subject to such condition (if any) as to obtaining the consent of

may compound debts;

creditors, or any proportion of them as the court shall think fit to direct, the assignees may take such reasonable part of any debt due to the insolvent's estate as may by composition be obtained, or may give time or take security for the payment of such debts, and may, with like leave of the court, submit to arbitration any difference or dispute between the assignees and any other person for or on account or by reason of anything relating to the estate and effects of the insolvent.

and refer disputes to arbitrators.

83. If the assignees shall agree in manner aforesaid to refer any matter in dispute to arbitration, such agreement of reference may be made a rule of court, whether such agreement contain a clause to that effect or not.

Reference to arbitration may be made a rule of court.

84. All persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the petition for sequestration or the adjudication of insolvency thereunder be afterwards annulled or dismissed, from all demands which may thereafter be made in respect of the same by the person against whom such adjudication was made, and all persons claiming under him ; and all persons who shall, without action, bona fide deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person as aforesaid in respect of the same, or any person claiming under him;

If petition or adjudication be annulled, &c., persons from whom the assignees have recovered, or who have bona fide paid the assignees, &c., discharged from claims by the insolvent.

Provided the person so delivering up any real or personal estate, or paying any debt, shall not have had notice of an action or other proceeding to dispute or annul the petition for sequestration or adjudication thereunder, and such action or other proceeding shall not have been commenced and prosecuted within the time and in manner allowed by this Ordinance-

85. If any assignee, indebted to the estate of which he is such assignee in respect of money, being part of the estate of the insolvent retained or employed by him, become insolvent, and obtain his certificate, it shall have the effect only of freeing his person from arrest and imprisonment, but his future effects, (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife, and children excepted,) shall remain

Assignee indebted to the estate becoming insolvent, his future property liable,

liable for so much of his debt to the estate of which he was assignee as shall not be paid by dividends under his insolvency, and for interest at the rate of nine *per centum* per annum on the whole debt.

any such action as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

Suits not to abate by death or removal of assignees.

86. Whenever any assignee shall die or be removed, or a new assignee shall be chosen, no action shall be thereby abated, but the court in which any action is depending may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assignee to be substituted in the place of the former, and such action shall be prosecuted in the name or names of the said surviving or new assignee or assignees in the same manner as if he had originally commenced the same.

Inaction against a debtor to the estate, in what case he may pay money into court.

87. If the assignees commence any action for any money due to the insolvent's estate before the time allowed for the insolvent to dispute the insolvency shall have elapsed, any defendant in any such action shall be entitled, after notice given to the assignees, to pay the same or any part thereof into the court in which such action is brought, and all proceedings with respect to the money so paid into court shall thereupon be stayed until such time shall have elapsed ; and if within that time the insolvent shall not have commenced such action or other proceeding as allowed by this Ordinance, and prosecuted the same with due diligence, the money shall be paid out of court to the assignees, but otherwise shall abide the event of such action or other proceeding, and upon such event shall be paid out of court, either to the assignees or the person adjudged insolvent, as the court shall direct; and after such payment of money so made into court it shall not be lawful for the person so adjudged insolvent to proceed against the defendant for recovery of the same money.

Limitation of actions.

88. Every action brought against any person for anything done in pursuance of this Ordinance shall be commenced within three months next after the act committed ; and if there be a judgment for the defendant, or if the plaintiff shall be nonsuited or discontinue his action after appearance thereto, the defendant shall receive such indemnity as to all costs, charges, and expenses incurred in and about

LAST EXAMINATION

89. The last examination of the insolvent shall be at the second public sitting of the court for the insolvent to surrender and conform, as advertised in the Gazette, and the insolvent shall prepare such balance sheet and accounts, and in such form, as the court shall direct, and shall subscribe such balance sheet and accounts, and file the same in court, and deliver a copy thereof to the assignees ten days at least before the day appointed for the last examination, or the adjournment day thereof for that purpose ; and such balance sheet and accounts, before such last examination, may be amended from time to time as occasion shall require and such court shall direct ; and the insolvent shall make oath of the truth of such balance sheet and accounts whenever he shall be duly required by the court so to do ; and the last examination of the insolvent shall in no case be passed unless his balance sheet shall have been duly filed as aforesaid , and the court may on the application of the assignees or of the insolvent make such allowance out of the estate of the insolvent for the preparation of such balance sheet and accounts, and to such person, as the court shall think fit, in any case in which it shall be made to appear to the satisfaction of the court, from the nature of the accounts or other good cause, that the insolvent required assistance in that behalf.

The insolvent to prepare balance sheet and accounts, &c.

90. If any insolvent apprehended by any warrant of the court shall, within the time allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

Insolvents apprehended by warrant.

⁹**91.** It shall be lawful for the court, at the time appointed for the last examination of the insolvent, or at any enlargement or adjournment thereof, to adjourn such examination *sine die* ; and in such case the insolvent shall be free from arrest or imprisonment for such time (if any) as such

Court may adjourn last examination *sine die*.

court shall from time to time by endorsement on the summons of the insolvent, think fit to appoint.

If insolvent in custody, court may appoint a person to attend him with books, papers, &c., to enable him to prepare a balance sheet.

92. Whenever any insolvent is in prison or in custody under any process, attachment, execution, commitment or sentence, the court may appoint a person to attend him from time to time to produce to him his books, papers, and writings, in order that he may prepare his balance sheet, and show the particulars of his estate and effects, previous to his last examination and discovery thereof.

PROOF OF DEBTS AND PAYMENTS IN FULL

When and how debts may be proved.

93. At the sittings appointed by the court under section 30 of this Ordinance, and at every adjournment thereof, and at every other sitting held for proof of debts, and whereof and of the purport whereof ten days' notice shall have been given in the Gazette, every creditor of the insolvent may prove his debt by his own oath or affidavit ; and all bodies politic and public companies incorporated or authorized to sue or bring actions may prove by an agent, provided such agent shall in his deposition swear that he is such agent, and that he is authorized to make such proof:

Provided always that if it shall appear to the court that any clerk, agent, or other person is more fully cognizant of the nature of the debt sought to be proved than the creditor is, the said court shall allow such clerk, agent, or other person to prove such debt by his oath or affidavit ; and

Provided that any creditor who is out of Sri Lanka may, in case he have no known agent in Sri Lanka capable of proving the alleged debt, make the necessary affidavit before some person duly qualified to administer oaths in the place where he resides, such person being certified to be so qualified by some sufficient authority in that behalf;

Creditor may be examined upon oath.

Provided also that it shall be lawful for the court to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt, or to require such further proof, and to examine such other persons in relation thereto, as such court shall think fit.

94. Every person with whom any insolvent shall have really and bona fide contracted any debt or demand before the filing of the petition for sequestration of his estate shall, notwithstanding any prior act of insolvency committed by such insolvent, be admitted to prove the same as if no such act of insolvency had been committed ; provided such person had not at the time the same was contracted notice of any act of insolvency by such insolvent committed.

Bonafide creditors for debts contracted after an act of insolvency may prove

95. The court, out of the estate and effects of the insolvent, shall order payment of all taxes due by the insolvent at the time of his insolvency up to the end of the current quarter.

Amount of taxes.

96. If any person already appointed or employed, or who may be hereafter appointed to or employed, in any office in the National Savings Bank, or in the Loan Board, or in any friendly society duly incorporated, and being intrusted with the keeping of the accounts, or having in his hands or possession by virtue of his office or employment any moneys or effects belonging to such Savings Bank, Loan Board, or society, or any deeds or securities relating to the same, shall become insolvent, the court shall, upon application made by the order of any such society, or any committee thereof, or the major part of them assembled at any meeting thereof, order payment and delivery over to be made to such society, or to such person as such society or committee may appoint, of all moneys and other things belonging to such society, and shall also order payment out of the estate and effects of the insolvent of all sums of money remaining due which the insolvent received by virtue of his said office or employment, before any either of his debts are paid or satisfied.

If insolvent an officer of friendly society, court to order payment of debt to them before any other debts.

97. When any insolvent shall have been indebted at the time of filing the petition for the sequestration of his estate to any servant, clerk, or superintendent, labourer, cooly, or workman of such insolvent, in respect of the wages or salary of such servant, clerk, or superintendent, labourer, cooly, or workman, it shall be lawful for the court, upon proof thereof, to order so much as shall be so due, not exceeding three months' wages or salary, and not exceeding

Three months' wages or salary to clerks or servants.

three hundred rupees, to be paid to such servant, clerk, or superintendent, labourer, cooly, or workman, out of the estate of such insolvent, and such servant, clerk, or superintendent, labourer, cooly, or workman shall be at liberty to prove for any sum exceeding such amount.

whether such credit shall have been given upon any bill, bond, note, or other negotiable security or not, shall be entitled to prove such debt, bill, bond, note, or other security as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of nine *per centum* per annum, to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted.

Apprentices discharged from their indentures.

98. When any person shall have been an apprentice to an insolvent at the time of the filing of a petition for sequestration of his estate, the filing of such petition shall be and inure as a complete discharge of the indenture whereby such apprentice was bound; and if any sum shall have been really and bona fide paid by or on the behalf of such apprentice to the insolvent as an apprentice fee, it shall be lawful for the court, upon proof thereof, to order any sum to be paid out of the estate of the said insolvent to or for the use of such apprentice which such court shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice, and to the time during which such apprentice shall have resided with the insolvent previous to the filing of such petition.

101. Any person who at the time of filing a petition for sequestration of any estate as insolvent shall be surety or liable for any debt of the insolvent, or bail for the insolvent, if he shall have paid the debt or any part thereof in discharge of the whole debt (although he may have paid the same after the filing of the petition for sequestration of the estate), if the creditor shall have proved his debt under the insolvency, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the insolvency which such creditor possessed or would be entitled to in respect of such proof; or if the creditor shall not have proved, such surety or person liable, or bail, shall be entitled to prove his demand in respect of such payment as a debt under the insolvency, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail as aforesaid after an act of insolvency committed by the insolvent:

Proof by sureties-

Mutual debts and credits may be set off.

99. Where there has been mutual credit given by the insolvent and any other person, or where there are mutual debts between the insolvent and any other person, the court shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of insolvency committed by such insolvent before the credit given to or the debt contracted by him; and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively; and every debt or demand hereby made provable against the estate of the insolvent may also be set off in manner aforesaid against such estate; provided that the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of insolvency by such insolvent committed.

Provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any act of insolvency by such insolvent committed.

Debts not payable at the time of the insolvency may be proved.

100. Any person who shall have given credit to the insolvent, upon valuable consideration, for any money or other matter or thing whatsoever which shall not have become payable when such insolvent committed an act of insolvency, and

102. The obligee in any bottomry or *respondentia* bond, and the assured in any policy of insurance made upon good and valuable consideration, shall be admitted to claim, and, after the loss or contingency shall have happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors as if the loss or contingency had happened before the filing of the petition for sequestration of the estate of such obligor or insurer; and the person effecting any policy of insurance

Claim and proof on bottomry or *respondentia* bonds, and policy of insurance.

upon ships or goods with any person (as a subscriber or underwriter) having become or becoming insolvent, shall be entitled to prove any loss to which such insolvent shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person so interested is not within Sri Lanka.

under the insolvency before such surety shall have fully paid or satisfied the amount so proved.

Proof by annuity creditor.

103. Any annuity creditor of any insolvent, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the time of the filing the petition for sequestration, shall be entitled to prove for the value of such annuity, which value the court shall ascertain, regard being had to the original price given for such annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the filing of such petition.

105. If any insolvent shall before the filing of a petition for sequestration of his estate have contracted any debt payable upon a contingency which shall not have happened before the filing of such petition, the person with whom such debt has been contracted may, if he think fit, apply to the court to set a value upon such debt, and the court is hereby required to ascertain the value thereof and to admit such person to prove the amount so ascertained and to receive dividends thereon; or if such value shall not be ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt and receive dividends with the other creditors, not disturbing any former dividends: provided such person had not when such debt was contracted notice of any act of insolvency by such insolvent committed.

Proof for contingent debt.

Proof by sureties for payment of annuities.

104. It shall not be lawful for any person entitled to any annuity granted by any insolvent to sue any person who may be collateral surety for the payment of such annuity until such annuitant shall have proved against such insolvent's estate for the value of such annuity, and for the arrears thereof; and if such surety after such proof pay the amount proved, he shall be thereby discharged from all claims in respect of such annuity ; and if such surety shall not (before any payment of the annuity subsequent to the filing the petition for sequestration shall have become due) pay the sum so proved, he may be sued for the accruing payments of such annuity until such surety shall have paid or satisfied the amount so proved, with interest thereon, from the time of notice of such proof and of the amount thereof being given to such surety; and after such payment or satisfaction such surety shall stand in the place of such annuitant in respect of such proof to the amount so paid or satisfied by such surety; and the certificate of the insolvent shall be a discharge to him for all claims of such annuitant or of such surety in respect of such annuity;

106. If any person who shall be adjudged insolvent after the commencement of this Ordinance shall have contracted before the filing of a petition for sequestration of his estate a liability to pay money upon a contingency which shall not have happened, and the demand in respect whereof shall not have been ascertained before the filing of such petition, in every such case, if such liability be not provable under any other provision of this Ordinance, the person with whom such liability has been contracted shall be admitted to claim for such sum as the court shall think fit; and after the contingency shall have happened, and the demand in respect of such liability shall have been ascertained, he shall be admitted to prove such demand and receive dividends with the other creditors, and, so far as is practicable, as if the contingency had happened and the demands had been ascertained before the filing of such petition, but not disturbing former dividends:

Claim and proof for contingent liability.

Provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant

Provided such person had not at the time such liability was contracted notice of any act of insolvency by such insolvent committed;

Provided also, that where any such claim shall not have, either in whole or in part, been converted into a proof within six months after the filing of such petition, it may upon the application of the assignees at any time after the expiration of such time, and if the court shall think fit, be expunged either in whole or in part from the proceedings,

prove a debt under such insolvency or have any claim entered upon the proceedings, without relinquishing such action; and the proving or claiming a debt under a petition for sequestration by any creditor shall be deemed an election by such creditor to take the benefit of such petition with respect to the debt so proved or claimed :

Proof for interest.

107. Upon all debts or sums certain, payable at a certain time, or otherwise, whereupon interest is not reserved or agreed for, and which shall be overdue at the filing of the petition for sequestration and provable thereunder, the creditor shall be entitled to prove for interest to be calculated at a rate not exceeding nine *per centum* per annum up to the date of the filing of such petition from the time when such debts or sums were payable, if such debts or sums be payable by virtue of some written instruments at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment.

Provided that such creditor shall not be liable to the payment to such insolvent or his assignees of the cost of such action so relinquished by him, and that where any such creditor shall have brought any action against such insolvent jointly with any other person, his relinquishing such action against the insolvent shall not affect such action against such other person;

Provided also, that any creditor who shall have so proved or claimed, if the petition for sequestration be afterwards dismissed, may proceed in the action as if he had not so proved or claimed.

Plaintiff or defendant obtaining judgment, &c., entitled to prove for costs, &c.

108. If any plaintiff in any action or petitioner for the sequestration of the estate of any person as insolvent shall have obtained any judgment, decree, or order against any person who shall thereafter become insolvent for any debt or demand in respect of which such plaintiff or petitioner shall prove under the insolvency, such plaintiff or petitioner shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the insolvency ; and if any defendant shall have obtained any judgment, decree, or order in any such action or in the matter of any such petition against any person who shall thereafter become insolvent, such defendant shall be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the insolvency.

110. Whenever it shall appear to the assignees, or to two or more creditors who have each proved debts to the amount of two hundred rupees or upwards, that any debt proved is not justly due, either in whole or in part, such assignees or creditors may make representation thereof to the court; and it shall be lawful for the court to summon and examine upon oath any person who shall have so proved, together with any person whose evidence may appear to the court to be material, either in support of or in opposition to any such debt; and if the court, upon the evidence given on both sides, or (if the person who shall have proved shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by such assignees or creditors, shall be of opinion that such debt is not due, either wholly or in part, the court shall be at liberty to expunge the same, either wholly or in part, from the proceedings:

Complaint of debts being proved which are not due investigation at whose instance and how

Provided that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking, to be filed with the proceedings, to pay such costs as the court shall adjudge to the creditor who has proved such debt, such costs to be recovered by application to the court, upon which an order for payment thereof may be made by the court.

Undertaking for costs.

Proving debt to be an election not to proceed against the insolvent by action.

109. No creditor who has brought any action against any insolvent in respect of a demand prior to the filing of a petition for sequestration, or which might have been proved as a debt under the insolvency, shall

Creditor having security not to receive more than other creditors.

111. No creditor having security for his debt, or having made any attachment of the goods and effects of the insolvent, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution served and levied by seizure and sale upon or any mortgage of or lien upon any part of the property of such insolvent before the date of the filing of a petition for sequestration of his estate :

Provided always that nothing herein contained shall be deemed to give validity to any power of attorney to confess judgment* or consent to a judgment declared to be null and void by any provision of this Ordinance, nor to give validity to any judgment entered up under or by virtue of any such power of attorney* or consent, or to any execution executed or levied under or by virtue of any such power of attorney* or consent.

Accounts of assignees.

112. The assignees shall keep an account wherein they shall enter all property of the insolvent received by them and all payments made by them on account of the insolvent's estate, which account every creditor who shall have proved may inspect at all reasonable times; and it shall and may be lawful for the court, whenever it shall think fit, to summon the assignees to produce the said book, and the said court may examine and inspect the same or appoint some qualified person so to do.

AUDIT, AND MONEY BELONGING TO THE INSOLVENT ESTATE

Audit.

113. The District Court shall, whenever it shall think fit, appoint a public sitting to be holden after the sitting appointed for the last examination of the insolvent (of which public sitting and of the purport whereof ten days' notice shall be given in the Gazette) to audit the accounts of the assignees; and at such sitting the assignees shall deliver upon oath a true statement in writing of all money received by them respectively, and when, and on what account, and how the same has been employed; and the court shall examine such statement, and compare

the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively; and it shall be lawful for the court to examine the assignees upon oath touching the truth of such accounts, and to make therein all just allowances.

114. The District Court may order and allow to be paid out of the assets of any insolvent estate to the assignees appointed by the court or chosen by the creditors, as a remuneration for their services, such sum as shall, upon consideration of the amount of the said estate and the nature of the duties performed by such assignees, appear to be just and reasonable.

Remuneration to assignees.

115. It shall be lawful for and shall be the duty of the creditors of any insolvent estate, at the meeting held for the choice of assignees, immediately after such election, in case such election shall take place at such meeting, and in case such election shall not then take place, then immediately after the votes of the said creditors in regard to such election shall have been given, to nominate and appoint some bank within Sri Lanka, with which bank it shall be the duty of the assignees to open an account, and in case of a difference of opinion amongst the said creditors assembled at such meeting, the greater part in value of the said creditors shall determine upon the bank to be so nominated and appointed as aforesaid, and from and after any such nomination and appointment of any such bank the assignees of such insolvent estate whether chosen by the creditors or provisionally appointed, shall, as soon as they shall receive any sum of money exceeding one hundred rupees belonging to such estate, open an account with such bank in the name of the insolvent estate, and such sum and every other sum exceeding one hundred rupees so received by them shall with all convenient speed be paid into such bank, to be placed to the credit of such account, and all cheques or orders for the payment of any such money out of the said bank shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the assignees, or by one of them for himself and co-assignees;

Creditors to choose a bank with which assignees shall open an account and lodge the money of the estate.

* Sections 31 and 32 of the Civil Procedure Code, relating to warrants and powers of attorney to confess judgment, are repealed by Law No. 20 of 1977.

DIVIDENDS

Provided that in case the creditors of any insolvent estate shall neglect to nominate any such bank it shall be lawful for the assignees to open an account with and pay all such moneys into any such bank in Sri Lanka as they shall select;

And provided that every provisional assignee appointed under this Ordinance before the meeting of creditors for the choice of assignees shall, pending such meeting, open an account with and pay all such moneys into any such bank in Sri Lanka as he shall select •

And provided that all assignees, whether provisional or elected, shall in regard to the bank with which such account shall be kept, and such moneys lodged, pursue such directions as they shall from time to time receive from any general meeting of the creditors of the insolvent estate ;

Provided that if there shall be no bank at the place where the assignees resides, any sum of money received by them exceeding one hundred rupees belonging to such estate shall forthwith be paid into the District Court.

Penalty upon assignee retaining or employing money belonging to the estate.

116. Any assignee who shall retain in his hands or knowingly permit any co-assignee so to retain any sum of money exceeding one hundred rupees, part of any insolvent estate, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum, or cause it to be paid, into some such bank or into the District Court as aforesaid, and who shall not have any just and lawful cause for so retaining the same, or shall employ for his own benefit, or knowingly permit any co-assignee so to employ, any sum of money part of any insolvent estate, shall forfeit and pay, for the benefit of the said estate, double the amount of the sum so retained or employed ; and the said sum so forfeited shall be deducted out of any claim the said assignee may have against the said estate, and the surplus, if any, shall be recovered by action at the suit of any two or more creditors in any competent court.

117. The District Court shall, whenever it shall think fit, appoint a public sitting to be holden after the sitting appointed for the last examination of the insolvent, when there are assets wherewith a dividend may be made (of which public sitting and of the purport whereof twenty-one days' notice shall be given in the Gazette), to make a dividend of the insolvent's estate, and shall at such sitting direct such part of the net produce of the insolvent's estate as it may think fit to be forthwith divided amongst such creditors as have proved debts under the insolvency in proportion to their respective debts, and shall make an order in writing under the hand of the District Judge for dividend accordingly, to be filed with the proceedings, which order shall contain an account of the amount of the debts proved, of the money to be divided, of how much in every ten rupees is then ordered to be paid to the creditors, and of the money allowed by the court to be retained, and of the reason for retaining the same ; and the assignees, in pursuance of such order, shall forthwith make such dividend in manner directed by the rules at any time in force under this Ordinance relating to the mode of payment of dividends by the assignees, but no dividend shall be declared unless the accounts of the assignees shall have been first audited.

Method of making dividends.

No dividend without previous audit

118. If the insolvent's estate shall not have been wholly divided upon the first dividend, the court shall, within eighteen months after the filing of the petition for sequestration of the estate, appoint a public sitting (where of and of the purport where of twenty-one days' notice shall be given in the Gazette) to make a second dividend, when all the creditors who have not proved their debts may prove the same, and at such sitting, but after such an audit as is directed by this Ordinance, shall order the balance in hand to be forthwith divided among such of the creditors as shall have proved their debts ; and such second dividend shall be final, unless any action be depending, or any part of the estate be standing out not sold or disposed of, or unless some other estate or effects of the insolvent shall afterwards come to the assignees, in which case they shall, as soon as may be, convert such estate

Final dividend within eighteen months, except where suit depending or estate standing out, &c

and effects into money ; and within two months after the same shall be so-converted, the same shall also be divided in manner aforesaid ; and if at the expiration of two years from the filing of any petition for sequestration, there shall remain any outstanding debts or other property due or belonging to the estate of the insolvent, which cannot, in the opinion of the court, be collected and received without unreasonable or inconvenient delay, it shall be lawful for the assignees, under the direction, of the court, to sell and assign such debts and other property, and also the books of the insolvent relating to his trade, dealings, or estate, in such manner and subject to such conditions as shall be ordered by the court ; and any person to whom any of such debts shall be so sold or assigned, may sue for the same in his own name as fully as the assignees of such insolvent might have done-

Outstanding debts, &c., may be sold, and the purchaser may sue for them.

order and disposition of himself and any co-assignee, or of either of them, any unclaimed dividend or any such undivided surplus as aforesaid, such assignee shall, within three months next after the expiration of one year from the time of the declaration and order of payment of such dividend, either pay the same to the creditor or other the person entitled to the same, or cause a certificate thereof to be filed in the District Court, containing a full and true account of the name of the creditor to whom such unclaimed dividend is due, and of the amount of such dividend, and shall in like manner as to any undivided surplus as aforesaid within three months next after the expiration of one year after the final declaration of dividends, cause a certificate stating the full and true amount of such surplus to be filed in the District Court, and every certificate to be filed as aforesaid shall be signed by the assignees filing the same, and every assignee shall, within one year next after the filing of any such certificate as aforesaid, pay or cause to be paid into the Treasury, to be carried to the account intituled " The Unclaimed Dividend Account ", the full amount of the unclaimed dividends mentioned in such certificate, or so much thereof as shall not have been then paid to the creditors or other persons entitled thereto, and also the full amount of such undivided surplus as aforesaid :

Remedy for dividend.

119. No action for any dividend shall be brought against any assignee by any creditor who shall have proved under the insolvency ; but if the assignees shall refuse to pay any such dividend, the court may order payment thereof, with interest for the time that it shall have been withheld, and may also order the costs of the application, and such order shall have the effect of a judgment by the said court.

UNCLAIMED DIVIDENDS

Unclaimed dividends, &c., to be paid into the Treasury.

120. All unclaimed dividends, and also any undivided surplus of an insolvent's estate over and above the amount finally directed to be divided amongst the creditors of any insolvent, shall be paid into the Treasury to be carried in the books of the Treasury to the account intituled " The Unclaimed Dividend Account ", subject to the order of the District Court, acting in prosecution of any insolvency for the payment thereof of any dividend due to any creditor.

Provided always that no certificate of any unclaimed dividends shall be filed until the expiration of one year after the declaration and order for payment of such dividends.

ALLOWANCES TO THE INSOLVENT

How unclaimed dividends, &c., in the hands of assignees to be disposed of.

121. Subject to any rule at any time in force under this Ordinance relating to unclaimed dividends, if any assignee under any insolvency shall have, either in his own hands, or at any bank, or otherwise subject to his order or disposition, or shall know that there is in the hands or subject to the

122. It shall be lawful for the District Court, if it think fit, from time to time to make such allowance to the insolvent out of his estate, until he shall have passed his last examination, as shall be necessary for the Support of himself and his family :

Allowance to insolvent for maintenance.

Provided always that no such allowance shall be made by the court for any period after the adjournment of the last examination *sine die*.

If estate pay ten rupees for every ten rupees and interest, surplus to be paid to insolvent.

123. If the produce of the estate of any insolvent shall be sufficient to pay ten rupees for every ten rupees of the liabilities, and interest as hereinafter mentioned, and to leave a surplus, the court may order such surplus to be paid to such insolvent, his executors, administrators, or assigns ; and every such insolvent shall be entitled to recover the remainder, if any, of the debts due to him ; but such surplus shall not be paid until all the creditors who have proved shall have received the interest due upon their debts.

CERTIFICATE OF CONFORMITY

Mode of obtaining certificate.

124. Forthwith after the insolvent shall have passed his last examination the District Court shall appoint a public sitting for the allowance of his certificate (whereof and of the purport whereof twenty-one days' notice shall be given in the Gazette and to the assignees), and at such sitting the assignees or any of the creditors of such insolvent who shall have given to the secretary of the court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate, and the court having regard to the conformity of the insolvent to this Ordinance, and to his conduct as a trader, or in relation to his estate, before as well as after his insolvency, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the insolvent entitled thereto and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require.

Form of certificate.

125. The certificate of conformity under this Ordinance shall be in writing under the hand of the District Judge, and shall certify that the insolvent has made a full discovery of his estate and effects and in all things conformed, and that so far as the court can judge there does not appear any reason to question the truth or fulness of such discovery (and shall be in the form Q in the Schedule, or to the like effect) ; and notice of the allowance of such certificate and of the class thereof shall be advertised in the Gazette in such manner as may be directed by the court.

126. The certificate of conformity allowed under this Ordinance, subject to the provisions herein contained, shall discharge the insolvent from all debts due by him when he became insolvent, and from all claims and demands made provable under the insolvency :

Effect of certificate.

Provided always that no such certificate shall release or discharge any person who was a partner with such insolvent at the time of his insolvency, or was then jointly bound or had made any joint contract with such insolvent, or who was a surety for him.

127. No insolvent shall be entitled to a certificate of conformity under this Ordinance, and any such certificate if allowed shall be void, if such insolvent shall after an act of insolvency, or in contemplation of insolvency, or with intent to defeat the object of this Ordinance, have parted with, concealed, destroyed, altered, mutilated, or falsified, or caused to be concealed, destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entry in any book of accounts or other document with intent to defraud his creditors, or shall have concealed any part of his property, or if any person having proved a false debt under the insolvency, such insolvent being privy thereto or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge.

Certificate not granted or void if insolvent has concealed or falsified books, &c.,

or concealed any property, or permitted any fictitious debts to be proved.

128. Any contract or security made or given by any insolvent or other person unto or in trust for any creditor for securing the payment of any money due by such insolvent at his insolvency, as a consideration or with intent to persuade such creditor to forbear opposing, or to consent to the allowance of the insolvent's certificate, or to forbear to petition for the recall of the same, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable.

Contract or security to induce creditor to forbear opposition void.

129. At any time within six months after any certificate of conformity shall have been allowed, and subject to such order as to deposit of costs as may be made by the Court of Appeal, any creditor of the

Certificate may be recalled.

insolvent, or any assignee, may apply to the Court of Appeal that such certificate may be recalled and delivered up to be cancelled ; and the Court of Appeal may, on good cause shown, order such certificate to be recalled and cancelled.

and abide the judgment of the Court of Appeal thereupon ; and upon any appeal duly entered and prosecuted relating to the certificate or to the judgment of the court as to any offence under this Ordinance charged against the insolvent, the Court of Appeal shall have power to rescind or vary the order of the District Court, or to make such other order thereon as it may think fit ; and upon an order for the allowance of any certificate by the Court of Appeal, and whether with conditions or not, or after a suspension thereof by order of the Court of Appeal or not, such certificate may be allowed and signed by the District Judge or by two or more Judges of the Court of Appeal.

Insolvent not liable upon any promise to pay debt discharged by certificate.

130. No insolvent, after his certificate shall have been allowed, shall be liable to pay or satisfy any debt, claim, or demand, from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand, upon any contract, promise, or agreement made after the filing of the petition for sequestration of his estate.

Insolvent, having obtained his certificate, free from arrest ; may plead his certificate ; evidence under it.

131. Any insolvent who shall, after his certificate shall have been allowed, be arrested or have any action brought against him for any debt, claim, or demand provable under his insolvency, shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became insolvent, and may give this Ordinance and the special matter in evidence ; and such insolvent's certificate shall be sufficient evidence of the insolvency, petition for sequestration, and other proceedings precedent to the obtaining such certificate ; and if any such insolvent shall be taken in execution or detained in prison for such debt, claim, or demand where judgment has been obtained before the allowance of his certificate, it shall be lawful for any Judge of the court wherein judgment has been so obtained, on such insolvent's producing his certificate, to order any officer who shall have such insolvent in custody by virtue of such execution, to discharge such insolvent, and such officer shall be hereby indemnified for so doing.

Insolvent, if in execution, discharged.

133. The allowance of the certificate by the District Court, and any order for the refusal or suspension of the allowance thereof (except in case of appeal), shall be final and conclusive, and shall not be revised by the District Court, unless the said court shall thereafter see good and sufficient cause to believe that the allowance of such certificate, or the refusal or suspension thereof, has been obtained on false evidence, or by reason of an improper suppression of evidence, or has otherwise been fraudulently obtained, in any of which cases it shall and may be lawful for the District Court, upon the application of the insolvent, or of any creditor of the insolvent, and subject to such order as to deposit of a sum for costs, and to such notices to the insolvent and to creditors, by advertisement or otherwise, as the court shall think fit, to grant a rehearing of the matter, and to rehear the same accordingly, and upon such rehearing, the District Court shall make such order as to the allowance of the certificate, or the refusal or suspension thereof, as the justice of the case may require, in like manner, upon like conditions, and having regard to the like circumstances, so far as the case will admit, as upon any original hearing ; and in case the certificate shall have been previously allowed, and upon such rehearing, the allowance thereof shall not be confirmed, such certificate shall have no force or effect whatever, and the same shall be delivered up to the court and cancelled.

Allowance, refusal, or suspension of certificate (except in case of appeal) to be final in what cases.

Appeal against allowance or refusal of certificate.

132. No such certificate shall be delivered to the insolvent until after the expiration of the time allowed for entering an appeal ; and if an appeal be duly entered against the judgment of such court for the allowance of the certificate, or for the refusal, the withholding, or the class of the certificate, and notice thereof be given to the court in such manner as may by any general rule or order to be made in pursuance of this Ordinance be directed, the certificate shall be further kept by the court,

ARRANGEMENTSBYDEED

Deeds of arrangement entered into between any debtor and certain of his creditors, in what cases binding on all.

134. Every deed or memorandum of arrangement now or hereafter entered into between any person and his creditors, and signed by or on behalf of six-sevenths in number and value of those creditors, whose debts amount to one hundred rupees and upwards, touching such person's liabilities and his release therefrom, and the distribution, inspection, conduct, management, and mode of winding up of his estate, or all or any of such matters or any matters having reference thereto, shall, (subject to the conditions hereinafter mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed such deed or memorandum of arrangement as if they had duly signed the same; and such deed or memorandum, when so signed, shall not be or be liable to be disturbed or impeached by reason of any prior or subsequent act of insolvency:

Provided always, that every creditor shall be accounted a creditor in value, in respect of such amount only, as upon an account fairly stated, after allowing the value of mortgaged property and other such available securities or liens from such person, shall appear to be the balance due to him.

When deed not to be effectual against creditor who has not signed.

135. No such deed or memorandum of arrangement shall be effectual or obligatory upon any creditor who shall not have signed the same, until after the expiration of three months from the time at which such creditor shall have had notice from such person of his suspension of payment, and of such deed or memorandum of arrangement, unless such debtor shall within such time obtain from the District Court an order or certificate of the said court, declaring or certifying that such deed or memorandum of arrangement has been duly signed by or on behalf of such majority of the creditors as aforesaid ; and it shall be lawful for the District Court of the district in which the person shall have resided or carried on business for six months next immediately preceding his suspension of payment, to make such order or certificate on the petition of any such person, and to exercise jurisdiction in and over the matters of any such application ; and no creditor who shall not have had fourteen days' notice of any intended application for such order or certificate as aforesaid shall be bound thereby.

136. When the trustee or inspector under any such deed or memorandum of arrangement, or, if there shall be no such trustee or inspector, when any two of the creditors shall be satisfied that six-sevenths in number and value of the creditors whose debts amount to one hundred rupees and upwards, have signed such deed or memorandum, it shall be lawful for such trustee or inspector, or for such two creditors, as the case may be, to certify the same to the District Court in writing, and such certificate shall be filed in court, and shall thereupon be prima facie evidence in all courts that such deed or memorandum of arrangement has been so signed.

Trustee or inspector, &c., to certify as to the deed being signed.

137. Every such certificate as last aforesaid shall have appended thereto a full account of the debts of such debtor, together with the names, residences, and occupations of his creditors, and shall be accompanied by an affidavit by such debtor verifying the same; and any omission in such account or the insertion therein of any debt not really existing or of any larger amount of debt than that really existing, and which shall appear to the court to have been made through the culpable negligence or fraud of such debtor, with intent to defraud any of his creditors, shall deprive him of the benefit of the provisions of this Ordinance with respect to arrangements by deed, and of the discharge proposed in any such deed or memorandum of arrangement;

Account of debt, &c., to be annexed to such certificate.

Provided always that any omission, insertion, or incorrectness in such account, which shall not have been made through such culpable negligence or fraud as aforesaid, shall not defeat or otherwise affect such deed or memorandum of arrangement.

138. The creditors of every such debtor shall have the same rights respectively as to set-off, mutual credit, lien, and priority, and joint and separate assets shall be distributed in like manner as in insolvency, and no creditor shall be prejudiced or affected by being a party to any such deed or memorandum of arrangement as aforesaid, or by the same being obligatory upon him as to his right or remedy against any person other than such debtor; and every person who would be entitled to prove in insolvency shall be deemed a creditor within the meaning of the provisions of this Ordinance with respect to arrangement by deed.

Rights of creditors.

Court may interfere in case of improper administration of the estate.

139. If any creditor of any person shall be desirous to show that the administration of the estate of such person has not been duly conducted, in conformity with such deed or memorandum of arrangement, it shall be lawful for him to apply to the District Court by petition, supported by affidavit, stating any facts or circumstances to show that such administration has not been duly conducted, and thereupon the court shall have full power, and it is hereby fully authorized, to consider the subject-matter of such application, and if it shall think fit may direct any inquiry, and in such manner as it shall think proper, into the subject of such application, and generally may make such order and exercise such jurisdiction in or over the subject-matter of such application and the costs thereof as to the said court shall appear just.

shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat, and such creditor shall be entitled to vote by letter of attorney, executed and attested in manner required for a creditor's voting in the choice of assignees; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition ; and the insolvent shall (if thereto required) make oath before the court that there has been no such transaction between him or any person with his privity and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent.

COMPOSITION AFTER ADJUDICATION OF
INSOLVENCY

EVIDENCE

If after adjudication certain of the creditors accept composition, it shall bind the rest.

140. Any insolvent, at any time after he shall have passed his last examination, may call a meeting of his creditors (whereof and of the purport whereof twenty-one days' notice shall be given in the Gazette), and if the insolvent or his friend shall make an offer of composition, and nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept the same, another meeting for the purpose of deciding upon such offer shall be appointed to be holden, whereof such notice shall be given as aforesaid ; and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the District Court shall and may, upon such acceptance being testified by them in writing, and upon payment of such sum as the court shall direct, annul the adjudication of insolvency and supersede or dismiss the petition for sequestration; and every creditor of such insolvent shall be bound to accept of such composition so agreed to.

142. The proper officer of the District Court shall, on the reasonable request of any insolvent, or of any creditor of such insolvent (having proved his debt), or on the like request of the registered attorney of any such insolvent or creditor, produce and show to such insolvent, creditor, or registered attorney at such times as the court shall direct, every petition for sequestration and adjudication of insolvency against or by such insolvent, and all orders and proceedings under any such petition or adjudication; and the court shall order the assignees or officer of court, as the case may be, to permit such insolvent, creditor, or registered attorney to have inspection at all reasonable times of all books, papers, and writings, relating to the matters of such petition or adjudication, and the estate of the insolvent in the possession of the assignees or filed in court in such matter, and permit him to inspect and examine the same; and such assignees or such officer shall provide for any such insolvent, creditor, or registered attorney requiring the same, a copy of such petition or other proceeding, books, papers, and writings as aforesaid, or of such part thereof as shall be required, receiving such fee, or sum, or rate of charge as may be authorized by the court in that behalf.

Officer of court to produce proceeding and give copies thereof.

Mode of voting in deciding upon such composition.

141. In deciding upon the offer of composition, no creditor whose debt is below two hundred rupees shall be reckoned in number, but the debt due to such creditor shall be computed in value; and every creditor to the amount of five hundred rupees and upwards, residing out of Sri Lanka,

If insolvent does not dispute the insolvency, Gazette to be evidence of the adjudication and petition, as against insolvent, and in suits or debts, &c., by assignees.

143. If the insolvent shall not (if he were within Sri Lanka at the date of the adjudication) within twenty-one days after the advertisement of the insolvency in the Gazette, or (if he were in any part of India, Pakistan or Bangladesh at the date of the adjudication) within three months after such advertisement, or (if he were elsewhere at the date of adjudication) within twelve months after such advertisement, have commenced an action or other proceeding to dispute or annul the petition for sequestration of his estate as insolvent, and shall not have prosecuted the same with due diligence and effect, the Gazette containing such advertisement shall be conclusive evidence in all cases as against such insolvent, and in all actions brought by the assignees for any debt or demand for which such insolvent might have sustained any action had he not been adjudged insolvent, that such person so adjudged insolvent became an insolvent before the date and filing of the petition for sequestration, and that such petition was filed on the day on which the same is stated in the Gazette to bear date.

In other cases no proof of petitioning creditor's debt or act of insolvency, unless notice to dispute them.

144. In any action, (other than an action brought by the assignees for any debt or demand for which the insolvent might have sustained an action had he not been adjudged insolvent), and whether at the suit of or against the assignees, or against any person acting under the warrant of the court, for anything done under such warrant, no proof shall be required at the trial, of the petitioning creditor's debt, or of the act of the insolvency respectively, unless the other party in such action shall, if defendant at or before answering, and if plaintiff before issue joined, give notice in writing to such assignees or other person that he intends to dispute one or both, and which of such matters; and in case such notice shall have been given, if such assignees or other person shall prove the matter so disputed, or the other party admit the same, the Judge before whom the cause shall be tried may (if he think fit) grant a certificate of such proof or admission; and such assignees or other person shall be entitled to the costs occasioned by such notice, and such costs shall, if such assignees or other person shall obtain a judgment, be added to the costs, and if the other party

shall obtain a judgment, shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignees or other person.

145. The court may, in all matters before it, award such costs as to such court shall seem fit and just; and in all cases in which costs shall be so awarded against any person, it shall and may be lawful for such court to cause such costs to be recovered from such person in the same manner as costs awarded by such court in civil suits may be recovered.

Court may award costs, and how recovered.

146. Every person summoned to attend before the court as a person known or suspected to have any of the estate of the insolvent in his possession, or who is supposed to be indebted to the insolvent, shall have such costs and charges as the court in its discretion shall think fit, and every witness summoned to attend before the court shall have his necessary expenses tendered to him in like manner as is now by law required upon service of subpoena to a witness in a civil action.

Witnesses and persons known or suspected to have insolvent's property, &c., when entitled to costs.

OFFENCES AGAINST THE LAW RELATING TO INSOLVENCY AND OTHER MATTERS IN THIS ORDINANCE

147. If any person adjudged insolvent shall not upon the day limited for his surrender, and before three of the clock of such day, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing to be served upon him personally or left at the usual or last known place of abode or business of such person, or personal notice in case such person be then in prison, and notice given in the Gazette of the filing of the petition for sequestration of his estate as insolvent, as the case may be, and of the sittings of the court (having no lawful impediment proved to the satisfaction of the court at such time, and allowed by the court by a memorandum thereof then made on the proceedings), surrender himself to such court and sign or subscribe such surrender, and submit to be examined before such court from time to time; or if any such insolvent upon such examination shall not discover all his real and personal estate, and how and to whom, upon what consideration, and when he

Insolvent not surrendering,

not discovering his property,

disposed of, assigned, or transferred any of such estate (and all books, papers, and writings relating thereunto), except such part as shall have been really and bona fide before sold or disposed of in the way of his trade or laid out in the ordinary expenses of his family ; or if any such insolvent, upon such examination, shall not deliver up to such court all such parts of such estate, and all books, papers, and writings relating thereunto, as shall be in his possession, custody, or power (except the necessary wearing apparel of himself, his wife, and children) ; or if any such insolvent shall remove, conceal, or embezzle any part of such estate to the value of one hundred rupees or upwards, or any books of accounts, papers, or writings relating thereto, with intent to defraud his creditors, every such insolvent shall be liable to such term of imprisonment not less than seven years as the Court of Appeal shall judge, or shall be liable to imprisonment, with or without hard labour, for any term not exceeding seven years.

not delivering his books. &c-

removing, concealing, or embezzling property, books, &c-

Punishment.

Insolvent destroying or falsifying books, &c.

Punishment.

Insolvent obtaining goods on credit under false pretences,

or removing or concealing goods so obtained.

Punishment.

148. If any insolvent shall, after an act of insolvency committed, or in contemplation of insolvency, or with intent to defeat the object of the law relating to insolvents, destroy, alter, mutilate, or falsify any of his books, papers, writings, or securities, or make or be privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, every such insolvent shall on conviction be liable to imprisonment, with or without hard labour, for any term not exceeding three years.

149. If any insolvent shall within three months next preceding the date of the filing of the petition for sequestration of his estate, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, obtain on credit from any other person any goods or property with intent to defraud the owner thereof ; or if any insolvent shall, within such time and with such intent, remove, conceal, or dispose of any goods or property so obtained, every such insolvent shall on conviction be liable to imprisonment, with or without hard labour, for any term not exceeding two years.

150. Any insolvent or insolvent's wife who shall upon any examination directed or authorized by this Ordinance, and any person who shall upon any examination, or in any affidavit or deposition so authorized or directed, or in any affidavit or deposition, wilfully and corruptly give false evidence, or wilfully and corruptly swear anything which shall be false, being convicted thereof, shall be liable to the penalties prescribed for the offence of giving false evidence in a judicial proceeding.

False evidence.

Giving false evidence

151. If at the sitting appointed for the last examination of any insolvent, or at any adjournment thereof, it shall appear to the District Court that the insolvent has committed any of the offences hereinafter enumerated, the court shall refuse to grant the insolvent any further protection from arrest, and if at any sitting or adjourned sitting for the allowance of the certificate of any insolvent, it shall appear that he has committed any of such offences, the court shall refuse to grant such certificate, or shall suspend the same for such time as it shall think fit, and shall in like manner refuse to grant the insolvent any further protection—

If at last examination it appears that insolvent has been guilty of any of the following offences, further protection refused ; certificate refused or suspended.

(i) if the insolvent shall at any time after the filing of the petition for sequestration of his estate, or within two months next preceding the filing of such petition, with intent to conceal the state of his affairs, or to defeat the objects of the law of insolvency, have destroyed any book, paper, deed, writing, or other document relating to his trade, dealings, or estate ;

Offences.

(ii) if the insolvent shall, with the like intent, have kept or caused to be kept false books, or have made false entries in, or withheld entries from, or wilfully altered or falsified any book, paper, deed, writing, or other document relating to his trade, dealings, or estate ;

(iii) if the insolvent shall have contracted any of his debts by any manner of fraud, or by means of false pretences, or shall by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors ;

(iv) if the insolvent shall at any time within two months next preceding the filing of the petition for sequestration of his

estate, fraudulently in contemplation of insolvency, and not under pressure from any of his creditors, with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have paid or satisfied any such creditor wholly or in part, or have made away with, mortgaged, or charged any part of his property, of what kind soever ;

(v) if the insolvent shall at any time after the filing of the petition for sequestration of his estate, and with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have concealed from the District Court or his assignees any debt due to or from him, or have concealed or made away with any part of his property, of what kind soever ;

(vi) if the insolvent shall under his insolvency, or at any meeting of his creditors, within three months next preceding the filing of the petition for sequestration of his estate, have attempted to account for any of his property by fictitious losses or expenses ;

(vii) if the insolvent shall, within six months next preceding the filing of the petition for sequestration of his estate, have put any of his creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any action for the recovery of any debt or demand provable under his Insolvency, or shall be indebted in costs incurred in any action so vexatiously brought or defended ;

(viii) if the insolvent shall, at any time after the filing of the petition for sequestration of his estate, have wilfully prevented or withheld the production of any book, paper, deed, writing, or other document relating to his trade, dealings, or estate ;

(ix) if the insolvent (being a trader) shall, during his trading have wilfully, and with intent to conceal the true state of his affairs, have omitted to keep proper accounts, or shall wilfully and with intent to conceal the true state of his affairs have kept his accounts imperfectly, carelessly, and negligently.

152. The assignees for the time being of the estate and effects of any insolvent, when the accounts relating to his estate shall have become records of the court, shall be deemed judgment-creditors of such insolvent for the total amount of the debt which shall by such accounts appear to be due from him to his creditors ; and every creditor of any insolvent immediately after the proof of his debt shall have been admitted, shall be deemed a judgment-creditor of such insolvent, to the extent of such proof ; and the court, when it shall have refused to grant the insolvent any further protection, or shall have refused or suspended his certificate, shall, on the application of such assignees or of any such creditor, grant a certificate in the form R in the Schedule, and every such certificate shall have the effect of a judgment entered up in the said court, until the allowance of the certificate of conformity of such insolvent ; and the assignees, or the creditor to whom, according to such certificate, the insolvent shall be indebted as therein mentioned, shall be thereupon entitled to issue and enforce a writ of execution against the body of such insolvent ; and the production of any such certificate to the secretary of such court shall be sufficient authority to him to issue such writ :

Provided always that every such last-mentioned certificate shall be deemed to have been cancelled and discharged by the allowance of the certificate of conformity of such insolvent from the time of such allowance ;

Provided also that no execution by virtue of any certificate which shall be granted to any creditor or assignees as aforesaid, shall be issued, nor shall any such certificate or execution in any manner affect any estate or effects which shall come to or be acquired by the insolvent, after the allowance of his certificate of conformity.

153. The assignees for the time being may issue and enforce execution upon any such certificate as last aforesaid, as fully to all intents and purposes as the assignees to whom such certificate shall have been originally granted.

On refusal of certificate or protection, the court may grant assignees or creditor a certificate on which they may sue out execution against the insolvent.

Assignees for the time being may issue execution on such certificate

Insolvent taken, not discharged for one year.

154. If any insolvent shall be taken in execution after the refusal of protection, or after the refusal or suspension of his certificate, he shall not be discharged from such execution, until he shall have been in prison for the full period of One year, except by order of the District Court.

List of uncertificated insolvents to be published in the Gazette every six months.

155. Every District Judge shall transmit to the Attorney-General on or before the fifteenth day of January and the fifteenth day of July in each year, the name and residence of every insolvent whose certificate shall have been refused or suspended by such Judge, and who shall then be uncertificated ; and the said Attorney-General shall thereupon cause a list, alphabetically arranged, showing the names and residences of all such uncertificated insolvents to be prepared, and published in the Gazette for general information,

Any person refusing to be sworn, or refusing to answer, or not answering fully, or refusing to sign examination, or to produce books, &c., maybe committed.

156. If any insolvent, or the wife of any insolvent, shall refuse to make and sign the declaration contained in the Schedule, or if any other person shall refuse to be sworn, or shall refuse to answer any lawful question put by the court, or shall not fully answer any such question to the satisfaction of the court, or shall refuse to sign his examination when reduced into writing (not having any lawful objection allowed by the court), or shall not produce any books, papers, deeds, and writings, or other documents in his custody or power, relating to any of the matters under inquiry, which such insolvent, wife of the insolvent, or person is required by the court to produce, and to the production of which he shall not state any objection allowed by the court, it shall be lawful for the court, by warrant, to commit such insolvent, wife of such insolvent, or other person to prison, there to remain without bail until he shall submit himself to such court to be sworn, and full answers make to the satisfaction of such court to all such lawful questions as shall be put by the court, and sign such examination, and produce such books, papers, deeds, writings, and other documents in his custody or power, to the production of which no such objection as aforesaid has been allowed.

Questions to be Specified In warrant.

157. If any person be committed by the District Court for refusing to answer or for not fully answering any question put to him by the court, such court shall in its warrant of commitment specify every such question :

Provided that if any person so committed shall bring any habeas corpus in order to be discharged from such commitment, and there shall appear on the return of such habeas corpus any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the Court of Appeal, and such court is hereby required, to commit such person to the same prison, there to remain until he shall conform, unless it shall be shown to such court by the person committed that he has fully answered all lawful questions put to him by the District Court, or if such person was committed for refusing to be sworn or for not signing his examinations, unless it shall appear to the Court of Appeal that he had a sufficient reason for the same :

Provided also that the Court of Appeal shall, if required thereto by the person committed, in case the whole of the examination of the person so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of the examination of such person whereof any such question was a part ; and if it shall appear from the whole examination that the answer or answers of the person committed is or are satisfactory, such court shall and may order the person so committed to be discharged.

158. If any person shall disobey any rule or order of the District Court, duly made by such court, for enforcing any of the purposes and provisions of this Ordinance, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, the court may, by warrant in the form S in the Schedule, commit the person so offending to prison, there to remain without bail until such court, or the Court of Appeal, shall make order to the contrary,

Persons disobeying any order of court to be committed.

If petitioning creditor's debt be not due, or if act of insolvency be not proved, and petition be Filed fraudulently or maliciously, court may order satisfaction

159. If the debt stated by the petitioning creditor in his affidavit, or in his petition for sequestration, and verified by affidavit to be due to him from any person, shall not be really due, or if, after a petition for sequestration filed, it shall not have been proved that the person against whom such petition has been filed had committed an act of insolvency, and it shall also appear that such petition was filed fraudulently or maliciously, the court shall and may, upon petition of the person against whom any such petition was so filed, examine into the same, and order satisfaction to be made to him for the damages by him sustained.

insolvent's estate not before come to the knowledge of the assignees, shall be allowed five per centum thereupon, and such further reward as the assignees, with the consent of the court, shall think fit to be paid out of the estate recovered on such discovery.

Petitioning creditor compounding with person after insolvency to forfeit his debt and pay the money, &c.

160. If any petitioning creditor shall, after the filing of his petition, receive any money, satisfaction, or security for his debt or any part thereof, whereby such petitioning creditor may receive more for every ten rupees in respect of his debt than the other creditors, such petitioning creditor shall forfeit his whole debt, and shall also repay or deliver up such money, satisfaction, or security, or the full value thereof, to the assignees of such insolvent for the benefit of the creditors of the insolvent.

162. If any creditor of any insolvent shall obtain any sum of money, or any property whatever, or security for money, from any person as an inducement for forbearing to oppose or for consenting to the allowance of the certificate of such insolvent, or to forbear to petition for the recall of the same, every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, property, or security so obtained (as the case may be).

Obtaining money, &c., to forbear opposition to or to consent to allowance of, certificate

Penalty.

Concealing insolvent's effects.

161. Any person who shall wilfully conceal any real or personal estate of the insolvent, and who shall not, within forty-two days after the filing of the petition for sequestration, discover such estate to the court or to the assignees, shall forfeit the sum of one thousand rupees, and double the value of the estate so concealed ; and any person, other than the person who shall have concealed the same, who shall after such time voluntarily discover to the court or to the assignees any part of such

163. Any person who shall insert or cause to be inserted in the Gazette, or in any newspaper, any advertisement under this Ordinance without authority, or knowing the same to be false in any material particular, shall be guilty of an offence, and liable on conviction to punishment by fine or imprisonment as the High Court shall award.

Inserting advertisements without authority.

164. Sections 36 and 37 shall apply and extend to State debtors as if the State had been specially mentioned in the said sections, and 37 to apply to State debtors.

Penalty. Allowance to persons making discovery.

165. In this Ordinance, unless the context otherwise requires—

Interpretation

" registered attorney " means an attorney-at-law appointed under Chapter V of the Civil Procedure Code by a party or his recognized agent to act on his behalf.

[Section 10.]

SCHEDULE

Form A

THE INSOLVENCY ORDINANCE

DECLARATION OF INSOLVENCY

I, the undersigned A. & of. do hereby declare that I am unable to meet my engagements with my creditors.

Dated at the hour of o'clock (in the forenoon, or at noon, or in the afternoon, as the case may be) this. day of. 19.....

Witness

(Signed) A. B.

C.D.

INSOLVENTS

[Cap. 103

Form B

[Section 16.]

THE INSOLVENCY ORDINANCE

PETITION BY A CREDITOR FOR SEQUESTRATION OF HIS DEBTOR'S ESTATE

To the District Court of.

The humble petition of.....

Showeth,

That.....having resided (or carried on business, as the case may be) for six months next immediately preceding the date of this petition, within the district of this court, that is to say, at..... is indebted unto your petitioner in the sum of five hundred rupees (if two petitioners, seven hundred rupees, and if three or more, one thousand rupees, as the case may be), and that your petitioner has been informed and believes that the said.....did lately commit an act of insolvency within the true intent and meaning of the Insolvency Ordinance.

Your petitioner therefore humbly prays that on proof of the requisites in that behalf the estate of the said.....may be adjudged insolvent and placed under sequestration.

And your petitioner shall ever pray, &c.

Signed by the petitioner on the.....day of.....,19. . . ., in the presence of.....

If the petition be by partners, alter the form accordingly, and let it be signed by one on behalf of himself and partners.

If the petition be by several, not being partners, then it must be signed by each, and in such case the names of the several petitioners should be stated in the attestation or attestations relating thereto respectively.

If the petitioner cannot speak to the place of residence or business of the debtor, strike out the averment as to that. and annex to the petition a separate affidavit of some person who can depose to the fact.

If the petition be against partners, alter the form accordingly.

Form C

[Section 16.]

THE INSOLVENCY ORDINANCE

AFFIDAVIT OF TRUTH OF ALLEGATIONS IN PETITION

.....day of..... 19.....

..... of..... in the district of..... the petitioner named in the petition hereunto annexed, maketh oath and saith that the several allegations in the said petition (and in the list annexed thereto, where the petition is by the insolvent himself) are true.

Sworn at..... this.....day of..... 19. . . ., before me,.....

Form D

[Section 16.]

THE INSOLVENCY ORDINANCE

PETITION BY A PERSON FOR SEQUESTRATION OF HIS OWN ESTATE AS INSOLVENT

The humble petition of.....

Showeth,

That your petitioner having resided (or carried on business, as the case may be) for six months next immediately preceding the date of this petition, within the district of this court, that is to say, at..... and

being unable to meet his engagements with his creditors, whose names are inserted in the list to this his petition annexed, has filed a declaration of insolvency in manner and form in that case made and provided, and that your petitioner verily believes that he can make it appear to the satisfaction of the court that his available estate is sufficient to pay his creditors at least two rupees and fifty cents on every ten rupees (or, that your petitioner is in actual custody within the walls of the prison at.for debt, and has been so since the.day of.last).

That your petitioner has examined the said list, and that it contains a full and true account of your petitioner's debts and the claims against him, with the names of his creditors and claimants, and the dates of contracting the debts and claims severally, as near as such dates can be slated, the nature of the debts and claims and securities (if any) given for the same, and that there is reasonable ground for disputing so much of the debts as are thereby mentioned as disputed ; and also a true account of the nature and amount of his property, and an inventory of the same and of the debts owing to him, with their dates as nearly as such dates can be stated, and the names of his debtors, and the nature of the securities (if any) which he has for such debts.

Your petitioner therefore humbly prays that on proof of the requisites in that behalf his estate may be adjudged insolvent and placed under sequestration.

A id your petitioner shall ever pray, &c.

Signed by the petitioner on theday of. 19., in the presence of.....

If the petition be by partners, alter the form accordingly, and state the names of the several petitioners in the attestation or attestations relating thereto respectively.

[Section 17.]

Form E

THE INSOLVENCY ORDINANCE

ORDER TO PROSECUTE A PETITION FOR SEQUESTRATION IN A PARTICULAR DISTRICT

In the Court of Appeal of the Republic of Sri Lanka, the.day of. 19....

In the matter of a petition for sequestration as insolvent of the estate of C. D.. of.....

Upon application made to.-this day by.of. (attorney-at-law) for. and upon reading the affidavit of. it is hereby ordered that the petition for sequestration as insolvent of the estate of the above-named C. D. be prosecuted in the District Court of.....

[Section 17.]

Form F

THE INSOLVENCY ORDINANCE

ORDER TO CONSOLIDATE PROCEEDINGS

In the Court of Appeal of the Republic of Sri Lanka, the.-day of. 19.

Ex parte.....

In the matter of.

Upon application made to.this day by,-of. (attorney-at-law) for. and upon reading the affidavit of. it is ordered that (staling the order).

Form G

THE INSOLVENCY ORDINANCE

ORDER TO TRANSFER A PETITION FOR SEQUESTRATION. &C.. FROM ONE DISTRICT COURT TO ANOTHER DISTRICT COURT

In the Court of Appeal of the Republic of Sri Lanka, the. day of., 19.

Ex parte.....

In the matter of.

Upon application made to. this day by. of., (attorney-at-law) for. and upon reading the affidavit of. it is ordered that (*stating the order*).

[section 27]

Form H

THE INSOLVENCY ORDINANCE

ORDER FOR AN ATTACHMENT UPON THE ESTATE OF THE INSOLVENT

In the District Court of. the. day of. 19.

In the matter of. an insolvent.

To the Fiscal of the Court.

Whereas the above-named. has been adjudged an insolvent under the Insolvency Ordinance, the estate of the said. is hereby placed under sequestration in your hands, and you are hereby ordered forthwith to lay an attachment on the property of the said. under inventory thereof, and to proceed therein as directed by the said Ordinance, and to return this order with what you have done thereon to this court on or before the. -day of. next.

And for so doing this shall be your sufficient warrant.

A.S.
District Judge.

Form I

THE INSOLVENCY ORDINANCE

ORDER FOR PETITION FOR SEQUESTRATION TO BE PROCEEDED IN, ON A SUBSTITUTED DEBT

In the District Court of. the. day of. 19.

In the matter of. an insolvent.

Upon application made to the court this day, by. of. (attorney-at-law) for. a creditor of the above-named insolvent, and who has proved a debt of sufficient amount to support an adjudication, and the debt of the petitioning creditor having been found by the court to be insufficient to support the adjudication of insolvency against the above-named. it is hereby ordered that the petition for sequestration filed against the said. -on the. day of. 19., be proceeded in, and that the costs of Ac. (*stating such order as to costs of any of the parties concerned as the conn thinks fit*),

A.B.
District Judge.

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[Section 30.]

Form K

THE INSOLVENCY ORDINANCE

ORDER ANNULING ADJUDICATION

In the District Court of....., the.....day of.....19.....

In the matter of.

Upon reading the proceedings in the above matter, and upon hearing (the evidence now adduced, if the case be so, and) what was alleged by. and being satisfied that the petitioning creditor's debt and act of insolvency (or specify the particular matter deemed insufficient, as the case may require) upon which the adjudication of insolvency made against the said.-on the.day of. 19... , was grounded, were and are (or, was and is) insufficient to support such adjudication, and no other debt or act of insolvency (or specify the-particular mailer requisite in lieu of that deemed insufficient, as the case may require) sufficient to support such adjudication being proved, it is ordered that the adjudication of insolvency made against' the said.-on the said.day of. 19., be annulled, and the same is hereby annulled accordingly.

A. B.,
District Judge.

[Section 32.]

Form L

THE INSOLVENCY ORDINANCE

SEARCH WARRANT

In the District Court of.....the.....day of.....,19.....

Whereas by evidence upon oath it hath been made to appear to this court, acting in the prosecution of a petition for sequestration filed and now in prosecution against,of., bearing date the of 19 and under which the said has been adjudged insolvent, that there is reason to suspect and believe that property of the said is concealed in the house (or other place, describing it, as the case may be) of one of such house not belonging to the said insolvent: These are therefore, by virtue of the Insolvency Ordinance, to authorize and require you, with necessary and proper assistants, to enter, in the daytime, into the house (or other place, describing it, as the case may be) of the said situate at.aforesaid, and there diligently to search for the said property, and if any property of the said insolvent shall be there found by you on such search, that you seize the same, to be disposed of and dealt with according to the provisions of the said Ordinance.

Given under my hand in the District Court of.....this.....day of..... 19.

A.B.,
District Judge.

To the Fiscal of the Court.
(or T o , if any person is specially appointed by the court.)

[Sections 41 and 42.]

Form M

THE INSOLVENCY ORDINANCE

FORM OF DECLARATION TO BE MADE BY THE INSOLVENT OR THE INSOLVENT'S WIFE

I, A. B; the person adjudged an insolvent under a petition for sequestration of my estate, filed on the. . ;-day of 19., (or I, C. B., the wife of A. B., adjudged an insolvent under, &c.), do solemnly promise and declare that I will make true answer to all such questions as may be proposed to me respecting all the property of the said A. B.. and ail dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said properly, to the best of my knowledge, information, and belief.

(Signed) A. B:
(or C. B; wife of the said A. B.).

Form N

THE INSOLVENCY ORDINANCE

ADMISSION OF DEBT TO THE INSOLVENT

I, the undersigned *J. K.*, of do hereby, in open court, confess that I am indebted to *E. F.* of an insolvent, in the sum of -upon the balance of accounts between myself and the said *E. F.*

(Signed) J. K.

Witness :

A.B.
District Judge.

Form O

THE INSOLVENCY ORDINANCE

ORDER FOR PAYMENT OF DEBT ADMITTED IN COURT
TO BE DUE TO THE ESTATE OF AN INSOLVENT

In the District Court of the day of 19.. - ..

In the matter of *E. F.* an insolvent.

Whereas *J. K.* of in his examination taken the day of 19., and signed by the said *J. K.*, has admitted that he is indebted to the above-named insolvent in the sum of upon the balance of accounts between the said *J. K.* and the said insolvent, it is hereby ordered that the said *J. K.* do pay to the assignees of the estate and effects of the said insolvent, in full discharge of the sum so admitted, the sum of -forthwith (or *if otherwise, stale the lime and manner of payment*), and that the said *J. K.* do also pay to the said assignees the sum of for the costs of and incident to the summons of the said *J. K.* in this behalf.

A.B.
District Judge.

(If the court shall not adjudge the costs of and incident to the summons to be paid by the person summoned, or if the court shall adjudge the assignees to pay to the person summoned his costs out of the estate of the insolvent, alter the form accordingly.)

Form Q

THE INSOLVENCY ORDINANCE

CERTIFICATE OF CONFORMITY

I, District Judge of acting in the prosecution of a petition for sequestration of the estate of as insolvent, and bearing date the- day of 19. do certify that the said. -became insolvent before the date and filing of the said petition within the true intent and meaning of the Insolvency Ordinance and was thereupon adjudged insolvent accordingly ; and I further certify that due notice was given in the Gazette of such petition having been filed and of the adjudication thereon, and that two public sittings for the said insolvent to surrender and conform were duly appointed, the last of which said sittings was appointed to be on the day of last; and I further certify that such two several sittings were had pursuant to such notice, and that upon the said. day of 19., the said insolvent did surrender himself, and did sign such surrender and submit to be examined from time to time upon oath ; and I further certify that the said insolvent did on the day of last finish his examination, and upon such examination made a full disclosure and discovery of his estate and effects, and in all things conformed, and so far as the court can judge there doth not

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appear any reason to question the truth of fulness of such discovery ; and I further certify that on the day of 19. . . . , in the District Court of I held a public sitting for the allowance of this certificate to the said insolvent (whereof and of the purport whereof the notice required in that behalf was duly given), and having regard to the conformity of the said insolvent to the said Ordinance, and to his conduct as a trader (or in relation to his estate) before as well as after his insolvency, I did then and there find the said insolvent entitled to such certificate, and did allow the same ; and I further certify that his insolvency has arisen from unavoidable losses and misfortunes, and that he is entitled to and I do award him this certificate as of the first class ; (or, that his Insolvency has not wholly arisen from unavoidable losses and misfortunes, and that he is entitled to and I do award him this certificate as of the second class ; or, that his insolvency has not arisen from unavoidable losses or misfortunes, and that he is only entitled to and I do only award him this certificate as of the third class).

(If the certificate be allowed with conditions, the same to be inserted here.)

Given under my hand in the District Court of.....this.....day of. 19.

Signed in the presence of.

A.B..
District Judge.

Form R

THE INSOLVENCY ORDINANCE

CERTIFICATE TO ASSIGNEES OR TO CREDITOR TO ENTITLE THEM TO ISSUE WRIT OF EXECUTION

In the District Court of..... the.day of.....19.....

In the matter of..... an insolvent.

I hereby certify that A. B., of and C. D., of assignees of the estate and effects of the above-named insolvent, are creditors of the said insolvent as such assignees for the sum of Rs..-in trust for the creditors of the said insolvent (or, that E. F; of, is a creditor of the said insolvent for the sum of Rs-), and that the said insolvent is not protected by this court from process against his person.

G.H..
District Judge.

Form S

THE INSOLVENCY ORDINANCE

WARRANT AGAINST PERSON DISOBEYING ANY ORDER OF THE COURT

Whereas by an order of this court bearing date the day of 19. . . . , made for enforcing the purposes and provisions of the Insolvency Ordinance, it was ordered that (as in the order), and whereas it is now proved that after the making of the said order, that is to say, on this day of , 19. . . . , a copy of the said order was duly served on the said personally, and the original order at the same time shown to him, but the said then refused (or neglected) to obey the same, and hath not as yet obeyed the said order:

These are therefore to require you forthwith to take into your custody the body of the said and him safely to convey to the prison at and him there to deliver to the keeper of the said prison, together with this precept, and the keeper of the said prison is hereby required in receive the said into his custody and him safely to keep and detain, without hail, until this court or the Court of Appeal shall make order to the contrary ; and for so doing this shall be your sufficient warrant.

Given under my hand in the District Court of.....the.....day of. i n the year.

A. B.,
District Judge.

To the Fiscal of the Court and to the keeper of the prison at